



TAKING THE STEP: IS THERE EVER A GOOD TIME TO START A LAW PRACTICE?

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Starting a law practice is always a challenge. It always involves risk. It doesn't matter whether you are a "baby lawyer" right out of school, or one who is highly experienced and breaking away from a larger firm environment. It doesn't matter whether the market is bear or bull. The factors which will determine success in each case will be different in some respects, and the same in others. The challenges to overcome will be different in some respects, and the same in others.

There are no hard statistics available to help you ascertain how likely you are to survive if you venture out on your own, or start a new firm with others. Malpractice insurers suggest that these numbers are virtually impossible to gather, as they may know about new firms, but have no way to know whether the firm ceases to exist, merges or becomes acquired, or merely changes carrier. It was surprising that no statistics were available from our state bar association, or the American Bar Association. General statistics from the US Census Bureau indicate that at least one third of new employer firms will not survive two years, and about one half do not survive beyond four years. But leading law firm consultants feel that lawyers are more successful at "hanging on" longer than general businesses.

Factors which increase your probability of success, or are absolutely necessary for success include the following for established attorneys:

- **Business Plan.** A comprehensive business plan should quantify at a minimum the expected sources and amounts of revenue; a budget for anticipated overhead; a marketing plan and budget; expected growth; and capitalization. This plan will be an invaluable tool for the firm to establish a line of credit, and benchmark progress.
- **Capital.** Most business failures, including that of law firms, result from insufficient capitalization at the outset. You need to know what the start-up cost and on-going "monthly nut" will be. You need to have sufficient funds available to cover at least three months of operating costs beyond start-up.

Yes, you can borrow start-up costs. Credit is still relatively cheap. But personal guarantees are frequently required. And you may find your firm unable to borrow further funds later if it becomes necessary due to expenses which run higher and/or revenues lower than predicted.

Your area(s) of practice will also help determine, to some extent, how much capital you will require. For example, a contingency practice requires the most capital because you have to be able to “fund” the billable time and expenses for an indeterminate term. Likewise, some institutional clients prefer to be billed and pay on 60 or 90 day cycles, delaying the initial influx of significant cash to as much as 180 days from the establishment of your practice.

- **Portable Business.** This is the best indicator of success for established attorneys. Institutional clients, whether business clients with on-going needs or wealthy individuals, are the best assurances of success.

Frequently, new firms “spin off” from established firms because it is perceived that a segment of institutional clients can be better served, or more economically and profitably served by the spin-off. Sometimes conflicts of interest may prevent a firm from representing otherwise solid institutional clients. These are compelling reasons to start a new practice.

- **Rainmaking abilities.** A lot depends on whether you and others you partner with have the ability to develop business on your own. That means a willingness to work the necessary extra hours needed to put marketing plans into action as well. It often means developing new skill sets for attorneys previously accustomed to servicing clients they do not originate. And in some cases it means going beyond one’s comfort zone and participating in activities, like seminar presentations, which do not come “naturally”.
- **Commitment and maturity.** The required time investment to successfully establish a new practice will often be daunting. Many attorneys, even those with substantial legal experience, are unprepared for the commitment of time and energy that running the business side of the practice requires. And most are unfamiliar with the variety of skills that will be necessary to do so. As many have stated to this author, “I didn’t go to law school to manage a business — I went to become a great lawyer.” Another frequent comment is, “I never realized how much work went into the ‘background’ to enable me to practice law at my previous firm.” Many lawyers discover they don’t like the business management side of the practice. But when you go out on your own, you must give it the time required, and become adept at it.

Good business management means understanding the importance of establishing and maintaining smart risk management strategies and policies, implementing competent billing, case management and file management systems. Tending to



records management from day one. Budgeting and paying careful attention to the financial performance of the firm. Implementing technology which supports the firms goals and needs. Hiring the right staff, and properly training and supervising and retaining them, and holding them accountable to do what is expected of them.

Good business management means learning to say NO. Learning to turn away potential clients, and to occasionally fire existing clients. It involves learning to discuss your fee structure and payment policies with clients in a forthright and clear manner *before* the onset of representation. It means regular contact with clients who have not paid their bill when due. And it sometimes means knowing when to stop working for clients who are not paying— before you have to wonder whether your firm can survive the economic hit if no payment is ever received for the already outstanding balance.

Even the best of plans will encounter unexpected surprises and plenty of ups and downs. The lawyer embarking on his own practice must be ready not only financially, but also emotionally and even physically. Emotional readiness means that you are able to establish and practice smart stress management habits. It may mean finding or budgeting time to work out at the gym, practice yoga, or carefully watch your diet. To be successful you have to honestly assess your physical and emotional “state of health” and do whatever it takes to be ready for the challenges ahead of you.

There are a number of additional challenges for the established attorney seeking to open his/her own practice. These considerations usually include:

- Change in financial position. Oftentimes a certain lifestyle has been established, and personal sacrifices, short or long-term, may be required during the course of establishing ones own practice. There can be a lot of fear and uncertainty not just for you, but for your family members as well. Many consultants refer to this as the “golden handcuffs” which tie an attorney to a firm. It’s not that he or she is happy, just that the change in financial position is impossible to make.

