

***HOW TO GROW YOUR PRACTICE BY
REPRESENTING MODERATE INCOME CLIENTS***



**The California Access to Justice Commission
Modest Means Committee**

November 2020

PUBLISHER'S NOTE

Successful Business Planning: Representing the Moderate Income Client and its sequel, *Successful Business Planning for the Modern Law Practice* was the work product of the Colorado Bar Association funded by a grant from the American Bar Association "ABA." It was designed to provide attorneys with useful information and guidance on how to maintain a sustainable law practice while providing competent representation to moderate income clients.

With the permission of the Colorado Bar Association, the California Access to Justice Commission has adapted this guide to encourage attorneys to consider serving the moderate income client, an underserved population, and increase access to justice. We would like to thank the Colorado Bar Association's Modest Means Task Force for their generosity in giving us access to this valuable work and their willingness to share their expertise with attorneys seeking to develop a practice that encompasses representation of moderate income clients.

We welcome all comments regarding *How To Grow Your Practice By Representing Moderate Income Clients in California* and will continually strive to keep this publication a helpful and informative resource for California attorneys.

Disclaimer:

Much of the information in *How To Grow Your Practice By Representing Moderate Income Clients in California* is based on current laws and practices in California, as well as policies and programs of the federal government.

This guide does not contain "approved" guidelines or standards. Attorneys should not let this guide substitute for their own independent legal judgment based on their specific case and their review of the relevant California Rules of Professional Conduct.

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PREFACE

How To Grow Your Practice By Representing Moderate Income Clients in California is a business planning tool designed to assist lawyers in developing a successful and financially viable practice that incorporates representation of moderate income clients, a population that often is not financially able to obtain lawyers. The goal of this guide is to increase access to justice for moderate income Californians—while allowing lawyers to make a decent living. The manual includes practical and ethical considerations in developing a business plan and providing representation.

In the current legal environment, moderate and low income people cannot afford lawyers, and there are too many lawyers who cannot find work. The large number of self-represented litigants in the California court system, as well as in individuals using the internet as their sole legal resource to draft wills, leases, business agreements, and other documents, represent a vast untapped market for lawyers with the know-how to pursue it, which is what this manual is designed to provide.

Going unrepresented and using the internet to draft documents harms many people. For example, many civil cases in California's courts involve landlord/tenant and debtor/creditor issues, where lawyers represent the landlord and the creditor, but the tenants and debtors are most often unrepresented, leading to bad outcomes or default. Business owners and others who have drafted their own documents often become aware of problems and their need for legal advice only after things have gone awry, problems that having legal advice at the start might well have prevented.

Studies indicate that the major reason moderate income people are self-represented is that they believe they cannot afford a lawyer. In fact, the vast majority of self-represented people find the legal system confusing, complex, and frustrating, and would prefer the legal assistance of a lawyer. There are plenty of lawyers seeking to practice law—many recent law school graduates have found it difficult to obtain legal employment. Many experienced lawyers are underemployed. Many law firms have downsized the number of attorneys on staff. This manual is designed to give these and other lawyers the tools they need to develop a successful practice providing legal assistance to moderate income people.

All practicing lawyers, those serving major corporations and wealthy clients, as well as those serving moderate and low income clients, will encounter ethical issues. For the latter, this manual provides guidance on those issues, but as noted in the disclaimer at the start of this manual, it does not provide “approved” or authoritative answers on those ethical and legal questions. And while the appendices to each chapter do provide authorities and resources, the lists therein are not exhaustive.

Ethical questions, which are matters of law, almost always require research, which can be very time consuming, particularly in California where the rules diverge in many areas from the ABA's Model Rules of Professional Conduct. Thus, dusting off your law school textbook or Googling an

issue may well lead you astray. Moreover, the applicable California law may be elsewhere, e.g., in California's Business and Professions Code, the Evidence Code, Rules of Court and, of course court opinions. But help is available.

The State Bar of California has an Ethics Hotline. **This call-back research service is confidential and free.** The service does not provide opinions or give advice, but it can jump-start your research and thus help you to make an informed decision. Attorneys can reach the Ethics Hotline from 9 a.m. to 5 p.m. on weekdays by calling **800-238-4427 (800-2-ETHICS)** from within California, or 415-538-2150 when calling from outside of California.

We thank the California Access to Justice Commission, Modest Means Committee, and all of the volunteer authors, researchers and editors listed on page 2 of this document for their generous contributions of time and willingness to share their expertise with other lawyers. Their common goal was to help lawyers develop a successful practice while providing access to justice to the moderate income population. We also thank the State Bar of California staff for their time and energy in shepherding this project. Additionally, we are grateful to the Colorado Bar Association for graciously sharing their work product.

We call your attention to another new resource, which addresses a broader array of subjects helpful to lawyers in establishing a new law practice: [*"Opening and Managing a Law Office: Go Solo, Win Clients, and Be Your Own Boss"*](#) (2020), published by the Solo and Small Firm Section of the California Lawyers Association, available in hard copy from Amazon or in a Kindle Edition.

The practice of law is in a state of flux. This guide is meant to assist lawyers to be successful as the legal landscape shifts. It also is meant to provide tools to lawyers to assist a large population of people who need their assistance. This is a win-win situation.

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MODERATE INCOME CLIENTS
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INTRODUCTION

Whether comprised of one or one hundred attorneys, to be profitable, a law firm needs a business plan like any other business. This is a fluid plan that will change as your clientele increases, technology changes, and what services you provide grows. A business plan consists of several components:

1. Who are your intended clients and how do you provide services they value (unbundled, convenient hours, etc.)
2. Choice of entity
3. Start-up costs and budget for 1-2 years
4. Marketing strategy (see [Chapter 6: Marketing & Business Development](#))
5. Office procedures (billing, etc.) (see [Chapter 5: Limited Scope Representation/Unbundling](#))
6. Technology needs (see [Chapter 7: Brick and Mortar or Virtual](#))

Business planning will not only give you focus, but it will also give you perspective, timelines, and ability to control your firm's growth.

PROVIDING VALUE THROUGH LEGAL EXPERTISE

Providing value to your clients should be the guiding principle in everything that you do in your law practice. Clients are coming to you first and foremost for your legal expertise. Determining how you can provide value is the first and most important step in the business planning process.

There are five ways you can offer value to a client in virtually any kind of legal matter: as *counsel, advocate, navigator, information broker, and connector.*

Counsel: The trained and objective advice of a lawyer is increasingly critical today, even though clients have growing access to legal information and resources that enable them to do more tasks on their own. Even in relatively simple matters, where clients generally have access to information or forms that would allow them to proceed with a lawsuit or enter a contract, the clients often do not have:

- the expertise to understand the precise meaning of certain legal terms or the steps that must be taken to achieve their goals;
- the objectivity to determine whether proceeding on their own is the best option; or
- the confidence that they are pursuing the proper course of action for their particular situation.

Advocate: A skilled advocate can add tremendous value to many clients, particularly where the client is on unequal footing in terms of power. Examples include:

- a consumer debt case where the creditor has deep pockets and is represented by counsel;
- a divorce case where one spouse has significantly more resources and is represented by counsel; and
- a business case where a budding small business is working on an important deal with a much larger company.

Having a trained advocate on the client's side oftentimes makes a big difference in the outcome of the matter and helps to provide peace of mind to the client.

Navigator: In most instances, the legal system is very complex and intimidating to the general public. Brief advice and coaching to help clients navigate the system provides value to a client who is unfamiliar with the system but otherwise is well positioned to adequately handle his or her case.

Information Broker: While this was traditionally a core value that lawyers provided to their clients, many consumers today expect to find answers to their questions on the internet.

Therefore, a great way to build trust and loyalty with potential clients is by knowing where they can get free and reliable information and resources, such as court websites, and making this information freely available. ([Jay Baer, *Youtility: Why Smart Marketing is about Help not Hype* \(N.Y.: Penguin, 2018\).](#)) Providing clients with this information means that you can focus your time on more significant and income-generating services.

Connector: A client may need services in addition to the legal assistance you provide in order to fully resolve his or her problem. For example:

- where a domestic violence victim seeking a protective order also needs non-legal counseling; and
- where a small business client also needs a valuation consultant.

By identifying these needs and acting as a connector, you are offering value to the client.

Unless Your Firm Serves Moderate Income Individuals, You're Leaving Money on the Table

To quote Richard S. Granat, CEO at LawMediaLabs, Inc., “There is a \$45 billion latent market for legal services waiting to be served. This market represents the legal needs of low and moderate income individuals and families who cannot afford the existing high cost of legal fees.”¹

Although these clients can't afford traditional full-scope representation, they can pay for some services, and the enterprising lawyer will find strategies to provide value for the client while realizing a profit. [Chapter 5: Limited Scope Representation/Unbundling](#) will cover how to serve this clientele via limited scope, but even beyond limited scope, as a lawyer you need to be thinking creatively about how to solve problems for your client, as opposed to simply thinking about what documents you can file. It might be through alternative fee structures ([Chapter 3: Pricing](#)), or it might be through leveraging technology to lower your costs or speed up certain processes to make them more affordable ([Chapter 8: Technology](#)). Again, the latent market for legal services to modest means folks—regular people, in other words—is tremendous. Not only does it help increase access to justice by serving these clients, but it simply makes sound business sense.

CREATE AND TEST ASSUMPTIONS ABOUT WHAT CLIENTS WANT

Incorporate Client Value into Your Business Strategy

Throughout this guide we will go into greater detail about three popular and effective approaches to incorporating client value into your business strategy. These approaches are:

- Limited scope representation ([Chapter 5: Limited Scope Representation/Unbundling](#));
- Alternative fee arrangements ([Chapter 3: Pricing](#)); and
- Virtual law practice components ([Chapter 8: Technology](#)).

¹ [The Latent Market for Legal Services: Closing the Justice Gap, by Richard S. Granat.](#)

Once you are familiar with these three concepts, you need to determine what clients in your target market value and what corresponding value you can offer them. The best way to do this is to create assumptions about what those clients value and test those assumptions:

Example 1: Word of mouth, observation, market research or your instinct tells you that moderate income clients in your target market value convenience. Put more concretely, they might value being able to access your legal services outside regular business hours (9:00 a.m. to 5:00 p.m.). To test this assumption, you advertise on your website and to your networks that your office will be open on Saturday mornings. What happens? Do clients take advantage of the Saturday morning hours? If they do, why did they? If they do not, why didn't they? Maybe your assumption is correct. Maybe it is incorrect. Maybe it is actually partially correct, but you need to adjust it because potential client feedback indicates Saturday afternoons are actually more convenient for clients than Saturday mornings. The point is to ask specific questions in order to properly evaluate the results. A second way to test this assumption would be by developing an online client portal and then asking clients the same questions regarding it.

Example 2: Here your assumption is that moderate income clients in your target market value having choices with respect to legal service offerings. To test this assumption, you advertise on your website and to your networks that you offer alternative fee arrangements (*e.g.*, fixed fees based on phase or task to be completed, or contingency fees). See [Chapter 3: Pricing](#). When talking with clients about your various fee arrangements, what do they choose? Why? Did they know that you offered alternative fee arrangements before they came to you? Which fee arrangements do they like the best and why?

Example 3: Your assumption is that moderate income clients in your target market will pay a flat fee for some service, say \$800 for an uncontested divorce. To test this assumption, you advertise on your website and to your networks that you will charge \$800 for an uncontested divorce. Do any clients take you up on your offer? If not, your price might be too high and you may need to lower it and retest this assumption with a new price. You may also need to adjust your marketing strategy.²

Example 4: Or, let's say, you want to take advantage of your second language capability with the community where you practice. You will market your services in those community centers with language-specific advertising. Do you get an immediate response? If not, you may have taken for granted that just because you speak the language, you will be accepted as credible. Perhaps you will need to be introduced to the community by a trusted source or you need to show your commitment to the community by participating in their cultural events.

Example 5: Serving underserved communities can be a successful strategy. Identifying a unique community that has traditionally been underserved can be a source of business that is not only profitable but meaningful to you. For example, many attorneys avoid clients on the assumption

² California's ethics rules allow for flat fees, for a discussion of this see [Flat Fees and the Ethics Rules that Apply to Them in Chapter 5](#).

that they will not have successful claims, such as bicycle accident victims, particularly bicycle riders struck by cars. However, handled properly, these claims can be successful, especially with increasing favorable attitudes towards bicycle riders. Or, identifying an unpopular specialty, such as dental malpractice, can help an attorney build a niche practice. (*See Resources*)

It is advisable to continue to test assumptions, evaluate client feedback and adjust your business strategy accordingly so you can grow your practice going forward.

Warning: Attorneys are reminded that certain topics are not proper subjects for discussion and consideration by and between competing attorneys. Any action taken to eliminate, restrict, or govern competition among attorneys may constitute a violation of the antitrust laws. If there is any discussion relating to significant factors of competition, an inference may be made that such a discussion is for the purpose of agreeing upon a common course of business conduct. Among the subjects that should never be discussed are fees; prices; costs; delinquency charges or fees; conditions, terms, and prices of service; allocating or sharing clients; or refusing to deal with a particular supplier or class of suppliers. Agreements among competitors relating to any of these subjects may be per se violations of the antitrust laws and can lead to criminal and civil penalties.

PREPARE A BUSINESS PLAN

After considering how you can provide value to clients, the next step is to develop a basic business strategy, plan, and budget to help guide you through the rest of the startup process.

Why Should I have a Business Plan?

Dwight D. Eisenhower once said, “[I]n preparing for battle I have always found that plans are useless, but planning is indispensable.” The same can be said about business planning for startups, including law practices. While your initial business plan will likely not get you all the way through the startup phase, going through the process of creating a business plan is still essential because it forces you to give at least some initial thought to your strategy for launching, maintaining, and growing your firm.

Additionally, writing a business plan forces you to think about the business aspects of a legal practice. If you are considering borrowing money from an investor or a bank, you will need to provide a business plan in order to be extended a line of credit.

Elements of a Business Plan

Initial business plans should contain the following sections:

- **Executive Summary.** Summarizes what the firm does; why does your law practice exist and what are you looking to achieve?

- **Strategy.** What value are you going to offer to clients in your target market, and how are you going to market and monetize that value? Where do you want your firm to be in one, five, and ten years? See discussion above for information about client value.
- **Attorney Overview.** Who will be practicing in this firm? Include lawyer biographies.
- **Financial Plan.** What expenses are associated with operating your practice and what are expected revenue projections. See discussion below for more information on writing a thorough budget.
- **Marketing Strategies.** What is your marketing plan? See Chapter Ten: Marketing for more detailed information.
- **Metrics and Milestones.** How are you going to measure and evaluate your law practice performance? What are your short and long-term goals for your law practice?

Tips

- Continually think about and evaluate how you can provide value to your clients.
- Create a business plan.
- Prepare a budget, paying close attention to expenses and revenue projections. Determine what form of organization your practice will be.
- Consider a business contingency plan for the event of disaster or tragic loss.
- Consider marketing strategies, including building a website and creating business cards. See [Chapter 6: Marketing & Business Development](#).
- Research malpractice insurance coverage and providers. See [Chapter 10: Legal Malpractice Insurance](#).

THE 11 RULES OF FINANCE

1. Deposit all retainers and unearned fees into your trust account.
2. Keep detailed financial and client records.
3. Keep electronic backups of all records.
4. Hire a bookkeeper with law firm experience.
5. Create a business plan.
6. Create a flexible budget.
7. Do your research when calculating your fees.
8. Never transfer any money into your own account until you've earned the fee.
9. Do transfer money earned to your operating account in a timely fashion.
10. Stay organized.
11. Regularly review financial statements.

PREPARE A BUDGET

Calculating your business expenses and revenue target is extremely important in creating a viable business plan. You will need to consider:

- How much it costs to run your business,

- How much money you need to live on, and
- How much money you ultimately want to make beyond that.

Identify and Calculate Your Monthly Business Expenses

Your business expenses include all costs and expenses associated with running your firm, including office expenses, insurance, software and other technology expenses, marketing and other professional expenses, taxes, staffing, and general administration and overhead costs.

Identify and Calculate Your Personal Living Expenses/Minimum Annual Salary

For purposes of this guide, your annual personal living expenses include all expenses that are necessary to maintain health, safety, well-being, and the ability to earn money. Examples include costs associated with housing, utilities, food, clothing, transportation, minimal necessary recreation, and various types of insurance, such as health, disability, and automobile. Once you have calculated your annual personal living expenses, add the income taxes that would be paid on your annual personal living expenses in order to calculate your minimum annual salary.

Determine Your Desired Annual Salary and Revenue Targets

Your desired annual salary will take into account your annual personal living expenses and the additional disposable income you want to spend and save each month (*e.g.*, for more extensive recreational activities, saving for vacations, saving for retirement, and so on), remembering to also take into account income taxes. Obviously, your desired annual salary needs to be realistic for the state of your practice. If you have just started your firm, your desired salary realistically may be just above what it takes to cover your expenses, while at later stages aiming higher should be more realistic.

By understanding your costs and identifying realistic income goals, you can determine how much per month or per week you need to average to meet your goals. So, for example, if your business and living costs together add up to \$40,000 per year and you hope to make at least \$10,000 beyond that, your revenue target should average \$1,000 per week to achieve your goal (assuming you take off for holidays and some vacation time).

Looking at your expenses and goals in this fashion frees you from looking at things through the hourly lens, informs your pricing strategies, and helps you evaluate how you are doing. Instead of focusing on how much you should charge a client for each hour, you can focus on what mix of paid services you need to average each week/month/year to meet your revenue goals.

For a sample budget, as well as other business planning materials, please see the *Designing a Sustainable Practice* section of the [Practicing Law Institute's Solo Practice Bootcamp: Best](#)

[Practices from Legal Incubator Programs to Help You Launch Your Own Practice](#) (Scholarships available).

CHOICE OF ENTITY

Importantly, if you want to practice in a business organization, you must determine what form of organization your firm will be. There are various business entity options and choosing one is beyond the scope of this document. However, the most common types are:

- Sole Proprietorship: Owned and operated by one person with pass-through income taxation and personal liability;
- For-profit Corporation: Operated by a board with entity level income taxation and a franchise tax (minimum \$800/year in California) and limited liability;
- Non-profit Corporation: Operated by a board and no taxation after application and approval by the IRS and limited liability, but the founder has to relinquish control over to the entity to the board and can be fired;
- General Partnership: Operated by a partnership (two or more people) with pass-through income taxation and personal liability;
- Limited Liability Partnership; similar to a general partnership, but all partners must be lawyers;
- Limited Liability Company (LLC): California prohibits LLCs from rendering professional services, so this is not an option in California. For the information of those with practices outside our state, LLC members operate the company and there is pass-through income taxation (and often a franchise tax), and limited liability; and
- Professional Corporation: Similar to a general corporation, but requires all shareholders to be lawyers.

Reminder: This information is NOT intended to serve as legal advice. Attorneys should consult with independent legal counsel to determine what is the best business entity for their practice. (*See Resources to this chapter.*)

It is important to note that the California Rules of Professional Conduct apply to all attorneys licensed to practice in California regardless of the form of business entity through which they are practicing. As such, although attorneys are allowed to practice through limited liability partnerships, no attorney can escape malpractice liability. California does not require you to have malpractice insurance, although there are important reasons for having it, which are covered in [Chapter 10: Legal Malpractice Insurance](#). There you will also find an idea on how you might be able to afford it. Note: Law firms cannot be owned by non-lawyers as the practice of law cannot be influenced by non-legal, business partners. See Calif. Rule of Prof. Conduct 5.4(b).³

³ You should also be familiar with all the other provisions of Rule 5.4, Financial and Similar Arrangements with Nonlawyers, in structuring your practice, which, e.g., prohibits sharing legal fees directly or indirectly with a nonlawyer, 5.4(a) but allows nonlawyer employees to be included in a compensation or retirement plan even when that plan is based in whole or part on a profit-sharing arrangement, given compliance with all other ethics

For more detailed information about the pros and cons of each entity, please see [CEB's *Selecting and Forming Business Entities*](#), or, for a low-cost resource, please see the *Deciding to Start Your Firm and Forming the Practice Entity* section of the previously mentioned [Solo Practice Bootcamp: Best Practices from Legal Incubator Programs to Help You Launch Your Own Practice](#) from the [Practicing Law Institute](#).

BASIC LAW PRACTICE CHECKLIST

At this point, you have considered what value you can offer your clients, incorporated that value into a business strategy and drafted a business plan that includes a budget. Now it is time to consider what things you need to open your doors.

A basic law practice should have:

- A law firm name, phone number, and email address;
- A basic website (so that potential clients can find you) with appropriate disclaimers (create static webpage and link to [ALPS Sample Website Disclaimer Resources](#)) (see the *Appendix to this chapter*);
- Basic letterhead and business cards (see the Appendix to [Chapter 6: Marketing & Business Development](#));
- The necessary paperwork filed with the [California Secretary of State's Office](#) upon selection of the business entity right for you. (see the [Appendix](#) to this chapter);
- Malpractice insurance (see [Chapter 10: Legal Malpractice Insurance](#));
- A space where you can meet with clients (see the [Appendix](#) to this chapter);
- A system for checking conflicts (see [Creating Conflicts of Interest Procedures to Protect You and Your Firm from Malpractice](#), by Sandra J. Roberts; see also [Chapter 2: Client Intake, Counseling and Engagement Agreements](#));
- Business operating and client trust accounts (see the [Appendix](#) to this chapter);
- Basic billing and bookkeeping systems (see the [Appendix](#) to this chapter);
- A basic budget that includes your business expenses and minimum salary (see the [Appendix](#) to this chapter);
- Assigned initial pricing to your legal services (see [Chapter 3: Pricing](#));
- A basic business contingency plan in place;
- Access to legal research (see the [Appendix](#) to this chapter); and
- Basic technology security, file retention, and backup systems in place (see the [Appendix](#) to this chapter).

INCUBATOR PROGRAM RESOURCES

rules, 5.4(a)(3) and covers many other important topics, like buying a law firm from an estate, 5.4(a)(1) and (2) and paying referral fees explicitly allowed only to those sponsored and operated in accordance with the State Bar's minimum standards for such services. Rule 5.4(a)(4).

Though you may be starting your own practice, that doesn't mean you need to do it all on your own. Attorney incubator programs can help you jumpstart your practice, so if you have access to one you should strongly consider whether applying to join one of the programs makes sense in your case.

Incubator Program Defined

Law firm incubator and residency programs enable newly-admitted lawyers to acquire a range of skills necessary to build on what they learned in law school and launch successful practices independently. The first incubator program was established by Fulbright Fellow Fred Rooney at the City University of New York over a decade ago. Similar incubator models and programs have been created by law schools, bar associations, and legal services organizations. Incubator programs generally encourage and support their graduates by providing substantive and skills training workshops, coaching in marketing and business development, mentoring, chances to network, etc. Program participants may also be provided with a space to work in and basic office supplies. In return, participants usually have a pro bono obligation and sometimes a tuition fee.

Benefits of Participating in an Established Incubator

Many incubator programs include benefits such as free access or discounted access to LexisNexis Advance, CEB Onlaw, Clio and MyCase for case management, and other software solutions for new solos. Incubator programs also typically include training, mentorship, networking opportunities, and potentially free or subsidized office space.

Resources for Incubator Participants or New Solos

The Bar Association of San Francisco has written a [Solo and Small Firm Toolkit](#) that is a must read for anyone considering opening his or her own firm, regardless of whether one is in an incubator.

The State Bar of California put together an [incubator guide](#) that explains how various incubator models (e.g. law school based vs. legal services organization based) differ, though the target audience is those starting an incubator program.

The following is a selection from the American Bar Association's [Incubator/Residency Program Profiles](#).

1. [Access to Law Initiative](#) (ALI) at California Western School of Law
2. [Bay Area Legal Incubator](#) (BALI)
3. [Community Law Practice Incubator](#) (CLPI)
4. [Center for Solo Practitioners](#) at Thomas Jefferson School of Law
5. [Lawyers for Family Justice](#)
6. [Los Angeles Incubator Consortium](#) (LAIC)

7. [Practical Lawyering Program](#) at Monterey College of Law

CHAPTER ONE APPENDIX

Resources

Misc.

- [“Opening and Managing a Law Office: Go Solo, Win Clients, and Be Your Own Boss”](#) (2020) is a comprehensive guide published by the Solo and Small Firm Section of the California Lawyers Association, available in hard copy from Amazon or in a Kindle Edition.
- [ABA “Going Solo” Portal](#)
The ABA “Going Solo” Portal is a great resource for attorneys opening their own practice. It contains information about many useful topics, including business registration/form of entity, computer advice and assistance, commercial general liability insurance, among others, as well as various links to helpful articles, blogs, books, and other websites.
- State Bar of California – Incubator Projects

Visit the [Incubator Projects](#) section of the State Bar of California’s website for more information on incubator projects.

- [Tools for New Lawyers Looking to go Solo](#), Practising Law Institute (6 hour CLE program)
- [Forms](#) from the Judicial Council of California
- [California Rules of Court](#)
- [Ethics Information](#)
- [California Rules of Professional Conduct](#)
- [Client Trust Accounting for California Lawyers](#)

Billing & Bookkeeping

- [How to Choose Billing and Accounting Software for Your Law Firm](#), Loretta Ruppert, *Blog Post on LegalEase.com* (Jan. 11, 2012)
- [Five Pitfalls of Legal Accounting](#), Rick Kabra, *Law Practice Today* (Feb. 12, 2016)

See [Chapter 3: Pricing](#) for billing resources.

Developing a Budget

- [“Budget Essentials for Law Firm Business Development,”](#) Deborah C. Scaringi, *Legal Marketing Reader* (Oct. 2010)
- [“Budgeting is the Key to Effective Alternative Billing,”](#) Ed Poll, *LawBiz* (Oct. 2012)
- [“Financing a Law Practice,”](#) Laura A. Calloway and David J. Bilinsky, *GP Solo* (July/Aug. 2011)
- [“Increasing Profit by Decreasing Costs,”](#) K. William Gibson, *Law Practice Magazine* (July/Aug. 2012)

Borrowing Money

- [U.S. Small Business Administration](#)

Building a Basic Website

- [Why a Mobile-Friendly Law Firm Website is Essential](#), Austen Loft, Blog Post on SololnColo.com
- [How to Select a Domain Name for Your Law Firm](#), Andrew Cabasso, Blog Post on Lawyerist.com (Feb. 12, 2015)

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- Rule 1.2.1 Advising or Assisting the Violation of Law
- Rule 1.5 Fees, see discussion of this Rule in [Chapter 3](#) below.
- Rule 1.6 Confidential Information of a Client
- Rule 1.8 -- Conflict of Interest with current clients: specific Rules, covering, among other things:
 - 1.8.1 Business transactions with current client and pecuniary interests adverse to a client;
 - 1.8.2 using client information to the client's disadvantage without informed consent
 - 1.8.3 accepting gifts from clients
 - 1.8(j) engaging in sexual relations with a client
- [Rule 1.15 - Safekeeping Funds and Property of Clients and Other Persons](#)
- Rules 7.1 through 7.6, covering such matters as naming your firm, advertising, soliciting clients and communicating about your practice, including about areas of specialization

NOTE: There are official interpretations of the Rules and there is law outside the Rules that may apply, such as the Business and Professions Code, one section of which is referred to in Rule 1.8.2. But the Rules do not contain exhaustive cross-references to all other law that may apply.

So, when you are unsure what to do, it is never wise to read a rule and comment and interpret on your own. Do your research when you have a question and to ensure you are researching all pertinent sources of law that may apply, avail yourself of the **Ethics Hotline 1-800-238-4427 (1-800-2ETHICS)** whose services are described in the [Preface](#) above.

CHAPTER TWO: CLIENT INTAKE, INITIAL SCREENING, AND CLIENT ENGAGEMENT AGREEMENTS

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INTRODUCTION

Establishing a relationship with a prospective client is a critical part of the practice of law. First impressions stick, both with the prospective client and the prospective lawyer. The right process for interviewing clients and screening them for suitability can save hours of grief later.

DEVELOP A REPEATABLE PROCESS

Creating a repeatable client intake and initial consultation process that includes the use of templates and leverages technology will increase your efficiency and decrease your chances of missing important facts or steps. While specific intake processes will vary depending on the attorney, firm and area of practice, the general flow of an intake procedure will include:

- Initial/pre-screen that involves a conflict check and controls the attorney's risk; this is where attorneys should discourage the client from disclosing confidential information.
- Follow up conversation to obtain greater detail.
- Full meeting to review the case, create an engagement agreement and discuss management of the legal issue and client expectations.

