NEW JERSEY LAW OFFICE MANAGEMENT 101

2010 Seminar Material

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LAW OFFICE MANAGEMENT 101

ETHICAL, PROFESSIONAL AND PRACTICAL CONSIDERATIONS

J. Llewellyn Mathews

Introduction

Abstractly, "Law Office Management" is an extremely broad and diverse topic. Implicitly, the subject focuses on the private practice of law, as opposed to in-house corporate or government practice.

Private law practices, not to mention individual lawyers, are extremely diverse. Statistics in New Jersey show that by far the large majority of lawyers practice in small firms of between one to 10 lawyers. The author of this article believes that a growing number of lawyers practice completely alone, with no support staff. However, while a smaller percentage of lawyers practice in large firms, larger firms probably have greater influence on the profession and the economy, because of the concentration of professional and economic power in that sector. This diversity among lawyers and law practices magnifies exponentially the broad array of issues that could be considered when thinking about law office management, because the most effective approach to each management topic can be affected significantly by whether the firm is a solo, small, medium or large operation. To illustrate, a solo practitioner with a small practice and no staff might need nothing more than a cell phone for voice communications, while a 200 lawyer firm would obviously need a robust and sophisticated multi-line system.

Potential law office management topics abound. A book focusing on starting a new law practice, published by the American Bar Association,[1] contains a checklist of issues concerning law office management, which includes the following topics: telephone equipment, telephone procedures and systems, referrals, client intake procedures, engagement, non-engagement and dis-engagement letters, time keeping and records, billing and collection, financial administration of the business, trust account administration, general ethics, conflicts of interest, calendaring and docketing, opening and maintaining files, closing files, file destruction, insurance, personnel, office administration, equipment, library and research, e-mail and electronic data, office location, marketing, client relations, and getting help. If each of these topics were superimposed on the context of solos, small, medium and large firms, the result would be unwieldy, not to mention uninteresting other than to the extremely dedicated teacher or student.

Given that practicing law is both a profession and a business, the topic of Law Office Management necessarily should encompass both of these perspectives. This seminar attempts to meld these perspectives and present information thought to be necessary, useful, and practically informative for a broad range of lawyers at the early stages of their careers or who may be embarking on new phases of their careers. Three elements are included, one of which is the subject of this paper: (1) "Ethical, Professional and Practical Considerations," (2) a "Primer On Big Law Firm Structure, Management And Economics," and (3) "Fundamental Economics of a Contingency Fee Practice: A Different Paradigm."

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[1] Foonberg, Jay G., *How to Start and Build a Law Practice*, ABA Law Student Division, Section of Law Practice Management.

Ethical, Professional and Practical Considerations

No matter what size the law firm, every lawyer and law firm is bound to follow the Rules of Professional Conduct ("RPC's"), and must arrange the structure of the practice and its management systems to ensure compliance with the RPC's. In addition, statutes, the Rules of Court, case law, opinions of the Advisory Committee on Professional Ethics ("ACPE") and the Committee on Attorney Advertising ("CAA"), and other regulatory sources may affect law office structure and management. This article focuses on selected requirements of the RPC's and related committee opinions.

Legal Structure

A law practice may be operated through any otherwise permissible business structure or combination of structures. Sole proprietorships and partnerships are implicitly authorized under R.1:21-1(a). Professional corporations are expressly authorized by N.J.S.A. §§ 14A:17-1 to -18 and R.1:21-1A. Limited liability entities are permitted by R.1:21-1B (LLC's) and R.1:21-1C (LLP's), and applicable statutes. Combinations of different types of entities are permitted. For example, a firm may consist of a partnership of professional corporations. R.1:21-1A(f). A law firm may own a wholly owned subsidiary, provided that both the parent and subsidiary conform to requirements applicable to law firms. ACPE Op. 704; CAA Op.37.

Only a lawyer may have an ownership interest in a law firm, no matter what the structure. R.1:21-1(a) and RPC 5.4(d). Moreover, a law firm may not engage in other types of business. While there is some pressure to change, at least currently, multi-disciplinary firms (for example, firms combining law and accounting, law and real estate sales, law and mortgage services, or law and title insurance) are prohibited. Cf. ACPE Op.688. Multi-state firms are permitted subject to

conditions and limitations relating to names, identification of the firm's attorneys on letterheads and other papers, and which attorneys of the firm may practice in New Jersey.

Informal "affiliations" of law firms pursuant to contractual relationships providing for reciprocal referral of cases and fee and cost sharing are prohibited. ACPE Op.694; CAA Op.28. However, so-called "Of Counsel" relationships are permitted. Both individual lawyers, and firm may be "Of Counsel" to another lawyer or firm. Although not precisely defined, an element of the "Of Counsel" concept includes a relationship that is close, ongoing, regular, and involves frequent contact for the purpose of consultation and advice. *See, e.g.,* CAA Op.21; ACPE Op's. 220, 286, 444, 476, 522 & 689.

Deciding what structure to adopt for law practice involves considerations of personal preference, size, public perception, tax and financial circumstances, and personnel considerations, just to list a few. However, unlike traditional businesses, limitation of personal liability for professional negligence is not a consideration. The statutes relating to professional corporations and the Court Rules (all cited above) authorizing lawyers to practice through LLC's and LLP's prohibit a lawyer from limiting his/her personal liability for professional negligence. For this reason, many solos choose to practice as sole proprietors to avoid the additional paperwork and administration involved in forming and operating a separate business entity. However, while personal liability for one's own professional negligence cannot be limited, vicarious liability for the negligence of a colleague may be limited, and liability for the ordinary business debts and obligations of the firm may be limited, through the use of the various business entities.

Names

Law firm names are regulated directly by RPC 7.5, and indirectly by RPC 7.1. The essential requirement of RPC 7.1 is that the name may not be misleading. For example, "John Doe & Associates" is misleading if the firm has no associates. "The Law Offices of John Doe" is misleading if there is only one office. RPC 7.5(e).

The firm name must include the full or last name of one or more lawyers actively associated with the firm, or who was once actively associated with the firm but has ceased to be so through death or retirement. RPC 7.5 (a) & (c). Thus a firm may not use the name of a famous retired judge or attorney who was never actively associated with the firm. A name may state or imply a partnership only if there is in fact shared responsibility and liability for the performance of legal services. RPC 7.5(d). If a firm has multiple locations in New Jersey, it must use the same name at all locations. ACPE Op. 493; CAA Op. 5. If the phrase "legal service" or similar phrases are used in a firm name, the firm must inform all clients in its retainer agreements and other writings that the firm is not affiliated with any public, quasi-public or charitable organization. RPC 7.5 (e). Whenever the firm name is a trade name (i.e, a business entity name, or anything other than the full or last names of the sole proprietor or every partner) the name or names of one or more of the firms New Jersey attorneys, principally responsible for the practice in New Jersey must be displayed on all letterheads, cards, and communications. RPC 7.5 (f). If the firm is organized as a business entity, it must include language in the firm name that describes the nature of the entity, such as "Doe & Roe, a Limited Liability Partnership." If the business entity is organized in a state other than New Jersey, the firm must state the jurisdiction where it is organized whenever it uses its name in New Jersey, including on letterhead, pleadings and other communications. Combining these requirements into an

example, one Pennsylvania firm with offices in several states including New Jersey uses the form: "Doe Roe, LLP, a Pennsylvania LLP, John Jones, New Jersey Resident Partner, 123 Somewhere Street, Anytown, NJ, 00000" on its letterhead, all pleadings, business cards and all other communications.

Internet "Web" names (also known as Uniform Resource Locator or URL names) may be different from the firm's formal name; however the URL name may not be misleading, and is subject to a number of other requirements and limitations set forth in CAA Op. 32. Conversely, CAA Opinion 32 prohibits the adoption of a URL name as the formal name of the firm required by RPC 7.5.

The *Bona Fide* Office Rule

Few rules applicable to lawyers in New Jersey have engendered as much controversy as the "*Bona fide* Office Rule," at R.1:21-1(a). The controversy continues virtually up to press time, with the most recent joint committee opinion on the subject having been issued on March 25, 2010. ACPE Op. 718; CAA Op. 41. Before January 1, 2004 attorneys and firms were required to have a *bona fide* office geographically located within New Jersey. Since then attorneys and firms have still been required to maintain a *bona fide* office, but now it may be located anywhere. Thus a law firm headquartered in Pennsylvania, with a *bona fide* office located in that state, may engage in the practice of law in New Jersey without having any office located here. The Rule defines a *bona fide* office as:

> [A] place where clients are met, files are kept, the telephone is answered, mail is received and the attorney or a responsible person acting on the attorney's behalf can be reached in person and by telephone during normal business hours to answer questions posed by the courts, clients or adversaries and to ensure that competent

> advice from the attorney can be obtained within a reasonable period of time.
>
> [R.1:21-1(a)]

While the *bona fide* office may be located outside of New Jersey, the attorney's business and trust accounts must be opened and maintained in New Jersey with an approved bank, and all other requirements, such as registration with and payment of fees to the client's security fund, must be satisfied.

As it presently stands, the Rule does not appear to permit the part-time practice of law, and some have suggested that the Rule has a discriminatory impact on women, who may have children and desire to practice on a part-time basis. The Rule clearly prohibits what might be characterized as the "law office of the future" that has no "bricks and mortar" existence and is paperless. The recently issued joint opinions of the ACPE and CAA (cited above) opine that a so-called "virtual office" cannot qualify as a *bona fide* office. In a "virtual office" arrangement, the attorney leases a right to use floating office space on an "as needed" basis, sharing the floating space with other lawyers or businesses. Mail and telephone calls are often (although not always) received initially by the landlord's employees, who forward the mail or calls to the attorney, or take messages. Small, but probably growing numbers of sole practitioners, proficient with computers and not needing support staff, have taken to working primarily from home offices, while maintaining a part-time "virtual office" for a "public face." Notably, "virtual offices" are not prohibited; however, a "virtual office" cannot be designated as the attorney's *bona fide* office. Those who wish to work at home and maintain only a part-time office must designate their home address as the *bona fide* office location.

The *bona fide* office rule is currently under examination and is likely to be changed.

