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ABA
AMERICAN BAR ASSOCIATION
**General Practice,
Solo & Small Firm
Division**

**Straight Talk on How to Maximize Cash
Flow in Uncertain Times**

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**2009 Fall Meeting and
National Solo and Small Firm Conference
October 16 - 17, 2009
Millennium Biltmore Hotel
Los Angeles, CA**

American Bar Association
General Practice, Solo and Small Firm Division

**STRAIGHT TALK ON HOW TO MAXIMIZE CASH FLOW IN
UNCERTAIN TIMES**

Ann M. Guinn
G&P Associates
Kent, WA 98032
(253) 946-1896 anngp15@aol.com

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ANN M. GUINN

Ann M. Guinn is the founding principal of G&P Associates, in Kent, Washington. She is a practice management consultant and trainer to solo and small law firm practitioners. With more than 30 years' experience in the legal community, Ann is committed to helping attorneys build and maintain practices that are high earning, satisfying, well-respected, and that exceed their clients' expectations. She provides assistance with financial analyses, efficiency and productivity, client development and marketing, and long-range planning.

Ms. Guinn has published a number of articles dealing with law practice management issues, and has been a featured speaker at meetings of the Washington and California State Bar Associations, local bar associations, and several regional conferences of the Association of Legal Administrators.

Ms. Guinn has served on the Executive Committee for the Washington State Bar Association's Solo and Small Practice Section since 1994. She has served on the Steering Committee for the WSBA Solo and Small Firm Conference since its inception in 2006 and has also been a featured speaker at the conference each year. Representing the interests of solo and small firm attorneys, Ann was the nonattorney member of the WSBA Trust Account and Retainers Responsibilities Taskforce, which was charged with revising the Rules of Professional Conduct relating to fees, retainers, and advance fee deposits. She also served on the WSBA committee that developed the Law Office Management Assistance Program and its practice management manual.

I. INTRODUCTION

Few law schools provide training on how to run an efficient and profitable law practice, leaving their graduates to either learn management skills from their employers, or by trial and error in solo or small practices. When the economy is healthy, even a poorly run law firm can get by; however, in times of economic uncertainty, the better managed the firm, the better the firm's chances of remaining both viable and profitable. Lacking some, or all, of the necessary skills to prepare the practice for economic ups and downs, or adapt the practice to changes in client needs, some solo or small firm practitioners can find themselves distracted from the practice of law as they work feverishly to keep the doors open.

While many law firms experience cash flow and workload peaks and valleys, a far-reaching economic downturn can cause significantly greater damage than those periodic fluctuations. During the current financial crisis, we've seen small law firms fold, solos cut expenses by going "virtual," widespread staff layoffs, and an explosion of attorneys at Rotary, Chamber of Commerce, and Kiwanis meetings – all trying to generate new business quickly.

Putting energy and money into developing more business is certainly one way to try to counter the effects of slaking revenues; however, making sure your house is in order is essential to not only your survival, but how well you survive. Benchmarking your firm's financial situation and taking any necessary corrective action is critical to both your short-term and long-term success. So, let's take a look at the financial strategies that will help you maximize your cashflow in

uncertain times. We'll begin with a self-assessment quiz to determine any potential areas of concern in your practice.

Tip: The best way to protect your business in uncertain economic times is advance preparation.

II. SELF-ASSESSMENT QUIZ

As a first step, please take a moment to answer a few questions about your practice. Please indicate your answer with a checkmark in the appropriate column.

YES NO

- | | | |
|-----|-----|--|
| ___ | ___ | Do your expenses consume more than 45% of your revenues? |
| ___ | ___ | Do you sometimes have trouble meeting monthly expenses? |
| ___ | ___ | Have you had to borrow to meet basic operating expenses within the last year? |
| ___ | ___ | Do you have less than six months' worth of operating expenses (including your compensation) set aside for emergencies? |
| ___ | ___ | Does it take longer than 60 days for you to be paid by your clients? |
| ___ | ___ | Do your accounts receivable equal more than two months' worth of revenues? |
| ___ | ___ | Is your realization rate lower than 90%? |
| ___ | ___ | Is your effective rate more than 10% below your regular billing rate? |

- ___ ___ Are you operating without a written business plan, budget, or marketing plan?
- ___ ___ Do you write off direct client expenses incurred in-house (e.g., postage, fax, photocopies, phones)?
- ___ ___ Are you seeing fewer initial consults per month than you were a year ago?
- ___ ___ Are you encountering more price resistance to your fees than you were a year ago?
- ___ ___ Are your clients asking for different services than they were a year ago?
- ___ ___ Are you without a plan to increase profitability over the next five years?
- ___ ___ When you set your fees, was your first consideration what your competition charges?
- ___ ___ Do you want to add staff or another attorney, upgrade your technology, or buy a building, but can't afford to?
- ___ ___ Does it seem that you are working harder now than you were five years ago, but with less to show for it?
- ___ ___ Do you want to make more money?

Every “yes” is a red flag indicating that you’ve got some work to do. Not knowing some answers is also a red flag indicating that you need to spend some time getting to know your business on a deeper level. You aren’t fully aware of your firm’s current financial situation – and that suggests you may need to do some work to get your firm on solid footing.

Now, let’s take a closer look at certain of these financial indicators.

Tip: For maximum success, you need to know your business intimately. It's time to take your relationship to a deeper level.

III. HOW TO CALCULATE YOUR FINANCIAL INDICATORS

Successful management of a law practice requires regular and thorough review of the firm's financial statements – both for what they show and what they don't show. Specifically, there are certain metrics by which to measure your firm's performance, but that information doesn't show up on a profit and loss statement, a cash flow report, or a balance sheet. Sometimes the most helpful information takes a little more digging. Luckily for you, someone else has already figured out how to do this in the simplest way possible. We're going to examine three of these metrics here: your turnover rate, liquidity ratios, and overhead-to-expenses percentage. Let's start with your turnover rate.

A. Turnover Rate

How long does it take you to get paid for your services?

Unless you collect your entire fee up front, there's a good chance you can't answer this question with certainty – and the true answer may surprise you. The number of times you get paid in a year is known as your turnover rate. Once you have this number, you can easily figure out how

many days it takes you to get paid for your services. To calculate your firm's turnover rate, please follow this simple equation:

$$\frac{\text{Annual Revenues}}{\text{Accounts Receivable}} = \text{Turnover rate (number of times paid per year)}$$

$$\frac{365 \text{ days}}{\text{Turnover rate}} = \text{Number of days to get paid}$$

According to a survey conducted several years ago by Robert Morris Associates, the national average length of time to get paid for a law firm with less than \$500,000 in assets is 11 days.

How can that be? I doubt there is any one answer; rather, those firms may:

- Collect 100% of fixed fees up front before the work commences
- Educate their clients as to the firm's expectations for prompt payment during the initial consultation and in the written fee agreement
- Bill promptly and regularly
- Establish a short due date for payments (e.g., 10 days from the date of the bill)
- Tackle past-due accounts the day they become past due
- Take adequate advance fee deposits to insure they get paid

- Use an evergreen (or replenishing) deposit account so they are paid timely and in full every month
- Stop work or withdraw from representation (as allowed) for nonpayment
- Selectively choose new clients, taking into account the client's ability to pay the attorney's fees, regardless of the outcome of the matter.

While you may never achieve the 11-day average, implementing strong billing practices and policies can help you increase your turnover rate and get you paid more quickly.

So, what's your turnover rate? You can't afford not to know.

