

A GUIDE TO SETTING UP AND RUNNING YOUR LAW OFFICE

Avoiding Malpractice Through Efficient Office Systems

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August 2019

Dear Oregon Lawyer:

This edition of *A Guide to Setting Up and Running Your Law Office: Avoiding Malpractice Through Efficient Office Systems* replaces the purple-covered handbook of the same name previously published by the Professional Liability Fund in March 2016.

This handbook is a reference guide that answers questions about everything from starting your own law office to maintaining a system for closed files. The suggestions in the handbook are those that are likely to help most practitioners. The systems suggested are not the only effective systems; they are some of the systems that we find easy to understand and implement.

A copy of this handbook is free to any Oregon lawyer who requests it. Out-of-state lawyers may download copies of *A Guide to Setting Up and Running Your Law Office: Avoiding Malpractice Through Efficient Office Systems* on the PLF website, www.osbplf.org > Practice Management > Publications.

This handbook is offered as a starting point for lawyers in private practice. The PLF also offers free practice management consultations on an individual basis, through our Practice Management Advisor program. In addition, the PLF has many free practice aids that are available to attorneys online at www.osbplf.org > Practice Management > Forms.

We hope this handbook will be of assistance to you and that you will utilize our practice management advisors and practice aids.

Sincerely yours,

A handwritten signature in blue ink that reads "Barbara S. Fishleder".

Barbara S. Fishleder
Director of Personal and Practice Management Assistance
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TABLE OF CONTENTS

GETTING STARTED	1
Sole Practitioner or Partner?	1
Deciding the Form of Entity	1
Choosing a Location and Situation	2
Buying a Law Practice	2
Furnishing Your Office.....	2
Budgeting.....	3
Professional Support and Resource Networks	4
Meeting with a Practice Management Advisor.....	4
NEW CLIENTS	5
Case and Client Screening	5
Creating Realistic Expectations	5
Using Intake Sheets.....	6
Thanking Referral Sources	6
Fees	7
Engagement, Nonengagement, and Disengagement Letters.....	9
Engagement Letters	10
Nonengagement Letters	10
Disengagement Letters.....	11
CONFLICT OF INTEREST SYSTEMS	13
Creating a Conflict Checking System.....	14
Transitioning from Traditional Conflict Systems	14
Setting Up the Conflict Database.....	14
Case Management Software	15
Using a Conflict System	15
A Checking Routine.....	15
Office Sharing.....	15
Document Conflict Checks	15
Input New Conflict Information	15
When a Name Is Found.....	16
New Lawyers and Staff.....	16
When a Lawyer or Staff Member Leaves the Firm	16
New Client List.....	16
Request for Conflict Search and System Entry.....	17
Types of Names to Be Added to Conflict List.....	18
ORGANIZING AND KEEPING CLIENT FILES	19
Opening Files – Paper-Based System	19
Numbering Files – Paper-Based System.....	19
Client Copies.....	19
Paperless Files.....	20
CALENDARING AND FILE TICKLING SYSTEMS	21
Types of File Tickling Systems	21
Transitioning from Traditional Tickling Systems.....	22
Main Calendar.....	22
Case List	22
Stand-Alone Calendaring Software	22
Case Management Software	22

Deadline Calculators.....	22
Choosing the Right Software for Your File Tickling System.....	22
Using a File Tickling System.....	23
Establishing a Routine	23
Setting Tickle Dates.....	23
Conducting Periodic Reviews.....	23
Tickling Specific Deadlines.....	23
Setting Reminder Dates	24
Following Up	24
Managing the Caseload.....	24
Types of Docketing Calendars.....	24
Central Docket Calendar.....	24
Docket List.....	24
Calendaring Programs and Case Management Software	25
Mobile Calendars	25
Using a Docketing Calendar	25
Setting Reminder and Follow-Up Dates	25
Calendaring All New Dates Immediately	26
TIME MANAGEMENT	28
Schedule Work.....	28
Schedule Time to Return Phone Calls, Respond to Texts, and Answer Emails	29
Deadline Dates.....	29
Enlist Staff Help.....	29
Checklists.....	30
Mail Handling	30
To-Do List.....	31
Technology	31
Build in Flexibility.....	32
CLIENT RELATIONS.....	33
Clarify Fees at Initial Meeting	33
Keep Your Client Informed	33
Follow Up in Writing.....	33
Create Realistic Expectations	34
Return Telephone Calls and Emails.....	34
Communicate By Email or Text	35
Show Respect for Clients.....	35
Let Clients Make the Decisions	35
Settlement Negotiations	36
Reject Certain Cases	36
Staff Responsibilities	37
Marketing.....	37
OFFICE AND TRUST ACCOUNTING	38
General Office Accounting	38
Chart of Accounts	38
General Ledger Spreadsheet	38
Account Balancing.....	38
Budgeting.....	39
Start-up Costs.....	39
Fixed Expenses	39

Extra Expenses.....	40
Using a Budget to Plan	40
Trust Accounts	40
Chart of Accounts	41
BILLING AND COLLECTIONS.....	42
Timekeeping	42
Preparing Billing Statements	42
The Monthly Billing Cycle	44
Maintain Billing Flexibility	44
Record Keeping	44
Collections	44
Sample Billing Statements.....	46
CLOSING FILES.....	49
Using a System	49
File Retention and Destruction	50
Determining How Long to Store Files.....	50
Closing, Storing, and Destroying Files	52
STAFF.....	54
Confidentiality	54
Develop Office Manuals	55
The Policy Manual.....	55
The Procedures Manual	56
CONTRACT WORK.....	59
Malpractice Risk and Professional Liability Coverage.....	59
Staying Out of Trouble	59
Scope of the Project	59
Contract Lawyer’s Status.....	60
Fees and Costs	60
Conflicts and Confidentiality.....	61
Work Product and Further Responsibility	61
Getting Started	61
RESOURCES	62

GETTING STARTED

The decision to open your own law office should include consideration of the following:

1. Do you want to practice as a sole practitioner or with other lawyers?
2. What type of entity do you want?
3. Where should you locate your office?
4. Do you want to purchase someone else's practice?
5. What type of furniture and equipment do you need?
6. What is a realistic budget?
7. What type of professional support and resource network do you need?
8. Should you meet with a Professional Liability Fund (PLF) Practice Management Advisor?

Sole Practitioner or Partner?

If you are self-reliant and can handle administrative details, you may want to be a sole practitioner. You can be your own boss, set your hours, and run the office any way you choose. You make all the decisions – good and bad – and take all the credit. You must also take all the responsibility and be able to market yourself to potential clients. Most of all, you must be willing to take risks. On the other hand, if you have trouble making decisions and the thought of shouldering the responsibility alone scares you, going solo may not be the road for you. Administration of a solo practice takes time away from the practice of law and requires some knowledge of how to run a business. If you enjoy practicing law and despise administrative matters, you may not be happy as a sole practitioner.

You may choose to form a partnership with other lawyers.¹ This allows you to share responsibilities and expenses with other lawyers. The partners can choose a managing partner to handle administrative affairs and make day-to-day decisions, with all of the partners voting on important matters and setting policy. It is essential that you draft a written partnership agreement with provisions that clearly state the terms under which the firm will operate: how expenses will be paid, profits and losses shared, capital contributions made, retirement earned and withdrawn, and capital and income paid. Other items that may be included are expected billable hours, sharing of administrative duties, employee supervision, and responsibilities of the respective partners on dissolution of the partnership. Even when a partnership is formed to share only office space and expenses, it is important to have some type of written agreement.

Deciding the Form of Entity

An Oregon lawyer can practice alone as a sole proprietor, a professional corporation, or a single member limited liability company. Two or more Oregon lawyers can practice as a general partnership, a professional corporation, a limited liability partnership, or a limited liability company.

Deciding what entity your practice should take is a business and tax decision. The choice you make will affect the business side of your practice. Therefore, whatever form you choose, consult an accountant and an insurance broker. An experienced accountant will be able to advise you on federal, state, and local taxes, employment requirements, and business licenses. An insurance broker can provide quotes on valuable papers coverage, cyber liability, business interruption coverage, premises liability, personal liability (to protect your assets from liability other than professional malpractice), theft, disappearance, and destruction coverage, fidelity insurance, and fidelity bonds for employees. Cyber liability/data breach coverage is also available through the PLF as part of the PLF Excess Claims Made Plan. Visit our website for details, www.osbplf.org > Excess Coverage > Overview.

¹ An attorney cannot form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law. Oregon Rule of Professional Conduct (ORPC) 5.4(b).

Choosing a Location and Situation

Cost is probably the most important consideration in determining where your office should be located. It is also the most restrictive. Keeping fixed costs at a minimum will prevent financial disaster during the start-up period. One option to consider is sharing an office with another lawyer or law firm. Some agreements provide for the tenant to do legal work (such as research) in exchange for rent or a portion of the rent. Guidelines for establishing office sharing and work-for-rent arrangements are available on the PLF website, www.osbplf.org > Practice Management > Forms > Category > Office Sharing.

Executive suites or “virtual offices” are another alternative that many new sole practitioners choose. This arrangement provides the lawyer with professional meeting space (sometimes paid for on an hourly basis), a mailing and delivery address, reception services, secretarial services, and access to office equipment. The executive suite is used to meet with clients or other lawyers and work is done from the lawyer’s home. For more information about these arrangements, *see* “Home-Based Law Office,” available on the PLF website, www.osbplf.org > Practice Management > Forms > Category > Opening a Law Office.

If you cannot afford an executive suite, explore other alternatives. For example, borrowing a colleague’s office or reserving the Oregon Lawyers’ Conference Room in downtown Portland. The Oregon Lawyers’ Conference Room is free meeting space, courtesy of the PLF and the Oregon Attorney Assistance Program (OAAP), and may be reserved online. For meetings outside Portland, the PLF maintains a list of free or inexpensive conference rooms in libraries, bar associations, and courthouses. To learn more, visit the PLF website, www.osbplf.org > Practice Management > Oregon Lawyers’ Conference Room.

Another consideration in determining your office location is your type of practice and the image you wish to project. If your practice does not require frequent court appearances, you may want to locate outside the downtown business district where rent is cheaper and parking is free. If litigation is your specialty, locating close to the courthouse may be a necessity.

No matter which location you choose, be careful not to enter into a long-term lease. A one-to three-year lease will provide flexibility to relocate your office as the nature of your practice changes. After a short period, you may find that additional space is required for staff or associates and that your current location does not allow for growth. Or you may find it advantageous to form a partnership with another sole practitioner, and a long-term obligation may keep you from doing so.

When choosing an office, consider conveniences to clients: parking availability and cost, proximity to bus lines, accessibility for aging or disabled clients (stairs, elevators), and ease of location (can your office be found easily by out-of-town clients?).

Buying a Law Practice

If you are thinking of buying a law practice, consider consulting with a broker experienced in the sale of professional businesses and carefully review ORPC 1.17. Checklists and resources for lawyers buying or selling a law practice are available on the PLF website, www.osbplf.org > Practice Management > Forms > Category > Buying a Law Practice; Selling a Law Practice.

Furnishing Your Office

When furnishing your office, keep in mind the image you wish to project to your clients. If money is limited, think about buying used or self-assembled office furniture. Keep it simple and hold costs down. The reception area should contain several chairs, a coffee or end table, a coat rack, and some magazines. If some of your clients bring children with them, provide a few toys or children’s books. If your staff person will be located in the reception area, make sure papers and files are not left where they can be seen by waiting clients. If there is a computer in the reception area, use a screen shade or position the monitor so waiting

clients cannot view information on the screen. (A screen saver is not enough unless it is password protected, since a curious client can hit any key to reactivate the screen if the reception area is temporarily unattended.) Do not keep unlocked file cabinets in the reception area.

In your own office, you will need a desk, comfortable chair, and at least two client chairs. Furnish your library/conference room with an adequate size conference table and chairs, bookcases, and a telephone with a speaker device. Other standard equipment and furnishings include a calculator (if your computer does not have one), file cabinet(s), digital dictation equipment or voice recognition software, telephone headset, copier, scanner, printer, and shredder. In addition, you should arrange for voicemail services. Basic office supplies include paper, envelopes, file folders, pens, pencils, stapler, hole punch, date stamper, rubber bands, and tape.

When purchasing computer equipment, keep in mind your future needs so the equipment does not quickly become obsolete. Make sure your equipment can be upgraded. Using a printer or copier, you can print your own letterhead, envelopes, and pleading paper. Purchase licensed software programs to ensure that support and upgrades will be readily available. In addition to using your computer for word processing, consider purchasing programs for calendaring, docketing, conflicts, office accounting, time and billing, and case management.

Budgeting

As with any new business, the first year of operation will entail many large purchases. Be aware that operating expenses will usually exceed revenues until your practice matures. Make sure you have sufficient reserves to last through the early growth stages.

You can calculate your reserves through a budget or cash flow projection – an estimate of income to be received and expenses to be paid for a certain period. To prepare a budget, you need to establish a business plan that answers some basic questions about services to be offered and reserves required. Ask yourself these questions: Will I be charging on a contingent fee, hourly rate, or other basis? If hourly, what will my rate be? What types of clients will I be trying to attract? What type of law will I be concentrating on? Should I require retainers? How much will I need for start-up costs? What will my monthly expenses be? How much do I need to live on? Once these areas have been addressed, you are ready to project your monthly cash flow.

If you are basing your income on hourly fees, determine your projected number of billable hours per month and multiply it by your hourly rate, keeping in mind that there will be few billable hours in the beginning with a gradual increase in each succeeding month. It is much more difficult to project income if you operate on a contingent fee basis; there is no easy formula to predict revenues. Keep in mind that income does not always equal immediate cash intake. Hourly and flat fee billing can take 30 to 90 days to collect. This makes retainers very attractive. At the very least, require retainers for costs; this not only keeps down your expenses, but it also gives clients a financial interest in their cases.

After establishing your start-up costs, determine monthly expenses by listing all expected costs, such as rent, utilities, telephone, Internet access, supplies, insurance, postage, and taxes. Two important items to include are personal living expenses, including student loan payments, and unexpected expenses. Personal expenses can be estimated by reviewing your personal checking account, cash withdrawals, and credit card activity for the past 12 months. It is wise to have two or three months of expenses in reserve at all times.

Don't stop there. At the end of each month, analyze income and expenses and update your projected budget using the actual figures as each month goes by. This will focus your attention on keeping expenses down and will immediately inform you of any underestimated or missing items. It will also let you know

whether income is keeping up with your projections and will alert you to the need for increased marketing to bring in new clients.

A start-up budget, monthly budget, general ledger, and a cash flow worksheet are available on the PLF website, www.osbplf.org > Practice Management > Forms > Category > Financial Management.

Professional Support and Resource Networks

Many lawyers maintain a network of other lawyers to whom they refer cases that are outside their own area of expertise. Letting other lawyers know your area of expertise is a great way to help get your practice started. The lawyer receiving the referral becomes the attorney for the client on that matter, and may split the fee with the referring lawyer.

Fee splitting is governed by ORPC 1.5(d), which provides that a division of fees can be made only if the client gives informed consent and the total fee of the lawyers for all legal services is not clearly excessive. Always disclose the fee splitting arrangement in full, and inform the client that the total fee will not be any greater because of the fee split. To avoid a misunderstanding later, always confirm the client's consent in writing.

Another alternative is to associate more experienced counsel. This also requires consent of the client. In this arrangement, both lawyers are counsel on the case and payment arrangements are determined between the attorneys.

Meeting with a Practice Management Advisor

The PLF offers individualized help with the process of opening a law office through our Practice Management Advisor (PMA) program. Practice management consultations are free and confidential. Learn more about our PMA program by visiting the PLF website, www.osbplf.org > Practice Management > Practice Management Advisors. Review our comprehensive checklist for opening a law office by visiting the PLF website, www.osbplf.org > Practice Management > Forms > Category > Opening a Law Office > Checklist for Opening a Law Office.

NEW CLIENTS

Case and Client Screening

Careful case and client screening can eliminate the threat of a legal malpractice suit and greatly reduce the stress in your life. Evaluate potential cases and clients with these factors in mind:

1. Do you have a good “gut reaction” to the client and the course of action he or she proposes? If your first impression is unfavorable, you may want to reject the case. Lawyers who are sued for malpractice almost always knew at the outset that they should have rejected the case.
2. Be cognizant of the client’s relationship and experience with previous lawyers. Beware of the client who constantly changes lawyers. Look out for the case that has already been rejected by one or more lawyers.
3. Be cognizant of the client’s attitude toward other professionals such as doctors, accountants, bankers, or lenders.
4. What is the client’s attitude toward the case? If he or she wishes to proceed because of principle and regardless of cost, you may find yourself pressed to pursue a case that you do not believe in or, worse, find offensive.
5. Do you have the skill, expertise, and time needed to pursue the case?
6. Are you taking the case simply because the potential client is a relative, a friend, related to a friend, or knows a friend? These cases should be avoided unless you have confidence in your ability to handle the case and have a good feeling about the potential client. Ask yourself whether you would take the case if the client walked in off the street. If not, you should reject the case.
7. Are you and the client able to agree on fee arrangements? If not, you may be dealing with someone who will have difficulty making other decisions or compromises.
8. Consider the client’s attitude and method of operation. If he or she has come to you with a “done deal,” researched the case extensively, or failed to attend to the matter until it became an emergency, the case may require special handling.
9. Consider the client’s ability to pay for your services. A client’s financial situation may warrant declining the case unless you are willing, at the beginning, to provide pro bono services.

Creating Realistic Expectations

Even some of the best cases are lost when presented to the jury. After obtaining the necessary information from the client regarding the problem, start by laying out the adverse facts about his or her case. If you begin by advising the client that he or she has a good case, the client will not hear anything else. It is also important to explain to the client the economics of settling the case.

If a lawsuit is or may be involved, don’t give the client the impression it will take only a few months to resolve. Lawsuits are rarely resolved in a couple of months. Explain fully to the client the time limits involved. In an effort to be brief and simple, lawyers often misguide their clients by simplifying the process. (“Once the complaint is filed, the other side has 30 days to respond. When the case is at issue, we can request a trial date.”) As a result, clients get the mistaken impression that their cases will be over in a month or two. It is far better to explain the possibilities of problems with service, requests for extensions of time, or motions that may require filing an amended complaint. The client should be told that discovery will take additional time, and that you then have to wait for the court to set a trial date. Be familiar with the court’s timeline for setting cases. Explain trial setovers, and get the client’s consent. Clients who are aware of these time frames will not be calling the office constantly wanting to know why something isn’t happening.

