

Annual Law Office Check-Up

(Your Firm's Annual Physical)

The Practice Management Advisors at The Florida Bar's LOMAS Department believe the maxim "an ounce of prevention is worth a pound of cure" applies to most areas of life. It is usually easier and less expensive to avoid mistakes than to correct them after they have occurred.

In a law office, as in life, often the time needed to review systems and procedures that insure quality legal services are being delivered to clients just never seems to be available. There is always one more telephone call to make, one more client to talk to, one more motion to review, one more question to research, and one more bill to pay. Just like the appointment for a dental check-up, it is easy to put off non-critical activity until next month.

This Check-Up has been organized for just this purpose. We will spend the next few hours going through a checklist. This checklist is designed to take the pulse of your law firm and help you to identify areas that need a little preventive medicine.

Whether you view the practice of as a "profession" or a "business," it is at the core a professional service business. Competitive pressure has everyone looking for efficient business processes that can be successfully applied to law firms to produce profitable, growing practices. Business terminology, such as marketing, return on investment, and strategic planning, has crept into law office management literature. Technology is speeding up processes and with it clients' demands for faster response time. What once used to take days now must be done in hours.

Although many lawyers wholeheartedly embrace the "law firms as a service industry" culture, there are still The Florida Bar Rules and ethical guidelines to consider. The most important reason to manage your law practice in accordance with Bar rules and ethical standards is the true "cost" of a grievance or malpractice claim. These costs are enumerated as:

1. Emotional cost of an attack on one's intelligence, integrity, and/or character. Even frivolous claims cause anger, stress and takes valuable time to defend.
2. Financial cost of defending against a grievance. The financial cost includes both money and time. The time involved in even responding to grievances that are ultimately dismissed can be costly. The financial cost of resolving a well-founded grievance that can result in suspension, or worse, disbarment.
3. Office morale suffers when malpractice or grievance "cloud" hangs over everyone's head. Low morale is generally linked to low productivity.
4. Reputation and "goodwill" suffers. A lawyer's reputation is key to attracting new clients and retaining existing clients, particularly in small town/rural locations.

While it is possible some lawyers never make mistakes, clients who have been treated with respect, feel they received valuable services from their lawyer, and feel they can openly communicate with their lawyer, usually allow mistakes to be corrected without filing a malpractice suit or a grievance with the Bar.

The preamble to The Florida Bar's Guidelines for Professional Conduct states:

The effective administration of justice requires the interaction of many professionals and disciplines, but none is more critical than the role of the lawyer. In fulfilling that role, a lawyer performs many tasks, few of which are easy, most of which are exacting. In the final analysis, a lawyer's duty is always to the client. But in striving to fulfill that duty, a lawyer must be ever conscious of his or her broader duty to the judicial system that serves both attorney and client. To the judiciary, lawyer owes candor, diligence and utmost respect. To the administration of justice, a lawyer unquestionably owes the fundamental duties of personal dignity and professional integrity. Coupled with those duties, however, is a lawyer's duty of courtesy and cooperation with fellow professionals for the efficient administration of our system of justice and the respect of the public it serves.

Therefore, it may be better to look at the Rules Regulating the Florida Bar both as an obligation assumed in exchange for the privilege of practicing law and, a legitimate guide for conducting business.

Law office management can be thought of as the infrastructure that allows a law firm to deliver legal services to its clients, The soundness of the infrastructure will determine the efficiency of delivery and the quality of services. There is no one size fits all system for law office procedures. The type of practice, size, and clients will determine what procedures work best. The goal of any office system should be to assist the lawyer in serving the client and helping the lawyer to meet his or her professional responsibility.

To emphasize the connection between good ethical practices and good business, the following questions have been grouped by either business process function (e.g. records management) or an important ethical consideration when managing ones' practice (e.g. Confidentiality). Try to answer them as honestly as possible with the goal of identifying those areas in your firm that may need improvement.

