

# **A Guide to Setting Up and Running Your Law Office**

## **Avoiding Malpractice Through Efficient Office Systems**

### A Note Regarding These Materials

This guide is a reference which will answer questions about everything from starting your law office, to maintaining a system for closed files. The suggestions included are those which are likely to help most practitioners. The systems suggested are not the only effective systems; they are systems which we have found to easily understand and easily implemented by practitioners all over the state.

The material included in this guide was developed by the Oregon State Bar Professional Liability Fund, whose Directors have permitted its adaptation for use by Kentucky lawyers. This guide is offered as a starting point for lawyers in private practice. We hope it will be of assistance to you.

### Acknowledgement

Lawyers Mutual Insurance Company of Kentucky (LMICK) gratefully acknowledges the Oregon State Bar Professional Liability Fund and Barbara S. Fishleder, Director of Personal and Practice Management Assistance, for providing this material.

### Disclaimer

This guide includes claim prevention techniques which are designed to minimize the likelihood of being sued for legal malpractice. The material presented does not establish, report, or create the standard of care for attorneys. The material is not a complete analysis of the topic, and readers should conduct their own appropriate legal research. These materials are intended as a starting point to assist attorneys in thinking about and dealing with the issues addressed therein. They are not intended to nor do they set or even evidence the appropriate standard of care, especially since they are based to a large extent on Oregon law. No one should rely on them as a defense to a claim of legal malpractice nor a foundation for a claim of legal malpractice.

**Published by: Oregon State Bar Professional Liability Fund**

*2009 Revisions*

# **A GUIDE TO SETTING UP AND RUNNING YOUR LAW OFFICE**

**Avoiding Malpractice Through Efficient Office Systems**



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*2009 Revision*

## **Oregon State Bar Professional Liability Fund**

16037 S.W. Upper Boones Ferry Road, Suite 300  
Tigard, Oregon 97224  
P.O. Box 231600  
Tigard, Oregon 97281  
[www.osbplf.org](http://www.osbplf.org)

503-639-6911  
1-800-452-1639

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Sheila Blackford  
Dee Crocker  
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This handbook includes claim prevention techniques that are designed to minimize the likelihood of being sued for legal malpractice. The material is not a complete analysis of the topic and readers should conduct their own appropriate research.

Ira R. Zarov  
Chief Executive Officer

June 2009

Dear Oregon Lawyer:

This edition of *A Guide to Setting Up and Running Your Law Office: Avoiding Malpractice Through Efficient Office Systems* replaces the purple-covered handbook of the same name previously published by the Professional Liability Fund in 2005.

This handbook is a reference guide that answers questions about everything from starting your own law office to maintaining a system for closed files. The suggestions in the handbook are those that are likely to help most practitioners. The systems suggested are not the only effective systems; they are some of the systems that we find easy to understand and implement.

A copy of this handbook is free to any Oregon lawyer who requests it. Out-of-state lawyers may purchase a copy at \$15 per handbook.

This handbook is offered as a starting point for lawyers in private practice. The Professional Liability Fund also offers free practice management consultations on an individual basis, through our Practice Management Advisor program. In addition, the Professional Liability Fund has many free practice aids that are available to attorneys online at [www.osbplf.org](http://www.osbplf.org).

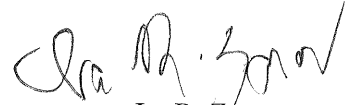
We hope this handbook will be of assistance to you and that you will utilize our practice management advisors and practice aids.

Sincerely yours,



Barbara S. Fishleder  
Director of Personal and Practice Management Assistance  
Professional Liability Fund

Sincerely yours,



Ira R. Zarov  
Chief Executive Officer  
Professional Liability Fund

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## GETTING STARTED

The decision to open your own law office should include consideration of the following:

1. What type of entity do you want? Should you practice solo, form a partnership, or set up a professional corporation or a single member limited liability company?
2. Where should you locate your office?
3. Do you want to purchase someone else's practice?
4. What type of furniture and equipment do you need?
5. What is a realistic budget?
6. What type of professional support and resource network do you need?

### Deciding the Form of Entity

If you are self-reliant and can handle administrative details, you may want to be a sole practitioner. You can be your own boss, set your hours, and run the office any way you choose. You make all the decisions – good and bad – and take all the credit. You must also take all the responsibility and be able to market yourself to potential clients. Most of all, you must be willing to take risks. On the other hand, if you have trouble making decisions and the thought of shouldering the responsibility alone scares you, going solo may not be the road for you. Administration of a solo practice takes time away from the practice of law and requires some knowledge of how to run a business. If you enjoy practicing law and despise administrative matters, you may not be happy as a sole practitioner.

You may choose to form a partnership with other lawyers.<sup>1</sup> This allows you to share responsibilities and expenses with other lawyers. The partners can choose a managing partner to handle administrative affairs and make day-to-day decisions, with all of the partners voting on important matters and setting policy. It is essential that you draft a written partnership agreement with provisions that clearly state the terms under which the firm will operate: how expenses will be paid, profits and losses shared, capital contributions made, retirement earned and withdrawn, and capital and income paid. Other items that may be included are expected billable hours, sharing of administrative duties, employee supervision, and responsibilities of the respective partners on dissolution of the partnership. Even when a partnership is formed to share only office space and expenses, it is important to have some type of agreement in writing.

An Oregon lawyer can practice alone as a sole proprietor, a professional corporation, or a single member limited liability company. Two or more Oregon lawyers can practice as a general partnership, a professional corporation, a limited liability partnership, or a limited liability corporation.

Deciding what entity your practice should take is a business and tax decision. The choice you make will affect the business side of your practice. Therefore, whatever form you choose, consult an accountant and an insurance broker. An experienced accountant will be able to advise you on federal, state, and local taxes; employment requirements; and business licenses. An insurance broker can provide quotes on valuable papers coverage; business interruption coverage; premises liability; personal liability (to protect your assets from liability other than professional malpractice); theft, disappearance, and destruction coverage; fidelity insurance; and fidelity bonds for employees.

### Choosing a Location and Situation

Cost is probably the most important consideration in determining where your office should be located. It is also the most restrictive. Keeping fixed costs at a minimum will prevent financial disaster during the start-up period. One option to consider is sharing an office with another lawyer or law firm. Some

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<sup>1</sup> An attorney cannot form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law. ORPC 5.4(b).

agreements provide for the tenant to do legal work (such as research) in exchange for rent or a portion of the rent. Office sharing guidelines are available on the Professional Liability Fund's (PLF's) Web site at [www.osbplf.org](http://www.osbplf.org). Select Practice Aids and Forms under Loss Prevention, then Office Sharing.

Executive suites are another option that many new sole practitioners choose. This arrangement provides the lawyer with a virtual office (sometimes furnished and paid for on an hourly basis), a waiting room with a receptionist (who will greet clients and take messages), a conference room, and secretarial services. Some sole practitioners work at home, have phone calls forwarded to their home number when they are there, and use the executive suite facilities to meet with clients or other lawyers. For more information about these arrangements, *see* Virtual Law Office, available on the PLF Web site at [www.osbplf.org](http://www.osbplf.org). Select Practice Aids and Forms under Loss Prevention, then Opening a Law Office.

Another consideration in determining your office location is your type of practice and the image you wish to project. If your practice does not require frequent court appearances, you may want to locate outside the downtown business district where rent is cheaper and parking is free. If litigation is your specialty, locating close to the courthouse may be a necessity.

No matter which location you choose, be careful not to enter into a long-term lease. A one-to three-year lease will provide flexibility to relocate your office as the nature of your practice changes. After a short period, you may find that additional space is required for staff or associates and that your current location does not allow for growth. Or you may find it advantageous to form a partnership with another sole practitioner, and a long-term obligation may keep you from doing so.

When choosing an office, consider conveniences to clients: parking availability and cost, proximity to bus lines, accessibility for aging or disabled clients (stairs, elevators), and ease of location (can your office be found easily by out-of-town clients?).

### **Buying a Law Practice**

If you are thinking of buying a law practice, consider consulting with a broker experienced in the sale of professional businesses and carefully review ORPC 1.17. A checklist and resource sheet written with the selling lawyer in mind is available on the PLF Web site at [www.osbplf.org](http://www.osbplf.org). Select Practice Aids and Forms under Loss Prevention, then Selling Your Practice. These are a valuable reference for the lawyer interested in buying a practice as well.

### **Furnishing Your Office**

When furnishing your office, keep in mind the image you wish to project to your clients. If money is limited, think about buying used office furniture. Keep it simple and hold costs down. The reception area should contain several chairs, a coffee or end table, a coat rack, and some magazines. If some of your clients bring children with them, provide a few toys or children's books. If your staff person will be located in the reception area, make sure papers and files are not left where they can be seen by waiting clients. If there is a computer on the staff person's desk, use a screen shade or position the monitor so waiting clients cannot view information on the screen. (A screen saver is not enough unless it is password protected, since a curious client can hit any key to reactivate the screen if the reception area is temporarily unattended.) Do not keep unlocked file cabinets in the reception area.

In your own office, you will need a desk, comfortable chair, and at least two client chairs. Furnish your library/conference room with an adequate size conference table and chairs, bookcases, and a telephone with a speaker device. Other standard equipment and furnishings include a calculator (if your computer does not have one), file cabinet(s), digital dictation equipment or voice recognition software, copier, scanner, fax machine, laser printer, and paper shredder. In addition, you should arrange for voice mail services or

purchase an answering machine. Basic office supplies include paper, envelopes, file folders, pens, pencils, stapler, hole punch, date stamper, rubber bands, and tape.

When purchasing computer equipment, keep in mind your future needs so the equipment does not quickly become obsolete. Make sure your equipment can be upgraded. Using a laser printer or digital copier, you can print your own letterhead, envelopes, and pleading paper. Purchase licensed software programs to ensure that support and upgrades will be readily available. In addition to using your computer for word processing, consider purchasing programs for calendaring, docketing, conflicts, office accounting, time and billing, and case management.

### **Budgeting**

As with any new business, the first year of operation will entail many large purchases. Be aware that operating expenses will usually exceed revenues until your practice matures. Make sure you have sufficient reserves to last through the early growth stages.

You can calculate your reserves through a budget or cash flow projection – an estimate of income to be received and expenses to be paid for a certain period of time. To prepare a budget, you need to establish a business plan that answers some basic questions about services to be offered and reserves required. Ask yourself these questions: Will I be charging on a contingent fee, hourly rate, or other basis? If hourly, what will my rate be? What types of clients will I be trying to attract? What type of law will I be concentrating on? Should I require retainers? How much will I need for start-up costs? What will my monthly expenses be? How much do I need to live on? Once these areas have been addressed, you are ready to project your monthly cash flow.

If you are basing your income on hourly fees, determine your projected number of billable hours per month and multiply it by your hourly rate, keeping in mind that there will be few billable hours in the beginning with a gradual increase in each succeeding month. It is much more difficult to project income if you operate on a contingent fee basis; there is no easy formula to predict revenues. Keep in mind that income does not always equal immediate cash intake. Hourly and flat fee billing can take 30 to 90 days to collect. This makes retainers very attractive. At the very least, require retainers for costs; this not only keeps down your expenses, it gives clients a financial interest in their cases.

After establishing your start-up costs, determine monthly expenses by listing all expected costs, such as rent, utilities, telephone, Internet access, supplies, insurance, postage, and taxes. Two important items to include are personal living expenses, including student loan payments, and unexpected expenses. Personal expenses can be estimated by reviewing checkbook stubs, cash withdrawals, and credit card activity for the past 12 months. It is wise to have two or three months of expenses in reserve at all times.

Don't stop there. At the end of each month, analyze income and expenses and update your projected budget using the actual figures as each month goes by. This will focus your attention on keeping expenses down and will immediately inform you of any underestimated or missing items. It will also let you know whether income is keeping up with your projections and will alert you to the need for increased marketing to bring in new clients.

### **Professional Support and Resource Networks**

Many lawyers maintain a network of other lawyers to whom they refer cases that are outside their own area of expertise. Letting other lawyers know your area of expertise is a great way to help get your practice started. The lawyer accepting the referral becomes the attorney for the client on that matter. The lawyer receiving the referral splits the fee with the referring lawyer.

Fee splitting is governed by ORPC 1.5(d), which provides that a division of fees can be made only if the client gives informed consent and the total fee of the lawyers for all legal services is not clearly excessive. Always disclose the fee splitting arrangement in full, and inform the client that the total fee will not be any greater as a result of the fee split. To avoid a misunderstanding later, always confirm the client's consent in writing.

Another alternative is to associate more experienced counsel on the case with you. This also requires consent of the client. In this arrangement, both lawyers are counsel on the case and payment arrangements are determined between the attorneys.

## Checklist for Opening a Law Office

- Decide what form of entity your business will be. (For solos: sole practitioner, professional corporation, single-member LLC. For multi-member firms: professional corporation, partnership, LLC, LLP.)
- Name your business. If you form an entity, your PC, LLC, or LLP status must be disclosed in the name of your firm. OSB Formal Ethics Opinion No. 2005-49. The name of your business must not be misleading as to the identity of the lawyers practicing under the name. ORPC 7.5(c)(1). Specifically, use of “and Associates” violates the rule if there are no associates or no relationship exists among lawyers in an office share attempting to use this designation. Use of trade names and historical names of deceased or retired lawyers is permitted under ORPC 7.5(c)(2) and (3). For more information, review *What’s In a Name: Things to consider before hanging that shingle*, by Sylvia E. Stevens, November 2006 *Oregon State Bar Bulletin*.
- Choose a location (downtown, suburbs, remote office).
- Choose space option (rent office space, share office space, executive suite, virtual office, and/or home office).
- Determine office needs:
  1. Furniture:
    - a. Lawyer’s office (desk, chair, guest chairs, file cabinet, chair mat, wastebasket)
    - b. Reception area (chairs, coffee table, lamp, pictures, magazine rack)
    - c. Staff (desk, chair, chair mat, wastebasket, file cabinet)
    - d. Conference (table, chairs)
  2. Equipment:
    - a. Telephone(s) with answering machine (or arrange for voice mail service)
    - b. Computer(s) with appropriate software and printer
    - c. Copier/Scanner
    - d. Paper shredder
    - e. Fax machine
    - f. Calculator and typewriter
    - g. Dictation equipment (if necessary)
    - h. Coffee pot and cups
  3. Supplies (stationery, business cards, paper, envelopes, ball-point pens, highlighter pens, pencils, stapler, staple remover, post-it notes and flags, two and three hole punch, copy stamp, date stamp, file folders, rubber bands, tape and tape dispenser, paper clips, phone message pads, legal pads)
  4. Personnel (secretary/administrative assistant, paralegal, receptionist, bookkeeper)
  5. Library (Vols. I and/or II of ORS, Oregon Advance Sheets, CLE materials in area of practice) Note: Many resources are now available online, including statutes, case law, the Oregon Rules of Appellate Procedure, Oregon Rules of Civil Procedure, Uniform Trial Court Rules, and Supplementary Local Rules. Use the Oregon State Bar’s online legal

research service or follow the links to other online resources from the bar's web site at [www.osbar.org](http://www.osbar.org). Download Professional Liability Fund practice aids at [www.osbplf.org](http://www.osbplf.org).

- Develop business plan and budget. Identify potential client markets and capital needed to carry business through first three months.
- Open appropriate bank accounts (general office, lawyer trust account) and file Notice of Enrollment in IOLTA program.
- Obtain necessary insurance (professional liability, business liability, etc.) and a business license.
- Consider consulting with a CPA or accountant concerning payment of quarterly estimated taxes and other tax liabilities.
- Determine what type of marketing and advertising you will use (yellow page ad, lawyer referral listing, brochures, business cards, sign for office, announcements, Web site). Review applicable Oregon Rules of Professional Conduct and OSB Formal Ethics Opinion No. 2007-180.
- Establish necessary office systems:
  1. Docket/calendar
  2. Tickler
  3. Accounting (general office and trust)
  4. Time and billing
  5. Filing (open files, closed files, organization of electronic documents)
  6. Conflict
- Call the Professional Liability Fund's practice management advisors at 503-639-6911 or 1-800-452-1639 for assistance or answers to any questions.

# Start-Up Budget

**Start-Up Capital or Line of Credit** \$ \_\_\_\_\_

## Equipment

Computer/Server and Backup System	\$ _____
Software	\$ _____
Printer	\$ _____
Fax	\$ _____
Scanner	\$ _____
Shredder	\$ _____
Copier	\$ _____
Telephone (Cell/landline)	\$ _____
Calculator	\$ _____

**Total Equipment** \$( \_\_\_\_\_ )

## Furnishings and Decor

Lawyer's desk	\$ _____
Lawyer's chair	\$ _____
Lawyer's chair mat	\$ _____
Client chairs (at least 2)	\$ _____
Lawyer's file cabinet	\$ _____
Credenza/computer table	\$ _____
Waste baskets (2)	\$ _____
Pictures and other decor	\$ _____
Reception area chairs	\$ _____
Coffee table	\$ _____
Conference Table	\$ _____
Conference Chairs (4-6)	\$ _____
Staff desk	\$ _____
Staff chair	\$ _____
Staff chair mat	\$ _____
Staff file cabinet	\$ _____

**Total Furnishings and Decor** \$( \_\_\_\_\_ )

## Supplies

Paper, envelopes, ball-point pens, highlighter pens, pencils, stapler, staple remover, post-it notes and flags, two and three hole punch, copy stamp, date stamp, file folders, rubber bands, tape and tape dispenser, paper clips, phone message pads, legal pads

\$ \_\_\_\_\_

**Total Supplies** \$( \_\_\_\_\_ )



**Library**

Legal research - Oregon State Bar (OSB)	FREE
Supplemental online legal research	\$ _____
CLE publications or BarBooks online through OSB	\$ _____

**Total Library** \$(\_\_\_\_\_)

**Marketing and Printing**

Stationery/Business cards	\$ _____
Announcements	\$ _____
Print Advertising (Newspaper/Yellow Pages)	\$ _____
Radio or TV Advertising	\$ _____
Internet Advertising	\$ _____
Other	\$ _____

**Total Marketing and Printing** \$(\_\_\_\_\_)

**Miscellaneous**

Business entity formation fees	\$ _____
Business sign(s)	\$ _____
Business license	\$ _____
Bar dues	\$ _____
Professional liability coverage	\$ _____
Excess professional liability coverage	\$ _____
Bond (for staff)	\$ _____
Business insurance (including liability, fire/casualty, disability/overhead/business interruption, premises liability, and valuable papers)	\$ _____

**Total Miscellaneous** \$(\_\_\_\_\_)

**Balance** \$ \_\_\_\_\_

**Notes:**

# Monthly Budget

## Monthly Expenses

Monthly Rent (should include water and garbage) \$ \_\_\_\_\_

Utilities/Internet Access (if not included in rent) \$ \_\_\_\_\_

Communications (cell, landline, PDA) \$ \_\_\_\_\_

Recycling/Shredding Services \$ \_\_\_\_\_

Parking \$ \_\_\_\_\_

Supplies \$ \_\_\_\_\_

Salaries \$ \_\_\_\_\_

Tax withholding \$ \_\_\_\_\_

Payments on furniture and equipment \$ \_\_\_\_\_

Insurance premiums (pro-rated monthly) \$ \_\_\_\_\_

Dues for professional organizations (pro-rated monthly) \$ \_\_\_\_\_

Subscriptions (pro-rated monthly) \$ \_\_\_\_\_

CLE and Legal Research \$ \_\_\_\_\_

Miscellaneous (business lunches, travel, marketing) \$ \_\_\_\_\_

Other \$ \_\_\_\_\_

**Total Monthly Bills** \$ \_\_\_\_\_

## Fees and Income

Fees needed to pay monthly bills \$ \_\_\_\_\_

Fees needed to pay self (including student loan payments) \$ \_\_\_\_\_

**Required Income** \$ \_\_\_\_\_

Required income divided by number of billable hours = hourly rate \$ \_\_\_\_\_

## **NEW CLIENTS**

### **Case and Client Screening**

Careful case and client screening can eliminate the threat of a legal malpractice suit and greatly reduce the stress in your life. Evaluate potential cases and clients with these factors in mind:

1. Do you have a good “gut reaction” to the client and the course of action he or she proposes? If your first impression is unfavorable, you may want to reject the case. Lawyers who are sued for malpractice almost always knew at the outset that they should have rejected the case.
2. Be cognizant of the client’s relationship and experience with previous lawyers. Beware of the client who constantly changes lawyers. Look out for the case that has already been rejected by one or more lawyers.
3. Be cognizant of the client’s attitude toward other professionals such as doctors, accountants, bankers, or lenders.
4. What is the client’s attitude toward the case? If he or she wishes to proceed because of principle and regardless of cost, you may find yourself pressed to pursue a case that you do not believe in or, worse, find offensive.
5. Do you have the skill, expertise, and time needed to pursue the case?
6. Are you taking the case simply because the potential client is a relative, a friend, related to a friend, or knows a friend? These cases should be avoided unless you have confidence in your ability to handle the case and have a good feeling about the potential client. Ask yourself whether you would take the case if the client walked in off the street. If not, you should reject the case.
7. Are you and the client able to agree on fee arrangements? If not, you may be dealing with someone who will have difficulty making other decisions or compromises.
8. Consider the client’s attitude and method of operation. If he or she has come to you with a “done deal,” researched the case extensively, or failed to attend to the matter until it became an emergency, the case may require special handling.
9. Consider the client’s ability to pay for your services. A client’s financial situation may warrant declining the case unless you are willing, at the beginning, to provide pro bono services.

