How to Start and Run a Solo Practice 2012
Northeastern University School of Law

April 21, 2012  9:00AM – 4:00PM

Presented by:

James Baron
Gabriel Cheong
Audrey Heidt
Sofia Lingos
Shani Rae Collymore
Jim Rowan
Veronica Zollina
This ticket ADMITS ONE to The Northeastern Law School’s:

All Day Workshop: How to Start and Run a Solo Practice

- What kind of law are you passionate about?
- Whom do you want to represent?
- How can you make it profitable?

Bring your DRAFT answers to this FREE workshop about how to start and run YOUR solo practice. Learn why these are critical questions, how you can find the answers, and ultimately, what steps you need to take in order to start your solo practice.

The Workshop features panelists who have gone into solo practice and who are willing to spend the day helping you open yours.

Why attend? To gain a clear-eyed view of how to start and run your solo practice from those who have been there and done that. In these economic times you may need to run a successful solo practice as a temporary bridge, or you may choose to make it a permanent career option.

Is this workshop for me? This limited enrollment (24 participants) workshop is open to any graduating law student and new-to-practice lawyer who want to practice on their own or explore that possibility.

What will I learn? Initial answers to the three big questions: What kind of law will I practice? Who will I serve? How will I make it profitable?

When: Saturday, April 21, 2012
   9 AM to 4 PM (Lunch will be served.)
Where: Northeastern University School of Law
   42 Dockser Hall
   65 Forsyth St., Boston, MA. 02115
Workshop Schedule

9:30 AM to 10 AM – Registration and Coffee
10 AM to NOON – Presentation and Q&A
NOON to 1 PM – Lunch and Networking
1 PM to 3 PM – Small Working Groups
3 PM to 4 PM- Concluding Session on Resources

James Baron practices special education and estate planning from his office in Waltham. Having previously earned a Masters’ degree in Education, and having personal experience dealing with the special education system, Jim attended law school with the intention of opening his own practice focusing on special education law.

Gabriel Cheong started his own law firm straight out of law school. His law firm grew steadily for the first year until he had the opportunity to purchase the law firm where he once interned in law school. In 2008, Gabriel purchased Infinity Law Group and is now running a small law firm while blogging, twittering, marketing and giving seminars on marketing and law practice management on a regular basis. His law practice is primarily focused on divorce, estate planning and prenuptial agreements.

Shani Rea Collymore is a solo-practitioner with an office in Lexington, MA. Her practice focuses on estate planning, probate and estate administration. She received her law degree from Suffolk University Law School and her undergraduate degree from Northeastern. She is active in the Women’s Bar.

Audrey Heidt is an elder law attorney in Waltham, Massachusetts. Audrey went solo directly out of law school, and is grateful to have a dedicated yoga practice in addition to her thriving law practice.

Sofia Lingos is the founding and principal attorney on Lingos Law, a boutique business law firm located in Boston, representing start-up and existing entities in developing, protecting, growing and maintaining their ventures. She is an active alumna of NUSL and passionate philanthropist, serving in numerous leadership roles throughout the community.

Jim Rowan spent a decade managing a small firm, teaches Law Practice Management and directs the clinical program at Northeastern University School of Law.

Veronica Zolina’s practice includes criminal defense as well as residential landlord/tenant and collaborative law. She entered solo practice in 2008, after two years with a small firm. Veronica is active as a volunteer in her community and in the Women's Bar Association. Prior to embarking on a law career, she worked as a marketing/communications professional in the nonprofit and financial industries.

Enrollment limited to twenty four participants.
No charge.
Lunch will be served.

To enroll, contact Janis Galligan by email j.galligan@neu.edu or by phone at 617/373-4930.
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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. (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:


- 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
  - 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 Year

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. 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)

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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

Seminars, etc.:

- 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).

(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 your 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


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 determents 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.


• *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).


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


4. Reference Materials

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, CounterSpy 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/ltc/fydocs/rm.html](http://www.abanet.org/tech/ltc/fydocs/rm.html)


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](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**

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)
to perform the legal services mentioned in paragraph (1) below. The lawyer agrees to perform them faithfully and with due diligence.

(1) The claim, controversy, and other matters with reference to which the services are to be performed are:

(2) The contingency upon which compensation is to be paid is:

(3) The client is not to be liable to pay compensation or court costs and expenses of litigation otherwise than from amounts collected for the client by the lawyer, except as follows:

(4) Compensation (including that of any associated counsel) to be paid to the lawyer by the client on the foregoing contingency shall be the following percentage of the (gross) (net) [indicate which] amount collected. [Here insert the percentages to be charged in the event of collection. These may be on a flat rate basis or in a descending scale in relation to the amount collected.] The percentage shall be applied to the amount of the recovery not including any attorney's fees awarded by a court or included in a settlement. The lawyer's compensation shall be such attorney's fees or the amount determined by the percentage calculation described above, whichever is greater. [Modify the last two sentences as appropriate if the parties agree on some other basis for calculation.]

This agreement and its performance are subject to Rule 1.5 of the Rules of Professional Conduct adopted by the Massachusetts Supreme Judicial Court.

WE EACH HAVE READ THE ABOVE AGREEMENT BEFORE SIGNING IT.

Witnesses to signatures
(To client)__________________________________________________
(Signature of Client)
(To lawyer)___________________________________________________
(Signature of Lawyer)
(If more space is needed separate sheets may be attached and initialed.)

Comment Inserted from <http://www.massreports.com/courtrules/sjcrules.htm#3:01>

2. Hourly Fee Agreements

Also provided below are examples of fee agreements which were provided by Attorney Jim Bolan. As with all forms, you are solely responsible to review the applicable rules and determine if the forms comply with current ethical rules and best practices.

CLIENT'S FEE AGREEMENT

(Litigation)

I, xxxxxxxxxxxxxxxxxx, of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, (the "Client"), hereby agrees to retain the law firm of _____________________-Massachusetts, 02459-3210, (the "Firm"), in connection with xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.

1. The Client hereby agrees to reimburse the Firm for all costs and disbursements incurred by it and to pay for all legal services performed on the Client's behalf at the hourly rates set
forth herein below. 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 rates:

<table>
<thead>
<tr>
<th>Role</th>
<th>Hourly Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Primary lawyer(s)</td>
<td></td>
</tr>
<tr>
<td>Other lawyers</td>
<td></td>
</tr>
<tr>
<td>Partners</td>
<td></td>
</tr>
<tr>
<td>Associates</td>
<td></td>
</tr>
<tr>
<td>Paralegals</td>
<td></td>
</tr>
</tbody>
</table>

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.

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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  xxxxxxxxxxxxxxxxxxxxxxxxx

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


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


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 $0.50 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

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**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.

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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