Pre-screen

The easiest and most obvious way to accomplish pre-screening is by asking basic questions. Good templates will help you catch conflicts of interest and other "red flags" about the requested representation so develop and use a client intake template⁴ to complete this task.

Importantly, while intake provides an opportunity to build rapport with a client and screen for potential conflicts, it is the latter that is the most important aspect initially as attorneys have an ethical duty to conduct a thorough conflicts check. To adequately conduct a conflict check you must gather the following information:

From the Client:

1. Names of clients & matters
2. Names of adverse parties
3. Names of related parties (witnesses, experts, insurance carriers, family members, co-counsel, opposing counsel, related entities, owners of business entities)

From your Own Records

1. Names of potential/rejected clients & matters
2. Dates matters were active/closed/rejected
3. Names of timekeepers who worked on particular matters

After obtaining enough initial information, conduct a thorough conflicts check before receiving or discussing any confidential information with the potential client.

Conflicts can arise in many ways, including:

⁴ Conflict checking is not a trivial matter and you should find a system that is efficient and understandable for you. Josh Camson's article on Lawyerist.com contains an [excellent overview](#) of what information to keep in a conflicts database and how to maintain it. **Note:** start keeping your conflict database the moment you meet with your first potential client. Do not wait.

1. Being adverse to a current client in any matter, however unrelated.
2. Being adverse to a former client in a substantially related matter.
3. Representing multiple clients in a single matter.
4. Conflicts resulting from dealings with prospective clients that do not mature into engagements.
5. Personal interest conflicts, including but not limited to: business transactions with clients; gifts from clients; providing financial assistance to clients; sexual relationships with clients.

There are several vendors offering conflict checking software. When in doubt, err on the side of declining cases with conflict.⁵

Follow-Up Initial Consultation

“Meet” with the potential client, either in person or virtually (through an online intake system), to discuss and assess his or her perceived legal issues, goals, expectations, budget, etc. and what he or she values most. Again, developing an initial consultation template for each area in which you practice will streamline the process. See the Appendix to this chapter for links to sample templates.

The initial consultation is important to the client because they are trying to decide if you are competent and most importantly if you are the right attorney for them. Here are some quick practice pointers for an effective initial consultation:

Be punctual and available. The client has waited to meet you. This is their chance to assess you as a service provider and your chance to develop a new business. Simple etiquette can go a long way, even if the relationship does not materialize. Do not stack client meetings back to back or on a day when you are pressed for a court or filing deadline.

Engage in active listening. Give the client an opportunity to describe their legal issue before you start asking questions. You don’t want to turn this meeting into a client interrogation. Make sure there are no distractions to draw your attention away from the client (turn off cell phones and email alerts).

Offer emotional sensitivity. Provide a safe space for the client to speak frankly and try to empathize with their trouble. In doing this, you will gain the client’s trust which is important to

⁵ See generally, [CA Rules of Professional Conduct](#), rules 1.7, 1.8.1 – 1.8.11, and 1.9 to determine the scope of conflicts; also see California Bar Journal [article on the ethical implications of joint representation](#) for a detailed discussion of when it is appropriate to represent multiple clients and the protections to take when doing so. If you are simultaneously working for the government or formerly worked for the government, consult Rule 1.11. If you formerly clerked for a judge, were a judge, or worked as an arbiter or mediator or other third party neutral in disputes, consult Rule 1.12. If your client is an entity, instead of a natural person, consult rule 1.13. And in evaluating all conflicts be aware of Rule 1.10 on the imputation of conflicts from one lawyer to another.

a healthy attorney-client relationship. Do not confuse this with pity and remember that humanizing your client's legal issue helps with trust building.

Avoid problem solving and legal advice. Remember that the purpose of this meeting is to determine if it is a good fit. It will not be uncommon for a client to ask a complicated legal question and expect a simple answer. Avoid the urge to offer legal advice and simply explain that there is almost never a simple answer. Also, if you are unsure of the answer, don't be afraid to be honest and explain "I don't know the answer, but I can research it and get back to you."

Framing the legal issue. This is also a good time to remember that your client will want you to frame their legal issue so they can determine what they are looking at. When working with a client who is a respondent, it is less of a problem. However, at the first meeting you must determine whether you are competent to take on the case and therefore framing the issue in the case is important so that you and your client know what you are looking at.

Don't be afraid to reject a bad fit. This is hard, but undoubtedly the most important. During the initial consultation, it is your opportunity to decide if it is a good fit. Don't be afraid to trust your gut and turn down representation, whether it's because of the issue involved or your sense that the client and you will not work well together. This will save you endless time and frustration.

During this meeting, it is important to discuss different fee arrangements. It is likely that as a part of this conversation you will be educating the potential client about limited scope representation and alternative fee structures associated with this practice. Be sure to review [Chapter 3: Pricing](#), as well as [Chapter 5: Limited Scope Representation/Unbundling](#).

After the meeting, determine whether taking the case is a good fit for your practice by comparing what you learn about the client and case with your case acceptance guidelines. See the next subsection for information on developing case acceptance guidelines.

Engaging in an Attorney-Client Relationship and Declining One

If both parties have agreed that there is a good fit, draft a client engagement agreement and make sure it is signed by both the attorney and client. Not only is this an ethical requirement, it is a good business practice; the client can see up front what he or she will be getting, and paying for the service. Again, the client gets a copy and a copy goes in the file. See the following subsection for information on drafting client-engagement agreements.

If there is not a good fit, be sure to notify the potential client in writing through a non-engagement letter so there is no doubt that there is no further attorney-client relationship. Don't forget to log this client into the conflicts database! You may also consider providing the client with referral options. It is also a good idea to offer the client alternative options if they

don't have the resources to hire you. See the Appendix to this chapter for sample non-engagement templates.

Consider Online Intake

To further streamline your process, you might consider conducting an online intake. Software now allows lawyers to move the client intake and initial consultation process online. Conducting intake online can benefit both potential clients and lawyers. Online intake provides potential clients with greater flexibility and convenience because they can complete the process at a time and location that is convenient for them. Lawyers can benefit by reducing data entry errors, having the ability to easily sort and analyze potential client data, and improving organization and workflow through the seamless connection between their client intake software and case management system ([4 Reasons Why Online Client Intake is a Game Changer](#), Clio Team Member, GoClio.com (March 19, 2015)). If you do decide to move your client intake process online, you should seriously consider including a [click-through website disclaimer](#) to decrease the chances of potential clients prematurely thinking the attorney-client relationship has begun.

Example: I am a lawyer, but I am not your lawyer (unless you have signed a contract with my office). This communication is not intended as legal advice, and no attorney client relationship is created by it.

Unless you have a practice where you deliver all or some of your legal services online, conducting *all* of the initial consultation online, in a non-interactive fashion, might not be the best option, and might be best limited to collecting basic information about the case. Meeting a potential client in person or conversing with them via a video software application such as Skype or Zoom for at least part of the initial consultation will allow you to better assess the potential client's personality and have a more interactive and fruitful discussion with him or her. This is your opportunity to connect with the client and help him or her see why you are the right lawyer to see them through the legal process. An online and *non-interactive* intake does not offer this chance to bond and gain the client's trust and business.

Create Case Acceptance Guidelines

The right process for interviewing clients and screening them for suitability can save hours of grief later, so it is important to create case acceptance guidelines and stick to them. When considering whether to take a case, ask yourself the following questions:

- Whether you are comfortable with this kind of legal work and, if not, whether you have the time and desire to become competent in the relevant practice area.
- Whether you feel comfortable with this client. If there are personality clashes already, beware — differences at early stages will be magnified if the representation does not go exactly as the client expects.

- Whether the client’s goals and expectations are reasonable.
- Whether the client can afford the amount of work necessary to accomplish the task.
- Whether you have the necessary time to commit to the matter.
- Whether other professionals (lawyers, expert witnesses, etc.) will be needed.

Consider incorporating these guidelines into your client intake and initial consultation templates.

TEN RULES OF CLIENT SCREENING

1. Establish reasonable expectations.
2. Speak frankly about the case.
3. Stick to your guidelines.
4. Decide how the attorney-client relationship should be structured.
5. Assess whether the case is fit for unbundling, if appropriate.
6. Discuss money and time.
7. Be wary of the “attorney shopping” client.
8. Maintain meticulous records.
9. Listen carefully to the client.
10. Trust your gut.

IDENTIFYING GOOD CANDIDATES FOR LIMITED SCOPE REPRESENTATION

Note: For a Full Discussion of Limited Representation, Including How And When It Is Appropriate and The Rules Governing This Form of Representation see [Chapter 5: Unbundling – Limited Scope Representation](#).

While limited scope representation is a good and helpful option for many clients, it is not appropriate for everyone and can actually do more harm than good if offered to an inappropriate candidate. When evaluating a case and potential client during the initial consultation to determine whether both are a good fit for limited scope representation, ask yourself these questions:

- Does this case fall within your area(s) of expertise?
- Do you have enough time during which to provide competent assistance (or has the client come to you with a last minute “emergency”)?
- Are you the first lawyer the client has consulted regarding the potential representation?
- Does the potential client have realistic expectations about his or her ability to handle all or parts of the case on his or her own and about what can be achieved?
- Does the potential client have the mental, physical, and emotional capacity to handle parts of the case himself or herself?
- Is the potential client capable of representing himself or herself in court or the portion of the case they propose to take on if they want to hire you for representation in court?

- Can the case be broken down into concrete steps that can be easily divided between you and the potential client?
- Have all parties been identified?
- Will the other party be difficult to find or serve?
- Are you able to verify the client's material facts and, if not, does the client understand the consequences of proceeding without your verification?
- Is the case simple enough substantively, strategically, and tactically to allow for a workable allocation of responsibilities between you and the potential client?
- Is the client coming to you before the case has started (*i.e.*, are you working with a clean slate)?
- Is your client able to focus on legal outcomes after you have explained them to him or her (or does he or she seem more focused on revenge, vindication or some other personal motive)?
- Would the limited scope of your representation be reasonable?
- Does the potential client seem open to discussing and agreeing to fees?
- Is this a field of practice amenable to limited scope representation?

If the answer to any of the above questions is no, you should consider declining to limit the scope of the representation.

During the initial consultation, it is important that you discuss the following items with a potential client who might be a candidate for limited scope representation:

- **The Differences Between Limited Scope Representation and Full Representation.** Explain the differences between the two models to the potential client and make sure the client fully understands his or her role and responsibilities associated with limited scope representation if he or she chooses that option.
- **Proper Filing and Service of Pleadings and Deadlines.** During the initial consultation, you should provide specific instructions to the client regarding proper filing and service of pleadings and advise the client of the importance of deadlines and how he or she will be responsible for keeping track of them.
- **Problems the Potential Client Is Likely to Face.** Try to foresee the problems the potential client is likely to face during the case. Remind the client verbally and in writing of those problems and of his or her independent responsibility for managing them.
- **Issues Outside of the Scope of the Limited Scope Representation.** You *must* advise clients on all related issues outside the scope of the representation and of their right to seek advice on issues outside the scope of the representation, even if they do not ask. Be sure to include this item in your initial consultation checklist(s). ([Nichols v. Keller, supra, 15 Cal. App. 4th 1672, 1683-1684.](#))

Before entering into a limited scope representation, make sure you comply with [Rule of Professional Conduct 1.2\(b\)](#) which states a limited scope representation may occur only if the limitation is reasonable under the circumstances, the representation is not otherwise prohibited by law, and the client gives informed consent. For a fuller list of the ethical rules to

consult in undertaking limited scope representation and how and when limited scope representation may be appropriate see [Chapter 5](#): Unbundling – Limited Scope Representation.

SAMPLE LETTERS

Declination Letter

[Date]

John Q. Client
100 Main Street
Sacramento, CA 94203

RE: *Client v. Jones*

Dear Mr. Client:

This will confirm our telephone conversation on [date]. As I discussed with you on the telephone, I have reviewed your case, and concluded, regretfully, that I cannot represent you in your lawsuit against Mr. Jones.

Be mindful that, as I emphasized at our meeting on [date], and our telephone call of this morning, the statute of limitations on your claim against Mr. Jones may run as soon as _____. [Alternative option: **Be mindful that, as I emphasized at our meeting on [date], and our telephone call of this morning, there are statutes of limitations that could bar your claim against Mr. Jones if your case is not filed in time.**] Thus, I encourage you to seek other counsel if you intend to pursue this matter further so that your rights may be protected.

You asked me for several referrals to other counsel. You may want to contact Bill Brown, Bob White, or Jane Black to see if they can represent you.

I very much appreciate your thinking of this firm, and I do regret that I cannot take on your case. But know that I wish you the best of luck in pursuing your lawsuit against Mr. Jones and again encourage you to seek counsel as soon as possible, as the statute of limitations is running.

Very truly yours,
Lawyer
FIRM, P.C.

Enclosure

NOTE: This is a sample form only. Use of this letter will help establish clear expectations regarding the attorney-client relationship and assist in avoiding attorney-client problems. It will not, however, provide absolute protection against a legal malpractice action.

SOURCE: Michael T. Mihm. Used with permission and with certain minor changes in phrasing

Declination Letter - Conflict of Interest

[Date]

John Q. Client
100 Main Street
Sacramento, CA 94203
RE: *Jones v. Client*

Dear Mr. Client:

Thank you for your telephone call on [date], in which you asked us to represent you on the matter of Jones v. Client. As we discussed this morning, this firm cannot represent you. I have checked my records and it appears that my firm has a conflict of interest. As we discussed this morning, because this firm has a conflict, the rules that govern lawyers prevent us from representing you in the lawsuit filed by Mr. Jones.

While I very much appreciate your thinking of this firm, we must decline the case. I encourage you to contact another attorney as soon as possible.

Very truly yours,
Lawyer
FIRM, P.C.

Enclosure

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SOURCE: Michael T. Mihm. Used with permission and with minor changes in phrasing.

Termination Letter - Representation Complete

[Date]

John Q. Client
100 Main Street
Sacramento, CA 94203

RE: *Smith v. Client*

Dear Ms. Client:

We are pleased to have had the opportunity to represent you and that the claims brought against you by Mr. Smith have been dismissed. Please find enclosed for your files the [original/fax original/scanned original] of the General Release that has been signed by the Plaintiff and an Order signed by Judge Brown dismissing the case against you with prejudice. Please keep both the General Release and the Order in a safe place, as they are important legal documents and establish that the claims against you have been dismissed.

This now completes our representation of you. We will be sending you a final bill for our legal services and we will be closing the file. If for any reason you would like access to the file, please let me know and you will be provided with access to it. You should do so quickly, as we will soon send the file to storage.

As stated in our fee agreement, we are not obligated to maintain your file after [_____] years of conclusion of your matter, assuming we have not received information about pending or threatened legal proceedings. We will not provide you any additional notice about access to your file beyond this letter.

Accordingly, if you wish to have your file, it is your obligation to contact us within the timeframe listed above. [Our policy is to destroy closed files after _____ years. We will notify you before the file is destroyed.]

Again, we are pleased to have had the opportunity to represent you on this matter. If there are any other matters for which you need legal representation, please call me and we will be happy to meet with you to see if we can be of assistance.

If you have any questions, comments or concerns about the case, our bill, or our representation of you, please contact me and I will be happy to sit down and discuss the matter with you.

Very truly yours,
Lawyer
FIRM, P.C.

Enclosure

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Termination Letter - Continued Representation On Other Matters - Client's Responsibilities

REGISTERED MAIL
RETURN RECEIPT REQUESTED

John Q. Client
100 Main Street
Sacramento, CA 94203

RE: Smith Foreclosure

Dear Ms. Client:

We are pleased to have had the opportunity to represent you in the foreclosure matter and that a settlement has been reached.

Please find enclosed for your files the original of the Settlement Agreement which has been signed by defendant Smith and the Deed in Lieu of Foreclosure which has also been signed by Mr. Smith. Please keep the Settlement Agreement in a safe place, as it is an important legal document and establishes that you have certain rights against Mr. Smith.

This will confirm that you wish to be responsible for filing the Deed in Lieu of Foreclosure with the Clerk and Recorder for the City and County of Denver. Accordingly, we will not take any

steps to record the Deed. But be mindful that as I emphasized in our meeting [and/or call], filing the Deed as soon as possible is critical, so I encourage you to do that as soon as possible. This completes our representation of you on this matter. We will be sending you a final bill for our legal services on this matter, and we will be closing the file. If there is any reason you would like access to the file, please let me know and you will be provided access to it. You should do so quickly, as we will soon send the file to storage.

As stated in our fee agreement, we are not obligated to maintain your file after [_____] years of conclusion of your matter, assuming we have not received information about pending or threatened legal proceedings. We will not provide you any additional notice beyond this letter. Accordingly, if you wish to have your file, it is your obligation to contact us within the timeframe listed above. [Our policy is to destroy closed files after _____ years. We will notify you before the file is destroyed.]

We are also representing you on the matter of Black v. Client. We will continue to represent you on that matter and continue to bill you separately for that representation. Please feel free to contact me regarding the status of that representation and I will continue to keep you informed on how that matter is developing.

We are pleased to have had the opportunity to represent you on the foreclosure. If there are any other matters for which you need legal representation, please call me and we will be happy to meet with you to see if we can be of assistance.

If you have any questions, comments, or concerns about the foreclosure, our bill, or our representation of you, please contact me and I will be happy to sit down and discuss the matter with you.

Very truly yours,
Lawyer
FIRM, P.C.

Enclosure

NOTE: This is a sample form only. Use of this letter will help establish clear expectations regarding the attorney-client relationship and assist in avoiding attorney-client problems. It will not, however, provide absolute protection against a legal malpractice action.

SOURCE: Michael T. Mihm. Used with permission and with minor changes in phrasing.

Termination Letter - Firing Client

[Date]

John Q. Client
100 Main Street
Sacramento, CA 94203

RE: Smith v. Client

Dear Mr. Client:

As we discussed in our meeting on [date], it appears that our relationship has reached a point where we can no longer work together effectively. Unfortunately, these situations occur on occasion and it becomes in the best interest of the client and the lawyer for the client to find new representation.

[This will confirm that you have decided to retain Mary Ann Counsel as your new lawyer. My staff is in the process of photocopying your file to be immediately transferred to Ms. Counsel, and I would be happy to meet with Ms. Counsel, at no cost to you, to bring her up to speed on the case so she can effectively represent you.]

[I encourage you to contact new counsel to represent you in this matter as soon as possible. You may want to contact Bill Brown, Bob White, or Jane Black to see if they can represent you.]

Pursuant to our fee agreement, we will be sending you our final bill for legal services. It is our understanding from our meeting on [date] that you will be taking care of this bill within two weeks.

We are pleased to have had the opportunity to represent you on this matter. I regret that we could not continue to represent you. We have filed a [Substitution of Counsel] [Motion to Withdraw] with the court. A copy is enclosed. I will send you a copy of the signed Order as soon as we receive it.

If you have any questions, comments, or concerns about the case, our bill or our representation of you, please contact me and I will be happy to sit down and discuss the matter with you.

Very truly yours,

Lawyer
FIRM, P.C.

NOTE: This is a sample form only. Use of this letter will help establish clear expectations regarding the attorney-client relationship and assist in avoiding attorney-client problems. It will not, however, provide absolute protection against a legal malpractice action.

NOTE: This letter is not a substitute for and should only supplement the notice requirements of [C.C.P. §§ 284-285](#), [C.R.C. 3.1362](#), and [R.P.C. 3.16](#).

SOURCE: Michael T. Mihm. Used with permission and with minor changes in phrasing.⁶

CLIENT ENGAGEMENT AGREEMENT

Once you and your potential client have agreed to enter into an attorney-client relationship, it is important that you outline the agreement in a Client Engagement Agreement. Make sure you note any limitations of the scope of the representation (if any) and specifics of the corresponding fee arrangement. [Business and Professions Code Section 6148](#) governs non-contingent fee agreements. It requires attorneys to have a written agreement whenever it is reasonably foreseeable that the client's total expense, including attorneys' fees, will exceed \$1,000. It is highly recommended that lawyers memorialize Client Engagement Agreements in writing in all cases.

All Client Engagement Agreements should:

- **Define the Scope of the Engagement and the Fee Arrangement**

Your Client Engagement Agreement should first and foremost include the scope of the agreement you reached with your client (i.e. what services you have agreed to provide and how you are going to charge the client for those services.)

If you are offering limited scope representation, it is best if you can list all of the tasks that need to be completed during the scope of the representation and indicate who is responsible for handling each task. Both you and the client should be able to pick up the Client Engagement Agreement and determine what falls inside and what falls outside of the scope of the agreement. If at any time after you and the client sign the Client Engagement Agreement you expand or contract the scope of the representation, you should draft and sign a new Client Engagement Agreement outlining the new scope of the representation. See materials from Practising Law Institute's [Unbundling 101: Expanding Your Practice Using Limited Scope Representation](#) webinar for additional sample forms, such as a Limited Scope Representation Flow Chart for Lawyers (and a separate one for clients); an Initial Consultation Checklist; an

⁶ We want to express our thanks to Michael T. Mihm for so generously providing the sample letters we have included in this chapter..

Attachment to Limited Scope Representation Agreement – Tasks to be Apportioned; an Attachment to Limited Scope Representation Agreement – Issues to be Apportioned; a Follow-up Checklist; and a Tickler Checklist.

Your Client Engagement Agreement should also clearly outline the fee arrangement, including the following details:

- How much you are going to charge the client;
- When the client is responsible for making payments;
- What forms of payment you accept; and
- What happens if the client does not make the payments on time, including your right to terminate the relationship and withdraw.

If certain costs or expenses, such as filing fees, are not included in the fee, it is important to make that clear as well.

- **Include Assumptions Upon Which the Agreement Is Based**

It is equally important to outline in the Client Engagement Agreement what is not included in the scope of the representation and any assumptions upon which the agreement is based. For example, in a domestic relations case, you may offer the client a fixed fee for an uncontested divorce based upon the assumption that the two parties have already reached an agreement on all issues pertaining to their children. Another example could be that you offer to serve as an on-call general counsel for a small company on a recurring fixed fee basis based on the assumption that the company will remain a certain size and therefore only have certain needs. Spelling out this type of assumption in your Client Engagement Agreement will protect you from getting stuck in a lopsided agreement where you are working many more hours than you bargained for because an assumption turned out to be incorrect.

- **Include A Right to Renegotiate Clause**

While the goal is to factor as many potential outcomes into your pricing structure as possible, it is often nearly impossible to do so. It is therefore advisable to include a right to renegotiate clause in all of your Client Engagement Agreements. These clauses should be enforced when an unforeseeable outcome has arisen and enforcing the clause is reasonable under the circumstances. Because the renegotiation could possibly constitute a business transaction, it is best to be on the safe side and afford the client the safeguards, such as drafting and signing a new written Client Engagement Agreement outlining the new scope of the engagement and fee structure. See materials developed by M. Sue Talia in [Chapter 5: Limited Scope Representation/Unbundling](#) for a more in-depth discussion.

- **Set Boundaries**

When offering alternative fee arrangements, it is essential to strike a balance that:

1. Allows clients to feel that they can contact you without being nicked and dimed when they have new information or a new problem that is relevant to their case; but also
2. Allows you to stay efficient and profitable by not causing you to spend more time on the case than necessary.

One way to proactively handle these situations is to include communication guidelines or requirements in your Client Engagement Agreement. For example, you could require your client to send all communication to you by email, or you could require clients to limit calls to one time per day. You should then have a candid conversation with your client about your communication boundaries, why you have instituted them, and how they will positively affect the client.

- **Include a Clause on Termination by the Client**

The Client Engagement Agreement should specify that the client may terminate the agreement and representation at any time and outline what happens when the client makes that choice. For example, procedures for the return of the client's file and any unearned fees should be spelled out. Lawyers are prohibited from including any improper fees, charges, or waiting periods in the Client Engagement Agreement that would in any way limit the client's absolute right to terminate the relationship. See California Rule of Professional Conduct 1.16e) (governing a lawyer's duties upon termination by a client or withdrawal for any reason).

- **Include a Clause on Termination by the Lawyer**

The Client Engagement Agreement should also outline the situations in which a lawyer may withdraw from a case and the associated process, including the client's rights and the court's role in the process. See generally California Rule of Professional Conduct 1.16 Declining or Terminating Representation.

- **Outline a Fee Dispute Process**

The Client Engagement Agreement should outline what happens when a fee dispute arises, including the remedies available to the client and the lawyer.

With respect to fee disputes, they must be submitted to the [State Bar's Mandatory Fee Arbitration Program](#) if the client so requests. This program is an informal, confidential and lower cost forum for resolving fee disputes between lawyers and their clients.

Most fee arbitration is conducted through local bar association programs. To request fee arbitration, contact the local county bar program where the majority of legal services were

provided, typically the county where the lawyer's office is located. The State Bar provides fee arbitration only when there is no local bar program. Additionally, mediation of a fee dispute is voluntary and may be available through local bar associations.

If the Client Engagement Agreement is for limited scope representation, it should also make clear that the client is responsible for disclosing material facts to you and complying with rules, statutes, and deadlines, and should outline who is responsible for communicating with other lawyers, mediators (if applicable), and court staff (if applicable) on the client's behalf.

Please note that the above list is by no means exhaustive, and you should carefully consider each provision in your Client Engagement Agreement with each client. To work at maximum efficiency, consider automating your client engagement process and thinking creatively about rules you could establish that could help you do this. One example might be to require your client to have a functional email address for you to use as the primary form of communication and service. This would not only increase your efficiency, it would also decrease your expenses.

Intake Process Resources

- [Client intake manual](#) from Lawyer's Mutual of North Carolina. Includes sample intakes for personal injury, family law, as well as a prospective client questionnaire, and an office intake form.
- [Five Questions to Ask a New Client](#), Merrilyn Astin Tarlton, Blog Post on AttorneyAtWork.com (Oct. 17, 2014)
- [How to Screen Clients](#), Spojmie Nasiri, Blog Post on Nasirilaw.com (June 2, 2012)
- [Client Screening Form Can Help Avoid Tactical Conflicts](#), Dan Pinnington, *Slaw* (March 28, 2011)
- [Case Acceptance and Client Screening](#), Tennessee Bar Association Guide to Setting up a New Practice
- [4 Reasons Why Online Client Intake is a Game Changer](#), Clio Team Member, Blog Post on GoClio.com (March 19, 2015)
- [Should You Use a Client Intake Form?](#), Mark Bassingthwaighe, Blog Post on SoloPracticeUniversity.com (Aug. 27, 2015)
- [Best Practices for Effective Law Firm Client Intake](#), Christopher Anderson, LexisNexis Business of Law Blog, originally published in *Legal Management Magazine* in June 2013.

CULTURAL COMPETENCY, PERSONAL BIAS, AND THE ROLE AS AN AMBASSADOR TO THE LEGAL PROFESSION⁷

This section is written by Protima Pandey, Advocate for gender justice, Director of Office of Women's Policy at the County of Santa Clara

⁷ Limited English Proficiency (LEP) clients trigger additional duties for the attorney. See additional resources in the chapter appendix for further information.

In doing client intake and more generally in structuring your practice, you must also consider cultural competency, personal bias, the role as an ambassador to the legal profession, balances of power and language barriers.

Cultural Competency

You have opened your law practice and you know most or all of what there is to know about your area of law practice. There is still one more aspect to consider – that which relates to your clientele. Do you have the ability to help all types of clients that walk through your door for legal assistance? What about fact patterns in your practice area that you are culturally unfamiliar with? What about clients who are unfamiliar with the US legal system?

These and other similar questions are important to consider for meaningful access to justice, for ensuring that your representation is effective, and for ultimately, offering your services competently.⁸ The California Rules of Professional Conduct require competency in representing clients,⁹ which is generally understood as subject matter competency, but it's also imperative to appreciate how your client understands the role of the law, the lawyer and the legal system if you are to effectively advocate for your client.¹⁰ When your client's story has a new or unheard of cultural reference—for example, a client in a medical billing dispute mentions presence of additional complications in her case due to female circumcision—you have to examine how that fact fits into your representation, incorporate it into your case theory, if necessary, and educate yourself with the help of your client in order to fully advocate for your client. The

⁸ See generally, [Is There an Ethical Duty, By Sylvia Stevens](#).

