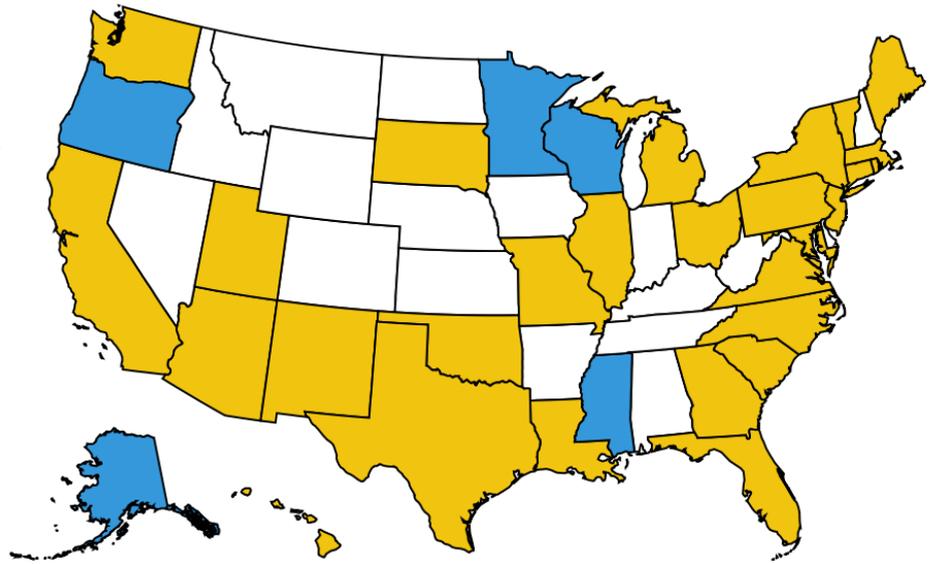


# Law Firm Incubators

Helping New Lawyers Start Sustainable Practices and Bridge the Justice Gap

The first law firm incubator launched in 2007. Today, there are over 60 existing or planned programs across 33 states and 4 countries.

They are operated by law schools, bar associations, bar foundations, private firms, legal aid organizations, nonprofits and increasingly collaborations among many different entities.



Has an incubator

Planning an incubator



**Substantive Law**  
**Programming**  
**Office Space** **Networking**  
**Technology** **Legal Research**  
**Admin Support** **Mentors** **Pro Bono**  
**Camaraderie** **Referrals**  
**Case Management**  
**Office Supplies** **Training**  
**Client Development**  
**Practice Management**

Incubators provide resources, mentors and training in areas such as:

- Substantive Law
- Practice Management
- Client Development...

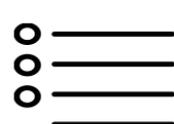
...to enable newly-admitted lawyers to acquire the range of skills necessary to launch successful practices that expand access to legal services for low- and moderate-income people.



Law Firms  
 ATJ  
 Commissions  
 Bar Foundations  
 Lawyers  
 Nonprofits  
 Courts  
 Law Schools  
 Bar Associations  
 Legal Aid  
 Law Libraries

*How can you advance the incubator movement?*

The ABA Standing Committee on the Delivery of Legal Services maintains a website dedicated to law firm incubators with...



Directory



Profiles



Latest Developments and Resources

...and a listserv to connect everyone involved. Visit [www.americanbar.org/delivery](http://www.americanbar.org/delivery) to learn more.

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*Incubating an Incubator*

# Incubator Startup Checklist

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*Updated 7/2018*

This checklist provides a set of guidelines for starting a legal incubator. As you work through this list, please keep in mind that there is no need to reinvent the wheel for any of these steps! Many incubators have come before you and are happy to share their resources. For more information about establishing an incubator like the Chicago Bar Foundation’s Justice Entrepreneurs Project, please contact CBF Executive Director Bob Glaves at (312) 554-1205/bglaves@chicagobar.org. For more information about implementing an incubator and resources associated with this checklist, please contact JEP Director Trevor Clarke at (312) 546-9939/tclarke@chicagobar.org or JEP Director of Innovation & Training Jessica Bednarz at (312) 554-8022/jbednarz@chicagobar.org.

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## GETTING STARTED

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### Threshold Questions

#### Clarify your overall goals—what are you trying to achieve?

- The goal may be refined or change as planning progresses, but clarity of purpose at the outset is critical to guiding the approach to planning and evaluation.
- Goals might include one or more of the following:
  - Increasing access to justice for clients of low and moderate income;
  - Developing innovative ways to practice for “graduates” to make services more affordable in an economically sustainable way.
  - Helping newer or transitioning lawyers establish sustainable solo practices; and/or
  - Better positioning newer lawyers in the marketplace by helping them gain skills and experience.

#### Does someone have staff resources to invest in the planning process?

- Planning will require staff time to become familiar with the incubator models and resources and to work with steering/planning committee(s) to develop an initial plan.
- Depending on the program complexity, you may need full-time and likely at least part-time staff for the incubator.

#### Are you willing to commit/find funding for the program?

- The funding required will vary greatly depending on the program, available resources and in-kind donations.
- When considering potential funding sources, be mindful of existing legal aid donor relationships and funding sources and try not to pull from them. Find new sources, if possible.

### First Steps

#### Get the lay of the land in your community

- Are other relevant programs in existence or development in your city or state?
- If yes, can you collaborate or coordinate with existing/developing efforts?

#### Identify resources and lessons from other incubators

- Check out the [ABA Legal Incubators resource page & listserv](#).
- Look at other business and tech incubators in your city and state.

### Create a strong steering/planning committee

- Include diverse perspectives and strong voices that will help develop a program that is best suited for your community.
- Involve people from outside the legal community. It's particularly important to include people from start-up and business communities and community organizations that serve the population(s) your incubator will serve.

### Identify and begin to develop buy-in from community stakeholders

- **State, local and specialty bar associations:** A bar association as host or partner can play a number of integral roles and offer a variety of resources, such as law practice management training and resources, other key training, networking, lawyer referral services, and possibly staff support.
- **Bar foundations:** A foundation can play a key role in a number of ways, such as providing funding, access to a network of partner organizations, firms and individuals, and staff support, among others.
- **Law schools:** Law schools have an important perspective on the needs of their students and the legal market, may be developing incubators or similar programs with which you can coordinate or collaborate, and may be important partners in recruiting or supporting participants.
- **Lawyer referral service:** The bar association lawyer referral service can offer insight on referrals, client needs and other practice issues. Involving the LRS staff and leadership at the outset helps ensure that you effectively incorporate the LRS perspective into your planning and that your program is complementary to the LRS. The LRS may also be a partner in referrals and training.
- **Private bar:** Lawyers in all practice areas can contribute to the program through mentoring, training, in-kind donations and other contributions. Determining the most effective way to utilize different attorneys or categories of attorneys will require some planning, but having conversations at the outset will help foster those relationships.
- **Legal aid organizations:** Legal aid organizations may have information and guidance on practice areas in need and insight into developing efficient practices. They may also be important partners for pro bono residencies, referrals and training.
- **The courts:** The courts can be great partners. They can potentially help with training (e.g. tips for practicing in various courtrooms), funding, mentoring (if formal mentoring programs are administered by an entity affiliated with the court) and referrals (if set up in a thoughtful way). Support from the courts can also increase legitimacy of the program and bolster the confidence of participants.
- **Consultants and advisors:** Accountants, marketing experts, training professionals and others are good potential training partners.
- **Other incubators:** Other legal, business and tech incubators in your community can be good sources of training, referrals and other resources and are worth exploring.

## Entity choice

- What will you call your incubator? Consider working with a branding expert on this particular task.
- What is the relationship between the incubator and the individual practices?
  - Do you want to incubate independent law practices or temporarily house them under the umbrella of your entity?
  - There are significant differences in the type of supervision and benefits you can offer and the nature of the relationship you will have with participants that have different legal consequences.
- What will be the entity structure for your incubator? Will it be the project of your entity, or an entity under an already existing organization or law school? Will it be a stand-alone 501(c)(3) organization? Will it be a formal collaborative structure involving multiple entities? Other?
- If you go with the stand-alone route:
  - How will you provide benefits and support to the staff? Can you set up a loaned employee relationship with one of the institutional stakeholders?
  - Will the bylaws include some or all of the above institutional stakeholders?
  - Considering involving an attorney who represents nonprofit and tax exempt organizations in the entity formation process.

## Consider sources for seed funding and in-kind donations

- This could come from inside or outside of the legal profession.
- Again, when looking at potential seed funding sources within the legal profession, be mindful of existing legal aid donor and funding relationships and try not to pull from them. Find new or complementary sources, if possible.

## Key Elements to Determine

### Program structure

- How long is the incubation period?
- What are the expectations of the participants?
- What are the expectations of all of the collaborators?
- Will it be a regional or statewide incubator (i.e. can participants live outside of the city in which the incubator is located and still participate)?
  - If it is statewide, consider how you will include these participants in trainings and provide them with a meaningful and inclusive incubator experience.
    - Can you partner with local bars?
    - How can technology be used to deliver training and resources and ensure a collaborative experience?
    - How can you create periodic points in the program where all participants can interact in person?
    - Other?

### Pro bono component

- Incorporating a robust pro bono component is particularly important, but it is crucial that it be done thoughtfully.
- Pro bono residencies have the potential of helping incubator participants build substantive skills under the supervision of an experienced attorney, develop mentoring relationships and connections in the areas of practice that can extend beyond the residency period, better understand the client communities they intend to serve, and develop potential referral sources.
- A structured pro bono component can also help participants overcome “imposter syndrome,” build confidence, and reinforce the value and importance of representing people in need of legal services.

### Staffing

- Part-time or full-time? New vs. existing hire? Will the staff member(s) work on-site? What support will they provide to participants?
- Staffing needs will likely change over the course of planning/implementation.
- Staff will be needed to run the day-to-day program operations and also to work with volunteers and other partners.
- Decisions about staffing will in many ways dictate the scope and size of the program.

### Office space

- What type and how much space does everyone need to be together?

- How will your space promote collaboration and innovation?
- Can you get it for free, and if so, what tradeoffs, if any, are involved?
- How will you obtain computers, phones, internet service, furniture, etc.?

### **Participants**

- How many participants will you take in each cohort?
- How often will you bring in another cohort?
- What level of experience do you want the participants to have?

### **Budget/funding/program sustainability**

- The budget will be based mostly on the items above.
- Will you require participants to pay rent or participation fees? Requiring participants to pay modest rent throughout the program or at later stages can help offset program costs and help participants begin to adjust to costs of running their practices on their own.
- Will participants receive a stipend (from whom)?
- Do you need money and other funding sources?

## **IMPLEMENTATION**

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### **Determine Participant Responsibilities and Expectations and Memorialize Them in a Participation Agreement**

**Rent—Will participants pay rent? If yes, how much and when?**

#### **Expectations of participating**

- Showing up and being involved?
- Collaborating?
- Providing feedback and information to evaluate the program?
- Pro bono work?

#### **Malpractice insurance**

- You should require participants to have it
- Can you build a relationship with a local malpractice insurance carrier who can provide training and offer discounted rates?

### **Bar admittance**

- When are law students admitted to the bar? Do you want to time your program start dates to match up with these dates?

### **Restrictions on types of practices and income of clients served?**

- What are the areas of need?
- What kinds of cases will support economically viable practices?
- What kinds of cases will participants be competent to handle?
- Will participants be required to target certain income levels?
- How do these various restrictions complement other existing services in the community?

### **Statement of principles for what it means to be part of the program**

- Are there certain principles that all incubator participants must practice on a daily basis in order to stay in or affiliated with the program (e.g., the JEP Service Standards)?

## **Participant Recruitment and Selection**

### **What are you looking for in participants?**

### **What are the application requirements?**

### **How and when are participants selected?**

### **How will you get the word out?**

- Communications through law schools (career and alumni services), bar associations, job search websites, supporters, etc. have proven effective.
- Holding info sessions provides potential participants with an opportunity to learn more about the program and ask questions.
- Social media is a great way to communicate with a variety of audiences.

## **Program Components to Develop (or Not)**

### **Pro bono program/partnership/residency with legal aid organization(s)**

### **Curriculum programming/training/cle**

### **Mentoring**

### **Networking opportunities**

**Referrals (see more below)**

**Technology and information resources (Note: Many legal tech vendors are willing to provide free or discounted products or services to incubator participants!)**

**Access to experts, consultants, etc.**

**Stipends/grants**

**Office space**

**On-site support**

## **Additional Legal Issues to Consider**

**Conflicts and confidentiality issues**

**Participation and alumni agreements**

**Permitted business structure for participants**

- Solo/small firm options?
- Non-profit options?

**IP issues**

## **Other Items**

**Marketing and communications**

- Logo
- Website
- Social media
- Other marketing materials and efforts

**Technology needs of the program itself (not participants)**

**If additional and/or ongoing fundraising necessary?**

**Evaluation and tracking – what does success look like and how will you know whether you are achieving it (e.g., see the [JEP Strategic Plan](#))?**

## POST-LAUNCH

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### Referrals and Service Standards

As you start building an incubator and network brand, are there certain minimum levels of service you want to be known for and require of your participants? If yes, what are they (e.g. [JEP Service Standards](#))?

Who within your community can you develop referral relationships with?

### Evaluation— Are You Achieving What You Previously Defined as Success?

#### Alumni

Alumni and participants will be the incubator's greatest assets. How can you keep them involved after they have completed the incubation period?

- Will there be dedicated training for alumni, perhaps focused on topics such as hiring employees, long-term business growth and evaluation, and/or retirement planning?
- Are there ways to incorporate alumni into the recruiting process for new participants? For participant trainings?
- Can alumni serve as mentors for participants?
- Can you help alumni get on CLE and community event panels to help them develop business and to help the incubator get the word out?
- Can you recognize alumni at an awards event?
- Can you create alumni focused socials?

What will the alumni's relationship be to the incubator?

