



Starting Your Practice

A Practical Guide to Starting Your Law Practice.

Guide adapted from the Arizona State Bar's Guide.

Overview

Many of the complaints referred to the Alabama State Bar are categorized in areas that often involve office management practices and procedures, such as inadequate communication, lack of diligence, disputes regarding scope of representation and fees, errors in declining or withdrawing from cases, conflicts of interest, and trust account management. Attorneys are disciplined each year for offenses arising from these areas.

These materials will focus on ways in which attorneys can begin the ongoing process of establishing good business procedures that will enable them to provide the best possible voice for their clients. We begin by focusing on how a lawyer can develop systems that specify for each client matter:

- The steps involved in the representation;
- The order in which these steps will be performed; and
- The person or persons responsible for assuring that these actions are carried out.

First, a few words on hiring and managing the personnel who will help you carry out these procedures. Even if you operate your office on a shoestring or if you're a technology whiz, you may want to consider hiring at least part-time clerical, receptionist, and bookkeeping help. Why?

- Your clients or potential clients will always have someone at your office who they can talk to.
- You will have considerably more time to devote to the practice of law and, consequently, you will be more productive.
- Secretarial and other clerical work can involve a high level of skill, judgment, and attention to detail. Unless you have a background as a secretary or bookkeeper, you may do these jobs poorly.
- Be aware, however, that you will not "save" an hour for every hour a staff member performs tasks you would otherwise have to do. On an ongoing basis, you must devote time to training and supervising the work your employees do.

Before deciding to hire even part-time help, you should be brutally realistic about your budget and your ability to pay for this assistance. Base your assessment on an average of your income over several months, not just during busy times, as you will be committing to pay for personnel even in your slower times

Hiring

Most lawyers must be frugal in hiring staff, which results in the need to do some careful analysis of your needs and desires before hiring an employee.

- Analyze the duties that require a law license to perform, then analyze your own strengths, weaknesses, likes, and dislikes among those duties that don't. If you type 100 words per minute, it may not be productive to hire a person whose typing speed is lower than yours to draft documents. You may need someone to assist only with phones, calendaring, filing, and copying. If you hunt and peck at the keyboards, however, a skilled typist may be just what you need. If your budget requires that you make some tough decisions about staffing, it's usually more productive to supplement rather than duplicate your own strengths.
- Consider whether a virtual receptionist will fill your needs. Members of the Alabama State Bar receive discounts from Ruby Receptionists and Smith.ai. A virtual receptionist service will answer your calls and either route calls to you or take messages. This gives your clients a person, rather than a machine, to talk to when they call and adds a level of professionalism to your practice. Be mindful about using the service in a manner that comports with your ethical obligations.
- Once you've determined the tasks you want accomplished, determine the skills an employee must have to do the job and those that would be desirable but not essential. Use this information to prepare a job description that you can share with applicants. It will also help you write your ad.
- Before you run an advertisement, determine the benefits you can reasonably provide and the hours you need assistance.
- Draft a list of acceptable interview questions.
- When offering employment, make it clear that the first 90 days constitutes a trial or probationary period.
- Avoid implying that employment is "permanent."
- Give the employee written information on your policies, procedures, and expectations right away; give him or her time to read it, invite and answer questions, then ask the employee to sign an acknowledgment. This does not require that you prepare long narratives. Checklists are a good way to organize, analyze your own procedures and policies, and pass them on to individuals you employ.
- Train all workers, whether independent contractors or employees, about the importance of confidentiality. *See Ala. R. Prof. C., Rule 1.6.*

Managing Personnel

Learn how to delegate and use employees to their fullest capabilities. Attorneys sometimes have what's known as a "control problem"; not all are good at delegating lower level tasks so that they will have time to pursue higher level responsibilities. If your employees are competent and well-trained, you should expect them to be able to do what they're assigned—typing, research, bookkeeping, etc.—without constant checking and review. This doesn't mean, however, that you do not need to supervise the work of even your most experienced and competent staff.

- Employees can be busy without being used to their fullest. With the goal of freeing up as much time as possible for you to practice law, you might consider:
 - Using secretaries to perform administrative tasks;
 - Using paralegals for research and interviews (under supervision); and
 - Using secretaries or other support staff to field routine inquiries.

- The "team" concept: Introduce your staff to the client immediately. Let the client know how much confidence you have in your staff's ability to perform for the client.
 - Enhances perception of overall office competence;
 - Reduces phone calls and interruptions to the attorney; and
 - Improves employee morale and underscores their importance to your office and your clients.

