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## Table Of Contents

### CHAPTER 1  OPENING AND MAINTAINING A LAW PRACTICE ..........1.1

**I. Business Entities:** .................................................................1.1

A. Overview: ..................................................................................1.1

B. Proprietorship or Solo Practice: ......................................................1.1

C. Partnership Or Multi-Lawyer Practice: .........................................1.2
   1. General Partnership: ...............................................................1.4
   2. Limited Partnership: ...............................................................1.4
   3. Limited Liability Partnership: .................................................1.5
   4. Publicly Traded Partnership: ....................................................1.6
   5. Joint Venture: .........................................................................1.7

D. Corporation: .................................................................................1.8
   1. C Corporation: .......................................................................1.9
   2. S Corporation: ........................................................................1.9

E. Limited Liability Company: .........................................................1.10

F. Other Forms of Business: ..............................................................1.12
   2. Cooperative: .........................................................................1.13
   3. Association: ...........................................................................1.14
   4. Tax-Exempt Entity: .................................................................1.14
   5. Real Estate Investment Trust (REIT): .......................................1.15
   6. Regulated Investment Company (RIC): ..................................1.16
   7. Real Estate Mortgage Investment Conduit (REMIC): ..............1.17
   8. Estate: ..................................................................................1.18
   9. De Facto Corporation: .............................................................1.19

**II. Law Office Basics** .................................................................1.20

A. Business Plans: ..........................................................................1.20

B. Why You Need a Business Plan: ..................................................1.20

C. Components of a Business Plan: ..................................................1.21

D. Options for Writing a Business Plan: ............................................1.21

E. Budgeting: ..................................................................................1.22
   1. When You Should Do It: ..........................................................1.22
   2. Fixed or Adjustable Monitoring: ..............................................1.22
   3. Requisite Tasks: .....................................................................1.22
   4. Educated Guesstimates v. Projections Based Upon Hard Numbers: .................................................................1.22
F. Office Space Considerations: .................................................................1.23
   1. Buying Versus Leasing: .................................................................1.23
      a. Benefits of Buying: ...............................................................1.23
      b. Drawbacks of Buying: .........................................................1.23
      c. Benefits of Leasing: .............................................................1.24
      d. Drawbacks of Leasing: .........................................................1.24
   2. Serviced Office Space/Executive Suites: .......................................1.25
   3. Shared Office Space: .................................................................1.25
   4. Ethical Considerations Regarding Office Space: ........................1.25
   5. Change of Address: .................................................................1.25
   6. The Americans With Disabilities Act ("ADA"): ........................1.25

G. Insurance: ..........................................................................................1.26
   1. Location Coverage: .................................................................1.26
   2. Coverage for Persons: ..............................................................1.26

H. Basic Equipment: ...............................................................................1.27
   1. Personal Computers: .................................................................1.27
      a. General Rules and Tips on Buying PCs: .........................1.27
      b. Research: ........................................................................1.27
      c. Laptop or Desktop: ............................................................1.28
      d. Add-ons for Your Computer: .........................................1.28
   2. Back Up System For Your Data: ................................................1.28
      a. Rules for Backing Up: ......................................................1.29
      b. Backup Software: ............................................................1.30
      c. Backup Devices: .............................................................1.30
   3. Printers: ......................................................................................1.31
   4. Fax Machine or Internet Faxing: ................................................1.32
      a. Options: ...........................................................................1.32
      b. Printing Methods for Fax Machines: ...............................1.33
      c. Phone System: .................................................................1.33
   5. High Speed Internet Access: .........................................................1.34
   6. Leasing versus Buying Equipment: .............................................1.34
      a. Deduct Payments as an Operating Expense: ..................1.34
      b. End of Lease Options: ......................................................1.34
      c. Leasing Pros and Cons: ...................................................1.34
      d. Disposing of Old Equipment: .........................................1.35

I. Signage: .............................................................................................1.35

J. Letterhead: ........................................................................................1.36

K. Home Office Considerations: .............................................................1.37
   1. Protecting Client Confidences: .................................................1.37
   2. Relevant Rules: ..........................................................................1.38

L. Practice Mobility: ...............................................................................1.38
   1. Required Hardware: .................................................................1.38
      a. Laptop or Tablet PC: .........................................................1.38
      b. Portable Printer: ..............................................................1.38
c. Cell Phone: .................................................................1.38

d. Personal Digital Assistant ("PDA"): .........................1.38

e. Portable Backup Device: ...........................................1.38

f. Carrying Case: ..............................................................1.39

2. Optional Recommended Items: ........................................1.39

a. USB Flash Drive: ........................................................1.39

b. Digital Camera: ..........................................................1.39

c. Digital Voice Recorder: ..............................................1.39

d. Portable Scanner: ........................................................1.39

e. Extra Cables and Emergency Items: ..........................1.39

f. Portable Routers: ..........................................................1.39


4. Securing PDAs and Cell Phones: ...............................1.40

a. The Problem: ..............................................................1.40

b. Using Built-In Security: ..............................................1.40

c. Other Options: ..............................................................1.40

III. Legal Resources – Law Library ........................................1.40

A. Introduction: ..............................................................1.40

B. The Basics: .................................................................1.41

C. Your Law Library: ......................................................1.41

D. Your Firm Library: ........................................................1.42

E. Your Local Law Library: ................................................1.42

F. Legal Resources For Your Firm Law Library: ................1.42

1. Primary Law: ..............................................................1.42

a. The Ohio Constitution: .............................................1.42

b. The United States Constitution: ...............................1.42

c. Online Databases: .....................................................1.43

G. Rules of Court: ...........................................................1.43

1. Ohio Rules of Court: ..................................................1.43

a. Books: .......................................................................1.43

b. Free Internet Bookmarks: ...........................................1.44

c. Online Databases: .....................................................1.44

2. Federal Rules of Court: ...............................................1.44

a. Books: .......................................................................1.44

b. Free Internet Bookmarks: ...........................................1.44

c. Online Databases: .....................................................1.45

H. Cases: ...........................................................................1.45

1. Ohio Law: .................................................................1.46

a. Books: .......................................................................1.46

b. Free Internet Bookmarks: ...........................................1.46

c. Online Databases: .....................................................1.47

2. Federal Law: ..............................................................1.47

a. Books: .......................................................................1.47
b. Free Internet bookmarks: ......................................................1.48

c. Online databases: ...........................................................1.48

I. Statutes And Legislative Materials: ................................................1.49

1. Ohio Law: ........................................................................1.49
   a. Books: ......................................................................1.49
   b. Free Internet Bookmarks: .........................................1.49
   c. Online Databases: ....................................................1.50

2. Federal Law: .....................................................................1.50
   a. Books: ......................................................................1.50
   b. Free Internet Bookmarks: .........................................1.50
   c. Online Databases: ....................................................1.50

J. Administrative Rules and Decisions: ..........................................1.51

1. Ohio Law: ........................................................................1.51
   a. Books: ......................................................................1.51
   b. Free Internet Bookmarks: .........................................1.52
   c. Online Databases: ....................................................1.52

2. Federal Law: .....................................................................1.52
   a. Books: ......................................................................1.52
   b. Free Internet Bookmarks: .........................................1.53
   c. Online Databases: ....................................................1.53

K. Local Ordinances: ..................................................................1.53

L. Treatises, Hornbooks, Practice Materials and Handbooks: ............1.54

1. Ohio Law: ........................................................................1.54
   a. Books: ......................................................................1.54
   b. Free Internet Bookmarks: .........................................1.59
   c. Online Databases: ....................................................1.59

2. Federal Law: .....................................................................1.59
   a. Books: ......................................................................1.59
   b. Free Internet Bookmarks: .........................................1.60
   c. Online Databases: ....................................................1.60

M. Legal Encyclopedias and Digests: ..............................................1.60

1. Ohio Law: ........................................................................1.60
   a. Books: ......................................................................1.60
   b. Free Internet Bookmarks: .........................................1.60
   c. Online Databases: ....................................................1.61

2. Federal Law: .....................................................................1.61
   a. Books: ......................................................................1.61
   b. Free Internet Bookmarks: .........................................1.61
   c. Online databases: ...................................................1.62

N. Form Books: .........................................................................1.62

1. Ohio Law: ........................................................................1.62
   a. Books: ......................................................................1.62
   b. Free Internet Bookmarks: .........................................1.62
   c. Online Databases: ....................................................1.63
2. Federal Law: .................................................................1.63
   a. Books: .................................................................1.63
   b. Free Internet Bookmarks: ................................1.64
   c. Online Databases: ............................................1.64

O. Jury Instructions: .............................................................1.64
   1. Ohio Law: .............................................................1.64
      a. Books: .............................................................1.64
      b. Free Internet Bookmarks: ................................1.65
      c. Online Databases: ............................................1.65
   2. Federal Law: .............................................................1.65
      a. Books: .............................................................1.65
      b. Free Internet Bookmarks: ................................1.65
      c. Online Databases: ............................................1.65

P. Verdict reporters: ............................................................1.65
   1. Ohio Law: .............................................................1.65
      a. Books: .............................................................1.65
      b. Free Internet Bookmarks: ................................1.65
      c. Online Databases: ............................................1.66
   2. Federal Law: .............................................................1.66
      a. Books: .............................................................1.66
      b. Free Internet Bookmarks: ................................1.66
      c. Online Databases: ............................................1.66

Q. Law Reviews and Journals: ...............................................1.66
   1. Ohio Law: .............................................................1.67
      a. Books: .............................................................1.67
      b. Free Internet Bookmarks: ................................1.68
      c. Online Databases: ............................................1.68
   2. Federal Law: .............................................................1.68
      a. Books: .............................................................1.68
      b. Free Internet Bookmarks: ................................1.68
      c. Online Databases: ............................................1.68

R. Citators: .............................................................................1.69

S. Legal Newspapers And Newsletters: ....................................1.69
   1. Ohio Law: .............................................................1.69
      a. Books: .............................................................1.69
      b. Online Databases: ............................................1.69
   2. Federal Law: .............................................................1.70
      a. Books: .............................................................1.70
      b. Free Internet Bookmarks: ................................1.70
      c. Online Databases: ............................................1.70

T. Legal Software Programs: ..................................................1.71

U. Legal Dictionaries: ............................................................1.71
   1. Books: ....................................................................1.71
2. Free Internet Bookmarks: ...........................................................1.71
3. Online Databases: .................................................................1.71

V. Citation Manuals: ........................................................................1.72
1. Books: ..................................................................................1.72
2. Free Internet Bookmarks: ...........................................................1.72
3. Online Databases: .................................................................1.72

W. Legal Directories: ........................................................................1.72
1. Books: ..................................................................................1.72
2. Free Internet Resources: .............................................................1.73
3. Online Databases: .....................................................................1.73

X. The Best Ohio Bookmarks: ............................................................1.73
1. Summary: ................................................................................1.73
2. Your Local Courts: .................................................................1.73
3. The Supreme Court of Ohio: .....................................................1.73
4. The Ohio General Assembly: ....................................................1.74
5. The Ohio Legislative Service Commission: ................................1.74
6. Casemaker Codes: .....................................................................1.74
7. Register of Ohio: .......................................................................1.74
8. Ohio’s Government Portal: .......................................................1.75
9. Agency Sites: ............................................................................1.75
10. Local Ordinances: .....................................................................1.75
11. Ohio Demographic and County Data: .......................................1.75

Y. Help When And Where You Need It: ..................................................1.75
1. Summary: ................................................................................1.75
2. County Law Libraries: .............................................................1.76
3. Law Firm Libraries: .................................................................1.76
4. Law School Libraries: ..............................................................1.77
5. Court Libraries: .........................................................................1.78
6. Agency Libraries: .......................................................................1.78
7. Public Libraries: ..........................................................................1.78

Z. Law Library Staff Members: ...........................................................1.79
AA. Arrangement of Library Materials: ...............................................1.79

CHAPTER 2  TIME BILLING & ACCOUNTING .................................................2.1

I. Accounts: ....................................................................................2.1
A. Trust Accounts: ..........................................................................2.1
1. Generally: ................................................................................2.1
2. Proper Management Pursuant to Rule 1.15: .................................2.1
B. Other Accounts: .........................................................................2.2
C. Credit Card Payments: ...............................................................2.3

II. Internal Fraud/Theft Prevention: ...................................................2.4
A. Monitoring: ..............................................................2.4
B. Separation Of Duties: ..............................................2.4
C. Deposits: .................................................................2.5
D. Vacation policy: .....................................................2.5
E. Review and audits: ...................................................2.5

III. Information Management: ........................................2.5
A. Time and billing procedures: .....................................2.5
  1. Computerized Systems: ..........................................2.5
  2. Selection Criteria: ..................................................2.6
  3. Additional Desirable Features: ..............................2.6
B. Accounting: .........................................................2.7
  1. Computerized Systems: ..........................................2.7
  2. Selection Criteria: ..................................................2.7
  3. Additional Desirable Features: ..............................2.8

IV. Financial Accounting: ..............................................2.8
A. Financial Statements: .............................................2.8
  1. What They Are: .....................................................2.8
  2. Frequency of Production: ......................................2.8
  3. Standard Statements:
     a. The Income Statement: .........................................2.8
     b. The Balance Sheet: ...........................................2.9
     c. The General Ledger: ..........................................2.10
B. Invoicing: ..............................................................2.10

V. Rules For Retainers, Billing: .......................................2.12
A. Retainers: ..............................................................2.12
B. Billing: .................................................................2.12

VI. Management Reporting: ............................................2.14
A. Accounts Receivable And Collection Reports: ............2.14
  1. Accounts Receivable Reports: ..............................2.14
  2. Collection Reports: ..............................................2.14
B. Productivity Reports: ..............................................2.14
  1. Work-In-Progress Reports: .....................................2.14
  2. Timekeeper Productivity Reports: ..........................2.15
  3. Firm Productivity And Management Reports: ..........2.15

CHAPTER 3 CASE MANAGEMENT & OFFICE OPERATIONS ....3.1
I. New Clients: ............................................................3.1
A. Initial Client Contact: .............................................3.1
B. Documenting the Representation ................................................................. 3.2
C. Client Communication: ............................................................................. 3.3
   1. Mail Procedures: ........................................................................... 3.3
   2. Telephone Calls: ........................................................................... 3.5
   3. Client Letters: ................................................................................ 3.6
D. Evaluating Cases: ..................................................................................... 3.6

II. Collections ........................................................................................................ 3.7
A. Seek Counsel: ............................................................................................ 3.7
B. Suits for Fees: ........................................................................................... 3.7

III. File Closing Procedures: ..................................................................................... 3.8

IV. Case management software: .............................................................................. 3.8
A. What It Is: .................................................................................................. 3.8
B. Key features of a Case Management System: ........................................... 3.9
   1. Calendaring: .................................................................................. 3.9
   2. Case Information Tracking: .......................................................... 3.9
   3. Contact Management: ....................................................................... 3.10
   4. Tickler Systems: .......................................................................... 3.10
   5. Conflict Checking: ........................................................................ 3.11
   6. Automated Document Generation: ............................................. 3.11
   7. Time Tracking: ........................................................................... 3.11
   8. Communication Management: .................................................... 3.12
   9. Information Mobility: ................................................................ 3.12
C. Main players: .......................................................................................... 3.12
D. Hardware recommendations: ..................................................................... 3.13

V. Internet security and e-mail: ............................................................................ 3.13
A. Importance: .......................................................................................... 3.13
B. Internet protection: ..................................................................................... 3.13
   1. Four Essential Types of Protection: ............................................ 3.13
      a. Antivirus software ........................................................................ 3.13
      b. Antispam software ...................................................................... 3.13
      c. Antispyware software: ........................................................... 3.14
      d. Firewall: ............................................................................ 3.14
   2. Security Suites: ........................................................................ 3.14
C. E-mail security: ....................................................................................... 3.14
   1. General Information: ................................................................... 3.14
   2. Recommendations: ....................................................................... 3.14

CHAPTER 4  HIRING, RETAINING AND TERMINATING EMPLOYEES ...... 4.1
I. Hiring employees: .......................................................................................... 4.1
A. Determining Your Employment Needs: ...................................................4.1
B. Finding The Right People: .................................................................4.1
C. The Application Process: .................................................................4.2
D. The Interview: ..................................................................................4.3
E. The Job Offer: ...................................................................................4.4

II. Managing employees: ...........................................................................4.5
A. Establishing Policies: ........................................................................4.5
B. Evaluations: ......................................................................................4.6
C. Protect Your Financial Information: ....................................................4.6

III. Firing employees: ..............................................................................4.6

IV. Payroll and taxes ...............................................................................4.7
A. Forms You Must Complete and File: .................................................4.7
B. Forms Your Employee Must Complete: .............................................4.7
C. What You Must Pay: .........................................................................4.8
D. Outsourcing Payroll: .........................................................................4.9
E. Ohio Minimum Wage: ........................................................................4.9

V. Other related issues ............................................................................4.9
A. Independent Contractors: .................................................................4.9
B. Shared Employees: ............................................................................4.10

CHAPTER 5 MARKETING ...........................................................................5.1
I. Introduction: ........................................................................................5.1
II. Ohio Rules of Professional Conduct: ................................................5.1
A. Rule 7.1 Communications Concerning a Lawyer’s Services: ..........5.1
B. Rule 7.2 Advertising and Recommendation of Professional
   Employment: .......................................................................................5.2
C. Rule 7.3 Direct Contact With Prospective Clients: .........................5.2
D. Rule 7.4 Communication of Fields of Practice and
   Specialization: .....................................................................................5.3
E. Rule 7.5 Firm Names and Letterheads: .............................................5.3

III. General Ideas And Concepts: ..............................................................5.3
IV. Necessary "Tools" for the Marketing Process: .......................................5.3
V. Niche Marketing: ................................................................................5.4
VI. Networking: .......................................................................................5.4
VII. Web sites: ............................................................................................................. 5.4
VIII. Newsletter and Correspondence:....................................................................... 5.4
IX. Visibility: .............................................................................................................. 5.5
X. E-mail Headers and Footers: ................................................................................. 5.5
   A. Signature Block: ........................................................................................ 5.5
   B. Additional Disclaimers and Notices: ........................................................ 5.5
XI. Specialization: ..................................................................................................... 5.6
XII. Resources: ......................................................................................................... 5.6
XIII. Public Relations Activities to Consider ............................................................. 5.6

CHAPTER 6 PRACTICE CHALLENGES......................................................................... 6.1
I. Making Money: ....................................................................................................... 6.1
   A. Practical Tips: ................................................................................................ 6.1
   B. Follow Your Business Plan: ........................................................................ 6.1
   C. Cash Flow: .................................................................................................... 6.1
II. Substance Abuse: .................................................................................................. 6.2
III. Burnout: ............................................................................................................... 6.2
IV. Professionalism Considerations - Client Relations: ............................................. 6.2
V. Multijurisdictional Practice (MJP): ....................................................................... 6.3
VI. Retaining Your License: ..................................................................................... 6.3
VII. New Lawyer Mentor Program & New Lawyer Training: .................................... 6.4
VIII. Supervisory Responsibilities: ............................................................................ 6.4
IX. Malpractice Insurance: ...................................................................................... 6.5
X. Disciplinary Procedures: ...................................................................................... 6.5

CHAPTER 7 QUALITY OF LIFE ................................................................................... 7.1
I. Ways to enhance career satisfaction ....................................................................... 7.1
   A. Mentoring: ..................................................................................................... 7.1
   B. Community Organization Boards, Advisory Committees: .................................. 7.1
   C. Presentation At Seminars: ............................................................................... 7.1
   D. Be Selective: .................................................................................................. 7.2
   E. Mediation/Alternative Dispute Resolution: ...................................................... 7.2
   F. Managing Your Schedule: ................................................................................ 7.2
II. Knowledge sharing/ use of computers ................................................................... 7.3
A. Sharing: .....................................................................................................7.3
B. Automate Drafting Process: .................................................................7.3
C. Knowledge Management: .................................................................7.3
D. Teleconferencing: .............................................................................7.3

III. Taking time for yourself/vacation ......................................................7.3
A. Find A Backup: ..................................................................................7.3
B. Breaks: ..............................................................................................7.4
C. Achieve A Balanced Life With Job, Family And Interests: ..........7.4
   1. Work Schedule: ........................................................................7.4
   2. Rely On Support Staff: ..............................................................7.4
   3. Efficient Communication: ......................................................7.4
   4. Pro Bono Work: .......................................................................7.4
      b. The Supreme Court of Ohio’s Statement Regarding the Provision of Pro Bono Legal Services by Ohio Lawyers: .................7.5
      c. Referral Sources: ..............................................................7.6
   5. Prioritize And Engage In Strict Self-Discipline: .......................7.7
   6. Exercise: ....................................................................................7.8
   7. Make Best Use of Drive Time: ..................................................7.8
D. Reassess Your Practice: .....................................................................7.8

IV. Summary .............................................................................................7.8

CHAPTER 8 CLOSING, SELLING OR ACQUIRING A LAW PRACTICE ....8.1
I. Overview: ............................................................................................8.1
II. Rules and Statutes ...............................................................................8.1
   A. Applicable Ohio Rules of Professional Conduct: .......................8.1
   B. Statutory References: ...............................................................8.1
III. Practice References ............................................................................8.1
IV. Preliminary Considerations ...............................................................8.2
V. Practice Disposition Triggers (Involuntary and Voluntary) .......8.2
VI. Parties that may be involved in the sale process .........................8.2
VII. Professional Responsibility Issues and Rule 1.17 Compliance ....8.3
VIII. Business Transaction Issues ............................................................8.3
IX. Law Practice Valuation .....................................................................8.4
X. Purchase Contract Elements ..............................................................8.5
XI. Buyer Issues .....................................................................................8.6
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>XII. Seller Issues</td>
<td>8.6</td>
</tr>
<tr>
<td>XIII. Closing a Law Practice</td>
<td>8.6</td>
</tr>
<tr>
<td>XIV. Practice Forms</td>
<td>8.7</td>
</tr>
<tr>
<td>XV. Conclusion</td>
<td>8.7</td>
</tr>
<tr>
<td>CHAPTER 9 EXHIBITS AND SAMPLE DOCUMENTS</td>
<td>9.1</td>
</tr>
<tr>
<td>Business Entity Comparison Chart</td>
<td>9.1</td>
</tr>
<tr>
<td>Close Corporation Agreement</td>
<td>9.11</td>
</tr>
<tr>
<td>Operating Agreement</td>
<td>9.26</td>
</tr>
<tr>
<td>Sample Register Ledger</td>
<td>9.57</td>
</tr>
<tr>
<td>Sample Settlement Statement</td>
<td>9.58</td>
</tr>
<tr>
<td>Sample Income Statement</td>
<td>9.59</td>
</tr>
<tr>
<td>Sample Balance Sheet</td>
<td>9.60</td>
</tr>
<tr>
<td>Client Intake Sheet</td>
<td>9.61</td>
</tr>
<tr>
<td>General Information Questionnaire</td>
<td>9.62</td>
</tr>
<tr>
<td>Engagement Letter</td>
<td>9.69</td>
</tr>
<tr>
<td>Non-Engagement Letter</td>
<td>9.70</td>
</tr>
<tr>
<td>Disengagement Letter</td>
<td>9.71</td>
</tr>
<tr>
<td>Hourly Fee Agreement</td>
<td>9.72</td>
</tr>
<tr>
<td>Contingent Fee Agreement</td>
<td>9.74</td>
</tr>
<tr>
<td>Mail And Fax Log Form</td>
<td>9.76</td>
</tr>
<tr>
<td>Subsequent Appointment Confirmation</td>
<td>9.77</td>
</tr>
<tr>
<td>Monthly Status Letter</td>
<td>9.78</td>
</tr>
<tr>
<td>Monthly Bill Sample Form</td>
<td>9.79</td>
</tr>
<tr>
<td>Deposition Scheduling Letter</td>
<td>9.80</td>
</tr>
<tr>
<td>Court Appearance Or Hearing Letter</td>
<td>9.87</td>
</tr>
<tr>
<td>File Closing Letter</td>
<td>9.88</td>
</tr>
<tr>
<td>Post-Representation Survey</td>
<td>9.89</td>
</tr>
<tr>
<td>News Release For Specialists</td>
<td>9.90</td>
</tr>
<tr>
<td>Confidentiality Agreement</td>
<td>9.92</td>
</tr>
<tr>
<td>Contract Of Sale</td>
<td>9.95</td>
</tr>
<tr>
<td>Notice Of Sale To Clients</td>
<td>9.100</td>
</tr>
<tr>
<td>Client Consent Form</td>
<td>9.102</td>
</tr>
</tbody>
</table>
I. BUSINESS ENTITIES:

A. Overview: The first step establishing a law practice is to choose a business entity. This chapter describes the basic tax and legal characteristics of the various types of business entities. You need to be aware of these characteristics in order to choose the appropriate entity (See Business Entity Comparison Chart).

Most of the focus in this chapter will be on selecting the appropriate type of entity for closely held companies. A closely held company is a business with one or very few owners. Closely held companies are not necessarily small businesses; and the term "closely held" has nothing to do with profitability or the level of business activity. However, there is a unique set of business considerations for a closely held company when choosing a form of business entity. The tax, legal, and management considerations are completely different for closely held companies than for publicly held companies.

The following types of businesses are most common for closely held companies:

- Proprietorship
- General partnership
- Limited partnership
- C corporation
- S corporation
- Limited liability company

There are many forms of business other than the six listed above, but closely held companies will typically not find it advantageous to use other entity types. However, in the right set of circumstances, one of the other entity choices may be desirable or necessary.

This chapter will provide the basic building blocks to make a choice of entity. After learning the basic characteristics of each entity type, the business owner will be able to evaluate the choice of entity factors discussed in later chapters to make the right decisions.

B. Proprietorship or Solo Practice: The solo practice or proprietorship is the simplest form of business for a lawyer. When a single lawyer decides to start a business and
does not form a separate legal entity, then the business will be classified as a proprietorship. As the name suggests, a proprietorship has only one owner. A solo practice can include lawyers sharing offices, of-counsel situations and contract lawyers. Any lawyer that does not have a co-owner or is not an employee falls under this category.

A proprietorship is easy to form, as there are generally very few federal and state requirements. A separate federal income tax return is not required for a proprietorship. The proprietor simply includes his/her income on Schedule C of his/her Form 1040. The owner is taxed on all the net profit, even if s/he leaves some of the cash in the business. The owner receives no tax deduction for cash draws out of the business. This type of taxation is called flowthrough taxation because the net profit or loss flows through to the proprietor’s individual income tax return.

Any net profit of the proprietorship will be subject to self-employment tax on the individual’s federal income tax return. The self-employment tax is computed on Schedule SE and is attached to Form 1040. Losses from prior years cannot be carried forward or backward to offset self-employment taxes in other years.

There is no liability protection with a sole proprietorship, except a one member LLC taxed as a proprietorship. Even then, the lawyer is personally liable for her own torts including malpractice. A legal entity can only protect against liabilities like contracts, bank debt where the attorney is not signed on the debt, which is unusual, and general trade creditors.

C. **Partnership Or Multi-Lawyer Practice:** This group includes any practice with two or more attorneys as co-owners. This does not include expense sharing arrangements. Multi-attorney practices are a partnership for state law and tax purposes, unless they form or elect to be a corporation. Multi-member LLCs are taxed as partnerships, unless an election is filed to be taxed as a C corporation or elections filed as an S corporation. A corporation can be either a C or S corporation.

There is no liability protection with a general partnership. As a separate legal entity, the partnership is primarily liable for all of its debts and liabilities. This means a creditor of the partnership can look to the assets of the partnership to satisfy liabilities. Any general partner of a partnership is also liable on any partnership debt. The liability of any limited partners is limited to their capital contribution plus any debts they personally guarantee.

A general partnership and a LLC taxed as a partnership, file a Form 1065 for federal tax purposes, with K-1 forms going to the partners reporting their share of tax items. Partners in a professional practice will generally pay Self Employment Tax ("SET") on their income. Attorneys cannot be employees of their own partnership.

A C or S corporation can be used under the corporate form, whether the entity is incorporated, or an LLC taxed as a corporation under the proper election. Tax is paid at the corporate level for any retained taxable earning of a C corporation. The
retained taxable earnings flow through to the owners with an S corporation. However, most professional firms pay out most or all of their taxable earnings in wages to the owners. Note the 50% nondeductible part of meals and entertainment, PAC contributions, officer life insurance premiums and other nondeductible items can create taxable earnings.

A partnership is a flowthrough entity for federal income tax purposes. The partnership does not pay federal income tax. All items of income, losses, gains, deductions, and credits pass through from the partnership to the partners. The partners then put these items on the appropriate schedule on their tax return. In general, any item that has special tax treatment at the individual or corporate level should flow through separately from the partnership to the partners.

The partnership files an annual informational return on Form 1065. A schedule K-1 for each partner is included with the Form 1065 to report each partner’s tax information. Each partner takes the information from his K-1 and reports this on his/her separate income tax return.

In Ohio, a partnership is generally not subject to state income tax. As under federal law, the income and deductions of the partnership are allocated to the partners in proportion to the right to share in income. Business and non-business income are treated differently. A partnership generally does not file a return with the State of Ohio. A partnership with two or more non-resident partners may, however, file a return on behalf of its non-resident partners. A partnership is subject to Ohio personal property taxes. The return of the taxable property of a partnership must be made by a partner.

Partnerships operating a trade or business activity will usually generate self-employment income or loss that will flow through to any general individual partners. Limited partners will generally not be subject to self-employment tax on their portion of the partnership profit. The partners will combine the passthrough self-employment income or loss from the partnership with other sources of self-employment income or loss and report the net self-employment income amount on their individual income tax returns. (If a partner has net self-employment income of over $400, the self-employment tax will be computed on Form 1040, Schedule SE.)

There are many different types of partnerships. Each type of partnership has its own special legal and tax characteristics.

The following types of partnerships are discussed below:

- General partnership
- Limited partnership
- Limited liability partnership
- Publicly traded partnership
• **Joint venture**

1. **General Partnership:** A partnership will be classified as a general partnership if it is not formed as a limited partnership or limited liability partnership under the applicable state law. The general partnership classification is the catchall or default category for any partnership not falling within one of these three special categories. All partners in the general partnership are general partners.

All the partners of a general partnership are liable for all the debts of the partnership. This is the main legal characteristic that separates the general partnership from other types of partnerships. The creditor of a partnership can look to the partnership or any partner for payment. State law may provide that the creditor must first collect from the partnership before going after the partners. However, each partner is ultimately liable for the partnership debts if there are not enough assets at the partnership level. A creditor can select which partner(s) to pursue. Usually, the target will be the partner(s) with the most money. There is no requirement to collect an equal amount from each partner or an amount that is proportionate to a partner’s ownership interest. If the creditor collects all his debt from one partner, then it is up to that partner to pursue the other partners for repayment. From a practical standpoint, a creditor will probably name the partnership and all general partners in a suit, and then try to collect from the entity or person with the most money.

The Ohio Supreme Court has ruled that in accordance with Ohio Revised Code Section 2329.09, partners are not primarily liable for the contractual obligations incurred by the partnership, thus requiring a creditor to first exhaust partnership property before resorting to personal assets of the partners.

2. **Limited Partnership:** A limited partnership has one or more general partners and one or more limited partners. There must be at least one general partner. As discussed above, any general partner will be personally liable for the debts of the partnership. It is possible to have a separate legal entity as the general partner. For example, a limited liability company or a corporation might be the general partner. By using a legal entity as the general partner, no individual will be personally liable for the debts of the partnership. The creditors can look only to the assets of the corporation or the limited liability company to satisfy the debts of the partnership. The partnership creditors will generally not be able to go around the corporation or limited liability company and hold the owners of the corporation or limited liability company personally liable.

Limited partners can generally not be held personally liable for partnership debts. Their liability exposure will be limited to their initial contribution, any obligation to make future contributions and any debts they personally guarantee. A creditor may be able to hold a limited partner personally liable...
if he or she has been active in the management of the partnership. A limited partner will need to look at the applicable state law to determine how much management activity may cause him or her to be held personally liable for partnership debts.

The limited partnership will be formed under the limited partnership laws of a particular state. Most states have enacted some form of the Revised Uniform Limited Partnership Act (RULPA) to allow the formation of limited partnerships in their state.

A limited partnership is managed by the general partner or partners. The limited partners may have a vote for some major business decisions. For example, the partnership agreement may have the limited partners vote on significant matters like admitting new partners, selling substantially all the assets of the partnership, and removing a general partner.

For tax purposes there are some differences between general and limited partnerships. The first difference relates to the deductibility of losses flowing through the partnership to the partners. General partners will have far fewer restrictions on the deductibility of these losses. Limited partners will have more problems with “tax basis” limitations and “passive activity” loss rules.

The treatment of self-employment tax is the second major difference between general and limited partnerships. Individual general partners will generally be subject to self-employment tax on the passthrough income from the partnership. See the self-employment tax discussion above (see Partnership or Multi-Lawyer Practice). On the other hand, limited partners will generally not be subject to self-employment tax on their share of the partnership profits. The exception to this rule is if the limited partners are actively involved in the management of the partnership.

3. **Limited Liability Partnership:** With a limited liability partnership, the partners are generally not personally liable for the acts of other partners and employees. In this respect, the partners are treated much like limited partners in a limited partnership. However, with a limited liability partnership the partners are generally liable for other debts. The partners can be active in the management of the partnership and not risk exposing themselves to personal liability.

From a tax perspective, a limited liability partnership can be somewhat unique. Like any other partnership, the limited liability partnership is a flowthrough tax entity and does not pay tax at the partnership level. However, the deductibility of losses and the self-employment tax treatment will probably depend upon each individual partner’s level of activity in the partnership. If a partner is active in the management of the partnership, the partner will probably not be subject to potential loss limitations under the tax
basis and passive activity loss rules. Inactive partners may be subject to these limitations.

The more active partners will most likely be subject to self-employment tax. The inactive partners will most likely be treated like limited partners and will not be subject to self-employment tax.

The limited liability partnership has been particularly attractive for many professional practices. Many professionals choose to practice as a partnership for tax purposes because of favorable tax treatment and flexibility. A limited liability partnership may provide additional liability protection for these professionals in some states. The limited liability partnership should protect the partners against most personal liability for acts of other partners or employees. Further, in many states it may also protect the professional partner from any malpractice liability resulting from the wrongful acts of another partner.

In most states, professionals (for example, dentists, orthodontists, attorneys, physicians, accountants, engineers, and architects) are personally liable for their own malpractice and wrongful acts of staff members under their direct supervision. The unlimited personal malpractice liability generally cannot be avoided, regardless of what type of business entity the professional selects. However, with the proper entity selection, a professional may be able to protect himself against the malpractice of other partners and staff members not under his direct control. In some states, the limited liability partnership will help in this regard. A corporation or a limited liability company may also work.

In 1994, Ohio enacted legislation to allow a partnership to become a registered partnership. Except as provided in a written agreement between the partners, a partner of a registered limited liability partnership is not liable for debts, obligations, or other liabilities of any kind of, or chargeable to, the partnership or another partner arising from negligence, or from wrongful acts, errors, omissions, or misconduct committed in the course of the partnership business by another partner, or an employee, agent or representative of the partnership. This legislation does not shelter the partner from the partner’s own negligence, wrongful acts, errors, omissions or misconduct in directly supervising any other partner or employee, agent, or representative of the partnership. To become a registered partnership, the partnership must file with the Secretary of State a registration application and the name of the partnership must contain the words “registered partnership having limited liability” or the abbreviation “P.L.L.,” “PLL,” “L.L.P.” or “LLP” as its last words or letters.

4. **Publicly Traded Partnership:** A publicly traded partnership is a special type of partnership for tax purposes only. Almost all of the partnerships that fall within the tax classification of a publicly traded partnership will be
limited partnerships. From a legal standpoint, the partners of a publicly traded partnership are not treated any differently from other general or limited partners. General partners of a publicly traded partnership will be personally liable for the debts of the partnership. The liability of the limited partners will generally be limited to their capital contributions plus any debts personally guaranteed by the limited partners.

The publicly traded partnership classification was created because people were trying to use publicly held partnerships to avoid the passive activity loss rules. One way to get around these loss limitation rules was to generate passive activity income. Promoters tried to use large publicly traded partnerships to generate passive activity income. Congress responded to this tax planning idea by creating the publicly traded partnership rules. These rules prevent investors from offsetting profits from publicly traded partnerships against passive activity losses from other activities. Publicly traded partnerships are generally larger limited partnerships that are listed on the stock exchange or other comparable market.

The publicly traded partnership rules are found in U.S. Tax Code Section 469(k). Most publicly traded partnerships will be treated as a partnership for tax purposes. However, there are some special rules found in Code Section 7704 that tax these partnerships as corporations if less than ninety percent of their gross income is from non-passive sources.

Any losses from a publicly traded partnership cannot offset income from other activities, except upon final disposition of the investment. These losses must be carried forward and can only offset future income generated from the same publicly traded partnership. The income from a publicly traded partnership is currently taxed at the partner level, after being offset by any carryover losses from that publicly traded partnership. The income cannot be offset by losses from other passive activities.

5. **Joint Venture:** A joint venture is a business arrangement to carry out a specific business project or purpose for profit. The joint venture is often terminated when the specific purpose or project has come to an end. If a separate legal entity is not created for the joint venture, the joint venture will be treated as a partnership for federal tax purposes and, generally, state law purposes. The joint venture does not need to call itself a partnership. The partnership rules will automatically apply when two or more individuals or entities enter into a business enterprise and a separate legal entity is not created.

A partnership also includes any other type of business venture entered into between two or more partners where another type of legal entity is not utilized. For example, a partnership includes a syndicate, group, pool, or any other unincorporated organization through which business is conducted by two or more parties. The general partnership rules will apply to joint ventures.
and these other unincorporated businesses unless one of the partners is
designated as a limited partner.

A limited partnership will work well for a joint venture if one or more of the
parties is not going to be involved in management. However, the general
partners will have unlimited liability.

A corporation can provide limited liability for all the owners. A regular C
corporation works well if all the owners are regular C corporations. The
owner corporations would generally be able to receive dividends partially or
fully tax-free from the co-venture corporation.

S corporation status can work well for the joint venture if all the owners are
individuals. The S corporation can provide limited liability protection for the
individual owners without double tax problems. An S corporation generally
cannot be used where the joint venture is going to have one or more non-
individual owners and one or more individual shareholders. Unfortunately,
while a regular C corporation can be used in this situation, it is generally not
desirable because it will be hard to get profits out of the regular corporation
to any owner who is not a C corporation without double tax problems.

A limited liability company can be an ideal entity for a joint venture. It
provides the flexibility of a partnership with the limited liability protection of
a corporation. Partnership tax law will apply to the limited liability company
if the entity is structured properly. With partnership tax treatment, there will
be no double tax problems for any type of business owner. Owners can be
active in business management and still have limited liability protection.

D. Corporation: A corporation is a separate legal entity created under the laws of a
particular state. Most states require corporations to file articles of incorporation with
the secretary of state or other designated official. The articles of incorporation
generally only cover the formation of the corporation. A separate legal document,
normally called the bylaws, governs the operations and management of the
corporation.

A corporation is managed by its directors and officers. The shareholders elect the
directors; the directors in turn elect the officers. The officers handle day-to-day
operations of the business. The officers and directors do not need to be shareholders
of the corporation. However, it is typical in closely held companies for the
shareholders to also be directors and officers.

To form a corporation in Ohio, articles of incorporation must be filed with the
Secretary of State and a statutory agent must be designated. In Ohio, “by-laws” are
distinguished from the corporation’s “code of regulations.” The code of regulations
establish the government of the corporation, the conduct of its affairs, and the
management of its property. The term “by-laws” in Ohio refers to the rules adopted
by the Board of Directors for the government of its members and the regulation of its affairs.

Ohio law allows many of the corporate governance formalities to be streamlined with a “close corporation agreement.” If assented to by all the shareholders at the time of adoption, such an agreement can regulate the internal affairs of the corporation including but not limited to eliminating the need for directors or restricting their authority. See sample Close Corporation Agreement.

The corporation provides limited liability protection to all shareholders. The shareholders are generally at risk only for their capital contributions and any debts they personally guarantee. In a closely held company, the owners may need to guarantee virtually all the debts of the corporation. Of course, this takes away some of the benefits of incorporating. There are some other limits to the liability protection provided by a corporation. Sometimes creditors can look through the corporation and hold the shareholders personally liable. This concept is known as “piercing the corporate veil.” This concept is generally limited to situations where shareholders have basically ignored the structure of the corporation in their business dealings. The shareholders, officers, and directors can also be held personally liable for certain payroll and other taxes they are required to withhold from employees or collect from customers and remit to the taxing authorities.

The federal tax treatment of the corporation will depend upon whether it is classified as an S or C corporation. The profits of both types of corporations are not subject to self-employment tax. Of course, the owners are subject to payroll taxes on any wages taken out of either type of corporation. The self-employment tax and payroll tax treatment is where the similarities end for the two types of corporations. They are treated drastically different for other federal tax purposes. The C corporation is a separate taxable entity. The S corporation is a flowthrough entity.

1. **C Corporation:** The C corporation is a separate taxable entity apart from its shareholders. This makes the C corporation unique. All the other major forms of business entities are flowthrough tax entities. The C corporation pays tax on its net taxable income. Any losses do not flow through to the shareholders. Losses either are carried back to preceding years to receive a refund, or are carried forward to offset future income. Any distributions of current or previously accumulated profits are taxable dividends to individual shareholders. Corporate shareholders may receive a full or partial dividends-received deduction. The dividend distributions are not deductible to the C corporation. This tax system can result in double taxation: once at the corporate level and then again at the shareholder’s level on dividend distributions. This double taxation certainly occurs in publicly held corporations. However, there usually is not double taxation in closely held C corporations.

2. **S Corporation:** An S corporation is generally a flowthrough entity for tax purposes. An S corporation can pay tax at the corporate level. However,
entity-level taxation is the exception, not the rule. It applies only to certain S corporations that were once C corporations.

Otherwise, flowthrough taxation applies to any item of income, loss, gain, deduction, and credit, much like a partnership. Any of these items that have separate tax treatment at the shareholder level will flow through separately to the shareholders.

The S corporation shareholders do not pay self-employment tax on profits of the S corporation. Unlike a C corporation, any distributions of previously taxed S corporation distributions are generally not subject to tax at the shareholder level.

There are limits on the number and type of shareholders that can own stock in an S corporation.

Even though an S corporation is treated as a flowthrough tax entity, it is still treated as a corporation for state law purposes. An S corporation will have the same limited liability opportunities that are available to the C corporation. Likewise, an S corporation is managed by its officers and directors in the same manner as a C corporation. There may be different state reporting and tax requirements for an S corporation versus a C corporation.

E. **Limited Liability Company:** Limited liability companies (LLCs) have become very popular in the past few years. They provide the limited liability protection found with a corporation and the flexibility provided by a partnership.

The owners of an LLC are called members. Most states allow one-member LLCs, as well as multi-member LLCs. These members generally receive the same liability protection as shareholders in a corporation and limited partners in a limited partnership. The personal liability of an LLC member is limited to his capital contribution plus any debts personally guaranteed. Unlike the limited partner, an LLC member can be actively involved in the day-to-day operations of the LLC and not risk losing the liability protection.

The LLC is managed by its members. Some LLCs choose to have centralized management by electing a management committee and/or one person to manage the day-to-day operations of the company. Other LLCs may choose not to have centralized management. These LLCs will be managed by all of the members based upon some type of vote or consensus. Management provisions will be set forth in some type of bylaws, declaration or operating agreement. As a general rule, the members of the LLC must file some type of articles of organization in the state in which they are organized. The members will then have some type of bylaws, declaration or operating agreement to govern the operations of the LLC.

A written operating agreement, declaration or bylaws are generally not a requirement for forming a limited liability company. However, a written agreement is highly recommended. A written agreement will solve more problems than it will create. The
agreement will address many important management and operating issues. This is especially true in a multi-owner LLC. See the sample Operating Agreement.

A one-member LLC owned by an individual will be taxed as a proprietorship for federal tax purposes. The one-member LLC does not have a separate tax existence, unless the individual elects to have the one-member LLC taxed as a corporation by filing Form 8832.

The uses for one-member LLCs have grown significantly over the past few years. Most states now have one-member LLC provisions. All proprietorships should seriously consider setting up an LLC to take advantage of the liability protection. Forming an LLC is a low-cost way to get added liability protection for proprietors.

The proprietorship can continue the same accounting and tax treatment after the LLC is formed. The one-person LLC will continue to file the same Schedule C for federal income tax purposes. Double-entry bookkeeping is not required. A federal identification number is not required if the business has no employees. Further, the same federal identification number can be used if a proprietorship switches to an LLC. The low cost and hassle of setting up an LLC makes it very attractive for proprietors trying to obtain liability protection.

The use of one-member LLCs is not restricted to individuals in most states. Corporations, non-profit entities, partnerships, and other limited liability companies can own a one-member LLC. For example, a one-member LLC owned by a corporation is treated as a division, for tax purposes, of the corporation. The LLC does not need to file a separate tax return. However, the corporation receives added liability protection from the activity placed in the one-member LLC.

The same is true for new business activities started in an existing S corporation or a limited liability company. It may be advantageous to have the new activity placed in a one-member LLC. A separate tax return is not filed. The activity in the one-member LLC is repeated as part of the S corporation or LLC tax return.

Non-profit organizations have been making use of limited liability companies. A non-profit organization can receive liability protection for activities placed in the wholly owned LLC. From a federal tax perspective, any for-profit activities operated by the non-profit entity can be included on Form 990T tax return, allowing income and loss activities to offset. This structure can be more advantageous than using a for-profit subsidiary corporation.

One-member LLCs have also been used for real estate ownership. An individual may wish to own real estate through a one-member LLC versus having outright ownership. The same is true for business entities that own real estate. Even a fractional interest in real estate can be owned in a one-member LLC.

The members of a multi-owner LLC will almost always want to have the business taxed as a partnership. In most states, the members have a choice between
partnership and corporate taxation. The owners will generally not want the LLC to be taxed as a corporation.

An advantage of the multi-owner LLC is having the flexibility of partnership taxation. For income tax purposes, the LLC will be treated like a general partnership, and the members will be treated like general partners. For self-employment tax purposes, treatment of the LLC will be very similar to that of a limited partnership. The self-employment tax will generally apply to any member actively involved in the management of the LLC.

Ohio adopted its law governing limited liability companies in 1994. A limited liability company’s operations are controlled by its articles of organization, the operating agreement among its members and by its bylaws (written declaration for one-member LLCs), if any. Generally, a limited liability company may be formed in Ohio for any purpose for which individuals may be lawfully associated. Under Ohio law, a franchise tax is imposed on corporations doing business in Ohio or owning property in Ohio. Some states like Texas do the same to limited liability companies. In Ohio, the application of the franchise tax is contingent on the entity’s treatment for federal income tax purposes. If taxed as an association for federal income tax purposes, the franchise tax will apply. If taxed as a partnership, it would not. Effective November 21, 1997, Ohio permits the formation of single-member limited liability companies. A single owner of a business can now get the protection of limited liability under state law while having the entity disregarded for tax purposes.

F. Other Forms of Business: We have already discussed the more common forms of business entities. Most business activities are conducted as either a proprietorship, partnership, S corporation, C corporation, or limited liability company. There are a host of other types of business entities that may be appropriate or necessary in special circumstances. A few are noted here.

1. Co-Ownership of Property: There are many different types of co-ownership of property. For example, real estate is often held under one of the following types of co-ownership:

   - Joint ownership.
   - Joint ownership with right of survivorship.
   - Tenants in common.
   - Tenancy by the entirety.

Rental personal property occasionally has co-owners. However, co-ownership of personal property is far less common than co-ownership of real property. Co-ownership of an actual business will normally be classified as a partnership for tax and state law purposes if no separate legal entity has been formed. On the other hand, joint ownership of investment or rental property
will generally not be treated as a partnership unless significant services are performed in addition to the rental and investment activity.

Co-ownership of property is not really a type of business entity. Co-ownership refers only to the way people choose to hold title to real or personal property. Co-ownership of property is discussed in this chapter since a lot of people choose to hold rental and investment property under some type of co-ownership.

The co-owners of property will be held personally liable for any debts arising out of ownership of the property. For example, each owner of real property may be held personally liable for environmental liability problems, debts secured by the real estate for which they have personally signed, personal injuries occurring on the real estate, and so on. A creditor can generally collect from any of the co-owners.

A separate tax return will not be filed for the co-ownership of property. This will be true as long as the co-ownership of property is not treated as a partnership. The co-owners will take their proportionate share of the income, deductions, gains, losses, credits, and so on and report them on their separate tax returns. For example, if two individuals own an equal interest in an apartment building, each will report one-half of the net rental income or loss on Schedule E of their individual income tax returns. Each individual will include one-half of all the rental income, deductions, and depreciation.

The property will be managed by its co-owners. This joint management of property can create a problem where the co-owners do not agree on a management decision. In many states, a co-owner holding a minority interest in the property can sometimes keep the majority owner(s) from doing what they want with the property.

2. **Cooperative:** Cooperatives are often formed for business/industry groups. The cooperatives are formed by participants in a particular industry as a means to market and sell a product. Cooperatives are most popular in the agriculture industry. For example, a group of apple growers in a particular region might form a cooperative to help promote, market, and sell the apples produced by the members of the cooperative. The business profits of the cooperative are split among the members based upon the amount of profits and product they contribute.

The extent of liability exposure to the members of the cooperative will vary from state to state. The management of the cooperative will be determined by the operating agreement or bylaws entered into among the members.

Ohio recognizes cooperatives, particularly agricultural cooperatives. A code of by-laws must be established by the coop within thirty days of its incorporation to establish its government and management. In Ohio, coops
are generally governed by corporation law, and individual liability, like
corporations, is limited to the members’ investment in the coop.

The cooperative is treated as a separate taxable entity. There are both taxable and
tax-exempt cooperatives. Cooperatives file either Form 1120 or 990-C. The advantage of a tax-exempt cooperative is the potential for a larger deduction for so-called patronage dividends (rebates) that are repaid as a distribution of profits. There are more limits placed upon the deductibility of patronage dividends for taxable cooperatives. Further, taxable cooperatives may be subject to tax on other non-member income. However, there are some situations where a non-taxable cooperative may need to pay tax, and may pay more tax than a taxable cooperative. Caution must be exercised when determining whether the cooperative is taxable or non-taxable.

3. **Association:** Many groups or businesses call themselves associations. A business association will be treated as a partnership or corporation for tax purposes if it is operating an activity for profit. Many tax-exempt organizations choose to form associations to conduct their activities. These tax-exempt associations will not be taxed as long as the entity is not conducting business activities unrelated to the tax-exempt purpose of the association.

For federal tax purposes, the word association is often used to describe a business entity that will be taxed as a corporation. Partnerships, limited liability companies, and joint ventures are often formed with the hope that the entity will be treated as a partnership for tax purposes. However, these entities can be taxed as a corporation if an election is made on Form 8832.

4. **Tax-Exempt Entity:** A tax-exempt entity can be formed as a corporation or as an unincorporated association. Most states have separate laws dealing with the incorporation of a tax-exempt entity. From a legal standpoint, a tax-exempt corporation will be treated like a for-profit corporation, discussed above. The management will normally be different than in a closely held corporation. It is common for tax-exempt organizations to be managed by a larger board of directors and some type of executive or management committee. The board and committee members will normally change over the years whereas a closely held corporation will normally have a small board that does not change often.

Ohio has separate laws dealing with “not-for-profit” corporations under [Chapter 1702](#) of the Ohio Revised Code. Trustees are the persons vested with the authority to conduct the affairs of the corporation. These entities are exempt from Ohio franchise taxes.

A tax-exempt entity will generally be fully or partially exempt from federal income tax. There are many different classes of tax-exempt entities. All tax-exempt entities will be subject to tax on their so-called unrelated trade or
business income. Otherwise, many tax-exempt entities are fully exempt. Others may avoid tax only on their dues and membership income.

A separate tax issue is the deductibility of payments to a tax-exempt entity. Contributions and grants to government entities and charitable organizations are generally deductible as charitable contributions. Membership dues and fees paid to civic, professional, and business organizations may be deductible as a business expense. Other membership fees and payments to tax-exempt entities may not be deductible at all. A complete discussion of the different types of tax-exempt entities and the deductibility of payments to these entities is beyond the scope of this book.

Many tax-exempt organizations operate one or more business activities. These business activities may be taxable if they are not related to the tax-exempt purpose of the organization. For tax or business reasons, it may be desirable to place these separate business activities in a separate business entity. An activity might be placed in a separate entity to obtain liability protection, to be governed by a different group of individuals, or for tax planning purposes.

5. **Real Estate Investment Trust (REIT):** A REIT is a special type of real estate investment holding entity set up for the benefit of a large number of outside investors. A REIT is often used as a way of taking real estate ownership public. A REIT can be set up as a corporation, trust, or association. A special election must be made to have the REIT taxed under the special federal income tax rules discussed below. The REIT must generally have over one hundred beneficial owners to elect this status. The beneficial owners of the REIT will be issued transferable shares or certificates. Most of the REIT assets must be investments in real estate and real estate mortgages. Therefore, most of the REIT income must be from rents and interests.

The REIT’s treatment for state law purposes will depend upon whether it was organized as a trust, corporation, or association. Regardless of what type of entity is used, the beneficial owners will generally have limited liability. The liability of an interest owner will be limited to his/her capital contribution.

The management of the REIT will again depend upon what type of entity is utilized. The REIT will be managed by its directors or trustees. A beneficial interest owner will have little to say about the management of the REIT, unless he is also a trustee or director.

The REIT has special federal tax treatment. The REIT is generally required to distribute most of its taxable income for the year. Beneficial owners are taxed on any income distributed to them. In this respect, the REIT provides for partial flowthrough taxation. However, the REIT is taxed like a C corporation for any income retained in the entity. The REIT has net operating
loss provisions similar to a C corporation. The beneficial interest owners will not pay self-employment tax on their portion of flowthrough REIT income.

A REIT is of little use to a closely held business owner. The use of a REIT is primarily reserved for publicly held companies to hold real estate and real estate mortgages for the benefit of a large number of investors. With its unique tax structure, the REIT has become a popular way to package publicly held real estate investments. The tax laws relating to REITs are very complex. A person desiring to establish a REIT must exercise caution and obtain competent advice.

The definition of a REIT is found in Section 856 of the Tax Code. The entity must make a special election to be treated as a REIT. There are restrictive assets and income requirements found in Section 857 of the Tax Code. The entity must pay close attention to the ownership, income, and asset requirements to keep in compliance with the REIT requirements. There is a one hundred percent penalty tax if any of the net income of the REIT is from sales of inventory-type property.

