

2022 EDITION

The Virginia Lawyer: A Deskbook for Practitioners



Continuing Legal Education
by the Virginia Law Foundation



The Virginia Lawyer: A Deskbook for Practitioners

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VIRGINIA LAWYERS PRACTICE DESKBOOK

THE VIRGINIA LAWYER:
A DESKBOOK FOR
PRACTITIONERS

Seventh Edition

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CHAPTER 1

MANAGING YOUR LAW OFFICE

1.1 STARTING A LAW PRACTICE

1.101 Introduction. The practice of law has never been harder. Attorneys face enormous financial and competitive pressures from within and without the profession. As the number of attorneys has soared in the past few decades, so has the interest and ability of other professions and businesses—accounting, banking, and insurance—to practice law in all but name. Clients (and nonclients) are more than willing to cast blame for unfulfilled expectations by filing malpractice claims and ethics complaints. While malpractice claims against lawyers have existed since the birth of the profession—in Virginia they date back to the founding of our nation—the nature, frequency, and cost of those problems have changed.¹ The cost and frequency of malpractice suits exploded exponentially beginning in the 1960s and continuing through the 1980s, far exceeding the rate of growth of the lawyer population. While the 1990s showed some calming of this storm, malpractice suits remain at record levels.²

In this stressful climate, prudent management of a law practice is critical. This chapter is addressed primarily to attorneys newly admitted to practice in Virginia but also to seasoned attorneys undertaking to establish a new practice. Although the practice of law remains a worthy, challenging, and fruitful profession, attorneys must learn to manage their practices for both risks and opportunities.

The Virginia State Bar's website provides a comprehensive checklist for opening a law office in Virginia.³

1.102 Business Plan.

A. In General. Before setting up a practice, the attorney must spend considerable time and thought creating a business plan. Initially, the

¹ See *Stephens v. White*, 2 Va. (2 Wash.) 203 (1796) (failure to reply to suit is actionable malpractice despite the lack of a fee).

² ABA Standing Comm. on Lawyers' Prof'l Liab., *Legal Malpractice Claims in the 1990s* (1996).

³ www.vsb.org/site/members/practice-management-basics.

business plan should serve as a road map to provide guidance when a decision needs to be made while setting up the practice. After the initial set up of the practice, the business plan continues to serve as a source of direction whenever a crucial issue about the course of the practice arises. There is no better example of the wisdom of the old adage “an ounce of prevention is worth a pound of cure” than a properly developed and implemented business plan.

Once the attorney establishes the business plan, he or she will have a sound basis on which to make decisions about the practice. The plan also can serve as a useful tool when dealing with banks—a well-developed business plan goes a long way in convincing a potential lender of the viability of a law practice. In the longer term, the attorney should review the business plan regularly to revise it based on changes in practice direction, expectations, or needs. A business plan is never final; it is a work in progress.

There are numerous software packages that are useful in creating a business plan. Typically, these packages include helpful guides for developing a business plan as well as a large catalog of resources for use in setting up a business. For less than \$100, these software packages are well worth the price.

B. Elements of a Business Plan. At a minimum, a business plan should include each of the following elements:

1. Anticipated Type and Area of Practice.

a. In General. The attorney should consider what type of practice he or she intends to engage in. While some attorneys thrive as generalists, more and more attorneys find fulfillment in mastering a few focused practice areas.

b. General Practitioner. The general practitioner has the benefit and satisfaction of being able to serve the broader community. With a range of legal services, he or she can serve clients throughout their lives. However, the generalist must keep abreast of changing law and procedures in many fields.

c. Specialist. The specialist can master a few practice areas and take a degree of comfort from such mastery. This more focused practice will require library and continuing legal education (CLE) resources specific to the practice area. The specialist will have to engage in targeted marketing by seeking referrals from colleagues and making public relations efforts.

d. Trial Lawyer Versus Office Lawyer. The adage “you can’t be in two places at one time” applies to selecting a practice area. Some practice areas, such as real estate and corporate work, are performed almost exclusively in the office. Others, such as criminal defense or personal injury practice, are performed in court or in other offices. A busy trial practice will preclude the time required to build and sustain an office-oriented practice. The attorney should decide where and how he or she wants to spend time, considering whether he or she enjoys the adversarial give and take, the excitement, and the uncertainty of the courtroom or prefers a collaborative, measured, and somewhat more predictable day in an office.

Some practice areas that typically involve large amounts of time in the courtroom include criminal defense and civil litigation. Practice areas typically considered “office practices” include wills and trusts (or “estate” work), real estate, corporate, and immigration. Obviously there is overlap in just about all practice types. It is uncommon for an attorney to spend his or her entire time in the office—trips to court are almost inevitable. However, in determining what type of practice will be most enjoyable, the attorney should consider whether he or she will be more comfortable in an office environment or in a courtroom environment.

2. Statement of Purpose and Expectations. The attorney should set out what he or she intends to do or achieve in his or her practice and what he or she expects to achieve by practicing law. This should include a financial component as well as a personal component. The financial rewards of practice are often only a small source of the overall satisfaction that the practice of law provides.

3. Inventory of Tangible Assets. The attorney should consider what tangible assets he or she can devote to the practice. These include financial assets as well as physical assets (such as equipment and furniture).

4. Inventory of Intangible Assets. The attorney should consider what skills, abilities, source of referrals, and other intangibles he or she has that will make the practice a success.

5. Correlation of Assets to Intended Area of Practice. The attorney should determine how the assets he or she has inventoried in the business plan lend themselves to the intended area of practice.

6. Contact List. The attorney should determine where he or she can turn for assistance in the course of establishing a practice. This should

include a financial contact, such as a bank, family member, or other source of financial backing.

