Practice Tips for Solo and Small-Firm Lawyers

By Dawn M. Evans

Most especially in these challenging economic times, cultivating and maintaining solid, functional working relationships with clients; managing your practice efficiently and consistently; and planning for the time when your practice may cease are critical to the success and peace of mind of all lawyers.[1] Lawyers who practice alone or with a small group carry the additional burden of wearing all the various hats associated with running a firm: client development; cultivating and maintaining client communication; performing the research, drafting, and advocacy associated with achieving the client's goals; developing and maintaining calendaring systems to assure timely completion of tasks; administering billing and securing collection; taking all steps necessary to ensure that bank accounts are appropriately managed; and hiring, training, and overseeing clerical and legal staff to support the work of the firm. It is a daunting task.

Notwithstanding anything that has been said about the public's perception of the legal profession, individual clients place a great deal of trust and confidence in the lawyer they hire to represent them—at least initially. It is up to the lawyer to nurture and maintain that trust through competent, efficient, and ethical representation. The sheer magnitude of the responsibility the lawyer carries for each client is stressful enough. In the face of that responsibility, the lawyer must establish his or her practice in a way that minimizes day-to-day stress so that the appropriate focus can be given to performing the job the lawyer has been hired to do. The way to do that is to develop protocols and systems that are well-known to staff, easily followed, and consistently used.

Law Practice Solutions is a regular feature brought to you by the Practice Management Resource Center (PMRC) of the State Bar of Michigan, featuring articles on practice and risk management for lawyers and their staff. For more resources offered by the PMRC, visit our website at http://www.michbar.org/pmrc/content.cfm or call our Helpline at (800) 341-9715 to speak with a practice management advisor.

—JoAnn Hathaway and Diane Ebersole, Practice Management Advisors

The Telephone is Your Friend

Forget every weary thought you've ever had about a stack of phone message slips. The fact that you have calls to return is always a good thing. The key to viewing the phone as a friendly device is managing it, not letting it manage you. As an initial point of contact for prospective clients—most especially clients who have simply picked your name from a directory without a referral—how each caller is handled is critical to building and maintaining a practice. A staff person who is articulate, efficient, polite, and caring can instill the confidence that will result in an initial appointment being made and kept.

Every nonlawyer staff member who answers your phone should be very clear on the limited nature of his or her role. It should be confined to imparting and obtaining *basic* information. Staff should not be giving even generic legal information that could be misconstrued as specific legal advice; nor is it necessarily wise to empower staff to provide fee information to an initial caller. Limiting what the staff provides also minimizes the possibility of misunderstandings and affords you the opportunity to present information in the way you believe is best. If your staff is authorized to make appointments for you, be certain that a conflicts-of-interest check is done *before* the client appears in your office to avoid the possibility of inadvertently receiving confidential information from your existing client's adversary in the first interview.

Staff's dealings with existing clients should also be based on clearly articulated instructions from you—keeping in mind that the time to set the client's expectations about communication is in *your* initial meeting. Staff members should not serve as a conduit of communication between you and the client on any matters that are or could become crucial or even material to the representation. Any material information that *is* orally communicated by staff should be reinforced in writing afterward.

Check for Conflicts of Interest

The time to check for conflicts of interest is *before* the initial meeting. Even if a staff member has established in the initial call that no named opposing party conflict exists, there may be related parties—e.g., parents with different last names, business clients—you would want to be aware of before having an attorney-client privileged conversation with the prospective client. Providing client information forms in your waiting room, ensuring that the would-be client completes it before the appointment, and training support staff to cross-check names against existing and former clients is a simple way to make certain that opposing parties and persons with differing interests are identified *before* the client enters your office.[2]

Use the Initial Meeting to Establish Mutual Expectations

In a sense, the initial meeting with the client is not unlike a job interview. When

you determine that this is a person you want for a client, establish ground rules for the representation in that first meeting. Because good communication is the key to a successful attorney-client relationship, determine how the client prefers to be contacted and obtain the information and tools necessary to accomplish that, including contact information for someone who can always locate the client. Other matters that should be addressed in the initial meeting are:

- A straightforward conversation about fees and expenses
- A step-by-step description of the legal proceeding or process that is involved in addressing the client's situation, including a realistic timetable for completion of the matter
- A detailed listing of the lawyer's expectations of the client (such as candor, timely responses to requests for information, restraint from undertaking actions that might impact the case without consulting the lawyer, etc.)
- Identification of the client's expectations; either modify them at the outset (if they are unreasonable or unattainable) or make note of them

Before the client leaves your office, introduce him or her to staff members with whom he or she will have regular contact and identify who to contact for which services, such as scheduling or cancelling appointments.

