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## PROFESSIONAL CONDUCT

### Hanging Out a Shingle? Follow the Rules to a Good Start

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*Special to the Legal*

We've read so many articles lately starting with the phrase "in these tough economic times" that we are loath to start this one that way. So let's just say that circumstances may be such that you have decided to take the leap into a solo practice. And while the circumstances in question may not be ideal, you may happily find, as thousands of your brothers and sisters have, that a solo practice can be both satisfying and lucrative. Naturally, we have some advice for how to avoid some of the common ethics pitfalls that busy solo practitioners can easily fall into.

- Log on to the Disciplinary Board Web site at [www.padb.us](http://www.padb.us) or [www.padisdisciplinaryboard.org](http://www.padisdisciplinaryboard.org). There you'll find downloadable versions of the Professional Rules of Responsibility, the Rules of the Disciplinary Board, the Rules of Disciplinary Enforcement, Continuing Legal Education Rules, IOLTA Board Rules and the Code of Civility. While you're online, sign up for attorney e-news. This newsletter from the board will keep you updated on changes to the rules and provides a helpful tip of the month.

- Carefully review Rule of Professional Conduct 1.15 (Safekeeping Property). The newly amended rule (latest amendment effective date: September 2008) includes significant new definitions, recordkeeping, segregation and other requirements for the safekeeping of funds and other property. In addition, the amended rule expressly sets forth specific duties and responsibilities for attorneys holding funds or other property in a fiduciary capacity. A special note on record-keeping: Rule 1.15(c) governs maintenance of IOLTA account records and specifically permits these records to



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be kept in electronic or hard-copy form. Electronic copies must be backed up at least monthly on "a separate electronic storage device," according to Rule 1.15(c) (3). The records must be preserved for a period of five years after termination of the client-lawyer relationship or after disposition of the property, whichever comes last.

- Don't get too busy to keep up with your continuing legal education. On April 16, the court entered an order adopting changes in the Rules of Disciplinary Enforcement creating a new category of discipline called administrative suspension, applicable to attorneys who fail to comply with CLE requirements. Any attorney who has been on inactive status or administrative suspension for three years or more must go through a

reinstatement procedure and must pay a reinstatement fee of \$300, if under administrative suspension at the time the petition for reinstatement is filed. An attorney who has been on administrative suspension for less than three years can be reinstated without a formal procedure once the failure that led to the administrative suspension has been corrected and the reinstatement fee is paid. But get the most out of your CLE experience by planning ahead and using it as an opportunity to network and develop business opportunities.

If the cost of CLE programs is a concern, several local public interest legal organizations offer free or reduced-price CLEs to attorneys willing to take on pro bono representations. The Philadelphia Volunteers for the Indigent Program, the Homeless Advocacy Project and the Support Center for Child Advocates are a few of the local organizations offering free or low-cost CLE programs to volunteer attorneys.

- Find an insurance broker who can help you with your malpractice and other types of insurance. Be aware that Rule 1.4(c) requires all lawyers in private practice to "inform a new client in writing if the lawyer does not have professional liability insurance of at least \$100,000 per occurrence and \$300,000 in the aggregate per year, subject to commercially reasonable deductibles, retention or co-insurance." The rule also requires that existing clients be informed in writing at any time the lawyer's insurance drops below the above amounts or is terminated. Records of all required disclosures must be maintained for six years after termination of the representation. The explanatory comment to the rule includes suggested disclosure language and provides a definition of "commercially reasonable coverage."

- Establish an e-mail retention and document destruction policy. These policies can and will vary from practice to practice and case to case. Any policy must contemplate the possibility that the lawyer or law firm could be named a party to a suit, in which case all e-mail and document destruction relating to the suit must stop. To help deal with the complexity, consider purchasing “The Lawyer’s Guide to Records Management and Retention,” published by the law practice management section of the ABA. This book is a worthwhile investment to help you sort out the myriad issues created by our new digital age.

- Take a few minutes to examine the safeguards you use to protect your future clients’ trust. Are computers kept locked and password secured when your staff leaves the office? Are your personnel instructed not to discuss any case outside the office or in common areas where they can be overheard? Are sensitive documents properly filed at the end of the day? Also, establish guidelines on how you use e-mail to communicate with clients and other lawyers. Make sure everyone understands and agrees to the guidelines, especially your clients. Remember, e-mails travel fast and sometimes follow unintended paths.

- Set up trustworthy procedures for calendaring appointments and appearances. Whether you keep your calendar on your BlackBerry, on your laptop or in an old-fashioned date book, make sure you have a reliable tickler system.

- Be careful about keeping your clients updated. Poor communication is a recurrent refrain in disciplinary complaints. Rule 1.4 requires that we keep our clients “reasonably informed” and “promptly comply with reasonable requests for information.” But communication gets difficult when you’re swamped with pressing matters. This happens to all lawyers and it need not lead to a disciplinary complaint; manage your clients’ expectations. From the very first meeting, explain that either you or a staff member will respond to phone calls within 24 hours. Then, when you do talk to your client, be honest: “I haven’t filed the complaint yet because I was dealing with another client’s emergency but I intend to file it next week.” Be proactive: Write to the client before you’ve missed a promised date. If you have no news to report, call the client to give a status report and let her know when you will next be calling.

- Set up conflict check procedures that comply with the rules. Even a solo practitioner can run into conflicts. Principal among the rules concerning conflicts of interest are Rules 1.7 and 1.8 (Conflict of Interest: Current Clients), 1.9 (Duties to Former Clients), 1.10 (Imputation of Conflicts of Interest), 1.13 (Organization as Client) and 1.18 (Duties to Prospective Clients). Take a minute to review the rules and establish your procedures.

- Carefully draft your fee agreements. Rule of Professional Conduct 1.5(b) requires us to communicate to our clients “the basis or rate of the fee ... in writing, before or within a reasonable time after commencing the representation.” Although the rule allows an exception for clients whom we “regularly represent,” we strongly recommend that you prepare a written fee agreement for every client, and as to each new representation. Miscommunication concerning fees is an attorney-client relationship killer, not to mention a prime germinator for

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contentious and potentially embarrassing fee dispute proceedings. On a similar note, make sure the scope of your representation is clearly set forth within your fee agreement, so that expectations are aligned on all sides.

- If you are a new lawyer, don’t go it alone. Join professional organizations; sign up for a Listserv; find a mentor. Also, new lawyers: Beware of the problem clients. They come in many forms but one variety is the client who shows up right as the statute of limitations is about to run. Put into writing that you are not taking the case and will not be filing a complaint. Another common variety is the serial client, who is also the serial complainer: Clients who are perennially dissatisfied with their representation and are frequent

filers of disciplinary complaints. Follow your instincts and don’t take on a client just to get the initial fee in the door.

- When you are at work, if you are not busy, don’t surf the Web. Update your LinkedIn profile, comment on legal blogs, write articles, plan presentations, take people to lunch and keep up with the law in your area. The phone will ring and pretty soon you’ll be too busy to do any of this.

Finally, the fact is that as a solo practitioner, you have to be both a businessperson and a lawyer. The best business advice we’ve culled from experts is this: Share space with other lawyers with whom you have the potential of setting up a mutual referral base; get a line of credit now before you need it; bill throughout the month so that you always have income coming in; keep your overhead low but splurge on time and cost-saving technology; hire an accountant who represents other solos and can give you accounting and business advice; and buy Jay Foonberg’s book, “How to Start and Build a Law Practice,” available at the ABA Web site.

Whatever your circumstances, remember, sometimes things happen for the best, sometimes we make the best of what happens. We hope you can make both of these possibilities work for you. •