### **Creating Realistic Expectations**

Even the best cases are lost when presented to the jury. After obtaining the necessary information from the client regarding the problem, start by laying out the adverse facts about his or case. If you begin by advising the client that he or she has a good case, the client will not hear anything else. It is also important to explain to the client the economics of settling the case.

If a lawsuit is or may be involved, don’t give the client the impression it will take only a few months to resolve. Lawsuits are rarely resolved in a couple of months. Explain fully to the client the time limits involved. In an effort to be brief and simple, lawyers often misguide their clients by simplifying the process. (“Once the complaint is filed, the other side has 30 days to respond. When the case is at issue, we can request a trial date.”) As a result, clients get the mistaken impression that their cases will be over in a month or two. It is far better to explain the possibilities of problems with service, requests for extensions of time, or motions that may require filing an amended complaint. The client should be told that discovery will take additional time, and that you then have to wait for the court to set a trial date. Be familiar with the court’s time line for setting cases. Explain trial setovers, and get the client’s consent. Clients who are aware of these time frames will not be calling the office constantly wanting to know why something isn’t happening.

When the matter does not involve litigation, explain the various steps involved and the time required for each. If there is a delay, advise the client immediately and provide a new estimate of when the matter will be completed.

### **Using Intake Sheets**

Have every new client complete an information sheet listing the client's address, telephone number, Social Security number, place(s) of employment, emergency contacts, spouse's or partner's information, and referral sources. While new clients are waiting to see you, you can also give them additional information sheets relating to the specific case, such as an intake sheet for a personal injury case, a domestic relations case, probate of an estate, or preparation of a will. If desired, add a disclaimer clarifying that you are not obligated to provide services to the client until you and the client mutually agree in writing to the terms of representation. (See "New Client Information Sheet with Disclaimer," available on the PLF Web site at [www.osbplf.org](http://www.osbplf.org). Select Practice Aids and Forms under Loss Prevention, then File Management.) Information sheets save you from having to ask routine questions during the initial interview.

The PLF's sample New Client Information Sheet provides spaces for docket control and conflict information. It also has a line to be initialed when the file is opened, conflicts are checked, and docket information is entered on the calendar. You can use the back side of this form to take notes during the initial interview, including supplementary conflict information. You can then use the sheet to open the client's file and enter the necessary information into the office docket and conflict systems. Once you have opened the file and entered information into both the docket and conflict systems, place the sheet in the client's file for reference. If your office is paperless, the sheet can be scanned and saved to the client's electronic file. This is a good time to send a thank-you letter to any referral sources.

## New Client Information Sheet

TODAY'S DATE <u>March 2, 2009</u>	
Client's Full Name <u>John Smith</u>	SS# <u>222-33-8354</u>
Spouse's/Partner's Full Name <u>None</u>	SS# _____
Street Address <u>123 Main Street, Apartment 5</u>	
City/State <u>Portland, Oregon</u>	Zip <u>97202</u> E-mail Address <u>smithjohn@ispprovider.com</u>
Telephone (Home) <u>(503)222-3000</u> Client Work <u>(503) 555-1111</u> Spouse/Partner Work _____	
Client's Employer <u>Vandalay Industries</u> Spouse's/Partner's Employer _____	
Emergency Contacts:	
Name <u>Howard Smith</u>	Relationship <u>Father</u> Telephone <u>(503) 555-1234</u>
Name <u>Mary Jones</u>	Relationship <u>Sister</u> Telephone <u>(503) 555-4567</u>
Why You Chose Our Office <u>Referred by Carol Wilson</u>	
Conference with Attorney Regarding:	
<u>Lease of commercial property for business.</u>	

### FOR OFFICE USE ONLY

Fee arrangement: <u>\$225.00 per hour. \$2,500 retainer.</u>
Billing arrangement: <u>Send client monthly itemized statement.</u>

DOCKET CONTROL	
Statute of Limitations Deadline	
Tort Claims Act Notice Due	
First Appearance Due	
Other Deadlines	
File Review Frequency	<u>30 days</u>
INSTRUCTIONS:	

CONFLICT CONTROL	
NAME	RELATIONSHIP
<u>John Smith</u>	<u>Client</u>
<u>LB Properties, Inc.</u>	<u>Lessor</u>
<u>Clifford Rhodes</u>	<u>President, LB Prop.</u>
<u>Margaret Ellis</u>	<u>Real Estate Agent</u>
<u>555 SE Downs, No. 115, Portland, OR</u>	<u>Property Address</u>

File opened by BLL Conflicts checked by BLL Deadlines docketed by CW  
 Engagement letter sent by MLS Date: March 3, 2009

## Fees

The client has the right to know what your legal services are going to cost. Some clients ask about fees right away, but others are quite timid about discussing money. Nevertheless, you need to fully discuss fees with the client before proceeding with the case. Clients who don't understand their responsibilities to pay are likely to be unhappy with the amount charged and may end up not paying their bill.

We strongly recommend that you have each client sign a fee agreement. Go over the fee agreement in detail with the client before the client signs it. This advice applies to all kinds of fee agreements – hourly, fixed, contingent, and value-based. Either have the client take the fee agreement home to read again, sign, and send back or prepare a fee agreement after the initial interview and send it to the client with the same instructions. Also, advise the client in writing that you will not do any work on the case until the fee agreement is signed and returned. If your agreement requires your client to provide you with funds for deposit in your trust account (funds you will earn as you do the work), be sure to explain that your representation cannot proceed until the money has been provided. If you take the case on a contingency basis, you may want to ask that a specific amount be paid to cover the initial costs of commencing the litigation (i.e., filing and service fees) and any charges for reports necessary to determine the value of the case (i.e., doctor or police reports). You should not finance your clients' litigation.

Generally, clients cooperate more fully with their cases when they are financially invested. If they are not sufficiently interested in the case to be willing to invest some money, the matter quickly becomes your problem rather than theirs. A surprising number of malpractice claims are brought against lawyers who spent enormous amounts of time on cases without collecting a cent in fees.

Many legal malpractice suits result from counterclaims in response to a lawyer's action to recover fees. The risk of being countersued for malpractice is greatly reduced if you take the time to explain your fees to clients early on, document your agreement, and provide frequent fee bills. Your explanation should include how you bill (i.e., units of time) and whether you have a minimum billing unit (e.g., .10 hour, which is six minutes). These fee bills should be detailed and should identify the specific services rendered for the fee charged. Listen carefully to your client's need for services before you provide a quote for fees. Then follow these practice tips to promote good client relations:

1. Enter into a written fee agreement early in the course of representation. Be sure it is specific and complete.
  - a. **Identify the Scope of Services.** The fee agreement should specify the services to be rendered and provide the client with clarity and written proof of what he or she has agreed to do.
  - b. **Specify the Timing of Services.** A fee agreement that clearly states that you will commence representation after the client performs a future act (e.g., paying a retainer fee, providing money for filing fees, or providing crucial background information) can avoid a misunderstanding.
  - c. **Explain the Type of Fee.** Clients are generally not familiar with legal terms such as contingent fee, costs, retainer fee, flat fee, fixed fee, or value-based billing. Be certain to explain these terms carefully. For example, if you charge a contingency fee, explain what the percentage fee will mean in terms of dollars. Be certain the client understands that he or she will be responsible for costs regardless of the outcome. If you charge an hourly fee, estimate the number of hours the case may take and periodically update the client. Provide revised estimates if the case takes more time than originally planned. If the fee arrangement is for an uncontested case,

define the term uncontested for the client. For example, if the fee applies only if you do not have to negotiate support or property division, let the client know this.

It may be difficult for clients to understand fees that are earned upon receipt. This type of fee arrangement can increase your risk of a legal malpractice or ethics claim. Be sure to fully advise the client of the nature of the fee and always put your fee agreement in writing. Avoid calling fees earned upon receipt “nonrefundable.” Such a designation may be misleading, if not false, in violation of ORPC 8.4(a)(3), which prohibits conduct involving “dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer’s fitness to practice law.” Remember: clients always have the right to challenge a fee as excessive, even if the agreement is in writing, and all fees are subject to refund if the work is not performed. OSB Legal Ethics Op. 2005-151.

- d. **Stick to the Payment Terms.** The fee agreement should specifically state when the client is expected to pay for services, even if the arrangement is for a contingent fee. Many contingent fee cases involve the expenditure of large amounts of money for costs. Outlining the terms of payment in the fee agreement enables you to recover these costs on a monthly or other basis.

Once the fee agreement is signed, treat it as the contract it is. Follow through on the legal work to be performed, and require the client to pay in accordance with the agreement. Do not change your method of compensation in the middle of the case.

- e. **Choose the Appropriate Form of Agreement.** The fee agreement can be a separate letter or memorandum, or it can be incorporated into an initial acknowledgment letter to the client. Whichever method you use, the agreement should (1) specify the scope and timing of the representation; (2) delineate what the client is expected to pay for and when; (3) explain billing practices and when the client can expect to receive bills; (4) identify what will occur if payment is not made; and (5) be signed and dated by the client. It is important to personally review the agreement with the client. You should also provide a copy to the client, encourage the client to review the agreement in the client’s own home or office, and encourage the client to ask questions before signing the agreement. The agreement should be stated in terms the client can understand. Note: If you are representing a client on a contingent fee basis, use a written fee agreement and comply with ORS 20.340 by having the client sign an Oregon State Bar-Approved Explanation of Contingent Fee Agreement **before** the fee agreement itself is signed. (A sample Contingent Fee Agreement and bar-approved model explanation form are available on the PLF Web site, [www.osbplf.org](http://www.osbplf.org). Select Practice Aids and Forms under Loss Prevention, then Engagement Letters.)

2. Prepare itemized bills so the client can determine what is being done, and send bills on a regular basis (preferably monthly). Inconsistent billing practices disrupt firm cash flow, infuriate clients, and make collection more difficult.
3. Maintain detailed and complete time records, even on contingency fee or flat/fixed fee cases. This procedure will enable you to analyze the amount of time you spent on the case. It will also help you determine how much to charge for similar cases in the future. These time records will also serve as evidence in the event of a fee dispute.
4. Do not allow outstanding fees to accumulate during the course of your representation. If you are not paid as agreed, call the client as soon as possible and discuss the situation. You may find that the client has new financial circumstances and that you are willing to renegotiate

the terms of the client's account. Or you may find that you need to address issues related to your attorney-client relationship. For example, perhaps the client is dissatisfied with an aspect of your representation. Speaking with the client helps you to decipher and address the applicable issues. Once you understand the situation, you can decide whether you want to continue or withdraw from the representation. If you withdraw, comply with all provisions of ORPC 1.16, as well as applicable court or agency rules. Do not discontinue providing essential legal services due to non-payment unless you have properly withdrawn.

5. As a general rule, avoid suing clients for fees. Make an effort to determine the cause of the client's dissatisfaction. Really listen to the client's side of the dispute. If appropriate, offer to arbitrate the fee dispute through the Oregon State Bar (OSB) Arbitration Program or consider other alternative dispute resolution methods.

If you decide to sue a client for fees, consider the following:

- a. Do you stand to gain or lose a substantial amount of money?
- b. Was a good result obtained in the underlying case?
- c. Has an uninvolved, experienced lawyer reviewed the file for possible malpractice?
- d. Are there any grounds on which the client can credibly dispute the debt or any part of it?
- e. Have you offered to arbitrate or compromise?
- f. Will a judgment be collectible if obtained?
- g. Will a lawsuit result in bad publicity reflecting negatively on you or your law firm?

Exercise extreme caution in deciding to sue to collect a fee. Many legal malpractice suits result from counterclaims in response to a lawyer's action to recover fees. Frequently, your effort to sue for fees is rewarded only with further aggravation, wasted time, wasted money, and poor client relations. A straightforward discussion of fees, financial arrangements, and billing procedures at the beginning of the attorney-client relationship will reassure clients, reduce the possibility of fee disputes, and eliminate the need for collection litigation.

The OSB Law Practice Management Section publishes a collection of fee agreements in a handbook entitled the *Fee Agreement Compendium*. The handbook is available through the Order Department of the OSB, 503-620-0222 or 1-800-452-8260 (ext. 413) and is included in BarBooks.

### **Engagement, Nonengagement, and Disengagement Letters**

Engagement, nonengagement, and disengagement letters are crucial to effective malpractice avoidance. Engagement, nonengagement, and disengagement letters set the stage for the relationship and the responsibilities between the parties. They protect you and the client by providing a clear written description of the client's relationship with counsel. Many legal malpractice claims are successfully defended because the lawyer can produce a letter that establishes that he or she did not have responsibilities to the client. Generally, an attorney-client relationship may be formed whenever it is reasonable under the circumstances for the potential client to look to the lawyer for advice. *See In re Weidner*, 310 Or 757, 801 P2d 828 (1990). Documenting your relationship with current, former, and declined clients avoids these misunderstandings.

Using engagement, nonengagement, and disengagement letters does not have to be time-consuming, difficult, or offensive to the client. On the contrary, most clients welcome (and expect) a clear written description of their association with their lawyer. Providing these letters to potential clients will clarify and formalize your own relationship to the client or potential client. This practice will also increase the likelihood that the legal matter is entered into your conflict of interest and calendaring systems.



Sample engagement, nonengagement, and disengagement letters are available on the PLF Web site at [www.osbplf.org](http://www.osbplf.org). Select Practice Aids and Forms under Loss Prevention, then Engagement, Disengagement, or Nonengagement Letters.

### **Engagement Letters**

*Always* follow the initial client interview with a letter that establishes the limits of representation. The letter should set out which legal problems will be handled and which ones will not, which steps will be taken (or have already been taken), and which responsibilities are the client's. This type of letter is equally important for an ongoing client with a new matter.

Engagement letters are crucial because clients generally come to you expecting you to fix everything related to a particular legal problem. If you are a personal injury lawyer and a client who has been hurt comes to you for help, you will probably assume that you will be representing the client only on the personal injury claim and possibly on a property damage claim. Yet the accident may have given rise to more than a personal injury or property damage claim; it may also involve a workers' compensation claim, a product liability claim, a social security disability claim, or an employment discrimination claim. Unless you specifically limit the scope of your representation, the client will assume you will resolve all of these problems.

Here is a vivid example of the importance of using an engagement letter:

The mother of a child who had been involved in a serious automobile accident called a lawyer. The lawyer advised the mother over the telephone that he would obtain a copy of the police report and would get back to her. There was no further communication between the lawyer and the mother. The lawyer forgot to obtain a copy of the police report, forgot to write back to the client, and forgot that he had made promises to her. After the statute of limitations ran, the lawyer was sued for legal malpractice. If the lawyer had sent an engagement letter to the client, a file would have been opened and the case would have been entered into the lawyer's calendaring system.

You can incorporate your fee agreement in the engagement letter rather than using a separate fee agreement. If you choose this method, the *entire* fee agreement needs to be set out in the letter. Include two originals of the engagement/fee agreement letter to the client with instructions to sign and return one of the originals to the office before representation begins.

### **Nonengagement Letters**

When you do not wish to accept the case, sending a nonengagement letter is equally important. In many instances lawyers are sued by non-clients or by those who are considered by the lawyer to be non-clients. An example of this occurrence is as follows:

A woman who had extensive health problems consulted with her "family" lawyer about a potential medical malpractice case. The lawyer listened empathetically to the woman's story, commented that he felt she had a good case, and advised her that he did not handle medical malpractice cases. The woman left the office believing that she had established a rapport with the lawyer and expecting that the lawyer would be handling her medical malpractice case. When the woman later sued the lawyer for missing the statute of limitations, he could only offer his verbal testimony that he had not accepted the case. He had not written the client a nonengagement letter, and could not offer any additional proof. The jury entered a verdict in favor of the woman.

In the above example, the lawyer could have avoided the legal malpractice claim by writing a simple, three-line nonengagement letter. The letter could have protected him and also served as a reminder to the client that she needed to obtain another lawyer for that matter. There may be times when you cannot send a nonengagement letter to your prospective client, as in a family law matter where the consulting client continues to live at home with his or her spouse. In these cases, use a New Client Information Sheet that contains a disclaimer clarifying that you are not obligated to provide services to the client until you and the client mutually agree in writing to the terms of representation. *See New Clients, supra.*

If you remain unconvinced that nonengagement letters are an important part of malpractice avoidance, consider for a moment how the jury will view the situation. If you decline a case and do **not** send a follow-up letter, your verbal testimony will be pitted against the client's. The plaintiff's lawyer in the legal malpractice case against you will probably point out that you interview over two hundred clients or potential clients a year. The jury is likely to believe that the client's recollection is better than yours since the client probably only has the one case.

Consider these guidelines when drafting a nonengagement letter:

1. Specifically state in the letter that you are not able to accept the case. It is not necessary to give a reason for declining the case, but you may do so if you wish.
2. Avoid commenting on the merits of the case. If you are not taking the time to research and investigate it, you should not offer an opinion as to its worth. This is particularly true if you are not skilled in the area of law in question.
3. If time limits apply to the case, generally advise the client that time limitations apply. Do not specifically state your calculations for the time limitations. Instead, emphasize that it is imperative to consult with another lawyer immediately.
4. Use the nonengagement letter as an opportunity to return any original documents the client may have given you during the interview.

If you decline representation of a client, you should consider sending the nonengagement letter by certified mail, return receipt requested. Keep a file copy of all nonengagement letters in a miscellaneous file, and be sure to enter information concerning the declined client in your conflict system.

### **Disengagement Letters**

When your legal services are complete:

1. Send a disengagement letter letting the client know that your representation in the matter has ended.
2. Thank the client for allowing you to be of service and return all original documents.
3. Set out any tasks the client needs to perform to *finalize* the matter, such as sending a certified copy of the General Judgment to a life insurance company if the adverse spouse is to keep life insurance in effect for your client or their minor children.
4. Set out any tasks the client needs to perform in the *future*, such as renewing a UCC filing, exercising an option to renew a lease, and so on.
5. If you are going to undertake any follow-up responsibilities, they should also be set out in the closing letter.
6. If you have chosen a destruction date for the file, let the client know that the file will be destroyed and when it will happen.

If you wish to terminate the attorney-client relationship before the case is concluded, be sure to comply with all ethics rules, including ORPC 1.16, and take the following steps:

1. Advise the client of the reason for termination in writing. Avoid commenting on the merits of the case. Since you are terminating representation before conclusion of the case, advise the client generally of any time limitations and stress the need to obtain another lawyer immediately. Be certain to properly withdraw as attorney of record.
2. Return any original documents or papers belonging to the client, but retain your file or, at a minimum, a copy of the file.
3. Refund any unearned fees.
4. Cooperate fully with the client's new legal counsel, if any. Provide that person with a complete copy of the file, and make sure the appropriate substitution of attorney is timely filed with the court.

## CONFLICT OF INTEREST SYSTEMS

Conflicts of interest can lead to serious malpractice and ethical problems. To detect conflicts, a good conflicts checking system is essential. No lawyer can remember every person connected with every case. Eventually a new client will appear with interests opposed to a present or past client. If undetected, such a conflict will cause much wasted effort if you are eventually forced to resign from the case and can result in malpractice claims and disciplinary proceedings.

One type of conflict problem lawyers run into is representation of multiple parties. Representing husband and wife, buyer and seller, insured and insurer, estate and administrator, directors and officers, guardian and ward, or trustee and beneficiary can be dangerous because the parties' interests may diverge. Any time multiple parties are represented or the lawyer has a personal interest in the matter, conflicts can arise.

Conflict problems also arise when lawyers fail to document that they are *not* representing someone. For example, assume a husband and wife want an amicable dissolution. They come to you and ask you to represent both of them.

In this type of situation, documentation is critical. Assuming that you are permitted to represent one of the parties, confirm representation of the client with an engagement letter (*see* New Clients, *supra*) and send the other party a nonengagement letter. The nonengagement letter should state that you are not representing the nonclient's interests and that the nonclient should seek independent counsel.

A good conflict checking system will detect possible conflicts of interest before representation. Nevertheless, some conflicts may arise during representation. Every lawyer should develop policies for handling conflict situations as they arise. Follow ORPCs 1.7, 1.8, and 1.9, and be sure to carefully document your actions.