B. Liquidity Ratios

Now, let's move on to your liquidity ratios. For this, you'll need your current balance sheet. Think of your firm's balance sheet as a snapshot of your firm at a particular moment in time. What's true of the firm today may not be true tomorrow. That said, the balance sheet reveals important information about your firm at the time the statement is prepared. The balance sheet shows your assets and liabilities, and owner's equity. It does not forecast earnings, showcase trends, reflect expenses, or give you a heads-up on your past-due accounts.

The balance sheet provides you with the numbers you need to calculate your firm's two liquidity ratios. The first – the quick ratio – is an indicator of how quickly the firm can raise money. This is definitely something you're going to want to know in case an emergency should arise.

Your quick ratio is determined by dividing the most liquid assets (e.g., cash, short-term investments, accounts receivable) by the current liabilities.

$$\frac{\text{Most liquid assets}}{\text{Current liabilities}} = \text{Quick ratio}$$

A ratio of 1-to-1 is acceptable. A ratio of 2-to-1 is better. If your liabilities are less than your current assets, then you have the ability to put your hands on money quickly in case of an emergency or an unexpected expenditure.

The second liquidity ratio – the current ratio -- is an indicator of the firm’s ability to meet its immediate financial needs. [NOTE: “Immediate needs” would include payroll, quarterly taxes, rent, insurance premiums, etc.] The current ratio is a measure of the firm’s liquidity. It demonstrates the firm’s ability to meet short-term obligations. As an example, this might be a situation where you have a loan coming due. This number is determined by dividing total current assets by current liabilities.

$$\frac{\text{Total current assets}}{\text{Current liabilities}} = \text{Current ratio}$$

A ratio of 1-to-1 is acceptable. A ratio of 2-to-1 is considered strong. Your strength again lies in having significantly more money available in assets than tied up in liabilities.

While you may never need to test your firm's liquidity, it's still good to know your financial health – and the quick and current ratios are just two more pieces in the overall picture.

C. Overhead as a Percentage of Revenues

When attorneys tell me they aren't making enough money, the first place I look is at the firm's overhead. That's usually the first place the attorneys look, as well, but they don't always know what to look for. After reviewing their expenses, they jump to the conclusion that they have to cut overhead to make more money. To determine the percentage of revenues required to meet your overhead, follow this formula:

$$\frac{\text{Total expenses less atty compensation}}{\text{Total annual revenues}} = \text{\% of revenues going to overhead}$$

In a solo or small firm, I look for overhead to run 40-45% of revenues (exclusive of attorneys' compensation). I don't get worried until I see overhead at more than 50% of revenues. The highest I've ever seen was 97%. That means that 97 cents of every dollar that comes in goes toward overhead. That is not just a serious problem – that firm is on life-support! Oddly enough, the attorney didn't see anything wrong with his overhead. Instead, he had self-diagnosed the problem as having more to do with the distribution of work amongst staff members. With advertising costs in excess of \$240,000 per year for his solo practice, his financial situation had nothing to do with work distribution.

There is a sad story that tops that one, however. After one of my CLE presentations, an attorney, supporting himself on two canes, approached me and said, “I’ve got a new story for you to tell about overhead.”

This gentleman had suffered a stroke the year before. He had been unable to return to work, but kept his office open in the hopes that his therapy sessions would one day allow him to resume his business. It was fairly obvious to me in speaking with him that his dream was not likely to happen. In the meantime, he had hired another attorney to handle all of his cases, and was giving him all the money his work earned. The attorney concluded his story by telling me that his overhead was running at about 135% of revenues.

In 18 years as a consultant, I’ve consistently found that, typically, the problem is not that overhead is too high – it’s that income is too low. Sometimes the attorneys simply aren’t billing enough time, or sometimes the realization rates are too low, indicating they aren’t collecting enough of what they bill. Other times, they simply don’t have enough work, or they are taking the wrong clients or cases. Discounting fees hurts, as well.

From the profit and loss statement, I move to the timekeepers’ productivity reports. Who is billing what, and how much are they collecting? I look to see if there are write-offs and write-downs that might be contributing to the problem. Then I get down to the nitty-gritty – how does everyone capture their time? Are their billing rates appropriate? Are their flat fees working for them? How much are they collecting of what they bill?

If your overhead is taking an extra big bite out of your revenues, sit down with your calculator, your profit and loss statement, and your budget and look for any particular line item that is unusually high. (You'll actually need your budgets and P&Ls from the past three years to get any sort of real feel for the appropriateness of your expenses.)

If you find numbers that seem to be unreasonable, find out what they represent. Asks questions, review invoices, study your financial statements until you know what each number represents.

If your overhead percentage is too high, check the following to try to pinpoint the reason:

- Profit and loss statements (going line by line over each expense item)
- Year-to-date budget comparison to current profit and loss statement
- Attorney productivity reports (specifically, hours billed and fees collected)
- Attorney realization rates
- Aged receivables report
- Work in process
- Advance fee deposit policy
- Attorney billing rates
- Attorney timekeeping habits

Watch your expenses carefully. Watch for trends. Watch for unusual amounts. If you have someone else doing your books, review all bills before they are paid. Review your cancelled

checks and bank statements. It's always a good practice to have someone other than the person who prepares checks handle the bank reconciliation anyway. That person could be you.

I've just given you three ways to measure your firm's health, but there are many different measurements you can use. At a minimum, monitor the following on a regular basis:

- Annual and year-to-date gross revenues
- Average number of hours billed per day
- Current fees charged
- Realization rates (the percentage of fees billed that you actually collect)
- Your effective rate (your true hourly rate, considering your realization rate)
- Overhead-to-income percentage
- Number of new clients per month
- The sources of new clients, the type of clients you receive from each source, the revenues generated from each of those clients
- The costs and profitability of your various practice areas and/or services
- The marketing costs per new client
- Turnover rate
- Liquidity ratios.

Know where you are all the time. Whenever a new financial statement is generated, do your calculations and take your measurements. If something is out of line, attend to it immediately before it does harm to your practice. Ignorance may be bliss, but poverty stinks!

Tip: Give your law firm a financial “physical” on a regular basis to keep it in good health!

IV. HOW TO KNOW WHAT TO CHARGE

If you are one of the many attorneys who pluck a figure out of the air and decide whether or not it will work as a billing rate, take heart. The good news is that there really is an easy and precise way to calculate your rate. This is known as your *minimum hourly rate* – the minimum you need to charge to meet your financial needs and goals. We’re looking at the minimum hourly rate because several of the popular billing methods are based in whole or in part on the expectation of earning a certain amount of money per hour.

A. Getting Your Hourly Rate Right

Let’s help Lucy Brown figure out her minimum hourly rate. A solo family law practitioner in a traditional brick-and-mortar office, Lucy has one full-time legal assistant. Out of concern about pricing herself out of the local market, Lucy chose to adopt the billing rate being charged by several other family law attorneys in her community. Even though she puts in long hours, and captures all of her time, there just never seems to be enough money.

The first thing I would tell Lucy is that adopting someone else's billing rate is a dangerous practice. To insure that she meets her needs when setting her rate, Lucy must take into account her overhead expenses, compensation, benefits, write-offs, write-downs, discounts, uncollectable accounts receivable, and expected firm profit. By merely following someone else's lead, Lucy is missing this critical point. It's no wonder it's not working for her.

By following a simple formula, Lucy can determine the minimum she needs to be charging per hour to cover her expenses and her compensation.