Client Relations - The Questions

The area of client relations is one of the most important aspects of law office management. Everything that happens in a law firm has a direct or indirect effect on the client. Therefore, the way a law firm conducts its business has a direct influences on its relationship with clients. Traditionally, law firms were set up in such a way that the critical element of administrative support was service to the attorney, who in turn served the client. Current thinking advances a client centered law firm where all personnel serve the client directly. The attorney is simply one team member involved in providing client service. Check your law firm's ability to meet these requirements by answering the following questions:

Questions – Client Relations	Yes	No	N/A
During the initial client meeting, do we establish clear communication by asking clients how they want to be kept informed or involved?			
Do we communicate the client preferences to the team members, put a notation in the client file and the information to our tickler file or automated to-do list? (E.g., "This client requires weekly updates, immediate telephone notification of all changes and written confirmation of appointments.")			
Do we introduce all team members to the client as soon as practicable after the onset of representation?			
Do we utilize a client intake form and do we always discuss fees and billing procedures in the <u>first</u> meeting with the client to avoid surprises?			
Do we provide our clients with a written engagement agreement that includes:			
(a) Details regarding the scope of our representation?			
(b) Clear details regarding fees and anticipated expenses?			
(c) Reminders that no specific result has been promised?			
Do we have clearly established telephone policies and procedures and do we thoroughly explain to all firm employees the critical importance of handling all calls with professional courtesy?			
Do we return clients' phone calls within 24 hours?			
Do we perform all the work we told the client we would?			

Questions – Client Relations	Yes	No	N/A
Do we complete the work in a timely fashion and do we have a clear understanding of what the client wants us to try to accomplish?			
Do we send follow-up letters after a meeting or a telephone conversation in which new decisions have been reached?			
Do we ask the client for feedback as the matter moves along?			
Do we follow up with clients at least every six weeks even when their cases are inactive?			
Do we send a disengagement letter at the end of each matter telling the client our representation is complete and thanking them for the opportunity to serve them?			
Do we thank clients for any referrals they may have sent us?			
Do we acknowledge staff members for exceptional client relations?			
Does our client screening procedures include questions to help us weed out [problem] clients? That is, clients who will not cooperate with your efforts, or clients who will not pay? Do we routinely send non-engagement letters to prospective clients we choose not to represent?			

“Client relations” is frequently used as a euphemism for marketing. While it means much more than this, it is a critical element- of any law firm marketing plan. Satisfied clients may never produce referrals, but dissatisfied clients may tell everyone they know about their bad experience.

A primary goal of any law firm should be to provide service to clients. How these services are provided differentiates successful law firms from less successful firms. It is critical to keep the client's interest in mind as work is performed. The Rules and Ethical guidelines set out minimum standards for client relations. Everyone in the firm should constantly try to exceed these standards in order to provide the best service possible to the client. In return, this effort will be a better marketing campaign than any yellow pages ad or client newsletter.

Confidentiality - The Questions

Clients trust their lawyer to safeguard the confidentiality of the information they provide. Since trust is very difficult to reestablish once it has been broken, it is important that you take steps to make sure every member of the firm does all they can to safeguard client information. Answer the following questions to determine if your law firm is doing all it can do to prevent client confidences from leaving the office:

Questions - Confidentiality	Yes	No	N/A
Do all new employees sign a confidentiality form acknowledging they have discussed confidentiality with you, read the relevant rules and will not breach the confidentiality of any client during and after their association with the firm?			
Do we make sure that client files or other confidential materials are never left unattended in the reception area, conference rooms or other public areas of the office?			
Is the reception area arranged so that visitors cannot overhear confidential conversations that may be occurring in a nearby conference room, office or kitchen/break-room?			
When non-firm persons are in the reception area, does the receptionist protect the confidentiality of client names, matters and other client information when talking in person with others or over the telephone?			
In areas open to non-firm persons (clients, vendors, cleaning crews, etc.), are precautions taken to guard client confidentialities (e.g. putting away or covering up client files and documents left unattended on desks and locking file cabinets that are located in common areas of office sharing situations, etc.)?			
When meeting with clients, do we hold meetings in a conference room, office, or other area where client files and materials are not visible?			
Do we ever leave clients or other non-firm persons unattended in an area where confidential files and information may be visible?			
While meeting with clients do we avoid taking calls or otherwise talking with other clients so as to protect client identities and confidentialities?			