Fee Agreements

Of course, fees are the life blood of a law practice. Careful attention to fee arrangements at the inception of a representation not only ensures compliance with applicable RPC's and Rules of Court, but also enhances the attorney-client relationship and facilitates easier collection after the representation comes to an end.

Fee arrangements for every representation must be confirmed in writing, except where the lawyer has an ongoing regular relationship with the client. RPC 1.5(b). This requirement does not mean that the client must sign a fee agreement, although many consider it to be advisable. A properly drawn engagement letter sent to the client will suffice. An engagement letter that explains in detail such things as the units of time charged (i.e. tenth or quarter hour units), policies regarding minimum charges (e.g., a minimum of .3 for any correspondence), polices regarding expenses (photocopying, postage), and policies concerning billing and payment, not only provide for a better attorney-client relationship, but may be important in the event of a later dispute and fee arbitration proceeding. Because an engagement letter is a communication with a client about the lawyer's service, it must comply with RPC 7.1, which contains several subparagraphs specifying what must be contained in a lawyer's statements about fees (for example, if an engagement letter provides that the lawyer will charge an hourly fee, the applicable hourly rate(s) or range of rates must be stated, and "that the total charge will vary according to the number of hours devoted to the matter, and in relation to the varying hourly rates charged for the services of different individuals who may be assigned to the matter." RPC 7.1(a)(4)(iv).) Read RPC 7.1 for requirements in other circumstances.

While fee agreements need not be signed by the client as a general proposition, the Rules of Court mandate that fee agreements be signed by the client in specified circumstances,

including contingent fees for matters arising from tortious conduct (R.1:21-7) and "family actions" (R.5:3-5).

In addition to receiving fees, lawyers sometimes pay or share fees to or with others. Sharing of fees with non-lawyers is strictly prohibited. RPC 5.4(a). Do not pay any non-lawyer, not even your own employee, a fee or bonus for bringing a case or client into your firm. Do not participate in a commercial, for-profit lawyer referral service that offers to refer potential clients to you in return for a fee. *See*, RPC 7.2(c) and 7.3(d). Sharing of fees by lawyers all in the same firm is largely unregulated. Sharing of fees between lawyers in different firms is permissible if: (1) the division is in proportion to services performed or the lawyers assume joint responsibility for the representation in a written agreement with the client, (2) the client is notified, (3) the client consents, and (4) the total fee is reasonable. RPC 1.5(e). Referral fees may be paid by Certified Trial Attorneys to other attorneys who refer matters to them.

Employment Agreements

RPC 5.6 prohibits partnership and employment agreements, and agreements relating to the settlement of controversies between non-lawyer parties, from restricting the rights of a lawyer to practice law after termination of the agreement. This limitation is designed to protect a client's right to choose his/her lawyer freely, and facilitates the lawyer's independence. This restriction essentially prohibits restrictive covenants in a lawyer's employment agreement, which might limit the lawyer's ability to practice after termination of employment. However, this Rule does not prohibit reasonable restrictions incidental to employee retirement plans. *See, e.g., Borteck v. Riker, Danzig, Scherer,* 179 N.J. 246 (2004).

Purchase and Sale of a Law Practice

Prior to the adoption of RPC 1.17 in 1992, lawyers were completely prohibited from selling any element of a law practice except the tangible assets, such as books, furniture and equipment. *See, e.g., Opinion 48* (July 16, 1964) and *Opinion 80* (July 15, 1965), *Advisory Committee on Professional Ethics*. With the adoption of RPC 1.17 the sale of the goodwill and other intangible elements of a law practice are now conditionally permitted, provided that the conditions of the Rule are satisfied.

Two important conditions are that the entire law practice must be sold and the selling attorney must withdraw entirely from the private practice of law in New Jersey.[2] In this regard, RPC 1.17 states:

> A lawyer . . . may sell or purchase a law practice, including good will, if the following conditions are satisfied:
>
> (a) The seller ceases to engage in the private practice of law in this jurisdiction;
>
> (b) The entire practice is sold . . . .
>
> [RPC 1.17(a)&(b) (emphasis added)]

In addition, RPC 1.17 requires certain notices to be given to clients by the selling attorney and publication of a notice concerning the sale by the buying attorney.

Specifically excepted from this Rule are sales limited to the tangible assets and admission to or withdrawal from a firm.

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[2] It is noted that the ABA Model Rules of Professional Conduct allow the sale of an area of a law practice. Unlike the Model Rules, the New Jersey RPC's require the entire practice to be sold.

Supervision of Staff

When considering potential disciplinary responsibility under the RPC's it is important to differentiate the common law concept of *respondeat superior* from ethical responsibility for supervision of staff. With limited exceptions, concepts of vicarious liability and *respondeat superior* that are commonly encountered in tort and contract matters are not applicable in the ethics sphere. Nevertheless, lawyers and law firms have direct, not vicarious, ethical responsibilities to supervise others in a firm to ensure compliance with the RPC's. Various provisions in RPC 5.1 to 5.3 require: (1) law firms to make reasonable efforts to ensure compliance by the firms members and staff, (2) supervising lawyers to make reasonable efforts to ensure compliance by subordinate lawyers, and in this circumstance supervising lawyers are vicariously responsible for misconduct of subordinate lawyers, (3) every lawyer and firm to make reasonable efforts to ensure that conduct of non-lawyer staff is compatible with the lawyer's responsibilities, and again in this limited circumstance the supervising lawyer may be vicariously responsible for staff violations. Subordinate lawyers do not enjoy a defense to ethics responsibility merely because they may have acted under direction from a supervisor, unless the subordinate lawyer acted in accordance with a supervisor's reasonable resolution of an arguable question under the RPC's. RPC 5.2. Again, these Rules relate to responsibility in the sense of exposure to ethics discipline, not liability in the more traditional sense of the common law.

"Reasonable efforts" is not defined in the foregoing Rules, however, the ABA Comments to the Model Rule suggest the establishment of policies and procedures: "designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property, and ensure that inexperienced lawyers are properly supervised."

Essential Office Systems

As suggested in the Introduction above, volumes could be written about law office management systems relating to a virtually endless list of concerns. However, focusing on the ethical perspective, several thoughts come to the forefront.

Communication With Clients

RPC 1.4 requires lawyers to keep their clients fully informed of how to communicate with the lawyer, and reasonably informed of the status of the client's matter. By far the largest number of ethics complaints made to the District Ethics Committees relate to failures of communication with clients. In reality, if good habits are developed and followed regularly, communication with clients is easy. And yet large numbers of lawyers fall short in this area. Two simple habits (systems) are all that are needed: (1) return every telephone call promptly (with 24 hours, if not by the end of the day), and (2) send the client a copy of every paper you send out and every paper you receive. Do the same for both outgoing and incoming e-mails. When you send your client a copy of a paper or e-mail you have received, explain in your cover letter what it is that you are enclosing, what your client should do with or about it, what it means to the case, if anything, and what you expect to happen next in the case. The results you will enjoy from this practice will include more satisfied clients, more prompt payment of your bills and a much lower chance of ethics or malpractice complaint.

Calendar and Tickler Systems

RPC 1.3 requires a lawyer to act with reasonable diligence and promptness. Calendar, docketing and tickler systems run the gamut from old-fashioned paper based manually operated systems to sophisticated computerized practice management systems. The form of the system is not important, so long as it is habitually followed. It should operate as automatically and

routinely as possible, so as to minimize the "human factor" which invariably leads to human error. In this writer's opinion, a calendar and a "to do" list are not enough, and any reliable calendar and tickler system must include at least four separate, although inter-related elements: (1) a traditional calendar (paper or electronic) for the entry of dates such as court appearances, closings, depositions, client appointments, etc., (2) a tickler or reminder system (again paper or electronic) in which entries are made to remind the lawyer to meet the lawyer's deadline driven responsibilities (e.g., responding to motions or discovery requests), and also to follow up on communications sent out by the lawyer to ensure any actions called for have been taken (e.g., a follow up reminder to verify that pleadings have been filed, not lost in the mail), (3) a separate reminder system for statutes of limitation, and (4) an alphabetical list of all open cases or matters, updated at least monthly.

The fourth item, the case list, can be especially useful if the list contains a short description of the nature of the case, the long term goals of the case, its current status, and a briefly stated strategic plan for the case, and if the list is reviewed and updated at least monthly. The simple task of taking a few minutes periodically to thoughtfully review and update the case list refreshes the lawyer's "big picture" strategic perspective of the case, allows for anticipation of future tasks, and facilitates smooth integration of projects into the lawyer's overall work schedule. In other words, it allows one to plan ahead and minimizes the risk of overlooking important tasks.

Conflict Detection

If lack of communication is the most frequent subject of ethics complaints, conflicts of interest must be a close second. Whether computerized, or based on old-fashioned 3x5 index cards, records of clients, adversaries, co-parties and even consultations that do not blossom into a

representation should be kept and consulted routinely before taking on any new matter. Determining whether a conflict of interest exists can be a complicated matter and is beyond the scope of this seminar.

Screening Against Conflicts

Screening of a lawyer from involvement in a particular case may allow a firm to handle a matter, even though one lawyer in the firm may be "conflicted out." The on,ly point to be made in this seminar is that screening requires the implementation of a formal written procedure. *See*, RPC's 1.10(c) & (f), 1.11(c) & definition at 1.0(l).

Miscellaneous Random Thoughts For Solo and Small Offices

Although they do not fit in well with the overall theme of this paper, several miscellaneous thoughts are offered for those who may be planning to open a solo or small practice.

Lawyer, Trust Account and Business Registrations

Lawyers must register annually with the New Jersey Lawyer's Fund For Client Protection. *See*, R.1:28. Registration may be done on line through the New Jersey Courts website. Attorneys must maintain at least two bank accounts, an Attorney Business Account and an Attorney Trust Account, in an approved New Jersey bank. Note that only a New Jersey attorney is permitted to sign an Attorney Trust Account check. R.1:21-6(c)(1)(A). The Attorney Trust Account must be registered annually with the IOLTA Fund, and this registration is separate from the registration for the Fund for Client Protection. R.1:28A. Record keeping requirements for bank accounts, and also client files, are set forth at R.1:21-6. It is strongly recommended that

all attorneys, even those practicing in large firms where accounts are maintained by employee bookkeepers, should learn the basics of attorney trust account management.