Lucy Brown's Minimum Hourly Rate

Lucy's desired compensation	\$ 100,000
The firm's total overhead expenses (exclusive of Lucy's compensation)	\$ 164,100
Emergency fund (6 months X \$22,008/mth overhead & compensation)	\$ 132,050
Desired annual firm profit	\$ 25,000
TOTAL REQUIRED REVENUES	\$ 421,150

Lucy's realization rate (% of fees billed that she collected –

divide total gross fees collected by total fees billed)

Fees Lucy collected	\$ 287,500
Total hours billed	1,325

Lucy's hourly rate	\$	250
Total fees billed	\$	331,250

Lucy's realization rate ($\$287,500 \div \$331,250$) = 0.87

Lucy's projected billable hours goal 1,300

Required Revenues \div (Realization Rate X Billables Goal) = Minimum Hourly Rate

or

$\$ 421,150 \div (0.87 \times 1,300 \text{ hours} = 1,131) = \$ 373$

Lucy is now faced with a dilemma. She is currently charging \$250 per hour, but according to this calculation, she needs to bring in \$373 per hour to cover her compensation, overhead, emergency savings fund, and desired firm profit.

For her geographic location, \$373 is considerably more than other family law attorneys are charging. Unless she can prove that she's worth the extra money, Lucy's rate may put her out of reach for a good portion of her target market. Is there a solution for Lucy?

First, Lucy needs to review the figures she used to arrive at the \$373 rate, starting with her desired compensation. Lucy wants to have a personal income of \$100,000 per year. Is that realistic? Perhaps not, but we'll let Lucy hang on to that thought for now.

Next, Lucy should give her expenses a good going over. Lucy pays her assistant \$36,000 per year and provides her with a small benefits package, including health insurance, Sep-IRA, two weeks' paid vacation, and an annual Christmas bonus. Aside from that, her monthly expenses run around \$8,800 for office space, equipment, insurance, on-line research, supplies, dues, publications, and so forth. If her expenses seem to be in order, Lucy must then look at her realization rate.

At 87%, Lucy's realization rate is a little low. She's left about \$44,000 sitting on the table in uncollected fees. While that isn't an extraordinarily high sum, it still has a significant impact on her small practice. If Lucy can boost her collections and get her realization rate up to, say, 95%, she could bring her minimum hourly rate down to \$341 – still a lot higher than her current rate, and possibly too high for her target market.

So, let's go back to the component parts of her required revenues. If Lucy dropped her desired compensation by \$10,000/yr and raised her realization rate to 95%, her required revenues would drop to \$411,150 and her rate would be \$333/hr. Then, if Lucy built her emergency fund up over, say, two years, her required revenues would go to \$345,125 and her hourly rate would be \$280.

At this point, Lucy has several options. She can:

- Adopt the \$373/hour rate and hope for the best

- Bill more hours
- Find ways to decrease her overhead expenses
- Improve her collections, and/or take a larger advance fee deposit or use an evergreen deposit account, to raise her realization rate
- Reduce her compensation
- Make herself worth this higher rate through value-added services, increased efficiency with technology or leveraging, or enhanced legal skills
- Adopt a hybrid billing method to deemphasize her hourly rate (e.g., hourly billing for certain tasks and flat fees for others).

If you were in Lucy’s shoes, which option would you choose?

B. Getting Your Employees’ Hourly Rates Right

Now, let’s say that Lucy has several other timekeepers working for her. How would she calculate their minimum hourly rates? For starters, Lucy is no longer 100% responsible for the firm’s overhead; all firm timekeepers will share in covering the overhead. To figure the share for each, Lucy would turn to a simple “weighting” system. In other words, each timekeeper carries his or her weight (share of overhead) based on positioning in the firm. It would look like this:

Senior partner/owner	1.75 share
Mid-level partner	1.50 share

Junior partner (3 yrs or less)	1.25 share
Senior associate (3+ yrs' experience)	1.00 share
Junior associate	0.75 share
Paralegal	0.50 share
Legal assistant	0.25 share

Total all the shares and divide this number into the firm's overhead. The resulting figure is the value of a 1.00 share. Then, multiple this number by each timekeeper's share to determine his or her dollar share of firm overhead. This is the number you will use as the overhead figure when calculating each timekeeper's hourly rate.

As an example, let's say there are four timekeepers in the firm:

Owner	1.75 share
Senior associate	1.00 share
Paralegal	0.50 share
Legal assistant	0.25 share

The weights total 3.50. Total annual overhead for the firm is \$194,000 (without attorney salaries). We calculate each timekeeper's share of overhead as follows:

$$\frac{\text{Overhead (less attys' compensation)}}{\text{Total weights}} = \text{Value of 1.00 share}$$

In this case, it would look like this:

$$\frac{\$ 194,000}{3.50} = \$ 55,429 \text{ (value of 1.00 share)}$$

Next, we multiply the value of 1.00 share (\$ 55,429) by each timekeeper's weight, which gives us the share of overhead for which each is responsible [NOTE: This is exclusive of attorney salaries, but inclusive of staff wages.]:

Senior partner/owner	\$ 97,000
Senior associate	\$ 55,429
Paralegal	\$ 27,715
Legal assistant	\$ 13,857
TOTAL OVERHEAD SHARES	\$194,001

Once you know each timekeeper's share of overhead, you can plug this number into your minimum hourly billing rate calculation to insure that each timekeeper is charging a sufficient amount to cover his or her compensation and share of firm expenses.

C. Getting Your Flat Fees Right

Now, let's say you choose to use a flat fee rate, rather than an hourly rate. You'll set your rate based on the time you believe you actually spend on certain routine tasks or matters; however, the only way to know for certain that your flat fee is working for you is to record all time worked on your flat fee matters. The thing is that you need to record all of your time every time on every case. Something as simple as a new court form can increase the time you spend on these routine matters.

If you discover that your flat fees aren't working the way you had assumed, there are several actions you can take to improve the situation:

- Raise your rate to cover the actual time involved
- Make the work process faster and more efficient so it takes less time
- Offer more service, not less, so that your clients think whatever price you charge is a good value.

Your rates shouldn't fit everyone, but they should fit your ideal client. You need to understand your target market – what they can afford to pay, and what they expect to pay, for legal services. If your target market can't afford what you need to charge, then you've either got to bring your fees in line with their ability to pay, or you need to rethink your target market. Investing in new technology to increase your efficiency and productivity, leveraging your practice with lower-paid associates or paralegals handling much of the work, using contract attorneys, going virtual, or getting better at collecting what you're owed are a few of the strategies that will help keep your fees down.

Tip: If you aren't making enough money, make sure your billing rates are right.

V. USING ADVANCE FEE DEPOSITS TO INSURE YOU GET PAID

At the outset of the attorney-client relationship, several things happen that provide you some assurance of the client's commitment to the work and the relationship. One such occurrence is the client's execution of your written fee agreement. Another is the client's payment of an advance fee deposit against a portion of your projected fees and costs.

Asking clients for money can be difficult; however, your fee agreement can both open the door for a discussion of your fees, and do the asking for you. Among other things, a detailed written fee agreement lays out your policy on advance fee deposits and the amount due before you'll begin work on the client's behalf.

In accepting an advance fee deposit, you are making a promise to your client that you will act as the client's attorney, that you will protect the client's best interests, and that you will perform the required legal services timely, with diligence, and to the best of your ability. Your client has made a commitment to you by providing the deposit, and you have made a commitment to the client by accepting it.

Attorneys frequently use the terms “advance fee deposit” and “retainer” interchangeably. This is not correct, as they do not serve the same purpose, nor are they handled in the same manner vis-à-vis the attorney’s trust account. [NOTE: Check your local ethics rules for guidance on the use of advance fee deposits, flat fees, and retainers.] A retainer secures an attorney’s promise to be available to the client at some future point. The attorney does not bill against a retainer because it is not meant to cover fees and costs. An advance fee deposit is exactly that – a deposit against future fees and costs that will be incurred on the client’s behalf. The attorney bills against the advance fee deposit and deducts the amount of each bill from the client’s trust account until it is completely consumed, or the case ends.