## GENERAL PRACTICE MANAGEMENT

<table>
<thead>
<tr>
<th>Title</th>
<th>Publisher</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative Forms Handbook</td>
<td>(No Date); a publication of the Florida Bar’s Law Office Management Assistance Service; includes Forms CD (MassLOMAP holds 2 Copies)</td>
</tr>
<tr>
<td>Leveraging with Legal Assistants: How to Maximize Team Performance, Improve Quality, and Boost Your Bottom Line</td>
<td>(1993); a publication of the American Bar Association (ed. Arthur G. Greene)</td>
</tr>
<tr>
<td>Finding the Right Lawyer</td>
<td>(1995); a publication of the American Bar Association (by Jay G. Foonberg)</td>
</tr>
<tr>
<td>Closing Your Practice: Retiring from Practice is More Complex than...</td>
<td>(1997); a publication of MCLE, Inc. (by Walton M. Phillips)</td>
</tr>
<tr>
<td>Handling Personnel Issues in the Law Office: Your Legal Responsibilities</td>
<td>(1997); a publication of the American Bar Association (by Francis T. Coleman and Douglas E. Rosenfeld)</td>
</tr>
<tr>
<td>Telecommuting for Lawyers</td>
<td>(1998); a publication of the American Bar Association (by Nicole Berg)</td>
</tr>
<tr>
<td>&quot;Who Is In Charge Around Here?&quot;--Eliminating Would've, Could've and Should've from Your Law Office: A Basic Course in Law Office</td>
<td>(1999); a publication of the Florida Bar’s Law Office Management Assistance Service and The Florida Chapters of the Association of Law Office Management</td>
</tr>
<tr>
<td>The Essential Formbook: Comprehensive Management Tools for Lawyers--Volume I: Partnership and Organizational Agreements,</td>
<td>(2000); a publication of the American Bar Association (by Gary A. Munneke and Anthony E. Davis); includes Forms CD</td>
</tr>
<tr>
<td>Getting Things Done: The Art of Stress-Free Productivity</td>
<td>(2001); a publication of Penguin Books (by David Allen)</td>
</tr>
<tr>
<td>Attorney and Law Firm Guide to The Business of Law: Planning and Operating for Survival and Growth</td>
<td>2nd Edition (2002); a publication of the American Bar Association (ed. Robert L. Haig); includes Appendices CD</td>
</tr>
<tr>
<td>A Lawyer's Guide to Retirement and Lifetime Planning</td>
<td>(2002); a publication of the American Bar Association (by Jay A. Coleman)</td>
</tr>
<tr>
<td>Managing Practice Interruptions</td>
<td>(2002); a publication of the Lawyers’ Professional Indemnity Company (LawPRO®) (by Daniel E. Pinnington)</td>
</tr>
<tr>
<td>Paralegals, Profitability, and the Future of Your Law Practice</td>
<td>(2003); a publication of the American Bar Association (by Arthur G. Greene and Therese A. Cannon); includes CD-Rom</td>
</tr>
<tr>
<td>Records Management in the Legal Environment: A Handbook of</td>
<td>(2003); a publication of ARMA International (by Jean Barr, Beth Greene)</td>
</tr>
<tr>
<td>Successful Partnering Between Inside and Outside Counsel, Volume 1</td>
<td>(2003); a publication of West Group (ed. Robert L. Haig); includes CD-Rom</td>
</tr>
<tr>
<td>Successful Partnering Between Inside and Outside Counsel, Volume 2</td>
<td>(2003); a publication of West Group (ed. Robert L. Haig); includes CD-Rom</td>
</tr>
<tr>
<td>Successful Partnering Between Inside and Outside Counsel, Volume 3</td>
<td>(2003); a publication of West Group (ed. Robert L. Haig); includes CD-Rom</td>
</tr>
<tr>
<td>Successful Partnering Between Inside and Outside Counsel, Volume 4</td>
<td>(2003); a publication of West Group (ed. Robert L. Haig); includes CD-Rom</td>
</tr>
<tr>
<td>ABA Model Guidelines for the Utilization of Paralegal Services</td>
<td>(2004); a publication of the American Bar Association’s Standing Committee</td>
</tr>
<tr>
<td>Compensation Plans for Law Firms</td>
<td>4th Edition (2004); a publication of the American Bar Association</td>
</tr>
<tr>
<td>How to Start &amp; Build a Law Practice</td>
<td>5th Edition (2004); a publication of the American Bar Association (by Jay G. Foonberg); includes CD-Rom</td>
</tr>
<tr>
<td>The Lawyer’s Guide to Strategic Planning: Defining, Setting and Achieving Your Firm’s Goals</td>
<td>(2004); a publication of the American Bar Association (by Thomas C. Grella and Michael L. Hudkins); includes CD-Rom (MassLOMAP holds 2 Copies)</td>
</tr>
<tr>
<td>Letters for Lawyers: Essential Communications for Clients, Prospects and Others</td>
<td>2nd Edition (2004); a publication of the American Bar Association (by Thomas E. Kane); includes CD-Rom</td>
</tr>
<tr>
<td>Up and Running: Operating Instructions for the Small Law Office</td>
<td>2nd Edition (2004); a publication of the Washington State Bar Association</td>
</tr>
<tr>
<td>Law Office Procedures Manual for Solos and Small Firms</td>
<td>3rd Edition (2005); a publication of the American Bar Association (by Demetrios Dimitriou); includes CD-Rom</td>
</tr>
<tr>
<td>New Practice Information Packet</td>
<td>(2005); a publication of the Washington State Bar Association</td>
</tr>
<tr>
<td>The Of Counsel Agreement: A Guide for Law Firm and Practitioner</td>
<td>3rd Edition (2005); a publication of the American Bar Association (by Harold G. Wren and Beverly Glascock); includes Appendices CD</td>
</tr>
<tr>
<td>Business Competency for Lawyers: A LawBiz Management Special</td>
<td>(2006); a publication of the LawBiz Management Company (by Harold G. Wren and Beverly Glascock)</td>
</tr>
<tr>
<td>How to Start and Run a Successful Solo or Small-Firm Practice</td>
<td>(2006); a publication of the Massachusetts Bar Association (by Marc L. Breakstone and David W. White-Lief, primary authors)</td>
</tr>
<tr>
<td>Managing the Client Relationship</td>
<td>(2006); a publication of the Boston Bar Association (by Paula E. Berg, George A. Berman, Rodney S. Dowell, Karen J. Kearns, Evan M. Coleman)</td>
</tr>
<tr>
<td>Pocket Mentor: Managing Time</td>
<td>(2006); a publication of the Harvard Business School Press</td>
</tr>
<tr>
<td>Starting Anew</td>
<td>(2006); a publication of the Florida Bar’s Law Office Management Assistance Service; CLE program DVD</td>
</tr>
<tr>
<td>How to Get &amp; Keep Good Clients</td>
<td>3rd Edition (2007); a publication of the American Bar Association (by Jay G. Foonberg); includes CD-Rom</td>
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<td>The Survey of Law Firm Economics</td>
<td>(2007)</td>
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<tr>
<td>Think Again!: Innovative Approaches to the Business of Law</td>
<td>(2007)</td>
</tr>
<tr>
<td>Disaster Recovery and Planning</td>
<td>(2008)</td>
</tr>
<tr>
<td>Hillman on Lawyer Mobility: The Law and Ethics of Partner</td>
<td>(2008)</td>
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<tr>
<td>Managing the Client Relationship</td>
<td>(2008)</td>
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<tr>
<td>Solo by Choice: How to be the Lawyer You Always Wanted to Be</td>
<td>(2008)</td>
</tr>
<tr>
<td>50 Financial Tips to Help You and Your Firm Survive and Thrive in a</td>
<td>(2009)</td>
</tr>
<tr>
<td>BBA Small Firm Meeting</td>
<td>(2007)</td>
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<td>BBA Small Firm Insurance Discussion</td>
<td>(2007)</td>
</tr>
<tr>
<td>The Organized Lawyer</td>
<td>(2009)</td>
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<tr>
<td>The Busy Lawyer's Guide to Success</td>
<td>(2009)</td>
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<tr>
<td>The 48 Secret Rules of Lawyering</td>
<td>(2008)</td>
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<td>Successful Partnering Between Inside and Outside Counsel- Forms,</td>
<td>(2003)</td>
</tr>
<tr>
<td>Law Partnership: Its Rights and Responsibilities</td>
<td>(1999)</td>
</tr>
<tr>
<td>The Ultimate Guide to Solo and Small Firm Success</td>
<td>(2009)</td>
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<tr>
<td>Difficult Conversations: How to Discuss What Matters the Most</td>
<td>(1999)</td>
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<tr>
<td>Letters to a Young Lawyer</td>
<td>(2001)</td>
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<td>How Good Lawyers Survive Bad Times</td>
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<td>(2009)</td>
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<td>Smart Soloing: How to Build Your Practice</td>
<td>(2010); a publication of the American Bar Association by Michael E. Gerber, Robert Armstrong, and Sanford M. Fisch</td>
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<td>To Do About It</td>
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LOMAP Lending Library: Resources for Solos
## LOMAP Lending Library: Resources for Solos

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<td>The Lawyer’s Essential Guide to Writing: Proven Tools and</td>
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<td>Fifty Unique Legal Paths: How to Find the Right Job</td>
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<td>Trial Prep for Paralegals: Effective Case Management &amp; Support to</td>
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<td>The Electronic Evidence and Discovery Handbook: Forms, Checklists,</td>
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<td>General Practice, Solo &amp; Small Firm Conference</td>
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<td>REBA Foundation Spring Conference</td>
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<td>Second Annual Lawyers in Transition Conference</td>
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<td>Suffolk County Bar Advocates Handbook</td>
<td>1998</td>
<td>Committee for Public Counsel Services</td>
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<td>Massachusetts Bar Association Conference, May 13 2009</td>
<td>2009</td>
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<td>A Uniform System of Citation (The Bluebook)</td>
<td>14th Edition</td>
<td>Harvard Law Review</td>
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<td>Oran’s Dictionary of the Law</td>
<td>1983</td>
<td>West Publishing Company</td>
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<tr>
<td>Guide to Judicial Practice in the Superior Court of Massachusetts</td>
<td>2008</td>
<td>Massachusetts Bar Association (eds. Jeffrey N. Catalano and Ann Marie Maguire)</td>
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<td>Operating the Profitable Immigration Law Office</td>
<td>2009</td>
<td>Massachusetts Bar Association (by Rodney S. Dowell, Roy J. Watson, Jared D. Correa, Marisa A. DeFranco, Richard Michael Green, Margaret Holland Sparages, Shiva</td>
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<td>Eighth Annual Family Mediation Institute</td>
<td>2009</td>
<td>Massachusetts Council on Family</td>
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<td>Workplace Injury - The Seminar You Can't Miss</td>
<td>(2010)</td>
<td>a publication of the MBA</td>
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<td>How to Build and Manage a Personal Injury Practice</td>
<td>3rd Edition (2012)</td>
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**TECHNOLOGY FOR THE PRACTICE OF LAW**

