



# Law Practice Management



Fall 2002  
Annual Meeting Edition

STATE BAR OF MICHIGAN  
Law Practice Management  
Section Council  
2001-2002

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## Letter from Our Chair

### A Look in the Rearview Mirror (Objects are Closer Than They Appear . . .)

This column is my last as Chair of the Section. It seems like that only yesterday Benson Barr asked me to become the Secretary/Treasurer of this Section. The Section Council had begun an exciting reinvigoration under Benson and I was enthusiastic and pleased to assist in these efforts. Like Benson, Austin Anderson continued that progress during his year as Chairman and we have continued those efforts over the past year. The year went quickly and so it seems it is over before it even began. Your Council is dedicated and hard working and I want to take a moment to look back on the year and spotlight some of their achievements.

Our newsletter continues to be an important cornerstone of our work. Under Konnie Kustron's leadership, the newsletter continued to flourish and her work on the newsletter has been outstanding. It is produced consistently and generally runs eight to twelve pages in length. The content has always been good, but we continue to make efforts to offer valuable content to our Members. Many Council Members have provided articles or columns on a regular basis: Joe Shulman, Joan Vestrand, Ernie Gifford, Greg Veltema, Konnie Kustron and Joan Bullock.

Konnie will pass these important responsibilities on to Joan Bullock who already has begun the transition and was responsible for this issue. Konnie will be moving into other important work for the Council. I am confident that you will see the same great work from Joan that you are used to seeing under Konnie's leadership.

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**Letter from the Chair**

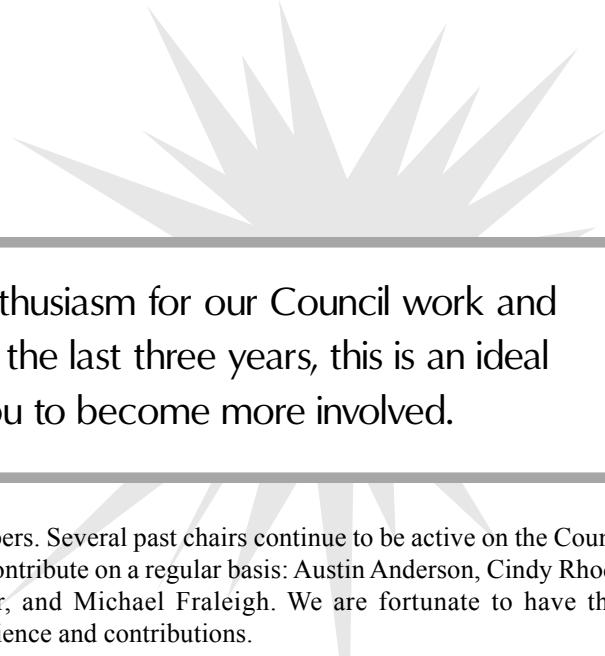
*Continued from page 1*

Vince Romano and Austin Anderson led our efforts to offer continuing legal education and were successful in producing presentations in cooperation with the Detroit Metropolitan Bar Association, the Oakland County Bar Association, and the Ingham County Bar Association. These presentations were not only well received, they resulted in more than seventy-five new members to our Section (an increase of approximately 15%). Again, many council members moderated or presented at these presentations: Michael Langnas, Joan Bullock, Konnie Kustron, Austin Anderson, Vince Romano, Joan Vestrand, Henry Gornbein, Cindy Rhodes Victor, Gary Gardner, Barry Brickner, and Sandy Boyer.

We have a very exciting program planned for the Annual Meeting, "Marketing for the Millennium", that will, thanks again to the efforts of Austin Anderson and Henry Gornbein, feature nationally known speakers. This presentation will take place on September 26, 2002 at the Annual Meeting.

Our bi-monthly Council Meetings held on Saturdays in Novi have been extremely well attended. We enjoy nearly full participation from all Council Members at each of these meetings. Not only is your Council a dedicated and diverse group, they are an extremely talented group. Four of your Council Members are fulltime faculty members at law schools or universities; two are principals in prominent firms that advise law firms and lawyers on law practice management and marketing; many have written articles and presented to local, regional, and national audiences on law practice management topics and issues; and several either manage or assist in managing their law firms or in-house functions. A few of our Council Members are solo practitioners and have brought their practical day-to-day experiences to the Council and your Section. One of these attorneys is the architect of one of the most well known legal websites in the country.

Another highlight was our Program Partnership with the ABA Legal TechShow in Chicago, with several resulting articles in the newsletter. Vince Romano is already hard at work preparing for the 2003 Survey on Michigan Law Practice Economics. The listserv and Section website continue to be active assets to our Section



With the new enthusiasm for our Council work and the Section over the last three years, this is an ideal time for you to become more involved.

members. Several past chairs continue to be active on the Council and contribute on a regular basis: Austin Anderson, Cindy Rhodes Victor, and Michael Fraleigh. We are fortunate to have their experience and contributions.

