ESTABLISHING A LAW PRACTICE

A Practical Guide for New Attorneys Entering into the Private Practice of Law

This booklet was prepared by Jerry Foxhoven, Director of the Drake Legal Clinic of the Drake University Law School, for students and recent graduates of the Drake University Law School who are contemplating going into private practice.

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Preface

This booklet is designed to provide some guidance for new attorneys entering into the private practice of law. It is not designed to deal with every issue that may be faced by a new attorney. The booklet is primarily designed to "get the new lawyer thinking" about the issues that should be considered in developing a successful law practice. Hence, it addresses many issues, especially the issue of determining an appropriate business entity, on a "macro level," requiring more in-depth research and analysis before making decisions. As in all things legal, a few caveats should be noted.

First, I caution the users of this booklet to keep in mind that the recommendations contained in this booklet are mine and mine alone – not necessarily the recommendations of the Drake University Law School, its administration or faculty.

Second, the recommendations and suggestions contained in this booklet are just one view of methods for establishing a successful private law practice. Attorneys should be open to exploring the ideas and practices of other successful attorneys in determining what course to chart for entering the practice of law.

Third, while most of the advice in this booklet is useful no matter where the attorney decides to set up practice, it is primarily geared toward practice in the State of Iowa. Each state has different rules governing the responsibilities of lawyers, and every lawyer should be thoroughly familiar with the rules of the jurisdiction where the attorney intends to establish a practice.

Fourth, the relevant rules and recommendations made in this booklet were, to the best of my knowledge, current as of the time it was written. However, rules, statutes and customs change from time to time, and any attorney or student using this booklet should do some independent research to ensure that the information contained herein is both accurate and current.

Finally, the private practice of law can be daunting, challenging, and frustrating. It can be stressful and attorneys can often feel unappreciated. However, at the same time, the private practice of law gives an attorney an opportunity to be a champion for human rights, a crusader for political and social reform, and the guardian of civil liberties. It can be rewarding, both financially and emotionally. By starting out with good procedures and policies, an attorney can anticipate an exciting and honorable career.

Good Luck!

Jerry Foxhoven

Chapter 1: Determining the Proper Business Entity.

The first decision a new lawyer must make is whether or not to practice alone, with an existing law firm, or with an association of lawyers (established or new). It is rarely a good idea for a new lawyer to "totally go it alone" immediately upon graduation. There is so much to learn about running a business, dealing with clients and other general practice issues that an uninitiated lawyer can quickly become overwhelmed with the mere process of practicing law. Please see the chapter on *Practice Resources* about the importance of finding a mentor and developing a network of other attorneys who can assist with legal and practice issues.

Types of Business Entities

Unless joining an existing law firm, a new lawyer must select the type of business entity under which to establish business. The primary factors that will affect this decision are business control, liability and taxation. The most common types of business entities for new lawyers can briefly be described as follows:

Sole Proprietorship: This is the most common business entity for new lawyers in the solo practice. This entity choice gives the attorney complete control of the business, however it provides no liability protection. Under a sole proprietorship, the lawyer is personally liable for all financial obligations, as well as tort liability, of the business. A lawyer is guilty of poor judgment if the lawyer fails to maintain both malpractice insurance and premises liability insurance. Please see the chapter on *Basic Law Office Operations* for a discussion of malpractice insurance options. The tax aspects of a sole proprietorship are relatively simple. Income and expenses from the practice are included on the lawyer's personal income tax return (Form 1040). A sole proprietor's profits and losses are recorded on Schedule C. A sole proprietor must also file a Schedule SE with Form 1040 to calculate how much self-employment tax is owed. Sole proprietors must make quarterly estimated tax payments. If the prior year's adjusted gross income is less than $150,000, the estimated tax payments must be at least 90 percent of the current year's tax liability or 100 percent of the prior year's liability, whichever is less. The IRS requires the payment of estimated taxes in four equal amounts throughout the year on the 15th of April, June, September and January.

Partnership: Another common business entity used by lawyers is the partnership, which is where two or more lawyers agree to share in the profits or losses of the practice. One of the disadvantages of a partnership is that the lawyer gives up some of

the control of the law practice/business. It is essential that any lawyer entering into a partnership with any other lawyer should have a written partnership agreement. The written agreement should include issues such as each partner's investment, division of income and expenses, the responsibilities and duties of each partner, resolution of disagreement on business decisions, the plan for the possible disability or death of a partner, limits of partners' outside interests or business, and the terms for dissolution of or withdrawal from the partnership. While all of these issues are difficult to discuss when forming a new partnership, the issues become much more problematic when they arise in an existing partnership without a prior agreement. Like a sole proprietorship, the lawyer is personally liable for all financial obligations, as well as tort liability of the business. In the case of a partnership, the lawyer will be personally responsible for the acts and omissions of all other partners done in the course of the business. Again, a lawyer is guilty of poor judgment if the lawyer and the partnership fail to maintain both malpractice insurance and premises liability insurance. Also, the lawyer will be held personally liable on contracts made on behalf of the partnership. A partnership does not bear the tax burden of profits or reap the benefit of losses. Rather, profits or losses are passed through to the partners to report on their individual income tax returns. While the partnership pays no income tax, it must compute its income and report it on a separate informational return, Form 1065. Each partner is required to report profits from the partnership on his or her individual tax return. The partner files a Schedule K-1 form, which indicates his or her share of partnership income, deductions, and tax credits. Like a sole proprietor, partners must make quarterly estimated tax payments. If the prior year's adjusted gross income is less than $150,000, the estimated tax payments must be at least 90 percent of the current year's tax liability or 100 percent of the prior year's liability, whichever is less. The IRS requires the payment of estimated taxes in four equal amounts throughout the year on the 15th of April, June, September, and January.

Limited Liability Partnership: Under the Limited Liability Partnership, the members work in an arrangement that is similar to a partnership with the exception that the Limited liability partners have no vicarious liability (i.e., they are only liable in tort for their own actions). However, a lawyer is always personally responsible in tort for his or her own acts or omissions. Likewise, if the member signs contracts on behalf of the LLP without a personal guarantee, the lawyer has no personal liability under the contract. The assets of the limited Liability Partnership are liable for all claims against the partnership (whether in contract or tort) regardless of the personal liability of the partners.

Professional Corporation (P.C.): The Professional Corporation (P.C.) allows a lawyer to operate as a corporation. To set up a PC, the attorney must file articles of incorporation with the secretary of state in the state where the lawyer intends to do business. A lawyer who practices alone with no staff or additional attorneys receives no liability protection from this business entity. The lawyer will still be personally liable for personal acts or omissions, but will not be liable for the acts or omissions of other lawyers who are members of the P.C. Hence, it is important for lawyers in a PC to have malpractice insurance that not only covers the PC, but also covers the lawyers individually A lawyer who signs a contract on behalf of a PC without a personal guarantee has no personal liability under the contract. Under a PC, the attorney can elect to be taxed as a "Subchapter S" corporation so that earnings and losses pass through to the owners much like in a partnership.