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<td>Amicus Attorney in One Hour for Lawyers</td>
<td>(2000)</td>
<td>a publication of the American Bar Association</td>
<td>David J. Cunningham and Jose C. Montana</td>
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<td>Technology Primer for Solos and Small Firms</td>
<td>(2006)</td>
<td>a publication of the American Bar Association</td>
<td>Dennis Kennedy, Natalie R. Kelly, Daniel E. Pinnington and the Law Practice</td>
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<td>Dennis Kennedy, Natalie R. Kelly, Daniel E. Pinnington and the Law Practice Management Program of the State Bar of Georgia; Audio of CLE</td>
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<td>ABA Techshow Road Show 2009</td>
<td>(2009)</td>
<td>a publication of the Massachusetts Bar Association</td>
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<td>Data Security and Identity Theft</td>
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<td>Find Info Like a Pro: Mining the Internet's Publicly Available Resources for Investigative Research</td>
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<td>Virtual Law Practice: How to Deliver Legal Services Online</td>
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<td>Decisions Made Simple</td>
<td>Nelson, John W. Simek and Michael C. Maschke)</td>
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<td>Cloud Computing for Lawyers</td>
<td>(2012); a publication of the American Bar Association (by Nicole</td>
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<td><strong>MARKETING FOR LAWYERS</strong></td>
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<td>Marketing and Legal Ethics: The Boundaries of Promoting Legal</td>
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<td>Through the Client's Eyes: New Approaches to Get Clients to Hire</td>
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<td>Marketing Success Stories: Conversations with Leading Lawyers</td>
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<td>Practice Made Perfect for Lawyers: 10 Principles for Marketing Your</td>
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<td>The Lawyer's Field Guide to Effective Business Development</td>
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<td>Referral Marketing: The Key to a Profitable Practice</td>
<td>(2007); a publication of the Boston Bar Association (by Edmund J.</td>
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<td>The Little Black Book: A Lawyer's Guide to Creating A Marketing</td>
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<td>Social media for Lawyers: The Next Frontier</td>
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<td>The ABA Guide to Lawyer Trust Accounts</td>
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<td>Accounting &amp; Finance for Lawyers</td>
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<td>Winning Alternatives to the Billable Hour: Strategies That Work</td>
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<td>Collecting Your Fee: Getting Paid from Intake to Invoice</td>
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<td>Managing Client Trust Accounts: Rules, Regulations and Common</td>
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**ETHICS AND INSURANCE**

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<td>(2007); a publication of the Boston Bar Association</td>
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<td>Managing the Practice of Investing in Clients</td>
<td>(2000); a publication of the Lawyers’ Professional Indemnity</td>
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<td>Company (LawPRO®) (by Karen K.H. Bell)</td>
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<td>Profile of Legal Malpractice Claims (2004 to 2007)</td>
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<td>Restatement of the Law Third: The Law Governing Lawyers (Volume</td>
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Dr. Donald F. Kuratko, the author of two entrepreneurship textbooks published in 1990, is the Stoops Distinguished Professor in Business and Director of the Entrepreneur Program at Ball State University. He grew up working in his family’s business.

The world does not need another article on business plans. If you have decided to write a business plan, you probably already know that there are too many books, tapes, videos, software programs and seminars already. It has been called the "business plan jungle" because unsuspecting entrepreneurs have been known to get lost in the rows of resources at their local bookstore, never to be heard from again.

How is this article different? It is designed to be your starting point--the first source to read before wading through the stacks of lengthier resources. By providing an overview of the standard sources, and the insights I have gained by working with literally hundreds of plans, I hope to help you determine whether you should write a business plan. And, if you decide to proceed, the information given here will help you take the next step.

What is a business plan?

A business plan:

- Describes every aspect of a particular business.
- Includes a marketing plan.
- Clarifies and outlines financial needs.
- Identifies potential obstacles and alternative solutions.
- Establishes milestones for continuous and timely evaluation.

Serves as a communication tool for all financial and professional sources.

The business plan is the major tool used in guiding the formation of the venture, as well as the primary document in managing it.

But it is also more than a written document--it is a process that starts when entrepreneurs begin to gather information and then continues as projections are made, implemented, measured and updated. It is an ongoing process.

The benefits

Financing Venture capitalists and most banks require business plans. Generally, when our national economy declines, it becomes harder to obtain financing, and financiers increase their demands for documentation. Many entrepreneurs say that they wrote a business plan because their bankers or venture capitalists required them to.

Increased knowledge But many of these same entrepreneurs say that just as important as getting the financing was the process of actually having to put the plan together. Writing the plan
forced them to view the business critically, objectively and thoroughly.

**Prevent poor investments** Business plans help entrepreneurs avoid projects that are poor investments. As Joseph Mancuso says in *How to Write a Winning Business Plan*, "If your proposed venture is marginal at best, the business plan will show you why and may help you avoid paying the high tuition of business failure. It is far cheaper not to begin an ill-fated business than to learn by experience what your business plan could have taught you at a cost of several hours of concentrated work."

**Planning** Business plans force you to plan. Because all aspects of the business venture must be addressed in the plan, the entrepreneur develops and examines operating strategies and expected results. Goals and objectives are quantified, so that the entrepreneur can compare forecasts with actual results. This type of planning can help keep you on track.

As a final note about the benefits, let's acknowledge that entrepreneurs who do all or most of the work themselves are the ones who tend to benefit most from the plans. Those who delegate this job tend to gain the least.

**The components**

Here is a brief description of the ten components of a business plan:

**Executive summary** This is the most important section because it has to convince the reader that the business will succeed. In no more than three pages, you should summarize the highlights of the rest of the plan.

The Executive Summary must be able to stand on its own. It is not simply an introduction to the rest of the business plan. Investors who review a lot of business plans may read only the Executive Summary. If the Executive Summary is not successful in gaining the investor's confidence, the plan will be rejected and will never be read in its entirety.

This section should discuss who will purchase the product or service, how much money is required, and what the payback is expected to be. You should also explain why you are uniquely qualified and skilled in managing the business.

Because this section summarizes the plan, it is often best to write this section last.

**Description of the business** This section should provide background information about your industry, a history of your company, and a general description of your new product or service.

Your product or service should be described in terms of its unique qualities and value to consumers.

Specific short-term and long-term objectives must be defined. You should clearly state what sales, market share, and profitability objectives you want your business to achieve.

**Marketing** There are two major parts to the marketing section. The first is research and analysis. Here, you should explain who will buy the product or service—or, in other words, identify your target market. Measure your market size and trends, and estimate the market share you expect to capture. Be sure to include support for your sales projections. For example, if your figures are based on published marketing research data, be sure to cite the source. Do your best to make realistic and credible projections.

Describe your competition in considerable detail, identifying their strengths and weaknesses.
Finally, explain how you will be better than your competitors.

The second part is your marketing plan. This critical section should include your market strategy, sales and distribution, pricing, advertising, promotion and public awareness.

Demonstrate how your pricing strategy will result in a profit. Identify your advertising plans, and include cost estimates to validate the proposed strategy.

**Research, design and development** This section includes developmental research leading to the design of the product. Industrial design is an art form that has successfully found its way into business, and it should not be neglected. Technical research results should be evaluated.

Include the costs of research, testing and development. Explain carefully what has already been accomplished (e.g., prototype development, lab testing, early development.)

And finally, mention any research or technical assistance that has been provided for you.

**Manufacturing** Explain the process steps to be used in producing your product or service. A simple flowchart is often used to show how a product will be assembled.

This section should also describe the advantages of your location in terms of zoning, tax laws, wage rates, labor availability, proximity to suppliers and transportation systems.

Outline also the requirements and costs of your production facilities and your equipment. (Be careful--too many entrepreneurs underestimate this part.)

**Organization** Start by describing the management team, their unique qualifications, and how you will compensate them (including salaries, employment agreements, stock purchase plans, levels of ownership and other considerations). Discuss how your organization will be structured and consider including a diagram illustrating who will report to whom.

Also include a discussion of the potential contribution of the board of directors, advisers and consultants.

Finally, carefully describe the legal structure of your venture (i.e., sole proprietorship, partnership or corporation).

**Critical risks** Discuss potential risks before investors point them out. Here are some examples: price-cutting by competitors, potentially unfavorable industry-wide trends, design or manufacturing costs that could exceed estimates, sales projections that are not achieved, production development schedules that are not met, difficulties or long lead times in procuring parts or raw materials, and greater-than-expected innovation and development costs to keep pace with new competition.

Outside consultants can often help identify risks and recommend alternative courses of action.

Your main objective is to show that you can anticipate and control (to a reasonable degree) your risks.