⁹ See California Rules of Professional Conduct (“CRPC”) Rule 1.1.

¹⁰ The medical profession has made strides in this regard by incorporating cultural competency as part of the trainings for their professionals. For example, California Business and Professions Code section [2190.1](#) specifically incorporates CLE-like requirements for physicians and surgeons to include training in cultural competency. Specifically, section 2190.1(c) provides that “in order to satisfy the requirements [that all continuing medical education courses include cultural and linguistic competency in the practice of medicine], continuing medical education courses shall address at least one or a combination of the following:

(1) *Cultural competency*. For the purposes of this section, “cultural competency” means a set of integrated attitudes, knowledge, and skills that enables a health care professional or organization to care effectively for patients from diverse cultures, groups, and communities. At a minimum, cultural competency is recommended to include the following:

- (A) Applying linguistic skills to communicate effectively with the target population.
- (B) Utilizing cultural information to establish therapeutic relationships.
- (C) Eliciting and incorporating pertinent cultural data in diagnosis and treatment.
- (D) Understanding and applying cultural and ethnic data to the process of clinical care.

(2) *Linguistic competency*. For the purposes of this section, “linguistic competency” means the ability of a physician and surgeon to provide patients who do not speak English or who have limited ability to speak English, direct communication in the patient's primary language.

(3) A review and explanation of relevant federal and state laws and regulations regarding linguistic access, including, but not limited to, the federal Civil Rights Act ([42 U.S.C. Sec. 1981](#), et seq.), Executive Order 13166 of August 11, 2000, of the President of the United States, and the Dymally-Alatorre Bilingual Services Act (Chapter 17.5 (commencing with Section 7290) of Division 7 of Title 1 of the Government Code).

practice of examining your client's unique background or culture as part of your professional representation will make your work meaningful to the client because you are connecting with the client and will lead to better access to justice because your case theory will incorporate not just the obvious and familiar facts, but also ones that are specific to your client.

What if your client is from a culture where there is distrust of the legal system, its actors, and its processes? For example, when explaining delays in a certain administrative proceeding for appealing social security, how would you react if your client asks you about "other ways" to speed things up, including asking if there was someone he or she could "directly talk to"? Would you assume your client is talking about bribes and shut her down, or would you ask your client to explain what he or she meant? How would you approach a client who needs to wear his religious attire at all times? The attire includes a small spear, and the client is due to testify in his breach of contract case in court? Consider whether you should counsel the client about permitted items in court and encourage him to keep his knife-like object at home, or ask the client about exceptions, if any, to wearing that item of clothing. Understanding the importance will help you choose between having your client observe existing court rules regarding items one can take into court, or filing for a religious accommodation request with the court.

Definitions of cultural competency are abundant and they share one thing in common: they are not finite in their approach to what culture is. In the context of being a lawyer, your role is to be mindful in your representation when cases and/or clients require you to step outside of your comfort zone and analyze something that is new and unknown to you. Whether it be reading your client's lack of eye contact as a possible issue with credibility or assuming that your client can drive and knows how to get to the court, and everything in between – you will be well served if you integrate culturally competent practices in your office. By making interpreters available, and asking the right questions, including asking for help with understanding a cultural practice, as well as preparing to schedule additional meetings where the situation demands, you will be better equipped to effectively gain your clients' trust and provide them more helpful services.

Personal Bias

While understanding where your client is coming from is important in effective representation, knowing yourself, both consciously as well as unconsciously, is part of becoming a better professional. When thinking of bias, many lawyers are convinced that their training in the law means that they will not be prejudiced or biased towards their clients, the stories those clients tell or the experiences they present. But while outwardly and consciously we intend to treat all our clients equally, it is critical to pause and examine the unconscious biases in our practice.

When working with a client who did not leave her insurance information on the vehicle she hit while backing out of the parking lot, do you immediately think "women drivers"? When working for a restaurant worker with an unpaid wage claim who tells you they did not file a Department of Labor wage claim, do you assume "undocumented worker"? When working with a sexual

harassment claim on behalf of a client, do you wonder what your client "did" to cause the harassment?

Whether you voice it or not, whether you write it down as part of your assessment interview questions or not, these thoughts and similar prejudices are prevalent in our world. From these assumptions and stereotypes arise the seed of doubt in your client's story, which may weaken the case's foundation in your mind, with the inevitable result that you decline the case. It isn't expected that you take every case, but it behooves us, as educated and aware professionals, to keep our prejudices in check and take our clients as they come. This is not to say we should avoid turning over every stone while analyzing and preparing the case, but rather that we should take each case scenario for what it is – that client's unique story, reason, and request for assistance.

It also behooves all lawyers to think about the environment their law office presents. For example, are all personnel in your law firm – and/or clients likely to be in your waiting room -- homogenous in their race or ethnicity? Do they happen to all come from affluent and/or mostly white, or mostly well-employed populations? Are your law clerks all from elite institutions and highly academically accomplished with at least a judicial clerkship early in their careers? What about the paraprofessional staff in your office?

Being aware of where your own personal biases reside as well as knowledge of your unconscious biases is key to having an inclusive and aware law practice. Where clients are seen for their unique legal issues as well as valued for who they are, the practitioner earns not just fees but also community goodwill. Representing minorities, out-groups, and unserved clients will help in ensuring access to justice for all as well as in educating the bench and the bar. Challenging yourself to help all clients, not just the ones who are from your in-group will serve to enrich the practice of law in your jurisdiction. When you check your bias, you realize that certain litigants or types of cases don't ever make it to the courts because of prevailing stereotypes and myths, not because those clients or disputes don't exist. If you choose to practice as a true social engineer¹¹ --able to listen to all stories without preconceived biases, welcoming clients from diverse backgrounds and remaining sensitive to the varied experiences and problems under-served populations present -- you help make the practice of law open to all, rather than just a few.

Lawyer as an Ambassador

When you take up the practice of law, you become a representative of the profession. You may consider yourself a mere cog in a machine, as the California-licensed-attorney machine is a quarter-million strong. But every client that is yours is going back into the community with an impression of lawyers based on her interactions with you. As such, you are an ambassador for the profession, one of many to be sure, but one that nonetheless may color significantly the impression in a community of what our profession is like. At no point in your practice can you

¹¹ For a general discussion of lawyers as social engineers, see [Lawyers Should be Social Engineers for Justice.](#)

say that you are your own individual solo practitioner operating on an independent island – you are always "an ambassador for the State Bar of California."

Lawyer jokes are popular for many reasons, many of them not pleasant. But lawyers might also be thought of as warriors¹², champions, and fearless leaders. Although putting your best foot forward will generate more business for you, it will also contribute to upholding the reputation of lawyers across this state and beyond. When the State Bar has to put out fraud alerts to the public to watch out for false loan modification schemes by attorneys or immigration practice fraud by attorneys, not only are these attorneys damaging the goodwill of the profession, even more important innocent and vulnerable families are hurt and many others may never seek the legal help they need.

The attorney-client relationship is fiduciary in nature and we owe a duty of highest care to our clients. There is a duty under the law, including the Rules of Professional Conduct, but there is also a moral duty – one that encompasses the role you play as a representative of the profession. Whether you are identified as a member of the solo practitioner community or the community of specialty practitioners in a particular substantive practice, you are always looked upon as part of the larger profession, both by your client and by the bench – and your role is therefore that of an ambassador and that is a role you play each and every day

Balances of Power

Determine whether there is an imbalance of power between the parties. If there is, can you work with the potential client on this case, particularly if you are considering limited scope representation? Is he or she emotionally equipped to handle parts of the case himself or herself given a significant imbalance of power? Domestic violence cases typically involve a great disparity in power between the abuser and the survivor. While many survivors would not be equipped to handle any part of the case on their own, some survivors are able to do so and can greatly benefit from a lawyer's coaching prior to going to court. For more on these issues see the [Reasonableness of Limitation](#) section in [Chapter 5](#).

Language Barriers

Determine whether there is a language barrier. If English is not the potential client's first language and you do not speak his or her first language, it is important that you consider hiring an interpreter for all parts of the case to the extent the client can afford it. For those potential clients who cannot afford it, you might ask the potential client has a family member or friend who speaks fluent English and the client's native tongue -- whom the client would be comfortable discussing all aspects of his or her case in front -- of who might act as an interpreter. So long as you are careful to impress upon that person his or her duty not to tell any other person the content of all communications between you and the client and you and

¹² Many thanks to Vivian Huelgo, Chief Counsel, ABA Commission on Domestic and Sexual Violence for coining the hashtag #lawyerwarrior.

the client assess that this person can be trusted to abide by this obligation – which it would be wise to put in writing for the interpreter to sign – and the person honors that obligation the confidentiality of your communications with the client will be preserved and the attorney-client privilege remains intact.¹³ If there is no such person whom both the client and you trust or in lieu of using such a person, you should try and maintain a list of lawyers in your area who speak languages in addition to English to whom you could refer the client. You should also be aware of any pro bono interpretive services that may be available in your area.

Client Empathy

Client empathy is often overlooked and cannot be overemphasized. While clients are not coming to you for therapy and you certainly are not expected to be a therapist, learning how to empathize with your clients will serve both you and them well. Often, by the time clients are seeking your help, they are in the midst of one of the most stressful experiences of their life. In order to understand clients' needs and provide them with the best representation and counsel, you need to gain their trust and confidence and help them manage their emotions. This can be accomplished by demonstrating to them that you understand what they are going through and why they feel the way they do.

A client who trusts you will generally be satisfied with your representation on his or her case, come back with other problems in the future, and refer you to friends and family. This investment in empathizing is one of the best ways to expand the growth of your practice, few things are as likely to pay off in new and return business as showing clients' you care and understand. Yet this skill is generally overlooked by the legal industry as a whole. There are numerous online sites and printed periodicals, such as *Psychology Today*, that may well be worth their small subscription fees.

Empathy should not be confused with pity. No one wants to be pitied. Resist the urge to patronize your client, to lecture your client, or to be judgmental of your client. While you may not overtly do anything that is unprofessional, your tone, gestures, and demeanor are all important to be mindful of. In course of time, this will become second nature to you. (See: Brené Brown's [Empathy vs. Sympathy video](#)).

CHAPTER TWO APPENDIX

Personal Bias and Client Empathy

¹³ On the privilege, see Cal. Evid. Code, § 952 (stating that the privilege is not destroyed by the presence of a third party “reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer is consulted”), and, e.g., *Insurance Co. of North America v. Superior Court* 108 Cal.App.3d 758, 771 (Cal. Ct. App. 1980) ([W]e construe section 952 to mean that attorney-client communications in the presence of ... interpreters,... when made to further the interest of the client or when reasonably necessary for transmission or accomplishment of the purpose of the consultation, remain privileged.]

Understanding Personal Bias: Resources

- [“Where Bias Begins: The Truth About Stereotypes”](#) – Psychology Today
- [Implicit Association Test](#)
- [Iceberg concept of culture](#)
- [Crash](#) (2004)
- [Bhaji on the Beach](#) (1993)
- [Documenting the need for Civil Legal Aid](#)
- [The Royal Society – Understanding Unconscious Bias Video](#):
- [RSA Shorts – Brené Brown on Empathy Video](#)
- [The National Language Access Advocates Network](#) (N-LANN):
- [“The Five Habits: Building Cross-Cultural Competence in Lawyers”](#) by Professor Susan Bryant of CUNY Law School 8 Clinical L.Rev. 1 (2001) California Bar Journal Article, Feb 2009

Client Empathy

- [Embrace the Empathy Piece](#), Jayne Reardon, Blog Post on 2Civility.org (Oct. 14, 2014)
- [How Can Empathy Help You Differentiate Your Law Firm?](#), Ilina Rejeva, Blog Post on LegalTrek.com (Sept. 28, 2014)
- [Emotional Intelligence, Lawyers, and Empathy - Using the Power of Listening with Care to Build Better Professional Relationships and Satisfy Clients](#), Dan DeFoe, Blog Post on [psycholawlogy.com](#) (Nov. 25, 2012)
- [Lawyers: Gatekeepers for Psychological Issues](#), Janice Mucalov, Canadian Bar Association Website (date unknown)
- [Empathy the Missing Ingredient in Poor Client Relations](#), Ed Poll, Blog Post on [Lawbiz.com](#) (Aug. 8, 2013)

California Demographics

- 20% (approx. 7 million) of population is limited-English Proficient. **Limited English Proficient” (LEP)** means individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English, i.e., those who do not speak English very well.
- 44% (approx. 15 million) speak a language other than English at home
- Over 200 languages spoken in CA
- “7 million Californians cannot access the courts without significant language assistance, cannot understand pleadings, forms or other legal documents, and cannot participate meaningfully in court proceedings without a qualified interpreter.” Language Barriers to Justice in California; California Access to Justice Commission; September 2005.

Other Resources

- See Chapter 7 of [“Opening and Managing a Law Office: Go Solo, Win Clients, and Be Your Own Boss”](#) (2020), published by the Solo and Small Firm Section of the California Lawyers
- [ABA Standards for Language Access in Courts](#) (Feb. 2012)

- [ABA Standards for the Provision of Civil Legal Aid, generally and in particular Standard 4.6](#) on Communication in the Primary Languages of Persons Served: A provider should assure that all language groups within its low income communities have access to services and should assist persons using its services in their primary language .
- [Limited English Proficiency](#), A Federal Interagency Website
- [National Association of the Deaf \(NAD\)](#)
- [National Center on Immigrant Integration Policy](#)
- [National Association of Judiciary Interpreters & Translators \(NAJIT\)](#)
- [Registry of Interpreters for the Deaf](#)
- Chic Dabby & Han Cannon, [Resource Guide for Advocates & Attorneys on Interpretation Services for Domestic Violence Victims](#) (Asian & Pac. Islander Inst. on Domestic Violence 2009),
- [Professional Standards and Ethics for California Court Interpreters](#)

Commercial Risk Management Solutions

- [ALPS Risk Management Resources at Your Fingertips](#)

Creating Case Acceptance Guidelines

- [Case Acceptance and Client Screening](#), Tennessee Bar Association Guide to Setting up a New Practice

Client Intake and Screening

- [Client intake manual](#) from Lawyer's Mutual of North Carolina. Includes sample intakes for personal injury, family law, as well as a prospective client questionnaire, and an office intake form.
- [Five Questions to Ask a New Client](#), Merrilyn Astin Tarlton, Blog Post on AttorneyAtWork.com (Oct. 17, 2014)
- [How to Screen Clients](#), Spojmie Nasiri, Blog Post on Nasirilaw.com (June 2, 2012)
- [Client Screening Form Can Help Avoid Tactical Conflicts](#), Dan Pinnington, *Slaw* (March 28, 2011)

Checking Conflicts

- [Maintaining a Conflict-Checking System](#), Marian C. Rice, *Law Practice Magazine* (Nov./Dec. 2013)

Client Engagement Agreements

- [Engagement Agreement Essentials](#), Allison C. Shields, *Law Practice Magazine* (Nov./Dec. 2015)
- [Today's Tech: How a Business Lawyer Uses Document Automation in His Practice](#), Nicole Black, Blog Post on Above the Law (May 7, 2015)
- [Sample non-engagement letters from the American Bar Association Solo, Small Firm, and General Practice Division](#)

Law Practice Management & Technology – Client Intake

- [4 Reasons Why Online Client Intake is a Game Changer](#), Clio Team Member, Blog Post on GoClio.com (March 19, 2015)
- [Should You Use a Client Intake Form?](#), Mark Bassingthwaighe, Blog Post on SoloPracticeUniversity.com (Aug. 27, 2015)
- [Best Practices for Effective Law Firm Client Intake](#), Christopher Anderson, LexisNexis Business of Law Blog, originally published in *Legal Management Magazine* in June 2013.

Limited Scope Representation

- [Unbundling Legal Services: Options for Clients, Courts & Counsel](#), Institute for the Advancement of the American Legal System
- [ABA Unbundling Resource Center \(browse by state\)](#)
- American Bar Association Modest Means Task Force [Handbook on Limited Scope Legal Assistance](#) and [Appendix](#)
- Practising Law Institute's [Unbundling 101: Expanding Your Practice Using Limited Scope Representation](#)

Authorities

California Rules of Professional Conduct¹⁴

- [Rule 1.2](#): Scope of Representation and Allocation of Authority
- [Rule 1.4](#): Communication
- [Rule 1.4.1](#): Communication of Settlement Orders
- [Rule 1.4.2](#): Disclosure of Professional Liability Insurance (detailing when a lawyer without malpractice insurance must communicate this to the client and how)

The Rules on Conflicts of Interest:

These Rules run from 1.7 (general conflict rule for current clients) thru 1.18, Duties to Prospective Client. Most speak to all lawyers, e.g., 1.7 (conflicts with current clients); 1.9 (conflicts with former clients); and 1.15 ([safeguarding client funds](#)). Others are more specialized, such as 1.11 (conflicts when a lawyer was formerly a government employee or is one now); 1.12 (conflicts when a lawyer worked as a judge or other third party neutral in disputes); and 1.13 (conflicts when the lawyer's client is an organization). In client intake and forming a lawyer-client relationship, familiarity with all conflicts rules that may apply is important. Here we single out a few:

¹⁴ We repeat: There are official interpretations for all these rules and there is law outside the California Rules of Professional Conduct that may apply. When you are unsure what to do, do not read a rule and its comment and interpret on your own. Do your research and to ensure you are researching all pertinent sources of law that may apply, avail yourself of the **Ethics Hotline 1-800-238-4427 (1-800-2ETHICS)** whose services are described in the [Preface](#) above.

- [Rule 1.7](#): Conflict of Interest: Current Clients
- [Rule 1.8.1](#): Business Transactions with a Client and Pecuniary Interests Adverse to a Client
- [Rule 1.8.3](#): Gifts from Client
- [Rule 1.8.5](#): Payment of Personal or Business Expenses Incurred by or for a Client
- [Rule 1.8.8](#): Limiting Liability to Client
- [Rule 1.8.10](#): Sexual Relations with Current Client
- Rule 1.9 Duties to Former Clients
- [Rule 1.16](#): Declining or Terminating Representation
- Rule 1.18 Duties to Prospective Client

[Rule 5.3 Responsibilities Regarding Nonlawyer Assistance](#)

Rule 5.4 Financial and Similar Arrangements with Nonlawyers (including interpreters)

Rule 8.4.1 Prohibited Discrimination, Harassment and Retaliation (including extensive comments)

California Business and Professions Code

- [Bus. & Prof. Code, § 6103.6](#): (in conjunction with [Prob. Code, §§ 15687, 21380, and 21360](#)): Trustee Services, Donative Transfers, and violations constituting grounds for discipline
- [Bus. & Prof. Code, § 6147](#): Contingency Fee Contracts

California Rules of Court

- [Rule 3.36](#): Notice of Limited Scope & Application to be Relieved as Attorney
- [Rule 3.1362](#): Withdrawal from an Active Case & Motion to be Relieved as Counsel

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INTRODUCTION

One of the most fundamental ways lawyers can make their services valuable and accessible, and in turn increase their client bases, is through alternative pricing structures. Providing certainty in your pricing sets the stage for more affordable, accessible, and transparent services for the client and a more fulfilling and successful practice for yourself.

SETTING YOUR FEES

Setting fees entails a thorough understanding of the area of law you practice, the average time required to complete a task, and your client base. Your business plan, your fee structure, billing and collection requires constant review and monitoring. The following fundamental concepts

will help you work most efficiently and effectively, guide your approach to selecting mutually beneficial fee arrangements, and assign appropriate pricing to your legal services.

CONSIDER ALTERNATIVE FEE STRUCTURES

Clients are used to paying a set price for just about everything in their lives, and just about every other consumer market (including for other professional services) offers transparent pricing. Potential clients can see a price and determine whether they can afford to pay it and whether they will get commensurate value in exchange for it.

For legal services based on the billable hour, clients are typically being asked to make what amounts to an open-ended commitment with no sense of control over what it might ultimately cost. The billable hour also can act as a disincentive to efficiency as it puts the focus on the lawyer's time rather than on the value to the client.

As a result, you should consider fee arrangements other than the billable hour that can offer the opportunity for increased affordability, transparency, and accessibility by prioritizing client value, innovation, and efficiency. They also help you to distinguish yourself in the market, opening up what are now latent client opportunities.

While it may feel like you are swimming against the tide at first by not using the billable hour, keep in mind that:

- There are functioning markets for many consumer legal services that do not depend on the billable hour (*e.g.*, personal injury, real estate closings, etc.);
- Companies such as Legal Zoom offer what they describe as legal solutions for fixed prices, and are growing their market share every day;
- Many larger companies and a growing number of law firms serving them are successfully using alternative fee arrangements (see the [Association for Corporate Counsel Value Challenge](#) for examples); and
- Other professional services, such as accounting and consulting, have been able to transition away from the billable hour, proving that doing so is not only possible, but also potentially lucrative.

Even if you do not use the billable hour, you still need to understand how much time you spend on your legal matters, for a variety of reasons. First, time is a key ingredient in determining your costs (as there are only so many hours you can work). Second, you may need to document the time you have spent on a matter for a fee petition or to defend a fee arbitration hearing. Third, tracking your time will allow you to show clients the amount of work you are doing for them, which could become particularly important in a case where an assumption changes and you need to revisit and potentially change the Client Engagement Agreement. Finally, tracking time will give you a feel for how much time it typically takes for a certain type of case or task, allowing you to set an appropriate fee.

Alternative fee arrangements are becoming more prevalent by the day as potential clients seek greater value and certainty. As you assign pricing to your legal services, ask yourself: what fee arrangements fit your practice and your clients? See the Justice Entrepreneurs Project [Pricing Toolkit](#) to review a variety of arrangements, along with a discussion of the pros and cons of each alternative. See also the Fee Arrangement Matrix in this chapter's appendix.

Consider Market Research

When considering what your fees are going to be, you might consider conducting market research. Market research is an important step in the pricing process because determining what other lawyers and businesses in your target market are charging for similar services or alternative not-so-similar services, such as the online legal forms, will give you a better sense of how to be competitive.

What is the going rate for your type of service? How are lawyers or firms in your practice area and community branding and marketing their services? The purpose of this market research is not to encourage a race to the bottom or suggest that your pricing should match what others may be offering, but your competitors' pricing and branding will help you understand the market. Differentiating yourself and explaining the value you offer is an essential part of your branding and will help you attract prospective clients. If your proposed pricing does not appear competitive in the marketplace, it would be good to assess whether you can become more efficient or reinvent your processes in order to effectively compete in that space.

The Fees Allowed and Prohibited Under California Rule 1.5

Illegal and Unconscionable Fees

California Rule of Professional Conduct 1.5 prohibits unconscionable and illegal fees, 1.5 (a), and sets out 13 factors to be considered in determining whether a fee violates the rule, 1.5(b). Among those factors are, the relative sophistication of the lawyer and client, 1.5(b)(4); the amount involved in the matter and the results obtained, 1.5(b)(7); any time limitations imposed by the client or the circumstances, 1.5(b)(8); whether the fee is fixed or contingent, 1.5(b)(11) and perhaps most important, whether the client gave informed consent, 1.5(13). Please note that the above is not an exhaustive list of the factors to be considered in determining whether a fee violates the rule, all 13 factors will be considered. See 1.5(a) for the full list.

Contingency Fees are Prohibited in Certain Family Law Matters and Criminal Cases

The rule also prohibits contingency fees in certain family law matters, 1.5(c)(1), and criminal cases, 1.5(c)(2). The family law prohibition applies to "any fee in a family law matter, the payment or amount of which is contingent upon the securing of a dissolution or declaration of nullity of a marriage or upon the amount of spousal or child support, or property settlement in lieu thereof", 1.5(c)(1). Comment [1]

to Rule 1.5 explains, however, that 1.5(c)(1) “does not preclude a contract for a contingent fee for legal representation in connection with the recovery of post-judgment balances due under child or spousal support or other financial orders.”

A Non-Refundable Fee is Prohibited Unless it is a “True Retainer”

The rule limits the use of non-refundable fees to those that are true retainer agreements 1.5(d). A true retainer agreement is defined in the rule as “a fee that a client pays to a lawyer to ensure the lawyer’s availability to the client during a specified period or on a specified matter, but not as compensation for legal services performed or to be performed.” Id. To be valid under the rule, a true retainer must be in writing after disclosing to the client that no part of the retainer is refundable.

Flat Fees are Allowed

The last section of the Rule, 1.5(e) allows for flat fees. A flat fee is defined in the rule as “a fixed amount that constitutes complete payment for the performance of described services regardless of the amount of work ultimately involved, and which may be paid in whole or in part in advance of the lawyer providing those services.” Id. But note that Rule 1.15 must be followed in accounting for flat fees properly as well as all other client funds. See the discussion in Chapter 3 on placing flat fees in your firm’s trust account and the requirements that must be met, if you instead intend to place that money in the firm’s operating expense account.

Note too you should be familiar the provisions that affect fees in Rule 5.4, Financial and Similar Arrangements with Nonlawyers, in structuring your practice, which, e.g., prohibits sharing legal fees directly or indirectly with a nonlawyer, 5.4(a), but allows nonlawyers employees to be included in a compensation or retirement plan even when that plan is based in whole or part on a profit-sharing arrangement, given compliance with all other ethics rules, 5.4(a)(3) and covers many other important topics, like buying a law firm from an estate, 5.4(a)(1) and (2) and paying referral fees explicitly allowed only to those sponsored and operated in accordance with the State Bar’s minimum standards for such services. Rule 5.4(a)(4).

Again, there is other law on this subject, such as case law and, for example, Section 6147 of California Business and Professions Code on contingency fees. So if you are unsure about a particular fee arrangement, do your research and call the **Ethics Hotline 1-800-238-4427 (1-800-2ETHICS)** which can lead you to the right resources and whose services are confidential and are described in somewhat more detail in the Preface above.

Set-up proper accounts

California Rule of Professional Conduct [1.15](#) details specific rules an attorney must follow to track and protect all funds received or held for the benefit of a client, or other third person to whom the lawyer owes a contractual, statutory, or other legal duty, including advances for fees, costs and expenses.

While some states require detailed recordkeeping requirements for attorneys, California's approach is to set forth minimum standards under Rule 1.15(e).

Though a detailed discussion of trust accounts is beyond the scope of this chapter, Rule 1.15 essentially comes down to this:

- All funds you receive from or hold for a client, or other third person to whom you owe a contractual, statutory, or other legal duty, including advances for fees, costs and expenses, must be deposited into a bank account that is clearly labeled as a client trust bank account. 1.15(a).
- There is a narrow exception to the above for flat fees paid in advance, see 1.15(b), but you must be careful to comply with all the provisions of that exception, including but not limited to, disclosing in writing that the client has the right to demand the money be held in a trust account until the fee is earned and to demand a refund if the services for which the flat fee is paid are not completed. As Comment [3] to Rule 1.15 explains: "Absent written disclosure and the client's agreement in a writing signed by the client..., a lawyer must deposit a flat fee paid in advance" into the lawyer's trust account. In sum, the safest way to practice is to deposit flat fees paid in advance into the firm's trust account. And with no exceptions, deposit all other client money into a client trust account as Rule 1.5(a) demands.
- When you receive other properties on behalf of a client, or other third person as described in the above summary of 1.15(a), you have to identify what you've received in your written records, actually label the properties to identify the owner, and immediately put them into a safe deposit box or some other place of safekeeping. 1.15(d).
- All client trust bank accounts must be maintained in California, or another jurisdiction where there is a substantial relationship between the client or the client's business and the other jurisdiction. 1.15(a). In that case, you have to get the client's consent in writing before you can deposit the client's funds outside of California.
- Whenever you receive money or other property on behalf of a client or other person, you have to promptly notify that client or other person of that fact. 1.15(d)(1).
- Commingling is prohibited. That means you can't deposit any money belonging to you or your law firm into any of your client trust bank accounts (except for the small amounts of money necessary to cover bank charges). 1.15(c). And it means that when you're holding client money that includes your fees, you can only withdraw your fees as they are earned and when earned those fees must be withdrawn at the earliest reasonable time. 1.15(c)(2). Please note this is not a matter of your convenience; you are ethically required to withdraw your money from that account as soon as you reasonably can. (In fact, it would be a good idea for you to withdraw your fees on a regular basis, perhaps when you do your monthly reconciliation. See **Reconciliation** below). See also, State Bar Formal Op. [No. 2005-169](#). But, as we discuss next, you cannot withdraw fees that the client disputes. 1.15(c)(2).
- Money held in a client trust bank account becomes yours and not the client's as soon as, in the words of rule 1.15(c)(2), your "interest in that portion becomes fixed." BUT—and this is a big but—you can't withdraw any fees that the client disputes. As far as you're concerned, from the moment a client disputes your fee, that money is frozen in the client trust bank account until the fee dispute is resolved. But as we said above, as soon as your interest

becomes fixed and is not in dispute, you are obligated to withdraw that money promptly from the client trust bank account. (See Formal Opinion [2006-171](#) which discusses the issue of a redepositing of funds withdrawn from a trust account.)

