

Differentiating a firm's services as a solo practitioner

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After 40 years, I left Big Law in April 2017 and reinvented myself as a solo practitioner. It wasn't easy ... at first.

For me, "solo" means having no full-time secretary or paralegal, no mailroom, no billing coordinator and no marketing department. It is a completely holistic approach to legal practice, from drafting documents to filing them via ECF on PACER. Whether it is billable work or not, few tasks are delegated to others. For reasons that I do not yet fully understand, I am loving it all.

This article will address two solo practice questions. First, how does the solo practitioner differentiate the firm's services from services provided by other law firms in the marketplace? Second, how can lawyers launching solo practices increase the likelihood of a successful start?

SPECIALIZATION: THE KEY TO STANDING OUT

Instead of setting out to learn new legal skill sets and broaden the scope of a new practice, lawyers contemplating solo practice should concentrate on targeted areas of specialized expertise they have developed over years of practice. Doing so permits solo practitioners to target clients needing that lawyer's unique skill set and representative experience.

Larger firms tend to market their broad bandwidth and expertise. However, having spent years writing and speaking about how best to defend complex, science-intensive cases, it did not make sense to suddenly start seeking, for example, labor and employment work.

I have always concentrated my practice in environmental and toxic tort litigation, product liability litigation (particularly that involving drugs and medical devices), and personal injury.

Based on the enthusiastic response from longtime clients, all of whom followed me to my new practice, I am confident that I made the correct decision in continuing to do that work that has brought me success in litigation in the past. In my solo practice, I can lean on my niche and expertise to enhance my brand in the marketplace.

By concentrating my practice, I can further elevate my expertise in the field and clients' perception of that expertise. This concentration of focus was not always possible for me as a partner in a larger firm.

For example, at about the time that I started my solo law practice, I was asked to serve as chair of the Toxic & Hazardous Substances Litigation Committee of the International Association of Defense Counsel. In that capacity, I have the privilege of working daily with the leading toxic tort and environmental litigation practitioners around the world.

In this role, it makes no difference that I am not a partner in a law firm that has a thousand lawyers and offices throughout the world. Moreover, I have a network of close colleagues around the country with whom I can share ideas and, when necessary, brainstorm about issues in the matters that I am handling.

Collegial organizations such as the IADC keep the solo practitioner on top of current issues in their area of expertise. I view the IADC Toxic & Hazardous Substances Litigation Committee as a virtual law firm that enables me to work closely with the very best defense toxic tort practitioners. Rarely was I able to find this level of collegiality or expertise by walking down the hall when I was working at a law firm.

Similar to the IADC, organizations such as the Defense Research Institute and the Product Liability Advisory Council offer solo practitioners the ability to network with, and learn from, lawyers at the pinnacle of the profession in their area of specialty.

What work do I seek as a solo lawyer? Corporate clients with whom I worked extensively in the past now consider me for one-off litigations.

On the other hand, I do not expect to be appointed lead counsel in a multidistrict litigation involving hundreds of product injury claims.

Nor do I have any reasonable expectation of being retained to defend a "bet your company" case. Those kinds of matters will be given to large law firms with large supporting casts of characters.

However, I can handle any site-specific environmental case with confidence. In any competition among lawyers seeking to be retained in a toxic tort litigation involving exposure to hazardous substances or contaminated water or air, I would be able to make a strong showing in seeking the retention.

How then do I differentiate myself — as a solo litigator — from other firms?

A solo practitioner can set themselves apart from larger firms in several key areas.

Staffing

Large and midsized law firms tend to overstaff cases with layers of junior partners, associates and paralegals. In any given matter, a client may see the work of four or more timekeepers on a billing invoice, all with different billing rates.

Even in smaller law firms, it is not unusual for the “client relationship” partner to delegate the handling of a case to a more junior partner, who will in turn seek the assistance of a junior or midlevel associate to perform the day-to-day work on the case.

