

Mistakes I've Made Setting Up a Solo Practice

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Larry Bodine

RETAINERS

Starting work before you get the retainer. Tell clients you can't start the work until you get the retainer (and it clears, if it's a check). Then, when you bill for \$1,900 of work, you indicate that you received the \$1,000 retainer, they owe \$900 on top of that, and they have to replenish the retainer with another \$1,000 (or whatever amount is set forth in your retainer agreement).

A problem is that retainers are often too small to cover the anticipated work. Though in theory, a retainer should be large enough to cover all of the work that you'll perform, in practice, we know that most clients can't pay that much up front. Even so, the retainer should be large enough to get you through at two billing cycles (if you are billing monthly).

ENGAGEMENT LETTERS

Working before receiving retainer. This could be my biggest mistake from what I have read here. In my field, commercial real estate with a specialty in affordable housing, the custom on many deals is to get paid at closing or pay on a monthly basis. Retainers are just not done. I have been open only for a short time, so I have sent out only one round of bills so far and about to send out another. I am REALLY worried about everything I have read here about clients not paying. I was at BigLaw for 12 years, so of course, I know that once in a while an errant client wouldn't pay, but my draw didn't depend on it. Why would clients pay BigLaw, but let a solo go unpaid?

Not sending out engagement letters right away is a big mistake. You must force yourself to send them out before you do anything for the client. It is so easy to jump in and start working.

Another mistake is not having the right language in my fee agreement concerning trial deposits and the ability to withdraw.

EMAIL SECURITY

I've had a number of clients who likely wouldn't have retained me if I didn't use e-mail encryption already. On the flip side, and depending on the client, I've gone the extra mile by installing encryption software on their systems, teaching them how to use it. But I don't refuse to represent clients who want to use email but not encryption.

Put something in your engagement letter about email, no matter what type of service you use. I use the following:

"Although email is an efficient method for many communications, it may be intercepted by third parties, delayed in transit, or otherwise unreliable. You cannot assume that any email message copied or sent to one of our legal professionals was actually opened or read unless you receive a non-automated reply message indicating that he or she read the substance of your message. In addition, if you choose to use email to communicate with us, you consent to the potential for confidential information to be unintentionally disclosed through intercepted email. We request that you inform us of any types of information for which you prefer a specific means of communication."

Many of my clients ask me to use security mechanisms, from the low tech (adding a password in Word), to zipping documents and adding a password to the ZIP file, to the high-tech (exchanging certificates and using either S/MIME) to securely encrypt email or encrypting specific documents using other technologies. This has been a sensitive topic here in the past, but if email is used for confidential communications, it is certainly worthwhile to arm yourself with some knowledge about the tools at your disposal for increasing security.

ADVERTISING IN THE YELLOW PAGES

I figured that since I was in a smaller, older, less sophisticated market, the Yellow Pages would still be a viable source of clients. Completely and utterly wrong! I got bupkes from my ad. The money would have been far better spent taking local attorneys and businesspeople out to lunch.

KEEPING CLIENTS HAPPY

This is a lesson I'm still learning, but I'm getting better. Just because I haven't been practicing for 30 years, that doesn't mean I have to charge a lot less than other attorneys.

For example, a few weeks ago, I got a call from a real estate broker who I had recently worked with on a residential purchase. She wanted to know what I charged. Though I like doing real estate deals, they're not going to be a major part of my practice. I wanted to quote a high price, so that if I do take on a closing, it's worth my while. But I couldn't bring myself to do it, given what other attorneys in the area charge. I ended up giving her a price a little below what I know the more experienced real estate attorneys charge, figuring how can I ask for the same or more as what they're getting.

When I told her the services I provide for my fee, noting my emphasis on keeping the client and everyone else involved in the deal abreast of all developments, she told me that, in her 15 years in the business, no one had kept her as well informed as I had nor had returned her calls so promptly.

It was then that I realized that, though I don't know every nuance of real estate law off the top of my head, I am providing a service that's as good, if not better, than what the other lawyers are charging and I should set my fee accordingly.

GET A REAL EMAIL ADDRESS

I have to admit that I am around age 30 and have a slight negative impression of attorneys that use AOL accounts (although I have been impressed with their ability as attorneys to the stigma is unwarranted).

I personally think using a free email address looks a little unprofessional, though I don't know if it's that big of a deal to clients or colleagues.

For me, in addition to the professionalism and permanence that I think is conveyed with my own domain, I would not want to be a Gmail/Hotmail/Yahoo/AOL user explaining to some tribunal why I chose that freebie option instead of taking an extra and relatively inexpensive step.

The issue isn't whether clients care about your email address; they undoubtedly do not. The issue is whether *potential* clients do. Someone who hasn't used your services before doesn't know whether you're good and whether you can help them; they're going to judge you in part on your self-presentation.

