

# Basic Training & Beyond

Day-One:

Is this right for me?

Getting started.

The business of the small firm.

Managing risk.

# Day-Two

Client relations.

Productivity & technology.

Marketing.

# A wide-lens look before we get into the weeds

1,352,027 US licensed attorneys

182,296 in New York State

170,117 in California

107,601 in the DC Bar

91,244 in Texas

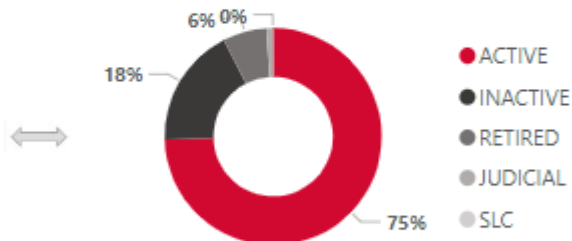
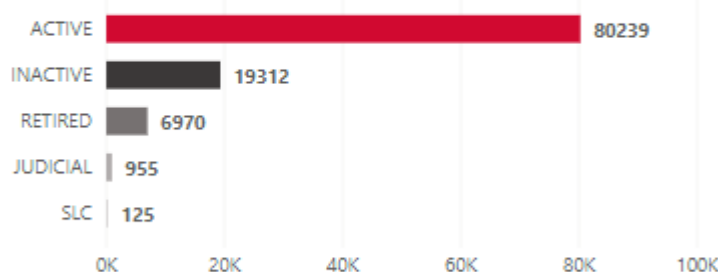
78,448 in Florida

### DC Bar Membership Population

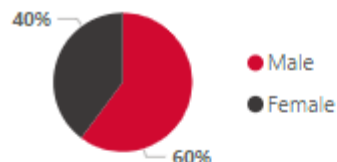
Queried 11/02/2020

Marginal discrepancies may exist due to the availability of data.

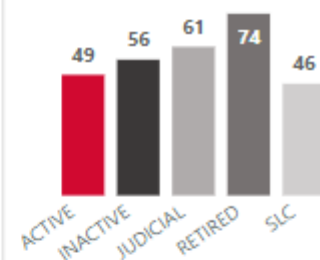
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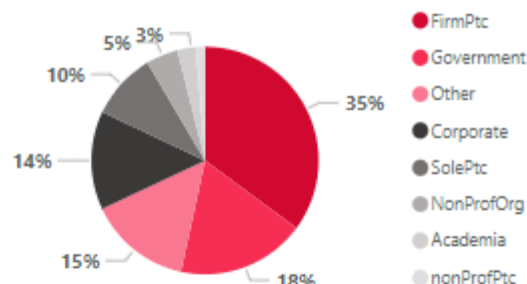
### Gender Breakout



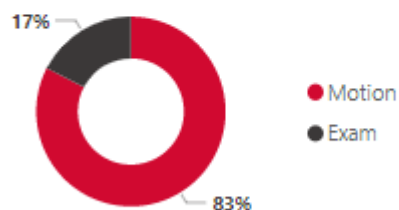
### Average Age



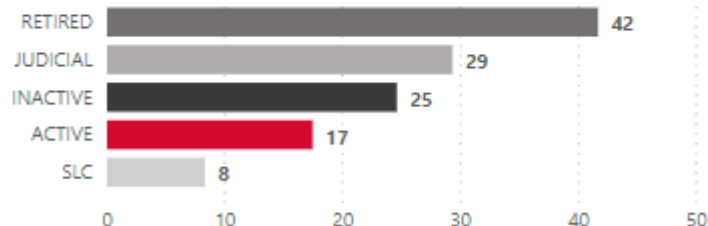
### Practice Industry



### Induction Method



### Average Length of Membership (Years)



New Admits - 247

New Admit Induction Method\*

# Is small firm law for me?

It's a profoundly challenged economy

It's a tough profession

Competition is intense

Expect an abundance of  
challenge & adventure

# The public's perception of lawyers

Please tell me how you would rate the honesty and ethical standards of people in these different fields -- very high, high, average, low or very low? How about -- [RANDOM ORDER]?

	Very high	High	Average	Low	Very low	No opinion
	%	%	%	%	%	%
Nurses	31	54	14	*	1	*
Engineers	17	49	31	2	1	1
Medical doctors	20	45	28	4	2	*
Pharmacists	15	49	28	5	3	*
Dentists	13	48	33	4	2	*
Police officers	17	37	31	9	5	*
College teachers	12	37	34	10	7	1
Psychiatrists	10	33	43	10	2	2
Chiropractors	6	35	47	9	2	1
Clergy	10	30	42	10	5	4
Journalists	5	23	34	20	17	1
Bankers	3	25	52	15	5	*
Labor union leaders	4	20	48	20	7	1
Lawyers	4	18	49	19	9	*
Business executives	2	18	50	22	8	1
State governors	4	16	52	21	6	*
Stockbrokers	2	12	55	22	8	2
Advertising practitioners	2	11	44	30	10	2
Insurance salespeople	2	11	52	26	9	*
Senators	2	11	42	32	13	1
Members of Congress	3	9	33	34	21	1
Car salespeople	1	8	47	30	13	*

# Historical view 1976 - 2019

9<sup>th</sup> most dishonest in  
this MoneyWise  
survey

Lawyers

	Very high	High	Average	Low	Very low	No opinion	Very high/High
	%	%	%	%	%	%	%
2019 Dec 2-15	4	18	49	19	9	*	22
2018 Dec 3-12	3	16	51	21	7	1	19
2017 Dec 4-11	4	14	53	19	9	1	18
2016 Dec 7-11	3	15	45	26	11	1	18
2015 Dec 2-6	4	17	44	25	9	1	21
2014 Dec 8-11	5	16	45	22	12	1	21
2013 Dec 5-8	3	17	45	23	12	1	20
2012 Nov 26-29	4	15	42	28	10	1	19
2011 Nov 28-Dec 1	3	16	43	27	10	1	19
2010 Nov 19-21	4	13	47	24	11	1	17
2009 Nov 20-22	3	10	45	28	12	1	13
2008 Nov 7-9	3	15	45	25	12	1	18
2007 Nov 30-Dec 2	2	13	49	25	10	1	15
2006 Dec 8-10	3	15	42	27	11	2	18
2005 Nov 17-20	3	15	46	25	10	1	18
2004 Nov 19-21	4	14	45	24	11	2	18
2003 Nov 14-16	3	13	47	25	11	1	16
2002 Nov 22-24	2	16	45	25	10	2	18
2001 Nov 26-27	4	14	50	23	8	1	18
2000 Nov 13-15	3	14	42	29	11	1	17
1999 Nov 4-7	1	12	45	28	13	1	13
1998 Oct 23-25	3	11	44	29	12	1	14
1997 Nov 6-9	3	12	41	31	10	3	15
1996 Dec 9-11	3	14	39	27	14	3	17
1995 Oct 19-22	4	12	36	29	17	2	16
1994 Sep 23-25	3	14	36	31	15	1	17
1993 Jul 19-21	3	13	41	28	13	2	16
1992 Jun 26-Jul 1	3	15	43	25	11	3	18
1991 May 16-19	4	18	44	21	10	5	22
1990 Feb 8-11	4	18	43	22	9	4	22
1988 Sep 23-26	3	15	45	23	10	4	18
1985 Jul 12-15	6	21	40	21	9	3	27
1983 May 20-23	5	19	43	18	9	6	24
1981 Jul 24-27	4	25	41	19	8	7	25
1977 Jul 22-25	5	21	44	19	8	4	26
1976 Jun 11-14	6	19	48	18	8	1	25

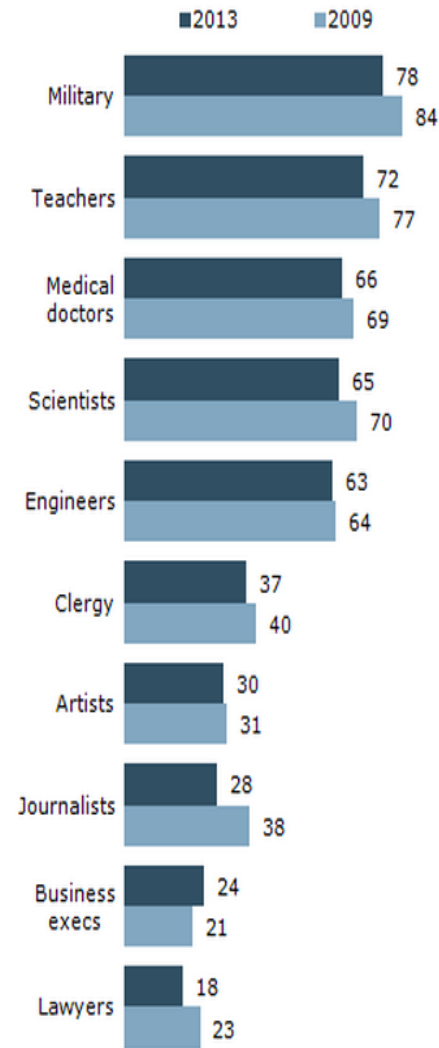
GALLUP

# Contribution to society's well-being

We are last ->

## Trend in Perceived Contribution

% saying each group contributes "a lot" to society's well-being



Source: Pew Research Center surveys March 21-April 8, 2013 and April 28-May 12, 2009. Q6a-j. Responses of those who said some, not very much, nothing at all and those who did not give an answer are not shown.