Limited Liability Company (LLC): The limited liability company (LLC) is an unincorporated business organization that allows lawyers to take advantage of the benefits of both the corporation and partnership forms of business. LLCs in most states require only one member, but Massachusetts and the District of Columbia require a minimum of two members. To set up an LLC, the attorney must file articles of organization (in some states, like Iowa, called a "certificate of organization") with the secretary of state in the state where the lawyer intends to do business and should draft an operating agreement listing members' rights and responsibilities. An application for employer ID number (IRS Form SS-4) and choice of tax status (IRS Form 8832) must be filed at the onset. Other documents must be filed on an on-going basis, such as an annual report, quarterly withholding, and tax deposit coupons. A lawyer who is the sole member of an LLC maintains complete control of the business/practice. This business form provides the lawyer with the liability protection of a corporation. However, a lawyer should recognize that, even if the LLC is used, the lawyer may be personally liable for personal acts or omissions. Hence, it is important for lawyers in an LLC to have malpractice insurance that not only covers the LLC, but also covers the lawyers individually. A lawyer who practices alone with no staff or additional attorneys receives no liability protection from this business entity. Under an LLC, earnings and losses pass through to the owners and are included on their personal tax returns. There is no separate business tax return required for an LLC, unless there are more than one member and the LLC chooses to be taxed as a partnership, in which case Form 1065 is filed. Fringe benefits to the lawyer or employees cannot be deducted with an LLC. LLC members in professional services (including the practice of law) must pay self-employment taxes.

Chapter 2: Basic Law Office Operations.

Attorneys frequently begin a discussion about managing their law office with the words, "If only I knew what I know now when I first got started." Like any business, it is so much easier if proper procedures are in place at the beginning so that time and energy are not expended in re-tooling. Likewise, good procedures protect an attorney from mistakes that can lead to ethical problems or malpractice liability. This booklet could not possibly deal with all of the basic law office operations that confront a new attorney. However, the information contained in this chapter should at least help the new attorney think through some of the issues that need to be resolved when first setting up a law office.

Office Space

It is always tempting for a new attorney to consider working from home. This is rarely a good idea. First, it gives clients access to the attorney's home (often at off hours) which can infringe upon the attorney's personal life. Second, it leaves the new attorney alone without easy access to the advice, guidance, and wisdom of other more experienced attorneys. The second problem also occurs when a new attorney opens up an independent office anywhere else, even away from home.

There are two options available for the new attorney that can be affordable, and yet do not lead to the problems identified above. One is to rent space at a "suite" of offices of lawyers. In many urban settings, landlords offer a suite of offices where there is a common reception area, a common conference room, and a common receptionist. Each lawyer has an individual office area (although that office area is usually fairly small.) Since the cost of many of the amenities is shared, the arrangement is very cost effective. Also, this arrangement allows access to other attorneys. A similar option is to "share" office space from an experienced attorney (or group of attorneys). The same advantages of the "suite" concept are applicable to this arrangement. In both of these options, it is important (for liability reasons) that the individual attorney to make it clear to the public and to clients that the attorneys are not partners.

Malpractice Insurance

One of the first things a new attorney should do is to purchase legal malpractice insurance. Obviously, since the new attorney has no previous experience, this is the time period when mistakes are most likely to happen (and when the attorney is least

able to afford to pay a malpractice claim out of pocket). It is dangerous to begin practice without insurance coverage in place. If the new attorney is joining an existing firm, the firm can usually automatically include the new attorney in the group malpractice policy. The Iowa State Bar Association has a recommended carrier for legal malpractice insurance, and, if time is of the essence, this may be the best place to begin. Otherwise, a new attorney can contact practicing attorneys for information about potential carriers and agents. Like any other form of insurance, premiums are based on risk, limits of liability, and deductibles.

Case Management Systems

There are a number of legal case management systems that are commercially available to attorneys. In some cases, the cost may be prohibitive. If financially able to purchase one of these systems, the new attorney should consult with other attorneys in the community to determine the strengths and limitations of the various systems before making the investment. Because of the expense involved, a new attorney should be careful in making this decision, and it is not essential that this decision be made at the moment of beginning practice. However, the longer one takes to begin using a case management system, the more time may be required to input existing data. At a minimum, the case management system should provide easy methods to: 1. conduct conflict checks; 2. retrieve contact information; 3. enter case activities and reports; and 4. keep track of deadlines, appointments and court dates. The Iowa Judicial Branch is moving to a "paperless" electronic system where all documents must be filed electronically. This change will bring both benefits and challenges. Any case management system purchased should be one that assists in the preparation and storage of the electronic documents that will be filed. If an attorney does not purchase a case management system, some type of ticker system (even if just on a paper or on an electronic calendar) and conflict check system must be implemented.

Time Management Systems

There are also a number of legal time management systems that are commercially available to assist attorneys in keeping track of the time expended on client cases. Many of these systems not only keep track of attorney time and expenses but are also capable of creating a bill for legal services. New attorneys can purchase one of these commercially available systems or create their own method of keeping track of time. A self-created system may be as simple as an Excel spreadsheet.

In any event, it is essential for every attorney to keep track of time in every case. Even if the case is not billed on an hourly basis, the attorney may need to have hourly records to calculate attorney fees in the event the client discharges the attorney or the attorney has to withdraw for ethical reasons. Likewise, if the client makes an ethical complaint or a malpractice claim against the attorney, good time records can document the diligence of the attorney.

It is equally important that the time records be made contemporaneously with the work performed. This is essential for several reasons: 1. recreating time at a later date inevitably results in a substantial reduction of time (and income) recorded; 2. whether the time records are used for proving a claim for attorney fees or for a defense in a malpractice action, the admissibility may be challenged if those records were not made contemporaneously with the services performed.

Basic Office Procedures

There are a myriad of office procedures that can be implemented in an operating law office. This Booklet does not attempt to detail all of the options for office procedures. Suffice it to say that each law office should have an established procedure for most day-to-day functions, such as opening mail, opening files, docketing hearings, taking phone messages, and recording case activity. An established office procedure for these functions provides predictability for the lawyer and the staff as well as some assurance that important matters do not get lost in the busy day-to-day function of the law office.

Filing Systems

Open files: There are an unlimited number of methods used by attorneys for storage of client files. Storing files alphabetically is not always the most workable system. Because of client confidentiality issues, it is preferable for the client's name not to be printed on the index tab of the file. Likewise, clients do not come to the attorney in alphabetical order. Consequently, if the files are stored alphabetically, there must be a constant shuffling of files as new clients are accepted. Using a running number is the easiest method; but, because the attorney must search for the file number each time a file is needed, it is not always advisable to use only a numbering system. One suggested solution to meet all of these concerns is to use a numbering system, but to show letters that also indicate the client name and the type of case. For example, if the 471st client of the attorney is Alex Smith who came in for representation on a criminal matter, the tab of the file folder could show: **471-SMI-cr.** This provides the desired

confidentiality, allows the files to be stored in the order the case came to the office, and allows the attorney to find the client's file (for instance if in a stack on the attorney's desk) quickly.