When the matter does not involve litigation, explain the various steps involved and the time required for each. If there is a delay, advise the client immediately and provide a new estimate of when the matter will be completed.

Using Intake Sheets

Have every new client complete an information sheet listing the client's address, telephone number, email address, Social Security number, place(s) of employment, emergency contacts, spouse's or partner's information, and referral sources. While new clients are waiting to see you, you can also give them additional information sheets relating to the specific case, such as an intake sheet for a personal injury case, a domestic relations case, probate of an estate, or preparation of a will. If desired, add a disclaimer clarifying that you are not obligated to provide services to the client until you and the client mutually agree in writing to the terms of representation.

The PLF offers two versions of a New Client Information Sheet. One includes a disclaimer, the other does not. Both are available on the PLF website, www.osbplf.org > Practice Management > Forms > Category > File Management. The PLF forms include spaces for the lawyer to record docket dates, conflict information, billing, and fee arrangements. They also include lines to be initialed when the file is opened, conflicts are checked, and docket information is entered on the calendar. You can use the back side of either form to take notes during the client meeting, including supplementary conflict information. When your initial interview is complete, use the sheet to open the client's file and enter the necessary information into the office docket and conflict systems. Keep the sheet in the client's file for reference. If your office is paperless, the sheet can be scanned and saved to the client's electronic file or used as a basis for designing a fillable PDF or online intake form through your website.

Thanking Referral Sources

Remember to thank your referral sources as part of the intake process.

Fees

The client has the right to know what your legal services are going to cost. Some clients ask about fees right away, but others are quite timid about discussing money. Nevertheless, you need to fully discuss fees with the client before proceeding with the case. Clients who don't understand their responsibilities to pay are likely to be unhappy with the amount charged and may end up not paying their bill.

We strongly recommend that you have each client sign a fee agreement. Go over the fee agreement in detail with the client before the client signs it. This advice applies to all kinds of fee agreements – hourly, fixed, contingent, hybrid, and value-based. Either have the client take the fee agreement home to read again, sign, and send back, or prepare a fee agreement after the initial interview and send it to the client with the same instructions. Also, advise the client in writing that you will not do any work on the case until the fee agreement is signed and returned. If your agreement requires your client to provide you with funds for deposit in your trust account (funds you will earn as you do the work), be sure to explain that your representation cannot proceed until the money has been provided. If you take the case on a contingency basis, you may want to ask that a specific amount be paid to cover the initial costs of commencing the litigation (i.e., filing and service fees) and any charges for reports necessary to determine the value of the case (i.e., doctor or police reports). You should not finance your clients' litigation.

Generally, clients cooperate more fully with their cases when they are financially invested. If they are not sufficiently interested in the case to be willing to invest some money, the matter quickly becomes your problem rather than theirs. A surprising number of malpractice claims are brought against lawyers who spent enormous amounts of time on cases without collecting any fees.

Suing a client to recover fees typically results in a counterclaim for malpractice. The risk of being countersued is greatly reduced if you take the time to explain your fees to clients early on, document your agreement, and provide frequent fee bills. Your explanation should include how you bill (e.g., units of time) and whether you have a minimum billing unit (e.g., .10 hour, which is six minutes). Your fee bills should be detailed and should identify the specific services rendered for the fee charged. Listen carefully to your client's need for services before you provide a quote for fees. Then follow these practice tips to promote good client relations:

1. Enter into a written fee agreement early in the course of representation. Be sure it is specific and complete.
 - a. **Identify the Scope of Services.** The fee agreement should specify the services to be rendered and provide the client with clarity and written proof of what he or she has agreed to do.
 - b. **Specify the Timing of Services.** A fee agreement that clearly states that you will commence representation after the client performs a future act (e.g., paying a retainer fee, providing money for filing fees, or providing crucial background information) can avoid a misunderstanding.
 - c. **Explain the Type of Fee.** Clients are generally not familiar with legal terms such as contingent fee, costs, retainer fee, flat fee, fixed fee, or value-based billing. Be certain to explain these terms carefully. For example, if you charge a contingency fee, explain what the percentage fee will mean in terms of dollars. Be certain the client understands that he or she will be responsible for costs regardless of the outcome. If you charge an hourly fee, estimate the number of hours the case may take and periodically update the client. Provide revised estimates if the case takes more time than originally planned. If the fee arrangement is for an uncontested case,

define the term “uncontested” for the client. For example, if the fee applies only if you do not have to negotiate support or property division, let the client know this.

It may be difficult for clients to understand fees that are earned upon receipt. This type of fee arrangement can increase your risk of a legal malpractice or ethics claim. Be sure to fully advise the client of the nature of the fee, and always put your fee agreement in writing. Avoid calling fees earned upon receipt “nonrefundable.” Such a designation may be misleading, if not false, in violation of ORPC 8.4(a)(3), which prohibits conduct involving “dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer’s fitness to practice law.” Remember: clients always have the right to challenge a fee as excessive, even if the agreement is in writing, and all fees are subject to refund if the work is not performed. OSB Formal Ethics Opinion No. 2005-151 [Revised 2011].

- d. **Stick to the Payment Terms.** The fee agreement should specifically state when the client is expected to pay for services, even if the arrangement is for a contingent fee. Many contingent fee cases involve the expenditure of large amounts of money for costs. Outlining the terms of payment in the fee agreement enables you to recover these costs on a monthly or other basis.

Once the fee agreement is signed, treat it as the contract it is. Follow through on the legal work to be performed, and require the client to pay in accordance with the agreement. Do not change your method of compensation in the middle of the case.

- e. **Choose the Appropriate Form of Agreement.** The fee agreement can be a separate letter or memorandum, or it can be incorporated into an initial acknowledgment letter to the client. Whichever method you use, the agreement should (1) specify the scope and timing of the representation; (2) delineate what the client is expected to pay for and when; (3) explain billing practices and when the client can expect to receive bills; (4) identify what will occur if payment is not made; and (5) be signed and dated by the client. Personally review the agreement with the client. You should also provide a copy to the client, encourage the client to review the agreement in the client’s own home or office, and encourage the client to ask questions before signing the agreement. The agreement should be stated in terms the client can understand. Note: If you are representing a client on a contingent fee basis, use a written fee agreement and comply with ORS 20.340 by having the client sign an Oregon State Bar (OSB)-approved Model Explanation of Contingent Fee Agreement **before** the fee agreement itself is signed. (Sample agreements and a bar-approved model explanation form are available on the PLF website, www.osbplf.org > Practice Management > Forms > Category > Engagement Letters and Fee Agreements.)

2. Prepare itemized bills so the client can determine what is being done, and send bills on a regular basis (preferably monthly). Inconsistent billing practices disrupt firm cash flow, infuriate clients, and make collection more difficult.
3. Maintain complete time records, even on contingency fee or flat/fixed fee cases. Keeping detailed records is helpful in several respects: it allows you to analyze time spent on individual cases; the data can be compared across similar matters and used to adjust future fees; and time records can be used as evidence – to support an attorney fee award or defend your fee in the event of a fee dispute.
4. Do not allow outstanding fees to accumulate during the course of your representation. If you are not paid as agreed, call the client as soon as possible and discuss the situation. You may

find that the client has new financial circumstances and that you are willing to renegotiate the terms of the client's account. Or you may find that you need to address issues related to your attorney-client relationship. For example, perhaps the client is dissatisfied with an aspect of your representation. Speaking with the client helps you to decipher and address the applicable issues. Once you understand the situation, you can decide whether you want to continue or withdraw from the representation. Before withdrawing, carefully review OSB Formal Ethics Opinion No. 2011-185 and comply with all provisions of ORPC 1.16, as well as applicable court or agency rules. Do not discontinue providing essential legal services due to non-payment unless you have properly withdrawn.

5. As a general rule, avoid suing clients for fees. Make an effort to determine the cause of the client's dissatisfaction. Really listen to the client's side of the dispute. If appropriate, offer to arbitrate the fee dispute through the OSB Fee Arbitration or Fee Mediation Program or consider other alternative dispute resolution methods. More information is available at www.osbar.org/feedisputeresolution.

If you decide to sue a client for fees, consider the following:

- a. Do you stand to gain or lose a substantial amount of money?
- b. Was a good result obtained in the underlying case?
- c. Has an uninvolved, experienced lawyer reviewed the file for possible malpractice?
- d. Are there any grounds on which the client can credibly dispute the debt or any part of it?
- e. Have you offered to arbitrate or compromise?
- f. Will a judgment be collectible if obtained?
- g. Will a lawsuit result in bad publicity reflecting negatively on you or your law firm?

Exercise extreme caution in deciding to sue to collect a fee. As noted above, a counterclaim of legal malpractice is common in response to a lawyer's action to recover fees. Frequently, your effort to sue for fees is rewarded only with further aggravation, wasted time, wasted money, and poor client relations. A straightforward discussion of fees, financial arrangements, and billing procedures at the beginning of the attorney-client relationship will reassure clients, reduce the possibility of fee disputes, and eliminate the need for collection litigation.

The OSB publishes a collection of fee agreements entitled the *Fee Agreement Compendium*. The handbook is included in BarBooks™ and available at no charge on the OSB website, www.osbar.org > CLE/Legal Publications > Legal Publications > Log in to BarBooks.

Engagement, Nonengagement, and Disengagement Letters

Engagement, nonengagement, and disengagement letters are crucial to effective malpractice avoidance. Engagement, nonengagement, and disengagement letters set the stage for the relationship and the responsibilities between the parties. They protect you and the client by providing a clear written description of the client's relationship with counsel. Many legal malpractice claims are successfully defended because the lawyer can produce a letter that establishes that he or she did not have responsibilities to the client. Generally, an attorney-client relationship may be formed whenever it is reasonable under the circumstances for the potential client to look to the lawyer for advice. *See In re Weidner*, 310 Or 757, 801 P2d 828 (1990). Documenting your relationship with current, former, and declined clients avoids these misunderstandings.

Using engagement, nonengagement, and disengagement letters does not have to be time-consuming, difficult, or offensive to the client. On the contrary, most clients welcome (and expect) a clear written

description of their association with their lawyer. Providing these letters to potential clients will clarify and formalize your own relationship to the client or potential client. This practice will also increase the likelihood that the legal matter is entered into your conflict of interest and calendaring systems.

Sample engagement, nonengagement, and disengagement letters are available on the PLF website, www.osbplf.org > Practice Management > Forms > Category > Engagement Letters and Fee Agreements; Disengagement and Nonengagement.

Engagement Letters

Always follow the initial client interview with a letter that establishes the limits of representation. The letter should set out which legal problems will be handled and which ones will not, which steps will be taken (or have already been taken), and which responsibilities are the client's. This type of letter is equally important for an ongoing client with a new matter.

Engagement letters are crucial because clients generally come to you expecting you to fix everything related to a particular legal problem. If you are a personal injury lawyer and a client who has been hurt comes to you for help, you will probably assume that you will be representing the client only on the personal injury claim and possibly on a property damage claim. Yet the accident may have given rise to more than a personal injury or property damage claim; it may also involve a workers' compensation claim, a product liability claim, a Social Security Disability claim, or an employment discrimination claim. Unless you specifically limit the scope of your representation, the client will assume you will resolve all of these problems.

Here is a vivid example of the importance of using an engagement letter:

The mother of a child who had been involved in a serious automobile accident called a lawyer. The lawyer advised the mother over the telephone that he would obtain a copy of the police report and would get back to her. There was no further communication between the lawyer and the mother. The lawyer forgot to obtain a copy of the police report, forgot to write back to the client, and forgot that he had made promises to her. After the statute of limitations ran, the lawyer was sued for legal malpractice. If the lawyer had sent an engagement letter to the client, a file would have been opened and the case would have been entered into the lawyer's calendaring system.

You can incorporate your fee agreement in the engagement letter rather than using a separate fee agreement. If you choose this method, the *entire* fee agreement needs to be set out in the letter. If you prefer to have clients sign a hard copy agreement, enclose two originals of the engagement/fee agreement letter to the client with instructions to sign and return one of the originals to the office before representation begins. This step is unnecessary if you use eSignature software.

Nonengagement Letters

When you do not wish to accept the case, sending a nonengagement letter is equally important. In many instances lawyers are sued by non-clients or by those who are considered by the lawyer to be non-clients. Here is an example:

A woman who had extensive health problems consulted with her "family" lawyer about a potential medical malpractice case. The lawyer listened empathetically to the woman's story, commented that he felt she had a good case, and advised her that he did not handle medical malpractice cases. The woman left the office believing that she had established a rapport with the lawyer and expecting that the lawyer would be handling her medical malpractice case. When the woman later sued the lawyer for missing the statute of

limitations, he could only offer his verbal testimony that he had not accepted the case. He failed to send the client a nonengagement letter, and could not offer any additional proof. The jury entered a verdict in favor of the woman.

In the above example, the lawyer could have avoided the legal malpractice claim by writing a simple, three-line nonengagement letter or email. Documenting his nonengagement could have protected him and served as a reminder to the client that she needed to obtain another lawyer for that matter.

There may be times when you cannot send a nonengagement letter or email to your prospective client, as in a family law matter where the consulting client continues to live at home with his or her spouse. In these cases, use a New Client Information Sheet that contains a disclaimer clarifying that you are not obligated to provide services to the client until you and the client mutually agree in writing to the terms of representation. *See New Clients, supra.*

If you remain unconvinced that nonengagement letters are an important part of malpractice avoidance, consider for a moment how the jury will view the situation. If you decline a case and do *not* send a follow-up letter, your verbal testimony will be pitted against the client's. The plaintiff's lawyer in the legal malpractice case against you will probably point out that you interview over two hundred clients or potential clients a year. The jury is likely to believe that the client's recollection is better than yours since the client probably only has the one case.

Consider these guidelines when drafting a nonengagement letter or email:

1. Specifically state that you are not able to accept the case. It is not necessary to give a reason for declining the case, but you may do so if you wish.
2. Avoid commenting on the merits of the case. If you are not taking the time to research and investigate it, you should not offer an opinion as to its worth. This is particularly true if you are not skilled in the area of law in question.
3. If time limits apply to the case, generally advise the client that time limitations apply. Do not specifically state your calculations for the time limitations. Instead, emphasize that it is imperative to consult with another lawyer immediately.
4. Return any original documents the client may have given you during the interview. (This will require a follow-up letter if your initial nonengagement is sent by email.)

Keep a copy of all nonengagement letters and emails in a miscellaneous file, and be sure to enter information concerning the declined client in your conflict system.

Disengagement Letters

When your legal services are complete:

1. Send a disengagement letter letting the client know that your representation in the matter has ended.
2. Thank the client for allowing you to be of service and return all original documents.
3. Set out any tasks the client needs to perform to *finalize* the matter, such as sending a certified copy of the General Judgment to a life insurance company if the adverse spouse is to keep life insurance in effect for your client or their minor children.
4. Set out any tasks the client needs to perform in the *future*, such as renewing a UCC filing, exercising an option to renew a lease, and so on.

5. If you are going to undertake any follow-up responsibilities, they should also be set out in the closing letter.
6. If you have chosen a destruction date for the file, let the client know that the file will be destroyed and when it will happen.

If you wish to terminate the attorney-client relationship before the case is concluded, carefully review OSB Formal Ethics Opinion No. 2011-185, comply with all ethics rules, including ORPC 1.16, and take the following steps:

1. Advise the client of the reason for termination in writing. Avoid commenting on the merits of the case. Since you are terminating representation before conclusion of the case, advise the client generally of any time limitations and stress the need to obtain another lawyer immediately. Follow the required procedures to withdraw as attorney of record.
2. Provide the client with a copy of your file and retain a copy for your records. Return any original documents or papers belonging to the client.
3. Refund any unearned fees.
4. Cooperate fully with the client's new legal counsel, if any. Provide that person with a complete copy of the file, and make sure the appropriate substitution of counsel is timely filed with the court.

CONFLICT OF INTEREST SYSTEMS

Conflicts of interest can lead to serious malpractice and ethical problems. To detect conflicts, a good conflicts checking system is essential. No lawyer can remember every person connected with every case. Eventually, a new client will appear with interests opposed to a present or past client. If undetected, such a conflict will cause much wasted effort if you are forced to resign from the case, and can result in malpractice claims and disciplinary proceedings.

One type of conflict problem lawyers run into is representation of multiple parties. Representing husband and wife, buyer and seller, insured and insurer, estate and administrator, directors and officers, guardian and ward, or trustee and beneficiary can be dangerous because the parties' interests may diverge. Any time multiple parties are represented or the lawyer has a personal interest in the matter, conflicts can arise.

Conflict problems also arise when lawyers fail to document that they are *not* representing someone. For example, assume a husband and wife want an amicable dissolution. They come to you and ask you to represent both of them.

In this type of situation, documentation is critical. Assuming that you are permitted to represent one of the parties, confirm representation of the client with an engagement letter and send the other party a nonengagement letter. The nonengagement letter should state that you are not representing the nonclient's interests and that the nonclient should seek independent counsel.

A good conflict checking system will detect possible conflicts of interest before representation. Nevertheless, some conflicts may arise during representation. Every lawyer should develop policies for handling conflict situations as they arise. Follow ORPCs 1.7, 1.8, 1.9, and 1.10, and be sure to carefully document your actions.

A poor conflict system is as bad as having no conflict system at all. Different approaches exist for setting up conflict systems, depending on the size and type of office. All effective systems have certain things in common. A good conflict system has these characteristics:

1. The system is integrated with other office systems;
2. The system provides for easy access to conflict data for everyone in the office;
3. Checks are conducted at the three key junctures: before the initial interview, before a new file is opened, and when a new party enters the case;
4. Searches check for spelling variations of names;
5. Conflict entries show the party's relationship with the client;
6. All parties connected with a case are entered into the system; and
7. Conflict searches are documented in the file.

Creating a Conflict Checking System

Transitioning from Traditional Conflict Systems

The traditional conflict system used index cards to keep track of conflict names. This system was slow to maintain and check. Now a simple electronic database allows for fast and immediate conflict checking. Databases are inexpensive and are often included in the software bundle that comes with new computers.

A database stores information on records in fields. When you set up a database, you select the particular fields that will appear on each record. When you create a new record, the fields will automatically appear to prompt the user to enter the correct information.

The big advantage of a database is that you can search the records using a particular name. Once you give the command, the database scans all the records in the database to see whether the designated name is present. If the name appears in any record, the computer pulls that record up onto the screen.

When shopping for a database, look for one that is easily searchable and will hold enough records. Many databases hold an unlimited number of records while others are limited. We recommend a minimum of 5000 records for a sole practitioner.