- Will they remain part of the incubator network? Other?
- Do alumni need to do anything in particular and/or meet certain standards in order to remain affiliated with the incubator?
- Do you need an Alumni Participation Agreement?

Once you have at least an attorney or two in each of the major consumer practice areas, consider whether it makes sense to partner with a lawyer referral platform builder such as [Community Lawyer](#) to develop a customized online referral platform for your network.

- Can any other bar, community or legal aid partners transfer referrals to you electronically?



## **Denver Law Solo Practice Grant Program**

**Please thoroughly answer the following questions. Feel free to expand the space as necessary to provide thorough responses.**

1. Please explain why you are considering opening a law practice.
2. Please describe your level of interest in opening a law practice.
3. What steps, if any, have you taken toward starting your practice? Examples may include, but are not limited to: registering your practice as a limited liability entity (e.g. P.C., L.L.C., or L.L.P.) with the Colorado Secretary of State's Office; drafting a partnership agreement; preparing marketing and business plans; launching a website; advertising; and developing letterhead and business cards.
4. Please list any coursework or training you have received on law practice management? If you have not received specific instruction on law practice management, please describe any other education or training you believe will be helpful in managing your practice and how you plan to obtain it.
5. Describe your law firm with respect to the following:
  - a. Practice area(s):
  - b. Target client base:
  - c. How do you plan to find clients?
  - d. Any other information you would like to provide
6. Please feel free to provide any other information you think we should know in considering your application.
7. Aside from subsidized rent through this program, what kind of support would you find helpful for your practice?
8. What are your business development, professional development and personal goals? Please fill in the chart attached to help assist you in your business plan:



UNIVERSITY of  
DENVER

STURM COLLEGE OF LAW  
Career Development &  
Opportunities

	<b>PERSONAL ACTION ITEMS FROM THE OUTSET</b>	<b>SHORT-TERM GOALS (30-60 DAYS)</b>	<b>LONG TERM GOALS (6-12 MONTHS)</b>
<b><i>I. BUSINESS DEVELOPMENT</i></b>			
<b><i>II. TALENT DEVELOPMENT</i></b>			
<b><i>III. PRODUCTIVITY AND PROFITABILITY</i></b>			
<b><i>IV. TEAM BUILDING (with others in LawBank</i></b>			
<b><i>V. OTHER</i></b>			

RESOURCES FOR  
ADDITIONAL  
INFORMATION

For more information  
please contact:

Eric Bono at  
ebono@law.du.edu, or

Samantha Rutsky at  
srutsky@law.du.edu.

LawBank website:  
[www.law-bank.com](http://www.law-bank.com)



**LawBank CoBo**  
3900 East Mexico Avenue, Ste. 300  
Denver, CO 80210  
(303) 927-0010

**LawBank Uptown**  
1888 Sherman Street, Ste. 200  
Denver, CO 80203  
(303) 481-6304

# Denver Law Solo Practice Grant Program





## Receive funding and space to start your solo practice

Denver Law has partnered with LawBank, an innovative and acclaimed co-working space for solo and small firm practitioners in Denver, to bring you the Denver Law Solo Practice Grant Program. The Program is available to licensed DU Law graduates from the most recent graduating class, and provides participants with:

- Work space within LawBank for a modest rate of just over \$50 per month to launch your solo practice
- Mentoring, interaction and collaboration amongst participating lawyers
- An opportunity to make a difference by providing pro bono legal services

## ABOUT THE PROGRAM

The Denver Law Solo Practice Grant Program will provide up to five grants, each valued at approximately \$350 per month, for the class of 2018 JD graduates.\* The grant is for one year, to commence on or before March 1, 2019.



This unique, collaborative environment is ideal for solo practitioners and small firms because lawyers can share their wisdom, create mentoring opportunities, and network while maintaining lower overhead. Amenities include:

- Daily access to co-working space
- The right to work in common areas such as LawBank's café
- Access to phone booths for confidential conversations
- A locking filing cabinet
- Monthly conference room hours
- A monthly printing allowance
- Occasional CLE speakers....and more!

\*For the purposes of the grant, the Class of 2018 is comprised of all graduates who receive their JD from Denver Law between September 1, 2017 and August 31, 2018.

## REQUIREMENTS FOR GRANT RECIPIENTS

Grant recipients are required to provide pro bono legal services for the benefit of low income clients for an average of six (6) hours per month, for a total of 72 hours, during the twelve (12) month term of their grant. LawBank provides a referral list of local organizations which connect lawyers with qualified clients.

Grant recipients must also provide a written assessment of their experience as a first year attorney working as a solo practitioner. The assessments allow DU to better evaluate the academic offerings and programs to improve the training and career-readiness of future graduates.





Ensuring  
access  
to justice  
for all



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# Limited Scope Representation Toolkit

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*Updated 6/2018*

The purpose of this toolkit is to assist attorneys who are licensed in Illinois and seeking to offer limited scope representation as one of their service offerings to potential clients who have civil matters in Illinois trial court. The toolkit includes the following:

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<b>OVERVIEW: Limited Scope Representation and Relevant Rules</b> .....	4
<b>CHECKLIST: Identifying Good Candidates for Limited Scope Representation</b> .....	6
<b>CHECKLIST: Discussing Limited Scope Representation with Potential Clients</b> .....	7
<b>CHECKLIST: Attorney and Client Task Assignment</b> .....	9
<b>SAMPLE AGREEMENT: Engagement Agreement for Legal Services</b> .....	11
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<b>APPENDIX: Court Forms and Other Resources</b> .....	16

This toolkit is a project of the Illinois Supreme Court Commission on Access to Justice, the Chicago Bar Foundation, Justice Entrepreneurs Project, The Lawyers Trust Fund of Illinois, and The Chicago Bar Association. These organizations would like to thank the following individuals for their assistance in the development of the toolkit: Jessica Bednarz, Samira A. Nazem, David Holtermann, Patricia Wrona, Sari Montgomery, Trisha M. Rich, Roya Samarghandi, Alyease Jones, and Sonny R. Thatch. If you have questions about the toolkit or limited scope representation more generally, please contact the CBF’s Director of Innovation & Training for the Justice Entrepreneurs Project Jessica Bednarz at [jbednarz@chicagobar.org](mailto:jbednarz@chicagobar.org) or (312) 554-8022.

## INTRODUCTION: How to Use This Toolkit

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This toolkit contains resources designed to aid attorneys in developing and managing a practice that includes limited scope representation. Attorneys are encouraged to read through all of the documents and consider modifying them to fit their needs.

The [Identifying Good Candidates for Limited Scope Representation](#) and [Discussing Limited Scope Representation with Potential Clients](#) Checklists can be used in conjunction with an attorney's initial consultation checklist or client interview forms.

The [Engagement Agreement for Legal Services](#) and [Attorney and Client Task Assignment Checklist](#) are designed to help attorneys develop engagement agreements that properly define the limited scope of the representation and outline who is responsible for each associated task. The two documents are intended to be used together. As a best practice, attorneys should walk through the checklist with the client, and both the attorney and the client should sign and date each document to memorialize their understanding of the division of tasks associated with the representation. Attorneys may also choose to incorporate the Attorney and Client Task Assignment Checklist into the Engagement Agreement for Legal Services. Once the attorney has completed the representation, the attorney should send a [Disengagement Letter](#) to the client.

The Court Forms have been approved by the Illinois Supreme Court and must be used when an attorney provides court-based assistance by making a limited scope appearance. The attorney must complete and file the [Notice of Limited Scope Appearance](#) when making such an appearance. Under Supreme Court Rule 13, the preferred method for ending a limited scope appearance is by oral motion to the court at a proceeding where the client is in attendance. If the attorney seeks to terminate the limited scope appearance outside the courtroom, the [Notice of Withdrawal of Limited Scope Appearance](#) must be filed with the court and served on the client (and all other parties of record), along with the form [Objection to Withdrawal of Limited Scope Appearance](#). The objection form is to be used by client litigants who believe the attorney has not completed the scope of representation identified in the Notice of Limited Scope Appearance.

The [Appendix](#) contains the Court Forms and some additional resources that may be helpful to attorneys as they build their limited scope practices.

**Please note:** This toolkit is intended as a practice aid to attorneys who seek to provide limited scope representation in civil matters in Illinois trial courts. Accordingly, it highlights ethics and procedural rules as well as best practices that relate to limited scope representation. An attorney's duty of care and obligations under the Rules of Professional Conduct in any legal representation extend beyond those discussed in this toolkit. Use of the toolkit is a supplement to, not a substitute for, the attorney's familiarity with the ethics rules and professional duties, and the attorney's exercise of judgment in providing representation.

## OVERVIEW: Limited Scope Representation and Relevant Rules

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Limited scope representation, often referred to as “unbundling,” allows attorneys to help potential clients for part of a case rather than seeing it through from beginning to end. This type of assistance is permitted under Illinois Rule of Professional Conduct 1.2(c) so long as it is reasonable under the circumstances and the client gives informed consent.

Limited scope representation allows potential clients who cannot afford to pay for full representation to still hire an attorney for what the potential client, with the attorney’s counsel, determines to be the portion(s) of the matter for which an attorney is most needed. Limited scope can be used for both discrete tasks, such as drafting pleadings or providing advice and coaching on an issue, and particular issues in a case, such as the custody portion of a dissolution case. Unbundling also allows the attorney to charge a fixed fee by task or phase of a case. Fixed fees help attorneys distinguish themselves in the market and allow them to focus on providing value rather than on billing time. They also provide clients with predictability and certainty with respect to legal fees, creating a win-win for both attorney and client.

Examples of how attorneys can limit the scope of their representation include, but are not limited to:

- Providing legal advice during a one-time consultation;
- Drafting and/or reviewing documents for a self-represented litigant to file;
- Coaching a self-represented litigant on presenting a case in court; and
- Appearing in court on behalf of a self-represented litigant on a one-time or ongoing basis pursuant to a limited scope appearance.

Additional examples can be found in the [Attorney and Client Task Assignment Checklist](#).

Contrary to popular belief, attorneys who have incorporated limited scope representation into their practices have not seen corresponding increases in their malpractice insurance premiums. Instead, many malpractice carriers support limited scope representation because the limited nature of the representation requires attorneys to carefully document the details of each representation in writing and to stay in constant communication with their clients, typically resulting in strong, positive attorney-client relationships.

Attorneys offering limited scope representation to potential clients should familiarize themselves with the following rules which address the provision of unbundled services by Illinois attorneys, including civil matters litigated in state trial courtrooms:

- [Illinois Rule of Professional Conduct 1.2\(c\)](#) permits attorneys to limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

- [Illinois Rule of Professional Conduct 4.2](#) clarifies when attorneys may communicate with a person represented by counsel on a limited basis.
- [Illinois Rule of Professional Conduct 5.5](#) clarifies that attorneys may counsel self-represented litigants without filing an appearance in the case.
- [Illinois Supreme Court Rule 11](#) requires that the opposing party or counsel serve all documents on both the attorney and the party while a limited scope appearance is in effect.
- [Illinois Supreme Court Rule 13](#) allows an attorney to make a limited scope appearance on behalf of a party in a civil court proceeding pursuant to Illinois Rule of Professional Conduct 1.2(c) when they have entered into a written agreement with the party to provide limited scope representation.

An attorney can withdraw from the limited scope appearance by oral motion or written notice to all parties of record. The notice shall advise the client that they have 21 days after the entry of the order of withdrawal during which to either retain another attorney or to file a supplementary appearance with the clerk of the court. At the end of the 21-day period, the representation will automatically terminate. See the form [Notice of Withdrawal of Limited Scope Appearance](#).

- [Illinois Supreme Court Rule 137](#) allows attorneys to assist self-represented litigants by preparing and reviewing pleadings, motions, and other documents without signing the pleading or filing an appearance.

**Note:** The procedural rules described above pertain only to limited scope representation in civil matters in Illinois trial court.

## CHECKLIST: Identifying Good Candidates for Limited Scope Representation

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While limited scope representation is a helpful option for many clients, it is not appropriate for every client and legal problem. Attorneys who want to offer unbundled legal services should determine whether they know the area of law well enough to limit their representation to specific issues or tasks, and to explain those limitations to their clients. Assuming they do, attorneys then need to determine whether limiting the scope of the representation in any particular matter would be *reasonable under the circumstances* and *obtain the client's informed consent* pursuant to [Illinois Rule of Professional Conduct 1.2\(c\)](#).

Attorneys must determine whether it is reasonable to limit the scope of representation based on the circumstances at the time of the engagement. This requires attorneys to consider both the complexity of the legal matter and the capabilities of the client.

### Complexity of the Legal Matter:

- Is the case simple enough substantively, strategically, and procedurally to be broken down into discrete steps that can be easily divided between the attorney and the potential client?

### Capabilities of the Client:

- Does the potential client have realistic expectations about their ability to handle all or parts of the case on their own?
- Does the potential client have the mental, physical, and emotional capacity to handle parts of the case on their own? When making this determination, an attorney should consider many factors including, but not limited to, disability status, English proficiency, and whether the potential client is a victim of trauma.
- Is the potential client capable of appearing independently in court?
- Does the potential client have the ability to follow instructions?
- Does the potential client have access to the technology needed to comply with e-filing and other court requirements and do they know how to use it?

If the answer to any of the above questions is “no,” the attorney should consider carefully whether limiting the scope of representation will be reasonable. However, the attorney should also keep in mind that reasonableness does not require the lawyer to predict that the client will prevail in the matter with limited scope assistance, but merely that there is a reasonable chance the litigant will do so.

## CHECKLIST: Discussing Limited Scope Representation with Potential Clients

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During the initial consultation, it is important that the attorney discuss the following items with the potential client before entering into a limited scope representation.