Closed Files: As with open files, there are an unlimited number of methods used by attorneys for storage of closed files. Because closed files are not accessed as frequently as open files, it is acceptable for the attorney to have to use some type of computer search to find the closed file number. Client cases do not close in alphabetical order, nor do they close in the order they were opened. Consequently, it is best to assign a new file number for closed files. The key to developing a numbering system for closed files is to make it as easy to locate the closed file as possible. One suggested solution is to employ a system that identifies the box (or cabinet) wherein the file is stored, the running number for closed file, and then initials that would help identify the client attached to the closed file. For example, if the Alex Smith criminal file is the 115th file closed and is in the 11th box of closed files, the file tab could show the following: **11-115-SMI**.

Whatever method is used, the new attorney should think through the various options for numbering and storing both open and closed files to make the files as easy to find and store as possible and to minimize the effort required to maintain the system.

Paper or Paperless Systems

The Iowa Judicial Branch (like court systems in many other states) has begun the process to require electronic filing in all court cases. Under this system, attorneys and pro se parties are not allowed to file paper copies of anything, and NO paper documents will be maintained by the Clerk of Court offices beginning with the date of implementation in the county. As a result of this change, the lawyer will have an electronic copy of every document filed in court (including documents filed by the adverse party and orders from the court). This is the perfect time for a new lawyer to consider going completely paperless. There are, of course, pros and cons to both systems. However, since the court system is becoming paperless, it makes sense for the attorney to follow suit.

The greatest advantage of going paperless is that there is no need to create the traditional filing systems discussed above. The paperless system also conserves costs in many ways: eliminating the need for copying charges, file folders, file cabinets, office space wasted on storing both open and closed files, and even postage (assuming most letters are transmitted by the attorney to clients, attorneys, and others electronically as well.) The cost benefits may be substantial.

The main disadvantages of going paperless are the same problems that involve any electronic management system: confidentiality and system malfunction. Paperless systems must include protection from hacking and other outside interventions that may compromise confidentiality. This is not an insurmountable obstacle: Banks have moved to electronic banking and even the IRS allows electronic filing so, obviously, methods are available to provide this type of protection. However, an attorney must direct attention to providing the necessary protection of confidential information. Attorneys should also back up all information so that, in the event of a malfunction (computer crash, etc.) important documentation is not lost. Also, if the attorney has gone paperless, it is important to have access to backed-up data and documents in the event that access to the internet is interrupted.

Chapter 3: Accepting or Rejecting Cases.

All attorneys (new and seasoned) have an ethical obligation to provide some legal services on a pro bono basis. That being said, attorneys cannot and should not accept every case or client who seeks representation. Quite frankly, the practice of law is a business. If an attorney's financial failure forces a departure from the practice of law, the attorney will be unable to provide pro bono services to any other people whose legal needs are unmet. Lawyers also have an obligation to themselves, their families, partners, and staff to make the practice of law economically viable. Also, even if a client is able to pay for legal services, it may be advisable for an attorney to decline representation of the client or acceptance of the case.

Whenever a potential client approaches an attorney to request representation on a legal matter, that initial contact or meeting should be a balanced one. Not only is it the opportunity for the client to interview the attorney to determine whether or not to employ the attorney, it is also an opportunity for the attorney to interview the client to determine whether or not the attorney wishes to represent the client or to accept the particular case. Many factors should go into the decision of whether or not the attorney accepts or rejects a case or a client, including whether the case is within the expertise of the attorney, whether the attorney can afford to invest the time and money necessary to successfully provide the representation, whether the client has a viable claim, and whether the attorney believes that there can be a healthy attorney-client relationship. Usually, if acceptance of the case would not be in the best interests of the attorney, it would also not be in the best interests of the client.

Clients often have the mistaken belief that, if they meet with an attorney about a legal matter, the attorney has automatically agreed to accept the case. Unless the attorney is prepared to accept or reject the case at the initial meeting, it is extremely important that the attorney advise the potential client that, while the attorney-client privilege has attached, the attorney has NOT agreed to represent the client or to accept the case at that time. The client should be clearly advised that the attorney will not take any action to protect the potential client's legal rights until a decision about representation has been made.

Declining Representation

When an attorney decides to decline the representation of a potential client, several simple but important steps should be taken. First, the decision to accept or reject the case should be made at a time early enough to allow the client to contact another

attorney about the case. Waiting months to decide to reject a case and advising the client just days before the statute of limitations runs is, at best, unprofessional and, at worst, unethical and may constitute malpractice.

Second, the decision to decline representation of the client or acceptance of the case should be made in writing. The letter should CLEARLY indicate that the attorney is not accepting the case and that no actions will be taken by the attorney to protect the rights of the client. The attorney may or may not want to indicate why the decision was made to decline representation. If the attorney states that the claim is not actionable and the attorney is wrong, the client may rely on that statement and such reliance may be the basis of a malpractice action. In any event, the attorney should strongly advise the client to seek a second opinion and may even want to suggest the names of several other alternative attorneys whom the client may contact.

Finally, in the letter declining representation, the attorney should advise the client of any applicable time limitations for any potential action and that failure to meet the time limitations may forever foreclose the client from pursuing the claim.

Accepting a Client or Case

If an attorney accepts a client's case, it is essential that the attorney provide a retainer agreement signed by both the attorney and the client that fully and clearly sets forth the terms and limits of the agreement for representation as well as the fee agreement. In some cases, such as contingency fees in tort cases, failure to have a written retainer/fee agreement is an ethical violation. In any event, an attorney who fails to reduce the fee agreement to writing can assume that any disagreement as to the terms of the agreement will be resolved in favor of the client.

The written notice of acceptance of the case, as well as the retainer agreement, should clearly identify the limits of representation. When an attorney agrees to represent a client or accept a case, the attorney rarely intends to agree to representation of the client on all matters or even on all eventual later-related issues. Clients rarely understand what attorneys would assume to be the natural limits of the agreement. For instance, in agreeing to accept a dissolution of marriage case, the attorney normally would assume that the agreement would not cover post-decree matters, including contempt and modification actions which could occur years after the decree is entered. However, unless this assumption is reduced to writing, clients may assume that the attorney has committed to representation on all dissolution matters for all time. Being clear on the terms and limits of the representation will protect against a deterioration of

the attorney-client relationship at a later date and will also help protect an attorney from being involved in never-ending legal representation.

Chapter 4: Attorney Fees and Retainers.

Like any other profession, financial survival in the practice of law is dependent on setting and collecting fees. This is one area in which new attorneys receive no training in law school (whether in classes, clinics, internships or externships). The Rules of Professional Responsibility provide very little firm guidance to attorneys in setting fees other than to require that fees cannot be "unreasonable" [See ABA Model Rule of Professional Conduct 1.5 and Iowa Rule of Professional Conduct 32:1.5]. This chapter is designed to assist the new attorney in setting fees that are reasonable both to the client and to the attorney.

Determining the Amount of the Fee

There are three common attorney fee arrangements: contingency, hourly, and flat-fee. Each has its benefits and draw-backs. Every possible consideration will not be examined here, but some fundamental thoughts are provided for each fee arrangement.