Setting Up the Conflict Database

When you set up a database for your practice, include the following fields in each record:

Date Opened:	(the date when the file or matter was opened)
Matter Name:	(the name of the file or matter)
Matter Number:	(the number assigned when the file or matter was opened, if applicable)
Client Name:	(the name of the client) ¹
Attorney:	(initials of the responsible attorney, if applicable)
Description of Matter:	(a description of the matter detailed enough to allow the user to determine whether a conflict exists without having to pull the file)
Conflict Names:	(names of all related and adverse parties and their relationships to the client) ²
Date Closed:	(the date when the file or matter was closed)
Closed File Number:	(the number assigned when the file or matter was closed)
Date Destroyed:	(the date when the file or matter was destroyed, if applicable)

¹ This field could be further divided to separately track the client by last name, first name, and middle name.

² Conflicts can also be tracked in two separate fields, one for adverse parties and one for related parties.

Other fields that could be added to a conflict database include the client's federal taxpayer identification or Social Security number, address, and the name of the opposing counsel. At a minimum, always include each party's relationship with the client or role in the case. This information makes it much easier to quickly assess the seriousness of a potential conflict.

Case Management Software

A case management software program can be an alternative to setting up your own database. This type of software usually allows you to electronically save or print a “conflict” report for the file and integrates various office systems (e.g., conflicts, client database, matter database, calendar, timekeeping, invoicing, document management, etc.) into one product.

This "all in one" software has become very popular. The PLF practice management advisors monitor new developments and can provide information about this type of software.

Using a Conflict System

A Checking Routine

Set up a procedure for checking conflicts. Conflicts should be checked three times. First, check for conflicts when a potential client first contacts you but before the initial interview. (A preliminary check of the potential client’s name allows you to decline further discussion, preventing a crucial divulgence of confidences.) Second, do a more thorough check before you open a new file for that client. After talking with the potential client, you will have the names of others connected with the case. Third, check the conflict system whenever a new party enters the case.

Office Sharing

Lawyers sharing offices *may* need to provide each other with the names of their clients so that a conflict of interest check can be completed. However, before revealing a client’s name to other lawyers in your office share, obtain the client’s informed consent in writing. OSB Formal Ethics Opinion No. 2005-50 [Revised 2014] cautions lawyers sharing offices to avoid conflicts of interest by (1) not holding themselves out to the public as members of the same firm through joint advertising, joint letterhead, or otherwise; (2) respecting confidentiality of information relating to the representation of their respective clients and insuring the same from their employees; and (3) keeping their respective files separate. If these steps are not taken, then lawyers in an office share cannot represent adverse parties. If a common telephone system is used, office sharers must not represent adverse parties unless they have taken steps to assure that telephone messages containing client information or legal advice are not given to or transmitted by shared employees. Mail must not be opened by shared employees. If the lawyers share a secretary or other employee who is in possession of the confidences or secrets of both lawyers, then the simultaneous representation of adverse parties would be prohibited.

Document Conflict Checks

Assign responsibility for conflict checking at each of the three stages mentioned above, and establish a method for recording that a check was completed. A client intake sheet or a specific conflict check request form are possible ways for keeping track of this. Always show the names that were checked and who performed the check. When a new file is opened, make sure that the conflict check was actually done.

Input New Conflict Information

The person checking for conflicts should also input the new conflict information from the client intake sheets or conflict check requests into the database or case management software program. Be sure to include everyone connected with the case. Lawyers in your own firm, staff, and close relatives of lawyers and staff should be listed in the conflict system. This insures that cases will not be taken against people connected with the firm.

In addition to all clients, enter the names of all prospective clients and declined clients into the conflict

system. A failure to enter prospective or declined clients in the conflict system can be embarrassing and costly and may result in ethical or malpractice claims against the lawyer. For example, assume a husband comes in for a consultation because he is contemplating divorce. During the consultation, the husband discloses confidential information. The husband then decides not to proceed with the divorce, or the lawyer declines the husband as a client. Two years later, the wife comes to the lawyer seeking a divorce. If the lawyer accepts the wife as a client, the lawyer will have a conflict of interest. This could easily happen if the lawyer forgot about the consultation with the husband and did not maintain a record of consultations in the conflict system. A similar situation can occur when two lawyers in the same firm interview prospective clients who have adverse interests.

When a Name Is Found

If a name is found in the conflict system, notify the responsible lawyer immediately. The faster the lawyer is aware of the potential client's relationship to a current or past case, the better position the lawyer is in to make a decision to decline representation or make proper disclosure. If a name comes up during a conflict check, it does not necessarily mean there is a conflict. The lawyer responsible for the client or matter must make the final decision. However, if there is no way to check for conflicts, or if a check is not done, the lawyer will not know until it is too late.

If the lawyer decides to decline representation, notify the declined client immediately. To protect client confidentiality, state only that a potential conflict exists. Do not provide any further details to the declined client. Always document notice and declination of representation with a nonengagement letter.

New Lawyers and Staff

Conflicts can arise when a new lawyer or staff member joins the firm. The new lawyer or staff member may have worked on cases at another firm that present a conflict with your firm's clients. Every lawyer and staff member should maintain a personal list of former clients. Have the new person review a list of the firm's clients and compare it with his or her personal list. When the comparison is complete, incorporate the new person's former clients into the firm's conflict system. This step ensures that all lawyers in the firm will be aware of any potential conflicts the new person might have. (The new person's conflicts are now the firm's conflicts unless the screening rule in ORPC 1.10 applies.)

When a Lawyer or Staff Member Leaves the Firm

When leaving a firm, a lawyer or staff member should take a list of the clients to whom he or she provided legal services. The list will let the lawyer or staff member screen for conflicts in his or her new office. If the lawyer or staff member did not maintain a list of the clients he or she served, the old firm may be able to provide the list from the firm's conflict system. (This option may not be available for staff members.)

If the firm's conflict system accurately reflects all the matters the lawyer worked on while at the firm, the firm can print a report for the lawyer or provide the information electronically, if available. If the firm's conflict system tracks only the primary lawyer on client matters and does not reflect all the lawyers who may have worked on a given file, the firm may want to create the necessary conflict information from billing records or provide the departing lawyer with a list of all the matters that were opened during the time the departing lawyer was employed at the firm.

New Client List

Regularly circulate a list of new clients and cases to all lawyers and staff in the office. Ask that everyone review the list for possible conflicts that may not be in the conflict system. Someone in the office may recognize a conflict from the list that would not be detected otherwise.

Request for Conflict Search and System Entry

FILE NAME John Smith – Business Lease

CLIENT/COMPANY NAME John Smith

CLIENT MATTER Business Lease RESPONSIBLE ATTORNEY MLS

RELATED PARTIES

NAME	RELATIONSHIP
<u>LB Properties, Inc.</u>	<u>Lessor</u>
<u>Sheila Blackford</u>	<u>President of LB Properties</u>
<u>Hong Dao</u>	<u>Real Estate Agent for Lessee</u>
<u>Rachel Edwards</u>	<u>Real Estate Agent for Lessor</u>
<u>Lee Wachocki</u>	<u>Property Manager</u>
<u>555 SE Downs, No. 115, Portland, Oregon</u>	<u>Property Address</u>

- NEW MATTER (to open new file)
 ADDITIONAL INFORMATION (to update file)
 SEARCH ONLY (do not add information)

Requested by MLS Request Date June 2, 2019

-
- NO CONFLICTS FOUND
 NAMES FOUND AS FOLLOWS:

Searched by BLL Search Date June 2, 2019

Types of Names to be Added to Conflict List

(This is not a complete list.)

<u>Litigation</u>	<u>Corporate/Business/Real Estate</u>
Insured Plaintiff(s) Guardian ad Litem Expert Witness(es)	Insurer Defendant(s) Spouse/Partner Lay Witness(es)
	Owner (Spouse/Partner) Buyer(s) Partner(s) Shareholder(s) Key Employees
	Subsidiaries/Affiliates Seller(s) Officer(s) Director(s) Property Address Tax lot ID Number
	Any opposing party in a transaction
<u>Probate</u>	<u>Estate Planning</u>
Deceased Personal Representative Spouse or Partner/Children/Heirs/Devises Trustee/Guardian/Conservator	Testator Personal Representative Spouse or Partner/Children/Heirs/Devises Trustee/Guardian
<u>Domestic Relations</u>	<u>Criminal</u>
Client Children	Spouse/Partner Grandparents
	Client Witness(es)
	Co-Defendant(s) Victim(s)
<u>Workers' Compensation</u>	<u>Bankruptcy</u>
Injured Worker Employer	Insurer
	Client Creditors
	Spouse/Partner
<u>Your Firm</u>	<u>Other</u>
All Lawyers Employees Spouses or Partners/Parents/Siblings In-laws/Children	Declined clients and adverse parties, if known Prospective clients Agencies or individuals for whom you provide investigation work, such as OSB Professional Responsibility Board

Include all clients in your conflict system, including pro bono clients and individuals advised through volunteer work at pro bono agencies such as Legal Aid Services of Oregon.

When listing an individual, be sure to include all known names (i.e., former or maiden names). When listing lawyers and employees of the firm, consider including contract attorneys, temporary workers, and freelancers. You can also include the firm's key vendors or service providers in the conflict system.

ORGANIZING AND KEEPING CLIENT FILES

Following the initial interview, once you have checked for conflicts and obtained the client's signature on a fee agreement or engagement letter, it is time to open the file. Some lawyers use a paper filing system, others are paperless, and many combine the two.

Opening Files – Paper-Based System

If you are paper-based, file folders can be legal or letter size. Letter-size file folders are cheaper, but what size file folder you use will also depend on the size of the file cabinet you choose. File cabinets come in a variety of forms: vertical (which store files front to back), horizontal (which store files side to side), or open shelving. Files stored in open shelving usually require end tabs on the folders. This works if you are also going to store your closed files on open shelves. However, if you are going to transfer your closed files to banker boxes, these side tabs get folded into the side of the banker boxes, making it very difficult to read the file names.

Although more expensive, another option is the pressboard partition file folder. These folders usually have at least two partitions in the middle of the file. This allows for six or more different filing surfaces. Some law offices use a file pocket or expandable file with colored subfiles in the pocket file. Using subfiles is a very easy way to keep pleadings separate from correspondence and correspondence separate from discovery, and so on. Each of the subfiles can be a different color. (Green for correspondence, blue for legal research, red for discovery, etc.) When you are filing correspondence, it is easy to locate the green correspondence subfile.

Another way of organizing files is to color code them by area of law. For example, all criminal files could be green, domestic relations red, and so forth. Again, it makes it much easier when looking for files to look for a specific color only.

Numbering Files – Paper-Based System

Decide whether to give files a number when they are opened. If you are not using a file number for a specific purpose, such as filing numerically or using open file numbers in the billing system, then don't spend the time to number open files. (*See Closing Files, infra.*) Many smaller offices file all open files alphabetically so there is no need for an open file number.

File numbers can be strictly sequential or may show how many files were opened in a given year, for example, 2019-10 (tenth file opened in 2019). Some offices give each client a number, and then each matter is an extension of that main client number.

Another challenge is to decide how to label succeeding matters when representing public entities and corporations. You should have a main file for everyday items and separate files for distinct topics such as an employee problem or a road project.

Client Copies

Unless you have arranged to provide documents electronically, give every client his or her own file folder. Put the name of the matter on the file tab. Consider using folders that come with fasteners already attached or two-hole punch the top of the folder and insert an Acco fastener. Tell clients they will receive copies of everything that is pertinent to their case and that it is their responsibility to maintain their own files. Tell clients that you will keep their files for 10 years after the representation is concluded and then destroy them, but clients may keep their files as long as they wish. (*See Engagement, Nonengagement, and Disengagement Letters in the New Clients section, supra.*)

Some jurisdictions state that the file belongs to the client and cannot be destroyed without the client's permission. By following the above guidelines, the client receives a duplicate of the lawyer's file. The lawyer's file then remains the sole property of the lawyer and can be destroyed when it is appropriate, without having to obtain the client's permission.

For guidelines regarding file production, withholding client files, and charging clients for locating, segregating, or copying files, *see* OSB Formal Ethics Opinion No. 2017-192.

Paperless Files

Keep paperless client files orderly for easy retrieval by anyone needing access. Create a folder on your system for each client. If a client has multiple case matters, use subfolders. Each matter may have a subfolder for correspondence, pleadings, and other documents as needed. Incoming paper can be scanned and saved in portable document format (PDF). You can use document management or case management software to track and organize client documents. The PLF practice management advisors monitor new developments and can provide information about these types of software. An excellent resource for going paperless is Donna S.M. Neff and Sheila M. Blackford, *Paperless in One Hour for Lawyers*, published by the American Bar Association (ABA) Law Practice Division (2014). Additional resources are available on the PLF website, www.osbplf.org > Practice Management > Forms > Category > Paperless Office and Cloud Computing.

If you communicate with clients by email or text, have a system in place to capture and document your messages in client files. For detailed instructions on how to save client emails and texts, see the PLF practice aids in the category titled Paperless Office and Cloud Computing, available on the PLF website, www.osbplf.org.

Once a matter is concluded, archive the client's paperless file. Archives can be stored locally (premise-based storage) or in the cloud. If you choose premise-based storage, use a hard drive devoted to storing client files or move the client's information to external media and delete it from your hard drive. Label and save the media. If you need to reopen the client's file, you can easily reload all the documents onto your desktop or laptop. This approach saves storage space on your working hard drive. If you choose cloud-based storage, review OSB Formal Ethics Opinion No. 2011-188 [Revised 2015], "Information Relating to the Representation of a Client: Third-Party Electronic Storage of Client Materials." For more information, *see* Closing Files, *infra*.

CALENDARING AND FILE TICKLING SYSTEMS

Failing to respond to deadlines is a leading cause of malpractice claims. In a study by the ABA's Standing Committee on Lawyers' Professional Liability, more than twenty-five percent of *all* malpractice claims could be traced to calendaring errors – failure to account for a deadline, failure to properly calendar, failure to react to the calendar, or procrastination in performance or follow-up.

To avoid malpractice and manage your practice effectively, you must have a good calendaring system to keep track of court dates, statutes of limitations, client appointments, file review dates, and other dates and deadlines.

Historically, lawyers have used several systems to track important dates: an appointment calendar for client appointments, a docket for court dates and legal deadlines, and a diary or tickling system for files. However, the terms calendar, docket, and tickler are often used interchangeably because all refer to the same principle of keeping track of important dates.

The three parts of a calendaring system – docket, calendar, and tickler – can be combined or subdivided further, depending on the size and type of practice. No matter what system you use, it must capture all deadlines and provide significant reminders to allow you to complete all work in an orderly and timely manner.

When setting up a calendaring system for your practice, look at the different elements of traditional calendaring methods and adapt them to your particular style. Whatever combination you use, be sure that your system provides for:

1. immediate and automatic entry of dates;
2. double checking of all entries;
3. sufficient lead time to complete tasks;
4. follow-up checking; and
5. backup or duplication of the main calendaring system.

A good calendaring system has two components: (1) a tickling function to prompt you to pull paper files or access electronic files in anticipation of work; and (2) a docketing function to remind you of impending dates and deadlines. This section explains how to set up a calendaring system to accomplish these two functions and prevent errors in maintaining the system. The first part gives an overview of tickling systems and how to use them, and the second does the same for docketing systems.

Types of File Tickling Systems

Systems for reminding you to work on files are called file tickling or diary systems. They are used to retrieve files in anticipation of future deadlines, to plan work, and to prevent files from being neglected. They also keep you aware of self-imposed work management deadlines and critical deadlines such as court appearances and statutes of limitations. In this way, the file tickling system ensures a steady workflow and acts as a backup for your regular calendar.

You can choose from several effective file tickling systems. No matter which type you use, you must take certain precautions to prevent error.

Transitioning from Traditional Tickling Systems

Prior to the widespread adoption of calendaring software, attorneys used index cards to tickle files. Maintaining a tickle system using index cards is labor-intensive and can lead to errors. It is easy for cards to be inadvertently misfiled or lost. There are better alternatives, which are discussed below.

Main Calendar

One alternative is to use your main calendar. Note the names of files to be tickled on the bottom of each day's section on the main calendar. At the beginning of each day, you or a staff person pull or bring up the files listed for that day. After you complete the task for a particular file, but before it is placed back in the cabinet or closed in your paperless filing system, note the next tickle date on the calendar.

Case List

Another approach is to maintain a list of all active cases and print the list at the beginning of each month. As the month progresses, place a line through the name of each file that you work on. At the end of the month, review any file not yet worked on. When a file is closed, remove its name from the list. This simple system prevents files from being forgotten.

Stand-Alone Calendaring Software

Stand-alone calendaring software works very well for file tickling, because you can enter recurring dates for reviewing a file. These review dates can be self-imposed deadlines or deadlines for statutes of limitations, court dates, or other critical times. When you open a file, you choose the review intervals. You then enter these intervals into the calendar, which automatically brings up the file name according to the specified intervals.

Calendaring software also allows for tickling events years in advance. For instance, corporation files can be tickled yearly for annual meetings, estate planning files can be tickled yearly for review, and judgments can be tickled for a 10-year renewal.

Case Management Software

Case management software is an alternative to stand-alone calendaring software. This type of software integrates various office systems (e.g., calendar, conflicts, client database, matter database, document management, etc.) into one product. One of the most helpful features of case management software is the ability to chain events. Chained events allow related deadlines or tasks to be linked together. For example, a trial date can be chained to all the events that must be accomplished prior to trial – filing a motion for summary judgment, issuing subpoenas, preparing witnesses, etc. If the trial is reset, any event chained (linked) to the trial date will be moved automatically. Without chained events, each task would need to be re-calendared manually.

Deadline Calculators

Calculating deadlines involves the tedious process of verifying the occurrence date, identifying the applicable deadline, calculating its expiration, and properly entering it into the calendar. A common problem is failure to account for weekends and legal holidays. One solution is to use a deadline calculator, which is a software program that allows deadlines to be imported into existing calendaring or case management programs. This ensures greater accuracy of date calculations.

Choosing the Right Software for Your File Tickling System

Calendaring software, case management software, and deadline calculators offer distinct advantages over desk calendar and card systems. The PLF practice management advisors monitor new developments and can provide information about software options.

