

HOW TO START AND BUILD A SUCCESSFUL PRACTICE

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Ann M. Guinn, practice management consultant to solo and small law firms, teaches attorneys what they didn't learn in law school about how to run a profitable, efficient, productive, and satisfying law practice. She helps her clients identify what's working and fix what's not working in their businesses, with a focus on firm finances, business development, and growth opportunities. Ann has served on the Executive Committee of WSBA's Solo & Small Practice Section since 1994, and is in her 14th year as co-chair of WSBA's Solo and Small Firm Conference. Ann has been a featured speaker at NY Legal Tech, ABA meetings, conferences and webinars, and solo/small firm conferences across the U.S. She is the recipient of the 2019 WSBA APEX Lifetime Service Achievement Award for her years of service to WSBA, the legal industry, and the public. Her book entitled *Minding Your Own Business: The Solo and Small Firm Lawyer's Guide to a Profitable Practice* is available through the ABA webstore at www.americanbar.org. She is currently working on her new book for the ABA entitled "Attorney Underearning: The Signs, The Symptoms, The Cures."

I. Introduction

Congratulations! You've decided to open your own law firm – and now the work begins. Arguably, the most important factor in your future success is the foundation on which you build your practice. Get it in place before you launch, and you'll be able to keep your focus on building the practice and doing great legal work.

In getting your new practice up and running, there will be lessons to learn along the way. Some will be of the smacking-the-forehead variety (“Of course! I should have thought of that.”), while others will be beyond stressful and potentially harmful to your practice. One thing that is for certain – as time goes by, you are going to become painfully aware of the things that law school *didn't* teach you. One of those critical things is how to build a successful law practice.

Having a successful practice isn't all about writing the perfect brief, or finding exactly the right authority to support your argument. Success is not a direct result of your dazzling performance in front of a hardened jury, or your standing in the legal industry or your local community. Those achievements are reflected in your reputation. Rather, success is about having satisfied clients because you've served them to the best of your ability. It's about having loyal staff that have your back. It's about earning enough money to take care of your staff and yourself. Success is about always doing the right thing in every situation. It's about acting with honor and integrity toward your opponent. It's about deriving personal satisfaction from your practice and enjoying the work. Success is about helping others. And, success is about making smart business decisions that will keep your practice both supportive and viable for the long-term.

The three biggest mistakes I see attorneys make when opening a new practice are:

- Not thinking beyond opening day. They have no goals, no ideas on how to get clients. They are unclear on their services or their potential clients' needs. They just pull a billing rate out of the air, and they have no clue as to what they need to earn each month to meet their financial needs. They give no thought to an exit strategy – what will they do with the business when they no longer want to practice law.
- Not treating the practice as a business. They put all the emphasis on practicing law and little emphasis on being a business owner.
- Not reaching out for help. Instead, they try to figure things out for themselves, often with no input from anyone else – a recipe for disaster.

Today we're going to take a look at the considerations you must address prior to opening your practice, as well as the responsibilities you must assume to help your practice fulfill its promise of being a great success for you and your clients. By careful planning, you should be able to avoid many of the mistakes other newbies make when opening a practice.

First and foremost, consider your clients in all business decisions. Your location will depend on where your clients are most comfortable meeting with you, your pricing on

what they will expect to pay for your services, and your services on their specific needs and issues, as well as your skills in helping them with these problems.

Let's begin with a look at the various roles you must fill as a solo/small firm lawyer.

II. The 3 Roles of a Solo or Small Firm Practitioner

In his best-selling book *The E-Myth Revisited: Why Most Small Businesses Don't Work and What To Do About It*, Michael Gerber talks about the very basic, underlying problem in small business:

“The problem is that everybody who goes into business is actually three-people-in-one. The Entrepreneur. The Manager. The Technician. And the problem is compounded by the fact that while each of these personalities wants to be the boss, none of them wants to have a boss. So, they start a business together in order to get rid of the boss. And the conflict begins.”

Let's consider what these three roles look like in a law firm:

A. The Entrepreneur

This role belongs to the person with the dream, the vision of what the practice can become. You set the course for the firm to follow. If you don't have a definite plan, the firm will be forced to find its own way – and, as the great philosopher Yogi Berra once said, “If you don't know where you're going, you'll probably end up somewhere else.” A business without a vision and a plan will be shaped by circumstances, trends, clients, economics, etc. No vision, no goal, no plan – no recipe for success.

B. The Manager

This role belongs to the person responsible for the day-to-day operations of the firm. The Manager keeps the business solvent, staffed, on track, productive and efficient. Small firms don't have the layered infrastructure found in larger firms; they don't typically have a CFO, marketing director, human resources manager, or firm administrator to assume the myriad responsibilities of the Manager. In a small firm, the Manager/attorney typically handles tasks ranging from marketing to coaching employees to analyzing financial statements to collections calls on past-due accounts, and everything in between. As if this weren't enough, the Manager must also implement the plan that will help the firm fulfill the vision of the Entrepreneur. To top it all off, the Manager is usually a practicing attorney, as well.

C. The Technician

This last role belongs to the person who actually performs the work (the attorney). This is what you trained to do, where your passion lies, where you are most comfortable. For the most part, attorneys just want to practice law. That's what they studied for and that's where their skills lie. I think most attorneys would be happiest if they could just concentrate on the legal work all day long and never give a second thought to a timesheet, a past-due account, or a networking opportunity.