Layered litigation staffing, while very profitable to the law firm, results in substantially higher fees and may not be in the client’s best interest.

Law firm partners seek to justify the heavy use of associates with lower billing rates on matters by contending that the practice saves the client money in the long run. However, when the associate is doing something for only the first or second time, it often takes twice as long to perform that task than the time it would take for a more experienced lawyer to complete it.

In contrast, a solo practitioner personally performs every aspect of case. There is a consistency that does not often exist in a law firm.

Billing

Since the Great Recession, corporate counsel have more carefully protected the company’s bottom line. The hourly billing rate increases routinely sought by law firms each year do not endear law firms to their clients.

In my firm, the client sees only one timekeeper’s time on an invoice and a single billing rate. Moreover, my billing rate is often substantially lower than the billing rates charged by the competition at law firms. On occasion, my billing rate is comparable to what the firm bills out for its midlevel associates.

Avoiding multi-layered hourly billing – with streamlined, flat-rate service – boosts client confidence and provides clarity to the relationship. Cost is another positive differentiating factor from the client’s perspective.

Of course, my overhead is much lower than the overhead of a traditional law firm. For example, I do not have to amortize the cost of those fancy internal staircases that connect one marbled floor to another. Nor do I need to pay the salaries of multiple non-billing staffers in marketing and accounting departments in the law firm’s back offices.

Some law firms have even gone so far as doing away with billing in one-tenth of an hour increments in favor of a minimum quarter-hour billing entry. For many “routine” cases that cross in-house counsel’s desk, retaining a large law firm

may not make strong financial sense when a solo practitioner can successfully defend the matter at considerably lower cost.

Reporting

Client communication is often more direct with a solo practitioner. I recognize that I must be available 24/7 and remain accessible via cellphone, both at home on the weekend and while on vacation.

My advice to solo practitioners is to make effective and efficient communication a priority. There is never a need for me to “get back” to the client because I need to ask the associate on the case what is going on.

Being on my own enhances my relationship with clients. The client trusts me and has confidence that its matter is being handled. Whether it is speaking to the client, a co-defendant or an adversary, there is no one more fully informed about the issues in the case than I am.

Loyalty

Trust and longevity of client relationships are vital to the solo practitioner. It is axiomatic that the client hires the lawyer, not the law firm. The partner whom the client retains is no doubt loyal to the client, but is the partner’s law firm?

If a potential conflict of interest arises at a law firm involving two clients, the law firm generally makes the decision concerning which clients to cut loose based on the law firm’s bottom line.

Even where there is no actual conflict of interest, “issue conflicts” may result in the firm asking the client relationship partner to turn down a retention because the legal position that the firm will have to advocate on the client’s behalf may conflict with the legal position taken by other firm clients in unrelated matters.

This constant weighing of the economic value of competing client relationships may cause the relationship partner of the spurned client to leave the law firm altogether to continue representing the client at another firm.

In contrast, the corporate client of the solo practitioner does not have to be concerned with how much clout the client has with the firm. Unquestionably, every client relationship is extremely important to the solo practitioner.

Bottom line: I am the same lawyer I was when practicing at the big law firm, but ... more efficiency! Less cost! Better result!

SUCCESSFULLY LAUNCHING A SOLO PRACTICE

The convenience of — and access to — advancing technology helps to level the playing field. User-friendly legal software, for example, allows me to hold my own against larger firms.

Even in the most document-intensive litigations, I can collect and organize documents with ease and efficiency. I can also

save all case-connected emails instantaneously to a specified location using Dropbox.

Pleadings and motion papers are routinely scanned, downloaded and directed to the appropriate online folder. By synchronizing my office PC and laptop, I can work on the go.

Keeping current on new advances in legal technology and software programs facilitates my ability to wear multiple hats at once. There are even web-based document management software programs, such as Summation or Relativity, that aid in reviewing otherwise unwieldy document productions, as well as identifying privileged and “hot” docs.