- **The differences between limited scope representation and full representation.** The attorney should identify the differences between the two models to the potential client. The attorney also should explain why limited scope representation would be reasonable in the potential client’s case and make sure the client fully understands his or her role and responsibilities associated with limited scope. The attorney needs to make the limitations of the representation clear (e.g., “If you hire me to only draft and review court documents, this means I will not go to court with you.”). Attorneys can use the [Attorney and Client Task Assignment Checklist](#) to facilitate this discussion with the potential client. Having this conversation will help the attorney satisfy the informed consent requirement in Rule 1.2(c).
- **Apportion tasks in writing.** If the client agrees to limited scope representation, using a document like the [Attorney and Client Task Assignment Checklist](#) will clarify the division of tasks associated with the representation, and memorialize the understanding of both the attorney and client. This checklist can also be incorporated into the [Engagement Agreement for Legal Services](#).
- **Discuss and document changes in the scope of the representation.** The scope of the representation in a case may change for a variety of reasons including, but not limited to, the client later deciding that they would like the attorney to handle additional tasks associated with the matter. If this happens, the best practice is for the attorney and the client to complete, sign, and date a new [Attorney and Client Task Assignment Checklist](#) and [Engagement Agreement for Legal Services](#). *If an attorney fails to document changes in the scope of a representation, they risk assuming responsibility for the entire case.* Because changes in the scope of the representation are common, attorneys should consider having a conversation about this with potential clients who are considering limited scope representation in an effort to manage expectations and reduce surprises down the road.
- **The proper filing and service of pleadings and deadlines.** During the initial consultation, the attorney should provide specific instructions to the potential client regarding proper filing and service of pleadings, including e-filing requirements, and advise them of the importance of deadlines and their responsibility to keep track of them.

- **Ancillary issues outside the scope of representation.** Attorneys should be aware that the court decisions in several states, including Illinois, have held that there is a duty to inform clients of issues that fall outside the scope of representation. See for example *Keef v. Widuch*, 747 N.E.2d 992, 321 App. 3d 571, 254 Ill. Dec. 580 (Ill. App., 2001), which found that an attorney whose representation was limited to a workers' compensation matter nonetheless had a duty to advise the client of the possibility of third-party claims and applicable statutes of limitation. This "peripheral" duty to advise does not require proactive representation by the attorney, and should not discourage attorneys from offering limited scope services when appropriate. There are several steps a practitioner can take to more effectively manage the duty to advise:
  - Attorneys should stick to areas of law with which they are familiar when providing limited scope representation. Knowledge and expertise in a practice area makes it easier to spot related issues that may fall outside the scope of representation.
  - Use a checklist or other screening document to ensure that initial client interviews include inquiries about commonly occurring ancillary issues.
  - Make sure discussions with clients about limiting representation address any ancillary issues and the risks of leaving those issues outside the scope of representation.
  - Document any advice given to clients about ancillary issues.
- **Communication with opposing counsel on matters outside the limited scope representation.** The attorney should advise the client that the client will need to communicate directly with opposing counsel on matters outside the scope of the limited representation. Outlining the scope and type of such communications on the [Attorney and Client Task Assignment Checklist](#) can be one helpful way to prepare the client for this. Once a limited scope appearance has terminated, the attorney may find it helpful to communicate that in writing to both the Circuit Clerk's office and the opposing counsel to ensure future case communications are directed to the correct person. If the attorney receives filed documents pertaining to matters outside the limited scope representation (or after the limited scope representation has terminated), the attorney has a duty to deliver such documents to the client in a timely manner.
- **Confirm the limited scope representation has ended.** Once the limited scope engagement ends, a best practice is for the attorney to send the client a [Disengagement Letter](#) to memorialize the end of the representation.

## CHECKLIST: Attorney and Client Task Assignment

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You can [download this checklist as a word document](#).

This checklist is designed for an attorney to use during an initial limited scope representation consultation to explain to clients the various tasks that their case will entail and to visually outline how responsibility for those tasks will be allocated between the attorney and the client. A best practice would be to attach the completed checklist to the Engagement Agreement for Legal Services, especially in cases where attorneys are handling multiple tasks in a case. This will make clear to the client what the attorney will and will not be handling for them. The checklist is not designed for any particular practice area and the list of tasks within it is not exhaustive. Attorneys should therefore consider tailoring the checklist to fit their respective practices.

When using this checklist, offer a detailed description about any tasks to be completed by attorney. To the extent possible, avoid using legal jargon or other terminology that may be unclear to the client (this is particularly important because limiting the scope of the relationship requires informed consent). Make sure that the checklist is updated if the scope of representation changes after its initial completion.

SERVICES TO BE PERFORMED (TASKS)	ATTORNEY TO DO	CLIENT TO DO
<b>Legal Advice</b>		
Provide advice about legal rights, responsibilities, procedures, and/or strategy on a one-time basis. <i>Describe:</i>		
Provide advice about legal rights, responsibilities, procedures, and/or strategy on an ongoing basis. <i>Describe:</i>		
<b>Document Preparation</b>		
Draft documents on behalf of client. <i>Describe:</i>		
Review documents prepared by client. <i>Describe:</i>		
Draft discovery requests on behalf of client. <i>Describe:</i>		
Review discovery requests on behalf of client. <i>Describe:</i>		
Draft or review correspondence. <i>Describe:</i>		
File and serve documents. <i>Describe:</i>		

<b>Case Preparation and Investigation</b>		
Conduct a factual investigation (e.g. contact witnesses and/or expert witnesses, obtain documents, public record searches). <i>Describe:</i>		
Prepare discovery responses on behalf of client. <i>Describe:</i>		
Review discovery responses prepared by client. <i>Describe:</i>		
Take or defend depositions. <i>Describe:</i>		
<b>Settlement Negotiations</b>		
Review an outstanding settlement offer or agreement. <i>Describe:</i>		
Negotiate specified issue(s) for settlement. <i>Describe:</i>		
<b>Trial Preparation</b>		
Draft or review subpoenas for trial. <i>Describe:</i>		
Draft or respond to motions for trial. <i>Describe:</i>		
Outline witness testimony and/or argument for trial. <i>Describe:</i>		
<b>Court Appearances</b>		
Appear in court on a one-time basis. <i>Describe:</i>		
Appear in court on an on-going basis. <i>Describe:</i>		
Represent Client at trial. <i>Describe:</i>		
<b>Miscellaneous</b>		
Other (describe):		
Other (describe):		

Any other task not set out in this Checklist is the responsibility of Client.

Client Initials \_\_\_\_\_

Attorney Initials \_\_\_\_\_

Date \_\_\_\_\_

# SAMPLE AGREEMENT: Engagement Agreement for Legal Services

---

You can [download this agreement as a word document](#).

## Engagement Agreement for Legal Services

This agreement (Agreement) is made between Client, \_\_\_\_\_ (Client), and Attorney, \_\_\_\_\_ (Attorney). Attorney only represents Client. Attorney does not represent any other person in this matter.

**1. The Client's Goals.** Client has engaged Attorney to help them achieve certain goals. Client's goals in this case include:

- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_

**2. The Scope of the Representation.** To accomplish Client's goals, Attorney will provide legal services that are limited to the following (describe scope of representation – be specific):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

*Client and Attorney have discussed the difference between full representation and limited scope representation and agree that limited scope representation is an appropriate option for Client at this time based on Client's case, abilities, goals, and budget.*

**3. Attorney Responsibilities.**

- a. **Assigned Services.** Client and Attorney have completed the Attorney and Client Task Assignment Checklist (Checklist) and attached it to this document. Attorney is only responsible for completing the services marked "Yes" in the "Attorney To Do" column of the Checklist. Client is responsible for completing all other tasks, including, but not limited to, those tasks marked "Yes" in the "Client To Do" column of the Checklist. *[Note: It is a best practice to complete the Checklist and append it to the Agreement. If an attorney chooses not to do this, the attorney should outline in the Agreement which tasks they will and will not be responsibility for during the engagement.]*
- b. **Additional Services.** If Attorney is requested or required to provide additional services, Attorney and Client will complete and sign a new Checklist and Engagement Agreement for Legal Services. Client will pay additional fees (to be agreed upon by Client and Attorney) for additional services.

**4. Client Responsibilities and Control.** Client will handle all parts of the case except those that are assigned to Attorney in the Checklist. Client will be in control of the case and will be responsible for all decisions made during the case. Client agrees to:

- a. Cooperate with Attorney and Attorney’s staff by promptly giving them all information they reasonably request about the case.
- b. Promptly tell Attorney anything they know about the case, including any concerns they have, and to update Attorney as new information or concerns arise.
- c. Promptly provide Attorney with copies of all court documents and other written materials that Client receives or sends out about the case.
- d. Immediately provide Attorney with any new court documents, including pleadings or motions, received from the other party or the other party’s attorney.
- e. Keep all documents related to the case together and organized in a file for Attorney to review as needed.
- f. Maintain an active phone number and email address by which Attorney can communicate with Client about the representation and where Client can receive documents and notifications from Attorney and the circuit clerk’s office in litigated matters. Client will check their voicemail and email account at least once every couple of days. If there are circumstances that prevent Client from doing this, Client will decide what the best way for Attorney to communicate with Client is and will provide written notice to Attorney of their decision.

**5. Method of Payment for Services.**

a. **Legal Fees.** In exchange for the legal services provided by Attorney, Client agrees to pay a fee of \$\_\_\_\_\_. Client has initialed the payment option below that works best for them.

\_\_\_\_\_ Client will pay the entire flat fee listed above when this Agreement is signed.

\_\_\_\_\_ Client will pay a partial fee of \$\_\_\_\_\_ when this agreement is signed. Client will pay the remaining \$\_\_\_\_\_ by or before\_\_\_\_\_.

\_\_\_\_\_ Client will pay off the flat fee listed above in installments as described here:

\_\_\_\_\_

\*A best practice is to offer flat fee and other pricing options that provide potential clients with predictability and certainty. Attorneys have the option of offering other fee arrangements to clients, including, but not limited to, offering their services pro bono, and if they do so, they should customize this provision to reflect that pricing model.

b. **Costs.** The fee does not include costs and expenses incurred to provide those services. In addition to the fee above, Client agrees to pay any costs and expenses including, but not limited to, fees associated with filing the case, private investigators, expert witnesses, court reporters and transcripts, service of subpoenas, and travel expenses which Attorney considers necessary and proper for the preparation and execution of the Attorney's commitments. Attorney will seek Client's approval before incurring these costs and explain why these costs are necessary to accomplish Client's goals. Client agrees to pay costs within thirty (30) days of receiving an associated invoice.

6. **Right to Seek Advice of Other Counsel.** Client has the right to ask another attorney for advice and professional services at any time during or following this Agreement.
7. **No Guarantees.** Client agrees that Attorney has not made any promises or guarantees that their involvement in the case will cause a certain outcome or result.
8. **Termination.** Client and Attorney have entered into a voluntary relationship and may end that relationship at any time. Client may end the relationship for any reason. Attorney may end the relationship if Attorney learns that Client has misrepresented or failed to disclose material facts to Attorney, if Client fails to follow Attorney's legal advice, if Client fails to cooperate in the representation, if Client fails to make the agreed upon payment(s), or for any other reason allowed by the [Illinois Rules of Professional Conduct](#). If the relationship ends, Client has a right to request a copy of their file, which includes all of the information given by Client to Attorney and any legal work completed by Attorney on Client's behalf.

Client is responsible for payment of all outstanding costs and expenses incurred prior to termination and attorney shall have a right to keep an appropriate proportion of the fees paid or due based on the legal services provided to Client. In the event there is a disagreement over the fees owed to Attorney, Illinois law provides attorneys with the right to seek judicial relief for outstanding fees, including a retaining lien to enforce payment of the bill, *after* an attorney's withdrawal or a client's request for the attorney to withdraw.

9. **Withdrawal of Attorney.** Attorney's obligation to Client is over once Attorney has completed all of the services identified in the attached Checklist. If Attorney has made a limited scope appearance on behalf of Client, that appearance should be terminated or withdrawn in a timely manner. In addition, Attorney may withdraw from the representation at any time as permitted under [Illinois Rule of Professional Conduct 1.16](#). Even if Attorney withdraws, Client must pay Attorney for all services provided and must reimburse Attorney for all out-of-pocket costs incurred prior to the withdrawal.
10. **Release of Client's Papers and Property.** Once all of Attorney's services are performed, Attorney will return all original documents to Client. If Client requests that all paper and property be returned, Attorney will release all of Client's papers and property to Client within a reasonable period of time. If Client does not make this request or give other direction, Attorney may dispose of the papers and property after seven (7) years following completion of services.

- 11.** Client has carefully read this Agreement and understands all of its provisions. Client agrees with the following statements by initialing each one:
- a.  Attorney has accurately described my goals in Paragraph 1.
  - b.  I am responsible for my case and will be in control of my case at all times as described in Paragraph 4.
  - c.  The services that I want Attorney to perform in my case are identified by the word “YES” in the “Attorney To Do” column of the Checklist that is attached to this Agreement. I take responsibility for all other aspects of my case, including, but not limited to, those tasks assigned to me under the “Client To Do” column in the Checklist.
  - d.  Attorney discussed the difference between full representation and limited scope representation and I understand and accept the limitations on the scope of Attorney’s responsibilities identified in Paragraphs 2 and 3.
  - e.  I will pay Attorney for services as described in Paragraph 5.
  - f.  I understand that any amendments to this Agreement must be in writing as described in Paragraph 3.
  - g.  I acknowledge that I have been advised by Attorney that I have the right to consult with another independent attorney to review this Agreement and to advise me on my rights as a client before I sign this Agreement.

**Client Signature** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Attorney Signature** \_\_\_\_\_

**Date:** \_\_\_\_\_

## SAMPLE LETTER: Disengagement

---

You can [download this letter as a word document](#).