Questions - Confidentiality	Yes	No	N/A
Are the facsimile machines and copiers located away from areas where non-firm persons may be able to see confidential materials?			
Do we discuss with the clients the potential loss of confidentiality by utilizing the internet to e-mail case related information or by using cell phones to discuss case related information?			
Do we shred our waste paper where it may contain discarded drafts and other confidential papers, or in the alternative, do we have a secure waste disposal unit, or does the office building utilize a trash compactor?			
If we are in an office sharing arrangement, have we discussed confidentiality with the landlord, other tenants and any employees who may be privy to confidential information (e.g. receptionist, word processor, etc.)?			

The requirement for safeguarding client confidences is a cornerstone building the lawyer client relationship. The client must have absolute confidence that the information they provide their lawyer does not leave the lawyer's office. The lawyer must set the example for all staff that this prohibition is taken seriously and every effort is made to prevent the inadvertent dissemination of client information.

Conflicts of Interest - The Questions

Many law firms rely on the staffs' collective memories to do their conflict of interest checking. This method rarely works accurately over any period of time. Every case handled cannot be so memorable that you will never forget every person involved. Examine the effectiveness of your conflict of interest system by answering the following questions:

Questions – Conflicts of Interest	Yes	No	N/A
Do we maintain and continuously update a master client list of both current and former clients?			
Do we record the names and addresses of corporate client officers and directors?			
Do we request information regarding other names (i.e. maiden, marital, aliases, d/b/a's, f/k/a's, a/k/a's, etc.) that potential clients and adverse parties may have used in the past?			
Do we properly identify and record information regarding all adverse parties?			
For each new matter, do we maintain a verification record that conflict of interest checks were conducted before representation was accepted			
Do we check our master list for conflicts of interest before accepting a new client or matter?			
Do we follow up on potential conflict situations?			
Do we properly inform the client in writing of any potential conflict?			
Do we get a signed waiver form the client if representation is requested after a potential conflict has been discussed?			
Do we have procedures in place to decline representation?			

Questions – Conflicts of Interest	Yes	No	N/A
Do we offer training sessions and materials to our staff that assist them in understanding, spotting, and helping the firm avoid conflicts of interest situations?			
Do we avoid engaging in any of the following practices, all of which are potential conflicts traps:			
a) Act as both legal counsel and an officer or director for the same corporation?			
b) Have a financial interest in a client matter?			
c) Represent adverse parties?			
d) Represent multiple parties attempting to recover monies from one collective financial source?			
e) Engage in business with a client?			
f) Accept stock, or interest in the client’s business, in lieu of fees?			
Do we check for any potential conflicts that our staff may have because of their prior work at other firms or because of their personal or business interests or relationships?			

The law firm should maintain a written conflict of interest system and keep it up to date at all times. When listing names remember to include all known names (i.e., former or maiden names). In addition, when performing conflict checks remember to check for frequent misspellings such as Mc v. Mac or Reed v. Reid. In addition to the traditional manual methods, there are now computer programs that will assist with this function. All staff members should be trained to use the system and conflict checks should be done and documented prior to the discussion of any new matter with a client or potential client. Some names to consider including in a conflict checking system are listed below by practice area. However, some of the name/entities are applicable to conflict searches in more than one category.

Litigation

Insured
Plaintiff(s)
Defendant(s)
Insurer
Guardian ad litem
Spouse
Expert Witness(es)
a/k/a's
f/k/a's
d/b/a's

Probate

Deceased
Personal Representative
Spouse/Children/Heirs/Devises
Guardian/Conservator

Corporate/Business/Real Estate

Owner/spouse
Partner(s)
Shareholder(s)
Director(s)
Officer(s)
Subsidiaries/Affiliates
Key Employees
Buyer(s)
Seller(s)
Property Address
Any opposing party in a transaction

Estate Planning

Testator/Testatrix

Spouse/Children/Heirs/Devises
Personal Representative

Dissolution

Client
Spouse
Children
Other surname
Maiden name

Worker's Compensation

Injured Worker
Employer
Insurer

Your Firm

All Lawyers
Spouses/Parents/Siblings/In-laws
Employees

Criminal

Client
Witness(es)
Victim(s)

Bankruptcy

Client
Spouse
Creditors

Client You Have Declined

Person You Declined
Adverse Party, if known

Docket/Work Control - The Questions

Missing a filing deadline or court appearance can be extremely damaging to a client as well as causing embarrassment and a potential malpractice claim for the lawyer or a bar grievance filed against the lawyer. In some cases the repercussions, financial and otherwise, could cost a lawyer his or her practice.

