



The 87<sup>th</sup> Annual Meeting of  
The State Bar of California *presents*

**Program #84: Evolving Your Practice:  
Daring to Become a Firm**

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Saturday, September 13, 2014  
Grand Hyatt - San Diego, California

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## 1. Why not stay in Solo Practice?

- a. Does having a firm with more than one lawyer provide entrée to larger cases? Not necessarily.
- b. Does having a firm provide more opportunity for economic security? Not necessarily.
- c. Is it possible to like anyone any more than you like yourself?
- d. Personal examples of solo practitioners who have successfully built a great practice.
- e. Personal examples of firms – big and small - that did not work out so well
- f. Lesson to be learned from every form of attorney business model (large law firm, small law firm, solo practice): Every form of law practice is a business, and every business involves risk, but risk that can be managed if you evaluate the risk before you choose.
- g. Having a solo practice is having a job, not a business. Having a firm is running a business. For a solo, the minute you stop working the job, your income ceases.

## 2. Potential benefits of a firm.

- a. Provides support in many ways.
- b. Provides bandwidth in terms of skill, experience, and personality.
- c. Provides a confidential source for consultations and reality checks.
- d. Broadens ability to generate business.
- e. Provides freedom to do more community service, take on more pro bono work, or expand into less profitable undertakings.
- f. Potentially provides financial leverage – earn profit on the labor of others.

- g. Potential, and significant, financial benefits in terms of taxes and benefits.
  - h. Easier to schedule time off, time with family, vacations etc., with less chance of having to cancel. Office coverage while gone. No missed new client opportunities while gone.
  - i. Smooths out the peaks and valleys of work flow. Having another attorney available is an overflow valve.
  - j. Opportunity to create the work environment you want, and work with people you like.
  - k. You get to make the decisions. If you like WordPerfect better than Word, you do not need to persuade a committee.
3. Potential drawbacks of a firm.
- a. Overhead (“the nut”) that has to be met every month which must be planned for carefully.
  - b. Involves a substantial investment of time and money in the beginning.
  - c. Expanded liability (learn how to spell “guaranty” and figure out how to read, understand, and draft them, as in guaranties on lease, lines of credit, equipment leases).
  - d. Responsibility to co-workers.
  - e. Responsibility *for* co-workers. (See Cal. Rule of Prof. Conduct 3-110; Cal. State Bar Form. Opinions 1988-103; 1997-148 (duty to supervise non-lawyers).)
  - f. Increases the chance for potentially disruptive personal or financial conflict.
  - g. Potentially requires more time to attend to administrative matters (but see recommendations below).

- h. Potentially requires more time to attend to employee management, oversight, development, etc. What is your management style, do you have the stomach for directing, overseeing, and reprimanding when appropriate (or are you conflict averse), what are your productivity expectations and how will they be measured, what will be the effect of exceeding or falling short of published expectations, and so forth.
4. Alternatives to the firm
- a. The “Association of Professional Corporations” Model. A collection of attorneys who work independently and share expenses.
  - b. The “non-association of attorneys”: Practicing in an attorneys suite.
  - c. The Remora (suckerfish) model: Subletting from a larger firm. (Comment from Wikipedia: “Controversy surrounds whether a remora's diet is primarily leftover fragments, or the feces of the host.” [www.wikipedia.org/wiki/remora](http://www.wikipedia.org/wiki/remora).)
5. Selected Legal Issues in creating and operating a law firm and tips for the unwary
- a. What type of business entity should you create? The California Rules of Professional Conduct define a “law firm” to include “two or more lawyers whose activities constitute the practice of law and who share its profits, expenses, and liabilities,” and a law corporation which employs more than one lawyer. (Cal. Rule of Prof. Cond. 1-100(B)(1)(a) and (b).)
    - i. Possibilities
      - 1. A partnership, including a general partnership but not including a Limited Liability Partnership, governed by the Uniform Partnership Act (Corp.Code §§ 16100 *et seq.*).
      - 2. A Limited Liability Partnership (Bus. & Prof. Code §§ 6174, 6174.5; State Bar Rules 3.170 *et seq.*; Corp. Code §§ 16951-16962).

3. A Law Corporation (a corporation which employs more than one lawyer)(Cal. Rule of Prof. Cond. 1-100(B)(1)(b); State Bar Rules 3.150 *et seq.*; Bus. & Prof. Code §§6160 *et seq.*) The Corporation can be a C Corporation or an S Corporation.
  4. A sole proprietorship.
- ii. Issues to consider when deciding what type of entity to create
    1. The extent to which you wish to limit liability for non-malpractice claims;
    2. Whether you will have other owners at the outset or intend to add owners;
    3. Whether you will have employees, and whether there are employment, health insurance, and retirement plan benefits associated with the entity you create; and
    4. Whether there are tax benefits associated with the entity you create.
  - iii. Tip: Unless you practice in this area, hire a business attorney who specializes in this area to give you advice on which entity to create and how to do it.
- b. What rules apply to the creation and operation of a law firm? In addition to the rules set forth in the California Rules of Professional Conduct, the Business and Professions Code, and the State Bar Rules which govern the business and the practice of law, there are law firm-specific rules to be aware of. They include:
    - i. Business and Professions Code sections 6174 and 6174.5 and State Bar Rules 3.170 *et seq.* govern the registration and maintenance of attorney limited liability partnerships;

- ii. Business and Professions Code sections 6160 et seq. and State Bar Rules 3.150 et seq. govern the registration and maintenance of law corporations;
- iii. Business and Professions Code section 6171(c) and State Bar Rules 3.152 state that a law corporation must indicate that it is a corporation in its name (that is, by stating “a professional corporation” or “Inc.”).
- iv. California Rule of Professional Conduct 1-310 states that attorneys may not form a partnership with any person not licensed to practice law where any of the activities of the partnership “consist of the practice of law.” (But see Corporations Code section 13403 which provides for a limited exception for professional corporations with only one or two shareholders.)
- v. Business and Professions Code section 6165 states that non-lawyers are not permitted to be officers, directors, or shareholders of a law corporation authorized to practice law in California.