Whether AOL conveys a negative message depends on your target client base. If it's older, less-sophisticated, non-computer savvy people, they probably don't care; they may not know the difference. If it's a younger crowd, perhaps an entrepreneurial market starting up new businesses, they may think that you're not very sophisticated yourself if you still use AOL.

REALLY BAD WEBSITES

I have seen one solo who literally scanned in his business card and that was it. Another did her own logo and it looks like a little kid did it. My website may not be perfect, but I had a professional do it. If you cannot afford a professional and don't have a hobby of designing websites, just don't have a website until you can afford it. Everyone thinks they are essential, but I think a bad website is worse than no website.

CLIENT COMMUNICATIONS MISTAKES

Over-promising when it comes to how quickly I can get things done.

I've frequently told people I can take care of something "tomorrow" or "by the end of the week," then found myself really stressed trying to live up to that promise. If it's a new area of the law for me, I tend to underestimate the time it's going to take me to get up to speed. Plus, more pressing matters tend to arise that make it difficult to devote the time to the project than I thought I had available. The rule I now try to follow is: **Under promise, over deliver.**

Unless something's a true emergency, there's no need to tell a client it will be done so quickly (and if I am going to do it quickly, I'm going to charge extra to put aside my other work). In fact, though a client would ideally like to have something done really fast, I think there's something to be said for appearing really busy and backlogged for several weeks (it's like the hot restaurant everyone wants to eat at).

Not calling a client when I'm running behind. I generally am very good about client contact. But there have been times when I've been really anxious, because there's something I know I need to address and I plan to address it, yet somehow the days go by and I don't get to it. And the whole time I'm very unhappy, because I feel I'm letting the client down. For some reason, it usually takes me a few days of this angst before I think to just pick up the phone and tell the client how busy I am and that I need some additional time. That phone call never turns out to be that bad and always makes me feel infinitely better.

SPECIALIZING

If you have a specialty — then I suppose you should specialize. I have years of experience in the construction and contracting business. I have a few contractor clients and months ago foreclosed a mechanics lien for my former employer. I do a bit of family law regular now. This experience was great for becoming familiar with superior court and motions practice and trial. If I were to have specialized starting out, and not done the family law, I would not have known how to navigate the foreclosure suit. Any civil experience or court experience is better than none at all and if there is a need in your area — do what you can be competent in. I think you are crazy to starve until the great land use case comes your way.

On the other hand...

Even though I knew I wanted to specialize in a few areas, my mistake was not sticking to that plan at the beginning. It was too tempting to take on areas I had no intention of doing long-term (e.g., landlord-tenant, debt collection) just to make a quick buck. But in the long run, it has hurt me significantly. I'd be much farther along if I had tightened my belt for a little while longer and put more energy into getting the word out about the areas of law I wanted to be practicing.

A corollary to the last one: Not being very clear with people I met and especially other attorneys that I specialized in a few areas. I'd generally say something like, "I'm trying to focus on estate planning, but I'm finding myself doing a little of everything." By saying something like that, I ended up getting the general-practice work that they didn't want to deal with (and usually it wasn't very good general practice work either). They may have been trying to help me out; however, they weren't likely thinking of me as their estate planning, probate, or elder law go-to person. I needed to make it clear that I was a specialist and someone they could trust sending their important clients to. Also, I think other solos are more likely to give you referrals if they know you specialize in areas they don't handle, since they don't have to worry about you poaching their clients.

WASTING TIME

A mistake I made was giving too many consultations that were way too long and took up too much of my time without quickly getting to what I can do for them and what it might cost. Avoiding this becomes easier over time.

Another mistake was performing some work "unbundled" for pro se clients. Often matters became too involved and explaining procedure took too much time. If you overlook something, you may be put in a position to provide full service in an effort to rectify the issue even if it was not your fault.

PICK UP THE PHONE AND CALL

Email with clients and opposing attorneys. There seems to be no limit to how much time email communications may take when a phone call would be quicker. I am amazed at what some OC put in email. It seems to be an easy method of needless arguing. I prefer one or two line responses. For repetitive arguments, I simply cut and paste previous emails. I am laughing now. For some OC I have switched to faxing memos in an effort to limit needless debate and the time sink that my clients would need to pay for on non-productive recess games. This seems to happen with OC representing a client with endless funds.

BEING READY

Not having a nice clean order ready to be endorsed after the commissioner makes a ruling. It is best to get the matters signed immediately than trying to schedule a presentation with a non responsive OC. In my area, attorney fees for such motions are "reserved for trial" and cannot be cashed in.

WAITING TO GOING SOLO

My absolute biggest mistake setting up a solo practice was not setting it up soon enough. What possessed me to give away years of profits to BigLaw, feel like a lesser lawyer because of arbitrary titles (e.g., partner/associate), and to forgo the freedom of operation and more meaningful family life that have come with solo practice? Nothing worth doing is ever easy, but if I had it to do over I would simply have done it sooner.