**Financial** This section of the business plan will be closely scrutinized by potential investors, so it’s imperative that you give it the attention it deserves. Three key financial statements must be presented: a balance sheet, an income statement, and a cash flow statement. These statements typically cover a three-year period. Be sure you state all the assumptions you made when
calculating the figures.

Determine the stages where your business will require external financing and identify the expected financing sources (both debt and equity sources). Also, clearly show what return on investment these sources will achieve by investing in your business. The final item to include is a break-even chart. This chart should show what level of sales will be required to cover all costs.

If the work is done well, the financial statements should represent the actual financial achievements expected from the business plan. They also provide a standard by which to measure the actual results of operating the enterprise. They become a very valuable tool for managing and controlling the business in the first few years.

**Milestone schedule** This is an important segment of the business plan because it requires determining what tasks must be accomplished in order to achieve your objectives. Milestones and deadlines should be established and monitored while the venture is in progress. Each milestone is related to all the others and together they comprise a network of the entire project.

It may be helpful to summarize this section in a chart.

**Appendix** This section includes important background information that was not included in the other sections. This is where you would put such items as: resumes of the management team, names of references and advisers, drawings, documents, agreements, and any materials that support the plan. You may also wish to add a bibliography of the sources you drew information from.

**Writing your plan**
The best way to start your plan is to find out what information you will need to acquire. The preceding outline is a good sketch; now go after complete information.

But you don't have to go into the business plan jungle unarmed. Our section on page 39 called, "Suggested Resources for Business Plan Development," can help you decide where to start looking.

Another alternative: Consider enrolling in a seminar offered by your local college or university.

In my experience, the two most common stumbling blocks when writing business plans are: finding the information and writing the document.

Acquiring your information will probably be the most time-consuming part of the business plan process. Here is a brief sampling of the types of places that may have the kind of information you will need.

**Data sources for your business plan**

**Sources of internal data**

- Accounting records
- Marketing studies
- Customer complaint files
- Sales records
- Other company records
Sources of external data

*General guides* (These guides provide direction on where to go to find data on a particular topic):

- American Statistics Index
- Business Information Sources
- Consultants and Consulting Organizations Directory
- Directories in Print
- Directory of Industry Data Sources
- Directory of On-Line Databases
- Encyclopedia of Associations
- Encyclopedia of Business Information Sources
- Small Business Sourcebook
- Statistical Reference Index

*Indexes to books and articles:*

- Applied Technology and Sciences Index
- Books in Print
- Business Periodicals Index
- Computer Database Information Searches
- Reader's Guide to Periodical Literature
- Wall Street Journal Index

*Government publications:*

- Census Reports (agriculture, construction, housing, manufacturers, mineral industries, population, retail trade, service industries, transportation, wholesale trade)
- County and City Data Book
- County Business Patterns
- Economic Indicators
- Guide to Foreign Trade Statistics
- Guide to Industrial Statistics
- U.S. Industrial Outlook

*Organizations and people:*

- American Marketing Association
- Friends, relatives, and other small-business owners
- Librarians
- Local Chamber of Commerce Offices
- Local and regional newspapers
- Marketing research firms
- Small Business Development Centers (SBDCs)
- State, local, and federal government offices
- Trade associations
- Universities

As you work through your plan, you may find our section, "A Business Plan Checklist," to be helpful. It can guide you through your writing process.
**Drawbacks and limitations** If business plans are so great, how come a lot of old, successful businesses don't have one?

Some business owners succeed without this tool because they are geniuses, they are lucky, or because they have an incredibly great product or service. What you don't see are all the businesses that didn't make it but might have done better if they had put a plan together. Many established business owners, quite frankly, could benefit from going through the process. I know of one 110-year-old business that decided to write a business plan because its owners needed to re-define their target markets. For three months, they met weekly with an outside consultant, and they said they literally "turned the business inside out." They're pleased with the results. Two years after going through the process, their sales are up 80 percent and their profits are up 300 percent.

Perhaps the main reason that some businesses don't have a business plan is that this type of planning goes against the nature or personality of many entrepreneurs. They would much rather be "doing something" than planning, projecting and calculating. The thought of spending three months (or even three full days) doing research makes them uneasy.

Finally, some entrepreneurs may feel skeptical about the value of a plan that is, after all, based upon estimates. If you are writing a plan for a new business or a new product, all of your calculations will, of course, be guesswork. The value of your "guesswork" depends upon what you are basing your assumptions on. Your research needs to be thorough, accurate and applicable to your own situation.

Even though business plans should take risks into account, it is impossible to identify all the unforeseen circumstances that may arise. Who can predict natural disasters or sudden serious illnesses? Insurance can help cover some losses, but it cannot ever put you back in exactly the same position you were in before.

And it can be hard to know when you have satisfactorily answered such questions as, "Who are my customers?" and, "How much of my product will they buy in a given period of time?" A common limitation of all of the resources I've listed is that they are not interactive. In other words, they cannot ask you questions like "Have you considered this as a possible market? Have you thought about this drawback?" That's why I highly recommend that you talk with someone about your plan before you consider it finished.

Doing a business plan won't guarantee success. It won't remove risk or uncertainty. And it won't always result in financing.

But business plans can help entrepreneurs make informed decisions. For that reason alone, they almost always prove to be a good investment in terms of time and effort.

The sources at the end of this document are presented as good starting points for preparing a business plan.

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**Emerging Business Forums**

There is a growing trend in formal business plan presentations today.

Business forums are developing in major cities all across the United States. M.I.T. established its
first business forum in 1978 in Boston. Since that time, Chicago, Milwaukee, and Indianapolis are examples of cities that have followed with similar forums.

One type of forum, known as Emerging Business Forum, offers entrepreneurs constructive critiques of their business plans by experienced business executives, venture capitalists, consultants and fellow entrepreneurs.

These Forums offer evaluation and counsel to growth enterprises. Entrepreneurs typically have 30 minutes to present their business plans before the review panel and a live audience. Members of the panel offer candid comments, pointing out both strengths and weaknesses of the plan. Audience participation follows. Presenters have the opportunity to respond to the evaluations and suggestions offered. They also receive written evaluations of the oral presentation from audience members. (The entrepreneur doesn't make the written plan available to the audience.) The Forum allows for individual contacts between the audience, panelists, and presenters.

A Common Stumbling Block: The Writing Process

Your desk is covered with pieces of information that you want to put into your business plan. You've had your coffee. Your phone is off the hook. But you spend the next fifteen minutes staring out the window...unable to get going.

You're not alone. Most people experience some form of writer's block when faced with a particularly important or large-scale job.

Why? Most researchers who study the act of writing currently believe that many of our writing problems are caused by our approach. They say that all writers—whether they are conscious of it or not—go through this five-stage process when they write: pre-writing, writing, revising, editing and proofreading. The majority of writing problems are caused, the researchers say, when the writer tries to do all of the steps at once. Let's take a closer look at each of these steps:

**Pre-writing** This is the stage where you decide what you're going to say. You may write or review your notes, assemble facts, organize your thoughts, establish your goals, or draft an outline. The more you have to say, the more important this stage is. Generally, the more time you spend here, the less time you will spend in the revising stage.

**Writing** After you know in broad terms what you need to say, you can start saying it. This is the stage where you just get it down. Resist the temptation to try to say everything perfectly. Don't correct grammar or punctuation. Don't stop after every sentence to critique yourself. Just keep going.

**Revising** When you're done, you can start revising for clarity. Re-work your sentences until you are sure that your reader will understand them.

Then, take a break from the project. At the very least, return a phone call or stand up and stretch. The next stage will require you to switch gears dramatically, and it will be much easier if you approach it from a fresh perspective.

**Editing** This is the most crucial and most difficult stage of the writing process. At this point, you should take a very objective look at your business plan and ask yourself:
. Does it do what it should do?

. Is it convincing?

. Do I need to include more information? Less?

. Have I supported all of my most important statements? Is it well-organized?

. Is it readable?

. Is the tone appropriate? Is the style appropriate?

**Proofreading** All that is left to do now is to look for typographical errors, minor grammatical errors, and to make sure that the business plan is spaced correctly on the page. It helps if someone else can take a look. Keep in mind that minor errors could undermine the impact of the whole business plan.

The most important applications of the process approach are: Don't correct yourself while you write, and don't wait for "the perfect opening sentence" to come to you.

Speaking from my own experience as a professional writer (who hates to write), this process approach makes a lot of sense. I consciously go through the steps about 90 percent of the time. While I taught this at University of Wisconsin-Milwaukee, about 75 percent of my students said that this approach saved them time and was especially helpful when they had tight deadlines.

Catherine Stover, Editor

**A Business Plan Checklist:**

**Key Questions to Answer**

**I. Executive Summary**

a. Why will the business succeed?
b. What do you want to start (or change)?
c. How much money is required?
d. What is the return on the investment?
e. Why is the venture a good risk?