- Develop written policies and procedures for your employees, so that they know exactly what you expect of them. Written information on procedures is especially valuable with new employees, when someone has to fill in for an absent employee, or if you are frequently unavailable to answer questions.
 - Ensures consistent treatment among employees;
 - Ensures consistency and accuracy in performing tasks with established procedures;
 - Prevents ad hoc decision-making from becoming "tradition" and, thus, policy;
 - Provides a framework for dealing with employees' problems – or problem employees;
 - It's never too soon to begin developing official policies—even if your total staff so far is one part-time secretary. It's never too late, either!
 - Checklists, checklists, checklists! They are easier to prepare and easy for employees to follow. They provide continuity and guidance without being cumbersome.

Client Selection: Before the Representation

Providing the best possible voice for your clients depends heavily upon your ability to select the right type of work for your knowledge, skills, and resources. There are no sure-fire rules that will guarantee that you will never accept a representation that you may later regret. However, client selection is a skill that can be learned and that improves with practice.

Look for “red flags” and listen to your instincts.

If you can't communicate well with the potential client at your first meeting, it's unlikely to get better under the stresses that inevitably occur during handling of a case:

- Does your client display classic signs of a potentially difficult client – is unable or unwilling to pay a fee advance; his/her goal appears to be revenge; his/her goal appears to be based on “principle,” without regard to economic reality; desires an unrealistic result; has come to you after firing other lawyers on this matter, etc.?
- Do you have the expertise and experience needed to handle the case, or can you reasonably obtain it?
- Do you have the resources to perform the work? This includes your time, as well as technological and human resources. This may also include financial resources. For example, if the case will require an expert, you will want to ensure that the client is responsible for paying the expert directly, rather than expecting you to advance that cost. Although you are permitted to advance the costs of litigation, you may not be able to do so. Be sure that you identify any costs in advance, meet with the prospective client, and address the need for them to cover those costs.

You should prepare a case “schedule” outlining what activities will be due at what time – not only does this help to determine whether you have the time available to accept the case, it can also help to predict the cash flow throughout the case, which is important in determining whether you want to accept it. In addition, it gives staff an understanding of what to anticipate.

Client Intake: Beginning the Representation

Firms need to set out who has primary responsibility for setting up a new client's file, including:

- Performing a conflict of interest check before undertaking representation;

- Preparing a new matter report (intake sheet) for the client file;
- Preparing a written fee agreement and/or retention letter; and
- Creating a tickler to assure the fee agreement; if mailed or emailed, it is received back from the client – signed, if necessary.
- Information provided to the client should include:
 - General statement of the matter you will be handling. It is usually helpful to reference a case number if one is available, rather than a more general description;
 - The scope or limits of the representation – i.e., what the agreed-on fees include; if you are entering into a limited scope representation, be particularly careful in this description;
 - The rate and basis of the fee;
 - What you will be attempting to accomplish for the client;
 - How you will communicate with your client and how he/she can reach you in an emergency; if you plan on communicating with your client by email, be sure to advise them not to use a shared or work computer;
 - How fees will be assessed, including a statement of minimum fees and/or hours; this includes any activities that will result in additional fees if they materialize;
 - Your client’s responsibility for payment of fees and costs, as well as their responsibility to cooperate in the preparation of the case, including keeping the attorney advised of a current address and phone number;
 - Warning that delay or failure to cooperate on the part of the client may prejudice client’s rights;
 - A reminder to the client that the attorney makes no guarantee;
 - Information about your succession plan;
 - Your policy regarding handling clients’ files and any documents at close of matter; and
 - A written acknowledgment by the client that he/she agrees to the terms of representation.

Although you are not required by rule to provide a fee agreement unless you are entering into a contingent fee agreement, it is a good idea to memorialize this information in a fee agreement.

Scheduling

Develop a system, either manual or automated, to record all appointments, deadlines, statutes of limitations, etc., as well as “ticklers” for each important event.

- A calendaring system must be understood and followed rigorously by all employees to be of any value.
- It is important to consider who will be responsible for calendaring, who will be the backup person if the responsible person is absent, and whether any other employees will be permitted to change the calendar.
- A calendaring system should also check for redundancies, scheduling conflicts, cases where one attorney could cover for another, etc.

Any calendar, either automated or manual, should have a backup system in place. Even if you use only manual calendars, there should be more than one. A manual calendar could be lost, stolen, or rendered unreadable by office emergencies, such as a water leakage. If you use an automated system and do not have a spare computer or server to which your calendar can immediately be restored, it’s a good idea to have a manual calendar as a back-up. Be certain that your office procedures include a time each week to update that manual back-up calendar. This is true even if your calendar is cloud-based.

If your hard drive becomes inoperable and you do not have another computer to which you can immediately restore, it might take a few days to repair or replace your computer or server before you can restore your data. If your calendar/practice management system is cloud-based, you will likely be able to access your data more easily. However, a backup calendar is still the best practice.

