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her discharge for excessive absenteeism violated the Act. The employee was granted a reduced work schedule when she notified the employer that her daughter had been molested and her daughter's pediatrician had advised her to be at home with her daughter after school. The employer, however, had emphasized its concerns about her excessive absenteeism and when granting the reduced schedule had specifically informed the employee that she would be expected to adhere to the new schedule. When she subsequently missed seven days of work, her employment was terminated.

The court found that the employer's expectation that the employee would cut down on her absences was legitimate and refused to infer a discriminatory motive from a memo concerning excessive absenteeism simply because it was sent two days after she had been granted FMLA leave. Noting that the FMLA is not a "shield" to protect employees from legitimate disciplinary action unrelated to the leave, the court concluded the employee had failed to offer "any competent evidence" that her employer's reasons for terminating her employment were pretextual, and granted summary judgment for the employer.

CONCLUSION • From the very beginning, the FMLA has presented significant compliance challenges for businesses. The promulgation of final regulations has done much to clear the air of the prevailing confusion, as have the judicial decisions on key points. The law will continue to develop, giving both employees and employers a better understanding of their respective rights and obligations under the Act.

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Setting Up a Law Practice

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If you begin with a plan,
you'll end up with a business.

PROFESSIONAL PRACTICES SHARE CERTAIN common features. They must function as businesses to deliver professional services. Their operations must be organized and systematic if they are to continue to serve clients and offer professionals opportunities to practice. It serves all

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- Averages for the legal field; and
- Financial requirements. Financial requirements are things like overhead, growth, and management strategies. This summary would also include the information about the board of directors and the organizational structure.

Standard Office Procedures

The plan should also summarize standard office operations and procedures, business management, professional work flow procedures, calendar and docket control, timekeeping and billing, and legal fees:

- Under calendar and docket control you would cover new file set-up procedures, calendaring procedures, mail receiving and opening procedures, and procedures for receiving and returning telephone calls;
- Under timekeeping and billing you would cover recording billable time, timekeeping systems, and billing cycle procedures; and

- Under the area of legal fees you would address fee agreements, types of fees, and you might even attach a copy of your current polices and procedures that you give to your clients.

Preserving the Goals

Although it is a tall order to develop a sophisticated plan, this is not the plan's most important characteristic. Remember, it is of key importance to develop, document, and communicate the character of the law practice and business. It is also vitally important to consistently follow the plan. This will ensure that you start and keep moving toward realistic, honorable, and obtainable goals. It makes a crucial statement to your professional and business colleagues, your staff, your financial institutions, and ultimately your clients.

Perhaps the most important statement it will make will be to you. It will serve as a document and vehicle to help you realize what you want and expect from yourself and your business. It will then help you to consistently move to that end because it will become a record of your history and a gauge to your understanding and prediction of the market. It will stand as a yardstick against which you will be able to measure the present ability of your company to perform against your past record in relation to the profession's standard.

IMPLEMENTING THE PLAN • Once the plan has been developed there must be a definite strategy for implementing it. Remember that a good plan will result in building a firm that satisfies market demands. There are several ways to make other professionals and the general public aware that your business is ready for activation:

- Sending out new announcements or by continued client contact;
- Public speaking and writing articles;
- Building a reputation in a specific practice area; and
- By joining professional and community organizations.

In other words, creating and measuring the immediate demand that occurs when you expend energy and initiate action. This will help you find out how well you are received in your community. It will also bear out how successful you were in your thinking when you formed the image you wanted to portray to colleagues and prospective clients.

Setting Up the Office

Next is setting up the physical office. When you choose the physical location for your office in a community, you will want to keep certain considerations about the client you want to attract in mind. First, do you want or need to stay away from high-traffic, congested areas? If your client

is older or disabled, this may be of key importance to you. In any case, you will want to be easy to locate, have access to public transportation if possible, and have a clearly marked entrance. The parking area should include ample, safe parking near the entrance, and reserved parking for clients with disabilities. Always avoid stairs!

When considering the office's physical design and furnishings, make sure you create an office that is wheelchair accessible and that bathrooms are similarly accessible. To maximize your lease dollars you will want few hallways, and sufficient but limited storage or waste areas.

The furnishings should be consistent with the standing, style, and image you have chosen to project. If your practice brings you clients that arrive in an excited or disturbed state, then incorporate a calming ambiance into the office scheme. This could be accomplished by providing chairs with higher seating for ease of mobility and comfort of clients. You could provide an aquarium in the waiting area, or provide separate waiting areas. You could also provide for separate entrances and exits so the clients would not be meeting. An easy, inexpensive way to help achieve this purpose is to decorate the office in light relaxing colors and provide soothing relaxing sources of lighting. Make provisions for clients with sight and hearing impairments. All these provisions will not only help you with spe-

cial clients but will also make the environment nicer for your other clients. It will also make the statement to all of your clients and colleagues that you care and are a thorough planner.

Equipment and Supplies

You will need office equipment and supplies to run your legal practice. You may want to start small and grow or you may want to do it all at once. No matter which option you choose just remember two things:

- Quality is a must; and
- Technology changes quickly in today's business environment.