Of course a law practice is a business and must do the things any business must do. All New Jersey businesses, even sole proprietorships with no employees, must register with the Division of Revenue. *See*, www.nj.gov.treasury/revenue/gettingregistered.htm.

E-mail and Internet Domain Accounts

The ability to use e-mail and have broadband internet access have become virtually essential. Many solos and small firms use cable for internet access. Internet "gateway" service providers, such as Comcast, AOL, Yahoo, etc. typically allow e-mail accounts to be established using their services and domains: e.g., JohnDoe@comcast .net. However, it is a simple and inexpensive task to establish your own more professional looking and sounding domain name through any number of internet service providers. For example (and without intending any endorsement), visit the site at "1and1.com" to learn how to choose your own domain name and establish an e-mail account (with or without creating a website with the same domain name). Many service providers will help you establish a domain, e-mail accounts, and websites from the simple to the sophisticated, sometimes for substantial fees. However, if you have even modest proficiency with computers and the internet, you can establish and maintain your own domain and business-like e-mail address for as little as about $10.00 per year!!

Electronic Postage, Telephone and Fax Services

Solos and small office should explore the use of electronic postage from providers such as "stamps.com" or "endicia.com" (which recently became "dymo.com" and can be reached through either name). With services such as this, and all the other online resources available through the internet, a solo can not only do the research and generate the work product, but also

do the production work involved with copying, mailing and postage from a single computer workstation without any support staff.

Even telephone and fax services can come from the internet, allowing the lawyer to manage and retrieve calls and faxes from anywhere that internet access is available.

Electronic Filing With The Courts

Anyone who practices in the federal courts must register for electronic filing. At least two registrations are required, one with PACER and one with what is called the CM/ECF ("Case Management/Electronic Case Filing") system in the District of interest. Currently, separate CM/ECF registrations are required in each District Court, as well as in each Court of Appeals, although the Administrative Office of the U.S. Courts is working on a consolidated system that will require only one countrywide registration in the future. Registration requires attendance at a training seminar given by the Clerk's office.

Even if the practitioner does not do federal work, it may be worth while to register and learn the system, because the New Jersey State Courts will certainly implement a system of electronic filing in the not too distant future.

Notably, the advent of electronic filing now makes it essential for law offices to have robust scanning capability. Even though briefs and pleadings created with a word processor can be converted into PDF format, exhibits and other documents created elsewhere must be scanned for filing.

Samples Forms and Resources

Younger lawyers often ask older lawyers for a form or sample from which to create work product. The first response to that question from this writer is that New Jersey is not a form based legal system. Unlike in some other states (mostly in the West) there are relatively few

standardized legal forms approved for use in this state. Thoughtless reliance of a form or sample is an invitation to embarrassment, if not disaster. Nevertheless, a sample of what has worked for someone else in the past can provide a springboard for thought and a base for increased efficiency. Over time, most lawyers develop a personal library of samples that fit the needs of their individual practices.

That said, a basic, reliable and somewhat forgotten resource is the New Jersey Practice Series, published by West and available through Westlaw. The series provides not only samples and forms, but also treatises on particular topics of interest in New Jersey law, and it is often a good starting point for research and drafting.

GOOD LUCK - GO FOR IT – OPEN YOUR OWN PRACTICE

LAW OFFICE MANAGEMENT

Ethical, Professional and Practical Considerations

J. Llewellyn Mathews

LAW OFFICE MANAGEMENT

- A few thoughts on operating a small office
  - Business registration – www.nj.gov.treasury/revenue/gettingregistered.htm
  - Internet domain registration and e-mail
  - Electronic postage – e.g., Stamps.com; Endicia.com
  - Internet based fax and telephone service
  - Federal practice – PACER; CM/ECF
  - Samples/forms/resources – NJ Practice Series

LAW OFFICE ORGANIZATION

- Permissible structures
  - Sole practitioner - R. 1:21-1(a)
  - Partners – R. 1:21-1(a)
  - Professional corporation - N.J.S.A. §§ 14A:17-1 to -18 and R. 1:21-1A
  - Limited liability entities - LLC's: R. 1:21-1B; LLP's: R. 1:21-1C
  - Combinations of above
    - e.g., a partnership of professional corporations

LAW OFFICE ORGANIZATION

- Permissible structures – continued
  - Non-lawyer ownership interest in firm prohibited
    - R. 1:21-1(a) and RPC 5.4(d)
  - Multi-disciplinary firms prohibited
    - Cf., ACPE Op. 688
  - Multi-state law firms permitted
    - Conditions pertaining to names and letterhead
    - Only NJ attorneys permitted to practice in NJ
  - "Affiliation" between law firms short of partnership or membership in business entity prohibited
    - ACPE Op. 694; CAA Op. 28

FIRM NAMES

- In addition to the RPC's, names are regulated by statute, Court Rules, cases and ACPE Opinions
- Focusing primarily on RPC 7.5
  - May not violate RPC 7.1 – i.e., not misleading, etc.
  - Must include full or last name(s) of lawyers actively associated with firm, or who have ceased to be associated through death or full retirement
  - May state or imply partnership only if shared responsibility and liability for performance of legal services
  - Must use same name at all locations in NJ – ACPE Op. 493; CAA Op. 5
  - Additional language (e.g., "& Associates") must be accurate
  - Limit on use of "Legal Services"

FIRM NAMES – CONT'D.

- Multi-state firm may use same name in jurisdictions where offices located
  - Must identify jurisdiction of formation if not NJ
- If firm name contains name of a non-NJ attorney, then all communications must include name of at least one NJ attorney responsible for NJ practice
- Any identification in NJ of firm attorneys must include jurisdictional limitations of those not licensed in NJ
- URL/web domain names – see CAA Op. 32

BONA FIDE OFFICE

- R. 1:21-1(a)
  - "[A] place where clients are met, files are kept, the telephone is answered, mail is received and the attorney or a responsible person acting on the attorney's behalf can be reached in person and by telephone during normal business hours to answer questions posed by the courts, clients or adversaries and to ensure that competent advice from the attorney can be obtained within a reasonable period of time."
  - May be outside of NJ, but trust and business accounts must be in NJ, and registration, payment of fees, etc., still required
  - ACPE Op. 718/CAA Op. 41 ("Virtual Offices")
  - Potential problem for part-time practice

FEE AGREEMENTS

- Confirm in writing in every case, unless ongoing relationship – RPC 1.5(b)
  - Need not be signed by client, except as below
- Comply with RPC 7.1, which contains several specific provisions relating to communications about fees
- Client must sign if contingent fee based on tort (R.1:21-7), or "family action" R.5:3-5)
- Fee sharing – be careful; avoid commercial for-profit referral services

EMPLOYMENT AGREEMENTS

- RPC 5.6
  - Prohibits partnership and employment agreements, and agreements settling controversies between private (i.e., non-lawyer) parties, which restrict the rights of a lawyer to practice after termination
  - Permits agreements concerning benefits after retirement
    - *See, Borteck v. Riker, Danzig, Scherer*, 179 *N.J.* 246 (2004): retirement plan containing reasonable restrictions incidental to retirement plan construed not to amount to termination penalty

PURCHASE/SALE OF A LAW PRACTICE

- RPC 1.17
  - Purchase and sale of law practice, including good will, is permitted
  - Seller must cease private practice entirely
  - Entire practice must be sold, although parts may be sold to different buyers
  - Buyer(s) must be lawyer(s)
  - Written notice to clients and published – see RPC 1:17(c)
  - Fees may not be increased as result of sale
  - Substitution must be filed promptly
  - Exceptions – joining/leaving a firm

MULTI-JURISDICTIONAL PRACTICE

- RPC 5.5(b)
  - Admission *pro hac vice* – R. 1:21-1(a) & 1:21-2
  - Multi-state transactions – RPC 5.5(b)(3)(i)
  - Arbitration/CDR – RPC 5.5(b)(3)(ii)
  - Investigation or discovery in NJ for lawsuit elsewhere – RPC 5.5(b)(3)(iii)
  - Other "occasional" activities in NJ in connection with multi-state representation – RPC 5.5(b)(3)(iv)
  - Subject to conditions and limitations shown on next slide

MULTI-JURISDICTIONAL PRACTICE - Continued

- Conditions and limitations under RPC 5.5(b)
  - For existing client in jurisdiction where admitted
  - Transaction, dispute, etc. originates in jurisdiction where admitted
  - In case of "occasional" activity, hardship from disengagement
  - In good standing where admitted
  - Subject to NJ RPC's
  - Appoint Clerk of S. Ct. for service of process
  - Not represent fully admitted
  - Maintain *bona fide* office
  - Register and pay annual fees and assessments

SUPERVISION OF STAFF

- Firms – RPC 5.1(a)
  - Reasonable efforts to ensure compliance by members and other lawyers
- Supervising lawyers - RPC 5.1(b)&(c)
  - Reasonable efforts to ensure compliance by subordinate lawyers
  - Vicarious responsibility for subordinate conduct
- Subordinate lawyers – RPC 5.2
  - Direction of another no defense, unless . . .
  - Acts in accordance with supervisor's reasonable resolution of an arguable question
- Non-lawyer assistants – RPC 5.3
  - Every firm and lawyer - reasonable efforts to ensure conduct compatible with lawyer's responsibilities
  - Vicarious responsibility for non-lawyer conduct
  - Duty to investigate past instances which might disclose propensity for misconduct

ESSENTIAL OFFICE SYSTEMS

- Client communication
  - RPC 1.4
- Calendar, tickler and case list system
  - RPC 1.3
- Conflict detection
  - RPC's 1.7 & 1.9
- Screening
  - RPC's 1.10(c), 1.11(c) & definition at RPC 1.0(l)
    - Written procedure required under RPC 1.0(l) & 1.10(f)
- File management/record keeping – R.1:21-6
- Bookkeeping/trust accounting

PRIMER ON BIG LAW FIRM STRUCTURE, MANAGEMENT AND ECONOMICS

By: Jonathan I. Epstein

INTRODUCTION

Not all big law firms are the same but all large law firms face similar economic and managerial challenges. Often the way law firms manage themselves, including how they structure their compensation systems and how profitable they are, greatly influence a firm's culture. And culture of law firms, like all businesses, is important. This segment of the program will provide you with some basics about large law firms. I will address:

- How firms are structured and managed
- Compensation arrangements for lawyers in large firms
- The expectations and opportunities for associates
- What drives the profitability of the large law firm business

Please keep in mind that the summary below includes generalizations about large firms that are not uniform. Each firm is different and there are a myriad of ways by which law firms handle the management issues discussed herein.