All active matters should have at least one tickler in the system, even if it’s a date arbitrarily established for file review. We recommend that you review all active cases at least once a month; once a week is better, if possible. This is to assure that no matter is overlooked or sits too long without attention.

Time Management

Few attorneys have enough time each day to accomplish everything that they would like to. Technology offers many opportunities for lawyers to complete more work in the same amount of time. However, no software program or management system will enable the attorney to handle an infinite volume. Any system can be overwhelmed by

volume. For that reason, time management remains an important skill that lawyers must develop.

Develop a system to set priorities for calendared work that is tied to and based upon your docketing system. There's a piece missing in your system if you set a "to-do" to work on an upcoming hearing as a high priority, but have neglected to set a tickler in your docket reminding you of this upcoming critical date.

Create blocks of time for major tasks. If you have staff, remember that you must also allow time for staff to complete their part of the project.

Start as early as is practical. Extreme time pressures invites error. Save the crunches for events out of your control, not for poor planning.

Keep meticulous records of all of your time. At the time that the work is done, you may not know whether or not you will bill for it later. Record it anyway; you can always decide later that it is non-billable. If you are billing matters as flat fees, collecting data on what it costs you (time) to do the work is crucial to setting your fees at a level that will yield a profit and enable you to do the required "look back" at your fee at the conclusion of the case to determine whether your fee is reasonable. On contingency matters, it's valuable to determine the profitability of particular kinds of cases. It also may be necessary to determine if your fees were reasonable for the circumstances, or a client may terminate your services (or vice versa) before the case proceeds to its normal conclusion, requiring you to determine the value of your services prior to termination.

- Record all "legal," but "nonbillable," time:
 - Reading law reviews and case summaries;
 - CLE work;
 - Pro bono work;
 - Developing new business; and
 - Maintaining client relations.
- Record all "non-legal" time, as well:
 - General administrative (ordering supplies, talking to vendors);
 - Paying bills and bookkeeping;
 - Collection of money due to you; and
 - Managing, training, and supervising your staff.

At the end of a week or month, review these time categories to see whether you are spending too much or too little time in certain areas.

Sole practitioners in particular are often amazed by the amount of time that their records show they are spending on routine, clerical, or administrative chores. This information is valuable in periodically reassessing whether you need clerical support and, if so, of what quantity and type.

Communication

Nothing is more important to good client relations than accurate, understandable and regular communication. In fact, poor communication can also have an impact on the attorney's ability to handle the case, from a legal standpoint.

Poor communication can lead to a minor problem being perceived as major. Excellent communication can make a major problem more manageable. Ideally, communication with the client should be a part of every action that the attorney takes.

Communication involves (at a minimum):

- Making sure that the client understands the scope of the representation;
- Making sure that the client understands what fees will be charged, as well as when, why, and how they will be applied;
- Making sure that the client understands how trust money, if any, will be applied;
- Making sure that the client understands whether fees are refundable or nonrefundable. Keep in mind that, if your fee is nonrefundable, you must also advise the client that they may nonetheless be entitled to a refund should the representation end early or if you are discharged;
- Making sure that the client understands what additional actions on his/her part are necessary for prosecuting the matter (additional documentation, last attempt before suit to come to terms with opposing party, etc.);
- Making sure that the client understands that there is no guarantee, in regard to the outcome;
- Making sure that you understand exactly what it is that the client wants you to do;
- Keeping the client informed of the status of the matter, including communication at regular intervals, even if nothing has happened;
- Making sure that the client is aware of how developments may affect the anticipated outcome of the matter;
- Returning all client phone calls within a reasonable time, or assuring that a staff member has done so. A client should never have to wait longer than 48 hours for a response, and client relations considerations often dictate a much shorter response time;
- Sending client copies of all relevant correspondence that you receive or send;

- Sending client copies of all court documents generated during the course of the matter;
- Making sure that the client understands your records retention policy. If you are expecting the client to maintain all of the copies you send them as their client file be sure they understand the importance of keeping them; and
- Updating the client regularly, even when no money is owed, on how many hours have been billed, what services have been performed, what money for costs have been paid from the retainer, etc.

Handling Client Funds

Keeping track of and protecting client funds is critically important and any staff should be familiar with trust accounting rules, not just attorneys and bookkeepers.

- For receipt of funds;
- For deposit into and disbursement from the trust account; and
- For closing out a client ledger at the end of the representation.

Be aware that safeguarding of client property may involve more than just funds in a trust account. Firms may need to set up safe deposit boxes for this property. Attorneys are responsible for:

- Ensuring the appropriateness of disbursements;
- Ensuring the availability of funds for the particular client before signing trust account checks;
- Conducting regular reviews of client ledgers;
- Reviewing monthly reports of reconciliation of ledgers and transactions register with the bank statement (3-way reconciliations); and
- Reviewing the closing of matters.