[Excerpted in part from Minding Your Own Business: The Solo and Small Firm Lawyer's Guide to a Profitable Practice by Ann M. Guinn (ABA 2010)]

Understanding the importance of each of these roles and taking a quick inventory to see how well-equipped you are to fulfill these various responsibilities is crucial to your future success. The law firms that continually struggle are those run by attorneys who are comfortable with the “technician” role, but handle the management chores on an as-needed basis only. Reactive management won't get you where you want to go. Work on developing a proactive mindset and things will go a lot easier for you.

So, that said, here's where the visionary must start work

III. Your Vision

Before you hang your shingle, please give thought to what you want your firm to look like. In other words, develop a vision for your business. You need to know where you're going with the practice.

In the words of the immortal Bloody Mary of “South Pacific” fame:

*You gotta have a dream!
If you don't have a dream,
How you gonna make a dream come true?*

While the speaker may be fictional, her words hit the nail squarely on the head – how are you going to achieve your goals when you don't know what they are?

Start by answering this question: “Where do I want to go and how will I get there?” This is the first step in developing your vision for your business. Then think about what your business will look like when you fulfill your vision. Who will be working for you? Whom will you be serving? Where will your business be located? What practice areas will you offer? What growth would you like to experience, and when? Write down your answers so you can refer back on a regular basis to keep that vision alive.

Once fully developed, let this vision guide all of your decision-making. Never lose sight of it. Don't get distracted by bright, shiny objects that send forth a tempting Siren's call. Stay the course, leaping over barriers, and pushing obstacles aside to get there. Keep the vision clear – then, make it real.

If you have any lingering doubts about the value of a vision, please consider the following words from some of the world's greatest philosophers:

If you don't know what you want, you end up with a lot you don't.

Chuck Palahniuk

The only thing worse than being blind is having sight, but no vision.

Helen Keller

Good business leaders create a vision, articulate the vision, passionately own the vision, and relentlessly drive it to completion.

Jack Welch

The starting point of all achievement is desire.

Napoleon Hill

Make sure that everyone in your organization knows your vision, and the part they will play in making that vision a reality. Incorporate your vision into the culture of your firm. If your goals include an informal work environment, lack of bureaucratic hindrances, developing close relationships with your clients, and supporting each other in the spirit of a team, model that for your employees. Talk about it, put up signs stating your intent, explain your vision to your clients. Put it in writing so that you can refer back to it time and again – especially when an “idea du jour” pops into your head. You’ll be able to deal with those enticements much more easily if you ask, “Will this take me closer to my goals, or away from them?”

Take your vision to lunch once a week and refresh your enthusiasm for your goals. Think about the current state of your business and what you need to change to move it forward. If you’ve got a weak spot, fix it. Keeping the wrong person in a job out of loyalty does a disservice to the employee, keeping the person from finding a job in which to excel and win acknowledgement for good work, and it holds the business back because you aren’t able to function at 100% capacity.

Hanging on to a practice area that doesn’t turn a profit is another example of staying too long at the dance. If you are doing too much non-billable work, make a list of the top 20 non-billable tasks that take up the most time for you, and then delegate 10 of those away. Your job is to perform extraordinary legal services for your clients, earn money from same, and move the firm forward in your vision – and photocopying or handling e-filings isn’t the best use of your time.

Keep your vision simple, clear, realistic and client-centered. You must be committed to your goals, and undaunted by whatever life happens to throw in your path. Expect the unexpected, but never lose sight of where you’re going. The old adage is true – a journey of 1,000 miles begins with a single step. Just keep moving forward (even if it’s at a snail’s pace) and one day you’ll reach your goal.

IV. Choosing Your Practice Area(s)

Now that you know what your business model will look like, it's time to decide what your services will be. Which practice area(s) will you choose? How do you know which ones make sense for you?

The first place to look is your own history. What jobs have you had? What industries have you experienced first-hand? Which classes did you enjoy most in law school? Where is your heart leading you?

Let's take a look at Jake. After practicing law in some form or another within an institution, he finally broke off to start his own firm. But, what services should he offer? The institutional experience gave him a great deal of expertise in the area of contracts and employment law. He could choose to do that for his own clients, but in reviewing his personal history, he realized that he had a real heart for helping immigrants to this country. You see, Jake had been an immigrant himself many years ago, and was now a naturalized citizen. He had gone through the system and knew many of the challenges that faced new immigrants. The thing is, while he knew contracts backwards and forwards, he didn't have any current knowledge of immigration law. So, he opened a practice offering contract review, drafting, negotiating, etc., as a contract attorney, while he sought out opportunities to learn the immigration area. He found several wonderfully helpful mentors, and today has a practice that is about 50-50 contract work and immigration. He's got his dream practice.

No applicable personal history? No worries – opportunities abound. Even in a bad economy, there is opportunity. Let's go back in time to early 2009 when the country was struggling under a recession. New attorney Tom reads about the increasing number of folks being forced into foreclosure. Tom could either represent folks trying to hold onto their homes, or banks and mortgage companies that are foreclosing. He could get involved in predatory lending cases, or breach of contract matters. Also, some folks (flippers) take advantage of rampant foreclosures by buying up properties on the cheap for resale. There may be title issues, buy-sell agreements, resolving foreclosure issues with lenders, etc., that require an attorney's expertise.

Tom regularly sees headlines about local businesses forced to downsize, or just plain shutting the doors. Lots of real property issues here. Companies selling off unused properties, trying to get out of long-term leases, going belly-up and walking away from their buildings – all sorts of real estate issues arise from a general economic crisis.

As people are losing their homes, they are becoming renters. Landlord-tenant issues come up. Unlawful detainer actions, zoning issues, local ordinance compliance, housing discrimination, and much more can be involved here. Homeowners associations have had many issues as a result of the high foreclosure rate, as well.