PEW RESEARCH CENTER



Did you know a pro bono lawyer  
uncovered the robo-signing scam  
during the mortgage crisis?

# The pressures on the profession

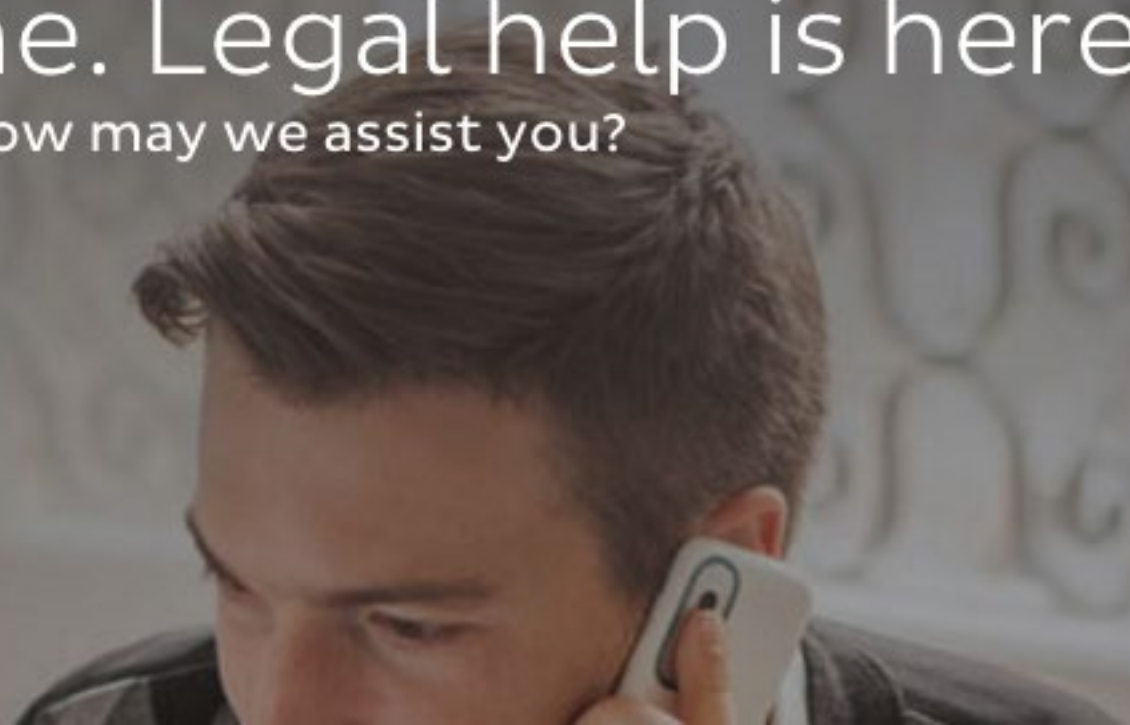
Client pressures  
to be more efficient & affordable

[The Legal Tech Assessment](#)

Market pressures in competition for our clients

[LegalZoom](#)


Welcome. Legal help is here.  
How may we assist you?



A background image showing a man in a suit talking on a white smartphone. He is looking down, and the image is slightly blurred. In the background, there are some books and a decorative wall.

# Welcome. Legal help is here.

How may we assist you?

[Business Formation](#) [LLC • Corporation](#)[Wills & Trusts](#) [Last Will & Testament • Living Trust](#)[Intellectual Property](#) [Trademarks • Patents • Copyrights](#)[Speak with an Attorney](#) [Attorney Directory](#)

CELEBRATE NATIONAL  
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MONTH

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help your business thrive.

3 ebooks + 20 special offers

[GET THE KIT](#)

# Is Amazon a competitor?



Brand Registry

Transparency

Project Zero

IP Accelerator

Progress Report

FAQ

Contact us

Get started

amazon IP Accelerator

## Protect your intellectual property

Amazon IP Accelerator helps businesses more quickly obtain intellectual property (IP) rights and brand protection in Amazon's stores.

Get started



# Rough week for lawyers

Sixty Minutes exposes the dark side of Rule 1.6:

ABA responds by attacking the messenger:

Then says we have a drinking problem:

So the public has to wonder: “Is my lawyer  
a crook, a drunk, or a drunk crook.”



Cat Moon  
@inspiredcat

"In a breakdown of loneliness and social support rates by profession, legal practice was the loneliest kind of work . . . [t]his is perhaps not surprising, given the known high prevalence of depression among lawyers."



America's Loneliest Workers, According  
to Research  
[hbr.org](http://hbr.org)

Tweet your reply





# America's Loneliest Workers





But lawyers can be happy when:

We are autonomous

We are masters of our world

We are connected and have a sense of belonging

# Demand for small firm services is and will be at an all time high

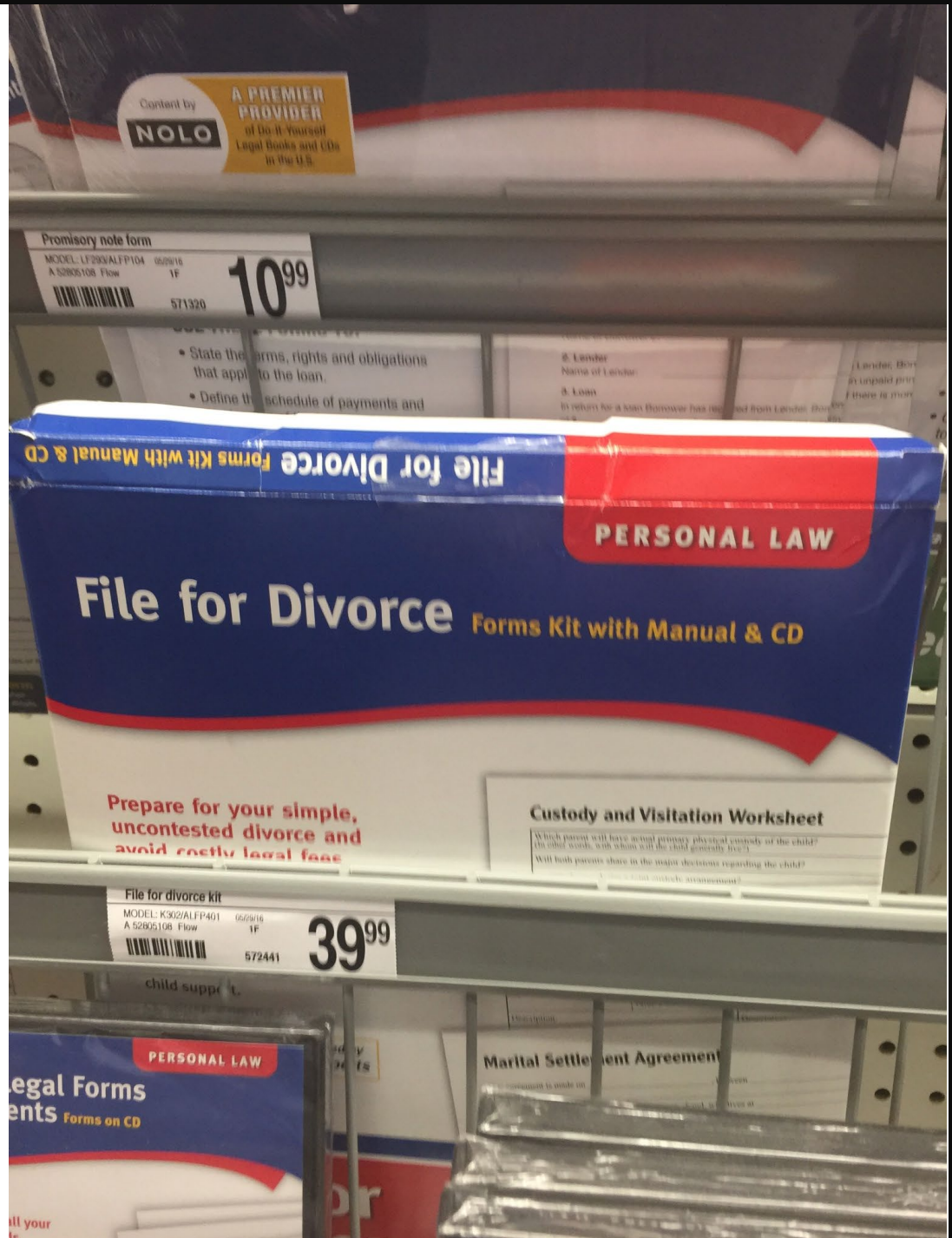
The challenge for the small firm lawyer is to:

Find the right problems

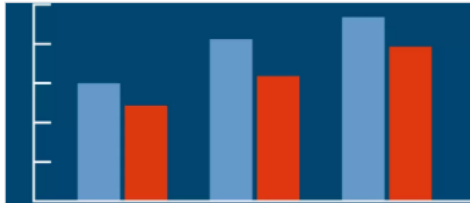
&

Get paid for solving them

How do you  
respond to a  
prospective  
client who  
shows up  
with this?