**II. Business Description**

a. What type of business are you planning?
b. What products or services will you sell?
c. What type of opportunity is it (new, part-time, expansion, seasonal, year-round)?
d. Why does it promise to be successful?
e. What is the growth potential?
f. How is it unique?

**III. Marketing**

a. Who are your potential customers?
b. How large is the market?
c. Who are your competitors? How are their businesses positioned?
d. What market share do you anticipate?
e. How will you price your product or service?
f. What advertising and promotional strategies will you use?

**IV. Research, Design, and Development**
a. Have you carefully described your design or development?
b. What technical assistance have you received?
c. What research needs do you anticipate?
d. Are the costs involved in research and design reasonable?

**V. Manufacturing**
a. Where will the business be located? Why?
b. What steps are required to produce your product or service?
c. What are your needs for production (e.g., facilities and equipment)?
d. Who will be your suppliers?
e. What type of transportation is available?
f. What is the supply of available labor?
g. What will it cost to produce your product or service?

**VI. Organization**
a. Who will manage the business?
b. What qualifications do you have?
c. How many employees will you need? What will they do?
d. How will you structure your organization?
e. What are your plans for employee salaries, wages and benefits?
f. What consultants or specialists will you need? How will you use them? What legal form of ownership will you choose? Why?
g. What licenses and permits will you need?

**VII. Critical Risks**
a. What potential problems could arise?
b. How likely are they?
c. How do you plan to manage these potential problems?

**VIII. Financial**
a. What is your total estimated business income for the first year? Monthly for the first year? Quarterly for the second and third years?
b. What will it cost you to open the business? What will your personal monthly financial needs be?
d. What sales volume will you need in order to make a profit during the first three years?
e. What will be the break-even point?
f. What will be your projected assets, liabilities, and net worth on the day before you expect to open?
g. What are your total financial needs?
h. What are your potential funding sources? How will you spend it?
i. How will the loans be secured?

**IX. Milestone Schedule**
a. What timing have you projected for this project?
b. How have you set your objectives?
c. Have you set up your deadlines for each stage of your venture?
d. Is there a relationship between events in this venture?

**X. Appendix**
a. Have you included all important documents, drawings, agreements, and references?
Suggested Resources for Business Plan Development

The most effective parts in any of the resources are a thorough outline of the business plan and a clean example of a completed plan. It is important to consider the level of sophistication with these resources. While some of the materials are designed for someone starting out, other resources have an expectation of certain business knowledge.

The following list outlines the resources in terms of title, description, and level of sophistication. As a final thought to business plan resources, remember that there are a variety of software programs available to assist in financial spreadsheets as well as certain market sensitivity analyses.

Speciality books devoted entirely to business plans

**Description** This is a short step-by-step guide. The book explains why certain information is required, how it may be best presented, and the sensitivities of both preparer and reviewer. The book contains 13 chapters, appendixes and index; however, it's only 180 pages long.  
**Level** Beginning--Startup

**Description** This is a useful handbook to help you design, write and use a business plan and a financing proposal tailored to your specific business needs. An example of a fish market business is used to illustrate each segment of the business plan.  
**Level** Beginning--Startup: Easy to follow with a good step-by-step format.

**Description** Based on the expert approaches of the MIT Enterprise Forum, this thin paperback shows you how to write a business plan that sells ideas. The authors use examples of real business plans to answer the entre-preneur's most pressing questions about how to effectively present any product or service to potential investors to win their attention and financial support.  
**Level** Beginning--Startup

**Title** Develop Your Business Plan, by Richard L. Leza and Jose F. Placencia, (The Oasis Press, 1988). $34.95  
**Description** It helps you do the critical planning needed for successful new or expanding businesses, new product introductions, funding presentations or internal planning. It guides you through detailed analyses of your company, your industry and your market. It includes worksheets, charts, graphs and advice for developing a professional business plan.  
**Level** Beginning--Startup

**Description** It contains actual business plans of Pizza Hut, Celestial Seasonings, Ben & Jerry's, People Express, and Software Publishing Corp. A good resource for reading through actual examples.  
**Level** Beginning--Startup

**Description** This is one of the most complete books devoted to business planning. It covers the outline, preparation, and presentation of a plan. Actual examples of business plans are illustrated as well as resources to help the entrepreneur. This book is one of the best resources available for the serious entrepreneur.

**Level** More sophisticated, but easy to follow.

Textbooks containing thorough coverage of business plans as well as additional material on entrepreneurship and small-business management (These are some of the leading texts for colleges and universities today)


**Description** This 600-page text is designed for an introduction to small businesses and their development. While the book contains 24 chapters involving the full presentation of managerial topics, there is a chapter devoted entirely to business plan development. In addition, there is an appendix with a complete business plan for a 1950's diner-style restaurant.

**Level** Introductory college level


**Description** A complete 700-page text on entrepreneurship topics ranging from creativity, financing, and assessment, to entrepreneurial growth and succession issues. There is a complete chapter on developing a business plan and also a special appendix containing a complete business plan on a "Roaring 20's Museum" for the city of Chicago. This was a national award-winning business plan that combined creativity, research, and a thorough knowledge of an idea.

**Level** Sophisticated--college level text


**Description** This large 800-page plus manual is a combination text and workbook. There are numerous topics covered concerning how ventures start up and there is a chapter devoted to business plans. The book contains an appendix with a complete business plan for an oil-drilling company. This text is long and detailed. While there are some interesting exercises, it seems better as a reference guide than as a narrative to read through completely.

**Level** Sophisticated

**Title** *Obtaining Venture Financing*, by James W. Henderson, (Lexington Books, 1988). $29.95

**Description** This 350-page book provides a complete analysis of the venture financing process. There is an entire chapter devoted to the business plan as well as detailed chapters on accounting, finance, sources of capital, and business valuation.

**Level** Sophisticated yet very thorough.


**Description** This 600-page text is designed for an introduction to small business and their development. The book contains 20 chapters involving the full presentation of managerial topics along with a chapter devoted entirely to business plan development. There is no complete business plan for illustration.

**Level** Introductory college level
DETAILED START UP LIST

Office Space (shared)
- Rent - $800-1,200/office (or less)(secretary space m/b included or extra)
- Receptionist/telephone coverage
- Conference Rooms/Kitchen
- Phone System/voicemail
- Library (if want books - many places we went were throwing away books to create space)
- Signage (lobby & floor)
- Copier/Fax - Scanner / efax

Computer System
- Use existing computer
- Networking including shared printer
- Printer/fax machine for DSL line
- Consultant

Phone lines/voicemail

- We have 3 landlines and we use Onebox as a virtual pbx
- Google Voice
- Skype
- Cell phone

Internet/e-mail

- Domain name (godaddy)
- DSL 1.6 Mbps ($89/month Verizon - others more expensive/better service)
- Use godaddy as e-mail server
- start process as soon as get phone lines

Postage
- Dymo Twin Turbo Printer
  - Endicia to print stamps for free
  - Don't use Pitney Bowes
- courier service (Boston Express Delivery)
- Fed Ex Account - set up account and they will send supplies/pre-printed

Banking

- At least 1 checking/operating account and 1 IOLTA

Accountant
- Quickbooks Pro
- Recommendation: Use an accountant from the start
Business Form

    LLP or P.C. or Sole Proprietor

Furniture

    Desks/desk chairs/client chairs/file cabinets/bookcases
    W.B. Mason (warehouse for floor models) http://www.wbswhattabargain.com/

Insurance

    Malpractice (through MBA) (about 1k/year attorney 1st Year- increases thru year 5)
    Health (COBRA then Northeast Business Trust or Mass Business Association group rates)
    Office/Renters

Timekeeping/billing software

    Timeslips (about $500 2 user license)
    Amicus
    Clio
    RocketMatter

Library/research

    LEXIS v. Westlaw (LEXIS better deal for non-Mass access) (Free at your local law library)
    Fastcase - free for iPhone/iPad
    Casemaker - free with Mass Bar Membership

Memberships

    BBA/MBA
    Social Law
    BBO (need to give address change/will bill when existing term up)

Subscriptions

    Lawyers Weekly
    Martindale Hubbell

Office Supplies

    Firm envelopes/labels/business cards (get online but not free ones at VistaPrint)
    Notepads/pens/printer paper/bond paper/folders/etc.
    iPad
Client/Marketing Issues

Think about billing rates
Have model engagement letters ready (engagement/retainer/contingent)
Have firm/individual bios ready
Mailing list for announcements (send to everyone can think of)
Lawyers Weekly Announcement

