

MARION COUNTY BAR ASSOCIATION

2nd Annual “End of Year-Brown Bag Lunch” CLE Marathon

BIG FIRM OR SOLO PRACTICE: HOW TO SURVIVE YOUR FIRST YEAR IN THE PRACTICE OF LAW

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BIG FIRM OR SOLO PRACTICE: HOW TO SURVIVE YOUR FIRST YEAR IN THE PRACTICE OF LAW

Ask many seasoned attorneys the question, "What was the most difficult year for you as an attorney?" and you will find that the overwhelming response will likely be, "My first year!" For new attorneys, the first year of practice is exciting but also frustrating. Many of these fresh faced attorneys sit at their desk, thinking law school did not prepare them to practice law. Far too many young attorneys express dissatisfaction with their career choice or practice area after the first year. Approximately 70 percent of young associates will leave the lucrative salaries of a large firm in the first 3 years of their practice. Solo practitioners report that many lose up to 50 percent of potential revenue uncollected in the first 3 years of their practice and, as a result,



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many are forced out of business. Young attorneys face a variety of common problems in their first year, such as issues with billing, mentoring, responsiveness, practice development and time management. Unfortunately, today's fast paced legal environment has left the young attorney adrift in the legal ocean without a life preserver. In the era of sink or swim, the young attorney treads water, gasping for air and hoping that help will arrive soon. All is not lost!!! We believe that these simple but

effective tips will provide new solo practitioners and associates with a lifeboat and paddle to safely steer themselves to dry land.

First, the only way you get paid is to bill all of your time on time. The concept of billing time is unique for some, annoying for others, but necessary for all. The system is time consuming and tedious. The act of billing for legal work can often times take longer than the actual time to perform the work. For young attorneys, who are used to punching in and out on a time clock, the arduous task of documenting ones own time is foreign. There is one universal truth for all. You must bill all of your time.

The bill is an invoice. It is the receipt for the client. For the flat fee client, the bill is written proof that you performed the work requested. It is a diary that details your efforts. It is a form of communication between the attorney and client that explains the value for the work performed. A failure to bill all of your time can be analogous to allowing a customer to take inventory from the store without paying for them.

Solo practitioners should establish an electronic billing system that is manageable, efficient and subject to audit. Associates should immediately familiarize themselves with the firm's billing system. Find out whether the client requires ABA codes or rejects block billing. Bill all of your time and do not reduce time because you believe the project may have taken too long to complete. As a new

attorney, you really do not have a clear grasp as to how long it should take to complete an assignment. Bill your time immediately after completing a particular task. You will lose a substantial amount of time if you wait three or four days to bill your time. Make sure the description in your time entries reflect the value provided to the client for the services rendered. Proofread your bill for typos and errors. Be accurate.

Second, finding a good



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mentor is critical to success in your practice. The practice of law is just that -- practice. And in order to successfully practice law, you need a good teacher. A mentor can help guide you and advise you of the common pitfalls that young attorneys face in the early years of practice. They can challenge you to become a better attorney. It is helpful in this practice to have a measure of success, and a mentor can be just that.

Typically, the firm will provide you with an assigned mentor. However, not everyone is good at "mentoring." You will often find that you will end up with a de facto mentor. A de facto mentor is an attorney at the firm who was not assigned to you, but with whom, either through work or social activities, you developed a relationship.

You have to recognize who this person is and capitalize on the fact that this person takes an interest in you. Always do good work at the firm, but especially do good work for this person. They will go to bat for you and will be an advocate for you when needed. Every young associate needs at least one partner advocate at the firm; the more the merrier. Realize also that you can learn good and bad things from your mentor; no one is perfect. A good mentor will acknowledge when he or she has done something ill-advised and will caution you on a better way to handle the situation.

For solo practitioners, it is a little different; there won't be anyone in the office who can serve as a mentor. Solo practitioners spend a lot of time self-mentoring. However, through friendships developed in law school or otherwise professionally, a solo practitioner should also have a mentor who they can call on when necessary.

