

STARTING YOUR OWN LAW PRACTICE

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I. Getting Started.

As a lawyer, or sometime in your life, you have probably heard the saying by Abraham Lincoln: “He who would be his own lawyer has a fool for a client.” (Mr. Lincoln also said “A lawyer’s time is his stock in trade.” a useful motto in our profession. My hometown lawyer had that sign above his receptionist’s desk.)

I mention this slogan (the first one) because a common problem that I have with my business owner clients is that they work beyond their skill set. Many business owners like doctors, lawyers and other professionals are intelligent, diligent, independent, persevering and self-reliant. The problem is that often they don’t know when to quit being “do-it-yourselfers,” so they make common, sometimes stupid, mistakes – not because they are stupid, but because they try to do legal things without the knowledge and experience to know what they are doing. For example, they may review and revise documents without realizing that much of what needs to be in the document for them is not there. This problem is what I call the “documents look OK to me” fallacy.¹

My point here is that even lawyers can work beyond their skill set. Starting out you may have no choice but to be a “general practitioner.” (Translation: you need clients, so you will do whatever work walks in the door.) Having been there I know this can be horrifying, but it can also be exciting. For example, my hometown attorney told me – when I went to him as a businessperson because I was not yet a lawyer – that one of the things that he enjoyed most about his practice was the variety, i.e. “to see who walked in the door each day.” (Incidentally, my attorney became a judge the same year I became an attorney, which was gratifying.) Ultimately, you want to do what you would enjoy doing

¹ I write about this problem more extensively in my book “Mind Your Own Business,” available in e-copy from my firm at azbuslaw.com. And I talk a little about the “Documents Look OK to Me Fallacy” in my video on the same Website at azbuslaw.com.

anyway, say for example you did not need the money. To say it from the reverse angle, as a Harvard educated Hong Kong lawyer with whom I was working on a bank merger said to me when I was a law firm clerk: “You really have to enjoy this work”-the implication being that that I would be miserable otherwise, especially since we were working from about 7:00 AM to 10:00 PM every day.

After you have been in practice for awhile you will learn that going outside of your area of knowledge and experience is a recipe for malpractice. No one (I know) can practice all areas of law at the same level of competence so “specialization” (I use this word in quotes because under the ethical rules you are not allowed to use it unless you *are* a certified specialist in the area) is important. I do not mean that you should become a certified specialist – there are pros and cons to that – but that you should “stake your ground, put your flag in it” and say this is what I do, whether that is family law or probate practice. (Many new attorneys do personal injury. I am not sure why; maybe it is because they think they can get more clients if they are willing to work on a contingency basis.)

The ethical rules, ER 1.1, do not require you to become an expert before you can practice law; this would be a “Catch 22.” But, the rule assumes that you will use reasonable diligence to learn the area so that you can competently provide representation. Also, as a practical matter, when I work in a new area of law, e.g. education law, I will not bill the client for the time, say for example three to ten hours or so, for me to learn the basics of the area (statutes, articles, seminar materials, case law, etc.).

And, this “getting up to speed” applies not only to the area of law in which you choose to practice, but also to setting up your *business*. And, that gets back to my point that, unless you have owned your own business prior to law school – or even if you did I would advise you to hire (“retain” is a word we do not use anymore because it doesn’t match the types of fees that you can charge and fee agreements that you may have) a business lawyer to help you set up your practice.²

² I have written the books “Inside the Firm, The Art of Choosing and Using a Lawyer,” and “Mind Your own Business” about operating your own business as well as the article “Ten Common Mistakes that Business Owners

Speaking of fee agreements, in Arizona there are several types: Flat Fee, Earned upon Receipt, Minimum Fee, Contingency Fee, Advance Fee and combinations or variations of same. The good news for lawyers in Arizona is that samples of these agreements are available Online from the State Bar and seminars are available to explain when and how you use them. This firm does work such as forming corporations on a Flat Fee basis. We do larger projects, whether litigation or transactional, on an Advanced Fee basis. Flat Fees go into your operating account and advance fees go into the trust account, just as if the Advance Fee were in and for a litigation matter (the litigation agreement is typically longer than a transactional agreement).

II. Avoiding Pitfalls.

A. Ignorance is Bliss – Or at least Makes Things Less Intimidating.

I joke sometimes that “A precondition of going into business for yourself is ignorance” because if you knew in advance what you were getting into, you might not do it. “Big picture-wise” one important thing to know is that running a business is like raising a child; if you are not willing and able to “be there” when the baby cries or the child needs you, then owning and operating the business, including the law practice, may not be right for you. Consider: if you own your own law practice, then you are not only a lawyer, but also a business person. And, businesses, like an organism, change qualitatively in structure as they grow quantitatively in size (clients, sales, space, etc.). So, you will never be able to coast, while wearing either the lawyer or the business owner hat.