[Client Name]

[Client Address 1]

[Client Address 2]

[Client Email]

[Date]

Re: Termination of Legal Services

Dear [Ms./Mr. Client's or Client Representative's Last Name]:

Thank you for allowing [Law Firm Name] to represent you in [Legal Matter]. [Enclosed/Attached] is a copy of [Relevant Document(s)—e.g., an order that was just entered]. I have completed the scope of legal representation agreed to in our Engagement Agreement for Legal Services. Accordingly, our attorney-client relationship has come to an end and I am no longer providing legal representation on your behalf. I am therefore closing your file. I will retain a copy of your file for seven (7) years after which I may destroy all documents in your file. You should keep all of your information and documentation concerning this matter in a safe place in case you need it in the future. If you would like to have copies of anything from my file, please let me know as soon as possible.

It has been a pleasure working with you. I hope this matter was concluded to your satisfaction. If you or someone you know needs legal assistance in the future, please feel free to contact my office to arrange a consultation. [Optional for mailed letter: I have included a few of my business cards.] I wish you the best of luck in your endeavors!

Best regards,

[Law Firm Name]

[Attorney's Name]

[Enclosures/Attachments]: [Relevant Document(s)]Resources

## APPENDIX: Court Forms and Other Resources

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### Court Forms

- [Notice of Limited Scope Appearance](#)
- [Notice of Withdrawal of Limited Scope Appearance](#)
- [Objection to Withdrawal of Limited Scope Appearance](#)

### Webinars

- M. Sue Talia/Practising Law Institute's (free) [Expanding your Practice Using Limited Scope Representation](#) (February 2018)
- The Chicago Bar Association's [Unbundled Services to Expand your Practice](#) (April 2017)
- The Illinois State Bar Association CLE program [Limited Scope Representation: When Less Is More](#) (October 2016)

### Articles

- [Rule Changes Permitting Limited Scope Representation in Litigation: Increasing Access & Opportunity](#)
- [Why Judges Should Embrace Limited Scope Representation](#)

### Studies

- Sara Smith & Will Hornsby's [Unbundled Legal Services: At the Tipping Point?](#) (April 2018)
- The Institute for the Advancement of the American Legal System's (IAALS) [Cases Without Counsel: Research on Self-Representation in U.S. Family Court and Recommendations After Listening to the Litigants](#) (May 2016)
- Dr. Julie Macfarlane's [The National Self-Represented Litigant Project: Identifying and Meeting the Needs of Self-Represented Litigants – Final Report](#) (May 2013)
- American Bar Association's [Perspectives on Finding Personal Legal Services](#) (February 2011)

### Other

- The Illinois State Bar Association's Limited Scope Representation [Consumer Legal Guide](#)
- The American Bar Association's [Unbundling Resource Center](#)
- The Chicago Bar Foundation's [Pricing Toolkit](#)

# Pricing Toolkit

for attorneys seeking to serve  
low- and moderate-income clients



# Step-by-Step Toolkit for Pricing Legal Services for Low- and Moderate-Income Clients

This toolkit provides a set of considerations for pricing legal services for attorneys who are primarily focused on serving low- and moderate-income clients. Use this toolkit to help guide pricing of legal services utilizing fee arrangements alternative to the billable hour.

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If you have questions about the toolkit or pricing more generally, please contact the CBF's Director of Innovation & Training for the Justice Entrepreneurs Project Jessica Bednarz at [jbednarz@chicagobar.org](mailto:jbednarz@chicagobar.org) or (312) 554-8022.

# Introduction

One of the most fundamental ways lawyers can make their services more accessible to low- and moderate-income clients is by using what are commonly referred to as alternative pricing structures. This is particularly true for lawyers practicing in areas where the billable hour has been the prevalent way of pricing services. Alternative fee arrangements have proven to be very effective in other legal and non-legal settings. Avoiding or doing away with the billable hour in your pricing sets the stage for more affordable, accessible, and transparent services for the client and a more fulfilling and successful practice for the lawyer.

This Pricing Toolkit and the accompanying materials were developed to provide attorneys serving low- and moderate-income clients with a guide to pricing their legal services using fee arrangements other than the billable hour. Attorneys serving clients in higher income brackets can also benefit from using the Pricing Toolkit.

## □ **Confirm the Basics of Your Practice**

Pricing legal services requires having some fundamental aspects of your approach to practice already in place. A variety of resources exist on these topics, but we do not address them here. Instead, we make the following assumptions about users of this checklist:

- The users are already familiar with the areas of law in which they have chosen to practice.
- The users have already determined their firm brand and identity, which should be reflected in their value and pricing.
- The users have already identified their target client base.

## □ **Understand Why the Billable Hour Presents a Problem for Clients and Why Alternative Fee Arrangements Offer Better Options for Clients**

Clients are used to paying a set price for just about everything in their lives, and just about every other consumer market (including most other professional services) offers transparent pricing. While there may be a menu of prices or the requirement of an estimate to arrive at a price, the client can see a price, determine whether they can afford to pay it, and decide whether they will get commensurate value in exchange for it.

For legal services based on the billable hour, this is not the case. While these services in many cases might actually be affordable for clients, there is no way for the clients to know that until later, because they are typically being asked to make what amounts to an open-ended commitment with no sense of control over what it might ultimately cost. Transparency, however, is just one part of a larger problem with the billable hour. The billable hour also acts as a perverse disincentive to efficiency--a lawyer who uses the latest technology to work more efficiently makes less under that system--and that can subtly discourage lawyers from making strategic decisions regarding the best use of their time and their client's money.

In addition, the billable hour system generally does not align with value to the client or the results the client is seeking to achieve. The billable hour puts the focus on the lawyer's inputs rather than on the resulting value to the client. Clients are not seeking to buy your time; what they want is to buy your services to help them achieve a particular end goal (e.g., a business deal, recovery or protection of funds, peace of mind, etc.). When the lawyer earns money based only on the amount of time spent, and not on the results achieved, those goals are not aligned well. And all of the risk effectively sits with the client if things do not go as planned. A quick chat with clients about the problems associated with the billable hour and its perverse incentives can quickly result in a client who is even more enthusiastic about alternatives than the lawyer—regular folks take this reasoning to heart!

***It wasn't always this way, and there is no reason it has to be this way going forward.***

While the billable hour may seem to be inextricably embedded into the DNA of our profession, this is not the case. It wasn't until the 1970s that the billable hour became the prevalent form of pricing in our profession, after literally centuries where the profession apparently functioned quite well without it (see Johnson, "[Alternative Fees Aren't So 'Alternative,'](#)" American Lawyer, August 24, 2015"). For many areas of law—including immigration, real estate, DUI and traffic, and minor criminal cases—fixed fees are still the norm today. In addition, for personal injury and many other types of cases, contingent fees are the norm. It is noteworthy that with few exceptions, the consumer markets for these areas of law function significantly better than for other areas where the billable hour remains the norm.

Using fee arrangements other than the billable hour offers the opportunity for increased affordability, transparency, and accessibility for clients by incentivizing client value, innovation, and efficiency. These arrangements are good for you as a lawyer, too, helping you to distinguish yourself in the market, opening up what are now latent client opportunities, and allowing you to focus on providing client value rather than on the amount of time you are billing. This toolkit offers more information and resources for these fee arrangements and how you can use them to develop a successful practice that is a win-win for both you and your clients.

While it may feel like you are swimming against the tide at first by not using the billable hour, keep in mind that:

- There are well-functioning markets for many consumer legal services that don't depend on the billable hour (e.g. personal injury, real estate closings, etc.);

- Companies that offer fixed fee referral options (e.g. Avvo Advisor) or what they describe as legal solutions for fixed prices (e.g. LegalZoom) are growing their market share every day;
- Many larger companies and a growing number of law firms serving them are successfully using fee arrangements other than the billable hour (see the [Association for Corporate Counsel Value Challenge](#) for examples); and
- Other professional services like accounting and consulting have been able to transition away from the billable hour, showing this is not only possible, but also potentially lucrative.

As Evan Chesler, chairman of one of the most successful law firms in the world stated a few years ago in an [op-ed piece](#) in Forbes, lawyers should be able to do what contractors and many others do: “Identify the potential client’s objectives, measure, calculate, build in a contingency, and come back with a price.”

Even without the billable hour, you will still want to understand how much time you are spending on your legal matters for a variety of reasons. First, time is a key ingredient in determining your costs (as there are only so many hours you can work) and efficiency. Second, you may need to document the time you have spent on a matter for a fee petition or to respond to inquiries about the work you have done for a client. Once you leave the billable hour behind, though, you can look at your time in the context of how you can most efficiently use technology, collaboration, and other means to deliver the highest value to your client at a price that allows you to be successful.

## □ **Understand the Guiding Concepts**

Providing value to the client should be the guiding principle in all pricing, and in the following section, we discuss the many ways clients are likely to find the most value in your services. The following fundamental concepts will help you work most efficiently and effectively, guide your approach to selecting mutually beneficial fee arrangements, and assign appropriate pricing to your legal services:

**Understanding What Success Means to the Client:** “Success” can mean many different things, and it is important that you determine what it means to each potential client so that you can determine what you realistically can help them achieve, and choose an appropriate fee arrangement that aligns with their goals. In some cases, success means a specific outcome, such as being designated as the custodial parent in a custody case or being awarded damages in a breach of contract case. In other cases, success may be more general or intangible, such as minimizing conflict, finding a resolution that is workable for the client, or gaining peace of mind by resolving the matter in a timely fashion.

**Providing Choices and Empowering the Client:** Attorneys distinguish themselves and build positive relationships with clients by providing choices to clients and empowering them to participate more fully in the resolution of their legal matter. While you should try to limit the options you offer in each case to no more than two or three choices so that it doesn't become overwhelming to the potential client, even giving them two alternatives can be the deciding factor in whether a potential client ultimately decides to retain your services. For example, offering unbundled service options for pricing provides potential clients with choices and more control, which fosters a positive working relationship even when the client chooses a traditional approach. You can also empower clients by pointing them towards information and resources they can use on their own to prepare for and supplement your services, such as a link to [www.illinoislegalaid.org](http://www.illinoislegalaid.org) for free resources and court forms.

**Providing Transparency and Price Certainty:** Being transparent with clients about how your pricing works and providing options that offer price certainty will help you attract clients and maintain relationships.

People who need legal help face many challenges finding information about how much legal help will cost and whether the services are a good value. If possible, your website should provide price ranges, explanations about your approaches to pricing, or other information to help a potential client understand whether your services will be affordable and a good value.

People who need legal help can also benefit greatly from knowing exactly how much they are going to pay for legal services. It is generally hard to budget for the unknown, and the unknown can often cause unnecessary anxiety. By offering fee arrangements that whenever possible are transparent and predictable, you are allowing potential clients to make more informed decisions with respect to their procurement of legal services and helping to reduce anxiety associated with the legal process.

**Utilizing Project Management and Process Improvement:** In order to offer the best value to clients, you should continually analyze and improve how you deliver legal services so that you are working at maximum efficiency. By fully understanding the component parts to a given matter and the various contingencies that may arise, you also can better determine where you are offering the most value to the client, how you might price the matter in phases of the case, and whether you can offer an unbundled approach. One of many advantages of moving away from the billable hour is to fully incentivize efficiency and innovation.

**Utilizing the “Guardrails” Concept:** Be sure to have a written fee agreement with your client. In order to effectively price a particular matter in whole or in part, it's critical to understand and document the key assumptions that you and your client are making as you enter into an agreement. For example, in a divorce matter, you may understand the situation to be uncontested when you are initially meeting with your client and price it accordingly, but things could turn out very differently later in the case. In that situation, your agreement should contain “guardrails” to ensure that you and your client both understand and agree that your agreement terminates or can be modified at that point, and a new or modified agreement reflecting these materially changed circumstances must be reached if the representation is to continue.

As another example, for more potentially complex litigation, it might not be possible in your initial meeting with a potential client to be able to assess and factor in all of the potential variables to determine what will be the best agreement for that case. In this instance, your agreement may be limited to just the initial assessment phase of the case for an agreed upon fee, with the explicit understanding that after that point you and your client will revisit the agreement and pricing for further representation in the case.

These are just two examples of the many similar situations in which this concept becomes important. Being clear with your client about key assumptions up front, and getting those assumptions down in writing, protects both of you in the event that an unexpected major turn of events in a case materially changes the matter that was the basis for your original agreement.

**Incentivizing “Good Behavior” for Both Lawyer and Client:** Pricing should align the interests of you and the client. For example, pricing should allow clients to feel like they can contact you without being nicked and dimed, but in a way that does not inadvertently encourage repeated and inefficient calls because there is no “cost” to the client. Similarly, utilizing pricing that reflects the client’s contributions to the process (e.g. providing you with complete and organized documents), can keep costs down for the client and save you time. Including specific provisions about these types of expectations in your legal representation agreement and discussing them clearly with the client helps everyone understand roles and expectations and increases efficiency. Explaining your reasoning for these expectations can also help you build rapport with your clients: by and large, people will understand your motivations and will be respectful of your time.

**Experimenting and Adapting:** In the end, this may be the most important. There are no silver bullets to determining the proper fee arrangement or pricing for each particular case. The best way to get started is to consider the concepts in this toolkit and start testing out alternative fee arrangements in actual cases. There undoubtedly will be cases where your arrangement turns out both better and worse for you from a business standpoint, and the key is to learn from your experiences and adapt your strategies going forward. Through time and more experience, the fee arrangements and pricing that work best for your practice will become clearer, and both you and your clients will be much happier and better off having left the billable hour behind.

## **Creating Client Value and Determining What Legal Services You Will Offer**

Having reviewed the guiding concepts, it’s time to focus on how you are going to put them to work. The first step in this process is determining the value you will offer to clients and how you will present it to them. The value you are providing should tie together with and be reflected in your firm’s branding and pricing.

## □ Determine the Value You Will Offer to Potential Clients

Potential clients are coming to you first and foremost for your legal expertise. As a general matter, there are five ways you can offer value to a potential client in virtually any kind of legal matter. While the amount of value for each potential client will vary based on the circumstances, assessing the value in each situation will help you determine the appropriate pricing for that matter.