With the new enthusiasm for our Council work and the Section over the last three years, this is an ideal time for you to become more involved. Being more active will give you the opportunity to meet and share the best law management practices. Also, it gives you opportunities to access and network an excellent group of lawyers that, in large part, do what you do. We hope you take advantage of this opportunity.

I have been honored to work on behalf of the Section and with your Council. Words cannot adequately describe the extent of their contributions to your Section nor can they adequately describe my gratitude for their efforts over this past year. Moreover, my Assistant, Cindy Bauman, has done much of the day-to-day work of organizing our Section meeting schedule and preparing agendas, handouts, and generally keeping the Section Council organized over the past year. I could not have served as Chairperson without her able assistance.

We all look forward to Reggie Dozier's term as Chair during the 2002-2003 year. I am looking forward to seeing many of you at the Annual Meeting. Thank you for the opportunity to serve you as the Chair of the State Bar's Section of Law Practice Management.

As always, we are interested in your comments, suggestions, and constructive criticism. Please feel free to send me a note at [postemam@ferris.edu](mailto:postemam@ferris.edu) or by telephone at (231) 591-2085.

*Miles Postema, Esq.*

# Letter from our Incoming Chair

## Reginald G. Dozier

Miles Postema is a hard act to follow. He has been one of the best Chairs of the Law Practice Management Section during my tenure as a member of the Section Council. He took office in the immediate aftermath of the tragedies of September 11, 2001. He experienced personal pain, and then personal loss. However, during that entire period, he continued to satisfy the requirements of his Chairmanship.

Miles set and held regularly scheduled meetings. He presided during the period of the very successful Nuts and Bolts Seminars, which were held in several locations around the state. There were also other successful programs during his tenure.

Miles also insisted on and assured that this publication was published on a regularly scheduled basis. Clearly, Miles is a hard act to follow.

In spite of the daunting task, I look forward to the Bar year ahead. In a time when our society is going through many changes, the practice of law faces many challenges. The economy always impacts the practice. Evolving technology constantly impacts the

practice. As a byproduct of technology, the business world has expanded nationally and globally. This phenomenon creates a novel question. How do lawyers, who are licensed on a state basis, effectively operate in this national and global economy? How does or will technology assist us in these endeavors? These are issues that we will ponder in this next Bar year.

I look forward to continuing the great things that currently exist, while establishing a few new programs. We will also explore a Mentorship project. This program will assist new law practices while establishing support for more senior practitioners. In addition to our continuing Nuts and Bolts Program, we will continue and enhance our Marketing Program. As always, we will continue to evaluate technology's impact on practice.

As I stated at the beginning, Miles is a hard act to follow. Our section improved during his term. Now it is up to me to keep the ball rolling. I welcome and solicit your help in this endeavor. If you have suggestions or even criticism, please feel free to contact me at (313) 961-2550, or [rdozier@lewismunday.com](mailto:rdozier@lewismunday.com).

# Solo's Corner

By Joan R. Bullock, Esq.

## Serendipity

Solo practitioners usually find themselves hard-pressed to do it all: managing accounts receivable and payable, handling other clerical and administrative tasks, participating in bar activities, attending seminars for professional development, brainstorming, creating, and implementing rainmaking tactics, and yes, taking time to actually practice law. Not only can the requirements of the business of the practice encroach upon the resources reserved for the actual practice of law, the reality unfortunately, for some is that the business and the practice become mutually exclusive options.

That is why the solo practitioner, more so than any other type of practitioner, could benefit from serendipity, or to some, just plain ol' luck. How does one go about becoming lucky? How does one attract fortuitous chance events into one's professional life? If the events are truly by chance, there is not that much one can do to cause a fortuitous event. However, a person does have some control over whether one can perceive the event in the first place. Opportunities abound everyday. Notwithstanding, many are oblivious to their occurrence and proximity. Therefore, it may be more precise to query how one goes about perceiving lucky events.