A. Traditional Advance Fee Deposit

When a small firm is having cash flow issues, the trouble sometimes stems from the attorney’s policy on advance fee deposits. Either the firm does not require an advance fee deposit, or the amount requested is not sufficient to protect the firm from a no-pay or slow-pay client. Unless you take your entire fee up front, or are handling contingent cases, it’s just a good business practice to ask for an advance fee deposit for each new matter. The deposit serves several purposes:

- It helps to insure timely payment to the attorney
- It demonstrates the client’s commitment to see the case through
- It provides a good start to the attorney-client relationship.

A successful advance fee deposit policy requires:

- Asking for sufficient money up front
- Clearly explaining your advance fee deposit policy in your written fee agreement
- Obtaining the client's signature indicating understanding and acceptance of your policy.

Asking for a deposit equal to at least the first two months' worth of billings in each new matter works for most smaller cases. If you are involved in a high ticket matter, then you would require an advance fee deposit that is more in line with your total projected legal fees for the case. As an example, you might require anywhere from 20-50%, or more, of projected fees up front.

B. Evergreen Deposit Account

A variation on a traditional advance fee deposit, known as an "evergreen" or "replenishing" account, can make all the difference in the world in your cash flow. With an evergreen deposit account, you put the advance fee deposit into the trust account, send out your monthly bill, and pay that bill out of the trust account if payment is not received within a certain period of time.

[NOTE: Regardless of the type of advance fee deposit you are using, your billing statement should display a notation alerting your client to your policy of withdrawing money from the trust account to pay the bill if the client does not dispute or pay the bill within a certain number of days. Check your local ethics rules for the minimum number of days you must allow for payment of your bill before you can withdraw funds from your client trust account.]

An evergreen deposit differs from a traditional advance fee deposit in that your client is still responsible for paying your monthly bill, even though you may already have paid yourself out of the trust account if payment was not received timely. If the client's check arrives before you withdraw trust account funds, you treat it as a regular payment on account and deposit it into the firm's operating account. If the client's check arrives after you have already paid yourself from the trust account, deposit the check into the trust account to return the client's deposit balance to its original level. Your client must understand and agree to the terms of this advance fee deposit as set forth in your written fee agreement.

If the balance in the client's trust account falls below a predetermined amount (as stated in your written fee agreement), you will stop work, as allowed, until the client restores the trust account to its original level. If the client is unable, or refuses, to replenish the deposit to its original level, you need to be prepared to file a Notice of Intent to Withdraw, as allowed.

While I believe that the practice of law is a business, it should be a business with a heart. On a case-by-case basis, you may wish to negotiate some other arrangement regarding unpaid bills and the required trust account balance for a good client who is going through a rough spot. For instance, you may agree to a lower trust account balance (e.g., \$2,500 instead of \$5,000), or you may allow the client extra time to replenish the account.

As you near the end of your representation, bill the client as usual, but indicate "DO NOT PAY" on the invoice to allow you to use up the remaining money in the trust account. When you have

completed all work, the client is responsible for paying any additional sums owed you. On the other hand, if you have been paid in full, any outstanding balance in the trust account must be promptly returned to the client.

An evergreen deposit account:

- Insures that you are paid regularly
- Allows you time to identify problem clients before their accounts become excessively past due
- Gives your clients peace of mind in knowing that you have been paid, even if they are a little late in sending in their payments.

What's that you say? Your client can't afford a sizable – or any -- advance fee deposit? Then, you need to decide how much your firm can afford to write off in unpaid fees and costs? When you don't require an advance fee deposit, you are putting your firm at risk of sustaining a loss. Look at it this way – if your client can't come up with a deposit now, how will you get paid at the end of the month after you've done the work?

If the client can't come up with your advance fee deposit, he might not be able to afford your services at all. I may be a minority of one on this, but I don't believe you are acting in your client's best interests if you run up fees and costs which the client cannot afford. While you may resolve the client's legal issue, you are also saddling your client with a huge debt and adding to his or her stress level.

The bottom line is this – regardless of the type of advance fee deposit you choose to use, establish your policy and stick to it. Get sufficient money up front to protect you and your client, or refer the client to a lesser-priced attorney or a legal services clinic for more affordable help.

Tip: Protect yourself from a write-off and your client from having you withdraw by requiring an advance fee deposit.

VI. GETTING PAID WHAT YOU'RE OWED

Unlike a fine cabernet sauvignon, your accounts receivable are at their best when less than 30 days old –and they definitely do not improve with age. Quite the opposite, in fact. The older you allow your accounts receivable to become, the more they cost you and the less likely your chance of 100% recovery. The trick is to keep from building up past-due accounts in the first place. Stay on top of your accounts receivable and keep that cash flow pouring into your bank account.

A. Staying on Top of Accounts Receivable

On a weekly basis, review your aged accounts report. In looking at this important report, do you see accounts that are 180+ days old? Unless your client is on a payment plan, those old accounts will be hard to collect. The older you allow an account to become, the less chance you have of

collecting 100% of the fees due. If you have accounts that haven't received a payment in more than a year, write them off. They are costing you to carry them on your books. If you want to take one last shot at collecting, be my guest; however, if that doesn't work get rid of them.

With a small firm, I expect to see no more than about two months' worth of revenues in outstanding receivables. If you average about \$23,000 in revenues each month, then your receivables shouldn't exceed \$46,000. Carrying receivables means you are carrying risk. When your receivables become excessive (say, more than three months' worth of revenues), your risk moves into the really uncomfortable zone. If none of your past-due accounts paid another penny, would your firm survive? That's how you need to look at your receivables. I learned long ago not to count my money until I see green. Many firms could survive a loss – it's just a matter of how much of a loss.

Contrary to what many attorneys believe, having high receivables is less about the clients and more about the attorney's management skills. Specifically, getting paid involves the attorney's:

- Case and client selection skills
- Ability to communicate billing procedures and expectations in both the written fee agreement and the initial consultation
- Advance fee deposit policy
- Ability to capture all billable time
- Prompt and regular billing practices
- Following up on past-due accounts early on.

Sometimes what you don't do can make getting paid more difficult than what you do. If you have cash flow problems, look at yourself first:

- Do you have accounts that have shown no payment activity for more than 90 days?
180 days?
- Do you wait until the end of the day, or even a few days, to record your time?
- Do you bill less frequently than once a month?
- Do you just keep sending bills, showing an increasing past-due balance, in the hopes that your client will suddenly pay up?
- Do you have trouble talking about money with your clients?
- Is your collections policy inconsistent (or even nonexistent)?

Then, what you're not doing – pursuing past-due accounts, recording time contemporaneously, billing regularly – has, at least in part, created your cash flow problems, whether or not you realize it.

The good news is that with a few simple adjustments to your existing billing practices, you can get paid, even out your cash flow, recover out-of-pocket expenses, and improve communication with your clients.

B. A Written Fee Agreement is a Good Thing

The first step to getting paid is having your client sign your written fee agreement. The agreement details how you bill for fees and costs, the client's responsibility to pay your bill, and what will happen if the client doesn't pay. The fee agreement should explain your billing practices, including:

- How you will bill for your work (including your billing rate, as well as the rates of others who will be working on this matter)
- How you will bill for costs incurred on the client's behalf
- The day of the month on which you prepare bills and the manner in which you will transmit the bill to your client (e-mail, snail mail, fax)
- When the client's payment is due
- The amount of any advance fee deposit required
- The disposition of the client's advance fee deposit (client trust account or general operating account)
- When and how you will withdraw money from the client trust account
- Your policy on past-due accounts (interest, withdrawal, collections agency, lawsuit, etc.)
- Your policy on refunding any remaining client money at the end of representation.