Ideally, you should incorporate key points in an attorney-client contract that is reviewed and executed at the conclusion of that initial meeting. Alternatively, or perhaps additionally, after the initial meeting, you should send the client a letter containing the key points conveyed in the initial conversation—both to document what was discussed and to provide the client something to refer to later.

Always Consider Using a Written Fee Agreement

While there may be very few instances—such as purely transactional work—in which a written fee agreement might seem excessive, in most cases a written fee agreement

is strongly recommended for a number of reasons. Most importantly, it reinforces the ground rules you have established and the mutual agreement about what you are being hired to do—including defining when your work is completed. It is also the place to set out your file retention/destruction policy. Reviewing the fee agreement with the client and gauging his or her initial reaction will help you determine from the outset if money will be an issue. This is invaluable information to have early on, before you invest significant time and energy.

Fee agreements should be written in plain English. If English is not the client's first language, either provide an appropriate translation or include language that confirms the agreement was explained by a third party (who should also acknowledge this) to the client before execution.

At a minimum, the fee agreement should contain:

- The amount of money that must be paid to initiate the representation
- A description of any hourly rates that apply, including identification of persons or categories of persons pertaining to each rate listed
- A description of the matter for which the lawyer is being hired and, if it is a litigation matter, a precise articulation of when the matter is completed (e.g., upon settlement or the conclusion of trial)
- A representative list of expense items for which payment will be sought
- Billing methodology and frequency, including how monies owed are billed against money prepaid
- Any policies pertaining to bill payment (such as what repercussions will flow from delinquent payment or nonpayment)
- The law firm's record retention/destruction policy

Almost as important as establishing and securing agreement to the terms of the fee arrangement is abiding by those terms. If the client anticipates being billed monthly and in practice is not billed for six months, the bill will be a shock in two ways. First, the client may assume that the absence of bills in the intervening months means he or she won't be billed for anything transpiring in the interim. Secondly, the cumulative effect of six months' time will undoubtedly produce a significantly larger bottom line than a monthly statement would have—a figure more apt to generate client "sticker shock."

Establish and Maintain Office Practices and Systems that Promote Consistency and Efficiency

Every law firm, regardless of size or area of practice, should develop and use communications, calendaring, filing, case management, time management and billing, and record retention systems that (1) identify potential conflicts of interest *before* a new client is accepted; (2) track important dates and deadlines, including pre- and post-reminders; (3) ensure the timely completion of all necessary steps associated with litigation, including the initiation of discovery requests, timely designation of witnesses and experts, etc.; (4) keep accurate and complete records of billable time spent and disseminate periodic billings consistent with fee agreements; (5) keep clients apprised of all steps taken and timely respond to client requests for information; and (6) maintain records in conformity with a thoughtfully developed retention policy.

Concluding the Representation

Nearly as important as the manner in which the attorney-client relationship is begun is the manner in which it is concluded. At the conclusion of representation, provide the client with copies of any pertinent documents related to the matters undertaken. Any original documentation (particularly title instruments and wills) should be returned and acknowledged as returned. Completing and delivering pertinent documents provides closure and invites return or related business.

When returning documents, include a closing letter that outlines what is being provided; describes the steps the client must take to complete any transactions and any steps you will be taking, or, when appropriate, states that no further actions will be taken; notifies (or re-notifies) the client of your record retention policy and the date after which the file may be destroyed; and expresses appreciation for the client's business. Include with the letter a final bill or acknowledge payment of the final bill.

You should maintain a core file that contains, at a minimum, a copy of any significant document not otherwise accessible through courthouse records until the expiration of any application statute of limitations for claims that might be brought by the client or third parties regarding the subject of the representation. Trust account records should be maintained for at least five years. ■

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FOOTNOTES

1. A future article will discuss how to plan for winding down a practice in an orderly manner.
2. For an in-depth discussion of the conflicts rules, consult an article entitled "How to Identify and Avoid Conflicts of Interest" by Dawn M. Evans, available from the State Bar website at <http://www.michbar.org/opinions/ethics/Articles/conflictsofinterest.pdf> (accessed July 20, 2009). If you need additional help sorting out a conflicts question, contact the State Bar's toll-free ethics helpline at (877) 558-4760.