6. **Regulated Investment Company (RIC):** A RIC is a corporation that makes a special election to receive federal flowthrough taxation for its investors. A RIC is ordinarily known as a mutual fund. The corporation has asset and income restrictions. The RIC is required to distribute most of its income to its investors. If the RIC meets the income, asset, and distribution requirements, then its distributed income will not be taxed at the corporate level and will flow through to be taxed to the investors.

Since the RIC is a corporation, it will provide limited liability protection to the shareholders. The shareholders’ liability exposure is limited to their capital contributed. Likewise, from a management standpoint, its officers and directors manage the RIC, like any other corporation.

The RIC has special treatment for federal tax purposes. The corporation will not be taxed on amounts distributed to shareholders if the company distributes currently at least ninety percent of its dividends and interest income. Of course, the shareholder investors will pay income tax on their distributions. The investors will not pay self-employment tax on their flowthrough income.

RICs are used most often for mutual funds and sometimes for venture capital companies. The RIC provides a nice way to package stock and bond investments for a large group of investors. The special flowthrough taxation avoids double tax problems. Many of the investors do not actually receive annual cash distributions, but may elect to reinvest their dividends back into the mutual funds.
The rules for RICs are found in Sections 851 through 855 of the Tax Code. A non-deductible excise tax can be assessed under Section 4982 of the Tax Code to the extent that the RIC does not meet the required distribution requirements. The RIC must invest at least fifty percent of its assets in cash-type investments securities. Not more than twenty-five percent of the company’s assets can be invested in securities of any one company.

RICs are of little value to operating closely held companies. However, they can be used as a powerful tax planning tool in conjunction with the sale of assets of a closely held C corporation or an S corporation that once was a C corporation. Business owners can avoid the second layer of tax, that would result on the liquidation of the Corporation after the sale, by using a RIC. This planning idea has always had viability to avoid the second layer of tax, or possibly eliminate it if the stock eventually passes through the estate of an individual shareholder and receives a step-up in basis. This planning idea is now more powerful with the new lower tax on dividend income. Caution must be exercised because of the complexities and requirements placed on RICs to receive the preferential tax treatment. However, it may be possible to avoid the second layer of tax and have dividend income pass through at the special 15% tax rate. There is even a 5% rate for lower income taxpayers.

7. **Real Estate Mortgage Investment Conduit (REMIC):** The REMIC is a special type of flowthrough tax entity in which substantially all the assets are investments in qualified mortgages and some other permitted investments. The REMIC is similar to the RIC discussed above except that the assets will be invested in mortgages instead of cash and securities. The REMIC must meet asset and distribution requirements to receive the special conduit tax treatment.

Most REMICs will be corporations; therefore, they will have limited liability, and the investors’ liability exposure will be limited to their capital contribution. Of course, like all corporations, the REMIC will be managed by its officers and directors.

The REMIC is generally not taxed on its income. The REMIC income flow through is taxed to its interest holders. Special rules are provided for “regular” interest holders and “residue” interest holders. The interest holders will generally have taxable interest income whether or not the REMIC income is actually distributed to them. The REMIC interest holders will not be subject to self-employment tax.

The REMICs are used most often to hold a portfolio of real estate mortgages for large groups of investors. The special flowthrough tax treatment avoids double tax for these mortgage funds.

The special federal tax rules for REMICs are found in Sections 860A through 860F of the Tax Code. Substantially all of the assets of the REMIC must be
invested in “qualified mortgages” and “permitted investments.” There are three types of permitted investments:

- Cash flow investments.
- Qualified reserve assets.
- Foreclosure property.

A REMIC is subject to a one hundred percent federal tax on its net income from prohibited transactions. Certain dispositions of assets and prohibited non-qualifying income result in one hundred percent penalty tax.

8. **Estate:** Though usually not by choice, an estate can end up being the owner of a business. For example, a decedent’s estate will own a proprietorship at the death of a proprietor. Of course, a decedent’s estate can end up owning a partnership interest, S corporation stock, C corporation stock, and so on, upon the death of the owner.

An estate often exists for an incompetent person or a bankrupt individual or corporation. The estate of an incompetent person is not a separate taxable entity. The estate of a bankrupt individual or corporation is a separate taxable entity. A discussion of the legal and tax aspects of an incompetent’s estate and a bankrupt estate is beyond the scope of this book. This section will focus on legal and tax aspects of a decedent’s estate.

A decedent’s estate is a separate legal and tax entity that comes into existence upon the death of an individual. The beneficiaries of an estate are generally not personally liable for the debts of the estate. An exception would be where the beneficiary is personally liable because of a personal guarantee or because they helped incur the debt. This would be typical when the estate has a surviving spouse as one of its beneficiaries. While a beneficiary may not be personally liable for the debts of the estate, the debts and claims of the estate must generally be paid before any property can be distributed to the beneficiaries free of all claims. The fiduciary of an estate can be personally liable for liabilities and claims against the estate if asset transfers are made without first paying any debts, claims, or taxes. The absence of personal liability is important where there is an insolvent estate.

The business of an estate is conducted by the designated fiduciary. Executor is the term used for a male individual fiduciary named in a will; executrix is used for a female. However, the term executor is now often used regardless of who the will appoints. The term administrator is used for a fiduciary appointed by the court, whether male or female. The fiduciary will normally have attorneys and other advisers, but the ultimate decision for the estate is made by the fiduciary and not the attorney or advisers.
A proprietorship of a business interest that goes into an estate will normally be held by the estate for a year or two before it is distributed to a beneficiary or sold. While the proprietorship is in the estate, the fiduciary will make the day-to-day decisions regarding the business. The fiduciary will likewise generally have any voting powers associated with any business interest owned by an estate.

A decedent’s estate is a separate taxable entity. An estate is unique for federal tax purposes since sometimes it pays taxes as a separate taxable entity and sometimes it provides flowthrough taxation. Any capital gains are generally taxed in the estate, except for the final year of the estate. Any capital or business losses are carried forward to offset future income in the estate. Any carryover capital or net operating losses pass through to the beneficiaries in the final year of the estate. Any ordinary income is taxed in the estate if no distributions are made. In general, to the extent distributions are made to “residue beneficiaries,” income will flow through to the beneficiaries. This unique taxing scheme provides flowthrough taxation for ordinary income to the extent that distributions of any kind are distributed to residue beneficiaries. In the final year of the estate, all income, gains, losses, and credits pass through to the beneficiaries.

The estate may receive business income from a proprietorship, partnership, or S corporation. This income will be taxed in the estate if no distributions are made. Like other ordinary income, to the extent that distributions are made of any property, the estate nor the beneficiaries will be subject to self-employment tax on any business income.

In Ohio, an executor may continue a decedent’s proprietorship for only one month following appointment without incurring personal liability unless otherwise provided in the decedent’s Will. Without such authority given in the decedent’s Will, the executor would need the probate court’s approval to continue the business operations.

9. **De Facto Corporation:** “De facto corporation” refers to an entity that fails to meet all the requirements of a corporation, but will be treated as a corporation for state law purposes. This legal concept can provide the owners limited liability where they have not complied with all the corporation requirements of a particular state. Of course, a business will not choose to be classified as a de facto corporation. The availability of de facto corporation status will vary widely from state to state.

It is uncertain how a de facto corporation will be taxed for federal income tax purposes. The owners will generally try to use corporate taxation. However, the IRS might try to tax the entity as a partnership if it is not truly a corporation.
II. LAW OFFICE BASICS

A. **Business Plans:** What Is a Business Plan? Generally, a business plan describes the business and details the past, present and future of the company. The plan is outlined in a document prepared by the firm’s manager.

B. **Why You Need a Business Plan:**

- **Estimating Start-up Costs:** For new firms, it provides a framework for organizing estimates of your start-up costs, and how much you’ll need to invest yourself or obtain from other sources.

- **Operating Budget:** Your business plan will contain a budget, which forces you to write down and analyze your operating expenses. This also helps you formulate revenue targets.

- **Revenue:** The plan provides a means of estimating revenue.

- **Financing for a New Firm:** If you’re seeking outside funding for a new practice, a business plan is often required by lending institutions for new enterprises. Of course, lenders require a business plan because they want evidence that the business will generate enough income to pay back the loan. It is certainly possible for a lawyer to have a lot of clients and still fail to make a profit. Lenders want to see that you’ve planned for success.

- **Financing for an Existing Firm:** If you’re seeking outside financing for an existing firm, a business plan helps convince lending institutions to invest in your business (even if a business plan isn’t specifically requested).

- **Protecting Your Investment:** If you’re funding your firm with your own assets, you need a business plan for the same reasons a lender requires one: you do not want to waste your own investment in the business.

- **Defining Objectives:** A plan helps you to define your objectives (business, personal and financial) and the means of achieving them.

- **Business Description:** A plan should include a business description that clarifies your practice, specialties, services you offer presently, services you’d like to offer in the future and profitability (or profit potential).

- **Marketing Plan:** A marketing plan helps your firm make money from the outset by forcing you to devise an effective marketing strategy and means of "getting the word out."

- **Fixing Problems:** For existing firms, developing a business plan provides a way to examine what is working and what isn’t, identify areas that can be improved upon and less satisfactory aspects of your practice. Once negatives are identified, you can plan the remedies, solutions and corrective actions.
C. **Components of a Business Plan:**

- **Executive Summary:** This is particularly helpful if your business plan is going to be designed for public consumption (lenders, etc.). The executive summary summarizes the highlights and key points of your plan in one or two pages.

- **Business Description:** There are three aspects of this: what happened in the past, what is going on now, and what you aspire to do in the future. Write a factual description of your firm, its ownership and history. As for the future, write down your vision, your dream of what your business would be in the perfect world. What will you be doing, who are your clients? What will make your business successful? What distinguishes you from all of the other lawyers?

- **Management Summary (if applicable):** Consider developing a management summary to provide background on management team members, their experiences and key accomplishments.

- **Products and Services:** Describe your practice areas and the specific products and related services offered. Also describe how your products and services stand out or can be differentiated from those offered by other firms.

- **Market Analysis:** Put together a summary of your typical clients within each practice area, and describe the competitive landscape, market size and expected growth of that market.

- **Marketing Plan:** How do you market yourself and your business? For example, how will you solicit referrals from other lawyers? Should you sign up for any lawyer referral services? How will you establish yourself in your community and make potential clients aware of you and the services you provide? Will you advertise? Will you have a Web site? Related to this is an analysis of what makes you unique, what you believe is your competitive advantage and, what the market is lacking (that you can provide).

- **Strategy and Implementation:** Describe how you will execute your plan, what steps you’ll take to put it into action. This is also where you’ll establish milestones and set deadlines by which certain things will be done.

- **Financial Plan:** This contains key financials including revenue, cash flow, profits and expenses.

D. **Options for Writing a Business Plan:**

- **Write it Yourself:** This can be a little intimidating, but it is certainly do-able. Create an outline of the points you want to address and start filling it in.

- **Hire a Professional:** There are business consultants and "lawyer coaches" who can help you write a business plan.
• **Use Business Plan Software**: There are many options for this, including applications like Business Plan Pro® (see [www.paloalto.com](http://www.paloalto.com)), Biz-Plan® ([www.planware.org](http://www.planware.org)), Business Plan Success® ([http://www.business-plan-success.com](http://www.business-plan-success.com)), and others.

E. **Budgeting**: Budgeting is usually undertaken as part of or immediately after the development of a business plan.

1. **When You Should Do It**: Annually, usually at the start of your tax year.

2. **Fixed or Adjustable Monitoring**: You need to periodically monitor your budget (monthly and at least quarterly) to see how you’re doing and also because budgets sometimes need interim adjustments. Unexpected developments should be factored in, and resources may need to be reallocated.

3. **Requisite Tasks**: In order to develop a budget, you need to:
   - **Estimate your fees or revenues**. This involves estimating the amount of work from new clients and the amount of work generated by existing clients.
   - **Estimate your personnel/payroll costs (probably your largest expense)**. This should include compensation for all employees aside from unscheduled bonuses or draws for equity partners; also include the cost of benefits.
   - **Estimate your operating expenses**. These include lease or mortgage payments for your office space, any costs associated with off-site (closed) storage, utilities, office operating expenses, professional activities such as CLE seminars, professional fees and general business expenses.

4. **Educated Guesstimates v. Projections Based Upon Hard Numbers**: If your firm has already existed for 12 months or more, then hopefully you have some historical information upon which to base your projections. If you don’t, then no matter what else you do, you need to immediately place top priority on the installation of a legal time/billing and accounting system that will enable you to **know and track** your revenues and costs. This is absolutely critical to the success of your firm and the only true way of determining where the money is coming from and where it is going. If you’re launching a new firm without historical data, then you’ll have to crunch some numbers based upon estimates.
F. Office Space Considerations:

1. Buying Versus Leasing:
   
a. Benefits of Buying:

   - **Investment Retirement Fund**: If you buy real estate for your business, then you’re a lawyer *and* a real estate investor. If your property appreciates over time, you may be able to sell it later and realize a substantial profit. That profit may be an excellent retirement fund for you down the road. Furthermore, when you look back at how much money you’ve paid in rent over a period of five or ten years, it is can be pretty depressing when you realize that you have nothing to show for it in terms of assets.

   - **Additional Income**: If you buy more space than your practice requires, then you may want to become a lawyer *and* a landlord. By leasing the additional space, you can generate additional revenue and offset your monthly mortgage obligation.

   - **Locking In Costs/Budgetary Benefits**: Many commercial leases have accelerator clauses that increase the rent at specified time intervals. Also, many leases are for shorter terms (five, seven, ten years) so lease expenses can increase dramatically once the current lease expires and a new one must be negotiated. Assuming that you purchase office space with a fixed rate mortgage, you can avoid increases in office space cost.

   - **Tax Deductions**: The associated costs of owning and occupying commercial office space may provide expense deductions in the form of mortgage interest, property taxes and other items.

b. Drawbacks of Buying:

   - **Higher Initial Costs**: Buying commercial space typically costs far more upfront than leasing. There are appraisal and maintenance costs, inspection fees, potential architect fees, the requirement of a large down payment, improvement costs and transfer taxes. For example, there are often 20 percent to 30 percent down payment requirements. So if you buy a $600,000 property, you may have to come up with a $180,000 down payment.

   - **Limited Flexibility**: If your business grows to the point that your owned office space becomes too small, it may force you to sell it if there’s no way to expand.
• **Time Consuming:** Looking for, buying, financing and building out real estate can be incredibly time-consuming for the owner, even with the assistance of a real estate agent and architect. This can be quite a distraction to the running of your business.

• **Tax Drawbacks:** Just as you may be able to deductible some expenses associated with owning property, other expenses may not be deductible. For example, rent expenses may be fully deductible when paid. However, improvements and depreciation on a commercial building may only be deductible over a 39-year period.

c. **Benefits of Leasing:**

• **Prime Location:** Leasing office space often provides one the ability to obtain space in a prime location. If your practice would benefit significantly from being in a high-profile location, leasing may be the only way to accomplish that (since buying in such locations is typically prohibitively expensive).

• **Unimpaired Borrowing Power:** Your ability to borrow money for the operation or expansion of your business may be significantly curtailed if you’ve over-extended yourself with a real estate acquisition.

• **Less Impact on Cash Flow and Working Capital:** It’s easy to tie up a significant percentage of your working capital and cash in a real estate purchase. With no safety zone or cash buffer, the business may be vulnerable to unexpected cash flow disruptions (a bad month, etc.). If your resources aren’t tied up in real estate, then they can be used to capitalize on opportunities or expand your business.

• **Less Time Consuming:** Compared to buying, a lease arrangement typically requires far less of the owner’s time to complete. This allows you to spend more time running your business and less time worrying about the new space and manage the property.

d. **Drawbacks of Leasing:**

• **Lack of Equity:** Of course, you’ll acquire no assets in a leased property. While leasing, you will be funding someone else’s retirement with your lease payments.

• **Increasing Costs:** Many leasing arrangements stipulate annual increases in rent. Furthermore, once the lease expires, the
negotiation of a new lease may result in substantially higher costs depending upon the market.

2. **Serviced Office Space/Executive Suites:** These are typically leased individual offices within a larger suite shared by other companies or professionals. Offices often come furnished and offer shared common equipment (fax machines, copiers, etc.), shared resources (such as conference rooms) and services (such as phone answering, mail handling and high-speed Internet).

3. **Shared Office Space:** A slightly different alternative to the executive suite service office space model is the shared office space. A group of lawyers may decide to jointly share the cost of renting an office; they do not however, form a firm, rather they maintain their separate practices. This allows lawyers to share expenses and resources (copiers, conference rooms, fax machines, phone answering services, etc.). Another benefit of this type of arrangement is the ability for the lawyers to easily distribute referrals among themselves. Lawyers who choose to share office space must be careful to keep their firm separate. See Model Rules 1.6 and 5.3.

4. **Ethical Considerations Regarding Office Space:**
   - [Rule 5.3](#) - Responsibilities Regarding Non-Lawyer Assistants
   - [Rule 1.6](#) - Confidentiality of Information
   - Consider whether shared space is suitable and can be configured so that their client’s confidences and secrets are protected from others in a shared office.
   - Sharing employees must be instructed about maintaining client confidences.
   - Receptionists in a shared office environment must not repeat client names while answering the phone since others in the waiting room may overhear.

5. **Change of Address:** If you’re moving your office and/or setting up a new office, you must remember to notify the Supreme Court of Ohio of your address change. You can do this online at [http://tinyurl.com/3db5aw](http://tinyurl.com/3db5aw). If you belong to one or more bar associations, don’t forget to contact them too, as well as your malpractice insurance carrier.

6. **The Americans With Disabilities Act ("ADA"):** When contemplating new office space, you also need to consider the ADA and what changes may need to be made to your office space so you are in compliance with the ADA. As a business providing goods and services to the public, you fall under the purview of the ADA. Generally, you are obligated to remove physical
"barriers" (physical features that limit or prevent people with disabilities from obtaining the goods or services you offer). The ADA requires that newly constructed facilities, first occupied on or after January 26, 1993, must meet or exceed the minimum requirements of the ADA Standards for Accessible Design (Standards). Alterations to facilities, spaces or elements (including renovations) made on or after January 26, 1992, also must comply with the Standards. For more information on the ADA, see www.usdoj.gov/crt/ada. You can also download the ADA Guide for Small Businesses at www.usdoj.gov/crt/ada/smbusgd.pdf.

G. **Insurance**: Law offices need protection from risk of loss for physical location and contents, and premises liability, as well as coverage for the business interruption and persons working there. Insurance coverage is available through Web sources, but working with a good insurance agent will allow a thorough assessment of coverage needs and policy options. Discounts also may be available for multiple coverages.

The OSBA Insurance Agency is here to assist you with most of your insurance needs. OSBA members are their only clients. For information about their insurance offerings, visit [http://www.ohiobar.org/pub/?articleid=54](http://www.ohiobar.org/pub/?articleid=54).

The Ohio Bar Liability Insurance Company is available to assist you with malpractice insurance. For more information, visit [http://www.oblic.com/](http://www.oblic.com/).

1. **Location Coverage:**
   - Building (if owned) property loss
   - Premises liability
   - Mortgage insurance (may not be applicable)
   - Office contents & equipment (purchase whether equipment is owned or rented)
   - Business interruption

2. **Coverage for Persons:**
   - Legal malpractice for attorneys
   - Fiduciary bond for staff handling accounts
   - EPLI coverage
   - Key person life insurance
   - Disability
   - Health insurance
H. Basic Equipment:

1. Personal Computers:
   a. General Rules and Tips on Buying PCs:
      - Quality Counts: Don’t cut corners here because your practice will grind to a halt if your computers fail you.
      - Warranty: Make sure you get a three-year, next business day, on-site warranty on any laptop or desktop that you buy. Furthermore, avoid "economy" warranties. If you're buying a laptop and the manufacturer offers additional "accidental breakage" protection, it's usually worth buying if you travel a lot.
      - Operating System on a Windows PC: As of this writing, make sure you get Windows XP Professional or Vista Business or Vista Ultimate. Generally speaking, Windows XP Home or Vista Home are not designed for an office environment and should be avoided. If you are thinking of Vista, make sure you contact the manufacturers of every peripheral you intend to connect to the new computer to see if the devices are Vista compatible. In other words, if you have an existing printer you intend to use with a new computer running Vista, you should check the printer manufacturer's web site or call their customer service to see if they have a driver that will enable your printer to work with Windows Vista. If you discover that some of your existing equipment won't work with Vista, then you'll probably need to replace those items as well. Of course, this can add considerable, unexpected expense to the total cost of your new computer.
      - What About Apple? They're excellent computers, but due to their very tiny slice of the world market (their market share fluctuates between 3% and 5%), the selection of legal-specific software (such as case management, legal time/billing and accounting, etc.) that will run on the Mac OS is extremely limited. It is also difficult to find support from third parties (unlike Windows computers).
      - Bundled Software: Make sure you get Microsoft Office or Corel WordPerfect Office included with your new computer as it is much more expensive to buy this software a la carte after the fact.
   b. Research: If you're not sure of which brand to buy for a laptop or desktop, consider these excellent free reference sources:
• **PC World Magazine** - [www.pcworld.com](http://www.pcworld.com) - even if you don't subscribe, you'll have full access to everything, including reviews of hardware and software.

• **PC Magazine** - [www.pcmag.com](http://www.pcmag.com) - even if you don't subscribe to the magazine, you'll have full access to everything, including reviews of hardware and software. PC Magazine also conducts an extensive annual survey of reader satisfaction with hardware and software. Once you're on their web site, look for the Annual Survey results for some very insightful reviews and recommendations.

• **CNET** - [www.cnet.com](http://www.cnet.com) - another excellent free source of reviews, pricing information and articles regarding personal computers and software applications.

c. **Laptop or Desktop:**

• **Laptop v. Desktop**: Comparing a similarly equipped desktop and laptop, the laptop will cost around $300 more. Even if you only use your laptop outside of the office once per month, you can easily justify this additional cost.

• **Tablet PCs**: If you’re considering a laptop computer, then make sure you go to a local computer store and test-drive a Tablet PC first. "Convertible" tablets have every feature of a standard laptop except that they also have "pen and ink" capabilities that allow you to write directly on the screen or use the included pen as you would a mouse and keyboard. In effect, it is a bottomless, digital legal pad. If you want to be able to take hand-written notes and send hand-written e-mail, this is the tool for you. Popular brands for these include Lenovo, Toshiba and Gateway.

d. **Add-ons for Your Computer:**

• **Computer Insurance**: You can obtain insurance from many sources for things like accidental damage, theft, power surges and the like. Some insurance companies even specialize in this area - see [www.safeware.com](http://www.safeware.com) as an example.

• **Uninterruptible Power Supply**: An uninterruptible power supply ("UPS") is an excellent surge suppressor and it will keep your PC running during power blips.

2. **Back Up System For Your Data**: To prevent data loss, it is essential that you have at least one backup device backing up all important data on a daily basis. Ideally, you’ll have more than one device backing up contemporaneously. Catastrophic data loss can devastate your practice and
some would argue that failure to take steps to protect and backup your important data is malpractice per se.

a. **Rules for Backing Up:** Follow these closely in choosing how you handle your own backups.

- **No Excuses:** You must be backing up all of your important data every day, no matter what. Every other day, once a week or less frequently is completely unacceptable.

- **Unattended Is Best:** The best backup methods do not require you to remember to do anything for the backup to occur. Unattended backups are the best for two important reasons. First, if someone has to remember to do it, they’ll forget. Second, backups sometimes take a long time and they’ll usually bog down your system when they’re running. Therefore, they’re best run at night when no one is using your network or computers. This also means that you cannot use backup media that is not large enough to backup all of your data. Therefore, CDs, DVDs, Zip disks and the like are eliminated because it’s extraordinarily unlikely that all of your data can fit on a single backup disk. That means that someone will have to swap disks as the backup device fills each disk.

- **Backup Everything:** DO NOT backup only the data you’ve created (e.g., Word or WordPerfect files, etc.). Instead, backup the entire drive of the computer you’re backing up. When restoring after a crash, you want Windows back the way it was, you want all of your printer drives installed, your video driver installed, your network adapter driver installed, etc. Trying to install all of your programs from CD and getting your settings back to the way they were pre-crash can literally take months.

- **You Must Check the Backup Log Every Day:** Most backup devices don’t tell you if they worked properly or not. The only way to make certain is to look at the "backup log" that the backup software maintains (every backup device requires software that actually performs the backup). Someone needs to do this every single day to make sure there were no malfunctions.

- **Replace Tape Media At Least Annually:** If you’re using a tape drive as a backup device, you need to write a "born-on" date on the tape and replace them at their one-year birthday. Tapes lose their ability to hold data over time and you don’t want to take the risk that your successful backup is not restorable due to bad media. Of course, buy your new tapes, get a good backup on them, then destroy the old ones.
Off-Site Storage: Portability of your backup media is important because you need to ensure that copies of all important data for your firm are taken off-site every night. If your office burns down and all of your backups were in the office, then it isn't going to do you much good. You can also use one of the Internet-based backup options mentioned below.

Avoid Using Incremental Backups: An incremental backup means you’re only backing up files that have changed or are new since the last full or incremental backup. You can get quite a chain of these going and hopefully there’s a full backup at the beginning of the chain. The benefit of this method is that it is faster since far less data is being backed up every time (only the new or changed files). However, there are two main reasons why you should use full backups instead. The first drawback of incremental backups is that you may have five backup disks, but you only have one copy of each file. With full backups and five media, you have five copies of every file (more is obviously better). Second, if you encounter a problem in your chain of incremental backups (bad media, etc.), then you may be prevented from restoring files "upstream" from the problem.

Run Test Restores At Least Once A Month: You need to do this to verify that you can restore and also to make sure you know how to do it.

Have a Secondary Backup: If you’re using a tape drive, get an external hard drive as a secondary backup, use one of the online backup options, or get a recordable DVD drive. Just make sure you have an extra copy of everything important if at all possible.

b. Backup Software: Many backup devices (hardware) come with software that operates them. However, you are usually free to use third-party programs if you’re dissatisfied with the backup software included with your backup device. These run the gamut from expensive and sophisticated (something like Symantec Veritas Backup Exec) to inexpensive and easy (an example would be Handy Backup - www.handybackup.com). Regardless, backup hardware is only half of the equation. You need backup software to complete a backup.

c. Backup Devices:

Tape Drives: High reliability, but slow and can be very expensive. Do not even consider tape drives with a Travan format (they are unreliable).
• **External Hard Drive Cartridges**: This is excellent for smaller networks and the small cartridges are easy to take off-site as an additional measure of protection. A good example of this would be an Iomega Rev USB Backup Kit. As of this writing, each hard drive cartridge holds 70 GB (uncompressed).

• **Additional Hard Drives**: These can be internal to the computer or external. They are inexpensive and are available in very large sizes. On the downside, they’re not very convenient to unplug and take off-site every day.

• **Recordable CD or DVD Drives**: It’s risky to make this your primary backup method because you will probably be unable to fit all of your data on a single disk. Therefore, you can’t run unattended backups and as we indicated above, it’s extremely important that your primary backup method can be executed without requiring someone to do something. Having said that, many people use this method as a periodic (i.e., weekly) backup method that they keep off-site.

• **Internet Backup Options**: This is becoming more and more common as a secondary backup method. It is not a good idea to use this as a primary backup method because: a) Internet connections frequently go down; b) backing up or restoring a large amount of data can take hours or days depending upon the speed of your internet connection; and c) it tends to be expensive over time (you pay a monthly fee for this service). Examples of this would be www.connected.com or www.mozypro.com.

• **USB Flash Drives**: These are reliable for data storage, they are very small dimensionally, and they are becoming available in larger sizes (in terms of gigabytes). However, they are not available in sizes most other backup media are available in (100+ GB). This means that it is unlikely that all of your data would fit on a single flash drive. In the future, this may be possible, but it isn't right now.

• **Floppy Disk Backup**: Floppy disks are the most unreliable media ever developed for a PC and they hold tiny amounts of data relative to the options outlined previously. Don't use floppy disks for anything, if possible.

3. **Printers**:

• **No Inkjet Printers**: Avoid making an inkjet printer your primary printer. The cost per page to print with inkjet printers (thanks to high-priced ink cartridges) can be as high as $0.15/page (black and white) compared with
a laser printer, which will give you roughly $0.04/page. Furthermore, some inkjet ink will smear if it becomes wet. Laser printers generally are a better option for any law office.

- **Color Printing**: If you have a color inkjet for purposes of printing photos, you likely will spend far more than you would if you had a third party print them for you. Online services are generally even cheaper than retail stores. Consider the leading service of [www.snapfish.com](http://www.snapfish.com) or [www.shutterfly.com](http://www.shutterfly.com). If you need to print color more frequently, then consider purchasing a color laser printer. If you tend to print either lots of color or straight black and white (with no color), then a "four pass" color laser will be your least expensive option. However, if you print mostly black and white with just a little color, four pass lasers use up a lot more toner, and this will drive up your cost per page. If you’re printing a lot of color or you print mostly black and white with only a little color, then consider a single pass color laser which will keep your cost per page to a minimum.

- **Consider A Multifunction or All-In-One ("AIO") Machine**: If you need to keep your budget down for a printer and want to be able to use it for more than just printing, a laser multifunction is a good option. As a rule, a multifunction peripheral handles at least two of the following (and often all of them): printing, scanning, copying and faxing. There are usually cost and space savings associated with multifunction machines. Popular options include models from Brother, Canon, Dell, Xerox and Hewlett Packard.

4. **Fax Machine or Internet Faxing:**
   a. **Options:**
      - **Multifunction of All-In-One machine**: Almost all multifunction machines include fax capability. The primary benefit is that you only have to buy one machine that handles multiple tasks. Overall, you’re likely to spend a lot less than buying a separate copier, scanner, printer and fax.
      - **Plain fax machine**: No real benefit here other than they can be pretty inexpensive.
      - **Internet faxing**: There are many services that allow you to send and receive faxes via the Internet. Typically, faxes sent to your Internet fax number are delivered to you via attachments to e-mail. These services also enable you to fax directly from Word, WordPerfect, Excel or Outlook. The biggest benefit of Internet faxing is that you can send and receive faxes anywhere you happen to be, as long as you’ve got a computer connected to the
Internet. Of course, you also avoid the cost of a dedicated fax phone line. The drawback is that unless you have a scanner, you cannot fax a hard copy of something via this method. Examples of Internet faxing services would be www.efax.com or www.myfax.com.

b. **Printing Methods for Fax Machines:** There are several choices for this:

- **Ribbon Transfer:** Available in black and white for light duty; likely not useful for office purposes.

- **Color Ink Jet:** Black and white or color will be expensive because of high ink costs.

- **Black and White Laser:** Black and white, higher volume, low cost per page; recommended for office purposes.

- **Thermal:** Black and white, lower volume. Printing on this tends to fade over time and may even disappear entirely.

c. **Phone System:**

- **Research:** Of course, you’ll need a multi-line phone system with voice mail. Unfortunately, a phone system can be the most expensive thing you buy for your office. The best place to start your research is most likely the telephone directory under Telephone Equipment & Systems - Dealers. Get as many quotes as you can and make sure you factor in the cost for ongoing maintenance and repair from the vendor you choose.

- **Look For Popular Options:** It’s a good idea to choose a brand of phone system that other dealers in your geographic area also support. Otherwise, if you become dissatisfied with the vendor you’re using for support, you may have no alternative vendor.

- **Consider Voice Over Internet Protocol ("VoIP"):** [www.webopedia.com](http://www.webopedia.com) provides a good definition of VoIP. VoIP is a category of hardware and software that enables people to use the Internet as the transmission medium for telephone calls by sending voice data in packets using Internet Protocol rather than by traditional circuit transmissions of the Public Switched Telephone Network. One advantage of VoIP is that the telephone calls over the Internet do not incur a surcharge beyond what the user is paying for Internet access, much in the same way that the user doesn’t pay for sending individual e-mails over the Internet. To try VoIP, you need:
• **High Speed Internet Connection:** See [http://tinyurl.com/2uy8jm](http://tinyurl.com/2uy8jm) to determine if your Internet connection is fast enough.

• **VoIP Service Provider:** Almost every telecommunications company and Internet Service Provider ("ISP") offers VoIP phone service including Time Warner, Verizon, AT&T, Wide Open West ("WOW") and the like. There are also many options which are not provided by ISPs but which work fine as long as you have a high speed Internet connection (see [www.vonage.com](http://www.vonage.com), for example).

• **Appropriate Phones:** Some services will work with standard telephones, others require IP phones in order to work properly.

5. **High Speed Internet Access:** There is absolutely no excuse for not having high speed Internet access at your office. The amazing array of resources available via the Internet, including free legal research, makes it easy to cost-justify.

6. **Leasing versus Buying Equipment:** Many lawyers are leasing their technology as a means of spreading the costs over a period of years and obtaining tax advantages.

   a. **Deduct Payments as an Operating Expense:** Your CPA will have to confirm this, but if you utilize an "operating lease" rather than a "capital lease" (with a fair market value end-of-lease purchase option rather than a $1 end-of-lease purchase option), you can deduct every lease payment as an operating expense. This would enable you to effectively deduct the cost of the computers over three years rather than a) writing it all off immediately, or b) depreciating it over five years.

   b. **End of Lease Options:** Computer leasing companies will take back the computers at the end of the lease term. This may remove the sometimes significant headache of disposing of old computers.

   c. **Leasing Pros and Cons:** The following are a few highlights from an article entitled *Tech Leasing for Lawyers*, by Dennis Kennedy, which appeared in the Oct/Nov 2004 issue of *Law Office Computing Magazine*.

   • "Computer technology leasing is an attractive option because computer systems get outdated quickly. There are good reasons to keep pace with technological change. Experts consistently recommend replacing computers on a three-year schedule. After
three years, the typical computer has little or no market value and no longer will be covered by warranty. Hardware costs, especially for servers, add up quickly. Large cash outlays for new purchases might be required."

- "Leasing is especially attractive to law firms that want to stay closer to the cutting edge in technology. It smoothes out their cash flow and protects their working capital while avoiding large periodic expenses for new technology purchases."

- "Smart leases give you a way to roll services, hardware and software into your monthly lease payment. This type of bundling allows a firm to consider an appropriate monthly cost of technology and aim a little higher on hardware, without cutting corners on training and support. For example, a bundled lease might even provide a way for a smaller firm to afford a high-level consulting firm, better software or a robust network infrastructure."

d. **Disposing of Old Equipment:** Whether you simply retire old computer equipment, sell it, give it away or turn it in to a leasing company, you need to make sure that all confidential data has been deleted in such a manner that it is not recoverable. This is not as simple as just deleting the data. You’ll need to use a program designed to make the deleted data unrecoverable or hire someone to do that for you. Examples of programs that can permanently delete data for you would include Search and Recover (www.iolo.com), WipeDrive (www.whitecanyon.com) or Secure-Delete (www.secure-delete.net).

I. **Signage:** Signage placing the law firm or solo attorney’s name before the public is not specifically addressed in the Ohio Rules of Professional Conduct. However, **Rule 7.5 Firm Names and Letterheads**, requires, in pertinent part, that:

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

Signs for the lawyer’s office then must not imply that lawyers who share space are a partnership. If lawyers share space, care must be taken on office signs both outside and inside the building and in the lobby to designate that each lawyer is practicing in her/his own firm. Designation such as:

- Law Office of John Doe
- Law Office of Mary Roe
- Law Office of Larry Lawyer
is less likely to confuse the public than a designation:

- Law Offices of
  - John Doe
  - Mary Roe
  - Larry Lawyer

J. **Letterhead:** Letterhead is governed by Rule 7.5 of the Ohio Rules of Professional Conduct. Rule 7.5 provides:

(a) A lawyer shall not use a firm name, letterhead or other professional designation that violated Rule 7.1. A lawyer in private practice shall not practice under a trade name, a name that is misleading as to the identity of the lawyer or lawyers practicing under the name, or a firm name containing names other than those of one or more of the lawyers in the firm, except that the name of a professional corporation or association, legal clinic, limited liability company, or registered partnership shall contain symbols indicating the nature of the organization as required by Gov. Bar R. III. If otherwise lawful, a firm may use as, or continue to include in its name, the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession.

(b) A law firm with offices in more than one jurisdiction that lists attorneys associated with the firm shall indicate the jurisdictional limitations on those not licensed to practice in Ohio.

(c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communication on its behalf, during any substantial period in which that lawyer is not actively and regularly practicing with the firm.

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

Comment [2] of the Rule provides further guidance for "lawyers who share office facilities, but who are not in fact associated with each other in a law firm" indicating that they "may not denominate themselves as, for example, "Smith and Jones," which suggests that they are practicing law together in a firm and that the use of a disclaimer such as "not a partnership" or "an association of sole practitioners" does not render the name or designation permissible.

Comment [3] of the Rule allows "a lawyer may be designated "Of Counsel" if the lawyer has a continuing relationship with a lawyer or law firm, other than as a partner or associate."
Comment [4] addresses legal clinics and provides that "The name of the law office shall consist only of the names of one or more of the active lawyers in the organization, and may include the phrase "legal clinic" or words of similar import. The use of a trade name or geographical or other type of identification or description is prohibited.

However, the sections of DR 2-102(E) that prohibit truthful statements about a lawyer’s actual businesses and professions are not included in Rule 7.5. Lawyers may now list truthful statements about their professional status, other business pursuits or degrees on the letterhead.

Rule 7.4 of the Ohio Rules of Professional Conduct permits a lawyer to state that he/she is a "specialist" and practices a "specialty" or "specializes in" particular fields, subject to the parameters of Rule 7.1.

Opinion 89-16 of the Board of Commissioners on Grievances and Discipline indicated that DR 2-102(A)(4) did not provide for listing non-lawyer employees on letterhead and opined that such employees, therefore, may not be listed on letterhead, although they may have business cards identifying their title and that they are employed by the firm.

Opinion 89-11 indicated that non-lawyer employees could use firm letterhead as long as under their signature they indicate their capacity with clarity, including that they are not licensed to practice law. Since this provision is not included in the new rule, the former Opinions appear to still give guidance in this area. Until further determined, it would seem prudent not to list such employees on letterhead.

K. Home Office Considerations:

1. **Protecting Client Confidences:** It is important that you protect privileged information from family members and that they understand that any information they may come across at home must not be discussed with anyone. Reasonable steps would include:

   • Using a separate computer at home that is only used for business and that no other family members can access.

   • If using a computer that other family members also use, it should be configured such that a logon and password is required to access any information on said computer that may be confidential. This is fairly easily accomplished with Windows XP Professional or Windows Vista.

   • Maintaining a locked file cabinet at home for storing any paper client files.

   • If client phone calls are received at home, a separate phone line should be secured for said communications with a separate voice mail that can be accessed only by you.
2. **Relevant Rules:**

- **1.6** - Confidentiality of Information
- **1.7** - Conflict of Interest: Current Clients
- **1.8** - Conflict of Interest: Current Clients: Specific Rules
- **1.9** - Duties to Former Clients

L. **Practice Mobility:**

1. **Required Hardware:**

a. **Laptop or Tablet PC:**

   - **Key Hardware:** This is the centerpiece for a mobile lawyer. If you already have or are getting a laptop, it’s a good idea to make it your sole computer and not try and synchronize everything between a laptop and desktop.

   - **Port Replicator:** It is also a good idea to acquire a port replicator or docking station for your laptop.

   - **Warranty:** For laptops, you should always look for a three-year, next business day, on-site warranty that will follow you wherever you happen to be. We also recommend upgrading the warranty to include coverage for accidental breakage (if that is an option).

b. **Portable Printer:** There are excellent, small portable printers from manufacturers like Hewlett Packard and Canon. Most portable printers have the ability to run on a battery if there are no outlets available and some even offer Infrared or Bluetooth connections to your computer in addition to a standard USB cable.

c. **Cell Phone:** Today, it makes sense to look for a convergent device or "smartphone" (combination of cell phone and PDA).

d. **Personal Digital Assistant ("PDA"):** A Palm Tungsten or similar device is an excellent reference tool for quickly looking up items on your calendar, to-do list and contacts (names, addresses and phone numbers). PDAs are also an excellent means of backing up the foregoing items.

e. **Portable Backup Device:** You must have a means of backing up the work you complete when you’re out of the office. The easiest and
least expensive option would be an external hard drive or external hard drive cartridges (such as an Iomega REV drive).

f. **Carrying Case:** There are many options here from shoulder bags, to backpack style computer bags to those with wheels and collapsible extension handles. An excellent place to start your search is [www.ebags.com](http://www.ebags.com).

2. **Optional Recommended Items:**
   
a. **USB Flash Drive:** These are extremely inexpensive devices that allow you to transfer large amounts of data from one computer to another.

b. **Digital Camera:** Many lawyers who are frequently out of the office like to keep a compact digital camera in their bag. A picture is worth a thousand words.

c. **Digital Voice Recorder:** These are widely available at any office supply store, and many of them are very small. Digital voice recorders allow you to dictate and then store or e-mail the voice files for subsequent transcription.

d. **Portable Scanner:** There are many options for these including multiple offerings from Visioneer, Planon and Pentax.

e. **Extra Cables and Emergency Items:** Kits such as the Zip-Linq Deluxe USB 2.0 Road Warrior Kit include everything from USB cables, adapters, mice, lights, headphones, a microphone and network cables.

f. **Portable Routers:** Products such as the Linksys Wireless-G Travel Router or D-Link AirPlus G Wireless Pocket Router allow you to setup a secure wireless network in any hotel room offering high-speed Internet access.

3. **Security for Your Laptop:** The following items should be considered if you’re traveling with a computer that contains confidential information:

   - **Protecting Confidential Information:** A laptop is stolen every 53 seconds. Therefore, if you have a laptop containing attorney-client privileged information, you need to take steps to protect it in the event of theft. For encryption, consider products such as SecuriKey ([www.securikey.com](http://www.securikey.com)) or PGP Whole Disk Encryption ([www.pgp.com](http://www.pgp.com)).

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1 Source: Safeware The Insurance Agency - see www.safeware.com
• **Theft Recovery**: There are services for laptops that will significantly increase the likelihood that authorities will be able to recover your laptop if it is stolen. Consider a service such as LoJack for Laptops (see www.lojackforlaptops.com).

• **Avoid Prying Eyes**: For example, if you’re using a laptop to draft confidential documents for a client while on an airplane, what is to keep the persons sitting next to you from reading what you are writing? Consider something like a 3M Privacy Filter for your laptop screen, which narrows the viewing area so that the screen is only visible to persons directly in front of it. These can be purchased from many sources, including most laptop manufacturers.

4. **Securing PDAs and Cell Phones:**
   a. **The Problem**: Lawyers frequently maintain confidential client information in their cell phones, PDAs and convergent devices (smartphones). Furthermore, these devices are often lost or stolen. Therefore, it is incumbent upon you to take steps to secure the confidential data contained on your phone/PDA.

   b. **Using Built-In Security**: Every device has some type of built-in security that you can enable. Enabling this security should be done at a minimum. Make sure you use a "strong" password consisting of a nonsensical mix of numbers and letters at least eight characters long.

   c. **Other Options**: This is just an example list; there are many other options. These applications allow you to destroy the data on your convergent device remotely by sending a special text message to your cell phone or other means.

   • mSafe (www.motionapps.com)
   • Warden (www.corsoft.com)
   • TealLock (www.tealpoint.com)

   • **Windows Server Options**: If you have a Windows Mobile OS PDA, and you have Microsoft Exchange Server with SP2, remote security can be configured. Microsoft Exchange 2007 has a very easy setup for this sort of functionality on most mobile devices.

III. **LEGAL RESOURCES – LAW LIBRARY**

   A. **Introduction**: The scope of legal resources that are currently available to practitioners in Ohio has expanded exponentially with the proliferation of the Internet. Because we live in both a physical world and a virtual environment made possible by the Internet, we have access to a much wider collection of legal resources
than ever before. This chapter will give you practical advice to help you define your law library needs, identify relevant books, Web sites, and databases, and tell you where you can find help at local law libraries.

B. The Basics: For research purpose, law comes in two basic types called primary and secondary law. Many cases can be resolved solely by reference to primary law. Lawyers often need secondary law for background information or to explain, describe or expand upon the law contained in primary law resources.

- Primary law includes: Constitutions, rules of court, cases, statutes and legislative materials, administrative regulations and decisions, and local ordinances.

- Secondary Law includes: treatises, hornbooks, practice materials and handbooks; legal encyclopedias and digests; form books; jury instructions; verdict reporters; law reviews and journals; citators; legal newspapers and newsletters; and legal software programs.

- In addition, some of the necessary tools of our trade include a legal dictionary, citation manuals and legal directories. Most lawyers also regularly use a regular print dictionary, a print thesaurus and the local telephone books.

C. Your Law Library: Regardless of your practice areas or the ease with which you can navigate the Internet, you should keep a core set of books on or near your desk. Of course, most, if not all, of the following items are also available via the Internet (most for no cost) and via CD subscription in lieu of books. Some would argue that having a print regular dictionary, legal dictionary, thesaurus, or directory of local attorneys, is completely unnecessary if you can access them via the Internet. In any event, these should include:

- the Unites States and the Ohio Constitutions;
- the applicable rules of court;
- a legal dictionary;
- a citation manual;
- a directory of local attorneys;
- a regular dictionary;
- a print thesaurus;
- local telephone books.
D. **Your Firm Library:** Depending on your practice areas, you will also need access to most, if not all, of the remaining primary resources and a number of secondary sources.

E. **Your Local Law Library:** In addition to providing access to primary legal materials, local law libraries can furnish many secondary sources, materials from other states, specialty materials, and even some international and foreign materials. What these libraries do not possess as part of their collections, they often can obtain from other nationwide libraries, usually for a reasonable fee.

Almost more importantly, a law library is a wonderful place where you can go to receive direct assistance from librarians who can help you streamline the time you spend researching and preparing your cases.

F. **Legal Resources For Your Firm Law Library:**

1. **Primary Law:**

   a. **The Ohio Constitution:**

      - **Books:** Rather than buying copies at a local or Internet book store, you may be able to pick up free pocket copies of the Ohio Constitution at a local bar association, a local public library or your local law library.

      - **Free Internet bookmarks:**

        - Ohio State Legislature: [www.legislature.state.oh.us](http://www.legislature.state.oh.us)
        - Anderson Online: [http://codes.ohio.gov](http://codes.ohio.gov)

        - **Online Databases:** Ohio State Bar Association members can access the Ohio Constitution online through *Casemaker* for no more than the cost of OSBA membership. Although other vendors provide online access to unannotated versions of the Ohio Constitution, Lexis and Westlaw both provide access to annotated versions online for a fee.

   b. **The United States Constitution:**

      - **Books:** You may be able to pick up free pocket copies of the United States Constitution at a local bar association, a local public library or your local law library.

      - **Free Internet bookmarks:**

        - Library of Congress: [http://tinyurl.com/2v2myz](http://tinyurl.com/2v2myz)
c. **Online Databases:**

- Lexis [www.lexis.com](http://www.lexis.com)
- Westlaw [www.westlaw.com](http://www.westlaw.com)
- Case Maker [www.casemaker.us](http://www.casemaker.us)

G. **Rules of Court:** Some of the most essential resources you should purchase in print are current compilations of court rules. These should be kept within arm’s length of your desk or desktop computer. However, some of the rules you need are also available for free on the Internet and in online databases.

1. **Ohio Rules of Court:**

a. **Books:** If you practice in state court, either one of the following titles will contain the civil, criminal, evidence, appellate, Supreme Court and superintendence rules you will need most often:


- Annotated versions of the civil, criminal, evidence, appellate, Supreme Court and superintendence rules (as well as other selected rules) are also contained in books that are sold with both sets of the *Ohio Revised Code* annotated:

- *Page’s Ohio Revised Code Annotated* (Lexis)

- *Baldwin’s Ohio Revised Code Annotated* (Thomson West).

- Both Lexis and Thomson West also publish the following books containing local rules for all 12 of the appellate districts, as well as selected common pleas courts:


- If these books do not contain your court’s local rules, try the court’s Web site, or call the clerk of the particular court to order a
copy. Your local law library also may have a copy you can use and/or borrow.

b. **Free Internet Bookmarks:**

- The easiest and best place to find Supreme Court of Ohio, civil, criminal, appellate, evidence, superintendence, ethics and other rules is at the Supreme Court of Ohio’s web site: [http://www.sconet.state.oh.us](http://www.sconet.state.oh.us)

- Many of the appellate districts and lower courts have also put their local rules on their individual court Web sites. An Internet gateway to many online Ohio court rules can be found at: [http://www.llrx.com/courtrules](http://www.llrx.com/courtrules).

c. **Online Databases:**

- Lexis [www.lexis.com](http://www.lexis.com)
- Westlaw [www.westlaw.com](http://www.westlaw.com)
- Case Maker [www.casemaker.us](http://www.casemaker.us)

2. **Federal Rules of Court:**

a. **Books:** If you practice in federal court, you will want to purchase one of the following books for access to applicable federal civil, appellate, bankruptcy and local rules:


- In addition, annotated versions of the federal civil, criminal, evidence, appellate, Supreme Court and bankruptcy rules can be found in both commercial annotations of the *United States Code*:
  - USCS: United States Code Service (Lexis)

b. **Free Internet Bookmarks:** The following rules are variously available for free at these and other Web sites:

- Supreme Court Rules: [http://www.supremecourts.gov/ctrules/ctrules.html](http://www.supremecourts.gov/ctrules/ctrules.html)
• Sixth Circuit Rules and IOPs:  http://tinyurl.com/3d3c5e

• Federal Rules of Evidence:
  http://www.law.cornell.edu/rules/fre/index.html

• Federal Rules of Civil Procedure:
  http://www.law.cornell.edu/rules/frcp/index.html

• Federal Rules of Criminal Procedure:
  http://www.law.cornell.edu/rules/frcrmp/

• Bankruptcy Rules:
  • U.S. Bankruptcy Courts
    http://www.uscourts.gov/bankruptcycourts.html
  • Bankruptcy Court, Northern District of Ohio
    http://www.ohnb.uscourts.gov/
  • Federal Rules of Bankruptcy Procedure
    http://straylight.law.cornell.edu/rules/frbp/

• Northern District of Ohio civil, criminal and bankruptcy rules:
  http://www.ohnd.uscourts.gov/

• Southern District of Ohio civil and criminal rules:

• An Internet gateway to many online court rules can be found at the following site: http://www.llrx.com/courtrules.

c. **Online Databases:**

• Lexis www.lexis.com

• Westlaw www.westlaw.com

• Case Maker www.casemaker.us

H. **Cases:** Although legal research vendors still publish cases in books, the easiest and most cost-effective way for lawyers to obtain access reported, unreported and archival cases today is to access them online. More and more courts are putting their cases online for free, the OSBA has created a repository of case databases that is free for members through Casemaker and legal research vendors provide access to annotated case law online. There are several obvious advantages to having access to online summaries. First, the resources often come annotated with cross-references to secondary sources that can be helpful. Second, the cases often come with hyperlinks
to other resources that may be included in the same database, thus speeding up your research. Third, citation checking can be conducted with just a few clicks.

However, print reporters still have some utility for several major reasons. In the first place, some attorneys prefer to read their cases in a book, where they can page back and forth and flip pages easily. Secondly, online databases sometimes omit appendices and attachments to opinions when they post decisions online, while you can still find these ancillary materials in the books. A disadvantage to relying on print resources is that in a book, you may only be able to find opinions that courts have issued but later "withdrawn."

1. **Ohio Law:**
   a. **Books:** Although most practitioners should now retrieve their cases online from a legal research vendor or the issuing courts themselves, some still may want to collect current court reports in print. In Ohio, official reports are still published in several sources, including:
      - Ohio Official Reports (Thomson West):
      - Ohio State Reports 3d (Ohio Supreme Court decisions)
      - Ohio Appellate Reports 3d (selected appellate opinions)
      - Ohio Miscellaneous Reports 2d (selected common pleas and municipal court decisions).
      - Thomson West also still publishes unofficial reports of reported cases in the *North Eastern Reporter 2d series*.
   b. **Free Internet Bookmarks:**
      - The Supreme Court of Ohio is your gateway to free online decisions from the Supreme Court of Ohio back to 1992 as well as all of the appellate districts back to at least 2001: [http://www.sconet.state.oh.us/rod/newpdf/default.asp](http://www.sconet.state.oh.us/rod/newpdf/default.asp).
      - In addition, each appellate district court has its own Web site with links to current decisions. The following gateway provides links to all of the appellate court Web sites: [http://www.sconet.state.oh.us/District_Courts/default.asp](http://www.sconet.state.oh.us/District_Courts/default.asp).
      - In addition, many lower courts are beginning to post their decisions on the Web, although some have become more sensitive to revealing private information such as Social Security numbers, bank account numbers, etc.
• Lexis also provides a free online product that contains a rolling five years’ worth of case law. All you have to do is register online for access at this Web site: http://www.lexisone.com/.

c. **Online Databases:**

• Through *Casemaker*, Ohio State Bar Association members have free access to:
  
  • Supreme Court decisions reported in Ohio State Reports (1st, 2nd and 3rd series);
  
  • Appellate decisions reported in Ohio Appellate Reports (1st, 2nd and 3rd series);
  
  • Common pleas and municipal court decisions reported in Ohio Misc. 2d Reports.

  • *Casemaker* also provides members with free access to selected unreported Ohio cases back to 1981.

  • In addition, Lexis and Westlaw provide online access to all reported and many unreported Ohio cases.

2. **Federal Law:**

   a. **Books:**

   • Lexis and Thomson West are still publishing new reported federal cases in the following books:

   • Supreme Court opinions:
     
     • Supreme Court Reporter (Thomson West)
     
     • United States Reports (U.S. Government Printing Office)
     
     • United States Supreme Court Reports, Lawyers’ Edition, 2d (Lexis)

   • Federal appellate opinions: *Federal Reporter 3rd* (Thomson West)

   • Federal District Court opinions: *Federal Supplement 2nd* (Thomson West)

   • Opinions relating to federal civil and criminal rules: *Federal Rules Decisions* (Thomson West)
b. **Free Internet bookmarks:**


- **Supreme Court opinions:**
  - Supreme Court opinions back to 2003: [http://www.supremecourtus.gov/opinions/opinions.html](http://www.supremecourtus.gov/opinions/opinions.html)
  - Supreme Court opinions back to 1893 from Findlaw: [http://www.findlaw.com/casecode/supreme.html](http://www.findlaw.com/casecode/supreme.html)
  - Supreme Court opinions by topic: [http://straylight.law.cornell.edu/supct/cases/topic.htm](http://straylight.law.cornell.edu/supct/cases/topic.htm)
  - Gateway to other sources of Supreme Court decisions: [http://tinyurl.com/23coub](http://tinyurl.com/23coub)

- **6th Circuit opinions:**
  - Sixth Circuit’s Web site (reported cases back to 7/1/99 and unreported cases back to 10/1/04): [http://tinyurl.com/384fg4](http://tinyurl.com/384fg4)
  - Sixth Circuit decisions from 1/95-6/99: [http://www.law.emory.edu/6circuit/](http://www.law.emory.edu/6circuit/)

- Lexis also provides a free online product that contains a rolling five years’ worth of federal case law. All you have to do is register online for access at the following site: [http://www.lexisone.com/](http://www.lexisone.com/)

c. **Online databases:**

- The OSBA’s *Casemaker* provides free access for members to searchable databases containing U.S. Supreme Court, circuit court, bankruptcy and district court opinions.

