Those of us that enjoy the benefits of a small practice know it is one of the best kept secrets in the legal profession. Of course, it is hard managing the deadlines, the overhead, and the constant demands to avoid the legal mine fields that we come across in our practices. The goal of the Section is to make it easier and more fun to manage your office. The Section’s mission is to enable everyone to solve everyday practice issues.

The Section has been busy planning for the summer educational program. We have defined three learning objectives. We want to help you identify and use reports to run your practice efficiently and effectively, understand the financial issues that make your practice successful, and recognize the influence of stress on your lives and learn how to stay healthy.

The Section’s education program is scheduled for July 12, 2008 in Philadelphia, Pennsylvania. Below is the specific program schedule with times:

A Small Firm Business Model

By James Rockefeller, Warner Robins, GA

I have been practicing law for 19 years or so now, but the first 10 years were primarily as a prosecutor. Before hanging my shingle, I was basically developing my own practice with another firm, so I am at more of a five or seven year mark of growth, as opposed to the almost three years my firm has been operating. I enjoy being a business person, but resetting the revenue meter each and every month is like jumping off a cliff without a parachute every thirty days.

As with the majority of solo or small law firms, or any other small business entrepreneur, payroll is my biggest expense. In addition to the employees’ actual pay, there is health insurance, workers’ compensation, unemployment insurance, State and Federal taxes, and payroll processing fees.

To keep these expenses low, most small firms seem to follow a similar format in terms of staffing – one assistant, maybe two at the most. I have chosen a slightly different approach to better serve my clients and to permit me to handle a wider variety of cases.

In my office, my direct support staff consists of a business manager/bookkeeper, an associate (with a dedicated paralegal for her), a family law paralegal, and a criminal law/personal injury paralegal. Additionally, we have a part-time high school student as a file clerk/runner, and a part-time law clerk to help out with the personal injury

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From the Editor cont. from Page 1

8:30 a.m. Opening Remarks/Elections

8:45 a.m. Generating and Using Reports to Operate Your Practice
Lawrence M. Simon, NJ
Mr. Simon will focus on the following areas:
• Case Management software
• Accounting and billing software
• Scanners, scanning software, and viewing software
• Spreadsheets

9:20 a.m. How Not to Go Broke
William S. Friedlander, NY

9:55 a.m. Maximizing Case Values While Resolving Them Efficiently
Thomas J. Vesper, NJ

10:35 a.m. The Paperless Law Office
Feliz Angelica Rael, NM

11:10 a.m. Dealing with Stress and Avoiding Substance Abuse
Tom Henretta, OH

11:50 a.m. Adjourn

Please try and attend. I look forward to seeing everyone this summer.
I would also like to encourage you to attend our business meeting which will take place at 8:15 a.m. on July 12, 2008. There are openings for leadership positions and your participation will make our Section stronger. I have enjoyed working as the Section Newsletter Editor.

There are still more issues of the Newsletter coming out this year. We need people to share their knowledge. Please consider writing an article. In addition, we ask that you participate in the Section, either on the list serve, writing articles for the Newsletter, or in a leadership capacity. Please share your knowledge with all of us.

Finally, I want to thank our Section Chair, Jeff Padwa, for all his hard work and effort to make the Section better during his term of office. Please come to the summer meeting and thank him yourself.
Business Model cont. from Page 1

case load. If I can grow my personal injury practice just a little bit more, I will add a dedicated personal injury paralegal in the near future and possibly an associate or two.

Why do I favor a larger than usual operation? One reason is because clients deserve to be treated properly by their attorneys. I hear a lot of complaints from folks calling my office about other attorneys (or their offices) who fail to return phone calls, fail to respond to their needs fast enough, and fail to tell them what is going on with their cases.

We are all told about this in law school – return your clients’ calls and communicate with them about their cases. Despite these warnings being hammered into our tender, mushy brains, the criticisms I hear are valid. Too many attorneys take the money and forget about the client.

I do not even need validation from these callers. I can tell from my dealings with my colleagues that there is insufficient quality control in their offices. Many attorneys take weeks to respond to me on letters, drafts of orders, and proposals when only a few minutes’ time to respond is actually necessary.

Another reason to have a larger operation is the nature of my practice. The reality is that family law and criminal law clients are both extremely “needy,” e.g., regularly seeking access to you and your staff. If the support staff or an associate works on the file, the lead attorney can work with the client. Phone calls on the way home and on the weekends generally come with the territory. With two busy attorneys, both of whom have a significant family law practice (which generates the most phone calls), we probably receive somewhere between five and ten phone calls per hour. (As a side note: it is a losing battle to try and bill for every single phone call on a file).

In hiring staff for a general trial practice like mine, there is another reason you need sufficient, talented, and well-trained staff: court time. Family law cases generate a lot of court, mediation, and deposition time (assuming the client can afford all this legal activity). Criminal cases, generally, come with at least two court appearances; you will probably also have to factor in additional “hand-holding” visits if a client is in custody.