- When your clients or other person ask you for money or other properties that you're holding for them, and that they are entitled to receive, you must deliver them promptly. 1.15(d)(7).
- When clients or other person ask you how much money you're holding for them or what you've done with the money while you've had it, you must tell them. 1.15(4).
- When the State Bar asks you how much money you're holding for the client or what you've done with it while you've had it, you must tell the State Bar. 1.15(6).
- For at least five years after disbursement you have to keep complete records of all client money, securities or other properties that are entrusted to you. See the Standards adopted pursuant to Rule 1.15(e) by the Board of Trustees of the State Bar, which are published at the end of Rule 1.15 and before the Comments.

The Standards state that Rule 1.15(e) requires, as the mandatory minimum, is:

- Client Ledger. This is a written ledger for each client or other person that details every monetary transaction on behalf of that client or other person. If you have a common client trust bank account in which the funds of more than one client are deposited, this is where you keep track of individual clients' money.
- Account Journal. This is a written journal for each client trust bank account. This is where you keep track of the money going in and out of a client trust bank account. When you have a bank account that's designated solely for one client's money, the account journal will be identical to the client ledger.
- Bank Statements and Cancelled Checks. You must keep all bank statements and cancelled checks for each client trust bank account, individual or common. These records show that the entries in your client ledger and account journal are accurate.
- Reconciliation. You must keep a written record showing that every month you "reconciled" or balanced the account journals you keep for each client trust bank account against the client ledgers you keep for each client or other person and the cancelled checks and bank statements for those accounts.
- Journal of Other Properties. You must keep a written journal of all securities or other properties you hold in trust for clients or other persons that explains what you are holding, who you are holding it for, when you received it, when you distributed it, and who you distributed it to.

The above essentials are taken, in large part, from the State Bar's [Handbook on Client Trust Accounting for California Attorneys](#), which contains a much more detailed discussion of:

1. the rules;
2. key concepts in client trust account;
3. opening a client trust bank account;
4. depositing money into your client trust bank account;
5. paying money out of your client trust bank account;
6. recordkeeping;

7. reconciliation; and
8. other regulations relating to clients and money.

Additionally, the State Bar has put together a page of [Client Trust and Accounting Resources](#).

UNDERSTANDING WHAT SUCCESS MEANS TO THE CLIENT

It is important that you determine what “success” means to each client so that you can realistically choose an appropriate fee arrangement that aligns with the client’s goals.

In some cases, success means a specific outcome, such as being designated as the custodial parent in a custody case or being awarded damages in a breach of contract case. In other cases, success may be more general or intangible, such as minimizing conflict, finding a resolution that is workable for the client, or gaining peace of mind by resolving the matter.

PROVIDING CHOICES FOR LEGAL ASSISTANCE

Lawyers distinguish themselves and build positive relationships with clients by providing choices to clients and pricing accordingly. Consider:

- Offering unbundled services and other options
- Offering payment options for pricing
- Pointing clients toward information and resources they can use on their own to prepare for and supplement your services, such as to the California Courts’ [Self-Help website](#) for free resources and court forms. For a fuller discussion of these options, see [Chapter 2](#) above.

THEORY OF QUANTUM MERUIT AND SETTING MILESTONES

Flat fees are not earned until a benefit is conferred on the client. It is important to clarify in the fee agreement the basis of payment if the representation were to terminate before the attorney has completed all agreed upon services. One method is the use of milestones. By including milestones or an earnings schedule in the fee agreement, there is a basis for determining the proper amount of unearned fees that need to be refunded to the client in the event that representation ends prematurely. Also, this adds an element of transparency for the client as to the fee arrangement.

Chapter 13 Bankruptcy Case Example

The following is an example of setting milestones in a Chapter 13 Bankruptcy case that could be incorporated into a fee agreement:

Client charged a \$2,650 flat fee.

\$700.00: Earned after lawyer reviews client’s credit report and documentation and calls the client to confirm Chapter filing, requests additional documentation from client (if applicable), and schedules the filing.

\$1,200.00: Earned after paperwork required for Chapter filing, including a plan, is completed.

\$750.00: Earned after the client reviews and signs the paperwork required for filing, the case is filed, notice is given to the applicable creditors, and the lawyer has checked in with the client regarding the 341 hearing date, a meeting of creditors.

USING SOLID PROJECT MANAGEMENT AND PROCESS MAPPING/IMPROVEMENT

By fully understanding the component parts of a given matter and the various contingencies that may arise, you can determine where you are offering the most value to the client, how you might price the matter in each phase of the case, and whether you can offer an unbundled or flat fee.

When breaking down matters involving litigation, such as contested divorces, it is important in this exercise to work through all potential outcomes, including unknown variables and worst-case scenarios, so you can generate the most accurate baselines and guardrails possible.¹⁵ This process helps you identify how you can work more efficiently by forcing you to contemplate what goes into each task and how using technology tools such as document automation can help you work faster and oftentimes more competently. In addition, process mapping can help you better understand all of the steps involved in a particular case and identify and eliminate redundancies and inefficiencies in the way you are doing your work. (See more on Process Mapping in Appendix at the end of this chapter.)

FEE AGREEMENTS

Though a full discussion of fee agreements is beyond the scope of these materials, Sue Talia’s risk management materials ([found on PLI](#)) include sample fee agreements and a discussion of how to use them. Additionally, the State Bar has [sample retainers](#) (“fee agreements”) as well.¹⁶

BILLING YOUR CLIENT

When selecting a billing system, think about a user-friendly billing experience. Each invoice is an excellent opportunity for you to demonstrate transparency and value to your clients. Each

¹⁵ Be aware, however, that certain contingent fee are prohibited in divorce cases, under California Rule of Professional Conduct 1.5(c). See [discussion above](#).

¹⁶ We avoid using the word “retainer” here because California Rule of Prof. Conduct 1.5(d) defines what a “true retainer” is, “a fee paid to a lawyer to ensure availability for a specified period of time or on a specified matter that is not to any extent compensation for services performed or to be performed. This definition is important because only “true retainers” are non-refundable and then only after the client agrees in writing to the arrangement.

invoice can illustrate that you are carrying out your agreed upon plan and moving closer to achieving the client's goals. Use terms and language that your client will understand, provide detailed descriptions of each segment of work, and send out invoices regularly.

When it comes to creating invoices, you have three options. You can create your own, purchase legal billing software, or purchase law practice management software that includes a billing feature. Many billing and law practice management software programs are designed to integrate with credit card processing software developed specifically for law firms. Note that you still need to provide invoices to clients when they pay all or a portion of the fee up front, including in flat-fee cases. All of the same rules apply, and your invoices should line up with the fee schedule in your Client Engagement Agreement.

Collections

Collections can be challenging for all attorneys. Big and small firms alike have experiences of unpaid bills or writing off receivables as inevitable aspect of practice. Also, every law firm has at least one client who either does not pay in a timely manner or does not pay his or her fees — or a portion of them — at all. However, there are tools and systems you can set up to help ensure collection. You also need a system for timely payment of your own bills to avoid being the target of a collection action yourself. Managing your own cash flow is essential. See [Chapter 2](#) and its resources on [preparing a realistic budget](#).

Detailed Fee Agreement

Develop Client Engagement Agreements that clearly outline the terms of the representation, including payment expectations and non-payment ramifications. Basic contract principles apply here: use a written agreement, sign the agreement, have the client sign the agreement, address all material terms therein, etc. Importantly, make sure the agreement clearly states the consequences to the client for failure to honor the agreement about payment terms. Make sure your agreements comply with all aspects of Rule 1.5 and 1.15.

Send Regular Invoices

Not only does sending regular bills to the client provide transparency and communication; it also serves as a friendly reminder of fees due. When a client is not paying bills in a timely fashion try to talk with the client to determine why. The client may be angling for a discounted bill and a simple conversation might be all that is needed to resolve the dispute. If numerous invoices are ignored, consider writing the client a demand letter more firmly requesting payment.

Note: the billing statement should be clear and concise, meaning a lawyer should avoid “block billing” (i.e. aggregating multiple smaller tasks into a single block entry to which a single time is

assigned). Not only does this conceal the amount of time spent on each task, but providing a heavily redacted bill or one that is all block billing will prevent fee recovery from the other party.

Payment Options

As discussed earlier in this guide, clients value convenience and having choices. Therefore, in addition to offering traditional payment options, consider offering credit card and online payment options, such as [eChecks](#). Certain card processing companies can provide a streamlined process by:

- Allowing your clients to pay by credit card (either in person or online);
- Immediately separating the funds into trust and operating accounts; and
- Deducting service fees only from your operating account, as required by the California Rule 1.15.

Liens

An attorney's lien (also known as a charging lien) can secure an attorney's compensation against the funds or judgment recovered by the attorney for the client. However, an attorney's lien does *not* arise automatically and (outside of contingency fee cases) one must comply with California Rule of Professional Conduct [1.8.1](#). This rule requires that:

- the lien and its terms are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a way that he or she can reasonably understand;
- the client either is represented in the transaction or acquisition by an independent lawyer of the client's choice, or the client is advised in writing to seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to seek that advice; and
- the lawyer obtains the client's informed written consent to the terms of the transaction or the terms of the lien, and to the lawyer's role in it.

Additionally, in different case types, there may be statutory or rule requirements specific to that case type. For more, please see this [MCLE Self-Study on the Ethical Enforcement of Attorney's Liens – Avoiding Ethical Traps for the Unwary](#).

Arbitration Clause in Fee Agreement

It is advisable to include an arbitration clause in your fee agreement as a way to address potential fee disputes. Arbitration is an informal process, typically faster and a lower cost alternative to court. Additionally, unlike litigation, the arbitration process is confidential and not open to the public.

The California State Bar has a [Mandatory Fee Arbitration Program](#), created pursuant to [Bus. & Prof. Code 6200-6206](#). It requires the lawyer to provide written notice, in an approved form, of the client's right to arbitration. Approved forms may be found on the Program's website. If the

client then requests, the claim must be submitted to the Arbitration Program. This program is an informal, confidential and lower cost forum for resolving fee disputes between lawyers and their clients. The Mandatory Arbitration Program is nonbinding unless, after the dispute arises, the lawyer and client agree otherwise.

Under the Mandatory Arbitration Program most fee arbitration is handled by local bar association programs. To request fee arbitration, contact the local county bar program where the majority of legal services were provided, typically the county where the lawyer's office is located. The State Bar's Mandatory Fee Arbitration Website includes a [list of approved local bar association programs](#) by county. The State Bar provides fee arbitration only when there is no local bar program. The number to call in that case can be found on the state's arbitration website. Mediation of a fee dispute is voluntary. Some local bar associations offer mediation services in addition to their mandatory arbitration programs.

Collection Lawsuit

An attorney who wishes to bring an action against a client to collect fees and/or costs must, prior to or at the time of service of summons (or prior to or at the commencement of any non-Mandatory Fee Arbitration), give the client written notice informing him or her of the right to arbitrate under the Mandatory Fee Arbitration Act. (See Business and Professions Code section 6200, et seq., and [Cal. St Bar Fee Arb. & Enforcement, Rule 3.501 \(b\)](#)).

There are no ethical problems with an attorney filing a lawsuit against a client for collection of fees, provided the client is given notice in an approved form of his or her right to arbitrate and the client waives that right. After receiving proper notice, if the client does not pursue that right within 30 days, it is deemed waived. [Bus. & Prof. Code, § 6201\(a\)](#). Note that this waiver does not constitute a waiver of any contract provisions between the lawyer and client that require nonbinding or binding arbitration. See *Ervin, Cohen & Jessup, LLP v. Kassel* (2007) 147 Cal.App.4th 821 (2007).

Pursuing unpaid fees through the courts is often not in your firm's best interest. First, a large percentage of legal malpractice claims are the result of a counterclaim in a fee dispute. As a result, costly litigation that takes time and energy to defend can ensue so it is important to carefully weigh the costs of litigation as a means to collect. Second, many lawyers get a large percentage of their clients through referrals and suing a client may substantially reduce those.

If you do decide to pursue your fees in court, you will first need to secure a judgment from the court in which your case was initially heard. For example, if the underlying case is a divorce case, you will need to go back to the domestic relations court and ask for a judgment for your legal fees. And there may be other laws that affects how you proceed. Once again, contact the [Ethics Hotline 1-800-238-4427 \(1-800-2ETHICS\)](#) to help ensuring you've found all laws that may apply or may also be relevant. Once you obtain a judgment in your lawsuit for fees, you can pursue collection, including but not limited to garnishing property or non-exempt wages.

FIND ADDITIONAL WAYS TO PROVIDE VALUE TO CLIENTS

It is worth noting that today's clients are seeking value beyond resolution of their perceived legal issues. Many clients, but particularly moderate income clients, also find value in the following:

Price Certainty: This might be a flat fee, such as in a routine traffic case, or a range of pricing or contingency fee options, such as in a contested court proceeding. In other matters, such as a debt collection case, this might be a relatively modest fixed fee for unbundled legal services, advice, and coaching that can lead to other service arrangements going forward. Whatever the case, remember to always have a written fee agreement. The more certainty you can offer the potential client as to what your services will cost, the better. Lack of price certainty has been one of the biggest problems with the billable hour system.

Transparency: A close cousin of price certainty is transparency. Let potential clients know up front as much as you can about your pricing.

Clear and Consistent Communication: This seems straightforward, but the number of lawyers who fail to clearly and consistently communicate with their clients is surprising.

Affordable Fees: Offering reasonable fees that are competitive in the marketplace will help you get and keep clients. As previously mentioned, see the Justice Entrepreneurs Project [Pricing Toolkit](#) to review a variety of arrangements, along with a discussion of considerations for each alternative arrangement. See also the Fee Arrangement Matrix in the appendix.

Collaboration: Working closely with the client builds empowerment and trust and can reduce the client's expenses if he or she is able and willing to handle some parts of the legal matter personally. Technology increasingly allows online collaboration as a way for clients to complete forms and other key documents. See [Chapter 5: Limited Scope Representation/Unbundling](#) and [Chapter 8: Technology](#).

Convenience: Offering hours and locations that are convenient for potential clients can be accomplished in several ways, including by offering them the option to communicate and collaborate with you using online collaboration tools or through a virtual law office client portal. See [Chapter 8: Technology](#).

Flexibility and a Variety of Potential Fee Arrangements: By offering a variety of fee arrangements, you allow potential clients to choose the option that works best for them and show them that you are working to meet their needs. Take care, however, not to overwhelm potential clients — you should offer no more than two or three fee arrangements for any given legal matter.

Warning: Attorneys are reminded that certain topics are not proper subjects for discussion and consideration by and between competing attorneys. Any action taken to eliminate, restrict, or

govern competition among attorneys may constitute a violation of the antitrust laws. If there is any discussion relating to significant factors of competition, an inference may be made that such a discussion is for the purpose of agreeing upon a common course of business conduct. Among the subjects that should never be discussed are fees; prices; costs; delinquency charges or fees; conditions, terms, and prices of service; allocating or sharing clients; or refusing to deal with a particular supplier or class of suppliers. Agreements among competitors relating to any of these subjects may be per se violations of the antitrust laws and can lead to criminal and civil penalties.

CHAPTER THREE APPENDIX

- See Chapter 7 of [“Opening and Managing a Law Office: Go Solo, Win Clients, and Be Your Own Boss”](#) (2020), published by the Solo and Small Firm Section of the California Lawyers
- [ABA Solo and Small Firm Resource Center](#)

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Managing Your Trust Account

- State Bar of California [Client Trust Accounting Handbook](#)

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- [Bus. & Prof. Code, § 6068](#): Duties of an Attorney
- [Bus. & Prof. Code, §§ 6101, 6106](#): Acts of Moral Turpitude as Cause for Disbarment
- [Bus. & Prof. Code, § 6103](#): Violation of Attorneys Duties as Cause for Disbarment
- [Bus. & Prof. Code, § 6146-6147](#): Limitations on Contingency Fees
- [Bus. & Prof. Code, § 6148](#): Fee Agreements/"Retainers"

California Ethics Opinion

- [Ethics Opinion 1967-10](#): Ethical Propriety of Circulating State Bar Pamphlets
- [Ethics Opinion 2004-165](#): Ethical Obligations when Using Contract Lawyers
- [Ethics Opinion 2002-160](#): Ethical constraints that govern the attorney's right to collect legal fees from settlement proceeds when communication with the client is not possible
- [Ethics Opinion 2005-169](#): Trust funds, overdraft protection, insufficient funds, and withdrawal of earned fees
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- [Ethics Opinion 2006-171](#): Redeposit of funds withdrawn from a trust account
- [Ethics Opinion 2007-172](#): Accepting fees by credit card
- [Ethics Opinion 2009-178](#): Ethical Considerations on General Releases on Fee Disputes
- [Ethics Opinion 1989-116](#): Binding arbitration clauses in fee agreements
- [San Francisco Bar Association - Ethics Opinion 1975-4](#): An attorney who has withdrawn from representation or who has been discharged by the client cannot ethically maintain a retaining or possessory lien on the client's papers or property pending payment of fees or costs

California Rules of Professional Conduct¹⁷

- [Rule 1.5](#): Fees for Legal Services
- [Rule 1.5.1](#): Fee Divisions Among Lawyers
- [Rule 1.8.1](#): Business Transactions with a Client and Pecuniary Interests Adverse to a Client
- [Rule 1.8.5](#): Payment of Personal or Business Expenses Incurred by or for a Client
- [Rule 1.15](#): Safekeeping Funds and Property of Clients and Other Persons
- [Rule 1.16](#): Declining or Terminating Representation
- [Rule 4.3](#): Communication with an Unrepresented Person
- [Rule 5.4](#): Financial and Similar Arrangements with Nonlawyers
- [Rule 7.2](#): Advertising
- [Rule 8.4](#): Misconduct
- [Rule 8.4.1](#): Prohibited Discrimination, Harassment and Retaliation

¹⁷ Again, we emphasize that there are official interpretations for these rules and there is law outside the California Rules of Professional Conduct or sources cited herein that may apply. When you are unsure what to do, do not read a rule and its comment and interpret on your own. Do your research and to ensure you are researching all pertinent sources of law that may apply avail yourself of the **Ethics Hotline 1-800-238-4427 (1-800-2ETHICS)** whose services are described in the Preface to this manual.

California Rules of Court

- [Rule 7.955](#): Attorney's Fees for Services to a Minor or a Person with a Disability

ABA Ethics Opinions¹⁸

Fee Agreements

- [Formal Opinion 02-425](#): Provision that Fee Disputes be Arbitrated

Billing

- [Formal Opinion 00-420](#): Contract Lawyers, Surcharge to Client for Use
- [Formal Opinion 93-379](#): Itemizing Services and Disbursements

Business Transactions with Client

- [Formal Opinion 00-416](#): Purchase of Client's Accounts Receivable from Client
- [Formal Opinion 00-418](#): Stock Ownership as Compensation

Contingent Fees

- [Formal Opinion 87-354](#): As Payment Arrangement with Medical-Legal Consulting Firm
- [Formal Opinion 94-389](#): Recovery and Liability Certain
- [Formal Opinion 93-373](#): Reverse Contingent Fee

Division of Fees

- [Formal Opinion 87-355](#): Prepaid Legal Services
- [Formal Opinion 93-374](#): Pro Bono Organizations, Sharing Court-Awarded Fees with Sponsoring Pro Bono Organizations

Fees Paid by Third Party

- [Formal Opinion 08-450](#): Confidentiality when Representing Joint Clients, including when one of the clients may be paying for the joint representation, e.g., an insurer paying fees of insured.

¹⁸ Note first consult Calif Ethics Op. cited above and as with all ABA ethics opinions know that these are not authoritative in Calif. But may have persuasive value, provided the rule interpreted is the same or substantially similar to the California Rule on the subject and that the opinion is otherwise consistent with other California law that may apply.

Fee Arrangement Matrix

Sample fee structure and suitable practice areas

Type	Description	Well-Suited For
Fixed Fee by Task	<p>A lawyer charges a specified sum for the completion of a certain task associated with the case or matter (e.g., review of a contract, court appearance, etc.).</p> <p>The term “fixed fee” and “flat fee” are used interchangeably.</p>	Most practice areas
Fixed Fee by Phase	A lawyer charges a specified sum for the completion of a certain phase associated with the case (e.g., initial case review, discovery, trial, etc.)	Many practice areas, including litigation, landlord/tenant, and domestic relations
Fixed Fee by Case	<p>A lawyer charges a specified sum for handling the entire case or matter. This arrangement works best for less complex matters with a higher degree of predictability about the potential range of legal work likely to be involved.</p> <p>Concerns with this arrangement include potential “windfalls” if the case is resolved quickly or conversely a lopsided agreement where the lawyer is working many more hours than expected in order to earn the set fee.</p>	Uncontested divorce, many post-decree domestic relations issues, real estate closings, immigration visas, wills/trusts, less complex estates, landlord/tenant, more modest civil litigation and contract disputes
Recurring Fixed Fee	<p>Recurring fixed fee arrangements can be used both in litigation and transactional settings, and in both instances involve charging a standard fee on a recurring monthly, quarterly or other time increment basis.</p> <p>Non-litigation recurring fixed fee arrangements are typically used in the context of advising clients. A litigation recurring fixed fee arrangement provides clients with more certainty with respect to their litigation budgets.</p>	Small business (non-litigation), domestic relations (e.g., contested custody cases, contested divorce,), condo associations

Contract Recurring Fee	A lawyer charges an initial fee for the creation of a document, such as a contract, and earns a fee every time the client uses the document through a licensing agreement or similar arrangement	Small business (non-litigation)
Pure Contingency	The lawyer receives a specified percentage of the amount recovered in the case and either the prospect of recovery and/or the amount that can be recovered is uncertain. The client generally will be charged any hard costs associated with the case, but the lawyer does not receive any fee unless the case results in a successful recovery. This structure is a way to share the risk between lawyer and client and works well when the amount at stake and the potential for recovery are sufficient to balance the risk to the lawyer.	Personal injury, breach of contract, debt collection
Reverse Contingency	The lawyer receives a percentage of the amount saved for the client. The base amount from which savings are calculated should be agreed upon with the client up front. Reverse contingency fee arrangements work best in cases where liability is at issue but damages are not.	Breach of contract
Fee-Shifting	Hundreds of state and federal statutes provide for attorney fee-shifting when the client prevails in a case and also provide bargaining leverage to recover fees during settlement. When available, this type of fee arrangement works particularly well for clients who can afford to pay little or no money for services and the client's case has potential merit.	Consumer Fraud, Security Deposit, domestic relations (statutory fee shifting allowable where the other party can afford to pay fees)
Flat Fee Plus Contingency	The lawyer charges an agreed upon flat fee in addition to a specified percentage of the damages awarded, if any. The client is typically also charged hard costs associated with the case. This arrangement works best in cases when there is greater uncertainty of either liability and/or the amount that may be recovered yet the client still sees value in pursuing the matter.	Breach of contract

Flat Fee Plus Reverse Contingency	Where the lawyer charges an agreed upon flat fee up front in addition to recovering a percentage of the amount saved for the client. The client is typically also charged hard costs associated with the case. This arrangement works well in situations when the client can benefit from receiving brief advice from counsel about their rights and responsibilities in the situation, and benefit from having a lawyer as their advocate to negotiate or obtain a better result than the client likely would be able to obtain on their own.	Consumer debt collection
Time Based	Usually hourly rates based on the amount of expertise of the lawyer and the time spent on the case.	Complicated dissolution cases or contract cases
	Additional hybrids can be found in <i>The Chicago Bar Foundation Pricing Toolkit</i> .	

Please see also discussion above of “true retainers” under the California Rules of Professional Conduct.

Project Management Examples (Process Mapping)

As mentioned above, mapping out and fully understanding all aspects of a given matter along with various contingencies will help you determine whether you are offering the most value to your client and how to best price the service(s) you will offer.

Below are two examples — an uncontested divorce case and a Chapter 7 or 13 bankruptcy case — of how process mapping can help you complete this step and visually break down each matter into discrete tasks with associated units of time. To do this, you will have to start at a baseline. What information do you know about potential clients and potential issues that could arise in this type of matter? What resources (*e.g.*, templates, automated document preparation, past cases that were very similar) do you have to work with? When process mapping, it is important to list any built-in assumptions and to assign dollar values to each task.

Uncontested Divorce Case*

Assumptions:

- No kids, no spousal support, and limited assets;
- Draft all paperwork prior to filing;
- Using Judicial Council forms as starting points for all drafting; and

- Postage (if any) will be built into the final fee; try to communicate and exchange documents electronically.

1. Initial consultation (1 hour)
2. Draft Petition for Dissolution of Marriage, Case Information Sheet, Summons, Waiver of Service, Declaration for Default or Uncontested Dissolution, and Financial Declaration (1-2.5 hours)
3. Draft Separation Agreement (1 hour)
4. Send draft Separation Agreement to client for his/her review (10 min.)
5. Once client approves the Separation Agreement, send it to opposing counsel or the other party (whichever is applicable) for his/her review (10 min.)
6. Request Financial Declarations from opposing counsel/party (10 min.)
7. Make final revisions (if applicable) to any documents and have both parties sign everything (45 min.)
8. File all documents with the Court (10 min.; \$435 filing fee)
9. Wait for the Court to process the documents.
10. Send thank you and disengagement letter to client (10 min.)

**The time increments, prices and other information used in the example above were arbitrarily selected and are being used for illustration purposes only.*

Chapter 7 or 13 Bankruptcy Case*

Assumptions:

- Using templates as starting points for all drafting;
- Postage (if any) will be built into the fee; try to communicate and exchange documents electronically;
- \$100 in fees for two required classes for debtors will be included in the final fee;
- Travel costs will be built into the final fee;
- Chapter 13 Bankruptcy has varying presumed reasonable fees ranging from approximately \$3,000 to \$5,000, depending on one's location and whether it's a business or non-business Chapter 13, and in order to charge in excess, an hourly billing must be provided to the court and notice given to the creditors.

Chapter 7

1. Initial Consultation (1 hour)
2. Review client credit report and documentation (1.5 hours)
3. Call to client to confirm Chapter filing, request additional documentation, schedule filing date (30 min.)
4. Complete filing paperwork (3 hours)
5. Client review and signing (30 min.)

6. File case and notice creditors (1.5 hours); \$335 filing fee & additional cost for postage (varies)
7. Check with client regarding 341 hearing date and remind to bring documentation (15 min.)
8. Attend 341 hearing (Including travel) (1.25 hours)
9. Check in with client to inform if assets to be distributed (10 min.)
10. Check in with client to inform of discharge (10 min.)
11. Check in with client to inform case is closed and send final documents (10 min.)

Chapter 13

1. Review client credit report and documentation (1.5 hours)
2. Call to client to confirm Chapter filing, request additional documentation, schedule filing date (1 hour)
3. Complete filing paperwork including plan (4.5 hours)
4. Client review and signing (30 min.)
5. File case and notice creditors (2 hours; \$310 filing fee & additional cost for postage) (varies)
6. Check with client regarding 341 hearing date and remind to bring documentation (15 min.)
7. Attend 341 hearing (Including travel) (1.25 hours)
8. Trustee or creditor objects to plan or requires additional documentation – must make revisions to plan and/or comply with request (if applicable) (1–3 hours)
9. Check in with client to inform of acceptance of Plan (10 min.)
10. Check in with client at least annually to make sure on plan schedule and producing required documents (30 – 50 min.)
11. Once plan complete, check in with client, complete and file final documents (1 hour)
12. Check in with client to inform case is closed and send final documents (10 min.)