What Will You Need?

When making a purchase or lease decision, you can go as low or as high as you can afford, but you need to keep in mind what you want the system to accomplish when making this decision. There is no reason to have a system that is too powerful. By contrast, having a system that will not accommodate your needs puts you at a definite disadvantage and costs you in lost time and trouble in the long run. Get what you need, but make sure what you get is what you need. A good rule of thumb is to determine an industry standard (both in the technology field and in the legal field) and base your decision on it.

Where (and How) To Get It

As far as sources of equipment and supplies, you will want to buy or lease your equipment from reputable deal-

ers and suppliers. If a deal or company seems too good to be true, it usually is. Whatever you decide to do, make sure that there is someone there to back it up if necessary. There is nothing more aggravating than to be left with a piece of equipment that your company depends on, but there is no one who can repair it for you. This could be devastating if the piece of equipment is a computer and your information cannot be recovered. The word here is always "caution."

Appearances Count

When stocking supplies you will want to include nice letterhead (not just what you can print off your computer), business cards (that give a good first impression and make a correct statement about your practice), brochures (these inform and create an impression), and other office staples. Always try to keep enough on hand to avoid having to run out to the stationer's all the time. You need to be in the office practicing law.

The Law Library

Your law library will be one of your most expensive acquisitions. Do not try to build the Library of Congress, but do not skimp on necessary items for your library. Your practice's success could depend on your library. By having the information close at hand, you avoid unnecessary delays in completing client work caused by leaving the office to research a topic. You also create a distinct advantage for your-

self. This advantage is that you get to look at the information and make a conclusion based on your knowledge, experience, and understanding of the matter. That prevents you from acting based on someone else's opinion. A practice point here is that calling around and depending on other opinions will eventually get you into trouble.

Insurance

This brings us to insurance. The types you should secure when opening a business include:

- Business premises insurance;
- Professional liability insurance (in appropriate amounts to meet standards of organizations you may belong to);
- Workers' compensation insurance;
- State disability insurance, office contents insurance (specific coverage for computer data reentry, loss of income, artwork, and so on, may be a good idea); and
- Life and health insurance.

Do not skimp on insurance or coverage amounts. Doing so courts disaster. Insurance is expensive, but not having it or having it in inappropriately low amounts is more expensive in the long run. Carefully work with your budgeting procedures to make sure that insurance is included.

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STATEMENTS AND BILLING • Remember a couple of important points about billing. Detailed bills that clearly and accurately outline services are better received by clients and are more likely to be paid without protest than are vague bills. Also, the prompt issuance of statements will create a distinct advantage for the attorney. Since the matter is fresh in the client's mind and since the client is seeking closure on the matter, the client is more likely to pay in a timely manner. One word of caution: Even if the client promptly pays a bill that he or she believes to be vague or inaccurate, that client will most likely be dissatisfied and seek future services elsewhere.

Let the Client Know What To Expect

Depending on the attorney-client relationship, some attorneys will forewarn clients that a sizable statement may be in the mail. By approaching the client this way, you can help soften the blow by indicating the approximate amount and create a better relationship with the client.

Retainers

The best possible way to avoid accounts receivable problems with clients is to receive retainers or up-front fees before performing the work. However, some types of legal work lend themselves to this method more realistically than others. This call is usually made at the initial client conference. Even if a retainer is received, you must still produce a bill or statement to account for the expenditure of the funds that the client has paid. If the amount exceeds the retainer, a bill for an amount due accompanies the statement. If the matter is settled and funds in excess of the fee remain in your escrow account, a refund check would accompany the statement (unless the agreement specified that it was a nonrefundable retainer that was received from the client when the work was begun).

Discuss Fees at the Outset

Discuss legal fees and payment options with the client at the first meeting. In some cases, this discussion can become very confusing, lengthy, and a very involved process for both the attorney and the client. Nonetheless, there has to be a clear understanding between the attorney and the client about the work to be performed, the cost of that work, and the payment arrangements for that work. If there is no agreement on a fee arrangement before representation, there will be a risk of financial loss and damage to professional standing through client

dissatisfaction. It may actually be better not to do the work for this client than to risk this potential loss. Remember, it may be better for the firm, from financial, time involvement, and legal standpoints, to choose not to represent certain people. If it would take away from the services you offer your other clients, or it would personally cause you or the firm to experience severe anxiety or unusual risk, then do not take the case.

The Written Agreement

Fee agreements should always be in writing. The degree of detail necessary in a fee agreement depends on the individual matter to be handled and the requirements each state imposes upon practitioners. A written agreement will not offend a client if it is properly written, correctly presented, and explained with care. Have no reservations about approaching the working relationship with a fee agreement because it will help indicate to the client that the matter will be handled in a more professional and businesslike way. The fee agreement should contain a clear, accurate statement of the understanding between the attorney and the client. It assures both the client and the attorney of a certain degree of security in the working relationship. If there is going to be a problem with financial arrangements and payment, the time to experience it is before you have invested your valuable time in the relationship.