Although it's difficult for some attorneys, you really must discuss money with your clients during the initial consultation. Clients must understand and agree to your fees and your billing practices before you begin work. If you jump the gun and start work before the client has signed your fee agreement, you run the risk of:

- A bar complaint
- Damaging your relationship with that client
- Not getting paid.

C. Recording Your Time

The second step to getting paid what you're owed is recording your time contemporaneously. I repeat – recording your time *contemporaneously*. Capturing your time as you move through the day is the only way to know that you are being fair to your clients and fair to yourself with your billings. You don't want to overcharge your clients; on the other hand, you certainly don't want to perform work for which you aren't paid, unless it is planned pro bono work.

Here's what happens if you don't record your billable time contemporaneously. If you wait until the end of the day to record your time, you lose, on average, about 10-15% of your potential billable time simply because you cannot remember every single thing you did during the day, nor the time it took you to do each task. If you wait until the next day, your average loss will be 25% or more of the time you could have billed. The end of the week? Fifty percent.

Let's take a look at what this can mean to your firm. Do you think, perhaps, it's possible that you fail to capture six minutes per day? Could be a quick phone call with a client, an answer to an e-mail, or a brief consultation with your paralegal on a client matter – six minutes that you don't record. If your hourly rate is \$200, your billing rate is \$3.33 per minute. Now, let's see

what losing six minutes per day of billable time does to your bottom line over the course of a year. Here's what that looks like:

\$ 3.33/min

X 6 mins

\$ 19.98/day

\$ 19.98/day

X 5 days

\$ 99.90/wk

\$ 99.90/wk

X 48 wks

\$ 4,795.20 ANNUAL LOSS

If you think you may be losing 15 minutes, or 30 minutes, or more, do the math. There is no question that if you aren't recording your time contemporaneously, you are losing out on potentially billable time. How much can you afford to lose each day?

The other thing about failing to record time contemporaneously is that we always underestimate the time it took us to do something. Be fair to your clients and be fair to yourself – accurate timekeeping requires you to note both your start and your stop times. Whether you use your

computer or a yellow legal pad to record your time, the important thing is to get it all recorded correctly. You can't bill for time you didn't record. Don't leave money on the table – make sure you are capturing all the time you actually work.

I think the best way to develop your timekeeping discipline is to take my 30-day challenge. For 30 days, record all of your time every day – billable and nonbillable alike. Yes, it's a pain, but I think you'll find at the end of the month that you captured more time than usual. If it takes 21 days for us to form a new habit, then 30 days of recording all your time ought to make timekeeping such a routine part of your day that you won't even notice you're doing it.

D. Making Your Billing Statement Work for You

The third step to getting paid is your billing statement. When preparing your billing statements, it's important to remember that your bill serves three purposes – it is a tool to:

1. Communicate with your client – it tells the client what you've been doing on his or her behalf during this billing period. It will help the client stay current on the case, even if you aren't a great communicator in other ways.
2. Market your services to your client – it should clearly demonstrate the value of your services to your client. Clients are much more likely to pay a bill when they see that the various phone calls, research sessions, and conferences with opposing

counsel have a direct benefit to them. (This is a great way to remind your client that you were the best choice for the job!)

3. Collect money from your client – it tells your client how much money he or she owes you for the work you've performed and for any out-of-pocket expenses you've incurred.

Detailed descriptions are the key to successful bills. Let's take a look at two different takes on the same bill:

7/6/09	Conf. w/opp. couns	0.8 hrs
7/17/09	T/C w/client	0.4 hrs
7/29/09	Research	3.3 hrs
	TOTAL HOURS BILLED	4.7 hrs
	TOTAL FEES BILLED	\$ 900.00

Now, tell the truth – do you see \$900 worth of value in this bill? Would you even know for sure what your attorney had done for you from this bill?

Remembering the three purposes of the bill, let's rework this bill to better serve both you and your client:

7/6/09	Conference with opposing counsel Mr. Brown to discuss an equitable division of the household furnishing and a proposed plan to fairly divide the children's school vacation time between the parents	0.8 hrs
7/17/09	Telephone conference with Mary to discuss Mr. Brown's counterproposal to her proposed property settlement and an alternative plan for division of the children's vacation time	0.4 hrs
7/29/09	On-line research into past court decisions on shared custody with a parent in a foreign country, restrictions on foreign and interstate travel with children, and spouse's responsibility for providing health insurance for Mary and the children	3.3 hrs

TOTAL HOURS BILLED 4.7 hrs

TOTAL FEES BILLED \$ 900.00

The second version of this bill tells the client exactly what she is paying for, and the direct benefit to her of each action taken. The bill satisfies two purposes: (1) it tells the client what the attorney did during this billing period, and (2) it demonstrates the value of those services to the client. Which would your clients rather receive?

If your bill isn't serving all three purposes, you're missing out. Maximize the value of your bill to your attorney-client relationship and you will be more likely to get paid without a fuss.

E. Billing Frequency

The fourth step to getting paid is to bill promptly and regularly. While it may seem like a no-brainer that bills need to go out at least once a month, it always surprises me when I meet yet another attorney who doesn't bill with any regularity. Let's consider how your clients may view the infrequent bill.

Your clients are constantly watching you. They want reassurance that you care about them, that you are competent, that you are diligent in your representation of them, and that you are reliable. They check for indicators every chance they get – and, whether or not you realize it, you are constantly giving them input on all their concerns. If your fee agreement says that you bill on the 1st of the month, then you'd better get those bills out on the 1st. They are watching.

Beyond that, your clients are just like you and I – they make budgets so they’ll have sufficient money to cover their bills. And, like you and I, if an expense does not materialize as expected, we sometimes apply that allocated money elsewhere.

If you think your clients are calling to find out what they owe out of concern for you, let me put your mind at ease. Trust me, when it comes to paying attorneys’ fees, clients are never worried that you don’t have enough money. They are worried about how much they will have to come up with once your bill arrives. It’s simply not fair or respectful of your clients to hit them sporadically with super-sized bills because you don’t get the bills out regularly.

Never forget that your billing statement is a communication tool – and it may not always communicate through the written word. Infrequent statements may be telling your clients that you are lackadaisical, disorganized, disinterested, and unreliable. Improve your cash flow and keep your clients in the loop by billing promptly.

F. Using an Alternative Billing Cycle to Even Out Your Cash Flow

Now, let’s consider your billing cycle. Do you bill at least once a month (and don’t even think about saying “no!”)? Do you sometimes feel anxious about money around the middle of the month? Do you have nightmares about not meeting payroll, losing your home, or having your power shut off?

In your spare time, try analyzing the payment patterns of your clients. Many law firms share a similar pattern of receipts. They receive a flurry of payments within the first 10 days after bills are mailed; then, payments slow up for another couple of weeks. Another flurry occurs in the five to seven days leading up to the next billing date because clients know that another bill is about to arrive and they don't want to pay an interest charge, nor do they want a dunning call from your office.

If you find uneven patterns in your cash receipts, consider splitting your client list and billing half on the 5th of the month, and the other half on the 20th.

“How will this help my cash flow?” you ask. Good question.

The following represents the cash receipts pattern that I've just described.