**The time increments, prices and other information used in the example above were arbitrarily selected and are being used for illustration purposes only.*

CHAPTER FOUR: GETTING COMPETENT / PRACTICING LAW

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INTRODUCTION

Although the concept sounds simple, competency in a law practice involves much more than a license to practice law and hanging your shingle. It requires you to become an expert in the areas in which you are practicing, develop practice skills relevant to your practice, network with the community of legal professionals in your practice and geographical area, familiarize yourself with the courthouses in which you will be practicing, and learn how to listen well and empathize with clients.

SUBSTANTIVE KNOWLEDGE AND PRACTICE SKILLS

Legal Education – CLE through Local Bar Associations and the California Lawyer’s Association

- Attending continuing legal education (CLE) programs and getting involved with local bar association substantive practice sections or committees are great ways to increase your substantive legal knowledge and sharpen your practice skills. If you can, it is always beneficial to join the local county bar association where you plan to practice most. Some associations offer free or discounted membership to newly-admitted attorneys. The more you know about a particular practice area, the more comfortable and competent you will be when you take a case.

- Another reason to join bar associations is that the bench considers bar associations to be partners in the delivery of legal services. In that sense, becoming active in your bar association will demonstrate your service to the profession, enhance your reputation with the bench, and help build lasting relationships with your colleagues.
- In addition to attending CLE programs each year, you should also consider building a library of informational resources. The combination of publications and online opinions will keep you current for your clients. Set an alert on your library subscriptions to update yourself with new opinions, check the California courts website for updates in the law every January and June, as well as ensure you are updated on the changes in legal forms (January and June) in your practice area.
- Talk with practitioners who are seasoned in your area of work and find out who the legal experts, commentators, or authors are. If you can, try and budget for an annual substantive update training, like an annual review or appellate updates that will keep you in the know for changes in the law.

Specialty and Affinity Bar Associations

- Consider joining a specialty bar association where the focus is on substantive law discussions, networking, and skill-building.
- Don't forget, you can also participate in affinity bar associations, those organized around ethnicity, race, gender, for example. If you are inclined to contribute and network with lawyers that you identify with or feel a kinship with. Camaraderie with professionals that you identify with will help build your confidence as well as help share challenges and experiences that may be unique to you.
- Many affinity bar associations also give back to the community through pro bono contributions, helping enhance access to justice for all.
- Similarly, practice area specialty associations will contribute to keeping you up on the law as well as introducing you to those seasoned in your practice area. Finding mentors who can help you learn will increase your substantive knowledge, help grow your practice and enrich your life.

Listservs

Listservs can also be helpful resources. The legal communities they are closest to the issues and have likely dealt with questions similar to those you might encounter. With that in mind, the ABA has created listservs to bring attorneys together to support each other. See Appendix for listservs and newsletters you may wish to join. The [Legal Aid Association of California](#) also has local listservs, as do substantive practice associations like those for trial lawyers, immigration lawyers, family law attorneys, etc. These are resources not just to keep you abreast of the law and find answers to questions but to find colleagues who may send you business or serve as welcoming and trusted places to refer those clients you cannot take on due to conflicts or because you're swamped with business.

Courtroom Comfort

Equally important is honing your practice skills. Unless you do transactional work, you will likely be going to court at least once in a while for your cases. Therefore, you need to become skilled in handling hearings and trials; being comfortable and proficient in courtroom and trial procedure and mastering the rules of evidence. Unfortunately, what you learned in law school and during bar review will not be enough. Just think of Joe Pesci in *My Cousin Vinny*, and if you haven't seen the movie, do.

There are at least four good options for strengthening your courtroom skills and knowledge:

- First, you can subscribe to trial building skills courses or attend CLE programs;
- Second, you can participate in more hands-on and interactive trial skills training programs run by organizations such as the [National Institute for Trial Advocacy](#), the ABA, and many local bar associations;
- Third, you can go to various courthouses and watch cases in action; or connect with colleagues about opportunities to attend trials, depositions, or mediations; and
- Fourth, you can take pro bono cases that are managed through a local pro bono agency. Not only will you be helping others, but pro bono legal work is a great training ground to build skills and confidence as well as make connections with others. Be sure that the pro bono organization provides training, mentoring and malpractice insurance.

Practising Law Institute

PLI provides hours of low-cost or free ([with a scholarship](#)) CLE on [Pro Bono topics](#) through their live webinars and on-demand archives for attorneys who perform pro bono legal services.

Co-Counsel

If you are presented with a case that you do not feel comfortable handling due to lack of experience, consider asking a more experienced lawyer to co-counsel the case with you. You may be concerned about sharing your fee with the lawyer, but the experience and education you will gain from the co-counsel relationship will more than likely make up for it. If, that is, you choose your co-counsel carefully. Also, see the [mentoring](#) section below for more resources.

Cultural Competence

Included in professional competence is the need to understand the cultural context and your competency in dealing with that cultural context. See [Chapter 2: Client Intake, Counseling and Engagement Agreements](#) for more.

THE 10 RULES OF GETTING COMPETENT

1. Attend CLEs regularly.

2. Develop skills in multiple areas of the law.
3. Find a mentor.
4. Stay current on the latest case law updates.
5. Develop client management skills.
6. Take advantage of online resources.
7. Learn the local rules and court procedure.
8. Be courteous to court staff.
9. Hone your courtroom skills.
10. Develop good listening skills and the ability to empathize.

NAVIGATING THE COURTHOUSE

Physical Location

- When beginning your practice, you should physically go to every courthouse in the jurisdiction(s) in which you will be practicing, walk around, and determine the location of the courtrooms, clerk's offices, conference rooms, cafeteria, and restrooms. You want to be proficient in moving around these buildings so you can work efficiently and direct your clients to where they need to go. Your familiarity with the courthouse will provide your client with a sense of comfort and indicate to them that this is not your first court appearance, even if it is.
- No courtroom orientation is complete without knowing where pleadings are filed, records are located, and orders are available. Deadlines can be missed and motions dropped from the calendar if you don't know where, when, and how to file your pleadings. While you are at it, get to know the filing clerks, they are a goldmine of information, your best allies when you are down to the wire in trial deadlines, and your treasure trove of inside information on efficiency in filing.
- Many local bar associations host events for newly-admitted attorneys. If you can, find out if your local bar has a young lawyers section or a barristers section and join one or both. They will likely have tips on courtroom tours, meeting judges, and filing pleadings.

Staff and Local Rules

- While at the courthouse(s), you should introduce yourself to the staff. Courthouse personnel, including judges, talk a lot about the lawyers they deal with. A positive and friendly reputation in every courthouse will serve you well when you need help in the future. These are the people who can get you out of a scheduling jam, move you up on a crowded docket, or move your file to the top of a judge's pile of paperwork.
- When speaking with the various clerks in the clerk's offices and courtrooms, be sure to ask them if there are any local rules of which you should be aware. It might be helpful to make copies of the local rules and keep the applicable one(s) in the front of each client's case folder for quick reference later. Check your local county court rules twice a year, January

and June, to see if something has been updated. The court website is a great resource to see if there are proposed changes to local rules.

- Also, keep in mind that one judge's courtroom is not another's; how each judge runs his or her courtroom is something you should endeavor to know. Observing judges in action and talking with other lawyers and court personnel are the best ways to find this out. When talking to staff in each courtroom, make sure to ask if they have any preference in how they set hearings in their division. Some will do them only on certain days or at certain times. Do not forget to take notes while they are talking, as you will need them later on.
- Meeting and getting to know every judicial officer is almost impossible, even if only due to turnover or changes in the nature of their dockets, not to mention your own time-constraints. However, each courthouse seems to reflect its respective community and culture. Your ability to fit in or at least manage the personalities of each courthouse creates calm for the client and is likely to get you through the courthouse processes more efficiently. Often, a client's fear or lack of familiarity with the courthouse can cause him or her to act differently, inappropriately, or in a forced and stilted manner, which in turn can negatively affect his or her credibility. In these cases, a lawyer's role as "host" to his or her client at the courthouse is essential to trying to calm the client's down. .
- Never forget, the courtroom para-professionals are as much a part of your practice as the bench officer. Lawyers who are dismissive of para-professionals are often known to, and disliked by, court staff as well as bench officers because they don't understand the village that a courthouse is. The para-professional, including the bailiff in the courtroom, are parts of the machinery of the courthouse that helps your client's case as much as you yourself as the attorney. When an order or an exhibit is missing and the para-professional was someone you didn't bother to know or treat with respect, it is your client who suffers - not because you lack substantive knowledge, but because you forgot the etiquette of the courthouse.

CLIENT MANAGEMENT

Equally important to your legal practice competence is client management competence. You should have an organizational system for your client management process from the first meeting to the closure of the case. (See [Chapter 2](#), [Chapter 3](#), and [Chapter 7](#).)

The process should follow a paperwork pattern that is repeated for every case to create good file documentation. Documents should include:

- a client intake questionnaire
- fee agreements
- assurance of the confidentiality of information a client provides to a lawyer statement
- descriptions of services to be provided
- conflict of interest checklist
- income and employment information
- contact information, and
- documentation regarding any particular time frames for deadlines that must be met for the client

Additional systems in place should include:

- billing
- case management software
- calendaring, tickler systems, and
- automated case law update

The project management system of working is especially beneficial when starting your practice. Each client matter is a project with deadlines, tasks, and documents to be completed. Each project has its own unique aspects but the steps in the project management system should remain the same. See [Chapter 2](#) and [Chapter 3](#).

FIND MENTORS

Finding mentors can be a great way to start bridging the gap between law school and law practice. Mentors can help you with a variety of topics: the nuts and bolts of practicing law, law practice management and technology, work/life balance, career development, and other matters. Instead of trying to find one mentor who can advise you on all of these topics, consider multiple mentors with different skill sets. Peers may also serve as mentors, albeit without the depth of experience, but wisdom is not limited to the old-guard. Some just starting out may also have much to convey.

Mentoring relationships can take many forms. Some might be one-time interactions, while others may grow into lifelong relationships. Some are more formal, where you are matched with a mentor through a bar program, while others are more informal, i.e., you identify and connect with the mentor yourself. Any type of mentoring relationships can be effective. And mentors might be found anywhere: in office sharing spaces, bar associations, professional networks, peer groups, alumni associations, and through volunteer work whether for a clinic, a law firm, a government entity or a legal aid organization.

Once you have found a mentor, it is important that you:

- **Consider What You'd Like Most to Get from the Relationship and Share that Goal or Goals with the Mentor.** This will help your mentor to help you more.
- **Be Respectful of the Mentor's Time.** Mentors are likely to be very busy people and their time is valuable. Before you meet or reach out to a mentor for help with a case or issue, be sure to first fully research the issue so you can limit the amount of time the mentor needs to spend assisting you. More generally do not make yourself a pain by calling on the mentor too often. This is the surest way to drive people away.
- **Find out How Your Mentor Prefers to Communicate.** Just because you prefer to communicate via text does not mean your mentor shares your preference. Determine early on how your mentor likes to communicate and who should be responsible for scheduling meetings so you can keep the communication flowing and the relationship moving forward.
- **Give Back.** Your mentoring relationships should not be one-way streets. In order to develop and strengthen a mentoring relationship, you need to give back to your mentor. You can do

this in a variety of ways. Examples include attending an event at which the mentor is speaking, sending the mentor a note when you see or hear them mentioned favorably somewhere, donating time or money to a charity that is important to them, etc. Also consider what you might be able to teach your mentor. Many older lawyers did not grow up using social media and other technologies and may be interested in learning more about them. Or, you may be able to help simply by helping the mentor stay up with his or her children's or grandkids culture, the latest videogames, binge-worthy tv and trending musicians and their music.

- **Be Open to the Mentor's Advice.** The whole point of finding a mentor is to benefit from his or her advice and guidance on topics or issues of your choice. If you constantly reject the mentor's advice, you have defeated the purpose of finding the mentor and perhaps also irritated the mentor and wasting his or her time in the process.
- **Approach the Mentoring Relationship with Enthusiasm.** Mentors want to work with mentee lawyers who are enthusiastic about the profession and have a desire to learn. No one wants to mentor a Sad Sack or Debbie Downer, a know-it-all, or an apathetic lawyer with no direction. So bring enthusiasm and a desire to learn to the relationship.

CHAPTER FOUR APPENDIX

California

Local Rules

- [County-specific Local Rules](#)

California Rules of Civil Procedure

- [Code Civ. Proc., §§ 90-100](#): Rules Governing Limited Civil Cases
- [Code Civ. Proc., §§ 2034.210-2034.310](#): Discovery Rules

California Rules of Court (generally)

- [Rule 3.1548](#): Pretrial Submissions

California Rules of Professional Conduct¹⁹

- [Rule 1.1](#): Competence
- [Rule 1.2.1](#): Advising or Assisting the Violation of Law
- [Rule 1.4](#): Communication with Client
- [Rule 1.6](#): Confidential Information of Client
- [Rule 1.8.5](#): Payment of Personal or Business Expenses Incurred by or for a Client
- [Rule 1.8.8](#): Limiting Liability to Client

¹⁹ We reiterate once more that there are official interpretations for all these rules and there is law outside the California Rules of Professional Conduct or sources cited herein that may apply. When you are unsure what to do, do not read a rule and its comment and interpret on your own. Do your research and to ensure you are researching all pertinent sources of law that may apply, avail yourself of the **Ethics Hotline 1-800-238-4427 (1-800-2ETHICS)** whose services are described in the Preface to this manual.

- [Rule 3.1](#): Meritorious Claims and Contentions
- [Rule 3.3](#): Candor Toward the Tribunal
- [Rule 3.4](#): Fairness to Opposing Party and Counsel
- [Rule 4.2](#): Communication with a Represented Party
- [Rule 4.3](#): Communication with an Unrepresented Party
- [Rule 5.5](#): Unauthorized Practice of Law; Multijurisdictional Practice of Law
- [Rule 5.6](#): Restrictions on a Lawyer's Right to Practice
- [Rule 8.4](#): Misconduct

[ABA Standards for Provision of Civil Legal Aid](#)

- Standard 4.6 on Communication in the Primary Languages of Persons Served: A provider should assure that all language groups within its low-income communities have access to services and should assist persons using its services in their primary language.
- Standard 4.3 on Protecting Client Confidences: Consistent with its ethical and legal responsibilities, a provider must protect information relating to the representation of a client from unauthorized disclosure.

Websites

ABA Resources

- The Lawyer's Resource Center
- Young Lawyers Division
- Solo and Small Firm Resource Center

General Resources

- www.myshingle.com
- [Legal Information Institute](#) at Cornell University Law School
- www.probono.net
- [California Courts Self-Help Center](#)
- [State Bar of California Rules of Professional Conduct](#)
- [Practising Law Institute Pro Bono Programs](#)

Articles / Publications

See Chapter 9 of "[Opening and Managing a Law Office: Go Solo, Win Clients, and Be Your Own Boss](#)" (2020), published by the Solo and Small Firm Section of the California Lawyers

- [Navigating the Mentor-Mentee Relationship](#), Binns, Erin, *Student Lawyer* (Feb. 2013)

Other Periodicals / Sources

- "What Does Competent Representation Really Mean?" J.R. Phelps, *The Florida Bar* (March 2002)
- "Negotiating Co-Counsel Arrangements," Susan Minsberg, www.lawyerist.com (Nov. 16, 2010)

- “Managing Co-Counsel Relationships,” Gary Jackson, *Litigation Commentary & Rev.* 25 (Jan./Feb. 2010)
- “The Liability and Ethical Considerations for ‘Of Counsel’ Relationships,” Alan M. Petrov and Patrick O. Peters, *LawyerCare* by ProNational Insurance Company (May 2007)
- “How to Co-Counsel without Getting Screwed,” Sam Glover, www.lawyerist.com (Aug. 10, 2012)
- “Managing Co-Counsel Relationships,” Gary Jackson, *TRIAL* (Oct. 2009)
- “Competency Models and the ‘New Normal’ Market,” Neil Hamilton, *The Minnesota Lawyer* (April 2011)

Statutory & Other Obligations re Language Access

- [Evid. Code, § 756](#) (new); [Gov. Code, § 68092.1](#) (new); [Gov. Code, § 11135](#); [Dymally-Alatorre Bilingual Services Act](#)
- ABA – [Language Access Standards for Courts](#) & Civil Legal Aid; Model Rules
- [Strategic Plan for Language Access in CA Courts](#)

CHAPTER FIVE: LIMITED SCOPE REPRESENTATION

This section is written by M. Sue Talia, Private Family Law Judge in Danville, California, National Expert on Limited Scope Representation

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INTRODUCTION

Limited scope representation, sometimes referred to as “unbundling,” can be an excellent way to expand your practice and tap into a new pool of potential clients. The majority of litigants can afford to pay for some legal services, even if not traditional full-service representation. These clients are currently unrepresented but need and can pay for your assistance on a limited basis. This not only expands your client base, but since by definition limited scope representation is “pay-as-you-go,” it is a profit center. This is a benefit not only for lawyers, who acquire new clients they otherwise would not have, but for the courts that are often overburdened by the demands of self-represented litigants who are often ill-equipped to represent themselves in court. This imposes real challenges for limited judicial resources, but unless more attorneys provide limited scope representation, the trend is likely to continue. Most important, it is benefits communities who traditionally have been priced out of receiving the legal services they need.

Limited scope is not suitable for every legal issue, for every client, or for every court. There are some legal issues which are simply too complex to be delegated to a client, no matter how skilled the coaching is. There are some litigants who are simply not capable of processing legal concepts and processes and presenting them coherently. However, when done properly, it has been shown to be a low-risk form of practice which leads to an expanded base of satisfied clients.

DEFINITION, HISTORY, AND RULES ASSOCIATED WITH LIMITED SCOPE REPRESENTATION

Traditional legal representation refers to the full panoply of services which a lawyer performs for a client. This includes gathering facts, conducting research, discovery, counseling, drafting pleadings and correspondence, negotiating with the opposing party, and court appearances. However, with the vast explosion of self-represented litigants commencing in the early 1990s, lawyers have increasingly offered these services in an à la carte fashion tailored to the case, the client’s needs, budget, and priorities. The designation of either certain discrete tasks the lawyer performs or specific issues limits the scope of representation. By far the vast majority of limited scope representation arrangements are divided by task and not issue. These can include the following:

- Advice and coaching
- Document assembly

- Document drafting or “ghostwriting”
- Investigation and exhibit preparation
- The Development of a strategy
- Procedural assistance
- Identification and interviewing of witnesses
- Participation in settlement negotiations or the drafting of settlement proposals
- Court appearances for a specific hearing or on a specific issue

Any or all of these tasks may be broken out to be performed on a limited scope basis by an attorney. While the common assumption is that limited scope representation means appearing in court, in fact court appearances constitute a very small percentage of the tasks that lawyers are asked to perform on a limited basis.

When an attorney performs discrete tasks in connection with a legal matter, the client is responsible for representing him or herself for the remaining parts of the case, usually with coaching and procedural advice from the limited scope lawyer.

When limited scope representation began in California, it was done informally, as lawyers representing moderate income clients attempted to limit their involvement to those aspects of the matter where the assistance of a licensed attorney was particularly critical to the result. There was little guidance until the year 2001 when the California Access to Justice Commission authorized its limited scope task force to look into ways to make legal services more accessible to low and moderate income litigants. Nowhere was this deemed to be more critical than in family law, with over 70% of California litigants representing themselves for at least part of their family law proceeding. The task force recommended rules of court and judicial forms designed to facilitate limited scope representation, provide guidance to lawyers and litigants, and encourage the practice in furtherance of providing access to justice. The statewide rules and forms were adopted for family law in 2003 and they have been revised and expanded since then. A companion set of civil rules and forms was adopted in 2007.

The original California Rules of Court 5.70 and 5.71 were periodically modified and have morphed into [Rule 5.425](#). Family law forms [FL 950](#) et seq. were designed to document the limitation on the scope of the representation, put the court and opposing party on notice of those limitations and facilitate an orderly withdrawal at the conclusion of the limited scope representation. When the civil rules were adopted as [Rule 3.36](#) et seq., they were joined by a companion set of civil forms [CIV-150](#) et seq. See also Calif. Rules of Prof. Conduct 1.2(b) and 6.5 Limited Legal Services Programs.

ETHICS RULES

All limited scope representations must comply with [California Rule of Professional Conduct 1.2\(b\)](#). Rule 1.2(b) states a lawyer may limit his or her scope of representation only if: (1) the limitation is reasonable under the circumstances; (2) is not otherwise prohibited by law; and (3) the client gives informed consent.

Standard of Care

The word “limitation” in the phrase “limited scope representation” refers only to the scope of the representation, and never to liability. Lawyers are prohibited from limiting their liability to clients for the services they perform. See Calif. Rule of Prof. Conduct 1.8.8 (setting forth this prohibition). Moreover, the standard of care for legal services in connection with limited scope representation is precisely the standard of care for the performance of those services in connection with full-service representation. There is no dilution or reduction in the lawyer’s duties of competence, confidentiality, or loyalty simply because the scope of the representation itself has been reduced.

There are four basic ethical considerations which govern limited scope representation. These concepts are not difficult, but there are no exceptions. They are:

- Limitations on representation must be reasonable under the circumstances
- Limitations on representation must be informed and should be in writing
- Changes in scope must be memorialized
- A lawyer must advise a client on related issues even if not asked

Reasonableness of limitation

The reasonableness standard is obvious. Some legal issues are simply too technical to ever be delegated to a layperson even with good coaching. Examples of such issues are Qualified Domestic Relations Orders, complex governmental regulations such as those of the Securities Exchange Commission, some forms of government entitlement litigation and the like. That being said, many areas of law, particularly those where the individual consumer of legal services interacts directly with the legal system, lend themselves to limited scope especially with competent document assistance and coaching from a lawyer. Among these are the most obvious, family law, as well as consumer rights, lemon laws, many types of administrative proceedings, landlord/tenant, denial of insurance coverage and the like. In many situations all the client needs is a well drafted demand letter and coaching on procedures. These are done on a piecemeal basis and are billed as services are performed.

The other aspect of the reasonableness standard is the competency of the client. It stands to reason that it doesn't matter how skilled a coach is if the client they're sending in the court is not English proficient in English-only court, or is simply too shy or afraid to speak for himself or herself in court or has mental health issues that prevent comprehension of explanations of legal concepts and procedures or the expression thereof. Similarly, a client who is incapable of giving informed consent is not a candidate for limited scope representation. The assessment of whether a particular client is an appropriate candidate for limited scope is part of the lawyer's professional judgment and this assessment is nondelegable.

The standard for assessing the reasonableness based on the client's skill is not whether, with good coaching, the client will do as good a job in court as a lawyer would. That standard would (or should) be unreachable. The question is whether, with good document preparation and coaching, the client is more likely to achieve a satisfactory result than he or she would without that assistance.

Informed Consent

Obtaining the client's informed consent prior to entering into a limited scope representation is required. Pursuant to California Rule of Professional Conduct 1.0.1(e), "informed consent" means "a person's agreement to a proposed course of conduct after the lawyer has communicated and explained (i) the relevant circumstances and (ii) the material risks, including any actual and reasonably foreseeable adverse consequences of the proposed course of conduct."

A client needs to know when establishing an attorney-client relationship whether that relationship is limited or all-inclusive. They must understand the difference. Best practice is to memorialize in all limited scope arrangements in a written fee agreement. This eliminates the likelihood of a misunderstanding regarding what tasks and issues are in or not within the scope of the representation. By giving the client a written description of the scope of the limited representation in lay terms most misunderstandings can be avoided. Such a description is contained in the risk management materials which are referenced throughout this chapter.

A fee agreement should draw a bright line box around the services to be performed by the lawyer. This protects the client and protects the lawyer. Several sample forms of fee agreements will be referenced later in this chapter.

Memorializing Changes in Scope

When the scope of representation changes, it should be memorialized. Memorializing changes in scope is arguably the most important of the ethical rules. As a practical matter, limited scope representation is often consumer driven, demanded by litigants who are used to getting

information for free off the internet, and unwilling to pay lawyers to be gatekeepers for something they believe they should be able to do themselves. They often consult a lawyer for very limited purposes such as document assembly, coaching on procedures, and the like. Practice has shown that in many of these situations, once that person tries interacting with the court and are disappointed in the results, they realize that the assistance of a competent lawyer is of more value to them than they initially thought.

The scope therefore frequently expands as the client comes to appreciate the benefit of the skill and experience of their limited scope lawyer, and the benefit that is likely to accrue by paying for additional services. This is a critical point in the representation. Lawyers want the business, and welcome the expansion of the scope. However, the fact that the representation remains one of limited scope, as the original fee agreement said, must be preserved in any subsequent agreements on expanded the scope to avoid inadvertently creating a full-service relationship. That means that before a limited scope lawyer offers additional services outside the initial scope, a new fee agreement must be signed by both the lawyer and the client. This doesn't have to be your boilerplate multipage full-service fee agreement. It can be a clearly defined checklist which is superseded by a new checklist. However, the new limitation on scope agreement must meet the requirement of informed client consent to the expanded, but still limited representation for the agreement to be valid.

One aspect of changes in scope which lawyers should be aware of is that the scope almost always expands rather than contracts. This is because a client often overestimates his own ability to self-represent and underestimates the value to himself or herself of competent legal services. After clients have attempted to self-represent and have acquired first-hand knowledge of how difficult it is to do that successfully, they often find that paying for additional legal services is more valuable than they originally thought. An interesting benefit to this is that they also return to their limited scope relationship with an increased appreciation of the value of their lawyer's services.

Advising on Related Issues, Even if Not Asked

The obligation to inform the client of related issues, even when those issues are outside the scope of the representation, is derived from the primary malpractice case on limited scope representation. The principle is that a legal issue is often much more complicated than a layperson would understand. One issue may trigger a related issue (for example, changes in custody and timeshare may trigger a change in child support). As between the client and the lawyer, the lawyer is in a better position to know if the result the client seeks to accomplish may trigger unintended consequences or raise a related issue which they are not considering. The obligation to inform does not mean that you must represent the client on the related issue.

It simply means that you must advise the client the issue exists and allow them the opportunity to either include or exclude that issue from the bright line box of the limitation on scope.

It is helpful to review the specific facts of [Nichols v. Keller](#) (1993) 15 Cal. App. 4th 1672. That review illustrates why this is not only a good ethical rule but indeed a necessary one. Mr. Nichols was injured in a vehicular accident while on the job. He consulted with Mr. Keller, a competent workers' compensation attorney, who pursued his claim successfully. After the statute of limitations had run, Mr. Nichols learned that his relief was not limited to workers' compensation against his employer, but indeed he could have sued the driver of the other vehicle individually. He sued lawyer Keller for malpractice. Mr. Keller's defense was that he was a limited scope lawyer and that his practice was strictly limited to workers' compensation. Moreover, he argued he would be incompetent to pursue a personal injury action against the driver of the other vehicle. The trial court and the Court of Appeal reasoned that as between the two of them, Mr. Keller was in a better position to know of the existence of a related third-party claim and had an obligation, not to pursue that claim himself, which he was not qualified to do, but to advise Mr. Nichols that he should consult a personal injury lawyer, and that he should do it quickly because, as always, there were time limitations that would at some point preclude the personal injury suit. The malpractice judgment against Mr. Keller was affirmed on appeal.

As with informed consent, failure to advise on the existence of related legal issues is an easy pitfall to avoid. Just as a client consulting with a lawyer on a matter of general law may not be aware of the potential tax problem, and the general lawyer may not be a tax expert qualified to advise the client on a tax issue, it is still incumbent on that lawyer to advise the client to consult an expert. Lawyers do this for tax issues or real estate issues or other related issues which are outside the scope of the competence of an individual lawyer or are by their nature very specialized. It's not difficult to write a letter suggesting the client seek tax advice. The same is true for any issue which is outside the scope of the matter for which the client is seeking advice. Of course, the related issue may well be within the competence of the consulting attorney, and may result in an expansion of the scope. So long as this expansion is memorialized, this is a win for the lawyer who may get the additional business, and a win for the client who gets needed competent services.

All of the forms, fee agreements, checklists, client handouts, and best practices which are necessary to ensure that you have met the four ethical rules summarized above and that your

file reflects your having done so already exist. They have been drafted to help you and are available in risk-management materials, which are discussed in detail later in this chapter.²⁰

The ethical rules on limited scope representation are not difficult, but they must be strictly adhered to, and as with any other issue of ethics, when in doubt err on the side of caution.