So, you see, Tom has many opportunities in what, to the untrained eye, looks like a big black hole. You just have to learn to look at things differently. Turn negatives into positives. Don't look for problems in the world around you – look for opportunities!

We have just seen how Tom learned to tap into the world around him to recognize opportunities. Now, how do you find the opportunities that surround you and your practice? This is going to take some work, but it will be worth the effort.

Let's start by checking the demographics in your area:

- What is your Chamber of Commerce seeing in the way of business development in your area?
- Is there an influx of new people of a certain age into your community?
- What construction is going on?
- What new business licenses are being issued?
- What can your banker tell you about changes in your community? Trends?
- Which industries are flourishing in your town? Which are faltering?
- What economic changes are occurring in your region? What opportunity lies in these changes?
- What segment of the local population is currently being underserved when it comes to legal services? What are their issues? How can you help?
- What companies are downsizing and laying off employees?
- What industries are moving in or moving out?

Read your local/regional business journal, as well as your local newspaper (especially the business section). Even the sports section can reveal business opportunities. New sports team coming to town? Think of the possibilities! There will be mass hiring of stadium and front-office staff, player employment agreements, leases, vendor licensing, OSHA issues, personal injury claims, endorsements and use of personal name and image, trademark and copyright issues, health law compliance, EPA issues, parking lot permits and land-use issues, stadium construction, noise abatement – you name it and it could show up here.

Reframe how you look at your community. Watch for opportunity. Instead of just driving down the street to get from Point A to Point B, slow down and take a good look around. What's happening? Where do you see potential legal issues? Watch for a need that is being underserved in your locale – a good starting point from which to grow your practice.

Talk to other business people. Find out what trends they are seeing in their businesses. What opportunities are they noticing? What challenges are they experiencing? When the economy took a nosedive at the end of 2008, it was no surprise to hairstylists. One of the first signs of economic uncertainty is the length of time people allow between haircuts. When people who used to get a haircut every four weeks or so are waiting six-plus weeks for a cut, something is going on in the economy. Ask your barber or

hairstylist – they’ll tell you. Then consider other businesses that could be affected by a change in the economy. What can you learn from them? What opportunities are there?

Speak with other business people who work with your target market. For instance, if you are a family law attorney, have lunch with some family therapists to find out what trends they are noticing among their clients. DUI attorneys, check with your neighborhood bartender as to any changes in people’s drinking habits. [Bars took a significant hit during the economic downturn because their customers figured out their money would go further if they bought liquor themselves and stayed home to drink. Not only were they not frequenting bars as they had in the past, but they were also not out driving – a blessing for the rest of us, but a curse for DUI attorneys.]

Estate planning attorneys might meet up with financial advisors or wealth managers to discuss trends in asset protection strategies.

Look for underserved or emerging practice areas, such as Medicaid planning, condo law, reproductive law, real estate law involving foreign investors, space law, class action work for internet security breaches – there is no limit to underserved and new areas. Just pay attention.

Spend the time and effort to determine what your clients and your community need and you’ll have a much better chance of growing your practice in a positive and successful way.

V. The Three-Point Foundation of a Successful Law Practice

You don’t have to be a contractor to know that the first step in building a house is not putting up walls or raising the roof. Rather, you must first level your building site and pour a strong foundation. That foundation has to support your house for many, many years to come. If the foundation fails, the house becomes unstable and may eventually collapse for lack of a solid footing.

As with the house, building a successful and satisfying law practice requires a solid foundation that will support it for many years, as well. Instead of cement, a successful law practice is built on a three-point foundation made up of a:

- Business plan
- Marketing plan
- Budget

Let’s take a look at each one of these foundational elements more closely.

A. Business Plan

The point of a business plan is this: you’ll make far fewer mistakes, waste less time, money and resources, and take a more direct path toward your goals if you have a plan to follow. As a bonus, practices that have a written business plan earn, on average, 10-50% more than a practice without a plan over the course of time.

Think of the business plan as your “Success Plan” because it defines your idea of success and lays out how you will achieve it. The business plan serves as the road map for your practice and keeps you on track when tempting opportunities and “bright shiny objects” (attractive distractions) present themselves. An objective and well-written business plan:

- Lays out your vision for your practice
- Defines who you are and what you are selling
- Defines your goals, breaks them into short-term and long-term goals, and defines the steps you plan to take to reach your goals
- Identifies the strategies you will use to turn your ideas into actual business practices
- Identifies your target market and how you plan to reach potential clients
- Pinpoints your firm’s strengths and weaknesses
- Identifies your competition
- Helps you to identify and take advantage of business opportunities for which you are (or can be) uniquely suited
- Gives you a way to measure your firm’s success in meeting your goals
- Serves as a vital guide when making business decisions.

So, what should your business plan look like? Here are some of the component parts of a good law firm or law practice business plan:

- Our firm’s (my practice’s) mission statement
- Our goals and objectives
- Our values statement
- Form of ownership/legal entity
- History of the firm
- What we want to be known for
- The practice areas and services we provide
- What we are really selling
- Our clients (who are they? where are they?)
- Our advisors (who are they? what do they bring to the table?)
- Firm partners
- Firm employees (in-house and outsourced)
- Job descriptions for all employees
- Compensation and benefits
- Allied firms and businesses
- Vendors/bankers
- Our competition (who are they? where are they? what is their market share? how do they attract clients? what services do they provide? what is their pricing strategy? what is their reputation in the local community?)
- The need for our services
- The office location, features, accessibility and appearance
- How our firm differs from others

- Our marketing strategy
- What we are starting with (equipment, software, client base, etc.)
- Capital investments we'll make in the next three years
- Our financial plan
- Our pricing strategy, fees, and billing methods
- Insurance
- Additional training necessary to achieve our goals
- The attorney(s) emergency and extended absence plan
- Exit strategy for the owner/partners
- What the firm will look like in five years
- The steps necessary to make the five-year goal a reality.