**Counsel:** While potential clients increasingly have access to legal information and resources that enable them to do more tasks on their own, the trained and objective advice of an attorney remains critical. Even in simpler matters where a potential client may be able to access information or forms that would allow them to proceed with a lawsuit or enter a contract, they often do not have the expertise or objectivity to determine whether doing so is the best option for their goals and interests or how best to proceed. Moreover, even if the potential client might be able to proceed prudently on his or her own, an attorney's counsel can provide peace of mind that the potential client is pursuing the proper course of action.

**Advocate:** A skilled advocate may have even greater value to many potential clients, particularly where the power dynamics in the legal matter leave the potential client on unequal footing. Examples include where the creditor in a consumer debt case or one spouse in a divorce has significantly more resources and is represented by counsel, or where a budding small business is working on an important deal with a much larger company. In these kinds of situations and in many other instances, even when the matter itself isn't complicated, the impact of having a trained advocate on the potential client's side can make a tremendous difference in the outcome and to the potential client's peace of mind.

**Navigator:** While there are ongoing efforts to make the legal system more user friendly and accessible, in most instances, it is still a very complex system that can be quite intimidating to regular people. Brief advice and coaching to help potential clients navigate the system may provide huge value to a potential client who is unfamiliar with the system but otherwise well positioned to adequately handle their case on their own.

**Information Broker:** This traditionally was one of the core values a lawyer delivered to a client, but with the growth of online legal information, forms, and resources, it is not as significant in consumer practice today, except in practices that specialize in complex and fast-changing areas of law, such as cybersecurity and regulatory compliance. Unlike consumers in the past, many consumers today expect to find answers to their questions on the internet. Distilling this information into what is most important for the client's situation is one way a lawyer can still provide significant value for them.

Maintaining awareness of where potential clients can get free and reliable information and resources, such as [www.illinoislegalaid.org](http://www.illinoislegalaid.org) and court websites, and making this information freely available to potential clients, is a great way to build trust and loyalty with them [Baer, Jay, Youtility: Why Smart Marketing is about Help not Hype. New York: Penguin, 2013. Print]. After you have provided your potential clients with this information, you can then focus your time on more significant and income-generating ways you can offer value to your clients as noted above.

**Connector:** Oftentimes, a client needs other services in addition to the legal assistance you provide in order to fully resolve their problem. Two examples are when a domestic violence victim seeking an order of protection needs help finding safe housing, or when a small business client needs a valuation consultant. By identifying when potential clients might benefit from social or other services and connecting clients with those services to help them achieve their goals, you are offering them value.

In addition to your legal expertise, the average legal consumer is also seeking some or all of the following:

**Price Certainty:** For some matters, this might be a flat fee, such as in a routine traffic case. In other cases, it might be a range of pricing or contingent fee options that depend on the complexity of the case and the amount at stake, such as in a contested court proceeding. Still in other matters, this might be a relatively modest fixed fee for advice and coaching that can lead to other service arrangements going forward, such as in a debt collection case. Whatever the case, remember to always have a written fee agreement, and the more certainty you can offer the potential client as to what your services will cost, the better. The lack of price certainty has been one of the biggest problems with the billable hour system.

**Transparency:** A close cousin of price certainty is transparency. Letting potential clients know up front as much as you can about your pricing will help you stand out and be more accessible to potential clients. As noted above, this doesn't need to be in the form of flat fee quotes for the entire matter, and should not be unless the matter is amenable to that arrangement, but most lawyers and firms historically have been very opaque to consumers when it comes to pricing.

**Clear and Consistent Communication:** This one is pretty straightforward. You might be surprised by how many attorneys don't do this.

**Affordable Fees:** If potential clients cannot afford your fees, they will not retain you for your legal expertise. Offering reasonable fees that are competitive in the marketplace will help you attract and keep clients.

**Collaboration:** Working closely with the client builds empowerment and trust, and can reduce the expense for the client as well. If a client is able and willing to handle some parts of a legal matter themselves, offering unbundled options that reduce the overall costs through collaboration with the client can make all the difference. Technology increasingly allows online collaboration as a way for clients to complete forms and other key documents.

**Convenience:** While working from 9:00 a.m. to 5:00 p.m. Monday through Friday is convenient for you, it might not be convenient for your potential clients. Offering hours that are more convenient for your potential clients can be of great value to them.

**Flexibility and a Variety of Potential Fee Arrangements:** Offering a variety of fee arrangements allows potential clients to choose the option that works best for their particular situation and shows potential clients that you are working to meet their needs. You should choose no more than two or three potential fee arrangements to offer for a particular matter so as not to overwhelm the potential client.

## □ **Select the Fee Arrangements You Will Offer Potential Clients**

After considering the value propositions that you are best positioned to offer your potential clients, identify the fee arrangements that are consistent with those propositions, your practice areas, and your firm brand. Because limited scope representation is central to many fee arrangements, we briefly touch on limited scope representation here before addressing related fee arrangements.

### **Limited Scope Representation/Unbundling**

Limited scope representation, often referred to as “unbundling,” allows attorneys to provide legal services on a portion of a potential client’s legal matter rather than seeing it through from beginning to end, so long as it is reasonable under the circumstances. “The client and attorney agree on the specific discrete tasks to be performed by the client and the attorney. Depending on the nature of the work being performed” and the attorney’s involvement, “the attorney may or may not enter an appearance with the court. The client represents himself or herself in all other aspects of the case.” M. Sue Talia, PLI Program - Expanding Your Practice Using Limited Scope Representation Program, January 30, 2015.

Limited scope representation allows potential clients who cannot afford to pay for full representation to still hire an attorney for what the potential client, with the attorney’s counsel, determines to be the part(s) of the matter for which an attorney is most needed. Limited scope can be used for both discrete tasks, such as drafting pleadings or providing advice and coaching on an issue, and for particular issues in a case, such as custody. Unbundling also allows you to charge a fixed fee by task or phase of a case, creating a win-win for you and your client.

Unbundling is a newer and rapidly growing approach to delivering legal services. A variety of resources exist to help you offer unbundled services, including resources from other states that adopted rules earlier than Illinois.

## Fee Arrangements

Alternative fee arrangements are growing in importance and becoming more prevalent by the day as potential clients seek greater value, including by paying less for legal services and having certainty up front about how much they will need to pay. Below are some examples of fee arrangements that have worked for attorneys in various practice areas. Please note that this is by no means an exhaustive list of fee arrangements and not every fee arrangement will work for you or your potential clients. Some fee arrangements require a client with a certain amount of sophistication. This section was compiled with input from several helpful sources, including Patrick Lamb's article, [What Is, And is Not, An Alternative Fee Arrangement](#) that appeared in Law Technology Today on December 10, 2014.

**Fixed Fee by Phase or Task:** This is where an attorney charges a specified sum for the completion of a certain task or phase associated with the case. Some examples of tasks and phases include: drafting a pleading or motion; completing discovery; defending someone in a deposition; and representing a client at a hearing that is scheduled for a specific date. It should be noted that the terms "fixed fee" and "flat fee" are often used interchangeably.

**Fixed Fee by Case:** This is where an attorney charges a specified sum for handling the entire case. A common example is charging a set amount for an uncontested divorce. This fee structure works well for cases in a variety of practice areas where the range of potential work involved is relatively predictable. Attorneys offering these arrangements grapple with concern about underbidding the case or potential "windfalls" if the case is resolved quickly, and how to handle the fee if that happens. For this reason and for ethical reasons, all potential outcomes and associated probabilities should be fully explained to the potential client during the initial consultation, and you should settle on a median price that takes into account the uncertainties involved.

**Recurring Fixed Fee:** There are two types of recurring fixed fee arrangements, and both involve charging a standard fee on a recurring monthly (or other time increment) basis. A non-litigation recurring fixed fee arrangement is typically used in the context of advising clients, such as an on-call general counsel arrangement for a small company. A litigation recurring fixed fee arrangement provides clients with more certainty with respect to their litigation budgets, such as paying a set amount for services each quarter that a case is pending.

Recurring fixed fee arrangements should not be confused with retainers. Many attorneys and legal consumers alike use the term "retainer" when either referring to a legal representation agreement that involved fixed fees, or to an advanced payment made to an attorney to perform agreed upon legal services that is then drawn upon and replenished as the attorney incurs fees and works on the case. The latter is subject to specific guidelines under the Illinois Rules of Professional Conduct.

When using a recurring fixed fee arrangement, it is important for ethical reasons that attorneys regularly review the agreement to make sure it makes sense for the potential client. For example, if you agree to a fixed fee that is based on you having to go to court on a monthly basis, but something changes and you now only have to go to court twice a year, you and your client should revisit your agreement and make adjustments accordingly if doing so is in the client's best interest.

**Pure Contingency:** In a pure contingency fee arrangement, the attorney recovers a specified percentage of the amount recovered. The client typically will be charged all hard costs associated with the case, but the client does not pay a fee unless the case results in a successful recovery. This structure is a way to share the risk between attorney and client, and works well when the amount at stake and the potential for recovery is sufficient for an attorney to incur the risk to handle a case. Sometimes the potential recovery can be quite large, such as in some personal injury cases. Other times, the potential recovery is more modest, such as in smaller breach of contract cases.

**Reverse Contingency:** Reverse contingency fee arrangements are similar to pure contingency fee arrangements but are based on the percentage of the amount of money saved for the client. The base amount from which savings are calculated should be agreed upon with the client up front and reasonable under the circumstances.

**Fee-Shifting:** Hundreds of state and federal statutes provide for attorney fee-shifting when the client prevails in a case. When available, this type of fee arrangement works particularly well for clients who can afford to pay little or no money for your services and the client's case has potential merit.

**Contract Recurring Fee:** The attorney charges an initial fee for the creation of a document, such as a sales contract, licenses the document to a client, and earns a licensing fee every time the client uses the document. This fee arrangement works best when an attorney creates a contract or similarly licensable document.

**Hybrid:** A hybrid fee arrangement uses more than one fee structure. Below are some examples of hybrid fee arrangements.

**Flat Fee Plus Contingency:** In a flat fee plus contingency fee arrangement, the attorney charges an agreed-upon flat fee in addition to the hard costs associated with the case, and also receives a specified percentage of the amount recovered. This arrangement works best in cases when liability is an issue and the client can benefit from receiving brief advice from counsel and/or having a lawyer as an advocate to negotiate or obtain a better result than the client likely would be able to obtain on his or her own.

**Flat Fee Plus Reverse Contingency:** In a flat fee plus reverse contingency fee arrangement, the attorney charges an agreed upon flat fee up front in addition to recovering a percentage of the amount saved for the client. This fee arrangement works well in credit card collection defense cases.

**Success Fees:** This fee arrangement sets a bonus that the attorney receives in addition to the core fee arrangement if the result meets agreed-upon criteria. Success fees can be a good way to align incentives for the lawyer and client.

**Holdback:** A holdback fee arrangement specifies that the client will receive back an agreed-upon portion of the total fee unless the attorney obtains a particular result, which is usually tied to client satisfaction. This fee arrangement encourages both the attorney and the client to measure success quantifiably and qualitatively.

**Value Adjustment Line:** In any fee arrangement, you can include a value adjustment line that gives the client the option of adjusting the fee up or down. The law firm Valorem Law Group has used this strategy very effectively to build trust with clients and underscore the value they are providing: <http://www.valorem.com/value-adjustment-line>.

**Taking an Interest in a Client's Company:** In exchange for legal services, the client offers the attorney stock options or equity in his or her company. This fee structure only works with clients who own companies. It can be particularly useful when a client, such as a business start-up, cannot afford to pay any money up front for legal services related to the business. Take care to avoid conflicts of interest if you are considering this type of arrangement.

**Fee Arrangements Using the Billable Hour:** While we do not recommend including the billable hour in any of your regular fee offerings for the reasons explained throughout this toolkit, there may be times when a more sophisticated client may actually request it. In these instances, the following two approaches can help align incentives for the lawyer and client.

**Capped Fees with Shared Savings:** In a capped fee with shared savings arrangement, an attorney's total fee is capped at a set amount. If the attorney bills lower than the cap, then the client and attorney share in savings (usually on an equal basis). This differs from a standard capped fees arrangement, which incentivizes attorneys to bill as close to the agreed upon cap as possible, but does not allow for the attorney to share in any savings.

**Collar Fees:** A fee collar is a variation of the capped fees with shared savings fee arrangement. With this fee arrangement, the client and attorney set an amount the attorney is to be paid. If the attorney's hours and fee then come in on target or at an agreed-upon percentage above or below the agreed-upon amount, the fee becomes final. If the hours and fee fall below the agreed-upon percentage, the client and attorney share the savings. If the hours and fee exceed the negotiated amount, the attorney is only paid an agreed-upon percentage of the excess amount billed. For example, if a client and attorney agree upon a \$20,000 fee with a 20 percent up and down collar, this means that the attorney receives \$20,000 if the fee falls between \$16,000 and \$24,000. If the attorney works only \$12,000 in billable time, the \$4,000 difference is split and the client receives a \$2,000 credit, meaning the final bill would be \$18,000. If the attorney works \$28,000 in billed time, the attorney is paid fifty percent of the amount over the \$24,000 collar, meaning the final bill would be \$22,000.

While not covered in this Toolkit, how and when you will get paid by the clients is an important topic that relates to pricing. Payment plans, including ACH payments and other arrangements, may allow clients to pay smaller amounts more consistently. Newer methods of paying for legal services, such as crowdfunding or litigation financing, may help your clients pay for services. Through crowdfunding, for example, a person with a legal issue can raise money from people within their family or community to pay for legal fees. [Funded Justice](#) is an example of a legal crowdfunding website.