B. Record-keeping.

One common challenge can be setting up your bookkeeping and accounting systems. This would include, of course, your time and billing systems, as well as your accounting systems. Often, an attorney will have one system for time and billing, e.g. Timeslips, and another, e.g. Quickbooks, for preparing the monthly income statement and balance sheet. But, this can be a pitfall because (1) you

have two systems – a recipe for mistakes and conflict and (2) QuickBooks likes to automatically “adjust” to correct discrepancies, but this is not good procedure and is absolutely *verboten* when it comes to trust accounting.

A short blurb on trust accounting for your law practice: It is the most important thing you will do; it can get you suspended or even disbarred if you do it improperly and (my experience is that) many accountants, even CPA’s don’t know *squat* about law firm *trust* accounting. So, what you must do: attend the state bar seminars on trust accounting. Take your accounting staff with you. Hire the bar to help you, e.g. the Arizona State Bar has LOMAP available at reasonable cost. And, if at all possible – and you may have to grow some to do this – get an in-house accountant to do the trust accounting. (This person doesn’t need to be a CPA, just someone who can and does understand bookkeeping and trust accounting.) Relying on an outside firm just does not work, at least not in my experience.

C. Credit Card Machines and Your Trust Account.

Another pitfall –and this relates to accounting and the trust account as well – is getting your credit card machine set up properly. You may want to have a machine where you can take either trust account deposits or operating account deposits.³ The good news is that the technology and the machines exist; the bad news is that getting the machines set up properly can be difficult and time-consuming. For example, credit card processing fees should not be taken from the trust account. You are allowed to keep a reasonable sum in the trust account for that purpose, but under my “belts and suspenders” approach (“abundance of caution” as lawyers say) we have the fees taken from the operating account, and in addition keep an amount in the trust account sufficient to cover the typical monthly charges as well. So, you have the challenge of needing to know how to set up the accounts and getting the “tech” on the other end of the line to do it

³ Under the Arizona Ethical Rules you can only take credit card payments to the trust account if you have funds in another account sufficient to immediately cover the credit card deposit in case of a problem – say, e.g. if the client back-charged on the account after you had billed fees against it. This could be a Catch 22 when you are just starting out.

properly. Typically, we had three or four conversations with the various credit card companies to get the job done correctly.

There are a number of other business and business law related pitfalls which I discuss in my article “Ten Common Mistakes that Business Owners make.”

III. Standard Operating Procedures.

One common mistake that I see business owners make, including law offices, is the failure to have defined standard operating policies and procedures. It is one thing to run a business out of your “hip pocket” at the \$100,000.00 level; it is quite another to run the business in the same way at the \$1,000,000.00 level. By “hip pocket” I mean that rather than a job description what a person does is what the owner tells that person to do, the approval procedure for any task is to ask the owner, money is spent and benefits are received by asking the owner.

Earlier I mentioned that a business changes qualitatively as it grows quantitatively. Here is an example: people like to buy their gas from Tony’s Service Station (or as we used to say his “filling station”) because (1) he is a good guy and nice to deal with and (2) he gives good service at the pump and in his garage repairing vehicles. But, let’s say that Tony does well enough that he is able to open another location in another part of town and does so.

What just happened? What are Tony’s strengths – the “USP,” unique selling proposition -- upon which he based his business? Personal contact and good repair work. By definition, with two locations, Tony is not going to have the personal contact or personally do and supervise all of the repair work as he did before. So, he is moving away from the strengths upon which he built his business.

What else will happen? Tony will be forced to be less of a “do-it-yourselfer” and more of an organizer and delegator; that is, to know and do those things which they teach in business school – education and training, and perhaps even aptitude, which Tony may not have. Also, when working through others, one needs to define their job, define the tasks, inspect and hold them accountable. In other words, the business will need to have job descriptions,

policies and procedures so that they know what to do without just asking the owner every time. Even if “aptitude-wise” Tony is able to create an organizational chart and management system, he may not *want* to give up control or run the kind of business which requires that he substitute systems for himself. But, if he doesn’t, a common result is stagnation. Quite often I see a business that grows rapidly from “nothing” to \$500,000.00, but “freezes” at \$1,000,000.00 in sales or so because the “hip pocket’ management system won’t work at that level. So, my question is “Are you like Tony in that you might do better to remain small and personal, or are you more than ready, willing and able to establish and implement systems as standard operating procedures?”

IV. Conclusion.

This brief article can get you started. The underlying question is whether you are cut out for owning and operating your own practice. I have had brilliant attorneys who wanted to practice law, not business, or who came from government work and didn’t know or think in terms of the need for good billing practices to survive, or who came from big firms and considered it an affront to make their own copies. If you own your own business you may have to start out by being the “chief cook and bottle washer” and knowing how to put toner in the copier without getting it all over you and the floor and in the middle of a rush filing.

So, in addition to the business “skill-set,” you need the business “will set.” You need to really want to have this “business child;” if you don’t, then I would be looking for alternatives, like a partnership, with the roles carefully defined, using a business lawyer to help you do this.

Whatever you decide to do: Good luck!