A poor conflict system is as bad as having no conflict system at all. There are different approaches to setting up conflict systems, depending on the size and type of office. All effective systems have certain things in common. A good conflict system has these characteristics:

1. The system is integrated with other office systems;
2. The system provides for easy access to conflict data for everyone in the office;
3. Checks are conducted at the three key junctures: before the initial interview, before a new file is opened, and when a new party enters the case;
4. Searches check for spelling variations of names;
5. Conflict entries show the party's relationship with the client;
6. All parties connected with a case are entered into the system; and
7. Conflict searches are documented in the file.

## Creating a Conflict Checking System

### Index Card System or Computer Database?

The traditional conflict system used index cards to keep track of conflict names. This system was slow to maintain and check. With the advent of computers, conflict systems have improved. Now a simple database on a computer allows for fast and immediate conflict checking. Databases have become very inexpensive and are often included in the software bundle that comes with new computers.

The database stores information on records in fields. When you set up the database, you select the particular fields that will appear on each record. When you create a new record, the fields will automatically appear to prompt the user to enter the correct information.

The big advantage of a database is that you can search the records using a particular name. Once you give the command, the database scans all the records in the database to see whether the designated name is present. If the name appears in any record, the computer pulls that record up onto the screen.

When shopping for a database, look for one that is easily searchable and will hold enough records. Many databases hold an unlimited number of records while others are limited. We recommend a minimum of 5000 records for the new sole practitioner.

### Setting Up the Conflict Database

When you set up a database for your practice, include the following fields in each record:

Date Opened:	(the date when the file or matter was opened)
Matter Name:	(the name of the file or matter)
Matter Number:	(the number assigned when the file or matter was opened, if applicable)
Client Name:	(the name of the client) <sup>1</sup>
Attorney:	(initials of the responsible lawyer, if applicable)
Description of Matter:	(a description of the matter detailed enough to allow the user to determine whether a conflict exists without having to pull the file)
Conflict Names:	(names of all related and adverse parties and their relationships to the client) <sup>2</sup>
Date Closed:	(the date when the file or matter was closed)
Closed File Number:	(the number assigned when the file or matter was closed)
Date Destroyed:	(the date when the file or matter was destroyed, if applicable)

<sup>1</sup> This field could be further divided to separately track the client by last name, first name, and middle name.

<sup>2</sup> Conflicts can also be tracked in two separate fields, one for adverse parties and one for related parties.

Other fields that could be added to a conflict database include the client's federal taxpayer identification or Social Security number and the name of the opposing counsel. At a minimum, always include each party's relationship with the client or role in the case. This information makes it much easier to quickly assess the seriousness of a potential conflict.

### Case Management Software

A case management program can be an alternative to setting up your own database. This type of

software usually allows you to print a “conflict” report for the file and integrates various office systems (conflicts, client database, matter database, calendar, tickler system, etc.) into one product.

This "all in one" software has become very popular. The PLF practice management advisors monitor new developments and can provide information about this type of software.

## **Using a Conflict System**

### **A Checking Routine**

Set up a procedure for checking conflicts. Conflicts should be checked three times. First, check for conflicts when a potential client first contacts you but before the initial interview. (A preliminary check of the potential client’s name allows you to decline further discussion, preventing a crucial divulgence of confidences.) Second, do a more thorough check before you open a new file for that client. After talking with the potential client, you will have the names of others connected with the case. Third, check the conflict system whenever a new party enters the case.

### **Office Sharing**

Lawyers sharing offices *may* need to provide each other with the names of their clients so that a conflict of interest check can be completed. However, before revealing a client’s name to other lawyers in your office share, obtain the client’s informed consent in writing. OSB Legal Ethics Op. 2005-50 cautions lawyers sharing offices to avoid conflicts of interest by (1) not holding themselves out to the public as members of the same firm through joint advertising, joint letterhead, or otherwise; (2) respecting confidentiality of information relating to the representation of their respective clients and insuring the same from their employees; and (3) keeping their respective files separate. If these steps are not taken, then lawyers in an office share cannot represent adverse parties. If a common telephone system is used, office sharers must not represent adverse parties unless they have taken steps to assure that telephone messages containing client information or legal advice are not given to or transmitted by shared employees. Mail must not be opened by shared employees. If the lawyers share a secretary or other employee who is in possession of the confidences or secrets of both lawyers, then the simultaneous representation of adverse parties would be prohibited.

### **Document Conflict Checks**

Assign responsibility for conflict checking at each of the three stages mentioned above, and establish a method for recording that a check was completed. A client intake sheet or a specific conflict check request form are possible ways for keeping track of this. Always show the names that were checked and who performed the check. When a new file is opened, make sure that the conflict check was actually done.

### **Input New Conflict Information**

The person checking for conflicts should also input the new conflict information from the client intake sheets or conflict check requests. Be sure to include everyone connected with the case. Lawyers in your own firm, staff members, and close relatives of lawyers and staff should be listed in the conflict system. This insures that cases will not be taken against people connected with the firm.

In addition to all clients, enter the names of all prospective clients and declined clients into the conflict system. A failure to enter prospective or declined clients in the conflict system can be embarrassing and costly and may result in ethical or malpractice claims against the lawyer. For example, assume a husband comes in for a consultation because he is contemplating divorce. During the consultation, the husband discloses confidential information. The husband then decides not to proceed with the divorce, or the lawyer declines the husband as a client. Two years later, the wife comes to the lawyer seeking a divorce. If the lawyer accepts the wife as a client, the lawyer will have a conflict of interest. This could happen easily if the lawyer forgot about

the consultation with the husband and did not maintain a record of consultations in the conflict system. A similar situation can occur when two lawyers in the same firm interview prospective clients who have adverse interests.

### **When a Name Is Found**

If a name is found in the conflict system, notify the responsible lawyer immediately. The faster the lawyer is aware of the potential client's relationship to a current or past case, the better position the lawyer is in to make a decision to decline representation or make proper disclosure. If a name comes up during a conflict check, it does not necessarily mean there is a conflict. The lawyer responsible for the client or matter must make the final decision. However, if there is no way to check for conflicts, or if a check is not done, the lawyer will not know until it is too late.

If the lawyer decides to decline representation, notify the declined client immediately. To protect client confidentiality, state only that a potential conflict exists. Do not provide any further details to the declined client. Always document notice and declination of representation with a nonengagement letter.

### **New Lawyers and Staff**

Conflicts can arise when a new lawyer or staff member joins the firm. The new lawyer or staff member may have worked on cases at another firm that present a conflict with your firm's clients. Every lawyer and staff member should maintain a personal list of former clients. Have the new person review a list of the firm's clients and compare it with his or her personal list. When the comparison is complete, incorporate the new person's former clients into the firm's conflict system. This step ensures that all lawyers in the firm will be aware of any potential conflicts the new person might have. (The new person's conflicts are now the firm's conflicts unless the screening rule in ORPC 1.10 applies.)

### **When a Lawyer or Staff Member Leaves the Firm**

When leaving a firm, a lawyer or staff member should take a list of the clients to whom he or she provided legal services. The list will let the lawyer or staff member screen for conflicts in his or her new office. If the lawyer or staff member did not maintain a list of the clients he or she served, the old firm may be able to provide the list from the firm's conflict system. (This option may not be available for staff members.)

If the firm's conflict system accurately reflects all the matters the lawyer worked on while at the firm, the firm can print a report for the lawyer or provide the information electronically, if available. If the firm's conflict system tracks only the primary lawyer on client matters and does not reflect all the lawyers who may have worked on a given file, the firm may want to create the necessary conflict information from billing records or provide the departing lawyer with a list of all the matters that were opened during the time the departing lawyer was employed at the firm.

### **New Client List**

Regularly circulate a list of new clients and cases to all lawyers and staff in the office. Ask that everyone review the list for possible conflicts that may not be in the conflict system. Someone in the office may recognize a conflict from the list that would not be detected otherwise.

## Request for Conflict Search and System Entry

FILE NAME John Smith – Business Lease

CLIENT/COMPANY NAME John Smith

CLIENT MATTER Business Lease RESPONSIBLE ATTORNEY MLS

### RELATED PARTIES

NAME	RELATIONSHIP
<u>LB Properties, Inc.</u>	<u>Lessor</u>
<u>Clifford Rhodes</u>	<u>President of LB Properties</u>
<u>Margaret Ellis</u>	<u>Real Estate Agent</u>
<u>555 SE Downs, No. 115, Portland, Oregon</u>	<u>Property Address</u>

- NEW MATTER (to open new file)  
 ADDITIONAL INFORMATION (to update file)  
 SEARCH ONLY (do not add information)

Requested by MLS Request Date March 2, 2009

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NO CONFLICTS FOUND

NAMES FOUND AS FOLLOWS:

Searched by BLL Search Date March 3, 2009



## Types of Names to be Added to Conflict List

*(This is not a complete list.)*

<p style="text-align: center;"><u>Litigation</u></p> <p>Insured                      Insurer          Plaintiff(s)                Defendant(s)          Guardian ad Litem        Spouse/Partner          Expert Witness(es)        Lay Witness(es)</p>	<p style="text-align: center;"><u>Corporate/Business/Real Estate</u></p> <p>Owner(Spouse/Partner)    Subsidiaries/Affiliates          Buyer(s)                    Seller(s)          Partner(s)                  Officer(s)          Shareholder(s)             Director(s)          Key Employees             Property Address             Taxlot ID Number</p> <p>Any opposing party in a transaction</p>
<p style="text-align: center;"><u>Probate</u></p> <p>Deceased                    Personal Representative          Spouse or Partner/Children/Heirs/Devises          Trustee/Guardian/Conservator</p>	<p style="text-align: center;"><u>Estate Planning</u></p> <p>Testator                      Personal Representative          Spouse or Partner/Children/Heirs/Devises          Trustee/Guardian</p>
<p style="text-align: center;"><u>Domestic Relations</u></p> <p>Client                        Spouse/Partner          Children                    Grandparents</p>	<p style="text-align: center;"><u>Criminal</u></p> <p>Client                        Co-Defendant(s)          Witness(es)                Victim(s)</p>
<p style="text-align: center;"><u>Workers' Compensation</u></p> <p>Injured Worker              Insurer          Employer</p>	<p style="text-align: center;"><u>Bankruptcy</u></p> <p>Client                        Spouse/Partner          Creditors</p>
<p style="text-align: center;"><u>Your Firm</u></p> <p>All Lawyers                Employees          Spouses or Partners/Parents/Siblings/          In-laws/Children</p>	<p style="text-align: center;"><u>Other</u></p> <p>Declined clients and adverse parties, if known          Prospective clients          Agencies or individuals for whom you provide          investigation work, such as Oregon State Bar          Professional Responsibility Board</p>

*Include all clients in your conflict system, including pro bono clients and individuals advised through volunteer work at pro bono agencies such as Legal Aid Services of Oregon.*

*When listing an individual, be sure to include all known names (i.e., former or maiden names). When listing lawyers and employees of the firm, consider including contract attorneys, temporary workers, and freelancers. You can also include the firm's key vendors or service providers in the conflict system.*

## ORGANIZING AND KEEPING CLIENT FILES

### Opening Files

Following the initial interview, once you have checked for conflicts and obtained the client's signature on a fee agreement or engagement letter, it is time to physically open the file. File folders can be legal or letter size. Letter-size file folders are cheaper, but what size file folder you use will also depend on the size of the file cabinet you choose. File cabinets come in a variety of forms: vertical (which store files front to back), horizontal (which store files side to side), or open shelving. Files stored in open shelving usually require end tabs on the folders. This works if you are also going to store your closed files on open shelves. However, if you are going to transfer your closed files to banker boxes, these side tabs get folded into the side of the banker boxes, making it very difficult to read the file names.

Although more expensive, another option is the pressboard partition file folder. These folders usually have at least two partitions in the middle of the file. This allows for six or more different filing surfaces. Some law offices use a file pocket or expandable file with colored subfiles in the pocket file. Using subfiles is a very easy way to keep pleadings separate from correspondence and correspondence separate from discovery, and so on. Each of the subfiles can be a different color. (Green for correspondence, blue for legal research, red for discovery, etc.) When you are filing correspondence, it is easy to locate the green correspondence subfile.

Another way of organizing files is to color code them by area of law. For example, all criminal files could be green, domestic relations red, and so forth. Again, it makes it much easier when looking for files to look for a specific color only.

### Numbering Files

Decide whether to give files a number when they are opened. If you are not using a file number for a specific purpose, such as filing numerically or using open file numbers in the billing system, then don't spend the time to number open files. (*See Closing Files, infra.*) Many smaller offices file all open files alphabetically so there is no need for an open file number.

File numbers can be strictly sequential or may show how many files were opened in a given year, for example, 2009-10 (tenth file opened in 2009). Some offices give each client a number, and then each matter is an extension of that main client number.

Another challenge is to decide how to label succeeding matters when representing public entities and corporations. You should have a main file for everyday items and separate files for distinct topics such as an employee problem or a road project.

### Client Copies

Unless you have arranged to provide documents electronically, give every client his or her own file folder. Put the name of the matter on the file tab. Use folders that come with fasteners already attached or two-hole punch the top of the folder and insert an Acco fastener. Tell clients they will receive copies of everything that is pertinent to their case and that it is their responsibility to maintain their own files. Tell clients that you will keep their files for 10 years after the representation is concluded and then destroy them, but clients may keep their files as long as they wish. (*See Engagement, Nonengagement, and Disengagement Letters in the New Clients section, supra.*)

Some jurisdictions state that the file belongs to the client and cannot be destroyed without the client's permission. By following the above guidelines, the client receives a duplicate of the lawyer's file.

The lawyer's file then remains the sole property of the lawyer and can be destroyed when it is appropriate, without having to obtain the client's permission.

### **Electronic Files**

Keep client computer files orderly for easy retrieval by anyone needing access. Create a folder on the computer for each client. If a client has multiple case matters, use subfolders. Each matter may have a subfolder for correspondence, pleadings, and other documents as needed. You can use document management or case management software to track and organize client documents created on your computer system. The PLF practice management advisors monitor new developments and can provide information about this type of software.

If you use e-mail to communicate with clients, have a system in place to capture and document your messages in the client's electronic or paper file. For detailed instructions on how to save client-email, visit the PLF Web site at [www.osbplf.org](http://www.osbplf.org). Select Practice Aids and Forms under Loss Prevention, then Technology, then "Managing Client E-Mail."

If your office is paperless, take advantage of the resources and tips on the PLF Web site at [www.osbplf.org](http://www.osbplf.org). Select Practice Aids and Forms under Loss Prevention, then Technology. *Also See* "Is It Time to Go Paper-Less?" *In Brief* (February 2009). Go to [www.osbplf.org](http://www.osbplf.org), select *In Brief*, then February 2009.

Once a matter is concluded, archive the client's computer folder or subfolder (including e-mail messages if saved electronically). One approach is to move or copy the client's information to appropriate computer media and delete it from the hard drive. Label and save the media. If you need to reopen the client's file, you can easily reload all the documents onto the computer. One added benefit to this system is that you can remove all office-generated forms and letters from the case file when it is closed because they have been stored on media. This saves file storage space. For more information, *see* Closing Files, *infra*.

## CALENDARING AND FILE TICKLING SYSTEMS

Failing to respond to deadlines is a leading cause of malpractice claims. In a recent study by the American Bar Association's Standing Committee on Lawyers' Professional Liability, more than twenty-five percent of *all* malpractice claims could be traced to calendaring errors—failure to account for a deadline, failure to properly calendar, failure to react to the calendar, or procrastination in performance or follow-up.

To avoid malpractice and manage your practice effectively, you must have a good calendaring system to keep track of court dates, statutes of limitations, client appointments, file review dates, and other dates and deadlines.

Historically, lawyers have used several systems to track important dates: an appointment calendar for client appointments, a docket for court dates and legal deadlines, and a diary or tickling system for files. However, the terms calendar, docket, and tickler are often used interchangeably because all refer to the same principle of keeping track of important dates.

The three parts of a calendaring system – docket, calendar, and tickler – are often combined or subdivided further, depending on the size and type of practice. No matter what system you use, it must capture all deadlines and provide significant reminders to allow you to complete all work orderly and timely.

When setting up a calendaring system for your practice, look at the different elements of traditional calendaring methods and adapt them to your particular style. Whatever combination you use, be sure that your system provides for:

1. immediate and automatic entry of dates;
2. double checking of all entries;
3. sufficient lead time to complete tasks;
4. follow-up checking; and
5. backup or duplication of the main calendaring system.

A good calendaring system has two components: (1) a tickling function to prompt you to pull paper files or access electronic files in anticipation of work; and (2) a docketing function to remind you of impending dates and deadlines. This section explains how to set up a calendaring system to accomplish these two functions and prevent errors in maintaining the system. The first part gives an overview of tickling systems and how to use them, and the second does the same for docketing systems.

### Types of File Tickling Systems

Systems for reminding you to work on files are called file tickling or diary systems. They are used to retrieve files in anticipation of future deadlines, to plan work, and to prevent files from being neglected. They also keep you aware of self-imposed work management deadlines and critical deadlines such as court appearances and statutes of limitations. In this way, the file tickling system ensures a steady work flow and backs up your regular calendar.

You can choose from several effective file tickling systems. No matter which type you use, you must take certain precautions to prevent error.

#### Index Card Tickling Systems

Prior to the widespread adoption of computerized calendaring programs, attorneys used index cards to tickle files. With an index card system, each open file is listed on a separate 3x5 card kept in a file box with daily and monthly dividers. When the client file is tickled, the 3x5 card is placed behind the

corresponding date in the card box. When the file is pulled for review, the card is then moved to the front of the file box. Upon completion of the file review, a new tickle date is noted on the card and the card is refiled under the new tickle date. Maintaining a tickle system using index cards is labor-intensive and can lead to errors. It is easy for cards to be inadvertently misfiled or lost. Better alternatives to the index card system are now available.

### **Main Calendar and a Case List**

One option to the index card system is to note the names of files to be tickled on the bottom of each day's section on the main calendar. At the beginning of each day, you or a staff person pull or bring up the files listed for that day. After you complete the task for a particular file, but before it is placed back in the cabinet or closed in the computer system, note the next tickle date on the calendar.

To prevent files from falling through the cracks, you or a staff person must maintain a list of all active cases in a word processing document and must print the list at the beginning of each month. As the month progresses, place a line through the name of each file that you work on. At the end of the month, review any file not yet worked on. When a file is closed, remove its name from the list. This simple system prevents files from being forgotten.

### **Stand-Alone Calendaring Programs**

Computer calendaring programs work very well for file tickling, because you can enter recurring dates for reviewing a file. These review dates can be self-imposed deadlines or deadlines for statutes of limitations, court dates, or other critical times. When you open a file, you choose the review intervals. You then enter these intervals into the calendar program, which automatically brings up the file name according to the specified intervals.

Calendaring programs also allow for tickling events years in advance. For instance, corporation files can be tickled yearly for annual meetings, will files can be tickled yearly for review, and judgments can be tickled for a 10-year renewal.

### **Case Management Programs**

Case management software is an alternative to a stand-alone calendaring program. This type of software integrates various office systems (calendar, tickler system, conflicts, client database, matter database, etc.) into one product. One of the most helpful features of a case management program is the ability to chain events. Chained events allow related deadlines or tasks to be linked together. For example, a trial date can be chained to all the events that must be accomplished prior to trial – filing a motion for summary judgment, issuing subpoenas, preparing witnesses, etc. If the trial is reset, any event chained (linked) to the trial date will be moved automatically. Without chained events, each task would need to be re-calendared manually.

### **Date Calculation Programs**

For most lawyers and their staff, calculating deadlines involves the tedious process of verifying the occurrence date, identifying the applicable deadline, calculating its expiration, and properly entering it into the calendar. A common problem is failure to account for weekends and legal holidays. One solution is to use a deadline calculation service (available online) or rules-based software. Both allow deadlines to be imported into existing calendaring or case management programs, and ensure greater accuracy of date calculations.

Calendaring, case management, and date calculation programs offer distinct advantages over the desk calendar and card systems and should be considered when setting up a calendaring system. The PLF practice management advisors monitor new developments in technology and can provide information about this type of software.

## Using a File Tickling System

### Establishing a Routine

No matter which tickling system you use, pull all tickled files for a particular day each morning. If your office is paperless, access the files on your computer system. If nothing needs to be done on a file that day, you can tickle the file for a future date. The best routine is for you and a staff member to review the files together. You can also use this meeting to review the day's mail. This system allows you to plan your work for the day and assign staff specific tasks. Any files that do not need immediate attention you can retickle and remove from your office.

If a routine tickle date comes up and there is no work to be done on the case, consider calling the client or sending a short letter. Some clients want to hear from their lawyer, even if no action is necessary. It is important to let the client know the status of the matter, even if the status is "waiting."

### Setting Tickle Dates

File tickling dates fall into several categories: (1) a date that cannot be missed, such as a time limitation; (2) a date that should not be missed, such as a follow-up on a 10-day notice; (3) an informational date, such as a date when medical reports are expected; and (4) a periodic review date. Dates vary in their significance and should be protected with extra tickle dates accordingly.