Note: The Texas State Bar Ethics Committee issued opinion 642 which held that, under the Texas Bar Ethics Rules:

Under the Texas Disciplinary Rules of Professional Conduct, a Texas law firm may not use “officer” or “principal” in the job titles for non-lawyer employees of the firm.

The Texas Disciplinary Rules of Professional Conduct also prohibit a Texas law firm from paying or agreeing to pay specified bonuses to non-lawyer employees contingent upon the firm’s achieving a specified level of revenue or profit. A Texas law firm may, however, consider its revenue, expenses, and profit in determining whether to pay bonuses to non-lawyer employees and the amount of such bonuses

vi. Tip: As with all aspects of the practice of law, it is good to periodically reacquaint yourself with both the Rules of Professional Conduct and the Business and Professions Code, but also make use of the State Bar Ethics Hotline and also have good secondary materials, like The Rutter Group Practice Guide on Professional Responsibility, Vapnek *et al.*, *Cal. Practice Guide: Professional Responsibility* (TRG 2013).

c. What other laws apply to your business?

i. The operation of a law firm is a business, and all of the rules governing other businesses in California govern law firms. Do not assume that just because you know how to practice law that you also know how to run a business. You need to either find a good business manager, and get good advice in doing so, or find someone who knows how to operate a business to advise you.

ii. Examples:

1. Laws governing obtaining business licenses;
2. Laws governing the payment of income and personal property taxes;
3. Laws governing employment, including wage and hour laws, civil rights, discrimination, and employment agreements.
4. Laws governing the nature and extent of insurance required to operate the business, including health, disability, malpractice, and liability insurance.

6. Practical considerations and some recommendations (not in order of importance):
  - a. Make sure you have the business to support it. Build it and they will come, but have a plan if it does not. Work will reach an equilibrium with the resources available to perform it.
  - b. Consider how you intend to keep the other attorneys busy, where the work will come from, and how you can maximize the utility of your co-workers?
  - c. Give careful consideration to your physical and technological needs at the outset. Careful planning regarding office and conference space, network, technology, telephone, and reception needs will pay off.
  - d. Also give careful consideration to your legal needs at the outset. Consider wage and hour issues, withholding and payroll accounting, workers compensation insurance, malpractice, health, disability, and comprehensive general liability insurance, and the kind of accounting system for accounts receivable and payable.
  - e. Learn how to read financial statements and cash flow reports and projections, and if you do not, take a good crash course.
  - f. Hire a controller who will function as your HR director, IT director, risk manager (dealing with insurance, document retention, bar renewals, MCLE requirements), finances (AR and AP), owner / business tax support, and managing external relations with lenders, investors, and suppliers.
  - g. Remember that you and everyone else is an employee of the firm, and your co-workers are your colleagues and co-workers. The only boss in a law firm is the client.

- h. In terms of management of the firm, remember that your highest and best use as a business owner is producing income (by working for clients who will pay you) and generating business. If you are spending substantial time managing the firm, you are not working to your full potential, although it can, for the right person and in the right measure, provide a welcome break from the practice of law.
- i. Remember that your business is a service business, and each and every one of your co-workers makes your business what it is. You play a small part of the overall success of the business, but you are 100% responsible for its failure.
- j. As a corollary of the last item, be generous to your co-workers. They will repay your generosity ten-fold, be happier, will make you happier, and make a happier workplace.
- k. In addition to making sure your clients are happy, cultivate every firm-related relationship you can, and particularly your relationships with your lenders, vendors, suppliers. One example: You will never build a first-rate litigation practice without having the best copy service and process servers.
- l. Maintain good relationships with your opposing counsel. It is not only the right thing to do, but they will be a good source of business. Brewer & Rehon met as opposing counsel.
- m. Cultivate good relationships with more senior attorneys in small firms or in solo practice both to learn and provide a good source of referral business.
- n. Create and maintain a good website. You will be surprised by how many people evaluate you based on your website and how many out of state clients will come to you because of a good website. Make it full of actual content (appellate cases, clients, publications) and avoid hyperbole. No one in his or her right mind believes what a lawyer says about him or herself. And if you do not have anything to say, do not say it.

- o. Consider other forms of technology, like the use of LinkedIn or blogs.
- p. Be very careful about picking a partner. If you have a partner, you should expect that there will come a time when you disagree on the direction of the business or some significant issue.
- q. Run your business like your life depends on it, because it does. Never forget that your co-workers' mortgage payments depend upon your care and prudence in managing your business. Learn to be discriminating in what clients and cases you take on. Do not take on a questionable matter or client just because your phone has not rung in two days. Do not be afraid to ask for a retainer; It is much better to find out that the client does not have any money ***before*** you have done the work. Also, become comfortable reading and managing your accounts receivable aging and making calls when any receivables become overdue. Your lender should never be more attentive to your financial condition than you are.
- r. Plan on being the hardest working person in the firm. If you do not want to be the hardest working person in the firm, a firm is not right for you.
- s. If you can, as soon as you can, buy a building.
- t. Build toward something. Have a business plan (in writing), periodically review it, and revise it as circumstances change.
- u. Do not be afraid to take chances and make mistakes, and make it clear to your co-workers that mistakes are part of life.
- v. Be lucky.