

## **THE PDP MONTHLY – JULY 2023**

### **SETTING SAIL: STARTING YOUR OWN LAW PRACTICE<sup>1</sup>**

In 1999, after many sleepless nights, the constant analysis and reanalysis of every issue we could think of, and much hand-wringing and agonizing, a friend and I started our own law firm. It was exciting, challenging and rewarding. To use a seafaring metaphor, we could chart our own course and set our own sails. But as with any adventure at sea, the water, especially in the early days, was plenty choppy. Fortunately, I had a smart, careful, and solid law partner, some business and life experiences that offered some guidance on how to move forward, and a handful of mentors in the community who helped smooth the way.

What I learned, both from that experience and from my partner and mentors was the importance of advance planning, and finding clarity in what we wanted the firm to be and how we might accomplish those goals. What follows, in no specific order, are many of the things a lawyer might want to consider and decide upon when venturing out to start a law firm. While this list may not be comprehensive, and not every item will be necessary or desired depending upon each individual's circumstances, all are worth considering, even if ultimately rejected.

#### **Should You?**

Probably the starting point for any lawyer considering forming a firm is to ask themselves a simple question “should I?” Ultimately, only you can answer that question, but it may depend on a number of factors. First, what is your risk tolerance? Starting any business carries with it a certain amount of uncertainty and risk, including whether you will have sufficient work to generate income to cover not only your operating expenses, but your desire to earn a living at whatever level

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<sup>1</sup> *This article is provided to members of the State Bar of New Mexico for informational purposes only and is not intended to be exhaustive or applicable to all circumstances. Further it is not intended to, nor does it constitute legal advice to a lawyer or law firm, nor does it establish any type of attorney-client relationship between employees of the State Bar of New Mexico and any person or entity. Further, this article is not a substitute for independent analysis and research by a lawyer or law firm. Each lawyer and law firm are responsible for their own compliance with applicable rules and laws and should consider seeking appropriate counsel for advice.*

seems right for you. Attendant to that question is the question of whether you are willing to persevere through the lean times, including the early months or years of the business when the income stream may not be as great.

Second, are you interested in and prepared to operate the business side of your practice? You may be a fantastic lawyer, skilled in the law, a natural with clients, gifted in your writing and advocacy, extremely intelligent, and professional in all your interactions. But do you have a source of funding to get you started in your practice, and some funds to operate and live on before the revenue from your practice begins flowing into the practice? Are you prepared to work with financial institutions to secure operating and trust accounts and lines of credit? Are you ready to find a location for your office, and negotiate with a landlord or commercial property owner? If you are going to have staff, are you ready to be the Human Resources director for your law firm, and deal with payroll and related taxes and insurance?

These are just a few of the issues that you will need to address when starting a firm. While I firmly believe that, at its heart, the practice of law is and should be first and foremost a profession, it is inescapable that starting and operating a law firm also means you are in business and there are a multitude of business decisions and tasks you will have to make and undertake to succeed. Fortunately, even if you have no prior experience, there are resources to help. For example, the U.S. Small Business Administration has an online business guide available [HERE](#). The guide has information on steps to take to start your business, to market and grow your business, and to manage your business.

### **What Do You Need?**

Once you decide you are ready to move forward, the next step is planning. And the starting point for planning is a business plan. What type of entity will your new firm be; a PC, an LLC, a sole proprietorship, or some other corporate entity? What will you name the firm? What area or areas of practice do you want to focus on? What licenses do you need to operate? What type of physical office will you have, i.e., a home office, a leased commercial office, a firm-owned office? What equipment and supplies do you need? What kind of technology will you use (hardware and software) and who has the expertise to set those up and keep them

running? What about insurance; not just professional liability insurance, but general liability insurance, property insurance, premises liability insurance, workers' compensation insurance, cybersecurity insurance, and others.

Speaking of technology, how will you conduct conflict checks? What type of files will you keep (paper, virtual, both)? Will you use any accounting software, including time and billing software? How about a case management, document management, or practice management system? Will your case management system integrate with your email accounts, will it facilitate confidential client communication, and will it be a one-time purchase, a monthly fee, or some combination of both? How will you maintain your calendars (you will need at least two, one of which should be automated) and will they facilitate the easy ability to track and remind you of upcoming deadlines and critical events?

Importantly, how will you finance your business, particularly in those first several months where your expenses may exceed your revenue? Do you have funds saved in advance, will you use a line of credit, do you need any capital improvement loans, can you/should you use credit cards? Speaking with and establishing a relationship with a financial institution, like a bank or credit union, and someone at the financial institution that you can talk to and work with, is normally a critical component to successfully launching any business, including a law practice. As a matter of best practice, and something the financial institution is likely to request, you should develop a budget for the first year, estimating your operating expenses, your anticipated fee structure, and your anticipated net income. If necessary, consider using a CPA or bookkeeper to assist you in preparing these financial statements and projections.

### **How Will You Staff the Practice?**

Depending upon the amount of work you start with, and how much available funding you have, you should think about whether you can afford and would benefit from having paid staff. Do you need, want, and can afford a legal assistant and/or a paralegal? Will that person (or persons) work full-time or part-time? Can you use a virtual assistant to handle incoming phone calls and messages, or do you count on paid staff to do so? Do you need to contract with consultants and

independent contractors to assist with accounting issues, IT, and other functional matters that may be outside your expertise?

### **How Will You Generate Clients?**

Of course, clients are a key component to the success of your practice. There are a number of ways to develop clients, always keeping in mind what is and is not allowed under the Rules of Professional Conduct. Will you rely on word of mouth, advertising, court appointments, existing contacts, or some combination of the foregoing? Developing a marketing plan can help ensure you identify and attract the type of clients and work you want to attract.

One important lesson that I learned early on when starting a practice is to avoid accepting any and every prospective client that contacts you for representation. Especially in the early months, when your revenue stream is just getting flowing, but your expenses are flowing abundantly, you may be tempted to accept every prospective client seeking your services. But if it is not the kind of work you want to do, and more importantly, if the client is not someone you think you can work with or who displays many “red flags,” you are much better off declining that work. Then, when the work and clients you want to attract come in the door, you will have the capacity to take that work and do so competently and diligently, not weighed down by the cases/clients you wish you had not taken.

### **How Will You Care For Yourself?**

I have a good friend who often reminds me that the practice of law can be a rough racket. Indeed, the stress associated with the work can be significant. When you add to that the stress that starting a new business brings, it can be easy to get overwhelmed. Difficult as it may be, you need to make an intentional effort to take care of your well-being. Do the things you always hear are important; exercise, get quality sleep, eat well, and unplug from technology every day. But also do some things that might be counter-intuitive when starting a new business; schedule some time off, plan a vacation, pursue a hobby. Importantly, stay connected with your family, your friends and your colleagues. Your practice benefits when you find ways to sustain yourself personally.

The above discussion only scratches the surface of the things you need to think about and do when starting your own practice. There are many good articles and checklists available to help you in your venture, including one that is available [HERE](#) on the State Bar of New Mexico Website. And, as you are getting established, or really at any time, if you have questions related to best practices and/or the Rules of Professional Conduct, please don't hesitate to contact the Professional Development Program at (505) 797-6079.

One last thing for now; if you do decide to set your own sails, here's to fair winds and following seas.