START-UP EXPENSES

Office (security/first month rent) $4,000
Computer (two desktops/shared printer)(can lease) $5,000
Computer Consultant/set up $500
Office Furniture per office (desk/credenza/chair/bookcase/two client chairs/large file cabinet)
(good chance can get furniture from former tenant) $3,500
Malpractice Insurance (for one) $1,000/yr
Software (Office, Quickbooks, Time Tracking software) $800
BBA Membership $150
MBA Membership $150
Social Law Membership $260
Lawyers Weekly (per year) $175
Phone lines $300
Announcement in Lawyers Weekly (editorial section) $700 Free
Announcement (500 cards or email) $200 or Free via email
Supplies $200
Internet/DSL setup $100
Martindale Hubbell $1,500
BASIC MONTHLY EXPENSES

Rent $2,000
Phone $200
Postage $50
Internet $89
LEXIS (two users) $234
Supplies $50
Malpractice Insurance $100
ONLINE MARKETING SOURCES

- Firm Website
- Blog
- Legal Videos (youtube)
- Twitter
- Avvo (http://www.avvo.com)
- Justia (http://www.justia.com)
- Google Local Business Listing
- Free Online Yellow pages:
  - Superpages.com
  - Local.com
  - Yippie.biz
  - Localeze.com
  - Yahoo Local
  - Yellowpages.com
  - IBeginSource.com
  - InfoUSA Add Your Business Listing
  - AllPages.com
  - Insider Pages
  - Kudzu.com
  - MagicYellow.com
  - Merchant Circle
  - Yelp
  - Openlist
  - YellowBot
B"LAW"GS
Law + Blog = Blawg

- 2011 ABA Top 100 Blawgs
- ABA Blawgs Directory
- Avoid A Claim Blog
- Blog for Profit
- Boston Personal Injury Lawyer Blog
- Build a Solo Practice
- CounseltoCounsel Blog
- Divorce Discourse
- Don't Go Alone: A Bankruptcy Law Blog
- Duct Tape Marketing
- Gruntled Employees
- HealthBlawg
- Hello, my name is Blog!
- Home Office Warrior
- Jim Calloway's Law Practice Tips Blog
- Law Practice Matters
- Legal Ease Blog
- Legal Productivity
- Mass LOMAP
- Massachusetts Estate Planning and Elder Law Blog
- MyShingle
- Nerino Petro's Compujurist
- Oregon Law Practice Management Blog
- PracticeSmarter
- Robert Ambrogi's LawSites
- SC Small Firm
- Scaling the Summit: A Family Law Blog
- Starting Out Solo Blog
- The Client Revolution
- The Non Billable Hour
- Thoughtful Legal Management
- Virtual Law Practice
MA STATE RESOURCES FOR SOLOS

- **Continuing Legal Education (CLE):** CLEs provide programming and practice manuals to assist attorneys in developing, enhancing and maintaining legal practice skills.
  - **Massachusetts Continuing Legal Education, Inc.** (MCLE) (Avg. $125 - $1,595)
    - Sample of Offered Courses:
      - How to Make Money and Stay Out of Trouble
      - Client Trust Accounts
      - Ethical Lawyering in Massachusetts
  - **Massachusetts is one of only seven jurisdictions that does not have a mandatory continuing legal education requirement (others include Connecticut, Hawaii, Maryland, Michigan, South Dakota, Washington D.C.).**

- **Office of the Bar Counsel (OBC)** The OBC is an independent administrative body that investigates, evaluates and prosecutes complaints against lawyers. The office provides information and support to the bar in the ethical practice of law in the following ways: participates in bar association and continuing legal education programs on ethics and practice management, provides articles on ethics issues to bar journals and periodical, works with the Supreme Judicial Court to develop and modify the rules of professional conduct for lawyers, and provides guidance to attorneys faced with ethical problems and attorneys seeking reinstatement.

- **Board of Bar Overseers (BBO)** The BBO acts as an administrative tribunal to consider disciplinary charges brought by Bar Counsel. When a lawyer is found guilty of misconduct the Board either imposes discipline or recommends to the Supreme Judicial Court that more serious discipline be imposed.

- **Lawyers Concerned for Lawyers, Inc. (LCL)** LCL is a private, non-profit Massachusetts corporation. As the state's sole lawyer assistance program, LCL assists lawyers, judges, law students, and their families who are experiencing any level of impairment in their ability to function as a result of personal, mental health, addiction or medical problems.

- **Massachusetts Law Office Management Assistance Program (LOMAP)** LOMAP helps attorneys licensed in Massachusetts (or soon to be) establish and institutionalize professional office practices and procedures to increase their ability to deliver high quality legal services, strengthen client relationships, and enhance their quality of life. LOMAP is funded by LCL.
BAR ASSOCIATIONS

Bar associations provide opportunities for members to participate in programming, mentorships, networking and other opportunities.

- **American Bar Association** (ABA) ($125 Membership + $45-$100/ Section + CLEs and Programs)

- **Massachusetts Bar Association** (MBA) ($175 Membership + $50/ Section + CLEs)

- **Boston Bar Association** (BBA) ($230 Membership + CLEs and Programs)

- **Women’s Bar Association** (WBA) (Membership Sliding Scale: $25-$250)

- **Practice Specific Bar Associations**
  
  o Examples
    
    - **National Employment Lawyer Association** (NELA)
    
    - **Real Estate Bar Association** (REBA)
    
    - **Association of Corporate Counsel** (AAC)
CHECKLIST FOR BACK-UP ATTORNEY

Contact Information

1. Name and Contact Information of Office Support Staff
   Name: 
   Address: 
   Phone Number: 
   Email: 

2. Name and Contact Information of Office Sharers
   Name: 
   Address: 
   Phone Number: 
   Email: 

3. Name and Contact Information of Of Counsel Attorneys
   Name: 
   Address: 
   Phone Number: 
   Email: 

4. Name and Contact Information of Bookkeeper
   Name: 
   Address: 
   Phone Number: 
   Email: 

5. Name and Contact Information of Accountant
   Name: 
   Address: 
   Phone Number: 
   Email: 

6. Name and Contact Information of Landlord
   Name: 
   Address: 
   Phone Number: 
   Email: 
   How to Access Building: 

How to Access Building:
7. Name and Contact Information of Malpractice Carrier

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<td>Email:</td>
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8. Name and Contact Information of Insurance Brokers (disability, life, property)

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<td>Address:</td>
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<td>Phone Number:</td>
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<td>Email:</td>
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9. Virtual Assistant

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10. Virtual Receptionist

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11. Virtual Fax Service

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<th>Name:</th>
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<td>Address:</td>
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<td>Phone Number:</td>
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</table>
# Online Information

1. Login and Password for Website and Email Host/Administrator

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<th>Name:</th>
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<tbody>
<tr>
<td>Address:</td>
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<tr>
<td>Website Address:</td>
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<td>Login:</td>
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2. Technical Support

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3. Login and Password for Blog

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<tr>
<td>Website Address:</td>
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<tr>
<td>Login:</td>
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<td>Password:</td>
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4. Login and Password for Avvo

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<tr>
<td>Password:</td>
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5. Login and Password for Linkedin

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<th>Login:</th>
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<td>Password:</td>
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6. Login and Password for Facebook

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<tr>
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<tbody>
<tr>
<td>Password:</td>
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</table>

7. Login and Password for Twitter

| Login:      |       |
8. Login and Password for Other

Website Address:
Login: 
Password 

9. Login and Password for Other

Website Address:
Login: 
Password 

10. Login and Password for Other

Website Address:
Login: 
Password 

11. Login and Password for Other

Website Address:
Login: 
Password 

12. Login and Password for Other

Website Address:
Login: 
Password
# Office Information

1. **Computer**
   - Type: 
   - Login: 
   - Password: 

2. **Computer**
   - Type: 
   - Login: 
   - Password: 

3. **Router (Wireless network)**
   - Name: 
   - Password: 

4. **Email – Work 1**
   - Address: 
   - Login: 
   - Password: 

5. **Email – Work 2**
   - Address: 
   - Login: 
   - Password: 

6. **Email – Work 3**
   - Address: 
   - Login: 
   - Password: 

7. **Email – Personal 1**
   - Address: 
   - Login: 
   - Password: 

8. **Email – Personal 2**
   - Address: 
   - Login: 
   - Password:
9. Calendar

<table>
<thead>
<tr>
<th>Online/Web based:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Password:</td>
<td></td>
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<tr>
<td>Location in office:</td>
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</table>

10. Password Protected Files

<table>
<thead>
<tr>
<th>File Name:</th>
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<tbody>
<tr>
<td>Password:</td>
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<td>Password:</td>
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<th>File Name:</th>
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<tr>
<td>Password:</td>
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11. Files

<table>
<thead>
<tr>
<th>Location:</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>How files are organized:</td>
<td></td>
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</table>

12. Voicemail

<table>
<thead>
<tr>
<th>Login:</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Password:</td>
<td></td>
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</tbody>
</table>

13. Keys to Office

| Location of spare set: |   |

14. Practice Management Software

<table>
<thead>
<tr>
<th>Type:</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Login:</td>
<td></td>
</tr>
<tr>
<td>Password:</td>
<td></td>
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</tbody>
</table>

15. WISP

|   |   |
16. PDA etc.