Contingency fees are commonly employed in personal injury claims. This is because injured parties are often unable to pay for representation, especially when recovery is uncertain. In Iowa, the most common contingency fee arrangement for personal injury cases is that the attorney receives one-third of the recovery, plus the expenses advanced. Complicated cases, cases requiring great advances for expenses, and cases with a substantial risk of no recovery may warrant fees for a higher percentage of the recovery. Likewise, simpler cases, cases with little financial risk, or cases with relative certainty of recovery may warrant a smaller percentage of the recovery to be paid for attorney fees. New attorneys should be familiar with the Rules of Professional Conduct relative to contingency fees. Contingency fee arrangements are prohibited in criminal and divorce cases.

Hourly rates are clearly the most common (and least risky) type of attorney fee arrangement. Under this fee arrangement, the attorney is paid an hourly rate for all services provided to the client. The attorney services and time expended is itemized (usually to the tenth of an hour) and normally billed on a monthly basis. Setting an hourly rate is especially challenging for a new attorney, because new attorneys will invariably take more time to perform a legal function than a more experienced attorney would take for the same work. However, if a new attorney sets the hourly rate too low, it will be difficult to adjust the rate appropriately with regular clients when the attorney becomes more experienced. For instance, if the new attorney sets the rate at half the hourly rate of an experienced attorney, it will be difficult for a client who has previously

employed the attorney to understand how the rate could possibly double in only three years. New attorneys should talk to their mentor (see Chapter 9 of this booklet) to identify the "normal rate in the community" and then only reduce that rate by a modest amount. In order to be fair to the client, the new attorney should itemize the entire time expended on the case on the client's billing, but reduce the total bill to a fee that seems fair to the attorney. In that way, the client will see the normal rate and will also see that the attorney reduced the bill in fairness to the client.

Flat fee contracts are especially dangerous for use by a new attorney. Flat fee arrangements are usually based upon the attorney's estimate of how much time will be expended on the case based upon that attorney's experience in many similar cases. Because the new attorney has little experience on which to base the flat fee, there is a significant chance that the flat rate set by a new attorney can either turn out to be unreasonably high (hence a violation of the Rules of Professional Conduct) or too low to be fair to the attorney. As a result, new attorneys are discouraged from using flat fee arrangements.

One final caveat should be made concerning the setting of fees. In certain cases (such as social security cases and estates), there are prohibitions against the attorney setting a fee. In such cases, the fee is either statutorily set or set by the court. It may be illegal or unethical for an attorney to either set or collect a fee that is not in compliance with these restrictions.

Retainers

When an attorney accepts a client's case, it is common for the attorney to require the client to provide a retainer, which is an advance payment of the fees that will be incurred in the case. Because these fees are not yet earned when paid, the retainer must be placed in a trust account (see Chapter 5). Portions of the retainer can be removed from the trust account once earned, but the attorney MUST provide a complete accounting of the funds earned and paid from the trust account when that withdrawal is made.

New attorneys often struggle with insisting that a client provide a retainer. However, experienced attorneys find that a client "who has some skin in the game" is often the more cooperative client. Also, a client who either cannot or will not pay a retainer when desiring to employ an attorney will rarely be willing or able to do so once the legal services are well under way or have been completed.

Chapter 5: Handling Client Funds.

One of the most frequent reasons for suspensions and revocations of attorneys' licenses is the improper handling of client funds. Attorneys are prohibited from commingling client and personal funds. In Iowa, as in most states, this means that unearned fees regardless of the amount must be placed in a separate trust account until the fee is earned. A simple rule of thumb is that any time any amount of additional work is required for a client for the fees already received, at least some portion of the fees are still unearned and require retention in the trust account. In the event that the funds held for a client are substantial and/or will be held for a significant time period, a separate trust account should be established for that client so that the interest earned on the account will benefit the client.

The IOLTA Account

Attorneys in Iowa (like in most states) are required to maintain an IOLTA (Interest on Lawyer Trust Account) account for client funds that are so small or held for such a brief period that it is not possible for the funds to economically benefit the individual client. Because the trust account consists only of client moneys (as well as a small amount of attorney funds necessary to maintain the account active and to cover the bank charges for the account), attorneys are not allowed to receive the interest earned on funds held in the trust account. Interest earned by an IOLTA account is paid directly to the Lawyer Trust Account Commission (a commission of the Iowa Judicial Branch) by the banking institution. The Lawyer Trust Account Commission manages a fund generated from interest on the pooled trust accounts of attorneys. The fund is used to support civil legal services for the poor. Funds are disbursed to charitable and educational programs through grants. Attorneys new to the practice can contact any banking institution and indicate the desire to open an "IOLTA account", and the banking institution will be able to do everything necessary to establish the account, make the necessary reports, and make payments to the Lawyer Trust Account Commission. Attorneys joining established firms can use the "firm" IOLTA account, but it is the responsibility of the individual attorney to ensure that the ethical rules for IOLTA accounts are followed.

Attorneys (or law firms) are required to maintain a system with ledgers for each client showing deposits and withdrawals for each client, as well as a ledger for the attorney funds kept in the IOLTA account to maintain the account and to pay any service charges. The bank statement on an IOLTA account MUST be reconciled on a monthly basis and also reconciled with the client ledgers on a monthly basis. Trust account records should be maintained on premises, as audits can be performed by the

Commission without prior notice at any time. Iowa Court Rule 45.2 incorporates the general record keeping and electronic records provisions of the ABA Model Rules for Client Trust Account Records, adopted by the ABA on August 9, 2010.

Each year, every Iowa attorney must submit an Annual Client Security Report online with the Iowa Judicial Branch. The report includes information concerning the attorney's IOLTA account as well as other areas of compliance with client security requirements. Failure to submit the report can result in a suspension of the Iowa license to practice law. At the time of the filing of the Annual Client Security Report, the attorney must pay both a fee and an assessment to the Client Security Trust Fund. The Client Security Commission manages this fund to reimburse clients of lawyers who have misappropriated or lost a client's money. The fund also covers the cost of administering the lawyer disciplinary system and other programs which impact the disciplinary system.

Withdrawal of Fees from the Trust Account

All Iowa attorneys should become thoroughly familiar with the provisions of Iowa Court Rules 45.7 through 45.10, which generally incorporate the court's guidance regarding advances for fees and costs first set out in *Board of Professional Ethics & Conduct v. Apland*, 577 N.W.2d 50 (Iowa 1998). In general, fees should not be withdrawn from the trust account until earned, and the attorney must provide the client with a complete itemized accounting whenever any fees held for that client are withdrawn.

Chapter 6: Client Communication.

The most frequent cause for ethics complaints and breakdowns of the attorney-client relationship is the failure of communication with the client by the attorney. In fact, this issue is so important that one of the Rules of Professional Conduct (ABA Model Rule1.4; Iowa Rule 32:1.4) is simply titled "Communication."

Responding to Client Contacts

The Rules of Professional Conduct [ABA Model Rule 1.4(a)(5); Iowa Rule 32:1.4(a)(5)] specifically direct a lawyer to "promptly comply with reasonable requests for information." Obviously, a busy attorney cannot always reply immediately to every phone message, email, or letter received from a client. However, it is essential that the attorney respond to every contact as promptly as is reasonable under the circumstances. If the attorney's personal or professional obligations prevent the attorney from being available to respond, some other person (a staff person or associate) should contact the client and tell the client when the attorney will be available to respond.