Third, confirm everything in writing. Senior attorneys lament the days when an attorney's word was his bond. Extensions of time were granted freely and without issue over the phone. Settlement agreements were entered into with a handshake and a smile. Discovery was exchanged without a formal written request. Alas, in the good 'ole days, an attorney's reputation was paramount and every promise made would certainly be kept.

Even if the stories of old are true, today, new attorneys should know that you must confirm everything in writing. A written confirmation of a conversation with opposing counsel, a client, your secretary or even a partner in your own firm is the best proof of the mutual understanding of

the parties if an issue arises. In the era of email and faxes, it only takes a few moments to memorialize a conversation regarding an enlargement of time, a discovery dispute, a synopsis of the terms of a settlement and release agreement, the terms and scope of a client engagement, legal fees, the goal of a legal assignment, a lunch date, and the result of a legal proceeding. If you practice law long enough, then you will undoubtedly face an issue that will send you scurrying through the pages of your correspondence file or through the database of your email to support your position regarding the party's prior discussion on that issue. Failure to document and confirm conversations in writing will leave you at the mercy of your memory.

Understand that as an attorney you will handle hundreds of files. You will have millions of conversations. Some of your cases will involve three attorneys who all represent the same corporate client. Clients will hire and fire counsel. Secretaries will forget. The practice of confirming everything in writing sounds eccentric, but given the complex, competitive and busy nature of today's legal world, it is one of the best safeguards for a young attorney's reputation.

Fourth, it is your responsibility to keep a calendar of all deadlines. Typically at the firm, the secretary will enter dates onto the electronic calendar. You should make sure that your Blackberry is synchronized with the firm electronic calendar so that these dates automatically populate onto the device. However, you cannot rely on the secretary to enter the dates. They are not attorneys. Although they typically know when most responses are due, which stems

from their experience and everyday dealings with filings, they are not officers of the court. It is up to you to double check that a date has been properly entered and commuted on the electronic calendar. Typically, you should make sure that any date that will get you into trouble if you fail to appear or respond, is calendared properly (i.e. responses to motions/pleadings; depositions; court appearances, dates from the case management plan, etc.). Remember, that as an attorney, it is your butt that is on the line if you fail to respond to a motion or appear in court. You will have to answer to the court, the partner and the client. Blaming the oversight on your secretary is inexcusable and undermines your credibility.

Finally, maintain a paper calendar. Paper calendars are not things of the past. Computers can fail. You want to make sure that you have a paper trail of all calendar dates that have been inputted electronically. Often times, your firm's malpractice insurance carrier will require that attorneys maintain a paper calendar anyway. Always check your calendar at least two weeks out so that you know when something is due and can plan accordingly.

Fifth, be responsive and communicate with partners and clients as much as possible. In your first year of practice, you will find that a lot of "reporting" that you do is internal -- to the partner or the client. Keep both parties abreast on status of what is happening with a case or task that you have assumed.

For partners, it will depend on the personality. Some partners are more demanding and will require more status updates than others. However, as a general

rule, you should respond to a partner's email within the same business day or at least within 24 hours. Try to plan your tasks as best as possible and do not wait until the last minute to tell a partner that you cannot complete an assignment. For example, if an assignment is due on Friday, you had better let the partner know by Wednesday if you are running into technical difficulties getting the assignment completed by the deadline. Often times they will be OK with an internal extension, but you have to realize that sometimes, the partner has given a due date to the client and if you wait until the last minute to tell the partner that you can't deliver on time, then you will be making the partner look bad to the client. Also, when practical, it may be good to give status updates on projects that perhaps have a longer due date. For example, say you've been asked to draft discovery responses, due in 30 days. It would be a good idea to send an email to the partner about 15 days in, saying "I've talked to client and we are on task to get this done in time" or "I'm still waiting on documents from client, but have drafted our objections," etc. This way, they know you are on task and you have put their mind at ease.