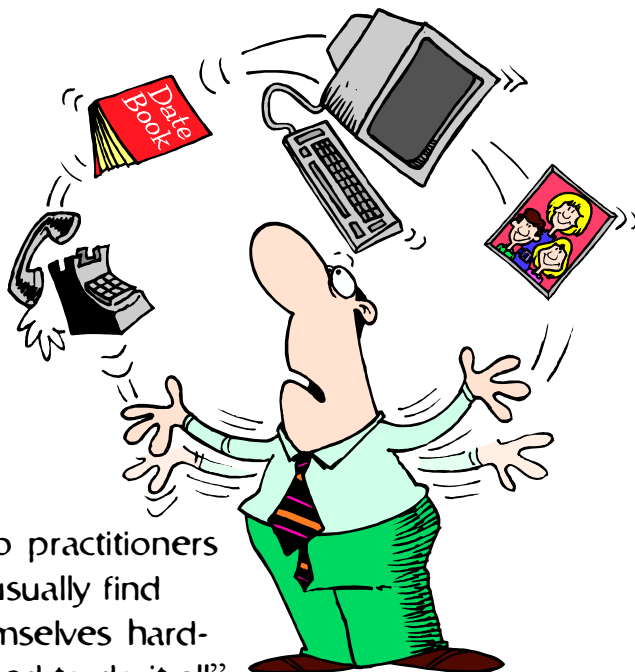
It has been said that luck is an opportunity disguised as a problem. Does one see the opportunity inside the problem or does one see only the problem?

It is my humble opinion that the "lucky" and the "unlucky" are not differentiated by chance so much as by the former's willingness to create an environment that fosters opportuneness. This environment is characterized by preparation and expectancy on the part of the lucky. Lucky people prepare themselves in a way that opens up options to them in the future. They have a goal in mind and equip themselves in advance with resources such that when the opportunity arises they perceive it and can take advantage of it. Having a goal in mind informs the lucky such that they understand the impact and the implications of the opportunity. People take advantage of opportunities all the time. However, are they choosing the right opportunities? There are good opportunities and there are bad opportunities. Preparation can inform so that one has a better ability to tell the difference in the opportunities without having to rely on hindsight.

Some may think achieving luck has the same probability as being struck by lightning; however lightning will strike in a spot more than once if that spot is equipped with a lightning rod. Along with preparation, which can take many forms, for e.g., academic, attitudinal, physical, to name a few, the lucky expect opportunities to cross their paths and therefore are on the lookout for them. In contrast, the unlucky engage in wishful thinking and take little thought in formulating a plan of getting from one point to another. Accordingly, the unlucky are not expectant and often miss opportunities that are in their proximity. An unexpectant mindset often prevents the unlucky from making the preparations necessary to take advantage of the opportunity. The unlucky often have not developed the resources or the expertise to manage it.

Preparation and expectancy informs the individual so that he or she is cognizant of, and does not settle for, second best. Preparation and expectancy instill one with the confidence necessary to seize the opportunity without hesitation. They give direction so that one is in the right place at the right time. It is a statistical fact that those who are prepared are luckier than those who are not. Be part of the statistic. Get lucky and look forward to serendipitous events.

© 2002 by Joan R. Bullock, J.D., M.B.A., C.P.A., Professor of Law, Florida A&M University College of Law, Orlando, Florida. The author can be reached at [joan.bullock@fam.u.edu](mailto:joan.bullock@fam.u.edu).



“Solo practitioners usually find themselves hard-pressed to do it all”

# Site Watch

By Ernie Gifford, Esq.

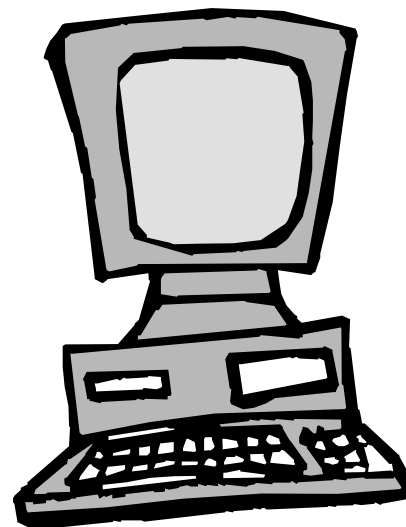
The “Hot Site” this month is CEOExpress.com ([www.ceoexpress.com](http://www.ceoexpress.com)), a portal website which includes links to other websites that the Webmaster considers valuable to CEOs. There are links, for instance, to the major newspapers, such as the New York Times, Washington Post, Boston Globe, and others. There are also sites for obtaining information about numerous subjects of use to those engaged in business as well as others, including lawyers. Business research sites are included as are directory sites such as the “Yellow Pages” and “The Zip Code Finder”. There is even a site titled “Speech And Writing” with links to other sites like “Common English Errors” and “Elements of Style”—both of which may be especially useful to lawyers. Of particular relevance to lawyers is a section entitled “Law” with links to the “U.S.Code” and “Findlaw” as well as to other law related websites.

Access to the features provided at the site is presently free. However, CEOExpress.com also offers a subscription version that provides features such as e-mail that are not provided to the free users of the site.

CEOExpress.com is a good opening site for the Internet user because it provides ready access to tools and a wealth of Internet accessible information. The website provides its own search engine,

“Express Search,” and also includes links to all of the most popular search engines. Travel sites are also listed, including not only the well-known sites but also others of which you may have never heard. I recommend that you give this site a try. I am sure you will find something there you can use.