- Lexis and Westlaw sell various packages containing access to all reported and most of the unreported federal court decisions.
I. **Statutes And Legislative Materials**: Statutes and legislative materials are often the starting point for issues under both state and federal law.

1. **Ohio Law**:
   a. **Books**:
      - The official record of the laws of Ohio is contained in a set of books called the *Laws of Ohio*, which is still published by the Ohio Secretary of State. This set can be used at a local law library and includes both uncodified laws and laws that the governor vetoes.
      - Unofficially since 1953, the codified laws of Ohio have been contained in the *Ohio Revised Code*. The *Ohio Revised Code* superseded the General Code of 1910, and its predecessor, the Revised Statutes of 1879. Some law libraries will retain copies of the prior versions of the ORC. Some practitioners and law firms choose to purchase their own set of the ORC in annotated form (i.e., containing cross-references and case annotations) from either of the two legal publishing giants:
        - *Baldwin’s Ohio Revised Code Annotated* (Thomson West)
        - *Page’s Ohio Revised Code Annotated* (Lexis).
      - A discussion of Ohio legislative history is beyond the scope of this chapter. As a result, please visit your local law library for help. Also, you can utilize the information provided on the Ohio Legislative Service Commission’s Web site at: [http://www.lsc.state.oh.us/leginfoguides.html](http://www.lsc.state.oh.us/leginfoguides.html).
      - Particularly useful at this Web site is the LSC’s online publication entitled *A Guide to Legislative History in Ohio*.
   b. **Free Internet Bookmarks**:
      - The *Ohio Revised Code* can be found online for free at the following site: [http://codes.ohio.gov/orc](http://codes.ohio.gov/orc)
      - The *Ohio Building Code* can be found online for free at the following site: [http://tinyurl.com/2dx7sw](http://tinyurl.com/2dx7sw)
      - The *Ohio Basic Code* can be found online for free at: [http://www.amlegal.com/library/oh/ohiobasiccode.shtml](http://www.amlegal.com/library/oh/ohiobasiccode.shtml)
• Bookmark Gongwer’s site for news regarding Ohio legislation: www.gongwer-oh.com

2. Federal Law:

a. Books:

• Federal public and private laws are published by the Office of the Federal Register. Federal public laws are also published in a set of books called the United States Statutes at Large, which contains the text of every law passed by Congress since 1789. Public laws are then arranged by subject in the United States Code (National Archives and Records Administration).

• You may find it easier to use the following commercial resources that provide annotated versions of the USC in print:

  • USCS: United States Code Service (Lexis)
  • USCA: United States Code Annotated (Thomson West).

• A lesson on federal legislative history is beyond the scope of this chapter. As a result, please visit your local law library for help. You can also get a good start using the guides provided at the following Web sites:

  • http://www.llsdc.org/sourcebook/fed-leg-hist.htm
  • http://lib.law.washington.edu/ref/fedlegishist.html
  • http://tinyurl.com/2fjalp

b. Free Internet Bookmarks: The best place to find the USC online for free is at the following Web sites:
J. **Administrative Rules and Decisions:** Oftentimes, the applicable code is either so general or vague that it does not completely explain the law. In those situations, you can turn to applicable agency regulations, or what are sometimes called rules, for greater detail and explanations. Like common law, agency decisions also can elucidate statutes and/or regulations that are unclear.

1. **Ohio Law:**

   a. **Books:**

   - The Ohio Administrative Code captures all of the rules promulgated by Ohio’s administrative agencies charged with implementing the Ohio Revised Code. Thomson West still publishes this code in print, as well as monthly supplements in the Ohio Monthly Record.

   - An explanation of agency rule-making power is beyond the scope of this chapter. However, an instructive publication which can answer most of your questions can be found online at the Legislative Service Commission’s Web site:


   - Some agencies issue their decisions in print:

     - Ohio Attorney General opinions;
• Ohio Ethics Commission Advisory opinions;
• decisions of the Ohio Supreme Court Board of Commissioners on Grievances and Discipline;
• SERB Official Reporter.

b. Free Internet Bookmarks:
   • A free version of the Ohio Administrative Code can be found at the following web site: http://codes.ohio.gov/oac
   • Ohio’s Government Portal: http://ohio.gov/
   • Board of Commissioners on Grievances and Discipline: http://www.sconet.state.oh.us/BOC/
   • Ohio Attorney General: http://www.ag.state.oh.us/legal/opinions/
   • Ohio Board of Tax Appeals: http://bta.ohio.gov/
   • Ohio Civil Rights Commission: http://crc.ohio.gov/
   • Ohio Ethics Commission: http://www.ethics.ohio.gov/AdvisoryDigest.html

c. Online Databases: The OSBA’s Casemaker provides members with free access to:
   • A current version of the OAC;
   • Ohio Attorney general opinions since 1993;
   • OSBA formal and informal ethics opinions since 2000;
   • opinions of the Board of Commissioners on Grievance and Discipline since 1997;
   • decisions of the Ohio Civil Rights Commission since 1994.
   • Lexis and Westlaw also provide access to annotated versions of the OAC and various administrative agency decisions.

2. Federal Law:
   a. Books: Once they are finalized by federal agencies, federal regulations are initially published in the Federal Register. Federal regulations are subsequently arranged by subject and agency in the
Code of Federal Regulations (CFR). Both of these sets of books are published by the United States Government Printing Office.

b. **Free Internet Bookmarks:**

- A free searchable version of the Federal Register back to 1994 can be found at the GPO Web site:  
  http://www.gpoaccess.gov/fr/index.html

- The GPO is also the place to find an online, searchable version of the CFR and the List of CFR Sections Affected (LSA):

- Regulations.Gov is another place to find regulations and other actions of federal agencies:  
  http://www.regulations.gov/fdmspublic/component/main

- Two other places to look for federal agency decisions are:
  - http://tinyurl.com/2pyb29
  - http://www.lib.lsu.edu/gov/fedgov.html

c. **Online Databases:**

- The OSBA's Casemaker provides members a free, current version of the CFR.

- Lexis and Westlaw provide sophisticated access to the Federal Register, CFR and LSA.

K. **Local Ordinances:** You may need to check local ordinances for issues relating to property rights, building restrictions and permits, zoning regulations, traffic laws, and other topics. The only places you used to be able to find copies of local ordinances were the particular jurisdiction’s law department and possibly your local public library. Although those are still places to go locally, more and more ordinances are being posted on the Internet.

All of the ordinances for the major Ohio cities are already on the Web:

- Akron: http://www.bpcnet.com/codes/akron/
- Cincinnati: http://www.cincinnati-oh.gov/council/pages/-3656-/
- Cleveland: http://caselaw.lp.findlaw.com/clevelandcodes/
• Columbus: http://www.bpcnet.com/codes/columbus/
• Dayton: http://tinyurl.com/2gv5n5
• Toledo: http://www.amlegal.com/toledo_oh/
• Youngstown: http://www.conwaygreene.com/Youngstown.htm

You can also check your jurisdiction’s Web site for a link to its local ordinances, or check the following sites to help you ascertain whether the local ordinances you need are on the Web:

• American Legal Publishing: http://www.amlegal.com/
• Conway Greene: http://www.conwaygreene.com/Municipal-Codes.htm
• Lexis’ Municipal Codes Web Library: http://www.bpcnet.com/codes.htm
• Municode.com: http://www.municode.com/
• E-Codes: http://www.generalcode.com/webcode2.html

L. Treatises, Hornbooks, Practice Materials and Handbooks: A treatise typically provides an extensive discussion of a legal topic. Similarly, hornbooks explain the basics and rudiments of a subject. Both treatises and hornbooks come in handy when researching black letter law principles. Practice materials discuss more practical applications of the law and often include sample forms to use. Handbooks can vary from practical guides on a legal subject to compilations of relevant statutes, rules and sometimes cases and/or case summaries. These value-added resources can be very helpful when primary law sources do not speak for themselves. Although these resources have traditionally only been available in print, many are now available online, although not for free.

1. Ohio Law:
   a. Books: Depending on your practice area, you may want to purchase one or more of the following books, some of which come with companion forms and CD ROMs:

   • Appellate practice:
     • Baldwin’s Ohio Appellate Practice (Painter/Dennis, Thomson West)
     • Appellate Practice and Procedure in Ohio (Wolff, et al., Lexis)
     • Architects, building:
• Know Your Code: A Guide to the Ohio Building Code (Thomson West)

• Automobiles:
  • Ohio Manual of Uniform Traffic Control Devices (Ohio Dept. Of Trans.)
  • Ohio Driving Under the Influence Law (Thomson West)
  • ODOT Standard Design Manual (ODOT)

• Bankruptcy:
  • Anderson’s Ohio Annotated Bankruptcy Handbook (Lexis)

• Civil practice:
  • Anderson’s Ohio Civil Practice with Forms (Lexis)
  • Baldwin’s Civil Practice (Thomson West)
  • Civil Rules Practice with Forms (Lexis)
  • Guide to the Ohio Rules of Civil Procedure (Lexis)

• Commercial law:
  • Ohio Forms Legal and Business (Thomson West)
  • Ohio Transaction Guide (Lexis)

• Constitutional Law:
  • The History of Ohio Law (Ohio University Press)
  • The Ohio State Constitution (Praeger)

• Corporations:
  • Anderson’s Ohio Corporation Law Handbook (Lexis)
  • Anderson’s Ohio Securities Law and Practice Handbook (Lexis)
  • Business Organizations (Thomson West)
  • Business Organizations Laws & Rules (Thomson West)
- Ohio Annotated Business Entities Handbook (Lexis)
- Ohio Business Entities (Lexis)
- Ohio Corporation Law (Lexis)

- Criminal law & procedure:
  - Anderson’s Ohio Criminal Practice & Procedure (Lexis)
  - Anderson’s Ohio Manual of Criminal Complaints & Indictments (Lexis)
  - Anderson’s Ohio Criminal Law Handbook (Lexis)
  - Anderson’s Ohio Search Warrant Manual (Lexis)
  - Baldwin’s Ohio Felony Sentencing Law (Thomson West)
  - Criminal Law [Katz & Giannelli] (Thomson West)
  - Ohio Arrest, Search and Seizure (Thomson West)
  - Ohio Criminal Justice (Thomson West)
  - Ohio Officer’s Search Warrant Handbook (Lexis)
  - Ohio Search Warrant Manual (Lexis)
  - Ohio Statutory Charges (Thomson West)

- Debtor-creditor relations:
  - Ohio Consumer Law (Thomson West)
  - Ohio Creditors’ Rights (Lexis)

- Ethics:
  - The Law of Professional Responsibility in Ohio (Lexis)
  - Lawyer’s Guide to the Ohio Code of Professional Responsibility (Banks-Baldwin)
  - Professional Responsibility in Ohio (Ohio State Bar Foundation)

- Evidence:
• Evidence (Thomson West)
• Ohio Evidence Manual (Casemaker)
• Rules of Evidence Handbook (Thomson West)
• Weissenberger’s Ohio Evidence Courtroom Manual (Lexis)
• Weissenberger’s Ohio Evidence Treatise (Lexis)

• Family law:
  • Anderson’s Ohio Family Law (Lexis)
  • Anderson’s Ohio Family Law Handbook (Lexis)
  • Domestic Relations Laws & Rules Annotated (Thomson West)
  • Ohio Domestic Violence Law (Thomson West)
  • Ohio Juvenile Law (Thomson West)
  • Sowald Morganstern Domestic Relations Law (Thomson West)

• Labor & employment law:
  • Anderson’s Ohio Annotated Workers’ Compensation Law (Lexis)
  • Ohio Civil Service & Collective Bargaining Laws & Rules Annotated (Thomson West)
  • Ohio Employment Practices Law (Thomson West)
  • Ohio Public Employee Collective Bargaining (Lexis)
  • Ohio Workers’ Compensation Law (Thomson West)
  • Representing the Terminated Employee in Ohio (Lexis)

• Landlord-tenant law:
  • Ohio Landlord/Tenant Law (White)
  • Ohio Eviction and Landlord-Tenant Law (Legal Aid Society of Cleveland)
• Medical laws & legislation:
  • *Anderson’s Ohio Elder Law Practice Manual* (Lexis)
  • *Drug Laws of Ohio* (Thomson West)
  • *Financial and Health Care Planning for the Elderly in Ohio* (Lexis)
  • *Ohio Medicaid Manual* (Richard Taps)

• Probate and estate law:
  • *Anderson’s Ohio Probate Practice and Procedure* (Lexis)
  • *Merrick-Rippner Ohio Probate Law* (Thomson West)
  • *Merrick-Rippner Probate Laws & Rules Annotated* (Thomson West)
  • *Ohio Estate Planning, Wills and Trusts Library: Forms and Practice Manual* (datatrace)
  • *Ohio Probate Laws Handbook* (Lexis)
  • *The Simple Will in Ohio* (Lexis)

• Real property:
  • *Ohio Condominium Law* (Thomson West)
  • *Ohio Real Estate Law Handbook* (Thomson West)
  • *Ohio Residential Real Estate Manual* (Lexis)
  • *Ohio Real Estate Law 3rd ed.* (Thomson West)
  • *Ohio Real Property Law and Practice 5th ed.* (Lexis)

• School law:
  • *Anderson’s Ohio School Finance* (Lexis)
  • *Anderson’s Ohio School Law Guide* (Lexis)
  • *Baldwin’s Ohio School Law* (Thomson West)

• Taxation:
- Anderson’s Ohio Tax Law Handbook (Lexis)
- Ohio Tax Law & Rules (Thomson West)

- Torts:
  - Ohio Personal Injury Practice (Thomson)
  - Tort Law (Thomson)

- Trial practice:
  - Ohio Pretrial Litigation Practice Manual (Lexis)
  - Trial Handbook for Ohio Lawyers (Thomson West)

- Workers’ compensation:
  - Ohio Workers’ Compensation Law (Thomson)

- In addition to these materials, CLE booklets, especially those from the ABA, ALI-ABA, the OSBA and your local bar associations, can be excellent sources for current information on particular areas of the law, sample checklists, and references to applicable cases and statutes.

b. **Free Internet Bookmarks:** The books listed above are not available for free on the Internet. As a result, you will either have to purchase online versions from Lexis or Westlaw, as appropriate, or check at your local law library.

c. **Online Databases:** Most, if not all, of the books specifically listed above, are available from Lexis or Westlaw, as appropriate. They often come in dedicated online libraries or packages labeled as analytical or practice materials.

2. **Federal Law:**

a. **Books:** A few select resources that provide an entree into federal law would include:

  - Federal Courts (West)
  - Federal Practice and Procedure [Wright] (Thomson West)
  - Federal Procedure, Lawyers Edition (Thomson West)
  - Manual of Federal Practice (Lexis)
  - Moore’s Federal Practice (Lexis)
• Supreme Court Practice (BNA)
• Weinstein’s Federal Evidence (Lexis)
• West’s Federal Administrative Practice (Thomson West).

• In addition, legal vendors publish books on every legal topic imaginable. As a result, there are likely to be treatises, hornbooks, practice guide and/or handbooks on virtually every federal law or principle. However, a list of these resources is beyond the scope of this chapter. For recommendations, please ask the librarian at your local law library.

• In addition to these materials, CLE booklets, especially those from the ABA, ALI-ABA, the OSBA and your local bar associations, can be excellent sources for current information on particular areas of the law, sample checklists, and references to applicable cases and statutes.

b. Free Internet Bookmarks: The books listed specifically above are not available for free on the Internet. As a result, you will either have to purchase online versions from Lexis or Westlaw, as appropriate, or check with your local law library.

c. Online Databases: All of the books specifically listed above are available from Lexis or Westlaw, as appropriate.

M. Legal Encyclopedias and Digests: Both legal novices and seasoned practitioners often overlook these extremely helpful resources. Encyclopedias can provide a thorough and organized overview of a legal topic, and digests can provide quick access to relevant case authorities.

1. Ohio Law:

a. Books: You may not have thought about it as an encyclopedia, but that is the purpose of:

• Ohio Jurisprudence 3d (Thomson West).

• West’s Ohio Digest provides access to West’s universal topic and key number system. Although West also still publishes General and Dicennial Digests with squibs of nationwide cases, these products are too cumbersome to use, in contrast to online access on Westlaw.

b. Free Internet Bookmarks: Neither Ohio Jurisprudence 3rd nor any of West’s Digests are available for free on the Internet.
c. **Online Databases:** Westlaw provides online access to *Ohio Jurisprudence 3rd*, and Lexis users can find particular sections using the "Get a Document" feature. Westlaw is the sole place to find the Digest system with its universal topic and key number system. Lexis has computerized and expanded its traditional headnote system online. These products are both integrated within databases of cases, etc. and are not sold separately.

2. **Federal Law:**

a. **Books:** There is no one encyclopedia of federal law, but the following two commonly-known titles provide a national perspective on the practice of law in the United States:

   - *Corpus Juris Secundum* [CJS](Thomson West)
   - *American Jurisprudence 2d* [AmJur](Thomson West).

   Other related titles which may also be helpful would include:

   - *Words and Phrases* (Thomson West)
   - *American Law Reports* (1st-6th and federal series)(Thomson West)
   - *Restatements of the Law* (Thomson West)
   - *Uniform Laws Annotated* (Thomson West).

   Thomson West still publishes the following federal digests, although using the digest system online is extremely easy and much more expeditious through Westlaw:

   - United States Supreme Court Digest (Thomson West)
   - West’s Federal Practice Digest (Thomson West).

   In addition, Thomson West still publishes topic specific digests. Examples of these topics would include digests for bankruptcy and education law.

b. **Free Internet Bookmarks:** None of the books listed above are available for free on the Internet, but there are a few places on the Web to get an overview of a legal topic:

   - Cornell Legal Research Encyclopedia: [http://library.lawschool.cornell.edu/encyclopedia/](http://library.lawschool.cornell.edu/encyclopedia/)
c. **Online databases:** Westlaw is the sole place to find the Digest system with its universal topic and key number system, and Westlaw also provides access to all of the related Thomson West products listed above. Lexis has computerized and expanded its traditional headnote system online. These products are both integrated within databases of cases, etc. and are not sold separately.

N. **Form Books:** If you have not been in practice long enough to have amassed a computer file or credenza of standard forms you use in your everyday practice, form books can save you a lot of time. Form books are taking hold online as a way to streamline preparation of court documents.

1. **Ohio Law:**

   a. **Books:** Many of the Ohio subject matter treatises identified above contain companion forms to supplement the text. Additional books that have proven to be good sources for basic Ohio forms include:

   - *Anderson’s Ohio Civil Practice with Forms* (Lexis)
   - *Couse’s Ohio Form Book* (Lexis)
   - *Ohio Forms: Legal and Business* (Thomson West)
   - *Ohio Forms of Pleading and Practice* (Lexis)

   b. **Free Internet Bookmarks:** More and more courts are posting their standard forms on their web sites.

   - Internet gateways to many online court forms can be found at the following sites:
     - [http://www.uscourtforms.com/](http://www.uscourtforms.com/)

   - Ohio forms are available at these locations on the Internet:
     - Lexisone free forms: [http://tinyurl.com/38owgv](http://tinyurl.com/38owgv)
     - For a more comprehensive list, please refer to the following Web site: [http://tinyurl.com/38lb52](http://tinyurl.com/38lb52)
c. **Online Databases:** The OSBA's *Casemaker* provides members with a gateway to many state court forms on the Internet. Both Lexis and Westlaw contain Ohio practice forms that can be downloaded in various formats and word-processed on your desktop or laptop computer.

2. **Federal Law:**

a. **Books:** Although there are many to choose from, several standard federal form books include:

- *American Jurisprudence Pleading and Practice Forms* (Thomson West)
- *American Jurisprudence Proof of Facts, 1st, 2nd and 3rd series* (Thomson West)
- *American Jurisprudence Trials* (Thomson West)
- *Bender’s Federal Practice Forms* (Lexis)
- *Bender’s Forms of Discovery* (Lexis)
- *Causes of Action, 1st and 2nd series* (Thomson West)
- *Federal Procedural Forms, Lawyers Ed.* (Thomson West)
- *Manual of Federal Practice Forms* (Lexis)
- *Trials* (Thomson West)
- *West’s Federal Forms* (Thomson West).

- In addition, here are a few more general form books containing sample forms that might also be helpful:

  - *American Jurisprudence Legal Forms, 2nd* (Thomson West)
  - *Nichols Cyclopedia of Legal Forms Annotated* (Thomson West)
  - *Rabkin & Johnson Current Legal Forms with Tax Analysis* (Lexis)
  - *West’s Legal Forms* (Thomson West).
• Your local law librarian can also recommend topic specific form books that may help you save time and money drafting pleadings, motions, and briefs that address federal law.

b. **Free Internet Bookmarks:**

• The quickest way to find federal forms on the Web is at: [http://www.forms.gov/bgfPortal/citizen.portal](http://www.forms.gov/bgfPortal/citizen.portal)

• Federal courts post many of their standard forms on their court Web sites.

• Internet gateways to many online court forms can be found at the following sites:
  - [http://www.uscourtforms.com/](http://www.uscourtforms.com/)

• Federal bankruptcy forms can be located at the following site: [http://www.uscourts.gov/bankruptcycourts.html](http://www.uscourts.gov/bankruptcycourts.html).

• You may be able to find additional forms at the following sites:
  - Catalaw: [http://www.catalaw.com/topics/Forms.shtml](http://www.catalaw.com/topics/Forms.shtml)

c. **Online Databases:** Both Lexis and Westlaw contain huge databases of federal practice forms that can be downloaded in various formats and word-processed on your desktop or laptop computer.

O. **Jury Instructions:** Every lawyer who tries a case in Ohio will need access to sample jury instructions. Both Ohio and federal jury instructions are available in books and from legal database vendors. In addition, courts sometimes incorporate the text of jury instructions into their legal decisions.

1. **Ohio Law:**

a. **Books:** The essential guide for drafting jury instructions in Ohio continues to be:

• *Ohio Jury Instructions* [OJI](Lexis), prepared by the Ohio Judicial Conference.
b. **Free Internet Bookmarks:** Other than free online cases which may contain the text of jury instructions that courts used in rendering their decisions, jury instructions from OJI are not available for free on the Internet.

c. **Online Databases:** The OSBA’s *Casemaker* product provides members with free, electronic access to OJI, as well as a separate set of Ohio jury instructions that the OSBA has developed and compiled. Both Lexis and Westlaw provide access to OJI online.

2. **Federal Law:**

a. **Books:** Although there are many topic specific form books that your local law librarian can recommend for particular legal subject areas, the following sources serve as good general federal form books:

   - Federal Jury Practice and Instructions, 5th ed. (Thomson West)
   - Modern Federal Jury Instructions (Lexis).

b. **Free Internet Bookmarks:** There are really no good sites for *free* federal jury instructions on the Internet.

c. **Online Databases:** Sixth Circuit Pattern Criminal Jury Instructions are available for *free* on the Web:

   - Lexis and Westlaw provide online access to the jury instructions they publish in print.

P. **Verdict reporters:** In order to evaluate your likelihood of success in a case or damages which your clients may be able to recover, you will want to turn to jury verdict and settlement reporters. Many of these resources are available in print and through fee-based online databases, but there is really only one general source on the Internet that you can use for free.

1. **Ohio Law:**

a. **Books:** The two major verdict reporters for Ohio are:

   - *OATL Verdict Reporter* (Ohio Academy of Trial Lawyers)
   - *Ohio Trial Reporter* (JAS).

b. **Free Internet Bookmarks:** There are really no places to find a compilation of Ohio jury verdicts for free on the Internet, but you can try the following resource:
National Law Journal’s Annual Survey of the Year’s Largest Jury Verdicts:

http://tinyurl.com/2t3hvx

c. **Online Databases:** Ohio Decisions Weekly reports verdict and settlement information online at:

http://www.ohiodecisionsweekly.com/

Lexis and Westlaw also provide access to all of the major Ohio trial reporters.

2. **Federal Law:**

a. **Books:** As opposed to federal jury verdict reporters, publishers print jury verdict reporters with a national perspective. These would include the following resources:

- *Dollar Verdicts: Personal Injury* (Thomson West)
- *Personal Injury Valuation Handbooks* (Jury Verdict Research, Inc.)
- *What’s It Worth?* (Michie Company).

b. **Free Internet bookmarks:** The only real place to try and find jury verdicts for free is the National Law Journal’s Annual Survey of the Year’s Largest Jury Verdicts:

http://tinyurl.com/2t3hvx

c. **Online Databases:**

- Subscribers to *Lawyers Weekly* can access a verdict database online at: http://www.lawyersusaonline.com/
- Lexis and Westlaw also provide access to all of the major national trial reporters separately and/or in combined databases.

Q. **Law Reviews and Journals:** Law review articles can be help you flesh out the salient points of a thorny legal issue or keep abreast of developments in your practice areas. However, unless they come from your law school *alma mater* or are devoted to your practice area, you probably do not need to personally subscribe to law reviews.
in print anymore. Instead, you can obtain them when you need them online from a legal research vendor or through your local law library.

There are several good ways to find law reviews and journals that may contain articles discussing Ohio and/or federal law. One way is to use key terms to search a full text database of law reviews and journals online. Another good way is to search in a periodical index, such as one of the following two sources, both of which can be searched many ways, including by title, author, subject and keyword:

- Index to Legal Periodicals (best used online)
- LegalTrac (only available online).

The *Index to Legal Periodicals* is available from both Lexis and Westlaw, and *LegalTrac* is available online from Thomson Gale. A third way is to check the annotations to your cases, statutes and authorities for cross-references to journal and law review articles.

1. **Ohio Law:** Many journals cover Ohio law topics, but several journals are devoted to a discussion of Ohio law. While all Ohio-specific journals are available in print, many are becoming available online.

   a. **Books:** A list of the major state-wide Ohio print journals includes:

   - *Baldwin’s Ohio School Law Journal* (Thomson West)
   - *Domestic Relations Journal of Ohio* (Thomson West)
   - *Ohio Business Law Journal* (Thomson West)
   - *Ohio Municipal Service* (Thomson West)
   - *Ohio State Bar Association Report* (OSBA)
   - *Ohio Lawyer* (Ohio Academy of Trial Lawyers)
   - *Ohio Trial* (Ohio State Bar Association)
   - *Probate Law Journal of Ohio* (Thomson West)
   - *Tort Law Journal of Ohio* (Thomson West)

   You are also likely to find information on Ohio law in the law reviews and journals published by Ohio’s law schools.

   In addition, your local bar association(s) also may publish their own journals covering topics of interest to local practitioners.
b. **Free Internet Bookmarks:** None of the print Ohio journals published by legal research vendors are available for free on the Internet.

Some law schools are beginning to provide free access online to recent and archival law review and journal articles. Here are two links that may help you find the journals you need:

- [http://stu.findlaw.com/journals/](http://stu.findlaw.com/journals/)

c. **Online Databases:**

- The OSBA makes its journals available online to members by password access.
- Lexis and Westlaw provide online access to overlapping collections of law reviews and journals. Some of Ohio’s law reviews and journals are becoming available through these venues.
- Some public libraries and law libraries subscribe to databases which contain abstracts and/or the full text of law review and journal articles.

2. **Federal Law:**

a. **Books:** There are too many journals that cover federal law topics to list them here. However, the best way to find them is to use the periodical indexes listed above.

In addition, your local bar association(s) may also publish their own journals covering topics of interest to local practitioners.

b. **Free Internet Bookmarks:** Some law schools are beginning to provide free access online to recent and archival law review and journal articles. Here are two links that may help you find the journals you need:

- [http://stu.findlaw.com/journals/](http://stu.findlaw.com/journals/)

c. **Online Databases:** Lexis and Westlaw provide online access to overlapping collections of law reviews and journals. However, the breadth of these articles is simply beyond the scope of this chapter. In addition, both vendors constantly change their providers and add
more archival content, making a master list from anyone but them impossible.

Some public libraries and law libraries subscribe to databases which contain abstracts and/or the full text of law review and journal articles.

R. **Citators:** Legal Research and Writing 101 teaches prospective lawyers to always check the authority and subsequent history of cases, statutes and other authorities they cite.

Traditional citators include *Shepard’s Citations* from Lexis, and KeyCite, a purely electronic product from Thomson West. Only a few practitioners and less and less traditional law libraries still maintain print sets of *Shepard’s* because the most efficient way to check the authority and/or subsequent history of a case is to use an online citator from either of these vendors. Both vendors also offer graduated levels of these services which can cover only Ohio or only federal law.

The OSBA’s Casemaker product also provides a service called "casecheck" that lists subsequent history for particular cases.

S. **Legal Newspapers And Newsletters:** Legal newspapers can be a good source for local and nationwide news, legal trends, public policy analysis, and docket information. Newsletters can provide more topic-specific information.

1. **Ohio Law:**
   a. **Books:** In addition to your local daily and weekly newspapers, your community may have access to publications like Cleveland and Akron’s Daily Legal News.
      - Several Ohio law firms also publish periodic newsletters on various legal topics.
      - Some law firms also post their newsletters on the Internet.

   b. **Online Databases:**
• When *Ohio Lawyers Weekly* ceased publication in the last two years, a new publication picked up the gauntlet and is available by subscription:


• Mealey’s publishes *Litigation NewsBriefs* for Ohio that are available on Lexis, and both Lexis and Westlaw provide various news services.

2. **Federal Law:**
   
a. **Books:** There are only a few legal newspapers that cover the nation:
   
   • American Lawyer
   
   • Lawyers Weekly
   
   • The National Law Journal.
   
   b. **Free Internet bookmarks:** Several Web sites where you can find current national legal news include:

   • American Lawyer: [http://www.americanlawyer.com/](http://www.americanlawyer.com/)
   
   
   
   
   • Jurist: [http://jurist.law.pitt.edu/](http://jurist.law.pitt.edu/)
   
   
   
   
   c. **Online Databases:** Both Lexis and Westlaw provide access to selected national news sources. However, before you contract to purchase these products, make sure the papers and newsletters you need are included. Also check the scope of the online products because some only cover substantive articles, without providing access to graphics, shorter articles, advertisements and the like. If you make only infrequent use of these resources, you might want to rely on your local law library for access.
Lexis provides access to *NewsBriefs* from a company called Mealey’s.

T. **Legal Software Programs:** There are a few legal software programs that may be very helpful to Ohio lawyers:

- FinPlan Ohio Divorce Planner (Thomson West); Information on this product can be found at: [http://west.thomson.com/finplan/](http://west.thomson.com/finplan/)

- Piper Software Productions offers Supportworks, which calculates child support obligations pursuant to the Ohio Child Support Guidelines (see [http://supportworks.net](http://supportworks.net))

- Puritas Springs Software (see [www.puritas-springs.com](http://www.puritas-springs.com)) offers a full slate of Ohio-specific tax, probate and domestic automated forms.

- Ohio DR Software, LLC: [http://www.ohiodrsoftware.com](http://www.ohiodrsoftware.com) - offers a HotDocs-based product that includes all required domestic relations forms and pleadings for all of Ohio’s 88 counties, plus over 470 standard domestic relations pleadings.

- Perfect Form ([www.perfectprobate.com](http://www.perfectprobate.com)) offers a full line-up of probate, estate tax and adoption forms (among others).

U. **Legal Dictionaries:** Nothing can replace having a legal dictionary handy on or near your desk, but for a quick answer, there are a number of legal dictionaries on the Web.

1. **Books:** You can always rely on *Black’s Law Dictionary* (Thomson West, 2004), which is now in its 8th edition.

2. **Free Internet Bookmarks:** Free legal dictionaries on the Internet can be found at the following Web sites:

   - Cornell Wex Legal Dictionary: [http://tinyurl.com/f864t](http://tinyurl.com/f864t)

3. **Online Databases:** Westlaw provides access to *Black’s Law Dictionary* (8th ed.) online.
V. **Citation Manuals:** All lawyers need to cite legal authorities once in a while.

1. **Books:** For technical questions relating to citations, you can turn to one of two alternative sources:
   - *The Bluebook: A Uniform System of Citation* (18th Ed., Harvard)
   - *ALWD Citation Manual: A Professional System of Citation* (Association of Legal Writing Directors).

2. **Free Internet Bookmarks:**
   - The Supreme Court of Ohio’s Manual of Citation is available on the Internet at: [http://tinyurl.com/2bkw74](http://tinyurl.com/2bkw74) and the 2002 revisions at: [http://tinyurl.com/2wurda](http://tinyurl.com/2wurda)
   - A handy cheat sheet to citation formats can be found at the following Web site: [http://www.law.cornell.edu/citation/](http://www.law.cornell.edu/citation/)

3. **Online Databases:** Neither of the two major citation manuals is available online.

W. **Legal Directories:** In combination, print and online directories can help you find the lawyers you need to locate, contact and serve.

1. **Books:**
   - *The Ohio Legal Directory* (2007) from Legal Directories Publishing is still a venerable, state-wide source for court and attorney information. OSBA members receive a 10% discount: [http://www.ohiobar.org/memrsrc/?articleid=156](http://www.ohiobar.org/memrsrc/?articleid=156) (you must be logged into the OSBA web site for this link to work).
   - In addition, the Ohio State Bar Association and many local bar associations publish online membership directories that can be accessed on their corresponding Web sites.
   - Martindale-Hubbell(Lexis) is also still available in print, with a free online component.
   - For information on federal judges, you can use:
     - Almanac of the Federal Judiciary (Aspen)
     - American Bench (Reginald Bishop Forster & Assoc.)
2. **Free Internet Resources:**

   - The *Ohio Legal Directory* provides an attorney and firm search engine on the Internet at the following site: [http://legaldirectories.com](http://legaldirectories.com)
   
   - The Supreme Court of Ohio maintains an online directory of attorneys licensed to practice law in Ohio at the following site: [http://tinyurl.com/ag99o](http://tinyurl.com/ag99o)
   
   - The OSBA membership directory is available on the OSBA web site: [http://ohiobar.org/memrsr/memdir/](http://ohiobar.org/memrsr/memdir/)
   
   - Martindale-Hubbell provides an online companion to its print directories at: [http://www.martindale.com](http://www.martindale.com)
   
   - West Group provides a free online directory of lawyers, law firms, government offices, and corporate law offices in the United States and Canada at: [http://lawyers.findlaw.com](http://lawyers.findlaw.com)
   
   - Many courts and agencies also provide online information about their judges and court personnel.

3. **Online Databases:**

   - Westlaw provides a large number of databases that profile attorneys, judges and expert witnesses. Westlaw also contains West’s Legal Directory and specialty directories to help you find experts, judges and courts, governmental offices and lawyers, and businesses.
   
   - Lexis provides access to the Martindale-Hubbell law directory, as well as a State Legislative Directory.

X. **The Best Ohio Bookmarks:**

1. **Summary:** More and more of what librarians call "primary law" resources are becoming available on the Internet. In addition to your local court Web sites, here are some of the best sites to bookmark for free copies of Ohio court rules, recent cases and opinions, codes, legislative information, administrative agency information and more.

2. **Your Local Courts:** Your local court Web pages can be a wonderful source of up-to-date contact information and potential access to local rules, forms, frequently-asked questions (FAQs) about local court procedures, docket information, fee schedules, case opinions and more.

3. **The Supreme Court of Ohio:** Bookmark the Supreme Court of Ohio’s Web site ([www.sconet.state.oh.us](http://www.sconet.state.oh.us)) for a number of reasons. Here, you can find:
• all of the major Rules of Court;
• the Supreme Court of Ohio’s docket and oral argument calendar;
• streaming video of oral arguments, both present and recently archived;
• recent Supreme Court of Ohio decisions and announcements (back to 1992);
• links to the courts of appeals and their online decisions (some back to 1999);
• links to other Ohio courts, such as the Court of Claims
• an online directory of attorneys admitted to practice in Ohio; and
• CLE information.

4. **The Ohio General Assembly**: [http://tinyurl.com/ytz42m](http://tinyurl.com/ytz42m), this site provides a wealth of legislative information, including:

• current and archival bills, bill status information, session law and acts;
• information on the Ohio House and Senate, their rules, calendars and journals;
• live and archived video streams from the Ohio House and Senate;
• a searchable version of the *Ohio Constitution*; and
• links to online versions of the *Ohio Revised Code*, the *Ohio Administrative Code*, and the *Register of Ohio*.

5. **The Ohio Legislative Service Commission**: This site ([www.lsc.state.oh.us](http://www.lsc.state.oh.us)) provides information on House and Senate bills and other detailed legislative information, including a focus on the current budget.

6. **Casemaker Codes**: See [http://codes.ohio.gov/](http://codes.ohio.gov/) - compliments of the Internet and Casemaker, Ohio practitioners are fortunate to have access to free, unannotated, searchable versions of:

• The Ohio Revised Code; and
• The Ohio Administrative Code.

7. **Register of Ohio**: See [www.registerofohio.state.oh.us](http://www.registerofohio.state.oh.us) - You can track proposed regulations online at the Register of Ohio.
8. **Ohio’s Government Portal**: See [www.ohio.gov](http://www.ohio.gov) - this site contains a wealth of information, including:
   - a list of all state agencies and departments;
   - a gateway to Ohio business information.

9. **Agency Sites**: Agency sites that are particularly useful for lawyers include:
   - The Ohio Civil Rights Commission: [http://crc.ohio.gov/](http://crc.ohio.gov/)
   - Office of the Ohio Attorney General: [http://www.ag.state.oh.us/](http://www.ag.state.oh.us/)
   - Ohio Secretary of State: [http://www.sos.state.oh.us/](http://www.sos.state.oh.us/)
   - Ohio Department of Taxation: [http://tax.ohio.gov/](http://tax.ohio.gov/)
   - Ohio Board of Tax Appeals: [http://bta.ohio.gov/](http://bta.ohio.gov/)
   - Ohio Ethics Commission: [http://ethics.ohio.gov/ethicshome.html](http://ethics.ohio.gov/ethicshome.html)
   - Ohio Department of Job & Family Services: [http://jfs.ohio.gov/](http://jfs.ohio.gov/)
   - Ohio Department of Transportation: [http://www.dot.state.oh.us/](http://www.dot.state.oh.us/)
   - Ohio Supreme Court Board of Commissioners on Grievances and Discipline: [http://tinyurl.com/yw3muk](http://tinyurl.com/yw3muk)

10. **Local Ordinances**: Gone are the days when lawyers could only obtain copies of local ordinances from municipal law departments and public libraries. More and more cities are providing their ordinances online via city Web sites or through online publishers. Bookmark your jurisdiction’s local ordinances.

11. **Ohio Demographic and County Data**:
   - Demographic data on Ohio: [http://www.osuedc.org/](http://www.osuedc.org/)
   - Ohio county profiles: [http://www.odod.state.oh.us/research/](http://www.odod.state.oh.us/research/)

Y. **Help When And Where You Need It**:

1. **Summary**: Local law libraries can provide the help you need to research and prepare your cases. There are actually many types of law libraries in the State of Ohio. These libraries can be classified as county law libraries, law firm libraries, law school libraries, court libraries, agency libraries and public libraries. As described below, these libraries vary in terms of organization, collections, operations, access, services and staffing. Some are open to the public, while others serve particular constituencies.
2. **County Law Libraries:** Ohio’s county law libraries were created by statute. Pursuant to Ohio Rev. Code Chapter 3375, each county law library is mandated to provide access to the local judiciary, county officials and members of the General Assembly. (Ohio Rev. Code Chapter 3375) While some county law libraries serve these constituents exclusively, a handful also has private members who pay membership dues for value-added services. Yet other libraries have affiliated with local bar associations to provide access and privileges for local attorneys. Approximately 33 of Ohio’s 88 county law libraries are open to the public, and all but three are located in county courthouses or county-owned facilities near the local courts.

A directory of Ohio’s County Law Libraries can be found at the following link: [http://clevelandlawlibrary.org/Public/Misc/Colawlib.html](http://clevelandlawlibrary.org/Public/Misc/Colawlib.html)

Ohio’s county law libraries are perhaps the most diverse set of law libraries in the state and, until recently, have operated relatively independent of one another. However, as of this writing, almost 20 libraries have joined a new entity called the Ohio Law Library Consortium for various cooperative purposes, including resource sharing and collective purchasing. In addition, a Task Force that the General Assembly created in June 2005 has been examining county law library operations and funding with the ultimate goal of making recommendations for their collective future.

Recent survey results show that the collections, staffing, policies and operations at these libraries vary greatly, depending on several factors, including unpredictable public funding. These libraries run the gamut, from the largest libraries that maintain robust print and online collections in metropolitan areas, to a large variety of medium-sized libraries spread throughout the state, to the smallest un-staffed libraries in tiny courthouse rooms. Only about half of Ohio’s county law libraries are staffed by librarians, some of whom possess either or both a masters’ degree in library science and a law degree. Although a number of these libraries maintain a catalog of their holdings, fewer than 10 have catalogs that are accessible from the Internet.

Services that are available at many of these libraries include: reference assistance; research services; computer access; access to books and online databases; book circulation; document delivery services; remote access to selected databases; word processing; CLE programs; chat reference; use of conference rooms and various equipment; and notary services.

3. **Law Firm Libraries:** While most practitioners collect handbooks and desktop resources relevant to their particular practice areas, some medium-sized firms, and all large law firms, maintain an in-house law library, often with one or more professional librarians on staff. Historically limited to collecting print resources, these libraries have migrated to providing electronic resources, cataloging their collections, loading information on firm
intranets and extranets, and often sharing their resources with other local law libraries. More recently, some firm libraries are going totally digital, relying on their local county law libraries and law schools for supplementary resources. Firm libraries often maintain an intricate system of current awareness and news services to keep their attorneys up to date on the latest developments in their fields. In addition to conducting detailed legal research and providing reference assistance to firm attorneys, paralegals and law clerks, some law firm librarians are expanding their roles to work closely with internal IT and IS departments, perform competitive intelligence and even conduct conflict checks. The natural corollary of these activities reflects a growing trend for firm librarians to bill clients for some or all of their time.

4. **Law School Libraries:** Each of Ohio’s nine law schools maintains a law library with an Internet portal and an online catalog:

- Capital University Law School: [www.law.capital.edu/Library/](http://www.law.capital.edu/Library/)
- Case Western Reserve Law School: [http://tinyurl.com/yqw368](http://tinyurl.com/yqw368)
- Cleveland-Marshall College of Law: [http://tinyurl.com/3c23ux](http://tinyurl.com/3c23ux)
- Ohio Northern University College of Law: [www.law.onu.edu](http://www.law.onu.edu) (Choose Library and Research)
- Ohio State University Moritz College of Law: [http://moritzlaw.osu.edu/library/](http://moritzlaw.osu.edu/library/)
- University of Akron Law School: [http://www.uakron.edu/law/library/](http://www.uakron.edu/law/library/)
- University of Cincinnati College of Law: [www.law.uc.edu/library/](http://www.law.uc.edu/library/)
- University of Dayton School of Law: [http://law.udayton.edu/home](http://law.udayton.edu/home) (Choose Quick Links)
- University of Toledo College of Law: [http://tinyurl.com/ypow7j](http://tinyurl.com/ypow7j)

Although these libraries primarily serve their faculty members, students and staff, they are also open to the public. As a result, Ohio practitioners can use their resources, make copies and seek limited reference assistance, where available. A few of these libraries, like those at Ohio State and Cleveland-Marshall, also provide online chat reference services. Most provide in-house access to selected online legal reference databases, but practitioners must ordinarily make special arrangements to borrow library materials. Naturally, the libraries’ collections vary from institution to institution, and some, like Case Western, which takes pride in its Commonwealth collection, collect special legal materials.
All of the law school libraries participate to some extent in OhioLINK, a statewide consortium of academic institutions that collectively purchases and shares selected resources. In addition, despite the increasing number of federal government publications that have become available on the Internet, many of these institutions still collect some or all of the federal government’s publications as partial or full federal depository libraries.

5. **Court Libraries:** Ohio lawyers have access to the books, materials and selected online databases available at the Supreme Court of Ohio Law Library at the Ohio Judicial Center in Columbus. Some of Ohio’s appellate courts have their own libraries, while others rely exclusively on their county law libraries.

County law libraries serve as chief law resource providers for many of Ohio’s subordinate state courts. However, some larger counties maintain separate law libraries for use by their judges, law clerks and staff attorneys, and supplement the print resources they buy with online access from legal research vendors such as Lexis or Westlaw. Except where permitted by the local court, these libraries are not for use by local practitioners.

The federal court libraries in Ohio are part of a national federal trial and appellate court library system called the U.S. Courts Library. Although these libraries cater to the needs of their courts, attorneys admitted to practice before the courts may also use their local federal court law libraries.

6. **Agency Libraries:** Both state and federal agencies typically maintain in-house libraries to save and archive their own documents, opinions and orders. Upon request, most are willing to send copies of these items at no cost or for a reasonable fee. Where applicable, they require public records and/or FOIA requests. Recently, nationwide trends show that such agencies have begun to downsize and/or eliminate these libraries, often to the detriment of the general public.

7. **Public Libraries:** With exceptions in northeast Ohio, most of the public libraries in Ohio have limited legal collections.
Z. **Law Library Staff Members:** Law libraries are staffed by a variety of personnel. At the helm is the head librarian, who may, among other titles, also be called a director or executive director. More recently, due to an expansion of their duties, these individuals are being referred to by many titles under the umbrella of information management. In law schools, these individuals are often faculty members. Regardless of the title on their business cards, many of these individuals usually hold a masters’ degree in library and/or information science, and some may also possess a law degree. Recent trends also suggest that some current librarians and many new hires have or soon thereafter acquire at least some expertise in information technology.

Head librarians are often supported by additional reference librarians who usually hold masters’ degrees in library and/or information science. These employees also may be considered faculty at some law schools. Depending on the size and type of library, libraries may also employ para-professionals, library assistants and pages to perform various types of services for patrons. In addition, law school, court and agency libraries sometimes receive support from their local IT or IS departments.

AA. **Arrangement of Library Materials:** For the most part, law libraries have historically been arranged by call numbers using either the Dewey Decimal system, a system developed by the Library of Congress, or a couple of other classification schemes. The two major systems arrange materials by subject. Some libraries may, in addition and/or alternatively, arrange their materials by type (such as audio visual materials) or by jurisdiction (i.e., Ohio, federal, and foreign and international).
Chapter 2  Time Billing & Accounting
Marilyn King

I. ACCOUNTS:

A. Trust Accounts:

1. Generally:
   
   - Open at least one insured, interest-bearing bank account designated as a client trust account or IOLTA account. Separate client trust accounts should be opened when administering estate funds.
   
   - Notify the Ohio Legal Assistance Foundation of the existence of the trust account.
   
   - Preserve all records regarding trust accounts for seven years.
   
   - An attorney may deposit non-client funds into the trust account solely for the purpose of paying or waiving bank services charges on the account, but only in an amount necessary for that purpose. Maintain accurate records of attorney funds deposited into and withdrawn from a trust account.
   
   - Review the trust account bank statement to ensure that checks written to a client or third parties are cashed. If a check written from the account does not clear the bank within a reasonable period of time, contact the client or third party to determine why the check has not yet been cashed.

2. Proper Management Pursuant to Rule 1.15: Proper management of trust accounts records have been defined under Rule 1.15 of the Ohio Code of Professional Conduct as follows:
   
   - Maintain a copy of the fee agreement with each client.
   
   - Maintain a record of the following information regarding trust funds or property held on behalf of a client:
      
      - the name of the client
      
      - the date and amount of the funds received, and from whom the funds were received
      
      - the date and amount of any expenditure of trust funds, why the funds were spent, and who received the funds
the current balance in the trust account for each client (Sample Register Ledger).

- Maintain a record for each trust bank account that includes the following:
  - the name of the bank account
  - a record of each deposit and withdrawal of funds by date, amount and name of client
  - the overall balance in the bank account

- Maintain the bank statements, deposit slips and, if provided by the bank, all cancelled checks for each trust account for seven years.

- Reconcile trust accounts monthly and keep the records of the reconciliation for seven years.

- Deposit funds received from a third party in which the client has an interest, such as a settlement payment, jury award, etc., into a trust account. Notify the client promptly when these funds are received. These funds must be given to the client promptly. If the client is to receive anything other than the full amount of the funds received, the arrangement as to the distribution of funds must be in writing. If requested by the client or the third party, promptly prepare a full accounting of the distribution of funds received. (Sample Settlement Statement)

B. Other Accounts:

- Open a bank account in the name of the lawyer or firm for the purpose of paying firm and client expenses and receiving client fees or other income earned.

- Keep a detailed record of each check written from the account. This record should include the check number, date and amount of the check and the purpose of the check (Sample Register Ledger).

- Checks written for expenses advanced on behalf of a client should be recorded in the billing system and subsequently billed to the client for reimbursement.

- Keep a detailed record of each deposit into the account. This record should include the date and amount of the deposit, from whom the funds were received, and the reason for the deposit.

- Payments received from clients should be recorded in the billing system and detailed on subsequent bills or statements sent to the client until the client account is paid in full.
Written receipts for payments should be provided upon request, or at any time at the discretion of the attorney. It is advisable that written receipts always be provided if a payment is made in cash and that a copy of the receipt be retained by the attorney.

Bank accounts should be reconciled monthly, as soon as is practically possible after receipt of a monthly bank statement. When reconciling the account, maintain a record of checks and deposits that have not yet cleared the bank to facilitate the following month’s reconciliation.

Client payments that have been returned for insufficient funds should be recorded in the billing system and deducted from total payments received on the client’s account. Bank fees for insufficient funds may, at the lawyer’s discretion, be charged to the client as an expense.

C. **Credit Card Payments:**

- Lawyers may, at their discretion, establish a merchant account with their bank for the purpose of receiving payments by credit card. This merchant account is generally processed through the attorney’s primary operating account. As with all other client payments, the credit card payment must be transferred to the lawyer’s trust account until such time as fees are earned. Transfers to the trust account are not necessary if the client is making a payment on a balance due.

- Merchant accounts may be processed through the attorney’s trust account.

- A merchant account with the bank will require payment of a number of bank fees, including a discount rate. The discount rate represents the percentage of the credit card payment that the bank will keep. Discount rates vary, but are generally in the range of two to five percent of the credit card payment. Other fees may include a monthly merchant account fee and a fee for leasing equipment necessary to authorize the credit card payment and process the payment into the bank account.

- A merchant account agreement with the bank usually prohibits charging the holder of the credit card for any associated merchant account fees or discount rates. Under this agreement, a client payment by credit card should be recorded to the client billing system at the full amount of the credit card payment, and the discount rate bank charge should be recorded as a firm expense.

- If the merchant account is processed through the lawyer’s trust account, the lawyer must maintain at all times sufficient funds in the trust account to cover the discount rate and other associated merchant account fees. These funds are in addition to those otherwise maintained in the account for ordinary bank service charges.
The OSBA has a member benefit program with First Data’s Community Merchant Services, offering discounted rates on credit and debit processing, check processing, payroll cards and much more.

II.  INTERNAL FRAUD/THEFT PREVENTION:

A.  Monitoring: Attorneys should be aware of and monitor the financial transactions occurring in their firm. Depending on the size of the firm, different strategies should be in place to minimize the risk of internal fraud and theft.

B.  Separation Of Duties: To the extent possible, adequate separation of duties for key tasks should be in place. Separation of duties requires that more than one attorney and/or employee be involved in these key tasks. Tasks which should be considered for a separation of duties approach should include:

- **Bank statement receipt and reconciliation:** The individual who receives the bank statement should be an attorney (or, in the case of a solo practitioner, an outside party) who is not authorized to sign checks on the account. This individual should review the statement and cancelled checks looking for any unusual activity, unfamiliar vendor names, forged signatures, etc.

- **Payment authorization:** The individual requesting a payment must provide adequate documentation (invoices, receipts) substantiating the need for the payment. The individual requesting the payment should not be the same person who mails the payment to the third party. Individuals with check-signing authority should not sign checks for payments they have requested, or for payments to themselves.

- **Payroll:**
  - Someone other than the person responsible for preparing payroll checks should receive and review the checks, and then distribute them. If payroll is outsourced, someone other than the person responsible for communicating with the payroll provider should review the reports received from the payroll provider.
  - If payroll is not outsourced, someone other than the person responsible for processing payroll should ensure that payroll tax payments are being made, and payroll tax checks recorded have cleared the bank.

- **Receipt of cash:** Persons who make payments in cash should be given a numbered receipt and a copy or electronic record of the receipt should be maintained at the firm. The individual who receives the cash should not be the same individual who prepares the bank deposit or reconciles the bank account.
C. **Deposits:** Checks and cash received should be deposited to the bank daily. If the deposit cannot be taken to the bank, all funds received should be placed in a secure location such as a locked box or fireproof safe to prevent loss or theft.

D. **Vacation policy:** A mandatory vacation policy for any employee involved in key tasks should be in place, and another employee should fulfill the key employee’s duties while he or she is gone.

E. **Review and audits:** A random review or audit of all financial transactions should occur at least annually. This is typically done by an outside accountant. Such a review should include the following:

   - **Bank statements and reconciliations.** The accountant should reconcile a sampling of deposits received to the firm’s billing system to ensure that all client payments were recorded to the client’s account, and that payments recorded on the client’s account also appear as a deposit on the bank statement. The accountant should also be looking for unusual adjusting entries made during the firm’s bank reconciliation process.

   - **Checks and other payments made.** The accountant should reconcile a sampling of client expense checks or other payments made to the firm’s billing system to ensure that all client expenses were properly recorded. The accountant also should review a sampling of payments made to ensure that payment authorization procedures have been followed and there is associated documentation such as internal approval forms, copies of invoices and receipts for each payment made.

   - **Firm credit card accounts.** The accountant should review a sampling of firm credit card purchases. This review should include a review of receipts associated with each credit card purchase and the nature of the purpose. If a firm credit card purchase is designated as a client expense, the purchase should be reconciled to the firm’s billing system to ensure that the expense was properly recorded and is reflected on a client’s account. As with other payments, the accountant should ensure that all payment authorization procedures have been followed and there is proper documentation to justify the expense.