I have retained clients and acquired new ones because they have confidence that I, even as a one-man show, can deliver high-quality work.

As in any new business venture, there are challenges in commencing a solo law practice. Despite retaining all my clients in my transition to solo practice from a law firm, I experienced a degree of angst because, at the start, money was flowing in only one direction — out!

Even with existing matters to work on the day that my firm’s doors opened, I recognized that there would be a considerable gap of time until work-in-progress was converted to an account receivable on the client’s desk.

Depending on the client, it can take between 30 and 90 days before a bill is paid and payment is received. For example, if the firm opens its doors on the first day of a new calendar year, work performed on that first day will not likely be billed until the first week of February.

In that scenario, if the client routinely pays its bills within 60 days of receipt of an invoice, the lawyer may reasonably expect to be paid in early April. Therefore, the fledgling solo must consider how to pay the firm’s bills through mid-April, not to mention expenses at home.

For a lawyer with long-standing client relationships, it may be reasonable to request a modest retainer from the client to help you bridge this gap. If the solo does not have client matters to work on at the outset, starting out can be an even more financially daunting challenge.

STAY INVOLVED AND COMMITTED!

Participating in professional continuing legal education activities as a speaker or panel member is an excellent way to gain useful exposure and let a large number of your colleagues know about your new business venture. If you are a member of DRI, the organization will publish a notice of your move in its monthly *For The Defense* publication in the Members on the Move column, including a brief discussion of your practice.

Shortly after opening my practice, I was invited by the Environmental Section of the New York State Bar Association to provide an overview of toxic tort litigation at its annual toxic tort conference in New York City. The NYSBA marketing materials for the meeting were sent to every NYSBA member, whether they attended the conference or not, reminding them of my area of practice and my new business venture.

Shortly thereafter, I moderated a panel that I assembled at an IADC meeting in Quebec City, Canada, titled “Genetically Modified Food: Will the World’s Food Supply Be Blessed or Cursed?” It provided another good opportunity to keep both my name and practice interests front and center before a large and influential group of lawyers and prospective clients.

In addition to staying active in legal groups, I maintained my relationship with members of the press, including Bloomberg BNA Toxics Law Reporter, Bloomberg Law, Law360, Inside Climate News and Thomson Reuters Westlaw. I provided my new contact information to journalists that had used me as a source to discuss developments in environmental or toxic tort litigation in the past.

As a result of this involvement, tens of thousands of their readers in legal fields were made aware that the “Law Office of William A. Ruskin” had come into existence. Equally important, the fact that prominent legal publications were seeking my views for articles reinforced to my clients that I was a thought leader in my practice area.

Finally, operating a solo law practice provides unfettered opportunities for civic engagement. I can accept pro bono opportunities as I deem appropriate without having to justify to others my reasons for doing so or responding to law firm inquiries concerning whether there will be some opportunity to turn the pro bono engagement into a profit-making venture down the road.

Since starting the law practice, I have accepted more volunteer mediation assignments from the U.S. District Court for the Southern District of New York, for whom I have been mediating disputes for 23 years, than ever before.

Because my law office is in Westchester County, New York, I joined the board of the Westchester Chapter of the New York League of Conservation Voters to become more deeply engaged in local environmental concerns.

In addition, I joined U.S. Sen. Chris Murphy’s Long Island Sound Advisory Committee, which is constantly evaluating issues at the intersection of commerce and the environment on the Long Island Sound. Civil engagement and commitment go hand and hand with solo law practice.

CONCLUSION

Solo practice is a separation from the “business” of law and an embrace of legal practice as a “profession” of law.

My law firm operates like a business, but my days are no longer overwhelmed by the constant accounting of billable hours, client development activity, shared originations, collections and future revenue projections.

In larger firms, lawyers may not always be able to make decisions that truly enhance their practices. In going solo, I devote more time to elevating my legal expertise and furthering my clients' legal objectives.

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