Using a File Tickling System

Establishing a Routine

No matter which tickling system you use, pull all tickled files for a particular day each morning. If your office is paperless, access the files on your computer. If nothing needs to be done on a file that day, you can tickle the file for a future date. The best routine is for you and a staff member to review the files together. You can also use this meeting to review the day's mail. This system allows you to plan your work for the day and assign staff specific tasks. Any files that do not need immediate attention you can retickle and remove from your office.

If a routine tickle date comes up and there is no work to be done on the case, call the client or send a short email or status report. A sample Client Status Report is available on the PLF website, www.osbplf.org > Practice Management > Forms > Category > Client Relations.

Most clients expect to hear from their lawyer periodically, even if no action is necessary. It is important to let the client know the status of the matter, even if the status is "waiting."

Setting Tickle Dates

File tickling dates fall into several categories: (1) a date that cannot be missed, such as a time limitation; (2) a date that should not be missed, such as a follow-up on a 10-day notice; (3) an informational date, such as a date when medical reports are expected; and (4) a periodic review date. Dates vary in their significance and should be protected with extra tickle dates accordingly.

When you are finished working on a file, mark a new tickle date on the file jacket or log sheet inside the file. Then send the file back for filing. Be sure that the new tickle date is also entered in the tickling system. If your office is paperless, consider keeping an electronic tickle log for each file/matter or track tickle dates using calendaring or case management software. **Never place a file back in the filing cabinet without inserting a tickle date in the tickler system.** Make this your file tickling rule. Also, instruct everyone you work with that no files are to be taken out of your office without a tickle date, and no files are to be put back in the cabinet without a new date in the system. This same practice should be followed for paperless filing systems.

Conducting Periodic Reviews

In addition to specific tickle dates, set each file for periodic review. A 30-day file review interval is ideal for most cases, and most files should not be tickled for more than 60 days out. Some law firms find it helpful to use a dual system: one reminder every 30 days to refresh the lawyer's memory about the client matter followed by a second reminder every 60 days to review the file. A dual system is easy to set up in a calendaring or case management program by creating a recurring appointment or task.

The maximum review frequency should be established at the outset of the matter and written in the file, either on the client intake sheet or on a file opening memo. If you are paperless, note the maximum review frequency in your calendaring or case management system. If the case has been concluded, close the file. If you represent a client in multiple matters, open separate paper or electronic files for each matter. Avoid keeping concluded matters in your open files.

Tickling Specific Deadlines

You should also tickle specific deadlines. For example, a file for a case in which you have given someone 10 days to respond should be tickled for 11 or 12 days. If you receive no response, you are reminded to take the next step immediately. If the deadline is not tickled, the file remains dormant in the

cabinet or in your electronic files and you are not reminded to take action. Your reminder may be the angry client calling to find out what is going on.

Tickle final deadlines, such as statutes of limitations or appeal deadlines, with ample reminder dates. Also, mark these dates directly on the file or prominently in your computer where you can easily see them.

Setting Reminder Dates

Develop a general timeline of tickle dates for each type of matter you handle. Include not only deadlines, meetings, and court appearances but also backup reminder dates. Give yourself adequate time to prepare for each upcoming event. For example, you should always tickle a file with a trial date for at least two months before trial, and again one month before trial, in addition to adding tickle dates for specific events. This method will give you plenty of lead time to make all final preparations before the trial date.

Following Up

Set tickle dates to follow up after an event. This is critical for time-sensitive deadlines but is easily overlooked when the next move depends on someone else. For example, always tickle follow-up dates to check whether service of process was accomplished timely. Also, remember to tickle the file for follow-up shortly after a self-imposed deadline, in case something still needs to be done before the real deadline.

Managing the Caseload

Use your tickling system to manage your work and help meet client expectations. Look at your calendar and find blocks of time when you can complete the next piece of work on a matter. When giving a client a date for completion of work, be realistic. Build in an extra cushion of time before the ultimate deadline given to the client. If you complete the work early, you will have a happier client and one less “to-do” task on your plate.

If you have a good tickling system and to-do list, you don't need to keep all active client files stacked in your office. A good system should also reduce the fear that a file will disappear or never return if it is allowed off your desk. File hoarding makes it difficult for others who may need the file. You can neglect a file just as easily under a pile of other files as in the filing cabinet. Getting the files off your desk can reduce a major source of stress and help you organize your work more effectively. If your office is paperless, a good tickling system and to-do list will keep you on track.

Types of Docketing Calendars

In every law firm, the central docketing calendar should hold all the important dates for each lawyer. If you maintain this calendar in addition to a file tickling system, the two will serve as backups to each other. You will be reminded of a particular event both by its presence on the calendar and by the file's reappearance because of a tickle date.

Central Docket Calendar

Traditionally, the docket calendar was a large, desktop calendar kept in a central location in the office and maintained by one staff member. Lawyers and staff members informed this person of important dates with written calendar slips.

For the sole practitioner, the central docket calendar may simply be the calendar that you or a staff person maintains. Docket dates and file tickle dates are maintained on one or both calendars. The essential element of a docketing system is to have ample reminder dates.

Docket List

A variation of the central calendar is a true docket list. In this type of system, you maintain a running list of all the important dates. Many offices maintain specialized docket systems in addition to the

central calendar. This is most common in firms with a heavy litigation practice because of the many court appearances and deadlines.

Usually, someone in the office enters the dates into a spreadsheet, a docketing program, or a case management program. The docket list is updated daily or weekly and distributed to all lawyers and staff. In addition, each lawyer and staff person maintains a calendar for all his or her important dates and appointments. This system is more common in larger firms, where a central desk calendar is impractical because of the number of events to be docketed.

Calendar Programs and Case Management Software

Many small firms and sole practitioners have abandoned central calendars in favor of calendaring programs, case management software, or a combination of the two. Calendaring or case management programs have many advantages over desktop calendars and are ideal for the small firm or sole practitioner. You can print or access up-to-date calendars at any time and set up recurring events as described above. This feature is ideal for matters that require periodic review, such as wills or corporations.

You can maintain different calendars in the same system, allowing each lawyer and staff member to have a personal calendar. If you need a firm-wide calendar, most programs can combine the individual calendars into one main calendar. Also, you can move or modify entries easily. The more sophisticated programs allow for entry of predetermined reminders for cases.

Some law firms choose to create a separate central docket calendar that is shared on the server and available remotely. Lawyers and staff members can update this central docket with important dates. Maintaining a shared central docket can be very helpful when a lawyer or key staff member is unexpectedly out of the office.

Mobile Calendars

Most lawyers prefer to carry a calendar with them when they are out of the office. You can easily synchronize a mobile device to the calendar on your computer or use your mobile device to access your calendar in the cloud. These devices can also store client contacts, documents, email, and other information.

Mobile devices allow the lawyer-on-the-go to stay in touch with the office. The key to making the system work is to synchronize all new or changed events from your mobile device to the main calendaring system. If an event appears only on your personal calendar and you are ill, on vacation, or lose your mobile device, you may miss the deadline. When all events are synchronized to the main calendaring system, everyone in the office can monitor and respond to deadlines. With cloud-based calendars, synchronization is automatic – users are accessing a single calendar stored online.

Using a Docketing Calendar

Setting Reminder and Follow-Up Dates

No matter what type of calendaring system you use, certain procedures are necessary to prevent error. It is essential that you enter all deadlines as soon as you are notified of them and that you create sufficient reminder entries. The number of reminder dates depends on the particular calendared item, but every item should have at least one reminder date. Three reminders are ideal: a month, a week, and a few days before the event date or deadline.

Follow-up reminders are also important, but they are often overlooked. If you are relying on someone else to do something, a follow-up entry date will remind you to verify that the action was taken. For example, if you sent the complaint to a process server, enter a follow-up date to verify that the process

server effected timely service. If necessary, create a follow-up log for a particular matter. Include each important action, when it was accomplished, and by whom.

Without a follow-up system, you may not discover that a critical action was *not* taken until it is too late. Establish a policy stating what action should be taken if final reminders and follow-ups are ignored or you are unavailable.

Take the following steps to ensure that all important events are properly calendared:

1. Set spam or junk email filters to allow receipt of eNotices from the courts in which you practice. Otherwise, an important deadline or notice may be missed. You may need to make this change at the Internet Service Provider (ISP) level *and* in the settings of your specific email program.
2. Create a rule in your email program to automatically forward copies of eNotices to staff if they are not receiving them directly from the court.
3. Enter the final deadline in your calendaring/docketing system.
4. Determine a reasonable timeline for completing the various tasks before the deadline and ensure that those dates are entered.
5. Have a staff person enter reminder and follow-up dates for each task and the final deadline. For example, if the task is sending a complaint out for service, create a follow-up entry to verify that the process server actually served the complaint. If the task is to mail notice by certified mail, create a follow-up entry to verify that the certified card was returned. Indicate final reminders in red or boldface, or use the attention-getting features of your calendaring or case management program.
6. As the case proceeds, have the staff person bring the reminders and follow-ups to your attention. Mark off tasks when they are completed.

Without reminder and follow-up dates, you can miss a critical date. Failing to respond to a critical date is a common type of malpractice.

Calendaring All New Dates Immediately

Immediate calendaring of new dates is critical for an effective calendaring system. The following are some techniques to shorten the time between the receipt of a new date and its placement on the main calendar.

1. **Use Intake Sheets.** Give each new client an intake sheet at the first appointment. The client completes the top half while waiting, and you complete the bottom half during the interview. The portion you fill out should include entries for important legal deadlines such as statutes of limitations, file review frequency, and the first tickle date.

Client information sheets provide a permanent record of every client interview. If no file is opened, scan and save the intake sheet or keep a hard copy in a miscellaneous prospective client file. Be sure to enter the prospective client information into your conflict of interest checking system.

For more information on using client intake sheets in your practice, *see* New Clients, *supra*.

2. **Process Incoming Documents.** In a small firm, have the person opening the mail enter all new dates in the calendar as the mail is opened. Besides date stamping, that person should indicate on each item that the date has been docketed, by either highlighting the docket date or placing a checkmark next to it. If your office is paperless, consult the mail handling recommendations for paperless filing systems available on the PLF website,

www.osbplf.org > Practice Management > Forms > Category > Paperless Office and Cloud Computing.

3. **Capture Deadlines in Email.** Create a routine for capturing docket and deadline dates that arrive via email. Follow the recommendations above to ensure that all important events are properly calendared.
4. **Synchronize Calendars.** If you use a mobile device, get into the habit of synchronizing it to your main calendar at the start of each day.
5. **Make the Calendar Accessible.** Keep the docketing calendar in a central location so everyone in the office has access to it. If the main calendar is manual, color code entries. Use different colors for each lawyer or type of entry (e.g., red for trials, orange for depositions, green for motions, purple for filing deadlines, etc.). Color coding is also a feature of most calendaring or case management programs.
6. **Meet with Staff.** Meet with staff daily to confirm new calendar items and discuss tickled cases. This is an excellent time to review new mail, report on the progress of work, and assign tasks to staff. Good communication can prevent calendaring errors.

TIME MANAGEMENT

Do you manage your time effectively or does time manage you? Many lawyers allow time to manage them, letting interruptions deter them from their intended tasks. Some lawyers even look forward to these interruptions as a way of avoiding the work they should be doing. Lawyers who say, “My best client called and I had to drop everything,” have an excuse for falling behind in their work. They justify it as unavoidable – but is it?

It is easy to rationalize that the drop-in client *must* be seen, or that all phone calls must be taken. Many lawyers believe that if they do not take all their calls as they come in, voicemails will stack up and they will not have time to return calls. However, those same lawyers may avoid phone calls from angry clients who call to find out why their work has not been completed.

People who habitually procrastinate need to ask themselves why. Is it because they are unsure how to proceed? Is there a personality conflict with the client? Is it a feeling of power, that is, making everyone run around at the last minute to help get the project completed? Some people feel that they do their best work under pressure, but procrastination causes a great deal of stress for procrastinating lawyers and those who must work with them.

The OSB’s Lawyer to Lawyer program is an excellent resource when you are unsure how to proceed in a case. Lawyers registered with the Lawyer to Lawyer program have agreed to volunteer their time to help other lawyers decide what steps to take in a matter. For more information, visit the OSB website, www.osbar.org > Bar Programs > Lawyer Referral and Information Services > Summary of Referral and Information Services Programs.

The Oregon Attorney Assistance Program (OAAP) is another source of help for the procrastinating lawyer. The OAAP facilitates a group of lawyers who have agreed to work on their procrastination issues. These lawyers want to discover why they procrastinate and how to overcome the problem. Participation in the group requires a commitment to attend the weekly workshops and work through the program. For more information, visit the OAAP website, www.aaap.org.

Schedule Work

One way to avoid being managed by time is to take control of your calendar. Use your calendar as it is meant to be used – to schedule your day. No one has any trouble putting appointments with other people on the calendar, but very few think of making appointments with client files. If the “Jones contract” must be completed, schedule an appointment with yourself to do it. For example, put a two-hour appointment on the calendar with the “Jones contract.” Block out this time the same as you would for any client who comes in to the office.

You most likely hold calls and refrain from reading text messages when you are meeting with a client. The same should hold true if the client is not there but the client’s file is. Even one short phone call or text can be a significant interruption. A two-minute telephone call may cut into the time you need to work on a project by 10 to 20 minutes. By the time you make notes on the phone call and regain your lost train of thought, a great deal of time may have passed.

All of us have situations arise that require immediate attention. When this occurs, the best efforts to follow through with carefully scheduled time will fail. However, these emergencies should be rare and not routine. If an emergency does arise, don’t let your whole system fall apart. Rearrange your schedule and keep going. Carefully scheduling work allows projects to be completed on time. The office where everything is a last-minute rush creates stress for everyone involved – you and your staff. Scheduling your

work and your day will allow everyone to take a deep breath occasionally. It will also make you, your staff, and your loved ones happier.

Schedule Time to Return Phone Calls, Respond to Texts, and Answer Emails

Block out time to make or receive telephone calls. Staff can tell callers when you are available. If callers know approximately when to expect a return call, they can attend to other matters. Clients often expect you to call back within a few minutes, and may become anxious and irritated if you cannot return their calls as expected. When a phone call *is* returned, the client may not be available. So the same routine starts over. This is a waste of everyone's time.

Figure out what time of day is most productive for you. Are you a morning person who runs out of steam later in the day? If so, do legal work in the morning and use the afternoon for appointments and returning phone calls. If you are a slow starter and do not reach your peak until later in the day, see clients and return calls in the morning. Follow the same procedure with text messages and email – block out time to respond.

Inform clients when you take on a new case what time of day you take calls, respond to texts, and answer emails. Doing legal work during your peak thinking hours allows you to spend less time spinning your wheels. You are able to concentrate better on the matter at hand.

Deadline Dates

All deadline dates must be calendared. You also must calendar reminders of these upcoming deadlines. For example, a statute of limitations deadline should have a reminder on the calendar every month for the six months before the limitations date, weekly for the last month, and daily for the last week. However, never wait until the last minute on a statute of limitations. Too many things can prevent you from meeting a fatal deadline date.

In addition, calendar all self-imposed deadlines. If you have promised a document to a client by a certain time, that is a deadline that should be calendared. If you find you cannot keep that deadline, let the client know and give the client a new date. Clients generally accept revised deadlines graciously if they are told directly. Waiting for the client to call to find out what is going on does not improve, and may even harm, the attorney-client relationship.

Better yet, plan ahead. Before you make a promise to the client to complete a task by a certain date, take a moment to *realistically* assess your schedule. Think about the task. How long will it take? Who will be involved? When can you find a block of time to work on the task without interruption? If you form the habit of planning ahead, you can avoid breaking a promise to a client or setting an unrealistic self-imposed deadline. For more information on calendaring, *see* Calendaring and File Tickling Systems, *supra*.

Enlist Staff Help

Instruct staff to take detailed messages from callers. This information allows you to be prepared to answer the callers' questions when you return their calls. When you return a call without knowing what the caller wants, you may find that you don't have what you need in front of you. You may have to call the client back yet again.

Sometimes the client just needs specific information that your staff person can provide. When you are given a detailed message, you can determine who should return the call. Most clients are not concerned about who returns the call, as long as they get the answers they need.

Checklists

A good checklist will take you step by step through a case. It ensures that you do not forget to get pertinent information from the client. It should include not only the necessary procedures but also the timelines involved in those procedures. A checklist will allow staff to become familiar with the procedures of a particular type of case and to know what steps need to be taken next. Without a good checklist, much time is wasted going through a file to find out what was done last and what must be done next.

Keep a checklist in each file and record all actions as soon as they are taken. (It is important that the person completing the action have the file. Otherwise, it is easy to forget to make the entries.) If your office is paperless, create a checklist by chaining together related deadlines and events using case management software. *See* Calendaring and File Tickling Systems, *supra*.

Another good way of keeping on top of each case is to set up a tracking sheet for each area of the law in which you practice. You can do this by listing, for instance, each probate case you have in the first column of the tracking sheet. Set up columns across the page and head them by each sequential step you need to take. (*See* the sample Master Probate Checklist for Managing Open Probate Files, available on the PLF website, www.osbplf.org > Practice Management > Forms > Category > Probate.) As you complete the steps, check or date the columns and add new cases as you take them on.

As an alternative to the tracking sheet, some lawyers use a dry-erase board so they can erase the completed cases and insert new ones. Offices using case management software can track cases by creating matter reports sorted by practice area. All three methods – tracking sheet, dry-erase board, and case management reporting – allow you to look at all the cases you have in an area of law and see where you are on each case at a glance.

A good checklist will ensure that nothing is overlooked. Each area of the law lends itself to its own distinctive checklist. The PLF has many checklists you can use as is or adapt to fit your particular practice. For more information about checklists and practice aids available from the PLF, *see* Resources, *infra*.

Mail Handling

Set aside a specific time each day to review your mail – usually shortly after it arrives in the office. If you are a sole practitioner with no staff, turn on your voicemail, silence your cell phone, and devote your entire attention to opening the mail, date-stamping it, and deciding what to do with each item. If you allow interruptions during this time, deadlines may be overlooked or papers may be placed into the wrong files.

Put educational materials and magazines in a stack to be read later. Glance at junk mail and throw it away, unless it is something you are interested in. Make an immediate decision on all other mail. Pull the file for each piece of mail. Promptly docket/calendar all items that need to be calendared. File all items and tickle the files that do not need immediate attention. Attach mail to the files that need immediate attention. When the action is taken, file the documents in the appropriate file. This eliminates loose documents laying around your office that may be lost or misplaced.