III. **INFORMATION MANAGEMENT:**

A. **Time and billing procedures:**

   1. **Computerized Systems:** A computerized system for time and billing is advisable, if not essential, for accurate accounting of time and billing information. Dozens of programs are available for maintaining records relevant to recording services provided, expenses advanced, retainers and payments received and balances due. Resources for identifying software programs available for time and billing include the American Bar Association Law Practice Management Section, the Ohio State Bar Association,
recommendations from other attorneys, and technology professionals or consultants.

2. **Selection Criteria:** The minimum requirements for selecting a time and billing program include:

   - recording the name, address and other contact information for each client/matter, and the primary attorney assigned to the engagement;
   - recording the name, position and hourly rate of each timekeeper at the firm;
   - recording the date, description, timekeeper name, client/matter name and time spent on services rendered;
   - recording the date, amount, description and payee for all expenses advanced on behalf of a specific client/matter;
   - recording the date, amount and payer of all payments made on a client/matter balance;
   - recording the date, amount and payer of all payments received into the firm’s trust account;
   - entering the date, amount, description, and payee of all payments made from the firm’s trust account for a specific client/matter;
   - the generation of a report detailing each transaction and the balance remaining in the firm’s trust account for each client/matter;
   - an automated system for producing draft bills and invoices for each client/matter;
   - the generation of a report detailing the date and amount of each invoice generated for each client/matter, payments or retainers applied and the balance due for each invoice and the total due for each client/matter;
   - the generation of a report detailing the fees and expenses advanced that have yet to be billed to a client/matter (Work in Progress, or "WIP")

3. **Additional Desirable Features:** Additional features to be considered in selecting an appropriate time and billing program include:

   - the ability to reprint previously produced bills, eliminating the need to retain paper copies;
   - multiple invoice design layouts or the ability to modify a layout to meet firm or client-specific requirements;
• productivity reports for each firm timekeeper, in summary or detail, for a specified date range;

• accounts receivable reports detailing the age of outstanding invoices for each client/matter;

• recording additional information about the matter, including area of law, referral source, originating attorney and fee/billing arrangements;

• maintaining multiple timekeeper rates as appropriate for various engagements;

• a conflict checking feature that will search the billing program to determine if conflicts of interest exist;

• a link to the firm’s accounting program to eliminate duplicate entry of client expense and payment transactions; OR

• an "all-in-one" program that includes time, billing and firm accounting capabilities.

B. Accounting:

1. **Computerized Systems:** Accurate financial records are critical to a firm’s survival; financial records provide for an analysis of a firm’s assets, debts, profitability and for tax reporting purposes. A wide array of software programs is available to maintain law firm accounting records. Some programs are generic, and are used by a variety of enterprises. Some programs are legal-specific, having been designed to record the typical transactions of a law firm, including client costs and trust accounting.

2. **Selection Criteria:** The minimum requirements for selecting an accounting program include:

   • a chart of accounts for identifying the specific nature of each financial transaction. A chart of accounts will include account identifiers (account numbers) for firm equity, assets, liabilities, income, and expenses;

   • a general ledger that allows for the designation of each financial transaction to be recorded to the appropriate equity, asset, liability, income or expense account;

   • a check register for each operating and trust account;

   • automated reporting capabilities for producing a balance sheet, an income statement and detailed reports of all firm financial transactions.
3. **Additional Desirable Features:** Additional features to be considered in selecting an appropriate accounting program include:

   - printing checks, and modifying check layouts to accommodate the firm’s existing bank checks (some accounting programs require that you purchase checks from them in order to print checks from their software);
   - bank reconciliation tools;
   - payroll processing capabilities and access to up-to-date tax tables;
   - tax reporting preparation, such as quarterly state and federal tax reports, W-2 and 1099 forms;
   - accounts payable capabilities;
   - a link to the firm’s time and billing program; OR
   - an "all-in-one" program that includes time, billing and firm accounting capabilities.

**IV. FINANCIAL ACCOUNTING:**

A. **Financial Statements:**

1. **What They Are:** Financial statements represent detailed and summary reports of all firm financial transactions.

2. **Frequency of Production:** Financial statements should be produced on a monthly and annual basis for review by firm management and/or an outside accountant.

3. **Standard Statements:** Basic financial statements that should be prepared on a monthly and annual basis include:

   a. **The Income Statement:** This is also referred to as a profit & loss statement. The income statement is divided into two sections, which display total income and total expenses.

      - The income section of the income statement summarizes transactions for each category of income and provides a total of firm income for the month or year. Income that should appear on an income statement would include fee income, interest earned on the firm operating account, if any, and other sources of income such as speaking fees or rental income. Under a typical cash-basis accounting system, this section of the income statement would also include a total of client expenses reimbursed.
• The expense section of the income statement summarizes each transaction for each category of expense and provides a total of firm expenses for the month or year. Typical firm expenses that appear on an income statement include payroll, rent, utilities, supplies, etc. Under a typical cash-basis accounting system, this section of the income statement would also list a total of client expenses advanced.

• Total income less total expenses produces a figure representing the firm’s net profit (or loss) for the month. (see Sample Income Statement)

• Income statement totals are often compared to the totals for the same period for a prior year. If firm budgets have been established, an income statement also may display actual and budgeted income and expenses, and the variance between actual and budgeted totals.

• Analysis of the income statement should be a part of the overall firm financial management strategy and an essential component in managing firm cash flow.

b. The Balance Sheet: The balance sheet is divided into three sections which display total assets, liabilities and firm equity.

• Asset totals represent the month-end or year-end balance in firm operating and trust accounts. Other assets that might appear on a balance sheet would be the balance outstanding on loans made to third parties and fixed assets, such as real estate or office furniture as well as equipment owned by the firm. Under an accrual basis accounting system, the asset total may also include accounts receivable and work in progress. Under a modified cash basis system, the asset total may also include client expenses advanced not yet billed or repaid by the client.

• Liability totals represent the month-end or year-end balance of firm debts. Typical firm liabilities would include the month-end or year-end balance in the trust account, firm loans or lines of credit due, payroll taxes withheld but not yet forwarded to the government, and health insurance premiums withheld from employee paychecks not yet paid to the health insurance company. Under an accrual basis accounting system, the liability total may include accounts payable.

• Equity totals represent the "value" of the firm. The equity total represents total assets less total liabilities. (see Sample Balance Sheet)
c. **The General Ledger:**

- The general ledger report lists each firm financial transaction during the specified date range. The report lists the opening balance, each transaction by date, and the closing balance for each account in the firm’s chart of accounts.

- A careful review of the general ledger will provide details for each deposit received and how it was applied (trust retainer, fee income, loan repayment, interest earned, etc.), as well as each withdrawal from a bank account and how it was designated (trust disbursement, client expense, payment on a loan, firm operating expense, etc.).

B. **Invoicing:**

- Establish a procedure for the regular preparation of bills to clients detailing services performed and expenses advanced. A monthly cycle for the preparation of client bills is standard.

- During the initial intake with the client, the party responsible for payment of the bill should be identified. If more than one party is responsible for payment, the extent to which each party is responsible should be documented in writing. The full name and address of the party responsible for payment should be recorded.

- Individuals performing legal services should record the details of services provided. This record should include the name of the client/matter, the date and description of the service and the name of the individual who provided the service.

- In hourly billing engagements, the amount of time spent to perform the service should also be recorded.

- In contingent or flat fee engagements, the amount of time spent providing the service should be recorded in the event that the contingent engagement is terminated or the reasonableness of the fees are disputed.

- Detailed records of expenses advanced on behalf of clients should be maintained and identified by client. The record of expenses advanced should also include the date and amount of the expense, the nature of the expense, and to whom the payment was made.

- A draft bill detailing services provided and expenses advanced should be prepared for each client who received services during the billing cycle. The draft bill should contain all the information recorded by the service providers as detailed above. The draft bill should be reviewed carefully by the attorney primarily responsible for the engagement, and check for errors, accuracy and reasonableness of fees.
• Once the draft bill has been reviewed and corrections or adjustments made, an approved bill should be mailed to the client.

• There is no "standard" layout for client bills. However, the bill should contain, at a minimum, the following:
  • the firm name, address and telephone number;
  • the date the bill was issued;
  • the client name and, if applicable, the name and address of the party responsible for payment of the bill;
  • a description of the legal services provided and the fee for those services;
  • a detailed listing of expenses advanced;
  • the total due for fees and expenses for the bill.
  • In addition, if a client retainer was used to pay all or part of the bill, an accounting of the amount of the retainer used and the remaining retainer balance should be included.

• Other items that may be included on a client bill are:
  • the date each service was provided, who provided the service, the hourly rate charged, how much time was spent on each task and a calculation of the hourly rate multiplied by time spent;
  • the previous balance due from prior bills, if any;
  • a listing of payments received since the previous bill;
  • the total balance due, including a previous balance; and
  • the payment due date or payment terms ("Net 30 Days", for example).

• A "statement of account" is different from a bill. A statement lists bills previously issued to a client that remain unpaid, and the total balance on the client’s account. A typical statement of account will include the invoice date, the original amount of the invoice, total payments received on the invoice, and the balance remaining. A statement of account may also be referred to as a "reminder statement" or "past due notice."

V. RULES FOR RETAINERS, BILLING:

A. Retainers:

- Attorneys may, at their discretion, require a prepayment or retainer in advance of performing services for a client. The amount of the retainer or prepayment is at the discretion of the attorney, but should not exceed the total amount of fees and expenses anticipated for the representation. The attorney may require that a retainer balance be replenished as fees are earned and expenses incurred.

- Retainer agreements, as with all transactions involving deposits into the trust account, must be in writing, and generally are included as a part of the fee agreement.

- Deposit retainers or advance payments from clients for fees or expenses into a trust account. Retainers or advance payments may not be withdrawn from the trust account and paid to the attorney until fees have been earned or expenses incurred.

- Do not deposit advance payment of fees designated as "earned upon receipt" or "non-refundable" into the firm operating account unless the client is advised in writing that if the attorney does not complete the representation for any reason, the client may be entitled to a refund of all or part of the fee based upon the value of the representation.

B. Billing:

- Charges for services should be reasonable. The factors to be including in determining the reasonableness of the fee include:
  - the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the service properly;
  - the likelihood, if apparent to the client, that the acceptance of the engagement will preclude other employment by the attorney;
  - the fee customarily charged in the area for similar legal services;
  - the amount involved and the results achieved;
  - the time limitations imposed by the client or by the circumstances;
  - the nature and length of the professional relationship with the client;
  - the experience, reputation and ability of the attorney(s) providing the services; and
  - whether the fee is fixed or contingent.
• Communicate with all clients, preferably in writing, the essential elements of the representation. This communication must occur before (or within a reasonable time after) commencing the representation, and must include:
  • the nature and scope of the representation;
  • any reasonable limits on the scope of the representation;
  • the basis or rate of the fee to be charged and any expenses for which the client will be responsible.

• Fees designated as "earned upon receipt" or "non-refundable" are prohibited unless the client is simultaneously advised in writing that if the attorney does not complete the representation for any reason, the client may be entitled to all or part of the fee based upon the reasonable value of the representation.

• Contingent fees based on the outcome of the matter are permissible EXCEPT for the following engagements:
  • domestic relations matters where the fee is contingent upon securing a divorce, or the amount of spousal or child support or property settlement;
  • representation in a criminal matter.

• All contingent fee agreements must be in writing. The contingent fee agreement must state the method by which the fee is to be determined, including the percentage(s) that shall accrue to the attorney in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether these expenses are to be deducted before or after the contingent fee is calculated.

• A contingent fee agreement will clearly advise the client of any expenses for which the client will be liable, whether or not the client is the prevailing party.

• If the attorney becomes entitled to compensation under the contingent fee agreement and the attorney will be disbursing funds, the lawyer must prepare a closing statement and will provide the client with that statement at the time of or prior to the receipt of the compensation under the agreement. The closing statement must include the following:
  • the manner in which the compensation was determined under the agreement;
  • any costs and expenses deducted by the attorney from the judgment or settlement involved;
  • if applicable, the division of the attorney fees with other attorneys not in the same firm; and
the closing statement must be signed by the client and the attorney.

The ABA Model Rule on Financial Recordkeeping recommends that copies of bills for legal fees and expenses rendered to clients be retained for a period of five years after termination of the representation. The recommendation provides that paper copies of the bill are not necessary if electronic records can be produced.

VI. MANAGEMENT REPORTING:

A. Accounts Receivable And Collection Reports:

1. Accounts Receivable Reports:

   • The accounts receivable (A/R) report provides information on client balances owed the firm. A typical A/R report will list the name of the client, the invoice date, and the amount owing on the invoice, as well as the total client balance for all invoices outstanding. An aged A/R reports separates the outstanding invoices into aging categories; typically 30, 60, 90 and 120+ days since the date the invoice was issued. A routine review of invoices in the 60-days-and-older category should be done on a regular basis. Clients with past-due invoices can then be identified and should be contacted to determine why the balance remains unpaid.

   • In firms with more than one timekeeper, it may be useful to produce an A/R report sorted by a timekeeper or responsible attorney. This can be helpful in analyzing balances by a timekeeper or attorney that remain unpaid and determining if the age or amount of the unpaid balances is in variance from other timekeepers at the firm.

2. Collection Reports:

   • A client collections summary report will list total fees and expenses billed to each client/matter and total collections for a specified date range. This information is useful in analyzing which clients are producing the most income for the firm.

   • A timekeeper collections summary report will list total fees billed by the timekeeper and total collections for a specified date range. This information is useful in analyzing how much fee income each timekeeper is generating for the firm.

B. Productivity Reports:

1. Work-In-Progress Reports:

   • A work-in-progress (WIP) report provides a listing of services rendered and expenses advanced that have not yet been billed to the client. The
WIP report can be in summary form, simply providing the total unbilled fees and expenses by client/matter. Or, the report can be in detailed form, listing each time entry and expense advanced for each client matter. Some firms use a detailed WIP report by client/matter as a draft bill for review and editing purposes just prior to billing.

- An aged WIP report details unbilled fees and expenses in aging categories as in an aged A/R report. Certain matters, such as estate administration, contingent cases or flat-fee engagements may not be billed until the conclusion of the matter. Hourly engagements where unbilled fees and expenses are over 60 days old should be regularly reviewed to determine why the fees and expenses have not yet been billed.

2. **Timekeeper Productivity Reports:**

- A basic timekeeper productivity report, or time listing, details the hours and value of work done during a specified date range. This report is useful in analyzing what and how much work is being done by each timekeeper. A summary report will simply provide total hours and value of work done. These totals can be compared to other timekeepers at the firm, and to assist in determining if target productivity objectives or budgets are being met.

- Write-off/write-down reports detail the original amount of a fee entry and how much of it was written down by not being billed in full to a client, and how much of it was written off by not being paid in full by a client. A regular review of write-offs and write-downs per timekeeper should be conducted to analyze trends and compare totals with other timekeepers at the firm.

- A billing and collection realization report by a timekeeper will provide a listing of hours/dollar value worked, fees billed and fees collected. Realization rates are expressed as percentages. A billing realization rate is calculated by dividing the value of fees billed by the value of work done. A collections realization rate is calculated by dividing the value of fees collected by fees billed. An overall realization rate is calculated by dividing total fees collected by the value of total services provided. Target overall realization rates for a typical firm should be in the 85-90 percent range. Failure to meet target realization rates should be analyzed by reviewing A/R, WIP and write-off/write-down reports.

3. **Firm Productivity And Management Reports:**

- An invoice journal or fees billed report details the date and amount of each invoice generated by the firm for a specified date range.
• A firm collections report will list total collections by client/matter, or by timekeeper, for a specified date range.

• Analysis of total firm billing and collections should be reviewed monthly as a part of the firm’s overall cash flow management strategy.

• An accounts payable (A/P) report details the amount and date due for invoices issued to or anticipated by the firm that have not yet been paid. Typical entries that are included in an accounts payable system that will appear on an A/P report would be monthly payments such as rent, utilities and payroll. Analysis of the firm’s total accounts payable should be reviewed monthly as a part of the firm’s overall cash flow management strategy.

• A cash flow reports assists the firm in determining whether/if funds are available to meet current obligations and to predict the availability of funds in the future. A typical cash flow report starts with the balance in the firm’s operating account. Additions to cash will include actual and anticipated income per a review of current and prior income, billing and collections reports. Reductions to cash will include actual and anticipated expenses per a review of current and prior expense and accounts payable reports.
Chapter 3  
Case Management & Office Operations  
Barron Henley & Gretchen Koehler Mote

I. NEW CLIENTS:

A. Initial Client Contact: Prior to undertaking representation of a new client, you must:

- Decide if you have the necessary expertise for the representation, as required by Rule 1.1 of the Ohio Rules of Professional Conduct. In this context, expertise means the requisite legal knowledge and legal skill. However, you don’t necessarily have to have special training or prior experience for the matter. You can accept representation if you can achieve the requisite level of competence through study and investigation, as long as that wouldn’t result in unreasonable delay or expense for the client.

- Determine if there is a conflict of interest. To avoid creating a conflict-of-interest that could result in disqualification, the lawyer should determine whether actual or potential conflicts-of-interest exist before receiving detailed information from the prospective client, other than which is necessary (names of adverse or opposing parties or other parties to transaction, names of counsel for any of those parties, and a general description of the nature of legal representation the prospective client seeks). Failure to screen for conflicts of interest can result in a legal malpractice claim. Use a system that will cross reference a database for additional and adverse parties as well as the potential client(s). The Conflicts of Interest Check Form can assist with this check and can be part of your electronic case management system. Rules 1.7, 1.8, 1.9, 1.10, 1.11, and 1.12 address how specific conflict situations must be addressed. If there is a waiver of a conflict of interest, each affected client must give informed consent, confirmed in writing.

- Conduct a thorough Intake Interview. If possible, this interview should occur at a time other than the initial contact. If it occurs at the time of the initial contact, the lawyer should conduct that part of the interview only after (1) gathering the information needed to check for conflicts and (2) actually conducting a conflict check. Use a to be sure you have the basic information about the client. This data should be entered in the database for the case (sample Client Intake Sheet).

- Gather information from your prospective client. Using a form like the General Information Questionnaire, or another check list you develop for a specific type of client, will assist you in having the information you need from your client.
B. **Documenting the Representation.** After the potential client has cleared your conflict check and you have decided to undertake representation, you should discuss the scope of your representation and fees.

- An **Engagement Letter** should be sent to the client confirming what you have agreed to do.

- You may limit the scope of a new or existing representation, per Rule 1.2, if the limitation is reasonable under the circumstances and communicated to the client, preferably in writing.

- A **Non-Engagement Letter** should be sent if you do not undertake the representation. This gives the client direction should they wish to continue to seek legal representation to pursue their case. A non-engagement letter should generally be used in four situations:
  
  - When the lawyer declines a specific request for legal representation.
  
  - When the lawyer performs legal services for, or advises one or more, but fewer than all, of the parties.
  
  - When the representation involves, or could involve, parties who might reasonably claim the lawyer’s client intended them to benefit from the lawyer’s services.
  
  - When the lawyer reasonably thinks someone involved in the matter might claim the lawyer negligently misrepresented something of consequence.

- A **Non-Engagement Letter** should convey, at a minimum:
  
  - That the lawyer declines the representation.
  
  - That no lawyer-client relationship exists with the party seeking the representation (or who might claim status as a "client").
  
  - Other relevant, critical information. For example, if the non-engagement letter relates to a proposed litigation matter for a plaintiff, the letter should advise, in rather general terms, the existence of statutes-of-limitation, accompanied by an urging to consult immediately or promptly with another lawyer. If the limitations issue presents more urgently, the lawyer should use a much stronger admonition than if the limitations issue is more remote.

- A **Disengagement Letter** should be sent if the lawyer decides not to continue the representation (for any reason), if the client terminates the lawyer’s representation, or if the lawyer’s representation is involuntarily terminated (such as by the court when revoking a lawyer’s admission *pro hac vice*)
• The Disengagement Letter should state the reason the lawyer-client relationship has ended. If the client owes the lawyer fees, the lawyer should address this issue or matter in the letter. The lawyer should consider addressing whether the lawyer will consult with successor counsel and the terms of such potential consultation. The lawyer should consider addressing whether the client or successor counsel will be allowed access to work product for which the client has yet to pay and, if the lawyer will allow such access, the terms on which the lawyer will do so.

• A Fee Agreement (see the sample Hourly Fee Agreement and the sample Contingent Fee Agreement), preferably in writing, is the best way to satisfy the requirements of Rule 1.5 that the nature and scope of the representation and the basis or rate of the fee and expenses the client will be responsible for shall be communicated to the client before or within a reasonable time after commencing the representation, unless the lawyer will charge a client whom the lawyer has regularly represented on the same basis as previously charged.

• A Fee Agreement must be in writing signed by the client and the lawyer and shall state the method by which the fee is to be determined, including the percentage(s) that shall accrue to the lawyer if there is settlement, trial or appeal; litigation and other expenses to be deducted from recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated.

• Other critical aspects of fee agreements which the lawyer should convey to the client include: the scope of the representation, services outside the scope of representation, and the recovery of court-allowed lawyer’s fees and costs.

• Retainers should be clearly spelled out in the Fee Agreement. If the lawyer will require an "Evergreen" or replenished retainer, that should be spelled out.

C. Client Communication: This keeps the client informed about the representation. Rule 1.2 clearly gives the client the ultimate authority to determine the purposes to be served by the legal representation, within the limits of the law and the lawyer’s professional obligations (Comment [1]).

1. Mail Procedures: These should be established:

• Designate a specific place to receive incoming mail.

• Mail should be received so that client confidences will be protected. It should not be opened and laid out at the receptionist's station where clients coming in for appointments can see it.

• Give a specific person responsibility for opening incoming mail and train a backup.

• All incoming mail should be date stamped. You may want some original documents to be date stamped on a "yellow sticky" for later removal or
on the back of the document. If you want this done, be sure the mail opener knows how and for what documents.

- It is usually not necessary to save envelopes. If you want the envelopes attached to correspondence, specify to the mail opener.

- Mail should be sorted for each attorney or support staff member. The attorney's secretary should further sort mail into correspondence from attorneys, clients, courts, periodicals and "junk" mail.

- A designated person should enter any court dates into the docketing system as orders are received. The designated person should also provide the lawyer a log of the dates the person has added to the docketing system so the lawyer can determine whether any dates present scheduling problems.

- If an attorney will be out of the office for more than a day, support staff should make a daily "Mail and Fax Log Form". As much as possible, mail should be filed as received, unless it requires further attention. When the attorney returns, Mail Logs should be reviewed, after which time they may be disposed of.

- Another attorney in the office should look at the priority mail on the Mail and Fax Log Form and take care of any situations requiring immediate attention. Sole practitioners should have support staff look at mail and, if the attorney will not be communicating with the office daily, designate another available attorney to whom emergency matters can be referred.

- "Green cards" or other receipt of mail forms should be recorded and attached to the appropriate document in the file.

- Any returned mail or change of address should be noted and entered into the system.

- Checks should be recorded as received and immediately given to bookkeeping to process as appropriate. Deposits to trust accounts should be made daily.

- Designate a specific place for outgoing mail.

- Designate a specific person to prepare outgoing mail. Designate and train a backup person.

- If mail is processed through a mail room, all staff members should know when mail is picked up or taken to the post office so that emergency trips can be avoided.
Maintain client confidentiality for outgoing mail. Do not place it on the receptionist’s desk for postal pick-up with client names exposed.

If a postage meter is used, a specific person should be responsible for maintaining postage on the meter.

Record "return receipt" letters in a log for easy reference.

2. **Telephone Calls:** Unreturned calls are major obstacles to good client relations. You should establish clear telephone protocols.

   - Establish a set phone answering order (e.g., if receptionist is busy, the phone will ring at secretary A's station who will pick up after a set number of rings).

   - Inform your support staff exactly how you want the telephone answered. Example: "Good morning, [firm name]. How may I direct your call?" or "How may I assist you? And who may I say is calling?" Avoid asking the person's name and then telling them whether or not the attorney is available. This procedure may make a client feel his or her call is less important than another person's. **Always thank clients for calling!**

   - If an attorney is unavailable, a message should be sent to voice mail or recorded on a duplicate message pad. Messages should always be put in the same place to be picked up by the attorney upon his or her return.

   - Who talks to clients and what is said when an attorney is gone should be spelled out to support staff. Staff should be cautioned not to give legal advice when talking to clients.

   - Perhaps all calls are referred to the absent attorney's secretary, or perhaps the receptionist fields all calls. Whoever talks to your clients, remember to instruct him or her to say: "Attorney X is in court at this time. I anticipate his/her return later today. When is an acceptable time to return your call and at what telephone number can you be reached?" Such a response sounds much better than: "Attorney X is out this afternoon. Can I have him call you?" (Caution again: Staff should never reveal to a caller anything about the identity of a client or the nature of a case the attorney is working on.)

   - All calls should be returned by the end of the business day, if possible, and at the latest, within 24 hours. If an attorney is not able to return the calls, support staff may do so, simply explaining the nature of the delay and determining if an emergency exists. Allowable access to voice mail by support staff or the duplicate pad comes in handy for this. Without revealing the name of the client or the nature of the case, a staff member may say: "Attorney X is still in trial, but anticipates returning your call tomorrow. Is this something that will require a call before that time?"
• Be careful where the phone answerer sits. Be sure clients waiting in the reception area cannot hear phone calls being announced.

• Have a procedure for taking true emergency calls. You may wish to suggest that your secretary discretely knock on your door and place a note in front of you where no one else can see it. If you decide to take the call, you must, of course, do so in another room away from any clients.

• Unless you are following emergency procedures, NEVER take a call from another client while you are in conference with a client. Even excusing yourself to do so will make them wonder why another client is more important than they are when they are sitting right there.

• While cell phones are ubiquitous, you should caution the client to reveal no confidential information (especially information the client may want to qualify for “privileged” status). You should not discuss a substantive matter relating to a legal matter on a cell telephone. Rather, the lawyer should arrange a time when lawyer and client can meet in person or can talk by telephone using a “land line.”

3. **Client Letters:** These are a vital part of client communication. Sample letters are included here for:

   • *Subsequent Appointment Confirmation Letter*
   
   • *Monthly Status Letter*
   
   • *Monthly Bill Sample Form*
   
   • *Deposition Scheduling Letter* and Instructions
   
   • *Court Appearance Hearing Letter*

D. **Evaluating Cases:** Effectively allows you to keep your client informed and be prepared.

   • A Plus/Minus Table can be a good evaluation tool. The Plus is anything in favor of your client, the minus anything negative.

   • Start with an analysis of the applicable statutory and case law. How does that apply to your client?

   • Next look at the result your client seeks? Is it reasonable?

   • Look at the economics of the representation. What will you need to do to reach the goal? Will there be extensive discovery? An expert(s)? Costs?
• How long will it take? What are the expectations of client? Do you have the time to dedicate to this?

• What are other possible means of resolving situation? Can you consider alternative dispute resolution, mediation, arbitration?

• Balance the plusses and minuses and determine what you need to discuss with your client. Remember: it’s your client’s case, but they came to you for legal representation.

II. COLLECTIONS

A. Seek Counsel: Collecting debts from others can be tricky for lawyers unfamiliar with that area of the law. Seeking the advice of lawyers who regularly handle cases in this area of law is advisable.

• The Financial Services Regulatory Relief Act of 2006 amended the Fair Debt Collection Practices Act in three respects:

• A formal pleading in a civil action shall not be construed as an initial communication under the FDCAP, and does not trigger the notice provision otherwise required in an initial communication.

• Notices required by the IRS, the GLB Act, or other federal or state laws regarding breach of data security are not to be treated as initial communications under the FDCPA.

• Collection activities can continue within the 30 days following the initial communication to a debtor, provided that the debtor has not notified the debt collector in writing that they dispute the debt or the debtor requests the name and address of the original creditor. However, any collection activities should not overshadow the debtor’s right to dispute the debt or request the name and address of the original creditor.

B. Suits for Fees: These are discouraged as they quite often draw a suit for legal malpractice. Using retainers, billing regularly, inquiring of the client why they have not paid your bill if it goes unpaid for a month and frequent communication with your client can help prevent large unpaid accounts.

If you do decide to sue for fees, it is advisable to consider the statute of limitations for legal malpractice and wait at least 1 year from the termination of the attorney/client relationship, as documented by a disengagement or closing letter. Be aware that the "discovery rule" applies to legal malpractice actions. See Zimmie v. Calfee Halter and Griswold et al. (1989) 43 Ohio St.3d 54 and its progeny.

Lawyers should also consider the economics of suing for a fee. If the lawyer draws a counterclaim for lawyer malpractice when the lawyer sues to collect an unpaid bill,
the lawyer faces a substantial risk he or she will have to pay the deductible on his or her professional-liability policy.

III. FILE CLOSING PROCEDURES:

At the conclusion of your representation, you should inform the client and address record retention issues.

- Complete original documents concluding matter (Release executed, Dismissal Entry filed, etc.)
- Return original documents and papers to the client. Note: You may not charge the client for copying any documents you wish to retain for your files.
- Copy useful forms for your office form file. Do not charge client for copies of file.
- Remove duplicates and "clean out" file for storage. Decide if you will scan file or store paper file. If storing paper, be sure storage area will not be subject to dampness or other conditions that may render the files unusable. Be sure records are protected in event of disaster. If scanning files into electronic format, make certain to scan to a durable medium, confirm that the electronic files are readable and accessible on the storage medium, and keep a back up of the scanned data off-site or in a location other than the principal data. Also, set a regular schedule to test the integrity of the electronic files.
- Send a File Closing Letter to client.
- Prepare and send final bill to client. Be sure to check on all court costs and other expenses.
- Calendar future docket dates such as Uniform Commercial Code and judgment renewals.
- Send a Post Representation Survey client survey to client.
- Enter case into closed file database for future conflicts checks.
- Comply with record keeping requirements of Rule 1.15.
- Assign date for review/destruction of file. Ask client if he/she prefers to have the file returned or destroyed after the assigned date. If you destroy the file, be sure to dispose of it in a manner that leaves no recoverable information.

IV. CASE MANAGEMENT SOFTWARE:

A. What It Is: Case management software (CMS) does so much that it is difficult to describe. To appreciate what CMS can do for you, imagine that all information about your client matters were centrally located, available electronically in an instant, and shareable with everyone in your office. The case information compiled in CMS includes all of your contact names, addresses and phone numbers (the term
"contacts" includes every person or entity that you deal with, some of whom are also clients), all the calendar items related to that matter on anyone’s calendar in your office, all the to-do list items, all the notes of phone calls, theories, meetings, the documents and e-mails related to the case, and even time, billing, and account receivable information.

B. **Key features of a Case Management System:**

1. **Calendaring:** In a perfect world, your calendaring system would be office-wide, easy to use and portable. You would have the ability to relate every appointment or task to the case it is relevant to. The system would have redundancy and security built in, you’d have the ability to see other people’s calendars, and you would be able to determine who made any particular entry. Finally, you would have the ability to run reports which would allow you to see, for example, all of your approaching deadlines or to make sure that at least one follow up date exists for every open file. CMS offers all of the foregoing. With CMS you can do things like this:

   - view all incomplete tasks for one matter – regardless of whose task it is;
   - see all appointments for a particular matter, no matter who is assigned to the appointment;
   - produce a history of every task and appointment, past or present, complete or not, in one place.

2. **Case Information Tracking:** Since case management programs are matter-centric, all matter-related information is compiled in the electronic files. "Files" in CMS are simply electronic containers of matter-specific information. They run parallel to your paper files and contain the key information you might otherwise have to locate the paper file in order to obtain. This same information is also available to everyone in your firm who works on that file. No more time will be wasted searching for a paper file that’s gone MIA; everything you need quick access to is stored in your CMS. Information contained in CMS includes the following:

   - administrative information (client name, matter name, responsible lawyer, source, client’s type of business, file type, responsible lawyer, who referred the matter to you, etc.);
   - file summary (notes);
   - status report;
   - notes related to the file (forget sticky notes. Make an electronic note that never gets lost);
• events (collectively, tasks and appointments; you can see just yours or everyone’s in your firm);

• time spent (your time spent or all time spent by everyone working on the file; these are copies of the time entries);

• communications (yours or everyone’s) which include income and outgoing phone calls, phone messages and e-mails;

• documents (links to the documents you’ve created for that matter);

• chronological list (recorded list of everything that has happened in the file since it was opened);

• research (links to the research compiled for that particular file);

• custom fields for that type of file. (For example, if it was a probate file, you would find the date of death, county of domicile, probate court case number, whether the decedent died testate or intestate, the decedent’s SSN, etc. You can create an unlimited number of custom fields per type of file.)

3. **Contact Management:** Many times, firms buy CMS simply to create a firm-wide electronic rolodex. A very common problem in law firms is the inaccessibility to client telephone numbers; and maybe more importantly, correct client phone numbers. The way contact lists are maintained in most law firms is usually inefficient. Each person has his/her own electronic or paper contact list, and if anything changes with a particular contact, each person who has that name on a list will, at some point, have the task of updating the record. All CMS has a shared contact list. Because your CMS is also a relational database, contacts are only entered one time, no matter how many matters or people within your firm they are associated with. Simply put, this means that when someone’s address changes, and that person is associated with several matters in your law firm, you will only need to update the address one time, and the change is instantaneous for everyone. Furthermore, as soon as anyone in your firm adds a new contact, everyone else can instantly access that contact’s information through the CMS.

4. **Tickler Systems:** There are two distinct benefits to the reminders in CMS. The first is that the reminders don’t show up until the day you want them to. The second is that they not only remind you of things, they can initiate tasks. For example, many CMS applications have advanced features which allow you to launch a phone call and/or journal, create a document from a template, run another program (like Excel, QuickBooks, etc.), check the status of a file, send an e-mail or even visit a Web page based simply upon an entry you have made in your to-do list. Finally, reports can be run to pull out a list of file follow ups or any other items you’ve created in the CMS like reports on the expiration of statutes of limitation and the like.
5. **Conflict Checking:** A proper conflict check involves searching all searchable databases in your office (or manually checking lists of clients and parties), plus circulating a new matter memo to all employees. If you have multiple applications and everyone maintains a private contact list, this can be extremely difficult. To make this easier, all CMS applications have conflict checking built in. With a properly implemented CMS, you would be able to quickly search every person related to any matter in your firm, including parties, witnesses, experts and even notes.

6. **Automated Document Generation:** Most CMS enables you to execute straight WordPerfect merges and MS Word mail merges. In this manner, you can pull information (names, addresses, etc.) out of the CMS and into your documents using standard word processor templates. Furthermore, CMS typically integrates with document assembly programs like HotDocs (from LexisNexis). This gives you tremendously more power when generating documents that utilize information stored in your CMS. Time is saved on even the simplest fax cover sheet and significant time is saved on more complex documents. Additionally, the documents created are consistent, no matter who sends the fax, generates the follow up letter, contract, trust, etc.

7. **Time Tracking:** Cumbersome time-keeping programs that require every time record to be manually entered often cause attorneys with poor typing skills to abandon the idea of entering their own time. As a result, it is often dictated or written down and then given to someone else who enters the time into a billing program. This is an inefficient way of entering time. Two people have wasted time: the person writing the time could have entered it directly into the CMS, and the person who normally types the entries can work on something else - maybe even something billable! Even more so, writing down time and passing it off to someone else increases the possibility that transcription errors will be made. Handwriting is difficult to read, the transcriptionist may not know what your abbreviations mean. The list goes on. CMS streamlines the process of entering time.

As this genre of software has evolved, more CMS applications are beginning to introduce built-in billing software. At the very least, a good CMS will integrate with many popular third-party accounting programs like PCLaw, Juris, Tabs3, QuickBooks or Timeslips. For example, let’s say you have an appointment on behalf of a client that is billable. Since the appointment is already linked to a matter in your calendar, creating a time entry is a simple matter of clicking the timesheet button in the appointment on your calendar. Doing so creates a perfect time entry with no additional data entry (the appointment description is automatically dropped in and the length of the appointment is also recorded). This ability to automate time entries means that even non-typists can enter their own time which typically results in more time being captured.
8. **Communication Management:** One of the most powerful features of CMS is the ability to manage and store communication records (usually e-mail and phone calls). All CMS applications allow one to easily journalize phone calls and most integrate with Microsoft Outlook or Novell GroupWise for purposes of e-mail. Not only can you save copies of your e-mails into the appropriate contacts and files, you can one-click bill them as well.

9. **Information Mobility:** Lawyers who have laptops will be able to take all of the foregoing information about all active matters with them everywhere they go. Therefore, phone calls can be returned while out of the office since almost all file information will be on the attorneys’ laptops and searchable in the CMS.

C. **Main players:** There are literally hundreds of CMS options, some pre-specialized for use in particular practice areas, others that can be customized to work in almost any practice area. The following is a sample list:

- AbacusLaw by Abacus Data Systems, Inc. - 800.726.3339; [www.abacuslaw.com](http://www.abacuslaw.com)
- Amicus Attorney by Gavel & Gown Software, Inc. - 800.472.2289; [www.amicusattorney.com](http://www.amicusattorney.com)
- Case & Point by Corporate Legal Solutions - 800.597.4361; [www.caseandpoint.com](http://www.caseandpoint.com)
- Case Management Groupware by Legal Files Software, Inc. - 800.500.0537; [www.legalfiles.com](http://www.legalfiles.com)
- CaseTrack by Economy Analysis Group, Ltd. - 207.367.2950; [www.casetrack.com](http://www.casetrack.com)
- Client Profiles by Client Profiles, Inc. - 866.720.5005; [www.clientprofiles.com](http://www.clientprofiles.com)
- EsqWare Case Management by EsqWare, Inc. - 800.568.7996; [www.esquare.com](http://www.esquare.com)
- Law Base by Synaptec Software, Inc. - 800.569.3377; [www.lawbase.com](http://www.lawbase.com)
- Legal Edge Law Firm Suite by Legal Edge Software - 610.975.5888; [www.legaledge.com](http://www.legaledge.com)
- Needles by Chesapeake Interlink Ltd. - 410.363.1976; [www.needleslaw.com](http://www.needleslaw.com)
- Perfect Law by Perfect Law - 800.749.6200; [www.perfectlaw.com](http://www.perfectlaw.com)
D. **Hardware recommendations:** The hardware requirements for CMS are program-specific. Some require a dedicated file server; others do not. Some will work on Windows networks only, and some work on other network operating systems. Realistically, the "minimum system requirements" proffered by the manufacturers of CMS are usually far less than what you would want. Your best bet is to ignore the "minimum" system requirements and find out what the "recommended" system requirements are. Better yet, find a consultant who has direct experience with what does and doesn’t work.

V. **INTERNET SECURITY AND E-MAIL:**

A. **Importance:** It is incumbent upon you to protect confidential client information and defend your computer systems and data from people who may try to destroy or steal it. Unfortunately, many of these people use the Internet as a means of accomplishing their goals. Here are some things to consider:

B. **Internet protection:** If you’re going to connect your computer to the Internet, you need to make sure you’re protected.

1. **Four Essential Types of Protection:**

   a. **Antivirus software:** Antivirus software protects you against viruses which are typically transmitted via e-mail. Examples would be Norton or McAfee Antivirus.

   b. **Antispam software:** SPAM is unwanted or unsolicited e-mail. An overload of this can make it very difficult to manage your electronic communications. Examples include Cloudmark Desktop (www.cloudmark.com), iHateSpam (www.sunbelt-software.com), or Postini (www.postini.com).
c. **Antispyware software:** Spyware is typically software that is loaded on your computer without your knowledge. Typically, it gathers information about you as you browse the Web and uses that information to track surfing habits and/or build marketing profiles (for targeting you with pop-up ads, for example). Spyware typically invades your privacy while bogging down your computer and sometimes rendering computers unusable. In order to detect and remove spyware and prevent future infections, you need antispyware software. Two excellent examples are SpySweeper ([www.webroot.com](http://www.webroot.com)) and Spyware Doctor ([www.pctools.com](http://www.pctools.com)).

d. **Firewall:** LearnTheNet.com provides an excellent definition of this - "A firewall is a combination hardware and software buffer that many companies or organizations have in place between their internal networks and the Internet. A firewall allows only specific kinds of messages from the Internet to flow in and out of the internal network. This protects the internal network from intruders or hackers who might try to use the Internet to break into those systems." Examples of this might be a hardware firewall like the Linksys WRT54G router or a software firewall like ZoneAlarm Pro ([www.zonealarm.com](http://www.zonealarm.com)).

2. **Security Suites:** There are programs that combine all of the foregoing protections into a single program. It is generally accepted that none of the security suites contain the best of each type of protection. However, they’re very cost effective. Examples are the ZoneAlarm Internet Security Suite or the Norton Internet Security Suite.

C. **E-mail security:**

1. **General Information:** Although the Ohio Rules of Professional Conduct do not require the use of encryption software for e-mail communications with clients, they do reference attorneys to ensure that client confidentiality is maintained. This obligation clearly extends to electronic communications. Moreover, it is fairly easy to make a case that one should have little expectation of privacy when sending e-mail and/or e-mail attachments that have not been encrypted.

2. **Recommendations:** It is a good idea to discuss confidentiality issues with any client you intend to e-mail. Ideally you should get permission to use e-mail for communicating with a client. When information is extraordinarily sensitive common sense and good judgment should carry the day. Consider avoiding e-mail for this kind of information, or use (and advise a client to use) encryption software to help maintain confidentiality.

There are many good options for encrypting e-mail. A few of samples include:
• **Mail It Safe** ([www.mailitsafe.com](http://www.mailitsafe.com)): With Mail it Safe, you have the ability to secure the content, to pull back messages inadvertently sent, and to track the receipt and consultation of your e-mail and its attachments. You also know in real-time if and when your recipient reviews your message and attachments. The Mail it Safe alert system allows you to receive a confirmation report at an e-mail address on your mobile phone, Palm or Blackberry.

• **PGP Desktop Email** ([www.pgp.com](http://www.pgp.com)): PGP Desktop E-mail provides you with an automated, transparent set of encryption solutions to consistently secure confidential information in e-mail. PGP Desktop E-mail supports major e-mail security standards and will interoperate seamlessly with most popular e-mail security software solutions. For recipients without e-mail security, senders can encrypt files using PGP Zip and send the protected information as a standard e-mail attachment.
I. HIRING EMPLOYEES:

A. Determining Your Employment Needs: Of course, your needs will vary depending on the size of your office, your work load and how much of the administrative work in the office you intend to do yourself.

- You may only need an office assistant, who can act as a receptionist, typist, bookkeeper and all-around office worker. You will need someone to answer the phones and to do basic office work for you.

- Office assistants may have specific legal training; legal secretaries will have more training in legal vocabulary and will be able to do more independent word-processing right out of the chute.

- You may want to hire a paralegal. A paralegal is a person, qualified by education, training or work experience who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity and who performs substantive legal work for which a lawyer is responsible. They can be expected to draft legal documents for the attorney’s review, assist in trial preparation and do legal research.

- You can choose to do all the typing yourself and have a service take messages for you, but delegation will allow you to bill more hours at your rate. Also, you must remember that how you present yourself to the outside world is an important factor in how you and your practice will be received.

- You should have written job descriptions prepared for each position that you intend to fill, including expected duties and responsibilities, be they strictly secretarial or broader. Written job descriptions force you to understand what you need and will set the expectations for your employees. The job descriptions should be periodically reviewed over the life of your business to reflect actual duties performed.

B. Finding The Right People: Once you know what you need, you then have to find people to interview.

- There are many schools that offer paralegal certificates and legal secretaries (see http://tinyurl.com/2xpd3r or http://tinyurl.com/23sh6e). You can contact the placement office of your local technical school for names of people looking for secretarial or paralegal jobs.
• The Internet is a great resource to look for potential employees. The OSBA's Legal Career Center (http://tinyurl.com/2a9r5t) offers many resources for job seekers and employers alike. CareerBuilder.com (www.careerbUILDER.com) and Monster.com (www.monster.com) are two of the largest Internet search engines that may also help you locate interested people.

• You can place an advertisement in the paper or on the Internet requesting contacts from those seeking legal employment. OSBA members receive a reduced rate on classified ads in the OSBA Report and OSBA Report Online (http://www.ohiobar.org/pub/?articleid=70).http://www.ohiobar.org/pub/?articleid=70

• You can contact a temporary employment agency and hire a temp-to-hire person. This will give you more time to evaluate the potential employee’s work product and attitude. Temps are also paid by the agency and the agency takes care of all payroll issues.

• Word of mouth is also a great way to hear of people interested in employment. Contact your professional friends to see if they have references of people that they would recommend. It is not a good idea to poach other people’s employees, but if you know of someone you would like to employ, there is no harm in approaching that person.

• It is a good idea to make a list of the skills and attributes you are looking for in a new employee. For support staff, premiums should be placed on word processor mastery and experience with the programs your office uses (time billing and accounting, case management, calendaring/docketing, etc.).

C. The Application Process: Your potential employees should fill out your application before you consider hiring them.

• Illegal discrimination is governed by both federal and state law and both regulate the hiring process. The various statutes prohibit discrimination in recruiting and hiring on the basis of race, color, sex, age, national origin, religion and disability. Both disparate treatment and disparate impact are prohibited. Even if the size of your business eliminates the requirements to abide by these requirements, it is a good idea to avoid the issue and not to discriminate. Immigration law also makes it unlawful to hire or recruit a foreign national who is not legally authorized to work in the USA and requires employer verification.

• Application questions are important. You cannot ask questions on the application (or interview) that will indicate race, color, religion, sex, national origin, handicap, age or ancestry. The Ohio Civil Rights Commission has established a checklist for lawful and unlawful pre-employment inquiries and is found in the publication Questioning Applicants for Employment and Membership in Labor Organizations that can be found, with other helpful publications, at http://erc.ohio.gov/publication_list.htm. The Americans with
Disabilities Act also prohibits asking questions about the existence, nature or severity of a disability, unless the question relates directly to the ability to perform specific job-related activities.

- You should have a written application prepared that requests the following information and contains the following notices:
  - Name, contact information and date.
  - Education and training, including schools attended, degrees/certificates received, and any other specific job-related skills.
  - Employment history, including dates of employment, job duties, salary level, reason for leaving, and contact information.
  - Information regarding any criminal convictions on the record.
  - Confirmation that the applicant is authorized to work in the U.S.A.
  - A statement that you are an Equal Opportunity Employer.
  - A statement asking the applicant to certify the truth of all statements made in the application, along with notification that false statements or relevant omissions on the application will result in discharge.
  - Additionally, you should obtain references and a separate authorization from the applicant for release of information from prior employers.

D. The Interview: Once you have received the applications, you will want to meet each potential employee in a face to face interview.

- Keep in mind the rules listed above for impermissible questions. Those rules also apply to the interview.
- The interview is the best place to determine if there will be a personality match or conflict with your prospective employee. If you are in a small office and intend to delegate work to this person, how you interact will be very important to the quality of your work life.
- Use the interview to tell the applicant what you expect of him or her. You should go over your written job description and discuss what the employee can bring to your office. You may also wish to discuss salary expectations and other employment benefits.
E. **The Job Offer:** After the interview, you may decide to make a job offer. Make sure that you establish work hours, job duties, rate of pay and any other potential employment benefits.

  - The Ohio Department of Job and Family Services tracks occupational employment statistics and can provide you with a range of wages that employees earn in given job classifications and in given areas. You can use this resource to gauge the wages that you offer. You can locate that information at [http://tinyurl.com/lu575](http://tinyurl.com/lu575), or type "occupational employment statistics Ohio" into your favorite search engine. Minimum wage issues are addressed below, but most wage and hour questions are addressed by the Ohio Wage and Hour Bureau in the Department of Commerce of the United States Department of Labor.

  - As an employer, you have the option to afford your employees fringe benefits. These will increase your expenses, but depending on the area in which you work, you may need to provide them in order to attract and keep quality employees. Fringe benefits may include the following:

    - An employer-sponsored retirement plan for your employees. Such plans include Simple, SEP and profit-sharing accounts. The details of these accounts are beyond the scope of this publication, but your accountant or investment advisor can explain the various employer-sponsored retirement plans that are available, and can set them up for you and your employees. If you do set up an account in which you as the employer can participate, you must also, given certain limitations, allow your employees to participate.

    - Health insurance. If you are a small employer, this can be prohibitively expensive. You may, however, be entitled to join a group plan offered by organizations, including the Ohio State Bar Association Insurance Agency ([http://www.ohiobar.org/pub/?articleid=54](http://www.ohiobar.org/pub/?articleid=54)), and many chambers of commerce. You are not required to provide health insurance, but you may need to consider it in order to attract and keep quality employees.

    - Paid vacation days, holidays and sick days. If you do offer vacation time, you will need to make staffing arrangements to handle the workload while your employees are on vacation.

    - Ohio still is an employment-at-will state, which means that the employment relationship can be terminated at the will of either party. However, there are many restrictions on your ability to fire someone, for certain reasons, including express contract, implied contract, promissory estoppel, public policy or for reasons prohibited by specific statutes. You should include a statement on any written policies or handbooks making it clear that the employee is an employee at will, and that no policies or handbooks can be construed as a contract for employment. The employee’s signature should be requested under a statement to
II. MANAGING EMPLOYEES:

A. Establishing Policies: Regardless of the size of your office, you should establish certain policies for employee management. These policies should be in writing, and you should ask your employees to sign and acknowledge that they have read and received copies. Also, be sure to include the employment-at-will disclaimer on that receipt.

• Privacy Policy: Employees only have the right to privacy that they are put on notice to expect. Therefore, your privacy policy should specify that there will be no expectation of privacy with respect to the company’s computers, e-mail and the Internet. In addition, it should be made clear that desks, break rooms and other common areas are places in which employees should not expect privacy. Advise your employees that their computers may be monitored and that they should have no expectation of privacy in their use.

• Harassment: You should have an explicit policy prohibiting harassment based on gender, age, national origin, race, religion and disability. It should state that employees who make complaints about harassment will be protected from retaliation and explain the complaint process. The OSBA has developed a sample policy titled "Preventing Sexual Harassment in the Legal Workplace" that can be downloaded on the OSBA Web site: http://www.ohiobar.org/memrsrcl/?articleid=309. Additional information can be obtained from the Equal Employment Opportunity Commission Web site at http://www.eeoc.gov/policy/guidance.html

• Confidentiality/Conduct: The Ohio Rules of Professional Conduct, Rule 5.3, relates to a lawyer’s responsibilities with respect to supervising nonlawyer employees. Non-lawyer employees must receive appropriate instruction and supervision concerning the ethical aspects of their employment, including confidentiality and work product. Office policies about confidentiality, conflicts of interest and ethical expectations should be in writing.

• Unauthorized Practice Of Law: You, as an attorney, must not let your non-lawyer employees do your legal work. Rule 5.5 of the Ohio Rules of Professional Conduct prohibits a lawyer from aiding another person, who is providing legal assistance, when that person is not licensed to practice law. This includes, but is not limited to, having a non-lawyer sign pleadings and correspondence, and drafting legal documents that you have not supervised. You should review and approve all documents prepared by your employees and sign everything yourself to indicate your review and approval.

• Discipline: You should have a written policy addressing the different levels of discipline that employees can expect to be in force, from a verbal warning (which
is recorded), a written warning and final written warning. If you have a
discipline policy, it must be followed for all employees equally, and you should
do due diligence in investigating any employee issues before resorting to
discipline. The policy should have an immediate termination provision for
egregious behavior, and should include the employment-at-will disclaimer. All
actions involving discipline must be recorded in writing and kept in the
employee’s file. All reports should be written at the time the action is taken; they
must be complete and factually accurate, and should be signed and dated by the
person taking the action (probably you).

• **Internet Usage and Email Policies**: There can be plenty of liability associated
  with unauthorized or inappropriate use of your firm's Internet access and
  company email accounts. If you enter "internet usage policy" into your favorite
  Internet search engine, you'll see that there are plenty of resources available to
  help you draft this. The policy should specifically enumerate the purpose, scope,
  prohibited activities and consequences for violation. It is a good idea to go over
  it with each employee, have both them and you sign it, and keep a copy in each
  employee's personnel file.

B. **Evaluations**: Periodically (at least once a year), you should evaluate the performance
   of each of your employees. That evaluation must include an honest assessment of
   the employee’s attendance, effectiveness, quality and attitude. The evaluation should
   be in writing and should be reviewed with the employee. The convenient time to do
   this is whenever you adjust salaries, either at the end of the year or at the anniversary
date of hire. Many employers ask their employees to do a self-evaluation, and then
   they discuss strengths, weaknesses, areas for improvement and expectations. The
   employee should sign the evaluation, acknowledging that it was reviewed.

C. **Protect Your Financial Information**: Be careful not to give any employee too
   much unsupervised control over your office’s finances. Many an attorney has
   discovered that a trust account or firm checking account is much lighter than it
   should be after a long-trusted employee disappears. There are different levels of
   safeguards, but at the least, the person you authorize to write the checks should not
   be the same person who reconciles the account. You may choose to be the only
   person authorized to sign checks, and you should balance the accounts yourself
   frequently. More information can be found in [Chapter 2: Time Billing and
   Accounting](#).

III. **FIRING EMPLOYEES**: Here are some considerations to keep in mind:

• Firing someone is never easy. It should be done with a certain level of decorum,
sensitivity and dignity, regardless of the situation. Each employee’s file will contain the
  signed receipts acknowledging all your office policies and procedures, all your
  performance evaluations, and any and all disciplinary actions taken by you against the
  employee. DOCUMENT EVERYTHING IN THE FILE. Make sure you conduct an
  exit interview with the soon-to-be-former employee in which you clearly state the
  reasons for termination, discuss any benefits due and address the final paycheck.
• Remember that there are many reasons that may not be used when firing someone. A practical list of prohibited discrimination, and relevant discussions, can be found on the EEOC Web site.  [http://www.eeoc.gov/types/index.html](http://www.eeoc.gov/types/index.html)

• Employment law is an entire practice area in and of itself and is beyond the scope of this resource, but to avoid lawsuits, and to be prepared for them when they come, there are a couple of commonsense things to do. Keep complete and accurate records in the employee’s file, make full use of the performance evaluation to document issues, give notice for discipline actions and be consistent in those actions, and be as fair and reasonable as you can.

• Identify the reasons for the discharge. They need to be lawful, nondiscriminatory reasons; and they need to be documented.

• The final employment action should be reviewed with the employee, and should be signed by them if they are willing. You can get the employee to release all discrimination claims, but the employee must receive consideration and knowingly and voluntarily release them.