Disbursements must be made with sequentially-numbered, pre-printed checks or by electronic transfer, clearly identifying the transaction on the client ledger and general ledger.

- Be sure that your account checks bear the notation “IOLTA Account,” “Client Trust Account,” or a similar designation.
- Avoid confusion by ordering checks and deposits slips for the IOLTA account in a different style or color than those used for the operating account.
- Be aware that receiving a non-sufficient funds (NSF) notice from your trust account bank will lead to an automatic disciplinary investigation.

- Be aware that making disbursements from your trust account that are inappropriate, such as paying for you bar dues or enrolling in a CLE program, may lead to a disciplinary investigation.

Handling Other Office Accounts

Even though the money in an operating or office account belongs to the attorney or the firm rather than to the clients, attorneys should, for business reasons, devote the same care and concern to their general office accounts as they do to their trust accounts.

Failure to properly segregate business funds, withhold employee and other taxes, etc., can result in violations of state and federal laws and IRS regulations.

Bouncing checks—even when they’re not trust account checks—could lead to discipline by the Bar, because writing a bad check is against the law. Additionally, bouncing checks, or having sloppy bookkeeping or bill-paying practices, negatively impact your professional reputation. It only takes one bad incident to destroy the level of trust and professionalism that you may have spent years building.

A law firm is a business and, just like any other business, it will fail if its principals do not have firm control over their profits and losses. Attorneys should set up accounting procedures that properly account for all assets and liabilities, so they can track and control profits and losses. This is useful in practices of all sizes.

Many excellent, inexpensive software programs available to help manage small business accounts. Some even incorporate built-in sample charts of accounts for law firms.

Most importantly, know yourself— your strengths and weaknesses. If you’ve never been able to balance your personal checkbook, or if you are not business-minded, hiring professional help in this area may be a priority – even over hiring a receptionist/secretary or paraprofessional help.

- **DO NOT WITHDRAW MONEY FROM YOUR TRUST ACCOUNT BY USING AN ATM OR DEBIT CARD OR BY CASH WITHDRAWAL**
- **NO “CASH BACK” TRANSACTIONS.**

Billing and Collections

It does not matter how hard you work if you are not sending out timely, accurate bills for your work. It does not matter how much you bill if you are not collecting your bills. Develop a billing system that:

- Enables attorneys to easily adjust bills or billing structure to fit each client or situation;
- Sends bills out at regular intervals or on-demand;

- Customizes bills to clients' needs and wishes;
- Tracks payment and payment histories;
- Makes one person, or group of people, specifically responsible for assuring that bills are sent out and money is collected.

Consider the following when setting fees:

- All businesses must carefully consider what prices to charge and must develop a specific fee policy — law offices are no exception;
- Consider alternatives to hourly billing; and
- Always use written fee agreements.

Research has shown that the later a lawyer bills for work, the less likely a client is to pay, pay timely, or pay the entire billed amount. Prompt billing may help you realize a higher return on payments from clients. In addition, if you've specified a billing cycle in your fee agreement, you should stick to it. Even if there are no additional charges during the billing period, each client should receive a billing statement, as scheduled in your fee agreement or engagement letter.

When billing clients, remember these tips:

- If possible, set a billing schedule appropriate for each particular client; if your system can accommodate it, allow the client to select the billing or payment date;
- Most clients strongly prefer detailed bills;
- Send informational bills showing services performed, even when no money is due;
- Bills are not only a means to collect money – they are also a great communication tool; and
- Require advances against fees; the easiest way to get paid is to already have the money and transfer it (disbursement by pre-numbered check or wire transfer) from your trust account to your operating account as it is earned and billed. Many clients are aware that it is common practice for attorneys to ask for money in advance. A client who is unwilling or unable to supply a reasonable advance is also less likely to pay when billed.

To collect what's owed:

- Make collection part of a particular employee's responsibilities, and include this duty in your office procedures. If you do not have staff, consider the means by which you will collect and allot time monthly to pursue collections; and
- Make sure that you regularly review the status of your accounts receivable, including how quickly bills are paid; identify slow and non-paying clients and develop a plan to address specific situations.

Last-resort options to collect:

- Assignment to a collection agency; or

- Filing suit (if representation has concluded or if the attorney has withdrawn).

NOTE: Be aware that these last-resort options for collection create a conflict of interest and will require that the representation be terminated. As a practical matter, pursuing these options may increase the possibility that a client will file a Bar complaint or a malpractice claim. Be sure, before making this decision, that your file is well documented with evidence that the case was properly handled, that fees were reasonable for the work done, and that you regularly issued accurate bills to your client for the work.

Take advantage of technology for monitoring and taking action regarding your accounts receivable. Many attorneys fail to take action on their accounts receivable early, when the possibility of collection is highest, because they feel that they don't have time. The longer that you wait to try to collect overdue bills, the less likely it is that you will ever be paid.