Fee Arrangements

There is almost no end to the variety of ways to bill clients for services. Some of these billing techniques are the flat fee, the monthly retainer, hourly billing, hourly billing charged against a retainer, contingent fees, statutory fees, commissions, and combinations of the above methods.

Flat Fee

Under the flat fee arrangement there is actually no relationship between the work that you do or the time you spend doing this work. It can work for you or against you depending on the type of work performed. Use this type of fee only when you know that it will not take more time or effort to complete a task than you can afford to put into it.

Monthly Retainer

The monthly retainer can be used with clients for whom you provide regular services over a period of time. The fee agreement should specifically state what work and how much work is included under this arrangement. It should also state that other work falling outside of these identified boundaries will be performed at an additional charge. It would be good to indicate how that charge would most likely be calculated.

Hourly Billing Charge

The hourly billing charge is widely used by attorneys today. It is considered to be the best representation of

how much time was spent on a matter and how much work was actually done by the attorney. One disadvantage is that it may not accurately reflect the complexity of the work performed. Another disadvantage is that it does not reflect the differences in lawyer ability and competency as the work is performed. Check with other attorneys in their particular geographical area to determine a good estimate for setting the hourly rate. One positive aspect of the hourly rate approach is that one attorney can actually charge different hourly rates for handling different types of matters for the same client. This is often seen when an attorney has established a specialty reputation of practice in a given area of law. The hourly rate charged against a retainer works in exactly the same way.

Contingent Fees

Always thoroughly analyze probable success and the potential of collecting the judgment before billing on a contingent basis. In many instances, there are statutory bases for an award of attorneys' fees. These fees are usually determined by a court or administrative body. When acting in a non-attorney capacity, attorneys may become eligible for finders' fees, fees as consultants to business, association fees with another legal firm in a quality control or consulting capacity for that firm, brokerage commissions, or even expert witness fees.

Accurate and complete financial records are a must for every business. In the legal field it is absolutely necessary to maintain separate bank accounts for your firm and for holding client funds.

Combined Methods

Finally, the reality of the situation is that most attorneys will use a combination of these billing methods, if not in general, then at least for specific clients.

The Importance of Consistency

The method or combination of methods used in billing clients must be consistent. Charge similar clients with similar matters and expenses in similar ways (most state bar associations require this). In all cases it is a good idea to be sure that the client understands the billing up front. This will prevent surprises and challenges when the charges for work and costs are broken down on the client's statement.

ACCOUNTING FOR IT ALL • Accurate and complete financial records are a must for every business. In the legal field it is absolutely necessary to maintain separate bank accounts

for your firm and for holding client funds. If this is not done and done properly, there will be a risk of disciplinary action. By thoughtfully organizing your internal recordkeeping systems and setting up separate bank accounts, you can avoid the problems created by commingling of funds in your firm.

Setting Up a Recordkeeping System

There are several different options for setting up the record system for accounting for the flow of funds. If you have experience in this area, you could design your own system; you could buy a system off the shelf for your computer, or you could hire a consultant or accountant to create a tailor-made system specifically for your office. As a word of caution, creating and maintaining a system can take a considerable amount of time and effort that you might better spend in your practice. You may find that even though the other options cost more up front, they pay off by giving you time to invest in the practice of law.

Avoiding the Traps

Just as your clients hire you as the expert in the handling of legal matters, you should carefully budget and hire experts to assist you in the operation of your business. By using this approach you can avoid several often-severe traps. The first is the trap of starting off by doing everything yourself. This occurs because you have

limited sources of finance. The problem is that without a plan it becomes too easy to continue in this mode of operation and then to never get free of the tangles of running the business. This hinders you in the practice of law and actually prevents you from increasing your financial base in the long run. Budgeting is important because it will enable you to pay the bills and increase the net worth of your law firm. One often overlooked aspect of running a business is the creation and funding of savings and retirement accounts. Remember to treat these items as a regular expense and you will not find yourself out in the cold someday.

Avoiding Commingling

One additional point in the area of finances. Always remember to keep your personal finances separate from the firm's finances, even if you are a solo practitioner. This helps avoid mistakes and confusion in the long run. It also keeps your private finances out of a business meeting and business finances out of personal meetings. For example, when you go to your banker or another institution for a loan you may not want to divulge information on both your personal and your business finances. Also, by not following this strategy, you could find that because you personally are being audited by the Internal Revenue Service, your business could very well be automatically included because you have commingled

House rules regarding working patterns and working hours will help you make sure that you produce. They will also help make sure that what you produce is quality.

your personal funds with those of the business. Keeping finances and records separate will be necessary if your business is incorporated, otherwise you may lose some of the legal protection that the corporate veil gives to you. There are also numerous other reasons to structure your finances and develop your operating accounting systems in this way. Seeking experienced, competent professional help in this area is a must.

QUALITY IN PRACTICE AND IN BUSINESS • Your business and your practice, just like you, need check-ups on a regular basis. Quality control is ultimately the look and feel of success. At regularly scheduled intervals, review your work with a fresh eye, but do not stop there. Have consultants come in at regular intervals to do check-ups on you, the law practice, and your business. The best way to do well is to continue to do well.

After setting up the law practice you will find that you will get very