IV. PAYROLL AND TAXES

A. **Forms You Must Complete and File:** The hiring of any employee triggers the reporting of wages to certain entities, and the withholding and paying of certain taxes and fees. Bonuses and any extra pay, including some benefits, must be included as income and taxes must be withheld. The first thing you must do is to file the following forms:

• IRS Form SS-4, which will give you your employer identification number. This form can be located on the IRS Web site ([http://www.irs.gov/](http://www.irs.gov/)), or by typing "SS-4" into your favorite search engine.

• Ohio Department of Taxation registration, which can be found at [http://obg.ohio.gov/genoverviewregsrvcs.shtml](http://obg.ohio.gov/genoverviewregsrvcs.shtml) or by searching "Ohio withholding application" into your favorite search engine.

• An Ohio Bureau of Workers Compensation U-3 application, which can be found on the Bureau of Workers Compensation Web site ([http://www.ohiobwc.com/](http://www.ohiobwc.com/)) at or by typing "Ohio bwc application" into your favorite search engine.

• An Ohio unemployment application (JFS 66300), can be found on the Web site for the Department of Job & Family Services ([http://jfs.ohio.gov/](http://jfs.ohio.gov/)) or by typing "Ohio unemployment registration" into your favorite search engine. Given your number of employees, you may not be required to pay into the state unemployment compensation fund, but you should file the application regardless.

B. **Forms Your Employee Must Complete:** Your employees must complete an IRS form W-4 from the IRS Web site ([http://www.irs.gov/](http://www.irs.gov/)), the Ohio IT-4 form from the Ohio Department of Taxation ([http://tax.ohio.gov/](http://tax.ohio.gov/)), and a Department of Homeland
Security I-9 form, which can be found on the Formi9 Web site (http://www.formi9.com/) or by typing "I-9" into your favorite search engine. You must have signed W-4 and IT-4 forms in your files and they should be updated and signed annually. You, as employer, must complete and file with the State of Ohio the New Hire Reporting Form. Find information about this form at the Ohio New Hire Reporting Center Web site (http://newhirereporting.com/oh-newhire/) or by typing "Ohio new hire report" into your favorite search engine.

C. **What You Must Pay:** When you pay your employees, you are required to (deduct) withhold certain amounts from their wages. Additionally, you are required to pay from your funds into certain federal and state funds.

- From each employee’s gross paycheck, you must withhold federal income tax. The amount to be withheld changes and the current withholding percentages can be found on the IRS Web site or by typing "current IRS withholding" into your favorite search engine. Those withheld amounts must be paid quarterly to the IRS along with Form 941.

- You must also withhold from each employee’s gross income state income tax, which also changes. The current tax rates can be found on the Ohio Department of Taxation Web site. Those withheld amounts must be paid quarterly, and in some cases monthly, to the Ohio Department of Taxation.

- You are required to withhold from each employee’s gross wages Social Security and Medicare taxes, to be deposited with the federal government. The employee’s portion of Social Security Tax is currently 6.2% (and has been since 1990), but you should check with the Social Security Web site (http://www.ssa.gov/) for current rates. These taxes, plus your portion of that liability, must be paid quarterly.

- If an employee works within the city limits of a city that has an income tax, you must withhold the appropriate percentage of local income tax for that municipality. If the employee works in the city but does not live in the city, the employee still will be required to pay city income taxes, but you are not required to withhold from them. You may, however, withhold local income tax as a courtesy. Check with your local municipality to see if there is a local income tax. This will need to be paid to the municipality at least quarterly. Check with your local tax department.

- Additionally, the employer must withhold from the employee’s gross pay any school district tax required for any school district in which the employee lives, regardless of where the employee works. You can find a chart of school districts and their respective tax rates at the Ohio Department of Taxation Web site. This tax will need to be paid to the Department of Taxation Quarterly.
• In addition to the amounts that your employee has withheld from his or her gross pay, you, as employer, are required to pay additionally into the Social Security, currently at 6.2%, and one-half (1/2) of the Medicare premium.

• You must also pay into the Workers’ Compensation Fund, at a percentage calculated by the Bureau of Workers’ Compensation. Those funds must be paid to the Bureau twice a year. Look into joining a group-rating plan as that will significantly reduce your premiums. The Ohio State Bar Association offers a workers' compensation group-rating program through Frank Gates. For more information, go to: http://www.ohiobar.org/memrsrsc/?articleid=151.

• You must also withhold federal unemployment taxes, at a rate that can be located at the IRS Web site on Form 940. FUTA must be paid to the IRS quarterly along with Form 940.

• Finally, you must withhold state unemployment taxes, at a rate which can be found at the Ohio Department of Job and Family Services or by typing "Ohio unemployment tax" into your favorite search engine.

D. Outsourcing Payroll: If you do not wish to be burdened with the requirements of managing payroll, there are different ways for you to hire that work to be done. Your local accountant usually will do any level of service for you, from completing only W-2 forms at the end of each year to providing complete payroll services. You should already have located an accountant, but if you have not, you should consult one before setting up any payroll system. There are some professional payroll services, including ADP and Paychex, which can take care of your payroll needs. There are also computer software programs, including PCLaw, Juris, Tabs 3, Quick Books and Peachtree, that allow computer-savvy people to take care of their own bookkeeping payroll issues.

E. Ohio Minimum Wage: Effective January 1, 2007, the Ohio minimum wage was raised to $6.85 per hour. There is current activity to raise the federal minimum wage as well. Make sure to find out what the current minimum wage is for both Ohio and the nation and pay whichever is higher. In addition, Ohio’s minimum wage is now indexed for inflation and will increase each year. The constitutional amendment also requires that "an employer shall maintain a record of the name, address, occupation, pay rate, hours worked for each day worked and each amount paid an employee for a period of not less than three years following the last date the employee was employed." It also requires an employee or person acting on behalf of an employee may request that you provide such information.

V. OTHER RELATED ISSUES

A. Independent Contractors: You can hire independent contractors to do work that is not performed by your employees. There are differing definitions of "employee" and "independent contractor," including those used by the IRS, Fair Labor Standards Act, National Labor Relations Board, Workers’ Compensation and Unemployment
Compensation. The essence of the difference is the amount of control that the employer retains over the worker. You can label someone an independent contractor, but that will not change your liability if it is found that you retained control over the manner and means of work performance. An excellent resource for making sure you comply with the test for an Independent Contractor is IRS publication 1779 which you can download for free at http://www.irs.gov/pub/irs-pdf/p1779.pdf.

You must issue an IRS Form 1099 to any non-employee that was paid more than $600 in any calendar year.

B. **Shared Employees:** Shared employees may become an issue if you are in an office-sharing arrangement. Before you get involved with any shared employee situation, make sure to establish what portion of the work day is to be assigned to you, who is responsible for paying the taxes and recognize that all employers may be liable for the actions of a joint employee.

The Ohio Rules of Professional Conduct imposes responsibility on a lawyer who has direct supervisory authority over an employee for that employee's violation of the Rules, if the lawyer orders, or ratifies the conduct with specific knowledge, or if the supervising lawyer knows of the conduct at a time when the consequences of the conduct can be avoided or mitigated, but fails to take reasonable remedial measures. **Rule 5.1**

**Rule 5.3** of the Ohio Rules of Professional Conduct governs responsibilities regarding nonlawyer assistants. The rule mandates that a lawyer who, individually or together with other lawyers, has managerial authority shall make reasonable efforts to ensure the firm has in effect measures giving reasonable assurance the employee’s conduct is compatible with the lawyer’s professional obligations. The lawyer shall be responsible for the employee’s conduct that would be a violation of the Rules if engaged in by a lawyer, if the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct or if the lawyer with direct supervisory authority knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.
Chapter 5  Marketing  
Gretchen Koehler Mote & Theodore M. Mann Jr.

I. INTRODUCTION:

Marketing must be an integral part of your practice. It gives you the ability to develop and control your practice and should be viewed as a positive element of any successful business operation.

Your law business will come from three primary sources: current clients, satisfied past clients and strangers. Of course, current clients and past satisfied clients know you and are pleased with your work. Hopefully they will use your services again or recommend you to others in the future, and for that reason it is important that you continue to market your services to them.

Strangers obviously don't know you, and most likely won't even think about an attorney until they are faced with a legal problem. Once the need arises, however, you want to be the person they turn to, and the way to help them think of you first is through marketing. Effective law office marketing requires both compliance with the Ohio Rules of Professional Conduct and application of sound marketing principles.

II. OHIO RULES OF PROFESSIONAL CONDUCT: Rules 7.1 through 7.5 address marketing and advertising.

A. Rule 7.1 Communications Concerning a Lawyer’s Services: Governs all communications about a lawyer’s services, including advertising permitted by Rule 7.2. Whatever means are used to make known a lawyer’s services, the statements must be truthful and not false or misleading. Truthful statements that are misleading are prohibited by the rule.

There is no longer a prohibition on client testimonials or self-laudatory claims, as long as they are not unverifiable. However, an advertisement that truthfully reports a lawyer’s achievements on behalf of clients or former clients may be misleading if it could lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client’s case.

Characterization of rates or fees chargeable by the lawyer or law firm such as "cut-rate," "lowest," "giveaway," "below cost," "discount," or "special" is likewise misleading.
B. **Rule 7.2 Advertising and Recommendation of Professional Employment:**

Provides, subject to requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.

A lawyer is allowed to pay for advertising and communications permitted by this rule, including the costs of:

- print directory listings
- on-line directory listings
- newspaper ads
- television and radio ads
- domain-name registrations
- sponsorship fees
- banner ads
- group advertising

A lawyer may compensate employees, agents and vendors who are engaged to provide marketing or client-development services, such as publicists, public-relations personnel, business-development staff and Web site designers. A lawyer employing such help shall take reasonable efforts to insure that the conduct of non-lawyer employees is compatible with the professional obligations of the lawyer.

C. **Rule 7.3 Direct Contact With Prospective Clients:**

Prohibits the solicitation of a prospective client through a real-time electronic exchange that is not initiated by the prospective client. The Rule broadens the types of communications permitted by authorizing the use of recorded telephone and electronic communication via the Internet. However, the provisions on disclosures now apply to all forms of permissible direct solicitations.

"Understanding Your Rights" as set out in the Rule must be sent if a communication soliciting professional employment from a prospective client or relative of a prospective client is sent within 30 days of an accident or disaster that gives rise to a potential claim for personal injury or wrongful death.

None of the requirements of Rule 7.3 apply to communications sent in response to requests from clients or prospective clients. Also, general announcements by lawyers including changes in personnel or office location do not constitute communications within the parameters of this rule.
A lawyer shall not solicit professional employment from a prospective client when that client has made known to the lawyer a desire not to be solicited by the lawyer. Also, a lawyer solicitation shall not involve coercion, duress or harassment.

D. **Rule 7.4 Communication of Fields of Practice and Specialization:** Provides that a lawyer may communicate the fact that he/she does or does not practice in a particular field of law. Allowing a lawyer to state she/he is a "specialist," practices a "specialty," or "specializes in" particular fields is a change from DR 2-105.

E. **Rule 7.5 Firm Names and Letterheads:** Allows truthful statements about a lawyer’s professional status, other business pursuits or degrees. This represents a change from the prohibitions in DR 2-102(E).

III. **GENERAL IDEAS AND CONCEPTS:** Within the confines of the Ohio Rules of Professional Conduct and law practice ethical guidelines, standard marketing concepts and issues are applicable. You should:

- Conduct an honest and candid self-assessment of your current practice and where you want to be in the future.

- Determine your target market and prospective client profile.

- Determine what tools, staff and skill set you need to employ (language skills, technology, specialized legal practice) and how you get them.

- Use your imagination for developing prospects.

- Be aware that you are marketing for prospective clients 24/7, for law work that may not even have happened yet.

IV. **NECESSARY "TOOLS" FOR THE MARKETING PROCESS:** Based on your analysis of the target market, necessary tools for any marketing effort are critical and subject to budget issues. They should include:

- Your 30-second message of what you do ("elevator speech").

- Business cards for distribution.

- Note taking ability for follow up. This can be "pen and paper," "Blackberry," tablet PC, or even a digital voice recorder. Be prepared and credible when meeting your client.

- All communication media including stationery, fax cover sheets and telephone-computer response technology.

- Web sites. Do not ignore the continued expansion of the use of Internet search engines by non-lawyers.
V. **NICHE MARKETING:** Be aware that certain marketing methods are better for specific types of practice. Real Estate Law, Business Law, Criminal Law, Probate and Elder Law all can be marketed using unique methods. For example, specific industry specialists as referral sources, timing of advertising placement, and demographics of target audience.

VI. **NETWORKING:** The core concept of networking is that people use lawyers they know or hear about and think can help them. Prospective clients find out about lawyers from friends, family members, other lawyers (referrals), business associates, referral services, Internet searches and the "Yellow Pages," and the search continues until one is found with whom they are comfortable. Any network that allows your name to become visible for legal work is a business referral source. Structural versions include formal organization memberships – church, service groups, bar associations, sports groups, school activities and anything else that gives you visibility and a chance to meet people. Participation in any of these is enhanced when you undertake a leadership role that showcases your talents for being responsible and for getting the job done.

A less structured but effective network is your personal network of contacts or vendors – your barber, dry cleaner or copy machine salesman. Make sure these contacts know you are a lawyer and know your areas of expertise so that they will hopefully think of you first when they need answers to their legal questions.

VII. **WEB SITES:** The trend to electronic Internet searches for lawyers and legal advice is a continuing and permanent factor in marketing the legal services. Web sites are the end result of an Internet search.

Search engine marketing by general sources, such as Yahoo, Google or legal specific search engines, are used by everyone. Web sites can stand alone or be included as part of a service like Martindale-Hubbell or West. They can be personally or professionally maintained. If you decide to maintain the site yourself, consider that providing this support costs you and/or your staff time away from lawyering.

Web sites can be static like an "E-Yellow Pages" or interactive. The latter requires a level of oversight and periodic updating to avoid dated material that can deter prospective clients.

Don’t ignore the membership lists of organizations to which you belong. Being listed on an organization's online membership roster as an attorney with specific areas of practice is a great way to let the other members of the organization know you are available to help them.

As a caution, be aware of the potential client's reliance on your Web site for legal advice and its adverse consequence. It is important that all of the information on your Web site be accurate. It is an excellent idea to add an outright disclaimer or "Terms of Use" section which specifically explains that information contained on your web site is not legal advice or legal opinion and should not be relied upon. Furthermore, nothing contained in your web site is intended to create or establish, and does not constitute, an attorney-client relationship between you and anyone else.

VIII. **NEWSLETTER AND CORRESPONDENCE:** The newsletter should be viewed as a chance to make contact with current, past and prospective clients. The size of your law firm
and the time you have available to devote to creating a newsletter may will help you decide if you can create the newsletter in-house or use outside contractor sources.

The goal is to make frequent contact so the recipient remembers you when they have a legal problem. The contact cycle can be quarterly, monthly or just periodically. For help with content, turn to the American Bar Association, Ohio State Bar Association and various law research contractors.

Take advantage of direct mail opportunities that are triggered by changes in the law, year-end planning, or client business issues like annual meetings or successor planning. In all cases, seek to create opportunities to communicate with clients and potential clients so you can showcase your legal services and expertise.

A growing number of lawyers are also using electronic newsletters as a means of reaching their clients. The cost is typically much less than direct mail and there are services that make it easy to develop professional looking newsletters and manage the distribution of them such as www.constantcontact.com.

IX. **VISIBILITY:** You should be looking for opportunities to speak and write on legal issues so your audience can see your competence and expertise in a topic area or specialty. Opportunities are extensive both within the legal community, such as speaking at a CLE event or submitting an article for publication, as well as within non-lawyer groups who have regular meetings and are seeking speakers.

X. **E-MAIL HEADERS AND FOOTERS:** The general shift to e-mail use requires the same care as other firm communications. The Internet’s inherent informality should not be an excuse for a failure to "sell" and demonstrate your competence.

A. **Signature Block:** At the minimum, your name and contact information should be part of your e-mail signature block that is automatically attached to your e-communication. Some lawyers have expanded their block to include application of a motto, phrase or practice area. Compliance with all standard business e-mail guidelines of courtesy and professionalism are mandatory since you don’t know to whom your communication will be forwarded.

B. **Additional Disclaimers and Notices:** You may also want to consider adaptations of the following at the end of your email addresses:

   - This e-mail may contain confidential or privileged material and is intended for use solely by the above referenced person(s)/recipient(s). Any review, copying, printing, disclosure, distribution, or other use by any other person or entity is strictly prohibited. If you have received this transmission in error, please notify the sender by telephone at _________ or send an electronic mail message to the sender and delete the copy you received. Thank you.

   - Neither the information block, the typed name of the sender, nor anything else in this message is intended to constitute an electronic signature unless a specific statement to the contrary is indicated in this message.
• IRS Circular 230 Notice/Disclosure. To ensure compliance with requirements imposed by the Internal Revenue Service, I inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

XI. SPECIALIZATION: If you have an authorized "specialty" certified by an organization approved by the Supreme Court Commission on Certification of Attorneys as Specialists - use it! Rule 7.4 allows attorneys so certified as specialists to state their specialty, as long as the name of the certifying organization is clearly identified.

If you don't maintain a certified "specialty," but you concentrate your practice in certain areas, make that known pursuant to Rule 7.4 while being careful not to mislead anyone in violation of Rule 7.1. (See Rule 7.4, allowing lawyers to state that they specialize or are specialists). Make sure this becomes a part of letterhead, e-mail signature block and other disclosure opportunities. For more information on OSBA Certified Attorney Specialists and marketing your specialty, see:

• OSBA Certified Attorney Specialists - see http://tinyurl.com/2v7uze

• Sample press release for use by OSBA attorney specialists - see News Release for Specialists

XII. RESOURCES: The Ohio State Bar Association, with input from its volunteer committees and sections, has developed a variety of products for OSBA members and the general public. These products are intended to meet the needs of improving attorney practices and in serving the general public with information about the law and how it relates to Ohio citizens. Some of the resources, such as the LawFacts Pamphlet series, can be customized by adding information about your firm. See www.ohiobar.org/ebiz/pl.asp?pcid=16 for ordering information or visit the Practice Resources area of the OSBA Web site: http://www.ohiobar.org/memrsrc/?articleid=252. - The products brochure should be a web link, not an exhibit - can't verify web sites because ohiobar.org is down right now.

XIII. PUBLIC RELATIONS ACTIVITIES TO CONSIDER

• Prepare and distribute news releases
  • announcing the firm’s formation, new members or offices
  • new certifications
  • seminars you are offering

• Prepare letters to the editor of the local newspaper explaining current events related to your practice areas.
• Develop regular newspaper columns for your local papers on topics within your area(s) of practice.

• Offer your services to local organizations (bar associations, Rotary, Kiwanis, PTA, etc.) to speak on areas in your fields of practice.

• Consider hosting seminars or clinics for your community in areas of your practice.

• Contact local radio and television stations to offer yourself as a contact in your areas of practice. You can become a local resource for the media, and you could be invited to appear on local talk shows.
Chapter 6  Practice Challenges
Gretchen Koehler Mote

This chapter highlights some of the challenges practicing attorneys will face during their careers. The topics are not exhaustive, but are meant to give some guidance in situations where one may encounter potential pitfalls.

Above all else, this section is meant to raise awareness that when one experiences "bumps in the road," you are not alone. Others have been there before! You are encouraged to seek help immediately to not imperil your clients or yourself.

I.  MAKING MONEY: The evolution of the practice of law from "an honored profession" to a "business" is often lamented. However, a framed document from the 1800’s listing a fee schedule clearly reflects that lawyers have never wanted to work "for free" and have always had to consider how to "keep the lights on," whether those lights were lanterns or halogen.

A.  Practical Tips:

- Get your name out by community and professional involvement
- Do what you say you’ll do, when you say you’ll do it!
- Clearly explain the scope of what you’ll do
- Use engagement letters and written fee agreements – use retainers!
- Send regular status updates to clients
- Bill for your services reasonably and regularly
- Save for that "rainy day" – not every month hits a "home run"
- Spend less than you make

B.  Follow Your Business Plan: You spent your valuable time and effort to develop your business plan – USE IT! Re-visit it regularly and tweak it to fit "reality" vs. your expectations. Eliminate what isn’t working and add new items. Caveat: It will take some time to see results, so set realistic time tables & follow through! For more on how to write a business plan, see Chapter 1 (Opening and Maintaining a Law Practice).

C.  Cash Flow: Gauging the ebb and flow of money into your law practice can be tricky. When starting out, it’s a good idea (but often difficult) to have cash reserves. A line of credit to cover cash-flow issues and emergencies is essential. Keep a close eye on this! Operating on a deficit obviously won’t work in the long haul. Use of retainers should help get over some of this uncertainty. Remember to budget for fixed costs
that must be covered at regular intervals such as weekly employee salaries, monthly overhead, quarterly tax payments regardless of current cash flow. No matter how tempting it may be when money becomes tight, your Trust Account is NOT the place to get a quick loan!

II. **SUBSTANCE ABUSE:** Statistically, lawyers have a higher incidence of substance abuse and depression than the general population. Whether stresses of dealing with clients or the financial uncertainty of the practice of law causes this, it probably contributes to it. If you or a colleague faces issues of substance abuse, depression, addictions – including gambling, Internet site abuse, shopping addiction – you have help nearby.

- Rule 8.3(c) of the Ohio Rules of Professional Conduct provides that confidentiality of information regarding lawyers participating in lawyers’ assistance programs is not only confidential but "shall be privileged for all purposes."

- The Ohio Lawyers’ Assistance Program is only a phone call away at 800-348-4343. E-mail may be sent to smote@ohiolap.org

III. **BURNOUT:** Lawyers experiencing a general fatigue with the practice of law will tell you "burnout" is an understatement! When this happens, you can employ several strategies:

- Determine areas of dissatisfaction:
  - If monetary, re-visit business plan for evaluation
  - If practice area, explore new fields
  - Contact Ohio Lawyers’ Assistance Program for assistance
  - Review Chapter 7: Quality of Life.
  - Consider finding an attorney to serve as your mentor.

IV. **PROFESSIONALISM CONSIDERATIONS - CLIENT RELATIONS:**


- [A Lawyer's Creed](https://www.ohiosupreme.gov/legal-resource-center/courts-and-judges/what-is-professionalism/a-lawyers-creed) is divided by paragraph to address those with whom a lawyer interacts. The first paragraph offers loyalty, confidentiality, competence, diligence and best judgment to clients. This is mirrored in Rules 1.1, 1.2, 1.3, 1.6 and 2.1.

- The second paragraph offers fairness, integrity and civility to opposing parties and their counsel. Rules 3.4 and 4.4 reflect these goals.
Courts and other tribunals are offered respect, candor and courtesy in the next paragraph. Rules 3.3 and 3.5 require the same conduct.

Concern for reputation and well-being of colleagues in the practice is found in paragraph four as well as in Rule 4.1 and 4.4.

Keeping the law a calling in the spirit of public service and promoting its understanding encompasses paragraph five. Rules 5.1, 5.2, 5.4, 8.1, 8.3 and 8.4 echo these sentiments.

Finally, the offer of service to the public is contemplated in reserved Rule 6.1 and in 6.2.

The interweaving of professionalism in the Rules indicates how inseparable such conduct is with the continued practice of law as a learned profession.

V. MULTIJURISDICTIONAL PRACTICE (MJP): Rule 5.5 governs MJP providing that a lawyer may practice only in a jurisdiction in which the lawyer is authorized to practice. The rule further provides that a lawyer who is admitted in another United States jurisdiction is in good standing and regularly practices law may provide legal services on a temporary basis under one or more of the conditions listed.

The comments to the rule also address pro hac vice admission, noting that such admission of an out-of-state lawyer to represent a client is a matter within the discretion of the tribunal before which the out-of-state lawyer seeks to appear.

No change in Ohio law or ethics is intended by the adoption of Rule 5.5.

VI. RETAINING YOUR LICENSE: Rule VI of the Rules for the Government of the Bar of Ohio provides that each attorney who is admitted to the practice of law in Ohio shall file with the Attorney Registration Section of the Supreme Court a Certificate of Registration together with a registration fee of three hundred and fifty dollars. An attorney who registers and pays the fee required under this section shall be granted active status.

The Rule also provides that each attorney admitted to the practice of law in Ohio shall keep informed of the registration requirements, deadlines and fees. Failure to receive notice that the registration and the fee are due or notice of noncompliance does not constitute an excuse.

Further, each attorney who is admitted to the practice of law in Ohio is required to keep the Attorney Registration Section apprised of the attorney's current residence address and office address and shall notify the Attorney Registration Section of any change in the information on the Certificate of Registration. You may do this online at http://tinyurl.com/3db5aw.

For information purposes regarding interest-bearing trust accounts established by 3953.231 or 4705.09 of the Revised Code, the Attorney Registration Section requires that IOLTA account information or the exemption from having such account be listed.

Rule X of the Rules of the Government of the Bar (http://tinyurl.com/3b93a8) establishes continuing legal education requirements for the bar. Each attorney authorized to practice in Ohio is required to have at least twenty-four credit hours of continuing legal education for
each two-year reporting period. At least two and one-half of the twenty-four credit hours of instruction shall be related to professional conduct and shall include all of the following:

- Thirty minutes of instruction on substance abuse, including causes, prevention, detection and treatment alternatives;
- Sixty minutes of instruction related to the Code of Professional Responsibility;
- Sixty minutes of instruction related to professionalism (including A Lawyer's Creed and A Lawyer's Aspirational Ideals adopted by the Supreme Court).

Online CLE credits are available for up to 6 hours through the internet: http://tinyurl.com/275cr1

VII. NEW LAWYER MENTOR PROGRAM & NEW LAWYER TRAINING: Attorneys newly admitted to the practice of law must complete a New Lawyers Training Program approved by the Commission prior to the end of the calendar year following the calendar year of admission. This is a single course of structured training of at least twelve hours for lawyers newly admitted to the practice of law.

In 2006, the Ohio Supreme Court established a state-wide mentoring program for newly admitted lawyers in Ohio. This pilot program does not negate the requirement to participate in the New Lawyer Training course, but under a temporary provision adopted by the Supreme Court of Ohio new lawyers who opt to participate in the mentoring program would attend six hours of a New Lawyer Training class and the other six hours of New Lawyer Training credit would be satisfied by successful completion of the Lawyer to Lawyer Mentoring Program.

VIII. SUPERVISORY RESPONSIBILITIES: Rules 5.1, 5.2, 5.3 enact new responsibilities for lawyers.

- Under Rule 5.1, a lawyer shall be responsible for another lawyer’s violation of the Rules if the lawyer either orders or, with knowledge of specific conduct, ratifies the conduct or if the lawyer is a partner or has comparable managerial authority in the law firm or governmental agency or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when consequences of such conduct can be avoided or mitigated but fails to take reasonable remedial action.
- Rule 5.2 provide that a lawyer is bound by the Rules notwithstanding that the lawyer acted at the direction of another person. However, a subordinate lawyer does not violate the Rules if that lawyer acts in accordance with the supervisory lawyer’s reasonable resolution of a question of professional duty.
- Rule 5.3 imposes responsibility on the lawyer for nonlawyer assistants. A lawyer individually or together with other lawyers with managerial authority must make reasonable efforts to ensure the firm or governmental agency has measures in effect giving reasonable assurance the person’s conduct is compatible with the professional obligation of the lawyer.
IX. MALPRACTICE INSURANCE: Rule 1.4 requires that the lawyer maintain professional liability (malpractice) insurance of at least $100,000.00 per occurrence and $300,000.00 in the aggregate or the client must receive the notice prescribed by the Rule.

Note that Rule III of the Rules for the Government of the Bar at Section 4 provides that a legal professional association, corporation, legal clinic, limited liability company, or registered partnership shall maintain adequate professional liability insurance or other form of adequate financial responsibility.

"Adequate professional liability insurance" means one or more policies of attorneys' professional liability insurance that insure the legal professional association, corporation, legal clinic, limited liability company, or registered partnership both:

(a) in an amount for each claim, in excess of any deductible, of at least fifty thousand dollars multiplied by the number of attorneys practicing with the firm, and (b) an amount of one hundred thousand dollars for all claims during the policy year, multiplied by the number of attorneys practicing with the firm. No firm shall be required to carry insurance of more than five million dollars per claim, in excess of any deductible, or more than ten million dollars for all claims during the policy year, in excess of any deductible.

Beyond the required amounts, determining the amount of professional liability insurance is a business decision of the lawyer involving an assessment of potential exposures and their tolerance for risk.

Whatever malpractice carrier a lawyer chooses, careful consideration should be given to the company’s rating by such services as Best’s, their track record of service and how their policy compares with others in the marketplace. You should always carefully read your policy. In the event of a claim, you must read and follow the directives in the policy to fully comply with the required claim reporting procedures.

X. DISCIPLINARY PROCEDURES: Rules 8.1 to 8.5 of the Ohio Rules of Professional Conduct impose duties for lawyers own, as well as others’, admission or discipline. The rules make it a separate professional offense to knowingly make a misrepresentation or omit a material fact in connection with a disciplinary matter.

Rule 8.3 requires a lawyer to self-report a disciplinary violation.

Rule V of the Rules for the Government of the Bar of Ohio set out Disciplinary Procedure and manner of discipline. Cooperation in this process is paramount. You should also check whether disciplinary coverage is afforded under your legal malpractice insurance policy.

The goal is that attorneys who set out to fulfill the goals and aspirations of A Lawyer's Creed and A Lawyer's Aspirational Ideals, who consider their service to the profession and who achieve a balance of their personal and professional life will experience a fulfilling, life-long career in the practice of law.

A plan manual should be prepared and discussed with employees. The recovery planning process is a good time to evaluate your business operating systems and fine-tune how your
office runs as well as providing a plan for contingencies that may allow you to stay up and running in the event of a disaster.
The legal profession is extremely rewarding……at least most of the time. However, because the profession is so demanding in terms of time, resources, mental and emotional stress, attorneys need to construct their practices so that their profession does not consume them. An attorney is better able to serve his or her clients when he or she enjoys the work and is not under prolonged stress. This chapter attempts to provide ideas to ensure that an attorney’s practice remains rewarding whether through outlets related to the profession, through office practice assistance, or through pro bono engagements. Achieving a sense of balance between work and the rest of your life and enhancing your professional satisfaction through pro bono work will help make you a better attorney and help you maintain a sense of purpose in your career.

I. WAYS TO ENHANCE CAREER SATISFACTION

A. Mentoring:

- Through local bar associations, Ohio State Bar Association and American Bar Association.
- Through area law schools
- "Passing the Torch"- Mentoring new attorneys in the area
- Admission to the Lawyer to Lawyer Mentoring Pilot Program, which was open to new lawyers who passed the Ohio bar examination and were admitted to the practice of law in 2006, has concluded. The mentoring program is not currently available to new lawyers who passed the Ohio bar examination and were admitted to the practice of law in 2007. The Commission on Professionalism is evaluating the pilot program and will be making recommendations to the Supreme Court concerning the permanent implementation of the program. The Commission on Professionalism anticipates that the mentoring program will resume at some point in 2008. For more information, see http://www.sconet.state.oh.us/mentoring/default.asp.

B. Community Organization Boards, Advisory Committees:

C. Presentation At Seminars:

- Through national, state or local bar associations;
- Through local organizations or other businesses,
- Estate- or tax-planning seminars with CPAs, investment advisors or insurance agents
Caution:

- Ohio Rules of Professional Conduct, Rule 5.3 Responsibilities Regarding Non-lawyer Assistance
- ORPC, Rule 5.4 Professional Independence of a Lawyer
- ORPC, Rule 5.6 Restrictions on the Right to Practice.

D. **Be Selective:** Sort through cases at or before intake to determine what cases you should accept or decline.

- Determine how many previous attorneys the potential client has utilized in the case and the reasons for terminating the relationship.
- Estimate length of time case will take.
- Determine whether the potential client seems willing to listen to you and your advice.
- Consider whether you are being asked to be a "hired gun."
- Consider whether taking the case will place an undue burden on you and/or your staff and cause you to neglect other matters at work and home.
- Ask: Is the potential client realistic in his/her expectations?
- See ORPC, Rule 1.18 Duties to Prospective Client and Rule 1.16 Declining or Terminating Representation.

E. **Mediation/Alternative Dispute Resolution:** See ORPC Rule 2.4 Lawyers Serving as Arbitrator, Mediator, or Third-Party Neutral.

F. **Managing Your Schedule:**

- Schedule "work days" on your calendar when no client appointments are scheduled. This permits you to do the work necessary outside of the appointments to accomplish the client’s goals in an expeditious manner. See ORPC, Rule 1.3 Diligence.
- Schedule specific times of day to return telephone calls/respond to e-mails. ORPC, Rule 1.4 Communication.
- Delegate non-lawyer tasks when appropriate. See ORPC, Rule 5.3, supra.
- Consider arranging flex-time with another attorney in the firm. If you’re a trial attorney, schedule appointments around the court schedule.
II. KNOWLEDGE SHARING/ USE OF COMPUTERS

A. **Sharing:** Documents can be shared between attorneys, banks, other professionals and clients easily and efficiently.

B. **Automate Drafting Process:** Computer programs allow attorneys and staff to create documents with extreme accuracy and consistency. Options include using the automation features found in the popular word processors like Microsoft Word and Corel WordPerfect; or utilizing programs which integrate with Word and WordPerfect such as HotDocs, DealBuilder, Rapidocs, Pathagoras, Activedocs, QShift or D3.

C. **Knowledge Management:** According to dictionary.com, one definition of "knowledge management" is "the technologies involved in creating, disseminating, and utilizing knowledge data." This concept is extremely important to lawyers from efficiency and profitability perspectives. You are encouraged to read up on this topic and here are some resources:

- LexisNexis - Perspectives On Knowledge Management In Law Firms (White Paper) by Ronald W. Staudt, Professor of Law - [www.lexisnexis.com/presscenter/hottopics/kminfirms.pdf](http://www.lexisnexis.com/presscenter/hottopics/kminfirms.pdf)
- Legal Knowledge Management: A Holistic Model (White Paper) by George T. Tziahanas, J.D., Vice President of Knowledge Services for Legal Research Center - [http://tinyurl.com/39pxfz](http://tinyurl.com/39pxfz)
- [www.systems-thinking.org/kmgmt/kmgmt.htm](http://www.systems-thinking.org/kmgmt/kmgmt.htm)
- [www.llrx.com/features/kmpower.htm](http://www.llrx.com/features/kmpower.htm)

D. **Teleconferencing:** Teleconferencing between attorneys saves time, travel and speeds negotiation.

III. TAKING TIME FOR YOURSELF/VACATION

A. **Find A Backup:** Find an attorney to provide emergency coverage for your clients in your absence. See ORPC, Rule 1.6 Confidentiality of Information and Rule 1.5 Fees and Expenses.

- Obtain clients’ agreement;
• Provide other attorney with necessary file information;

• Create written fee arrangement with clients’ knowledge and consent.

B. **Breaks:** Schedule breaks in weekly schedule. Work with staff to schedule appointments at sufficient intervals to allow for breaks.

C. **Achieve A Balanced Life With Job, Family And Interests:**

1. **Work Schedule:**
   - Consider a part-time/flex-time schedule.
   - Work at home.
   - Set a work schedule and hold to it.
   - Limit or eliminate evening or Saturday appointments.
   - Schedule work/office appointments around children’s schedules/school schedules.
   - Carve out weekend time for family, friends and personal interests while leaving work out of your plans (i.e.: do not take cell phone calls).
   - Take a lunch break.
     - Make lunch appointments with friends so that you force yourself to take a break and have time with friends as well.
     - Schedule working lunches with other attorneys to discuss cases.
   - Organize your day as much as possible and stick to the schedule.

2. **Rely On Support Staff:**
   - Train staff to handle calls, drop-ins and matters not requiring legal advice. (See **Rule 5.3** Responsibilities Regarding Non-lawyer Assistants).
   - Delegate, delegate, delegate - Use the paralegals you hired and take advantage of the excellent on-the-job training you have given your staff.

3. **Efficient Communication:** Communicate through e-mail to increase convenience for providing responses.

4. **Pro Bono Work:** Do pro bono work in areas of interest, such as: bar associations, church-related matters, humane society, arts council or historical society. Many resources are available:
a. **Ohio Rules of Professional Conduct:**

- **Preamble and Scope:** [6]: "A lawyer should seek improvement of the law, ensure access to the legal system, advance the administration of justice, and exemplify the quality of service rendered by the legal profession. … A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel."

- **Rule 6.5:** waives conflict of interest rules for attorneys providing short term limited legal services to a client under the auspices of a program sponsored by a nonprofit organization or a court.

- **A Lawyer's Creed:** … "To the public and our system of justice, I offer service. I shall devote some of my time and skills to community, governmental and other activities that promote the common good. I shall strive to improve the law and our legal system and to make the law and our legal system available to all."

- **A Lawyer's Aspirational Ideals:** … "As to the public and our system of justice, I shall aspire: … To help provide the pro bono representation that is necessary to make our system of justice available to all."

b. **The Supreme Court of Ohio’s Statement Regarding the Provision of Pro Bono Legal Services by Ohio Lawyers:**

- “… This Court strongly encourages each Ohio lawyer to ensure access to justice for all Ohioans by participating in pro bono activities. …”

- “… There are pro bono programs available throughout Ohio that are sponsored by bar associations, legal aid programs, churches, and civic associations. … A lawyer may fulfill this professional commitment by providing legal counsel to charitable organizations that may not be able to afford to pay for legal services or may making a financial contribution to an organization that provides legal services to persons of limited means. …Moreover, the Court encourages lawyers to respond to this call by seeking to engage in new or additional pro bono opportunities. …”
The Supreme Court is to develop a means by which Ohio lawyers may voluntarily and anonymously report pro bono activities and financial support of legal aid programs.

c. Referral Sources:

- **Ohio legal aid societies:**
  
  - **Advocates for Basic Legal Equality/Legal Aid of Western Ohio** - serves Allen, Ashland, Auglaize, Champaign, Clark, Crawford, Darke, Defiance, Erie, Fulton, Greene, Hancock, Hardin, Henry, Huron, Logan, Lucas, Mercer, Miami, Montgomery, Ottawa, Paulding, Preble, Putnam, Richland, Sandusky, Seneca, Shelby, Van Wert, Williams, Wood, Wyandot counties. Phone: 937-228-8104; toll free 866-837-8832 - Web: [www.ablelaw.org](http://www.ablelaw.org)
  
  - **The Legal Aid Society of Columbus** - serves Delaware, Franklin, Madison, Marion, Morrow, and Union counties. Phone: 614-224-8374; toll free 877-224-8374 - Web: [www.columbuslegalaid.org](http://www.columbuslegalaid.org)
  
  - **Ohio State Legal Services Association/Southeastern Ohio Legal Services** - serves Adams, Athens, Belmont, Carroll, Coshocton, Fairfield, Fayette, Gallia, Guernsey, Harrison, Hocking, Holmes, Jackson, Jefferson, Knox, Lawrence, Licking, Meigs, Monroe, Morgan, Muskingum, Noble, Perry, Pickaway, Pike, Ross, Scioto, Vinton, Tuscarawas, Washington counties. Phone: 614-221-7201; toll free 800-589-5888 Web: [www.oslsa.org](http://www.oslsa.org)
  
  - **Community Legal Aid Services/Northeast Ohio Legal Services** - serves Columbiana, Mahoning, Medina, Portage, Stark, Summit, Trumbull and Wayne counties. Phone: 330-535-4191; toll free 866-584-2350 Web: [www.communitylegalaid.org](http://www.communitylegalaid.org)
  
  - **Legal Aid Society of Cleveland** – serves Ashtabula, Cuyahoga, Geauga, Lake and Lorain counties. Phone: 216-687-1900; toll free 888-817-3777 Web: [www.lasclev.org](http://www.lasclev.org)
  
  - **Legal Aid Society of Greater Cincinnati** - serves Brown, Butler, Clermont, Clinton, Hamilton, Highland and Warren counties. Phone: 513-241-9400; toll free 800-582-2682 - Web: [www.lascinti.org](http://www.lascinti.org)
• Bar Associations:
  
  • **Akron Bar Association;** Phone: 330-253-5007; Web: www.akronbar.org
  
  • Cincinnati Bar Association; Phone: 513-381-8213; Web: www.cincybar.org
  
  • Cleveland Bar Association; Phone: 216-696-3525; Web: www.clevelandbar.org
  
  • Columbus Bar Association; Phone: 614-221-4112; Web: www.cbalaw.org
  
  • Cuyahoga County Bar Association; Phone: 216-621-5112; Web: www.cuybar.org
  
  • Dayton Bar Association; Phone: 937-222-7092; Web: www.daybar.org
  
  • Toledo Bar Association; Phone: 419-242-9363; Web: www.toledobar.org

• Court appointments

• Community organizations, including churches, temples, mosques, and any affiliated groups

• Schools

• Online
  
  • www.ohioprobono.org
  
  • www.ohiolegalservices.org: Click on link to "Legal Aid Delivery System"; then click on link to "Searchable Directory of Ohio’s Legal Aid Providers;" Insert county name under "Find Ohio Legal Help By" to obtain a county-by-county list of volunteer attorney programs, or click on "Using a Map of Ohio Counties" to obtain the same information by clicking on a county-by-county map of Ohio.

5. **Prioritize And Engage In Strict Self-Discipline:** Stick to a plan whenever possible. Do not be controlled by the "tyranny of the urgent." Remember that what may be perceived as urgent by the client or another attorney is not always the most important aspect of your work day. You cannot help everybody; you are not indispensable. Be careful not to take a case based
solely on feelings or guilt (this seldom turns out well and takes more time than other cases).

6. **Exercise:** Schedule regular exercise during the day or evening after work (even if it is just a walk around the parking lot).

7. **Make Best Use of Drive Time:** Use your drive time to and from work to relax by either listening to music, your favorite radio program or books on tape.

D. **Reassess Your Practice:**

- If certain types of cases continue to wake you up in the middle of the night, focus on taking your practice into other areas and eliminating the stressful cases.

- When all else fails to provide you with professional and personal satisfaction, assess what you enjoy doing and try to match your practice areas and style with your interests and skills.

- "An in-depth assessment of your skills is absolutely necessary before you can undertake an effective job change... Without an honest analysis of your abilities, you will probably fall into another unhappy work situation that meets neither your needs nor your wants...

  You will need to be aware of your well-developed skills because those are the ones that come naturally to you and are the most comfortable and pleasing to use. When you are using those skills, what you are doing at that moment doesn’t seem like work, and you don’t have to think about your actions. Everything just flows smoothly. These are the skills that you want to transfer to new work. Conversely, when you are required to use a skill that does not come naturally or that you haven’t developed, the task will produce stress and feel forced. You will have to concentrate much harder to get a successful result." Greenberg, Hindi, *The Lawyer’s Career Change Handbook*, pages 104 & 105.

- For a complete discussion of skills analysis and application to the practice of law, refer to [www.lawyersintrransition.com](http://www.lawyersintrransition.com), or refer to *The Lawyer’s Career Change Handbook* by Hindi Greenberg. Special attention should be given to Chapter Five (Assess Your Skills. Values, and Interests to Find the Best Job for You) and Chapter Six (Options within the Law) which contain a complete skills analysis as well as a full discussion of types of law practices. Also included in this publication are extensive lists of resource materials for further consultation.

IV. **SUMMARY**

- Statistically, lawyers have a higher incidence of substance abuse and depression than the general population. Whether stresses of dealing with clients and financial uncertainty on the practice of law causes this, it probably contributes to it. If you or a colleague faces
issues of substance abuse, depression, addictions including - gambling, Internet site abuse, shopping addiction - you have help nearby. Ohio Lawyers’ Assistance Program is only a phone call away at 800-348-4343! E-mail may be sent to smote@ohiolap.org.

- **Rule 8.3(c)** of the Ohio Rules of Professional Conduct provides that confidentiality of information regarding lawyers participating in lawyers’ assistance programs is not only confidential but "shall be privileged for all purposes."


Chapter 8   Closing, Selling or Acquiring a Law Practice  
Theodore Mann Jr.

I. **OVERVIEW:** The acquisition, sale or closing of a law practice is a multi-faceted process. Guidelines must be considered that relate to any business transaction. The additional compliance requirements are the legal-professional components creating responsibility and liability issues which should not be ignored by the parties to the transaction. This is a three-way process with Seller, Buyer and Client interests. The Sale of Law Practice should be viewed like the sale of any professional practice, with the important caveat of the need for protection of client confidences and secrets and respect for the attorney-client relationship.

II. **RULES AND STATUTES**

A. **Applicable Ohio Rules of Professional Conduct:**
   - Rule 1.17 – Sale of Law Practice
   - Rule 1.0(2)(f), Definition of "informed consent"
   - Rule 1.1, Competence of lawyer in representation
   - Rule 1.6, Confidentiality of Information
   - Rule 1.7, Conflict of Interest and Current Clients
   - Rule 1.8(h), Conflict of Interest and No Limitation of Liability to Client
   - Rule 1.9, Duties to former clients
   - Rule 1.16, Declining or Terminating Representation

B. **Statutory References:**
   - Supreme Court Rules for Government of Bar – Rule III
   - Authorized Statutory Law Practice Structures under R.C. 1701 (General Corporation), R.C. 1703 (Foreign Corporation), R.C. 1705 (Limited Liability Company), R.C. 1775 (Limited Liability Partnership) or R.C. 1785 (Legal Professional Association)

III. **PRACTICE REFERENCES**
   - Matthew Bender Ohio Transaction Guide: Chapter 31 "Buying and Selling a Business"
   - OSBA CLE Institute "Retiring From a Law Practice," Course No. 06-106
IV. PRELIMINARY CONSIDERATIONS

- Know the scope of the transaction – Buy, Sell, Transfer or Close
- Determine post transaction compatibility issues of the surviving entity and reverse engineer to ensure Professional Conduct compliance before deal closing and asset transfer
- Valuation and self-analysis is needed by both sides
- Final judgment on the transaction will be rendered not on the business metric but with view of client safeguards and professional responsibility.
- Rules of Professional Conduct mandate the purchase transaction must include the entire practice except for carve-outs due to conflicts of interest

V. PRACTICE DISPOSITION TRIGGERS (INVOLUNTARY AND VOLUNTARY)

- Involuntary reasons include attorney’s death and estate administration, attorney being unable to continue practice for variety of reasons of disbarment or discipline, disability and extended absence like military service.
- Voluntary reasons include retirement, lateral job opportunity, merger of practice, election to political office.