B. The Marketing Plan

Marketing is simply telling people what you do – over and over again. Sometimes attorneys think that marketing and advertising are one and the same, when in truth, they are two different things. While advertising is a form of marketing, there are many other aspects to a good marketing plan. In fact, a successful marketing plan is based on a combination of different marketing strategies that allow your message to get out to your potential clients through several different means.

Whether or not you have a formal marketing plan, if you are in practice, then you are marketing every single day. Not convinced? Among other things, marketing is about:

- Your image
- Your message
- Your brand
- The quality and timeliness of your work product
- How you treat your clients
- How you treat others
- How you manage your staff; and
- How well you keep promises and follow through.

You can have the priciest and most focused marketing plan in the world, but if your internal marketing doesn't back up your claims, you aren't going to be successful. As one of my clients once said, "Marketing is everything you do" – and I would add to that, "and everything you don't do."

Attorneys have four marketing touchpoints with their clients – and it's important that you recognize and utilize each:

- Pre-hire – marketing to attract new clients
- Initial consultation – marketing to demonstrate to your potential client that you are the best attorney for the job

- During representation – marketing that continually demonstrates the value of your services to your client, and the client’s value to you, and reminds them why you were the best choice
- After representation – marketing that helps keep you top of mind with former clients for additional work or referrals.

If you focus only on the pre-hire marketing, you’re not going to have happy and satisfied clients. An attorney once told me that she loves the chase – trying to win the client – but, once the client has hired her, she loses interest in doing the actual work. Then, it becomes drudgery. If you build a good relationship with your client, and you remember at all times your commitment to act with diligence on behalf of your client, you’ll find that this form of marketing is really working for you.

C. The Budget

The budget tells you how much you need to earn to cover your overhead. Add to that figure your desired compensation, and you’ve got your revenues goal for the year. Break that down to a monthly number, then figure out what that looks like daily, and you’ll be crystal clear on what you need to do to meet your goals.

Actually, the “budget” I’m referring to here is your operating budget – the projections of the expenses you’ll incur to run your practice over the course of the year. You’ll also want to prepare a budget of projected income, including all possible income streams. You might also have a capital expenditures budget, as well; but today, we’ll concentrate on the operating budget.

If you have been in business for more than a year, then I would suggest that you use your profit and loss statement from the previous year as a guideline in preparing your budget. You can use the same line items, but you’ll want to break some down into subcategories so that you are clear on what expense goes where. If you are just starting out, then do your very best to guesstimate your expenses for this first year. You know what your rent is, your insurance, your equipment contracts, your bar dues, WestLaw fees, payroll expenses, and so forth. For some of the other things, like office supplies, postage, travel, CLEs, etc., you’ll have to just use your best judgment on coming up with projections.

On a monthly basis, run a comparison of your budget year-to-date with your profit and loss statement. Are you way over, way under, or just about where you thought you’d be? If you need to tweak your projections, please do so. You just need to stay on top of how much money you need to be bringing in to cover everything.

At year-end, take a good hard look at your comparison, checking for any unusually and unexpectedly high expenses. Then, use that year-end P&L statement as a basis for your budget for the following year. Don’t worry – it will be easier after you have a few years under your belt. A successful law practice works with a budget, sticks to a budget, and makes decisions based on the budget. That’s a smart business practice.

VI. Traditional vs. Virtual Office

Thanks to technology, it's no longer a "given" that you'll need traditional brick-and-mortar office space. If you aren't sure if you need a traditional office, ask yourself a few questions to help clear up the confusion:

- What money do I have for rent in a traditional office environment?
- Could I share space with someone else, or sublet an office from a larger firm?
- Where are my clients most likely to be located?
- Do I expect to meet with clients in my office?
- Will my clients expect me to have an actual office? Would they be comfortable working with an attorney in a virtual environment?
- How important is it for me to have easy access to camaraderie with other people, noise, support staff, office services, or a sounding board with whom to discuss legal questions and procedure?
- How can I meet these needs in some other way if I can't afford a traditional office?
- If I choose to be virtual, do I have access to a convenient and attractive conference room in which to meet clients on an as-needed basis?
- If I will be working out of my home, how well-disciplined am I to be able to focus on my work and not the laundry or the kids' interruptions of my work time?
- Do I have an appropriate work area in my home that I can designate as my "office?"
- Would my practice be suitable to an on-line practice format?
- How would that work?
- Who do I know that could answer my questions?

When developing your overall budget, make sure to include the projected costs associated with your work space. Include office equipment, staff assistance, phones, internet connection, supplies, etc. Be realistic about the money you'll have during your first year in business. If you are new to the practice of law, it will take you awhile to build up a client base of good, paying clients. If you are leaving another job to go out on your own, you may be lucky enough to bring clients with you, so your cash flow may be a little better.

VII. Technology

There are certain pieces of hardware you'll need from the outset with your new practice. You must have a reliable PC or laptop, a good quality printer, a scanner, a shredder, and a phone (a cell may do it). In addition, many attorneys are now singing the praises of their tablets – in fact, some attorneys use only a tablet for all their computing needs.

Using cloud-based software and storing your documents in the cloud allows you great freedom in that you can work from anywhere – your home, your office, a plane, or the deck of a cruise ship in some exotic locale. Please consider carefully how you will work,

and what your clients will need, before choosing your hardware and software. If your clients will want to access their files on-line, then the cloud is it. If they want to receive and pay their bills on-line, then you'll want to consider putting a payment portal in the "clients only" portion of your website.