Always use a written fee agreement. Your fee agreement may take the form of an engagement letter or the more formal format of a standard fee agreement. Either way, be sure to include a description of the scope, the amount of the fee, and the form of fee collection (e.g. flat fee, contingent fee, or by billable hour). If you are charging the client for reimbursable costs (e.g. copies, postage, or filing fees) be sure to itemize the costs and who will be responsible for paying the costs. For more on fee agreements, see Ala. R. Prof. C., Rule 1.5, or contact PMAP for more information and sample fee agreements.

File Closing, Retention & Destruction

Your file retention/destruction procedures should provide for the following:

- The client should be informed in the fee agreement or retention letter about what will happen to client documents and client files, when, and under what circumstances;
- The firm should have a written policy specifying how long particular file types will be retained and detailing all procedures involved in file review, storage, and destruction; and
- If you have designated a lawyer who will be responsible for closing your practice in the event of your incapacity, the client should be informed of that and should be provided instructions on how to get that information.

When a file is closed, the following – at a minimum – should occur:

- The attorney(s) reviews the file and concludes that no further action will be needed; then, they will make a determination, under the retention policy, regarding when the file will be eligible for destruction; and
- The bookkeeper (or attorney) will review the file to verify that the client has paid in full and will confirm that all client funds have been returned and

- If you have staff, the staff member responsible for closing the file has been given written instructions as to what information should be kept, what information should be discarded, and when the file will be eligible for destruction; an appropriate tickler for destruction should be created and information should be recorded concerning the storage location of the file until that time.
 - Information potentially useful for other matters has been removed to a central “bank,”
 - Any property, or original documents, belonging to the client or a third party has been returned; and
 - Any notifications to the client outlined in the retainer agreement have been made and any specified waiting time after notification has occurred.

Files should be properly destroyed; that may include confidential destruction procedures and/or shredding – not simply thrown out in a dumpster.

Use of Technology in Your Law Office

Attorneys are responsible for ensuring that clients’ electronic information is backed-up and secure. If you are particularly savvy with computers and networks, you may be tempted to do your own computer workstation and/or network setup, software installation, etc. Keep in mind, though, that computer networking and security is a specialty, these days. Hiring a network technician may be the most cost-effective and time-efficient way to ensure that your computer backup and security is done properly.

If you are sharing office space with other law firms, you may share a computer network, which has been set up to ensure that each firm **does not** have access to any other firm’s data. If this is the case, think twice about sharing an electronic calendar with another firm. Unless the data that is entered on the shared electronic calendar is encrypted – or otherwise maintains confidentiality of client information – and conflicts checking procedures are strictly adhered to, you may be in violation of Ala. R. Prof. C., Rule 1.6 – 1.9.

Comment 8 to ABA Model Rules of Professional Conduct, Rule 1.1 (Competence) makes clear that lawyers are responsible for a basic level of knowledge about technology. “[8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.” Lawyers should, therefore, be familiar with cloud computing, encryption, and two-step authentication.

Cloud computing uses remote servers to store and access information via the internet. There are a number of popular cloud computing storage and information sharing platforms, including Dropbox, Box, and Google Drive. Additionally, most practice management software systems are now cloud-based.

One advantage to cloud computing is the ability to access information from anywhere. One consideration in selecting a cloud computing platform is to determine if it offers encryption as the information is being uploaded to the site, while the information is stored on the site, and when the information is accessed from the site. Encryption scrambles data and makes it more difficult for unauthorized parties to access it. If an insufficient level of encryption is offered, consider layering on your own additional encryption. Another option is a private cloud service, which allows you to keep control over your information. However, since a server is local – rather than remote – a natural disaster or power outage may prevent you from accessing your data. When selecting a cloud solution, be sure that you know whether the servers are located in the United States or elsewhere, as the laws of another jurisdiction may govern the privacy and security of your data if it is stored outside of the U.S.

Two-step, or multi-factor authentication, requires a user to enter a password, as well as another piece of information (customarily, a multi-digit code text messaged to the user) in order to verify the user's identity. It can be enabled on a number of platforms, including email, cloud platforms, and even social media. An even more basic option is a lock-code on cell phones and tablets. Many phones offer remote wiping, should the phone be lost or stolen, enabling the owner to remotely erase all of the personal data stored on the phone. Are they foolproof? No, of course not. But a lawyer who accidentally misplaces an unlocked cell phone opens the door to his/her clients' confidential information being placed into the wrong hands.

