

Are You Inexperienced and Solo?

by Janean S. Johnston

AS I WRITE THIS ARTICLE in October 2008, law school graduates and survivors of bar exams are being sworn into bars across the country. According to the American Bar Association, more than 70 percent of lawyers in private practice in the United States are in firms of five attorneys or fewer. Solo practitioners are sued more than twice as often as larger firms.

ALPS — the Virginia State Bar's endorsed legal malpractice insurance carrier — reports that the top three practice areas in Virginia that are vulnerable to malpractice claims are plaintiff-personal injury, real estate, and domestic relations—family law.

Most ethics complaints are not filed against newly admitted attorneys because they do not have many clients. These lawyers don't procrastinate, and they respond to client matters, return phone calls promptly, and communicate regularly. Although they don't have as many conflicts of interest, new attorneys should not feel immune to ethics complaints.

For example, the competency requirement of Rule 1.1 of the Virginia Rules of Professional Conduct ethics rules can easily trip up the new practitioner. Practical and procedural practices for serving a client competently usually are not taught in law school. At larger firms, new associates often have mentors within the firm, but solos do not have that option.

What should a new solo do to overcome the lack of an in-house mentor? One option would be to consult or associate with an experienced lawyer. Comment [2] to Rule 1.1 allows the inexperienced lawyer to spend whatever study time is necessary to learn the skills required to adequately represent a client. When the client base is small, this can be a good choice. However, remember, that not all of this time can be billed to the client if it violates Rule 1.5 regarding reasonableness of the fee.

If a potential client approaches a new attorney with a matter that the attorney has neither the experience nor the willingness to take on, the lawyer can refer the person to another attorney or to the VSB Virginia Lawyer Referral Service at (804) 775-0808 in Richmond or (800) 552-7977 outside Richmond.

The implementation of Rule 1.15, which governs safekeeping of client property and complying with trust accounting requirements, has been a major challenge for new lawyers. The VSB's sanctions for trust account violations are severe, and noncompliance is easy to prove.

To teach lawyers how to establish, maintain, and reconcile trust accounting records, the VSB has developed a continuing legal education program, The Devil Wears Green. I encourage all new solos to attend this seminar or a similar CLE program. To schedule The Devil Wore Green for a bar association, contact Michelle L. Townsend at (804) 775-0557 or townsend@vsb.org.

Other client-service issues and related ethics rules that are vital to building a thriving practice include:

- Rule 1.2 concerns the scope of representation, which is best discussed during the initial client meeting and reinforced in a fee agreement. This is also the time to explain what can be accomplished, so that unrealistic expectations are not created.
- Rule 1.5, which addresses fees and their reasonableness requirements, stresses the importance of stating clearly the basis for the fees, so that a client can give informed consent.
- Rule 1.3 requires diligence, which means that an appropriate docketing and calendaring system must be implemented to track dates and deadlines.
- Rule 1.4 governs communication issues. Part of the value in returning phone calls in a responsible and timely manner is the respect that the client feels as a result. Good communications reduces ethics complaints.

What should newly admitted solo practitioners do to survive and build a successful practice? Good solo practitioners may practice law alone, but they must not isolate themselves from other lawyers. Find other lawyers in your various areas of practice whom you respect and join bar groups for your personal and professional development. Too often solos who are truly alone become discouraged, depressed, and, sometimes, dependent on addictive substances.

Among the resources to help your practice are the VSB's Ethics Hotline at (804) 775-0564, Lawyers Helping Lawyers at (800) 838-8358, and the Fee Dispute Resolution Program at (804) 775-9423. Jay G. Foonberg's book, *How to Start and Build a Law Practice*, now in its fifth edition, is a valued resource (available at <http://www.foonberglaw.com/prod/htsab.html> for \$69.95). I would also recommend a new book, *Solo by Choice: How to Be the Lawyer You Always Wanted to Be*, by Carolyn Elefant (available on Amazon.com for \$40.50), for any newly admitted solo.

Starting out on your own can be daunting. If new solo practitioners would like advice on case management software programs or other practice management resources, please call me at (703) 567-0088.