ONCE MONTHLY BILLING RECEIPTS PATTERN

BILLS MAILED	FLURRY OF PAYMENTS	SLOWDOWN	FLURRY OF PAYMENTS
1 st of the month	3 rd – 12 th	13 th – 23 nd	24 th – 30 th

Whether or not this is the exact pattern of cash receipts in your firm, you probably have noticed a pattern of some sort. If that pattern has ups and downs, then billing half and half will help even out the peaks and valleys. A twice monthly billing cycle would look like this:

TWICE MONTHLY BILLING RECEIPTS PATTERN

BILLS MAILED	FLURRY OF PAYMENTS	SLOWDOWN	FLURRY OF PAYMENTS
5 th of the month	7 th – 16 th	17 th – 27 th	28 th – 4 th
20 th of the month	22 nd – 1 st	2 nd – 12 th	13 th – 19 th

Not only can you even out your cash flow, but it should relieve those mid-month panic attacks when you envision facing your staff empty-handed on payday. I think one of the reasons some attorneys bill sporadically is because of the time involved in preparing and mailing the bills. The more you can break up the task, the less onerous it is – and the more likely you will be to actually get it done. One of my clients has gone where I dared not even hope – she just moved from monthly to twice-monthly billing. Each of her clients’ receives a bill roughly every two

weeks. While it is a little more work for her bookkeeper, her clients love getting smaller bills, they pay quickly, and her cash flow has improved significantly.

G. Recovering Direct Out-Of-Pocket Expenses

The last billing tip will help you recover direct out-of-pocket expenses incurred in-house.

Specifically, we're talking about "The Four Ps:"

- Postage
- Phones
- Photocopies
- Phax (poetic license)

Firms that consider certain direct expenses as being part of the regular cost of doing business have probably never done a cost analysis to determine how much they are absorbing each year for out-of-pocket expenses.

Logging these out-of-pocket expenses requires way too much manpower, both in logging and in processing the charges for billing purposes, to make it worthwhile. Electronic tracking systems are a little better, but it still takes some effort on your part to make this feasible – and, there's the cost of the equipment. So, what happens when you get to the copier and find you've forgotten to bring the client number for the tracking device? Do you just enter the admin number to save a trip back to your desk?

Besides, how can you possibly figure the actual out-of-pocket expense for a photocopy? How do you factor in the cost of staff or attorney time spent walking to/from and standing at the copier, plus the cost of paper, toner, electricity, equipment lease, per-square-foot rent for the floor space, etc?

If you bill out at \$200 per hour, your rate per minute is \$3.33. If it takes you six minutes to make the copies, stuff the envelope, walk to the postage meter, run the envelop through the machine, put it in the outgoing mail box, and return to your desk, charging the actual cost of mailing the letter would mean that your client would be paying upwards of \$20.00, instead of the cost of a mere postage stamp. Good luck explaining that to your clients.

Actual cost for long-distance phone calls would have to include, at a minimum, the federal and state taxes, connection fees, linebacker fees, etc., and possibly the value of the time spent reviewing the phone bill and allocating the calls by client. The point is this: no firm charges actual cost for these in-house services because no firm knows what that actual cost is.

There's a simple and pain-free way to recover direct expenses incurred in-house: charge a flat two or three percent of monthly fees to cover postage, photocopies, phones, and fax. For example, if you bill your client \$100, you add an additional \$2 or \$3 to cover these costs. If you bill \$1,000, you add \$20 or \$30 for costs. This is all clearly explained in your written fee agreement and your client agrees to this practice by signing the agreement.

Per your fee agreement, this cost recovery method does not preclude you from passing through actual costs incurred by sending large copying projects to FedExKinko's, for instance. This plan also does not cover expert's fees, messenger fees, parking, mileage, special supplies, or any costs other than the four listed above.

Let's say that one month you were in depositions for your client for 10 days and you didn't have any need for photocopies, postage, faxes, or long-distance calls – you are certainly free to waive the flat fee for expenses that month if you choose.

Simple, easy, clean.

Okay, you've done everything right – everything you can to help yourself get paid for your work. Sometimes, however, despite your best efforts and sound practices, you may find yourself struggling with past-due accounts. As long as attorneys send out bills, there will be past-due accounts. The key is to catch them early and keep them from becoming excessively past-due accounts.

H. A Consistent Collections Procedure Can Make All the Difference

If, despite all of your best efforts, you still wind up with a severely past-due account, you have some options available to you:

- Take the client to lunch and take one more try at getting paid

- Turn the account over to a collection agency
- Enter into fee dispute arbitration
- Sue the client
- Let it go.

You've all been warned off ever suing a client, so that narrows your options to four. Obviously fee dispute arbitration is only appropriate in certain situations. If you are just dealing with a deadbeat, then he's not going to go for arbitration. He just doesn't want to pay you under any circumstances.

If you choose to sue your client, only do so if:

- You've tried diligently to get your client to pay you
- You did your best work for the client
- You kept great notes on your dealings (phone calls, e-mails, letters, etc.) with the client and on your work
- The amount is critical to your firm and not just a matter of principal
- Your malpractice insurance is in place (and hasn't got a clause prohibiting you from suing a client), and you can withstand a possible countersuit.

Consider whether you would be better off handling this matter in another way. Perhaps you can negotiate a lesser amount to get the matter settled.

If you want to try to salvage the relationship, then making one more effort to get paid is the way to go. If you continue to accept work from the client despite nonpayment, I offer these words of advice: “If you’re in a hole and you can’t get out – quit digging!”

Put together your own collections policy and stick to it. It might look something like this:

1. A written fee agreement, signed by the client, which details your billing and collections practice.
2. Weekly aging of accounts receivable.
3. A personal phone call as soon as the account becomes past-due.
4. A follow-up phone within 24 hours if a promised payment is not received.
5. A firm letter stating your intention to stop work and file a Notice of Intent to Withdraw when the account is 45 days past due.
6. Cease work, as allowed.
7. Withdraw, as allowed.
8. Resolution through use of a collection agency, fee dispute arbitration, or lawsuit.

If you choose to use the services of a collection agency, do some checking on the company before you sign on:

- What is the agency’s fee?
- What are the age restrictions on past-due accounts (some won’t take anything more than 90 days past-due)?

- How are collection calls handled? What is said? Do they script the calls? How tough do they get?
- What tactics are used in trying to recover owed monies?

A good collection agency will let you call the shots. In other words, you can instruct them to stop short of filing a legal action against your client. If the agency doesn't allow you a say in how your clients will be handled, look further.

Pay attention to your aged accounts report. Be consistent in your follow-up. Respect yourself and your practice enough not to let clients take advantage of you. You earned the money – unfortunately, sometimes you have to do extra work to see that you get paid.

Tip: Tightening up your billing practices can loosen up your cash flow. Do everything you can to help yourself get paid!

VII. PERSONAL HABITS THAT HURT YOUR PRACTICE

We've all got them – those little quirks and habits that accompany us wherever we go. While some of these characteristics can actually be quite charming, others get in the way of our success by hindering productivity and, in turn, potential billings. What's that you say – “not me?” Just to make sure you're clean, please take a moment to consider some of the personal habits that can hurt your practice.

A. Procrastination

Procrastination reduces productivity, adds stress for you and your staff, and robs you of revenues. What you may not realize is that your procrastination is costing the firm dearly in several ways:

- The quality of the work suffers and your clients may become unhappy with your work product. No law practice can afford to have dissatisfied clients.
- Clients don't like to be overbilled; on the other hand, they don't want a low bill at the expense of the quality and effectiveness of the attorney's work – and they certainly don't want to be billed for a “redo” of faulty work that was sent out in haste.
- Staff turnover may be higher than usual due to the stress of working for a procrastinator – and turnover takes a big bite out of the bottom line.
- If you share staff with other attorneys, your fellow practitioners may become angry because their work gets bumped in order to accommodate your big adrenalin-pumping emergencies.
- The firm's reputation with the court and opposing counsel can suffer because your last-minute crunches frazzle court staff and anger other attorneys.
- You can only bill for work you actually perform on behalf of a client; so, by squeezing a six-hour project into only 1-1/2 hours, you are not only short-changing your client with a slapped-together work product, but you are also short-changing your firm of potential revenue.