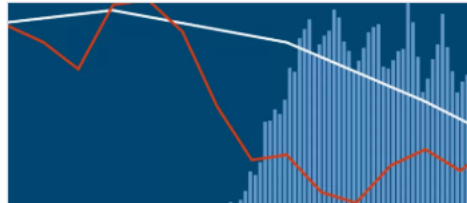


# The time we are in



## Clio's COVID-19 Impact Research Briefing: July 15

Clio's third briefing on the impact of COVID-19 shows steady recovery in June across most practice areas and states. As coronavirus cases continue to rise in the US, the impact remains uncertain for July.



## Clio's COVID-19 Impact Research Briefing: June 17

Clio's second briefing on the impact of COVID-19 shows several weeks of decreased business for law firms, which has affected monthly billing volumes. Initial data in June however shows a sharp increase in new caseloads...



## Clio's COVID-19 Impact Research Briefing: May 4

Clio's first briefing on the impact of COVID-19 indicates that legal professionals have been significantly affected by social restrictions and that—despite the ongoing need for legal services—many firms are seeing reduced client demand.

Clio Legal Trends Report 2020

Clio Legal Trends Report 2019

# Justice for Me

An affordable legal fee payment plan.

The lender's fee is like that charged  
by a credit card processor.

But is this a Rule 5.4(a) issue?

# Here is the Ben Glass response to LegalZoom

intranet x Contact Us - US Tax Law x B BenGlassLaw VIP Program x

benglasslaw.com/reports/benglasslaw-vip-program-for-virginia-residents.cfm?utm\_source=newsletter&utm\_medium=email&utm\_campaign=bgl-newsletter-7-24-2018&inf\_contact\_key=b161ccac36c496df4626bf4b88fa743faaa87b8d7b9b31e3afdad788bf4669a

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A New Kind of Program Designed for Virginia Residents. Learn More about Ben Glass's VIP Program!

BGL VIP New Intro  
Become a BenGlassLaw VIP Member (It's FREE!)

No surprise, many attorneys who hear about BenGlassLaw's VIP program find it too sensational to believe. They ask, "why would you offer all these free benefits, isn't it hurting your law practice." The honest answer is no, because we know that helping people with their small legal issues is just as important as helping them with their big legal issues.

Become A VIP Member Today!

It's been an honor serving this community for over 32 years, and we wanted to give back with a free membership program for our closest friends.

Yes, start now!

No, thanks

LIVE CHAT - ONLINE NOW

Hi, we are here to help if you have questions.

9:22 AM 7/24/2018

# Characteristics

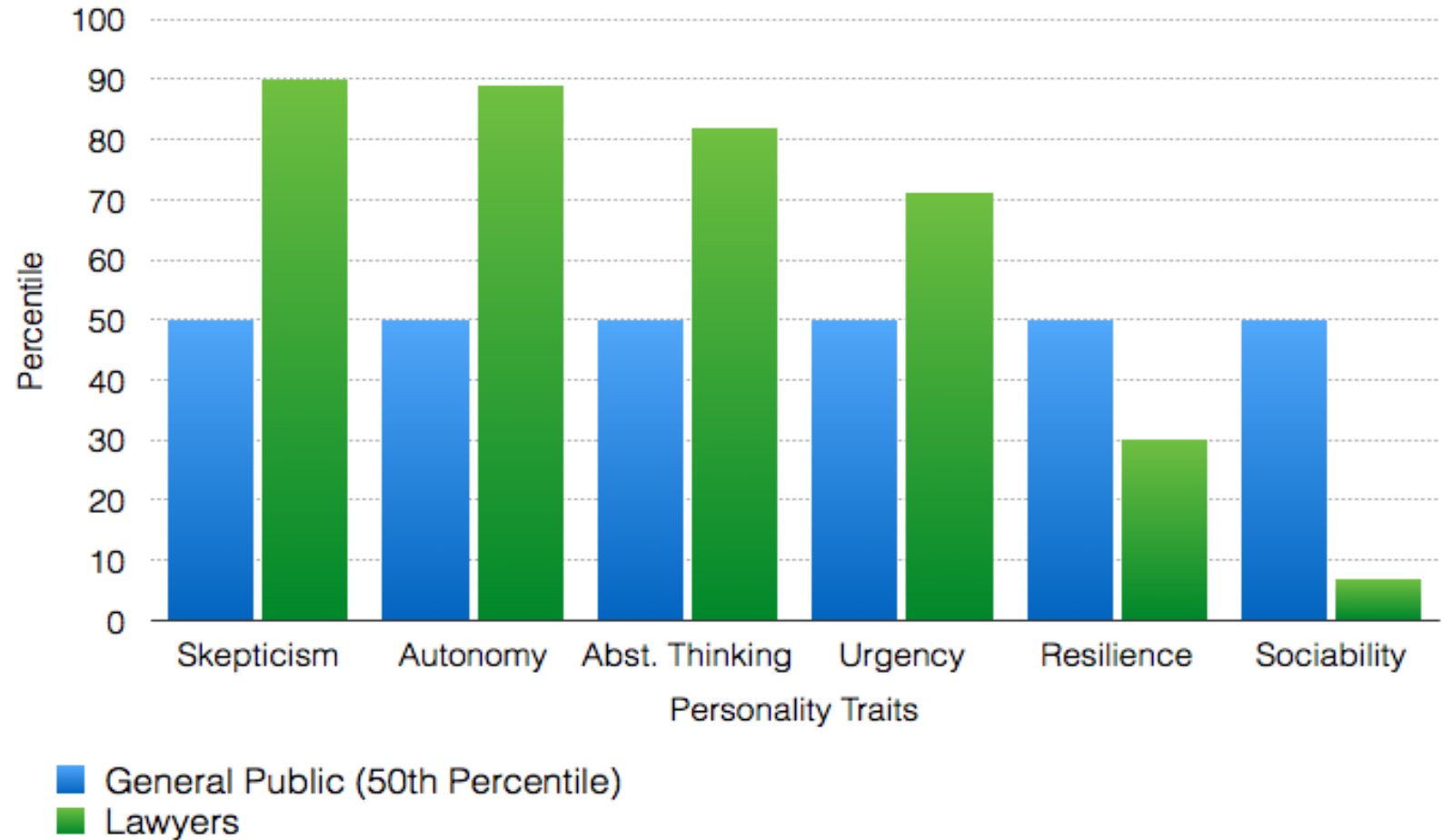
**Are you empathetic?**

**Can you listen & observe?**

**Can you make the complex  
understandable?**

**Can you maintain boundaries?**

# The 6 Predominant Lawyer Personality Traits



From the research of Larry Richard, Ph.D.



Small firm lawyers need  
high EQ  
(emotional intelligence)

What does high EQ look like?

# High EQ Qualities

You are optimistic.

You are not a perfectionist.

You can balance work and play.

You embrace change.

You are not easily distracted.

You are empathetic.

You know your strengths & weaknesses.

You are self-motivated.

You don't dwell in the past.

You take care of yourself.

You set boundaries.

*A person with EQ  
understands this truth:*

You cannot impact a  
feeling with a fact.

You can only impact a  
feeling with another  
feeling.

The New York Times bestselling  
author of *Brainstorm* and *Mindsight*

Daniel J. Siegel, MD

# AWARE

*The Science and  
Practice of Presence*

THE GROUNDBREAKING  
MEDITATION PRACTICE

A great  
resource to  
develop good  
decision making

# Characteristics of the successful small firm lawyer

**Are you an *idea* person & a *detail* person?**

**Can you work a room? Can you close?**

**Can you screen & talk about money?**

**Can you be selective about clients & cases?**

**Are you a life-long learner?**

# Empathy vs Sympathy

This video of Brene Brown explains the difference.

<https://www.youtube.com/watch?v=1Evwgu369Jw>

An empathetic person  
is not afraid to be vulnerable

Here's a talk by Brene Brown on  
the  
power of vulnerability

If you have  
clients who  
have suffered  
trauma,  
this is a  
resource to  
understand how  
trauma  
affects a person

# THE BODY KEEPS THE SCORE

BRAIN, MIND, AND BODY  
IN THE HEALING OF TRAUMA



BESSEL VAN DER KOLK, M.D.