THE 10 BASICS OF LIMITED SCOPE

1. Know the rules.
2. Get informed consent from your client.
3. File the appropriate entry of appearance form, if necessary.
4. Lay out exactly what you will and will not do for the client in the fee agreement and amend the agreement if the scope changes.
5. Stay within the scope of your agreement.
6. Make sure the client understands what tasks he or she is responsible for and talk to the opposing side about your limited scope role.
7. Utilize checklists and handouts to educate your client.
8. Keep thorough records.
9. Always advise the client of the existence of any related legal issues and any time limitations that make finding another lawyer, if that is necessary, a matter to be handled promptly
10. Don't forget your termination letter!

INTEGRATING LIMITED SCOPE REPRESENTATION INTO YOUR PRACTICE

As you begin to incorporate limited scope representation into your practice, consider the following:

Initial Intake

It is essential to do a thorough initial intake with every potential limited scope client. You do this for several reasons. Of course, you need to gather all of the pertinent facts and documents to competently represent the client, as you would in any representation, whether full-service or limited in scope. Additionally, you must advise a client of the difference between limited scope and full-service so that you can obtain informed consent. Also, you have to do a thorough intake so that you can identify any related issues of which the client may be unaware (remember *Nichols v Keller*). Any client who is resistant to a thorough intake interview is

²⁰ A three-hour family law training, including a full hour of ethics, a detailed analysis of the risk-management materials and information on marketing and promoting a limited scope legal practice is available from PLI: [Expanding Your Practice Using Limited Scope Representation](#) at low-cost or free with scholarship.

probably not a good candidate for limited scope representation. Never take a limited scope representation when the client will not let you gather enough information so that you can make a professional judgment as to whether the limitation in scope is reasonable under the circumstances or whether there are related issues of which the client should be aware.

Checklists are an excellent and cost-effective way to memorialize your limited scope client intake and particularly its thoroughness.

The initial intake is where you must make the professional judgment of whether limited scope representation is appropriate for *this* client with *this* matter in *this* court or administrative body. This is where lawyers should weed out clients who are incapable of informed consent, clients who are using limited scope representation to manipulate the court or the opposing party, legal issues or fact patterns which are too complex for limited scope representation and any other factors which would render the matter unsuitable for limited scope. A detailed list of the factors which you should look for in the initial intake analysis is contained in the best practices section of the risk-management materials referred to throughout this chapter. The most recent iteration of the risk-management materials are available online as part of the course materials for the PLI program referenced in footnote 20.

Fee Agreements

A client's understanding of their, and their lawyer's, responsibilities is often subjective. Clients often hear what they want to hear. It is relatively easy to communicate your responsibilities when the agreement is that "I will take care of your entire case and you will pay me X dollars per hour for my work." But in limited scope representation you must be disciplined and be sure that from the start there is a clear, definitive apportionment of responsibilities and that the client understands precisely which legal tasks will be performed by the lawyer and which ones they are responsible for undertaking themselves. Any misunderstanding regarding the limitation on scope is likely to be resolved in favor of the client absent a writing which memorializes it in terms simple enough for a client to understand. For this reason, any lawyer who enters into a verbal limited scope representation agreement does so at his or her peril. [Sample fee agreements](#) have been drafted and approved by the State Bar Committee on Mandatory Fee Arbitration and are available for free, and there is no excuse for not having a limited scope fee agreement which is periodically revised as the scope of representation changes.

Fee agreements come in four general types:

Single Shot Tasks

The simplest agreements are where an attorney performs a single service for client on the spot, with no expectation of any further services in the future. This agreement is in some ways analogous to a “non-retention letter.” The agreement need be nothing more than a simple checklist indicating the service the attorney performed for the client and a recitation that no further services are requested or anticipated. A common example of this type of limited scope service is where the client has appeared as a self-represented litigant in court, has obtained an oral order, for example for child support, and needs a lawyer to draft the written order and wage assignment. This drafting often exceeds the ability of self-represented litigants but is a relatively simple task for most lawyers. The lawyer drafts the order or other documentation, gives it to the client, and collects a check or swipes a credit card. The attorney client relationship begins and ends on the same day, usually in less than an hour.

Coaching

The vast majority of limited scope representation arrangements involve more than simply drafting a single pleading and less than appearing at court. These can be as simple as a client consulting with a lawyer to review documents the client has drafted himself or herself (usually having been copied off the internet) to ongoing multiple levels of document assembly, investigation, exhibit preparation, procedural advice, strategy discussions and planning, coaching for settlement conferences, preparation of demand letters, scripting questions for the litigant to ask witnesses while self-representing in court, and many other types of services as dictated by the client’s needs and the complexity of the matter. There are two separate coaching fee agreements in the risk-management materials, one for a simpler case where the client occasionally consults for advice and document review and another for ongoing detailed repeated coaching and document assistance. Each can and should be tailored to the specific needs of the matter.

Limited Scope Court Appearances

At the far end of the spectrum is an attorney client relationship where it is contemplated that one of the services the attorney will perform will be an appearance in court. This type of representation needs its own fee agreement. As with all limited scope fee agreements, it must comply with California Rule of Professional Conduct 1.2(b) and clearly delineate the scope of representation. It should also recite that making one or more court appearances may be among the tasks the attorney is agreeing to perform. While the California Judicial Council is very supportive of limited scope representation, and has done a good job of training its judges to

allow, accommodate, and in fact encourages limited scope representation, when making a court appearance it is critically important to guard against an unwitting expansion of scope. It is recommended that a fee agreement which includes limited scope court appearances should include a provision that if a judicial officer attempts to expand the scope of representation beyond that which has been agreed by the attorney and client, the client agrees to sign a substitution of attorney.

The fee agreement for limited scope court appearances should also recite that the limited scope attorney is not going to be communicating with opposing counsel or the opposing party on issues outside that for which the lawyer has agreed to make an appearance. Although, again remember, that the limited scope lawyer must advise the client of the existence of any related legal issues.

Drafting Pleadings (“Ghostwriting”)

The rules on disclosure of ghostwriting vary widely from state to state. There is no requirement in California that the drafter of pleadings that are filed with the court must disclose either his or her own identity or nor is there a requirement to disclose within the four corners of a document that the pleading was drafted by an attorney²¹

Notice of Limited Appearance

When a limited scope representation involves appearance at court, a notice of limited appearance form is mandatory. In family law this is [FL-950](#) in civil law it is [CIV-150](#). Procedures for withdrawing after the conclusion of limited scope court appearances vary from civil to family law in California and will be discussed in a [later part](#) of this chapter.

Communication

An attorney who has filed a notice of limited representation in order to make a court appearance would communicate directly with the opposing party or counsel on issues or matters within the limitation on scope. Opposing party or counsel should communicate directly to the litigant on any issues or matters which are outside the scope of representation. And you should make that clear to both your client and opposing counsel.

²¹ Readers in other states should consult your own rules. There are two other schools of thought on this issue of disclosure of ghostwriting. Some states require that the document contains a recitation that was drafted by a licensed attorney without disclosure of identity. Other states require disclosure of full contact information of the drafter. This is a problem in those states where filing a pleading on behalf of the client constitutes a general appearance. Do not make assumptions about the rule in your state. Research it yourself.

There is sometimes confusion regarding the responsibilities of the full-service attorney who is opposing an attorney making a court appearance for limited scope. [Rule 4.2](#) of the Rules of Professional Conduct provides that an attorney must not communicate directly or indirectly about the subject of the representation with a represented person without consent from the other party's lawyer. The key phrase in this context is "about the subject of the representation." Comment [4] to Rule 4.2 clarifies that the rule does not prohibit communication with a represented person concerning matters outside the representation. Comment [4] goes on to say: "[A] lawyer who knows that a person is being provided with limited scope representation is not prohibited from communicating with that person with respect to matters that are outside the scope of the limited representation." Since it is easier for attorneys to deal with attorneys than self-represented litigants, some attorneys take the position that they can't talk to the client directly if a notice of limited representation has been filed. But discussing with opposing counsel the interpretation of Rule 4.2 offered above may well change his or her mind.

However, whenever a lawyer communicates with a self-represented litigant, the lawyer must comply with Rule of Professional Conduct 4.3 which states in pertinent part:

In communicating on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person incorrectly believes the lawyer is disinterested in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. If the lawyer knows or reasonably should know that the interests of the unrepresented person are in conflict with the interests of the client, the lawyer shall not give legal advice to that person, except that the lawyer may, but is not required to, advise the person to secure counsel.

Converting to Full Service Representation

As discussed above, the scope of representation often changes over time and. This change is almost always an expansion. Sometimes the change converts the limited scope representation to full-service representation. Most lawyers are happy to expand the scope of their services. An expansion to full-service representation does require investigating where the overall matter stands now after the steps the client has taken in all areas delegated to him or her by the limited scope agreement. It is important to know what strategies have been adopted and with what results and potential consequences before agreeing to undertake full service or representation of a client who is been previously self-representing.

Client Education re Procedures, including Filing, Service and Deadlines

One of the most common forms of limited scope representation involves the client who currently is self-representing and intends to remain so, but needs help with court procedures, service of process and other technical aspects. A lawyer who is providing coaching or document assistance for such a client is responsible for educating the client on the relevant procedures, technicalities of service, filing and other deadlines and, most importantly, the negative consequences of failing to do any of these things properly. This is part of the service that a good coach offers. An easy way to do this is to have a good crib sheet to give to the client. When you do this, make a note of the date and time you gave the client the sheet -- and explained everything in it -- to document your file. Remind the client that he or she is making a decision to dispense with your full service assistance and that the client will be now responsible for the tasks the limited scope agreement assigns to him or her and that you will be calling when a document is due or a reply needs to be filed to help ensure that no deadlines are missed. Then you need to make a note to the file of the date and time all this was communicated to the client orally and through the crib sheet to document what you've done.

Complex Cases

Highly complex cases are not good candidates for limited scope representation. No matter how competent a limited scope lawyer may be in the part of the case which she has undertaken, in a complex case there are generally too many moving parts, all of which impact the others, to not have a single unified strategy. This is one of those points of analysis which should be considered in forming the professional judgment at the outset whether an individual case is suitable for limited scope representation. If the agreement is that the client will self-represent on part of the case and the lawyer will assist with another part of the case, it is important to include in that assessment the question of whether the actions taken by one in their part of the case will impact the others and how. When in doubt, always err on the side of caution.

Fees and Billing

Best practice is that limited scope representation is pay-as-you-go. The reason for this is practical. Limited scope clients often consult sporadically. They come in for a document to be drafted or some advice on procedures or strategy, and then they may go away for months. They may never come back. Make it a practice to collect payment at the end of each session with your limited scope client.

Sometimes a limited scope arrangement will require a lawyer to do work outside the client's presence. For example, you may be gathering and assembling evidence, preparing exhibits and testimony for the client's use. Lawyers who do this may require a payment of fees in advance of

service equivalent to a few hours of time, which is replenished as used. If you do this, be clear with the client that any unused amounts will be refunded to the client at the end. It is generally not advisable or necessary to charge significant fee paid in advance as would be done with full-service litigation which is contemplated to proceed well into the future. Be aware that there are ethical rules that prescribe how you must handle any fees paid in advance or other money you hold for the client's benefit. They will be discussed in the next section.

A final note: it is not advisable to charge a reduced hourly rate for limited scope representation. Again, the reason is practical. A lawyer's standard of care for a task performed in the context of limited scope representation is exactly the same as the standard of care for the performance of that task in the context of full service. The ethical and professional responsibilities are the same, charging a reduced fee for limited scope representation creates a false impression that the client will receive second-class service. The cost savings to the client is in the fact that the lawyer is taking on fewer tasks and thus devoting less time to the case than in a full-service case, and not due to any reduction in diligence or care.

Flat Fees and the Ethics Rules that Apply to Them

Some limited scope lawyers, particularly those with a high volume practice consisting of modest cases, charge flat fees for certain tasks. This should be done with caution and only after you are certain that you can accurately estimate in advance the approximate time it will take you to perform a certain task. The reason is practical. Many lawyers underestimate the amount of time it actually takes them to draft a petition for dissolution or some other specific document. When they find that the flat fee that they have been quoting for that service is insufficient and they are losing money, they raise the fee, which may cause the client hostility and the loss of trust. So, if you use flat fees, make sure that you set them appropriately at the outset and if you raise your fees this should be part of an overall restructuring of your fee schedule and not in the middle of handling a case.

Flat fees paid in advance must comply with Rule of Professional Conduct 1.15 (a) which requires a lawyer to deposit such fees in the lawyer's trust account in the State of California (with a very limited exceptions for out of state accounts, not likely to occur in a limited representation). The lawyer may deposit flat fees paid in advance in the lawyer's operating account only if the lawyer discloses to the client in writing three things.

1. that the lawyer will do this;
2. that the client has a right to demand that the flat fee be put instead in a trust account until the fee is earned; and

3. that the client is entitled to a refund of any amount not earned in the event of termination or for any other reason. The client should sign this written disclosure.²² For more on Rule 1.15's requirements on keeping and safeguarding client funds, including records to be kept and notices required, see discussion above in [Chapter 3](#).

WITHDRAWING FROM THE CASE

FAMILY LAW

Many limited scope consulting arrangements occur over a period of weeks, months or even more. There may be no clear ending date. The lawyer will simply know that the client has stopped coming back with more questions. In others, there will be a clear point at which the consulting arrangement ends -- usually at the final disposition of the matter. At that point, it is good practice and good business to send a letter confirming the end of the relationship. A courtesy letter which states "I'm pleased that I was able to assist you in bringing this matter to a satisfactory conclusion. It was a pleasure working with you, and I hope you will not hesitate to call me if I can be of further assistance to you in the future" at the conclusion of any representation is simply good manners and good business. When the client simply stops showing up also send a letter asking where the matter stands and if any further help is needed. For ethical rules on withdrawing or terminating a representation, see Calif. Rule of Prof. Conduct 1.16 (setting out when withdrawal is required and when and how it is permissible as well as required actions when a client terminates the representation).

If a lawyer has actually appeared in court and thus filed the mandatory [FL-950](#), a more formal step is required to document the end of the attorney-client relationship. Calif. Rule of Prof. Conduct 1.16(c) states that if a tribunal requires permission to withdraw, the lawyer must obtain that permission before withdrawing. Moreover, Rule 1.16(d) says: "A lawyer shall not terminate a representation until the lawyer has taken reasonable steps to avoid reasonably foreseeable prejudice" to the client, "such as giving the client sufficient notice to retain other counsel and complying with 1.16(e), which requires in almost all circumstances release to the client at the client's request all material reasonably necessary to the client's representation (the lawyer may and should keep copies, see Comment [5] to Rule 1.16) and the prompt refund of any fees or expenses paid in advance, not earned or incurred.

Best practice is always to obtain a substitution of attorney. This is something which should be discussed with the client at the time limited scope court appearances are being contemplated. It is important to tell the client that after you have completed the court appearances for which

²² Rule 1.5(b)(2) actually requires a client signature to the writing described above only for flat fees greater than \$1,000,00, but even for smaller amounts it is wise to get the client's signature to the written disclosure required.

you have contracted, you will be providing them with a document called substitution of attorney (the import of which you should explain and for which they will not be charged) and a condition of your agreeing to go to court on their behalf is that they agreed to sign this document and promptly return it to you after your representation is completed. Note that it is an absolute ethical violation to obtain a substitution of attorney from a client before services have been completed to be filed at the lawyer's discretion at some indeterminate time in the future. This is a serious disciplinary issue and great care must be taken to not run afoul of the rule.

In the absence of a substitution of attorney, withdrawal is governed by [Rule 5.425](#) of the California Rules of Court. A modification of that rule designed to make it easier for lawyers to withdraw from family law court appearances is currently out for comment as this chapter is being written. Any lawyer who agrees to make a limited scope court appearance in family law should check the current version of 5.425 to ensure that they are in compliance.

CIVIL

The rules for documenting the end of a coaching or ghostwriting relationship in non-family civil cases are the same as for family law. When a client merely consults a lawyer to draft a demand letter, it is not necessary to create additional documentation, other than the original agreement, to memorialize the fact that nothing further is required. The simple one-shot fee agreement mentioned earlier in this chapter is sufficient.

When there is a clear end to the relationship, a courtesy letter documenting that fact and thanking the client for their business is appropriate.

Where court appearance has been made and the mandatory [CIV-150](#) filed and served, the attorney's withdrawal is best marked by a substitution of attorney. This should always be the preferred method. If the client declines to sign the substitution or is otherwise unavailable, the procedures are contained in [Rule 3.35](#) et seq., of the California Rules of Court. Lawyers should always check the rule when making a limited scope court appearance to ensure that they are in compliance.

ADVANTAGES OF LIMITED SCOPE REPRESENTATION

Here are a few of the benefits of adding limited scope representation to the range of services you offer to clients.

- **Access to a wider range of potential clients.** The vast majority of litigants can afford to pay for some legal services, even if traditional full-service remains financially out of reach. Limited scope clients are currently nobody's clients. They still have legal issues and a smart lawyer will find a way to meet those needs and expand their client base.
- **Zero accounts receivable and improved cash flow.** Most full-service lawyers, especially in fields such as family law, carry significant accounts receivable, much of which never gets paid or is discounted in order to obtain partial collection. Since limited scope representation is pay-as-you-go, the lawyer sees payment as soon as the services are provided instead of waiting weeks or even months for collection.
- **Improved quality of life.** A lawyer who is collecting payment for 100% of their time spent at the point of service does not have to work as many hours as a lawyer who is only collecting 75% or 80% to make the same amount of money. This frees time for hobbies, family, or taking on more clients.
- **Better client relations.** Clients are inherently suspicious of the billable hour. They assume that it is an incentive to be inefficient. When they attempt to deal with part of their legal matter themselves, they acquire a much better understanding of how difficult it can be and how valuable the assistance of a competent lawyer is to them. As a result, they are less likely to question your bill because they see the direct benefit to them of your work.
- **Improved referral sources.** Limited scope clients almost universally report that they are more satisfied with the result than full-service litigation clients. Many limited scope clients – and full service clients as well -- are either vaguely or overtly anti-lawyer. They assume they will be overcharged or even cheated. When they obtain a reasonable result for a reasonable fee which is much lower than a full-service attorney has quoted them, they tend to tell all of their friends about their positive experience. Word-of-mouth from satisfied clients is always the best referral source for a lawyer, and limited scope clients tend to send all their friends. Satisfied clients breed more satisfied clients.

CHAPTER FIVE APPENDIX

Authorities

California Rules of Court

- [Rule 3.35](#): Definition of limited scope representation; application of rules
- [Rule 3.36](#): Notice of limited scope representation and application to be relieved as attorney
- [Rule 3.37](#): Nondisclosure of attorney assistance in preparation of court documents
- [Rule 5.425](#): Limited scope representation; application of rules
- [Rule 5.427](#): Attorney's fees and costs

- *California Court Forms* [FL-950](#): Notice of Limited Scope Representation (Family Law)
- [FL-955](#): Notice of Completion of Limited Scope Representation
- [FL-956](#): Objection to Proposed Notice of Completion of Limited Scope Representation
- [FL-958](#): Order on Completion of Limited Scope Representation
- [CIV-150](#): Notice of Limited Scope Representation (Civil Law)
- [CIV-151](#): Application to be Relieved as Attorney on Completion of Limited Scope Representation
- [CIV-152](#): Objection to Application to be Relieved as Attorney on Completion of Limited Scope Representation
- [CIV-153](#): Order on Application to be Relieved as Attorney on Completion of Limited Scope Representation

*California Rules of Professional Conduct*²³

- [Rule 1.1](#): Competence
- [Rule 1.2](#): Scope of Representation and Allocation of Authority
- Rule 1.5 Fees
- [Rule 4.2](#): Communication With a Represented Person
- [Rule 4.3](#): Communicating With an Unrepresented Person
- [Rule 1.15](#): Safekeeping Funds and Property of Clients and Other Persons
- [Rule 1.16](#): Declining or Terminating Representation

California Ethics Opinions and Other Resources

- [Los Angeles County Bar Association Ethics Opinion 502](#): Lawyers' Duties When Preparing Pleadings or Negotiating Settlement for Self-Represented Litigants

²³ Again, remember there are official interpretations of these rules, some cited below under California Ethics Opinions (which is not intended to be an exhaustive list) and there is law outside the Rules that may apply, such as the California Rules of Court cited above and the Business and Professions Code, The Rules do not contain exhaustive cross-references to all other law that may apply. So, when you are unsure what to do it is never wise to read a rule and comment and interpret on your own. Do your research when you have a question and to ensure you are researching all pertinent sources of law that may apply, avail yourself of the **Ethics Hotline 1-800-238-4427 (1-800-2ETHICS)** whose services are described in the Preface above.

- *California Judicial Council Website* [Limited-scope and unbundling materials](#). This is the link to a wealth of unbundling materials on the California Judicial Council website. It has direct links to both the family law and civil risk management materials, the Ethics Primer listed below, limited scope court forms, as well as the Report of the Limited Representation Committee of the California Access to Justice Commission (2001) many more resources.
- [Limited Scope Representation](#) at the Judicial Council website

Ethics Primer

- The California State Bar's Committee on Professional Responsibility and Conduct has posted an [Ethics Primer on Limited Scope Representation](#)

CHAPTER SIX: MARKETING AND BUSINESS DEVELOPMENT

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INTRODUCTION

The terms “marketing” and “business development” are often used interchangeably by lawyers when describing their plan for growing their law firm. They are actually two distinct business functions, despite covering similar ground. In the legal context, marketing involves developing a strategic plan for communicating a law firm’s overall message, including its brand, service offerings, and benefits to potential clients, existing clients, partners, and the community at large. Once a marketing plan is in place, lawyers in a law firm can then begin their business development efforts, which typically consist of engaging in activities that will help them strategically build relationships with potential referral sources, such as colleagues and other professionals. Lawyers should plan on devoting a significant amount of time to both marketing and business development when starting a law firm.

DEVELOP A LAW FIRM BRAND

Clients have many lawyers to choose from when they have a legal issue. What makes you different and sets you apart from other lawyers and law firms? This is where a law firm brand

comes in. A law firm brand is your opportunity to convey to clients who you are, what legal service packages you have to offer, and what makes you unique.

In the legal profession, attorneys sell an intangible set of skills including their expertise, knowledge and problem solving abilities. This makes the profession ideal for branding as it gives attorneys a way to set themselves apart. Today, with the prolific use of the internet and social media, having a law firm brand is essential.

When developing your brand, consider:

- Target audience;
- Your firm values;
- What your personal and firm strengths are;
- What is unique about you and your firm; and
- How you can offer value to potential clients in your target market.

For more information on what clients in your target market value and what services you can offer, see these sections in Chapter 1, [Providing Value Through Legal Expertise](#) and [Create and Test Assumptions about What Clients Want](#).

A brand is more than just a logo or a [tagline](#). It is the way people think of you through a combination of your website, logo, letterhead, business cards, social media, and other marketing channels.

MARKETING PLAN AND BUDGET

Every lawyer needs to develop a plan and determine how much money, if any, he or she is going to set aside for communicating and promoting his or her law firm brand, service offerings, and benefits to potential clients. One trap that many lawyers fall into is spending an exorbitant amount of money on marketing and advertising without first determining who their potential clients are and forming the basis for evaluating various marketing and advertising options. See generally Chapter 1 on [preparing a budget](#) and on [testing assumptions](#) about what clients want.

When assessing your marketing options, keep in mind:

- How your potential clients search for legal information;
- Your expected return on investment (whether anticipated revenue will justify the expense of the service); and
- The need to reevaluate your expenses each year to determine whether the expected return has been realized.

The “Marketing and Business Development Planning Template” that appears later in this chapter offers excellent suggestions and forms to use in marketing your services. It can be easily customized and is a good starting point for any law firm.

It is also important to consider the following avenues for marketing your business:

Referrals

The best and most important asset you have is your relationship with colleagues and clients. This means that if you're just starting out and don't have any clients, your priority should be cultivating an active source of referrals.

Former clients are many lawyers' best referral source, so you should be sure to keep your former clients updated on your practice, services, and expertise via social media or some other medium. Ask clients for feedback about why they hired you and what you can do to improve. Use their constructive criticism to improve. Clients will be more likely to refer their family and friends to you later if they feel like you helped them. Another way to maximize these referrals is to include a statement in your closing letter which advises that you maintain your practice through referrals, list your areas of practice and request that the client keep you in mind for future legal needs or as a referral for family and friends.

Leverage your network of peers; get involved with your local bar association, and do pro bono work. Consider participating in an [established incubator program](#), see Chapter 1 and for advice on [finding and keeping mentors](#), see Chapter 4. Participating in these types of activities will put you in contact with individuals who can refer potential clients to you if they know what legal services you offer and believe that you will do good work and give good customer service. If you do receive a referral from another attorney, be sure to call that attorney or send them a handwritten note thanking them for the referral. It will only take a moment but can have a long lasting positive effect.

Certified Lawyer Referral Services

In California, certified Lawyer Referral Services are important sources of referrals for attorneys who are dedicated to serving their communities and offering affordable legal services. Callers looking for legal assistance are screened by trained intake personnel. In order to become a member, attorneys are screened for their experience and competence at different levels of expertise in discrete subject matter panels and are then matched with clients.

Many of these services offer more than just advertising, including professional development through Continuing Legal Education programs, opportunity to network with peers, and paths to expand a practice in new or trending subject matters. Some also have mentoring programs to guide newer and less-experienced attorneys to learn the ropes.

The certified LRS system of certifying lawyer referral services is authorized by Business & Professions Code section 6155 and [controlled by State Bar Rules](#).

Self-Help Centers

California has established self-help centers in courthouses throughout the state, with their resources found [here](#) and the list of locations [here](#). The purpose of these self-help centers is to facilitate access to the courts by providing basic information about court procedures and practices to litigants who are not represented by lawyers.

Internet Presence

A 2014 survey by FindLaw and Thomson Reuters found that consumers turn to the internet first to help them find a lawyer. What's more, the survey was a follow up to one conducted in 2011 where using the internet was the least popular choice. Establishing an internet presence is no longer simply advisable, but required.

There are various avenues for internet presence. Developing a personalized firm website is arguably the most important. Also, Facebook, Twitter, and LinkedIn can be some of the most cost-effective means of communicating and promoting your legal services and practice. Many younger lawyers who have grown up using social media leverage it and do not spend a dime on marketing aside from funds spent to develop their websites.

Importantly, be extremely careful what you post online. Be sure to review the commonly implicated Rules of Professional Conduct in the Appendix of this Chapter keeping in mind potential ethical violations that can arise when using social media. The State Bar of California maintains an [Ethics and Technology](#) website to help lawyers with ethics issues connected to use of the internet, including the use of websites, emails, and many other topics. There you will find ethics opinions addressing issues arising from internet use and many other helpful resources.

Traditional Advertising

There are many traditional methods of advertising which should not be overlooked if they are avenues that you believe might reach your potential clients, including:

- Direct mail or email advertisements
- Printed advertisements displayed in public places or printed in newspapers
- Television or radio advertisements
- Purchasing Google AdWords

Again, before pursuing these avenues make sure you consider cost, target audience and estimated return on your investment. It is advisable to develop a marketing budget to incorporate into your overall budget and be realistic about all expenditures. Be sure to evaluate every expense to determine your expected return and to reevaluate expenses a year later to determine whether the expected return was realized. Remember to consider how you treat unsolicited ads, mailers, and e-mails, and remind yourself that most people will treat your advertisement that same way.

Also, as you consider advertising be sure to thoroughly review the commonly implicated Rules of Professional Conduct in the Appendix of this Chapter, particularly those on advertising and soliciting clients. See the next section on Marketing Tips for the rules involved.

Marketing Tips

- Develop a brand by considering target audience, strengths, and firm values.
- Create a marketing plan and calendar.
- Try to do at least one marketing activity a day.
- Develop an internet presence; create a website and use social media (such as Facebook, Twitter, and LinkedIn) to connect with potential clients.
- Make sure your advertisements, including your website, are free of false or misleading statements. [Rules 7.1 through 7.5](#) of the California Rules of Professional Conduct.
- Make sure your website has a disclaimer stating viewers are not considered clients unless there is a signed retainer agreement. Think of inexpensive ways to advertise, including creating a listing on Yelp! or Avvo.
- Get your name out by writing articles for legal publications or blogs, speaking at community organizations, or volunteering.
- Network with colleagues and clients to cultivate referrals.
- Request client feedback.
- Create an elevator speech — know what you do and be able to explain it in 30 seconds or less.