If you have staff, use this time to meet with them to go over the mail and the calendar and to review files tickled for that day. Many items can be delegated to staff for handling. If mail is scanned and distributed electronically, review mail handling procedures for paperless offices available on the PLF website, www.osbplf.org > Practice Management > Forms > Category > Paperless Office and Cloud Computing.

Meeting with staff daily not only ensures good communication, but it also allows each of you to review upcoming deadlines and work schedules. It is also a convenient time to review the status of current

cases. This enables staff to talk intelligently to clients when they call and cuts down on unnecessary interruptions in your workday.

To-Do List

Using some type of “to-do” list works well for most people. You can prepare this list each morning or at the end of each workday for the next day. You can keep it on your desk or carry it with you so you can add items to it as they come to mind. As you complete items, check them off the list. Items you do not complete should be rewritten on a new list.

Many calendaring programs include a “to-do” or “task” list. Most of these programs roll uncompleted items over to the next day’s list and will even show how many days an item has been on the list. You can print “to-do” lists to carry with you, synch them to your mobile device, or manage your “to-do” list using a mobile app designed for this purpose.

Most of us put more items on a “to-do” list than we can ever hope to accomplish in a single day. Do not let this be self-defeating. Give yourself permission not to do everything on the list. Otherwise, you may feel guilty and stop using a “to-do” list.

A “to-do” list can become overwhelming, so limit it to the items that need doing in the near future. Keep items that you may want to do sometime in the future on a list for future projects and not on the “to-do” list.

Technology

Technology can be a great time-saver, if used to the fullest. Learning some rudimentary skills beyond word processing is beneficial to any office.

Start by developing forms instead of reinventing the wheel each time you prepare a legal document. Use templates, create macros, and set up merge documents. Specialized document assembly software can speed up the process. The PLF practice management advisors monitor new developments and can provide information about software options.

As you develop forms, organize how you store them. Start by setting up two directories or folders – one labeled “Forms” and another labeled “Letters.” Within these directories, create subdirectories or subfolders for each area of law in your practice, such as probate forms/letters, workers’ compensation forms/letters, domestic relations forms/letters, estate planning forms/letters, and so on. Whenever you prepare a document or letter that is likely to be used again, save it to that particular “forms” or “letters” directory. Go through the document, delete confidential client information, scrub the metadata, and set it up as a merge document for future use.

Directories and subdirectories will keep you and your staff organized and allow for easy retrieval of forms and documents. Set up a subdirectory for each client’s case. As you work on a case, import forms and letters from the various directories and subdirectories to that client’s directory. Make changes to the forms and letters to fit the client’s circumstances and then save them in that client’s directory or folder. Give the changed form or letter a new name, so the original document is not changed and remains in its original directory or subdirectory to be used again.

When you close the client’s file, archive the client’s electronic information (emails, pleadings, discovery, etc.) For more information, *see* Organizing and Keeping Client Files, *supra* and Closing Files, *infra*.

Other sources of forms include OSB BarBooks™, OSB CLE publications, independent developers, fellow practitioners, and the PLF (www.osbplf.org).

Learning how to use technology wisely will allow you to operate your practice more efficiently. This saves you effort and saves your client money. It also gives you more time to take on more clients and make more money. If you have questions about how to maximize your efficiency by getting the most out of technology, contact the PLF practice management advisors.

Build in Flexibility

One thing to keep in mind with any form of time management is that some people function better with rigid controls and schedules. However, most of us need flexibility. Build some flexibility into your schedule as an option. If you need the extra time – great. If not, you can use the time to work on other projects without feeling guilty.

CLIENT RELATIONS

Establishing and maintaining a good working relationship with your clients is one of your best protections against a malpractice claim. A client with whom you have maintained good communication will be less likely to sue you than one who harbors frustrations about having been ignored or mistreated. This can be true even if an administrative error occurs that might be grounds for a potential claim. Also, good client relations often allow a claim to be handled without the necessity – and cost – of litigation.

Common courtesy and good communication are the key factors in good client relations. Here are some suggestions to follow.

Clarify Fees at Initial Meeting

Clients have a right to know what your legal services are going to cost. Some clients ask this question right away, but others are quite timid about discussing money. In fact, many lawyers are uncomfortable discussing fees, but you need to discuss this topic fully with the client before you proceed with a case. Clients who do not understand their responsibility to pay are the ones who will be unhappy with the amount charged. (For more specific guidance in clarifying fees, *see* New Clients, *supra*.)

Keep Your Client Informed

The most important thing you can do is to keep the client informed. Transmit almost everything you do or receive to your client with a simple cover letter or email explaining what is enclosed or by use of a stamp “For Your Information Only – No Response Required.” Make it a standard office policy to send copies of everything to your client unless you instruct staff otherwise.

Keeping your client constantly advised will dramatically cut the number of telephone calls and emails you receive from the client wanting to know what is going on. In turn, both you and your staff will spend less time on the phone and responding to emails. This frees all of you for other work.

If there is no activity on a file for a period of time and the file comes up on a routine tickler review, send a short status report or email to your client. The client will be glad to know that you have not forgotten the case and will be less likely to keep calling or emailing the office wanting to know what is happening.

Unless you have arranged to provide documents electronically, give clients their own file folders that are labeled with the name of the matter on the file tab. Each case file should include the initial fee agreement and an outline of what the client can expect as the case progresses, including a discussion of procedures and timelines. Whether you provide documents by mail, email, or another form of electronic communication such as a file sharing application or client portal, tell the client to keep copies of everything you send. If the client is keeping a file, instruct the client to bring the file to your meetings. Provide clients with copies of everything as their cases proceed so that they can build their own record of the case. (*See* Organizing and Keeping Client Files, *supra*.)

Follow Up in Writing

Follow up most office and telephone conferences and discovery procedures with a letter or email to the client setting out the relevant information including the items discussed, any action taken or to be taken, and advice given. This letter provides the client with communication and you with proof that you reviewed the matter with him or her. It takes no longer to compose a letter or email than to write a memo to the file, and a letter or email will be far greater protection than a memo in case of a malpractice claim.

Although documenting the file does require some additional time and effort, it is time and effort that improves your relationship with your client. Isn't it better to spend a little extra time documenting the file than to lose billable time defending a legal malpractice claim?

Providing a written summary of what transpired in a meeting or phone call provides clients with an opportunity to review and understand the information. Most clients are upset when they visit or speak with their lawyer and may focus only on the positive or the negative said to them. They may not hear or understand everything, or they may misinterpret what is said. When given the opportunity to review a letter or email, clients can digest the information and ask for further clarification if needed.

The average client is not knowledgeable about the law or legal terminology, so word your communications in a way that a lay person can readily understand.

Create Realistic Expectations

Many legal malpractice cases are filed because clients had unrealistic expectations. Carefully evaluate the pros and cons of new cases or courses of action and explain them to the client. (For specific guidance on creating realistic expectations, *see* New Clients, *supra*.)

Return Telephone Calls and Emails

Nothing is more irritating to clients than to call or email you, not be able to reach you, and then not have their call or email returned. They feel ignored or avoided. Clients who are told that you will return their calls or emails will wait impatiently. To avoid the problem, give clients a time frame in which they might expect your return call or email. Then they can go about their business and be available when the call or email *is* returned. With phone calls, instruct staff to tell the client that a message will be given to you. Staff should *not* state, "I will have the lawyer return your call." You may not be able to keep that promise.

Voicemail messages are easy to change. If you are using voicemail, record a new message each morning and give callers some idea of what to expect. If you are in trial, your voicemail message may state as much and indicate that you will not return calls until evening. If staff members, associates, or partners are available to assist clients in your absence, include this information in your message. The caller can then contact someone else in the firm or leave a message for you with alternate times to call, if the caller will be unavailable in the evening. Recording a new greeting each day sends the message that you are diligent and monitor your voicemail daily. Used properly, voicemail can be a valuable communication tool for you and your clients. *See* Using Voicemail in the Office, available on the PLF website, www.osbplf.org > Practice Management > Forms > Category > Client Relations.

Advise the client at the outset of your representation that you do not take telephone calls at certain times of the day because of:

1. court appearances;
2. time blocked out to concentrate on legal work; or
3. conferences with other clients.

Assure clients you will return their calls at your earliest opportunity. If you have staff, introduce the client to staff and encourage the client to talk to staff if you are not available. Clients who know in advance that you are not always accessible by phone will not be upset. They will assume it is a perfectly normal way to conduct business.

You may have nothing to tell the client and feel it unnecessary to return the call. Or you may be extremely busy and not have the opportunity to return the call. A good staff person, at your direction, can return the call and advise the client of the status of the case. If the client needs something that requires your

assistance, staff can transmit an accurate message. This enables you to be prepared with the information before returning the call, eliminating the need to call the client back again.

If clients are expecting a return call and you are detained, instruct staff to call back and inform them of the delay. This extra effort really doesn't take much time and gets great results. Clients will appreciate the update, and staff may be able to take a more detailed message for you.

Communicate By Email or Text

Adapt the telephone protocols described above to email and text communications. Give clients a time frame in which they might expect your response. With email, consider using automatic out-of-office replies to inform clients when you will be away from the office. Weigh the benefits of giving staff access to your email. A good staff person, at your direction, can respond to client emails or at least inform the client that your response will be delayed. With access to your email, staff can also monitor messages from the court, including notification of hearing dates, trial dates, or other timelines.

Keep a record of all emails and text messages. (*See Organizing and Keeping Client Files, supra.*) Keep in mind that emails and text messages may be discoverable. Exercise care in what you say (or don't say). Include a confidentiality disclaimer in your email message. If the message is misdirected, the recipient will immediately know it is a confidential communication that should not be read.

For a sample confidentiality disclaimer, detailed instructions on how to save emails and text messages, and tips for improving communications, visit the PLF website, www.osbplf.org, or contact a Practice Management Advisor.

Show Respect for Clients

Remember that clients are paying for your services. Treat them with the same respect you demand and expect from your service providers. Strive to make each client feel important. You may not think a client needs to know something, but he or she may *want* to know it. Think how you feel about being uninformed, put on hold, or forced to wait. Always:

1. return phone calls the same day, or have a staff person return them;
2. respond as promptly as possible to messages and other client requests;
3. be on time for appointments;
4. avoid texting or taking phone calls during office conferences;
5. give clients your full attention – do not interrupt their phone calls by speaking to other people in the room;
6. send clients copies of your work product;
7. show an interest in each client as a person; and
8. bill on a regular, preferably monthly, basis.

Most areas of law require a lot of client contact. Generally, people consult lawyers because they have experienced a traumatic event and need help. They are usually unfamiliar with the legal process and are relying on you to protect them. Inform your clients of all developments in their cases.

Let Clients Make the Decisions

Your responsibility to clients involves outlining alternatives, explaining consequences, and providing enough information so they can make decisions. However, it is *not* your responsibility to make those decisions for them. Clients need to be involved throughout your handling of their cases. Make sure

you are communicating clear and concise information, but do not be pressured into making decisions for clients. Never proceed without a client's permission, and always obtain express permission for:

1. granting extensions of time to the adverse party;
2. stipulating to evidence or testimony;
3. suggesting settlement figures to the other side;
4. rejecting settlement offers;
5. settling cases;
6. agreeing to continuances; and
7. concluding testimony in litigation matters.

If a client decides to proceed against your advice or in a manner you feel has important ramifications, document the file with a letter or email to the client confirming the implications of that decision.

Lack of informed consent is one of the major causes for legal malpractice claims. Often, a lawyer provides adequate information to the client but is unable to prove it later. Carefully analyze the client's capacity and determine the best way to document your advice. It may be necessary to send a letter by certified mail, return receipt requested, or have the client reply to an email or sign a copy of a letter acknowledging that the advising letter was read and understood. Or it may be necessary to have a settlement agreement reported by a court reporter to verify the client's consent.

Settlement Negotiations

Keep your client informed in writing of all settlement offers, no matter how unfavorable. Do not make any offers or agree to any settlements without thoroughly discussing the pros and cons with your client. Failure to communicate a settlement offer is a frequent source of malpractice and ethics claims.

When a client does decide to accept or reject a settlement offer, be sure to document your file with a letter or email to the client setting out the terms of the proposed settlement, the advice you gave, and the client's decision. Whether to accept or reject a settlement offer is the client's decision. Your role is to provide the information he or she needs to make an *informed* decision. Beware of putting pressure on a client to accept a settlement. It may be better to resign from a case or suggest that the client get a second opinion than to be too persuasive.

Clients who are informed of all aspects of a case and are encouraged to remain involved feel better able to make a decision on settlement. The client who dumps the matter on your desk and makes it your problem will never be happy with the result. These clients will distance themselves from the matter and never understand what is going on.

Reject Certain Cases

Careful client and case screening is an effective way to avoid poor client relations. Most lawyers can spot a difficult client after a relatively short time in practice, so follow your instincts. If you do not feel you can or want to devote the necessary time to a client, do not take the case or arrange to withdraw from representation if you have already taken it. Avoiding a difficult client after you have already taken a case almost inevitably results in a malpractice claim. (For more specific information on case and client screening or withdrawing from representation, *see* New Clients, *supra*.)

Staff Responsibilities

Have you ever walked through your front door and viewed your office as your clients see it? Your receptionist is the first person clients see, and his or her voice is the first one they hear when calling. Does your receptionist give the impression of being competent and congenial or irritated and disinterested? Instruct all staff to make the client feel comfortable and important. After all, without clients there would be no payday. Even the most difficult client can usually be tempered with a smile and a friendly greeting.

Your staff is a very important part of client relations, so take the time to train your staff on how to deal with clients. Explain their limits in discussing cases with the clients. Also, explain the need for confidentiality. Staff often do not realize they are bound by the same legal ethics as lawyers. Make this point an essential part of employee orientation for every new staff member. For a sample confidentiality agreement for staff and other staff training materials, visit the PLF website, www.osbplf.org > Practice Management > Forms > Category > Staff.

Although being treated rudely by staff may not create a malpractice claim, it is certainly not conducive to good client relations. A rudely treated client will not recommend you to others and may advise others not to use your services.

Marketing

Happy clients are your best marketing tool. In fact, ABA studies indicate that 54 percent of a lawyer's business is from referrals by satisfied clients.

Using a good tickler system (*see* Calendaring and File Tickling Systems, *supra*) will allow you to follow up in future years to remind clients of actions they may need to take. Clients appreciate such reminders, which can be a source of additional business for your firm. Be mindful, however, that notifying a former client of the possible need for further action on a completed matter may convert that former client into a current client for conflict purposes. *See* OSB Formal Ethics Opinion No. 2005-146. To avoid this result, *always* send a closing or disengagement letter at the conclusion of the case and include a disclaimer in your follow-up letter that states that your letter is being sent as a reminder only and not for the purpose of offering legal advice.

Remember, you are selling a service. Clients are your business. *Clients hire you* – not the other way around. Find out your clients' expectations. One way to find out whether you are meeting your clients' needs is to send a simple questionnaire or survey to each client at the close of the case. A well-designed survey will give you insight about what you are doing right and what you need to improve. Sample client service questionnaires are available on the PLF website, www.osbplf.org > Practice Management > Forms > Category > Client Relations.

OFFICE AND TRUST ACCOUNTING

Generally, lawyers are not very familiar with bookkeeping or accounting principles. Courses in accounting and professional responsibility are optional, so experience must be obtained from other sources. If you lack skills in these areas, hire a bookkeeper or accountant. However, keep in mind that you are ultimately responsible for client funds held in trust. (*See Trust Accounts, infra.*)

You should have an office bank account, for general office expenses. If you hold funds of a client or third person, even for a brief time, you will also need a lawyer trust account. This two-account system is required by the ORPCs so that you fulfill your duty as a fiduciary to safeguard and segregate client or third person assets from the lawyer's personal and business assets.

General Office Accounting

Chart of Accounts

A chart of accounts is a list of categories for payables and receivables. (*See* the sample at the end of this chapter.) Categorizing payments and receivables allows you to figure out how much money you are spending in each area – for example, office supplies, rent, Internet access, legal research, insurance, CLEs, and costs advanced.

General Ledger Spreadsheet

If you are setting up your accounts manually, use a spreadsheet with account categories listed at the tops of the columns. As you write checks, enter the payee in the payee column and enter the amount of the check in both the amount column and the column under the proper category. If the check applies to more than one category, split these items and enter each amount in the column for its category. For instance, the telephone bill may contain charges for your Internet access, Web hosting, and telephone service. Enter the total amount of the check in the amount column and deduct it from the running balance – then enter the proper amounts in the columns for the various expense categories. This approach makes it easy to track your expenses by category. This spreadsheet is called a “General Ledger.” (A sample General Ledger is available on the PLF website, www.osbplf.org > Practice Management > Forms > Category > Financial Management.)

If you are using an accounting program, such as Quicken® or QuickBooks®, the program will come with a set of predetermined account categories. Modify the predetermined categories to suit your needs. Most accounting software allows you to do this *and* to split amounts among various categories.

You should total all categories monthly and transfer the totals to a separate spreadsheet for each category. An accounting program can easily sort this information into reports that you can run on demand and print to a hard copy or save as a PDF.

Most of your accounts receivable will come from fees. However, you will also need categories for other receivables, such as capital outlay, refunds, and costs advanced, so that these amounts are not reflected as income. If you overpay an insurance premium and the overpayment is refunded, enter it as a deposit and deduct it from the insurance category. If a client reimburses costs advanced paid out of the office account, enter them as a deposit and subtract them from the costs advanced expense category.

Account Balancing

When you receive the bank statement each month, check off the cleared checks against those written for the month. Most bank statements have a simple chart and formula on the back of the statement that makes it easy to reconcile the statement. If you use an accounting program, it should come with a reconciliation function to assist in this process.

Problems arise when accounts are not reconciled monthly. Allowing a staff person to have sole responsibility for this procedure without overseeing the accounts provides unsupervised access to your funds and greatly increases the likelihood of employee theft. Always have staff deliver your bank records to you unopened, or have them sent directly to your home. Direct electronic bank records or statements to your personal email address. Review non-sufficient funds (NSF) notices immediately. Review statements and cancelled checks (including signatures) monthly. Many lawyers find out too late that a staff person took funds. If your staff person takes funds from the lawyer trust account, you may be disciplined even though you were not involved in the theft.

Be careful about who you permit to be a signer on the bank accounts. Even if you indicate that two signatures are required on checks over a certain amount or that staff can only sign checks up to \$500, banks are not responsible for monitoring the signatures on checks. You must take special care to fulfill this responsibility. Some jurisdictions (e.g., Washington) prohibit non-lawyers from signing on the lawyer trust account. Monitor all disbursements from accounts, including transfers, checks, or other debits. Carefully review what bills are paid and to whom.