Before you run out and buy the latest software, do stop to consider the cost of upgrades, ease of access, and tech support fees before choosing to install PC-based software. One of the big advantages to cloud-based software is that upgrades are automatic – every time the software is improved, you automatically are moved to the new level.

Consider, also, open source software when you are just starting out. There are many, many "look-alike" programs available free of charge, and if money is short, there's nothing wrong with starting out here. Check out OpenOffice (similar to Microsoft's Office Suite) or AbiWord (for word processing only). Google "open source software for lawyers" and you'll get a long list of possibilities. Take a look at www.softwareinformer.com for reviews. Spend a few minutes reviewing the "ABA Practice and Case Management Software Comparison Chart," or go to www.buycheapsoftware.com for low prices on resale software. You can also find good prices on second-hand software at technology hardware resellers.

Buy the best you can afford right up front. You don't want to save on the initial purchase, only to have that savings wiped out by repair bills or pricey tech support calls.

VIII. How to Get Help Without Breaking the Bank

When you are just starting out, money is often an issue; but, so is the need to get some help. There are some suitable alternatives to hiring staff right away, and I would urge you to think about the help you might need as you open the doors.

First, you will have a much better idea of what you need to delegate away once you're open for business. For starters, though, think about farming out your bookkeeping tasks, your phone coverage, and perhaps even some of the "attorney" tasks that someone else could competently handle for you. Keep a list of all the things you do during the day for 30 days. This will give you a good idea of what you should delegate away, and which tasks belong solely with you. Before you hire even a virtual employee, make sure you're clear on what you need someone to do for you, as well as how much money you have available for this work. Try to find someone who is willing to accept pay for only the hours actually worked. Research your state's labor laws and the IRS guidelines on independent contractor vs. employee before entering into any sort of working relationship. You don't want to run afoul of the law by not doing your homework.

Once you find the right person to help, make sure you go over the ethics involved in working in a law firm. Specifically, explain the need for complete client confidentiality,

and the need to keep all information picked up on the job within the confines of your practice.

For a virtual receptionist, try www.callruby.com (Ruby Receptionists). They are repeatedly rated the best answering service in the industry. For a virtual legal assistant or paralegal, Google those terms plus your city/state (if location is important to you). Consider using contract attorneys for additional help drafting documents or researching case law. As with a regular hire, always ask for and check references. Very important!

Join legal industry listservs and post procedural questions there. Develop your own list of resources, and identify an appropriate mentor and ask for mentoring. (Don't abuse this privilege – it's a gift, and you should treat it accordingly.)

Low-cost, or free, help is available from a variety of sources. Do your homework well, and you'll not only get good help, you'll save a bundle, as well.

IX. Getting Your Billing Rates Right

Successful law firms insure that their billing rates are correct for each timekeeper. The billing rate must take into account the timekeeper's share of overhead and his/her compensation, as well as write-offs and uncollectibles. Luckily, there's a simple formula that will help you determine what your minimum hourly rate must be. Let's look at how Charlene calculated hers:

A. Billing Rate Formula

To figure out what she should be charging, Charlene uses this simple formula:

Charlene's Minimum Hourly Rate

Charlene's desired compensation	\$ 100,000
Charlene's share of firm overhead (exclusive of atty compensation)	\$ 164,100
Emergency fund (6 months' worth of overhead and compensation)	\$ 132,050
Desired firm profit	\$ 25,000
TOTAL REQUIRED REVENUES	\$ 421,150

Charlene's realization rate (% of fees billed that she collected)
[divide total gross fees collected by total fees billed]

Charlene's gross fees collected	\$ 287,500
Total hours billed	1,325
Charlene's current hourly rate	\$ 250
Total fees billed	\$ 331,250

Charlene's realization rate	$(\$287,500 \div \$331,250) =$	0.87
Charlene's projected billables goal		1,300

Required Revenues \div (Realization Rate X Billables Goal) = Minimum Hourly Rate

or

$$\mathbf{\$ 421,150 \div (0.87 \times 1,300 \text{ hours} = 1,131) = \$ 373}$$

Again, this figure is Charlene's minimum hourly rate – the minimum she needs to charge per hour to meet her financial needs. If it seems too high for her services and her locale, then Charlene needs to revisit her target revenues to insure they are realistic. From there, she needs to look at her realization rate. If it's too low, bringing that number up will lower the minimum hourly rate here. Perhaps her billables goal isn't sufficient to allow her to generate revenues at a rate that would lower her hourly fee. There are other considerations, however, when setting your rates. Refer to RPC 1.5 for further guidance on factors that may influence the fees you charge.

If you are using flat fees, you still need to meet your target revenues each year. A flat fee is based on an expectation of a certain amount of lawyer time required for the work at a certain rate per hour; so, this calculation would apply here, as well.

B. Advance Fee Deposits

First, let's look at the difference between a "retainer" and an "advance fee deposit." A retainer is money given to an attorney to guarantee that practitioner's availability to handle a specific task, or at a certain time in the future. The retainer is considered the attorney's property upon receipt, and is deposited into the operating account. An advance fee deposit is money taken up front before representation begins, and is placed into the client's trust account because it has not yet been earned by the attorney. As the attorney incurs fees and costs, the attorney's client bills are paid out of the trust account until the deposit is fully consumed. Always give your client notice that you will be withdrawing funds from the trust account if payment is not received by a certain date, and the client does not dispute the bill. Such notice can go on the bottom of your client bills.