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## State Bar of Michigan Annual Meeting Law Practice Management Section September 26, 2002

### Marketing for the Millenium

Striving for service excellence is the common business philosophy shared by truly marketing-driven organizations. This session will explore what it takes to successfully compete as a service organization in today’s market place. Best practices from world-class organizations and from within the legal industry will highlight opportunities for law firms to enhance the effectiveness of their marketing efforts.

The Law Practice Management Section has assembled an outstanding faculty to provide Michigan lawyers with the information that will enhance the effectiveness of their marketing efforts.

The faculty includes: Connie Cook Laug, Director of Client Services at Graydon Head & Ritchey, LLP and President of Client InSight, LLC located in Cincinnati, will discuss “Living Your Brand: Where Marketing and Operations Meet to Achieve Results”; Milton W. Zwicker, Managing Partner of Zwicker Evans Lewis of Barrie and Orillia, Ontario, will discuss “What Does it Take to Win in the New Marketplace?”; Henry S. Gornbein, Of Counsel at Strobl Cunningham Caretti & Sharp, P.C., of Bloomfield Hills, will discuss “Building a Successful Specialty Practice Through a Website”; and Barbara Generoux Silkworth, Marketing, Director of Miller, Canfield, Paddock & Stone, will discuss, “Developing and Implementing a Successful Marketing Program in a Larger Law Firm.” Austin Anderson, a Principal of the AndersonBoyer Group, Ann Arbor will moderate the session.

The lectures will be followed by a panel discussion and a question and answer session.



# Book Review

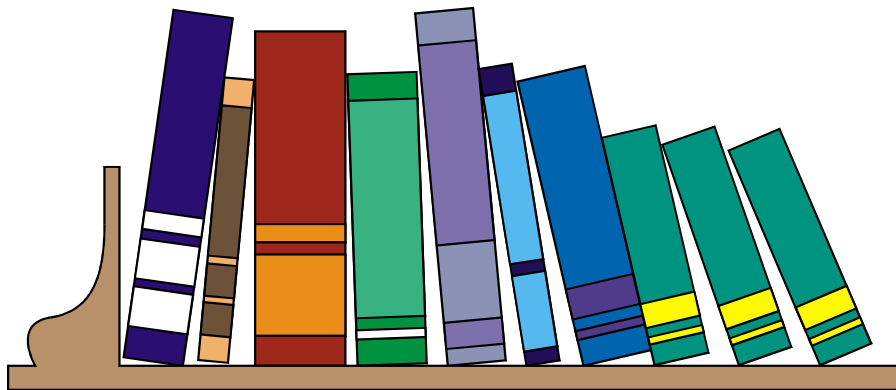
By Michael D. Langnas, Esq.

## Flying Solo

As part of the LPM Section's services to its members, we like to offer our review of newer publications that would be of use to the sole practitioner as the opportunity arises. In this case, "*Flying Solo, A Survival Guide for the Solo Lawyer, Third Edition*" is our target.

From the start, I must say, that the book is somewhat lengthy at 781 pages. However, with the multitude of topics covered by this book, I could not envision it any shorter, only longer. Each chapter is written by a different author providing an expertise and view that is different from each other. As a reference guide, I believe that it is a useful tool for those beginning on the quest of starting their own practice.

The table of contents is broken down into different segments that prove to be useful. It is delineated in ways that if you needed information on a particular subject, you could look and probably find a topic in the book that either covers what your particular need is or comes very close.



There are several things that I like about this book in particular. The first section of the book is critical for all people contemplating starting their own firm. This section, *Part I- Making the Decision*, is extremely important. It covers numerous issues that sometimes get left behind because a person gets either excited about the prospects of starting their firm or just don't know that they should

consider these as real issues. I have some complaints about the topics specifically identified in *What Kind of Practice*; however, I am sure this stems from nothing more than my own belief that there is more than one way to skin a cat. I am also sure that these sections are there merely as examples of what kinds of practices that could be started by a solo practitioner and were not intended as a limitation.

Another section I liked a lot was *Part III- Growing The Business*. Too often as lawyers, we forget that marketing, accounting, and managing our business are sometimes just as important as being a lawyer. Two ideas that I found true and agree with wholeheartedly are that you must watch your receivables and bill on the 25<sup>th</sup> of each month. It does not matter the amount of work you have if nobody is paying you and you are not billing. Finally, another truism is to always be the check signer and not delegate that authority. We all hear too many stories about someone getting cheated by an employee who could sign checks. I guess I may be cynical, but, for as hard as some of us work, why take the chance?