It is advisable to bond employees who have access to accounts or firm credit cards and to obtain appropriate insurance. Contact your insurance broker for more information.

Budgeting

Even a new lawyer starting a sole practice needs a budget. (Sample budgets and a cash flow worksheet are available on the PLF website, www.osbplf.org > Practice Management > Forms > Category > Financial Management.) Without one, it is easy to overspend and hard to plan for future purchases. Knowing the amount of your overhead will help you decide how much money you need to make and how much you need to charge to make that amount. Failure to budget can cause financial problems. Lawyers with financial problems may take on new clients who have money in hand, leaving the work for existing clients unfinished. This soon turns into a vicious cycle and leads to disciplinary complaints from clients whose work is not completed. Financial problems also increase the temptation to borrow from the lawyer trust account.

Start-up Costs

Start-up costs are usually one-time expenses such as equipment and furnishings. To meet your start-up costs, set aside money to cover living expenses and overhead for at least the first six months of practice. It normally takes that long to establish any kind of cash flow.

Fixed Expenses

Fixed expenses are those items that you need to pay every month, for example, rent, salaries, payments on equipment, and supplies. The amounts of these fixed expenses change very little on a month-to-month basis. When you add these fixed expenses, you have the amount you need to make each month to pay basic expenses. Remember, hours worked and billed one month may not actually generate revenue until the next month or the month after that.

Some fixed expenses are only paid quarterly or yearly. These include insurance, malpractice coverage, and dues. If you divide these expenses into monthly amounts and set them aside each month, you do not have to come up with a large lump sum when these payments become due. It may be hard to discipline yourself to do this; however, by not doing so, you may put your law practice in jeopardy.

One large fixed expense that you should set aside money for is estimated taxes. These are due at least quarterly. Do not mistakenly assume you will show no profit, especially in the first year, and then be shocked to find out how much you owe the IRS.

Once you have determined all your fixed expenses, you know how much is left over for you or available to pay extra expenses.

Extra Expenses

Extra expenses may consist of items like a new smartphone, tablet, or other device you feel will enhance your practice. Without a budget, buying extras can drain sums that should be reserved to pay fixed expenses.

Using a budget will allow you to set aside money for future purchases. You can then use cash to buy new equipment or furniture without having to take out a loan or draw on a line of credit.

Using a Budget to Plan

Having a budget enables you to decide when you can hire additional staff, move to a new office space, or increase other benefits. It also provides you with a way to determine where you can cut expenses. Working with a budget and a full understanding of the office cash flow allows you to make adjustments that are compatible with your priorities. (For more information on these topics, *see* Billing and Collections, *infra*.)

Trust Accounts

The ethical obligations for those who set up lawyer trust accounts are rooted in the principle that a lawyer who holds funds of a client or third person in trust, even for a brief time or intermittently, has the duty as a fiduciary to safeguard and segregate those assets from the lawyer's personal and business assets. ORPC 1.15 sets forth the ethical duties and obligations of a lawyer who is holding client or third person funds. The duties set forth in ORPC 1.15 are intended to eliminate not only the *actual* loss of client funds but also their *risk* of loss while in the lawyer's possession.

Lawyers must account for every penny of client funds as long as the funds remain in their possession. ***This responsibility cannot be delegated, transferred, or excused by the ignorance, inattention, incompetence, or dishonesty of the lawyer or the lawyer's employees or associates.*** A lawyer may employ others to help carry out this duty but must provide adequate training and supervision to ensure that all ethical and legal obligations to account for those monies are being met. *In re Mannis*, 295 Or 594, 668 P2d 1224 (1983) (lawyer reprimanded although he was unaware employee was commingling funds).

The need to handle a client's funds with extreme care should be self-evident. Even so, cases continue to arise in which practicing lawyers, whether inadvertently or intentionally, mishandle their clients' money, thus subjecting those clients to the risk of economic hardship and seriously undermining public confidence in the legal profession. Mishandling client funds can also subject the lawyer to disciplinary action, which may result in the lawyer losing his or her license to practice law.

For more information on lawyer trust accounts, see the PLF publication, *A Guide to Setting Up and Using Your Lawyer Trust Account*, available on the PLF website, www.osbplf.org > Practice Management > Publications; the OSB BarBooks™ publication, *The Ethical Oregon Lawyer*, available on the bar website at www.osbar.org > CLE/Legal Publications > Legal Publications > Log in to BarBooks; or visit the Oregon Law Foundation website at <https://olf.osbar.org>.

Chart of Accounts

(This is not a complete list, but merely an example.)

RECEIVABLES (Income and Reimbursements)

Fees	Fees received (from clients or third parties)
Referral Fees	Fees received (from other lawyers)

PAYABLES (Expenses)

Advanced Costs	Costs advanced on behalf of clients
Draw	Draw on profits
Dues	Membership dues
Education	CLE expenses
Equipment	Equipment purchases
Insurance:	
Liability	Fire and liability insurance
Life	Life insurance
Malpractice	Malpractice insurance
Medical	Medical insurance
Janitorial	Janitorial costs
Legal Research	Legal research subscriptions
Marketing	Marketing and promotional
Operating Expenses:	
Photocopies	Photocopy expenses
Postage	Postage
Supplies	Office supplies
Telephone/Internet	Landline, cell, and Internet expenses
Rent	Office rental
Repairs	Repair work
Travel	Travel expenses
Utilities	Gas, electric, water, garbage

BILLING AND COLLECTIONS

Turning legal work into income is an important aspect of managing a law practice. Instituting and following procedures for timekeeping, billing, and collections reduces stress and makes financial success possible. Good billing procedures include accurate timekeeping, immediate entry of time, preparation of statements, and monthly billing.

Timekeeping

Billing begins with accurate timekeeping. Your daily time records should account for every tenth of an hour. Enter the time spent after each activity in your time and billing program or record it on a daily time sheet. (Sample time sheets are available on the PLF website, www.osbplf.org > Practice Management > Forms > Category > Financial Management.) If you have trouble keeping current with your time entries or maintaining time sheets, dictate the time after each activity or try using a mobile time tracking app. Procrastination in timekeeping causes a loss of billable time, because lawyers generally underestimate time when they reconstruct it later.

When starting out, keep track of every block of time throughout the workday. Account for billable time and for time spent on administrative chores, breaks, and so on, to gain insight into your overall productivity. You can use the information to decide how much time you should be working and how efficiently you are working. Tracking your time also gives you an idea of how much a particular legal procedure costs you. You can then use this knowledge to set flat or fixed fees and give clients accurate fee estimates. A total productivity breakdown also allows you to know when time spent on administrative chores can be shifted to a staff person.

Preparing Billing Statements

Your bills should provide the client with specific information about what you did to earn the fee. Many fee disputes are caused by misunderstandings about billing statements. The bill should show fees charged, costs incurred, and trust account activity, as applicable. (See the sample bills at the end of this chapter.) Always include a due date. Many clients prioritize bills according to due dates and will place a bill without a due date at the bottom of the bills-to-pay pile.

Remember that you should not transfer client funds out of the lawyer trust account until you have given notice to the client. (See the PLF publication, *A Guide to Setting Up and Using Your Lawyer Trust Account*, www.osbplf.org > Practice Management > Publications.) Be sure to show the trust account transfer and balance on your monthly statements so that you can make all the trust transfers at once after you have sent out the statements.

When describing your work, be sensitive to the client's perceptions. For example, many clients do not want to be charged for conferences between lawyers. Some clients do not think their lawyer should charge for research because they are supposed to know the law. Some clients do not know that 0.5 on the bill means a half-hour rather than five minutes.

Follow the "golden rules" of billing:

1. Proofread statements carefully. Clients view billing statements as a reflection of your work. If names are misspelled or statements are incorrect, they may believe that you are not paying adequate attention to their cases. Clients immediately notice billing mistakes and are likely to be upset.
2. If you make an error on a client bill, apologize and correct it quickly and accurately the *first time*. The client shouldn't have to remind you a second time.

- Offer a “carrot” instead of a “stick.” In lieu of late fees or interest, which may pose problems, give clients a discount if payment is made within 10 days of the billing date. This will improve your cash flow by giving clients an incentive to pay early. If you employ this technique, calculate the discount for the client and include it on the billing statement. (For information on ethical dilemmas related to billing and collections, refer to the OSB BarBooks™ publication, *The Ethical Oregon Lawyer*, available on the bar website at www.osbar.org > CLE/Legal Publications > Legal Publications > Log in to BarBooks. For a thorough discussion of truth-in-lending concerns, consult the OSB publication, *Fee Agreement Compendium*. See Resources, *infra*.)

You can avoid many misunderstandings about billing by thoroughly briefing clients at the outset of each case. Explain how you bill and what work is required on the case. Then when the bill arrives, the descriptions and charges on it will match the client’s expectations.

If you can’t afford or don’t want to bother with billing software, create a document in your word processing program for all current bills. Make each bill a separate page and keep the bills in alphabetical order by client name. When you open a new file, insert your billing letterhead into the appropriate place in the billing document, and add the client’s name and address. Time and expenses can be entered as ordinary text or in a table. When the table feature is used, formulas can be inserted to aid with calculating time spent or expenses incurred. Here is an example of three time entries created in a word processing document with the table and formula visible:

Professional Services Rendered	Hours
Review medical records obtained from Dr. Jones	1.5
Office conference with Dr. Jones regarding client’s prognosis	1.0
Phone conference with client regarding defendant’s settlement offer	.50
	{=SUM(ABOVE)}

Here are the same time entries in a final bill, ready for the client. The table is not visible. The formula field now shows the total hours spent working on the client’s case:

Professional Services Rendered	Hours
Review medical records obtained from Dr. Jones	1.5
Office conference with Dr. Jones regarding client’s prognosis	1.0
Phone conference with client regarding defendant’s settlement offer	.50
	3.0

To make the process easier, consider using a spreadsheet program. Spreadsheets are preformatted into columns and rows, and specifically designed to manipulate data and apply calculations.

If your spreadsheet or word processing document becomes cumbersome to work with due to the number of client bills it contains, it is probably time to invest in billing software. You will likely recover the cost of your investment very quickly because you can use the time previously spent generating bills manually to produce billable hours. If purchasing a software program is not feasible and your billing document has become too long, break it up. Organize client bills into separate documents in alphabetical segments, such as Bills A-E, Bills F-J, Bills K-O, Bills P-T, and Bills U-Z. Set up and save each client’s

statement in the proper document, for example, the statement for Sam Jones is saved alphabetically in the document “Bills F-J.”

Enter your time daily into the current bills. Scroll down through the bills or find each client’s bill using the search function and the client’s name. If you diligently enter your time on a daily basis, you will need to spend very little time finalizing the bills. At the end of the month, all you will have to do is make any corrections, total each bill, fill in any trust account activity, and print or email the final copy.

The Monthly Billing Cycle

Good billing practices include sending bills monthly and at the immediate conclusion of a matter. Send bills at the same time each month, preferably before the last day of the month. Most people and businesses are prepared to pay bills at the first of the month. Late-arriving bills are often put off until the next month. The longer the gap between completing legal work and billing, the less likely it is that the client will pay.

If cash flow is an issue, consider two billing cycles. Divide the client list in half. Mail or email A-M bills by the 15th and N-Z bills by the 30th. This simple step can improve your firm’s financial health by leveling the natural peaks and valleys of accounts receivable and payable. Improved cash flow is important if you need to spread out the age of your accounts receivable (e.g., the number of accounts that are 30 days, 45 days, or 60 days past due.) Dividing the billing cycle also increases your average daily bank balance because you are collecting more accounts throughout the month. If you apply for financing, the age of your accounts receivable and your average daily bank balance will be key factors in the loan evaluation process.

Remember, clients must consent to *all* billing practices. Be sure to include billing information in your fee agreement with the client or enclose a billing brochure.

Maintain Billing Flexibility

In addition to generating monthly statements, be prepared to give clients their bills on short notice – for example, when they show up unannounced with a checkbook or credit card in hand. Also, have your bill ready when a client picks up final documents for a particular matter. If you maintain up-to-date records, you will be ready to tell each client what is owed at any time. And if you keep up on daily entry of time into your billing system, you can print out a statement on the spot.

Keeping billing records current also allows you to hand clients a finished work product with the bill attached. This method works well for matters that end with the production of a document (e.g., wills, contracts, etc.).

Record Keeping

Retain a copy of each client’s bills in the client file and in a file of all bills sent out that month. Any records related to trust accounting must be held for five years after termination of the representation. ORPC 1.15-1(a).

Collections

You can usually foresee the likelihood of collecting a particular fee at the outset of a case. A client who is obviously unreliable or unable to give you money before work commences is even less likely to pay after the work is finished.

Attempting to collect delinquent amounts generally produces nothing but more headaches. Sometimes you can recover some of the debt, but clients often respond to collection efforts by filing a malpractice claim or disciplinary complaint. If a client objects to the amount of a bill, offer to use the Bar’s fee arbitration or mediation program. For more information about the fee arbitration or mediation program,

visit the bar website, www.osbar.org > For The Public > Client Services > Fee Dispute Resolution. If you do take action to collect on debts, remember that you must abide by the debt collection laws. Any debt collection letters must contain the correct statutorily mandated language.

Time spent on collections would be better devoted to establishing a system to secure more fees up front and end representation of clients before past due amounts have accumulated. Keep the rules governing withdrawal (ORPC 1.16) in mind when dealing with a client who is reluctant to pay. Depending on the type of proceeding and the particular court, it may be impossible for you to withdraw from representation after a certain point.

Review your accounts receivable regularly. If a client appears to be unable to pay, call and determine his or her financial situation. Then decide whether you want to withdraw from the case or continue with the understanding that you might not be paid. It is very difficult to represent a client competently when you are preoccupied with the client's unpaid bill.

Continuing to represent a client who refuses to pay can get you into ethics and malpractice trouble. As the client continues to withhold payment, your resentment builds, you tend to delay working on the file, and you may be reluctant to communicate. In this hostile environment, you are very vulnerable to a malpractice claim or ethics complaint. Usually, the non-paying client finds fault with you as a way of rationalizing nonpayment. (For more information on collection-related issues, *see* the discussion on Fees, *supra*.)

Sample Billing Statement

LETTERHEAD

Date

Name
Address
City and State

RE:

STATEMENT

PROFESSIONAL SERVICES RENDERED

		<u>Hours</u>	
7/02/19	Conference with client re case	1.0	
7/16/19	Research re facts	<u>1.0</u>	
		2.0	
	2.0 hrs. x \$200 per hour		\$ 400.00

COSTS

7/31/19	Recording fees	\$ 50.50	
	Document scanning	\$ <u>3.56</u>	
			\$ <u>54.06</u>
	TOTAL		\$ 454.06

TRUST ACCOUNT BALANCE:

Retainer Paid	\$ 500.00
Legal Services and Costs	\$ <u>454.06</u>

BALANCE REMAINING IN TRUST \$ 45.94

ALL ACCOUNTS ARE DUE BY THE 10TH OF THE NEXT MONTH

Sample Billing Statement

LETTERHEAD

Date

Name
Address
City and State

RE:

STATEMENT

BALANCE IN TRUST ACCOUNT			\$ 500.00
PROFESSIONAL SERVICES RENDERED			
		<u>Hours</u>	
7/02/19	Initial conference with client re acceptance of case	1.0	
7/16/19	Research re facts	2.5	
7/31/19	Draft Answer in response to Complaint	<u>0.5</u>	
		4.0	
	4.0 hrs. x \$100 per hour		\$ <u>(400.00)</u>
COSTS			
7/31/19	Filing fee	\$ 50.50	
	Document scanning	<u>3.56</u>	
			\$ <u>(54.06)</u>
BALANCE REMAINING IN TRUST			\$ 45.94
AMOUNT NEEDED TO BRING TRUST ACCOUNT TO \$500.00			\$ <u>454.06</u>

***ALL ACCOUNTS ARE DUE BY THE 10TH OF THE NEXT MONTH
KINDLY REMIT \$454.06 TO REPLENISH
YOUR TRUST ACCOUNT***

Sample Billing Statement

LETTERHEAD

Date

Name
Address
City and State

RE:

STATEMENT

PROFESSIONAL SERVICES RENDERED

		<u>Hours</u>	
7/02/19	Initial conference with client re acceptance of case	1.0	
7/16/19	Research re facts	2.5	
7/31/19	Draft Answer in response to Complaint	<u>0.5</u>	
		4.0	
	4.0 hrs. x \$200 per hour		\$ 800.00

COSTS

7/31/19	Filing fee	\$ 50.50	
	Document scanning	\$ <u>3.56</u>	
			\$ <u>54.06</u>
	TOTAL		\$ <u>854.06</u>

***10% DISCOUNT ON ALL ACCOUNTS
PAID IN FULL WITHIN 10 DAYS OF STATEMENT DATE
(\$768.66 DUE IF PAID BY [Date])***

CLOSING FILES

Using a System

The first step in a system for closing files is to determine whether a file can be closed. Next, send a closing letter to the client, indicating that representation has ended and the file is being closed. This letter should explain any remaining duties and obligations of the lawyer and the client. Along with the letter, send a final bill, return original documents, and tell the client how long you will keep the file before destroying it. This is also a good time to send a survey asking the client's opinion on the service received. For example, was our staff courteous and helpful? Were your questions answered? Would you ask us to handle another case for you? (*See Client Relations, supra.*)

Regardless of your filing system for open files, consider giving closed files a closed file number so you can file them in numerical order. For example, organize closed files by the year in which they were closed (e.g., 19-001). Even if you are using a numerical system for your open files, remember that files are not closed in the same order they are opened. Assigning a closed file number can simplify the filing of closed files by filing them in the order they are closed (using their new number). You won't have to then move files closed earlier to insert newly closed files. Using the year as the first or last two digits of the closed file number will quickly identify how old the file is. Enter the client name, matter name, assigned closed file number, date closed, and location of the file (on-site or off-site) in your case management program. If you don't have a case management program, set up a closed file inventory using a spreadsheet or word processing table. The columns of spreadsheets and tables are easily sorted, allowing you to produce a list organized by client name, date closed, location of file, or other criteria.

You can then place paper files on shelves or in boxes in numerical order. With electronic files, segregate closed files from open files and organize them in a similar fashion.