Firm Management

Major law firms generally are overseen by a body of Managing Partners or an Executive Committee. Some firms are merely run by a Chairman. Most typically, day-to-day operating authority is vested in one or two leaders who will carry the title of Chairman or Managing Partner and report to the Managing Partners or Executive Committee. The Managing Partners or the Executive Committee members are elected by the partners and, in turn, this body appoints the

Chairman or Managing Partner of the firm. In some instances, the Chairman is elected by the partners. Ultimate governing authority resides with the Managing Partners or Executive Committee. In many firms, the Managing Partners function like a Board of Directors of a corporation, settling policy for the law firm which is carried out by the Managing Partner, Chairman or Executive Partner, as the case may be. Equity (or share partners) generally get to vote on major partnership decisions, such as election of the Managing Partners and admission of new partners to the firm. Votes are usually weighted based on the partners' respective equity interests in the firm.

In addition to the lawyer-managers, major law firms have large infrastructures composed of non-lawyer professionals, who run the administrative side of the enterprise, ranging from a Chief Operating Officer to the staffs of dozens of professionals who handle different aspects of the law firm's daily business operations. A law firm of 500 lawyers will often employ more than 1,000 non-lawyer employees. The costs of administrative personnel and office space are the most significant operating expenses for large firms.

Large law firms have practice groups for the different specialty areas of the lawyers in the firm. The practice group heads oversee the day-to-day practices of the lawyers in the group. Some firms have many such groups and others limit the number of practice groups to reduce lawyer management time. Partners are expected to commit a substantial number of hours to the practice of law, law firm administration and client development activities. Large firms often have many committees ranging from pro bono to audit committees.

Equity v. Non-Equity Partners

Some law firms are structured as single-tier partnerships with only one class of partners, each of whom owns an equity interest in the firm. Other firms are two- or multi-tiered partnerships, consisting of equity partners, salaried partners and/or limited equity partners. As a general proposition, the distinction between equity and non-equity partners is that equity partners have a vote in the partnership affairs and share in the firms net profits. (They also have liability for partnership debts in the case of a general partnership.) This means that equity partners' compensation is tied to the profitability of the law firm. Non-equity partners, on the other hand as the name implies, do not hold equity interests in the law firm, often do not have a vote in partnership affairs and are generally salaried. Large law firms also have lawyers characterized as "counsel" or "of counsel." These lawyers are not partners of the firm but have contractual relationships that include specific compensation arrangements. The titles of "counsel" or "of counsel" are carried by senior associates that are not on a partnership track or senior lawyers who come to a law firm late in their career (e.g., retired judges) or lawyers approaching retirement. The arrangements with counsel or of counsel vary depending upon the individual circumstances.

Associate Arrangements

Historically associates in large law firms would advance annually lockstep over the course of the first 8 or 10 years of their careers with concomitant salary and rate increases along the way. Associates who are performing well and meeting firm expectations are referred to as "on track" associates – meaning they are on a partnership track. Associates that are deemed not meeting the firm's expectations are generally asked to leave the law firm during their initial 8-10 years with the firm. In most large law firms, after a tenure of 8 to 10 years, a determination is

made whether the associate would advance to partner. In a single-tier partnership associates advance to partner or be asked to leave, with exceptions dependent upon the needs of the law firm at the time. In a multi-tier partnership, associates may move from associate status to equity partnership, salaried partnership, limited equity partnership or a counsel position after their tenure as an associate. Advancement to partnership is dependent on a multitude of factors, including the profitability of the firm or the practice group to which the associate belongs.

Recently many large law firms have moved away from a lockstep "up-and-out" system to a levels or tiered system. Under the new approach, first year associates are slotted as say Level 1 associates and bear a certain salary and billing rate. With experience, associates advance to a Level 2, Level 3 and Level 4 based upon ability and demonstrated skills. Anyone who advances to the top level is then in a position to be considered for partnership; however, associates may remain in a lower level for multiple years without being asked to leave the law firm. Within either a lockstep system or levels system, law firms generally have bonus arrangements for associates based upon billable hours or independent business generation. For example, law firms often pay billable hours bonuses to associates who bill over 2,000 hours a year and business development bonuses for new clients introduced to the firm based on a percentage of fees generated from the new client.

Associate Evaluations

Large law firms formally review and evaluate the performance of their associates. In most instances, associates are evaluated annually and are given direct feedback on the results of the evaluation. Associates are judged based on their writing abilities, oral communication skills, judgment, expertise in their practice area, ability to deal directly with clients, work ethic, non-

billable contributions to the firm and ability to work well with others. The associates' annual evaluations are critical to the associates' advancement in the firm. To be considered an "on track" associate one must receive high marks in the evaluation process.

Partner Compensation

Partner compensation systems vary widely among law firms and can be a driver of the firm culture. Typically, however, law firms have a compensation committee that evaluates partners based upon a wide range of factors, both objective and subjective. Some law firms may have a dominant Managing Partner that has the primary exclusive role in setting compensation and other firms may be formula driven, whereby partner compensation is primarily a function of economic statistics. Compensation systems can be "open" (where all partners know what other partners are paid and the statistical information available for such partners) or "closed" (where information about partners compensation is not shared among the partnership). Some firms have a very elaborate compensation process, where not only are all of the partners' statistics open but partners are interviewed by a compensation committee annually, where the compensation committee considers all of the partner's financial and other contributions to the law firm and then tries to determine the comparative relative values of the contributions of each partner to the partnership in setting compensation. Such an open comprehensive process in a law firm with 250 partners can be extraordinarily time-consuming and expensive, but often engenders a sense of fairness and equity among the partnership and tends to promote a healthy law firm culture.

A partner's compensation may be fixed or the partner may be paid distributions equal to the partner's share of the firm's profits or a combination thereof. Often firms pay annual bonuses to partners based on the partner performance and the firm's financial results. Some

firms have draw programs to insure cash flow to partners over the course of a year where, if necessary, funds are borrowed by the firm to pay partner compensation. These borrowings are repaid out of firm profits, when and as available, and the net profits of the firm are distributed to the partners at the end of the year based upon a partner's share of the equity or upon some bonus determinations. In some firms equity partners merely receive a distribution of their share of the net profits of the firm after payment of expenses on a monthly basis without any draw program.

If a partner's equity in the firm is adjusted annually based upon a prior year's performance, a partner's compensation is highly dependent upon the profitability of the firm in the year after the partner's equity is determined. In such a case, a partner, for example, who has a great year in 2009 will receive an increase in equity in the law firm but not necessarily a specific increase in compensation. Instead, the partner will be rewarded for 2009's performance based on the firm's performance in 2010. Therefore, if 2010 turns out to be not such a good year for the firm, the increase in the partner's share in the equity in the firm may not result in an increase in compensation. This is one reason, among many, why for most partners, the profitability of the law firm is critical. One measure is profits per partner although profits per partner does not necessarily reflect the average distribution to the partners. Profits per partner are generally determined by dividing the firm's net profits by the number of partners. There are other important measures of law firm performance, such as revenue per lawyer, which is a statistic reported in the American Lawyers AmLaw 200 in addition to the profits per partner.

Increasing Firm's Profitability

As demonstrated by the slides presented on law firm economics, to increase profitability the law firm needs to concentrate on increasing revenues (by bringing in more business,

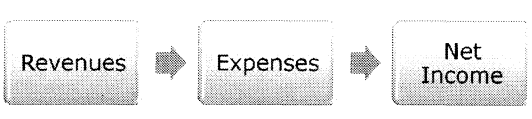
increasing rates or increasing the hours worked), increasing leverage (i.e., increasing the ratio of associates to partners), improving realization and by decreasing operating expenses. Law firms always concentrate on realization, meaning the success in capturing and collecting the hourly charges per lawyer. That is, to improve profitability the firm wants to reduce the time or dollars written off and increase the speed with which it collects its bills.

Law Firm Economics

Understanding the business side of a law firm

Jonathan I. Epstein

- Top law firms are large, complex organizations
- AmLaw 100 revenues range from $276,000,000 to $2.2 Billion!
- Multi-Office
- National and international
- Thousands of employees



- Billable hours
- Billing rate
- Billing Realization
- Alternative fee arrangements (AFA's)

DrinkerBiddle 4

- Record your time
- Submit regularly
- Billable hours
- Non-billable time = Investment
- Inventory

DrinkerBiddle 5

One hour per lawyer per month:

1 hour x 500 lawyers x $300 x 12 months = $1,800,000 per year!

One hour per lawyer per week:

1 hour x 500 lawyers x $300 x 52 weeks = $7,800,000 per year!

DrinkerBiddle 6

- What is my rate?
  - Standard rate set by firm
- How is it determined?
  - Market
  - Experience
  - Expertise
  - Specialty
- Discounts

- Realization rates represent the dollar amount of standard "time value" which are eventually billed and collected by the firm.
  - Rate realization compares the actual rate charged to a client against standard billing rates.
  - Billing realization compares the amount actually billed to a client against amount recorded.
  - Collection realization compares the amount of fees collected against the amount of fees billed.

- Client satisfaction
- Efficiency
- Quality of work/Value to client
- Establishing realistic client expectations
- Communications with client regarding progress

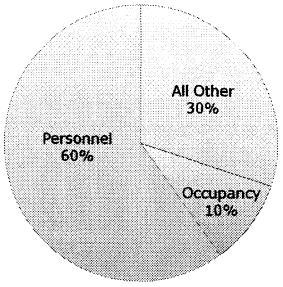
- Lawyer Compensation + Benefits
- Overhead
- Client Expenses

- Actual cash compensation
- Salary + bonus
- Benefits
- Distributions of profit to partners

- All expenses of the firm, net of lawyer compensation. Consists of:

-Secretarial Staff	-Technology/Communications
-Occupancy	-Recruiting & CLE
-Administrative	-Marketing
-Insurance & Taxes	-Supplies
-Library	-Office Operating Expenses

70% of a typical law firm's expenses are personnel and occupancy.