7. Short-Term Goals. The attorney should determine goals for the practice in the short-term, such as six months or one year. These could be financial goals (“I will go into the red no more than x dollars during my first six months of practice and at the end of year one I will be in the black”), client goals (“I will have x clients after my first year in practice”), or other important goals. Setting short-term goals will, to a great degree, help the attorney develop a step-by-step plan for opening an office.

8. Long-Term Goals. The attorney should determine what he or she intends to achieve in the practice after two or three years and further into the future.

9. Step-by-Step Plan. Taking into account the area of intended practice, assets, and long-term goals, the attorney should set out the detailed steps that must be taken in order to establish a successful law practice. The plan should include a realistic calendar highlighting the mileposts that will be achieved as the attorney works toward opening the office. Target deadlines should be reasonable—starting a practice is a major undertaking and the calendar should reflect this fact.

1.103 Advisors and Mentors. Although the changing economics of the practice of law have forced more attorneys to practice without the benefit of mentors, many local bar associations have formal mentoring programs. Even those that do not will offer valuable informal mentoring and camaraderie. Other sources for advice should include a certified public accountant (CPA), the Virginia State Bar’s (VSB) Independent Risk Managers Claims Prevention Hotline, who may be reached by telephone on their confidential line at 703-659-6567, and the VSB’s ethics hotline at 804-775-0564.

1.104 Selection of Practice Entity.⁴

A. Solo Practice. While most attorneys are social creatures, some thrive by working solo in their own offices. With advances in computers, legal research databases, and related technologies, a solo practitioner can practice at a sophisticated level that previously could be achieved only by throwing multiple bodies at a problem. The advantage is that the attorney truly will be

⁴ See Chapter 5 of this book (comparison of business entities); see also *Choosing a Virginia Business Entity* (Virginia Law Foundation 2019).

in charge, meaning he or she can come and go as he or she pleases, practice as he or she pleases, and retain all earnings.

The solitude comes at a price. Solo practitioners can easily be overwhelmed by a single case or client to the long-term detriment of a balanced practice. However, it is even more likely that clients with large, complex, and remunerative cases will avoid the solo practitioner because of the solo status. Solo practitioners also lack backup support in the case of absence for vacation or illness and the arrival of a large or complex matter. They lack a sounding board.

B. Office Sharing. Office sharing can remedy many of the ills of true solo practice. It provides a ready backup to cover absences, a sounding board, and a logical co-counsel for larger and more complex representation. It may prove a source of referrals. It also can present cost savings on common expenses such as copy and fax machines and law libraries.

Without careful planning, however, office sharing can expose an attorney to a malpractice claim as a de facto partner. Without careful delineation of the practices through separate letterhead, advertisements, building signs, and telephone answering, clients may assume and rely on the joint presence as that of a partnership. The attorney should remember that without the commitments of a firm, he or she has no authority or means to control the practice next door.

C. Partnership. Partnerships can be highly trained, motivated teams working together efficiently and diligently toward shared goals of excellence in intellectually challenging areas of the law while generously and equitably rewarding efforts. They can also be pools of infighting, nepotism, client-hoarding, and dead wood.

A firm's culture influences all facets of firm life from policies of compensation, partnership track, billable hour quotas, strategic development plans, and technology upgrades to sabbaticals. Rarely will a new attorney learn a firm's explicit compensation and partnership structure. However, an attorney can gain insights into a firm's culture by telltale signs such as staff interaction with attorneys, attorney and staff turnover, attorney access to and communication with senior partners, billable hour or revenue quotas, client profiles, and client origination and credit policies.

D. Other Statutory Forms of Practice. The attorney should consult with a CPA for advice on the particular tax benefits of adopting a formal legal entity status such as a professional corporation (PC), limited

liability partnership (LLP), or limited liability company (LLC) versus operating as a sole proprietorship or a simple partnership. Each of the formal entities carries both one-time and periodic costs to maintain. The accountant can identify the revenue thresholds at which the formal entity status brings tax benefits to smaller firms.

Generally, the formal entities can provide a chief tax benefit of avoiding some significant payroll taxes. Some income, but not all, can be paid to the entity owners, shareholders, or members as dividends or distributions not subject to FICA, Medicare, and state and federal unemployment taxes. The particular amounts to be sheltered should be determined in conjunction with the CPA but can present significant savings.

A corporate form of practice may also provide a certain degree of protection from liability for the acts of corporate colleagues. It also shields the individuals from general, nonprofessional liability claims brought against the entity. However, it does not shield an attorney from direct liability for his or her professional acts. The corporate entity does not supplant the need for professional liability insurance. Because these entities are creatures in derogation of the common law, the statutes covering them should be examined carefully for the specific application of the vicarious liability shield.

Section 54.1-3902 of the Virginia Code requires a PC, an LLC, or an LLP to register with the VSB. Initial registration is \$100, with subsequent biennial fees of \$50.⁵

1.105 Office Space.

A. In General. An attorney starting out in practice must obtain suitable office space, equipment, and support staff to allow the practice to flourish. The attorney should devote much time to analyzing where and whether to buy, lease, or share office space; what equipment should be leased or purchased; and what staff is necessary to keep the business running.

B. Location. In real estate, the axiom is that there are three considerations when buying or selling property: location, location, and location. When setting up a law practice, this same axiom applies: the location of the attorney's office will largely determine the long-term success of the practice.

⁵ The VSB may be contacted about registration by telephone at 804-775-0530. See the VSB website at www.vsb.org/site/about/bar-staff for a complete listing of all VSB staff members and their telephone numbers.