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Oregon State Bar Bulletin — MAY 2011

Managing Your Practice

Business Essentials:

Tips for the Small Firm and Sole Practitioner

By Sheila Blackford, Dee Crocker & Beverly Michaelis



According to the American Psychological Association, almost three-quarters of adults report that money is a “very significant” source of stress. Add the pressure of running a solo practice or small firm, and financial worries can quickly spiral out of control. So how can you get on track, meet your goals and create a vision for the future? It starts with planning and a little number-crunching.

Create a Business Plan

Every solo or small-firm practitioner should have a written business plan. If you are applying for a loan or line of credit, the bank will require it. But it isn’t just an exercise for new lawyers or those seeking financing. Your business plan serves as a roadmap for the future. It describes your reason for going into business, why you are entering into (or continuing) a particular type of practice, your projected income and expenses, how you will market yourself and how your business will be structured. It requires research, organization and reflection. However, it doesn’t have to be a daunting task. The Small Business Administration is a great place to start. See <http://tinyurl.com/smallbusinessadmin>.

For tools specific to the legal profession, try these free resources from the **Law Society of British Columbia**, <http://tinyurl.com/lawsocietyBC>; **FindLaw**,

<http://tinyurl.com/findlawbizplan> and **Whittier Legal**, <http://tinyurl.com/whittierlegal>. The American Bar Association offers the 2011 edition of *The Lawyer’s Guide to Creating a Business Plan*, a step-by-step software package with self-calculating worksheets, detailed financial plans, and preformatted documents.

www.abanet.org/abastore/index.cfm. *Creating a Business Plan*, excerpted from *Flying Solo: A Survival Guide for the Solo and Small Firm Lawyer*, is a bargain at \$19.95. All ABA Web store products may be ordered through the Professional Liability Fund at a discount. From the PLF website, www.osbplf.org, select ABA Products, and note the PLF promotional code.

Your Mission Statement

A mission statement is an important component of your written business plan. How can you express your talents, passion and values in a concise paragraph or two? Four simple exercises developed by Terry Leahy will help you craft a concise, professional mission statement. See this post for more information:

<http://tinyurl.com/pracmgmtmission>.

Your Financial Plan

Your financial plan is a key component of your business plan and ultimately the success of your law practice. It includes a statement of your financial goals. Tracking the ebb and flow of income and expenses will allow you to project revenue, create a budget and monitor the financial health of your law firm. Start by reviewing your expenses. Some are more essential and time-sensitive than others, such as your annual bar dues and PLF assessment. Both require planning to ensure you have adequate cash on hand to make these payments.

You should become familiar with three particular financial statements that will be an important focus of your financial planning process. You can create these reports yourself or hire an accountant to assist you.

1. The Balance Sheet. A balance sheet is a statement of your assets and your liabilities at a specific point in time — a financial snapshot. Some firms create a balance sheet at year end, while others prepare this statement monthly or quarterly.

2. The Income Statement or Profit and Loss Statement . This is a summary of all the income received and all the expenses paid during a specific period of time, usually a month, a quarter and/or a full year.

3. The Cash Flow Statement. This worksheet shows your cash inflows and outflows over a period of time: monthly, quarterly and/or yearly. It allows you to see the peaks and valleys in your cash flow so you can plan for periodic big expenses and set aside reserves for meeting emergencies. A sample 12-month cash flow statement is available on the PLF website, www.osbplf.org. Select Practice Aids and Forms, then Financial Management. A cash flow statement can also be created in QuickBooks or similar software.

Sample balance sheets and income statements, along with other forms, can be found by searching the SBA Website, <http://www.sba.gov/>.

Use a Budget

Every law office should have a budget. Without one, it's easy to overspend and hard to plan for future purchases. Knowing your overhead costs will help you decide how much revenue you need to make and how much you need to charge to bring in 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 can lead to disciplinary complaints from clients whose work is not completed.

How will you find the right amounts for your initial budget? If available, gather the last three years of tax returns, including pertinent schedules. Reevaluate your expenditures. Are there places you could cut back? Is it time to invest in new technology or hire support staff? Keep your business objectives in mind. Your budget should be crafted to meet the short, mid-range and long-term goals of your plan.

If you are just starting out, estimate your expenses and then adjust your estimates over time based on what you are actually spending. This will allow you to create a realistic budget.

If you have accounting software, you can create a budget and run reports and graphs that compare actual to budgeted income and expenses by category. Both Quicken and QuickBooks have this feature. These programs can also create a budget automatically from actual income and expenses you've previously entered.

If you don't have accounting software, you can use online resources like **Mint**, www.mint.com, or **Wesabe**, www.wesabe.com. Both are free and allow you to budget, manage investments, set spending alerts and generate reports. Additionally, Mint offers a free iPhone app to track expenses on the go.

If you want to focus specifically on what your hourly rate should be, try **Freelance Switch**, <http://freelanceswitch.com/rates>, an easy-to-use hourly rate calculator.

Mint, Wesabe, and Freelance Switch are secure sites. No personal identifying information is required. But if the idea of entering financial data online makes you uneasy, the PLF offers budget forms. From the PLF website, select Practice Aids and Forms, then Financial Management.