When you are finished working on a file, mark a new tickle date on the file jacket or log sheet inside the file. Then send the file back for filing. Be sure that the new tickle date is also entered in the tickling system. If your office is paperless, consider keeping an electronic tickle log for each file/matter or track tickle dates using calendaring or case management software. **Never place a file back in the filing cabinet without inserting a tickle date in the tickler system.** Make this your file tickling rule. Also, instruct everyone you work with that no files are to be taken out of your office without a tickle date, and no files are to be put back in the cabinet without a new date in the system. This same practice should be followed for electronic or paperless filing systems.

### Conducting Periodic Reviews

In addition to specific tickle dates, set each file for periodic review. A 30-day file review interval is ideal for most cases, and most files should not be tickled for more than 60 days out. Some law firms find it helpful to use a dual system: one reminder every 30 days to refresh the lawyer's memory about the client matter followed by a second reminder every 60 days to physically pull the file. A dual system is easy to set up in a calendaring or case management program by creating a recurring appointment or task.

The maximum review frequency should be established at the outset of the matter and written in the file, either on the client intake sheet or on a file opening memo. If you are paperless, note the maximum review frequency in your calendaring or case management system. Consider using fillable Intake Sheets, as described below. If the case has been concluded, close the file. If you represent a client in multiple matters, open separate paper or electronic files for each matter. Avoid keeping concluded matters in your open files.

### Tickling Specific Deadlines

You should also tickle specific deadlines. For example, a file for a case in which you have given someone 10 days to respond should be tickled for 11 or 12 days. If you receive no response, you are reminded to take the next step immediately. If the deadline is not tickled, the file remains dormant in the cabinet or in your computer system and you are not reminded to take action. Your reminder may be the angry client calling to find out what is going on.

Tickle final deadlines, such as statutes of limitations or appeal deadlines, with ample reminder dates. Also, mark these dates directly on the file or prominently in your computer system where you can easily see them.

### **Setting Reminder Dates**

Develop a general time line of tickle dates for each type of matter you handle. Include not only deadlines, meetings, and court appearances but also backup reminder dates. Give yourself adequate time to prepare for each upcoming event. For example, you should always tickle a file with a trial date for at least two months before trial, and again one month before trial, in addition to adding tickle dates for specific events. This method will give you plenty of lead time to make all final preparations before the trial date.

### **Following Up**

Set tickle dates to follow up after an event. This is critical for time-sensitive deadlines but is easily overlooked when the next move depends on someone else. For example, always tickle follow-up dates to check whether service of process was accomplished timely. Also, remember to tickle the file for follow-up shortly after a self-imposed deadline, in case something still needs to be done before the real deadline.

### **Managing the Caseload**

Use your tickling system to manage your work and help meet client expectations. Look at your calendar and find blocks of time when you can complete the next piece of work on a matter. When giving a client a date for completion of work, be realistic. Build in an extra cushion of time before the ultimate deadline given to the client. If you complete the work early, you will have a happier client and one less “to do” task on your plate.

If you have a good tickling system and to-do list, you don't need to keep all active client files stacked in your office. A good system should also reduce the fear that a file will disappear or never return if it is allowed off your desk. File hoarding makes it difficult for others who may need the file. You can neglect a file just as easily under a pile of other files as in the filing cabinet. Getting the files off your desk can reduce a major source of stress and help you organize your work more effectively. If your office is paperless, a good tickling system and to-do list will keep you on track.

## **Types of Docketing Calendars**

In every law firm, the central docketing calendar should hold all the important dates for each lawyer. If you maintain this calendar in addition to a file tickling system, the two will serve as backups to each other. You will be reminded of a particular event both by its presence on the calendar and by the file's reappearance because of a tickle date.

### **Central Docket Calendar**

Traditionally, the docket calendar was a large, desk-top calendar kept in a central location in the office and maintained by one staff member. Lawyers and staff members informed this person of important dates with written calendar slips.

For the sole practitioner, the central docket calendar may simply be the calendar that you or a staff person maintains. Docket dates and file tickle dates are maintained on one or both calendars. The essential element of a docketing system is to have ample reminder dates.

### **Docket List**

A variation of the central calendar is a true docket system. In this type of system, you maintain a running list of all the important dates. Many offices maintain specialized docket systems in addition to the central calendar. This is most common in firms with a heavy litigation practice because of the many court appearances and deadlines.

Usually, someone in the office enters the dates into a word processing document, spreadsheet, or computerized docketing or case management program. The docket list is updated daily or weekly and distributed to all staff and lawyers. In addition, each lawyer and staff person maintains a calendar for all his or her important dates and appointments. This system is more common in larger firms, where a central desk calendar is impractical because of the number of events to be docketed.

### **Computer Calendar**

Many small firms and sole practitioners are shifting their central calendars over to computerized calendars, case management software, or a combination of computerized and manual calendars. Calendaring or case management programs have many advantages over desktop calendars and are ideal for the sole practitioner or firm with networked computers. You can print or access up-to-date calendars at any time and set up recurring events as described above. This feature is ideal for matters that require periodic review, such as wills or corporations.

You can maintain different calendars in the same system, allowing each lawyer and staff member to have a personal calendar. If you need a firm-wide calendar, most programs can combine the individual calendars into one main calendar. Also, you can move or modify entries easily. The more sophisticated programs allow for entry of predetermined reminders for cases.

Some law firms choose to create a separate central docket calendar that is shared on the server. Lawyers and staff members can update this central docket with important dates. Maintaining a shared central docket can be very helpful when a lawyer or key staff member is unexpectedly out of the office.

### **Individual Calendars**

Most lawyers prefer to carry a calendar with them when they are out of the office. A traditional “day planner” can be handy, but works well only if you remember to transfer all new appointments or scheduling changes to your central calendar at the office. By contrast, you can easily synchronize a personal digital assistant (PDA) or smartphone to the central calendar on your computer. These devices can also store client contacts, documents, and e-mail. PDAs and smartphones have become more affordable, and with wireless capability, they allow the lawyer-on-the-go to stay in touch with the office. The key to making the system work is to synchronize all new or changed events from your personal calendar device to the main calendaring system. If an event appears only on your personal calendar and you are ill, on vacation, or lose your calendar, you may miss the deadline. When all events are synchronized to the main calendaring system, everyone in the office can monitor and respond to deadlines.

## **Using a Docket Calendar System**

### **Setting Reminder and Follow-Up Dates**

No matter what type of calendaring system you use, certain procedures are necessary to prevent error. It is essential that you enter all deadlines as soon as you are notified of them and that you create sufficient reminder entries. The number of reminder dates depends on the particular calendared item, but every item should have at least one reminder date. Three reminders are ideal: a month, a week, and a few days before the event date or deadline.

Follow-up reminders are also important, but they are often overlooked. If you are relying on someone else to do something, a follow-up entry date will remind you to verify that the action was taken. For example, if you sent the complaint to a process server, enter a follow-up date to verify that the process server effected timely service. If necessary, create a follow-up log for a particular matter. Include each important action, when it was accomplished, and by whom.



Without a follow-up system, you may not discover that a critical action was *not* taken until it is too late. Establish a policy stating what action should be taken if final reminders and follow-ups are ignored or you are unavailable.

Take the following steps to ensure that all important events are properly calendared:

1. Set spam or junk e-mail filters to allow receipt of e-notices from the courts in which you practice. Otherwise, an important deadline or notice may be missed. You may need to make this change at the Internet Service Provider (ISP) level *and* in the settings of your specific e-mail program. Example: Assume Comcast is your ISP and Microsoft Outlook® is your e-mail program. Log on to your e-mail account with Comcast at [www.comcast.net](http://www.comcast.net), and change the spam settings using Comcast's spam detector. Do the same with Outlook® by changing your junk e-mail options (specific steps vary depending on which version of Outlook® you are using.) These steps assure that neither your ISP (Comcast) nor your e-mail program (Outlook®) will block e-mail from the court.
2. Create an agent or rule in your e-mail program to automatically forward copies of e-notices to staff if they are not receiving them directly from the court.
3. Enter the final deadline on your calendar, on the staff person's calendar, and on the central docket.
4. Determine a reasonable time line for completing the various tasks before the deadline and ensure that those dates are entered.
5. Have a staff person enter reminder and follow-up dates for each task and the final deadline. For example, if the event is sending a complaint out for service, create a follow-up entry to verify that the process server actually served the complaint. If the event is to mail notice by certified mail, create a follow-up entry to verify that the certified card was returned. Indicate final reminders in red or boldface, or use the attention-getting features of your calendaring or case management program.
6. As the case proceeds, have the staff person bring the reminders and follow-ups to your attention and marks off tasks when they are completed.

Without reminder and follow-up dates, you can miss a critical date. Failing to respond to a critical date is a common type of malpractice. Use reminder and follow-up dates.

### **Calendaring All New Dates Immediately**

Immediate calendaring of new dates is critical for an effective calendaring system. The following are some techniques to shorten the time between the receipt of a new date and its placement on the main calendar.

1. **Intake Sheets.** Give each new client an intake sheet at the first appointment. The client completes the top half while waiting, and you complete the bottom half during the interview. The portion you fill out should include entries for important legal deadlines such as statute of limitations, file review frequency, and the first tickle date. If you maintain a paper-based filing system, place the client information sheet in the new file folder. If you have a paperless filing system, you may wish to convert your intake form to a fillable PDF in Adobe Acrobat® and e-mail it to clients for completion. The remainder of the form can be completed by you after the client interview. Otherwise, the paper form can be scanned and added to the new client's electronic file. In either case, enter the dates on the calendar immediately.

Client information sheets provide a permanent record of every client interview. If no file is opened, scan and save the intake sheet or keep a hard copy in a miscellaneous prospective client file. Be sure to enter the prospective client information into your conflict of interest checking system.

- Mail Handling.** In a small firm, have the person opening the mail enter all new dates as the mail is opened. Besides date stamping, that person should indicate on each item that the date has been docketed, either by highlighting the docket date or placing a checkmark next to it. If your office is paperless, consult the mail handling recommendations for paperless filing systems available on the PLF Web site, [www.osbplf.org](http://www.osbplf.org). Select Practice Aids and Forms under Loss Prevention, then Mail Handling.
- Synchronizing Calendars.** If you have a manual calendaring system, keep a supply of brightly colored calendar slips and carry these with you when outside the office. This allows you or a staff member to make note of new dates immediately and to give the note to the person in charge of the main calendar.

CALENDAR NOTE	
NAME _____	
<input type="checkbox"/> APPOINTMENT	<input type="checkbox"/> COURT APPEARANCE
DATE _____	
<input type="checkbox"/> AT OFFICE	<input type="checkbox"/> AT OTHER LOCATION
TIME REQUIRED _____	
COMMENTS: _____	

If you use a PDA or smartphone, get into the habit of synchronizing it to your main calendar on your office computer at the start of each day.

- Access to the Calendar.** Keep the docketing calendar in a central location so everyone in the office has access to it. If the main calendar is manual, color code entries. Use different colors for each lawyer or type of entry (e.g., red for trials, orange for depositions, green for motions, purple for filing deadlines, etc.). Color coding is also a feature of most computerized calendaring or case management programs.
- Daily Conferences with Staff.** Meet with staff daily to confirm new calendar items and discuss tickled cases. This is an excellent time to review new mail, report on the progress of work, and assign tasks to staff. Good communication can prevent calendaring errors.

## TIME MANAGEMENT

Do you manage your time effectively or does time manage you? Many lawyers allow time to manage them, letting interruptions deter them from their intended tasks. Some lawyers even look forward to these interruptions as a way of avoiding the work they should be doing. Lawyers who say, “My best client called and I had to drop everything,” have an excuse for falling behind in their work. They justify it as unavoidable – but is it?

It is easy to rationalize that the drop-in client *must* be seen, or that all phone calls must be taken. Many lawyers believe that if they do not take their calls, phone messages will stack up and they will not have time to return them. However, those same lawyers may avoid phone calls from angry clients who call to find out why their work has not been completed.

People who habitually procrastinate need to ask themselves why. Is it because they are unsure how to proceed? Is there a personality conflict with the client? Is it a feeling of power, that is, making everyone run around at the last minute to help get the project completed? Some people feel that they do their best work under pressure, but procrastination causes a great deal of stress for procrastinating lawyers and those who must work with them.

The OSB’s Lawyer to Lawyer program is an excellent resource when you are unsure how to proceed in a case. Lawyers registered with the Lawyer to Lawyer program have agreed to volunteer their time to help other lawyers decide what steps to take in a matter.

The Oregon Attorney Assistance Program (OAAP) is another source of help for the procrastinating lawyer. The OAAP facilitates a group of lawyers who have agreed to work on their procrastination issues. These lawyers want to discover why they procrastinate and how to overcome the problem. Participation in the group requires a commitment to attend the weekly workshops and work through the program.

### Schedule Work

One way to avoid being managed by time is to take control of your calendar. Use your calendar as it is meant to be used – to schedule your day. No one has any trouble putting appointments with other people on the calendar, but very few think of making appointments with client files. If the “Jones contract” must be completed, schedule an appointment with yourself to do it. For example, put a two-hour appointment on the calendar with the “Jones contract.” Block out this time the same as you would for any client who comes in to the office.

You most likely have calls held when you are meeting with a client. The same should hold true if the client is not there but the client’s file is. Even one short phone call can be a significant interruption. A two-minute telephone call may cut into the time you need to work on a project by 10 to 20 minutes. By the time you make notes on the phone call and regain your lost train of thought, a great deal of time may have passed.

All of us have situations arise that require immediate attention. When this occurs, the best efforts to follow through with carefully scheduled time will fail. However, these emergencies should be rare and not routine. If an emergency does arise, do not let the whole system fall apart. Rearrange your schedule and keep going. Carefully scheduling work allows projects to be completed on time. The office where everything is a last-minute rush creates stress for everyone involved – you and your staff. Scheduling your work and your day will allow everyone to take a deep breath occasionally. It will also make you, your staff, and your spouse or significant other, happier.

## **Schedule Time to Return Phone Calls**

Block out time to make or receive telephone calls. Staff can tell callers when you are available. If callers know approximately when to expect a return call, they can attend to other matters. Clients often expect you to call back within a few minutes, and they will sit by the phone anxiously waiting for a return call. When their calls are not returned within a few minutes, clients become irritated. They do not want to leave the phone for fear of missing the call, but they do not want to waste their time sitting there, either. When the phone call *is* returned, the client may not be available. So the same routine starts over. This is a waste of everyone's time.

Figure out what time of day is most productive for you. Are you a morning person who runs out of steam later in the day? If so, do legal work in the morning and use the afternoon for appointments and returning phone calls. If you are a slow starter and do not reach your peak until later in the day, see clients and return phone calls in the morning. Inform clients when you take on a new case what time of day you take calls and why. Doing legal work during your peak thinking hours allows you to spend less time spinning your wheels. You are able to concentrate better on the matter at hand.

## **Deadline Dates**

All deadline dates must be calendared. You also must calendar reminders of these upcoming deadlines. For example, a statute of limitations deadline should have a reminder on the calendar every month for the six months before the limitation date, weekly for the last month, and daily for the last week. However, never wait until the last minute on a statute of limitations. Too many things can prevent you from meeting a fatal deadline date.

In addition, calendar all self-imposed deadlines. If you have promised a document to a client by a certain time, that is a deadline that should be calendared. If you find you cannot keep that deadline, let the client know and give the client a new date. Clients generally accept revised deadlines graciously if they are told directly. Waiting for the client to call to find out what is going on does not improve, and may even harm, your attorney-client relations.

Better yet, plan ahead. Before you make a promise to the client to complete a task by a certain date, take a moment to *realistically* assess your schedule. Think about the task. How long will it take? Who will be involved? When can you find a block of time to work on the task without interruption? If you form the habit of planning ahead, you can avoid breaking a promise to a client or setting an unrealistic self-imposed deadline. For more information on calendaring, *see* Calendaring and File Tickling Systems, *supra*.

## **Enlist Staff Help**

Instruct staff to take detailed messages from callers. This information allows you to be prepared to answer the callers' questions when you return their calls. When you return a call without knowing what the caller wants, you may find that you don't have what you need in front of you. You may have to call the client back yet again.

Sometimes the client just needs specific information that your staff person can provide. When you are given a detailed message, you can determine who should return the call. Most clients are not concerned about who returns the call, as long as they get the answers they need.

## **Checklists**

A good checklist will take you step by step through a case. It ensures that you do not forget to get pertinent information from the client. It should include not only the necessary procedures but also the time lines involved in those procedures. A checklist will allow staff to become familiar with the procedures of a

particular type of case and to know what steps need to be taken next. Without a good checklist, much time is wasted going through a file to find out what was done last and what must be done next.

Keep a checklist in each file and record all actions as soon as they are taken. (It is important that the person completing the action have the file. Otherwise, it is easy to forget to make the entries.) If your office is paperless, create a checklist by chaining together related deadlines and events using case management software. *See* Calendaring and File Tickling Systems, *supra*.

Another good way of keeping on top of each case is to set up a tracking sheet for each area of the law in which you practice. You can do this by listing, for instance, each probate case you have in the first column of the tracking sheet. Set up columns across the page and head them by each sequential step you need to take. (*See* sample Master Probate form at the end of this chapter.) As you complete the steps, check or date the columns and add new cases as you take them on. As an alternative to the tracking sheet, some lawyers use a dry-erase board so they can erase the completed cases and insert new ones. Offices using case management software can track cases by creating matter reports sorted by practice area. All three methods – tracking sheet, dry erase board, and case management reporting – allow you to look at all the cases you have in an area of law and see where you are on each case at a glance.

A good checklist will ensure that nothing is overlooked. Each area of the law lends itself to its own distinctive checklist. The PLF has many checklists you can use as is or adapt to fit your particular practice. For more information about checklists and practice aids available from the PLF, *see* Resources, *infra*.

### **Mail Handling**

Set aside a specific time each day to review your mail – usually shortly after it arrives in the office. If you are a sole practitioner with no staff, turn on the answering machine or activate your voice mail and devote your entire attention to opening the mail, date-stamping it, and deciding what to do with each item. If you allow interruptions during this time, deadlines may be overlooked or papers may be placed into the wrong files.

Put educational materials and magazines in a stack to be read later. Glance at junk mail and throw it away, unless it is something you are interested in. Make an immediate decision on all other mail. Pull the file for each piece of mail. Promptly docket/calendar all items that need to be calendared. File all items and tickle the files that do not need immediate action. Attach mail to the files that need immediate attention. When the action is taken, file the documents in the appropriate file. This eliminates loose documents laying around your office that may be lost or misplaced.

If you have staff, use this time to meet with them to go over the mail and the calendar and to review files tickled for that day. Many items can be delegated to staff for handling. If mail is scanned and distributed electronically, review mail handling procedures for paperless offices available on the PLF Web site at [www.osbplf.org](http://www.osbplf.org). Select Practice Aids and Forms under Loss Prevention, then Mail Handling, then “Mail Handling Paperless Filing System.”

Meeting with staff daily not only ensures good communication, but it also allows each of you to review upcoming deadlines and work schedules. It is also a convenient time to review the status of current cases. This enables staff to talk intelligently to clients when they call and cuts down on unnecessary interruptions in your workday.

### **To Do List**

Using some type of “to do” list works well for most people. You can handwrite and prepare this list each morning or at the end of each workday for the next day. You can keep it on your desk or carry it with

you so you can add items to it as they come to mind. As you complete items, check them off the list. Items you do not complete should be rewritten on a new list.

Many computerized calendaring programs include a “to do” or “task” list. Most of these programs roll uncompleted items over to the next day’s list and will even show how many days an item has been on the list. You can print computerized “to do” lists to carry with you or synch them to a PDA.

Most of us put more items on a “to do” list than we can ever hope to accomplish in a single day. Do not let this be self-defeating. Give yourself permission not to do everything on the list. Otherwise, you may feel guilty and stop using a “to do” list.

A “to do” list can become overwhelming, so limit it to the items that need doing in the near future. Keep items that you may want to do sometime in the future on a list for future projects and not on the “to do” list.

### **Computer Management**

A computer can be a great time-saver, if it is properly set up and used to the fullest. However, many people use a computer only as a typewriter, which is not much of a time-saver. Learning some rudimentary computer skills beyond word processing is beneficial to any office.

Depending on your level of computer literacy, you can set up your computer in several ways to benefit you to the fullest. This section outlines a simple way to organize your hard drive. Those with greater computer literacy can probably develop their own systems using these principles.

You can develop forms using templates, macros, and merge documents or by inserting an asterisk wherever there is variable information in a document. Enhancements to word processing programs and specialized document assembly software can speed up the process.

As you develop forms, organize how you store them on your computer. Start by setting up two directories or folders – one labeled “Forms” and another labeled “Letters.” Within these directories, create subdirectories or subfolders for each area of law in your practice, such as probate forms/letters, workers’ compensation forms/letters, domestic relations forms/letters, will forms/letters, and so on. Whenever you prepare a document or letter that is likely to be used again, save it to that particular “forms” or “letters” directory. Go through the document, delete variable information, and replace it with an asterisk or set it up as a merge document for future use.