An advance fee deposit serves several purposes:

- Demonstrates the client's commitment to seeing the case through
- Provides a good start to the attorney-client relationship by establishing it as a business relationship
- Helps insure timely payment to the attorney.

Taking some money up front is a good business practice because it helps insure your client's commitment to following through with his/her matter, and it helps insure that you will be paid for your services. It's that simple. As a criminal defense attorney once told me, "They don't pay from the jailhouse." Trusting any client to pay up after the matter is

resolved is risky business, and can leave you holding the (empty) bag. So, protect yourself and require an advance fee deposit for all new work.

Discuss your advance fee deposit policy with your potential client in the initial consultation. Spell it out clearly in your written fee agreement. Obtain your client's signature on the fee agreement, indicating acceptance of your advance fee deposit policy.

Remember the purpose of this deposit and require an adequate amount up front. I suggest the equivalent of about the first two months' worth of projected billings for fairly routine matters. That will be a significant buy-in for the client, and will provide you with time to determine if the client is creditworthy. For larger, more complex cases, consider asking for 35-50% of your estimated fees up front. Bottom line is this: how much risk can you afford to carry? As a start-up, you probably can't afford any losses, so hold firm on your advance fee deposit requirements.

If your client cannot afford to give you an advance fee deposit, you are at great risk of not getting paid in the long run. In this situation, there is a good chance the client can't afford you at all – or isn't adequately prepared to finance this case. Just be careful.

My favorite form of advance fee deposit – a so-called “evergreen deposit account” – is actually a variation on a traditional advance fee deposit. As explained in your written fee agreement, this popular replenishing deposit account works like this:

You accept an advance fee deposit, place it in your client trust account, and bill your client on a regular basis for your fees and costs. The client has X number of days in which to pay your bill. If payment is not received timely, then you pay yourself out of the client trust account, just as you would with a traditional advance fee deposit. When the client eventually pays, that money is deposited into your trust account to bring the client's balance back up to the original level. Your fee agreement contains a statement to the effect that if the balance in the client's trust account falls below \$_____ (fill in the blank), you will be unable to continue work until the client returns the balance to its original amount.

The evergreen deposit account helps to minimize your risk of not getting paid. As long as you take an adequate amount up front, you will always be paid timely – whether directly from the client, or from the trust account. Because it's a replenishing account, you can actually afford to take a smaller advance fee deposit because you know you'll get paid for the first month – and if the client doesn't replenish the account as required, you'll probably know early enough to be able to withdraw before you incur a huge loss.

Successful law businesses have policies in place to help insure payment for services rendered. If you aren't relying, at least in part, on advance fee deposits to help you get paid, maybe it's time to rethink this opportunity.

C. Develop Good Billing Practices

The first step in developing an effective collections procedure is having a solid fee agreement that details your expectations of payment, the client's responsibility to pay, and the consequences of nonpayment of your bills. Choosing the right clients, and turning away those whom you suspect can't afford you, won't pay you, or will be problematic in your dealings, will also help insure you'll get paid for your services.

In addition, how and when you bill can have a significant impact on your ability to get paid what you're owed. First, remember that your billing statement serves three purposes. Use it as a tool to:

- Communicate with your client
- Market your services
- Collect money owed you

Other tips to help you help yourself through your billing practices include:

- Record all of your time contemporaneously every day. That's the only way to be fair to your client and to yourself. If you record all of your time – even nonbillable time – you'll build the discipline necessary to insure you get paid appropriately for the work you do on behalf of your clients. Do this regardless of how you calculate your fee. In other words, track your time for hourly fees, flat fees, contingent fees – or any other alternative fee arrangement you may employ.
- Bill regularly (at least once a month).
- Be fair with your bills.
- Give your clients adequate time to pay your bills, then phone to work out a payment plan with any clients who are delinquent.
- Split your client list in half and bill A-M on the 25th of the month, and N-Z on the 10th of the month. This gets your bills into your clients' hands a few days before payday, and helps you by creating a steady flow of payments received all month long.
- Write-off or write-down time only if you believe it's the right thing to do. Avoid discounting just because you think your client will be more willing to pay, or pay quickly, if your bill is smaller. Discounting means that you aren't getting paid fully for the work you've done, and regular discounting sends a message to you clients that says "I know I'm not worth what I charge," or "I don't work as fast as I should." Whatever time it took you to do the work is what it took. For the most part, your clients aren't in a position to second-guess how much time is reasonable. As long as you are fair with your clients, you have nothing for which to apologize.

D. Handling Past-Due Accounts

In spite of following the steps above for getting paid, there will still be times when you'll come up empty-handed. Prepare for that by developing a policy on past-due accounts right up front and follow it every time. Put it in your fee agreement, and be prepared to enforce your terms.

Start the process with a friendly phone call to find out the reason for the delinquency. Offer to work out a payment plan to help your client get caught up. Break the balance due into smaller amounts, but try to get it all paid before your next bill goes out, if at all possible.

Keep following up on past-due accounts. If you have a client on a payment schedule, and the client is honoring it, then be grateful that the money is coming in (albeit, slowly) and learn from the experience so you can minimize your chances of being in this position again.

If you have gotten nowhere with your requests to bring the account current, fire the client. Sometimes you aren't allowed to withdraw, but there are plenty of opportunities where you can get out. Don't allow yourself to reach the point of no return in the client's case. If you are not getting paid, cut your losses and fire the client. **[NOTE: Some state bars prohibit you from stopping work even for nonpayment. Please check your local rules to insure you aren't in violation of your Rules of Professional Conduct.]**

X. Operating Expenses

Overhead is a necessary evil in a law firm. It costs a lot of money to get and keep a law practice up and running; but, how much is too much?