Industry-Specific Data for Lawyers

Every five years, the Oregon State Bar sends out an economic survey to a random sample of the bar membership. The most recent survey was conducted in 2007 and is available on the bar's website at <http://tinyurl.com/osbar07survey>. Information on billing practices begins on page 26. Hourly rate data is captured by geographic location, total years admitted to practice and areas of private practice. The following bar sections participated in a supplemental hourly rates survey in 2008: Antitrust, Business Law, Business Litigation, Civil Rights, Construction Law, Consumer Law, Energy Law, Environmental, Intellectual Property, International, and Litigation. The supplemental survey can be found here: <http://tinyurl.com/osbar08suppsurvey>.

Use this data, in conjunction with your budget or calculations from Mint, Wesabe or Freelance Switch, to decide how much you should charge for your services.

Avoid Common Pitfalls that Lead to Non-Paying Clients

Getting paid can be a stressful part of practicing law. It's easy to sabotage yourself if you don't consider some common pitfalls and how to avoid them:

Discuss fees at the outset of the representation. Carefully screen new clients to minimize the number who don't pay for your services because they can't afford your fees.

Avoid clients with unrealistic expectations. The client who frequently complains or needs constant handholding is often the same client who is unhappy with your bill.

Review your billing practices with new clients. Make sure they understand that time will be billed in tenths of an hour, statements will be issued monthly and payment is expected within 30 days. Include a due date on all your bills.

Use written fee agreements to prevent misunderstandings and communicate what will happen if the client does not pay.

Since most people are paid on the first of the month, send your bills out by the 25th of the month so they will have your bill in hand when they are paid.

Monitor accounts receivable closely and establish a collection procedure ahead of time. Assuming you generate bills on the 25th of the month and clients are expected to pay within 30 days, your procedure might be: On Day 31, past-due clients automatically are sent a second billing notice. On Day 40, past-due clients receive a phone call. On Day 50, past-due clients receive a (form) letter, and so on. The idea is to establish specific steps that follow a timeline.

Remember, these situations rarely get better. If you need to withdraw, comply with the Oregon Rules of Professional Conduct (ORPC). See "How to Fire a Client: Do's and Don'ts When Ending Representation," Beverly Michaelis, *Oregon State Bar Bulletin* (July 2007) and "Tying Up Loose Ends: How to End a Relationship," Helen Hirschbiel, *Oregon State Bar Bulletin* (October 2010).

Offer incentives, such as a discounted or hourly rate or flat fee, if the client establishes a retainer or pays your fee up front. Comply with OSB Formal Opinion 2005-151 if you intend to charge a fixed fee "earned upon receipt." Recent amendments to ORPC 1.5 and 1.15-1 explicitly require a written fee agreement signed by the client informing the

client: 1) The funds will not be deposited into the lawyer trust account; 2) The client may discharge the lawyer at any time; 3) In the event the lawyer is discharged or discontinues representation, the lawyer may be required to refund all or part of the fee if the services for which the fee was paid have not been completed.

Consider an early-payment discount. If the client pays your outstanding bill within 10 days rather than 30, give the client a percentage discount off the total amount due.

Accept credit cards. Avoid bookkeeping hassles by using a private credit card processor who will take merchant fees only from your business account, *not your lawyer trust account*. Be sure to read and comply with OSB Formal Opinion 2005-172.

Collect the “last month’s rent.” Require that the client pay a security deposit to be held in the lawyer trust account. Invoice the client as usual. At the end of the matter, use the security deposit to pay the client’s final bill. Alternatively, the funds may also be used if the client fails to pay a monthly invoice. Put this arrangement in writing. Keep in mind that if the client’s funds can earn net interest, you are required to establish a separate interest-bearing account for the client or obtain a waiver of the client’s right to interest. See OSB Formal Opinion 2005-117 for additional details.

Use “evergreen” retainers. In this type of arrangement, the client agrees to maintain a specified retainer balance at all times. Your bill should reflect the beginning retainer balance, fees and costs incurred during the month, total funds disbursed from the client’s retainer, any balance remaining, and the amount needed to replenish the retainer to the required amount.

Consider interest charges carefully. Unless you and the client have entered into an enforceable written agreement to charge interest at a higher rate, you may charge only the statutory rate of nine percent on a past-due account. See OSB Formal Opinion No. 2005-97.

Resist the temptation to modify your fee agreement with current clients. OSB Formal Opinion 2005-97 also stands for the proposition that modification of a fee agreement in the lawyer’s favor requires client consent preceded by an explanation of the reason for the change and its effect on the client. In addition, any modification must be objectively fair. Meeting this standard isn’t impossible, but it isn’t easy, either. If you discover you have made a bad bargain, the best course is to learn from experience and change your fee agreement *prospectively* with future clients. Otherwise, you may find yourself in the middle of a fee dispute, even if your client initially agrees to the modification.

Think twice before suing a client for fees. The decision is yours, and economic pressures are hard to ignore. Before you take this ultimate step, however, be sure you’ve considered all the issues, including the possible effect on your PLF coverage. See “Fee Disputes and Binding Arbitration — Impact on PLF Coverage,” Roger Westendorf, *In Brief* (June 2009).

Business and financial planning may not be what you went to law school for, but the ultimate success of your practice depends on your ability to understand and manage the financial nuts and bolts of running a law firm. However, you don’t have to do it by yourself. Spend some time planning for the future, use the resources available to you, and get outside assistance if needed.

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