When crises break while I am away from the office, I need to have someone ready and skilled enough to “deal” with the client and start preparing documents while not over-stepping the boundary between staff and attorney; the last thing I want is for a client to receive legal advice from the staff!

One of the main advantages of practicing with a partner or associate is an often-overlooked business model – the “economies of scale.” Having someone around whom you trust and like is invaluable. Sharing expenses, covering for each other in court or elsewhere, knowing the staff has someone around to help them manage clients and files, and being able to randomly bounce ideas off a colleague are just a few of the priceless benefits of practicing with someone else.

This is not to say that this model is easily achieved! Attorneys are strong personalities and often do not “play nice” with each other. Also, we tend to be horrible business people. I will never understand why we are not taught more in law school about running a successful business.

Practicing with someone else can be trying and personalities can come into play. Deal with it! Having someone around to help to pay the bills, someone to help expand the client-base, and someone to help keep the office nailed down while you are putting out fires, offers incalculable peace of mind.

When you are making staffing decisions, do not disregard the “rhythm” or “flow” of your cases. Family law cases typically require intense, initial bursts of activity for about a month or so before settling down into a more meandering path of about six to nine months, on average, towards conclusion. However, if you have two contested custody cases walk into the office at roughly the same time, your staff person will be consumed for at least a week with pleadings, drafting court orders, and affidavits. The up-and-down nature of a family law practice demands that you have some type of back-up support for your primary family law staff person.

Criminal law cases are very different. They either close out in a month or so, depending on the nature or seriousness of the charges, or they drag on for over a year because your client wants to proceed to trial or to the brink of trial. Usually, one can expect a fairly rapid “churning” of the criminal case load.

While this might seem to dictate multiple staff to handle the constant turnover, that is not necessarily true. In fact, if you provide your staff with simple and detailed work-flow instructions and a template system for swift and relatively automatic document generation, staff input on cases can be rather limited.

However, this is not true when the client wants to try the case – especially when the case has complicated facts or serious charges. In this situation, you will find yourself needing intense staff assistance to prepare your case and provide proper services for your client. This means that the nature of your staffing needs, for a criminal practice, will fluctuate depending on the type of criminal cases you accept.

Conversely, there is this “creature”...
we call personal injury caseload. These files take a relatively long time to close out. Generally, even in your minor car wreck cases it might take a year, maybe longer, to put your file together to even make a demand. Only “low-fruit” personal injury cases (which I try to avoid), will have speedier resolutions. The down side (and it is a serious one) of these aggravating cases is that the profit margin (if any) of cost-to-handle-the-case versus revenue will be fairly slim clients can often demand more of you then the case justifies, and, because of the volume, your staffing needs will be higher.

On the other extreme, the high-end cases like medical malpractice and wrongful death/catastrophe cases (which I would like to have, but would share with a bigger firm), will exponentially increase your need to have quality staff assistance. These cases require that you engage in intense discovery, if not trial. The mid-range cases ($25K to $100K value) still take a fairly large amount of time to wind through the system, but a solid staff which acts as your extra hands, eyes, and ears can usually handle these cases with limited assistance. However, cases much larger than this probably demand the resources of larger operations that are better prepared to handle them.

In my opinion, it is hard to avoid a 2.5 staff person to attorney ratio; it just depends on what you want to designate as the staff’s responsibility. I just do not see how even a 1-to-1 ratio lets you provide proper customer service for clients, particularly if you handle any type of family law cases or significant personal injury cases.

With a personal injury-only practice, which is less client-driven and where cases do not turn over rapidly, you might make do with secretary per two attorneys, but you will still need a receptionist, office manager, a file clerk/runner, and a true paralegal. I suppose some of these jobs can be part-time and/ or combined (remember, they demand different talents or skills), but the roles that all positions represent are important and cannot be overlooked.

An adequately staffed law firm is crucial to success. Do not short-change yourself and your clients. Hire good employees, train them well, appreciate them, pay them what they deserve (which may be more than what the market calls for), and let them help you achieve success for your clients and your practice. See them as an integral component in your successful business, not money coming out of your pocket.

James Rockefeller, Rockefeller Law Center, 524 S. Houston Lake Road, Suite G-100, Warner Robins, GA 31088, T: 478/953-6955, email: ajr@rockefellerlawcenter.com. Mr. Rockefeller owns the Rockefeller Law Center; he is a former Houston County Chief Assistant District Attorney and a former Miami Prosecutor.
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It is never too late to decide where to put your resources. Resources, you ask? What resources? Time, money, energy, desire... It doesn’t matter if you are Boone & Stone in Atlanta with three onsite lawyers or Clifford Chance with “3800 legal advisors.” Just as we have seen with Mother Earth, we all have limited resources.

So, how to win in the battle of Small Firm Management? It is relatively simple: pick your battles. Pick battles you can win, pick them early, and review the picks often. In our office, we set all criteria in advance for the matters we will consider.

Pay attention and determine which areas of the law that you know, or are willing to learn. How many matters are already on your plate? What kind of time requirements are coming up and how much money can you expect to spend in case costs? At our firm, after our analysis, we draw a hard line in the sand.