In a small firm, a healthy overhead total would fall in the 40-45% of revenues range. (This is exclusive of attorney compensation.) I don't get nervous until it tops 50%. In a larger firm, healthy overhead would typically run no higher than about 60%.

On an annual basis, check your overhead to see where you are. If it's high, don't immediately assume that you have to reduce expenses. It's too easy to look at the biggest expense (usually, payroll) and decide you need to lop jobs to reduce your overhead; but, that isn't always the thing to do. In my 26+ years of consulting, I've only found one firm where overhead was outrageously high (97%). Rather, I usually find that the reason overhead seems to be too high is that revenues are too low. The attorney(s) isn't billing enough, or collecting enough of what's billed.

If you have deadwood on your payroll, then lop away; however, if you think you just can't afford to keep everyone, remember that when you cut positions, you may also be impacting your ability to serve your clients timely and with the level of customer service you wish to provide. Make sure you can cover all tasks and responsibilities without unduly burdening your remaining staff.

If everyone seems to be working hard all the time, then look at your productivity reports and analyze everyone's billings and collections. Are there timekeepers who are coming up short on goals? Are you coming up short? Do you need more clients? Do you need better paying clients? Is your billing rate appropriate? Is your realization rate above

90%? Lots to look at, and lots of steps to take to help bring the overhead in line with revenues.

XI. How to Get Clients

There are six proven strategies for marketing professional services. They are:

1. Direct contact and follow-up
2. Networking and referral source building
3. Public speaking
4. Writing and publicity
5. Promotional events
6. Advertising (this would include your website)

If you delve into each of these strategies a bit, you'll notice that the first three are what are called "active" strategies – active, in the sense that you are personally involved in meeting and speaking with people. The last three are "passive" strategies – passive, because you do whatever (e.g., a blog post, an ad in a local newspaper, or an article in a publication), and it sits out in the world working for you without any further effort on your part.

The best marketing plan will incorporate two or more of these strategies for a good marketing mix. People will find you in a number of different ways, and you want to make sure you're wherever they are looking – be it on-line or at a Chamber mixer. Your varied strategies will help get your name out in different ways to different channels. Find what works for you and build off that marketing success.

A. The #1 Best Source of New Clients for Most Law Practices

While there are many ways in which to market your new law practice, please don't overlook the tried and true for the new high-tech strategies. If you ask most attorneys the best source of new clients, they will say "word of mouth" – referrals. Referrals can come from current or past clients, other attorneys, other professionals, next-door neighbors, or anyone else who knows and respects the practitioner. Referral-source building is still one of the most effective ways to market most law practices. Get over being shy and start telling everyone you know what you do and who you want to serve. Get clear on who your Ideal Client is, and be as specific as possible on those details with your referral sources for the most appropriate referrals. [See Attachment A – Key Characteristics of My Ideal Client for ideas on what's most important to you in a client.]

B. How to Ask for Referrals

Referrals can be the life's blood of a small law firm, but many attorneys are shy about asking for referrals. Your best source of referrals is your clients – after all, who's better situated to sing your praises than a happy client?

The two best times for asking for referrals in your relationship with a client are when the client's matter is coming to an end, and then again, after the matter has closed.

Hopefully, in both instances, the client has nothing but warm and happy thoughts about you and your service.

So, let's take a look at how to handle that request for referrals. We'll start with the near-the-end situation. As you see a client's matter nearing completion, try to have one more face-to-face conversation with the client (on the phone if face-to-face isn't possible). During that conversation, praise the client with sincerity for being easy to work with, or responsive to your requests for further information, or quick to turnaround documents sent for review, or able to understand the legal process and make intelligent and informed decisions regarding his/her matter. Then, follow up with three questions designed to help you honor the client's feelings, and ask for referrals:

- "Now, I'd like to ask you – what was the best part about working with me/this firm?"
- "Thank you so much for your comments. That is valuable information for me. I'd just like to say that in this firm, we take client satisfaction seriously. We want all of our clients to have a good experience. That requires us to be continually raising the bar on ourselves. That said, what could we do next time to make this an even better experience for you?"
- "Again, thank you. Now, one last question. You've been such a pleasure to work with – how can I get more great clients like you?"

Listen carefully, take notes, nod in understanding, and express your appreciation for the client's candor and helpful insight. Then, review your notes and implement any idea that makes sense and is manageable. Make a note in your CRM program as to the originator of that idea so the next time you meet this client, you can say, "You'll be pleased to know that we took your suggestion to heart and we now _____ [fill in the blank]."

These questions do three things: first, they make the client feel important because you are asking for a personal opinion and suggestions; second, the next question plants the seed that there will be a next time, and the client will come back to you; and third, you are asking the client to help you get more clients. Trust me – when you ask, they will help. Sometimes clients don't know you want more clients. They assume you are working at capacity all the time – and, you never want to disavow them of that assumption. A simple tip-off to them could be:

"I've always got time for more great clients like you" or "I'd always make time for your friends or family members."

Then, when the referrals start coming through the door, be sure to send a thank-you note to your referral source – especially if it's a former client. No gifts (see RPC 7.2 on the prohibition for giving anything of value to someone for a referral), but a sincere note is a lovely gesture.

XII. Satisfied Clients

A successful firm has satisfied clients. Period. If your clients aren't satisfied, then no matter how much money you may make, your firm isn't successful.

Bar grievances and malpractice suits prove clients want more than a victory. Winning isn't always enough to satisfy a client. The list of things you can do to help make your clients happy is endless; however, I'm going to boil it down to a simple statement – make your clients feel important. That's what we all want, really – to feel important, to feel like we matter.