When an attorney responds to a contact from the client, documentation should be made for the attorney's file. A returned phone call should be noted in the file or in the attorney's case management system (and noted on the attorney's time records) even if the client was not available and a voicemail message was required. If a return call was made and the attorney talked to the client, similar documentation should be made both of the contact and the contents of the conversation. *Please note that it is unethical in Iowa for an attorney to record any telephone conversation without prior consent of all parties to the phone conversation* [see ISBA Comm. on Professional Ethics & Conduct, Formal Op.83-16 (1982) and Formal Op. 95-09 (1995)].

Obviously, the easy method to document a responsive email or letter is simply to maintain a "hard copy" of the response in the file. An alternative is to maintain an electronic copy on the case management system.

It is important that the documentation of contact (or attempted contact) with the client be made <u>contemporaneously</u> with the contact or attempted contact. This is essential for several reasons: 1. recreating contacts at a later date inevitably results in a substantial number of missed contacts; 2. whether the documentation is used for proving a claim for attorney fees, for a defense in a malpractice action, or for a response to an ethics complaint, the admissibility of the record may be challenged if the record was not made contemporaneously with the contact.

Proactive Policies

Attorneys often complain that clients call so often that it is impossible for the attorney to do anything other than return phone calls. This can create stress and can also reduce the ability of the lawyer to complete the legal work required for clients. If an attorney is proactive, the number of client contacts, as well as the number of client complaints, can be substantially reduced.

If the attorney makes it clear to the client that phone calls are included in the hourly charges for representation and promptly sends itemized billings on a monthly basis, clients usually recognize that the cost of repeated phone calls is prohibitive. This alone can substantially reduce the number of phone calls. An attorney can suggest to the client that the fees for phone calls can be reduced if the client makes notes about what will be discussed before calling the attorney (making the calls more organized and shorter) and if the client groups calls together discussing several issues with each call rather than calling on every individual issue or concern that may arise.

The number of telephone calls from clients is substantially reduced if the attorney sends copies of everything (letters, court documents, etc.) created for the client's case. If the client receives a copy of every letter or court document sent or received by the attorney on the case, the client will be current on the status of the case which may obviate the need for a phone call to the attorney. This procedure has the added advantage of making the client feel that the attorney is "earning the fee" because the client sees the work done by the attorney.

Finally, every attorney should take the time to create form letters for every event that normally elicits contact from a client and answers the common questions of clients. For instance, when filing a lawsuit, a form letter accompanying the copy of the petition may advise the client that the defendant has twenty days to respond, that extensions for a response are often granted, that the initial response is vague and provides little information because the attorney for the defendant knows nothing about the case, and an explaination the discovery process. The letter can therefore tell the client that little progress will occur on the case for 60 to 90 days after the filing of a lawsuit. With this type of letter, clients are less inclined to routinely call the attorney and ask "What's going on?"

Chapter 7: Dealing with an Ethics Complaint.

The most frequent cause of panic for any lawyer (but especially for a new one) is the receipt of an ethics complaint. Unfortunately, even the most conscientious and competent attorney can expect to be the subject of an ethics complaint sooner or later. This chapter is designed to accomplish two things: 1. to give some instruction as to how to respond when an ethics complaint is received and 2. to provide some proactive, preventative measures that can be taken to prevent ethics complaints from being filed in the first place.

Responding to the Ethics Complaint

Even a casual review of Iowa Supreme Court opinions dealing with attorney reprimands, license suspensions, or license revocations leads to the stark realization that an incredible number of attorneys against whom an ethics complaint has been lodged do not even respond to the complaint. In Iowa, failure to respond to an ethics complaint, in and of itself, is an ethical violation [see Iowa Rule of Court 34.7(1)]. Hence, even if the complaint has no validity, a failure to respond to the complaint may bring sanctions to the attorney. Also, when an ethics violation has occurred, acceptance of responsibility can mitigate the remedy imposed against the lawyer. **Failure to respond is the WORST thing an attorney can do when an ethics complaint has been filed!**

When an attorney is served with an ethics complaint, the first thing that attorney should do is read the complaint and then calm down. The attorney should not respond the moment the complaint is received. (Under Iowa Rule 34.6(4), an attorney has twenty days to respond to the complaint). A response should be professional, tempered, and factual. It is a tremendous mistake to respond when angry or panicked.

The second thing an attorney should do is review the client file including all of the time records on the case. In most cases, the attorney will feel relief once the file and documentation has been reviewed. It is wise at this point to chart out a time line of events on the case that will later assist the attorney in formulating a response.

Third, the attorney who is the subject of an ethics complaint should thoroughly review the Rules of Procedure of the Iowa Supreme Court Attorney Disciplinary Board (Chapter 34 of the Iowa Rules). These rules can be accessed from the website of the Iowa Judicial Branch. Not only will failure to comply with the rules subject the attorney to further discipline, but ignorance or noncompliance with the rules is more evidence that the attorney is not conscientious or committed to compliance.

Fourth, the attorney should draft a thorough, clear, honest, and factual response. The response should include any attachments that may help shed light on the attorney's position. (Note that a client who files an ethics complaint against an attorney waives the attorney-client privilege as it relates to the ethics proceedings.) The attorney should draft the response early enough to allow the attorney time to "sleep on it", meaning reflect on the response for at least a day before sending in the response. It is also helpful to have another attorney review the response before submitting it.

Finally, respond to all requests for information or discovery submitted. Again, failure to respond may just add to the problems of the attorney.

Proactive Policies

It is obvious that the best way to avoid an ethics complaint is to comply with the Code of Professional Responsibility. While some ethics complaints "come out of the blue" with the attorney having no idea that there was a problem, most are made by a client who has already voiced concerns to the attorney. Attorneys can minimize (but not eliminate) the chance that an ethics complaint will be lodged by taking several proactive steps.

First, keeping the client informed and responding to telephone calls, emails, and letters can prevent most instances of client dissatisfaction including those that lead to the filing of ethics complaints. If this is a regular procedure for the attorney, ethics complaints will be avoided in most cases.

Second, throughout the life of a case, attorneys should be vigilant about documenting the client file. Lawyers often call these forms of documentation "CYA letters." Whenever a recommendation is made to the client, and especially when the client is not following the attorney's advice, a letter or memo documenting the advice given as well as the grounds for the advice should be created. If an ethics complaint is later filed, such documentation will help support the attorney's position.

Finally, when a client voices dissatisfaction to an attorney, the attorney should take the time to meet with the client, listen to the client's concerns, and, if possible, work to alleviate the client's concerns. If a client's concerns cannot be relieved, an attorney may wish to agree to reduce fees or eliminate any outstanding fees owed in order to allow the client to seek alternate counsel. Not only will compromise with the client help reduce the chance of an ethics complaint being filed, but it will also decrease the chance that the client will disparage the attorney to other potential clients.

Chapter 8: Building a Client Base.