Directories and subdirectories will keep you and your staff organized and allow for easy retrieval of forms and documents. Set up a subdirectory for each client’s case. As you work on a case, import forms and letters from the various directories and subdirectories to that client’s directory. Make changes to the forms and letters to fit the client’s circumstances and then save them in that client’s directory or folder. Give the changed form or letter a new name, so the original document is not changed and remains in its original directory or subdirectory to be used again.

When you close the client’s file, archive the client’s electronic information (e-mails, correspondence, pleadings, etc.) One approach is to move or copy the client’s directory or folder to appropriate computer media and delete it from the hard drive. Label and save the media. If you need to reopen the client’s file, you can easily reload all the documents onto the computer. One added benefit to this system is that you can remove all office-generated forms and letters from the case file when it is closed because they have been stored on media. This saves file storage space. For more information, *see* Closing Files, *infra*.

Besides generating your own forms, many forms are available from the OSB's CLE Publications department, other independent developers of forms, and the PLF ([www.osbplf.org](http://www.osbplf.org)).

Learn how to use your computer to its fullest, so you are not constantly reinventing the wheel. This saves you time and saves your client money. It also gives you more time to take on more clients and make more money.

One thing to keep in mind with any form of time management is that some people function better with rigid controls and schedules. However, most of us need flexibility. Build some flexibility into your schedule as an option. If you need the extra time – great. If not, you can use the time to work on other projects without feeling guilty.

## Master Probate Checklist

(SAMPLE ONLY—THIS IS NOT A COMPLETE CHECKLIST)  
 (USE THIS SAMPLE AS A GUIDELINE TO CREATE YOUR OWN)

Name of Estate Personal Representative SS# of Decedent/ ID# of Estate Probate Number	Date of Death	PR Appt.	1st Pub. Date	Notice to Heirs	Inven. Filed	Indiv. Inc. Tax Ret.	Req. for Audit	Four Mos. Exp.	File Final Acct.	Not. Final Acct.	Req. for Release	Estate Closed



## CLIENT RELATIONS

Establishing and maintaining a good working relationship with your clients is one of your best protections against a malpractice claim. A client with whom you have maintained good communication will be less likely to sue you than one who harbors frustrations about having been ignored or mistreated. This is true even if an administrative error occurs that might be grounds for a potential claim. Also, good client relations often allow a claim to be handled without the necessity – and cost – of litigation.

Common courtesy and good communication are the key factors in good client relations. Here are some suggestions to follow.

### Clarify Fees at Initial Meeting

Clients have a right to know what your legal services are going to cost. Some clients ask this question right away, but others are quite timid about discussing money. In fact, many lawyers are uncomfortable discussing fees, but you need to fully discuss this topic with the client before you proceed with a case. Clients who do not understand their responsibility to pay are the ones who will be unhappy with the amount charged. (For more specific guidance in clarifying fees, *see* New Clients, *supra*.)

### Keep Your Client Informed

The most important thing you can do is to keep the client informed. Transmit almost everything you do or receive to your client with a simple cover letter or e-mail explaining what is enclosed or by use of a stamp “For Your Information Only – No Response Required.” Make it a standard office policy to send copies of everything to your client unless you instruct staff otherwise.

Keeping your client constantly advised will dramatically cut the number of telephone calls the client makes to your office wanting to know what is going on. In turn, both you and your staff will spend less time on the phone. This frees all of you for other work.

If there is no activity on a file for a time and the file comes up on a routine tickler review, send a short status letter or e-mail to your client. The client will be glad to know that you have not forgotten the case and will be less likely to keep calling the office wanting to know what is happening.

Unless you have arranged to provide documents electronically, give clients their own file folders that are labeled with the name of the matter on the file tab. Each case file should include the initial fee agreement and an outline of what the client can expect as the case progresses, including a discussion of procedures and time lines. Whether you provide documents by mail or e-mail, tell the client to keep copies of everything you send. If the client is keeping a file, instruct the client to bring the file to your meetings. Provide the clients with copies of everything as their cases proceed so that they can build their own record of the case. (*See* Organizing and Keeping Client Files, *infra*.)

### Follow Up in Writing

Follow up most office and telephone conferences and discovery procedures with a letter or e-mail to the client setting out the relevant information including the items discussed, any action taken or to be taken, and advice given. This letter provides the client with communication and you with proof that you reviewed the matter with him or her. It takes no longer to compose a letter or e-mail than to write a memo to the file, and a letter or e-mail will be far greater protection than a memo in case of a malpractice claim.

Although documenting the file does require some additional time and effort, it is time and effort that improves your relationship with your client. Isn't it better to spend a little extra time documenting the file than to lose billable time defending a legal malpractice claim?

Providing a written summary of what transpired in a conference provides clients with an opportunity to review and think over the information. Most clients are upset when they visit their lawyer and may focus only on the positive or the negative said to them. They may not hear or understand everything, or they may misinterpret what is said. When given the opportunity to review a letter in their own homes or offices, clients can digest the information and ask for further clarification if needed.

The average client is not knowledgeable about the law or legal terminology, so word your correspondence in a way that a lay person can readily understand.

### **Communicating By E-mail**

If you communicate with clients by e-mail, you must keep a record of all messages sent and received. Make it a habit to save all messages and attachments electronically or print them for the client file. (See *Organizing and Keeping Client Files, infra.*) Keep in mind that e-mail may be discoverable. Exercise care in what you say (or don't say). Include a confidentiality disclaimer at the *beginning* of your e-mail message. If the message is misdirected, the recipient will immediately know it is a confidential communication that should not be read.

For a sample confidentiality disclaimer and detailed instructions on how to save client e-mail, visit the PLF Web site at [www.osbplf.org](http://www.osbplf.org). Select Practice Aids and Forms under Loss Prevention, then Technology, then "Disclaimers For E-mail, ListServes, Usenets, Web Sites, and Newsletters" and "Managing Client E-Mail." For tips on improving e-mail communications, See "Using E-mail in the Office," also available on the PLF Web site at [www.osbplf.org](http://www.osbplf.org). Select Practice Aids and Forms under Loss Prevention, then Client Communication.

### **Create Realistic Expectations**

Many legal malpractice cases are filed because clients had unrealistic expectations. Carefully evaluate the pros and cons of new cases or courses of action and explain them to the client. (For specific guidance on creating realistic expectations, see *New Clients, supra.*)

### **Return Telephone Calls**

Nothing is more irritating to clients than to call you, not be able to reach you, and then not have their call returned. They feel ignored or avoided. Clients who are told that you will return their calls will sit by the telephone waiting, afraid to leave for fear of missing the call. To avoid the problem, give clients a time frame in which they might expect your return call. Then they can go about their business and be available when the call *is* returned. Instruct staff to tell the client that a message will be given to you. Staff should *not* state, "I will have the lawyer return your call." You may not be able to keep that promise.

Voice mail messages are easy to change. If you are using voice mail, record a new message each morning and give callers some idea of what to expect. If you are in trial, the voice mail message may state as much and indicate that you will not return calls until evening. If staff members, associates, or partners are available to assist clients in your absence, include this information in your message. The caller can then contact someone else in the firm or leave a message for you with alternate times to call, if the caller will be unavailable in the evening. Recording a new greeting each day sends the message that you are diligent and monitor your voice mail daily. Used properly, voice mail can be a valuable communication tool for you and your clients. See "Using Voicemail in the Office," available on the PLF Web site at [www.osbplf.org](http://www.osbplf.org). Select Practice Aids and Forms under Loss Prevention, then Client Communication.

Advise the client at the outset of your representation that you do not take telephone calls at certain times of the day because of:

1. court appearances;
2. time blocked out to concentrate on legal work; or
3. conferences with other clients.

Assure clients you will return their calls at your earliest opportunity. If you have staff, introduce the client to staff and encourage the client to talk to staff if you are not available. Clients who know in advance that you are not always accessible by phone will not be upset. They will assume it is a perfectly normal way to conduct business.

You may have nothing to tell the client and feel it unnecessary to return the call. Or you may be extremely busy and not have the opportunity to return the call. A good staff person, at your direction, can return the call and advise the client of the status of the case. If the client needs something that requires your assistance, staff can transmit an accurate message. This enables you to be prepared with the information before returning the call, eliminating the need to call the client back again.

If clients are expecting a return call and you are detained, instruct staff to call back and inform them of the delay. This extra effort really doesn't take much time and gets great results. Clients will appreciate the update, and staff may be able to take a more detailed message for you.

### **Show Respect for Clients**

Remember that clients are paying for your services. Treat them with the same respect you demand and expect from your service providers. Strive to make each client feel important. Clients feel communication from you is important. You may not think a client needs to know something, but he or she may *want* to know it. Think how you feel about being uninformed, put on hold, or forced to wait. Always:

1. return phone calls the same day, or have a staff person return them;
2. be on time for appointments;
3. avoid taking phone calls during office conferences;
4. give clients your full attention – do not interrupt their phone calls by speaking to other people in the room;
5. send clients copies of your work product;
6. show an interest in each client as a person; and
7. bill on a regular, preferably monthly, basis.

Most areas of law require a lot of client contact. Generally, people consult lawyers because they have experienced a traumatic event and need help. They are usually unfamiliar with the legal process and are relying on you to protect them. Usually, they want to be informed of all developments.

### **Let Clients Make the Decisions**

Your responsibility to clients involves outlining alternatives, explaining consequences, and providing enough information so they can make decisions. However, it is *not* your responsibility to make those decisions for them. Clients need to be involved throughout your handling of their cases. Make sure you are communicating clear and concise information, but do not be pressured into making decisions for clients. Never proceed without a client's permission, and always obtain express permission for:

1. granting extensions of time to the adverse party;
2. stipulating to evidence or testimony;
3. suggesting settlement figures to the other side;

4. rejecting settlement offers;
5. settling cases;
6. agreeing to continuances; and
7. concluding testimony in litigation matters.

If a client decides to proceed against your advice or in a manner you feel has important ramifications, document the file with a letter or e-mail to the client confirming the implications of that decision.

Lack of informed consent is one of the major causes for legal malpractice claims. Often a lawyer provides adequate information to the client but is unable to prove it later. Carefully analyze the client's capacity and determine the best way to document your advice. It may be necessary to send a letter by certified mail, return receipt requested, or have the client reply to an e-mail or sign a copy of a letter acknowledging that the advising letter was read and understood. Or it may be necessary to have a settlement agreement reported by a court reporter to verify the client's consent.

### **Settlement Negotiations**

Keep your client informed in writing of all settlement offers, no matter how unfavorable. Do not make any offers or agree to any settlements without thoroughly discussing the pros and cons with your client. Failure to communicate a settlement offer is a frequent source of malpractice and ethics claims.

When a client does decide to accept or reject a settlement offer, be sure to document your file with a letter or e-mail to the client setting out the terms of the proposed settlement, the advice you gave, and the client's decision. Whether to accept or reject a settlement offer is the client's decision. Your role is to provide the information he or she needs to make an *informed* decision. Beware of putting pressure on a client to accept a settlement. It may be better to resign from a case or suggest that the client get a second opinion than to be too persuasive.

Clients who are informed of all aspects of a case and are encouraged to remain involved feel better able to make a decision on settlement. The client who dumps the matter on your desk and makes it your problem will never be happy with the result. These clients will distance themselves from the matter and never understand what is going on.

### **Reject Certain Cases**

Careful client and case screening is an effective way to avoid poor client relations. Most lawyers can spot a difficult client after a relatively short time in practice, so follow your instincts. If you do not feel you can or want to devote the necessary time to a client, do not take the case or arrange to withdraw from representation if you have already taken it. Avoiding a difficult client after you have already taken a case almost inevitably results in a malpractice claim. (For more specific information on case and client screening or withdrawing from representation, *see* New Clients, *infra*.)

### **Staff Responsibilities**

Have you ever walked through your front door and viewed your office as your clients see it? Your receptionist is the first person clients see, and his or her voice is the first one they hear when calling. Does your receptionist give the impression of being competent and congenial or irritated and disinterested? Instruct all staff to make the client feel comfortable and important. After all, without clients there would be no payday. Even the most difficult client can usually be tempered with a smile and a friendly greeting.

Your staff is a very important part of client relations, so take the time to train your staff on how to deal with clients. Explain their limits in discussing cases with the clients. Also, explain the need for

confidentiality. Staff often do not realize they are bound by the same legal ethics as lawyers. Make this point an essential part of employee orientation for every new staff member.

Although being treated rudely by staff may not create a malpractice claim, it is certainly not conducive to good client relations. A rudely treated client will not recommend you to others and may advise others not to use your services.

### **Marketing**

Happy clients are your best marketing tool. In fact, ABA studies indicate that 54 percent of a lawyer's business is from referrals by satisfied clients.

Using a good tickler system (*see* Calendaring and File Tickling Systems, *supra*) will allow you to follow up in future years to remind clients of actions they may need to take. Clients appreciate such reminders, which can be a source of additional business for your firm. Be mindful, however, that notifying a former client of the possible need for further action on a completed matter may convert that former client into a current client for conflict purposes. *See* OSB Legal Ethics Op. 2005-146. To avoid this result, *always* send a closing or disengagement letter at the conclusion of the case and include a disclaimer in your follow-up letter that states that your letter is being sent as a reminder only and not for the purpose of offering legal advice.

Remember, you are selling a service. Clients are your business. *Clients hire you* – not the other way around. Find out your clients' expectations. Usually, clients are more concerned with service and value than with results. One way to find out whether you are meeting your clients' needs is to send a simple survey (*see* Client Service Questionnaire, *supra*) to each client at the close of the case. A good survey will give you insight about what you are doing right and what you need to improve.

## Client Service Questionnaire

How were you referred to our firm?

- Know lawyer or staff member personally. Name \_\_\_\_\_
- Referred by someone. Name \_\_\_\_\_
- Saw firm advertisement or brochure. Where? \_\_\_\_\_
- Saw firm Web site \_\_\_\_\_
- Other (please explain) \_\_\_\_\_

Why did you select our firm?

- Convenient location
- Firm/lawyer reputation
- Personal relationship with lawyer/staff member
- Business relationship with lawyer/staff member
- Cost of legal services
- Recommendation (please explain) \_\_\_\_\_
- Other (please explain) \_\_\_\_\_

What is your opinion about the following?

	Very Satisfied	Somewhat Satisfied	Somewhat Dissatisfied	Very Dissatisfied
Convenience of the office location	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comfort and appearance of reception area	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Staff helpfulness	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Courteousness	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ease of reaching your lawyer on the telephone	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Promptness in returning telephone calls	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Promptness in responding to e-mail, if applicable	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Clarity of lawyer's explanations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Amount of information I got about my case	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Settlement amount, if applicable	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Charge for attorney fees	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lawyer's responsiveness when I wanted to meet	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lawyer's skills as a listener	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lawyer's concern about me as a person	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lawyer's belief in my case	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Overall, what is your level of satisfaction with our service?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Did we meet your expectations?  Yes  No

Do you feel you could have handled your case as well without a lawyer?  Yes  No

Would you ask our firm to handle another case for you?  Yes  No

Would you refer a friend to our firm?  Yes  No

Do you have any suggestions for how we can improve our services? (Continue on separate sheet if necessary.)

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Thank you for taking the time to complete our questionnaire. We will review your answers and strive to make appropriate changes to serve you and other clients better.

If you want to give us your name and phone number, we may call you to discuss your feedback. We will also discuss any action we are taking to improve our service to clients. We thank you again for selecting us as your lawyers and helping us improve our client service.

OPTIONAL: \_\_\_\_\_ (Name) \_\_\_\_\_ (Date)  
 \_\_\_\_\_ (Phone) \_\_\_\_\_ (E-mail)  
 \_\_\_\_\_ (Case/Matter)

## OFFICE AND TRUST ACCOUNTING

Generally, lawyers are not very familiar with bookkeeping or accounting principles. Law schools do not teach financial management, so accounting and bookkeeping experience must be obtained from other sources. If you lack skills in these areas, be sure to hire a bookkeeper or accountant.

You should have two office bank accounts: one for general office expenses and the other for funds held in trust for clients (Lawyer Trust Account). This two-account system is required by the Oregon Rules of Professional Conduct.

### General Office Accounting

#### Chart of Accounts

A chart of accounts is a list of categories for payables and receivables. (*See* sample at the end of this chapter.) Categorizing payments and receivables allows you to figure out how much money you are spending in each area – for example, library, office supplies, rent, photocopying, telephone, insurance, education, and costs advanced.

#### General Ledger

If you are setting up your accounts manually, use some type of ledger book or pad with columns across the page. Some ledger books already have account categories listed at the tops of the columns, while others are blank, allowing you to write your own. As you write checks, enter the payee in the payee column and enter the amount of the check in both the amount column and the column under the proper category. If the check applies to more than one category, split these items and enter each amount in the column for its category. For instance, the telephone bill may contain charges for your Internet access, Web hosting, telephone service (landline and cell), and yellow page advertising. Enter the total amount of the check in the amount column and deduct it from the running balance – then enter the proper amounts in the columns for the various expense categories. This method makes it easy to track all your categories individually. This book is called a “General Ledger.” (*See* the sample at the end of this chapter.)

If you are using a computerized accounting system, such as Quicken® or QuickBooks®, the program will come with a set of predetermined account categories. You may want to delete some of them and add your own. Most accounting software allows you to do this *and* to split amounts among various categories.

You should total all categories monthly and transfer the totals to a monthly tracking sheet for each category. Manual bookkeeping ledgers may already provide the format in the general ledger book, while computer programs sort and print out these reports.

Most of your accounts receivable will come from fees. However, you will also need categories for other receivables, such as capital outlay, refunds, and costs advanced, so that these amounts are not reflected as income. If you overpay an insurance premium and the overpayment is refunded, enter it as a deposit and deduct it from the insurance category. If a client reimburses costs advanced paid out of the general or office accounts, enter them as a deposit and subtract them from the costs advanced expense category.

#### Financial Record Keeping and Account Balancing

Each time you make a deposit, list its source in an income and reimbursement category (refer to the sample general ledger at the end of this chapter, columns 1-3) *and* list the deposit in the “total received” column (refer to column 4 in the sample). You must also add the deposit amount to the general account balance (refer to column 5 in the sample).

Each time you pay an expense, list the source of the expense in an expense category (refer to columns 7-11 in the sample) and list the expense in the “total paid” column (refer to column 6 in the sample). You must also subtract the expense amount from the general account balance (refer to column 5 in the sample).

To balance your ledger, follow these steps:

STEP 1. Total each item in the income and reimbursement categories (refer to columns 1-3 in the sample) each month. This gives you a total income and reimbursement amount for the month. For the purpose of this illustration, we will refer to that total as the “income and reimbursement total.” This amount should be the same as the total of all the entries in the “total received” category (refer to column 4 in the sample). If you do not come up with the same total, you must backtrack to find your error. If you get the same total for these two (the total of the individual categories and the total of all entries in sample column 4), you can move on to the next step. Using the sample general ledger at the end of this chapter, the total of all the entries in the income and reimbursement categories is \$11,200.

STEP 2. Total each item in the expense categories (refer to columns 7-11 in the sample) each month. This gives you a total expense amount for the month. For the purpose of this illustration, we will refer to that total as the “expense total.” This amount should be the same as the total of all the entries in the “total paid” category (refer to column 6 in the sample). If you do not come up with the same total, you must backtrack to find your error. If you get the same total for these two (the total of the individual categories and the total of all entries in sample column 6), you can move on to the next step. Using the sample general ledger at the end of this chapter, the expense total for the month is \$2,200.

STEP 3. Take the income and reimbursement total for the month (*see* STEP 1) and add it to the beginning balance for the month (refer to the beginning figure in column 5 in the sample). For the purpose of this illustration, we will refer to this new figure as beginning balance plus monthly income and reimbursement (BBPMI&R). Take the “expense total” for the month and subtract it from the BBPMI&R. This new figure (the beginning balance plus the money received during the month minus the money paid out during the month) should equal the ending balance for the general account (refer to the last entry made in column 5 of the sample). If it does not, you must backtrack and find your error. If it does match, and you have done all three steps, you have completed the first part of balancing your accounts. Using the sample general ledger at the end of this chapter as an example, the BBPMI&R is \$11,200 (income and reimbursements of \$11,200 plus a beginning balance of \$0). When the expense total for the month (\$2,200) is subtracted from the BBPMI&R of \$11,200, a net of \$9,000 remains. This equals the ending balance for the general account (the last entry made in column 5 on 1/12/09).