Play to your strengths

<https://www.gallupstrengthscenter.com/>

<http://www.viacharacter.org/www/>

<https://www.authentichappiness.sas.upenn.edu/>

# The small firm focus

When we are licensed to solve the problems of others,  
it is best that our focus be narrow.

There is less challenge and risk  
in a narrowly focused small firm.

We are expert & efficient at solving our client's problem.

Our marketing initiative is better directed and more  
successful.



# Necessary skills

Active listener

Ability to negotiate

Effective writer

Good speaker

Ability to adapt

Quick study

Solution oriented

# We are regulated

We must comply with the DC Rules of Professional Conduct;

And the rules of any other jurisdiction where we are barred;

And other codes, regulations and court rules;

And not become paralyzed by regulation.

[Click here for free, confidential, informal ethics advice](#)

# We are DC Rule focused here

If you practice in another jurisdiction,  
it may be different there.

For example:

DC Rule 7.1 & 7.5 – marketing

DC Rule 1.8(d)(1) & (2) – client financial help

DC Rule 5.4(b) – non-lawyer equity partner

DC Rule 1.6 – confidences & secrets

# Getting started

What's the problem you solve?

Why should a prospective client bring you into their life?

What is the skill set you need to attract and solve the problem of your ideal client?

Is it the same skill set?

# 76 words in a 30 second spot

Because that is what people remember

Less can be more

*The words you speak become the house you live in.*

- Hafiz



# Firm name

Rule 7.5 & 7.1

Avoid implying that you are more than you are

Using *Firm* is acceptable [Ethics Opinion 332](#)

Be cautious of and test drive the unique name

# Unique name example: *Ipseity Law*

Ipseity, from the Latin word *ipse*, meaning “itself”

*“Ipseity reminds me of my core self,  
the me beneath all layers of adaptation & personality,  
and that’s why I choose Ipeity Law for the  
name of my small firm.”*

# The entity question

Know why you need an entity

[Here are resources on forming a business in DC](#)

[Here is information from DCRA](#)

Sole proprietor is an option

See *Choosing the Business Entity* in the e-Manual

Sole proprietors, partners & self employed persons  
pay [estimated taxes](#)

# Your firm will need an EIN

Apply to the IRS for an employer id number

You will need an EIN to open your firm's  
business checking account

Avoid putting your SSN on a 1099 form

More is in the e-Manual

IRS Employee vs Contractor Guidelines

# Doing business in DC

Law firms do not need a business license  
from DCRA

You may need to file the FR 500 (e-Manual)

More information about the FR500 is here

# Do you need an office in DC?

DC Rules do not require it

Be careful about an office in a jurisdiction  
where you are not barred

See e-Manual for more information

The office should be client-focused

Is client data safe & secure?

# Avoiding UPL

Rule 5.5 bars a DC Bar member from the unauthorized practice of law in another jurisdiction

Every jurisdiction has its own UPL rule, regulation or code provision

See e-Manual - Avoiding the Unauthorized Practice of Law

When emails from Colorado became UPL in Minnesota

# CARR /

WORKPLACES / DC Metro

## Bethesda

4800 Hampden Lane  
Suite 200  
Bethesda, MD

## Capitol Hill

300 New Jersey Ave NW  
Suite 900  
Washington, DC

## City Center

1325 G Street NW  
Suite 500  
Washington, DC

## Clarendon

3033 Wilson Boulevard  
Suite 700  
Arlington, VA

## Duke Street

1765 Duke Street  
Alexandria, VA

## Dupont

1101 Connecticut Ave NW  
Suite 450  
Washington, DC

## Friendship Heights

5425 Wisconsin Avenue  
Suite 600  
Chevy Chase, MD

## Georgetown

1050 30th Street NW  
Washington, DC

## King Street Station

1800 Diagonal Road  
Suite 600  
Alexandria, VA

## K Street

1717 K Street NW  
Suite 900  
Washington, DC

## Old Town

500 Montgomery Street  
Suite 400  
Alexandria, VA

## Pennsylvania Avenue

1701 Pennsylvania Ave  
NW  
Suite 200  
Washington, DC

## Reston Town Center

1818 Library Street  
Suite 500  
Reston, VA

## Rosslyn

1001 19th Street North  
Suite 1200  
Arlington, VA

## Tysons Boulevard

1750 Tysons Boulevard  
Suite 1500  
McLean, VA

## The Willard Offices

1455 Pennsylvania Ave NW  
Suite 400  
Washington, DC



Plus 10 additional locations found across the United States.  
Learn more at [www.carrworkplaces.com/locations](http://www.carrworkplaces.com/locations)

\*diagram not to scale



# DC Bar Member Benefits

Carr WorkPlaces

Clio, MyCase, Zola

Fastcase

USI Affinity

OSI

Office Services Inc.  
1629 K Street NW Suite 300  
Washington, DC  
20006

# The law firm business plan

Planning gives your focus, control, & direction

You will have an edge over the competition

You will think about your law enterprise as a system

Planning reduces risk & increases reward

See the e-Manual for more information.

Request the plan template, workbook & spreadsheets:

[PMAS@dcbar.org](mailto:PMAS@dcbar.org)

# Here is why the plan is essential

It raises issues you will not have considered

It helps you to think like an entrepreneur

It puts you in your ideal client's  
problem recognition process

# Build your network

Small firm support systems are important

Networking events & groups are vital

Mentoring can result

Referral networks are created

Resources are located

Informal groups, voluntary bars & Communities

And social media are some of the possibilities

# Networking Opportunities

Law is a relationship business

December 10 on Zoom: Business planning in a pandemic with [Tom Martin](#)

[Register here](#)

2<sup>nd</sup> Friday at Alto Fumo, 2909 Wilson Blvd. (Clarendon Metro) in Arlington at 12:30 pm. RSVP to [steven@stevenkriegerlaw.com](mailto:steven@stevenkriegerlaw.com)

Last Friday at *Barrel & Crow*, 4867 Cordell Avenue, Bethesda at Noon. RSVP to [mark@markdelbianco.com](mailto:mark@markdelbianco.com)

# The business of the small firm

Fees & getting paid

Handling money

Management

Getting help

Handling client data

# Fees

How will you price your service?

Rule 1.5 says it must be *reasonable*

So you can profit, know what a productive hour is worth –

More in the e-Manual

Ask for the 168 hour time management spreadsheet

Time & effort are not necessarily value.

The client values the result.



# Productive hour calculation

**Monthly expenses X 12**

**\$5k professional, \$5k personal X 12 = \$120,000.00**

**\$120k / 50 weeks = \$2400.00**

**\$2400 / 5 days = \$480.00**

**\$480 / 3 productive hours each day = \$160.00**

**( / = divide)**

# Incorporating profit

**\$160.00 + \$90 profit = \$250.00 hourly rate**

**\$250.00 X 3 productive hours a day = \$750.00**

**\$750.00 X 5 days = \$3750.00**

**\$3750.00 X 50 weeks = \$187,500.00**

**\$187,500 - \$120,000 = \$67,500.00 profit**

# Lawyerist

Hourly rate calculator

# Revenue – Expense = Profit

When the small firm does not intend to profit,  
it is simply surfing cash flow.

Here is how to know when you are profiting:

Total Fixed Cost / (Market Price – Cost) = Matters  
needed to break even

\$5000 Fixed Cost (month) / (\$1000 - \$750) = 20  
matters a month to break even

$$\text{Revenue} - \text{Expense} = \text{Profit}$$

Compare to a firm with more margin in the formula

$$\begin{aligned} &\$5000 \text{ Fixed Cost (month)} / (\$2500 - \$750) = 3 \\ &\text{matters a month to break even} \end{aligned}$$

How do you know the market?