Finally, Chapter 20, provided useful information regarding how to partner with another firm or solo on particular projects. Currently, this is something that is working out very well for a solo practitioner and my firm. The issues covered by this chapter are thought provoking and I thought important, especially as a way to keep business that may otherwise need to be sent away. In addition, having a firm or another solo practitioner that you can partner with on projects will help reduce stress and the onset of possible malpractice.

Overall, I think that this book would be a helpful resource to anyone who is thinking about starting his or her own firm. The topics covered are as complete as could be expected and I think the book is worth the purchase for those looking to begin anew.

*Michael D. Langnas's firm Langnas & Associates, PC is located in Southfield, Michigan. The author can be contacted at 248-356-7100 or by e-mail at michael@langnas.com.*

# 2002 Michigan Legal Assistant Salary Survey

By Jill R. Pace, Esq.  
Special Counsel

Due to popular demand, we repeated our 2000 Legal Assistant Salary Survey. As in 2000, the 2002 survey explores the trends in salaries, benefits, specialties, educational background, firm requirements, and career goals of Legal Assistants throughout the state. Here is a summary of the 2002 survey results:

Four hundred twenty-eight (428) legal assistants responded to the survey. Most of the respondents are well educated, with over half (60 percent) holding a Bachelor's degree and 37 percent an Associate degree. Of those respondents holding a degree, 65 percent indicated that their degree is in Legal Assistant studies. The majority is female (95 percent) and consider themselves "career legal assistants" (79 percent). As in 2000, only a small percentage of the legal assistants are certified by either of the two national legal assistant associations. Eight percent (8 percent) of the legal assistants surveyed are Certified Legal Assistants through either the National Association of Legal Assistants or by the National Federation of Paralegal Associations, Paralegal Advanced Competency Exam (PACE) Registered Paralegals.

## Hours

**Billable Hour Requirements:** 66 percent of legal assistants reported that billable hours are not required of them. The remainder of those surveyed indicated various billable requirements: two percent required over 1800 hours, three percent must bill between 1701 and 1800 hours, two percent face a quota of 1601 to 1700 hours, nine percent have a requirement of 1501 to 1600 hours, and 14 percent have a quota of 1401 to 1500 hours per year. Only four percent have a minimum billable hours quota of less than 1400 hours annually.

**Time Spent on Non-Billables:** Approximately one out of every five billing legal assistants (18 percent) spends less than 10 percent of their time on non-billable matters. Twenty-two percent (22 percent) spend an average of 10-30 percent of their time doing non-billable tasks; nine percent devote anywhere from 30-50 percent of their time on non-billable work, while only four percent spend between 50-70 percent of their time on non-billable items. Of those surveyed, three percent spend over 70 percent of their time on non-billable tasks and 44 percent indicated that this was not applicable as they are not required to track billable time. (Note: a significant number of respondents are employed by corporations or government entities, which typically do not track billables).

**Hours Worked:** Legal assistants are working longer hours in 2002. In our 2000 survey, the majority of respondents spent an

average of 36-40 hours per week at work (48 percent of respondents). In 2002, we have found that the same percentage of respondents (48 percent) now work an average of 40-45 hours per week (an extra four to five hours per week). Twenty-eight percent (28 percent) reported an average workweek of 36-40 hours, while 11 percent average 45-50 hours per week. Only two percent of legal assistants report working over 50 hours per week. The remaining 11 percent of all respondents work less than 35 hours per week.

**Overtime:** Although many legal assistants work over 40 hours a week, only 39 percent of our respondents receive overtime pay for their additional hours worked each week. All others are treated as "Exempt" employees by their employers.

## Benefits

**Vacation:** Sixty-seven percent (67 percent) of legal assistants are entitled to three or more weeks of vacation each year. Three weeks of vacation is common for 34 percent of legal assistants, while 28 percent receive two weeks. Thirty-three percent (33 percent) receive four weeks out of the office. A few (five percent) receive only one week of vacation per year.

**Raises:** Almost all legal assistants (86 percent) receive an annual raise. In addition, most raises (65 percent) fall into the three to five percent range.

**Maternity Leave:** The majority of respondents (58 percent) receive paid maternity leave. Of those receiving paid leave, 50 percent indicated that their leave is five to six weeks in length. That time off is generally at or near full pay, as fifty-eight percent (58 percent) of respondents receive 75-100 percent of their pay while on maternity leave.

## Job Market

**Number of Jobs Held:** Contrary to some employers' concern about a high turnover rate amongst legal assistants, our survey indicates that just under one-quarter of respondents (22 percent) have had only one legal employer in their career. Almost one-half of legal assistants (47 percent) reported holding two or three jobs in the profession. Thirty-one percent (31 percent) have changed jobs four or more times. It should be noted that 78 percent of respondents had at least six years of experience as a legal assistant.