[See the Fee Arrangement Matrix](#)

### □ **Understand the Steps and Variables Involved in Your Matters and Whether Technology or Other Methods Might Help You Do the Work More Efficiently**

Mapping out and fully understanding the component parts to a given matter and the various contingencies that may arise gives you the means to determine where you are offering the most value to your client and how best to price it. This process will help you create a pricing baseline and “guardrails” – pricing highs and lows for each piece of work that account for the mutual assumptions built into each pricing arrangement. When breaking down matters involving litigation, such as contested divorces, it is important in this exercise to work through all potential outcomes, including unknown variables and worst case scenarios, so that you can generate the most accurate baselines and guardrails possible.

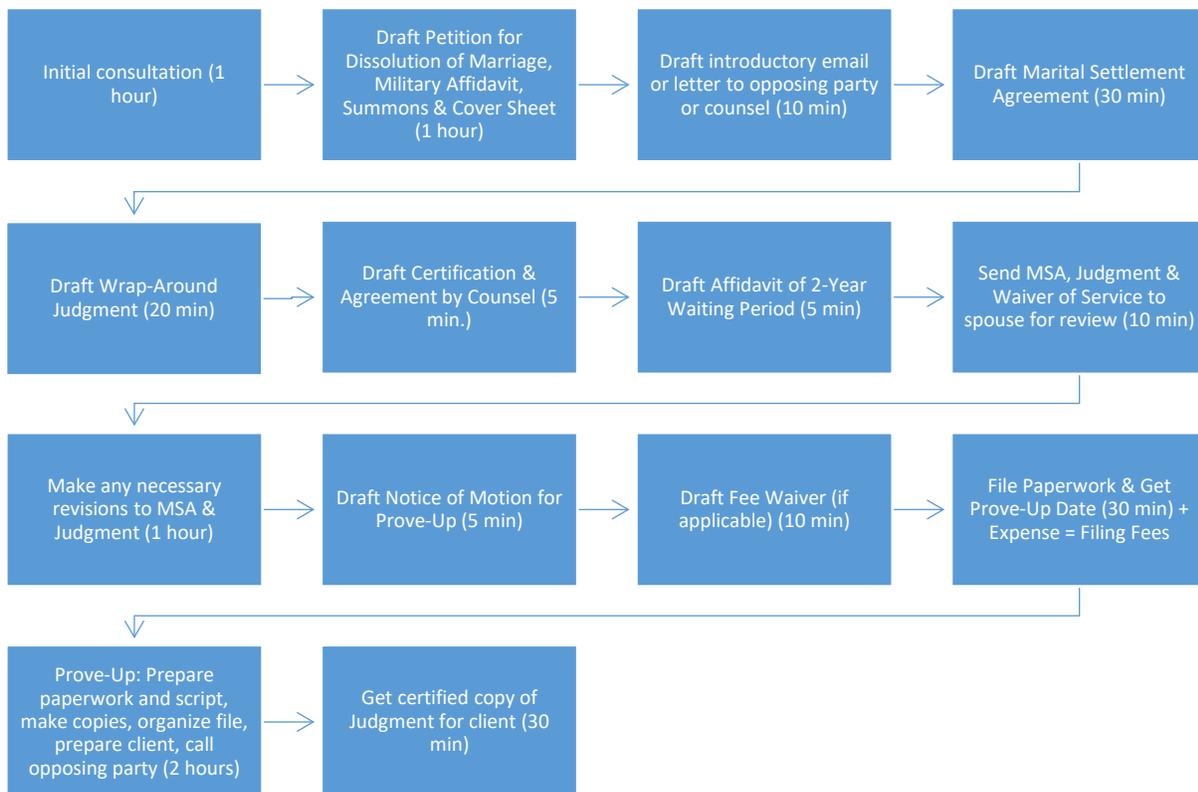
This process, sometimes referred to as “process mapping” or “process improvement,” also helps you identify how you can work more efficiently by forcing you to contemplate what goes into each task and how using technology tools such as document automation and e-filing can help you work faster and oftentimes more competently. In addition, process mapping can help you better understand all of the steps involved in a particular case and identify and eliminate redundancies and inefficiencies in the way you are doing your work. Finally, when you are offering unbundled services or breaking your pricing down by task or phase of the case, process mapping will help you better understand how and when that will work most efficiently and effectively for you and your client.

Below are examples of how process mapping can help you by visually breaking down each matter into discrete tasks with associated units of time. To do this, you will have to start at a baseline. What information do you know about the potential client and potential issues that could arise in this type of matter? What resources (e.g. templates, automated document preparation, past cases that were very similar) do you have to work with?

## Uncontested Divorce Case\*

### Assumptions:

- No kids
- Draft all paperwork prior to filing
- Limited assets
- Using templates as starting points for all drafting
- Filing in person (so no electronic filing fee)
- Postage (if any) will be absorbed into the final fee; try to communicate and exchange documents electronically



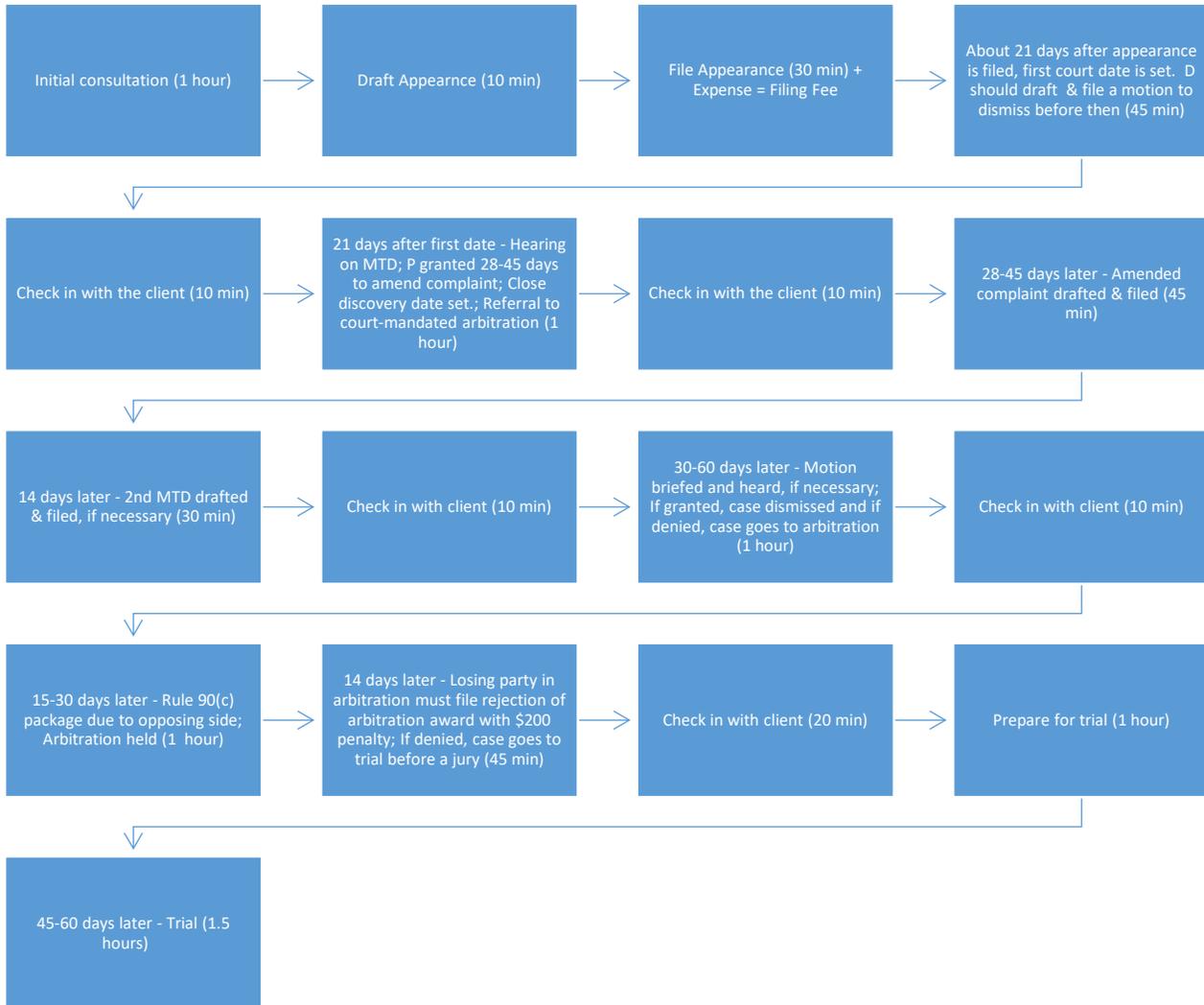
*\*The time increments used in the example above were arbitrarily selected and are being used for illustration purposes only.*

## Credit Card Defense Case Involving Fraud\*

### Assumptions:

- The motions schedule could change and thus the timing would change
- The court could grant extensions that are not reflected below
- Contested case, over \$10,000 at stake, and a jury demand is filed
- Filing in person (so no electronic filing fee)

- Using templates as starting points for all drafting
- Postage (if any) will be absorbed into the fee; try to communicate and exchange documents electronically



*\*The time increments, prices and other information used in the example above were arbitrarily selected and are being used for illustration purposes only.*

# Calculating your Business Expenses, Minimum Salary, Desired Salary, and Revenue Goals

An important step in evaluating your pricing structure and your approach to delivering client services is understanding three things: how much it costs to run your business; how much money you need to live on; and, given the stage of your practice, how much money you ultimately want to make beyond that.

## □ Identify and Calculate Your Monthly Business Expenses

Your business expenses include all costs and expenses associated with running your firm, including office expenses, insurance, software, and other technology expenses; marketing and other professional expenses; and general administration and overhead costs. Taxes (e.g. self-employment taxes, if applicable) should be included as well.

## □ Identify and Calculate Your Personal Living Expenses/Minimum Annual Salary

For purposes of this checklist, your annual personal living expenses include all expenses that are necessary to maintain health, safety, well-being, and the ability to earn money. Examples may include costs associated with housing, utilities, food, clothing, and transportation, and various types of insurance, such as health, disability, and automobile. Once you have calculated your annual personal living expenses, add the income taxes that would be paid on your annual personal living expenses in order to calculate your minimum annual salary.

## □ Determine Your Desired Annual Salary

Your desired annual salary will take into account your annual personal living expenses and the additional disposable income you want to spend and save each month (e.g. recreational activities, saving for vacations, saving for retirement, etc.), and remembering to also take into account income taxes. Obviously, your desired annual salary needs to be realistic for the stage of your practice. If you have just started your firm, your desired salary realistically may be just above what it takes to meet your expenses, while at later stages, it should be more realistic to aim higher.

By understanding your costs and identifying realistic income goals, you can determine how much per month or per week you need to average in order to meet your goals. If, for example, your business and living costs add up to \$40,000 per year and you hope to make at least \$10,000 beyond that, you need to average \$1,000 per week to achieve your goal (assuming you take off for holidays and some vacation time).

Looking at your expenses and goals in this fashion helps free you from looking at things through the hourly lens, helps inform your pricing strategies, and helps you evaluate how you are doing. Instead of looking at how much you should charge a client for each hour, you can look at what mix of paid services you need to average each week/month/year to meet your revenue goals.

## Conduct Market Research

An important step in the pricing process is determining what other attorneys and businesses in your service area are charging for similar services or other types of resources where there is a discernable market for that service, such as Avvo.com or the online legal forms market. What is the going rate for your type of service? How are lawyers or firms in your practice area and community branding and marketing their services? The purpose of this market research is not to encourage a race to the bottom or suggest that your pricing should match what others may be offering, but your competitor's pricing and branding will help you understand the market. Differentiating yourself and explaining the value you offer will help you attract prospective clients and is an essential part of your branding. If your proposed pricing does not appear competitive in the marketplace, you may need to assess whether you can become more efficient or reinvent your processes in order to effectively compete in that space.

For example, a brief Google search showed that in the Chicago area, online divorce forms can be completed through an online service such as LegalZoom for as little as \$299.00. For as little as \$499.00, an attorney will complete the documents and handle the associated court hearing. Potential clients searching for legal services on the internet are unable to assess the quality of these forms and services. The prices associated with these forms and services are what they will see, however, and if price certainty and affordable fees are valuable to them, they are likely to be interested in contacting these attorneys and online services.

## Putting it All Together

### □ **Assign Pricing to Your Legal Services**

Now that you have determined what value and services you will offer potential clients, understand the steps and variables involved in your matters, know your business expenses and revenue targets, and have conducted market research, it's finally time to use all of the information you have collected and assign pricing to your legal services.

For more predictable matters or tasks (e.g. routine court hearings, counsel, and preparation of simple contracts or other documents), you may be able to establish standard prices for each time you do it based on the consistent value you are offering your clients in those situations. For other matters, it might be a range of prices you offer based on the value you can offer in the particular circumstances involved (e.g. lower end of range if an eviction can be resolved short of trial, higher end of range if a trial is required). Even for matters where you can't have a set price for all situations due to the variables involved, staying away from the billable hour and being transparent with potential clients about the range of prices, and the reasons for that range, is valuable and helps provide some certainty to the potential client.

For other matters, you may have two or three options you can offer the potential client, depending on particular facts involved and the client's ability and willingness to do parts of it on his or her own. For example, in a collection defense case, you might offer the potential client a fixed fee to negotiate and attempt to settle the matter for the client, with three options for what happens next: an additional set amount for a contested hearing or trial, possibly broken into phases depending on the complexity; a reverse contingency arrangement based on how much you are able to save the client in the case regardless of the stage at which you are able to achieve that resolution; or an unbundled arrangement where you provide coaching to the client and the client then proceeds on his or her own for the remainder of the case.

These are just a few examples of how you might look at pricing a particular matter. It's important to understand that there is no silver bullet here or magic formula that can be used to determine optimal pricing for legal services in every situation. Attorneys must do what business owners do in other industries – understand the value they can deliver to their customer, use the information they have available to them to make the most educated decisions possible, and then experiment and adjust based on experience. It is a given that not every arrangement will work out in your favor, but carefully monitoring each matter will help you learn from your experiences and make adjustments to your pricing approaches going forward.