Office Recordkeeping and Account Management

Encompassed within a lawyer's ethical obligation is a duty to maintain a client's files. Formal Opinion 2010-02: "Rule 1.6, Ala. R. Prof. C., embodies one of the most fundamental principles of our profession and requires that with few exceptions, a "lawyer shall not reveal information in relation to representation of a client." The duty to maintain confidentiality includes a duty to segregate, protect and safeguard a client's file and the information it contains. The obligation to maintain a client's file contemporaneously organized in an orderly filing and indexing system is inherent in the duty of confidentiality and explicit in Rule 1.15. The failure to do so is a breach of 1.15 and may also rise to the level of a breach of 1.6. The principals of confidentiality, loyalty and fidelity are so fundamental to the practice of law that these rules must be enforced to eliminate even the risk of breach of these principles."

Suggestion: If you are holding property of any type that will need to be returned to a client, it's a good idea to contact him/her at least once a year, since postal forwarding orders generally expire in a year.

Ala. R. Prof. C., Rule 1.15 -Safekeeping Property:

(a) A lawyer shall hold the property of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or

elsewhere with the consent of the client or third person. No funds of a lawyer shall be deposited in such a trust account, except (1) unearned attorney fees that are being held until earned, and (2) funds sufficient to pay bank service charges on that account or to obtain a waiver thereof. Any funds while in the lawyer's trust account that the lawyer is entitled to receive as a fee, reimbursement, or costs shall not be used by the lawyer for any personal or business expenses until such funds are removed from the trust account.

Closed Files

Other practical considerations, such as the attorney's need for records to defend against a Bar complaint or malpractice complaint, should be taken into account when developing a written file retention/destruction policy. Once a policy has been developed, it should be consistently followed. Keep in mind, however, that the file belongs to the client. If the client request their file, you should maintain a copy of the file in accordance with your file retention policy and ethical obligations.

Other Records:

In the general course of business, a law firm will accumulate numerous financial and personnel records. At some point, the continued retention of all of these records becomes onerous. There are numerous federal and state regulations that set the length of time that certain items, such as payroll records and personnel information, must be retained. These regulations extend beyond the scope of these exemplary materials; therefore, attorneys should consult their accountants, law firm administrators or human resources staff if they are concerned about compliance in these areas.

Methods of Disposal:

There is no officially approved method for disposing of files or records once the time for destruction, as specified in the written file retention policy, arrives. Two points should be considered, however, when choosing a method of destruction. The first is the attorney's obligation to preserve client confidentiality. Client files, when and if they are destroyed, must be destroyed in a way that will not compromise clients' right to have their confidences maintained.

Second, as a practical rule, consistency in the means by which files are destroyed will make it easier to defend against any possible charges that a file was singled out for destruction. In other words, if an attorney destroys a file in accordance with established policy and by an established method, he/she will be in a better position to defend against a charge, claiming that there was something "suspicious" about the destruction of the file than will the attorney who burns one file, keeps another needlessly, and shreds a third.

A number of records storage companies are equipped to perform confidential file destruction. One advantage of this method of destruction is the issuance of a certificate of destruction that the attorney can retain as evidence of file destruction.

Business Considerations: Starting Your Practice

There are a myriad of decisions that any new business owner must make. The necessity of balancing professional, ethical, and practical elements of running a business makes this a particularly challenging process for lawyers. The following materials outline some of the issues that a lawyer must face when establishing his/her own practice.

Decide on a form of business—sole proprietorship, partnership, professional service corporation, limited liability company or limited liability partnership

This decision will affect all other aspects of your business—how your income is reported, which tax forms you must fill out, how your employees are paid, what benefits and expenses may be deductible, and on and on. It cannot be overemphasized that this is a critical decision, and one that should be made only after consultation with your own lawyer, tax consultant, CPA, etc. Many attorneys select a business entity with an unrealistic expectation of the advantages and disadvantages, both tax and liability, that particular forms offer.

Licensing and Other Requirements:

Be sure to contact your city to explore what, if any, business licenses are required.

If you are leaving government employment, ensure you have an occupational license and all dues are paid in full.

If you plan to hire employees any time in the near future, be sure to consult an accountant and visit the IRS website.

You may obtain Form SS-4 at the IRS website <https://www.irs.gov/pub/irs-pdf/fss4.pdf> or by calling 1-877-777-4778.

If you plan to hire employees any time in the near future, review Publication 15. This useful publication tells you how much to withhold from your employees' salaries for income tax and social security. <https://www.irs.gov/pub/irs-pdf/p15.pdf>

Furthermore, review Publication 334, Tax Guide for Small Business. This is an invaluable publication described by the IRS as “a comprehensive navigational aid for federal tax forms.” It tells you what forms to fill out and when. <https://www.irs.gov/pub/irs-pdf/p334.pdf> The IRS also offers tax workshops for small businesses on a regular basis; inquire at your local office for a schedule.