Answer the following questions to determine how well your firm is doing in this area:

Questions – Docket/Work Control	Yes	No	N/A
Do we keep individual calendars, i.e. attorney and secretary/paralegal?			
Does your calendar include:			
a) statute of limitations?			
b) all court appearances?			
c) client/other appointments?			
d) all administrative hearings?			
e) real estate closing dates?			
f) all litigation deadlines?			
g) all self-imposed, discretionary deadlines (i.e., promises made to others, promises made to you and work deadlines you have set for yourself)?			
Do we also maintain a firm-wide calendar?			
Do we have good system for updating and maintaining each calendar in case of scheduling changes?			
Do we coordinate regularly with team members to assure efficient workflow?			
Is there a designated person to monitor or coordinate entries into all calendars?			
Do we use automated reminders or tickler slips to draw the attorney's attention to an upcoming deadline?			
If the calendar is maintained on the computer, do we frequently print out a copy to use in case of power failures or other computer problems?			

Questions – Docket/Work Control	Yes	No	N/A
Is there a designated person assigned to check mail, phone messages, deadlines and calendared appointments for attorneys who are away during planned or unplanned absences?			

In addition to the firm's office-wide calendar, each attorney should be responsible for maintaining an individual calendar. One person or group of persons in the office should be responsible for updating any additions, deletions or changes made on the office-wide calendar and for fact-checking the information on the individual calendars.

Records Management The Questions

While there are several ethics opinions and rules dealing with client files, (especially 88-11, reconsidered), proper records management procedures (and Rule 4-1.6) require that client confidences, which are contained in the client's file, be protected. And, to the extent portions of the client file may belong to the client as discussed in Rule 4-1.15 (client property), lawyers have a duty keep the file in a responsible manner. The client file represents a record of the work performed for the client. It also represents one of the most frequently overlooked functions in the office: drop filing, filing procedures, and the filing identification system. Maintaining the files in an orderly manner that allows for efficient access to client information will save time and money in the long run. In addition, the ability to promptly respond to inquiries by having the information at your fingertips will enhance your professional image. The following questions should help you determine the current status of your records management program:

Questions – Records Management	Yes	No	N/A
Do we have a standardized filing system for all client files and subfiles?			
Are all members of the firm informed of the reasons for and methods of filing procedures?			
Are all materials filed timely and regularly?			
After a matter is completed, do we follow a written file retention and destruction policy and schedule			
Do we comply with the Florida Bar's, State of Florida's and the Federal Government's records retention rules and guidelines for business files?			
Do we store current records in a secure area?			
Do we store closed paper records in an environment safe from water or vermin damage?			
Do we return original client documents (client property) to the client as soon as practicable?			
Do we keep back-up media of electronic records off-site in a facility with "24-7" accessibility?			

Staff Management The Questions

A large part of a client's impression, of your law firm will come from the actions of your staff. It is critical to your success that your staff is well trained and motivated to provide excellent service to the firm's clients. Check your policies and procedures against the following list of questions:

Question – Staff Management	Yes	No	N/A
Do we clearly communicate expectations of performance to all firm employees?			
Do we have a <u>current</u> office policy <i>and</i> current procedures manual?			
Do we have written job descriptions for each support staff position?			
Do we clearly communicate to employees how they will be evaluated and compensated?			
Do we provide all employees, including lawyers, with a copy of the Florida Bar Rules and help them to interpret how these rules affect law office operations?			
Do we train employees in the ethical requirements of working in a law office environment and clearly communicate their limits and boundaries as support staff personnel??			
Do we keep staff members informed and give them an opportunity to offer input regarding matters affecting them?			
Do we properly supervise employees by reviewing their work?			
Do we set a good example for our staff by creating, implementing, and monitoring dependable office policies and systems, (i.e., docket/work control, conflicts of interest, good documentation, etc.)			
Do we encourage and motivate employees to take pride and ownership in their work?			