*Continued on page 8*

## 2002 Michigan Legal Assistant Salary Survey

Continued from page 7

Numbers of years in each job: Consistent with the above results, one out of every ten legal assistants (10 percent) stayed 15 or more years in their first job. Twenty-seven percent (27 percent) of respondents stayed in their first job from five to 14 years. Of those remaining we found the following: 20 percent of all respondents remained three to four years in their first position; 28 percent stayed one to two years; and 15 percent changed jobs within one year.

### Job Satisfaction

A vast majority (82 percent) of respondents identified salary as a “very important” factor in job satisfaction. A distant second was benefits (60 percent). Flexible hours and the partner they reported to were “very important” to 45 percent and 43 percent of respondents respectively. Only twenty-two percent (22 percent) or less of those responding identified bonus and prestige as “very important” to job satisfaction.

Forty-seven percent (47 percent) of those surveyed identified “other” things as being “very important” in ensuring job satisfaction. Those things included: environment, the people they worked with, the respect given to them by the attorneys, the type of legal work they were performing, and simply being able to enjoy their time at the office.

### Salary

Finally, the answer we’ve all been waiting for... what are legal assistants earning these days? The following table details the different salary ranges offered to most legal assistants in Michigan:

Salary Range*	% Of Legal Assistants
Under \$25,000	6%
\$25,000-\$30,000	10%
\$30,000-\$35,000	13%
\$35,000-\$40,000	16%
\$40,000-\$45,000	22%
\$45,000-\$50,000	12%
\$50,000-\$60,000	15%
Over \$60,000	6%

\*Details about salaries linked to type of employer, years of service, specialty, and county of employment are available in the full report. See below for details.

Legal Assistants are earning more income. In 2000, only 13 percent of all respondents earned over \$50,000 annually. In 2002, 21 percent of all respondents earned over \$50,000 annually, for an increase of 61.5 percent in the proportion of respondents in that high-end salary bracket.

Bonus: As in 2000, over one-half (59 percent) of all respondents receive a merit-based or discretionary bonus. Twenty-eight percent (28 percent) receive a formula or structured bonus.

### Demographics

Legal assistants employed by law firms accounted for 56 percent of the respondents. Corporations employed 25 percent of the respondents. Eleven percent (11 percent) of those surveyed work for government agencies, while two percent are freelance legal assistants.

Over one half of respondents (53 percent) support one to 3 attorneys. Approximately one third of all respondents receive full-time secretarial and/or clerical support.

### Special Mention

Thanks must be given to the Legal Assistants Section of the State Bar of Michigan and to the Legal Assistant Programs of Eastern Michigan University, Ferris State University, Henry Ford Community College, Kellogg Community College, Lansing Community College, Madonna University, and Oakland University. Without everyone’s cooperation, we never would have received such a high response rate. Special thanks to Professor Robert Kushler of Oakland University for statistical calculations.

For a more detailed copy of the survey results please contact the author of this report at Special Counsel at (248) 614-0013 or e-mail the request to [jill.pace@specialcounsel.com](mailto:jill.pace@specialcounsel.com). Included in the detailed results are salary levels linked to: type of employer, years of service, specialty, and county of employment. Ola N. Glezen, Placement Director, handles all of Special Counsel’s legal assistant placements in Michigan. Ola may be contacted at: [ola.glezen@specialcounsel.com](mailto:ola.glezen@specialcounsel.com).

### About the Author

*Jill R. Pace, Esq. is Director of Client Services for Special Counsel’s Troy Office. Jill has worked with legal assistants for the past four and a half years and opened Special Counsel’s Michigan office in January 1999. Prior to entering the legal placement profession, Jill practiced law for four years.*

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# Recruiting for the Small and Mid-sized Law Firm

*By Phillip Lesky, Esq.*

The most important decision made by law firm management is the difficult choice of the people hired to help the firm grow and achieve success. If one defines management as the art of getting things done through other people, then it follows that the choice of whom those “other people” are greatly determines the degree to which a firm reaches its goals. Unless you can identify where and when your next growth positions will occur and a potential successor for all of your key current personnel, you need to start recruiting. Successful law firms, like all successful organizations, are always recruiting.

Many firms wait until a person leaves before starting the recruiting process. This guarantees that the hiring decision will be less deliberative and probably less successful. American Bar Association studies have shown that the average lawyer holds three jobs within his or her first eight (8) years of practice. If your firm, like most, relies on hiring young associates, you will not keep most of them more than two or three years on average.

As your firm evolves, its needs regarding recruiting are likely to change with it. While a firm in its early stages may require a “jack of all trades” to help with a growing general practice, a more fully developed practice may need someone with very different traits and skills. The only way to be sure you are identifying the right person is if recruiting is a proactive, rather than reactive, pursuit.