Beyond this, an ethical question arises – did you serve your client to the best of your ability? Did you represent your client conscientiously and with diligence? Did the client receive value for his money?

How about you? Are you losing money due to procrastination? Is your bad habit hurting your practice? Make your clients happy by doing the job they deserve, make your employees happy by giving them ample lead time to accomplish their work, feel better about your work by spending the time necessary to produce quality work, and just maybe you'll make more money, as well.

B. Clutter and Disorganization

“Research indicates that people waste an hour or more each day searching for lost items or working in ways that are not productive,” says Standolyn Robertson, President of the National Association of Professional Organizers. There are roughly 230 work days each year. An attorney who spends 15 minutes a day looking for lost files, trying to find the draft of a document, or searching for a misplaced phone message loses about 58 billable hours per year. At \$200/ hr, that's an annual loss of \$11,600 per year!

How much time do you spend each day looking for things in your office? Do the math. Clutter and disorganization are costing you.

C. Poor Time Management/Planning Skills

Is time management and/or planning your work an issue with you? Do you ever complain that you don't know:

- What to work on next
- How to accurately judge the amount of time necessary to complete a task
- How to schedule your work
- How to start the project
- How to prioritize tasks
- The next step to take to move the project along
- How to use small blocks of time effectively
- How to limit interruptions.

If time gets away from you, or you feel like you spend too much time doing things that aren't important, or you feel overwhelmed by the work awaiting your attention, you need to get some help. Take a class, read a book, ask an attorney whom you admire how he or she handles time and prioritizes tasks. Make getting better with time your No. 1 priority. Rely on standard time management tools, such as:

- A "to do" list
- Selecting three tasks each day that you want to complete, and sticking with them until they are done. Don't start a new task until each of your chosen tasks are finished.

- The tickler feature in your computer software
- Delegating away tasks that are not the best use of your time
- Prioritizing your work using the A-B-C method. No Bs or Cs are started until all As are completed. Eventually, the Bs will move up to become As, so you will get to them, but it may take awhile
- Plan out the next day's work the night before
- Ask for help.

When all else fails, stop and ask yourself – “What is the best use of my time right now?”

D. Attorneys Doing Clerical Work

Practitioners who spend time making photocopies, sending faxes, ordering office supplies, or stuffing envelopes, etc., are cutting into both productivity and profitability. Few attorneys would feel right about charging a client for time spent making photocopies, as an example. While the argument that “it’s faster if I just do it,” may be true, the lost billable time will almost always outweigh the speed factor. Let your staff handle the clerical tasks. That’s what you pay them to do, and it frees you to do the billable work.

Don’t have staff? Consider retaining the services of a virtual assistant to handle clerical duties. Through the use of technology, attorneys and staff don’t even have to be in the same state anymore. Increase profitability by making the best use of your time – skip the clerical work in favor of billable work.

E. Not Preparing for the Unexpected

Running a law practice without a Plan B is akin to skydiving without a backup parachute. If your main chute doesn't open properly, you've got a bigger problem than even Houston can help with. In a law firm, Plan B would include:

- Daily backup of your computer system
- An attorney(s) who can fill in during your absence (vacation, illness, incapacitation, etc.)
- An emergency fund to cover an economic downturn, your inability to work for a period of time, unexpected expenses, a unique business opportunity, etc.
- A disaster recovery plan
- A roster of technology experts to help you get up and running when you have a system crash.

As TV journalist Anderson Cooper noted of the nearly nonexistent pre-Hurricane Katrina preparations made by the city of New Orleans, "Hope is not a plan." Hoping that nothing goes wrong is of no help when something does go wrong. And, rest assured, it will.

As I write this, our country is reeling from a devastating economic blow that no one saw coming. Law firms have not been exempted from the its widespread effects. Clients are taking longer to pay their bills, some are refusing to provide an advance fee deposit before representation begins,

still others have asked to have their deposits refunded because they need the money. Law firms that were operating on a fairly narrow profit margin before the Wall Street crash are now scrambling to stay afloat. Small firms with good credit standings have been notified of significant decreases in their available lines of credit. In case of emergency, they don't have access to the funds they've tapped into in the past.

Failure to plan for the unexpected can result in the demise of your firm. Conduct a "worst-case scenario" audit of your practice to help you identify where you need to do some strategizing. Name every possible negative-impact occurrence you and your staff can think of. Your list might include fire, earthquake, hurricane, flooding, power outage, police activity, civil disturbance, hazmat spill in the building or neighborhood, a bridge out or major road to the office closed, injury or death of attorney or employee, and so on. What are your weak spots? Make developing your Plan B a priority. Once you've got it down on paper, review it regularly for its continuing applicability. Failure to plan is a plan for failure. Remember the Boy Scouts – "Be prepared."

F. Ineffective Supervision of Staff

Your staff is your most valuable asset, but it's not going to be the best it can be without strong leadership. Start on Day #1 with a discussion of what your staff can and cannot do as law firm employees. Stress confidentiality, honesty, integrity, care and compassion for your clients, the importance of error-free work and careful attention to the smallest details.

As the lawyer, you are responsible for all that your staff does in your name. Ethical violations amongst staff members occur when attorneys are not paying close attention to what's happening under their very noses. From the bookkeeper who embezzles thousands of dollars, to the receptionist who regales her family or friends with the more salient aspects of your clients' cases over the dinner table, you are responsible. Don't assume that employees who have previous law firm experience know the ethical ins and outs of law firm employment. You don't know what they learned at another job. Just as children learn from watching their parents, employees learn how to act from watching their attorney bosses. Do yourself a favor and lay down your expectations up front, then reinforce them from time to time through staff meetings, one-on-one counseling, etc.

Beyond the ethical issues, you need to supervise your staff's work. Monitor the quality of the work product, make sure even routine tasks are being handled timely and appropriately, address behavior problems quickly and with an eye to salvaging the employee. Know what goes on in your office, but don't hover – that never has a positive effect.

Remember that you are ultimately responsible for any malfeasance of your employees.

Attorneys have been sued for malpractice, and even disbarred, for the actions of a staff member.

Don't let that happen to you.

G. Personal Timewasters

Quick – name your top three office timewasters. Mine are computer games, cats (I work at home), and friends who call for a personal chat during my business day.

While the actual timewasters are as varied as the individuals shackled to them, they all have one thing in common: they rob us of money! Every six minutes that I spend playing mahjong is 0.1 hr that I cannot bill. Every 30-minute personal telephone call is 0.5 hrs that is unavailable for a billable task.

To determine what your timewasters are, take my 30-day challenge. For the next month, record all of your time. That's right – all of your time. Every trip to the coffee machine, your lunch hour, computer games time, billable time – every minute of every day. At the end of 30 days, you're going to be surprised to see where your time really goes. The biggest shock will be how much time was lost to what can only be described as timewasters. Identify them and get rid of them. Be ruthless. They are costing you.

If you are addicted to computer games, delete them from the computer. If you have a candy dish at your desk, cut down on interruptions by moving it to the lobby or coffee area. If co-workers or employees continually interrupt your work, close your door. If e-mails consume hours of the day, limit yourself to checking them only two or three times each day at preset times. Then, limit how much time you'll allow yourself to read and reply to messages. Select only the client-

related e-mails for immediate attention. If a client requests that you take action on something, add that request to your “to do” list, but don’t feel compelled to respond immediately unless there is a compelling reason to do so. If a particular e-mail is going to take some research before responding, print it out and put it in your “pending” file.

If you bill \$200/hr and can regain even 15 minutes per day by eliminating certain timewasters, you can potentially add nearly \$12,000 to your bottom line. Doesn’t that make giving up Free Cell just a tad bit easier?