Rule 1.5(a)(3)

Bar associations cannot tell you

Experienced lawyers & Clio reports are the  
best sources

The USAO's Laffey Matrix is here

Above the Law accounts

# Clio Legal Trends 2020

## HOURLY RATES BY STATE

State	Law Firms	Lawyers	Hourly Rate	State	Law Firms	Lawyers	Non-lawyers
<b>AL</b>	\$186	\$195	\$103	<b>NC</b>	\$224	\$247	\$125
<b>AR</b>	\$220	\$238	\$120	<b>ND</b>	\$234	\$256	\$153
<b>AZ</b>	\$228	\$254	\$137	<b>NE</b>	\$212	\$215	\$202
<b>CA</b>	\$308	\$338	\$171	<b>NH</b>	\$242	\$261	\$140
<b>CO</b>	\$235	\$258	\$136	<b>NJ</b>	\$299	\$316	\$186
<b>CT</b>	\$290	\$311	\$185	<b>NM</b>	\$216	\$239	\$132
<b>DC</b>	\$342	\$380	\$189	<b>NV</b>	\$280	\$312	\$166
<b>DE</b>	\$291	\$333	\$166	<b>NY</b>	\$338	\$357	\$223
<b>FL</b>	\$262	\$294	\$143	<b>OH</b>	\$213	\$223	\$139
<b>GA</b>	\$252	\$268	\$156	<b>OK</b>	\$206	\$223	\$120
<b>IA</b>	\$170	\$175	\$125	<b>OR</b>	\$223	\$247	\$126
<b>ID</b>	\$207	\$221	\$111	<b>PA</b>	\$268	\$281	\$187
<b>IL</b>	\$280	\$298	\$164	<b>RI</b>	\$192	\$203	\$106
<b>IN</b>	\$218	\$233	\$129	<b>SC</b>	\$208	\$239	\$110
<b>KS</b>	\$210	\$217	\$151	<b>SD</b>	\$175	\$180	\$107
<b>KY</b>	\$196	\$205	\$126	<b>TN</b>	\$212	\$228	\$117
<b>LA</b>	\$219	\$235	\$92	<b>TX</b>	\$253	\$286	\$139
<b>MA</b>	\$257	\$268	\$173	<b>UT</b>	\$223	\$240	\$135
<b>MD</b>	\$287	\$306	\$177	<b>VA</b>	\$264	\$282	\$161
<b>ME</b>	\$161	\$171	\$106	<b>VT</b>	\$209	\$222	\$105
<b>MI</b>	\$247	\$263	\$140	<b>WA</b>	\$251	\$280	\$145
<b>MN</b>	\$246	\$264	\$142	<b>WI</b>	\$222	\$229	\$172

# DC US Attorney's Office Laffey Matrix 2018-19

## Years / Hourly Rate

<https://www.justice.gov/usao-dc/page/file/1189846/download>

### **USAO ATTORNEY'S FEES MATRIX — 2015-2020**

*Revised Methodology starting with 2015-2016 Year*

Years (Hourly Rate for June 1 – May 31, based on change in PPI-OL since January 2011)

Experience	2015-16	2016-17	2017-18	2018-19	2019-20
31+ years	568	581	602	613	637
21-30 years	530	543	563	572	595
16-20 years	504	516	536	544	566
11-15 years	455	465	483	491	510
8-10 years	386	395	410	417	433
6-7 years	332	339	352	358	372
4-5 years	325	332	346	351	365
2-3 years	315	322	334	340	353
Less than 2 years	284	291	302	307	319
Paralegals & Law Clerks	154	157	164	166	173



# DC US Attorney's Office Laffey Matrix

## **LAFFEY MATRIX -- 2003-2014** **(2009-10 rates were unchanged from 2008-09 rates)**

	Years (Rate for June 1 - May 31, based on prior year's CPI-U)										
Experience	03-04	04-05	05-06	06-07	07-08	08-09	09-10	10-11	11-12	12-13	13-14
20+ years	380	390	405	425	440	465	465	475	495	505	510
11-19 years	335	345	360	375	390	410	410	420	435	445	450
8-10 years	270	280	290	305	315	330	330	335	350	355	360
4-7 years	220	225	235	245	255	270	270	275	285	290	295
1-3 years	180	185	195	205	215	225	225	230	240	245	250
Paralegals & Law Clerks	105	110	115	120	125	130	130	135	140	145	145

# The best business model for getting paid



The Zips model works for the small firm

No inventory

Nothing perishable

Get paid up front

# Charging for the initial consultation



**Garner Law PLLC**



## **60 Minute In-Office Consultation Session**

Need advice on a legal issue? This session is designed to help you navigate your legal issue and includes review of your documents.



**\$200 USD**



**1 hour**



## **60 Minute Online Consultation Session**

Need advice on a legal issue? This session is designed to help you navigate your legal issue and includes review of documents. Documents must be sent electronically at least 1 hour prior to the session.



**\$200 USD**



**1 hour**

# The fee agreement

A plan for solving your client's problem

A plan for getting paid

Rule 1.5(b) requires a writing covering the scope, fee & expenses

A contingent fee “agreement” is required as is a written statement of the outcome - Rule 1.5(c)

# The best practice

Create a client-friendly contract that complies with Rule 1.5 and [Rule 1.15](#) (when necessary)

Address other important issues like how you will communicate, what is expected of the client & what happens to the file

The e-Manual covers other terms

Request sample forms at [PMAS@dcbar.org](mailto:PMAS@dcbar.org)

# Limited Scope Opportunity

D.C. Superior Court has issued [Admin Order 14-10](#) allowing limited appearances in these divisions:

Civil

Probate

Tax

Family

Domestic Violence

[RPC 1.2 has been amended.](#)

See more in the e-Manual for forms.

# Bar Complaint Form

It asks this question regardless of the nature of the complaint:

*D. Do you have a written retainer agreement with the attorney? If yes, please attach a copy.*

There is no exception in Rule 1.5 for a client who is pro bono, court appointed, friend or family



# Small firm bank accounts

- The firm's business account (operating account)
- DC IOLTA, assuming there are IOLTA eligible funds
- Trust Account for a single client or case, assuming the need exists

# What goes where?

If you have done the work and earned the money, it goes into the business or operating account.

When it is an advance fee, when you are paid before you have done the work, when you have not yet earned the money, it goes into the IOLTA, assuming it is nominal in amount or going to be held for a short time.

# Elements of good trust account management:

A ledger for each account;

Advance fees (flat, fixed or hourly) are entrusted (DC IOLTA);

Keep a client ledger for each client's money held in trust;

Include a summary of a client's trust funds in the invoice;

Use the three-way trust account reconciliation spreadsheet.

# e-Manual, Chapter 5, Trust Accounting

Use the [DC IOLTA Registration Form](#) to open an IOLTA at  
an IOLTA compliant bank

Most advance fees are IOLTA eligible because they will  
not earn net interest for the client

Name your IOLTA properly ([Rule 1.15\(b\)](#)) Example:

*Daniel M. Mills Lawyer DC IOLTA, or*

*The Mills Firm DC IOLTA*

# IOLTA Exceptions / Rule 1.15

“ . . . when the lawyer is otherwise compliant with the contrary mandates of a tribunal . . . ”

If you are licensed, principally practice & are IOLTA compliant in another jurisdiction. Rule 1.15(b)

“ . . . unless the client gives informed consent to a different arrangement.” Rule 1.15(e)

# The problem with “informed consent to a different arrangement”

The Rules don't explain it

There is no case that sets out the elements

After In Re Mance, Disciplinary Counsel is waiting on the right set of facts to establish the elements. It may be coming in In Re Ponds

Waiver of entrustment is high risk conduct

# What we think we know about informed consent to waiver of entrustment

Orally & in writing the client agrees that:

1. Advance fees are normally entrusted;
2. Un-entrusted fees are treated as the lawyer's property;
3. Lawyer must explain the service & do the work to earn the fee;
4. Unearned fee must be returned to the client;
5. Un-entrusted fees are subject to the lawyer's creditors.

# Credit Card Payments

Be certain the payment goes into the right law firm account

LawPay is a new DC Bar member benefit for credit card processing

LEO 348 Accepting Credit Cards for Payment of Legal Fees

The charge back risk & credit card provisions for fee agreements: request at [PMAS@dcbar.org](mailto:PMAS@dcbar.org)



# Bank account record keeping

Maintain complete records for tax purposes;

Maintain complete records for trust account purposes  
(Rule 1.15(a);

“Complete records” tell the full story of how the lawyer handled the money and whether the lawyer followed the Rules – *In Re Clower*, 831 A. 2d 1030, DCCA 2003

Include supporting data

# The law firm bank statement

Should only be opened or accessible by you;

Should be examined regularly;

Never delegate this task regardless of how big, busy & successful you become;

Only delegate financial duties after your thorough review of the bank statement;

Reconcile the bank statement with your trust account ledger & client ledgers.

# Trust account scams

It typically begins with a remote “client”;

It will involve a check to deposit into your trust account and fees for you;

The scammer will want funds wired to another account (usually off-shore)'

Never wire funds until the check has cleared'

To be safe, send the check for “collection” (UCC 4-501).



## **LEGAL COUNSEL NEEDED!!!**

Paris Jun

August 18, 2015, 11:46 PM

Dear Counsel,

My name is Paris Jun. I am contacting your firm in regards to a divorce settlement with my ex husband ( Michael Jun ) who resides in your jurisdiction. I am currently on assignment in Japan. We had a court agreement for him to pay \$578,000.00 plus legal fees. He has only paid me \$78,000.00USD since.

I am hereby seeking your firm to represent me in collecting the balance from him. He has agreed already to pay me the balance but it is my belief that a Law firm like yours is needed to help me collect this payment from my ex-husband or litigate this matter if he fails to pay as promised.

Sincerely,  
Paris Jun

# IOLTA eligible funds . . .

- Must be held in an approved IOLTA bank;
- Are funds that are nominal in amount, or,
  - Held for a short period of time;
- Such that effort to administer "consumes" interest income.
- Example of an account name: *Daniel M. Mills DC IOLTA Account*;
- Interest goes to the DC Bar Foundation for pro bono legal services.