If you have established a relationship with your client based on trust and have identified for your client the key assumptions and variables that were taken into account in your original pricing, you may be able to go back to your client and discuss renegotiating the agreed upon pricing if doing so would be reasonable. Just be sure to include a clause in your Legal Representation Agreement that allows you to have this conversation and to draft and sign a new or modified Legal Representation Agreement if changes to the pricing are in fact made.

## **Develop Checklists and Templates for Each Matter**

Developing checklists and templates for particular types of legal matters and unbundling options is an integral step in streamlining your intake and pricing processes. For example, it is helpful to develop a checklist for your initial consultations. Depending on your practice, it generally is also helpful to develop templates for certain pleadings, agreements, or letters that will increase efficiency and allow you to standardize your approach.

## □ Experiment, Track Your Time, and Make Adjustments As You Go

Once you have assigned pricing to your legal services and begin to experiment, it is important to track your time and make adjustments as you go for at least the first year or two. This process will help you create a pricing baseline and guardrails, and will help you to better price your services going forward.

We are not suggesting that you track your time for the purpose of billing by the hour or pricing your services in accordance with it. Instead, we suggest that you track and evaluate how much time you are spending on particular tasks and matters. This allows you to understand if your pricing for particular matters has the potential to match your income goals over time. It may also help you determine efficiencies or better ways of doing the work. And finally, in cases where fee shifting is available or a dispute develops over the work you have done, you will often need to produce time records to substantiate your work. Unfortunately, for fee shifting, the time records may need to be in the dreaded increments from the billable hour world. See Andy Norman's article, [Attorneys' Fees, Maximize Your Recovery in Fee-Shifting Cases](#), which appeared in the Illinois Bar Journal in February 2015, for additional information on how to track time.

## Conclusion

Offering a variety of fee arrangements that are not based on the billable hour has tremendous potential for you to attract new clients, to strengthen relationships with your existing clients, and to have a more fulfilling practice that gives you every incentive to innovate and maximize efficiency in how you offer value to your clients. While there is no silver bullet here to determine which arrangement to use and how much to charge in every situation as you get started, you can set yourself up for longer-term success by using the tools and resources recommended in this Toolkit, experimenting with different fee arrangements, tracking your results, and adapting as you learn. In the process, you'll be helping move our profession towards a better future where regular people do not feel priced out of the market for necessary legal services.

## Fee Arrangement Matrix

Please note that this is not an exhaustive list of fee structures or the practice areas “ideally suited for” each structure. We hope the examples below will inspire further innovation, and we look forward to adding additional examples to this list as they are identified.

Type	Description	Well-Suited For
Fixed Fee by Task	An attorney charges a specified sum for the completion of a certain task associated with the case or matter (e.g., review of a contract, court appearance, etc).	Most practice areas
Fixed Fee by Phase	An attorney charges a specified sum for the completion of a certain phase associated with the case (e.g., initial case review, discovery, trial, etc.)	Many practice areas, including litigation, landlord/tenant, and domestic relations
Fixed Fee by Case	An attorney charges a specified sum for handling the entire case or matter. This arrangement works best for less complex matters with a higher degree of predictability about the potential range of legal work likely to be involved.	Uncontested divorce, many post-decree domestic relations issues, real estate closings, immigration visas, wills/trusts, less complex estates, landlord/tenant, more modest civil litigation, contract disputes
Recurring Fixed Fee	Recurring fixed fee arrangements can be used both in litigation and transactional settings, and in both instances involve charging a standard fee on a recurring monthly, quarterly, or other time increment basis. Non-litigation recurring fixed fee arrangements are typically used in the context of advising clients. A litigation recurring fixed fee arrangement provides clients with more certainty with respect to their litigation budgets.	Small business (non-litigation), domestic relations (e.g., contested custody cases, contested divorce), condo associations
Contract Recurring Fee	An attorney charges an initial fee for the creation of a document, such as a contract, and earns a fee every time the client uses the document through a licensing agreement or similar arrangement.	Small business (non-litigation)
Pure Contingency	The attorney receives a specified percentage of the amount recovered in the case and either the prospect of recovery and/or the amount that can be recovered is uncertain. The client generally will be charged any hard costs associated with the case, but the attorney does not receive any fee unless the case results in a successful recovery. This structure is a way to share the risk between attorney and client, and works well when the amount at stake and the potential for recovery are sufficient to balance the risk to the lawyer.	Personal injury, breach of contract, debt collection
Reverse Contingency	The attorney receives a percentage of the amount saved for the client. The base amount from which savings are calculated should be agreed upon with the client up front. Reverse contingency fee arrangements work best in cases where liability is an issue but damages are not.	Breach of contract

Fee-Shifting	Hundreds of state and federal statutes provide for attorney fee-shifting when the client prevails in a case, and also provide bargaining leverage to recover fees during settlement.	Consumer Fraud, Security Deposit, domestic relations (statutory fee shifting allowable where the other party can afford to pay fees)
Flat Fee Plus Contingency	The attorney charges an agreed upon flat fee in addition to a specified percentage of the damages awarded, if any. The client is typically also charged hard costs associated with the case. This arrangement works best in cases when there is greater uncertainty of either liability and/or the amount that may be recovered, yet the client still sees value in pursuing the matter.	Breach of contract
Flat Fee Plus Reverse Contingency	Where the attorney charges an agreed upon flat fee up front in addition to recovering a percentage of the amount saved for the client. The client is typically also charged hard costs associated with the case. This arrangement works well in situations when the client can benefit from receiving brief advice from counsel about their rights and responsibilities in the situation, and benefit from having a lawyer as their advocate to negotiate or obtain a better result than the client likely would be able to obtain on their own.	Consumer debt collection
Holdback	Specifies that the lawyer will withhold an agreed upon portion of the core fee arrangement on behalf of the client and return it to the client unless the attorney obtains a particular result, which is usually tied to client satisfaction.	Currently most often used in more sophisticated business litigation, but has broader potential applicability
Success Fees	Similar to the Holdback, in this instance the attorney receives an agreed upon bonus payment in addition to the core fee arrangement if the result meets agreed upon criteria. Aligns incentives for the lawyer and client.	Typically used in more sophisticated business litigation, but has broader potential applicability

Please see the [Fee Arrangements](#) section of the Pricing Toolkit for a full description of each fee arrangement.



# Hanging Your Shingle Resource Guide

Focus: Financial and Ethical Considerations

Whether you've started your own law practice or you're still in the planning stages, there are questions common to all practitioners about best practices, financial considerations and ethical boundaries.

This resource guide offers tips on how to start and maintain a successful firm of your own, whether as a solo practitioner, a space sharer or a member of a small firm or partnership.



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Choosing your fee structure	6
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# Selecting the Right Entity

## What kind of practice will work best for you?

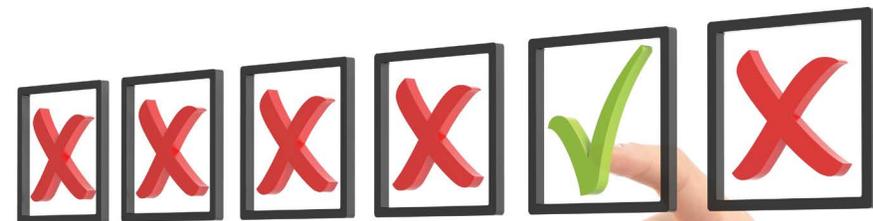
Any lawyer looking to start a practice should consider:

- Your desired level of control over the business
- Your vision of the size and nature of the business
- How much structure you want—or don't want
- The relative vulnerability to lawsuits
- Tax implications linked to the practice structure chosen
- The need to reinvest earnings in the business
- The anticipated need to withdraw cash from the business for the practitioner's use

A lawyer operating as a solo practitioner enjoys the most freedom to make business decisions, because they own the business and do not have to incorporate. However, the solo practitioner is solely liable to creditors or legal actions, like lawsuits.

On the other hand, in a partnership, whether between two attorneys or among a group of three or more, each partner is jointly and severally liable for the practice's debt. This means that any individual partner can expose the others to liability to third-party creditors, which can jeopardize not only the business's assets, but the partners' personal assets as well.

Of course, there may be a better compromise for those who would like more protection against liabilities which arise from professional malpractice involving those associated with the same entities. Limited liability corporations, or LLCs, are governed by individual states' organizational rules, and restrict potential liability to the business's assets alone.





# Choosing a Partner

When choosing a partner, refer to the American Bar Association's *Model Rules of Professional Conduct* regarding the obligation attorneys have to avoid forming a partnership with any non-lawyer. All attorneys are obligated to consider their own competence in different areas of the law. When you practice solo, you do not want to be a generalist, but a specialist. If you do want to run a firm that serves anyone with any legal issue, bring in other attorneys with specializations that complement yours.

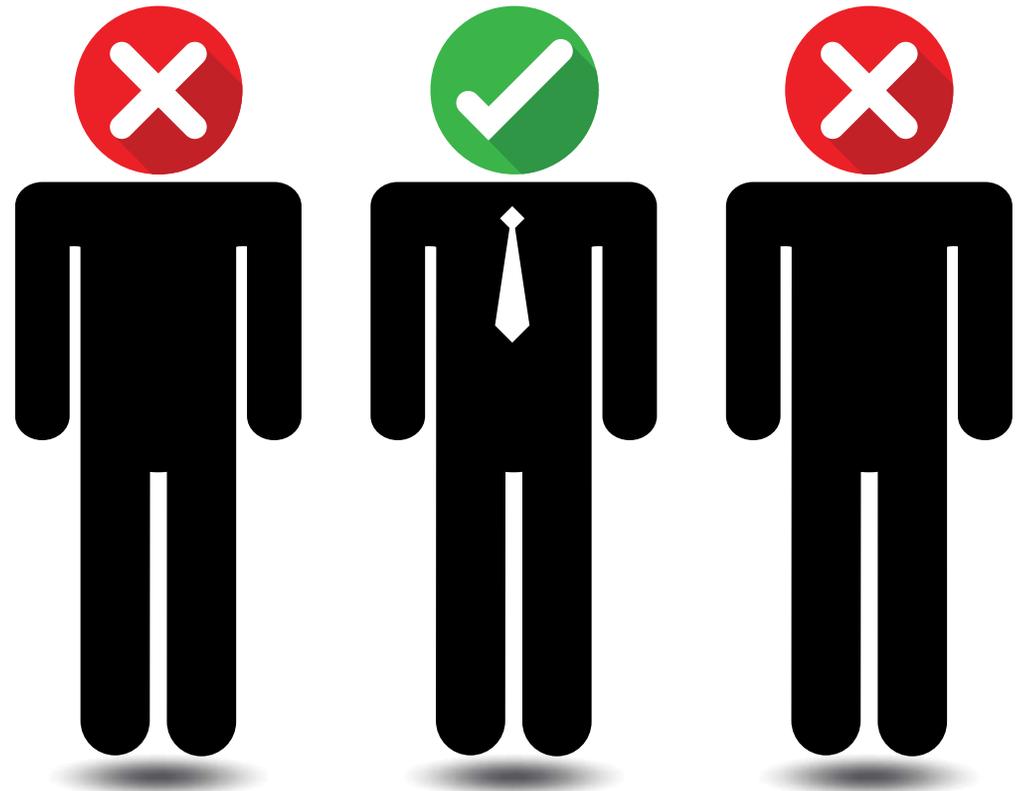
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## Must-do

Avoid forming partnerships with non-lawyers.

– American Bar Association's *Model Rules of Professional Conduct*

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# Finding Your Clients

When seeking out new clients for your practice, refer to the [ABA's rules on advertising](#), specifically those concerning direct contact with potential clients. Lawyers can solicit clients by mail, and through legal service organizations that refer people with legal concerns to lawyers who are qualified to represent them.

However, the most important source of new clients are referrals provided by existing clients. Additional sources for referrals include judges, fellow legal professionals and businesspeople. The importance of networking in growing your client list cannot be overstated.

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## Best Practice

Existing clients are your most important source of referrals.

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# Nuts and Bolts

Now that you know what type of practice you want to open, and you have a strategy for finding clients, how do you open the doors to your practice?

You should have two bank accounts—an operating account that will be used for the firm’s expenses, and a trust account in which clients’ funds are held in escrow as an advance on legal fees and expenses. Any interest earned on funds in the trust account—which might be either an IOLTA (Interest on Lawyer Trust Account) or a simple client escrow account from which fees are drawn—must be paid to a state entity. Usually, this is the Lawyers’ Trust Fund.

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## Best Practice

Set up two bank accounts—an operating account for firm expenses and a trust account for client’s funds held in escrow as an advance of legal fees/expenses.

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With regard to trust accounts, funds being held on behalf of a client in the short term should be deposited into an IOLTA, while large amounts being held over a long period of time should go into an interest-bearing escrow account on behalf of that client alone.

Lawyers planning to handle cases in several areas of the law might want to open a number of different interest-earning accounts that correspond to those areas of practice. It’s strongly recommended that you do not co-mingle the firm’s operating funds with clients’ money, as many of the problems attorneys find themselves in is related to the merging of client and operating funds. This often results in attorneys not having enough funds to cover clients’ money.

One way to avoid mixing funds is to choose checks of a different color for each account which you have opened. When settlement checks are deposited into the trust account—they should never go into the operating account—the bank should be contacted before the money is distributed to the client to ensure that the money has not only been received but has been made available for withdrawal.





# Should You Take Credit Cards?

Why might you agree to take credit cards from clients?



Some of the advantages:

- ✓ Client convenience
- ✓ Ability of clients to authorize automatic, recurring payments
- ✓ Faster receipt of payment
- ✓ The credit card company, rather than the firm, handles the finances



The downsides?

- ✗ Your firm pays the processing rates
- ✗ You must have a signed engagement letter from the client authorizing the use of the credit card
- ✗ The higher potential for co-mingling of funds

The solution? Opening two separate accounts for credit card payments. Use your operating account for recurring earned fees which clients may pay during the duration of the case. Open a second account for retainers, which allows you to estimate how much additional money you will need to collect to account for the fees.