When you receive the bank statement each month, check off the cleared checks against those written for the month. Most bank statements have a simple chart and formula on the back of the statement that makes it easy to reconcile the statement. If you use a computerized accounting program, it should come with a reconciliation function to assist in this process. Problems arise when accounts are not reconciled monthly. Allowing a staff person to have sole responsibility for this procedure without overseeing the accounts provides unsupervised access to your funds and greatly increases the likelihood of employee theft. Always have staff deliver your bank records to you unopened, or have them sent directly to your home. Review the statements and cancelled checks (including the signatures) monthly. Many lawyers have found out too late that a staff person took funds. If your staff person takes funds from the Lawyer Trust Account, you may be disciplined even though you were not involved in the theft.

Be careful about who you permit to be a signer on the office accounts. Even if you have indicated that two signatures are required on checks over a certain amount or that staff can only sign checks up to



\$500, banks are not responsible for monitoring the signatures on checks. You must take special care to fulfill this responsibility. It is advisable to bond employees who have access to accounts or firm credit cards and to obtain appropriate insurance. Contact your insurance broker for more information. Always be aware of what checks are written and what bills are paid. Review both carefully.

## **Budgeting**

Even a new lawyer starting a sole practice needs a budget. (For a sample budget, *see* the Getting Started section of this handbook.) Without one, it is easy to overspend and hard to plan for future purchases. Knowing the amount of your overhead will help you decide how much money you need to make and how much you need to charge to make that amount. Failure to budget can cause financial problems. Lawyers with financial problems may take on new clients who have money in hand, leaving the work for existing clients unfinished. This soon turns into a vicious cycle and leads to disciplinary complaints from clients whose work is not completed. Financial problems also increase the temptation to borrow from the Lawyer Trust Account.

### **Start-up Costs**

Start-up costs are usually one-time expenses such as equipment and furnishings. To meet your start-up costs, set aside money to cover living expenses and overhead for at least the first six months of practice. It normally takes that long to establish any kind of cash flow.

### **Fixed Expenses**

Fixed expenses are those items that you need to pay every month, for example, rent, salaries, payments on equipment, and supplies. The amounts of these fixed expenses change very little on a month-to-month basis. When you add these fixed expenses, you have the amount you need to make each month to pay basic expenses. Remember, hours worked and billed one month may not actually generate revenue until the next month or the month after that.

Some fixed expenses are only paid quarterly or yearly. These include insurance, malpractice coverage, and dues. If you divide these expenses into monthly amounts and set them aside each month, you do not have to come up with a large lump sum when these payments become due. It may be hard to discipline yourself to do this; however, by not doing so, you may put your law practice in jeopardy.

One large fixed expense that you should set aside money for is estimated quarterly taxes. Do not mistakenly assume you will show no profit, especially in the first year, and then be shocked to find out how much you owe the IRS.

Once you have determined all your fixed expenses, you know how much is left over for you or available to pay extra expenses.

### **Extra Expenses**

Extra expenses may consist of items like BarBooks from the OSB or a software program you feel will enhance your practice. Without a budget, buying extras can drain sums that should be reserved to pay fixed expenses.

Using a budget will allow you to set aside money for future purchases. You can then use cash to buy new equipment or furniture without having to take out a loan or draw on a line of credit.

### **Using a Budget to Plan**

Having a budget enables you to decide when you can hire additional staff, move to better office space, or increase other benefits. It also provides you with a way to determine where you can cut expenses. Working with a budget and a full understanding of the office cash flow allows you to make adjustments that

are compatible with your priorities. (For more information on these topics, *see* Billing and Collections, *infra*.)

### **Trust Accounts**

The ethical obligations for those who set up Lawyer Trust Accounts are rooted in the principle that a lawyer who holds funds of a client or third person in trust, even for a brief time or intermittently, has the duty as a fiduciary to safeguard and segregate those assets from the lawyer's personal and business assets. ORPC 1.15 sets forth the ethical duties and obligations of a lawyer who is holding client or third person funds. The duties set forth in ORPC 1.15 are intended to eliminate not only the *actual* loss of client funds but also their *risk* of loss while in the lawyer's possession.

Lawyers must account for every penny of client funds as long as the funds remain in their possession. ***This responsibility cannot be delegated, transferred, or excused by the ignorance, inattention, incompetence, or dishonesty of the lawyer or the lawyer's employees or associates.*** A lawyer may employ others to help carry out this duty but must provide adequate training and supervision to ensure that all ethical and legal obligations to account for those monies are being met. *In re Mannis*, 295 Or 594, 668 P2d 1224 (1983) (lawyer reprimanded although he was unaware employee was commingling funds).

The need to handle a client's funds with extreme care should be self-evident. Even so, cases continue to arise in which practicing lawyers, whether inadvertently or intentionally, mishandle their clients' money, thus subjecting those clients to the risk of economic hardship and seriously undermining public confidence in the legal profession. Mishandling client funds can also subject the lawyer to disciplinary action, which may result in the lawyer losing his or her license to practice law.

For more information on lawyer trust accounts, see the PLF publication, *A Guide to Setting Up and Using Your Lawyer Trust Account* (2009), available on the PLF Web site, [www.osbplf.org](http://www.osbplf.org); the OSB CLE publication, *The Ethical Oregon Lawyer*; contact the administrator of the Oregon Law Foundation (OLF) at 503-620-0222 or 1-800-452-8260, ext. 373; or visit the OLF web site at [www.oregonlawfoundation.org](http://www.oregonlawfoundation.org).

## Chart of Accounts

(This is not a complete list, but merely an example.)

### RECEIVABLES (Income and Reimbursements)

Fees	Fees received
Referral Fees	Fees received (from other lawyers)

### PAYABLES (Expenses)

Advanced Costs	Costs advanced on behalf of clients
Draw	Draw on profits
Dues	Membership dues
Education	CLE expenses
Equipment	Equipment purchases
Insurance:	
Liability	Fire and liability insurance
Life	Life insurance
Malpractice	Malpractice insurance
Medical	Medical insurance
Janitorial	Janitorial costs
Library	Books and subscriptions
Marketing	Marketing and promotional
Operating Expenses:	
Photocopies	Photocopy expenses
Postage	Postage
Supplies	Office supplies
Telephone/Internet	Landline, cell, and Internet expenses
Rent	Office rental
Repairs	Repair work
Travel	Travel expenses
Utilities	Gas, electric, water, garbage

## General Ledger

INCOME (Income and Reimbursements)				BANK ACCOUNT				EXPENSES (Payments)					
1	2	3	4	5	Date	Name or Memo	Chk No.	6	7	8	9	10	11
Fees	Advanced Costs	Other	Total Received	Bank Balance				Total Paid	Total Deductions From Employee Earnings	Employee Gross Earnings	Advanced Costs	Supplies	Other Expenses (Describe)
				0.00	1/5/09	<i>Beginning Balance</i>							
		10,000.00	10,000.00	10,000.00	1/6/09	<i>Capital Investment</i>							
				8,000.00	1/6/09	<i>Costco</i>	101	2,000.00				500.00	<i>Equipment 1,500.00</i>
				7,800.00	1/6/09	<i>Clackamas County Circuit Court</i>	102	200.00			200.00		
1,000.00	200.00		1,200.00	9,000.00	1/12/09	<i>Thomas Jones</i>							

## BILLING AND COLLECTIONS

Turning legal work into income is an important aspect of managing a law practice. Instituting and following procedures for timekeeping, billing, and collections reduces stress and makes financial success possible. Billing procedures must include accurate timekeeping, immediate entry of time, preparation of statements, and monthly billing.

### Timekeeping

Billing begins with accurate timekeeping. Your daily time records should account for every tenth of an hour. Enter the time spent after each activity in your time and billing program or record it on a daily time sheet. (*See* samples at the end of this chapter.) If you have trouble keeping current with your time entries or maintaining time sheets by hand, dictate the time after each activity. Procrastination in timekeeping causes a loss of billable time, because lawyers generally underestimate time when they reconstruct it later.

When starting out, keep track of every block of time throughout the workday. Account for billable time and also for time spent on administrative chores, breaks, and so on, to give you a picture of your total productivity. You can use the information to decide how much time you should be working and how efficiently you are working. It also gives you an idea of how much a particular legal procedure costs you. You can then use this knowledge to set flat or fixed fees and give clients accurate fee estimates. A total productivity breakdown also allows you to know when time spent on administrative chores can be shifted to a staff person.

### Preparing Billing Statements

Your bills should provide the client with specific information about what you did to earn the fee. Many fee disputes are caused by misunderstandings about billing statements. The bill should show fees charged, costs incurred, and trust account activity, as applicable. (*See* the sample bills at the end of this chapter.) Always include a due date. Many clients prioritize bills according to due dates and will place a bill without a due date at the bottom of the bills-to-pay pile.

Remember that you should not transfer client funds out of the Lawyer Trust Account until you have given notice to the client. (*See* the PLF publication, *A Guide to Setting Up and Using Your Lawyer Trust Account*.) Be sure to show the trust account transfer and balance on your monthly statements so that you can make all the trust transfers at once after you have sent out the statements.

When describing your work, be sensitive to the client's perceptions. For example, many clients do not want to be charged for conferences between lawyers. Some clients do not think their lawyer should charge for research because they are supposed to know the law. Some clients do not know that 0.5 on the bill means a half-hour rather than 5 minutes.

Follow the "golden rules" of billing:

1. Proofread statements carefully. Clients view billing statements as a reflection of your work. If names are misspelled or statements are incorrect, they may believe that you are not paying adequate attention to their cases. Clients immediately notice billing mistakes and are likely to be upset.
2. If you make an error on a client bill, apologize and correct it quickly and accurately the *first time*. The client shouldn't have to remind you a second time.
3. Offer a "carrot" instead of a "stick." In lieu of late fees or interest, which may pose problems, give clients a discount if payment is made within 10 days of the billing date. This will improve

your cash flow by giving clients an incentive to pay early. If you employ this technique, calculate the discount for the client and include it on the billing statement. (For information on ethical dilemmas related to billing and collections, refer to the OSB publication, *The Ethical Oregon Lawyer*. For a thorough discussion of truth-in-lending concerns, consult the OSB publication, *Fee Agreement Compendium*. See Resources, *infra*.)

You can avoid many misunderstandings about billing by thoroughly briefing clients at the outset of each case. Explain how you bill and what work is required on the case. Then when the bill arrives, the descriptions and charges on it will match the client's expectations.

If you are not using a computerized billing program, create a document in your word processing program for all current bills. Make each bill a separate page in that document and keep the bills in alphabetical order by client name. When you open a new file, insert your billing letterhead into the appropriate place in the billing document, and add the client's name and address. Time and expenses can be entered as ordinary text or in a table. When the table feature is used, formulas can be inserted to aid with computing time spent or expenses incurred. Here is an example of three time entries created in a word processing document with the table and formula visible:

Professional Services Rendered	Hours
Review medical records obtained from Dr. Jones	1.5
Office conference with Dr. Jones regarding client's prognosis	1.0
Phone conference with client regarding defendant's settlement offer	.50
	{=SUM(ABOVE)}

Here are the same time entries in a final bill, ready for the client. The table is not visible. The formula field now shows the total hours spent working on the client's case:

Professional Services Rendered	Hours
Review medical records obtained from Dr. Jones	1.5
Office conference with Dr. Jones regarding client's prognosis	1.0
Phone conference with client regarding defendant's settlement offer	.50
	3.0

Spreadsheet and database programs may also be used to create client bills. These programs have advanced features to assist with calculating time and expenses.

If your spreadsheet or word processing document becomes cumbersome to work with due to the number of client bills it contains, it is probably time to invest in a computerized billing program. You will likely recover the cost of your investment in such software very quickly because you can use the time previously spent generating bills manually to produce billable hours. If purchasing a program is not feasible and your billing document has become too long, break it up. Organize client bills into separate documents in alphabetical segments, such as Bills A-E, Bills F-J, Bills K-O, Bills P-T, and Bills U-Z. Set up and save each client's statement in the proper document, for example, the statement for Sam Jones is saved alphabetically in the document "Bills F-J."

If you are tracking your time manually, take your time sheets and enter the time into the current bills daily. Scroll down through the bills or find each client's bill using the search function and the client's name. If you diligently enter your time on a daily basis, you will need to spend very little time finalizing the bills. At the end of the month, all you will have to do is make any corrections, total each bill, fill in any trust account activity, and print or e-mail the final copy.

### **The Monthly Billing Cycle**

You should send bills monthly and at the immediate conclusion of a case. Send bills at the same time each month, preferably before the last day of the month. Most people and businesses are prepared to pay bills at the first of the month. Late-arriving bills are often put off until the next month. The longer the gap between completing legal work and billing, the less likely it is that the client will pay.

If cash flow is an issue, consider two billing cycles. Divide the client list in half. Mail or e-mail A-M bills by the 15<sup>th</sup> and N-Z bills by the 30<sup>th</sup>. This simple step can improve your firm's financial health by leveling the natural peaks and valleys of accounts receivable and payable. Improved cash flow is important if you need to spread out the age of your accounts receivable. (The number of accounts that are 30 days, 45 days, or 60 days past due.) Dividing the billing cycle also increases your average daily bank balance because you are collecting more accounts throughout the month. If you apply for financing, the age of your accounts receivable and your average daily bank balance will be key factors in the loan evaluation process.

Remember, clients must consent to *all* billing practices. Be sure to include billing information in your fee agreement with the client or enclose a billing brochure.

### **Maintain Billing Flexibility**

In addition to generating monthly statements, be prepared to give clients their bills on short notice – for example, when they show up unannounced with checkbook in hand. Also, have your bill ready when a client picks up final documents for a particular matter. If you maintain up-to-date records, you will be ready to tell each client what is owed at any time. And if you keep up on daily entry of time into your billing system, you can print out a statement on the spot.

Keeping billing records current also allows you to hand clients a finished work product with the bill attached. This method works well for matters that end with the production of a document (wills, contracts, etc.).

### **Record Keeping**

Retain a copy of each client's bills in the client file and in a file of all bills sent out that month. Any records related to trust accounting must be held for five years after termination of the representation. ORPC 1.15-1(a).

### **Collections**

You can usually foresee the likelihood of collecting a particular fee at the outset of a case. A client who is obviously unreliable or unable to give you money before work commences is even less likely to pay after the work is finished.

Attempting to collect delinquent amounts generally produces nothing but more headaches. Sometimes you can recover some of the debt, but clients often respond to collection efforts by filing a malpractice claim or disciplinary complaint. If a client objects to the amount of a bill, offer to use the Bar's fee arbitration program. If you do take action to collect on debts, remember that you must abide by the debt collection laws. Any debt collection letters must contain the correct statutorily mandated language.

Time spent on collections would be better devoted to establishing a system to secure more fees up front and end representation of clients before past due amounts have accumulated. Keep the rules governing withdrawal (ORPC 1.16) in mind when dealing with a client who is reluctant to pay. Depending on the type of proceeding and the particular court, it may be impossible for you to withdraw from representation after a certain point.

Review your accounts receivable regularly. If a client appears to be unable to pay, call and determine his or her financial situation. Then decide whether you want to withdraw from the case or continue with the understanding that you might not be paid. It is very difficult to competently represent a client when you are preoccupied with the client's unpaid bill.

Continuing to represent a client who refuses to pay, however, can get you into ethics and malpractice trouble. As the client continues to withhold payment, your resentment builds, you tend to delay working on the file, and you may be reluctant to communicate. In this hostile environment, you are very vulnerable to a malpractice claim or ethics complaint. Usually, the non-paying client finds fault with you as a way of rationalizing nonpayment, and you may end up with an ethics or malpractice claim. (For more information on collection-related issues, *see* the discussion on Fees, *infra*.)



# Daily Time Sheet

Date \_\_\_\_\_

CLIENT	TIME	Phone conf.	Office conf.	Letter	Draft Document	Attend Court	Research	Travel	Review File	EXPLANATION
	08:00									
	08:15									
	08:30									
	08:45									
	09:00									
	09:15									
	09:30									
	09:45									
	10:00									
	10:15									
	10:30									
	10:45									
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	03:45									
	04:00									
	04:15									
	04:30									
	04:45									
	05:00									
	05:15									
	05:30									
	05:45									
	06:00									

# Daily Time Sheet

Date \_\_\_\_\_

CLIENT	EXPLANATION											TIME	

# Sample Billing Statement

## LETTERHEAD

Date

Name  
Address  
City and State

RE:

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## STATEMENT

### PROFESSIONAL SERVICES RENDERED

		<u>Hours</u>	
3/2/09	Initial conference with client re acceptance of case	1.0	
3/16/09	Research re facts	<u>1.0</u>	
		2.0	
	2.0 hrs x \$200 per hour		\$ 400.00

### COSTS

3/31/09	Filing fee	\$ 50.50	
	Long distance phone calls	\$ <u>3.56</u>	
			\$ <u>54.06</u>
	<b>TOTAL</b>		<b>\$ 454.06</b>

### TRUST ACCOUNT BALANCE:

Retainer Paid	\$ 500.00
Legal Services and Costs	\$ <u>454.06</u>

BALANCE REMAINING IN TRUST \$ 45.94

***ALL ACCOUNTS ARE DUE BY THE 10TH OF THE NEXT MONTH***

## Sample Billing Statement

LETTERHEAD

Date

Name  
Address  
City and State

RE:

---

### STATEMENT

BALANCE IN TRUST ACCOUNT		\$ 500.00
PROFESSIONAL SERVICES RENDERED		
	<u>Hours</u>	
3/2/09	Initial conference with client re acceptance of case	1.0
3/16/09	Research re facts	2.5
3/31/09	Preparation of answer to complaint	<u>0.5</u>
		4.0
	4.0 hrs x \$100 per hour	\$ <u>(400.00)</u>
COSTS		
3/31/09	Filing fee \$ 50.50 Long distance phone calls <u>3.56</u>	
		\$ <u>(54.06)</u>
BALANCE REMAINING IN TRUST		\$ 45.94
AMOUNT NEEDED TO BRING TRUST ACCOUNT TO \$500.00		\$ <u>454.06</u>

***ALL ACCOUNTS ARE DUE BY THE 10TH OF THE NEXT MONTH  
KINDLY REMIT \$454.06 TO REPLENISH  
YOUR TRUST ACCOUNT***

## Sample Billing Statement

LETTERHEAD

Date

Name  
Address  
City and State

RE:

---

---

### STATEMENT

#### PROFESSIONAL SERVICES RENDERED

		<u>Hours</u>	
3/2/09	Initial conference with client re acceptance of case	1.0	
3/16/09	Research re facts	2.5	
3/31/09	Preparation of answer to complaint	<u>0.5</u> 4.0	
	4.0 hrs x \$200 per hour		\$ 800.00

#### COSTS

3/31/09	Filing fee	\$ 50.50	
	Long distance phone calls	\$ <u>3.56</u>	
			\$ <u>54.06</u>
	<b>TOTAL</b>		<b>\$ <u>854.06</u></b>

***10% DISCOUNT ON ALL ACCOUNTS  
PAID IN FULL WITHIN 10 DAYS OF STATEMENT DATE  
(\$768.66 DUE IF PAID BY [Date])***

## CLOSING FILES

### Using a System

The first step in a system for closing files is to determine whether a file can be closed. Next, send a closing letter to the client, indicating that representation has ended and the file is being closed. This letter should explain any remaining duties and obligations of the lawyer and the client. Along with the letter, send a final bill, return original documents, and tell the client how long you will keep the file before destroying it. This is also a good time to send a survey asking the client's opinion on the service received. For example, Was our staff courteous and helpful? Were your questions answered? Would you ask us to handle another case for you? (*See Client Relations, supra.*)

Regardless of your filing system for open files, give closed files a closed file number so you can file them in numerical order. Even if you are using a numerical system for your active files, remember that files are not closed in the same order they are opened. Assigning a closed file number will simplify the filing of closed files in the order they are closed (using their new number). You won't have to move files closed earlier to insert newly closed files. Using the year as the first or last two digits of the closed file number will quickly identify how old the file is. You can then place files on shelves or in boxes in numerical order.

Enter the client name, matter name, assigned closed file number, date closed, and location of file (on site or off-site) in your case management program. If you don't have a case management program, set up a closed file inventory using a spreadsheet or word processing table. The columns of spreadsheets and tables are easily sorted, allowing you to produce a list organized by client name, date closed, location of file, or other criteria.

Before scanning or placing a closed file in storage, check the entire file for the following:

1. Have all original documents been filed or recorded and original papers and documents returned to the client?
2. Do any documents need to be placed in the office form file? Have all duplicate documents been removed? Has all filing been placed in the file and have all loose papers been secured?
3. Have the firm's electronic files been reviewed for client-related material, such as e-mail messages, electronic faxes, digitized evidence, or other documents? This data may exist on network servers, Web servers, Extranets, Intranets, the Internet, local hard drives of firm PCs, laptops, home computers, zip drives, disks, portable memory sticks and flash drives, PDAs and smartphones, or other media. Examples include e-mail communications, instant messages, electronic faxes, digitized evidence, word processing, or other documents generated during the course of the case.

If some materials exist only in electronic form, decide whether they will be retained in electronic form or printed and placed in the appropriate location in the client's file.