# Trust Account Records

- What are you required to keep? *Complete records* - Rule 1.15(a);
- How long? . . . *for a period of five years after termination of the representation.*  
Rule 1.15(a);
- But is it ever safe to destroy trust account records when there is no statute of limitation on a disciplinary complaint?

# Complete records?

- What are complete records of a trust account transaction?
- If Bar Counsel cannot figure it out from your records, then your records are not complete.
- *In re Donald A. Clower*, 831 A.2d 1030, DCCA 2003.

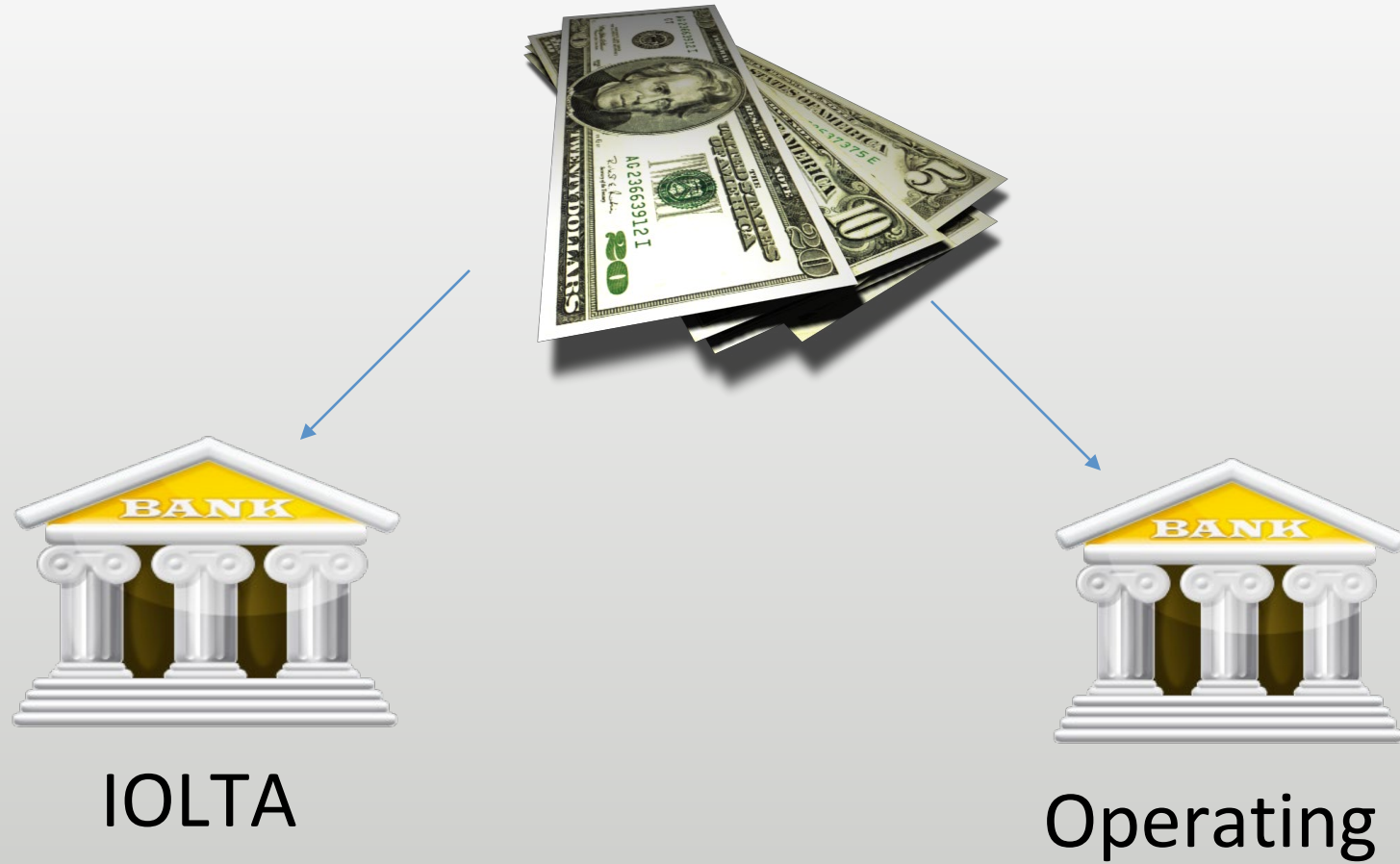
- **“Complete records” tell the full story of how the lawyer handled the money and whether the lawyer followed the Rules;**
- **If the records show what happened and that you complied with the Rules, then they are complete;**
- **“The reason for requiring complete records is so that any audit of the attorney’s handling of clients funds by Bar Counsel can be completed even if the attorney or the client, or both, are not available.” *In re Clower* at 1034.**



*What is ODC's expectation for complete records in a contingency fee matter?*

**ODC wants to see the underlying documentation for every entry on the recovered fund (settlement) distribution sheet.**

# Managing Money



So where does the money go?

If the Fee is an ...



Advance Fee/Expense  
or Settlement



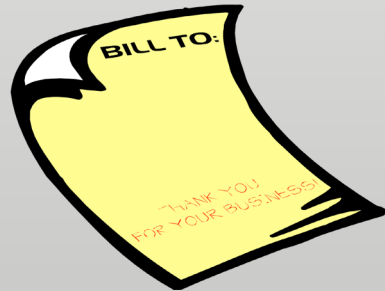
It goes in your...

IOLTA Account

**With the advance  
fee in the IOLTA,  
then you....**



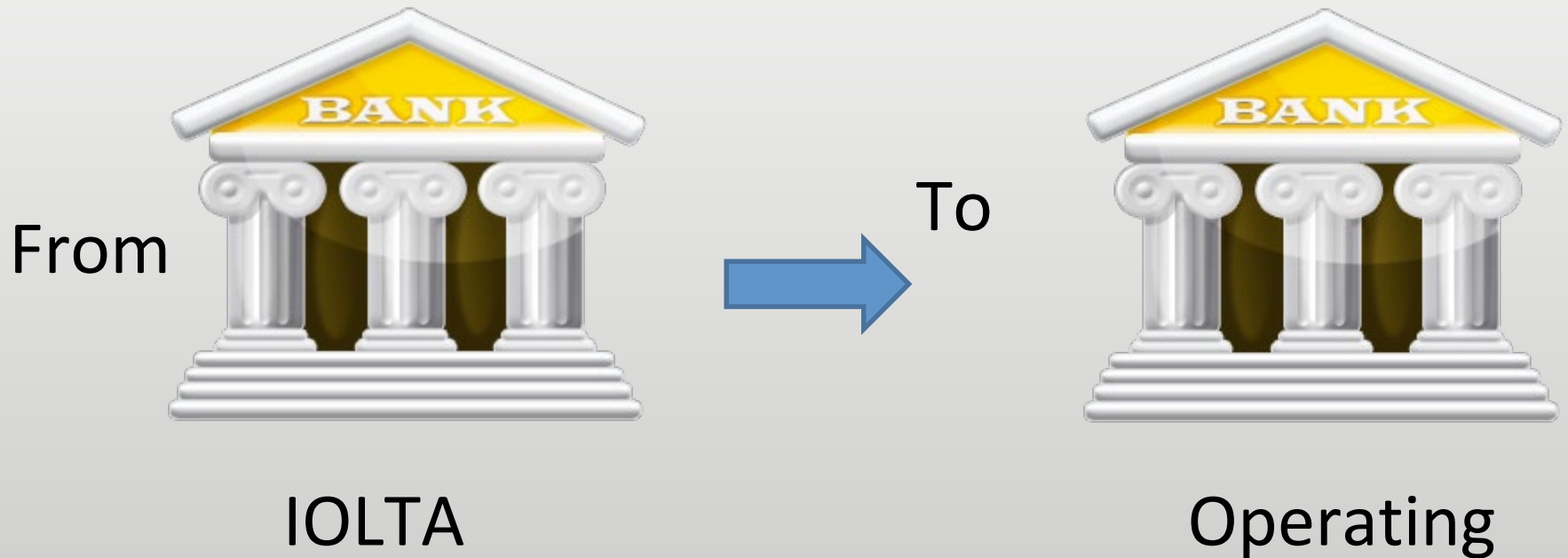
**Perform the work**



**And then...**

**Send invoice**

Transfer the attorney fee pursuant to your  
fee agreement ...



**These separate accounts can be at the same bank or different banks**

# Recovered funds in a contingency fee matter

- Check is deposited into the firm's IOLTA
  - Wait for the check to clear
- When funds are available, distribute according to the fee agreement and claims of valid third parties

What if you get paid after the work is performed?



Then you deposit straight to...



Operating Account



NEVER



Advance Fee



Operating Account

UNLESS.....

You obtain the client's "Informed Consent" to deposit their money into your operating account - Rule 1.15(e).