All new lawyers worry about whether or not there will be enough clients to make an acceptable income. The surprising thing to most new lawyers is that established lawyers have the same concern. There is an old German saying, “God gives us walnuts, but we have to crack them ourselves.” It takes a conscious effort to build and maintain a client base. This chapter contains a few tips for making “building and maintaining a client base” a part of the normal business of practicing law.

Using Current Clients as a Business Tool

Most lay people feel some degree of importance when they are asked if they know a good lawyer and they can respond that they do. Consequently, one of the most important sources of referrals is from current clients. If the attorney is responsive to the client and the client feels well informed about what is happening on their case, they will refer their friends and relatives to their lawyer. Conversely, if an attorney is nonresponsive to a client, that client will tell friends and relatives not to go to their attorney. So, the best way to make sure that a client makes referrals is to make sure that the client is satisfied with the legal services provided.

One of the cheapest and most effective tools for business generation is the use of business cards. All attorneys should have an abundance of business cards. It is essential that clients carry one of the attorney’s business cards. This can be accomplished in several ways. First, the attorney should give the client a business card at the very first meeting and instruct the client to carry it at all times so that the client will be able to keep in contact with the attorney. Second, business cards should be strategically placed in the attorney’s office so that, no matter where the client sits, the client can reach over and take a card. Third, whenever a case closes, the attorney, in the closing letter, should include a business card, “in case the client has any questions in the future.” When clients have the attorney’s business card, it is very easy for them to make referrals to friends and relatives.

Identifying and Thanking Referral Sources

All attorneys should ask new clients, “How did you get my name?” This not only helps the attorney identify what type of business generation activities are working, it also gives the opportunity for the attorney to thank the referring party. Whether the referring source is a prior client, juror, attorney, or friend, the attorney should write a brief letter to

the referring party thanking them for the referral. While the attorney-client relationship may prevent the attorney from giving any information (and maybe even the name) of the new client, sending a letter saying that a new client came to the attorney identifying the source of the referral and thanking the person for the referral is important. It is also helpful to include a business card with the thank-you letter so that the referring person can easily make future referrals.

Asking Other Lawyers for Referrals

All attorneys must refer clients elsewhere from time to time (if for no other reason than because of conflicts). There is nothing inappropriate about an attorney talking to fellow attorneys, telling those attorneys about the type of legal cases the attorney accepts, and affirmatively asking that attorney for referrals. Iowa lawyers are very generous in their attempts to help a new attorney succeed in starting a law practice. Therefore, asking other attorneys for referrals can be very rewarding. Again, whenever another attorney sends a referral, the recipient of the business should send a thank-you letter promptly.

Taking Affirmative Steps of Building a Client Base

All attorneys, new and experienced, should recognize the need to continue to build a strong base of business. There are many small efforts that can be made in this regard including involvement in volunteer work for nonprofits and other business or social organizations. It is rarely wise to join an organization (unless it is a business breakfast or luncheon club designed for business contacts) solely to procure business. Attorneys who do this often find that the other members see this as a non-altruistic motive and often refuse to refer clients accordingly. However, if the attorney finds an interest in being involved in a particular club or nonprofit organization for personal fulfillment or altruistic reasons, it is important that the attorney member not be shy about making sure that the other members of the organization know that he or she is an attorney. This may be by just performing those functions for the organization that are typically given to attorneys (e.g., review of the bylaws) or by reporting on legal changes that may be of interest to the group. The attorney may be regularly subject to the slew of “lawyer jokes,” but if the other members see the attorney as bright, friendly, and committed to the cause in which they also believe, referrals become natural.

Whatever steps a lawyer takes to develop new business, it should be done consciously. Attorneys should set aside some time every week (for instance, an hour each Friday) to examine what efforts were made the preceding week to generate clients and to chart

out what efforts will be made next week to generate business. These steps may include something as simple as writing a thank-you letter for a referral or going out to lunch with a prospective referring attorney. By regularly doing something (even if something small) to build a client base, an attorney can feel confident that the legal practice will continue to grow.

Chapter 9: Practice Resources.

New attorneys often view the resources they need to be successful to be more material than human. The new attorney sees the most important resources to be books, computers, phones, office furniture, and equipment. While these physical resources are, of course, an essential part of the day-to-day functioning of a law office, experienced lawyers recognize that all successful lawyers need "human resources" as well. Every new lawyer should find a mentor to assist them in developing both professional skills and a professional character. Also, every lawyer should build a base of support from lawyers who have special expertise in certain areas of the law.

The Importance of Finding a Mentor

Judges and lawyers frequently comment that Drake University Law School graduates are more prepared to practice law than students from other law schools. However, no matter how advanced a new attorney's training was in law school, it would be a mistake to believe that anyone can exit law school fully prepared to practice law. It is essential for every new attorney to recognize the need for an effective mentor upon entering a legal career. Every new attorney should take to heart the following words by Iowa Supreme Court Justice (now Chief Justice) Cady in March of 2007 in an Iowa Supreme Court opinion suspending the law license of a young lawyer:

> He had no real mentor within the profession, and primarily associated with people that provided little professional guidance . . . The confluence of these circumstances, as well as others, foretold the disaster that would lie ahead. This cataclysm eventually unfolded in an eight-count complaint filed by the Board in 2006 . . . We have recognized the rigors of the practice of law and the difficulties that can be encountered by attorneys. . . These difficulties are multiplied exponentially for young lawyers who venture into the practice as sole practitioners . . . In the end, this case can be distinguished from the others. Ultimately, it seems to reveal less about an unethical lawyer than one who was confused, alone, and unprepared for the voyage he undertook, and quickly found himself well over his head in the dangerous and sometimes treacherous currents of the practice of law . . . Moreover, we support the concept of mentoring for all new lawyers, especially those who have recently graduated from law school and choose to begin their careers as a sole practitioner. The lack of education and guidance on the intricacies of the practice of law is often, as in this case, a recipe for disaster for new lawyers.

Every new lawyer should affirmatively seek out a mentor – an experienced attorney who has a reputation not only for financial success, but for professionalism and competency. The new attorney should make it clear to the potential mentor that the new attorney would like to meet regularly with the proposed mentor for advice and assurance. Most attorneys are flattered by the request to serve as a mentor and are also very willing to assist the new attorney in transitioning from law school to the practice of law. If the proposed mentor candidly states that he or she does not have time to serve as a mentor, the new attorney should appreciate the candor and seek an alternate lawyer to serve as a mentor.

Building a Base of Expert Supports

The practice of law has become more and more complex and complicated, and, consequently, it is difficult for any attorney to be fully competent in every aspect of the law. However, an attorney in the general practice of law will frequently be forced to identify concerns that are outside the areas of expertise for that lawyer. For instance, a general practice attorney may fully intend to avoid any representation of clients on tax matters. However, that attorney, in representing a divorce client, may need to recognize the tax implications of the sale of a house or the transfer of a retirement account. Similar issues can arise in many other areas of the law (such as bankruptcy, real estate, estates, etc.) where the attorney may have no intent to practice and may feel totally unprepared to render an opinion. However, it is essential that the attorney have some source for expertise in specialized areas because the collateral consequences of actions taken by the attorney in the case may be disastrous to the client.