Even with this backup plan in place, malpractice insurance is highly recommended. Malpractice claims can arise from many different activities, including the co-mingling of funds.





# Choosing Your Fee Structure

The different options for charging fees are: hourly billing, task-based billing, flat fees and contingency fees, which implicate [ABA Rule 1.5](#).

Regardless of the fee structure you choose, you must be careful to disclose it to your clients when they retain you and to obtain their informed consent before you begin to work. You must also obtain your client's informed consent to any fee splitting that involves an attorney who is not employed by your firm.

So what's left after you pay all of these bills? Clearly, the firm's income minus expenses equals the attorney's income, and as the sole practitioner or the partnership becomes increasingly experienced, the members of the firm will learn which expenses are necessary and which can be avoided.



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## Must-do

Always disclose your fee structure to clients when they retain you. Always obtain their informed consent before you begin work.

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# Limiting Expenses to Maximize Revenue

To whatever extent possible, you should try to outsource all non-revenue-producing activities, including administrative tasks, and accounting and finance functions. Keep in mind that every hour you spend on non-billable activities such as accounting or administration is one less hour you are spending on billable, revenue-generating tasks for your firm.

Aside from outsourcing, another great way to accomplish non-revenue tasks is to automate those tasks using a checklist or software system that completes these tasks automatically. This will leave you more time to perform revenue-generating work for your clients.

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## Best Practice

Minimize all non-income-producing activities by outsourcing them.

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# Which Accounting System?

The most important consideration in choosing an accounting system to help automate your administrative tasks is its ability to integrate with your time and billing systems.

The better each of your systems communicates with one another, the more efficiently you can complete these tasks. Another must-have is the accounting system's ability to accept direct bank and credit card payments so you can have real-time financial information when you sign in. Whichever accounting system you choose, you should reconcile all of your accounts on at least a monthly basis, and analyze your billing and receivables frequently to target chronically delinquent accounts and avoid continuing to work on cases that aren't generating any revenue.

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## Best Practice

Reconcile all of your accounts at least on a monthly basis, if not more frequently.

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# Key Takeaways

- Seriously consider how much control you wish to have over the business, your vision for the size and nature of the firm, how much you will need to pay yourself, and your tolerance for risk.
- Consider what kind of entity you wish to form. What are the tax implications and personal risks for different types? What is the need to reinvest earnings in the business? How much structure is needed?
- Avoid forming a partnership with non-lawyers.
- Do not attempt to be master of all practice areas. If necessary, consider associating with other lawyers with expertise that complements your own.
- Know that your existing clients are the best source of new client referrals.
- Set up separate bank accounts for operating funds (to handle expenses) and client funds (a trust account where funds are held in escrow).
- Open separate interest-bearing accounts that correspond to different areas of practice.
- Do not co-mingle funds.
- Settlement checks must go into the trust account—they should never go into the operating account. Further, the bank should be contacted before the money is distributed to the client to confirm the funds' availability and delivery.
- Consider the pros and cons of accepting credit cards. It can be convenient and efficient. But you will pay processing fees and client authorization is required. To avoid co-mingling, set up one account for operating expenses and another for retainer fees.
- Purchase malpractice insurance. Malpractice claims can arise from co-mingling funds, among myriad other things.
- Carefully consider the different fee options, but make sure you disclose these clearly when retained by a client and secure their informed consent.
- Outsource as many of the non-revenue-generating tasks as possible, such as administrative and accounting functions.
- Pick an accounting system that works with your time and billing systems.
- Reconcile all of your accounts on a monthly basis—if not more.
- Establish a budget and treat it as a working document that you review and adjust on a routine basis.
- Look to your bar association for additional guidance and resources.



This resource guide is based on a LexisNexis® Webinar titled “Starting Your Own Firm: Key Financial Considerations,” featuring Matthew J. Costello, CPA, a partner at Novak Costello CPA Group, LLC, in Chicago, and Lisa M. Nyuli, Esq., a family law attorney in South Elgin, IL.

It was edited, in part, by Moira McGuire Kulik, Esq., a practitioner of eight years and a graduate of the Temple University James E. Beasley School of Law, and Tom Hagy, former publisher of *Mealey's™ Litigation Reports*, now managing director of HB Litigation Conferences.

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# 10 steps to start your business

*Starting a business involves planning, making key financial decisions, and completing a series of legal activities. Scroll down to learn about each step.*



# 1

## Conduct market research

Market research will tell you if there's an opportunity to turn your idea into a successful business. It's a way to gather information about potential customers and businesses already operating in your area. Use that information to find a competitive advantage for your business.

[LEARN MORE](#)

**2**

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## Write your business plan

Your business plan is the foundation of your business. It's a roadmap for how to structure, run, and grow your new business. You'll use it to convince people that working with you — or investing in your company — is a smart choice.

**LEARN MORE**

# 3

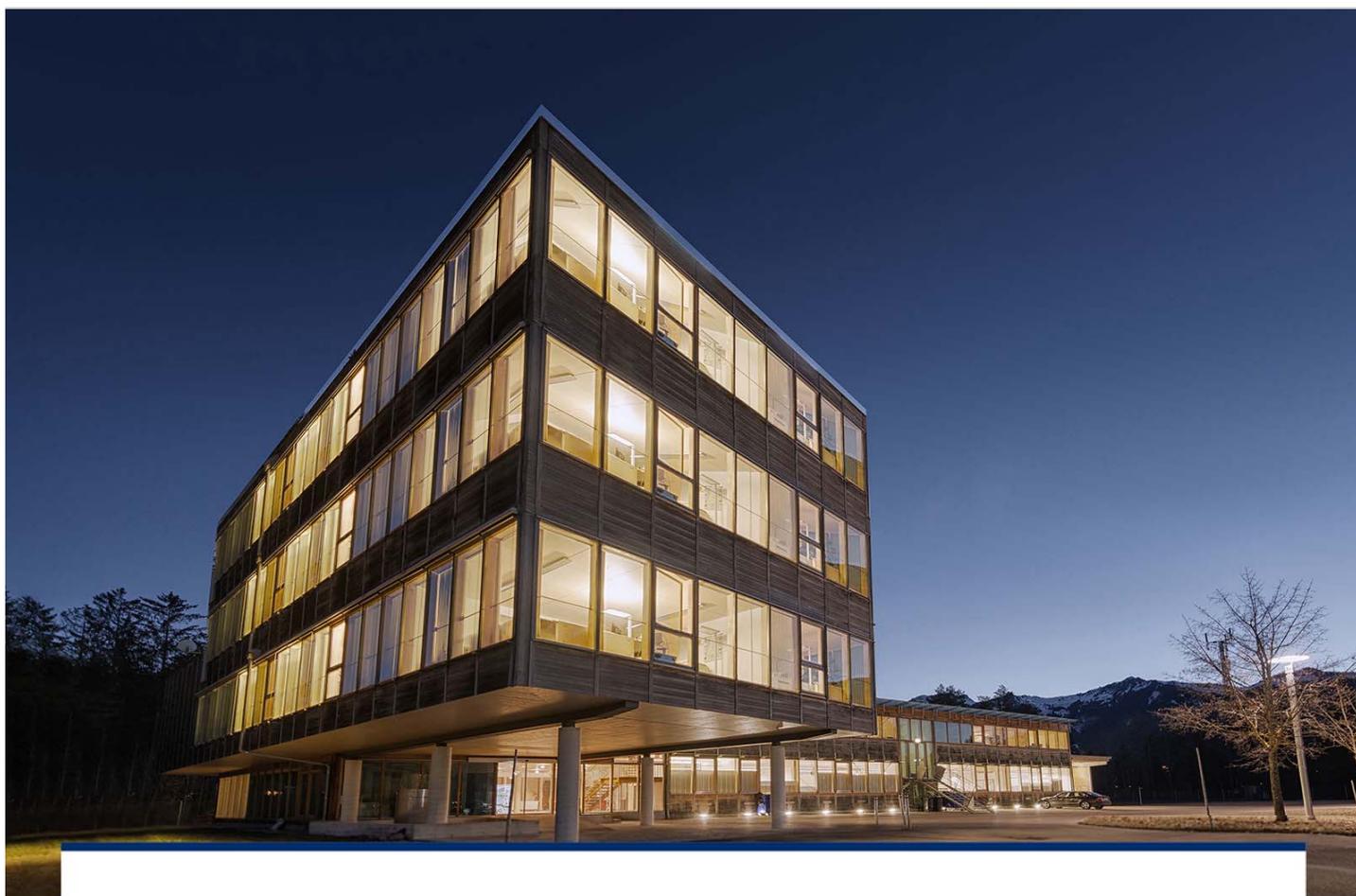
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## Fund your business

Your business plan will help you figure out how much money you'll need to start your business. If you don't have that amount on hand, you'll need to either raise or borrow the capital. Fortunately, there are more ways than ever to find the capital you need.

[LEARN MORE](#)





# 4



## Pick your business location

Your business location is one of the most important decisions you'll make. Whether you're setting up a brick-and-mortar business or launching an online store, the choices you make could affect your taxes, legal requirements, and revenue.

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# Choose a business structure

The legal structure you choose for your business will impact your business registration requirements, how much you pay in taxes, and your personal liability.

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## 6



# Choose your business name

It's not easy to pick the perfect name. You'll want one that reflects your brand and captures your spirit. You'll also want to make sure your business name isn't already being used by someone else.

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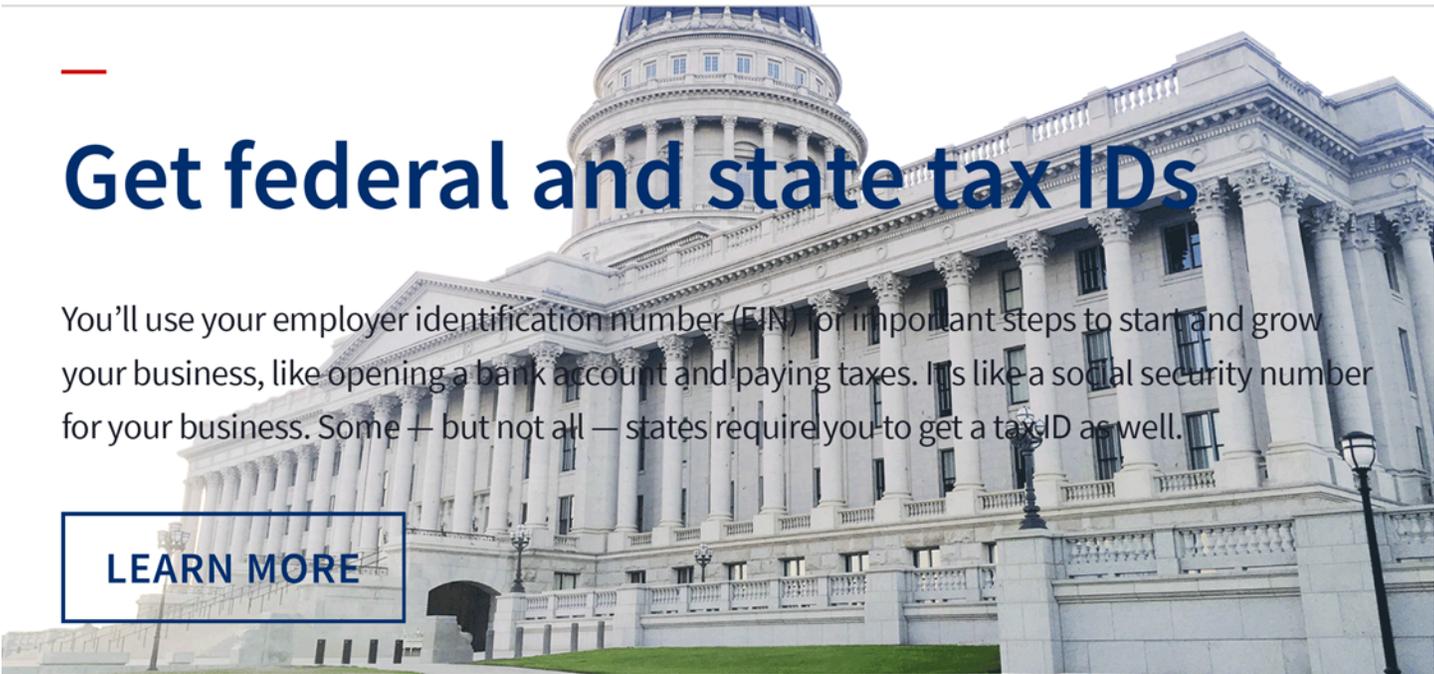
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## Register your business

Once you've picked the perfect business name, it's time to make it legal and protect your brand. If you're doing business under a name different than your own, you'll need to register with the federal government, and maybe your state government, too.

[LEARN MORE](#)

A photograph of the U.S. Capitol building in Washington, D.C., showing its iconic dome and classical architecture with columns and a balcony.

# Get federal and state tax IDs

You'll use your employer identification number (EIN) for important steps to start and grow your business, like opening a bank account and paying taxes. It's like a social security number for your business. Some — but not all — states require you to get a tax ID as well.

[LEARN MORE](#)

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# Apply for licenses and permits

Keep your business running smoothly by staying legally compliant. The licenses and permits you need for your business will vary by industry, state, location, and other factors.

[LEARN MORE](#)

[MENU](#) 

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# Open a business bank account

A small business checking account can help you handle legal, tax, and day-to-day issues. The good news is it's easy to set one up if you have the right registrations and paperwork ready.

[LEARN MORE](#)

[MENU](#) 

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Congratulations ! It's time to cut the big ribbon. Your business is officially open. Now, focus on managing and growing your business.

## Need help? Get free business counseling.

*Get advice from partner organizations like SCORE mentors, Small Business Development Centers, and Women's Business Centers. Find one now.*

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