4. Has the final bill and a closing (disengagement) letter been sent to the client?
5. Have all future docket dates (UCC renewals, judgment renewals) been placed on the calendar?
6. Has a file destruction date been assigned and placed on the calendar?

For specific steps to take when closing files, *See* the sample File Closing Checklist at the end of this chapter. If you intend to scan client files and dispose of the original documents, review the PLF practice aid, "A Checklist for Imaging Client Files and Disposing of Original Documents," available at [www.osbplf.org](http://www.osbplf.org). Select Practice Aids and Forms under Loss Prevention, then Technology.

## File Retention

The PLF recommends that you keep client files for a minimum of 10 years. The PLF recommends this 10-year retention period to ensure the file will be available to defend you against any malpractice claims. The 10-year rule has some exceptions, so you need to review files before setting a destruction date to determine whether they should be kept longer than 10 years.

Files you should retain longer than the minimum 10-year period include:

1. **Cases Involving a Minor Who Is Still a Minor at the End of 10 Years.** For example, if you represent a five-year-old in a matter in which funds are placed on deposit until the minor reaches the age of majority, you should retain the file until one year after the child has reached the age of majority. You would want to have proof that everything possible was done to protect the funds from misappropriation by a parent or guardian.
2. **Estate Plans for a Client Who Is Still Alive 10 Years After the Work is Performed.** When planning a client's estate, information in the file may indicate why the client wanted assets disposed of in a particular manner. If the client dies 20 years after the estate plan is done and the will is then contested, this information would be pertinent to the estate litigation.
3. **Contracts, Mortgages, and Other Agreements That Are Still Being Paid Off at the End of 10 Years.** Mistakes, or perceived mistakes, may not be discovered until a contract or mortgage is paid off. Your file may contain evidence of what the parties agreed to or what their intentions were at the time of drafting and executing the document.
4. **Uncollected Judgments.** Files involving judgments that have not been collected and require renewal should be kept through the renewal period.
5. **Files That Show a Tax Basis.** Files establishing a tax basis in property should be kept until the property is sold or transferred.
6. **Criminal Law Cases.** Keep criminal law files for one year after the client is released from custody.
7. **Support and Custody Cases.** Support and custody files in which the children are minors or the support obligation continues at the end of 10 years should be retained as long as the obligation remains.
8. **Corporate Books and Records.** Retain these items indefinitely.
9. **Adoption Files.** Many lawyers feel adoption files should never be destroyed.
10. **Intellectual Property Files.** Keep longer than 10 years if you are responsible for maintenance of the client's patent or trademark registration.
11. **Files of Problem Clients.** You may need to retain these indefinitely.

Whenever possible, do not keep clients' original papers (including estate plans or wills). If you keep original wills, 40 years must elapse before the will can be disposed of. ORS 112.815 provides: "An attorney who has custody of a will may dispose of the will in accordance with ORS 112.820 if: (1) The attorney is licensed to practice law in the state of Oregon; (2) At least 40 years has elapsed since execution of the will; (3) The attorney does not know and after diligent inquiry cannot ascertain the address of the testator; and (4) The will is not subject to a contract to make a will or devise or not to revoke a will or devise."

When closing your file, return original documents to clients or transfer them to their new attorneys. Be sure to get a receipt for the property and keep the receipt in your paper or electronic file.

The first step in the file retention process begins *when the client retains you*. Your fee agreement should notify the client that you will be destroying the file and when. The client's signature on the fee agreement will provide consent. In addition, your engagement letter should remind clients you will be destroying the file after certain conditions are met.

The second step in the file retention process occurs *when the file is closed*. At that time, establish a destruction date and calendar it as discussed earlier in this chapter. If you have not already obtained the client's permission to destroy the file (in the fee agreement and engagement letter), you can get written permission now. Or, you can make sure the client has a **complete** copy of the file. This includes all pleadings, correspondence, and other papers and documents necessary for the client to construct a file for personal use. (See OSB Legal Ethics Ops. 2005-125 and 2005-90.)

If you choose this alternative, be sure to document that the client has a complete file. This means that the paper or electronic file you have in your office is yours (and can be destroyed without permission), and the one the client has is the *client's*. File closing is also a good time to advise clients of your firm's policy on retrieving and providing file material once a matter is closed.

Here are some examples to help you in determining whether the client has been provided with a *complete copy* of his or her file:

1. Lawyer 1 is an ideal malpractice avoider and communicated well with the client throughout the case representation. He provided the client with copies of all pleadings, correspondence, and all other papers and documents that would be necessary for the client to construct her own file. At the close of the case, Lawyer 1 returned all original papers to the client.

Conclusion: Lawyer 1 has already provided the client with a "file." He decides to dispose of the office file and is able to do so without the client's permission.

2. During the course of representation, Lawyer 2 provided the client with copies of pleadings but did not provide the client with copies of correspondence or other important client papers. At the close of the case, she returned original documents and other client papers to the client.

Conclusion: Lawyer 2 may be obligated to contact the client before disposing of the files since some portions of the file may be needed at a future date. For example, if the client were represented on a real estate transaction, he might need to prove discussions concerning easements or other rights that might not be in the underlying contract. Or in domestic relations cases, it might later be important to prove circumstances surrounding custody arrangements or representations of asset value. It would be wise for Lawyer 2 to contact the client before disposing of the file.

3. Lawyer 3 did not provide the client with copies of pleadings or any other documents during the course of the case. At the end of the matter, he returned the client's original documents and papers.

Conclusion: Although the client would be able to reconstruct part of the file by obtaining copies of the pleadings from the court, there would be many items in the lawyer's file that the client may need. Lawyer 3 should contact the client before disposing of the client's file.

If you have copied your client with all pertinent file materials, then the client has received a copy of the file and you can destroy the one in your office. The desire to avoid contacting clients for permission to dispose of files may be an incentive for you to provide them with copies of everything during the course of the case and to carefully review files at the close of each matter to make sure all original papers are returned. Contacting clients for permission before disposing of files can be a very large burden; in most instances, the client will have moved or will not respond, and the effort will be futile.



Your retention policy for electronic data should be consistent with your retention policy for paper files.

### **File Destruction**

Keep a permanent inventory of the files you destroy, reflecting the file name, destruction date, and method of destruction. Record this information in your case management program or set up a spreadsheet or word processing table following the approach described above. (*See Using a System, supra.*)

If the client has consented to destruction of the file, retain the proof of consent with your permanent inventory, that is, the original fee agreement or engagement letter that includes consent to destruction 10 years hence.

You can destroy files in several ways. The easiest and most effective method is to shred them. (You may purchase a paper shredder or, in some areas, subscribe to a mobile shredding service.) You can then recycle the shredded papers. (*See OSB Legal Ethics Op. 2005-141.*) Be sure the destruction and recycling methods chosen preserve confidential client information. (*See "Document Destruction," In Brief* (June 2005).) If you possess electronic data containing "consumer personal information" within the meaning of the Oregon Consumer Identity Theft Protection Act (ORS 646A.600 to 646A.628) you are required to develop, implement, and maintain safeguards to protect the security and disposal of the data. Failure to do so can result in civil penalties. For more information, *See "2007 Legislation Alerts - Business Law/Consumer Protection (Identity Theft)," In Brief* (November 2007) and "Protect Client Information from Identity Theft," *In Brief* (August 2008.) Go to [www.osbplf.org](http://www.osbplf.org), select *In Brief*, then choose the month and year of the issue you wish to access.

Permanent destruction of electronic data requires special expertise. With proper technique, deleted documents can be retrieved and restored. Consult with a computer expert to determine what steps must be taken to ensure that client documents have been completely purged from your system, including backups. For recommendations on how to store data for long-term archival needs, contact the Association for Records Management Professionals at [www.arma.org](http://www.arma.org).

### **Storage of Closed Files**

Keep closed files in a safe place and in a manner that makes it possible to retrieve them easily. Some firms use off-site storage facilities where the temperature is regulated, the files are bar-coded and indexed, and retrieval of a file is part of the storage service. This can be expensive. Scanning files may be more cost-effective. If you choose to scan closed files, establish a secure, reliable backup system and test it regularly. *See "How to Backup Your Computer,"* available at [www.osbplf.org](http://www.osbplf.org). Select Practice Aids and Forms under Loss Prevention, then Technology.

Wherever you store closed files, keep them orderly. At the very least, keep them in labeled boxes on shelves. Keep a folder or inventory that notes which files are in which box, and number the boxes on the outside. Also, keep a sheet on the inside of each box that lists the files in that box. Use cement blocks and boards to make the shelves high enough to accommodate one row of boxes per shelf, rather than stacking the boxes on top of each other. And make sure that the box numbers are visible when the boxes are placed on the shelf.

You may wish to copy all electronic files relating to a closed file onto appropriate computer media to be kept with the closed file. This is especially helpful in matters that may re-open at a later date (e.g., child support in domestic relations cases, re-opening of claims in workers' compensation cases). If you store electronic media, protect the media from exposure to temperature extremes, magnetic fields, metal objects, or other damage. (*Caveat:* Due to rapid obsolescence of computer hardware and software, it may be

difficult, if not impossible, to retrieve electronic data that is five or more years old. Monitor changes in technology, and, if necessary, transfer your data to new media or save it in a different format so it remains accessible.)

## File Closing Checklist

Client \_\_\_\_\_

File/Matter No. \_\_\_\_\_

Matter: \_\_\_\_\_

Date: \_\_\_\_\_

Atty: \_\_\_\_\_

DATE	INITIALS	ACTION FOR ALL FILES – PAPER AND ELECTRONIC
		1. Make sure notices of <i>lis pendens</i> or lien abstracts have been discharged.
		2. Make sure all original judgments, orders, decrees, cost bills, deeds, contracts, <i>etc.</i> are filed or recorded.
		3. If an unsatisfied judgment is involved, diary the file for 3, 6, and 9 years. Review for assets and file certificate of extension before expiration of 10 years.
		4. Make sure any UCC or security interest has been perfected and filed. Diary appropriate renewal date and reminders.
		5. If the file involves a lease or option to buy, diary the file for 6 months prior to expiration.
		6. If the file involves a criminal matter, check to see if expungement is possible and diary the file for 3 years.
		7. Check for unbilled activities or balance remaining in trust and send final bill or accounting to client.
		8. Review the file for any further work to be done.
		9. Review file for additional names to be included in conflict system.
		10. Review file for documents to be included in the firm's form or template directory.
		11. If litigation or tribunal matter, withdraw as attorney of record.
		12. Assign destruction date. Regardless of how files are kept, the PLF recommends that all files be kept for a minimum of 10 years. See the PLF practice aid, <i>File Retention and Destruction</i> , available at <a href="http://www.osbplf.org">www.osbplf.org</a> . Select Practice Aids and Forms, then File Management.
		13. Send closing letter to client. Advise client of file destruction date and firm policy on retrieval and provision of closed file materials. Return client's original documents and include client questionnaire, if appropriate.
		14. Remove file from active status and enter destruction date into calendar, case management system, or closed file inventory.
DATE	INITIALS	ACTION FOR PAPER FILES ONLY
		15. Assign closed file number.
		16. Mark the file closed and enter closed file number in case management system or closed file inventory.
		17. Remove duplicate documents, unused note pads, and other unneeded items from file. (DO NOT remove draft work product, memos, phone messages, research, or attorney notes relating to the merits of the case.)
		18. Check for loose, unfiled documents and place in the file.
		19. Check network servers, local hard drives, laptops, zip drives, disks, flash drives, PDAs, <i>etc.</i> for electronic material not in file. Print hard copies, file, and purge electronic data or move electronic data onto appropriate storage media according to the firm's policy for retention of electronic records. Also see step 25 below.
		20. Move file to storage.

## File Closing Checklist

Client \_\_\_\_\_

File/Matter No. \_\_\_\_\_

Matter: \_\_\_\_\_

Date: \_\_\_\_\_

Atty: \_\_\_\_\_

DATE	INITIALS	ACTION FOR ELECTRONIC FILES
		21. Review the PLF practice aid, <i>Checklist for Imaging Client Files and Disposing of Original Documents</i> , available at <a href="http://www.osbplf.org">www.osbplf.org</a> . Select Practice Aids and Forms, then Technology.
		22. Does the matter involve original documents whose authenticity could be disputed? Or documents that have particular legal importance, such as an original Will? These documents cannot be discarded after scanning. Provide them to the client or make other arrangements to protect and store valuable originals.  The Professional Liability Fund recommends against storing client's original wills. See "Why Did We EVER Want to Keep Original Wills?" <i>In Brief</i> (March 2007). Available at <a href="http://www.osbplf.org">www.osbplf.org</a> . Select <i>In Brief</i> , then March 2007.
		23. Does the firm possess original documents or property belonging to the client? Documents, photographs, receipts, cancelled checks, or other materials provided by the client are generally considered <i>property</i> of the client and cannot be destroyed. Keep scanned copies of these items for <u>your</u> records. Return the client's original property <u>to the client</u> .
		24. Verify completeness of client's electronic file. Check for loose, unscanned documents, e-mails, or other records. Scan, save, or move items to client's electronic file as needed. If you are scanning a paper file in its entirety, consider providing the client with the paper version once you are assured the file has been accurately scanned. This will save destruction fees and give the client a complete copy of their file.
		25. If you possess electronic data containing "consumer personal information" within the meaning of the Oregon Consumer Identity Theft Protection Act (ORS 646A.600 to 646A.628) you are required to develop, implement, and maintain safeguards to protect the security and disposal of the data. Failure to do so can result in civil penalties. See "2007 Legislation Alerts - Business Law/Consumer Protection (Identity Theft)," <i>In Brief</i> (November 2007) and "Protect Client Information from Identity Theft," <i>In Brief</i> (August 2008.) Go to <a href="http://www.osbplf.org">www.osbplf.org</a> , select <i>In Brief</i> , then choose the month and year of the issue you wish to access.
		26. Be prepared to meet future requests for file material. Clients are entitled to file information in a format they can access. This may mean printing all or part of a file. Inform clients of the firm's policy on retrieval and provision of closed files at the time of file closing. See step 13 above.
		27. Enter closed file information into case management system or closed file inventory.
		28. Properly archive electronic file for duration of firm's retention period. Establish access rights to ensure that documents cannot be inadvertently modified, destroyed, or altered. Retain file material for 10 or more years. See step 12 above.
		29. Establish, test, and maintain on and off-site backups. See the PLF practice aid, <i>How to Back Up Your Computer</i> , available at <a href="http://www.osbplf.org">www.osbplf.org</a> . Select Practice Aids and Forms, then Technology.

# STAFF

## Confidentiality

The most important thing for your staff to remember is that everything in a law office is confidential. Working in a law office can be exciting, and the staff may learn all kinds of interesting things about prominent or well-known people in the community. It can be tempting to disclose some of this information to outsiders, including family members. However, revealing such confidential information can be extremely harmful to other people, and it can result in a malpractice claim being brought against you. It can also result in the staff member's discharge from employment and the probability that another law firm will never hire the employee.

Family, friends, or acquaintances may assume staff know all about the law and ask them for legal advice. Advise your staff that providing advice constitutes the unauthorized practice of law. They must never give legal advice – even if they know the answer.

The OSB Membership Directory and OSB Web site, [www.osbar.org](http://www.osbar.org), contain all the regulatory provisions that lawyers licensed to practice law in the state of Oregon must follow. Among these provisions are the Oregon Rules of Professional Conduct. All legal staff must be acquainted with the Rules of Professional Conduct and the other rules governing lawyer conduct. They should be aware that you can be disbarred for their misconduct and that they must always work under your supervision. As legal professionals, your staff should consider themselves bound by the Oregon Rules of Professional Conduct.

Your staff is an important resource for you and your clients, and it is important that they have both a professional demeanor and a professional attitude. To that end, review these points with your staff:

1. **Display Humanity to Clients.** Law offices are in business to help people. Many of the people who come to your office are troubled and uneasy. Employees should never lose the human touch and never forget that if it weren't for clients, the law office would be out of business and the staff would be out of a job.
2. **Don't Discuss Business Outside the Office.** Staff should never talk outside the office about what happens there. Lawyers have a professional responsibility to keep information relating to the representation of a client confidential. This information is considered privileged. Employees of a law office are also responsible for preserving the clients' confidential information. Violation of a client confidence is a most grievous error and grounds for instant dismissal.
3. **Be Careful What You Say Around Clients.** Clients often come to law firms because they have problems. Sometimes the number and severity of those problems can be overwhelming, and lawyers or staff may laugh or joke to release tension. Such levity may make the staff appear unfeeling, so take special care to make sure that clients or office visitors do not overhear discussions of this sort.
4. **Be Attentive to Economics in the Office.** The practice of law is a profession, but it is also a business. Remind employees that if they see a chance to save a dollar, they should let you know. If they are right, everyone will benefit.
5. **Be a Professional in Personal Appearance.** Clients pay money for help with their legal problems. They expect to pay a professional fee, and they expect to deal with professionals.

Therefore, follow the office dress code and dress like a professional. Avoid chewing gum, reading books at your desk, checking personal e-mail, surfing the Web, or any other activity that may not be well-received if viewed by a client.

6. **Be a Professional in Work Habits.** Lawyers deal in documents. What goes out of the office electronically or on paper is the hallmark of a legal business. Do not rely on spell-check or grammar check. Always proofread your work for accuracy and meaning. The final product should be crisp and professional. If what is being said does not make sense, bring it to the attention of the lawyer. If you are given an instruction you do not understand, ask.
7. **Establish Priorities and Keep the Work Moving.** Remember that clients want and need action. Today's work should get out today. Advise staff that if they have more work stacked up than they can handle today, they should check with you to determine what should be done first.
8. **Be Communicative and Cooperative.** Staff should communicate their needs and make suggestions for improvement. Lawyers and staff can work together efficiently and cooperatively if good communication exists.

## **Develop Office Manuals**

### **The Policy Manual**

An office policy manual is no longer considered a frill that only large law firms can afford. In law firms of all sizes, it is now a primary method of furnishing employees with information about their working environment, as well as what the office expects from them. Providing your staff with a written policy manual helps accomplish four basic goals:

1. Aids new employees in orientation and gives them information about their new employer.
2. Fosters a positive attitude toward the employer.
3. Explains work rules and penalties for their violation.
4. Protects the office through appropriate disclosures.

Your employees need to know what you expect of them and what they can expect in return. By putting your office policies in writing, everyone has a clear and concise direction when questions arise, avoiding misunderstandings and controversy.

Written policies also protect workers and shield the office from unnecessary claims and litigation. Putting a policy in writing gives you an opportunity to think it through and consider it carefully. It is far easier to show a court a written policy than an oral one.

Providing policies establishes the framework within which more specific guidance can be developed when necessary. By establishing carefully prepared policies that spell out the philosophy and goals of the office in the performance of a given function, you can develop procedures and rules that will achieve the desired result. Although you cannot anticipate all future situations, general policy statements provide guidance for when you must take action.

The term "policy" can be defined as a definite course of action selected from among alternatives and in light of given conditions to guide and determine current and future decisions. Policies are general statements of philosophy, principles, and objectives in a given area. When you establish written policies, you let the staff know exactly what you wish to accomplish and why. With this in mind, do not blindly adopt boilerplate policies without thinking them through. Consult the people affected and discuss the best possible solutions to fit your needs.

Fair policies produce consistent treatment of all employees and provide office management with a frame of reference for making uniform personnel decisions. They offer quick and decisive action with understanding and in many instances can bring about needed change.

A good policy should be:

1. up-to-date;
2. clearly understood by everyone;
3. consistently followed;
4. established by the proper authority; and
5. concise (one policy per topic).

When the final version of your office policy manual has been approved, arrange a meeting with staff to discuss existing policies, highlight new policies, and explain how the policies will be implemented. Introduce the policy manual in a positive way. Let employees know these policies are being adopted to create a fair workplace and to minimize misunderstandings and controversy. Emphasize that many of the policies have been long established by the firm and the manual is simply putting them in writing for everyone's benefit. Advise employees that all policies will be enforced and applied uniformly and without exception.

Encourage everyone to read the manual completely and carefully as soon after the meeting as possible, and establish a date when a receipt and acknowledgment statement must be signed and returned. Instruct employees to use the policy manual as a reference guide when any questions arise and, if something is not covered in the manual, to bring it to the attention of the person responsible for updates.

Periodically review all office memoranda dealing with subjects in the office policy manual (or new subjects appropriate for inclusion). Keep in mind that any major changes in the office structure will most likely require changes in the manual. Federal, state, and local laws and regulations may also necessitate an addition or change in the policy manual and should not be overlooked. Conduct a total audit of the manual every three to six years.

An outdated policy manual can be an enormous problem. If policies you refer to are not current, you may find yourself in a situation in which one employee has been treated differently than another. Don't let this happen to your office. Review the policy manual annually to make sure that new policy or personnel questions are adequately addressed in it. You may also find that a current policy is not working and a new policy should be implemented.