All successful attorneys have a network of other lawyers with specialties in other practice areas with whom they can informally consult. There are mutual benefits to such arrangements that go beyond the advantage of expert consultation on collateral issues of cases handled by the consulting attorney. Both attorneys can receive referrals of clients in the practice areas of the respective attorney. It is reasonable to expect that the attorney who is serving as an informal (and unpaid) consultant to the general practitioner will be the beneficiary of referrals of clients in those areas of practice when the general practitioner is approached by potential clients for legal matters outside of the attorney's areas of expertise. Likewise, the general practitioner will often find that the specialist will refer clients for general practice matters. Consequently, the building of a base of expert supports is not only advantageous to an attorney's clients and to the avoidance of malpractice liability, but it is also a source of business and can assist in building a source of clients.

On entry into the practice of law, a new attorney should work to identify potential specialists in areas of the law outside the lawyer's areas of expertise. This can be done by observing the work of other lawyers, or it can be one other area on which the new attorney can rely on the identified mentor for assistance. As in many other matters, new lawyers should "ask around" to determine what lawyers have expertise in various areas of the law and keep track of contact information for those lawyers for quick access. Once a relationship has been created and the new lawyer has consulted informally with a specialist, the relationship can be cemented for future use by the simple tool of sending a "thank you" letter to the specialist.

Membership in the State and Local Bar Associations

Some states make membership in the state bar association a condition of licensure. In Iowa, membership in the Iowa State Bar Association (ISBA) is strictly voluntary. However, in Iowa, a vast majority of practicing lawyers are members of the ISBA. There are many benefits to belonging to the ISBA (or the state bar association wherever a lawyer may be practicing). Anyone can go to the ISBA website for a list of member benefits, which include discounts on CLE events, practice tools and forms, and other resources. The most significant benefit of belonging to the ISBA (as well as any local bar association) is that members, especially those who are active in the organization, make contacts with many lawyers with similar interests. This not only assists the lawyer in building the base of expert supports noted above, but it also creates a camaraderie that assists the new lawyer in building a reputation in the legal community.

Chapter 10: Lifetime Learning and Reflection.

Law school is just the first step of a lifetime of learning that is necessary to become, and to continue to be, an outstanding professional. In order to move from mere competency to expertise in the law, a lawyer must use a combination of Continuing Legal Educational opportunities, resources designed to stay current on changes in the law, and constant reflection on experiences and performance.

Continuing Legal Education

In virtually every jurisdiction, all attorneys must attend a specified number of hours of continuing legal education (CLE) hours each year. In order to maintain a license to practice law in the state, the attorney must file an annual report with the governing authority showing compliance with the jurisdiction's CLE requirements. In Iowa, that report must be filed electronically with the Commission on Continuing Legal Education by accessing the necessary report forms on the Iowa Judicial Branch website.

Attorneys should view continuing legal education as more than a requirement to remain in good standing with the state licensing authority. It should be seen as a tool for continuous development of the attorney's character and skills. Attorneys often view CLEs as expensive, both in terms of the cost of the training and in income lost from the law practice by attending. This makes proper selection of a CLE opportunity important. New attorneys should select CLE opportunities that feature experienced attorneys speaking on the "nuts and bolts" of the areas of practice in which the new attorney is primarily engaged. All attorneys can also select CLE opportunities that feature areas of practice in which the attorney is not currently engaged but are potential areas for expansion of the practice. Once the attorney has gained a level of competency in a practice area, CLE opportunities should be expanded to include more advanced and complex legal issues.

Staying Current on the Law

All attorneys recognize that the law is constantly changing, both because of legislative action and judicial interpretation and rulings. The first Rule of Professional Responsibility (ABA Rule 1.1; Iowa Rule 32:1.1) deals with attorney competency. Comment 6 of both the ABA rule and the Iowa rule states: "To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, engage in continuing study and education, and comply with all continuing legal

education requirements to which the lawyer is subject." Not only is competency on the current law an ethical responsibility, failure to stay current on the law may provide the basis for a legal malpractice action.

Continuing legal education events are only one source of information available to an attorney on changes in the law. Most states have electronic resources available from the state legislature and from the state appellate court systems that allow an attorney access to changes in the law free of charge. In Iowa, anyone can access the Iowa General Assembly website to view new legislation that has been passed and signed into law. That website even groups legislation by the Iowa Code sections amended by the legislation and shows the bill history including when the bill passed, whether or not it was signed into law by the Governor, and the effective date of the legislation. In Iowa, laws normally take effect on July 1st immediately after the passage of the bill. The Iowa Judicial Branch, on its website, posts electronic copies of the opinions of both the Iowa Supreme Court and the Iowa Court of Appeals on the day the opinions are issued. Attorneys can sign up (free of charge) for an electronic notice of opinions being released. Each time opinions are issued (once a week by the Iowa Supreme Court and twice a month by the Iowa Court of Appeals), anyone who has signed up for notification receives an email notifying of the issuance of opinions by the appellate court and providing an electronic link for quick access to the opinions. It is important for all attorneys to develop the habit of regularly reviewing all Iowa appellate opinions promptly after their release.

Conscious Reflection

The classic form of clinical legal education involves a three-step process: observation, performance, and reflection. As Professor Emeritus Dan Power described it, clinical education follows the sports analogy: "chalk it, walk it, talk it." Like professional athletes who watch "game film" to engage in a critical analysis of performance, attorneys should always reflect on performance after any significant professional event to determine what was done well and what areas require improvement. Lawyers should not only practice self reflection but should also conduct an informal critical analysis of all attorneys involved in the case. This allows the attorney to examine different styles and methods with the goal of personally gaining from the experience of others. Conscious reflection should be a lifetime tool for all attorneys and is the best method of moving from competency to expertise.

Reflection is not only beneficial in court or other legal activities, but can also be used to improve every skill necessary to be successful in private practice. For instance, when

an attorney-client relationship deteriorates (either leading to the firing of the lawyer, the lawyer's withdrawal from the case, or the filing of an ethics complaint by the client), the lawyer should not only ask, "What could I have done differently to prevent this problem?" The lawyer should also ask, "What were the clues that I should have seen when the client first came in that would have alerted me to the potential problems?" By reflecting on issues of client interaction and attorney-client relations, an attorney can gain insight that will help prevent a recurrence of similar conflicts.

Chapter 11: Developing a Professional Character.

There are three dimensions of all professional work (including the practice of law): Thinking, Performing, and Behaving. Here is what each dimension includes:

Thinking Like a Lawyer: This is what most of the first half of a law school career is about. New law school graduates are able to "think like a lawyer" as a result of the case-dialogue method used in law school. Attorneys look at almost every set of facts differently than they did before law school.

Performing Like a Lawyer: This is where the law student or new attorney moves from "thinking like a lawyer" to "lawyering." A new law school graduate moves from a novice to competence. Later in practice, the attorney will move to expertise. In law school clinical programs, internships and externships, the law student gained the "wisdom of practice" from being coached, watching (modeling), performing, reflecting, and experiencing (repetition). This same method of gaining competence in legal performance is used by the new attorney.