It’s not easy to move to a situation where you may not be able to afford the tuition for private school for the children, take those expensive vacations, or enjoy the same fringe benefits the family has taken for granted. There will probably be times when you think you made the wrong decision. Certainly your family will, and may exert considerable pressure on you to rethink your decision, or go back shortly after you have set out on your own. Keep in mind that you need to keep a long-term view of your new firm. You need to view your dollars, efforts, and sacrifice as a three to five year investment before real returns start to come in.

The better you can plan and prepare financially for this transitional period, the more likely you will successfully survive it.



- **Fear of burning bridges.** It's not easy to leave a firm to establish your own practice, and maintain positive working relationships with those you leave behind. Keep in mind that a former firm can become a surprisingly good referral source when the departure is amicable. Think about that as you try to decide whether to make your plans surreptitiously, or be forthcoming about your intentions.

Sometimes the emotional reactions are severe, and actions become vengeful and inappropriate. Cool heads must prevail in order to minimize fuss, disruption to client service, and development of any bad perceptions by the client as to the congeniality of the break-off.

Negative perceptions by clients usually weigh more heavily on the members of the firm left behind, regardless of the client's decision to stay or go. Nonetheless, everyone must keep in mind that it is ultimately the client's decision as to who will care for its legal needs in the future, and proceed appropriately in a professional manner.

- **Competition and other marketplace factors.** Not all attorneys leave to establish their practices because they have a stable of institutional business which is portable. Some do so because they are thrust out on their own for a variety of reasons. Perhaps your firm is not doing well, or is changing strategic direction and no longer sees a good fit for your area of practice. Maybe your geographic market has been losing the types of clients you represent. Maybe you are perceived to be "over the hill", or perhaps you have reached the mandatory retirement age at your firm, but are not ready to be put out to pasture.

Under these or other circumstances you may find yourself setting up practice in a geographic market with few available clients in your practice area, and lots of competition for those which remain. And then you have to ask yourself—because you will have to work even harder to be successful—do you really enjoy the area of law in which you practice? Is there another practice area which you can successfully migrate to which can be sustained in your geographic area? Or are you willing to relocate? Your answers may well determine your likelihood of success.

Most of the factors which are necessary to ensure success for the experienced attorney also apply to the new attorney, but the practical "how to's" are different. For example, establishing a solid business plan for someone who has yet to develop a practice is more conjecture than prediction. Selection of practice area(s) may be driven more by geographic and/or marketplace factors than personal preference.

In a small town, for example, it is more likely you will need to be a generalist. But if you happen to start your practice in a small town with an abundance of large or small business, or wealthy individuals, you may be able to concentrate your area(s) of practice.



Unfortunately, consultants agree that a general practice is the worst type of start-up to have in terms of predicting success. But if you have a strong client service attitude, particularly with respect to on-going communications, are consistently “out there” in the community, build strong networks, and capitalize on all opportunities, then as long as you do good work you have a reasonable chance of being successful.

Marketplace factors which will greatly impact success for a new attorney include how “hot” their chosen area(s) of law are, as well as how much competition exists. For example, litigation and bankruptcy are very hot right now. Health law and employment law are also strong. Mediation, on the other hand, is fairly cool. Many attorneys picked up this practice area expecting it to be quite lucrative. Many are now concentrating their efforts in other practice areas in order to pay the bills.

Clearly, the best chance for success is to have a focus to your practice. Whether the focus is on the type of client, (e.g. institutional, small business, entrepreneurs etc), or area of practice, (e.g. patent, litigation, immigration, real estate etc.) a focus will enable you to develop a marketing strategy, and to build a productive network sooner.

Financial issues for the new attorney also differ in many significant ways. You may find yourself saddled with significant school debt, and/or without track record to qualify for any significant line of credit. On the other hand, you probably don’t have family members to support yet, or a lavish lifestyle to maintain. That means that there is often little to lose by trying to step out on your own.

Sharing office space, or renting space within another firm, is a viable solution for new attorneys to keep overhead low while having the accoutrements of a larger, more established firm. Often it will also provide some business which the tenant firm does not wish to handle. However, you must be aware that there are pitfalls of office sharing which may await you if you do not take some precautions. (I recommend you seek assistance first so you are cognizant of the potential hazards and work to avoid them.) Working from a home office is another solution to keep overhead to a bare minimum. But again, you’ll need some assistance to do this “right”.

The bottom line for new attorneys is that there is a wealth of information you need. Not just information about running your own practice, but also about practicing law on a day-to-day basis. In larger firms you have the advantage of more experienced attorneys who can provide guidance and feedback at critical moments. On your own you will need to find other sources of mentoring.

As a new attorney, you also need to consider whether you have what it takes on an emotional and intellectual basis to go out on your own. I suggest you read the first chapter or two of Jay Foonberg’s book “*How to Start and Build a Law Practice*” before you make your decision. It will walk you through this decision-making process capably. The rest of this hefty volume will serve as your bible from inception of your firm to its sunset, and at many critical points in between.



In summary, there are a number of indicators which can assist you in predicting whether it is a good time to start a firm, and whether you have a decent chance of survival. These indicators are definitely more clear for established attorneys than new attorneys. But regardless of whether you are an established or new attorney, in order to be successful there are a number of business initiatives which you must undertake. And you must continue to manage not just the professional substantive practice side of the firm, but also the business side. If you don't manage the business side, no matter how well you do professionally, your firm will ultimately fail.

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