VI. PARTIES THAT MAY BE INVOLVED IN THE SALE PROCESS

- Buyer entity, its owners and its legal advisors
- Seller entity, its owners and its legal advisors
- Accountants for buying and selling operations
- Outside valuation sources and experts
- Office staff to maintain operations and retained key employees
- Bankers and financing entities
- Landlord
- Equipment leaseholders
- Insurance providers
- Clients, clients, clients
- Outside oversight when transaction is involuntary (Probate Court, Disciplinary Counsel)
- Government Agencies (Workers Compensation, Unemployment, Wage Withholding, etc.)
- Work-in process notices

VII. PROFESSIONAL RESPONSIBILITY ISSUES AND RULE 1.17 COMPLIANCE

- Initial commitment to confidentiality by a Confidentiality Agreement between Buyer and Seller
- Sale Agreement subject to general open negotiation and Professional Conduct Rules
- Sale Agreement requires certain mandatory language as to intent to deliver legal services, honor of existing fee agreements (Rule 1.17(d)(1) and (2))
- Restrictions on selling lawyer future activities subject to negotiation but are also defined based on planned post-sale activities if entering academic, government or public service or as in-house counsel (Rule 1.17 (d)(3))
- Written notice required to all clients (Rule 1.17 (d)(3)) before sale closing with specific notice content (Rule 1.17 (e)(1-5))
- Special requirements applicable when Estate is a party (Rule 1.17 (f))
- Buyer and Seller barred from any liability limitation of clients (Rule 1.17 (i) and 1.8(h))
- Rule of Professional Conduct, Rule 1.17 compliance
- Client representation and transfer issues
- Conflicts check and resolution procedures (Rule 1.7 and 1.8)
- Legal Malpractice Insurance transitions and coverage "tail" requirements
- Identification of clients and work in progress with "look back" on open responsibilities
- Stored files and archive retention, document destruction or release to client

VIII. BUSINESS TRANSACTION ISSUES

- Written Letter of Intent (Optional) and Purchase Agreement (Mandatory)
- Define what is being acquired or transferred and what is being retained by Seller
- Due Diligence by both sides
  - Buyer due diligence should include:
• Several years of filed tax returns
• Asset titles
• Debt Agreements
• Equipment and Office Leases
• Business and payroll tax returns
• Malpractice Policy, Applications and Claim history
• Bar Association Grievance and Fee Dispute History
• All insurance coverages and loss or claim history
• Staff interviews
  • Seller due diligence with focus on clients receiving successor legal service and Buyer ability to complete sale process
    • Verification of Buyer’s credentials
    • Verification of Buyer’s financial ability
    • Buyer competence and ability to serve clients
    • Acquisition of "tail" insurance coverage
• Identify all assets, liabilities and ownership
• Contracts and leases as exist, service requirements, assignability and termination
• Labor and employment issues as to agreements and statutes (FMLA, ERISA, etc.)
• Electronic issues – computers, passwords, internet web site, e-mail, data back-ups, procedures to transfer or erase data, system compatibility
• Offsite assets and records

IX. LAW PRACTICE VALUATION

• General Rule of Willing Buyer and Willing Seller is applicable
• No mandatory price or valuation so long as "arms length" transaction exists
• Similar or comparable sales as reference points on pricing and terms can be difficult to identify with each law practice having unique issues and comparable sales may have confidentiality restrictions
The "Hard" assets of equipment, contracts, etc. are easy valuations

The core asset is Seller Attorney’s "goodwill" that generates clients and revenue

Business of client mix and reliable future earnings stream expectation are primary valuation components

Purchase price as multiplier of business revenue is universal rule for any business but lower number for law business due to uncertainty of future client revenue base

Review average earnings of prior time period of 3-5 years for earning history

The multiplier range is generally .5-1.5 times annual earnings as adjusted. Positive factors are (a) stable core clients, (b) seller assist in succession, and (c) selling firm profitable. Negative factors are (a) over-reliance on seller leadership/rainmaking, and (b) selling business tied to negative economy/declining market

Valuation elements are a combination of (a) net tangible assets (Balance Sheet items at FMV, Collectible Fees less costs) plus (b) goodwill

Price adjustment factors should include post-close participation by selling attorney to keep client base loyal to new business, condition of equipment and hard assets to compliment acquiring operation, net income

Staff skills and key employee retention with no-compete issues may be value factors due to client contact with staff

X. PURCHASE CONTRACT ELEMENTS

General contract requirements

Price and consideration definitions

List of all client accounts and status of any written fee agreement or fee and billing terms

Assets to be transferred or retained

Obligations and liabilities to be assumed or retained

Lease identification and assignability with Lessor-Third Party information

Identification of accounts, deposits and prepaid expenses

Income defined and factors for potential price adjustment in post-close period

Purchase price payment terms and conditions

No-Compete and post-close responsibilities of Seller
- Performance guarantees as basis for price adjustment after closing
- Representations and warranties as to assets, liabilities and business conditions
- Identification of Accounts Receivable and Accounts Payable with charge backs for collectibility problems and "surprises"
- Agreed client communications, notices and public announcements
- Insurance coverage, continuity, transfer and unearned premium ownership for all risks
- Tax reporting and payments
- Potential claims and reserves or procedures for resolution
- Dispute resolution process for any transaction and post-close issues
- Consents required, if any, from interested parties
- Items referenced in Rule 1.17(d)

XI. BUYER ISSUES

- Verify business absorption and coverage issues with surviving current professional insurance coverage
- Buyer may need to revise or create new business structure for post-close operation

XII. SELLER ISSUES

- Review post-sale personal and professional plans and need to plan for it – license surrender, inactive status, active status
- Relocation to another jurisdiction where prior status of Ohio license and its disposition may be an issue

XIII. CLOSING A LAW PRACTICE

- Business structures will dictate certain procedures under Ohio law for winding down
- Government agency filings – last wage report, etc.
- Secretary of State business filing form with notice disclosures
- Internal operations and contract terminations
- Professional Insurance "tail" coverage
- Law license status change and Supreme Court filing
• Communication to clients
• Release of client records and archives
• Records retention for general business requirements

XIV. PRACTICE FORMS

• Confidentiality Agreement under Rule 1.17 (c) (see page 9.92)
• Contract of Sale under Rule 1.17 (d) (see page 9.95)
• Notice of Sale to Clients under Rule 1.17 (e) (see page 9.100)
• Client Consent Form under Rule 1.17(f) (see page 9.102)

XV. CONCLUSION

• Law practice acquisition is a method to increase practice size or enter an area of practice on an accelerated time frame beyond normal business development and marketing techniques

• The sale of a law practice under the Professional Rules allows a more professional structure to secure value from an existing practice, without complex gyrations used in the past to transfer a practice between unstructured entities
### BUSINESS ENTITY COMPARISON CHART

<table>
<thead>
<tr>
<th>Choice of Entity Factor</th>
<th>Proprietor-ship</th>
<th>General Partnership</th>
<th>Limited Partnership</th>
<th>Limited Liability Company Taxed as a Partnership</th>
<th>S Corporation</th>
<th>C Corporation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A. Treatment of Business Profits</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Taxable income of business</td>
<td>Taxed on proprietor’s tax return</td>
<td>Flows through to partner’s tax return</td>
<td>Flows through to partner’s tax return</td>
<td>Flows through to member’s tax return</td>
<td>Flows through to shareholder’s tax return</td>
<td>Subject to tax at corporate level</td>
</tr>
<tr>
<td>2. Applicable tax rates</td>
<td>Individual tax rates</td>
<td>Tax rate of partner, unless partner is another flow-through entity</td>
<td>Tax rate of partner unless partner is another flow-through entity</td>
<td>Tax rate of owner, unless owner is another flow-through entity</td>
<td>Tax rates of shareholder</td>
<td>Corporation tax rates</td>
</tr>
<tr>
<td>3. Potential for double tax versus one layer of tax</td>
<td>Always only one layer of tax</td>
<td>Always only one layer of tax</td>
<td>Always only one layer of tax</td>
<td>Always only one layer of tax</td>
<td>Only one layer of tax, unless built-in-gains tax applies</td>
<td>Potential for double tax, but often can minimize exposure</td>
</tr>
<tr>
<td>4. Tax treatment of liquidation</td>
<td>No tax</td>
<td>Generally no tax</td>
<td>Generally no tax</td>
<td>Generally no tax</td>
<td>There can be both corporate- and shareholder-level taxes</td>
<td>There generally will be corporate- and shareholder-level taxes</td>
</tr>
<tr>
<td>5. Current Distributions</td>
<td>Not taxable</td>
<td>Not taxable unless they exceed basis</td>
<td>Not taxable unless they exceed basis</td>
<td>Not taxable unless they exceed basis</td>
<td>Only distributions in excess of basis, or of corporation earnings and profits, are taxable</td>
<td>Generally taxable at preferential rates</td>
</tr>
<tr>
<td>Choice of Entity Factor</td>
<td>Proprietor-ship</td>
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</tr>
<tr>
<td>6. Income shifting opportunities</td>
<td>Not available</td>
<td>Can shift income</td>
<td>Can shift income</td>
<td>Can shift income, but watch reasonable compensation requirement</td>
<td>Can only shift dividend income</td>
<td></td>
</tr>
<tr>
<td>7. State taxes</td>
<td>Generally taxes at individual level</td>
<td>Generally taxes at partner level only</td>
<td>Generally taxes at partner level only</td>
<td>Generally taxes at owner level only</td>
<td>Taxes may apply at business and/or shareholder level</td>
<td>Generally taxes at business level on business profits and at shareholder level on dividends</td>
</tr>
</tbody>
</table>

B. Treatment of Business Losses

<table>
<thead>
<tr>
<th>1. Business losses</th>
<th>Reported on proprietor’s tax return</th>
<th>Flow-through to partners</th>
<th>Flow-through to partners</th>
<th>Flow-through to members</th>
<th>Flow-through to shareholders</th>
<th>Stay in corporation, carried back two years and forward twenty years</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Passive activity loss limits</td>
<td>Generally will not apply</td>
<td>Apply to passive investments and inactive partners</td>
<td>Apply to passive investments, limited partners, and inactive general partners</td>
<td>Apply to passive investments and inactive members</td>
<td>Apply to passive investments and inactive shareholders</td>
<td>Generally cannot offset investment income, but can offset active business income</td>
</tr>
<tr>
<td>3. Basis and at-risk limitations on losses</td>
<td>Generally not a problem</td>
<td>Generally not a problem</td>
<td>Limited partners’ losses are often limited</td>
<td>Generally not a problem</td>
<td>Losses can be limited if shareholder notes are not structured properly</td>
<td>Generally do not apply to the corporation</td>
</tr>
<tr>
<td>Choice of Entity Factor</td>
<td>Proprietor-ship</td>
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<td>--------------</td>
</tr>
<tr>
<td>C. Payroll Tax, Self-employment Tax, and Related Costs</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Payroll taxes on wages to owners</td>
<td>Not applicable; proprietor is not an employee</td>
<td>Not applicable; partner is not an employee</td>
<td>Not applicable; partners cannot be employees</td>
<td>Not applicable; members cannot be employees</td>
<td>Payroll taxes apply</td>
<td>Payroll taxes apply</td>
</tr>
<tr>
<td>2. Payroll tax returns required</td>
<td>Only if employees; proprietor is not an employee</td>
<td>Only if employees; partners are not employees</td>
<td>Only if employees; partners are not employees</td>
<td>Only if employees; members are not employees</td>
<td>Generally required</td>
<td>Generally required</td>
</tr>
<tr>
<td>3. Workers’ compensation coverage on owners</td>
<td>Generally not required</td>
<td>Generally not required</td>
<td>Generally not required</td>
<td>Generally not required</td>
<td>Generally required on wages to shareholder/employees</td>
<td>Generally required on wages to shareholder/employees</td>
</tr>
<tr>
<td>4. Self-employment tax</td>
<td>Applies to all the proprietor’s taxable income</td>
<td>Generally applies to taxable income of partners</td>
<td>Generally applies to taxable income of general partners</td>
<td>Generally applies to taxable income of active members</td>
<td>Does not apply</td>
<td>Does not apply</td>
</tr>
<tr>
<td>5. Income tax withholding versus estimated payments</td>
<td>Estimated payments</td>
<td>Estimated payments for partners, unless partner is a flow-through entity</td>
<td>Estimated payments for partners, unless partner is a flow-through entity</td>
<td>Estimated payments for owners, unless owner is a flow-through entity</td>
<td>Generally withholding and estimated payments for shareholders</td>
<td>Generally withholding for shareholders and estimated payments for corporation</td>
</tr>
<tr>
<td>D. Sale of Business or Assets</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Tax treatment of sale of business interest</td>
<td>Could create capital and/or ordinary gains and losses</td>
<td>Generally capital gain or loss</td>
<td>Generally capital gain or loss</td>
<td>Generally capital gain or loss</td>
<td>Gains are almost always capital; losses are sometimes ordinary</td>
<td>Gains are almost always capital; losses are sometimes ordinary</td>
</tr>
<tr>
<td>Choice of Entity Factor</td>
<td>Proprietor-ship</td>
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<td>--------------</td>
</tr>
<tr>
<td>2. Basis increase for taxable income retained in business</td>
<td>Does not apply</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>3. Tax treatment of asset sales</td>
<td>Only one layer of tax</td>
<td>Only one layer of tax</td>
<td>Only one layer of tax</td>
<td>Only one layer of tax, unless built-in-gains tax applies</td>
<td>Only one layer of tax, unless built-in-gains tax applies</td>
<td>Can be two layers of tax; proper planning can minimize tax consequences</td>
</tr>
<tr>
<td>4. Gain on distribution of assets to owner(s)</td>
<td>No gain</td>
<td>Generally no gain</td>
<td>Generally no gain</td>
<td>Generally no gain</td>
<td>Can be gain at corporate and shareholder levels</td>
<td>Can be gain at corporate level; generally gain at shareholder level</td>
</tr>
</tbody>
</table>

### E. Management of Multi-Owner Businesses

<table>
<thead>
<tr>
<th>1. How company is managed</th>
<th>Managed by proprietor</th>
<th>Generally managed by all partners</th>
<th>Generally managed by all general partners</th>
<th>Both centralization of management and management by owners are available</th>
<th>Centralization of management by directors and officers</th>
<th>Centralization of management by directors and officers</th>
</tr>
</thead>
</table>

### F. Compensation Issues
<table>
<thead>
<tr>
<th>Choice of Entity Factor</th>
<th>Proprietor-ship</th>
<th>General Partnership</th>
<th>Limited Partnership</th>
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<th>S Corporation</th>
<th>C Corporation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Deductibility of payments to owners</td>
<td>No deduction</td>
<td>Guaranteed payments are deductible; distributions are not</td>
<td>Guaranteed payments are deductible; distributions are not</td>
<td>Guaranteed payments are deductible; distributions are not</td>
<td>Salaries to shareholder/employees are deductible; distributions are not</td>
<td>Salaries to shareholder/employees are deductible; distributions are not</td>
</tr>
<tr>
<td>2. Unreasonable compensation issue</td>
<td>Not applicable</td>
<td>Generally not applicable; can shift income only when it does apply</td>
<td>Generally not applicable; can shift income only when it does apply</td>
<td>Generally not applicable; can shift income only when it does apply</td>
<td>Can cause additional tax at the C corporation level</td>
<td></td>
</tr>
<tr>
<td>3. Reasonable compensation requirement</td>
<td>Not applicable</td>
<td>Not applicable; unless family service partnership</td>
<td>Not applicable; unless family service partnership</td>
<td>Not applicable, unless family service partnership</td>
<td>Can cause income shifting and gifts</td>
<td>Not applicable</td>
</tr>
<tr>
<td>4. Qualified plan loans to owners</td>
<td>Qualified plan loans are allowed due to Economic Growth and Tax Relief Reconciliation Act of 2001</td>
<td>Qualified plan loans are allowed due to Economic Growth and Tax Relief Reconciliation Act of 2001</td>
<td>Qualified plan loans are allowed due to Economic Growth and Tax Relief Reconciliation Act of 2001</td>
<td>Qualified plan loans are allowed due to Economic Growth and Tax Relief Reconciliation Act of 2001</td>
<td>Qualified plan loans are allowed due to Economic Growth and Tax Relief Reconciliation Act of 2001</td>
<td></td>
</tr>
<tr>
<td>5. Fringe benefits for owners</td>
<td>No business deduction to proprietorship unless spouse is covered employee</td>
<td>Partner-ship deducts, but partners must include in income unless spouse is covered employee</td>
<td>Partner-ship deducts, but partners must include in income unless spouse is covered employee</td>
<td>LLC deducts, but member must include in income unless spouse is covered employee</td>
<td>Corporation deducts, but shareholder must include in income,</td>
<td>Corporation deducts; no income to shareholder/employee</td>
</tr>
</tbody>
</table>

G. Special Taxes

<p>| 1. Alternative minimum tax | Can apply to individual proprietor | Applies at partner level unless partner is a flow-through entity | Applies at partner level unless partner is a flow-through entity | Applies at member level unless member is a flow-through entity | Applies at shareholder level | Corporate-level AMT is generally more beneficial than individual AMT |</p>
<table>
<thead>
<tr>
<th>Choice of Entity Factor</th>
<th>Proprietor-ship</th>
<th>General Partnership</th>
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<th>C Corporation</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. S corporation passive income tax</td>
<td>Not applicable</td>
<td>Not applicable</td>
<td>Not applicable</td>
<td>Not applicable</td>
<td>Thirty-five percent rate can apply to passive income</td>
<td>Can apply to C corporations electing S status</td>
</tr>
<tr>
<td>3. C corporation personal holding company tax</td>
<td>Not applicable</td>
<td>Not applicable</td>
<td>Not applicable</td>
<td>Not applicable</td>
<td>Can apply to S corporations revoking S status</td>
<td>Can apply to passive income</td>
</tr>
<tr>
<td>4. C corporation accumulated earnings tax</td>
<td>Not applicable</td>
<td>Not applicable</td>
<td>Not applicable</td>
<td>Not applicable</td>
<td>Not applicable</td>
<td>Can apply to excess accumulated earnings</td>
</tr>
</tbody>
</table>

**H. Limited Liability**

| 1. Liability protection to owners | None provided by entity | Joint and several liability for partners | Joint and several liability for general partners; liability of limited partners generally limited to capital contributed | Liability generally limited to capital contributed | Liability generally limited to capital contributed | Liability generally limited to capital contributed |

**I. Other Choice of Entity Considerations**

<p>| 1. Debt to equity issue | Not applicable | Can cause income reallocation | Can cause income reallocation | Can cause income reallocation | Can cause second class of stock and S status termination | “Thin capitalization” can cause dividend problems |
| 2. How to bring in new business owners | Need to form new business entity | Transfer or creation of partner-ship interests | Transfer or creation of partner-ship interests | Transfer or creation of LLC interests | Transfer of or issuance of new stock | Transfer of or issuance of new stock |</p>
<table>
<thead>
<tr>
<th>Choice of Entity Factor</th>
<th>Proprietor-ship</th>
<th>General Partnership</th>
<th>Limited Partnership</th>
<th>Limited Liability Company Taxed as a Partnership</th>
<th>S Corporation</th>
<th>C Corporation</th>
</tr>
</thead>
<tbody>
<tr>
<td>3. Ease of transfer</td>
<td>Must create new entity to make transfer</td>
<td>Some-times difficult to transfer partial ownership interests</td>
<td>Some-times difficult to transfer partial ownership interests</td>
<td>Sometimes difficult to transfer partial ownership interests</td>
<td>Easy to transfer corporate stock</td>
<td>Easy to transfer corporate stock</td>
</tr>
<tr>
<td>4. Start-up and organizational costs</td>
<td>Very low cost</td>
<td>Moderate cost</td>
<td>Moderate cost, but higher than general partnership</td>
<td>Moderate cost, but higher than general partnership cost</td>
<td>Highest cost</td>
<td>Highest cost</td>
</tr>
<tr>
<td>5. Filing requirements</td>
<td>Very few filing requirements</td>
<td>More than with a proprietorship, but generally less than with a corporation</td>
<td>More than with a proprietorship, but generally less than with a corporation</td>
<td>More than with a proprietorship, but generally less than with a corporation</td>
<td>Highest filing requirements</td>
<td>Highest filing requirements</td>
</tr>
<tr>
<td>6. Administrative cost to maintain entity</td>
<td>Very little</td>
<td>More than with a proprietorship, but generally less than with a corporation</td>
<td>More than with a proprietorship, but generally less than with a corporation</td>
<td>More than with a proprietorship, but generally less than with a corporation</td>
<td>Generally highest cost to maintain</td>
<td>Generally highest cost to maintain</td>
</tr>
<tr>
<td>8. Restrictions on cash method of accounting</td>
<td>None</td>
<td>Generally not allowed for service companies with greater than $5 million in gross profit</td>
<td>Generally not allowed for service companies with greater than $5 million in gross profit</td>
<td>Generally not allowed for service companies with greater than $5 million in gross profit</td>
<td>Generally no restriction</td>
<td>Generally not allowed for companies with greater than $5 million in gross profit</td>
</tr>
<tr>
<td>9. Special allocations</td>
<td>Not applicable</td>
<td>Generally allowed</td>
<td>Generally allowed</td>
<td>Generally allowed</td>
<td>Not allowed — must be pro rata</td>
<td>Not applicable</td>
</tr>
<tr>
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<td>--------------</td>
</tr>
<tr>
<td>10. Annual asset expensing election</td>
<td>Limits apply at proprietor level</td>
<td>Limits apply at business and partner levels</td>
<td>Limits apply at business and partner levels</td>
<td>Limits apply at business and partner levels</td>
<td>Limits apply at business and shareholder levels</td>
<td>Limits apply at corporate level only</td>
</tr>
<tr>
<td>11. Duration of entity; effect of death or transfer</td>
<td>Death of proprietor terminates</td>
<td>Dissolution and termination can occur</td>
<td>Dissolution and termination can occur</td>
<td>Depends on state statutes and operating agreement</td>
<td>Perpetual existence</td>
<td>Perpetual existence</td>
</tr>
<tr>
<td>12. Year end requirements</td>
<td>Same as proprietor, generally calendar year</td>
<td>Generally same as majority of partners, generally calendar year</td>
<td>Generally same as majority of partners, generally calendar year</td>
<td>Generally same as majority of members, generally calendar year</td>
<td>Generally must use calendar year</td>
<td>Generally can use any year end</td>
</tr>
<tr>
<td>13. Consequences of not using &quot;permitted year&quot;</td>
<td>Not applicable; must use same year as proprietor</td>
<td>May need to make enhanced payments</td>
<td>May need to make enhanced payments</td>
<td>May need to make enhanced payments</td>
<td>May need to make enhanced payments</td>
<td>No restrictions except personal service corporation may have deduction limitations</td>
</tr>
<tr>
<td>14. Acquisition debt and interest expense</td>
<td>Deductible as business expense</td>
<td>Generally deductible as business expense or passive activity loss deduction</td>
<td>Generally deductible as business expense or passive activity loss deduction</td>
<td>Generally deductible as business expense or passive activity loss deduction</td>
<td>Generally deductible as business expense or passive activity loss deduction</td>
<td>Investment interest; subject to limitations for individual shareholders</td>
</tr>
<tr>
<td>15. Limit on type of owners</td>
<td>Individual proprietor</td>
<td>No limit</td>
<td>No limit</td>
<td>No limit</td>
<td>Generally limited to individuals, estates, and some trusts</td>
<td>No limit</td>
</tr>
<tr>
<td>16. Limit on number of owners</td>
<td>One owner</td>
<td>No limit</td>
<td>No limit</td>
<td>No limit; in some states more than one owner is required</td>
<td>Seventy shareholder limit, seventy-five under pending legislation</td>
<td>No limit</td>
</tr>
<tr>
<td>Choice of Entity Factor</td>
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</tr>
<tr>
<td>17. Business expenses incurred by owners</td>
<td>Deductible as business expense</td>
<td>Generally deductible by partners as business expense</td>
<td>Generally deductible by partners as business expense</td>
<td>Generally deductible by members as business expense</td>
<td>Subject to itemized deduction limitations at individual level; reimbursement policy can help</td>
<td>Subject to itemized deduction limitations at individual level; reimbursement policy can help</td>
</tr>
</tbody>
</table>

J. Determining Tax Status

1. Tax status classification issue | Not applicable | Generally a partnership, but can elect to be taxed as a corporation | Generally a partnership, but can elect to be taxed as a corporation | Generally a partnership, but can elect to be taxed as a corporation | Valid S corporation election required | Not applicable |

K. Professional Practices

1. Tax rate | Taxed at proprietor’s tax rate | Taxed at partner’s tax rate | Taxed at partner’s tax rate | Taxed at member’s tax rate | Taxed at shareholder’s tax rate | Generally taxed at thirty-five percent personal service corporation tax rate |

2. Mal-practice liability | Generally unlimited | Generally unlimited; limited liability partnership or multiple entities may help limit exposure | Not applicable; generally not used for professional practices | Generally unlimited; may provide protection in some states for group practices | Generally unlimited; may provide protection in some states for group practices | Generally unlimited; may provide protection in some states for group practices |
### L. Using Multiple Entities

<table>
<thead>
<tr>
<th>1. Availability of multiple entities</th>
<th>Not applicable</th>
<th>Can shift wealth and income to other family members</th>
<th>Can shift wealth and income to other family members</th>
<th>Can shift wealth and income to other family members</th>
<th>Can shift wealth and income to other family members</th>
<th>Use of multiple C corporation and lower rates possible with proper structure</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Dividing up multiple activities contained in one entity</td>
<td>Generally non-taxable; must form one or more new entities</td>
<td>Generally non-taxable</td>
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<td>Risk of tax on corporate division</td>
<td>Risk of tax on corporate division</td>
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### M. Changing the Form of an Existing Entity and Terminations

<table>
<thead>
<tr>
<th>1. Changing the form of entity</th>
<th>An incorporation or change to partnership or LLC is generally tax-free</th>
<th>An incorporation or change to limited partnership or LLC is generally tax-free</th>
<th>Change to LLC and incorporation are generally tax-free</th>
<th>Change to partnership and incorporation are generally tax-free</th>
<th>Change to C corporation is tax-free; other changes are a liquidation with potential tax</th>
<th>Electing S status is generally tax-free; any other change is a liquidation with potential tax</th>
</tr>
</thead>
</table>
This Close Corporation Agreement (the "Agreement") is made and entered into effective as of the ____ day of ___________, 20____, by and among ABC Company, an Ohio corporation (the "Corporation"), and each of the undersigned shareholders of the Corporation (collectively, the "Shareholders" and individually, a "Shareholder").

Background Information

A. As of the date of this Agreement, the total number of shares that the Corporation is authorized to issue is {__________ (____)} common shares, {without par value}, of which one hundred (100) shares are issued, outstanding, and owned in the following manner:

<table>
<thead>
<tr>
<th>Shareholder</th>
<th>Shares</th>
</tr>
</thead>
<tbody>
<tr>
<td>John Doe</td>
<td>50</td>
</tr>
<tr>
<td>John Smith</td>
<td>50</td>
</tr>
</tbody>
</table>

B. The Corporation is taxed as an S corporation under Subchapter S of the Internal Revenue Code of 1986, as amended.

C. The Shareholders and the Corporation desire to enter into this Agreement (i) to regulate certain aspects of the affairs of the Corporation, (ii) to obtain and preserve the Subchapter S status of the Corporation, (iii) to restrict the transferability of the shares of capital stock of the Corporation, and (iv) to provide for the purchase and sale of the shares of capital stock of the Corporation under certain circumstances.

Provisions

Now, therefore, in consideration of the foregoing and the mutual promises and covenants set forth herein, the parties hereto agree as follows:

Article I
General Provisions

A. Definitions. For the purposes of this Agreement, the following terms shall have the following meanings:

1. Affiliate. An "Affiliate" of a Shareholder shall mean a corporation, partnership, limited liability company, proprietorship, or other business entity of which the Shareholder or a Related Person is an officer, director, partner, member, or an owner of more than a five-percent (5%) equity interest.

2. Bona Fide Offer. "Bona Fide Offer" shall mean a bona fide written offer to purchase Shares that meets each of the following criteria:

   a. The Offeror is named in the offer and is neither a Related Person nor an Affiliate;
b. The price per Share for the Shares shall be separately set forth, which price shall be payable in cash either at the closing or on a deferred basis;

c. The proposed purchase of Shares shall be independent of any other transaction and the offer shall not be subject to any contingencies other than (i) the ability of the Offeror to obtain financing, (ii) satisfactory documentation of the purchase, (iii) the ability of the Offeree Shareholder to transfer good, unencumbered title to its Shares, and (iv) the lack of material adverse changes in the business or financial condition of the Corporation; and

d. The Offer shall set forth all material terms and conditions of the proposed transaction.

3. Closing Date. "Closing Date" shall mean the date for consummation of purchases and sales of Shares on the death or Permanent Disability of Doe or Smith pursuant to Section IV(C)(3) or on the exercise of an option under Sections IV(E)(2) or IV(E)(3)(b).


5. Corporation. "Corporation" shall mean ABC Company, an Ohio corporation organized pursuant to Chapter 1701 of the Ohio Revised Code.

6. Doe. "Doe" shall mean John Doe, who is presently a resident of the State of Ohio and the President of the Corporation.

7. Doe Family Members. "Doe Family Members" shall mean Doe, his spouse, his lineal descendants, and the spouses of his lineal descendants. Doe Family Members shall also include any trust for the benefit of, or any partnership, limited liability company, or corporation wholly-owned by any of the foregoing individuals, provided that all decisions regarding voting and disposition of Shares held by such trust, partnership, limited liability company, or corporation are controlled by Doe or, during Doe's Permanent Disability, his spouse.

8. Doe Shareholders. "Doe Shareholders" shall mean (A) John Doe, for so long as he continues to hold Shares, and (B) any Doe Family Members who hereafter acquire Shares (and such Doe Family Members shall continue to be Doe Shareholders even if they are no longer Doe Family Members because of, for example, the death or Permanent Disability of Doe).

9. Family Members. "Family Members" shall mean, with respect to any Doe Shareholder, Doe Family Members, and with respect to any Smith Shareholder, Smith Family Members.

10. Family Shareholders. "Family Shareholders" shall mean, with respect to any Doe Shareholder, other Doe Shareholders, and with respect to any Smith Shareholder, other Smith Shareholders.

11. Offered Shares. "Offered Shares" shall mean the Shares which the Offeree Shareholder (acting alone or in concert with other Family Shareholders) proposes to transfer to the Offeror.
12. **Offeree Shareholder.** "Offeree Shareholder" shall mean a Shareholder who receives, and desires to accept, a Bona Fide Offer with respect to its Shares.

13. **Offeror.** "Offeror" shall mean the person or entity making a Bona Fide Offer.

14. **Other Shareholders.** "Other Shareholders" shall mean, with respect to a Doe Shareholder, the Smith Shareholders, and with respect to a Smith Shareholder, the Doe Shareholders.

15. **Permanent Disability.** "Permanent Disability" shall mean either (i) if there are buy-sell disability insurance policies covering the permanent disability of Doe and Smith, the definition of permanent disability in such policies, or (ii) if there are not buy-sell disability insurance policies covering the permanent disability of Doe and Smith, the inability of Doe or Smith, as the case may be, to perform his material duties on behalf of the Corporation for one hundred eighty (180) days during any twelve (12) month period.

16. **Policies.** "Policies" shall mean (i) one or more policies of life insurance on the life of Doe, owned by and payable to Smith and/or other Smith Family Shareholders, and (ii) one or more policies of life insurance on the life of Smith, owned by and payable to Doe and/or other Doe Family Shareholders. "Policies" shall also mean (iii) one or more buy-sell disability insurance policies covering the permanent disability of Doe, owned by and payable to Smith and/or other Smith Family Shareholders, and (iii) one or more buy-sell disability insurance policies covering the permanent disability of Smith, owned by and payable to Doe and/or other Doe Family Shareholders, but only if Smith and Doe both purchase such buy-sell disability insurance policies.

17. **Related Person.** "Related Person" shall mean a spouse, sibling, lineal ancestor, or descendant, or any spouse of a sibling, lineal ancestor, or descendant, of a Shareholder.

18. **Shareholder.** "Shareholder" shall mean any holder of Shares.

19. **Shares.** "Shares" shall mean any shares of capital stock of the Corporation or any beneficial interest in such shares.

20. **Share Value.** "Share Value" shall mean the value per Share agreed upon by Doe and Smith and reflected in a Certificate of Value in the form attached hereto as Exhibit A signed and dated by Doe and Smith and attached to this Agreement. The Share Value may be updated by Doe and Smith as often as they so desire but if the Certificate of Value is more than twelve (12) months old, the Share Value shall then be determined by appraisal as follows. Selling Shareholders holding a majority of the Shares held by the selling Shareholders shall appoint a representative of the selling Shareholders. The Corporation and the representative of the selling Shareholders shall appoint an appraiser to determine the fair market value of each Share as of the date of death or Permanent Disability. If the representative of the selling Shareholders and the Corporation are unable to agree on an appraiser within twenty-eight (28) days after the date of death or Permanent Disability, then the representative of the selling Shareholders and the Corporation shall each appoint an appraiser. The two appraisers shall determine the fair market value of each Share as of the date of death or Permanent Disability. If the two appraisers cannot agree upon a value within thirty (30) days after their appointment, then the two appraisers shall select a third appraiser. The average value determined by the three appraisers shall be binding upon all
Shareholders and the Corporation and in any court of competent jurisdiction. The costs of such appraisals shall be borne equally by the selling Shareholders (allocated among the selling Shareholders in accordance with the number of Shares sold) and the Corporation.

21. **Smith.** "Smith" shall mean John Smith, who is presently a resident of the State of Ohio and the Vice President of the Corporation.

22. **Smith Family Members.** "Smith Family Members" shall mean Smith, his spouse, his lineal descendants, and the spouses of his lineal descendants. Smith Family Members shall also include any trust for the benefit of or any partnership, limited liability company, or corporation wholly-owned by the foregoing individuals, provided that all decisions regarding voting and disposition of Shares held by such trust, partnership, limited liability company, or corporation are controlled by Smith or, during Smith's Permanent Disability, his spouse.

23. **Smith Shareholders.** "Smith Shareholders" shall mean (A) John Smith, for so long as he continues to hold Shares, and (B) any Smith Family Members who hereafter acquire Shares (and such Smith Family Members shall continue to be Smith Shareholders even if they are no longer Smith Family Members because of, for example, the death or Permanent Disability of Smith).

24. **Tendered Shares.** "Tendered Shares" shall mean Shares tendered by a Shareholder pursuant to Section IV(E)(3)(c).

25. **Transfer.** "Transfer" shall mean (i) any sale, exchange, gift, bequest, hypothecation, pledge, or grant of a security interest or (ii) any other disposition of Shares, whether voluntarily, involuntarily, by operation of law, or otherwise, that would change the legal or beneficial ownership of the Shares. A "Transfer" includes, without limitation, any transaction that creates a form of joint ownership in the Shares between the transferor and one or more persons (whether or not that other person is the spouse of the transferor) or any transaction that creates or grants an option, warrant, or right to obtain an interest in the Shares.

B. **Close Corporation Agreement.** This Agreement is to be governed by Section 1701.591 of the Ohio Revised Code and is a "close corporation agreement" as that term is defined in Section 1701.01(X) of the Ohio Revised Code. This Agreement shall be entered in the record of minutes of the proceedings of shareholders of the Corporation.

C. **Effect on Other Governing Instruments.** This Agreement shall regulate certain aspects of the Corporation's internal affairs and the relations of the Shareholders among themselves to the extent set forth herein. If any provision of the Corporation's Articles of Incorporation or Code of Regulations or Chapter 1701 of the Ohio Revised Code, other than Section 1701.591, is inconsistent with this Agreement, the parties to this Agreement hereby waive such inconsistent provisions, to the extent such provisions may be waived, and to the maximum extent necessary to carry out the purposes of this Agreement. To the extent not inconsistent with the provisions of this Agreement, the other provisions of Chapter 1701 of the Ohio Revised Code shall regulate aspects of the internal affairs of the Corporation and the relations of the Shareholders among themselves.
Article II
Corporate Governance Provisions

A. Election of Directors. Throughout the term of this Agreement, the Board of Directors of the Corporation shall consist of two (2) Directors --

- one (1) of whom shall be appointed by Doe; and
- one (1) of whom shall be appointed by Smith.

Any vacancy in the Board of Directors shall be filled by the person who appointed the Director whose death, resignation, or removal caused such vacancy to exist.

B. Distributions for Taxes. Subject to any limitations on distributions under applicable state or federal law, the Corporation and the Shareholders agree as follows:

1. Distributions. Subject to the terms of this Section II(B), the Corporation shall make pro rata distributions of money, based on ownership of Shares, sufficient to fully fund each Shareholder's payment of all federal, state, and local income taxes on the income (net of any tax benefits produced for the Shareholders by the Corporation's losses, deductions, and credits) that passes through from the Corporation to the Shareholders under the applicable provisions of the Code -- which taxes shall be calculated, for this purpose, on the assumption that each Shareholder is subject to the highest marginal rate of taxation to which any Shareholder is subject. The Corporation shall make the distributions required by this Section II(B) in a timely manner to allow the tax (including, without limitation, estimated tax payments) attributable to the income passed through the Corporation to any Shareholder to be paid when due.

2. Discretion to Withhold or Delay Distributions. Notwithstanding any other provision of this Agreement, the Corporation may withhold or delay any distribution otherwise required to be made pursuant to Section II(B)(1), but only if the Board of Directors unanimously determines that the financial or business condition of the Corporation would be materially and adversely affected if such distribution were not withheld or delayed.

3. Pro Rata Distributions. Nothing in this Section shall cause the total distributions paid with respect to (as opposed to in exchange for) any outstanding Share to differ from the amounts paid with respect to any other outstanding Share.

4. Additional Distributions Not Precluded. Nothing in this Section II(B) shall be construed to limit the ability of the Corporation to declare and pay additional distributions to the Shareholders out of the assets of the Corporation legally available for such payment at such time or times as the Corporation's Board of Directors may determine.

Article III
Provisions Relating to the Policies

A. Payment of Policy Premiums. For so long as Doe is living and there are Doe Shareholders, the Corporation shall pay, as they come due (or within any applicable grace period), all premiums required to maintain the Policies on Doe's life in full force and effect. For so long as Smith is living and there are Smith Shareholders, the Corporation shall pay, as they come due (or
within any applicable grace period), all premiums required to maintain the Policies on Smith's life in full force and effect. The Corporation shall also pay, as they come due (or within any applicable grace period), all premiums required to maintain the buy-sell disability insurance Policies, owned by and payable to the Corporation, covering the permanent disability of Doe and Smith.

B. **Treatment as Distributions.** Payments of premiums by the Corporation pursuant to Section III(A) shall be treated as distributions to the Shareholders who own the Policies for purposes of Subchapter S of the Code. The Board of Directors shall adjust other distributions to the Shareholders so that the total distributions paid with respect to (as opposed to in exchange for) each outstanding Share do not differ from the amounts paid with respect to any other outstanding Share taking into account the preceding sentence.

C. **Implementation of Agreement.** Any officer of the Corporation, without further action of the Board of Directors or the Shareholders, is hereby authorized to make payment of premiums in accordance with this Article III and to take such other actions as such officer deems appropriate and necessary, in such officer's sole discretion, to implement the provisions of this Article III; provided, however, the Board of Directors shall retain the power and authority to take actions which it deems necessary or desirable to implement this Article III.

**Article IV**

**Restrictions on Transfers of Shares**

A. **Restrictions on Transfers to Preserve Subchapter S Status.**

1. **General Restrictions.** No Shareholder may Transfer, and no person may acquire, the legal or beneficial ownership of any Share if such Transfer or acquisition would cause the Subchapter S status of the Corporation to terminate. Specifically, no Transfer may be made to, and no acquisition may be made by, any person who would cause the Corporation to have more than the maximum permitted number of shareholders under the Code as then in effect (with such maximum presently equal to 75 shareholders) or to any person that is not eligible to be a shareholder of an S corporation under the provisions of the Code as in effect at the time of the purported Transfer (presently including nonresident aliens and any person other than an individual, an estate, certain trusts, and certain tax-exempt organizations).

2. **Amendment to this Agreement.** In addition to the requirements of Section IV(A)(1) and the other restrictions in this Agreement, no Transfer of Shares shall be permitted, and no purported Transfer shall be effective, until the transferee has executed a supplemental signature page to this Agreement. All parties agree that upon execution and acceptance of a supplemental signature page, this Agreement shall be amended and the transferee shall have the rights and obligations of a Shareholder under this Agreement. Each such amendment shall be annexed to this Agreement, and copies thereof shall be forwarded to each Shareholder by the Corporation.

B. **General Prohibition of Transfers.** Except as otherwise specifically authorized under Sections IV(C), IV(D), IV(E), and IV(F), and subject to Section IV(A), no Shareholder shall Transfer any of his Shares during his lifetime or as a result of his death.
C. Buy-Out on Death or Permanent Disability.

1. In General. Upon the death or Permanent Disability of Doe, the Smith Shareholders shall purchase and the Doe Shareholders shall sell all of the Shares held by the Doe Shareholders on the terms and conditions set forth in this Section IV(C); provided, however, that if there is no buy-sell disability insurance Policy covering the permanent disability of Doe, the Doe Shareholders shall not be required to sell any of the Shares held by the Doe Shareholders on the terms and conditions set forth in this Section IV(C). Upon the death or Permanent Disability of Smith, the Doe Shareholders shall purchase and the Smith Shareholders shall sell all of the Shares held by the Smith Shareholders on the terms and conditions set forth in this Section IV(C); provided, however, that if there is no buy-sell disability insurance Policy covering the permanent disability of Smith, the Smith Shareholders shall not be required to sell any of the Shares held by the Smith Shareholders on the terms and conditions set forth in this Section IV(C). If there is more than one purchasing Family Shareholder, the obligation of the purchasing Family Shareholders to purchase Shares shall be allocated between or among the purchasing Family Shareholders pursuant to Section IV(C)(4).

2. Terms of Sale. The purchase price per Share for a purchase and sale pursuant to Section IV(C)(1) shall be the Share Value. The selling Shareholders shall not be required to make any representation or warranty other than as to their ownership of the Shares to be sold and their power and authority to Transfer legal and beneficial ownership of the Shares. The purchase price shall be paid as follows:

- An amount equal to the proceeds from any Policy that the Family Shareholders were required to maintain on the life or disability of Doe or Smith, as the case may be, shall be paid in cash or other immediately available funds;

- The balance of the purchase price shall be evidenced by a five-year, non-negotiable promissory note, bearing interest at the prime rate established by the Corporation's primary bank on the day prior to the Closing Date (as defined Section IV(C)(3)). The purchasing Family Shareholders shall be jointly and severally obligated on the promissory note. The promissory note will be payable in five (5) equal installments of principal with accrued interest. The first installment of principal, with interest, will be due and payable on the first anniversary of the Closing Date, and subsequent annual installments, with accrued interest, will be due and payable on each succeeding anniversary of the Closing Date until the entire amount of the obligation is paid. The purchasing Family Shareholders will have the right to prepay all or any part of the promissory note at any time without penalty and, in the case of a sale as a result of Permanent Disability, the purchasing Family Shareholders shall prepay the promissory note to the extent of life insurance proceeds received as a result of the death of the person whose Permanent Disability triggered the sale.

The Corporation shall use reasonable efforts to obtain releases in favor of the selling Shareholders and their family members from those creditors of the Company and other affected parties to which they have any personal financial responsibility with respect to the debts and obligations of the Corporation. If the Corporation is unable to obtain all applicable releases, the Corporation and the remaining Shareholders, jointly and severally, shall indemnify and hold the selling Shareholders and their family members harmless from any loss, liability, damage, cost, or expense (including attorney fees and related expenses) arising out the debts and obligations of the Corporation after the Closing Date.
3. **Closing.** Purchases and sales of Shares pursuant to Section IV(C)(1) shall be consummated on a normal business day (the "Closing Date") within one hundred eighty (180) days following the death or Permanent Disability, and at a time, during normal business hours, specified in a written notice by the Corporation to the selling Shareholders. Such notice shall also specify the place, within __________ County, Ohio, where the closing shall occur. At the closing, the certificate(s) representing the Shares to be purchased shall be delivered by the selling Shareholder appropriately endorsed or with an executed stock power attached. Each of the Shareholders hereby appoints the Corporation his agent and attorney-in-fact, with full power of substitution, for the purpose of endorsing and delivering certificate(s) or executing and delivering stock powers pursuant to the preceding sentence in the name, place, and stead of such Shareholder. The foregoing grant of authority is a special power of attorney coupled with an interest, is irrevocable, and shall survive the death or disability of the principal.

4. **Allocations of Shares.** The obligation to purchase Shares pursuant to Section IV(C)(1) shall be allocated between or among the purchasing Family Shareholders in proportion to their relative share of proceeds from the Policies on the event that triggers the purchase obligation; provided, however, that the purchasing Family Shareholders may agree to allocate the obligation to purchase Shares in any other manner that they may agree.

D. **Intra-Family Transfers Permitted.** Subject to Section IV(A), any Doe Shareholder may Transfer all or any portion of his Shares to any Doe Family Member, and any Smith Shareholder may Transfer all or any portion of his Shares to any Smith Family Member.

E. **Exception For Certain Third-Party Sales.**

1. **Exception Generally.** Subject to Section IV(A) and this Section IV(E), upon receipt of a Bona Fide Offer, any Shareholder may Transfer all or any portion of his Shares to the Offeror.

2. **Intra-Family Right of First Refusal.** Upon receipt of a Bona Fide Offer, if the Offeree Shareholder desires to Transfer any Shares to the Offeror pursuant to the terms of such Bona Fide Offer, such Offeree Shareholder shall give written notice to such effect to the Corporation and each Family Shareholder, which notice shall specify the number of Offered Shares which such Offeree Shareholder proposes to Transfer to the Offeror and shall include a true, complete, and legible copy of the Bona Fide Offer. For a period of thirty (30) days after such notice, each Family Shareholder (acting alone or in concert with one or more Family Members) shall have the option to purchase all, but not less than all, of the Offered Shares on the terms and conditions set forth in Section IV(E)(6). If more than one Family Shareholder exercises such option, the Offered Shares shall be allocated between or among the exercising Family Shareholders pursuant to Section IV(E)(5).

3. **Inter-Family Rights.**

a. **Notice to Other Shareholders.** Upon expiration unexercised of the option granted pursuant to Section IV(E)(2) (or upon written waiver of such option by all Family Shareholders), the Offeree Shareholder shall give written notice to such effect to the Corporation and each Other Shareholder, which notice to Other Shareholders shall include a true, complete, and legible copy of the notice theretofore given pursuant to Section IV(E)(2).
b. **Right of First Refusal.** For a period of thirty (30) days after the notice required to be given pursuant to Section IV(E)(3)(a), each Other Shareholder (acting alone or in concert with one or more Family Members) shall have the option to purchase all, but not less than all, of the Offered Shares on the terms and conditions set forth in Section IV(E)(6). If more than one Other Shareholder exercises such option, the Offered Shares shall be allocated between or among the exercising Other Shareholders pursuant to Section IV(E)(5).

c. **Right to Tender Shares.** During the same period of thirty (30) days after the notice required to be given pursuant to Section IV(E)(3)(a), each Other Shareholder shall have the right to tender all or any portion of his Shares ("Tendered Shares") for purchase by the Offeror at the per Share price and on the other terms and conditions set forth in the Bona Fide Offer. A tender of Shares pursuant to this Section IV(E)(3)(c) shall not necessarily result in an actual purchase of the Tendered Shares. If the option granted pursuant to Section IV(E)(3)(b) is exercised by any Other Shareholder, all tenders pursuant to this Section IV(E)(3)(c) shall be null and void. Even if such option is not exercised by any Other Shareholder, purchase of all Tendered Shares shall merely be a condition precedent to Transfer of the Offered Shares pursuant to Section IV(E)(4). Moreover, unless Offered Shares are Transferred pursuant to Section IV(E)(4), any sale of Tendered Shares to the Offeror shall itself be subject to all restrictions on transferability of Shares created by this Agreement.

4. **Transfer of Offered Shares.** For a period of sixty (60) days after expiration unexercised of the option granted pursuant to Section IV(E)(3)(b) (or upon written waiver of such option by all Other Shareholders), the Offeree Shareholder shall be entitled to Transfer, in a single transaction, all or any portion of the Offered Shares to the Offeror, free and clear of all restrictions on the transferability of the Offered Shares imposed by this Agreement, at a per Share price equal to the per Share price specified in the Bona Fide Offer, and on other terms and conditions no more favorable to the Offeree Shareholder than those specified in the Bona Fide Offer; provided, however, that a condition precedent to such Transfer shall be the simultaneous purchase by the Offeror of all Tendered Shares pursuant to Section IV(E)(3)(c).

5. **Allocations of Option Shares.** If more than one Family Shareholder exercises the option granted pursuant to Section IV(E)(2), or more than one Other Shareholder exercises the option granted pursuant to Section IV(E)(3)(b), the Offered Shares shall be allocated between or among, and purchased by, the exercising Shareholders in proportion to their relative holdings of Shares. For this purpose, if an exercising Shareholder is acting in concert with other Shareholders whose identity is specified in the notice of exercise, the aggregate holdings of all such Shareholders shall be attributed to the exercising Shareholder.

6. **Mechanics.**

a. **Exercise of Rights of First Refusal.** The options granted pursuant to Section IV(E)(2) and Section IV(E)(3)(b) shall be exercisable by written notice to such effect to the Offeree Shareholder, with contemporaneous notices to the Corporation and all other Shareholders eligible to exercise the same option. If the exercising Shareholder is acting in concert with any other Shareholder or Family Member, the identity of such other person(s) and their allocation of interest in the Shares to be purchased shall be specified in the notice. The notice shall be signed by
the exercising Shareholder and each person acting in concert with him. No person shall participate in more than one notice of exercise. Once given, such notice shall be irrevocable.

b. **Exercise of Tender Right.** The tender right exercisable pursuant to Section IV(E)(3)(c) shall be exercisable by written notice to such effect to the Offeree Shareholder, with contemporaneous notices to the Corporation and all other Shareholders eligible to exercise such right. The notice shall specify the number of Shares being tendered and shall be signed by the tendering Shareholder. Once given, such notice shall be irrevocable and shall terminate the tendering Shareholder's right to exercise (directly or indirectly by acting in concert with another Shareholder) the option granted pursuant to Section IV(E)(3)(b).

c. **Terms of Sale.** Upon exercise of any option granted pursuant to Section IV(E)(2) or Section IV(E)(3)(b), the purchase price for the Offered Shares shall be the price specified in the Bona Fide Offer. All other terms and conditions of the Transfer of the Offered Shares shall be the same as those specified in the Bona Fide Offer provided, however, (A) if any portion of the purchase price is deferred, in lieu of any other security for the deferred payments, the exercising Shareholder(s) may elect to pledge the Offered Shares, (B) the Offeree Shareholder shall not be required to make any representation or warranty other than as to his ownership of the Offered Shares, his power and authority to Transfer legal and beneficial ownership of the Offered Shares, free and clear of all liens or encumbrances, and the absence of any actual or threatened litigation, administrative proceeding, investigation, or inquiry relating to or affecting any of the foregoing matters, and (C) after the Transfer the Offered Shares in the hands of the exercising Shareholder(s) shall be subject to the restrictions on transferability contained in this Agreement.

d. **Closing.** Purchases and sales of Shares pursuant to exercise of an option under Section IV(E)(2) or Section IV(E)(3)(b) shall be consummated on a normal business day (the "Closing Date") within sixty (60) days following expiration of the applicable option period, and at a time, during normal business hours, specified in a written notice by the exercising Shareholder(s) to the Offeree Shareholder. Such notice shall also specify the place, within __________ County, Ohio, where the closing shall occur. At the closing, the certificate(s) representing the Shares to be purchased shall be delivered by the Offeree Shareholder appropriately endorsed or with an executed stock power attached. Each of the Shareholders hereby appoints the Corporation his agent and attorney-in-fact, with full power of substitution, for the purpose of endorsing and delivering certificate(s) or executing and delivering stock powers pursuant to the preceding sentence in the name, place, and stead of such Shareholder. The foregoing grant of authority is a special power of attorney coupled with an interest, is irrevocable, and shall survive the death or disability of the principal.

F. **Transfers With Consent Permitted.** Notwithstanding any other provisions of this Agreement, a Shareholder may Transfer Shares without complying with any of the terms and provisions of this Agreement if (a) he gives written notice to all of the Shareholders of the intended Transfer, which notice shall specify the number of Shares to be Transferred, the person to whom the Shares are to be Transferred, the consideration to be paid, if any, and the other terms and conditions of the proposed Transfer, (b) he receives the express written consent of each Shareholder to such proposed Transfer, and (c) the proposed Transfer is consummated in accordance with the terms described in such notice within sixty (60) days after receipt of the first consent received (or within
such longer period of time as may be specified in the notice seeking such consent). Shares Transferred in accordance with this Section IV(F) shall, in the hands of any person other than a Doe Family Member or a Smith Family Member, be free and clear of all restrictions on transferability imposed by this Agreement (other than those contained in Section IV(A)).

G. Effect of Purported Transfer. Any purported Transfer or acquisition of Shares in violation of this Agreement shall be null and void and of no force or effect. The purported transferee shall have no interest in any of the Shares purported to be Transferred. Each Shareholder agrees that any such Transfer or acquisition may and should be enjoined.

H. Beneficial Ownership. Any purported Transfer in violation of this Agreement will not affect the beneficial ownership of Shares. Thus, the Shareholder making the purported Transfer will retain the right to vote and the right to receive distributions and liquidation proceeds. Additionally, a Shareholder making the purported Transfer shall continue to report the portion of income or loss allocated by the Corporation in accordance with the provisions of the Code as then in effect.

I. Adequate Assurance. No Shareholder may Transfer the legal or beneficial ownership of any Share to any trust unless (a) the Corporation has received in advance copies of all relevant trust documents and (b) the Corporation has obtained adequate assurance that the Transfer to the trust will not adversely affect the Corporation or any of its Shareholders under Subchapter S of the Code.

Article V
Miscellaneous Provisions

A. Stock Legend. All Share certificates issued by the Corporation shall bear the following legend:

"The rights of a holder of this certificate are governed by the Corporation's Articles of Incorporation, Code of Regulations, and a certain Close Corporation Agreement dated ______________, ____. Copies of such documents are on file at the Corporation's office, and the Corporation will mail to the holder of this certificate copies of such documents upon request therefor. The holder of this certificate, by acceptance hereof, agrees to the terms of the Articles of Incorporation, Code of Regulations, and Close Corporation Agreement. The securities represented by this certificate have not been registered under the Securities Act of 1933, as amended (the "Act"), nor the securities laws of any state. Accordingly, these securities may not be offered, sold, transferred, pledged, or hypothecated in the absence of registration, or the availability, in the opinion of counsel for the Corporation, of an exemption from registration, under the Act, and any applicable state securities laws. Therefore, the stock transfer agent will effect transfer of this certificate only in accordance with the above instructions."

Any person to whom Shares are Transferred (or attempted to be Transferred) shall be conclusively deemed to have constructive notice of this Agreement and to have agreed to be bound by its provisions (to the extent applicable to such Shares).

B. Specific Performance. Each party to this Agreement hereby acknowledges that (i) the relationships created by this Agreement, and the obligations to be performed under this Agreement, are personal and unique to the Corporation and the Shareholders and (ii) no party to this Agreement will have an adequate remedy at law if another party should fail to perform any of its
obligations under this Agreement. In the event of any such failure of performance by any party to
this Agreement, each of the other parties to this Agreement shall be entitled to the remedy of specific
performance of this Agreement (in addition to any other rights or remedies which such other parties
may have at law or in equity).

C. Clearinghouse Function. In order to facilitate the implementation and operation of
this Agreement, all notices required and authorized to be given pursuant to this Agreement shall be
channeled through the Corporation. The Corporation shall then redeliver such notices to the
applicable persons in accordance with the terms of this Agreement. It shall be the responsibility of
each person entitled to receive any notice under this Agreement to provide the Corporation with a
current mailing address at which such person shall receive all notices given pursuant to this
Agreement. All notices so given shall be in writing and shall be mailed by certified United States
mail, postage prepaid, return receipt requested to the last known address of the person entitled to
receive any notice. All such notices shall be deemed given upon receipt or upon refusal of the
addressee to receive the same as evidence on the return receipt. The Corporation shall maintain
records of all actions taken, and information received or transmitted by it, pursuant to this
Agreement.

D. Construction. Wherever the context so permits, the use of words in this Agreement
in the masculine, feminine, or neuter gender shall be construed to include all of said genders. All
references to Articles and Sections are to provisions of this Agreement unless the context dictates
otherwise.

E. Attorneys Fees. Each of the parties hereby agrees that if any party violates any of
the covenants set forth herein, such party shall indemnify all other parties from and against any loss
or liability (including without limitation reasonable attorney fees and expenses) which such other
parties may incur or suffer, directly or indirectly, by reason of the enforcement of the covenants set
forth herein.

F. Entire Agreement. This Agreement sets forth the entire agreement and
understanding among the parties as to the subject matter hereof and merges and supersedes all prior
discussions, agreements, and undertakings of every kind and nature between them with respect to the
subject matter hereof.

G. Counterparts. This Agreement may be executed in one or more counterparts, which
shall together constitute a single agreement. In the event of execution of more than one counterpart
of this Agreement, the Corporation is expressly authorized to remove the signature pages from each
such counterpart and attach all such signature pages to a single counterpart of this Agreement;
provided, however, that the Corporation shall promptly thereafter provide a complete and accurate
copy of such single counterpart to each party.

H. Further Assurances. Each of the parties agrees, at any time and from time to time,
upon the reasonable request of any other party, to do, execute, acknowledge, and deliver, or cause to
be done, executed, acknowledged, and delivered, all such further acts, documents, and instruments as
may be required to effect any of the transactions contemplated by this Agreement.

I. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the
parties and their respective heirs, executors, and permitted assigns.

J. Governing Law; Venue. This Agreement shall be governed by and construed in
accordance with laws of the State of Ohio (regardless of the laws that might be applicable under
principles of conflicts of laws) as to all matters, including but not limited to matters of validity,
construction, effect, and performance. The forum and venue of all actions regarding this Agreement shall be in a court of competent jurisdiction in _________ County, Ohio and the parties hereby consent to the exclusive jurisdiction of such court.

K. Severance. In the event any sentence or paragraph of this Agreement is declared by a court to be void, that sentence or paragraph shall be deemed severed from the remainder of this Agreement, and the balance of the Agreement shall remain in effect.

L. Headings. The headings used in this Agreement are for convenience only and shall be ignored in interpreting this Agreement.

M. Waiver. No failure by any party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute waiver of any breach or any other covenant, duty, agreement, or condition.

N. Third Party Beneficiaries. Nothing herein expressed or implied is intended or shall be construed to confer upon or give any person other than the parties, and their permitted successors and assigns, any rights or remedies under or by reason of this Agreement.

O. Amendment; Termination. Except as provided in Section IV(A)(2), this Agreement shall be changed, modified, terminated, cancelled, or amended only by a writing signed by each of the then parties to this Agreement.

P. Weekends and Holidays. Where this Agreement authorizes or requires the payment of money or the performance of an obligation on a Saturday or Sunday or a public holiday, or authorizes or requires the payment of money or the performance of an obligation within or before or after a period of time computed from a certain day, and such period of time ends on a Saturday or Sunday or a public holiday, such payment may be made or obligations performed on the next succeeding business day, with the same force and effect as if made or performed in accordance with the terms of this Agreement.

Q. Joint Preparation. This Agreement is to be deemed to have been prepared jointly by the parties hereto, and any uncertainty or ambiguity existing herein shall not be interpreted against any party, but shall be interpreted according to the rules for the interpretation of arm's length agreements.

In witness whereof, the parties hereto have executed this Close Corporation Agreement on the day and year first above written.

ABC COMPANY,
An Ohio corporation

By: ________________________________
Its: ________________________________
John Doe

John Smith
EXHIBIT A

CERTIFICATE OF VALUE

This _____ day of ____________, 20____, the undersigned hereby establish the Share Value as defined in Section I(A)(19) of the Close Corporation Agreement among ABC Company and its Shareholders as __________ dollars ($_______) per Share. Capitalized terms in this Certificate shall have the meanings given such terms in the Close Corporation Agreement.

____________________________________
John Doe

____________________________________
John Smith
OPERATING AGREEMENT
OF
{NAME}

THIS OPERATING AGREEMENT (the “Agreement”) is made this ____ day of __________, 20___, by and among {Name}, an Ohio limited liability company (the “Company”), and the undersigned members of the Company, all of whom have signed this Agreement agreeing to be obligated by the terms of this Agreement.

OPERATING STATEMENT

This Agreement governs the relationship among members of the Company and between the Company and the members, pursuant to Chapter 1705 of the Ohio Revised Code, as amended from time to time.

In consideration of their mutual promises, covenants, and agreements, the parties hereto do hereby promise, covenant, and agree as follows:

Article I. General Organizational Information

Section 1.01 Name. The business of the Company shall be conducted under the name {Name} or such other name as the {Option 1: members} {Option 2: managers} may from time to time designate in accordance with applicable laws.

Section 1.02 Principal Office. The principal office, place of business, and mailing address of the Company shall be maintained at {Principal Office} or at such other place as may be designated by the {Option 1: members} {Option 2: managers}.

Section 1.03 Initial Members and Addresses. The initial members of the Company and their addresses are as follows:

<table>
<thead>
<tr>
<th>NAME</th>
<th>ADDRESS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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</tbody>
</table>

Section 1.04 Registered Agent and Office. The registered agent of the Company shall be {Registered Agent}, and the registered office of the Company shall be {Registered Office}. The {Option 1: members} {Option 2: managers} shall have the right and authority to change the registered agent and office when they deem it appropriate to do so by filing such instruments of record as may be required by the Ohio Secretary of State.

Article II. Purposes

The business of the Company shall be:

(a) {Specific Purpose}.
(b) To accomplish any purpose or purposes for which individuals lawfully may associate themselves or any other lawful purpose whatsoever or which shall at any time appear conducive to, or expedient for, the protection or benefit of the Company and its assets.

(c) To exercise all other powers necessary to, or reasonably connected with, the Company’s business which may be legally exercised by limited liability companies under the Ohio Revised Code.

Article III. Duration Of The Company

The period of the duration of the Company shall be perpetual unless and until dissolved pursuant to ____ of this Agreement.