For clients, please follow their guidelines. The beauty of working with insurance companies or other big clients, is that they typically have set guidelines for reporting on the status of a case. You normally don't have to play the personality guess work that you have to do with the partners. Follow these guidelines. For example, a client often requires an initial and subsequent status reports on a case in 60-90 day intervals. Make sure these dates are calendared and be timely on completing these tasks. Keep the

client informed of significant developments in the case (factual/legal discoveries). Respond to the client within 24 hours. Following general ethics rules about keeping the client informed is key. Attend Mr. Lunberg's upcoming December 12, 2007 presentation on *Ten Ways to Stay Out of Trouble With The Disciplinary Commission* for more tips on client responsiveness.

Finally, invest in a Blackberry or Treo. It's essential to your ability to be responsive and also to have a life. However, don't become so used to e-mail that you forget that telephones exist. When you are away from the office for more than 4 hours, call in and check voicemail. In general, it is still good to pick up the telephone once in awhile and call the client. This fosters a personable approach to client responsiveness. Doing good work is important to maintaining relationships, but the fact that someone knows you on a somewhat personal level is helpful to maintaining that relationship as well.

Sixth, internal and external networking is essential. So, you think that now that you have a job at the large firm, your days of networking are over or you believe that you will hang out your shingle, go in your office, sit and wait for the phone to ring off the hook with clients. In both instances you will find yourself wrong and without work. In the large firm setting, many associates find it difficult to get enough work from partners and senior associates to meet or exceed their billable hour requirement. The solo practitioner struggles to find "paying" clients to keep the lights on. Both struggle with client development and wonder how

they can market themselves to the people they rely on for work. The answer is networking.

Finding work starts with talking to the people who have work. A solo practitioner who is focused on serving clients in dissolution matters will often find that large firm attorneys (and their support staff) are constantly seeking referrals for divorce attorneys to handle these types of cases. A new associate who is interested in becoming a part of the firm's exclusive Nike Patent Litigation team may gain entry by asking the partner in charge of the team out to lunch or expressing interest to a senior associate who is currently a member of the team. People give work to attorneys and associates who they know, like, respect and believe will get the job done. There are a multitude of attorneys who are smart, competent and capable of representing a potential client. However, if no one knows that the attorney exists, they will not receive the work. You have to continue to market your skills and abilities to others.

Seventh, develop a career plan. Many new attorneys spent their time in law school unsure and uncertain with regard to where they were going to start their legal practice. It is not uncommon for the young attorney to think, "I'm just glad I found a job." The legal market is tight and an "experimental" attitude can be helpful, but young attorneys must realize that the practice of law is a profession that requires a career plan.

As a new solo practitioner you should think about how you want your firm to develop over the next five to 10 years. Do you want to specialize in a particular area? Do you need to take on an additional partner? What

conferences must you attend to learn the particular skills that you need to develop to be successful? What is your marketing plan? Are there certain bar associations or trial organizations that you would like to join? What are your technology needs? How many CLE's do you need to obtain each year? Do you want to be a judge in the future?

As a new associate, you should think about your future career path. Determine your short- and long-term goals for the next five to 10 years. Do you want to make partner? What are the criteria? How are you going to meet or exceed the criteria? Do you want to be an associate general counsel of a corporation? Do you want to be on the firm's recruiting committee? Do you want to establish a niche as a toxic tort attorney? Do you want to take depositions this year or represent a client at a mediation? Do you want to second chair a trial?

You should write down your career plan. It should clearly state your specific goals, a timeline for obtaining the goals and specific methods for obtaining the goals. You should check off goals as you reach them. Revisit, alter, supplement and amend the career plan on a semiannual basis. Take the career plan to a lunch meeting with your mentors and determine whether they have any information that can assist you with fulfilling the benchmarks in your career plan. A good career plan can anchor your decision-making process when opportunities or difficulties arise. No decision should be made without reviewing your career plan.

Eighth, be involved in bar association activities. The

Indiana State Bar Association, Indianapolis Bar Association and Marion County Bar Association are wonderful resources for the new attorney. They are not just social outlets for receptions and parties. They are learning resource centers. They are referral sources for clients. They are public relations firms. They are a source of mentors. They are organizations whose sole purpose is to improve the lives of attorneys. Some of the premier attorneys and judges in this city have careers that are rooted in or tied to a history of bar association membership, activism and leadership. Also, participation in American Bar Association, National Bar Association and Defense Research Institute (DRI), is a good networking/marketing tool that can lead to further business opportunities and marketing for the firm.