DrinkerBiddle 13

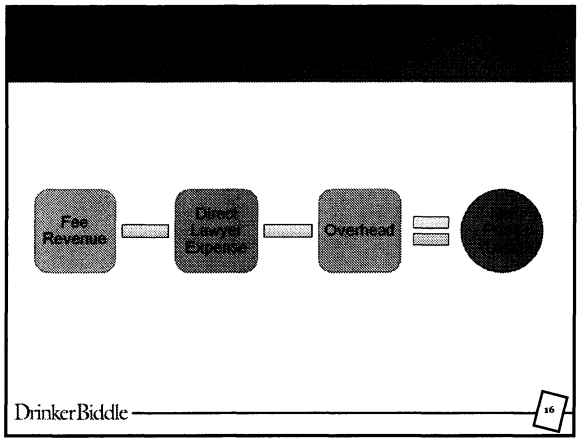
- Hard costs (cash)
  - Filing fees
  - Travel
- Soft costs (non-cash)
  - Westlaw
  - Photo copies
- Generally, billed to client

DrinkerBiddle 14

Compensation	$130,000
Benefits	20,000
Overhead	180,000
Total	**$330,000**

Need to collect this amount before any profit is generated for partners.

DrinkerBiddle 15



DrinkerBiddle 16

- Utilization (hours per lawyer)
- Realization
- Leverage

DrinkerBiddle 17

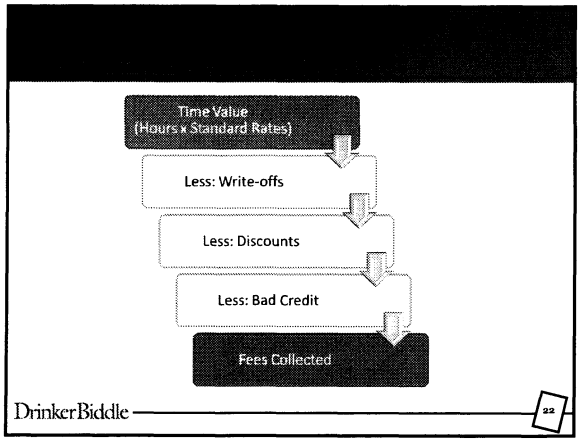
- Revenue Per Lawyer (RPL)
- Profits Per Equity Partner (PEP)
- Profit Margin
- Revenue "Leakage"
- Realization

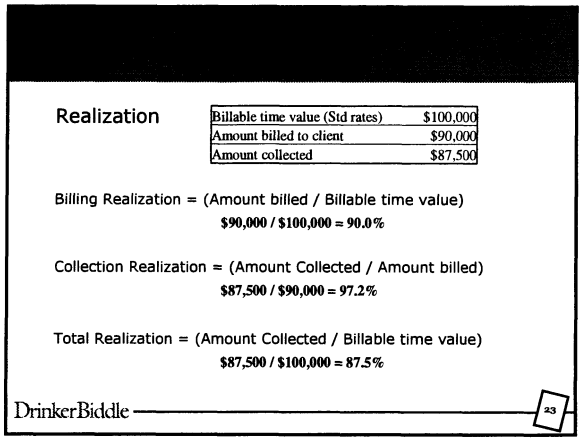
DrinkerBiddle 18

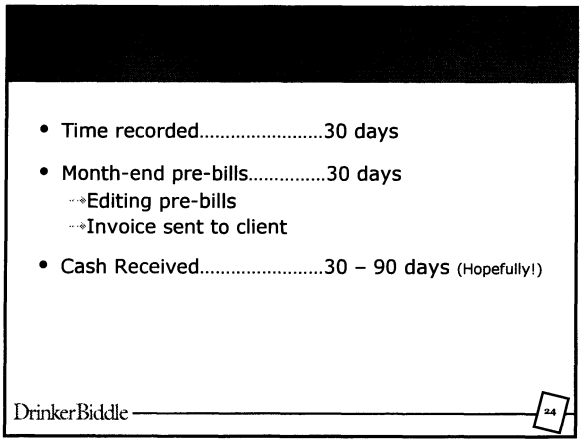
- Revenue Per Lawyer (RPL)
  - Gross Revenue / Full time Equivalent Lawyers (FTE)
  - $360,000,000 / 600 Lawyers = $600,000

- Profits Per Equity Partner (PEP)
  - Net Profit / Number of Equity Partners
  - $120,000,000 / 240 EP = $500,000

- Profit Margin
  - Net Profit / Gross Revenue
  - $120,000 / $360,000 = 33%


Time Value
(Hours x Standard Rates)
Less: Write-offs
Less: Discounts
Less: Bad Credit
Fees Collected
DrinkerBiddle
22


Realization
Billable time value (Std rates) $100,000
Amount billed to client $90,000
Amount collected $87,500
Billing Realization = (Amount billed / Billable time value)
$90,000 / $100,000 = 90.0%
Collection Realization = (Amount Collected / Amount billed)
$87,500 / $90,000 = 97.2%
Total Realization = (Amount Collected / Billable time value)
$87,500 / $100,000 = 87.5%
DrinkerBiddle
23


Time recorded.....30 days
Month-end pre-bills.....30 days
Editing pre-bills
Invoice sent to client
Cash Received.....30 – 90 days (Hopefully!)
DrinkerBiddle
24

- Monthly financial statements & reporting
- Financial and profitability analyses
- Time entry system
- Payroll – Partners & employees
- Accounts payable & expense reimbursement
- Client billing function
- Collection follow-up
- Cash receipts & escrow
- Budgeting & Forecasting
- Annual Audit

Questions??
Questions???

Fundamental Economics of a Contingency Fee Practice: A Different Pagadigm

John A. Sakson, Esquire

This segment of Law Office Management 101 addresses the Fundamental Economics of a Contingency Practice. The economics of an hourly billing practice were the subject of Jonathan Epstein, Esquire's presentation, and represents one of the two general paradigms for attorney billing. The other paradigm for attorney billing is "contingency fee billing". This monograph addresses contingency billing and its requirements, referral fees, certification of trial attorneys, the economics of a contingency fee practice, and attorney advertising and marketing.

Contingency Fees

Contingency billing means that an attorney performing services for a client will be paid a fee 'contingent' - or dependent upon - a recovery by the client. This form of billing is almost always used in plaintiff's claims, i.e., where the person asserting the claim is seeking to recover money damages. It is rarely used in representing defendants, who face the prospect of paying a damage award. Traditionally, contingency billing is used in claims arising as a result of tortious conduct and involving personal injury. These claims include vehicular negligence, premises liability, product liability and medical and other professional negligence.

More recently, employment discrimination and other workplace claims are being undertaken on a contingency basis. Attorneys representing plaintiffs in business tort cases, including fraud, interference with contractual relations, and accounting malpractice also utilize this billing approach. Contingency fees are **prohibited** in Criminal and Matrimonial cases in New Jersey.

Because they are often used in personal injury, medical malpractice and commercial collection cases with substantial damages, contingency fees have been widely associated with large jury awards and recoveries and, as a result, have become a focal point for advocates of tort reform. In reality, they have existed for at least 100 years, long before the onset of the current liability crisis. Significantly, U.S. jurisdictions generally eschew "loser pays" systems that permit successful litigants to recover attorneys' fees from the losing party.

Proponents of contingency fee arrangements argue that they improve access to the legal system by enabling plaintiffs with limited financial means to obtain legal services they could not otherwise afford, sometimes referred to as "opening the courthouse door". Critics of contingency fee arrangements, on the other hand, attribute the recent "litigation explosion"– the expansion of tort liability – largely to the efforts of lawyers working on a contingency fee basis to increase the return on their investment. Detractors of contingency fees decry the oft-stated goal of improving access to the legal system as misleading, claiming that contingency fee

arrangements are motivated by greed and encourage excessive, speculative or frivolous litigation. After all, contingency fee arrangements also finance litigation of upper-income and business clients that could easily afford to pay on an hourly basis.

Controversial or not, there is no question that the use of contingency fee arrangements in U.S. civil ligation has become widespread, expanding well beyond the confines of tort law. In a number of other contexts, contingency fee arrangements have proven an effective means of spreading risk, not only for litigants with resource or liquidity constraints, but also for the well-financed. This includes Intellectual Property matters, and particularly patent infringement lawsuits, where the substantial litigation costs for both sides may be as significant an influence on the outcome of the case as the merits of the claim itself. The truth is contingency fee arrangements have a proud and honorable place in legal practice. Often, they are the only way individuals and smaller companies can actually gain access to the courts and legal system their taxes support. If a case is successful, the plaintiff will most likely pay more to their lawyer under a contingency fee arrangement than they would had they paid hourly fees. The reason for this is straightforward. The money the contingency fee lawyer makes on successful cases has to make up for the money he does not make on the cases that fail. The key words here are "if the case is successful." No case is guaranteed, and

there is always the risk of losing. In short, the winning cases subsidize the losing ones. Now given these economic truths, why should anyone agree to this? Again, the answer is simple. If you lose, you don't pay. For individuals and small companies who would otherwise face financial ruin in the event of a loss, the prospect of paying fees only out of actual winnings is very, very attractive. They are willing to pay somewhat more in the event of a win in order to offset the very real economic devastation that would result in the event of a loss.

Despite popular rhetoric to the contrary, the truth is that contingent fee arrangements discourage rather than promote frivolous litigation. The contingency fee lawyer only gets paid when a case is successful. He doesn't get paid for effort. He doesn't get paid for churning paper. He doesn't get paid for beautifully drafted research memos. He gets paid for results. Contingent fee arrangements weed out and discourage frivolous cases. The successful contingency fee case thus blends the common interests of both lawyer and client. The client who has a strong case and can afford hourly fees is probably money ahead to pay on an hourly basis. Only when he cannot does a contingent fee arrangement make economic sense. Similarly, it does the contingency fee lawyer absolutely no good to take on a meritless case because even 100% of zero is still zero.

Contingent fees are also used by attorneys representing the 'petitioner' (a/k/a "plaintiff") in Workers Compensation matters. Workers Compensation is not a

common law right of recovery, but was statutorily established. The workers compensation statute caps attorneys fees at 20% of the petitioner's recovery. This award is divided between the petitioner and the respondent ("defendant"), and is typically paid 40% by the petitioner and 60% by the respondent on cases which settle by judgment. Attorneys fees for the petitioner's attorney are paid 100% by the petitioner when Workers Compensation claims are settled by a "Section 20" lump sum settlement, which eliminates the opportunity to re-open the case at a later point in time.