Article IV. Capital Contributions

Section 4.01 Original Capital Contributions. The original capital contributions to the Company of each of the members shall be as follows:

<table>
<thead>
<tr>
<th>NAME</th>
<th>CAPITAL CONTRIBUTION</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Section 4.02 Additional Capital Contributions. No member shall be obligated to make additional capital contributions, other than those described in 0 above, to the Company unless the {Option 1: members} {Option 2: managers} determine by {Option: unanimous} written consent to require such additional contributions.

Section 4.03 Failure to Make Capital Contribution. If a member fails to make a required capital contribution within thirty (30) days after notice thereof from the {Option 1: members} {Option 2: managers}, the Company may pursue collection thereof by all legal means as an obligation owed to the Company.

Section 4.04 Loans to the Company. The amount of a loan, if any, made to the Company by a member shall not be considered a contribution to capital of the Company nor shall the making of such loan entitle such member to an increased share of the Profits or Losses (as defined in Exhibit A) to be allocated pursuant to the provisions of this Agreement.

Section 4.05 Admission of Additional Members. Additional members may be admitted to the Company upon the {Option: unanimous} written consent of the {Option 1: members} {Option 2: managers}. Each such additional member shall make such capital contribution as the {Option 1: members} {Option 2: managers} by {Option: unanimous} written consent shall determine to require and shall be required to adopt and agree to be bound by all the provisions of this Agreement.

Article V. Allocations

Section 5.01 Profit-Sharing Percentages. {Option 1: The percentage membership rights and membership interests of each of the members of the Company (the “Profit-Sharing Percentages”) shall be as follows:
Section 5.02 Allocation of Profits and Losses. Allocations of Profits and Losses (as defined in Exhibit A) shall be made as provided in Exhibit A.

Article VI. Distributions

{Option 1 – Section 6.01, 6.02, and 6.03:

Section 6.01 Cash Flow Distributions.

(a) Net Cash Flow From Operations and Net Cash Flow From Sales, Refinancings, and Other Extraordinary Items shall be distributed to the members at such times and in such amounts as determined by the {Option 1: members} {Option 2: managers} {Option; provided, however, that the Company shall distribute Net Cash Flow From Operations {Option: and Net Cash Flow From Sales, Refinancings, and Other Extraordinary Items} to the members annually (pro rata in accordance with their respective Profit-Sharing Percentages) in an amount at least sufficient for the members to pay their federal and state income taxes on their respective share of Company income, as determined in good faith by the Company’s accountant}. All cash flow distributions shall be in proportion to the members’ Profit-Sharing Percentages unless all of the members otherwise consent.

(b) In the case of the liquidation or termination of the Company, distributions shall be made in accordance with 0 hereof.

Section 6.02 Distributions in Kind. A member, regardless of the nature of his or her contribution, has no right to demand and receive any distribution from the Company in any form other than cash.

Section 6.03 Definitions. As used in this 0, the following terms have the following meanings:

“Net Cash Flow From Operations” shall mean the gross cash revenues received by the Company as a result of the conduct by the Company of its business operations (but not including gross cash revenue received upon liquidation or termination of the Company which shall be distributed only in accordance with 0 of this Agreement), less the sum of the following to the extent paid or set aside by the Company: (i) all principal and interest payments and all other sums paid on or with respect to any indebtedness of the Company (including loans made by any member), (ii) all cash expenditures incurred incident to the operation of the Company’s business, including without limitation,
expenditures for capital improvements; and (iii) such cash reserves as the {Option 1: members} {Option 2: managers} deem reasonably necessary to the proper operation of the Company’s business, including but not limited to, for working capital, capital improvements, repairs, taxes, insurance, and funding other cash requirements and contingencies.

“Net Cash Flow From Sales, Refinancings, and Other Extraordinary Items” shall mean the net cash proceeds from (i) all sales and other dispositions of property not in the ordinary course of business (and not including gross cash proceeds received upon liquidation or termination of the Company which shall be distributed only in accordance with 0 of this Agreement), (ii) all refinancings of property, and (iii) other extraordinary items such as the receipt of life insurance proceeds; provided, however, such term shall not include any cash proceeds to the extent the {Option 1: members} {Option 2: managers} reasonably decide to retain such proceeds for cash reserves. Net cash proceeds are gross cash proceeds less the payment of transaction costs and, in the case of the sale or other disposition of property, payment of any indebtedness secured by the property. Such term shall include all principal and interest payments with respect to any note or other obligation received by the Company in connection with sales and other dispositions of property not in the ordinary course of business.

{Option 2: Section 6.01, 6.02 and 6.03 – Sections will renumber when Option 1 is deleted.}

Section 6.04 Cash Flow Distributions.

(a) Net Cash Flow shall be distributed to the members at such times and in such amounts as determined by the {Option 1: members} {Option 2: managers} {Option: ; provided, however, that the Company shall distribute Net Cash Flow to the members annually (pro rata in accordance with their respective Profit-Sharing Percentages) in an amount at least sufficient for the members to pay their federal and state income taxes on their respective share of Company income, as determined in good faith by the Company’s accountant}. All cash flow distributions shall be in proportion to the members’ Profit-Sharing Percentages unless all of the members otherwise consent.

(b) In the case of the liquidation or termination of the Company, distributions shall be made in accordance with 0 hereof.

Section 6.05 Distributions in Kind. A member, regardless of the nature of his or her contribution, has no right to demand and receive any distribution from the Company in any form other than cash.

Section 6.06 Net Cash Flow. As used in this 0, “Net Cash Flow” shall mean the gross cash revenues received by the Company including revenues resulting from refinancings of property and other extraordinary items (but not including gross cash revenue received upon liquidation or termination of the Company which shall be distributed only in accordance with 0 of this Agreement), less the sum of the following to the extent paid or set aside by the Company: (i) all principal and interest payments and all other sums paid on or with respect to any indebtedness of the Company (including loans made by any member); (ii) all cash expenditures, including without limitation, expenditures for capital improvements; and (iii) such cash reserves as the {Option 1: members} {Option 2: managers} deem reasonably necessary to the Company’s business, including but not
limited to, for working capital, capital improvements, repairs, taxes, insurance, and funding other cash requirements and contingencies.}

**Article VII. Accounting**

**Section 7.01 Books and Records.** At all times during the continuation of the Company, the Company shall keep true and full books of account and all other records necessary for recording the Company’s business and affairs. The books of the Company shall be maintained on the cash or accrual basis, as may be determined by the {Option 1: members} {Option 2: managers}, and in accordance with applicable income tax regulations. Such books of account shall be maintained at all times at the principal office of the Company and, upon written demand, such books of account and records shall be open to the inspection and examination of any member in person or by his or her duly authorized representative at all reasonable times, and for any reasonable and proper purpose.

**Section 7.02 Fiscal Year.** The fiscal year of the Company shall be the calendar year.

**Section 7.03 Annual Statements.** Annual statements of the operations of the Company shall be prepared, including a balance sheet, statement of operations, and such supporting statements as the {Option 1: members} {Option 2: managers} deem relevant.

**Section 7.04 Bank Accounts.** All funds of the Company shall be deposited in its name in such checking or savings accounts as shall be designated from time to time by the {Option 1: members} {Option 2: managers}. Withdrawals therefrom shall be made upon the signature of any of the {Option 1: members} {Option 2: managers} {Option 3: individual(s) with signature authority} or such other signature or signatures as the {Option 1: members} {Option 2: managers} may designate.

**Section 7.05 Income Tax Returns.** The Company shall provide the members information on the Company’s taxable income or loss that is relevant to reporting the Company’s tax items as well as all other filings, forms, or other information required by federal law or state taxing and regulatory authorities. This information shall also show each member’s distributive share of the Company’s income, gain, loss, deduction, and credit. This information shall be furnished to the members as soon as practicable after the close of the Company’s taxable year and reasonable estimates will be provided during the course of the year as may be necessary for the members to make estimated tax payments.

**Article VIII. Management Of The Company**

**Section 8.01 The Managers.**

(a) Initial Managers. The business of the Company shall be exercised by or under the direction of one or more managers of the Company. {Option: Only a member may serve as a manager of the Company.} The members hereby designate _________________ as the initial manager(s) of the Company.

(b) Appointment of Managers. A manager shall be appointed by the written consent of {Option 1: each of the members} {Option 2: members holding a majority of the Profit-Sharing Percentages} {Option 3: members holding _____ percent (___%) of the Profit-Sharing Percentages}. 

OfficeKeeper Exhibits
(c) Resignation and Removal of Managers. Any manager may resign by executing and delivering a written instrument to that effect to the other managers and each of the members. Any manager may be removed at any time, with or without cause, by the written consent of {Option 1: each of the members} {Option 2: members holding a majority of the Profit-Sharing Percentages} {Option 3: members holding _____ percent (___%) of the Profit-Sharing Percentages}. If at least one manager is not otherwise serving, such resignation or removal shall not become effective until a successor manager is appointed pursuant to 00.

Section 8.02 The Members. Except as expressly provided elsewhere in this Agreement, all decisions reserved to the members shall be made by the consent of {Option 1: members holding a majority of the Profit-Sharing Percentages} {Option 2: a majority of the members} {Option 3: each of the members}. {Option: In determining the Profit-Sharing Percentages of the members for purposes of any consent, authorization, or approval of the members required by this Agreement, the Profit-Sharing Percentages of nonmember assignees shall be disregarded.}

Section 8.03 Authority of Managers. Except as expressly provided elsewhere in this Agreement, the managers shall have the following express authorities:

(a) All authority for management and control of the Company, its assets, and operations shall be vested in the managers, and the managers shall have the authority on behalf of and for the benefit of the Company to conduct any and all Company business and to take any action, make any determination, and exercise all authority of the Company.

(b) {Option: Except as provided in 00,} The managers, on behalf of and in the name of the Company and in addition to their general management powers, shall have the authority to:

(i) Subject to 0, establish, maintain, and draw upon checking and other accounts in the name of the Company in such financial institutions as the managers may, from time to time, select;

(ii) Negotiate, enter into, execute, deliver, and perform any and all contracts which the managers may deem appropriate for the Company business;

(iii) Commence, defend, settle, compromise, appeal, prosecute, or otherwise deal with any legal proceedings and investigations, civil, criminal or otherwise, before any court or governmental agency;

(iv) Execute any notifications, statements, reports, returns, and other filings relating to the operation of the Company’s business or the management of the Company’s assets that are necessary or desirable to be filed with any state or federal agency, commission, or authority, including any state or federal securities commission;

(v) Sell, exchange, dispose of, transfer, lease as lessor, or otherwise alienate, or convey title to, or grant an option for the sale {Option: of all or any portion} of any real or personal property of the Company {Option: , including the goodwill of the business of the Company};
(vi) Purchase, lease as lessee, invest in, or otherwise acquire, or acquire title to, or an option for the purchase of, any real or personal property of any kind or description which the managers may deem appropriate for the Company business;

(vii) Borrow money and, as security therefor, mortgage or grant security interests in all or any part of any Company property, whether real or personal;

(viii) Refinance, recast, increase, modify, consolidate, extend, or prepay, in whole or in part, any mortgage or security interest affecting any Company property, whether real or personal;

(ix) Employ accountants, attorneys, and other persons, as may be reasonably necessary in the Company business, on such terms and for such compensation as shall be reasonably determined {Option: (and any employment of the same by, or affiliation thereof with, any manager shall not prevent such employment on behalf of the Company)};

(x) {Option: Confess a judgment on behalf of the Company};

(xi) {Option: Submit a claim or liability of the Company to arbitration or reference};

(xii) {Option: Assign the property of the Company, whether real or personal, in trust for creditors or on the assignee’s promise to pay the debts of the Company};

(xiii) Execute, acknowledge, and deliver any and all instruments which are reasonably necessary to effectuate any of the foregoing; and

(xiv) Do all things permitted by law and exercise all authority of the Company {Option: regardless of whether any act of the managers would make it impossible to carry on the business of the Company}, except as otherwise provided in this Agreement and subject to the limitations stated in this Agreement.

(c) Notwithstanding the foregoing provisions of this 0, the managers shall not take or agree to take any of the following actions by or on behalf of the Company without the consent of {Option 1: each of the members} {Option 2: members holding a majority of the Profit-Sharing Percentages} {Option 3: members holding _____ percent (__%) of the Profit-Sharing Percentages}:

(i) {Option: Sell, lease, exchange, or otherwise dispose of all or substantially all of the Company’s property and assets};

(ii) {Option: Confess a judgment on behalf of the Company};

(iii) {Option: Submit a claim or liability of the Company to arbitration or reference};

(iv) {Option: Assign the property of the Company, whether real or personal, in trust for creditors or on the assignee’s promise to pay the debts of the Company};
(v) {Option: Obtain, increase, modify, consolidate, or extend any loan, whether secured or unsecured, affecting the Company other than in the ordinary course of the Company’s business}; or

(vi) {Option: Do any other act that would make it impossible to carry on the ordinary business of the Company}.

Section 8.04 Actions of Managers.

(a) {Option 1: Majority} {Option 2: Unanimous} Consent. All decisions of the managers shall be made by {Option 1: the consent of managers holding a majority of the Profit-Sharing Percentages} {Option 2: the unanimous consent of the managers} {Option 3: the consent of a majority of the managers} {Option 4: the consent of any single manager}. In the absence of such vote or consent, the status quo shall be preserved. {Option: If more than one manager is serving, no manager, acting singly, shall have authority to take any action on behalf of the Company for carrying on the business of the Company unless such action has been authorized by {Option 1: managers holding a majority of the Profit-Sharing Percentages} {Option 2: each of the managers} {Option 3: a majority of the managers}; provided, however, a manager, acting singly, shall have authority to take any action within the scope of the management powers that have been expressly assigned and delegated to such manager pursuant to 00.

(b) Assignment of Management Powers. By a written instrument signed by {Option 1: managers holding a majority of the Profit-Sharing Percentages} {Option 2: each of the managers} {Option 3: a majority of the managers}, the managers may assign and delegate to one or more managers {Option: or nonmanagers} any part or all of the rights, powers, duties, and discretions granted to the managers. Any such assignment or delegation may be either for a specified time or until the assignment or delegation is revoked by a written instrument signed by {Option 1: managers holding a majority of the Profit-Sharing Percentages} {Option 2: each of the managers} {Option 3: a majority of the managers}. {Option: Pursuant to this 00, the management powers of the initial managers shall be assigned and delegated as follows until such time as the assignment and delegation is revoked by a written instrument signed by {Option 1: managers holding a majority of the Profit-Sharing Percentages} {Option 2: each of the managers} {Option 3: a majority of the managers}:

(i) ____________ shall be the President. The President shall preside at all meetings of members and managers. The President shall exercise, subject to the control of the managers and the members, a general supervision over the affairs of the Company, and shall perform generally all duties incident to the office and such other duties as may be assigned to the President from time to time by the managers.

(ii) ____________ shall be the Vice President. The Vice President shall perform all duties of the President in the President’s absence or during the President’s inability to act. The Vice President shall have such further duties as may be assigned to the Vice President by the managers.
(iii) ____________ shall be the Secretary. The Secretary shall keep the minutes of all proceedings of the managers and of the members and shall make a proper record of same. The Secretary shall have such further duties as may be assigned to the Secretary by the managers.

(iv) ____________ shall be the Treasurer. The Treasurer shall maintain custody of the funds and securities of the Company which may come into the Treasurer’s hands, and shall do with the same as may be ordered by the managers. When necessary or proper, the Treasurer may endorse on behalf of the Company, for collection, checks, notes, and other obligations. The Treasurer shall deposit the funds of the Company to its credit in such hands and depositories as the managers may, from time to time, designate. The Treasurer shall also have such further duties as may be assigned to the Treasurer by the managers.}

(c) Procedures.

(i) Meetings. Meetings of the managers may be called by {Option 1: any manager} {Option 2: managers holding a majority of the Profit-Sharing Percentages} {Option 3: a majority of the managers} and meetings of the members may be called by {Option 1: any member} {Option 2: members holding a majority of the Profit-Sharing Percentages} {Option 3: a majority of the members}. Any meeting shall be held at such place as may be specified in such call.

(ii) Notice of Meetings. Unless waived, written notice of the time and place of each meeting of the managers or members shall be given to each manager or member, as the case may be, either by personal delivery or by mail, at least ten (10) days before the meeting by the manager(s) or member(s) calling such meeting. The notice need not specify the purposes of the meeting. Any manager or member, either before or after any meeting, may waive, in writing, any notice required to be given by this Agreement. In addition, the attendance of a manager or member at a meeting without protesting, prior to the commencement of the meeting, the lack of proper notice shall be deemed to be a waiver by such manager or member of notice of such meeting.

(iii) Telephone Meetings. Managers or members may participate in a meeting by means of telephone conference or other similar communications equipment if all persons participating can hear each other. Any manager or member participating in a meeting by these means shall be deemed present in person at the meeting.

(iv) Action Without a Meeting. Any action which may be authorized or taken at any meeting of the managers or members may be authorized or taken without a meeting with the written approval of sufficient managers or members, as the case may be, to authorize or take such action at a meeting. Any such writing shall be filed with the Company’s records and notice of such action shall be provided to any managers or members who have not signed such writing before such action may be taken.

(v) Minutes. A duly authorized manager or member shall keep minutes of each meeting of the managers or members which shall include a record of attendance, actions
determined to be taken by the managers or members, reports discussed, and any other pertinent information.

Section 8.05 Payment of Managers’ Expenses. {Option: Any manager shall be paid by the Company, upon the manager’s request, for all reasonable and necessary expenses directly or indirectly incurred by such manager in the conduct of the Company business as well as in preparing, filing, and distributing any tax return, financial report, or other document required to be prepared, filed, or distributed under this Agreement.}

Section 8.06 Indemnification of Members and Managers. The Company shall indemnify to the fullest extent permitted under Section 1705.32 of the Ohio Revised Code any person who was or is a party or who is threatened to be made a party to any threatened, pending, or completed action or suit because he or she is or was a member or manager of the Company.}

Article IX. Transfer Of Membership Interests

{Option 1 – Section 9.01 and 9.02:

Section 9.01 Restrictions on Sale or Exchange.

(a) Notwithstanding any provision to the contrary in this Agreement, without the consent of the managers, the sale or exchange of any membership interests shall not be permitted if such interests sought to be sold or exchanged, when added to the total of all other interests sold or exchanged within the period of twelve (12) consecutive months ending with the proposed date of the sale or exchange, results in the termination of the Company under Section 708 of the Code.

(b) The membership interests have not been registered under the Securities Act of 1933, as amended, and applicable state securities laws but were issued pursuant to an exemption from such registration. Notwithstanding any provisions to the contrary in this Agreement, no reoffers, reoffers for sale, or resale of the membership interests may be made except pursuant to an effective registration statement under the Securities Act of 1933, as amended, and applicable state securities laws or pursuant to an exemption from such registration evidenced by an opinion of counsel or other evidence satisfactory to the managers.

Section 9.02 Rights of Transferees. A transferee of a membership interest pursuant to any transfer in accordance with the provisions of this Agreement shall be entitled to participate in all allocations and distributions pursuant to this Agreement with respect to such interest allocated to the transferee and to succeed to the capital account representing the transferred interest. However, until and unless such transferee is admitted as a member pursuant to this Agreement, such transferee shall not be entitled to any other rights or privileges of a member, including without limitation any rights to cast any vote or to give any consent under any provision of this Agreement, or otherwise to approve, authorize, or consent to, or to withhold approval, authorization, or consent of, any action which requires the approval, authorization, or consent of any member under this Agreement or applicable law and, except to the extent assumed by agreement, does not have liability as a member solely because of the transfer. A transferee shall be admitted as a member upon (i) the consent of all remaining members and (ii) the transferee agreeing to be bound by this Agreement.}
Section 9.03 Definitions. For purposes of this Article IX, the following terms shall have the following meanings:

(a) “Voluntary Transfer” shall mean any transfer, encumbrance, or other disposition (either directly or indirectly by sale, pledge, gift, or any other disposition) of any membership interest (or any interest therein) other than an Involuntary Withdrawal.

(b) “Involuntary Withdrawal” shall mean, with respect to any member, (i) adjudication of bankruptcy or insolvency of the member or death or adjudication of incompetence of the member, if the member is a natural person, or (ii) the dissolution or other termination of the existence (whether by merger, consolidation, or otherwise) of the member, if the member is a corporation, partnership, trust, or other entity or association other than pursuant to a merger, consolidation, or other transaction in which the successor to the member acquires all or substantially all of the assets, capital stock, partnership interests, or other ownership interests of that member.

Section 9.04 Voluntary Transfers.

(a) Subject to Section 9.2(c), a member may make a Voluntary Transfer of the whole or a portion of any membership interest only with the written consent of {Option 1: each of the members other than member desiring to make the Voluntary Transfer} {Option 2: members (other than the member desiring to make the Voluntary Transfer) holding a majority of the Profit-Sharing Percentages (exclusive of the Profit-Sharing Percentages of the member desiring to make the Voluntary Transfer)} {Option 3: members (other than the member desiring to make the Voluntary Transfer) holding _____ percent (___%) of the Profit-Sharing Percentages (exclusive of the Profit-Sharing Percentages of the member desiring to make the Voluntary Transfer)} {Option 4: managers (other than the member desiring to make the Voluntary Transfer if such member is a manager) holding a majority of the Profit-Sharing Percentages (exclusive of the Profit-Sharing Percentages of the member desiring to make the Voluntary Transfer if such member is a manager)} {Option 5: each of the managers} {Option 6: a majority of the managers (other than the member desiring to make the Voluntary Transfer if such member is a manager)}, which consent may be withheld in their discretion, and only if the following conditions are satisfied:

(i) An assignment instrument in form and substance reasonably satisfactory to counsel to the Company is delivered to the Company and contains an expression by the transferee of its intention to be substituted as a member and an agreement to be bound by all of the terms and provisions of this Agreement, as the same may have been amended;

(ii) The transferee shall agree to pay and shall pay all reasonable expenses incurred by the Company in connection with the assignment and substitution;

(iii) The Company shall receive the opinion of legal counsel reasonably acceptable to it (at the expense of the transferee) or other evidence satisfactory to counsel for the
Company to the effect that such assignment and substitution will not violate federal or state securities laws; and

(iv) Both the transferor and the transferee members agree to indemnify and hold the Company and the other members harmless from any loss, liability, or damage arising out of the assignment and substitution.

(b) Subjection to Section 9.2(c), any transferee of a membership interest in the Company shall not become a member unless and until {Option 1: each of the members other than member desiring to make the Voluntary Transfer} {Option 2: members (other than the member desiring to make the Voluntary Transfer) holding a majority of the Profit-Sharing Percentages (exclusive of the Profit-Sharing Percentages of the member desiring to make the Voluntary Transfer)} {Option 3: members (other than the member desiring to make the Voluntary Transfer) holding _____ percent (____%) of the Profit-Sharing Percentages (exclusive of the Profit-Sharing Percentages of the member desiring to make the Voluntary Transfer)} {Option 4: managers (other than the member desiring to make the Voluntary Transfer if such member is a manager) holding a majority of the Profit-Sharing Percentages (exclusive of the Profit-Sharing Percentages of the member desiring to make the Voluntary Transfer if such member is a manager)} {Option 5: each of the managers} {Option 6: a majority of the managers (other than the member desiring to make the Voluntary Transfer if such member is a manager)} consent in writing to such substitution, which consent may be withheld in their sole discretion.

(c) The written consent required in Sections 9.2(a) and 9.2(b) is waived and, therefore deemed given, for Voluntary Transfers to Permitted Transferees. “Permitted Transferees” shall mean a

(i) Spouse of a member (other than a spouse who is legally separated under a decree of separate maintenance or a spouse who is a party to a pending divorce proceeding);

(ii) Descendant of a member (including descendants by adoption);

(iii) Parent or sibling of a member;

(iv) Descendant of a sibling of a member (including those by adoption); and

(v) Trust created for the benefit of anyone described in clauses (i) through (iv) of this section 9.2(c).

Section 9.05 Involuntary Withdrawal. Upon any Involuntary Withdrawal of any member, the personal representative or successor in interest of such member, as the case may be, shall be entitled to receive, to the extent assigned, distributions of cash and other property and the allocations of income, gain, loss, deduction, credit, or similar items to which the member would have been entitled. The member shall no longer remain a member or retain those rights his transferee is not entitled to receive. However, no such transferee shall become a member without the written consent of {Option 1: each of the members} {Option 2: members holding a majority of the Profit-Sharing Percentages} {Option 3: members holding _____ percent (____%) of the Profit-Sharing Percentages} {Option 4: managers.
managers holding a majority of the Profit-Sharing Percentages} {Option 5: each of the managers} {Option 6: a majority of the managers}, which consent may be withheld in their sole discretion.

Section 9.06 Restrictions on Sale or Exchange.

(a) Notwithstanding any provision to the contrary in this Agreement, without the consent of the managers, the sale or exchange of any membership interests shall not be permitted if such interests sought to be sold or exchanged, when added to the total of all other interests sold or exchanged within the period of twelve (12) consecutive months ending with the proposed date of the sale or exchange, results in the termination of the Company under Section 708 of the Internal Revenue Code.

(b) The membership interests have not been registered under the Securities Act of 1933, as amended, and applicable state securities laws but were issued pursuant to an exemption from such registration. Notwithstanding any provisions to the contrary in this Agreement, no reoffers, reoffers for sale, or resale of the interests may be made except pursuant to an effective registration statement under the Securities Act of 1933, as amended, and applicable state securities laws or pursuant to an exemption from such registration evidenced by an opinion of counsel or other evidence satisfactory to the managers.

Section 9.07 Rights of Transferees. A transferee of a membership interest pursuant to any transfer in accordance with the provisions of this Agreement shall be entitled to participate in all allocations and distributions pursuant to this Agreement with respect to such interest allocated to the transferee and to succeed to the capital account representing the transferred interest. However, until and unless such transferee is admitted as a member pursuant to this Agreement, such transferee shall not be entitled to any other rights or privileges of a member, including without limitation any rights to cast any vote or to give any consent under any provision of this Agreement, or otherwise to approve, authorize, or consent to, or to withhold approval, authorization, or consent of, any action which requires the approval, authorization, or consent of any member under this Agreement or applicable law and, except to the extent assumed by agreement, does not have liability as a member solely because of the transfer.

Section 9.08 Definitions. For purposes of this Article IX, the following terms shall have the following meanings:

(a) “Appraised Value of the Membership Interest” shall mean the value of a Membership Interest determined in accordance with Section 9.3(e).

(b) “Business Day” shall mean any weekday other than one that is declared a legal holiday by either the federal government or the State of Ohio.

(c) “Member” shall mean the owner of a Membership Interest, regardless of whether such owner (i) is a member under Chapter 1705 of the Ohio Revised Code or (ii) has any voting rights under this Agreement.
(d) “Membership Interest” shall mean all or part of (i) any membership interest in the Company or (ii) any rights or obligations associated with a membership interest.

(e) “Notice” shall mean any notice required to be given under this Article IX and any Notice shall be deemed to be given when the provider of such Notice deposits such Notice, addressed to the Notice recipients at their respective addresses as such addresses are reflected in the Company’s records, in the United States mail, postage prepaid.

(f) “Offeree Member” shall mean each Member other than the Offering Member.

(g) “Offering Member” shall mean (i) the Member whose Membership Interest is the subject of an intended Transfer or (ii) the Transferee of a Transfer that is not permitted under this Agreement, and who is required to offer to sell such Membership Interest in accordance with Section 9.3.

(h) “Person” shall mean any natural person; partnership, limited partnership, trust, estate, association, limited liability company, or corporation; any custodian, nominee, trustee, executor, administrator, or other fiduciary; or any other individual or entity in its own or any representative capacity.

(i) “Transfer” shall mean any gift, sale, transfer, alienation, pledge, encumbrance, or other manner of disposal of any Membership Interest voluntarily, involuntarily, by operation of law, or otherwise.

(j) “Transferee” shall mean the Person who obtains or, if not permitted by this Agreement, would obtain in any capacity a Membership Interest as the result of a Transfer or an attempted Transfer.

Section 9.09 Restrictions on Transfers.

(a) Transfers Prohibited. A Member shall not Transfer a Membership Interest except as specifically authorized in this Agreement. Any Transfer or attempted Transfer in contravention of this Agreement shall be null and void and of no force or effect, and the Membership Interest that is the subject of such Transfer or attempted Transfer shall be deemed to be offered to the Members (other than the violating or noncomplying Member) and the Company pursuant to Section 9.3; provided, that the Notice Date for purposes of Section 9.3(a) shall be the date that the managers provide Notice to the Members (other than the violating or noncomplying Member) of (i) such Transfer or attempted Transfer and (ii) the Members’ rights under this Section 9.2(a) and Section 9.3. The managers shall provide the Notice required by the preceding sentence at such time as the managers decide to do so or, if earlier, upon the request of any Member (including the violating or noncomplying Member).

This Section 9.2(a) and the requirements to offer Membership Interests contained herein shall be binding upon the Members and/or any executor, administrator, receiver, trustee or custodian in bankruptcy, or other personal or legal representative of a Member; pledgee; and/or Transferee or purchaser of a Membership Interest sold or Transferred by court order, on execution, at any judicial or creditor sale, or otherwise.
(b) Transfers of All Interests in Capital, Profits, and Losses. In addition to the other restrictions on Transfers of Membership Interests in this Agreement, a Member may only Transfer all of such Member’s interest in the capital, profits, and losses of the Company.

(c) Conditions to Transfer. A Transfer shall be subject to prior exercise, or termination unexercised, of the rights of refusal granted under Section 9.3 and the satisfaction of the following conditions:

(i) An assignment instrument in form and substance reasonably satisfactory to counsel to the Company is delivered to the Company containing an expression by the Transferee of such Transferee’s intention to be substituted as a Member and an agreement to be bound by all of the terms and provisions of this Agreement, as the same may have been amended;

(ii) The Transferee agrees to pay and shall pay all reasonable expenses incurred by the Company in connection with the assignment and substitution;

(iii) The Company receives the opinion of legal counsel reasonably acceptable to it (at the expense of the Transferee) or other evidence satisfactory to counsel for the Company to the effect that such assignment and substitution will not violate federal or state securities laws;

(iv) Both the Transferor and the Transferee Members agree to indemnify and hold the Company and the other Members harmless from any loss, liability, or damage arising out of the assignment and substitution; and

(v) The Transferor satisfies any indebtedness the Transferor may owe the Company.

Section 9.10 Rights of Refusal. Prior to any intended Transfer of a Membership Interest by a Member, such Member shall offer to sell such Membership Interest pursuant to this Section 9.3.

(a) Notice of Intent to Transfer and Notice Date. An Offering Member shall give written Notice of the intended Transfer to the Company. Such Notice shall specifically identify the Membership Interest proposed to be Transferred. Upon receipt of the Offering Member’s Notice, the Company shall immediately deliver Notice of such proposed Transfer to each of the Offeree Members. For purposes of this Section 9.3, the Notice Date shall be the date that the Company gives the Notice required in the preceding sentence.

(b) Rights of First Refusal. The Offeree Members shall have first rights of refusal to purchase all but not less than all of the Membership Interest which is the subject of such proposed Transfer.

Such rights may be exercised by any or all of the Offeree Members by written Notice of exercise delivered to the Offering Member and the Company no later than the close of business of the tenth (10th) Business Day after the Notice Date. If there is more than one Offeree Member, Notice of exercise shall specify the maximum portion of such Membership Interest which the Offeree Member is willing to purchase pursuant to this Section 9.3(b). Such Notice of exercise shall irrevocably obligate the Offeree Member to purchase that
maximum portion, or any lesser portion, of such Membership Interest as determined pursuant to this Section 9.3(b).

If the sum of the maximum portions of such Membership Interest specified by the Offeree Members exceeds the Membership Interest available pursuant to this Section 9.3(b), the available Membership Interest shall be allocated among the Offeree Members in proportion to the Profit-Sharing Percentages of each respective Offeree Member as of the close of business on the day when the Notice under Section 9.3(a) was given.

(c) Rights of Second Refusal. To the extent that the rights of first refusal granted pursuant to Section 9.3(b) are not exercised to purchase the entire Membership Interest that is the subject of the proposed Transfer, the Company shall have second rights of refusal to purchase all, or any portion of, the Membership Interest that (i) was the subject of the proposed Transfer but (ii) was not purchased by the Offeree Members pursuant to Section 9.3(b).

Such rights shall be exercised by the Company by written Notice of exercise delivered to the Offering Member no later than the close of business of the twentieth (20th) Business Day after the Notice Date. The Notice of exercise shall specify the portion of the Membership Interest that the Company is purchasing pursuant to this Section 9.3(c). The Notice of exercise shall irrevocably obligate the Company to purchase that portion of such Membership Interest.

If the sum of the maximum portions of such Membership Interest specified by the Offeree Members and the Company is less than the Membership Interest available pursuant to Sections 9.3(b) and 9.3(c), the Transfer described in the Notice may be effected; provided, however, if the Transfer described in the Notice is not effected within forty (40) days after the Notice Date, the Transfer described in the Notice shall once again be subject to the provisions of this Section 9.3.

(d) Transfers of Voting Rights. Unless a Transfer (whether intended or not intended) is subject to Sections 9.3(a), 9.3(b), and if applicable 9.3(c), the Transferee of such Transfer shall have no right to exercise any rights or privileges associated with the Transferred Membership Interest, including without limitation any rights to cast any vote or to give any consent under any provision of this Agreement, or otherwise to approve, authorize, or consent to, or to withhold approval, authorization, or consent of, any action which requires the approval, authorization, or consent of any Member under this Agreement or applicable law. If the Transfer to such Transferee was subject to Sections 9.3(a), 9.3(b), and if applicable 9.3(c), such Transferee shall be entitled to exercise such rights and privileges associated with such Transferee’s Membership Interest.

(e) Purchase Price. The Purchase Price for a Membership Interest shall be the Appraised Value of the Membership Interest. The Appraised Value of the Membership Interest shall be the value of the Membership Interest on the date of the Notice specified in Section 9.3(a) as determined by an appraiser appointed by the managers. For this purpose, the appraiser shall not take into account any control premiums, control discounts, marketability discounts, or other similar discounts or premiums. The appraiser shall be regularly engaged in the
appraisal of businesses and interests in businesses for a fee. The appraiser shall not have previously acted in any capacity for any Member or manager.

(f) Terms of Purchase. The terms of any purchase of a Membership Interest under Sections 9.3(b) or 9.3(c) shall be as follows:

(i) Unless otherwise mutually agreed by the affected parties, the closing of such purchase shall take place at the principal office of the Company at 10:00 a.m. on the tenth (10th) Business Day after the last day for exercise of any right to purchase in Sections 9.3(b) or if applicable 9.3(c).

(ii) Payment of the purchase price shall be made at the closing in cash or other immediately available funds.

Section 9.11 Additional Transfer Restrictions.

(a) Notwithstanding any provision to the contrary in this Agreement, without the consent of each of the nontransferring members (as such term is defined in Chapter 1705 of the Ohio Revised Code), the sale or exchange of any Membership Interests shall not be permitted if such Membership Interests sought to be sold or exchanged, when added to the total of all other Membership Interests sold or exchanged within the period of twelve (12) consecutive months ending with the proposed date of the sale or exchange, results in the termination of the Company under Section 708 of the Internal Revenue Code of 1986, as amended.

(b) The Membership Interests have not been registered under the Securities Act of 1933, as amended, and applicable state securities laws but were issued pursuant to an exemption from such registration. Notwithstanding any provisions to the contrary in this Agreement, no reoffers, reoffers for sale, or resale of the Membership Interests may be made except pursuant to an effective registration statement under the Securities Act of 1933, as amended, and applicable state securities laws or pursuant to an exemption from such registration evidenced by an opinion of counsel or other evidence satisfactory to the nontransferring members (as such term is defined in Chapter 1705 of the Ohio Revised Code).

{Option: ARTICLE X

Article X. Merger or Consolidation

Section 10.01 Approval of Agreement of Merger or Consolidation. The Company may merge or consolidate with one or more other entities provided that an agreement of merger or consolidation meeting the requirements of the Ohio Revised Code is approved by (i) {Option 1: managers holding a majority of the Profit-Sharing Percentages} {Option 2: each of the managers} {Option 3: a majority of the managers}, and (ii) {Option 1: each of the members} {Option 2: members holding a majority of the Profit-Sharing Percentages} {Option 3: members holding _____ percent (%) of the Profit-Sharing Percentages}. For purposes of all actions that the Ohio Revised Code authorizes to be taken by the representatives of an entity in connection with any such merger or consolidation, the managers of the Company shall constitute its representatives.
Section 10.02 Dissenters’ Rights. No member of the Company shall be entitled to relief as a dissenting member pursuant to Sections 1705.40 and 1705.41 of the Ohio Revised Code or any successor provisions.

{Option: ARTICLE X - Article will renumber if Option above is deleted.}

Article XI. Withdrawal, Dissolution, and Termination

Section 11.01 Withdrawal. No individual member shall have the right to withdraw from the Company. {None of the events set forth in Section 1705.15(C)-(J) of the Ohio Revised Code shall constitute an event of withdrawal.}

Section 11.02 Dissolution Events. The Company shall be dissolved upon the occurrence of any of the following events (an “Event of Termination”) set forth or 00

(a) By the written agreement of all of the members; or

(b) Upon the occurrence of any of the following events, unless the Company is continued by the written consent of {Option 1: all of the members (other than the member with respect to whom the event has occurred)} {Option 2: members (other than the member with respect to whom the event has occurred) holding a majority of the Profit-Sharing Percentages (exclusive of the Profit-Sharing Percentages of the member with respect to whom the event has occurred)} {Option 3: members (other than the member with respect to whom the event has occurred) holding ______ percent (___%) of the Profit-Sharing Percentages (exclusive of the Profit-Sharing Percentages of the member with respect to whom the event has occurred)} {Option 4: each of the managers (other than the member with respect to whom the event has occurred if such member is a manager)} within ninety (90) days after the notice to the members required by 00 is given:

{Option 1:

(i) A member makes an assignment for the benefit of creditors;

(ii) A member files a voluntary petition in bankruptcy;

(iii) A member is adjudicated a bankrupt or insolvent;

(iv) A member files a petition or answer in any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief proceeding under any law or rule that seeks for himself or herself any of those types of relief;

(v) A member files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him or her in any proceeding seeking the relief described in Section 10.2(b)(iv); or

(vi) A period of one hundred twenty days (120) has elapsed after the commencement against a member of any proceeding seeking the relief described in Section 10.2(b)(iv), and the proceeding has not been dismissed; a period of ninety (90) days
has elapsed after the appointment of a trustee, receiver, or liquidator for a member or for all or any substantial part of a member’s properties without the member’s consent or acquiescence, and the appointment has not been vacated or stayed; or a period of ninety (90) days has elapsed after the expiration of that stay, and the appointment has not been vacated.

{Option 2: - this will renumber when Option 1 is deleted.

(i) adjudication of bankruptcy or insolvency of the member or death or adjudication of incompetence of the member, if the member is a natural person, or

(ii) the dissolution or other termination of the existence (whether by merger, consolidation, or otherwise) of the member, if the member is a corporation, partnership, trust, or other entity or association other than pursuant to a merger, consolidation, or other transaction in which the successor to the member acquires all or substantially all of the assets, capital stock, partnership interests, or other ownership interests of that member.}

(c) Upon the occurrence of any of the events specified in 00, the affected member shall give written notice of the event to the Company. Such notice shall be given no more than five (5) days after the occurrence of the event. Upon receipt of the notice, the Company shall immediately deliver notice of the event to each of the other members and managers and such notice shall inform the members or managers, as the case may be, of their right to continue the Company in accordance with 00 within ninety (90) days after such notice is given.

(d) As soon as practicable, following the occurrence of any of the events specified in this 0 which effect the dissolution of the Company, an appropriate representative of the Company shall execute and deliver to the Ohio Secretary of State for filing a certificate of dissolution in a form that is prescribed by the Ohio Secretary of State and that includes the effective date of the dissolution.

Section 11.03 Winding Up, Liquidation, and Distribution of Assets.

(a) Upon dissolution of the Company pursuant to 0, the Company business shall be terminated, its liabilities discharged, and its property distributed as hereinafter described, and the Company shall be liquidated. A reasonable period of time shall be allowed for the orderly termination of the Company business, discharge of its liabilities, and distribution of its remaining property, subject to 0 and 0 and within the periods of time provided in 0.

(b) For purposes of the termination of the Company business, discharge of its liabilities, and distribution of its remaining property, the {Option 1: managers} {Option 2: members} shall select one or more persons to act as the Liquidation Manager and have the exclusive power and authority to act on behalf of the Company, to terminate the Company business, to sell and convey any real or personal property of the Company for such consideration and upon such terms and conditions as the Liquidation Manager deems appropriate, to discharge the Company liabilities, to establish any reserves that the Liquidation Manager deems reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company, to pay expenses, debts, and liabilities of the Company, and to distribute its
property as provided in 00. If more than one person is selected to serve as Liquidation Manager, any disagreements that cannot be resolved between them shall be decided by the {Option 1: managers} {Option 2: members}.

(c) The Liquidation Manager shall apply all Company property to pay all expenses of liquidation and to satisfy all debts and liabilities of the Company as provided by the Ohio Revised Code and distribute any remaining property as provided by 0.

Section 11.04 Final Distribution.

(a) All cash and other property remaining for distribution to members pursuant to 0 following satisfaction of all debts and liabilities after an Event of Termination shall be divided among and distributed to the members in accordance with their positive capital accounts, after giving effect to all contributions, distributions, and allocations for all periods. If any member has a deficit Capital Account balance (after giving effect to all contributions, distributions, and allocations for all periods), such member shall have no obligation to make any contribution to the capital of the Company with respect to such deficit, and such deficit shall not be considered a debt owed to the Company or to any other person for any purpose whatsoever. The foregoing provision and the other provisions of this Agreement relating to distributions are intended to comply with Regulation Section 1.704-1(b)(2)(ii)(b) and shall be interpreted and applied in a manner consistent with such Regulation.

(b) All distributions under this 0 shall be made not later than the end of the Company’s taxable year in which the Event of Termination occurs or, if later, the ninetieth (90th) calendar day following the Event of Termination; provided that (i) reserves determined by the Liquidation Manager as reasonably required to provide for liabilities (contingent or otherwise) of the Company need not be distributed until such liabilities are satisfied and (ii) installment obligations and other amounts owed to the Company and not collected prior to the end of such taxable year or ninetieth (90th) calendar day following such taxable year need not be distributed until received; and provided further that such retention of funds is permitted by and shall comply with the provisions of Regulation Section 1.704-1(b). Distributions pursuant to this 0 may, in the discretion of the Liquidation Manager, be distributed to a trust established for the benefit of the members for the purposes of liquidating Company assets, collecting amounts owed to the Company, and paying any contingent or unforeseen liabilities or obligations of the Company or of the members arising out of or in connection with the Company. The assets of any such trust shall be distributed to the members from time to time, in the reasonable discretion of the Liquidation Manager, in the same proportions as the amount distributed to such trust by the Company would otherwise have been distributed to the members pursuant to this Agreement.

Section 11.05 Deemed Liquidation. Notwithstanding any other provisions of this 0, in the event the Company is liquidated within the meaning of Regulation Section 1.704-1(b)(2)(ii)(g) but no event of dissolution has occurred, Company property shall not be liquidated, the Company’s liabilities shall not be paid or discharged, and the Company’s affairs shall not be wound up.
Article XII. Representations And Warranties Of Members

Each of the undersigned members hereby represents and warrants as follows:

(a) The member has sufficient knowledge and experience to evaluate the merits and risks of his or her investment in the Company;

(b) The member has been provided with, or given reasonable access to, full and fair disclosure of all information material to his or her investment in the Company;

(c) The member understands that no market is likely to exist for his or her interest in the Company, and he or she does not anticipate the need to sell his or her interest in the Company in the foreseeable future;

(d) The member is purchasing his or her interest in the Company for his or her own account for investment purposes only and not with a view to distribution;

(e) The member has not purchased his or her interest as a result of any general solicitation or general advertising, including advertisements, articles, notices, or other communications published in any newspaper, magazine, or similar media or broadcast over radio or television, or any seminar or meeting whose attendees have been invited by general solicitation or general advertising;

(f) The member understands that the offering of membership interests in the Company will not be registered under the Securities Act of 1933, as amended (the “Act”), nor the securities law of any state, and accordingly these securities may not be offered, sold, pledged, hypothecated, or otherwise transferred or disposed of in the absence of registration or the availability of an exemption from registration under the Act and any applicable state securities law. The member further understands that the Company is under no obligation to register his or her membership interest on his or her behalf or to assist him or her in complying with an exemption from registration; and

(g) The member can withstand the loss of his or her entire investment without suffering serious financial difficulties.

Article XIII. Miscellaneous Provisions

Section 13.01 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. The parties hereto hereby consent to the exclusive jurisdiction of the courts of the State of Ohio in Franklin County, and the United States District Court, for the Southern District of Ohio, Eastern Division and waive any contention that any such court is an improper venue for enforcement of this Agreement.

Section 13.02 Inurement. This Agreement shall be binding upon, and inure to the benefit of, all parties hereto, their personal and legal representatives, guardians, successors, and assigns to the extent, but only to the extent, that assignment is provided for, in accordance with, and permitted by, the provisions of this Agreement.
Section 13.03 No Limit on Personal Activities. Nothing herein contained shall be construed to limit in any manner the members or their respective agents, servants, and employees in carrying out their own respective businesses or activities.

Section 13.04 Further Assurances. The members and the Company agree that they and each of them will take whatever action or actions are deemed by counsel to the Company to be reasonably necessary or desirable from time to time to effectuate the provisions or intent of this Agreement, and to that end the members and the Company agree that they will execute, acknowledge, seal, and deliver any further instruments or documents which may be necessary to give force and effect to this Agreement or any of the provisions hereof or to carry out the intent of this Agreement or any of the provisions hereof.

Section 13.05 Gender and Headings. Throughout this Agreement, where such meanings would be appropriate: (a) the masculine gender shall be deemed to include the feminine and the neuter and vice versa, and (b) the singular shall be deemed to include the plural and vice versa. The headings herein are inserted only as a matter of convenience and reference, and in no way define or describe the scope of the Agreement or the intent of any provisions hereof.

Section 13.06 Entire Agreement. This Agreement sets forth all of the promises, agreements, conditions, understandings, warranties, and representations among the parties hereto with respect to the Company and the subject matter hereof and supersedes all prior negotiations, discussions, undertakings, and agreements between the parties, and there are no promises, agreements, conditions, understandings, warranties, or representations, oral or written, express or implied, among them other than as set forth herein.

Section 13.07 Severability. In the event that any part, article, section, paragraph, or clause of this Agreement shall be held to be indefinite, invalid, or otherwise unenforceable, the entire Agreement shall not fail on account thereof, and the balance of the Agreement shall continue in full force and effect.

Section 13.08 Amendments. This Agreement may not be modified or amended except with the written consent of all members.

Section 13.09 Execution of Additional Instruments. Each member hereby agrees to execute and deliver to the Company within five (5) days after receipt of the Company’s written request therefor, such other and further statements of interest and holdings, designations, powers of attorney, and other instruments as the Company deems necessary to comply with any laws, rules, or regulations.

Section 13.10 Title to Company Properties. Title to all Company properties shall be held in the name of the Company.

Section 13.11 Membership Interests. Each of the members and any substituted or additional members admitted hereby covenant, acknowledge, and agree that all membership interests in the Company shall for all purposes be deemed personalty and shall not be deemed realty or any interest in the real or personal property owned by the Company.

Section 13.12 Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or
waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

Section 13.13 Not for Benefit of Creditors. The provisions of this Agreement are intended only for the regulation of relations among members and the Company. This Agreement is not intended for the benefit of nonmember creditors and does not grant any rights to, or confer any benefits on, nonmember creditors or any other person who is not a member.

Section 13.14 Insurance. The Company shall have the right to make application for, take out, and maintain in effect such policies of life insurance on the lives of any or all of the members, whenever and in such amounts as the managers shall determine. Each member shall exert his or her best efforts and fully assist and cooperate with the Company in obtaining any such policies of life insurance.

Section 13.15 Counterparts. This Agreement may be executed in separate multiple counterparts which together shall constitute one Agreement, binding on all signatories, notwithstanding that they are not signatories to the same Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

COMPANY:    MEMBERS:
{Name}, an Ohio limited liability company __________________________________________

____________________________________
{Manager Name}, Manager

____________________________________
{Manager Name}, Manager
EXHIBIT A TO OPERATING AGREEMENT

Exhibit A.1 Allocation of Profits and Losses. After giving effect to the special allocations set forth in A.2 and A.3 hereof, Profits and Losses shall be allocated to the members in proportion to their Profit-Sharing Percentages.

Exhibit A.2 Special Allocations. The following special allocations shall be made in the following order:

(a) Limitation on Allocation of Losses. To the extent the allocation of Losses under A.1 or the second sentence of this A.2(a) would cause any member to have an Adjusted Capital Account deficit at the end of any taxable year of the Company, then such Losses shall not be allocated to such members. Such Losses shall then, subject to the first sentence of this A.2(a), be specially allocated to the remaining members in proportion to the remaining members’ respective Profit-Sharing Percentages.

(b) Profit Chargeback. To the extent any Losses have been allocated to any members under the second sentence of A.2(a), then Profits shall thereafter first be specially allocated to such members in proportion to their respective Profit-Sharing Percentages until the Profits specially allocated under this A.2(b) to each such member equals the Losses specially allocated to each such member under the second sentence of A.2(a).

(c) Minimum Gain Chargeback. Except as otherwise provided in Regulation Section 1.704-2(f), notwithstanding any other provision of this Exhibit A, if there is a net decrease in Partnership Minimum Gain during any Company fiscal year, each member shall be specially allocated items of Company income and gain for such fiscal year (and, if necessary, subsequent fiscal years) in an amount equal to such member’s share of the net decrease in Partnership Minimum Gain, determined in accordance with Regulation Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each member pursuant thereto. The items to be so allocated shall be determined in accordance with Regulation Sections 1.704-2(f)(6) and 1.704-2(j)(2). This A.2(c) is intended to comply with the minimum gain chargeback requirement in Regulation Section 1.704-2(f) and shall be interpreted consistently therewith.

(d) Partner Minimum Gain Chargeback. Except as otherwise provided in Regulation Section 1.704-2(i)(4), notwithstanding any other provisions of this Exhibit A, if there is a net decrease in Partner Nonrecourse Debt Minimum Gain attributable to a Partner Nonrecourse Debt during any Company fiscal year, each member who has a share of the Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Regulation Section 1.704-2(i)(5), shall be specially allocated items of Company income and gain for such fiscal year (and, if necessary, subsequent fiscal years) in an amount equal to such member’s share of the net decrease in Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Regulation Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each member pursuant thereto. The items to be so allocated shall be determined in accordance with Regulation Sections 1.704-2(i)(4) and 1.704 2(j)(2). This A.2(d) is intended to comply with
the minimum gain chargeback requirement in Regulation Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(e) Qualified Income Offset. In the event any member unexpectedly receives any adjustments, allocations, or distributions described in Regulation Section 1.704-1(b)(2)(ii)(d)(4) through (6), items of Company income and gain shall be specially allocated to each such member in an amount and manner sufficient to eliminate, to the extent and in the manner required by Regulation Section 1.704-1(b)(2)(ii)(d), the Adjusted Capital Account deficit of such member as quickly as possible, provided that an allocation pursuant to this A.2(e) shall be made if and only to the extent that such member would have an Adjusted Capital Account deficit after all other allocations provided for in this Exhibit A have been tentatively made as if this A.2(e) were not in the Agreement.

(f) Gross Income Allocation. In the event any member has a deficit Capital Account at the end of any Company fiscal year which is in excess of the sum of (i) the amount, if any, such member is obligated to restore and (ii) the amount such member is deemed to be obligated to restore pursuant to the penultimate sentences of Regulation Sections 1.704-2(g)(1) and 1.704-2(i)(5), each such member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this A.2(f) shall be made if and only to the extent that such member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Exhibit A have been tentatively made as if this A.2(f) and A.2(e) hereof were not in the Agreement.

(g) Nonrecourse Deductions. Nonrecourse Deductions for any fiscal year shall be specially allocated among the members in the same manner as Losses are allocated for such fiscal year.

(h) Partner Nonrecourse Deductions. Any Partner Nonrecourse Deductions for any fiscal year shall be specially allocated to the member who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which such Partner Nonrecourse Deductions are attributable in accordance with Regulation Section 1.704-2(i)(1).

(i) Section 754 Adjustment. To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Section 734(b) or Section 743(b) of the Code is required, pursuant to Regulation Section 1.704-1(b)(2)(iv)(m)(2) or (4), to be taken into account in determining Capital Accounts as the result of a distribution to a member in complete liquidation of such member’s interest in the Company, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the members in accordance with their interests in the Company in the event that Regulation Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the member to whom such distribution was made in the event that Regulation Section 1.704-1(b)(2)(iv)(m)(4) applies.

(j) Allocations Relating to Taxable Issuance of Partnership Interest. Any income, gain, loss, or deduction realized as a direct or indirect result of the issuance of an interest in the Company by the Company to a member (the “Issuance Items”) shall be allocated among the members
so that, to the extent possible, the net amount of such Issuance Items together with all other allocations under this Agreement to each member, shall be equal to the net amount that would have been allocated to each such member if the Issuance Items had not been realized.

Exhibit A.3 Curative Allocations. The allocations set forth in A.2(c) - (i) hereof (the “Regulatory Allocations”) are intended to comply with certain requirements of the Regulations. It is the intent of the members that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss, or deduction pursuant to this A.3. Therefore, notwithstanding any other provision of this Exhibit A (other than the Regulatory Allocations), the managers shall make such offsetting special allocations of income, gain, loss, or deduction in whatever manner they determine appropriate so that, after such offsetting allocations are made, each member’s Capital Account balance is, to the extent possible, equal to the Capital Account balance such member would have had if the Regulatory Allocations were not part of the Agreement and the Company items were allocated pursuant to A.1, A.2(j), and A.4. In exercising their discretion under this Section A.3, the managers shall take into account future Regulatory Allocations under A.2(c) and A.2(d) that, although not yet made, are likely to offset other Regulatory Allocations previously made under A.2(g) and A.2(h).

Exhibit A.4 Other Allocation Rules.

(a) Generally, all Profits and Losses allocated to the members shall be allocated among them in proportion to their Profit-Sharing Percentages. In the event additional members are admitted to the Company on different dates during any fiscal year, the Profits (or Losses) allocated to the members for each such fiscal year shall be allocated among the members in proportion to the Profit-Sharing Percentages each holds from time to time during such fiscal year in accordance with Section 706 of the Code, using any convention permitted by law and selected by the managers.