Best Practice Tip: Don't Do This!



NEVER



Law firm Money



IOLTA Account

Except....

You can only put law firm  
money into an IOLTA Account  
pursuant to D.C. Rule 1.15(f)  
which says...

*Nothing in this rule shall prohibit a  
lawyer from placing a small amount  
of the lawyer's funds into a trust  
account for the sole purpose of  
defraying bank charges that may be  
made against that account.*

# **In Re Mance**

## **980 A.2d 1196 (D.C. 2009)**

- **A flat fee is now an advance fee when it is paid before work begins**
- **Rule 1.15(e) applies - it must be entrusted**
  - **Advance flat fees go into the IOLTA**
- **The fee agreement determines how and when you earn the fee**
  - **A lawyer cannot earn a fee for doing nothing. *In re Sather*, 3 P.3d at 414**

# When does a flat fee go into the operating account?

- When the work is done and the fee is earned.
- If a flat fee is paid after the work is performed, it goes into the operating account.

# Availability - What's that?

- Flat fee is generally not an *engagement retainer* (classic definition)
- Engagement retainer refers to availability, if required
- Flat fee for a task-based matter may cover all the work to be done
  - LEO 355 - Flat Fees & Trust Accounts
  - Availability gigs are rare and unique

# **Rule 1.15(e) informed consent - what is needed?**

- Flat fees normally are entrusted
- Un-entrusted fee will be treated as the lawyer's property
- Lawyer must work for the fee to keep it
- Lawyer must explain the benefit or service
- Lawyer must refund any fee not earned
- Fee is subject to the lawyer's creditors

*What is the message sent by this?*



# IN RE KENNETH A. MARTIN

NO. 11-BG-775 DCCA February 13, 2014

- If a client, *with reasonable promptness*, disputes a lawyer's fee after it has been withdrawn from the trust account, the lawyer must return the disputed sum to the trust account;
- Unearned fees that must be returned to the client under Rule 1.16(d) include an arbitration award in favor of the client.

**From the DC Bar, it is free &  
confidential**

- **Hope Todd, Saul Singer, Nakia Matthews & Erika Stillabower;**
- **202-737-4700 / ext. 1010**
- **[ethics@dcbar.org](mailto:ethics@dcbar.org)**

# Practice management help

We are free and confidential too

**Dan Mills / 202-780-2762 / [dmills@dcbar.org](mailto:dmills@dcbar.org)**

**Rochelle Washington / 202-780-2764 / [rwashington@dcbar.org](mailto:rwashington@dcbar.org)**

# Managing the small firm

A system for the paper & digital data

A system for time & dates

Invoicing & handling money

Work flows & procedures in your office

e-Manual, Chapter 8, Office Management

# Tracking your work

Whether you charge for time or results, you need to know what you are doing & where you are spending your time

Useful tools: [time59.com](http://time59.com) [Timeslips](http://Timeslips) [Clio](http://Clio) [Timesolv](http://Timesolv)

[Clio is a DC Bar member benefit](#)

Ask for the 168 hour time management spreadsheet at [PMAS@dcbar.org](mailto:PMAS@dcbar.org)

# Invoicing

It starts in your initial consultation

It should be described in the fee agreement

It should be tied to value

It should involve a highly functional system in your law office

Invoices that show progress get paid

e-Manual, Chapter 6, Billing Practices

# Project management

Keeping track of every prospective client, engaged client, administrative & marketing initiative in your law firm

Start with the Case & Action Manager spreadsheet; request from [PMAS@dcbar.org](mailto:PMAS@dcbar.org)

Migrate to [Clio](#)

# Is it really possible to manage time?

When people & projects compete for your time:

Works in blocks of time with a single goal

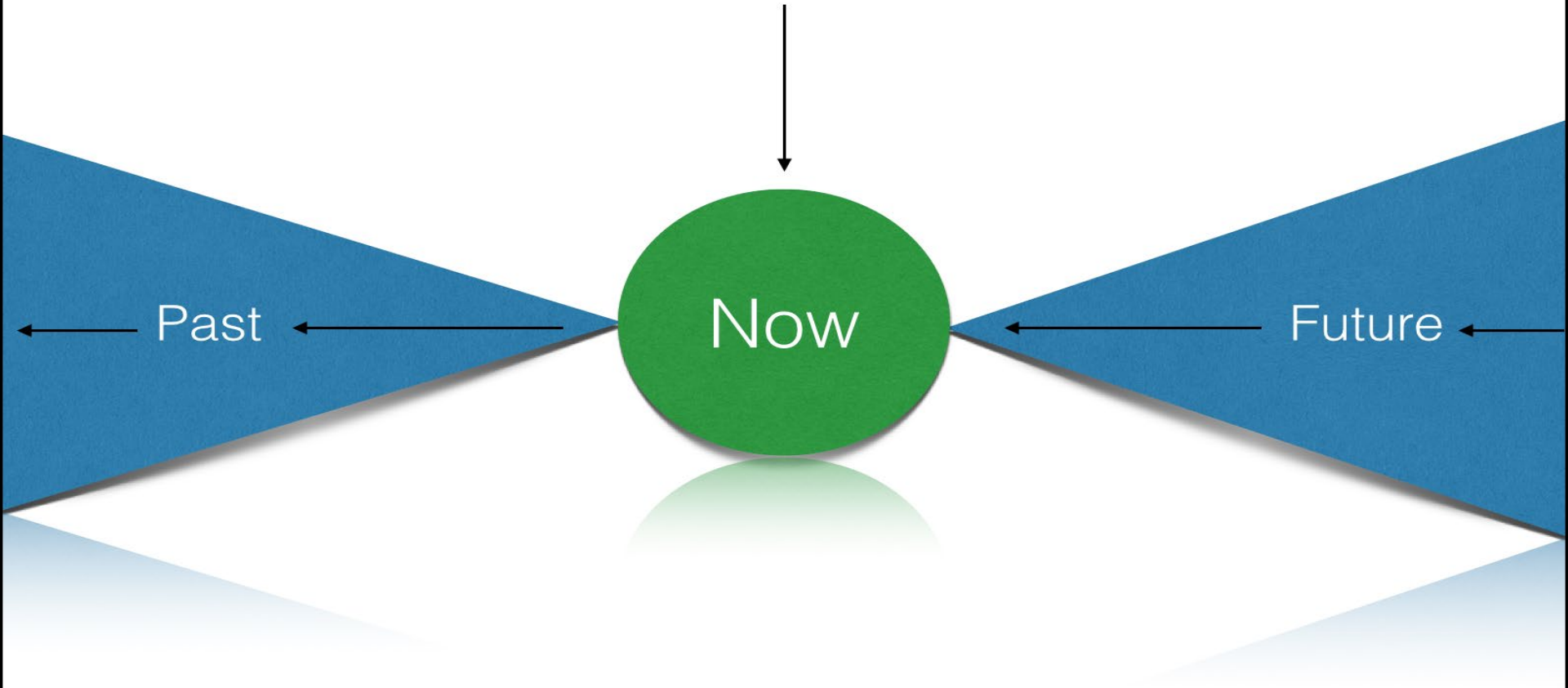
Employ self-discipline & focus

*Avoid chronic reaction syndrome*

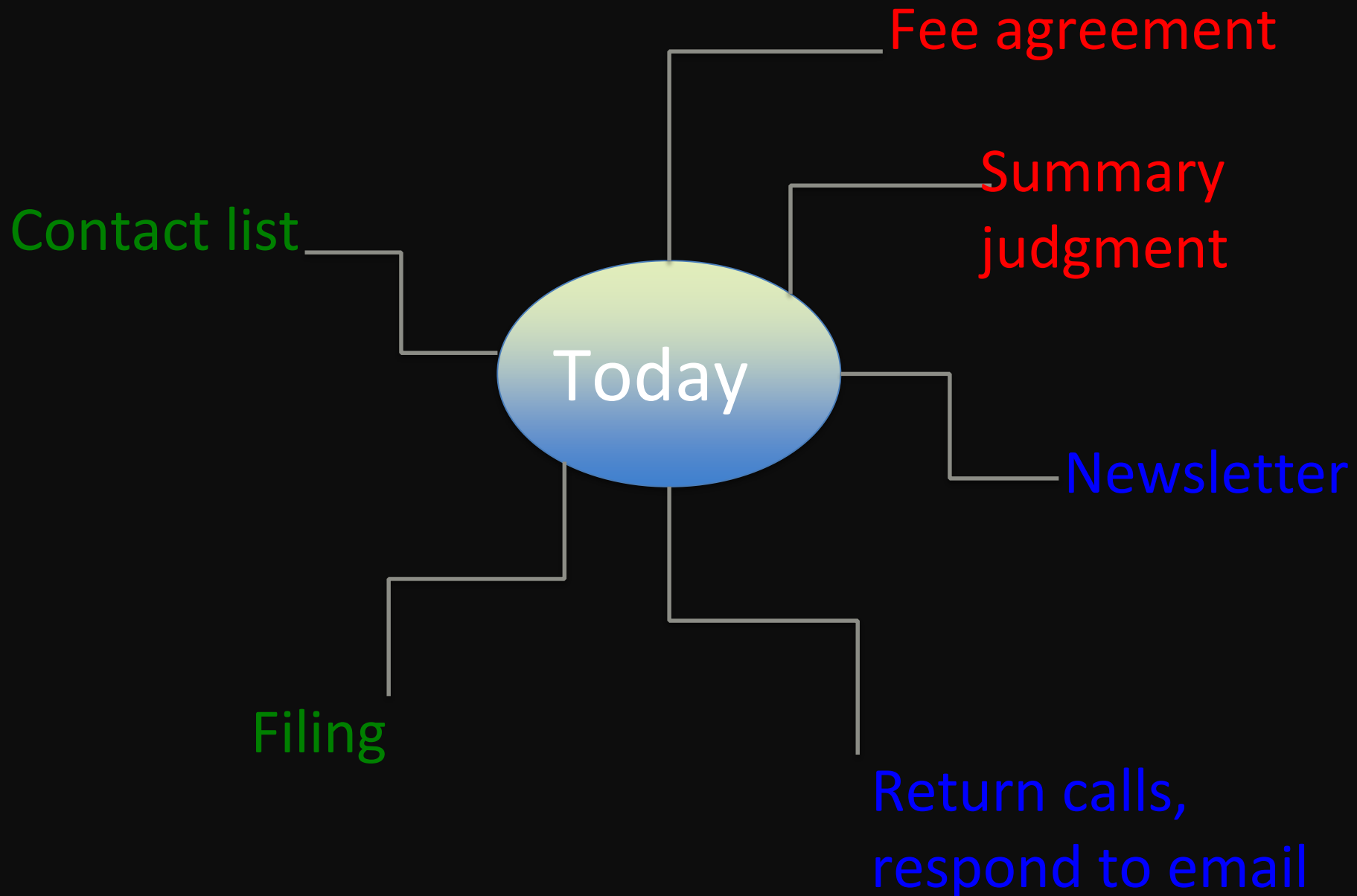
*Avoid Distractions of Doom*



The only moment for action or omission



A concept map for the next three hours



# Backup systems for the small firm

Backup your data either to a safe, encrypted external hard drive, and/or

[Backblaze](#) [Carbonite](#) or similar service.

To be really safe, [clone your hard drive](#).

[Glyph are best](#).

Get a backup for yourself; avoid DC App. R. XI, Section 15(a); comply with [R. 1.3, Comment 5](#)

Use [Being Prepared](#) – see the eManual

Ask for the *Agreement for Emergency Backup Services*  
from [PMAS@DCBar.org](mailto:PMAS@DCBar.org)

# When you need help

The *Of Counsel* arrangement; requires a close & ongoing relationship between the lawyer & firm;

Rule 1.10: the conflicts of the *of counsel* lawyer and of the firm are imputed to each other;

Washington Lawyer, Speaking of Ethics, Of Counsel

# Getting help on a contract basis

[Lawclerk.legal](#)

[Montage Legal Group](#)

[Lawyer Exchange](#)

[CuroLegal](#)

[UpWork](#)

# Where to find virtual staff?

- [upwork.com](https://www.upwork.com) (My personal favorite)
- [freelancer.com](https://www.freelancer.com) (general VAs - all categories)
- [fiverr.com](https://www.fiverr.com) (everything from powerpoint to logos to research and article writing for \$5)
- [atlasvirtualparalegal.com](https://atlasvirtualparalegal.com)
- [99designs.com](https://99designs.com) (logo and graphics)
- [guru.com](https://www.guru.com) (great pool of admin and paralegal support)
- [virtualparalegalservices.com](https://virtualparalegalservices.com)
- [thevirtualparalegal.com](https://thevirtualparalegal.com)
- [starrparalegals.com](https://starrparalegals.com) (bankruptcy specialty)
- [flex-counsel.com/](https://flex-counsel.com/)
- [equityva.com](https://equityva.com)
- Off-line options:
  - local colleges
  - former places of employment/courthouse clerks
  - social media

# Managing client data

Whether you are paper oriented, paperless or a combination, the process starts with:

## Rule 1.6 Confidentiality of Information

Know where the data is & that it is secure.

Should it be password protected & encrypted?

Who has access to the data?

# Maintaining client data

Should the client be asked before data is stored in the cloud?

What is your duty to protect electronic communications?

Cloud ethics opinions

Some data should not be exposed to the internet

D.C. has a data breach statute applicable to lawyers: DC Code  
Section 28-3851

Legal Cloud Computing Association

USI Affinity offers cyber insurance

LEO 283 Disposition of Closed Client Files

LEO 333 What makes up the client's file



# Managing the risk

While the DC Rules do not require malpractice insurance, it is best to be covered

An entity will not protect you

Rule 1.8(g) bars a prospective limitation on a lawyer's liability for malpractice

e-Manual, Malpractice & Insurance

[USI Affinity, DC Bar Member Benefit](#)

# The disciplinary system in DC

This is a consumer oriented disciplinary culture

Small firms are 10% of the DC Bar & generate nearly  
50% of the docketed bar complaints

ODC statistics tell us to manage & communicate to  
avoid bar complaints

# Evaluating your enterprise

Record what you learn as a part of your business plan

Get client feedback on their experience with your firm

Get a free, confidential assessment of your firm's  
operation from the

Practice Management Advisory Service

# Here's what to ask

- What should we keep doing?
- What should we stop doing?
- What did we not do that we should do?

# How do small firms increase revenue?

- By adding clients
- By increasing fees
- By selling more services to current clients
- By adding lawyers to increase bandwidth

# Clio Legal Trends Report

Unique data on why small firms grow

What's the solution for too many lawyers & not enough clients who can afford them?

**Lead generators? Caveat emptor!**

[www.justanswer.com](http://www.justanswer.com)

[www.legalzoom.com](http://www.legalzoom.com)

[www.rocketlawyer.com](http://www.rocketlawyer.com)

[www.nolo.com](http://www.nolo.com)

[www.totalattorneys.com](http://www.totalattorneys.com)

[www.legalmatch.com](http://www.legalmatch.com)

**Read the Terms of Service & ask for references**

# Resources from the DC Bar

[Free and confidential ethics guidance](#)

[Help with business issues from the Practice  
Management Advisory Service](#)

[Help with stress, addiction & personal issues from the  
Lawyer Assistance Program](#)

[Fee dispute resolution with the Attorney Client  
Arbitration Board](#)



# Upcoming events

Basic Training & Beyond, day-two, December 16,  
2020,  
9:15 a.m. - 4:30 p.m.

December 10, Noon on Zoom: Planning for your firm  
in a pandemic with Tom Martin

DC Bar Lunch & Learn

Our Newsletter

BRIAN TANNEBAUM

# THE PRACTICE

BRUTAL  
TRUTHS  
ABOUT  
LAWYERS  
AND  
LAWYERING



[The Practice, amazon.com](https://www.amazon.com/dp/0060920060)

. . . from Brian Tannebaum

## How Did I Build My Practice?

- Being Present
- Working **on** my practice, not just **in** my practice
- Being **Where** Others **Weren't**
- Running Things
- Collecting Mentors

**“The best tech a lawyer can have is ears.”**

**Brian Tannebaum**

# Small Law Misconceptions

- It takes a lot of money
- It's easy and for everyone
- It's for those who can't get a job
- Everyone I know will send me business
- Working two or more practice areas is best
  - It's something to do until I find a job
    - You can't turn anyone away

Posted by  
this D.C.lawyer  
12/2/20 on  
LinkedIn



**Shahed Kader** • 2nd

Attorney for Software Businesses, Former SaaS Sales Leader.

5h •

It's officially been 18 months since I went full time running my law practice. Here are 6 things I have learned:

1. Being in a niche is good. Doing a group of specific things for a specific type of client REALLY well can be better than doing a bunch of things kind of well. I focus on transactional law for software companies.
2. Not all types of marketing/advertising works for everyone. For example, my clients aren't looking for my services on Facebook and Instagram. They're Googling, asking colleagues, or looking on LinkedIn.
3. Educating people is key - through content, webinars, or podcasts. Share knowledge to build trust.
4. Stand firm in your worth - prospective clients will come and try to negotiate down rates and claim they're getting a better deal elsewhere - but you are better served holding your ground. Those looking for deals aren't going to be great clients.
5. My best, most consistent clients have come to me organically - through word of mouth, or just finding my content in Google or LinkedIn.
6. Mental health is really important. I knew this before, but the stresses of being an entrepreneur are amplified in a pandemic. Meditate, seek therapy, and do what you can to maintain your inner peace.

The lessons keep on coming, and I keep on learning. Onward!