Rule 1:21-7: The Contingent Fee Rule

New Jersey Court Rule 1:21-7 governs contingent fees when the claim being made involves tortious conduct, including products liability. The rule read, in pertinent part:

> ***© In any matter where a client's claim for damages is based upon the alleged tortious conduct of another, including products liability claims and claims among family members that are subject to Part V of these Rules but excluding statutorily based discrimination and employment claims, and the client is not a subrogee, an attorney shall not contract for, charge, or collect a contingent fee in excess of the following limits:***
>
> ***(1) 33 1/3% on the first $500,000 recovered;***
>
> ***(2) 30% on the next $500,000 recovered;***

> ***(3) 25% on the next $500,000 recovered;***
>
> ***(4) 20% on the next $500,000 recovered; and***
>
> ***(5) on all amounts recovered in excess of the above by application for reasonable fee in accordance with the provisions of paragraph (f) hereof; and***
>
> ***(6) where the amount recovered is for the benefit of a client who was a minor or mentally incapacitated when the contingent fee arrangement was made, the foregoing limits shall apply, except that the fee on any amount recovered by settlement without trial shall not exceed 25%.***

This rule establishes a sliding fee scale, where the percentage of attorneys fee paid by the client is reduced as the amount of the recovery grows, in increments of half a million dollars. Fees on net recoveries in excess of $2 million are fixed by the court.

Contingent fees pursuant to R. 1:21-7 are fixed on the client's net recovery. "Net recovery" means the gross amount recovered, less the costs associated with producing the recovery. Permissible costs include investigation expenses, expenses for experts or other testimony or evidence, costs of brief and transcripts on appeal, and interest pursuant to R. 4:42-11(b) [Non-binding, mandatory arbitration of claims prior to trial]. Examples of costs that are **not** permitted include overhead, (such as rent) secretarial expense, telephone expenses, postage expenses,

photocopying, attorney transportation and legal research. (See the Comments to R.1:21-7 for more information.)

Rule 1:21-7 also requires that all contingency fee agreements be in writing, and the client must be advised that they have the option of paying the reasonable value of the legal services rendered instead of the contingent fee. Contingent fees subject to this rule for minors and incompentents are limited to 25% if the matter is not tried. Recoveries that involve a 'structured settlement' - payments received by a claimant over a period of time - are calculated on the *actual cost* of the deferred payment, and not on the amount of money paid out over time. The rule also allows attorneys to seek a greater fee than the rule allows in exceptional cases, by application to the court, and subject to a body of case law on the subject. Permissible reasons for an increased fee include cases that create new causes of action, and situations involving very high expenses paid by the attorney in the face of no offer from the defendant.

Referral Fees

A referral fee is a fee paid to anyone, who may or may not be an attorney, solely for the recommendation of counsel, without the performance of services. This situation typically arises when an attorney obtains a case in an unfamiliar practice area, and refers the case to another attorney to do the actual work on the case. This often occurs when attorneys refer personal injury cases or Workers

Compensation cases to practitioners in those fields. The attorney receiving the case pays a percentage of the fee earned - typically one-third of the fee - to the attorney who referred the case, without any regard to the amount of work, if any, performed by the referring attorney. This arrangement also occurs in other specialty practice areas. Referral fees are generally prohibited by RPC 7.2© and RPC 7.3(d). R.P.C. 1.5(e) does allow "division of fees" proportional to work performed, meaning that if more than one attorney works to earn a fee for a client, the participating attorneys may divide the fee based on the relative percentages of work performed by each of them. An attorney who is discharged by a client - often in personal injury and matrimonial matters - may recover "quantum meruit", or the fair value of the work performed, from the attorney who actually receives the fee in the case.

When 'referral fees' are paid by an attorney to someone who is not an attorney, in exchange for obtaining a case procured by that party, the conduct is criminal. The practice of directing personal injury cases to a specific attorney is known as "running", and the person procuring the case is called a "runner". New Jersey criminalized this conduct, with the passage of N.J.S.A. 2C:21-22.1, in 1999, which makes it a third-degree crime for a lawyer or health care provider to use a runner.

There is an important exception to the general prohibition regarding the payment of referral fees in New Jersey. Rule 1:39-6(d) specifically provides that

Certified Attorneys may pay referral fees without regard to work participation or responsibility. This feature of the certification procedure presents a substantial incentive to qualified attorneys to complete this arduous process.

The Attorney Certification Process

The New Jersey Supreme Court authorized the certification of attorneys when it adopted this rule in 1979. Initially, the Board on Attorney Certification was permitted to certify Civil Trial Attorneys and Criminal Trial Attorneys. The certification process was expanded in 1996 to include Matrimonial Law Attorneys and Workers Compensation Law Attorneys. An attorney qualifies to sit for the written certification examination by demonstrating education, experience, knowledge and skill in a designated practice area. Recommendations are obtained from judges who have witnessed the applicant's trial skills, and from adversaries in cases that were tried. Each applicant must meet a minimum trial days requirement, and must supply information to the Board regarding a number of completed cases. The 'experience' requirements are established by the specific sub-boards in each specialty area. Applicants successfully completing this process are allowed to sit for the day-long certification examination, which is graded by members of the Board on Attorney Certification. Successful candidates earn the title: Certified Civil Trial Attorney, Certified Criminal Trial Attorney, Certified Matrimonial Law

Attorney or Certified Workers Compensation Attorney. It is generally understood that less than 1% of all New Jersey licensed attorneys have earned certification.

The rationale for the certification process, and for the ability to pay referral fees without the necessity of work participation by the referring attorney, was to encourage attorneys to forward cases in these specialty areas to practitioners who are knowledgeable and active in those practices. For example, a real estate transactions attorney may be approached by a client with a complex medical negligence claim. Although the attorney has never handled such a claim, there is a temptation to attempt the matter because of the potential for a significant fee. The attorney undertaking such a matter will undoubtedly experience many sleepless nights throughout the course of the case, questioning decisions made along the way and worrying about the outcome. The certification process allows that attorney to refer the malpractice claim to an experienced (and certified) malpractice attorney, and still share in a substantial fee if the case is successful. The client receives the benefit of a seasoned litigator in the specialty area, and the referring attorney reaps some of the reward, with none of the work or the heartache. It's a "win-win" situation. Referral fees are **not** allowed on matrimonial cases. The rationale for this prohibition is that the cost of the referral fee would be passed along directly to the client in the form of increased fees, since matrimonial fees are paid by the client individually.

Calculation of Referral Fees

There is no rule that specifies how to calculate a referral fee. Typically, a referral fee on a personal injury matter is one-third of the attorney's fee earned in the case. Thus, a forwarded case earning a gross attorney's fee of $15,000 would result in a $5,000 referral fee to the referring attorney. This practice is altered slightly in larger cases where the net recovery is subject to the sliding fee scale of R. 1:21-7. Certified civil trial attorneys frequently pay referral fees in direct relation to the percentage of fee they are receiving, i.e., they pay a 33.33% fee on fees subject to that percentage, they pay 30% on fees subject to that percentage, and so forth. Nothing prohibits a certified attorney from paying more, or less, as a referral fee, although the economics dictate against paying larger percentages, and the marketplace (i.e, the competition among certified attorneys for referred work) discourages paying lower percentages than custom dictates.

Referral fees on business litigation and non-litigation matters are paid at a lower percentage than personal injury matters, often 10 - 15%, rather than a third of the fee. The economics of hourly billing do not support working for a significantly discounted rate.

Operating a Contingency Fee Practice

The hourly billing paradigm might be characterized as "The bigger, The better", meaning that the more people working on a project, billing hours to that project, will add to the profitability of the endeavor. Put another way, "X" attorneys working "X" hours at "X" rate, realizing "X" percentage of their billed time equals gross fees. That larger the number represented by "X", the larger the amount of the gross fees. A contingent practice, on the other hand, is rewarded for the result of its efforts, but not for the effort itself, and not in any relation to the amount of time spent on the matter. In fact, the less time spent on a matter, the better it is for the contingency biller. In theory, at least, a contingent practice seeks to be 'lean and mean', meaning that excessive staffing, unnecessary work and excessive overhead detract from profit, and the more quickly and efficiently a matter is prosecuted, the more profitable it is for the contingency biller.

However, as T.S. Elliot famously wrote: "Between the idea and the reality falls the shadow.", and accomplishing the task of operating in this fashion is easier said than done. Personal injury practices tend to be staff-intensive, and they tend to rely on case management software. They are staff-intensive for a number of reasons. First, the personal injury attorney is often dealing with unsophisticated clients. Second, these clients are in crisis, because they are injured, out of work, losing income, incurring expenses and worrying about the future. The cases

themselves have elements (P.I.P. issues and workers compensation issues) which are time-consuming, and the responsible attorneys are often out of the office, attending court sessions, depositions or other proceedings. Finally, these practices tend to be 'large volume' practices, meaning that attorneys or law firms handling these cases tend to have a large volume of cases. For all these reasons, personal injury and workers compensation firms tend to have large staffs. A typical "attorney to staff" ratio in a business practice is 2:1 or higher, meaning that two or more attorneys share one secretary. A typical "attorney to staff" ratio in a personal injury or workers compensation practice is 1:2 or higher, meaning that one attorney has two or more staff members.

Case management software maximizes efficiency and productivity in volume contingency practices by systematizing the case handling process in a number of ways. These programs manage and integrate relevant data, including provider information, schedules and deadlines. Many programs are 'calendar-driven', and prompt a user to execute specific functions according to a schedule, or checklist, created and/or modified by the user. "Needles", a product of Cheseapeake Interlink, Inc., is the acknowledged leader in the field of personal injury and workers compensation case management software.