One major error that we see with small firm management is the desire to have work. I do not mean simply having something to do; I mean the attitude of filling the file cabinet, loading the case management system, lengthening the “open files” list.

We are all, at some point or another, insecure about our next month, year, or decade. We all want to know what is coming in the door tomorrow. The trick is to not overload. Do not let the junk accumulate in your file room. Do your spring cleaning now.

In our business, we make money by closing files. The file is worth its maximum on the day we sign up a client. We lose a part of that money each day that the file remains open. Whether we successfully settle or try the case, the length of time in the office increases proportionate to the expenses attributable to the matter, professional time, office overhead, and out of pocket costs. Plus, it delays your payday and reduces your resources to work on other matters.

This same analysis applies to bad cases. Bad cases need to be rejected early. Bad cases are matters we should not have taken, matters we took based upon incorrect assumptions, or cases that have made a turn for the worse.

The management issue with bad cases is the parasitic drag on the office. They still consume employee time, they occupy space, and they show up on the attorney’s desk at calendared intervals. Probably the worst aspect of keeping bad cases is prolonging client expectations and increasing malpractice exposure.

In our experience, clients do not mind being told they do not have a case nearly as much as they mind being strung on. Assess your cases regularly and “shoot the dogs”... early.

Take the opportunity at the end of each year to review your work load in light of your resources and in light of the old business school adage: 80 percent of your revenue comes from 20 percent of your effort, and the corollary.

Take the bold step of culling files from your cabinet. Prioritize your matters, work hard on all, and look at the best twice as often. Make your dreams for come true.

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Independent Living Facility Litigation
An AAJ Litigation Packet Preview

This Litigation Packet profiles the case of McKay v. Lifestyles Senior Housing Managers, L.L.C., d/b/a/ Glenwood Place Senior Living, which involves an independent living resident who drowned to death in a hot tub located at the facility. With the assistance of Mr. Bill Reed, the plaintiff’s attorney in this case, the AAJ Exchange has compiled key documents focusing on senior housing, healthcare and safety, the differences between independent living and assisted living facilities, and the standards of care in independent living facilities.

This action arose out of the drowning death of 84 year old Orvetta McKay while she was a resident in the independent living portion of Glenwood Place. Ms. McKay moved into the facility on August 23, 2001.

At that time, defendants had agreed to provide certain services to Ms. McKay, including supervision and monitoring for safety and security. Ms. McKay’s family had also been assured that the fitness facility and pool/hot tub area remained locked unless there was a staff member present to supervise.

What they were not aware of was that some time after Ms. McKay moved into defendants’ facility, she was provided with a key giving her unfettered and unsupervised access to the fitness center, swimming pool, and hot tub. Ms. McKay began using the hot tub alone during the early hours of the morning, which staff at the facility became aware of when they were alerted by other residents concerned about the safety of such activities.

Despite this knowledge, the staff at Glenwood place did not prevent Ms. McKay from continuing to use the hot tub alone, even though she had a history of poor judgment and medication use. On November 21, 2001, Ms. McKay was seen going into the pool/hot tub area at Glenwood Place a little before 6:00 a.m., and, at approximately 6:30 a.m., she was discovered in the hot tub, drowned.

Independent living facilities are designed specifically for independent senior adults who want to enjoy an independent lifestyle filled with recreational, educational, and social activities with other seniors. Independent living is ideal for seniors who are healthy and able to care for themselves, want to live independently, desire the security to be found in seniors-only community, no longer want to maintain a house, prefer to live among peers, and can communicate with doctors and caregivers by themselves. At this time there is no OBRA or regulatory scheme in place governing standard of care at these facilities.

In this case, the plaintiffs pleaded negligence; wrongful death; abuse, neglect, exploitation and/or abandonment as set forth in RCW 74.34 et seq.; breach of contract; and violation of the consumer protection act. The only claims that could be submitted to the jury under Washington law were the decedent’s claim for pain and suffering and the adult children’s claim for wrongful death. At the completion of trial, the jury found no damages for the decedent and $350,000 for the adult children.

This Litigation Packet is designed as a valuable resource for Members handling independent living facility cases and contains:

- An exploration of the differences between independent living facilities and other senior housing facilities
- Plaintiffs’ Complaint, Second Amended Complaint, Discovery, Motions, Memoranda, Briefs, Orders, and Jury instructions
- Depositions of independent living facility executives and staff, and defense and plaintiff expert witnesses
- AAJ Education speaker papers
- Notes:
  1. Plaintiff’s Trial Brief.
  2. Id.
  5. Email from Bill Reed, Esq., Reed, Johnson & Snider, P.C. (July 25, 2007).

This article is an excerpt from an AAJ Exchange Litigation Packet. Working closely with AAJ Members, the Exchange develops Litigation Packets, which contain comprehensive, practical material on “hot” litigation topics and trial advocacy issues. For a detailed Table of Contents, log onto the Exchange at www.justice.org/exchange, click on “Litigation Packets,” select “Nursing Home,” and “View” the packet description. Or call the Exchange at (800) 344-3023.
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