Shop for insurance:

As a law office owner, you will need to evaluate your need for and make decisions about various types of insurance, including professional liability insurance (malpractice); general liability insurance (to cover incidents, such as injuries to third parties on premises); property insurance (to cover damage to business equipment); workers' compensation insurance; group medical insurance; life insurance; long-term disability insurance; business interruption insurance (to cover profit losses while business is interrupted); employee bonds (if coverage is not provided under professional liability insurance); or "Key Man" insurance (to provide needed cash flow, in case of loss of partner).

For the practitioner just starting out, this may seem like a distressingly long list of potential expenses. Frequently, circumstances dictate what types of insurance, and at what levels of coverage, an attorney selects initially. For example, an attorney who chooses to obtain referrals from a lawyer referral service, or reduced-fee panel, typically must carry professional liability insurance to be eligible. For those lawyers, obtaining professional liability insurance is a necessity. Lawyers whose area of practice requires the employment of highly-skilled support staff may have difficulty hiring employees, unless medical benefits are provided.

Workers' compensation insurance is required if you have any regularly-employed workers, full or part-time, or if you have contractors (such as courier services) entering your home office.

Be sure to review out member benefit discounts on insurance.

<https://www.alabar.org/members/benefits/>

In addition, review these professional liability insurance carriers.

https://www.americanbar.org/groups/lawyers_professional_liability/resources/lpl-insurance-directory/alabama/

Set up an IOLTA trust account

Many attorneys receive funds of a type that must be placed in a trust account. If you contemplate receiving any of the types of funds outlined below, you should open an IOLTA (Interest on Lawyers' Trust Accounts) account. You do not, however, need a trust account, merely because you are engaged in the practice of law. If you have questions about whether you need a trust account, setting up your trust account, or managing your trust account, please call PMAP at 334-517-2120 or email autumn.caudell@alabar.org.

From a management standpoint, funds which should be held in a trust account generally fall into three categories: (1) funds belonging entirely to a client (for example, advances to be applied against services billed at an hourly rate); (2) funds belonging in

part to a client and in part, or potentially, to the attorney (for example, settlement checks which will be disbursed after cleared to client and attorney); and (3) in some instances, funds belonging to a third party (for example, settlement funds which will be used to satisfy medical or other liens).

In general, the character of the funds, not the amount or the length of time they will remain in the account, dictates where monies received from clients should be deposited.

Fees which have already been earned and billed to the client belong to the attorney and, therefore, do not fall into any of the three categories above. Earned fees should, for that reason, promptly be transferred (disbursed by pre-numbered check or electronic transfer) to an operating account if they have been kept in a trust account; if you are billing after the fees are earned, the remittance of solely earned fees should be deposited directly into your operating account. In addition to complying with ethical requirements, an attorney needs to keep in mind the practical implications of holding earned fees. The *Alabama Rules of Professional Conduct*, in particular Rule 1.15 and make clear that commingling funds in the trust account is prohibited.

Another consideration in promptly transferring earned fees is that money in the trust account cannot be spent by the lawyer for anything other than expenses directly related to representation of the client on whose behalf the funds are being held. All interest earned from money held in the trust account is paid to either the Alabama Law Foundation or the Alabama Civil Justice Foundation, not to the lawyer. For that reason, money that should be refunded or disbursed to a client should be promptly handled and money belonging to the attorney should be promptly transferred.

Although commingling funds is generally prohibited, some banks require an initial deposit to open any account, including an IOLTA account, and some will close an account that has a zero balance for a specified period. You may keep in your account a small amount of “administrative” funds to cover the costs of maintaining the account, including a minimum amount to keep the account open. In addition, some banks assess a monthly service charge and some charge a fee if an account is inactive for a certain period. You should be aware of any fees that your bank charges. Bank charges generally will show up on a bank statement with no advance notice. These funds must be reasonably related to the actual fees assessed for administration of the account and may not constitute a “cushion” to avoid overdrafts.

You should check with your bank (or with several banks) to determine specific policies and costs. Your bank should be able to give you a realistic estimate of the amount of administrative/service charges that you may expect against your account over the course of a year.

When setting up your IOLTA, you should review Ala. R. Prof. C., Rule 1.15 and the Trust Accounting Handbook.

Recordkeeping system:

You will need to decide what type of system will work best for you and your firm. You may choose a manual or automated accounting program to keep track of your IOLTA account.

You will need to keep the following records:

- Bank statement (only the attorney should open it);
- General ledger/checkbook register;
- Client ledgers and administrative ledger. Each client will have a separate ledger; the administrative ledger is where you will track your funds maintained in the trust account to pay administrative/service charges. The client ledgers must reflect all deposits and disbursements, the dates, the reason, and maintain a running balance of available funds;
- A record of your monthly 3-way reconciliation;
- Copies of all deposits made each month and deposit receipt; and
- Copies of all checks written each month.