BUSINESS DEVELOPMENT

Once you have a marketing plan and budget in place, you can begin your business development efforts. Business development also requires funds, so you will need to determine how much money you are going to allocate for it and develop an associated plan, budget, and calendar.

Business development is a time-consuming task, especially when you are first starting your law practice. You should plan on devoting at least a third of your time to business development efforts until you have developed a solid client base. For many lawyers, business development feels unnatural and unpleasant. There are numerous ways a lawyer can develop business, however. The key is to choose a strategy that is a natural fit with your personality.

Networking

Some more formal and traditional business development activities include leveraging peer networks, such as getting involved with the [California Lawyers Association](#) and local bar association sections and committees. Don't forget about networking with non-attorney groups as well, such as college alumni associations, rotary groups, religious groups, community groups and organizations and neighborhood associations.

Today, some lawyers are also finding business development success through more informal gatherings, such as [meetups](#) or through [branded legal networks](#). Meetups are posted online and bring people who share a common interest together to discuss it, do projects together, or engage in activities they each enjoy. Branded legal networks are online referral services. Please note before signing up for a branded network that Calif. Rule of Prof. Conduct Rule 5.4(a)(4) allows lawyers to pay for lawyer referral services only if the service is “established, sponsored and operated in accordance with the State Bar of California’s Minimum Standards for Lawyer Referral Services.”²⁴ Again, the key is to choose a strategy and activities that are a good fit for you. Participating in these types of activities will put you in contact with individuals who can refer potential clients to you if they know what legal services you offer and believe that you will do good work and provide client value.

Develop an elevator speech that is less than 30 seconds and constantly practice it so that you can quickly and succinctly summarize your brand identity, legal service offerings, and how you can benefit moderate income clients (e.g., “My firm’s mission is to provide client-centric legal services that are affordable, responsive, and accountable to the unique needs of individuals and families in the San Francisco Bay Area.”). Identify your firm brand, your legal service offerings, and the value you can provide clients, including any alternative fee arrangements and billing methods that you offer. Following up with new contacts — even if it is just sending them a quick email to say it was nice to meet them — will show you are conscientious and serious about developing your practice.

Volunteering

Do [pro bono](#) work. Not only will you provide a community benefit, but you will also gain knowledge that you otherwise would never have learned through paid work.

Other

To keep yourself disciplined with marketing, create a business development calendar in which you identify and schedule potential business development opportunities, such as:

- Write articles for your local bar association’s bulletin, law school alumni magazines
- Start a blog and consistently post articles
- Join the board of an organization (legal or non-legal)
- Present a training or volunteer at a clinic
- Participate in list-serves

²⁴ For a discussion of [controversies between bar regulations and the new online technologies, like branded networks, see](#) Benjamin H. Barton & Deborah L. Rhode [Access to Justice and Routine Legal Services: New Technologies Meet Bar Regulators, 70 Hastings L.J. 955](#) (describing controversies over bar regulation of new online technologies that help address the routine legal needs of low-and middle-income consumers and arguing that bar regulators need to take care that they are not hindering access to justice for low and moderate income folks, now under served).

- Attend local bar association functions
- Follow up with new contacts to build your network

Be diligent about keeping up with this calendar to ensure your name and business are being distributed into the market consistently.

A cautionary note on blogging: While some forms of blogging are not subject to the ethical strictures on advertising or soliciting business, others are. Please see [Formal Op. 2016-196](#).

Evaluation

Every time you meet with a new client, ask the client how he or she found you. This will help you determine which business development efforts are most productive for you. If one of your contacts refers a potential client to you, be sure to thank him or her. Lawyer referrals will likely be one of your biggest business development sources. It will take numerous contacts to determine how fruitful your potential referral sources are. Make sure to seize the opportunity to let your contacts know about developments in your practice, expansion of client services, successes, added staff, etc.

THE 10 RULES OF MARKETING

1. Do at least one marketing activity a day.
2. Set marketing goals.
3. Join a local bar association.
4. Utilize social media.
5. Develop professional relationships.
6. Write articles and blog entries regularly.
7. Create eye-catching advertisements.
8. Set aside money to spend on marketing.
9. Request client feedback.
10. Provide outstanding customer service.

On the use of social media by lawyers, see [Ethics Opinion 2012-168](#): Posting on Social Media and Attorney Advertising.

MARKETING AND BUSINESS DEVELOPMENT PLANNING TEMPLATE

Provided by Martha Cusick Eddy, Global Director of Marketing, RGL Forensics, and Phil Nugent, Managing Director, NCG Marketing. Used with permission. Contact Martha at martha@mapgrowth.com. Contact Phil at phil@ncgmarketing.com, www.ncgmarketing.com.

Firm Name:

Prepared By:

Date:

EXECUTIVE SUMMARY

Vision Statement

Situation Analysis

SWOT Analysis

Look at the internal factors and list out your strengths and weaknesses. Then look at the external environment affecting your office and list out opportunities and threats in your market.

Strengths	Weaknesses

Opportunities	Threats

External Market Analysis

Which markets does your office serve? What is the overall market situation? What are the changes in the market? What percentage of your work goes to which market? How would you like to diversify your work in the future?

Competitive Analysis

Who are your competitors? How do they market their services? What are their competitive advantages? Disadvantages?

OBJECTIVES

Define your annual objectives.

- Profit
- Revenue mix objectives
- Days in AR
- Realization rate
- Business Development - average number of activities weekly, monthly / Impact of activities

MARKETING STRATEGIES

Target Market and Client Segments

How will you reach your market goals? What specific clients will you target? What current clients will you continue to develop? Who can they introduce you to? What potential clients will you develop? What specific companies can you target?

Client Characteristics

WHO IS YOUR CLIENT - What are the demographics of your clients? Be specific - title, experience, etc. What are your client's needs? What influences their buying decision? What is the lifecycle of your client? How often does he or she give you work? How often could he or she give you work?

Service Strategy

Existing services

New services

Are there any new services that could be added?

INTEGRATED MARKETING COMMUNICATIONS STRATEGY

Contacts & Your Network

1. Create a contact list of family, friends, contacts – in Outlook or other contact management tool
2. Develop wish list of prospects
3. Rate your contact list on a 1, 2, 3 tiered basis
4. Keep in touch through events, newsletters, holiday & birthday cards, lunch, coffee, calls, e-mails, personal events, etc.

Contact Frequency:

- 1's: Quarterly in person
- 2's: Twice a year (once in person)
- 3's: Once a year

Professional Development

1. Join one local association and get actively involved in one targeted community
2. Update your bio annually
3. Bio Improvement – Include some niche orientation
4. Bio Improvement – Add some success stories
5. Set up a leads group with other professionals

Industry & Niche Development

1. Target an industry that has specific interest to you
2. Join one industry trade association – attend local meetings and one national meeting
3. Subscribe to and read the Wall Street Journal, Forbes, and Fortune
4. Subscribe to the primary trade journal for your niche industry

Internal Development

1. Identify three colleagues that you want to strengthen your relationships with
2. Present once per year internally

Community Development

1. Identify one community organization that you have strong passion for
2. Join and get involved with one committee
3. Attend quarterly meetings
4. Seek out leadership role

Visibility

1. Write one article per year for a professional or industry publication
2. Present one speech per year for a professional or industry publication
3. Participate in a firm seminar to clients and prospects

Client Development

1. Develop a list of the critical issues to your client and that client's industry
2. Visit client's offices, facilities, factories, stores, etc.

ACTIONS & TACTICS

Most Effective

- Speaking engagements, especially at industry forums/client industry meetings
- Published articles — articles in client/industry trade press — information pieces published for industry forums — published in general business sources, blogs
- Seminars (small scale — executive briefings with proper follow up)
- Proprietary research
- Web 2.0 Tactics
- Referrals from clients (with follow-up calls)
- Warm calls (follow up on referrals and from marketing activities listed above)

Somewhat Effective

- Conference participation
- Trade and professional associations
- Community/civic activities
- Networking with referral sources
- Targeted direct mail and newsletters — electronic and paper based

- Cold calling (follow up from direct mail and events)
- PR and media relations with industry press, business press, and analysts
- Client surveys

Least Effective & Expensive

- Brochures
- Seminars (ballroom size)
- Sponsorships
- Advertising

ACTIONS AND TACTICS

What steps must you take to meet your goals and objectives?

- Initial meetings with prospective clients
- Public speaking in front of clients and targets
- Give and receive referrals
- Organize a seminar
- Attend conferences and events
- Contact and set meetings/schedule meals with your Circles of Influence/Network
- Identify and send value-added information
- Public relations events and articles detailing client successes
- Relationship-building trips to firm offices to lead to cross-selling
- Write and publish articles targeted toward client issues
- Attend networking events to meet influencers and decision makers
- Secure leadership position in association or group
- Active participation in associations
- Invite targets to entertainment or sporting event
- Proactively offer office advice or presentation
- Introduce a colleague into a client relationship
- Conduct a needs assessment
- Follow up after key client/prospect interactions
- Research client's business, key stakeholders, industry and key issues
- Offer training to client's in-house team
- Productize your services
- Invite a key contact to sit on a panel
- Other

Weekly Marketing Plan

Name:

Week of:

Goal for the Week:

Weekly Action Items

Make 3 to 5 Direct Contacts with Referral Sources, Past Clients and/or Prospects

- Name / Outcome: _____
- Name / Outcome: _____
- Name / Outcome: _____

Meet with 1 Client for Purpose of Relationship Building / Exploring Additional Needs / Satisfaction

- Name/Outcome: _____

Make 2 Direct Contacts with Firm Colleagues to Assist in Business Development

1. Name/Outcome: _____
2. Name/Outcome: _____

Add _____ New Contacts to My Database

Connect with _____ New Contacts on LinkedIn

Attend _____ Networking Events

- Name/Outcome: _____

Maintain Involvement with Targeted Trade Group

- Name/Engagement: _____

Participate in _____ Discussion Groups or Social Media Groups

Special Activities

- Write a Thank You Note
- Send a Referral
- Offer an In-House Seminar for a Client or Contact
- Get a Group of Contacts Together to Talk about Business and Partnering Opportunities
- Think Broadly About Business Development – It’s Not Just About Referrals, Leads and Sales

Status Report

- Hours Invested This Week: _____
- Overall Impression of Effectiveness & Outcomes: _____

CHAPTER SIX APPENDIX

See Chapter 8 of “[Opening and Managing a Law Office: Go Solo, Win Clients, and Be Your Own Boss](#)” (2020), published by the Solo and Small Firm Section of the California Lawyers

Websites

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- [Branding on a Shoestring](#), David Gent, Blog Post on The Market Donut (date unknown)
- [Does a Small Law Firm Need to Have a Brand?](#), Valerie Nelan, Nathan Smith & Stacy Smith, Blog Post on [attorneyatwork.com](#) (May 16, 2013)
- [Marketing Matters: Branding Your Law Firm](#), Susan Van Dyke, Canadian Bar Association PracticeLink (date unknown)
- [Turn Clients into Client-Advocates: The Brand Experience](#), Jay Harrington, Blog Post on [AttorneyAtWork.com](#) (Sept. 30, 2014)

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- [Making it Rain – Practical Tips From Those Who Do: Nakia Gray](#), Sakkara Turpin, *Law Practice Today* (Feb. 12, 2016)

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- [The Rainmaker Blog](#)
- [Lexis/Nexis Law Firm Marketing Solutions](#)
- [Law Marketing Monitor](#)
- [The Attorney Marketing Blog](#)
- [Practice Smarter](#)
- [Social Media Marketing for Law Firms](#)
- [Real Lawyers Have Blogs](#)
- [Zen & the Art of Legal Networking](#)
- [CaseDetails](#)
- [Technology and Marketing Law Blog](#)
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- [How to Conduct Market Research on a Tight Budget](#), Meghan Keaney Anderson, Blog Post on HubSpot.com (June 4, 2014)
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- [ABA Solo and Small Firm Resource Center – Marketing](#)
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- [Useful YouTube Optimization Tips that Will Help Give Your Video High Ranking](#), Lalit Sharma, Blog Post on SocialMediaToday.com (Feb. 8, 2016)
- [ABA Journal Blawg 100](#)

Networking

- [Four Pre-Holiday Networking Tips for Introverts](#), Kim Staflund, Blog Post on AttorneyAtWork.com (Nov. 24, 2015)

- [How to Chat at Networking Events](#), Theda C. Snyder, Blog Post on AttorneyAtWork.com (Dec. 29, 2015)

Social Media

- [Social Media for Law Firms: It's All About Adding Value](#), Daniel Decker, *Law Practice Today* (November 13, 2015)

Other Periodicals/Sources

- ["Marketing Unbundled Legal Services in a DIY Economy"](#), Steph Kimbro, *Lawyerist.com* (June 16, 2010)
- ["Marketing Your Practice Today: Does Your Firm Need a Marketing Director? The Skills and Benefits to Look for in the Right Pro"](#), Mary K. Young, *Law Practice*, "Smart Marketing: Ideas You Can Use to get Your Firm Back in the Game" (May/June 2010)
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Authorities

California

California Business and Professions Code

- [Bus. & Prof. Code, §§ 6101, 6106](#): Acts of Moral Turpitude as Cause for Disbarment
- [Bus. & Prof. Code, §§ 6151-6152](#): Runners, Cappers, and Soliciting Business
- [Bus. & Prof. Code, §§ 6157-6159.2](#): Lawyer Advertising

California Ethics Opinions

- [Ethics Opinion 1967-10](#): Ethical Propriety of Circularizing State Bar Pamphlets
- [Ethics Opinion 1988-105](#): Advertising to and communicating with personal injury victims
- [Ethics Opinion 2012-168](#): Posting on Social Media and Attorney Advertising
- Ethics Opinion 2016-196: Attorney Blogging

*California Rules of Professional Conduct*²⁵

- [Rule 1.5.1](#): Fee Divisions Among Lawyers
- [Rule 5.4](#): Financial and Similar Arrangement with Nonlawyers
- [Rules 7.1 through 7.5](#): Advertising and Solicitation

²⁵ Again, there are official interpretations of these rules. There are official interpretations of these rules. We list a few ethics opinions in this appendix, but that list is not exhaustive, nor are ethics opinions the only source of authoritative interpretation. There is case law on many subjects too. When you are unsure what to do. It is never wise to read a rule and comment and interpret on your own. Do your research when you have a question and avail yourself of the **Ethics Hotline 1-800-238-4427 (1-800-2ETHICS)** whose services are described in the Preface above. And if your issues are connected to use of the internet, you may be able to find help at the State Bar's Ethics and Technology website.

CHAPTER SEVEN: BRICK AND MORTAR OR VIRTUAL PRACTICE

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INTRODUCTION

With the growth of the internet has come the presence of virtual law offices. Lawyers today now have a choice between selecting a permanent commercial location and developing a virtual office. In this chapter, we will explore both options.

VIRTUAL LAW PRACTICE

The information in this section was adapted from Stephanie L. Kimbro's book ["Virtual Law Practice: How to Deliver Legal Services Online, Second Edition"](#), American Bar Association (2015) and used with permission from Stephanie L. Kimbro.

"Virtual law practice" can have different meanings depending on with whom you are speaking. The two most common definitions seem to be:

1. "[A] professional law practice that exists online through a secure portal and is accessible to both the client and the lawyer anywhere the parties may access the Internet." Stephanie L. Kimbro, ["Virtual Law Practice: How to Deliver Legal Services Online, First Edition"](#), and
2. Rentable meeting space, a receptionist, and other services that are shared by several lawyers.

While the latter arrangement can be a great way to save on overhead, it does not require lawyers to incorporate technology into the management or delivery of their legal services. If you are contemplating the latter arrangement, whether in combination with the former or not, see Calif. Ethics Opinion 1997-150 on complying with the ethics rules when sharing office space with other lawyers who are not practicing in a firm with you.

Ideally, lawyers will both develop low-overhead practices *and* incorporate technology into the management and delivery of their legal services to clients. In this chapter, we will use Stephanie Kimbro’s definition when referring to “virtual law practice.”

Virtual law practices can provide tremendous value to potential clients through convenience, transparency, price certainty, affordable fees, and collaboration. For example, clients can have around-the-clock access to information about their cases through a secure portal and that may suit their own busy schedules. Clients unable to travel to a lawyer’s office during regular business hours may appreciate the ability to video conference or communicate primarily through portal access, email, and text.

The benefits of online delivery include:

- Lower overhead;
- The ability to create an eco-friendly, paperless office;
- Greater work/life balance and flexibility;
- The ability to expand your client base across jurisdictions;
- Flexibility to transition between different phases in life and career to meet professional and personal needs;
- The opportunity to tap into a broader market of consumers seeking legal services;
- The ability to serve as an amenity for existing clients of a traditional law practice;
- Added security of cloud hosted backups and other cost-effective benefits of using software as a service (SaaS);
- Less malpractice risk through the use of technology to automate tickler systems and other checks; and
- Streamlined administrative features of a law practice that permit lawyers to focus on the actual “practice” of law.

The risks include:

- Ensuring security of the technology, including third-party control and storage of law office data;
- Properly retaining and returning law office data;
- Maintaining confidentiality;
- Competently providing unbundled legal services (if applicable); and
- Avoiding the unauthorized practice of law in other jurisdictions.

You do not need a physical office space to have a successful and financially viable law practice. All you really need is a place to meet with clients. You might also consider meeting with clients at locations in the community that are convenient for them, as long as you adhere to the applicable [California Rules of Professional Conduct](#), specifically Rule 1.6 on client [confidentiality](#), which demands, inter alia, that wherever you communicate with a client you have no reason to believe that unnecessary third parties will be able to listen in. Meeting at coffee shops, public libraries, community centers, and other public places are thus permissible only if conversations with your client can be kept confidential (i.e. other people cannot make out the details of your conversations.)

If you do choose to go this route, strongly consider using a business address other than your home address. Alternatives could include renting a mailbox at a UPS store or a virtual law office. If you go with the former option, you can simply tell clients you work virtually and are happy to meet with them at public locations that are convenient for them. If you would prefer to meet with clients in a professional setting, most, if not all, virtual offices also rent out meeting space. And if working at home is simply not an option for you, virtual offices and offices with co-working spaces, could be good low-cost alternatives. See the resources in the office space section and at the end of this chapter for tips on selecting office space. Again, however, please note that you do not need to rent a physical office space to test client value assumptions or to have a successful and financially viable law practice.

Virtual Law Office Start-up Checklist

- Write a business plan whether you are starting a new practice or incorporating into an existing law firm.
- Select a name and register an URL. (You can incorporate into your existing website without purchasing a new URL.)
- Contract with a website developer and start creating web content, payment processing,
- Complete business formation and register with the [Secretary of State](#).
- Draft any needed agreements: partnership, fee structure, online legal engagement, disclaimers, etc.
- Draft law firm's policies and procedures for delivering legal services online, including technology use and social media use, email policy, and response/turnaround for handling online clients. Here again the State Bar's [Ethics and Technology](#) website may be very useful to you.
- Develop needed online forms, such as limited scope agreements, etc.

OFFICE SPACE

When selecting office space for your practice, you need to consider all options. Whatever setting you select, you should strive for flexibility, so that as your law practice evolves, the office space can evolve. Avoid long-term leases or agreements. Most important, what does the office cost in good times and in lean times? You should not get in over your head.

What Are the Basic Considerations and Questions?

It is best to explore office options such as working from home, virtual office space, office sharing, and individual office rental. When selecting office space, you need to consider your needs, the needs of your clients, the needs of the public, and the needs of your staff. You should think simply and ask practical questions, such as:

- How will your client pay fees and costs in person?
- How will your client drop off signed documents or evidence?

- How will client confidences be kept confidential?
- How will other parties hand-deliver pleadings and documents?
- What meeting space is needed?
- Where does privacy of the attorney and his or her family factor in?
- What kind of lease or office-sharing agreements are needed?
- How often will a meeting room be needed?
- Who answers telephones?
- How will copying and faxing needs be met?
- What are the [ethical considerations for sharing offices](#)? See Calif. Ethics Opinion 97-150.²⁶

What Are the Office Space Options?

Office space needs can vary depending of type of practice. For example, if your practice includes face-to-face contact with clients, attorneys, and others, an office presence with conference room and meeting space will be necessary. Even if you work from home, alternative arrangements can be made for space rentals on a short-term basis or on an as-needed basis.

Keys to Working from Home: Working from a home office can be the least expensive option. With a home office, you need to balance serving the client with personal and family privacy. It is critical to provide clients a secure, professional place to drop off payments, documents, and evidence. Virtual office vendors provide drop-box services, phone answering, and as-needed meeting room space for the home office attorney. Online communication options such as Google Voice can be the answer to communication issues.

Note: You will need to get tax advice before writing off or deducting home office space.

Keys to Office-Sharing Arrangements: Office sharing with other attorneys requires detailed planning. An office-sharing agreement is necessary to address not only business concerns, but also ethical issues. Business concerns involve paying for sharing of equipment, reception services, common space, and sometimes staff.

Note: Office sharing requires special scrutiny of ethical issues involving confidentiality, conflicts of interest, and misleading clients on lawyer relationships (e.g. client confusion over whether the lawyers are members of a single law firm). See generally Calif. Ethics Opinion 97-150.

²⁶ The opinion gives no definitive answer on when conflicts might be imputed among lawyers who share office space, suggesting only that it will depend on the particular facts and circumstances, in particular whether the lawyers sharing space might be functioning in some respects as a de facto firm. This is consistent with Rule 1.10, which covers the imputation of conflicts among lawyers. That rule limits imputation to lawyers practicing within a “firm,” a term defined in the Rule 1.0.1(c). The definition there does not include lawyers sharing office space. But again, you should assume that if you are not meticulous in keeping your law practice, especially all client communications, work product and fees separate from your officemates that a court and bar regulators will consider you to have formed a de facto firm. In addition, if you hold yourself out to the public as practicing with your officemates or conduct your practice and/or office so that it would be reasonable for a client to assume you are practicing as a firm, a court and bar regulators will almost surely hold that 1.10’s imputation sections apply.

Keys to Renting Individual Office Space: It's all in the lease and terms of the tenancy. Negotiate terms to avoid getting locked into a long-term and expensive lease, especially because your law practice may well experience peaks and valleys. During negotiation of a lease, you should be aware of hidden costs, such as parking, utilities, premises liability insurance, etc. You should lease only the space that is needed and that your practice will support. Seek references from other tenants and former tenants.

Consider Combinations of the Options: Attorneys often rent individual space, then, as the practice expands, use virtual office space or satellite office space. This option is an alternative to leasing more space than you need for growth potential. For expanding staff needs, consider distance working arrangements for clerks and paralegals, who can complete tasks remotely.

THE 10 RULES OF OFFICE SPACE

1. Consider all your options.
2. Know the tax code for write-offs.
3. Avoid the appearance of a partnership if office-sharing.
4. Make sure your office budget includes collateral expenses.
5. Only rent what you need.
6. With virtual law offices, ensure IOLTA compliance.
7. Have office-share agreements in writing.
8. Don't forget about insurance!
9. Virtual law practice is the practice of law.
10. The choice of "office" is dependent on the lawyer's practice and the clients served.

ETHICAL CONSIDERATIONS

Like any lawyer, you need to be continually concerned about your ethical duties to the client, the court and the profession. Your office space choice also involves the public's perception, especially in office-sharing arrangements.

Some key California Rules of Professional Conduct include:

- *Firm Names and Signage:* [Rules 7.1 through 7.5](#) controls lawyer communications, including firm names, which are communications, and which must not misrepresent the relationship of the attorneys in the shared office space.
- *Confidentiality of Information:* [Rule 1.6](#) and [Bus. & Prof. Code, § 6068 \(e\)](#) require every lawyer to keep client information confidential. Special care needs to be observed with phone messages, mail, storage of files, and technology in a shared office environment.
- *Conflicts of Interest:* Footnote 4 of Ethics Opinion [1997-150](#), which deals with shared office, explicitly excludes discussion of how the conflicts of interest rules might apply to a shared office or staff arrangement. However, it goes on to say that the "Committee recognizes, however, that conflict of interest rules might apply to shared office or staff situations,

depending on the facts, particularly if the attorneys have created a partnership by estoppel by holding themselves out as a partnership, or otherwise have led a client or potential client reasonably to believe that the attorneys are functioning as a law firm.”

- *Shared Lawyers, Paralegal and Clerical Staff*: When lawyers not in the same firm are sharing office space and also share lawyers, law clerks, paralegals, investigators, and clerical staff, issues of confidentiality, conflict of interest, and misleading appearance of partnership/affiliation of lawyers are likely to arise. See Footnote 4 of [Ethics Opinion 1997-150](#).

TIPS

- Before you write off your home office on your taxes, be sure to consult with your accountant about IRS regulations. For instance, you can only deduct your home office if you regularly use part of your home exclusively for conducting business. If you also watch TV in the room, etc., it will not qualify.
- If you are sharing space with another attorney, make sure you have a written office-sharing agreement.
- If you are considering renting individual office space, keep in mind that additional costs for parking, electricity and other utilities, phone service, and common area costs are common. Also, the individual office usually requires a yearly lease that can tie your resources down for a longer period of time.
- Depending upon the type of practice, premises liability insurance, general liability insurance, fire insurance coverage, and other types of person-to-person liability insurance will be needed. The single largest cost may well be professional liability insurance

CHAPTER SEVEN APPENDIX

See Chapter 5 of “[Opening and Managing a Law Office: Go Solo, Win Clients, and Be Your Own Boss](#)” (2020), published by the Solo and Small Firm Section of the California Lawyers

Articles

Office Sharing and Selecting Office Space

- “[Keeping Your Office Sharing Arrangements with Other Lawyers Squeaky Clean Under the Ethics Rules](#),” Kathryn A. Thompson, *Center for Professional Responsibility* (May 2007)
- “[Techno Ethics: Sharing Real \(and Virtual\) Offices](#),” *GP Solo* (Sept./Oct. 2012)
- [Tips for Choosing Virtual Office Space](#), Carolyn Elefant, Blog Post on MyShingle.com (Feb. 18, 2014)
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- [10 Questions to Ask Yourself Before Choosing an Office Space](#), Lisa Girard, Blog Post on Entrepreneur.com (March 19, 2013)
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- [Virtual Law Practice](#), Joshua Poje, *ABA TechReport* (2014)
- [The Counselor: How Rachel Rodgers Built Her Virtual Legal Practice](#), Danielle Jenene Powell, Blog Post on FastCompany.com (April 15, 2013)
- [Virtual Firms on the Decline - Why??](#), Carolyn Elefant, Blog Post on MyShingle.com (August 16, 2013)
- [The Completely Virtual Lawyer: Can It Be Done?](#), Andrew Cabasso, Blog Post on JurisPage.com (date unknown)
- [How Real Are Virtual Law Firms?](#), Chad Burton, American Bar Association

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- [“Working From Home: Is It For You?”](#) Jan Matthew Tamanini, *GP Solo* (Oct./Nov. 2011)
- [“Working From Home: Ten Tax and Legal Tips,”](#) Kelly Phillips Erb, *SP Solo* (Oct./Nov. 2011)

Authorities

*California Rules of Professional Conduct*²⁷

- [Rule 1.1](#): Competence
- [Rule 1.6](#): Confidential Information of Client
- [Rule 1.7](#): Conflict of Interest: Current Clients
- [Rule 1.9](#): Duties to Former Clients
- Rule 1.10 Imputation of Conflicts: General Rule
- Rule 1.15 Safekeeping Funds and Property of Clients and Other Persons
- [Rules 7.1 through 7.5](#): Advertising and Solicitation

California Business and Professions Code

- [Bus. & Prof. Code, § 6068 \(e\)](#): Confidential Information of a Client

California Ethics Opinions

- [Ethics Opinion 1986-90](#): Whether a group of solo practitioners can hold themselves out as a single entity

²⁷ We remind you again there are official interpretations for these rules and there is law outside the California Rules of Professional Conduct that may apply. When you are unsure what to do, do not read a rule and its comment and interpret on your own. Do your research and to ensure you are researching all pertinent sources of law that may apply, avail yourself of the **Ethics Hotline 1-800-238-4427 (1-800-2ETHICS)** whose services are described in the Preface to this manual.