17. Subscriptions and Memberships

18. Online Storage or External Hard Drive
   Type:
   Login:
   Password:
   Location:

19. How to check for conflict of interest

20. Location of active client list

21. Mail
   In office delivery:
   PO Box:

23. Fed Ex/UPS Account
   Account Number:
   Login:
   Password
# Financial Information and Document Location

1. Safety Deposit Box

<table>
<thead>
<tr>
<th>Location:</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>How to access:</td>
<td></td>
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</table>

2. Bank

<table>
<thead>
<tr>
<th>Name:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Account number:</td>
<td></td>
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<tr>
<td>Account signors:</td>
<td></td>
</tr>
<tr>
<td>Location of records:</td>
<td></td>
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</table>

3. IOLTA

<table>
<thead>
<tr>
<th>Account Number</th>
<th></th>
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<tbody>
<tr>
<td>Additional information:</td>
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</table>

4. Storage Facilities

<table>
<thead>
<tr>
<th>Location:</th>
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<tbody>
<tr>
<td>How to access:</td>
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5. Business Documents

<table>
<thead>
<tr>
<th>Lease:</th>
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<tbody>
<tr>
<td>Location:</td>
<td></td>
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<tr>
<td>Maintenance Contract:</td>
<td></td>
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<tr>
<td>Location:</td>
<td></td>
</tr>
<tr>
<td>Business Credit Card:</td>
<td></td>
</tr>
<tr>
<td>Location:</td>
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<tr>
<td>Other:</td>
<td></td>
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<tr>
<td>Location:</td>
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6. Health Insurance

<table>
<thead>
<tr>
<th>Plan:</th>
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<tbody>
<tr>
<td>Account Number:</td>
<td></td>
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<tr>
<td>Contact:</td>
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</tbody>
</table>
7. Credit Cards

Business Credit Card Name & Account:

Online login id & password:

Accounts which automatically bill to your credit card:
If you’re one of the many young attorneys, with JD in hand and no job in sight, you might be thinking about opening your own law practice. Starting a law firm is easy—print some business cards and you’re open for business. Running it successfully (and enjoyably) is hard. Jumping in without a plan is a recipe for failure. Law school taught you the theory of law, but to be successful as the owner of a law firm you have to also learn both the practice of law and the business of law.

The Practice of Law

The practice of law is something that law schools don’t prepare students well for. How do you file or caption a motion? How do you comply with Superior Court Rule 9A? How do you schedule a hearing date? Those are issues that come up in practice every day in addition to knowing the laws, rules and procedure of your chosen practice area.

The traditional advice given to young lawyers is that you must first find a mentor. It’s good advice but other lawyers are busy and you not being as well connected because you’re young, it might be hard to find a lawyer to mentor you and who’s willing to spend the time to answer all your questions. Solosez (operated by the ABA) is an online listserv that works like communal mentorship. Instead of having one mentor, you can have thousands of mentors from across the country. You simply post a question to the Solosez listserv and usually within the hour, you’ll get an answer or even forms for your particular question. Along those same lines, MASSFORUM (operated by Lawyer’s Weekly) is a local Solosez just for Massachusetts lawyers.

When you’re a young attorney, chances are you have a lot of free time. A good way to learn the practice of law and also at the same time help other people, is to do volunteer work. The MBA hosts a monthly Dial-A-Lawyer night where you can give free legal advice to callers which in turn teaches you confidence in giving legal advice. Volunteer for Lawyer of the Day at the probate courts if you’re a family attorney. The clerks will help and teach you while you’re also helping pro se litigants. Help with The Volunteer Lawyers Project and Senior Partners for Justice to take on civil cases. They will give you administrative support, free training and free MCLE classes in return. For criminal practice, try getting on the CPCS (Committee for Public Counsel Services) list for criminal defense practice.

The Business of Law

One thing that law schools do worse than teaching the practice of law is teaching the business of law. There are only a handful of law schools in the country that offers a course on law practice management yet a majority of attorneys practice in solo or small firm settings. The business of law—how to run a law practice, manage employees, and marketing—is just as important as knowing the practice of law. After all, if you don’t have clients, it doesn’t matter how great your legal skills are.

Before hanging your shingle, first prepare a business plan. It doesn’t have to be formal. Just write down what resources you have to fund your firm, the projected start-up costs, income sources, firm structure (LLC, PC, Partnership, etc.) and location (shared suite, virtual office, home office, etc.) The next step is
to write down a marketing plan. What are the different ways you plan on marketing your law firm and what is the cost for each of those activities? Think about a website, blog, networking groups (such as Chamber of Commerce, local trade groups, StartingOutSolo.com, Women Attorneys Network), free online directories (Avvo, Justia, JDSupra), LinkedIn, Facebook, Twitter, print advertisements, church and faith-based groups, seminars, newsletters and mailings. Some activities will be costly in terms of money and/or time. The key is to keep track of where your business is coming from so that you can adjust your marketing plan accordingly to get the most return for your marketing dollar.

Marketing is a continuous process. You cannot implement a marketing idea, sit back and relax, and hope that the money continues to flow in. If you stop marketing, the business will eventually stop. If you market only when you see your business dry up, you will lose credibility with your clients and they will smell your desperation and won’t engage you. If you put all your marketing eggs in one basket, you run the risk of sinking your firm when the referral source dries up. As with investments, diversify.

Starting a law firm and running it successfully takes hard work, long hours and dedication. Any young attorney can do it, but it is not for every young attorney. Make sure you have what it takes and do your homework before taking the plunge.

Article by Gabriel Cheong, Esq., owner of Infinity Law Group LLC. For more information about how Attorney Cheong started a practice straight from law school, visit www.infinitylawgroup.com and www.startingoutsolo.com.
BUILDING YOUR HOUSE:  
A Recent Graduate’s Toolbox for Building a Law Practice  
Sofia S. Lingos, Esq., Lingos Law for publication in the ABA Solo & Small Firm Journal

The phrase “hang your shingle” is commonly used to define a lawyer’s bold decision to embark on a formidable journey toward self-employment. This locution clearly oversimplifies the process that goes into finally opening one’s doors. For that reason, I prefer the analogy “build your house.” As a young lawyer and entrepreneur, I chose to build my own practice directly out of law school, and through research, experience, and trials and errors, I have created a toolbox of ideas which can be used to build your house.

I. DRAFTING PLANS

As a business law practitioner, my first inquiry to a new client is whether or not they have developed a business plan. Unfortunately, all too often their answer is no. A business cannot achieve success without a clear plan analyzing one’s current identity, resources, and goals and setting a distinct timeline for plan implementation. Copious planning will save time, frustration and money.

There are a plethora of reasons leading attorneys to build their own practice. Whether one’s entrepreneurial business spirit and creative passions are being stifled by working for the “man,” or it is a temporary endeavor until other career opportunities become available; before you begin to build your house you must decide into which category you fall. Are you going to rent or buy into your practice?

Renting is a growing field in this economy for new graduates and displaced practitioners alike. If you plan to rent, you will be developing and promoting your practice to make yourself a more attractive candidate for your future dream job. One should be frugal with infrastructure and careful with self-promotion. You are not only selling yourself to potential clients but to possible employers. You want to demonstrate to firms that you emulate their ideals and, if possible, that they are better off working with you than competing against you. Know your audience, research and identify potential firms with whom you would like to work, and notify them of your interest and temporary plans. Offer contract work at a discounted rate to begin forming relationships and allow them the opportunity to observe and appreciate your work. This route allows you to keep your legal abilities keen, practice business development skills and hopefully generate an income.

If you have committed yourself to buying into your practice, congratulations! You are ready to invest in infrastructure, develop your brand, promote your practice and prepare for the challenging and rewarding path ahead. Get ready to build your house.

II. CONSTRUCTION CREW

1. Contractor

As attorneys, we are service providers; therefore, the investment is in self-development rather than inventory. You have a juris doctor, bar card, and at least a modicum of practical legal experience. The next step is to evaluate your skill set, explore your interests and determine in what area of law you wish to practice. Become a specialist; general practice is a risky endeavor. You cannot be great at everything and it is difficult to distinguish yourself as an expert. Knowledge is power. Identify and
utilize continuing education resources. The practice of law requires a commitment to a lifetime of learning.

2. **Subcontractors**

There will be times when a task you encounter is outside of your skill set and the opportunity cost to learn is outweighed by the ability to hire someone else to do the job. This is reflected in both legal and non-legal work. Compile and keep a list of reputable attorneys in each legal area in which you do not practice. Build a personal relationship with this network and inform them of your intentions to provide them with referrals. Hopefully, they will do the same for you.