Question – Staff Management	Yes	No	N/A
Do we provide support and assistance for staff members in the handling of disrespectful, rude and otherwise out-of-line clients and others?			
Do we keep our staff informed as to our whereabouts and schedule?			
Do we provide a safe office environment?			

It is important for lawyers to recognize the critical functions performed by staff in the office and acknowledge that this expertise is a necessary ingredient in the law firm's ability to serve its clients. Some lawyers who have never been law office employees themselves have difficulty supervising and motivating staff because they do not know how to look at issues from an employee's point of view. This makes it even more important to learn to listen to what the law firm staff is saying.

Financial Management The Questions

Financial management covers a broad area of activity in a law firm. In this survey timekeeping, billing, budgeting and financial record keeping and reporting are included under the financial management umbrella. All of these activities should be coordinated to produce an efficient accounting and record keeping system. Mastering the elements of financial management should provide a sense of control over the direction the law firm is heading.

Questions – Timekeeping	Yes	No	N/A
Do we have documented timekeeping procedures?			
Do we communicate firm goals to all timekeepers?			
Do we train all timekeepers in proper timekeeping methods?			
Do we provide feedback to timekeepers regarding their timekeeping skills?			

Questions – Billing	Yes	No	N/A
Is all timekeepers' time posted to clients' files daily?			
Are all expense disbursements posted to clients' files on a regular basis?			
Are all internally incurred expenses (postage, long distance, etc.) posted to clients' files regularly?			
Are all payments and credits posted to clients' files regularly?			
Are all entries reviewed for accuracy?			
Are all bills reviewed and approved by management?			
Are bills sent out on a regularly scheduled basis?			

Questions – Billing	Yes	No	N/A
Are the accounts receivable evaluated and followed up on regularly?			
Must write-downs, write-offs and write-ups (over a certain limit) be approved by management?			

Questions – Budgeting	Yes	No	N/A
Do we have a revenue, expense, cash flow and capital budget?			
Does our profit or loss statements compare actual results to the budget on a monthly basis?			
Do we follow up on discrepancies?			

Questions – Financial Record Keeping and Reporting	Yes	No	N/A
Do we have financial controls in place (e.g., procedures for checks and balances and a division of responsibilities)?			
Is a partner, shareholder or member involved in the reconciliation process of the trust account(s)?			
Is everyone involved in handling trust account transactions for the firm covered by a fidelity bond?			
Do we generate a standard set of financial reports on a regular basis? (e.g., balance sheet, profit or loss stmt, WIP & A/R report, etc.)			
Do we review and evaluate these reports for their reasonableness?			
Do we act promptly when corrective steps are needed?			
Do we follow up on the results of a change in direction?			
Do we prepare and file tax returns timely?			

Questions – Financial Record Keeping and Reporting	Yes	No	N/A
Do we teach our associates, paralegals and administrative support personnel the basic principles of law firm financial management? That is, so they are better informed as to how some of their actions and decisions, and/or how well they perform certain tasks, can positively or adversely affect the firm’s profitability?			

Question – Trust Accounting	Yes	No	N/A
Do we periodically review the Bar’s rules on trust accounting with our associates and support staff personnel?			
Are we confident that our trust accounting procedures comply with the rules in Chapter 5 of the Rules Regulating The Florida Bar?			
Are the firm’s trust accounts with a FDIC insured bank within the State of Florida?			
Does our bank have a letter on file requesting that they notify The Florida Bar if the firm’s trust account is ever in overdraft status?			
Is a partner, shareholder or member involved in the reconciliation process of the trust account(s)?			
Is everyone involved in handling trust account transactions covered by a fidelity bond?			
Are the firm’s trust accounts clearly named “trust account” in the account name (e.g., “John A. Jones, Attorney At Law, Trust Account”?)			
Does the trust account contain funds for client with whom the firm has had no contact with in the past year? Does the firm comply with F.S. 717?			
Does the firm remove earned fees from the trust account within 30 days of the fees being earned?			
Can the firm produce trust account records for the past seven years?			

Financial management skills can be learned. Management by definition means supervision and review. Lawyers should not get so overwhelmed by trying to actually do the bookkeeping that they lose their ability to look at the big picture.