Sound policies do make a difference. They can work toward creating a secure foundation on which to build a unified work force and a harmonious work environment. They pay off in decreased turnover, greater job satisfaction, and increased productivity.

### **The Procedures Manual**

Each of your employees performs many tasks. The methods used to complete these tasks are your office procedures. Without written procedures, however, employees may find themselves lost or confused and develop their own methods. Soon you will find everyone in the office performing the same tasks differently, with varying results. Important elements may be missed or overlooked, and any office consistency may be lost.

The basic advantages to providing a written procedures manual are:

1. **Uniformity.** Through a properly written procedures manual, any employee should be able to step in and complete or assist with any project. Should any employee's workload be more than the employee can handle, as often occurs in the practice of law, the work can be distributed to other employees and completed in the necessary time. This creates an efficient and productive staff who are able to timely handle all projects and produce a work product that is uniform in both accuracy and style.
2. **Reduced training time.** New employees can immediately review instructions for completing any work task – a sure way to quickly enhance their performance and productivity.
3. **Fewer disruptions for clarifications.** Both existing and new employees should be able to use the office procedures manual as a quick reference guide, reducing the time required by administrative personnel and other employees to answer questions.
4. **Assignment of responsibility.** Written procedures make it easy to find out where a job has gone wrong. If a particular task is not performed, you can easily identify what caused the problem and how to correct it.
5. **Continuity.** As staff and lawyers join and leave the firm, written procedures promote continuity because everyone has the same information and guidelines.
6. **Clarified expectations.** The procedures manual helps employees to know exactly what is expected of whom. Uncertainty and frustration are reduced.

When you begin to write your own manual, you may want to review another firm's procedures. But remember that your law office is unique, and not all procedures will work in every office. Rather than adopting the procedures of others, look at your office's current practices and start from there. Creating an office procedures manual does not necessarily mean creating new ways of doing things. Often it means reducing your current procedures to writing.

Every office procedures manual should be detailed, complete, and accurate. It should be easy to read, with clear, concise directions and a user-friendly index. It should also contain examples and/or samples. Don't forget that this will be the "how-to" book for the employees using it, and it should be an educational tool as well as an easy reference guide.

Start with an outline of the topics to be covered, and then fill in the step-by-step procedures. As you describe procedures unfamiliar to a new employee, try to put yourself in the new employee's place. Remember, that person may have to learn procedures that differ from those they have used in the past. If certain areas have already generated questions in your office, be sure to cover them in your manual.

Most offices already have forms in use, and they should be incorporated as examples in the manual. When possible, include checklists to guide employees through all procedures necessary to complete each task.

A procedures manual should:

1. be an orientation tool;
2. be a training guide;
3. be a reference guide;
4. provide uniformity;
5. reduce disputes over work methods;
6. delegate through clearly outlined duties and responsibilities;



7. facilitate work measurement and provide information for cost control; and
8. improve morale by letting everyone know the rules.

A procedures manual will be successful only if you update it periodically. Keep your procedures manual on your computer network or in a loose-leaf notebook for easy updating. As you add new material and revise existing procedures, you can insert or delete pages as necessary.

## CONTRACT WORK

Contract work is work done by an “outside” lawyer for another lawyer or a law firm. The outside lawyer contracts to perform specific work on specific cases and is usually paid by the hour for work performed. However, compensation arrangements vary depending on the type of case involved.

Contract work can arise in many ways. Sole practitioners and firms often have extra work but not enough to justify hiring an associate. Similarly, a new lawyer may have a case requiring legal expertise beyond his or her ability. In those situations, the lawyer in need of help might contract with another lawyer for help on one specific case. By doing this, the lawyer hiring additional help provides the client with competent representation and is able to maintain his or her primary relationship with the client. At the same time, the lawyer helping out on the case gains experience and income.

### Malpractice Risk and Professional Liability Coverage

When entering into contract work arrangements, be aware of potential problems. Lawyers tend to be informal when dealing with each other. Nonetheless, you should take the same precautions as when dealing with clients directly.

Contract lawyers have contractual responsibilities to the primary lawyer and to the client. In addition, the contract lawyer must be aware of the risk of malpractice. Even though the contract lawyer may have only an indirect relationship with the client, he or she may still have a professional duty to that person. If something goes wrong, both the contract lawyer and the primary lawyer may be liable.

Depending on the type of work, the contract lawyer may be able to get an exemption from PLF coverage. Some contract lawyers confine their work to supervised activities and claim the exemption from PLF coverage. If you are doing contract work and want to claim an exemption from PLF coverage, be sure to follow PLF guidelines at all times. (*See* the PLF guidelines for law clerk/supervised lawyers following this chapter.)

Note that the exemption merely excuses the lawyer from purchasing malpractice coverage from the PLF. It does not affect any duty owed to the hiring lawyer. In addition, depending on the circumstances, the contract lawyer may be liable to the client for any malpractice in carrying out that work. So it is important to take the same precautions whether the work is exempt or nonexempt.

### Staying Out of Trouble

To reduce the dangers inherent in contract work arrangements, take the same precautions used in attorney-client relationships. Document the arrangement, define the scope of the project, establish your status *vis-a-vis* the client and the PLF, and determine fees and other costs. You and the hiring attorney should settle administrative matters such as the form of the work product expected, billing method, retention of file material, and proprietary rights to forms created during the contract relationship. Use written agreements, engagement letters, and disengagement letters to memorialize these issues. For larger projects, keep the primary lawyer updated with periodic correspondence just as you would a client.

### Scope of the Project

At your initial conference with the primary lawyer, determine exactly what is expected. How much time should be spent on each aspect of the project? What are the projected hours and what is to be done if more time is required? What is the procedure for modifying the project? When should the project be completed? (*See* the sample Project Assignment sheet at the end of this chapter.)

## Contract Lawyer's Status

1. **Employee or Independent Contractor?** Contract lawyers are generally independent contractors. Discuss and clarify your status at the outset of your working relationship. If you are an independent contractor, the primary lawyer's firm should not withhold your income or payroll taxes. Workers' compensation, Social Security, and unemployment insurance do not accrue to the independent contractor.
2. **Exempt or Nonexempt from PLF Coverage?** Another matter to decide is whether you will be handling the project as exempt or nonexempt from PLF coverage. This is especially important if you have claimed an exemption from coverage already. Review the PLF exemption guidelines and make sure your project can be conducted according to the exemption restrictions.

Remember that law clerk/supervised lawyer status does not preclude the possibility of being sued for malpractice. It simply means that you are not required to purchase PLF coverage. If you are exempt and are sued, you have no coverage and the PLF is not required to provide you a defense.

## Fees and Costs

At the outset of a contract arrangement, agree on your rate and other items to be billed. Will the fee be based on a simple hourly rate? Will you share in a contingent fee or some other fee-splitting arrangement? If so, proper disclosure must be made to the client. Who will pay for such things as copying, computerized legal research, long-distance telephone calls, and travel expenses? Will the primary lawyer reimburse you for costs, or will the primary lawyer's firm pay for costs as they arise? Will you use the firm's equipment and support staff?

Also, determine the form of your bills and the timing of submission. Does the primary lawyer want daily time sheets to enter into the firm's billing system or a final invoice for the entire project? When will the firm pay your bill? How much detail should the bill include?

## Conflicts and Confidentiality

As a contract lawyer you must maintain a conflict system, because your projects come from such a wide range of sources. Both sides of a dispute may approach you to do work.

Before you begin work on a project, the primary lawyer must provide you with a list of all parties connected with the case. After you check these names for conflicts, enter the names into your conflict system. (For more information on setting up and using a conflict system, *see* Conflict of Interest Systems, *supra*.)

Confidentiality is another danger area. You may be doing contract work for many different law offices, which may expose you to information about cases other than the one you have been hired to work on. You may be blamed for the leakage of confidences. Knowledge about other cases may preclude you from working on those cases for another firm.

To avoid coming into contact with extraneous confidences, request that the primary lawyer's firm segregate you from matters other than the contract project. You should have no access to other files, and other cases should never be discussed with or around you.

## Work Product and Further Responsibility

Clarify the final form of your work product. Does the primary lawyer want an electronic copy, hard copy, or both? If electronic, which format should you use? If the project involves research, does the primary lawyer want copies of all the cases or simply a list?

Along with the final work product, include your final billing statement and a closing cover letter. The cover letter should reiterate what work you did and alert the primary lawyer to any unfinished business on the case. The letter should make clear that you are not taking any responsibility for any further aspects of the case.

Contract relationships can become quite complex if you take on significant responsibilities in representation of the underlying client. Your role, and that of the primary lawyer, may become blurred and disputes may arise over possession of files, use of specialized forms created in conjunction with the contract work, or other issues. You can avoid these disputes by entering into a written agreement that clearly states the terms, conditions, and expectations of the contract relationship.

### **Getting Started**

The PLF has forms on its Web site to help you get started in your contract practice. These include a Contract Lawyers Checklist, Contract Project Intake Sheet, Contract Project Letter of Understanding, Letter Declining Contract Project, and Project Assignment. The latter follows this chapter. All are available at [www.osbplf.org](http://www.osbplf.org). Select Practice Aids and Forms under Loss Prevention, then Contract Lawyering.

## **PLF Exemption Guidelines Law Clerk/Supervised Attorney**

You may perform legal research and writing without purchasing Professional Liability Fund Coverage, provided:

1. your work is reviewed and supervised by an attorney with PLF coverage;
2. you make no strategy or case decisions;
3. you do not hold yourself out to any client as an attorney;
4. you sign no pleadings or briefs;
5. you attend no depositions as the attorney of record;
6. you make no court appearances as the attorney of record;
7. you do not use the title “attorney,” “attorney at law,” or “lawyer” on any correspondence or documents; and
8. you are not listed in the firm name or on the firm letterhead as an attorney or firm member (unless specified as retired). If you are retired, your name may be listed on the firm letterhead as “retired” or “of counsel (retired),” whichever applies. Note that if you are listed on the letterhead in this way, you may be vicariously liable for errors made by other members of the firm under the theory of apparent partnership or partnership by estoppel. The other members of the firm may also be vicariously liable for your errors.

Since you are an Oregon lawyer, you could be exposed to possible legal malpractice claims or lawsuits. We recommend the following safeguards in order to help protect yourself from possible claims or suits for legal malpractice:

1. Direct your legal research memos to your supervising attorney and never send them directly to the client;
2. Do not participate in or conduct client interviews;
3. Do not discuss the case, formally or informally, with the client. This includes discussion by phone and in person; and
4. It is permissible for you to have a business card that lists you as attorney at law. We recommend that you give these cards out only to attorneys for whom you are going to do work. We recommend that you use other titles on cards given out to witnesses, clients, or experts. Some options are investigator, paralegal, interviewer, law clerk, or research assistant.

Although these steps will not guarantee you freedom from legal malpractice claims, they do reduce your exposure to such claims.

If you have any questions about your PLF coverage or the activities which you can do as a lawyer exempt from PLF coverage, please contact the PLF, 503-639-6911 or 1-800-452-1639.

# Project Assignment

Date of Assignment: \_\_\_\_\_

Assigning Lawyer: \_\_\_\_\_

Case Name: \_\_\_\_\_

Facts: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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\_\_\_\_\_

Issues to be Researched: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Type of Work Product (Informal, Formal, Pleading, etc.): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Amount of Time to be Spent on Project: \_\_\_\_\_

**DUE DATE:** \_\_\_\_\_

## RESOURCES

The following is a list of resources you may find helpful during your practice:

**OREGON STATE BAR PROFESSIONAL LIABILITY FUND (PLF).** The PLF provides free educational materials ranging from malpractice avoidance to time management solutions. The PLF also has practice aids and handbooks that are available at no charge. In addition, the PLF's Practice Management Program will send a practice management advisor to your office at no charge to help you set up or improve your law office systems. To download free practice aids and forms or order low- or no-charge audio and video programs on tape or disk, visit the PLF's Web site, [www.osbplf.org](http://www.osbplf.org). For more information, call 503-639-6911 or 1-800-452-1639.

**OREGON ATTORNEY ASSISTANCE PROGRAM.** The Oregon Attorney Assistance Program (OAAP) is a free and confidential assistance program for all Oregon lawyers. Programs include assistance with alcoholism, drug addiction, burnout, career satisfaction, depression, anxiety, gambling addiction, sexual addiction, procrastination, relationship issues, stress management, time management, and other distress that may impair a lawyer's ability to function. For additional information or to access the program, visit the OAAP Web site at [www.oaap.org](http://www.oaap.org) or call the OAAP attorney counselors at 503-226-1057 or 1-800-321-6227.

**PRACTICE TIPS FOR AVOIDING MALPRACTICE.** The PLF periodically publishes a newsletter, *In Brief*. This newsletter is filled with information on how to avoid legal malpractice in specific areas of law. Technology updates, practice tips, and resources of interest to Oregon practitioners are also included. Past issues of the *In Brief* are available on the PLF Web site, [www.osbplf.org](http://www.osbplf.org), or call 503-639-6911 or 1-800-452-1639 for more information.

**SAMPLE DISCLOSURE AND CONSENT LETTERS AND CHECKLISTS.** Peter R. Jarvis, Mark Fucile, and Brad F. Tellam have prepared an excellent collection of disclosure and consent letters with checklists that are available to download from the PLF Web site, [www.osbplf.org](http://www.osbplf.org). Select Practice Aids and Forms, then Conflicts of Interest.

**OREGON WOMEN LAWYERS.** OWLS has 11 regional chapters in the state. The chapters hold luncheons that include guest speakers and also allow for networking opportunities. OWLS publishes a quarterly newsletter on topics of concern to women lawyers called the *AdvanceSheet*. For information, contact OWLS at 503-595-7826, via e-mail at [info@oregonwomenlawyers.org](mailto:info@oregonwomenlawyers.org) or visit their Web site, [www.oregonwomenlawyers.org](http://www.oregonwomenlawyers.org).

**OREGON WOMEN LAWYERS CONTRACT LAWYER REFERRAL SERVICE.** OWLS coordinates a service for lawyers who are seeking contract work and attorneys who wish to hire contract lawyers. For information, contact OWLS at 503-595-7826 or visit their Web site, [www.oregonwomenlawyers.org](http://www.oregonwomenlawyers.org).

**THE COMPLETE GUIDE TO CONTRACT LAWYERING 3rd Ed, 2003.** Authors Deborah Arron and Deborah Guyol look at temporary legal services from the perspective of the contract attorney and the hiring law firm. The book addresses ethical considerations, malpractice liability, independent contractor vs. employee status, and other topics of interest. To order, contact Niche Press, 4701 SW Admiral Way, #278, Seattle, Washington 98116, 1-206-229-9754, or visit [www.decisionbooks.com](http://www.decisionbooks.com). (\$29.95)

**NATIONAL ASSOCIATION OF LEGAL SECRETARIES OF OREGON.** NALS of Oregon provides information on Oregon recording and filing fees through a subscription service that is updated annually. For more information, visit the NALS of Oregon Web site at [www.nalsor.org](http://www.nalsor.org) or write to NALS of Oregon, PO Box 8729, Portland, Oregon 97207 or NALS of Portland, PO Box 13, Portland, OR 97207.

**AMERICAN BAR ASSOCIATION GENERAL PRACTICE SECTION.** This section offers a journal for general practitioners. It also has a publication catalog that lists books of interest to general practitioners. For more information, visit the ABA's Web site at [www.abanet.org](http://www.abanet.org). To order ABA books, CLEs, periodicals, and other ABA Web store products at a discount, visit the PLF Web site, [www.osbplf.org](http://www.osbplf.org).

**AMERICAN BAR ASSOCIATION LAW PRACTICE MANAGEMENT SECTION AND PUBLICATION CATALOG.** This section publishes a journal geared to law practice management and also publishes books of interest to those who are running their own practices. Some of the particularly relevant books published by this section of the ABA include *Flying Solo: A Survival Guide for the Solo and Small Firm Lawyer*, 4th ed.; *How to Start and Build a Law Practice*, 5th ed.; *Keeping Good Lawyers: Best Practices to Create Career Satisfaction*; *Through the Client's Eyes: New Approaches to Get Clients to Hire You Again and Again*, 2nd ed.; *The Lawyer's Field Guide to Effective Business Development*; *The Lawyer's Guide to Records Management and Retention*; *Winning Alternatives to the Billable Hour: Strategies That Work*, 2nd ed.; *Making Partner: A Guide for Law Firm Associates*, 3rd ed.; and *Information Security for Lawyers and Law Firms*. For information on the Law Practice Management Section, call 1-312-988-5654. Information on ABA member services and resources is also available on the Web at [www.abanet.org](http://www.abanet.org). To order ABA law practice management books and other ABA Web store products at a discount, go to [www.osbplf.org](http://www.osbplf.org).

**LOCAL BAR ASSOCIATIONS.** Local bar associations have many resources to offer. They are often a good source of information on what is happening at the local courthouse, and they sometimes hold monthly CLEs or social gatherings. In addition, they sometimes offer group insurance coverage. Presidents of local bar associations are listed in the OSB Membership Directory and on the OSB Web site, [www.osbar.org](http://www.osbar.org).

**FOR ADDITIONAL INFORMATION ON THE OREGON STATE BAR RESOURCES AND SERVICES LISTED BELOW, VISIT THE OSB WEB SITE AT [www.osbar.org](http://www.osbar.org).**

**LAWYER TO LAWYER PROGRAM.** This program connects Oregon attorneys working in unfamiliar practice areas with experienced attorneys willing to offer informal advice at no charge. For names of resource attorneys and more information about Lawyer to Lawyer, call the OSB, 503-620-0222 or 1-800-452-8260, ext. 408.

**SOLE AND SMALL FIRM PRACTITIONERS SECTION.** The OSB has a sole and small firm practitioners section to provide networking and continuing legal education opportunities for attorneys in solo or small firm practices. For information, call the OSB, 503-620-0222 or 1-800-452-8260, ext. 313.

**LAW PRACTICE MANAGEMENT SECTION.** The Law Practice Management Section of the OSB emphasizes the administrative and managerial aspects of the practice of law. This section's goals are to help practitioners develop better law practice and firm management skills, improve profitability in a competitive environment, and adapt to technological change. For more information, call the OSB, 503-620-0222 or 1-800-452-8260, ext. 409.

**LAWYER REFERRAL SERVICE.** This service distributes referrals to lawyers who register with the service. Attorneys registering with the service are allowed to charge \$35 for the initial consultation. The rate charged after the initial consultation is at the lawyer's discretion. For information or current registration fees, contact the OSB at 503-620-0222 or 1-800-452-8260, ext. 418.

**ETHICS AND MALPRACTICE AVOIDANCE UPDATES.** The *Oregon State Bar Bulletin* periodically includes articles written by the OSB General Counsel's office on ethical issues commonly faced by practitioners. The PLF also regularly contributes articles on ethics, practice tips, and procedures for avoiding



malpractice. Past issues of the *Bulletin* are available on the bar's Web site.

**ETHICS OPINIONS/INQUIRIES.** Ethics issues can often be resolved by reviewing the OSB Formal Ethics Opinions. The complete ethics opinions are maintained on the OSB's Web site. Also, check CLE materials such as *The Ethical Oregon Lawyer*. The OSB General Counsel's office provides ethics opinions and answers to ethics inquiries. The information is free. Call the OSB at 503-620-0222 or 1-800-452-8260, ext. 361 or 359.

**MEMBERSHIP SECTIONS.** OSB members are welcome to join any of the various subject matter sections. Participation in relevant sections can be a great help in developing a practice. The OSB Membership Directory and OSB Web site lists the various sections and their leaders. For more information, call 503-620-0222 or 1-800-452-8260, ext 385.

**MEMBERSHIP DIRECTORY.** The OSB Membership Directory is often overlooked as a resource. In addition to a listing of attorneys, it also contains useful information on OSB services, the Oregon courts, and other legal organizations. The full texts of the Oregon Rules of Professional Conduct and the PLF's Claims Made Plan are also included in this publication. An online version of the OSB Membership Directory is updated daily and available on the bar's Web site.

**FORMS ON DISK.** Many of the OSB CLE programs include materials with forms and the option of purchasing the forms on disk in Word or WordPerfect. OSB CLE publications and forms are also available on CD-ROM. For more information, call the OSB Order Desk at 503-431-6413 or 1-800-452-8260, ext. 413.

**SAMPLE FEE AGREEMENTS.** A collection of fee agreements, including agreements tailored to specific areas of law, is available through the OSB Law Practice Management Section *Fee Agreement Compendium*. The publication is part of BarBooks, and is available separately through the OSB Order Desk at 503-431-6413 or 1-800-452-8260, ext. 413.

**NEW LAWYERS DIVISION.** This division of the OSB offers low-cost CLEs and other networking opportunities at chapter meetings throughout the state. For more information, call the OSB at 503-620-0222 or 1-800-452-8260, ext. 404.

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*These forms are available on the PLF Web site, [www.osbplf.org](http://www.osbplf.org).  
Oregon attorneys have the PLF's permission to reprint these forms for use in their law practice.*