Cash flow is a major concern in a contingency billing practice. Hourly billers generate monthly bills, which are submitted to clients for payment as they

are generated. The monthly receipt of income (when these bills are paid) is a positive cash flow factor. Contingent billers are not paid until the case is resolved, either by settlement or verdict. The average length of a personal injury case in New Jersey is approximately 36 months (from the date of the incident, until the resolution of the claim by settlement or verdict), and the contingent biller does not receive a dollar of income during this time period, until some or all of the case resolves. The 'pipeline' analogy is often used to explain this situation. Imagine a pipeline that enters the ground at a certain point, and exits the ground at a further point. The distance, or length, of the underground pipe is the equivalent of 36 months. A contingency billing attorney will pump cases into the pipe at the one end, but nothing will come out of the other end for approximately 36 months. Once the flow is established, and assuming the attorney continues to obtain work, there will be a steady stream of income coming out of the end of the pipe, although the attorney waited three years for the income flow to begin.

Other cash flow issues include the fact that the costs incurred in establishing and handling a personal injury case must be paid as the expense is incurred, and may not be deducted as an "expense" on the attorney's tax return. Staff and associate attorney compensation is usually paid on a regular (weekly, bi-weekly or monthly) basis, regardless of the firm's receipt of income. Other office expenses, including rent, benefits, insurance, supplies and other office expenses, are also paid

as incurred. For this reason, many contingency attorneys and firms establish credit lines with a bank to ensure the availability of cash at all times. There is a story about a Texas lawyer flying around the country in his jet, from one huge case to another, who was known to say: "My banker is my best friend!" Practices that operate on a calendar-year basis will distribute all the income in the business on December 31st, and begin the new year with an empty bank account. Unless a substantial case settles at the very end or very beginning of the year, the first payroll, or first several payrolls, will be made with money borrowed from a credit line, which will be repaid as fees are received, or from the pocket of the practice owner. This reliance on outside institutions for financing is another aspect of the unique pressures of the contingency fee practice.

Profitability in this type of practice must be measured after all the expenses associated with the production of a fee, including the cost of financing, is considered. The law firm management literature speaks about the "Rule of Threes" in associate profitability. This school of thought maintains that an associate is not profitable to the firm/employer until the associate is generating fees equal to three times the associate's salary. One third of the fee production pays for the associate salary, while another third pays for overhead in its many forms, while the final third represents profit. Thus, an attorney earning a salary of $80,000 would be

expected to generate at least $240,000 in realized gross fees, in order to be considered to be profitable.

Compensation

A discussion of compensation methodologies for partners/shareholders in law firms is beyond the scope of this monograph. Suffice it to say that sole practitioners will earn the net sum of their gross income minus their expenses; whereas partners divide profits in accordance with a partnership agreement, and shareholders divide profits according to a shareholder agreement.

Associate salaries in contingent practices are paid in a variety of forms. Some firms pay a straight salary, either in a lockstep or merit-based system. Lockstep systems pay all associates who begin work in a specific year the same salary, so that each year's "class" of attorneys receives the same salary. Sometimes these systems continue and include partnership, whereas other lockstep systems operate for only the first two or three years of an attorney's tenure with the firm. Many smaller law firms pay associates a salary plus a percentage of the fee on work that is originated by the associate. The percentage ranges, but is often one-third of the fees earned. Other law firms will pay associates based on a percentage of their fee production on cases supplied by the firm. Another approach is to blend a base salary with a percentage of production over a set amount, giving the associate an incentive to maximize fee production.

Attorney Advertising

Young lawyers in 2010 will have difficulty understanding the changes that have occurred in the area of attorney advertising over the course of the past 30+ years. Attorney advertising is both widely used and widely accepted today. The television and radio airwaves are rife with attorney commercials, while billboards and other signage is found along our roadways. Attorneys utilize print media to disseminate information about their practices, and the internet is a brave new world of opportunities for lawyer advertising. And yet, none of this existed 33 years ago, and when attorney advertising was first allowed, an advertising attorney was viewed as a pariah by his fellow members of the bar. How times have changed!

Attorney advertising has a long history in America. From the time of our founding fathers, up through and including the time of Abraham Lincoln, attorney advertising was commonplace. The methods of advertising were limited by the available media, and attorneys typically advertising in newspapers, journals and other print publications. Flyers and other printed materials were also disseminated.

It was not until the early 1900s when attorney advertising was halted by courts, when it was deemed to be 'commercial speech' which was not entitled to First Amendment protection. In 1908, the American Bar Association derided attorney advertising as "unprofessional". Legal and ethical prohibitions prevented attorneys from advertising for the bulk of the 20th century, until 1977, when the

United States Supreme Court rendered its decision in Bates v. State Bar of Arizona, 433 U.S. 350 (1977). This landmark opinion held that legal advertising is not inherently misleading, and ruled that it constitutes commercial speech which does have First Amendment protection.

State bars around the country reacted to this decision, and in 1979 New Jersey allowed print advertising, but prohibited other media usage, notably television and radio. 1984 brought the freedom for New Jersey attorneys to utilize radio and television advertising, but the enabling rule did not allow "drawings, animations, dramatizations, music or lyrics". This rule remains in place today, although it is not enforced, and New Jersey attorney advertisements routinely utilize drawings, animations and music. Common forms of attorney advertising now include television, radio, print media, telephone directories, billboards, internet, direct mail, pamphlets, flyers and sponsorship of sports teams. Attorney logos are found on almost every imaginable item, including T-shirts, hats, coffee mugs, letter openers, stress relievers and other "give-aways".

Legal advertising in New Jersey is currently controlled by R.P.C. 7.2, which holds that all advertising shall be 'predominantly informational', and shall not utilize 'extreme portrayals'. The New Jersey Supreme Court formed a Committee on Attorney Advertising, and promulgated Court Rules addressing the issue, which are found at N.J. Court Rule 1:19A-1 through 1:19A-7. The Committee issues

Advisory Opinions on Attorney Advertising, which are published in the New Jersey Law Journal, and which currently number forty (40) opinions. There are two Attorney Advertising Guidelines. The first requires every advertisement to include a bona fide street address, and the second establishes font requirements for direct mail and other advertisements.

Marketing

Getting clients is the name of the game. Law firm leaders know that it is much easier to find an attorney to **do** the work, than it is to find an attorney who is able to **get** the work. Attorneys who are able to produce clients at a significant level are known as "rainmakers" in the legal world. Rainmakers are a valuable commodity, and they are often among the most highly compensated attorneys at a law firm. The road to partnership/shareholdership at many law firms requires a candidate to demonstrate the ability to develop their own clients before the attorney will be admitted to partnership. It is sometimes said that before an attorney is made a partner, they have to "feed themselves and at least one other person" (meaning that they produce work for themselves and an associate).

Fortunately, there are many different ways to gain clients, and an attorney should be able to find an approach fitting their style and personality. By far the easiest way to gain new clients is through reputation. Good lawyers do good work, and are recognized as good lawyers. Many attorneys have built fabulous practices -

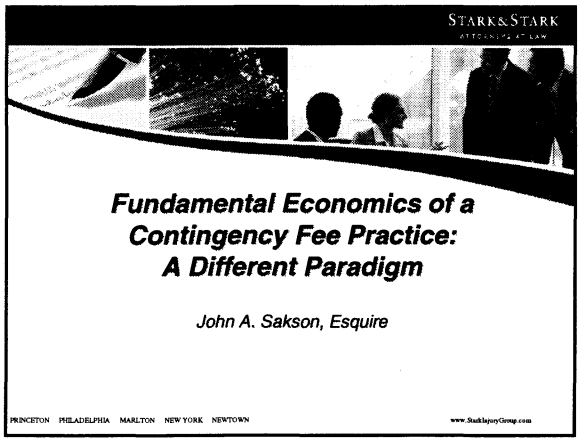
without any marketing effort - simply by being excellent at what they do. Publishing scholarly or practice-related articles in legal or non-legal publications is a time-honored method for letting others know that you possess knowledge in a specific area. Some attorneys host radio or television "call-in" shows, answering legal questions for listeners. Offering seminars to the public and/or the bar is another excellent way to gain visibility. Websites and blogs utilize the Internet to circulate information about an attorney's practice.

Community involvement is another popular method for obtaining clients. Working for an organization or a cause that is important to you gives you the opportunity to meet other like-minded individuals. Networking with other lawyers, through the County or State Bar Association or NJAJ or AAJ, is another means of meeting people who may send work to you.

All of these approaches are available to you, and there's one more that hasn't been mentioned yet: advertising! There are multiple medias available to you, including television, radio, print and the Internet, and the only limits to your endeavor are posed by the rules governing advertising conduct, and your pocketbook.

Finally, larger law firms offer an additional source of work - what is known as the "internal referral". Many lawyers make a living from the cases they receive from other attorneys within their own law firm.

There are many approaches to obtaining new clients, and the mastery of one or more of these methods is a necessary part of every attorney's skill set. Attorneys with a reputation for doing excellent work, and for keeping clients happy by communicating with them, will always be in demand, and this is as true within the walls of a law firm as it is outside those walls. Do excellent work, be responsive to your clients, and make the referring attorney look good in the client's eyes, and you're sure to be the recipient of more work.



Two General Approaches to Billing

- **Hourly billing - Explained by Jon Epstein, Esquire**
- **Contingency Billing**

Traditionally, claims arising as result of tortuous conduct: Personal injury, including vehicular negligence, premises liability, product liability, medical and other professional negligence. Also, business torts: fraud, interference with contractual relations, accounting malpractice.

Prohibited in Criminal & Matrimonial Cases!

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Other Contingency Billing Areas:

- **Workers Compensation**
  - Statutory basis for fees:
    - Cap of 20% of recovery
    - Max fee of $40,000
  - Payable:
    - 40% by petitioner, 60% by respondent on judgments
    - 100%by petitioner of Section 20 settlements
- **Collection cases**
  - Often a blended rate, including a fixed fee as well as a % of recovery
- **Business/Commercial Litigation**
  - A recent phenomenon, value-added for client

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Rule 1:21-7: Contingency Fees

Tortious conduct, including Products Liability, is subject to the limits of this rule:

- 33.33% of first $500,000 net recovery;
- 30% of next $500,000 net recovery;
- 25% of next $500,000 net recovery;
- 20% of next $500,000 net recovery.
- Fees on net recoveries in excess of $2 million are fixed by the Court.