Before scanning or placing a closed file in storage, check the entire file for the following:

1. Have all original documents been filed or recorded and original papers and documents returned to the client?
2. Do any documents need to be added to office form files? Have all duplicate documents been removed? Has all filing been placed in the file and have all loose papers been secured?
3. Have the firm's electronic files been reviewed for client-related material, such as emails, text messages, faxes, digitized evidence, or other documents? This data may exist on network servers, third-party servers, local hard drives of firm PCs, laptops, home computers, flash drives, disks, mobile devices, or other media.
4. Has the final bill and a closing (disengagement) letter been sent to the client?
5. Have all future docket dates (UCC renewals, judgment renewals) been placed on the calendar?
6. Has a file destruction date been assigned and placed on the calendar?

For specific steps to take when closing files, *see* the PLF practice aid File Closing Checklist, available on the PLF website, www.osbplf.org > Practice Management > Forms > Category > File Management. If you intend to scan client files and dispose of the original documents, review the PLF practice aid, Checklist for Scanning Client Files, also available on the PLF website, www.osbplf.org > Practice Management > Forms > Category > Paperless Office and Cloud Computing.

File Retention and Destruction

Determining How Long to Store Files

Generally, we recommend that you store client files for at least 10 years from the date you cease work on a client's matter.¹ This practice will help ensure that the file is available for defense against a legal malpractice claim. Legal malpractice claims based on a theory of negligence are subject to a statute of ultimate repose that bars claims not filed "within 10 years of the act or omission complained of." ORS 12.115(1).

There may be reasons to store client files for longer than 10 years before destroying them, including: (1) the type of cases you handle; (2) fee agreement provisions and whether a client consents to destruction; (3) your relationship with a client; (4) whether a file contains specific documents or originals; and (5) a file's potential utility to you or your client in the future. This is by no means an exhaustive list of factors to consider in determining how long to store files. We encourage you to conduct your own research, consider additional factors particular to your cases and clients, and adopt a file storage approach based on your independent reasoning.

1. Case Type

The type of cases you handle may provide reasons to store the file for more than 10 years, particularly if the case involves:

- Adoption;
- Contracts or agreements requiring payments for more than 10 years;
- Estate planning for clients who are still alive after 10 years;
- Family law matters that are ongoing and subject to modification (i.e., custody, parenting time, support);
- Intellectual property;
- Judgments that may need to be renewed;
- A minor who is still under the age of 18 after 10 years;²
- A tax basis in property; or
- A situation in which a professional instinct or personal intuition urges you to keep the file longer.

2. Fee Agreement and Client Consent

We recommend that you include a provision in your fee agreement or engagement letter that specifies the length of time that you will store the file before destroying it (e.g., 10 years). Your client's signature provides consent for you to destroy the file after the specified period.

If there is no agreement providing for the file's destruction, consider these options before destroying the file: (1) obtain the client's consent to destroy the file; (2) give the client a complete copy of the file; or

¹ See OSB Formal Ethics Opinion No. 2017-192 (defining "client file," explaining the obligation to produce it upon request).

² If you represent a person entering a settlement agreement on behalf of a minor, you are required to maintain that person's affidavit for two years after the minor reaches age 21. See ORS 126.725(2). See also Brooks F. Cooper, "Settlements for Minors – 2009 Legislative Changes," available on the PLF website, www.osbplf.org > Practice Management > Publications > inBrief > Archives > November 2010.

(3) continue to store the file instead of destroying it. Choosing one of these options will help avoid the predicament where you have destroyed the file without consent, the client does not have a complete copy of the file, and you are unable to comply with a request for the file.

3. Relationship with Client

Your relationship with your client may provide reasons to store the file for more than 10 years, particularly in situations involving:

- Ongoing relationships with clients;
- Problem clients, especially when you are concerned about a lawsuit or bar complaint; or
- A professional instinct or personal intuition that urges you to keep the file longer.

4. Specific Documents and Originals

Depending on the contents of the file, you may have an obligation to keep specific documents and originals for a specified period of time or refrain from destroying them. To prevent problems, we generally recommend that you keep a copy of original documents but avoid storing originals when possible. Be especially mindful about storing and destroying documents if the file contains:

- Affidavits or verified statements of a client entering into a settlement agreement on behalf of a minor (*see* footnote 2);
- Corporate books and records;
- Intrinsically significant or valuable original paper documents (e.g., securities, negotiable instruments, deeds);³
- Oregon eCourt filings with an image of a document containing another person's original signature, in which case you must retain the original paper document for 30 days;⁴
- Original client documents (*see* footnote 3);
- Original wills, which you may not be able to dispose of for 40 years if you keep them;⁵
- U.S. Bankruptcy Court documents filed electronically;⁶

5. Utility

Certain files may have utility to you or your client even after 10 years. Before destroying a file, consider whether it:

- Contains research, motions, notes, or other materials that are not saved in a separate location and that you may wish to build upon, refer to, or reuse; or
- Could be useful to your client or future counsel because of ongoing matters like appeal, retrial, post-conviction relief, or habeas proceedings.

³ *See* OSB Formal Ethics Opinion No. 2016-191.

⁴ *See* UTCR 21.120(1).

⁵ *See* ORS 112.815.

⁶ *See* Oregon LBR 5005-4(e) – Retention of Original Document.

Closing, Storing, and Destroying Files

Once you cease work on a client’s matter, you are ready to: (1) close the file by gathering pertinent materials, addressing consent to destruction, determining whether further action is required, and setting a destruction date; (2) store the file in a secure, organized fashion that lets you easily access and review it before destruction; and (3) destroy the file on the chosen date.

1. Closing the File

One important aspect of closing the file is gathering all materials that belong in it and putting them together. OSB Formal Ethics Opinion No. 2017-192 defines “client file” broadly to include correspondence, records, electronic documents, email, text messages, and more. Because of its broad definition, assembling the client file may require you to gather information from paper documents as well as electronic data from servers, the Internet, desktop hard drives, laptop hard drives, external hard drives, mobile devices, cloud storage providers, or other media.⁷

Next, if you wish to avoid the predicament described under “Fee Agreement and Client Consent” (above), you could take the following steps if you haven’t taken them already: (1) provide a complete copy of the file to your client (rather than awaiting a request, which may come at a much later and less convenient time); or (2) obtain the client’s consent to destroy the file at a future date. If you take these steps, be sure to document the fact.

Finally, closing is an ideal time to: (1) return or segregate specific documents and originals that you do not wish to destroy (*see* “Specific Documents and Originals,” above); (2) review the file for loose ends (e.g., additional work, conflict system update, final billing, withdrawal motion or notice of termination);⁸ and (3) establish and calendar a destruction date.

2. Storing the File

Security is a key consideration for your file storage system whether you decide to store files in paper format, electronic format, or a blend of both. You have a duty to store files in a manner that safeguards client property and maintains confidentiality (*see* footnote 3). These considerations underlie your duty to evaluate a third party if you plan to store files on its server (i.e., in “the cloud”).⁹ Depending on file content and your storage method, laws may require you to employ heightened security measures and provide notice of unauthorized access. For example, files containing health information may subject you to HIPAA,¹⁰ while files containing consumer information may subject you to the Oregon Consumer Identity Theft

⁷ *See* “Checklist for Scanning Client Files” at www.osbplf.org > Practice Management > Forms > Category > Paperless Office and Cloud Computing.

⁸ *See* “File Closing Checklist” at www.osbplf.org > Practice Management > Forms > Category > File Management.

⁹ *See* OSB Formal Ethics Opinion No. 2011-188 [Revised 2015].

¹⁰ *See* Kelly T. Hagan, “Business Associate, Esq.: HIPAA’s New Normal,” available on the PLF website, www.osbplf.org > Practice Management > Publications > inBrief > Archives > September 2013, and Kelly T. Hagan, “The HIPAA Compliance Process,” available on the PLF website, www.osbplf.org > Practice Management > Publications > inBrief > Archives > May 2014.

Protection Act (OCITPA).¹¹ It is incumbent upon you to determine applicable law and use a storage method that satisfies your security obligations. You may need to consult with an information technology expert or specialist within the applicable area of law.

In terms of organization, you may wish to store closed files in a way that makes them easy to access and review prior to destruction. A simple method is to store files by the year in which you ceased work on the matter and then review them at the end of your established retention period (e.g., 10 years). For example, label a physical box or digital folder with “2019,” fill it with files closed in 2019, and begin a final review in 2029.

A final review consists of checking files for anything you would rather keep or return than destroy. For anything you wish to store on a long-term or permanent basis, you could use a “long-term storage” or “do not destroy” label. You are not required to destroy files, but file destruction relieves you of costs and logistical issues related to long-term storage.

3. Destroying the File

After you make a final review of the file and decide to destroy it, you are ready to select the means of disposal. Your duty to maintain confidentiality applies to the disposal process.¹² Like the file storage process, file destruction may implicate laws requiring specific methodology. Under OCITPA, the obligation to protect information during disposal could be satisfied by “burning, pulverizing, shredding, or modifying a physical record and by destroying or erasing electronic media so that the information cannot be read or reconstructed” (or by contracting with a party who can).¹³ ORS 646A.622(2)(d)(C)(iv) to 646A.622(3).

Note that destroying an electronic file is more complicated than destroying a paper file. This is due not only to the difficulty of deleting electronic data but also to the number of locations that may house your client’s electronic data. Keep in mind that: (1) if you store a file on your own hardware, you may need to use specialized software or physical obliteration to destroy the electronic data; and (2) if you store a file in the cloud, you may or may not be able to destroy electronic data on your storage provider’s server.¹⁴ The difficulty of destroying electronic data is a factor to consider in devising your file storage system, especially if you plan to use the cloud.

An inventory is a simple means of recording which files were destroyed, the dates of destruction, and whether clients consented to destruction. You may wish to keep proof of consent along with the inventory in case there is a dispute as to whether consent was provided.

¹¹ See ORS 646A.622 to 646A.628 and Kimi Nam, “Protect Client Information from Identity Theft,” available on the PLF website, www.osbplf.org > Practice Management > Publications > inBrief > Archives > August 2008.

¹² See OSB Formal Ethics Opinion No. 2005-141 [Revised 2015].

¹³ Visit <http://www.naidonline.org/> for more information.

¹⁴ See Hong Dao, “Unwanted Data: How to Properly Destroy Data in Hardware,” available on the PLF website, www.osbplf.org > Practice Management > Publications > inBrief > Archives > April 2017.

STAFF

Confidentiality

The most important thing for your staff to remember is that everything in a law office is confidential. Working in a law office can be exciting, and the staff may learn all kinds of interesting things about prominent or well-known people in the community. It can be tempting to disclose some of this information to friends or family members. However, revealing such confidential information can be extremely harmful to other people, and it can result in a malpractice claim being brought against you. It can also result in the staff member's discharge from employment and the probability that another law firm will never hire the employee.

You may wish to have employees sign a confidentiality agreement or pledge. Samples of both are available on the PLF website, www.osbplf.org > Practice Management > Forms > Category > Staff.

Family, friends, or acquaintances may assume staff know all about the law and ask them for legal advice. Advise your staff that providing advice constitutes the unauthorized practice of law. They must never give legal advice – even if they know the answer.

The OSB website, www.osbar.org, contains all the regulatory provisions that lawyers licensed to practice law in the state of Oregon must follow. Among these provisions are the Oregon Rules of Professional Conduct (ORPCs). All legal staff must be acquainted with the ORPCs and the other rules governing lawyer conduct. They should be aware that you can be disbarred for their misconduct and that they must always work under your supervision. As legal professionals, your staff should consider themselves bound by the ORPCs.

Your staff is an important resource for you and your clients, and it is important that they have both a professional demeanor and a professional attitude. To that end, review these points with your staff:

1. **Display Humanity to Clients.** Law offices are in business to help people. Many of the people who come to your office are troubled and uneasy. Employees should never lose the human touch and never forget that if it weren't for clients, the law office would be out of business and the staff would be out of a job.
2. **Don't Discuss Business Outside the Office.** Staff should never talk outside the office about what happens there. Lawyers have a professional responsibility to keep information relating to the representation of a client confidential. This information is considered privileged. Employees of a law office are also responsible for preserving the clients' confidential information. Violation of a client confidence is a most grievous error and grounds for instant dismissal.
3. **Be Careful What You Say Around Clients.** Clients often come to law firms because they have problems. Sometimes the number and severity of those problems can be overwhelming, and lawyers or staff may laugh or joke to release tension. Such levity may make the staff appear unfeeling, so take special care to make sure that clients or office visitors do not overhear discussions of this sort.
4. **Be Attentive to Economics in the Office.** The practice of law is a profession, but it is also a business. Remind employees that if they see a chance to save a dollar, they should let you know. If they are right, everyone will benefit.
5. **Be a Professional in Personal Appearance.** Clients pay money for help with their legal problems. They expect to pay a professional fee, and they expect to deal with professionals.

Therefore, dress like a professional. Avoid any activity that may not be well-received if viewed or overheard by a client: sending or reading personal email, texting, playing games on a personal device, or checking social media accounts.

6. **Be a Professional in Work Habits.** Lawyers deal in documents. What goes out of the office electronically or on paper is the hallmark of a legal business. Do not rely on spell-check or grammar check. Always proofread your work for accuracy and meaning. The final product should be crisp and professional. If what is being said does not make sense, bring it to the attention of the lawyer. If you are given an instruction you do not understand, ask.
7. **Establish Priorities and Keep the Work Moving.** Remember that clients want and need action. Today's work should get out today. Advise staff that if they have more work stacked up than they can handle today, they should check with you to determine what should be done first.
8. **Be Communicative and Cooperative.** Staff should communicate their needs and make suggestions for improvement. Lawyers and staff can work together efficiently and cooperatively if good communication exists.

Develop Office Manuals

The Policy Manual

An office policy manual is no longer considered a frill that only large law firms can afford. In law firms of all sizes, it is now a primary method of furnishing employees with information about their working environment, as well as what the office expects from them. Providing your staff with a written policy manual helps accomplish four basic goals:

1. Aids new employees in orientation and gives them information about their new employer.
2. Fosters a positive attitude toward the employer.
3. Explains work rules and penalties for their violation.
4. Protects the office through appropriate disclosures.

Your employees need to know what you expect of them and what they can expect in return. By putting your office policies in writing, everyone has a clear and concise direction when questions arise, avoiding misunderstandings and controversy.

Written policies also protect workers and shield the office from unnecessary claims and litigation. Putting a policy in writing gives you an opportunity to think it through and consider it carefully. It is far easier to show a court a written policy than an oral one.

Providing policies establishes the framework within which guidance that is more specific can be developed when necessary. By establishing carefully prepared policies that spell out the philosophy and goals of the office in the performance of a given function, you can develop procedures and rules that will achieve the desired result. Although you cannot anticipate all future situations, general policy statements provide guidance for when you must take action.

The term "policy" can be defined as a definite course of action selected from among alternatives and in light of given conditions to guide and determine current and future decisions. Policies are general statements of philosophy, principles, and objectives in a given area. When you establish written policies, you let the staff know exactly what you wish to accomplish and why. With this in mind, do not blindly adopt boilerplate policies without thinking them through. Consult the people affected and discuss the best possible solutions to fit your needs.

Fair policies produce consistent treatment of all employees and provide office management with a frame of reference for making uniform personnel decisions. They offer quick and decisive action with understanding and in many instances can bring about needed change.

A good policy should be:

1. up-to-date;
2. clearly understood by everyone;
3. consistently followed;
4. established by the proper authority; and
5. concise (one policy per topic).

When the final version of your office policy manual has been approved, arrange a meeting with staff to discuss existing policies, highlight new policies, and explain how the policies will be implemented. Introduce the policy manual in a positive way. Let employees know these policies are being adopted to create a fair workplace and to minimize misunderstandings and controversy. Emphasize that many of the policies have been long established by the firm and the manual is simply putting them in writing for everyone's benefit. Advise employees that all policies will be enforced and applied uniformly and without exception.

Encourage everyone to read the manual completely and carefully as soon after the meeting as possible, and establish a date when a receipt and acknowledgment statement must be signed and returned. Instruct employees to use the policy manual as a reference guide when any questions arise and, if something is not covered in the manual, to bring it to the attention of the person responsible for updates.

Periodically review all office memoranda dealing with subjects in the office policy manual (or new subjects appropriate for inclusion). Keep in mind that any major changes in the office structure will most likely require changes in the manual. Federal, state, and local laws and regulations may also necessitate an addition or change in the policy manual and should not be overlooked. Conduct a total audit of the manual every three to six years.

An outdated policy manual can be an enormous problem. If policies are not current, you may find yourself in a situation in which one employee has been treated differently than another. Don't let this happen to your office. Review the policy manual annually to make sure that new policy or personnel questions are adequately addressed in it. You may also find that a current policy is not working and a new policy should be implemented.

Sound policies do make a difference. They can work toward creating a secure foundation on which to build a unified work force and a harmonious work environment. They pay off in decreased turnover, greater job satisfaction, and increased productivity.

The Procedures Manual

Each of your employees performs many tasks. The methods used to complete these tasks are your office procedures. Without written procedures, however, employees may find themselves lost or confused and develop their own methods. Soon you will find everyone in the office performing the same tasks differently, with varying results. Important elements may be missed or overlooked, and any office consistency may be lost.

The basic advantages to providing a written procedures manual are:

1. **Uniformity.** Through a properly written procedures manual, any employee should be able to step in and complete or assist with any project. Should any employee's workload be more than the employee can handle, as often occurs in the practice of law, the work can be distributed to other employees and completed in the necessary time. This creates an efficient and productive staff who are able to timely handle all projects and produce a work product that is uniform in both accuracy and style.
2. **Reduced training time.** New employees can immediately review instructions for completing any work task – a sure way to enhance their performance and productivity.
3. **Fewer disruptions for clarifications.** Both existing and new employees should be able to use the office procedures manual as a quick reference guide, reducing the time required by administrative personnel and other employees to answer questions.
4. **Assignment of responsibility.** Written procedures make it easy to find out where a job has gone wrong. If a particular task is not performed, you can easily identify what caused the problem and how to correct it.
5. **Continuity.** As staff and lawyers join and leave the firm, written procedures promote continuity because everyone has the same information and guidelines.
6. **Clarified expectations.** The procedures manual helps employees to know exactly what is expected of whom. Uncertainty and frustration are reduced.

When you begin to write your own manual, you may want to review another firm's procedures. But remember that your law office is unique, and not all procedures will work in every office. Rather than adopting the procedures of others, look at your office's current practices and start from there. Creating an office procedures manual does not necessarily mean creating new ways of doing things. Often it means reducing your current procedures to writing.

Every office procedures manual should be detailed, complete, and accurate. It should be easy to read, with clear, concise directions and a user-friendly index. It should also contain examples and/or samples. Don't forget that this will be the "how-to" book for the employees using it, and it should be an educational tool as well as an easy reference guide.