Tip: Sometimes your biggest cash flow problem is YOU!

VIII. IDENTIFYING BUSINESS OPPORTUNITIES IN AN ECONOMIC DOWNTURN

In an economic downturn, certain practice areas struggle more than others. If you have noticed a decline in new work, it’s time to consider shaking up your practice. Perhaps it’s time to change your practice area, or to add a new practice area. Clients still need attorneys, and there is still work to be done – but, it is up to you to go out and find it. You can’t afford to sit around waiting for the phone to ring, or for the economy to improve. For many practice areas, in uncertain times, the attorney absolutely must be proactive about marketing and seeking out new work.

A. There's Gold In Them Thar Past Clients

The Pareto Principal, also known as the 80-20 Rule, applies to law firms in this way: 80% of your work should come from 20% of your clients. This work can come either directly from your clients, or as a result of a referral from a client.

The 80/20 Rule also applies to your marketing efforts. Accordingly, 80% of your work/new clients should come from 20% of your marketing efforts.

Let's look first at "low hanging fruit" – aka, "past or present clients." People buy from those they know, like and trust. Your clients are more likely to hire you again over an unknown attorney – especially if they've had a good experience with you.

Getting more work from past clients isn't as hard as it sounds. You just need to be creative about your approach. Keep the lines of communication open with former clients through newsletters, periodic checklists, updates on legal issues that may impact their prior work, and so on. Call to see how they are doing. Find out what their challenges are right now – and find a way to help them. Giving a thoughtful referral can help cement that customer loyalty you're hoping for, as well. The important thing is to help them deal with an issue that is causing them trouble.

The same applies to current clients. Everyone is facing some sort of challenge right now – and if you can identify a common thread amongst your clients, address the issue for one and all.

B. Networking Isn't All About You

Done properly, networking is about building a mutually rewarding relationship with another individual. Read Never Eat Alone, by Keith Ferrazzi (Currency Doubleday 2005) to learn how to network effectively. It's not about tooting your own horn, pushing yourself on unwilling victims, or grabbing as many business cards as possible at the Chamber of Commerce meeting. Networking is about two people helping each other through referrals and shared information.

The simplest way to develop these relationships is by getting some one-on-one time with another person, and then asking interested questions. Sincerity is a "must," as is active listening skills. Without them, all is for naught.

Don't know how to start? Call a potential referral source and say something like this:

"Hi, Mary. This is Tom Brown. I really enjoyed meeting you at the CLE last week. I've been thinking about your practice and I'd like to suggest we meet for coffee one day soon. I'd like to hear more about your practice and see if there is some way I can help you grow your business. I think we probably each know people the other should know. If you are interested, please choose a couple of open dates and we'll get something on the calendar."

Now, could you resist an invitation from someone who wants to help you get more business?

Neither can they. Try it and see what happens. “No” is the worst that can happen – and then you just move on to someone else.

C. Build a Bridge Through an Alliance

Building an alliance can mean anything from having a co-counsel relationship, to developing a relationship with an attorney in a complementary practice area, to forming a collaborative team to work on a common client’s behalf. As an example, if you are handling a divorce for a father of four, he’ll need a new estate plan when the divorce is final. By working with his CPA, financial advisor, and an estate planning attorney, you can insure that your client’s needs are fully met – plus, you can stay actively involved in the process to make sure that his new estate plan is in compliance with his divorce settlement.

D. Don’t Wait for Opportunity to Knock – Go Out Looking for It!

In an economic downturn, certain traditional practice areas may begin to suffer. As an example, when money is tight, divorces tend to drop off. Estate planning isn’t so important when you’ve just watched your retirement savings evaporate and the value of your house decrease by 26%. Banks tighten up credit, so business start-ups are frequently put on hold until things get better. Real estate development declines, and a flood of foreclosures slows new construction even more.

So, enough doom and gloom. Let's get proactive about protecting your practice. An economic downturn can provide all sorts of new opportunities for smart attorneys. To find your opportunities, make it a regular practice to read your local business journal, as well as a major local newspaper, and your community's throw-away paper. Pay attention to business development, as well as business failures. Massive layoffs can result in issues involving: employment law, retirement plans, bankruptcies, divorce, DUI, foreclosures, predatory lending, unlawful termination, age discrimination, and more.

When a community sets out to bring new business to the area, the legal community can benefit with work in contracts, leases, taxation issues, land-use regulations and enforcement, remediation issues, construction, real estate, employment law, business start-up (businesses that will support a new major industry), and so on.

Read the police blotter section – do you see an increase in serious crime? DUI/DWI? Domestic violence? Both tend to rise during times of economic challenge.

Check out the rentals section – landlord-tenant issues will increase as more people lose their homes to foreclosure and move into rental property. Same goes with discriminatory rental practices.

Is a condo development opening in your area? Condo or homeowners' association law is a hugely underserved practice area. Every condo or co-op development has an association – and they all need by-laws, enforcement help, and on-going legal services for a variety of issues.

Follow the business license notices. Send a letter congratulating new business owners on their start-ups and offering your services in the future.

Request business development statistics from the Chamber of Commerce. Find out who's moving into your area from the Visitor's Bureau. Learn the demographics of your area. Age, gender, ethnic background, number of children, average income, median house price – all valuable information in determining the potential legal needs in your area.

Are seniors flocking to your community? If so, you've got issues involving estate planning, probate, Medicaid, elder abuse, nursing home negligence, insurance fraud, disability and Social Security disputes, conservatorships, and so on.

If you have an interest in reaching beyond your own locale, read the Wall Street Journal to see what's going on in other parts of the country or the world. A solo attorney with a special niche can develop quite a nice practice serving foreign companies in the U.S. Think locally, regionally, nationally – globally!

Consider altering the delivery of your legal services. Offering unbundled services, or helping people prepare to represent themselves, can bring in money quickly. Take your services to your clients by visiting them in their homes and in their place of business.

Learn to think outside the box. Forget the traditional law firm business model. That's been inching out the door for the past few years – push it along and build something new for yourself. Don't follow precedent – set precedent!

Find a need and fill it. Fall back on what you do really well and make that a bigger part of your practice. Get creative with your problem-solving skills. Embrace innovation – get out of lock-step with your peers.

E. Market 'Til You Drop!

Most attorneys would rather have a root canal than be anything remotely connected to marketing. Now is not the time to give in to any negative feelings you may harbor about marketing. Choose two or three of the following six strategies for marketing legal services and get to work:

1. Direct contact and follow-up
2. Networking and referral source building
3. Public speaking
4. Writing and publicity
5. Promotional events
6. Advertising.

HINT: These marketing strategies are actually listed by order of effectiveness, so if your only nod at marketing is to have a website in place, you need to add another strategy or two to maximize the effectiveness of your marketing plan.

Tip: Opportunities abound in all economies. Watch for them – they are all around you!

IX. CONCLUSION

Economic downturns happen – always have, always will. What will see you through is having your practice in good shape before something happens – and looking for ways to adapt your practice when money and clients become scarce. To summarize:

- Keep an eye on your business – study your financial indicators constantly
- Make sure your billing rates and methods are working for you
- Record all of your time contemporaneously
- Develop standardized billing procedures to get bills out timely
- Go after past-due accounts as soon as they become delinquent
- Take yourself in hand and cut out the personal habits that hurt your practice
- Look for new opportunities every day
- Keep calm – and keep moving. This, too, shall pass!

In your business, don't be caught up short. Prepare for the worst – but, expect the best!

Parts of these materials were based on or taken directly from the draft manuscript for a book to be published by the American Bar Association in January 2010. The working title is “Taking Care of Business: How to Make Money and Enjoy the Practice of Law” by Ann M. Guinn, solo and small firm consultant.