There are many choices available to generate a pool of potential employees. In addition to the common practice of advertising in bar publications, you may seek recommendations from existing employees and law school alumni associations. Ask for recommendations from judges and referees. Recruit while at court. Recruit while attending seminars and bar functions. The point is that you should always be on the lookout for talented people who can help you achieve greater success.

Remember that recruiting is an opportunity for you to brag about your firm. We have all seen numerous “blind” ads which do not identify the firm. This is a crucial lost opportunity to sell your firm to every practitioner scanning the classifieds. Not only might a blind ad cost you a talented applicant, but also the opportunity to market your firm for referrals and other professional associations. Never use a blind ad. Your ad should also contain a specific description of the individual you are seeking to hire. If your description resonates with someone, that person is likely to have many of the traits you are seeking.

Many firms also make the mistake of seeing recruiting as nothing more than filling technical needs. While that is certainly important, a person’s behavioral traits are far more indicative of success in buying into the firm culture, dealing with the stresses specific to the job, and striving for goals in line with those of the firm. Technical abilities can be taught. Behavior, largely, cannot. Evaluating behavioral skills in addition to technical job skills will result in greater diversity and hiring people who complement, rather than just replicate, you. Many systems exist which help recruiters identify specific behavioral characteristics in applicants. They should be used in all cases.

Success in recruiting determines your success as an organization. It is an ongoing necessity in order to counter demographic trends and continually strive toward firm goals. Successful recruiting requires an ongoing system designed to identify and attract individuals who possess the necessary behavioral, as well as technical, skills to succeed. Large firms often have trained full time professionals on staff to design and manage such an ongoing system. Small and mid-sized firms must find a way to maintain similar focus in the recruiting process.

Anyone responsible for managing a small or mid-sized law firm must adopt an ongoing recruiting plan, preferably in conjunction with an overall business plan. Take care to identify individuals with the behavioral characteristics necessary for success. If your firm is unable to manage such a process on its own, you should hire outside assistance to work with the firm in making hiring decisions. Your firm’s future depends on its success in attracting and retaining the best people possible.

*Phillip Lesky is a law firm management consultant and is a sole practitioner in the Law Office of Phillip Lesky, PLLC located in Southfield, Michigan. He can be contacted at 248-357-1166 or by email at plesky@comcast.net.*

# Avoiding Malpractice: Overhead Sharing and Professional Affiliation Issues

By Steven A. Mitchell, Esq.

Overhead sharing can be as important to the survival of a small professional services business (e. g. law firm) as client development. It comes in many forms, and often is only limited by the creativity of the entrepreneurial lawyer that originates an idea. Most commonly, lawyers share office space. In conjunction with office sharing, there are shared receptionists, shared clerical services, telephones, fax/copiers, office supplies purchased in bulk, library subscription services, and the list goes on.

Savvy lawyers must have good business skills to survive that aspect of a profession that is oftentimes caught between providing quality service and achieving a favorable bottom-line. In addition to overhead sharing, lawyers also integrate their talents and services into networks with other lawyers in order to offer a greater breadth of legal services to their clients in hope of retaining existing ones and attracting new ones. They also network and affiliate with service professionals in other disciplines, such as accounting, financial planning, real estate, securities brokerage, etc; and in some instances, they provide those services themselves, having personally acquired multiple professional licenses.

Unfortunately, lawyers sometimes develop good business ideas, without giving proper consideration to the requirements of sound professional practices. The following hypothetical frames some of the issues that creative entrepreneurs fail to recognize as professional lawyers.

Sally Shingle is a talented and energetic lawyer interested in developing a business in multi-discipline professional services. In addition to her law degree she has an MBA and an undergraduate degree in accounting, although she is not a CPA. She has written a business plan that tasks her with establishing a law practice whose primary mission will be counseling clients on the development of their estate plans. In addition, she will also service those clients over their lifetimes on wealth acquisition, tax avoidance, personal income tax services and business record keeping. Finally, she will provide litigation services in the event her clients ever need to go to court.

She leases a building with a common area and several offices. She subleases one office to a financial planner, Joseph Bucks. Joe's "rent" is the referral of six prospective estate planning clients to Sally per month, as well as the development of a plan to present four annual joint financial/estate planning "seminars" with Sally. He also agrees to pay one half of the salary of a common receptionist. Mr. Bucks has a real estate brokerage license; and he intends to operate a small agency from his office.

Sally subleases another space to a bookkeeping company that she forms, owns, and operates. She hires a bookkeeper, Penelope Pusher, to manage the tax preparation/record keeping business, entrusting Ms. Pusher with unsupervised autonomy in its operation, since Sally has no interest in it, or time.