Acting Like a Lawyer: This is where the new attorney develops a professional identity and purpose. The professional identity must be as a person who is ethical, professional, honest, dedicated to service to clients, and to public service, as well as having a calling to promote justice and the public good.

The professional character established by the new attorney in the legal community in which he or she sets up practice is destined to follow that attorney, in most cases, throughout the attorney's career. It is, therefore, essential that the new attorney strive to identify appropriate role models and to only practice with attorneys with whom the attorney shares a similar professional identity.

Changing the Character of the Practice of Law

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In the early 90's, attorney and writer Mike Papantonio sent a survey to more than 200 trial lawyers throughout the southeastern United States. The response rate to his survey was 90%, and some of the information gleaned from the survey was disheartening. When asked to list the most significant fears about the practice of a trial lawyer, almost two-thirds (64.1%) of the respondents replied "fear of spending too much time practicing law and not enough time living." When asked to describe the aspect of their career that causes the most dissatisfaction, well over half (56.3%) of respondents replied "the quality of life I have with my family suffers." When the survey asked to describe what the respondent needed to take more time from the day to day practice to

accomplish, more than three-quarters (76.2%) responded "improve the quality of my life." When asked to describe the change that a respondent noticed since beginning the practice of law, the largest response rate (48.6%) responded, "I am much more suspicious of everyone."

Many books have been written about the lack of career satisfaction experienced by lawyers, but few real solutions have been offered. Instead of proposing changes that alter the character of the entire practice of law, most writers have proposed suggestions for individuals to deal with the pressures and stresses of a legal career. These "self-help" solutions do not make meaningful changes that are necessary to convert the legal field into an attractive career choice. In fact, these traditional proposals do more to fuel the denigration of the legal career by stressing ways to focus on self rather than on the legal community as a whole. In this article, I propose some key steps that practicing lawyers can take to begin a sea change in the quality of life for all lawyers. I propose that lawyers adopt the following five action steps to transform our legal community.

Action Step Number One: Create a legal community dedicated to service. Most would concede that a lifestyle that includes a commitment to public service is the key to personal satisfaction. It is easy for us to commit to make service a portion of our life, but the key to reshaping the practice of law is to create an environment where everyone is encouraged to be an active community volunteer. I have started the practice of sending a congratulatory letter, note, or email to lawyers I know whenever I hear about a service activity in which the lawyer has participated. I like to quote Fred ("Mr.") Rogers who said: "We live in a world in which we need to share responsibility. It's easy to say 'It's not my child, not my community, not my world, not my problem.' Then, there are those who see the need and respond. I consider those people my heroes." This congratulatory note not only encourages the recipient to continue to make public service a regular part of life but also has a similar effect on the sender.

Action Step Number Two: Create an environment of civility and professionalism in the legal community. Most parents learn rather early in the process of parenthood that positive reinforcement is more effective in changing behaviors than criticism or punishment. When seminars and articles discuss the issues of civility and professionalism in the legal profession, the focus is invariably on objectionable conduct. Few lawyers would feign that they are uncertain as to whether or not certain conduct meets acceptable standards of civility and professionalism. The issue is how to change the behaviors of lawyers by such an extent as to change the entire character of the practice of law. Rather than criticizing instances of hostility and unprofessionalism, I have started routinely complimenting lawyers on instances of good professional conduct. Rather than assuming that civil and professional behavior is expected and, therefore, does not warrant a compliment, I make a point of thanking the lawyer for the professionalism exhibited under a difficult situation and noting what a pleasure it was to

work with that lawyer on the case. Again, not only does this comment help me to focus on my own efforts at professionalism and civility, but it also encourages the other lawyer to continue such positive practices in the future.

Action Step Number Three: Create a legal community that respects the personal priorities of its members. Few lawyers or judges would object to scheduling a hearing or deposition around the business schedule of the lawyers involved. It is not uncommon for lawyers to cite their unavailability because of a trial, hearing, deposition or even a seminar. However, most lawyers would not consider citing unavailability because of a child's ball game. I have actually heard a judge refuse to schedule a hearing around an attorney's family vacation ". . . unless nonrefundable airline tickets have already been purchased." This general attitude in the legal community forces attorneys to prioritize their lives around business matters to the exclusion of personal and family matters. Lawyers should be encouraged to raise scheduling problems related to family commitments, and recipients of this courtesy should always remember to voice appreciation for the accommodation. Years ago, I sent a letter thanking a lawyer for rescheduling a deposition so that I could attend a school event for my son. In the letter I told him, ". . . you will never know how much I enjoyed being able to be there for my son." He called me back and told me he was touched by my remark, and we remained friends for years. The entire legal community benefits when lawyers feel that their desire to prioritize personal matters is respected.

Action Step Number Four: Create a community that exhibits empathy and respect among lawyers. Time after time, Supreme Court opinions imposing disciplinary action against attorneys describe situations where the attorney involved is obviously struggling with depression or substance abuse issues. Most of those cases involve interaction with other lawyers and judges. Especially in cases of lawyers who have practiced in the community for a number of years, it is difficult to imagine that even a casual observer would not have noticed that the attorney involved is struggling. I wonder what kind of "community" would either ignore a member who is struggling with these issues or would fail to casually mention a referral source. Any healthy community (even a business one) would expect its members to show empathy and concern for other members faced with these struggles. Lawyers should never let the business of law become so impersonal that no one stops, shows concern for the struggling lawyer, and offers assistance. Lawyers should provide the same empathy and support to fellow lawyers that they would expect to be provided to their own family members in the workplace if similar issues arose.

Action Step Number Five: Eliminate the "winning is everything" philosophy in the legal community. During the entire time that I practiced law, I made it a personal habit to call opposing counsel in every case I lost and congratulate my opponent for a job well done. It was not a call that I looked forward to making. I always felt that this

must be what it is like for a political candidate to make a concession phone call. Although I won my share of cases, I virtually never received a similar call from a lawyer when I was victorious. The congratulatory phone call is not only humbling, but it is a reminder that Vince Lombardi was wrong when he said “winning isn’t everything, it’s the only thing.” In virtually every contested legal matter (in or out of court), there is a winner and a loser. If the legal community adopts a “winning is everything” philosophy, few lawyers will find the practice of law emotionally rewarding. By congratulating each other on a skilled legal performance, lawyers not only contribute to civility and professionalism, but they also create a proper realignment of our professional goals. The focus will be on recognition of quality legal representation rather than victory at all costs. Both lawyers in a contested matter or negotiation can leave with a feeling of accomplishment and satisfaction.

The practice of law has a long history of being one of the chosen professions often referred to as a “calling.” Most young lawyers enter the field not so much for the financial rewards as for the opportunity to make a difference in the lives of others. As lawyers have allowed the practice to dominate their personal lives, the profession has become just another job – one involving extreme competition. The result has been dissatisfaction and personal distress. Now is the time to take concrete action steps to reverse that trend and to restore the legal community to one that is emotionally and spiritually rewarding. If the character of the practice of law is altered, our legal community can reap the rewards of being a healthy and supportive community for generations to come.