Failure to maintain trust account records in accordance with Ala. R. Prof. C., Rule 1.15 may result in disciplinary action.

Depositing and disbursing funds:

You will need to enter all deposit information on the client ledger and general ledger for a manual system. If you are using an automated system, once you enter the information on the client ledger it will also place it on the general ledger.

Be sure to use the correct deposit slip for your trust account. Complete the deposit slip (be sure to include the client (and, if available, matter number) on the slip and make a copy; stamp the back of the check “For Deposit Only” and include the name of your firm. Money can be deposited into the trust account by going to the bank or by electronic transfer. You need documentation of any electronic transactions.

You will also need to enter all disbursement information on the appropriate ledgers (client and general).

- Wait at least 10 business days for the deposit to clear the payor’s bank.
- You may call the payor’s bank (not your bank) and inquire as to whether the check has cleared;
- Verify with the client ledger and general ledger that the money is available to be disbursed; and
- Enter all disbursements on the client ledger and general ledger.
- Disburse money from the trust account only by pre-numbered check or electronic transfer which generates a record of the transaction. Be sure to use the correct

check for the trust account, include the name of client and why check is written on the memo field of check (for example: Jones/earned fees or Jones/filing fees) and make a copy; and

- Do not disburse money by going to bank and withdrawing cash or using the ATM or debit card. In fact, you should not have a debit or ATM card for your client trust account.
- You **must** have personal funds available to cover any deposit that does not clear.
- You must deposit the money into the trust account within three business days of learning that the deposit did not clear.

Be sure that all funds clear prior to any disbursement as it is very risky for attorneys to disburse unclear funds. Disbursing prior to the funds being collected places all of the risk on you, as you will have to replace any funds that do not clear. Attorneys are frequently swayed by insistent or pleading clients to disburse prematurely. This is not a best practice and should be avoided.

3-way reconciliations of the IOLTA account:

- Open and review your bank statement every month. Staff should not open the bank statement.
- If there was a bank charge that you were not aware of until you received the bank statement, add this to your general ledger and adjust, as necessary. You will also need to add this to your administrative ledger and adjust, as necessary. There is a place on the reconciliation for bank charges.
- Reconcile the bank statement to the general ledger, checking off all checks and deposits that have cleared. Subtract checks and add deposits that have not cleared as of the ending date of the bank statement (for example, bank statement ends on 1/31/15 and check #555 was written on 2/1/15; you would not include this transaction on this month's reconciliation). You may use the back of the bank statement to complete this part of the reconciliation, or the 3-way reconciliation worksheet provided by PMAP.
- Add the total of your client ledgers, including the administrative ledger, together.
- Again, use only transactions up to the ending date of the bank statement. Write this number on the 3-way reconciliation worksheet.
- Take the balance on the general ledger, again, as of the ending date of the bank statement. Write this amount on the 3-way reconciliation worksheet.
- All three figures should match on the 3-way reconciliation worksheet, reconciled bank statement, total of client ledgers, and general ledger. If they match, congratulations – your trust account is reconciled. If they do not match, you must

review your records to find the problem. You are required to maintain your records reflecting the 3-way reconciliation, however, you are not required to submit your records to the State Bar on a regular basis, unless otherwise required.

If you are using software to maintain your client trust account, please remember that most software will not perform this 3-way reconciliation. You will have to produce the records necessary, including the individual client ledgers, and conduct the reconciliation manually.

Set up an Operating account

Your operating account, or your business account, is the account into which any funds for your firm, except those that must go to the trust account, are deposited and out of which all expenses relating

When you go to a bank to set up this account, you will probably be advised to set up a commercial or business account. There is no Bar regulation that you keep your operating account in a commercial, as opposed to a personal, checking account; although, from a management standpoint it is good practice to not use the same account for both your personal and business needs. Commercial accounts may offer certain advantages to you, depending on the bank, and they are, correspondingly, more expensive to maintain. As with your client trust account, choose a bank that is convenient to your office and/or home to make regular banking easier.

Set up your books and payroll system:

Do not wait until after you have hired employees, received payments from clients, or paid a deposit on your lease to set up a bookkeeping system. Having your books set up in advance allows you to start on Day 1 organized, in control, and in compliance with state and federal laws. Many small firms contract with an independent bookkeeper or accountant to handle their books on a part-time basis. If you choose this option, be sure to ascertain that your bookkeeper is not only generally competent but also knowledgeable about matters pertaining only to law firms, such as trust accounting. Remember that you remain responsible for training and supervising to assure that your trust account is properly maintained.

Notify the Bar of your contact information:

Don't forget to notify Membership if you change your address or phone number:

By email: ms@alabar.org

By fax: 334-269-1515

For questions regarding law practice management, please call 334-517-2120 or email autumn.caudell@alabar.org