Finally, she enters into an arrangement with the foremost litigation specialist in the state, Oliver Wendell Darrow, whereby Mr. Darrow agrees to permit his name to appear on Ms. Shingle's letterhead as "of Counsel" in return for potential future litigation referrals. Sally sets aside an "office" in her building for Mr. Darrow that doubles as storage space, even though Darrow lives and works several hundred miles away; and they have no other contact. He can always use the conference room in the rare circumstance that he should ever need to actually travel there to meet with clients.

Sally names her business "Shingle & Associates" and posts a prominent sign outside the building with the moniker, "One-Stop Professional Services". A common receptionist screens all incoming clients and phone calls, since neither Sally nor Joe Bucks has a secretary (a casualty of the computer age). When the receptionist answers the phone, she always answers: "Shingle & Associates". Although there are three separate phone lines, it is not unusual for Sally's clients to leave messages for more than one professional, due to the

nature of a given project. Mr. Bucks is responsible for screening the mail, while Ms. Pusher handles filing for Ms. Shingle.

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Sally's first clients are a middle-aged couple who recently inherited about thirty parcels of residential real estate being managed as rental units. They meet Sally and Mr. Buck at one of their joint seminars. They make an appointment with Sally to develop an estate plan. She advises the clients to utilize a trust in order to implement their plan. Next, she summons Mr. Bucks to her office and re-introduces him as her "associate". He advises the clients to liquidate two-thirds of the real estate and make investments in limited partnerships that offer higher returns and are more liquid. Subsequently, Penny Pusher (also introduced as Sally's "associate") prepares the clients' personal income tax returns.

Granted, the foregoing hypothetical is somewhat lengthy, but there are many complex professional issues connected with what first appear as routine business decisions. Does Sally's business plan meet minimal requirements for preserving client confidentiality? Can someone who is not an employee of a law firm (Bucks and Pusher) have access to client files and mail? Are Sally's signing, letterhead, and office setting adequate for purposes of meeting the requirements for lawyer advertising? What are Sally's disclosure responsibilities in connection with the real estate and investment transactions? What are her disclosure responsibilities regarding the expertise and role of her "associates"? Does she have a duty to supervise Ms. Pusher and/or Mr. Bucks? Can Mr. Darrow's name appear on Sally's letterhead as "of Counsel"?

What happens if the limited partnerships go bankrupt, the clients lose their investment capital and start looking for someone to blame? Can they sue Sally for malpractice? What if they claim they thought Bucks was a lawyer? After all, Sally is a lawyer, Bucks is her "associate"; and they work in the same office, answer the same phones, and conduct the same seminars.

Is Sally liable for legal malpractice if the clients get audited on their tax returns and pay thousands of dollars in interest and penalties? If Mr. Darrow commits malpractice can Sally be sued because his name is on her letterhead? Can Mr. Darrow be sued for Sally's malpractice for the same reason? Will Sally's policy of professional liability insurance cover any of these potential claims?

Generally, Michigan Rules of Professional Conduct (MRPC) 1.6(b) provides:

"(b) Except when permitted under paragraph (c), a lawyer shall not knowingly:

(1) reveal a confidence or secret of a client..."

Steps must be taken to preserve those confidences and secrets; and guidance is set forth in a number of ethics opinions including Michigan Ethics Opinions, Informal Opinion RI-118, RI-135, RI-206 and RI-249 in the context of office sharing.

In the advertising context, MRPC 7.5(a) states:

"A lawyer shall not use a firm name, letterhead, or other professional designation which violates Rule 7.1."

Rule 7.1 provides in pertinent part:

"A lawyer may, on the lawyer's own behalf, on behalf of a partner or associate, or on behalf of any other lawyer affiliated with the lawyer or the lawyer's law firm, use or participate in the use of any form of public communication that is not false, fraudulent, misleading, or deceptive. A communication shall not:

"(a) contain a material misrepresentation of fact or law, or omit a fact necessary to make the statement considered as a whole not materially misleading..."

Accordingly, the firm's sign, letterhead, and office setting must not mislead clients or the public, and in particular, separate business entities sharing a common office space must be kept separate. Several additional ethics opinions are instructive, including RI-68 and RI-323.

A legitimate "of counsel" relationship "must be close, regular and personal and not that of a partner, shareholder, or forwarder or receiver of legal business, or mere office-sharer..." See RI-102. Therefore, without more, the "of counsel" relationship described above is probably not appropriate.

As for Sally's professional liability insurance coverage, she should work closely with her carrier's insurance agent or underwriting department to ensure that they have the necessary information to effectively evaluate coverage needs, identify risk management issues, and provide advice regarding gaps in coverage or areas where other types of business coverage may be indicated. Identifying these issues in conjunction with the development of new ideas for reducing overhead and facilitating professional affiliations can go a long way toward preventing grievance complaints and malpractice claims; and that can be beneficial to both your business and professional well being.

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Publication deadline for the upcoming issue:

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