With regards to staffing, hiring fulltime employees is a costly and complicated risk. These individuals depend on you for a consistent paycheck and require space. Additionally, you have to comply with state and federal employment guidelines and deal with human resource issues. Evaluate your staffing needs and plan for growth. Will you need a secretary, receptionist, paralegal, IT expert, marketing manager and/or accountant? Outsourcing work to virtual and contract employees can fulfill many of your needs without incurring the costs associated with maintaining a fulltime staff.

3. **Consultant**

Finding a mentor and cultivating a personal development relationship with more experienced individuals who are willing to advise you on particular matters is imperative when practicing on your own. Locate experts in your practice areas, in marketing, in practice management and in other fields in which you will inevitably need advice. The alumni relations department of your law school, local and national bar organizations, former professors and employers, and active, more senior attorneys in your field are all excellent options to find a mentor. The best mentors will find satisfaction in merely sharing their expertise, but do consider what you can bring to the table in return. Offer assistance with social media or share articles that you think may be of interest. Do not forget to maintain the relationship after it has been formed.

### III. BREAKING GROUND

1. **Capital**

As with any business, you must make an initial financial investment in order to yield returns. You should determine: How much do you have? How much do you need? How much can you obtain? How long can you survive? Recognize the amount of non-billable time that will go into getting your business off the ground. Invest time in researching the most cost-efficient business solutions available. Create a budget and stick to it. Make sure to detail your expenses. The majority of start-up businesses operate at a loss for at least their first year. Do not let this reality disappoint you, rather stick to your plan and, if necessary, seek contract employment to supplement your income.

2. **Lot**

Your office is more than just a room with a desk. Consider your locale and spatial needs. Can you work in a home office without being distracted? Can you afford to buy? Does a virtual office provide you with the support you require? Is shared space available? How much room do you need for staff and growth? Each option has costs and benefits. If you are interested in shared space, do not just consider those that are advertised, be proactive. If you are familiar with an office that you
think would fit your needs, contact management directly and propose the idea of leasing office space, utilizing their conference rooms or receiving mail at their address.

Establish a permanent address. After finding a space, moving in, decorating and hooking up your telecommunication services, another move is costly both in time and money. Your address is part of your identity. What does your zip code say about your practice? Can you charge 90210 prices? Additionally, once you have printed your address and marketed it to your contacts and clients, you want to maintain consistency.

3. Foundation

Forming a legal structure and registering your business is important to protect yourself from personal liability issues, tax consequences, partnership relationships and state and federal regulations. There are numerous legal structures available. Common organizations for sole practitioners and small firms include: Sole Proprietorship, General Partnership, Professional Corporation, S-Corporation, Limited Liability Company or Limited Liability Partnership. If you begin as a sole proprietor you can avoid quarterly filings and registration fees, but you are not shielding your personal assets from liability. If you register under a more formalized legal structure you are afforded more protection, but it comes at a cost. This decision should be made in the beginning stages of your practice, as your legal name should contain the suffix reflecting the selected structure (i.e. LLC, LLP, or Inc.).

IV. LAYING BRICKS

1. Equipment

Initial investments in equipment are costly, but there are some items you must have. Invest in a computer with adequate storage, a fast processor, encryption capabilities, anti-virus protection and a business office program. Review the service packages and purchase additional protection that provides immediate service, loaner equipment and, if necessary, a replacement device. Purchase an external drive and keep it in a separate location from your computer, backing up your files daily. Consider a “cloud” service to store your files virtually in a second location.

You can purchase an all-in-one printer/scanner/fax machine, though if this equipment fails you do not have a back-up option. Choose a laser printer for speed and cost efficiency. As opposed to installing a separate fax line, there are inexpensive electronic fax services where everything is done directly from your desktop, such as eFax. A smartphone is essential as you are expected to be accessible at all times. For an inexpensive alternative to a traditional business line, you can create a free customized local number through Google Voice that will forward calls directly to your mobile phone and includes caller identification, personalized greetings, voicemail transcriptions, and many other useful features. There are also inexpensive web-based plans through Skype. Invest in the necessary equipment upfront, so that you are prepared to fulfill your clients’ needs.

2. Tools

Develop a toolbox of resources to assist you in your practice. Find a free or low cost law library where you can access the resources you need. These may include law school, social law, courthouse or other government libraries. Compile lists of free online resource and create a document with
direct access to each of their links. There are numerous sites available, but a few to get you started include: FindLaw, Nolo and Justia.

Purchase a time and client management program. If you already utilize Outlook, there is an inexpensive option available called Credenza that integrates directly with your Outlook account. Other popular, but more expensive, services include Clio and Rocket Matter. Download the free trials first to see which programs offer you the tools you need.

Select accounting software that allows you to map out your financial plan. Open a business bank account and trust account. Inquire into the benefits and fees associated with each. Create a relationship with the branch manager who deals with small businesses or small law firms. Utilize a credit card solely dedicated to business expenses to assist you in itemizing your purchases for tax purposes. Take advantage of business expense tax-deductions. Compartmentalize your tools in an organized fashion and continue to build your resource bank.

3. Insurance

Risk aversion can be accomplished through insurance. Malpractice is not the only coverage to be considered, though it is imperative to have in place. Limitation of liability as a registered legal entity does not protect one from all possible claims. Though the overhead may seem high, mistakes do happen. You must also consider your options and personal need for health, disability and life insurance. Make sure you are protected from property liability claims involving your office space. Insurance is not a legal requirement in many states, but operating without protection can result in irreparable consequences.

V. SELLING YOUR HOUSE

Your house is built, now it is time to put it on the market. Hanging a shingle will not result in an immediate client base. Moreover, it may induce a myriad of other professionals to offer their services for a cost. Do not take the bait. As lawyers, we learn how to teach ourselves new skill sets with each novel matter we face. As solo practitioners, marketing is just another challenge.

1. For Sale Sign

You must first begin to develop your brand. Notify colleagues, contacts and potential clients that your doors are open for business. Build a virtual presence by establishing accounts through social media and developing a website. Even referral-based practices need an online presence. When a potential client wants to confirm the legitimacy of your business, they will turn to the web. Various website hosts are available. My experience with GoDaddy has been both economical and user-friendly. There are design programs and other website building tools available to complete the task independently. However, if you do hire a web designer, make sure that you have access to update the site. Otherwise, you may incur charges every time you want to add a new article, accomplishment or make other alterations.

Linked-In, Facebook and Twitter are the most widely utilized social media outlets. These accounts can be established in minutes and allow your audience to be virtually endless. Linked-In is a business-oriented networking site. It is a great place to follow your colleagues, join virtual interest groups and promote your practice for free. Facebook is a more socially-oriented networking site that also allows you to create a business page. Twitter provides real time updates on topics and
individuals of interest to you and allows you to create virtual relationships with like-minded people and entities.

Blogging is another way to gain recognition and share your expertise. No longer is there an editor that stands in the way of you disseminating your message. Now, with the click of a button, your audience receives a monthly, weekly, or daily update. Many attorneys are taking it a step further and filming YouTube videos to create a personalized connection with potential clients and to share legal advice. There are also a variety of free online directories where you can add your business listing. Also, do not forget to join legal sites such as Avvo and Martindale.

Many of your messages may be delivered virtually, but there are advantages to producing a printed product. At the very least, you must have a business card. These can be produced almost instantly at many print shops and overnight via inexpensive online printers. VistaPrint offers copious options for printed marketing materials. Make sure to hang your shingle in as many windows as possible.

2. Join a Board

Get out from behind your desk. Do not just join bar associations, but become an active member. Your colleagues are the best referral sources. Get involved with non-legal organizations: volunteer, attend a church or join organizations that are relevant to your practice (i.e. small business group or real estate board). After you initiate a relationship, have a contact management plan in place to continue cultivating these connections. Actively assist others in building their network. Be seen as a leader. If a group does not exist, build it. These undertakings can be laborious and time-consuming, so undergo trial periods where you evaluate the benefits that each offer and commit yourself to those that provide the best return.

3. Realtor

As an entrepreneurial legal practitioner, you play many roles, but never forget that you must be constantly selling your services. Always be conscious of your behavior in public, because your reputation is your most valuable asset. Hand out your business card to everyone you meet. Develop your elevator speech and deliver it to whomever will listen. Use your company name to sponsor a neighborhood activity. Be creative and get actively involved. Be known as “a” lawyer; be known as “the” lawyer; and hopefully you will become “their” lawyer.

VI. MAINTAINING YOUR HOUSE

After you build your practice you must constantly engage in home maintenance. Do not let all of your hard work go to waste. Each new client provides a novel challenge and experience. Revisit your business plan often; it should evolve with your practice. Though your clients should always take priority, do not forget that if you neglect your house, it will fall.