- [Ethics Opinion 1997-150](#): Ethical issues of office sharing
- [Ethics Opinion 2012-184](#): Maintaining a virtual law office practice

*ABA Formal Ethics Opinions*²⁸

- [Formal Opinion 84-351](#): Letterhead Designation of “Affiliated” or “Associated” Law Firms
- [Formal Opinion 94-338](#): Relationships Among Law Firms
- [Formal Opinion 96-401](#): Limited Liability Partnerships

²⁸ These opinions are not authoritative in California but may be cited for their persuasive value.

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OVERVIEW

There are many routine functions in a law firm that can be standardized and more easily accomplished using technology. As your firm grows and you take on more cases, you may find it is more effective to invest in more robust law practice management products and/or services, such as document automation or case management software, in order to continue to provide value to clients, work efficiently, and stay organized.

Additionally, technology can help make your firm more efficient and help you cut costs and increase profits. For example, you can use technology to automate forms and pleadings, or client intake, and to better measure data to determine what is working and what isn't with respect to advertising, types of cases taken, etc.²⁹

Selecting the products and services that are the best fit for your growing practice can be a tricky and time-consuming endeavor, as the number of options in each category can be overwhelming.

Before you start the research process, the [ABA Legal Technology Center](#) recommends that you first:

1. Understand the problem you are trying to solve;
2. Determine whether technology can really fix your problem;
3. Look at the costs;
4. Develop an implementation strategy; and
5. Know what comes next.

See [Invest Wisely: 5 Tips for Purchasing Technology](#), Joshua Poje, Your ABA (May 2014), for further explanation of each step.

If you determine that investing in a more robust law practice management or technology project or service is something that makes sense for your growing practice, consider starting your research process by checking out the ABA Legal Technology Resource Center's [Technology Buyer's Guide](#), which provides a simple breakdown of technology products and services by

²⁹ [Five Ways for Law Firms to Become More Efficient](#).

category. Product listings include basic information on the product and general contact information for the provider. Please note this Guide is not a comprehensive list, as companies have to pay a fee in order to be listed in it.

Importantly, review the Appendix of this chapter for articles that explore a variety of technology products and services available.

THE 10 RULES OF TECHNOLOGY

1. Become well versed in how your current tools work.
2. Think twice before you buy.
3. Stay in the loop on the newest advances.
4. Save money by buying refurbished products.
5. Wait to upgrade until all bugs have been fixed.
6. Find good tech support.
7. Do your research.
8. Check out “Tech Tips” regularly.
9. Keep it simple.
10. Think outside the box and within the ethics rules and other applicable law.

CYBERSECURITY

Law firms maintain a wealth of information valuable information, including case information, litigation strategies, attorney client privileged information, personal identity information for employees, clients, and third parties, and credit card information. In addition to the ethical duties to maintain confidentiality, lawyers have legal responsibilities to protect this information, such as [HIPAA](#).

Data theft can be accomplished by such means as hacking or malware. Data leakage occurs through such means as insider misuse, loss of unsecured laptop, communication over unsecured networks, downloading of unapproved software on firm’s computer network, or other more frequent problems. To protect yourself, your clients, your firm, and your employees, it is important to implement cybersecurity policies, including encryption, effective security software on all devices, training of staff, and proper disposal of all digital media and devices. Many malpractice carriers offer cyber liability insurance and information on how to protect information.

TIPS

1. Dedicate time or hire a technology compliance officer to oversee technology, including security.
2. Keep hardware and software up to date, including updating patches and antivirus software. Remove the human element and set backups to be done automatically.

3. If using an “open” or “wifi” network, make sure steps are taken to protect the confidentiality of client information. [Ethics Opinion 2010-179](#).
4. Develop office policy with regard to technology security, such as use of personal devices, internet usage for non-work-related use, etc.
5. Create a disaster recovery plan for electronic files.
6. Keep in mind file retention requirements. [Ethics Opinion 2001-157](#).
7. Create email-use policies for staff to ensure effective communication and confidentiality. [Ethics Opinion 2010-179](#).
8. Consider document automation to make your life easier.
9. Consider purchasing cyber liability insurance.
10. Make sure you have a metadata scrubber and use it to avoid any inadvertent disclosures. [Formal Opinion 06-442](#).

Consult the State Bar’s [Ethics & Technology](#) Website for more information.

CHAPTER EIGHT APPENDIX

See Chapter 6 of “[Opening and Managing a Law Office: Go Solo, Win Clients, and Be Your Own Boss](#)” (2020), published by the Solo and Small Firm Section of the California Lawyers

ARTICLES

Business Continuity, Contingency, and Succession Planning

- [The Contingency Planning Guide for Lawyers](#), The Law Society of Upper Canada (Oct. 2014)
- [Surviving a Disaster: A Lawyer’s Guide to Disaster Planning](#), ABA Special Committee on Disaster Response and Preparedness (Aug. 2011)
- [The 7 Deadly Sins of Succession Planning](#), Peter A. Giuliani, *Law Practice Magazine* (Nov./Dec. 2015)

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- [Legal Calendaring: What You Don't Know Can Hurt You](#), Joseph C. Scott, *Law Practice* (March 2016)

Client Satisfaction Surveys — Examples

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- [Cyber Security Checklist](#), ALPS Property and Casualty Insurance Company

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- [Investing Wisely: 5 Tips for Purchasing Technology](#), Joshua Poje, *YourABA* (May 2014)
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- [4 Steps to Getting Serious About Law Firm Cybersecurity](#), Joseph Burton, *ABA Law Practice Today* (September 2014)
- [Thinking Small about Legal Tech](#), David Perla, *ABA Law Practice Today*, (April 2016)
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- [ABA Law Technology Resource Center — FYI: Starting a Website](#)
- [How to Design the Best Law Firm Website](#), Mike Ramsey, Blog Post on AttorneyAtWork.com (Sept. 11, 2013)

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California Business & Professions Code

- [Bus. & Prof. Code, § 6068](#): Duties of an Attorney
- [Bus. & Prof. Code, §§ 6101, 6106](#): Acts of Moral Turpitude as Cause for Disbarment

- [Bus. & Prof. Code, § 6103](#): Violation of Attorneys Duties as Cause for Disbarment

California Rules of Professional Conduct

- [Rule 1.6](#): Confidential Information of Client
- [Rule 3.3](#): Candor Toward the Tribunal
- [Rule 3.4](#): Fairness to Opposing Party and Counsel
- [Rule 8.4](#): Misconduct

California Ethics Opinions

- See generally the [Ethics & Technology Resources](#) section of the State Bar's ethics page.
- [Ethics Opinion 2001-167](#): What ethical duties does an attorney have regarding the retention of former clients' files? Is the attorney ethically required to retain the files for any specific length of time following the completion of representation?
- [Ethics Opinion 2007-174](#): Is an attorney ethically obligated, upon termination of employment, promptly to release to a client, at the client's request, (1) an electronic version of e-mail correspondence, (2) an electronic version of the pleadings, (3) an electronic version of discovery requests and responses, (4) an electronic deposition and exhibit database, and/or (5) an electronic version of transactional documents?
- [Ethics Opinion 2010-179](#): Does an attorney violate the duties of confidentiality and competence he or she owes to a client by using technology to transmit or store confidential client information when the technology may be susceptible to unauthorized access by third parties?

*ABA Opinions*³⁰

- [Formal Opinion 10-457](#): Lawyer Websites
- [Formal Opinion 08-451](#): Lawyer's Obligations When Outsourcing Legal and Nonlegal Support Services
- [Formal Opinion 06-442](#): Review and Use of Metadata
- [Formal Opinion 99-413](#): Protecting the Confidentiality of Unencrypted E-Mail
- [Formal Opinion 95-398](#): Access of Nonlawyers to a Lawyer's Database
- [Formal Opinion 477R](#): Securing Communication of Protected Client Information

³⁰ ABA opinions are not authoritative in California but may be cited for their persuasive value.

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WHAT STAFF DO I NEED FOR MY LAW PRACTICE?

Strategic and appropriate staffing for any law practice is the key to getting you the help you need to adequately represent clients. The components of successful staffing include recruitment, hiring, retaining, supervising, and evaluating the staff. Whether staff members are full-time, part-time, contract workers, or paid interns, these components still apply. Just like all of the other “business aspects” of law practice, what the practice needs and what the practice can realistically afford are key factors.

Outsourcing Work

You can outsource administrative tasks, business tasks, legal work, or any combination of the three as long as you conscientiously follow all ethical rules, e.g. the duty of confidentiality, safekeeping client funds etc..., in doing so. Bookkeeping, payroll, accounting, IT support, and receptionist duties are examples of administrative tasks that can easily be outsourced. Marketing is an example of a business task that many solo and small firm lawyers outsource. Various legal tasks can also be outsourced. The most popular example is research, but others could include drafting a pleading, covering a routine status in court, or issuing or responding to discovery. When outsourcing legal tasks, lawyers should be mindful of ethics rules, particularly rules pertaining to conflicts of interest, confidentiality, and supervision. Outsource work only if it will save you time, save the client money, and allow you to deliver a work product that is equivalent to or better than the work product you would deliver had you done the work yourself.

Hiring Staff

If you do not plan to outsource substantially parts of your work, you will need to hire staff. And if you start out by outsourcing, your firm may grow to a point where outsourcing no longer satisfies your firm needs. Strategic and effective staffing involves hiring the right people;

training, supervising, and evaluating them; and then keeping them happy so you can retain them for long periods of time.

The first step to successful recruiting of staff is for the attorney to accurately determine what the practice needs. Key factors in this assessment include the following:

Identify Tasks: Look at the type of cases, clients, and nature of your practice to identify the tasks that need to be completed. Determine what kinds of tasks need to be completed (*e.g.*, [workflow management](#), going to court, drafting pleadings, marketing) and what type of staff member needs to complete them (*e.g.*, a lawyer, a paralegal, a law student, other).

Note: When hiring new staff, it can be wise to hire someone who fills a deficiency, or who is simply good at a task you dislike. For example, if you struggle to stay organized, you may wish to hire someone who enjoys keeping things organized. Or if you really dislike legal research, you might hire someone who revels in the task.

Identify Who Needs to Accomplish the Tasks: Determine which tasks need to be completed by you as the lawyer, by paralegals, or by other staff. Ideally, you should delegate as much work as you can to other staff members so you can spend as much time as possible doing work that requires a law license. Remember, when delegating tasks, that you are responsible for the ethics and the competence of the work, so it is essential to train your staff to complete the delegated tasks and to evaluate their competence.

Employment Status: After you determine what type of staff member you need to hire, it is then important that you consider:

- *Differences in Employment Status.* What is a [full-time employee](#) versus a [part-time employee](#) versus an [independent contractor](#)? Where do interns and law clerks fit in? What is the [difference between exempt staff and non-exempt staff](#)? By exempt and non-exempt we are referring to whether an employee is exempt from over-time provisions and/or minimum wage requirements. Caution — this area is a minefield, so proceed carefully!
- *Differences in Tax and Benefit Packages for Each Employment Status.* Who qualifies for which benefits? What taxes need to be withheld for which types of staff members?

Create Job Descriptions and Post: After identifying the tasks and determining what skills are needed for the tasks, you should draft job descriptions to advertise or post the job notices. Spend some time carefully crafting your job description as it will dictate who applies for the job and drive the selection process. At a minimum, the job description should include:

- The job or position title;
- The reporting structure for the position;
- A list of the position's essential or key job duties;
- The qualifications and educational requirements for the position;
- The qualities or attributes you would like the new staff member to have;
- The salary and benefits associated with the position; and
- How candidates can apply.

Good places to post job descriptions include local and affinity bar associations paralegal/secretary job boards, and online job posting sites such as Craigslist and indeed.org (but be prepared to receive a ton of responses).

Screening Applicants: Rule out applications that are sloppy, contain misspellings, or are addressed to the incorrect firm or person, as this lack of attention to detail will likely carry forward into the applicant's work at your firm. Be on the lookout for red flags, such as employment gaps, and do your due diligence prior to offering someone an interview or job. Formal and informal (social media) background checks are easy to conduct online, and reference checks can take less than an hour. Don't forget to ask for references and make the calls to check those references.

During each interview, ask open-ended questions that will help you determine whether the candidate possesses the skills, education, and attributes needed to perform the job well. Let the candidates do the talking. Observe how the applicant presents himself or herself during the interview. Is the applicant well spoken, prepared, polite, and self-confident? Will the applicant fit in well in your office? Is the applicant tech savvy and a strong writer? Does he or she appear to be excited about the position? Take all of these considerations into account and offer the job to the best candidate. Keep in mind there are certain questions you cannot ask during an interview (see [What You Can Ask and What You Can't — Legal/Illegal Interview Questions](#)) and [that you cannot illegally discriminate against anyone](#). It is important here to be aware of conscious and unconscious bias you may possess. [See discussion of bias in Chapter 2 above.](#)

TRAINING, SUPERVISION AND EVALUATION

Once you have hired a new staff member, it is important that you adequately train, supervise, and evaluate him or her. Some suggestions for supervision and evaluation include:

Provide Job Training and Orientation: Because your goal is to delegate as much work to this new staff member as possible, it is important that you invest time in training him or her well. All staff members, including lawyers, should be trained on ethical obligations, including client confidentiality, and office policies and procedures. Staff members who work with client trust accounts require additional training on how to properly handle and record the movement of client and firm funds.

Checklists and Manuals: Create procedure and process manuals. Encourage staff members to help keep manuals current and up-to-date.

Regular Feedback Systems: Construct a regular feedback system for staff to report to you on the progress of their projects. The system should include oral and written progress reports from staff members.

Encourage Questions: You may understandably like the “self-starter” staff member, but encourage questions about the nature and extent of tasks.

Emphasize Confidentiality Responsibilities: Have a confidentiality agreement for all employees, whether part-time, full-time, or independent contractors to sign, first making sure they understand the obligations contained within it. Make sure that all staff is aware of the special confidentiality obligations of a law office.

Know Your Ethical Obligations: The California Supreme Court recognizes the obligation to develop appropriate office procedures and to supervise law office staff, as well as the duty to provide effective supervision to junior lawyers. See [Trousil v. State Bar](#) (1985) 38 Cal. 3d 337, 342 (“lapses in office procedure...[may be] deemed ‘willful’ for disciplinary purposes”); [Gabba v. State Bar](#) (1990) [50 Cal. 3d 344](#), 353 (duty to supervise other lawyers); [Waysman v. State Bar](#) (1986) 41 Cal. 3d 452, 455 (duty to supervise law office staff); see also, Ethics Opinion 1997-50 at 3 (“Each attorney has the obligation to supervise his or her subordinates and employees.”) See also Rule 5.1 (responsibilities of managerial and supervisory lawyers); and Rule 5.3 (responsibilities regarding nonlawyer assistants).

Retention

Hiring staff is a big investment of time and money. Ideally, you want to retain each staff member for as long as possible. The best way to accomplish this is to keep staff members happy. Here are some suggestions on how to do that:

Offer Competitive Compensation and Benefits: Financial stability is very important, and employees who do not feel financially stable or properly compensated for their work will eventually look for a job elsewhere. Note here that Calif. Rule 5.4, which generally prohibits sharing fees with nonlawyers, allows nonlawyer employees to be included in a compensation or retirement plan even when that plan is based in whole or part on a profit-sharing arrangement, given compliance with all other ethics rules. See 5.4(a)(3)

Provide Professional Development Opportunities: Many employees are looking to work for firms that will provide them with professional development opportunities as an added work benefit.

Recognize Good Work and Promote When Possible: All employees like to be recognized for the good work they do, and most employees strive to move up to the next level.

Provide a Good Work Environment: A good work environment with good people is just as important as compensation and benefits to many employees and helps retain them in the long run and motivate them to work harder. What constitutes a good work environment likely varies slightly by person and industry, but generally employees like environments that foster good communication, inspire them to work together toward a common goal, welcome creative and diverse opinions, and offer open physical spaces with plenty of natural light.

Say Thank You, Often: This one is easy. Be polite and thank people for working for you as often as possible. Yes, it is their job to complete certain tasks for you as outlined in the job description and employment agreement. Many employees can easily go elsewhere, though, so if you want to retain them, demonstrate your gratitude to them.

THE 10 RULES OF STAFFING

1. Have all employees sign a confidentiality form.
2. Train your staff.
3. Know the difference between independent contractors and employees.
4. Consider outsourcing for specialized tasks.
5. Offer professional development and continuing education.
6. Create and follow a procedures manual.
7. Provide staff the opportunity to offer input in matters affecting them.
8. Supervise your staff.
9. Know and make sure your staff is familiar with the ethical obligations and constraints inherent in the practice of law.
10. Encourage and listen to staff feedback.

TIPS

- Delegate, delegate, delegate. If you think you can't delegate anything, think again. There's probably some part of a project you can delegate.
- Train your staff to be the "go-to" person for clients. That way, clients aren't bothering you with questions that staff could answer instead.
- Studies show that while a good salary is important, it's not necessarily what makes a staff person stay. It's important for staff members to know that they are valued, and that they are doing valuable and important work. The more the work interests and challenges staff and the more they feel they are making a real contribution, the happier they will be. California Rules of Prof. Conduct 5.1 and 5.3 say that you are responsible for supervising staff. Make sure you stress the importance of confidentiality. Have staff members sign a confidentiality agreement so they understand that this is a very serious matter.
- Develop a procedures manual for staff. It's a great opportunity for you to put down everything only you know (*e.g.*, where the closest FedEx dropoff is located) on paper, and it will be a huge help when you get a new staff person on board. Be careful about creating policy manuals, though. These can be viewed as contracts.
- Consider using a staffing company to screen applicants. They can do background checks, check references, and give basic skills tests (such as typing and spelling tests). If you can't afford to hire a company (or you don't want to), there are various websites where you can find timed typing tests, etc., at no charge.
- Make sure your staff members always sign letters, e-mails, etc. with their full titles. Otherwise, your clients (and others) may assume they are an attorney.

- Caution staff members against such things as talking about client matters in the elevators when others are present or with other staff members who are not employed solely by you.
- You may not be in a position to pay top dollar for staff members, so consider other ways of rewarding them. For instance, you could give them their birthday off with pay, bring in bagels for breakfast, or give them a title and their own business cards. Be careful that any such cards will not be misleading as to the staff member's expertise or training and that the cards are not subject to inappropriate use. Most important, only give such cards to staff members who have proven their responsibility, good judgment and trustworthiness over a substantial period of time.
- If you use shared staff and you are office sharing, make sure they answer the phone correctly. Ideally, they will answer with the name of your firm — "Law Offices of Suzanne Smith" — or "Law Offices" if they're answering one line for multiple lawyers. And make sure any shared staff understands the importance of keeping clients clear that the lawyers sharing space are practicing as distinct firms.
- Outsourcing can be the answer in situations where you need specialized work done but you don't want to commit to an employee. Payroll, bookkeeping, and IT support are perfect examples of services you can outsource. It is your responsibility to ensure that any outside bookkeeper understand fully your firm's obligations on handling client funds and property.
- Make clear to staff that their work e-mail should only be used for work. They should not use it for shopping on the internet, sending jokes to their friends, etc.
- Inform staff that they are not to download any software or images from the internet without your express permission and knowledge. You don't want to be responsible for any claim of copyright violation, nor do you want to subject your firm equipment to viruses or malware, etc.
- For the sake of convenience, you might want to allow a trusted staff person to be a signatory on your business account. If you do, be sure to put safeguards in place. For instance, state on your checks something like "Amounts over \$350 require two signatures." Have all bank statements sent to your home rather than the office. That way, staff cannot alter statements to cover up wrongdoing. As a general rule, however, it is best not to allow staff to be a signatory on your trust account.
- Create and enforce a policy against harassment.
- Create a "safe environment." This applies to not only the physical environment, but also the cultural one. For example, developing a firm culture that allows anyone to question another's work before it leaves the office may catch errors that might have proven costly in the end. A safe culture means, however, that staff members treat one another and not just you and the clients with respect

CHAPTER NINE APPENDIX

See Chapter 4 of “[Opening and Managing a Law Office: Go Solo, Win Clients, and Be Your Own Boss](#)” (2020), published by the Solo and Small Firm Section of the California Lawyers

Websites

Hiring & Managing Staff

- [3 Tips for Finding the Best Law Firm Staff](#), Greg Hamblin, Blog Post on FileVine.com (Oct. 23, 2015)
- [Hiring, Training, and Retaining Staff](#), Robert A. Kraft, *GP Solo* (Oct./Nov. 2010)
- The Job Description — Your Blueprint for Successful Hiring, author unknown, RobertHalf.com (posting date unknown)
- [Writing Effective Job Descriptions](#), U.S. Small Business Administration, [sba.gov](#) (posting date unknown)
- [Twenty-Five Tips for Employee Training and Supervision](#), Diane M. Ellis, State Bar of Arizona (date unknown)
- [How Important Is Your Work Environment?](#), Matthew Walden, Blog Post on [infinity-cs.com](#) (March 25, 2015)
- [Hiring Workers: Employment Law Basics](#), author unknown, Blog Post on [HRHero.com](#) (date unknown)

Outsourcing

- [Outsourcing for Beginners](#), Ruth Carter, Blog Post on [AttorneyAtWork.com](#) (Dec. 10, 2013)
- [Give Your Clients the Most by Outsourcing](#), Nicole Bradick, Blog Post on [AttorneyAtWork.com](#) (Sept. 30, 2015)
- [Five Sources for Professional Help in a Pinch](#), Theda C. Snyder, Blog Post on [AttorneyAtWork.com](#) (Aug. 14, 2015)
- [For Law Firms and Lawyers, Outsourcing is “In.”](#) Edward Poll, Blog Post on [SmallFirmInnovation.com](#) (Aug. 28, 2013)
- [Hire a Contractor or an Employee?](#), SBA.gov

Project Management

- [Building Bridges with Clients in Mind](#), Tom Bolt, *Law Practice Magazine* (Nov./Dec. 2015)

Running a Law Firm

- [Opening a Small Firm — How to Survive the First Three Years](#), Branigan Robertson, DBA-YLD Blog Post (Nov. 2, 2015)

Taxes

- [Year-End Tax Planning for Lawyers](#)

Websites

- [ABA Law Technology Resource Center — FYI: Starting a Website](#)
- [How to Design the Best Law Firm Website](#), Mike Ramsey, Blog Post on AttorneyAtWork.com (Sept. 11, 2013)

Authorities

California Rules of Professional Conduct

- [Rule 1.1](#): Competence
- [Rule 1.3](#): Diligence
- [Rule 1.6](#): Confidential Information of Client. Rule 1.6 and [Bus. & Prof. Code, § 6068 \(e\)](#) require every lawyer to keep client information confidential. Special care needs to be observed with phone messages, mail, storage of files, and technology in a shared office environment.
- Rule 1.15 Safekeeping Funds and Property of Clients and Other Persons
- [Rule 5.1](#): Responsibilities of Managerial and Supervisory Lawyers
- [Rule 5.2](#): Responsibilities of a Subordinate Lawyer
- [Rule 5.3](#): Responsibilities Regarding Nonlawyer Assistants
- [Rules 7.1 through 7.5](#): Advertising and Solicitation. Controls lawyer communications, including firm names, which must not misrepresent the relationship of the attorneys in the shared office space in a false or misleading manner.

California Ethics Opinions

- [Ethics Opinion 1997-150](#): Footnote 4 deals with shared office, and explicitly excludes discussion of how the requirements of [Rule 1.7](#) (Conflict of Interest: Current Clients) might apply to a shared office or staff arrangement. However, it goes on to say that the “Committee recognizes, however, that conflict of interest rules might apply to shared office or staff situations, depending on the facts, particularly if the attorneys have created a partnership by estoppel by holding themselves out as a partnership, or otherwise have led a client or potential client reasonably to believe that the attorneys are functioning as a law firm.”
- [Ethics Opinion 2004-165](#): Ethical Obligations when Using Contract Lawyers

*ABA Formal Ethics Opinions*³¹

- [Formal Opinion 87-354](#): Lawyers’ Use of Medical-Legal Consulting Firm
- [Formal Opinion 88-356](#): Temporary Lawyers
- [Formal Opinion 90-357](#): Use of Designation “Of Counsel”
- [Formal Opinion 00-420](#): Surcharge to Client for Use of a Contract Lawyer

IRS Resources

- [Small Business and Self-Employed Tax Center](#)

³¹ ABA opinions are not authoritative in California but may be cited for their persuasive value.

- [Small Business and Self-Employed Online Learning and Educational Products](#)
- [Independent Contractor \(Self-Employed\) or Employee?](#)

U.S. Department of Labor Resources

- [Fair Labor Standards Act \(FLSA\) Advisor](#)
- [FLSA Checklist: Exempt vs. Non-exempt Status](#)

CHAPTER TEN: LEGAL MALPRACTICE INSURANCE AND CYBER LIABILITY INSURANCE

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OVERVIEW

The State of California does not require that attorneys carry professional liability Insurance, although best practice is to carry such insurance as it protects you as an attorney, your firm and your clients. Malpractice insurance not only helps protect the client should malpractice occur, it also diminishes exposure of your personal assets and defrays the large expense costs of defending a malpractice suit, meritorious or not. Although many attorneys opt not to insure due to the costs of the coverage, you will find that many legal malpractice carriers provide opportunities to finance your annual premium. This can make the overall purchase more cost effective for you and your firm.

If you choose to “go bare,” be aware that [Rule 1.4.2](#) of the California Rules Professional Conduct requires that you disclose in writing to each client at the time of engagement that you lack insurance whenever it is reasonably foreseeable that your work for a client will exceed four hours. If you rely on this slim exception, be clear that as soon as if as soon as the representation exceeds four hours you must make the required written disclosure. And, if you lose or cancel your insurance, you need to make the required written disclosure to all existing clients. In sum, note that the best practice is that if you have no malpractice insurance that you make the required written disclosure to all clients even if your confident that the representation will not exceed four hours. Even more important, it is wise for all concerned that you carry such insurance.

Next, you should consider cyber liability insurance while you’re investigating legal malpractice insurance. If our client data is exposed online (whether through hacking or another means), you will have both a cyber liability issue as well as a malpractice issue. Lawyers and firms are a target for hackers and cyber criminals because they have valuable, confidential client information (think trade secrets, employee data, your clients’ social security numbers) trust account funds and credit card information. Attorneys have a legal and ethical obligation to safeguard their clients’ confidential and personal information. As such, it is strongly advisable that your consider adding cyber liability coverage when investigating malpractice coverage.

CHAPTER 10 APPENDIX

See "Insurance" in Chapter 3 of "[*Opening and Managing a Law Office: Go Solo, Win Clients, and Be Your Own Boss*](#)" (2020), published by the Solo and Small Firm Section of the California Lawyers

Resources for State Bar of California Members

California Rule of Professional Responsibility

[Rule 1.4.2](#) Disclosure of Professional Liability Insurance

Websites

State Bar of California

California Department of Insurance

- [List of Professional Liability Insurance Admitted Carriers in CA and Ratings](#)

ABA Resources

- [Standing Committee on Lawyers' Professional Liability](#)
- [Risk Management Resources](#)
- [Professional Liability Insurance Information](#)

Confidential Assistance is Available

Ethics Hotline: 800-238-4427 (toll-free in California) and 415-538-2150 (from outside of CA)

See Preface for more information on how the Hotline operates and what service it provides.

SOME FINAL WORDS

There are individual lawyers and small firm practices out there right now serving moderate and low income clients using the tools we've given you in this manual who are thriving financially by doing work that is both intellectually stimulating and personally rewarding. You can join their ranks.

Starting out on a new venture, pursuing a novel path, building your own niche takes courage and a belief in yourself whether you are just out of law school or a more seasoned practitioner. Most find the mere contemplation of such a move scary and exciting at the same time. That is normal. And you may well feel overwhelmed by the amount of information and warnings in this manual. Don't be. Your legal education has trained you to take complex problems and break them down into their constituent parts, to go step by step, to attend to details while keeping the big picture in sight.

With the help of this manual and the resources provided therein, through incubator programs, the guidance of others who have tread this path before you and are out there willing to help, through local bar programs and networks and the support of family and friends, you can do this. Step by step. Task by task. You can be successful. And as important, if not more so, help those in need who are out there waiting, more afraid than you are, out there searching and not finding someone to help. You can be that person.

To all those willing to take on this challenge, know that we applaud your courage. And on behalf of the millions of Californians desperate for your help, we thank you.

JUDGE MARK JUHAS, Los Angeles Superior Court
Chair

CATHERINE BLAKEMORE
Vice-Chair

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