Arguably, the most effective way to make a client feel important is through communication. Not sure how to start? Try asking yourself:

- What are my client's expectations of the outcome of this matter? Of me?
- What does my client need right now?
- How is my client feeling about her case? About me?
- What can I do to help reduce my client's stress?
- When did I last send my client an update on his case?
- What update can I provide my client today?
- When is the last time I phoned my client just to say "hi?"
- When is the last time I spoke with my client?
- When is the last time I communicated in any form with my client?
- What is my client's biggest fear? What am I doing to help my client with this fear?

Start the line of open communication in the initial consultation, and carry it through to completion of the client's matter and beyond. Return phone calls promptly. Anticipate questions. Address fears. Call during those long dormant periods that tend to be part of the legal process. Drop the legalese – that only makes you look like a show-off and it can intimidate your clients. Speak to them in everyday language and break down legal jargon and procedures into sound bites that make sense to the layman.

For supremely satisfied clients, find ways to "WOW" them. Exceed their expectations by meeting their needs. Go the extra mile. Look for things you can do to help your clients through what can be a stressful time. Take care of your clients as though your business depends on it – because it does.

Remember, the difference between a good attorney and a great attorney is the ability to make clients feel important.

XIII. You

The last, but most important key element to having a successful law practice is this – be the best lawyer you can be:

- Always act with integrity, dignity and respect for others
- Always do your best work for every client every time.
- Put in the time and effort to insure your work is first-rate.
- Handle your clients with the greatest care, compassion, understanding and patience.
- Work to improve efficiency so that you can save your clients money and speed up the process.
- Put in the time to continually upgrade your skills so that you can provide better and better service for your clients.
- Take care of your staff.
- Ask for help when you need it.
- Offer help when you can.
- Don't try to do everything yourself – it's not the best use of your time or skills.
- Maintain your principles and always act with dignity and respect toward others.
- Remember that you are the hired help and your client is in the top spot.
- Become a resource for your clients. Look to help them in a variety of ways.
- Uphold the standards of your profession and always work to improve the image of lawyers through your actions and words.
- Give back to your community. Through pro bono work or other forms of volunteerism, help those in need. There is no higher calling.
- Take responsibility for your practice, make smart business decisions, and always keep the practice focused on your clients.

XIV. Find a Good Mentor(s)

Arguably, the best piece of advice you'll receive today is to find a good mentor to whom you can turn with questions (and you will have many questions!). I mentioned it earlier, but it bears repeating. You should have a mentor for your practice area(s) – someone who can answer procedural questions, supply you with sample forms, and advise you on how to handle a problem client or comport one's self in court. In addition, you need a mentor to help you with practice management questions. Senior attorneys are remarkably generous with their time and knowledge in helping younger attorneys learn the ropes of practicing law and running a business. Just be careful not to abuse the relationship by constantly calling or e-mailing. Interview potential mentors to find the right fit – someone who has a well-run and profitable practice, and is well-respected in the local community, both for legal skills and personal integrity. Also, make sure your proposed mentor has the time and interest to help you.

Don't be like the young fellow, only a month into his practice, who says he doesn't have a mentor because he's "really a loner and not into asking for help." Sad – and dangerous. This is no time to try to go it alone – you have too much at stake – and so do your clients. Ask for help, and show proper appreciation for the words of wisdom. One day it will be your turn to help someone coming up behind you, and that will be your chance to pay it forward.

XV. Conclusion

Opening a law practice is a big undertaking. While others may argue with me on this, I believe you are first a business owner, and second a lawyer. Your legal services are the product you sell. If you don't develop good business skills, you're going to have a hard time of it. Remember the three roles of a small firm attorney and make sure you pay close attention to all three. They are interdependent, and your firm's ultimate success is riding on your ability to be a good businessperson and a great attorney.

“Service” is the name of the game. Serve your clients to the best of your ability – every client, every time. Your reputation is made or broken on your clients' experience with you.

Make sure everyone you know understands what it is you do and who your ideal clients are. Be specific – the more detail, the better able others will be to determine who is an appropriate referral for you.

Develop a plan for the future, and follow it. Know where you're going and how you plan to get there. Don't deviate from the plan. Bright shiny objects will come at you from all directions. The key is to stay focused on the goal you set for yourself and bat away the distractions. When an interesting opportunity comes your way, ask yourself “Will this take me closer to my goals, or away from them?” If it will further your goals, then it may be worth a second look; but, if it is merely a distraction (no matter how attractive), you need to let it go. Not every wonderful opportunity makes sense for your business.

Lastly, build a practice that serves your clients well, and enjoy it – and enjoy your life! You're just at the threshold now, and you can make it anything you want it to be. How exciting!! Dream your dream, and make it a reality. We pass this way but once.

BEST WISHES FOR YOUR GREAT SUCCESS!

ATTACHMENT A

KEY CHARACTERISTICS OF MY IDEAL CLIENT

CHARACTERISTIC	SPECIFICS	LEVEL OF IMPORTANCE Scale of 1-5 (5 = high)
Gender		
Age range		
Citizenship (if important)		
Annual income		
Educational level		
Geographic location		
Assets		
Ability to pay my fees		
Likability		
Ability to understand what I am saying		
Ability to actively participate in the attorney-client relationship		
Reasonableness		
Credibility		
Honesty		
Verbal communication skills		
Legal issues involved		
Prior offenses/convictions		
Type/size of business		
General health		
Emotional stability		
Prior experience with attys or the legal process		
Hobbies		
Special interests		
Other		

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