

## Working Without a Net

Solos and small firms face special risks, but are free to customize a sound practice. **By Arthur Burger**

**Y**ou probably already know the special hazards involved in practicing in a small firm or as a solo practitioner, but let's get all the bad news out of the way. It's helpful to identify the problems in order to address the solutions.

First, you're more likely than your big firm colleagues to represent individuals and small businesses, rather than large institutions. So for your clients, the cases you handle are personal—real personal. In fact, any case you're handling may be the most important thing in your client's life at that time. Whether it's a divorce, a personal injury matter, an immigration or a criminal case, they need to have it come out right so they can get on with their lives. If things go badly, they will be angry, or even desperate, and may look for a lawyer to blame. That's why these cases come so high in the hit parade for bar complaints. Contrast this with handling a matter for a large corporate client. If a corporate client becomes mildly peeved, they can simply take their business somewhere else. They are 800-pound gorillas. This creates a different type of concern, but in terms of getting into trouble, your small firm clients are far more dangerous.

Second, when a call comes in on a new case, and you're thinking about meeting your rent and payroll, it's awfully difficult to turn the case down. But turning cases down is often essential to a profitable and efficient practice. If you're not turning down some cases, you are probably taking on some cases in which the client can't pay a reasonable fee, cases of questionable merit, or cases in which your expertise is stretched dangerously thin. These are formulas for difficult, or non-remunerative, times. There is only a finite amount of energy you have to give. Save it for reasonably good cases and clients.

Third, unlike your "uptown" colleagues, your backup resources are relatively limited. When you're stuck, there's no fleet of eager associates or gray-bearded senior partners to whom you can turn. You must therefore find a way to produce good work with relatively little staff support.

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Fourth, if you don't have a large firm and staff to fall back on, you are responsible for establishing a system to ensure that your handling of client funds, and funds of other third parties, is in strict compliance with the rules. There is zero tolerance for such violations and you must see to it that funds are properly handled.

So what's a lawyer to do?

There are many steps you can take to minimize the isolation of a solo, or small firm practice. For example, take advantage of bar groups and services that benefit the small firm lawyer. The Bar Association of the District of Columbia has a Solo and Small Firm Practice Committee. The D.C. Bar has a Law Practice Management Section. You should join other sections and associations that relate to your substantive area of law. Watch for CLE courses that are relevant to the small firm practitioner, such as the D.C. Bar CLE course on handling client funds, which is offered twice a year. Reid Trautz of the D.C. Bar assists lawyers in setting up trust accounts and other administrative aspects of opening an office. Link up with others with whom you can consult and exchange advice on cases.

Discipline yourself not to take a case until you have determined that it makes sense to do so. Make sure you have the necessary expertise and resources. That includes making sure the client is serious about his or her responsibilities as well. One way to find out if a client is serious about following through on the realities of paying the fees and costs involved is to require a significant retainer. If they decline or fail to pay a retainer, you've learned what you needed to know, and you've learned it the easy way.

If you decide to go forward with a case, prepare a good retainer agreement and have a candid discussion with the client regarding the expenses, duration of the matter, and difficulties you are likely to encounter. The retainer agreement should not only provide a full statement of the fee and billing provisions, but also define the scope of the representation, so there is no misunderstanding what you're agreeing to do, and what you're not. In fact, it's sometimes helpful to recite expressly certain related matters that you're not handling. Make no lofty or unrealistic predictions of what to expect. The client will

remember every word of any rosy prediction you offer. Let the client be pleasantly surprised if things go smoothly. If you decide not to take the case, send a letter to the client documenting that it is understood that you are not taking the case and have no responsibility to take further action.

Clients, like the rest of us, don't like to be ignored. Make a point of keeping clients informed, and make sure calls are returned. If there is bad news to report, get it out fast. It only gets harder if you delay. Develop a habit of documenting discussions with the client so that if things turn unpleasant, you will have more than your recollection to support your position.

Working toward specialization is usually preferable to trying to slug it out in a general practice. Specialization allows for efficiencies that can make you more productive, better able to

charge higher fees, and more marketable to clients. Find an area that allows you to play to your strengths, and go with it. Security comes only with being able to provide genuine value in the marketplace.

Finally, enjoy the benefits of a small firm or solo practice. You don't have to conform to the bureaucratic demands of a large firm. You can create a practice that reflects your personality, your values, and your attributes.

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