Ninth, learn how to effectively manage and reward staff. Often times, people overlook the valuable assistance that their secretary, librarian, paralegal or IT department can afford them. Secretaries have a wealth of legal experience and can often be helpful with telling you what documents need to be filed and certain procedures within the firm. Find out what they can do and what they can't do for you. For example, there should be very little reason for an attorney to have to prepare a standard order. The secretary can do that. Of course, you will have to review the order before it is filed, but it is a standard form, that doesn't require you to spend time preparing. Same rule goes for appearances. Also, secretaries can be helpful on advising on how to deal with certain partner personalities and style of doing things. One partner may have one preference while another prefers something else. Listen to

your secretary and don't be afraid to ask them for their opinion on how you can do things better. Remember, they have been at the firm longer than you and have seen many attorneys come and go; they are another valuable "mentor" so to speak, and can help your practice of law become even better.

Don't forget about paralegals. Learn what all they can do to assist you. They typically will help with obtaining medical records/authorizations, non-party requests for documents, scheduling and some discovery, which are things you should not be spending a lot of your time billing for! Also, your firm's librarian is a valuable resource. A librarian can save you loads of time by doing some standard research tasks such as jury verdict research, cite checking, expert searches and more. The firm will often have a person who is adept at locating witnesses or determining corporate citizenship. Contacting the Lexis or Westlaw representative prior to performing legal research can save the client money and you stress.

Also, your firm does not hire an IT department just to snoop into your incoming and outgoing email! All joking aside, these individuals provide a wealth of resources in order to make your practice easier. Whether it be preparing for trial, phone conferences or a presentation, they can provide you with the appropriate technology to make your practice better and more efficient.

Finally, don't always be about the business! Get to know your secretary on a personal level (i.e. do you know if they even have kids? What do they enjoy doing outside of work?). Take

them to lunch and remember corporate holidays (Secretary's Day) and birthdays where appropriate. Show your appreciation. Say thank you!

Tenth, learn how to effectively manage your time. In addition to using staff wisely, you must learn to manage your billable hours. In the firm life, it is true that time is money. We have already discussed billing time and so it is not a surprise that billable time is the way your firm operates and the way you must operate. Come up with monthly or weekly goals to ensure that you hit your firm's real and desired billable hour requirement. For example, if the spoken goal is 1850 (i.e. what is required to keep your employment) you need to be on track to do at least an average of 150-160 hours each month. If the goal is 2000 hours for the year, then you'll need to average 160-170 hours per month. If you plan to take a vacation, you will have to do a little more one month (180 hours) to make up for the time lost. I would even suggest a weekly goal for those who feel they may get too far behind by relying on a monthly goal. Forty hours a week is advisable. Welcome to the world of billables! Hopefully, you won't have to live your entire life in six-minute increments, but at least at work, you'll be on the right track.

Understand that your time is not your own. You have so many partners and clients to be responsive to, you cannot afford to procrastinate on an assignment. For example, one week you may look at your workload and say, "I have enough work to get me through the week, which will keep me on target to hit my billable hour goal for the month." You have some deadlines for the projects, but feel that you will be

able to slack a little because you have nothing else on your plate and should be able to pace yourself to get everything done. However, lo and behold, two days before one of the projects is due, a partner comes in and needs your assistance on a temporary restraining order and injunction that has to be filed the next day. You spend all your time on the brief in support of the injunction that you can't get the other assignment done that you thought you had adequately planned for. You then have to go and tell the partner for that assignment that you cannot deliver as promised. Many times, the partners are understanding as they know that your time is not your own. So when this situation arises, make both partners aware of your deadline predicament and let them decide which one of the projects can wait.

Nevertheless, as a general rule, don't put off for tomorrow what you can do today, for you never know in the practice of law what emergency tomorrow will bring!