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Fees are computed on "Net Recovery":
Gross amount less costs

Permissible Costs:

- Investigation expenses
- Expenses for experts or other testimony or evidence
- Costs of briefs & transcripts on appeal
- Interest pursuant to R.4:42-11(b)

Not Permitted as Costs:

- ✓ *Overhead (rent, secretarial time, etc.)*
- ✓ *Telephone*
- ✓ *Postage*
- ✓ *Xeroxing*
- ✓ *Attorney transportation*
- ✓ *Legal research*

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Other Considerations:

- Contingent fees for minors or incompetents are limited to 25% if the matter is not tried .
- Contingency Fee Agreement must be in writing.
- Structured settlement fees are calculated on the actual cost of the deferred payments.
- The fee caps of R.1:21-7 do not apply to Business Torts.
- Client must have the option of paying the reasonable value of services rendered.
- Provision for application to Court for a greater fee.

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Referral Fees

- Payment of referral fees is **not** permitted in New Jersey. *See R.P.C.s 7.2(c) and 7.3(d).*
- *R.P.C. 1.5(e) allows "division of fees" proportional to work performed.*
- *An attorney may recover "quantum meruit" – the fair value of the work performed.*
- ✓ ***Exception:*** **Certified Attorneys may pay referral fees without regard to work participation or responsibility. R.1:39-6(d).**

Matrimonial cases are excluded from this rule.

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How are Referral Fees Calculated?

Personal Injury cases:

- Typically, one-third (1/3) of the attorney's fee earned in the case.
- Larger value cases: the same proportion of referral fee as earned by R. 1:21-7. (1/3 of 1/3; 30% of 30%, 25% of 25%, 20% of 20%).

Business & Non-litigation matters:

- A lower percentage – often 10 – 15%, even in cases with a blended rate (hourly fees + contingent fee).

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Eligibility to Apply for Certification:

- Membership in NJ bar for at least 5 years
- Engaged in private practice or government, and represents and gives advice to clients
- Extensive & substantial experience in the designated practice area
- Reputation for professional competence
- Substantial educational involvement
- Successful completion of written examination

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How does a Contingency practice operate?

- Hourly paradigm: The bigger, the better
- "X" attorneys working "X" hours at "X" rate, realizing "X" % of their billed time = Gross fees
- Gross fee minus expenses = profit
- Contingent practices seek to be lean & mean, although these practices are **staff- intensive & reliant on Case Management Software**

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Board on Attorney Certification
The Certification Process

- Rules 1:39: Certification of Attorneys
- Four areas of Certification:
  - Civil Trial Attorney
  - Criminal Trial Attorney
  - Matrimonial Law Attorney
  - Workers Compensation Law Attorney

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Staff Intensive Because:

a) dealing w/unsophisticated clients;

b) Clients are in crisis (injured, out of work, loss of income, bills to pay, concerns about the future)

c) P.I.P. & WC issues are time-consuming

d) Attorneys frequently out of the office;

e) Often large volume practices (many clients)

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Typical "Attorney to Staff" ratios:

Business practices:

- **2:1 or higher**
- This means that two or more attorneys share one secretary.

Contingent practices:

- **1:2 or higher**
- This means that one attorney has several secretaries, or a secretary and a paralegal.

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Cash Flow is Always a Concern in Contingent Practices

Business practices:

- Hourly billers generally bill submit bills on a **monthly basis**.
- Monthly payments = Cash Flow

Contingent practices:

- Contingent billers are paid at the **conclusion** of the case.
- Average life of a personal injury case in NJ = 36 months (Initial sign-up until final disbursement)

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Additional Cash Flow Issues:

- Costs must be paid as incurred (police report, photographs, medical records, narrative reports, liability experts, depositions, etc.) and may not be deducted as an "expense" on tax return.
- Staff and attorney compensation is usually paid on a regular basis (weekly, bi-weekly or monthly) regardless of receipt of income.
- Office overhead, including: rent/mortgage, employee benefits, malpractice insurance, office expenses & supplies must be paid on time.

✓ The Texas jet-set lawyer: "My banker is my best friend!"

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How are Contingent Fee Attorneys Paid?

- Sole practitioner: "Eat what you kill."
- Partnership: Split in accordance w/agreement
- Corporate form: According to Shareholder Agreement

Associates:

- Salary, raises either in lockstep, or merit-based*;
- Salary plus percentage of work brought in to firm (1/3);
- Percentage of production (20% or more, paid as earned or computed monthly or quarterly);
- Blended: salary + percentage of production over a certain amount.

** Often lower than salaries paid to hourly billing attorneys*

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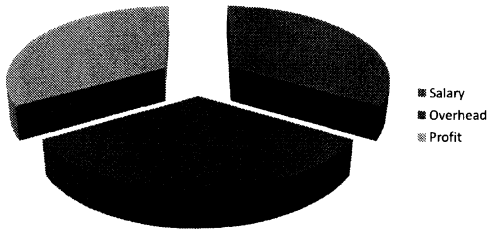
Profitability

"Rule of Threes"



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Attorney Advertising

❖Commonplace in early years (Abe Lincoln)

❖Disallowed as commercial speech not protected by the 1st Amendment in 1900s

1908: "unprofessional" according to ABA

1977: Bates v. State Bar of Arizona, 433 U.S. 383

•Legal advertising is not inherently misleading

•It is commercial speech & has 1st Amendment protection

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Legal Advertising in New Jersey:

- 1979: allows print advertising
- 1984: allows broadcast (radio & TV) advertising, but no "drawings, animations, dramatizations, music or lyrics"
- This rule has not changed, but is not enforced.

Currently in New Jersey, R.P.C. 7.2:

- All advertising shall be predominantly informational
- No "extreme portrayals"

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Common Forms of Legal Advertising

- TV
- Radio
- Print media, including telephone directories
- Billboards
- Internet
- Direct Mail
- Pamphlets & flyers
- Sponsorship of sports teams

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Committee on Attorney Advertising

- NJ Court Rules 1:19A-1 to 1:19A-7
- Attorney Advertising Guidelines:

1. All advertisements shall include a bona fide street address
2. Font requirements for direct mail & other advertisements
3. Advisory Opinions on Attorney Advertising are published in the New Jersey Law Journal and are archived. There are currently 40 of them.

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Marketing

Getting business is the name of the game.
*"It's a lot easier to find someone to **do** the work than it is to find someone who can **get** the work!"*

How do you get the work?

- Reputation
- Community Involvement
- Networking with other lawyers (County & State Bar Ass'n; NJAJ; AAJ)
- Publishing scholarly or practice-related articles to other attorneys
- Newspaper column/radio or TV show
- Website – including "pay per click" & SEO (Search Engine Optimization)
- Blogging
- Giving seminars to attorneys and/or the public
- Advertising – multiple medias (TV, radio, print, Internet)
- Specializing/"niche" practice areas (Nursing Home, Med Mal)
- The "Internal Referral" – a great source of business at large firms

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Thank You.

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About the Panelists...

Jonathan I. Epstein is the Managing Partner and Partner-in-Charge of Drinker Biddle's Princeton, New Jersey, office. Concentrating his practice in real estate and commercial litigation, he has more than 30 years of experience as a transactional lawyer and litigator of commercial disputes.

Admitted to practice in New Jersey, Mr. Epstein is Past President and former Trustee of the Mercer County Bar Association and a member of the New Jersey State, Mercer County and Princeton Bar Associations. He has been a member of the District VII Ethics Committee and a Trustee of the Mercer Bar Foundation and the Legal Aid Society of Mercer County.

A former Adjunct Professor at Seton Hall University School of Law, Mr. Epstein has also served as a Master of the Mercer County American Inn of Court. He is the recipient of the New Jersey Commission on Professionalism 2005 Professional Lawyer of the Year for Mercer County and has been named in *Business News New Jersey*'s "Who's Who" as one of New Jersey's top business leaders.

Mr. Epstein received his B.A. from Hobart College and his J.D. from Rutgers University School of Law-Camden.

J. Llewellyn Mathews, Certified as a Civil Trial Attorney by the Supreme Court of New Jersey, is in private practice in Mt. Laurel, New Jersey, where he concentrates his practice in estate and trust litigation, general litigation and appellate matters.

Mr. Mathews is admitted to practice in New Jersey and before the United States District Court for the District of New Jersey, the Court of Appeals for the Third Circuit, the United States Patent and Trademark Office and the United States Supreme Court. He has been a member of the New Jersey State and Burlington County Bar Associations, the Federal Practice Committee of the Camden County Bar Association and the Association of the Federal Bar of the State of New Jersey. He has also served on the United States District Court for the District of New Jersey Lawyers Advisory Committee, the Third Circuit Judicial Council Bench-Bar Relations Committee and the New Jersey District III-B Ethics Committee. A Master of the Burlington American Inn of Court, he has also been a member of the Historical Society of the United States District Court for the District of New Jersey.

Mr. Mathews served as a United States Magistrate, presiding over jury and non-jury trials of misdemeanor and petty criminal and traffic offenses on the federal reservations at Fort Dix and McGuire Air Force Base, New Jersey. He is a published author and has participated in *pro bono* service as well as public and private arbitration and mediation programs. He has had numerous reported cases.

Mr. Mathews received his B.S. from Cornell University and his J.D. from the University of Oklahoma, where he was a member of the *Oklahoma Law Review.*

John A. Sakson, Certified as a Civil Trial Attorney by the Supreme Court of New Jersey and as a Civil Trial Advocate by the National Board of Trial Advocacy, is a Shareholder in Stark & Stark in Lawrenceville, New Jersey. Co-Managing Director of the firm and Chair of the Personal Injury Group, he concentrates his practice in serious personal injuries.

Admitted to practice in New Jersey, Mr. Sakson is a member and Past President of the Mercer County Bar Association and a member of the New Jersey State Bar Association, where he is Past Chair of the Certified Trial Attorneys Section and a two-term Mercer County Trustee to the Association. He is also a member of the American Bar Association, the American Arbitration Association Panel of Arbitrators, the Association of Trial Lawyers of America and ATLA-NJ, for which he formerly served on the Board of Governors. Mr. Sakson was also appointed to the New Jersey Supreme Court Board on Trial Attorney Certification and was Chair of the Civil Trial Attorney Certification Exam in 1993. Co-Author of *New Jersey Auto Insurance: A Consumer's Guide*, he has lectured at National Institute of Trial Advocacy programs and other continuing legal education courses.

Mr. Sakson received his B.A. from Fairfield University and his J.D., *cum laude*, from Seton Hall University School of Law.

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