Start with an outline of the topics to be covered, and then fill in the step-by-step procedures. As you describe procedures unfamiliar to a new employee, try to put yourself in the new employee's place. Remember, that person may have to learn procedures that differ from those they have used in the past. If certain areas have already generated questions in your office, be sure to cover them in your manual.

Most offices already have forms in use, and they should be incorporated as examples in the manual. When possible, include checklists to guide employees through all procedures necessary to complete each task.

A procedures manual should:

1. be an orientation tool;
2. be a training guide;
3. be a reference guide;
4. provide uniformity;
5. reduce disputes over work methods;
6. delegate through clearly outlined duties and responsibilities;

7. facilitate work measurement and provide information for cost control; and
8. improve morale by letting everyone know the rules.

A procedures manual will be successful only if you update it periodically. Keep your procedures manual on your computer network or in a loose-leaf notebook for easy updating. As you add new material and revise existing procedures, you can insert or delete pages as necessary.

CONTRACT WORK

Contract work is work done by an “outside” lawyer for another lawyer or a law firm. The outside lawyer contracts to perform specific work on specific cases and is usually paid by the hour for work performed. However, compensation arrangements vary depending on the type of case involved.

Contract work can arise in many ways. Sole practitioners and firms often have extra work but not enough to justify hiring an associate. Similarly, a new lawyer may have a case requiring legal expertise beyond his or her ability. In those situations, the lawyer in need of help might contract with another lawyer for help on one specific case. By doing this, the lawyer hiring additional help provides the client with competent representation and is able to maintain his or her primary relationship with the client. At the same time, the lawyer helping out on the case gains experience and income.

Malpractice Risk and Professional Liability Coverage

When entering into contract work arrangements, be aware of potential problems. Lawyers tend to be informal when dealing with each other. Nonetheless, you should take the same precautions as when dealing with clients directly.

Contract lawyers have contractual responsibilities to the primary lawyer and to the client. In addition, the contract lawyer must be aware of the risk of malpractice. Even though the contract lawyer may have only an indirect relationship with the client, he or she may still have a professional duty to that person. If something goes wrong, both the contract lawyer and the primary lawyer may be liable.

Depending on the type of work, the contract lawyer may be able to get an exemption from PLF coverage. Some contract lawyers confine their work to supervised activities and claim the exemption from PLF coverage. If you are doing contract work and want to claim an exemption from PLF coverage, be sure to follow PLF guidelines at all times. (See the PLF guidelines for exemptions on the PLF website, www.osbplf.org > Assessments & Exemptions > Exemptions > Exemptions from Coverage.)

Note that the exemption merely excuses the lawyer from purchasing malpractice coverage from the PLF. It does not affect any duty owed to the hiring lawyer. In addition, depending on the circumstances, the contract lawyer may be liable to the client for any malpractice in carrying out that work. So it is important to take the same precautions whether the work is exempt or nonexempt.

Staying Out of Trouble

To reduce the dangers inherent in contract work arrangements, take the same precautions used in attorney-client relationships. Document the arrangement, define the scope of the project, establish your status *vis-a-vis* the client and the PLF, and determine fees and other costs. Various forms are available on the PLF website, www.osbplf.org > Practice Management > Forms > Category > Contract Lawyering. You and the hiring attorney should settle administrative matters such as the form of the work product expected, billing method, retention of file material, and proprietary rights to forms created during the contract relationship. Use written agreements, engagement letters, and disengagement letters to memorialize these issues. For larger projects, keep the primary lawyer updated with periodic emails just as you would a client.

Scope of the Project

At your initial conference with the primary lawyer, determine exactly what is expected. How much time should be spent on each aspect of the project? What are the projected hours and what is to be done if more time is required? What is the procedure for modifying the project? When should the project be completed? (A sample Project Assignment sheet is available on the PLF website, www.osbplf.org > Practice Management > Forms > Category > Staff.)

Contract Lawyer's Status

1. **Employee or Independent Contractor?** Contract lawyers may or may not be independent contractors. Discuss and clarify your status at the outset of your working relationship. If you are an independent contractor, the primary lawyer's firm should not withhold your income or payroll taxes. Workers' compensation, Social Security, and unemployment insurance do not accrue to the independent contractor. *See* Nicole Elgin "Independent Contractors versus Employees: The Latest from the Oregon Supreme Court" available on the PLF website, www.osbplf.org > Practice Management > Publications > inBrief > Archives > June 2019. *See also* Lisa Brown "Independent Contractors or Employees?" available on the PLF website, www.osbplf.org > Practice Management > Publications > inBrief > Archives > April 2016.
2. **Exempt or Nonexempt from PLF Coverage?** Another matter to decide is whether you will be handling the project as exempt or nonexempt from PLF coverage. This is especially important if you have claimed an exemption from coverage already. Review the PLF exemption guidelines and make sure your project can be conducted according to the exemption restrictions.

Remember that if you claim an exemption from coverage, it does not preclude the possibility of being sued for malpractice. It simply means that you are not required to purchase PLF coverage. If you are exempt and are sued, you have no coverage and the PLF is not required to defend you.

If you are exempt from PLF coverage and performing contract work, we recommend the following safeguards in order to help protect yourself from possible claims or suits for legal malpractice:

1. Direct your legal research memos to your supervising attorney and never send them directly to the client;
2. Do not participate in or conduct client interviews;
3. Do not discuss the case, formally or informally, with the client. This includes discussion by phone and in person; and
4. It is permissible for you to have a business card that lists you as attorney at law. We recommend that you give these cards out only to attorneys for whom you are going to do work. We recommend that you use other titles on cards given out to witnesses, clients, or experts. Some options are investigator, paralegal, interviewer, law clerk, or research assistant.

Although these steps will not guarantee you freedom from legal malpractice claims, they do reduce your exposure to such claims. If you have any questions about your PLF coverage or the activities that you can do as a lawyer exempt from PLF coverage, please contact the PLF, 503-639-6911 or 1-800-452-1639.

Fees and Costs

At the outset of a contract arrangement, agree on your rate and other items to be billed. Will the fee be based on a simple hourly rate? Will you share in a contingent fee or some other fee-splitting arrangement? If so, proper disclosure must be made to the client pursuant to ORPC 1.5(d). Who will pay for such things as copying, computerized legal research, and travel expenses? Will the primary lawyer reimburse you for costs, or will the primary lawyer's firm pay for costs as they arise? Will you use the firm's equipment and support staff?

Also, determine the form of your bills and the timing of submission. Does the primary lawyer want your time entered contemporaneously into the firm's billing system or a final invoice for the entire project when all the work is completed? When will the firm pay your bill? How much detail should the bill include?

Conflicts and Confidentiality

As a contract lawyer, you must maintain a conflict system, because your projects come from such a wide range of sources. Both sides of a dispute may approach you to do work.

Before you begin work on a project, the primary lawyer must provide you with a list of all parties connected with the case. After you check these names for conflicts, enter the names into your conflict system. (For more information on setting up and using a conflict system, *see* Conflict of Interest Systems, *supra*.)

Confidentiality is another danger area. You may be doing contract work for many different law offices, which may expose you to information about cases other than the one you have been hired to work on. You may be blamed for the leakage of confidences. Knowledge about other cases may preclude you from working on those cases for another firm.

To avoid coming into contact with extraneous confidences, request that the primary lawyer's firm segregate you from matters other than the contract project. You should have no access to other files, and other cases should never be discussed with or around you.

Work Product and Further Responsibility

Clarify the final form of your work product. Does the primary lawyer want an electronic copy, a hard copy, or both? If electronic, which format should you use? If the project involves research, does the primary lawyer want copies of all the cases or simply a list?

Along with the final work product, include your final billing statement and a closing cover letter or email. The cover letter or email should reiterate what work you did and alert the primary lawyer to any unfinished business on the case. Make clear that you are not taking any responsibility for any further aspects of the case.

Contract relationships can become quite complex if you take on significant responsibilities in representation of the underlying client. Your role, and that of the primary lawyer, may become blurred and disputes may arise over possession of files, use of specialized forms created in conjunction with the contract work, or other issues. You can avoid these disputes by entering into a written agreement that clearly states the terms, conditions, and expectations of the contract relationship.

Getting Started

The PLF has CLEs, forms, checklists, and articles on its website, www.osbplf.org, to help you get started in your contract practice. Available forms include a checklist, intake sheet, letter of understanding, and letter declining a contract project, available at www.osbplf.org > Practice Management > Forms > Category > Contract Lawyering.

RESOURCES

The following is a list of resources you may find helpful during your practice:

OREGON STATE BAR PROFESSIONAL LIABILITY FUND (PLF). The PLF provides free educational materials ranging from malpractice avoidance to time management solutions. The PLF also has practice aids and handbooks that are available at no charge. In addition, the PLF's Practice Management Program, a free and *confidential* assistance program for all Oregon lawyers, will send a practice management advisor to your office at no charge to help you set up or improve your law office systems. To download free practice aids and forms or order low- or no-cost CLE programs, visit the PLF's website, www.osbplf.org. For more information, call 503-639-6911 or 1-800-452-1639.

OREGON ATTORNEY ASSISTANCE PROGRAM (OAAP). The OAAP is a free and *confidential* assistance program for all Oregon lawyers. Programs include assistance with problem alcohol or drug use, burnout, career satisfaction, depression, anxiety, problem gambling, procrastination, relationship issues, stress management, time management, and other distress that may impair a lawyer's ability to function. For additional information or to access the program, visit the OAAP website at www.oaap.org or call the OAAP attorney counselors at 503-226-1057 or 1-800-321-6227.

PRACTICE TIPS FOR AVOIDING MALPRACTICE. The PLF periodically publishes a newsletter, *inBrief*. This newsletter is filled with information on how to avoid legal malpractice in specific areas of law. Technology updates, practice tips, and resources of interest to Oregon practitioners are also included. Past issues are available on the PLF website, www.osbplf.org > Practice Management > Publications > inBrief, or call 503-639-6911 or 1-800-452-1639 for more information.

PRACTICAL ADVICE FOR OREGON LAWYERS. The practice management advisors also publish a blog, *inPractice*, every two weeks. It provides practical advice for Oregon lawyers related to various aspects of practice. It can be found on the PLF website, www.osbplf.org > Blog.

SAMPLE DISCLOSURE AND CONSENT LETTERS AND CHECKLISTS. Attorneys Peter R. Jarvis, Mark Fucile, and Brad F. Tellam have prepared an excellent collection of disclosure and consent letters with checklists that are available to download from the PLF website, www.osbplf.org > Practice Management > Forms > Category > Disclosure of Potential Malpractice.

OREGON WOMEN LAWYERS (OWLS). OWLS has 13 regional chapters in the state. The chapters hold luncheons that include guest speakers and allow for networking opportunities. OWLS publishes a quarterly newsletter on topics of concern to women lawyers called the *AdvanceSheet*. For information, contact OWLS at 503-841-5720, via email at linda@oregonwomenlawyers.org, or visit their website, www.oregonwomenlawyers.org.

OREGON WOMEN LAWYERS CONTRACT LAWYER SERVICE. OWLS coordinates a service for lawyers who are seeking contract work and attorneys who wish to hire contract lawyers. For information, contact OWLS at 503-841-5720 or visit their website, www.oregonwomenlawyers.org > Resources > Contract Lawyer Service.

THE COMPLETE GUIDE TO CONTRACT LAWYERING 3rd Ed, 2003. Authors Deborah Arron and Deborah Guyol look at temporary legal services from the perspective of the contract attorney and the hiring law firm. The book addresses ethical considerations, malpractice liability, independent contractor vs. employee status, and other topics of interest. Available on Amazon and other book sites.

NALS OF OREGON. The main objective of NALS of Oregon is to further the education and training of

legal support staff to enhance the competencies of members in the legal services profession. There are local chapters throughout the state of Oregon, and members are typically career legal support staff who are interested in learning as much as possible about the legal profession and keeping up to date on changes in the law. For more information, visit the NALS of Oregon website at www.nalsor.org.

AMERICAN BAR ASSOCIATION SOLO, SMALL FIRM AND GENERAL PRACTICE DIVISION.

This section focuses on law practice management for solo, small firm, and general practitioners. It offers various journals, books, and other resources. It also has a publication catalog that lists books of interest to general practitioners. For more information, visit www.americanbar.org/groups/gpsolo/. To order ABA law practice management books, CLEs, periodicals, and other ABA Web store products at a discount, visit the PLF website, www.osbplf.org > Practice Management > Resources & Discounts.

AMERICAN BAR ASSOCIATION LAW PRACTICE DIVISION. This section focuses on law practice management and publishes various journals, books, and other resources for those who are running their own practices. For more information, visit www.americanbar.org/groups/law_practice/. To order ABA law practice management books, CLEs, periodicals, and other ABA Web store products at a discount, visit the PLF website, www.osbplf.org > Practice management > Resources & Discounts.

LOCAL BAR ASSOCIATIONS. Local bar associations have many resources to offer. They are often a good source of information on what is happening at the local courthouse, and they sometimes hold monthly CLEs or social gatherings. In addition, they sometimes offer group insurance coverage and various product discounts. Presidents of local bar associations are listed on the OSB website, www.osbar.org > Member Groups > Volunteer Bars > List/Contacts.

FOR ADDITIONAL INFORMATION ON THE OREGON STATE BAR RESOURCES AND SERVICES LISTED BELOW, VISIT THE OSB WEBSITE AT www.osbar.org.

OSB LAWYER TO LAWYER PROGRAM. This program connects Oregon attorneys working in unfamiliar practice areas with experienced attorneys willing to offer informal advice at no charge. For names of resource attorneys and more information about Lawyer to Lawyer, call the OSB, 503-620-0222 or 1-800-452-8260, ext. 408, or visit the OSB website, www.osbar.org > Bar Programs > Lawyer Referral and Information Services > Summary of Referral and Information Services Programs.

OSB SOLO AND SMALL FIRM SECTION. The OSB has a solo and small firm section to provide networking and continuing legal education opportunities for attorneys in solo or small firm practices. For information, visit the OSB website at www.osbar.org > Member Groups > Sections > Section Info/Websites.

OSB LAWYER REFERRAL SERVICE. This service distributes referrals to lawyers who register with the service. Attorneys registering with the service are allowed to charge \$35 for the initial consultation. The rate charged after the initial consultation is at the lawyer's discretion. For information or current registration fees, call 503-431-6408 or 1-800-452-8260, ext. 408, or visit the OSB website, www.osbar.org > Bar Programs > Lawyer Referral and Information Services > Summary of Referral and Information Services Programs.

ETHICS AND MALPRACTICE AVOIDANCE UPDATES. The *Oregon State Bar Bulletin* periodically includes articles written by the OSB General Counsel's office on ethical issues commonly faced by practitioners. The PLF also regularly contributes articles on ethics, practice tips, and procedures for avoiding malpractice. Past issues of the *Bulletin* are available on the OSB website, www.osbar.org > For Lawyers > OSB Publications > Bar Bulletin Magazine.

ETHICS OPINIONS/INQUIRIES. Ethics issues can often be resolved by reviewing the OSB Formal

Ethics Opinions maintained on the OSB's website, www.osbar.org > For Lawyers > Legal Ethics > Find an Ethics Opinion. Also, check *The Ethical Oregon Lawyer*. The publication is part of BarBooks™, and is available on the OSB website, www.osbar.org > CLE/Legal Publications > Legal Publications > Log in to BarBooks. The OSB General Counsel's Office offers an ethics helpline to discuss legal ethics questions. The information is *free but not confidential*. Call the OSB Legal Ethics Helpline at 503-431-6475 or 1-800-452-8260, ext. 312 or 363, or visit the OSB website at www.osbar.org > For Lawyers > Legal Ethics > Legal Ethics Home.

OSB MEMBERSHIP SECTIONS. OSB members are welcome to join any of the various subject matter sections. Participation in relevant sections can be a great help in developing a practice. The OSB website lists the various sections and their leaders at www.osbar.org > Member Groups > Sections > Section Info/Websites.

FORMS. Many of the OSB CLE programs include materials with forms. For more information, call the OSB CLE Service Center at 503-431-6413 or 1-800-452-8260, ext. 413, or visit the OSB website at www.osbar.org > CLE/Legal Publications > CLE Seminars > CLE Seminars Home. Also, check BarBooks™ publications, many of which have forms, available at www.osbar.org > CLE/Legal Publications > Legal Publications > Log in to BarBooks.

SAMPLE FEE AGREEMENTS. A collection of fee agreements, including agreements tailored to specific areas of law, is available in the *Fee Agreement Compendium*. The publication is part of BarBooks™, and is available on the OSB website, www.osbar.org > CLE/Legal Publications > Legal Publications > Log in to BarBooks.

OSB OREGON NEW LAWYERS DIVISION (ONLD). This division of the OSB offers low-cost CLEs and other networking opportunities at chapter meetings throughout the state. For more information, visit the Oregon New Lawyers Division website, www.osbar.org > Member Groups > Oregon New Lawyers Division > ONLD Home.

OSB BARBOOKS™ ONLINE LIBRARY. The BarBooks™ online library is a free member benefit included as part of your regular bar dues, with publications in numerous practice areas. You may download any of the forms and jury instructions included in the BarBooks™ library, as well as the PDF of any book included in the library. BarBooks™ offers free one-hour web conference training sessions every month, accredited for 1 Practical Skills MCLE credit. Call the OSB at 503-620-0222 or 1-800-452-8260 and speak to staff in the Legal Publications Department for more information. To access BarBooks™, use the Member Login on the OSB website, www.osbar.org > CLE/Legal Publications > Legal Publications > Log in to BarBooks.

OSB NEW LAWYER MENTORING PROGRAM (NLMP). The OSB and the Oregon Supreme Court launched this initiative to serve all incoming bar members starting in 2011. The mandatory program formalizes a process that for many decades took place organically, through connections forged at law firms and other close-knit bar communities. As our state bar has grown, the process of introducing new lawyers to the legal community, and guiding them through the transition to law practice, has grown more amorphous. The NLMP offers new bar members one-on-one guidance on elements of a highly competent practice, while promoting the professionalism, civility, and collegiality that make Oregon among the best places in the country to practice law. For more information, visit the OSB website, www.osbar.org > Licensing/Compliance > New Lawyer Mentoring Program.

OSB MEMBERSHIP DIRECTORY. The OSB membership directory is a listing of attorneys updated daily and is available on the OSB website, www.osbar.org > Member Directory.