(b) For purposes of determining the Profits, Losses, or any other items allocable to any period, Profits, Losses, and any such other items shall be determined on a daily, monthly, or other basis, as determined by the managers using any permissible method under Section 706 of the Code and the Regulations thereunder.

(c) The members are aware of the income tax consequences of the allocations made by this Exhibit A and hereby agree to be bound by the provisions of this Exhibit A in reporting their shares of Company income and loss for income tax purposes.

(d) Solely for purposes of determining a member’s proportionate share of the “excess nonrecourse liabilities” of the Company within the meaning of Regulation Section 1.752-3(a)(3), the members’ interests in Company profits are the same as the members’ Profit-Sharing Percentages.

(e) To the extent permitted by Regulation Section 1.704-2(h)(3), the managers shall endeavor to treat distributions of Net Cash Flow as having been made from the proceeds of a Nonrecourse Liability or a Partner Nonrecourse Debt only to the extent that such distributions would cause or increase an Adjusted Capital Account deficit for any member.
Exhibit A.5 Tax Allocations: Code Section 704(c). In accordance with Section 704(c) of the Code and the Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Gross Asset Value.

In the event the Gross Asset Value of any Company asset is adjusted pursuant to subsection (ii) of the definition of “Gross Asset Value”, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Section 704(c) of the Code and the Regulations thereunder.

Any elections or other decisions relating to such allocations shall be made by the managers in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this A.5 are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any member’s Capital Account or share of Profits, Losses, other items, or distributions pursuant to any provision of this Agreement.

Exhibit A.6 Definitions. Unless the context otherwise requires, the terms defined below as used in this Exhibit A (and elsewhere in this Agreement) shall have the following meanings:

“Adjusted Capital Account” shall at any time mean, with respect to any member, such member’s Capital Account at such time (i) increased by any amounts such member is obligated to restore or is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5) and (ii) decreased by the items described in Regulation Section 1.704-1(b)(2)(ii)(d)(4) through (6). The foregoing definition of Adjusted Capital Account is intended to comply with the provisions of Regulation Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistent therewith.

“Capital Account” shall mean with respect to each member the Capital Account maintained for such member in accordance with the following provisions:

(i) To each member’s Capital Account there shall be credited such member’s Capital Contributions, such member’s distributive share of Profits and any items in the nature of income or gain which are specially allocated to such member pursuant to Exhibit A hereof, and the amount of any Company liabilities assumed by such member in connection with Company property distributed to such member or which are secured by any Company property distributed to such member.

(ii) To each member’s Capital Account there shall be debited the amount of cash and the Gross Asset Value of any Company property distributed to such member pursuant to any provision of this Agreement, such member’s distributive share of losses and any items in the nature of expenses or losses which are specially allocated to such member pursuant to Exhibit A hereof, and the amount of any liabilities of such member assumed by the Company in connection with property contributed by such member to the Company or which are secured by any property contributed by such member to the Company.
(iii) In the event all or a portion of the interest in the Company is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred interest.

(iv) In determining the amount of any liability for purposes of subsections (i), (ii), and (iii) above, there shall be taken into account Section 752(c) of the Code and any other applicable provisions of the Code and Regulations.

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulation Section 1.704-1(b) and shall be interpreted and applied in a manner consistent with such Regulation. In the event the managers shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto (including, without limitation, debits or credits relating to liabilities that are secured by contributed or distributed property or that are assumed by the Company or any member in connection with contributed or distributed property), are computed in order to comply with such Regulation, the managers may make such modification, provided that it is not likely to have a material effect on the amounts distributable to any member upon the dissolution of the Company. The managers also shall (i) make any adjustments that are necessary and appropriate to maintain equality between the Capital Accounts of the members and the amount of Company capital reflected on the Company’s balance sheet as computed for book purposes, in accordance with Regulation Section 1.704-1(b)(2)(iv)(g) and (ii) make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Regulation Section 1.704-1(b).

“Capital Contributions” shall mean, with respect to any member, the amount of money and the initial Gross Asset Value of any property (other than money) contributed to the Company with respect to the interests held by such member. The principal amount of a promissory note which is not readily traded on an established securities market and which is contributed to the Company by the maker of the note (or a person related to the maker of the note within the meaning of Regulation Section 1.704-1(b)(2)(ii)(c)) shall not be included in the Capital Account of any member until the Company makes a taxable disposition of the note or until (and to the extent) principal payments are made on the note, all in accordance with Regulation Section 1.704-1(b)(2)(iv)(d)(2).

“Code” shall mean the Internal Revenue Code of 1986, as amended (or any corresponding provisions of succeeding law).

“Depreciation” shall mean for any period, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such period, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such period, Depreciation for such asset shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such period bears to such beginning adjusted tax basis; provided, however, that if the adjusted basis for federal income tax purposes of an asset at the beginning of such period is zero, depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the managers.

“Gross Asset Value” shall mean, with respect to any asset, the asset’s adjusted basis for federal income tax purposes, except as follows:
(i) The initial Gross Asset Value of any asset contributed by a member to the Company shall be the gross fair market value of such asset, as determined by the contributing member and the Company;

(ii) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by the members, as of the following times: (a) the acquisition of an additional interest in the Company by any new or existing member in exchange for more than a de minimis capital contribution; (b) the distribution by the Company to a member of more than a de minimis amount of Company property as consideration for an interest in the Company; and (c) the liquidation of the Company within the meaning of Regulation Section 1.704-1(b)(2)(ii)(g); provided, however, that the adjustments pursuant to clauses (a) and (b) above shall be made only if the managers reasonably determine that such adjustments are necessary or appropriate to reflect the relative economic interests of the members in the Company;

(iii) The Gross Asset Value of any Company asset distributed to any member shall be adjusted to equal the gross fair market value of such asset on the date of distribution as determined by the distributee and the Company; and

(iv) The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Section 734(b) or Section 743(b) of the Code, but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulation Section 1.704-1(b)(2)(iv)(m); provided, however, that Gross Asset Values shall not be adjusted under this subsection (iv) to the extent the managers determine that an adjustment pursuant to subsection (ii) hereof is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this subsection (iv).

If the Gross Asset Value of an asset has been determined or adjusted pursuant to subsection (i), (ii), or (iv) hereof, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses.

“Minimum Gain” shall have the meaning set forth in Regulation Sections 1.704-2(b)(2) and 1.704-2(d).

“Nonrecourse Deductions” shall have the meaning set forth in Regulation Section 1.704-2(b)(1).

“Nonrecourse Liability” shall have the meaning set forth in Regulation Section 1.704-2(b)(3).

“Partner Nonrecourse Debt” shall have the meaning set forth in Regulation Section 1.704-2(b)(4).

“Partner Nonrecourse Debt Minimum Gain” shall mean an amount with respect to each Partner Nonrecourse Debt equal to the Partnership Minimum Gain that would result if such Partner Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Regulation Section 1.704-2(i)(3).

“Partner Nonrecourse Deductions” shall have the meaning set forth in Regulation Sections 1.704-2(i)(1) and 1.704-2(i)(2).
“Partnership Minimum Gain” shall have the meaning set forth in Regulation Sections 1.704-2(b)(2) and 1.704-2(d).

“Profits” and “Losses” shall mean, for any period, an amount equal to the Company’s taxable income or loss for such period, determined in accordance with Section 703(a) of the Code (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code shall be included in taxable income or loss), with the following adjustments:

(i) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits and Losses hereunder shall be added to such taxable income or loss;

(ii) Any expenditures of the Company described in Section 705(a)(2)(B) of the Code or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulation Section 1.704-1(b)(2)(iv)(i) and not otherwise taken into account in computing Profits or Losses hereunder shall be subtracted from such taxable income or loss;

(iii) In the event the Gross Asset Value of any Company asset is adjusted pursuant to subsections (ii) or (iii) under the definition of “Gross Asset Value”, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits and Losses;

(iv) Gain or Loss resulting from any disposition of Company property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value;

(v) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such fiscal year or other period;

(vi) To the extent an adjustment to the adjusted tax basis of any company asset pursuant to Section 734(b) or Section 743(b) of the Code is required, pursuant to Regulation Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a member’s interest in the Company, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Profits or Losses; and

(vii) Notwithstanding the foregoing, any items which are specially allocated pursuant to Exhibit A hereof shall not be taken into account in computing Profits or Losses.

The amounts of the items of Company income, gain, loss, or deduction available to be specially allocated pursuant to Exhibit A hereof shall be determined by applying rules analogous to those set forth above.
“Regulations” shall mean the Income Tax Regulations, including Temporary Regulations, promulgated under the Code, as such regulations may be amended (including corresponding provisions of succeeding regulations). Regulations shall also mean Proposed Regulations but only to the extent the managers choose to follow such Proposed Regulations.
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SAMPLE SETTLEMENT STATEMENT

SETTLEMENT STATEMENT

Matter: Jones v. Smith
Firm File No.: 999-999
Date of Engagement: May 5, 2005
Date of Settlement: October 1, 2007

Initial Funds and Attorney’s Fees:
Settlement Funds Received $27,500.00
Attorney’s Fees at 33 % $9,075.00

Costs and Expenses:
04/23/2006 Medical Records 1,721.11
05/06/2006 Records copies 132.00
1,853.11

Net to Plaintiffs 16,571.89

By signing below, you authorize the law firm of Brown Campos & Marshall to deposit your settlement funds to trust and to release funds pursuant to the calculations above. You agree that funds will ONLY be released to all parties (you included) upon confirmation from the firm’s banking institution that initial settlement funds (i.e. Settlement Funds Received) have cleared and said funds are available for withdrawal.

Authorization to Endorse:
I/We, ________________________________, hereby authorize the law firm of Brown, Campos and Marshall to endorse any and all checks on my behalf to effectuate the prompt deposit and subsequent disbursement of the settlement funds related to the aforementioned case/matter.

Date: _______________________

Plaintiff: ______________________________

Plaintiff: ______________________________
# SAMPLE INCOME STATEMENT

### Franklin & Associates

### Income Statement

**As of 12/31/06**

### Revenue

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**Total Revenue** $390,956.17

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**Total Expenses** $343,736.05

**NET INCOME** $47,220.12
### Franklin & Associates
**Balance Sheet**
*As of 12/31/06*

#### Current Assets
- **Account Name**
  - General Operating Account: $2,028.75
  - Trust Bank Account: $75,000.50
  - Client Disb Recov: $65,776.42

**Total Current Assets**: $67,805.17

#### Fixed Assets
- **Furniture & Fixtures**: $23,953.11
- **Computer Hardware**: $98,357.65
- **Accumulated Depreciation**: -$63,298.57

**Total Fixed Assets**: $59,012.19

**Total Assets**: $126,817.36

#### Short-Term Liabilities
- **Client Trust Funds Held**: $75,000.50
- **FUTA Withholding**: $125.07
- **OH SUI Liability**: $357.93
- **Local Withholding**: $3,678.53
- **Line of Credit (Principal Balance)**: $30,000.00

**Total Short-Term Liabilities**: $109,162.03

**Total Liabilities**: $109,162.03

#### Equity
- **Partner Equity**: $3,958.09
- **Income for Alloc**: $13,697.24

**Total Equity**: $17,655.33

**Total Liabilities & Equity**: $126,817.36
# CLIENT INTAKE SHEET

- **File Number:** ____________________  
- **Date Form Completed:** ____________
- **□ New Client □ Existing Client**

**Client:** ____________________  
**SS#:** ________________  
**□ M □ F**

**Spouse:** ____________________  
**SS#:** ________________  
**□ M □ F**

**Address:** ____________________  
**Home Telephone:** ________________

**Client Employer:** ____________________  
**Telephone:** ____________________

**Spouse Employer:** ____________________  
**Telephone:** ____________________

**Insurance Information:** ____________________

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**Case Name and Number:** ____________________  
**Area of law:** ____________________

**Originating Attorney:** ____________________

**Assigned Attorney(s):** ____________________

**Referred By □ Client □ Attorney:** ____________________

*Initial and date the following items when completed:*

- **Conflict Check:** ________________  
- **Fee Contract:** ________________
- **Engagement Letter:** ________________  
- **Docket Entered:** ________________
- **Statute Of Limitations/Time Deadline:** ________________
GENERAL INFORMATION QUESTIONNAIRE

NOTE: Questions 1 - 12 in this questionnaire are designed to be useful in most civil and criminal representations. Questions 13 - 20 should be added when screening prospective personal injury litigation clients. The questionnaire can be completed by the attorney during a first meeting with prospective clients or mailed to the client in advance and reviewed at a first meeting.)

1. Name and contact information

   Full name ________________________________________________________
   Present home address ____________________________________________
   Home phone __________________________ Business phone ______________

2. Have you ever used, or been known by, any other name than that shown above?
   □ Yes   □ No
   If so, list here each other name, and state when and why each other name was used:
   ________________________________________________________________
   ________________________________________________________________

3. State the addresses where you have resided during the past 10 years, and the period of time at each residence, including dates:

   ________________________________________________________________ Dates __________
   ________________________________________________________________ Dates __________
   ________________________________________________________________ Dates __________
   ________________________________________________________________ Dates __________

4. Place of birth __________________________ Date __________
   Have you ever used any other date or place of birth? □ Yes □ No
   If so, explain: ________________________________________________________
   ________________________________________________________________

5. Are you presently married? □ Yes □ No
   Date of marriage ______________ Place of marriage ______________________
   Full name of spouse _________________________________________________
   Have you ever been divorced or legally separated? □ Yes □ No
6. List the names, ages and addresses of all those (including children) who are dependent upon you for support, and your relationship to each:

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<tr>
<th>Name</th>
<th>Address</th>
<th>Age</th>
<th>Relationship</th>
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7. Employment History

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Most recent employer

Employer’s address

Ending date ____________ Beginning date ____________

Job classification

Beginning pay rate ____________ Ending pay rate ____________

Reason(s) for leaving

Employer prior to last listed

Employer’s address

Ending date ____________ Beginning date ____________

Job classification

Beginning pay rate ____________ Ending pay rate ____________

Reason(s) for leaving

8. Educational Background

What education have you had, including any special job training?

9. Military Background

Have you been in the military service? □ Yes □ No

If so, give service number

Type of discharge

Dates of service

Have you ever been rejected for military service because of physical, mental or other reasons? □ Yes □ No
If so, explain: __________________________________________________

Do you have any service-connected injuries or disabilities?  □ Yes  □ No
If so, give details: __________________________________________________

Percentage of disability
Present condition of service-connected injury or disability

Do you receive payments for service-connected injuries?  □ Yes  □ No

10. Prior Claims and Lawsuits
Many cases have been damaged beyond repair by a history of other claims and lawsuits which your attorney did not know about. It is NOT the fact that one has had other claims or lawsuits that is important, for one will not be penalized by a court or jury if the claims are reasonable and genuine. It is the DENIAL of previous claims and suits that damages the case. List every claim you have ever made for personal injury or property damage, and give details:

a) Date ___________ Nature of claim __________________________
   Against whom ____________________________ Suit filed? ___________
   Result _______________________________________

b) Date ___________ Nature of claim __________________________
   Against whom ____________________________ Suit filed? ___________
   Result _______________________________________

c) Date ___________ Nature of claim __________________________
   Against whom ____________________________ Suit filed? ___________
   Result _______________________________________

11. Police Record
Under the rules of evidence, there are circumstances under which a person's prior criminal record may be relevant in a proceeding. The other attorney will make a complete investigation of your background, and we must be PREPARED AGAINST development of unfavorable evidence. List here any arrest(s) and state the date, place, charge, court, case number and outcome:

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
12. **Workers’ Compensation**
   Have you ever made a claim for Workers’ Compensation? □ Yes □ No
   If so, when was the date of your injury? __________________________________________

   Are you receiving payments at present? □ Yes □ No
   If so, explain: _________________________________________________________________

   Who is handling your Workers’ Compensation action? ________________________________

   Are you receiving disability payments from any source other than Workers’ Compensation at present? □ Yes □ No
   If so, explain: _________________________________________________________________

13. **Date of Injury or Accident**
   (If you are not certain about a specific date, discuss with the lawyer immediately).

   Location of Accident/Injury ______________________________________________________
   Names of other people involved in the accident/injury: ______________________________

   Have you missed any time from work as a result of your injury? □ Yes □ No
   If so, list the dates you were unable to work:
   FROM: __________________________ TO: __________________________
   FROM: __________________________ TO: __________________________
   FROM: __________________________ TO: __________________________
   FROM: __________________________ TO: __________________________

14. **Prior Physical Examinations**
   List here EVERY physical examination you have ever had during the last five years, for any purpose, including employment, promotion, insurance, selective service, armed forces, etc. State date, name of doctor, and result, as fully as you can recall.

   a) Date________________ Place _______________________
      Name of doctor ____________________________
      Purpose _____________________________________
      Result ________________________________________
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<tr>
<th>Date</th>
<th>Place</th>
<th>Name of doctor</th>
<th>Purpose</th>
<th>Result</th>
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15. Prior Accidents and Injuries
Failure to mention other accidents or injuries can undermine a lawsuit, no matter how trivial they may seem. List here every such incident, whether it resulted in a claim for damages or not, stating the date, place, nature of the accident and extent of your injuries. If none, so state:

________________________________________________________________________
________________________________________________________________________

16. Illness or Disease
No matter how trivial an illness, either before or since your accident, we must know about it. This is particularly true if there is any connection with your present physical complaints. At the trial, the defendant will have a complete history of your past physical condition, made available through medical and hospital records, veteran’s records, insurance records, etc.

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<tr>
<th>Date</th>
<th>Nature of illness</th>
<th>Duration</th>
<th>Treated by</th>
<th>Hospitalized?</th>
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<td>Yes/No</td>
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a)  

b)  

c)  

Do you now, or have you ever had trouble with:
Eyes?  Yes  No  
Ears?  Yes  No
If so, give details: ________________________________________________________________

Have you ever worn glasses?  □ Yes  □ No
An artificial eye?  □ Yes  □ No
A hearing aid?  □ Yes  □ No
If so, give details: ________________________________________________________________

Have you ever worked with radioactive substances, asbestos or any other substance alleged to cause diseases, such as cancer?  □ Yes  □ No
If so, please explain: ________________________________________________________________

Have you ever been denied life or health insurance? _________________________________
If so, by which company and why? _________________________________

17. Alcoholism, Drug Addiction, and Venereal Disease
If you have ever been treated for these conditions, please be sure to discuss it with your attorney CONFIDENTIALLY, long before your case goes to trial.

18. The Injury
State all injuries known to be a result of the accident:
______________________________________________________________
______________________________________________________________
______________________________________________________________
______________________________________________________________
______________________________________________________________

Length of time confined to bed __________________________________________
Length of time confined to house _________________________________________

State present physical condition, including scars, disabilities, deformities, discomforts, etc., due to the injuries:
______________________________________________________________
______________________________________________________________
______________________________________________________________
______________________________________________________________

19. List all physicians and surgeons you have seen for your injury/injuries.
a) Name__________________________________________________________
Address_________________________________________________________
Nature of treatment ____________________________________________
Still under care? ____________________________________________

b) Name ____________________________________________________
Address _____________________________________________________
Nature of treatment __________________________________________
Still under care? ____________________________________________

c) Name ____________________________________________________
Address _____________________________________________________
Nature of treatment __________________________________________
Still under care? ____________________________________________

d) Name ____________________________________________________
Address _____________________________________________________
Nature of treatment __________________________________________
Still under care? ____________________________________________

e) Name ____________________________________________________
Address _____________________________________________________
Nature of treatment __________________________________________
Still under care? ____________________________________________

CONTINUE ON BACK, IF NECESSARY

20. List all nurses, therapists or other health care professionals that you have seen.

a) Name ____________________________________________________
Address _____________________________________________________
Nature of treatment __________________________________________
Still under care? ____________________________________________

b) Name ____________________________________________________
Address _____________________________________________________
Nature of treatment __________________________________________
Still under care? ____________________________________________

c) Name ____________________________________________________
Address _____________________________________________________
Nature of treatment __________________________________________
Still under care? ____________________________________________
ENGAGEMENT LETTER

(On Attorney Letterhead)

Date

Dear Mr./Ms. ________________:

This letter will confirm our conference on ____ (date) ____ and the fact that our office is now representing you in the following matter(s): ____ (full description of legal services to be provided, including, if applicable, the level of services--e.g. administrative review, trial, appeal, etc.) ____

We are glad to have you as a client in regard to this particular situation(s). If you wish for us to represent you in any matter other than that stated above, we will be happy to review that matter with you and determine if we can be of service to you.

Our fees are outlined in our fee agreement, which we have already discussed and a copy of which is enclosed. (Note: If agreement has not yet been signed, send two signed copies of fee agreement and request that the client sign one and return it to you.)

We will keep you informed as this matter progresses. In the meantime, if you have any questions, please call. Thank you for choosing our firm to represent you in this matter.

Sincerely yours,

Enclosure
NON-ENGAGEMENT LETTER

(On Attorney Letterhead)

Date

Dear Mr./Ms. ______________:

In response to your request when you contacted this firm, I have reviewed the information you provided regarding possible representation in the matter of: _________________. I appreciate the confidence you have expressed in our firm; however, the firm has decided not to represent you in this matter. Therefore, I am returning with this letter the documents you provided for my review. In declining to represent you in this matter, please understand that we are not expressing any opinion concerning the merits of your case.

If you still wish to pursue this legal matter or make a claim against any other party, you should be aware that the passage of time may bar you from doing so. Since time is always important in legal matters and could be critically short in your case, if you decide to contact another law firm about this matter, I recommend that you do so immediately.

We are not charging any fee for reviewing your case, since we have declined to represent you and are not expressing an opinion as to the merits of your case. If you need legal assistance for other matters in the future, I hope you will again consider our firm. Should you have any questions, please contact me.

Very truly yours,
DISENGAGEMENT LETTER

(On Attorney Letterhead)

Date

Dear Mr./Ms.__________________________:

When I undertook to represent you concerning __ (describe nature of representation, including case number, if any) ______________ you signed a Fee Agreement agreeing to pay for the legal services provided to you and the costs and disbursements made on your behalf. At the present time, our records reflect that you have not paid our invoices in a timely manner as you agreed you would.

Our records reflect that you have paid $______ (report amount), leaving a balance of $______ (report amount), which is now due and owing. Due to the apparent breakdown in our professional relationship, enclosed please find a Motion to Withdraw as Counsel, which I intend to file. I will be happy to continue to represent you if we can make acceptable financial arrangements in the very near future. Otherwise, my further representation of you has terminated.

If you wish to be represented in this matter, you should contact another attorney immediately. Keep in mind that, if your case is not filed in a timely manner, you may be barred forever from pursuing your claim. (Include specific time limit, if known.) You may wish to call the Lawyer Referral Service at (provide number).

Please contact our office to make arrangements for return of your file. I will be happy to give it directly to you or to forward it to your new attorney, if you wish. It is our policy to maintain a file such as yours for _____ years, after which time it will be destroyed. I look forward to hearing from you soon regarding these arrangements.

Very truly yours,
HOURLY FEE AGREEMENT

The undersigned, __________________________ (hereinafter known as Client) hereby requests the legal services of __________________________ (hereinafter known as Attorney) for representation concerning __________________________.

Legal services will be billed on an hourly basis, with time being charged in tenths of an hour, at the following rates:

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<th>Per Hour</th>
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<td>Partners</td>
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<td>Associates</td>
<td>_____</td>
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<td>Paralegals</td>
<td>_____</td>
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<tr>
<td>Law Clerks</td>
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Attorney will use his/her discretion in staffing, to provide services in the most economical manner possible. Please note that all time spent on your behalf in this matter, including time spent in telephone conversations, will be charged to you. The initials of the person performing the services will be noted on the invoice.

In addition to fees for legal services, Attorney will be entitled to payment or reimbursement for costs and expenses incurred for services, including but not limited to: photocopying, messenger and delivery service, fees for computerized research services, travel (including mileage, parking, air fare, lodging, meals and ground transportation), long distance telephone, telecopying, depositions, court costs, and filing fees. Client agrees that Client is responsible for such expenses relating to this case. Depending upon the type of case you have, expenses may also include, but are not limited to: medical treatment, charges for medical examinations and reports, the cost of accident and credit reports, hospital records, and pictures. Attorney is hereby authorized to charge such expenses and have such expenses billed to Client and Client agrees to pay them promptly. Unless other arrangements are made at the outset, fees and expenses of others will not be paid by Attorney and will be the responsibility of and billed directly to the Client.

Client agrees that Attorney may retain co-counsel, and Attorney agrees that Client will be consulted concerning co-counsel and any fee arrangement with co-counsel prior to retention of or consultation with co-counsel by Attorney.

Invoices for legal services rendered and costs advanced or incurred are issued ______ (indicate time interval, e.g. monthly) and are payable upon receipt. Interest at the rate of ______ percent per month will be added to the balance due on amounts which remain unpaid thirty (30) days or more.

Attorney reserves the right to withdraw from representation if, among other things, Client fails to honor the terms of this FEE AGREEMENT by failing to pay Attorney's invoices, by failing to cooperate or follow Attorney's advice on a material matter, or if any fact or circumstance arises or is discovered that would, in Attorney's view, render our continuing representation unlawful or unethical.
You should be aware of an ethical requirement imposed on all Ohio attorneys, that if a client, in the course of representation by an attorney, perpetrates a fraud upon any person or tribunal, the attorney is obligated to call upon the client to rectify the same, and if the client refuses or is unable to do so, the attorney is required to reveal the fraud to the affected person or court.

The outcome of negotiations and litigation is subject to factors which cannot always be foreseen; therefore, it is understood that Attorney has made no promises or guarantees to Client concerning the outcome of this representation and cannot do so. Nothing herein shall be construed as such a promise or guarantee.

This **FEE AGREEMENT** pertains only to legal services rendered and costs and expenses for the matter expressly stated above. It does not relate to any other matter for which Client seeks representation by Attorney. Any other matter will require a separate **FEE AGREEMENT**.

Date: ______________________  Client: ____________________________

Date: ______________________  Attorney: __________________________

Date: ______________________  Witness: ____________________________
The undersigned, ________________, (hereinafter known as Client) requests the legal services of ________________ (hereinafter known as Attorney) for representation to assert a claim for damages against ________________ arising out of an occurrence on or about ________________ in which Client was injured or claims to have sustained injury and damage.

Attorney shall perform all reasonable, necessary and usual services in matters of this kind including, but not limited to: investigation of facts, gathering of evidence, preparation of exhibits, interviewing witness(es), compiling records of expenses, and negotiations with the adversary’s insurance carrier or other representative.

If a settlement is not effected which is satisfactory to the Client, Attorney agrees to (specify: initiate alternative dispute resolution proceedings, arbitration, or bring an action against) ________________ to attain the benefits provided by judicial oversight of the claim.

In connection with this, Attorney will file all necessary court papers, attend pretrial conferences and status conferences, prepare appropriate interrogatories, requests for admissions and requests for production of documents, attend and take appropriate depositions, and continue settlement negotiations. If a settlement satisfactory to Client cannot be attained, Attorney agrees to try the case in the trial court unless permitted to withdraw pursuant to Rule 1.16(b) of the Rules of Professional Conduct.

If a judgment in favor of Client is obtained in the trial court and the adversary appeals, Attorney shall provide all appropriate services in resistance to the appeal, including review of the trial court’s record, preparation of appropriate briefs, and oral argument in the reviewing courts.

If the trial of the case should result in a judgment that is adverse to Client, Attorney shall not be obligated to appeal. Attorney shall advise Client of the opinion concerning the advisability of appeal and may undertake to provide services as appellate counsel under a new, separate and distinct FEE AGREEMENT.

The fee of Attorney shall be contingent upon the result obtained. There shall be no legal obligation by Client to pay Attorney any fee if nothing is recovered from the adversary or from the Client’s insurer in an underinsured or uninsured situation.

However, Client is responsible for all expenses incurred in the prosecution of the claim. Client gives permission to Attorney to advance the payment of costs and expenses, but Client acknowledges the Client remains responsible for payment of said costs and expenses and agrees to reimburse Attorney for any such costs and expense for which Attorney advances payment. Client may reimburse Attorney as costs and expenses are incurred or, if Client reimburses
Attorney upon settlement, Client agrees that such costs and expenses shall be paid out of Client's portion of the settlement proceeds.

The legal fee of Attorney shall be ______ percent of the gross amount recovered, if settlement is achieved without the necessity of filing suit; ______ percent of the gross settlement or judgment if it is necessary to file suit; and ______ percent of the ultimate gross settlement or judgment following the trial and any appeal undertaken by the adversary.

In the event of discharge by Client and in the event Client subsequently recovers money or other property as a result of this action, Client shall be indebted to Attorney for legal fees based upon the value in ______ (name of city, Ohio) of legal services rendered and for any costs and expenses advanced by Attorney.

Attorney reserves the right to withdraw from representation if Client fails to cooperate or follow Attorney’s advice on a material matter, or if any fact or circumstance arises or is discovered that would, in Attorney’s view, render continuing representation unlawful or unethical. Client should be aware of an ethical requirement imposed on all Ohio attorneys that if a client, in the course of representation by an attorney, perpetrates a fraud upon any person or court, the attorney is obligated to call upon the client to rectify the same, and if the client refuses or is unable to do so, the attorney is required to reveal the fraud to the affected person or court.

Date: ___________  Client: _____________________________________________
Date: ___________  Attorney: ________________________________
Date: ___________  Witness: ________________________________
MAIL AND FAX LOG FORM

For ________________________________

Attorney ________________________________

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<th>Disposition</th>
<th>File No.</th>
<th>Nature of Mail Received</th>
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Date

Dear Mr./Ms. ______________:

This will confirm your appointment to meet with me in our office on ______________ at ______ o'clock. The purpose of our meeting will be ______________________. Please bring (specify documents, pictures, etc.) ______________ with you when you come.

I look forward to meeting with you again. If you have any questions before our meeting, please feel free to call.

Very truly yours,
MONTHLY STATUS LETTER

(On Attorney Letterhead)

Date

Dear Mr./Ms. ________________:

In order to keep you informed on a regular basis regarding your case, I will be sending you status reports such as this one on a monthly basis. Please do not hesitate to contact me at any time for more detailed information concerning the progress of your case.

Since our last meeting on____________________, the following has happened: ______
(specify court appearances, discovery, motions filed, etc.) ________________________
______________________________
______________________________

I have enclosed copies of correspondence, filings, other documents our firm has prepared on your behalf since our last status report, and a monthly bill for our services, which I trust you will find in order.

Thank you for allowing our firm to represent you in this matter. We will continue to apply our best efforts on your behalf and report to you as your case continues.

Very truly yours,
MONTHLY BILL SAMPLE FORM

(On Attorney Letterhead)

Date: ___________  Invoice Number: ______________
Client Name: ________________________________________
Client Address: _______________________________________
Re: ____________________________

STATEMENT

Legal Services:
Date: ___________
Description of Services: ___________________________________

Attorney Initials: ___________
Total hours: ______ x ($_______) hr. = ______

Costs:
Date: ___________
Description of Costs: ___________________________________

Total Costs: ___________

Total Bill: ___________

(Add information concerning unpaid bills, etc. here)
DEPOSITION SCHEDULING LETTER

Date

Dear Mr./Ms. ________________:

Your discovery deposition has been scheduled for ________ at ______ o'clock here in our offices. I will meet with you in our office at ______ o'clock, one hour prior to the deposition, to answer any questions you may have concerning this matter. Please review the enclosed Deposition Instructions before we meet.

I look forward to seeing you on ______________ for your deposition. Until then, if you have any questions, please feel free to call.

Very truly yours,
DEPOSITION INSTRUCTIONS

(Note: Some of the advice provided below is applicable primarily in personal injury cases. Practitioners will wish to tailor these instructions to suit particular cases.)

Under the law, the other lawyer has a right to take your “discovery deposition.” This means that you will be put under oath and the lawyer will ask you questions relating to this case. The lawyer’s questions and your answers will be taken down by a court reporter. One of your lawyers will be present at all times.

There will be no judge or jury present. However, after the deposition is over, the court reporter may type out all the questions and answers, and both your lawyer and the other lawyer will receive copies. The original may be filed in court.

If your case goes to trial, your deposition may be used in court, particularly in cross-examination of you by the other lawyer should your testimony at trial be different than your testimony at the time of the deposition. The lawyer will want to indicate that you told two different stories. For this reason it is extremely important that you have everything in mind concerning the cause and nature of your injuries, and the facts of the case at the time of the deposition. It would be helpful if you try to refresh your recollection before you have your deposition taken.

The other lawyer at the deposition can ask you questions that may seem as if they are none of his/her business and that, actually, would not be admissible in court. However, the courts allow “discovery” in these depositions, and the lawyer may ask you for “hearsay” and other things that will enable him/her to make further investigation of the case.

For this reason, do not be surprised if we do not object to questions that seem to you to be out of line. If the other lawyer questions you on any subject that is not proper, we will object to the question. If we object to the question and instruct you not to answer it, then you should REFUSE TO ANSWER THE QUESTION. Please answer all other questions. Sometimes we will object for the record, but may still permit you to answer. The only time you should not answer the question is when we instruct you not to answer.

REASONS FOR TAKING THIS DEPOSITION:
The deposition will assist the opposition in evaluating your case for settlement purposes. This is often the first and only opportunity for the other lawyer to see you before the case comes to trial. Therefore, you should be clean and neatly dressed, and courteous and respectful to the other lawyer, and all others in the room. Be prepared to exhibit any injuries that might be visible, so wear the right clothes. Discuss what to wear with us if you have any questions.

You should answer all questions in an honest and straightforward manner.
HOW TO CONDUCT YOURSELF IN THE DEPOSITION:

We know that you would not deliberately lie, but it is important that you do not testify to something that is inaccurate or exaggerated. For this reason, LISTEN TO EACH QUESTION CAREFULLY AND BE SURE THAT YOU UNDERSTAND IT BEFORE ANSWERING. If you do not understand it, ask the other lawyer to rephrase it so you do understand the question, then answer it honestly and in a straightforward manner. If you do not know the answer, do not be afraid to say that you don’t know or don’t recall. No one can remember every small detail. However, you will remember the important things and should give an honest and full answer to questions on these points.

The other lawyer will probably be friendly and will not “bully” you in any manner. His/her theory will probably be that the more he/she can get you to say, the more likely you are to put your “foot in your mouth.” Therefore:

- UNDERSTAND THE QUESTION. You don’t have to hurry to answer.
- ANSWER THAT QUESTION TRUTHFULLY.
- STOP!

Do not volunteer anything. Give a full and complete answer to the question asked, but do not anticipate any other question or attempt to answer it. If the other attorney overlooks any relevant or important questions, that is his/her worry, not yours.

If the other lawyer should be rough in any manner, do not lose your temper. We will be there with you and be certain he/she acts properly.

Speak loudly and clearly enough that everyone can hear and understand you. You must answer out loud, saying “yes” or “no,” as a nod of your head cannot be recorded by the court reporter transcribing your testimony.

PAST INJURIES: (if applicable)
The other lawyer will undoubtedly ask you about injuries you may have sustained in the past. Insurance companies and railroads have central index bureaus where they can get information on all injuries that persons have sustained, where persons have been paid workers’ compensation, and where they have filed suit or recovered from any employer or insurance company. Also, it is common for the other side to check on treatments you have had--medical doctors, osteopaths, chiropractors and hospitals--wherever you have lived and in adjoining areas. Therefore, it is extremely important that you answer every question truthfully.

Also, answer only the question you are asked. In other words, if you are asked what injuries you have had to the same part of your body that was injured this time, then limit your answer to that part
of your body. Or, if you are asked what injuries you have sustained on a certain job or in automobile accidents, then limit your answer to the questions asked. If, however, you are asked generally about any injuries you have had, give the other attorney the information requested concerning any and all injuries of any type and to any part of your body that you have had at any time.

**ACTIVITIES SINCE INJURY:** (if applicable)

Before the trial, perhaps before the deposition, the other side may have investigated what you do at work, at home, in your neighborhood, and any other place you go. It is quite common for them to hire photographers to hide a block or so away, out of sight, and take movies or pictures with a telephoto lens of a person working around the house, on the job, or out fishing, or engaged in other recreational activities.

Fishing, mowing the lawn, working or doing anything else you feel able to do (and that your doctor allows you to do), will not hurt your case in and of itself. However, if you forget that you have engaged in a certain activity and testify at your deposition that you are unable to do so because of your injuries, the other lawyer can seriously damage your case with pictures, movies or witnesses directly contradicting your testimony.

**SUMMARY:**

1. You should be clean, and wear clean, neat clothing.
2. Treat all persons in the deposition room with respect. Consider this an important and solemn occasion.
3. Come prepared to exhibit any and all injuries which you have suffered.
4. Have with you the facts and figures with respect to your time lost from work, amount of wages lost, doctor bills, hospital bills and all other facts with respect to the damages caused as a result of your injury. Review these items before coming to the deposition.
5. Tell the truth.
7. Don’t be afraid of the lawyers.
8. Speak slowly and clearly.
9. Answer all questions directly, giving concise answers to the questions, and STOP TALKING.
10. NEVER VOLUNTEER any information. Wait until the question is asked; answer it and STOP. If you can answer “yes” or “no,” do so and STOP.
11. Do not magnify your injuries or losses.
12. If you don’t know, admit it. Some witnesses think they should have an answer for every question asked. You cannot know all the facts and you do yourself a disservice if you attempt to testify to facts with which you are not acquainted. It is IMPERATIVE that you be HONEST and STRAIGHTFORWARD in your testimony.
13. Do not try to memorize your story. Justice requires only that a witness tell his/her story to the best of his/her ability.

14. Do not answer a question unless you have heard it and clearly understand it. If you have to, ask that it be explained or repeated.

15. Do not guess or estimate time, speed or distance unless you are sure that the estimate is correct, and then make certain that when you answer, you state that this is your estimate. Go over these estimates with us before your deposition is taken.

16. Many of the questions you will be asked will not be admissible at the trial, but the opposition is entitled to an answer in order to help them prepare their case. Many cases are lost because the witness tries to hide something. Many of the questions can be used at the trial to discredit you.

17. If we object to a question, stop talking, and we will instruct you after we object to either answer the question or not to answer it.

18. After the deposition is over, do not discuss anything in the presence of the opposing lawyers or the reporter. If you want to discuss something after the deposition, wait until we are alone.

REMEMBER, perhaps the most important aspect of your lawsuit is YOU AND THE APPEARANCE YOU MAKE. If you give the appearance of earnestness, fairness and honesty, and if in giving your discovery deposition you keep in mind the suggestions we have made, you will be taking a great stride toward successful completion of the litigation in which you are involved.

Because the testimony you give will be your own, there is NO NEED FOR YOU TO TAKE THESE INSTRUCTIONS WITH YOU TO THE DEPOSITION. Your testimony will be more natural if you are not relying too heavily upon instructions.

**Words and Phrases**

We understand that most people have never been involved in a lawsuit. Some of the words and phrases you will hear are not familiar; therefore they are defined here for you, so you can have a better understanding of the legal process. If you hear any other words or phrases you do not understand, do not hesitate to ask your lawyer to explain them to you.

**ALLEGED**: To claim that something is true.

**ANSWER**: The paper filed in the court by the defendant’s lawyers stating their defense to your claims.

**ATTORNEY**: Another word for lawyer.
DAMAGES: The loss, in money, that the plaintiff claims he or she should be awarded. Only after we prove that the defendant is liable are we entitled to ask for money damages.

DEFENDANT: The person or company against whom a lawsuit is filed.

DEPOSITION: Sworn testimony given during the course of the lawsuit. Anyone, a plaintiff, a defendant or a witness, may be deposed. It allows one side to find out exactly what the other side intends to prove.

TO FILE/FILING: The physical act of taking or mailing the pleadings to the courthouse and depositing them with the clerk of courts.

INTERROGATORIES: Questions submitted by one side to the other, filed with the court, which must be answered under oath. Interrogatories usually ask specific questions on the facts of the case.

JUDGMENT: The final decree which ends a part, or all of a lawsuit.

LEGAL ASSISTANT/PARALEGAL: A person on an attorney’s staff who has taken classes in the area of law and who will assist the attorney under his or her supervision in document preparation and information-gathering.

LIABILITY: Legal responsibility. What must be proved against a defendant before the plaintiff is entitled to an award of money damages.

MOTION: A paper, filed with the court, which asks the court to make an order during the lawsuit. The motion may ask for final judgment, a ruling on the admissibility in court of certain evidence, or many more things.

ORDER: Any ruling by the judge on any issue brought up by the parties. An order is signed and filed with the clerk of courts to be placed in the court’s file.

PLAINTIFF: The person who asks the court to award him/her a remedy (e.g. money damages, an injunction, a declaration of rights or responsibilities, etc.)

PLEADINGS: All the papers filed with the clerk of courts during the lawsuit.
STATUTE OF LIMITATIONS: The law which puts an absolute time limit on filing a Complaint. There are different statutes of limitations for different areas of law. For example, in a case involving bodily injury from negligence occurring in Ohio, this date is two years after the date of your injury. There are some exceptions to this law which may allow the filing more than two years after the injury. Always consult an attorney immediately if you believe that you have a claim, and are uncertain as to the statute of limitations for your claim. You may have less than one year from the date of an injury for circumstances to bring your case in court for medical malpractice or other types of claims, so never delay.
Dear Mr./Ms. _____________:

Your case has been set for jury trial on ________________ at _____o'clock in the county courthouse, located at ________________ in _________________. Your case is before Judge ________________ in Courtroom _____.

You will find it most convenient to park (specify parking lots, etc.) ________________. Judge ________________’s courtroom is located on the _____ floor. I will meet you (location) ________ at _______o'clock the day of the trial.

You must plan to be present for this. If you have any questions, please feel free to call.

Very truly yours,
Date:

Re:  

Case Name & Number

Dear Mr./Ms. ________________:

Thank you for allowing our firm to represent you in this matter. Your case is now concluded and we are closing our file. We will retain our file for a period of ________ years.

We are returning all original documents and papers you gave us in connection with this case. You should keep all your information concerning this matter in a safe place in case you need it in the future. If you would like to have anything else from our file, please let us know as soon as possible.

We hope this matter was concluded to your satisfaction. We would appreciate it if you would take a few minutes to complete and return the enclosed client survey. If we may be of assistance in the future to you or to friends or family members who may need legal help, we hope you will contact us.

Very truly yours,
POST-REPRESENTATION SURVEY

How did you find out about our firm?

☐ Referred by family/friend
☐ Knew attorney personally
☐ Advertisement in ________________________________
☐ Other ________________________________

Was our office conveniently located for you? ☐ Yes ☐ No

Did our staff greet you courteously when you came to the office? ☐ Yes ☐ No

Were your phone calls answered pleasantly by staff? ☐ Yes ☐ No

Were your phone calls returned promptly by attorneys? ☐ Yes ☐ No

Did the attorney handling your case explain what the firm would do? ☐ Yes ☐ No

Did you feel the legal fees charged were fair for the services provided? ☐ Yes ☐ No

Did you receive regular bills on your case? ☐ Yes ☐ No

Were you given regular status reports on your case? ☐ Yes ☐ No

Did the attorney handling your case explain the progress of your case? ☐ Yes ☐ No

Did you feel you met with your attorney when you needed to? ☐ Yes ☐ No

Did you feel your attorney cared about you and your case? ☐ Yes ☐ No

Overall, were you satisfied with the legal services you received? ☐ Yes ☐ No

If you need legal representation in the future, would you call our firm? ☐ Yes ☐ No

If a friend needed an attorney, would you refer him/her to our firm? ☐ Yes ☐ No

Please write down any comments or suggestions you may have to help us better serve our clients in the future.

__________________________________________________________________________
__________________________________________________________________________
__________________________________________________________________________

Thank you again. It was our privilege to represent you.
NEWS RELEASE FOR SPECIALISTS

(plaintext)

NEWS RELEASE – D R A F T

FOR IMMEDIATE RELEASE

DATE:

CONTACT: (Issuing attorney name and phone number)

CITY/STATE – (Name of issuing attorney) has been certified by the Ohio State Bar Association as a specialist in (area of law). This certification makes (last name of attorney) one of a small group of attorneys in Ohio to have earned this distinction.

“I am pleased to offer my clients this added expertise,” said (last name of attorney). “I would be pleased to answer questions about (specialty area) or other areas in which my practice is involved. Potential clients can call my law office at (phone number) or visit our web site at (www.).”

(Insert a paragraph or two about the attorney’s credentials, background, community and specialty area involvement, family, etc For example:)

(Last name of attorney specialist) earned his/her undergraduate degree in (major) from (name of college/university). He/she is a graduate of (name of law school). (Last name of lawyer) is licensed to practice in (name of state), and (list other jurisdictions.). He/she has been involved in (number of actions, trials, etc). He/she is a member of (name organizations). He/she has published (list significant publications). He/she is (marital status and children, if applicable). All attorneys licensed to practice law in Ohio must have graduated from an accredited law school and passed an intensive examination. In addition, they must attend continuing legal education courses as required by the Supreme Court of Ohio. Attorneys like (last name of specialist) who devote a large part of their practice to a particular area of the law may choose to go beyond these requirements to earn specialty certification. This means that they have:

• demonstrated substantial and continuing involvement in a particular field of law;
• submit references from other lawyers attesting to their competency in the specialty area;
• attend intermediate or advanced continuing legal education courses in the specialty area in addition to the courses required of all attorneys;
• remain in good standing with the Supreme Court of Ohio;
• maintain minimum professional liability insurance coverage, and
• passed a written examination in the specialty area.

Attorneys who have earned a specialty certification must be re-certified at least every four to seven years and must report annually to the certifying agency.

The Supreme Court of Ohio established a Commission on Certification of Attorneys as Specialists to identify specialties and set minimum standards for certification as specialists.
Agencies that provide ongoing education for lawyers may submit their certification programs to the court for approval. Once accredited by the Supreme Court of Ohio, these agencies can then offer their certification programs to Ohio attorneys who wish to become specialists in those particular fields of law. The Ohio State Bar Association is the largest certifying agency in Ohio and was responsible for certifying (specialist’s last name).

The areas of law approved for specialty certification include: Administrative agency law, Appellate law, Business bankruptcy law, Business law, Commercial and real property law, Residential real property law, Civil trial advocacy, Consumer bankruptcy law, Creditors’ rights/debt collection, Criminal trial advocacy, Elder law, Estate planning, Trust and probate law, Family relations law, Federal taxation law, Labor and employment law, and Workers’ compensation law.

Some of these areas may not yet have accredited specialty programs available, and some have been combined. Other fields of law may be added to the Supreme Court's list in the future.
CONFIDENTIALITY AGREEMENT

Pursuant to Rule 1.17(c)

This CONFIDENTIALITY AGREEMENT is made this _____ day of _______[month], ______ [year] at ___________ [city], Ohio, by and between __________ [name] Buyer and __________ [name] Seller.

WHEREAS, the Buyer desires to obtain and review certain confidential and proprietary information in the possession of Seller that may include the confidences and secrets of clients of the Seller as contained in Seller’s records and files, and;

WHEREAS, the Buyer represents that it is qualified to act under the Ohio Rules of Professional Conduct, Rule 1.17 as a Purchasing Lawyer, and;

WHEREAS, the Seller has agreed to provide the information subject to the terms and conditions of this AGREEMENT and restrictions of the Ohio Rules of Professional Conduct, Rule 1.17(c) and 1.6;

NOW THEREFORE, in consideration of the covenants and conditions hereinafter set forth, the parties agree as follows:

1. Confidentiality. As a condition to the Seller furnishing the Information to the Buyer, the Buyer agrees to treat and handle confidentially the Information and any other information which it obtains concerning the Seller and confidences and secrets of Seller’s clients during the course of Buyer’s review, whether furnished before or after the date of this AGREEMENT pursuant to Ohio Rules of Professional Conduct, Rules 1.17(c) and 1.6. The Information restricted by this AGREEMENT does not include information which (i) becomes generally available to the public; or (ii) becomes available to the Buyer on a non-confidential basis from a source other than the Seller, provided that such source is not bound by a confidentiality agreement with the Seller or is under any statutory or judicial restrictions regarding release of information.

2. No Detrimental Use. The Buyer agrees that the Information will not be used by the Buyer in any way detrimental to the Seller or its clients, and that such Information will be kept confidential by the Buyer. The Buyer agrees that it will make use of the Information only for the purpose specified in this AGREEMENT, and will not use the Information for the purpose of competing with the Seller or otherwise for its benefit at any time in the future. The Buyer agrees that it will not knowingly permit or facilitate such use by any other person or entity without written consent of the Seller.

3. Disclosure of Discussions. Without the prior written consent of the Seller, the Buyer shall not, and will direct its representatives not to, disclose to any person or entity the fact that discussions or negotiations may take place or are taking place concerning a possible transaction between the Buyer and the Seller or any of the terms, conditions or other facts with respect to any such possible transaction, including the status thereof.
4. **Representative.** For the purpose of this AGREEMENT, a representative means an officer or employee of the Buyer, or a law firm, accounting firm, or other entity or person (and their employees) who, in the good faith judgment of the Buyer need to have access to some or all of the Information for the purpose of evaluating any possible transaction. In the event that the Buyer elects to disclose, in good faith, any of the Information to a representative, such representative will be bound by the terms and conditions of this AGREEMENT and the representative shall be jointly and severally liable with the Buyer to the Seller for any breach thereof.

5. **Disclosure Required by Law.** In the event that the Buyer is requested or required by law to disclose any of the Information, it is agreed that the Buyer will provide the Seller with prompt prior notice of such request so that the Seller may seek an appropriate protective order and/or waive compliance with the provisions of this AGREEMENT.

6. **No Representation or Warranty.** Although the Seller will endeavor to make sure that the Information is reliable, the Buyer understands and agrees that the Seller does not make any representation or warranty as to the accuracy or completeness of the Information. The Buyer agrees that neither the Seller nor its agents or shareholders shall have any liability hereunder to the Buyer or any of its representatives resulting from the use of the Information by the Buyer or such representatives.

7. **Return of Materials.** At the request of the Seller, the Buyer shall promptly return to the Seller all written material containing or reflecting any information contained in the Information (whether prepared by the Seller or otherwise). In addition, the Buyer and its representatives will not retain any copies, extracts or other reproductions, in whole or in part, of the Information. The Buyer shall thereafter destroy all documents, memoranda, notes or other writings prepared by the Buyer, or its representatives, which are based on the Information and provide the Seller with written notice of this disposition.

8. **Injunctive Relief.** The Buyer acknowledges that the remedy at law for any breach by it of the terms of this AGREEMENT shall be inadequate and that the damages resulting from such breach are not readily susceptible to being measured in monetary terms. Accordingly, in the event of a breach or threatened breach by the Buyer of the terms of this AGREEMENT, the Seller shall be entitled to immediate injunctive relief and may obtain a temporary order restraining any threatened or further breach. Nothing herein shall be construed as prohibiting the Seller from pursuing any other remedies available to the Seller for such breach or threatened breach, including the recovery of damages from the Buyer. The Buyer further represents that it understands and agrees that the provisions of this AGREEMENT shall be strictly enforced and construed against it.

9. **Non-Waiver.** It is further agreed that no failure or delay by the Seller in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor shall any single or partial exercise therefore preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

10. **Applicable Law.** It is agreed that the law of Ohio shall apply to this AGREEMENT and where applicable the Ohio Rules of Professional Conduct.
IN WITNESS WHEREOF, the parties have executed this CONFIDENTIALITY AGREEMENT on the day and year first written above.

[BUYER]

By: ___________________________[Title]

[Name of Buyer] __________________________

[Signature of Authorized Officer/Agent] _________

Accepted: _______________[Date]

_______________________ [Seller]
CONTRACT OF SALE

Pursuant to Rule 1.17(d)

This CONTRACT is made this ____ day of _____ [month], _____ [year] by and between __________ [name] Buyer of __________ [city], Ohio and __________ [name] Seller of __________ [city], Ohio.

WHEREAS, both Buyer and Seller are attorneys duly licensed to practice in the State of Ohio. Seller has an established law practice with offices located at ___________________________ [address]. Seller desires to sell, and Buyer desires to buy, Seller’s practice identified in and on the terms and conditions for the consideration set forth in this CONTRACT.

THEREFORE, in consideration of the mutual promises and conditions contained in this contract, the parties agree as follows:

1. Buyer agrees that in accord with Ohio Rules of Professional Conduct, Rule 1.17(d)(1-3) (a) he is purchasing the law practice of the Seller in good faith and with the intention of delivering legal services to clients of the Seller so acquired and others in need of legal services; (b) he will honor any fee agreements currently in existence between Seller and existing clients but reserves the right to negotiate fees with clients of Seller for legal representation commenced after the date of sale; and (c) he reserves the right to negotiate for reasonable limitations on the ability of the seller to reenter the practice of law as further defined under terms and conditions of this CONTRACT.

2. Buyer shall purchase from Seller and Seller shall sell to Buyer on the terms and conditions set forth in this CONTRACT the following:
   a. The furniture, fixtures, equipment and library of Seller’s practice as listed on the attached inventory (Exhibit A);
   b. The files and records pertaining to clients of Seller transferred with the consent of the clients as obtained pursuant to Rule __________ of the Ohio Rules of Professional Conduct and the files, books, records, work papers, and other tangible assets of or pertaining to Seller’s practice; these assets include the accounts receivable of Seller’s practice as listed on the attached inventory (Exhibit B);
   c. The leasehold interest owned by Seller under the lease with __________ [name of lessor], dated __________, for the premises in which the offices of Seller’s practice are located; and
   d. All the trade, goodwill, and other intangible assets of Seller’s practice.

3. The total purchase price to be paid by Buyer to Seller for the property subject to this CONTRACT is $__________, allocated to the items of property in accordance with the attached schedule (Exhibit B).
The total purchase price shall be paid by Buyer to Seller as follows: the sum of $__________ on execution of this CONTRACT, receipt of which is acknowledged by Seller, and the balance on execution and delivery to Buyer of the instruments described in Paragraph 4 of this CONTRACT and control of Seller’s practice.

4. The purchase and sale described in this CONTRACT shall be consummated at __________ [time] on __________ [date], at the office of __________ [name] Attorney at Law, __________ [address], at which time and place, on payment to Seller of the balance of the purchase price, Seller shall deliver to Buyer;

a. A bill of sale, duly executed by Seller, conveying all property as described by this CONTRACT to Buyer;

b. An assignment of lease duly executed by Seller and acknowledged before a notary public assigning to Buyer all Seller’s interest under the lease between Seller as Lessee and __________ [name of lessor] as Lessor, dated __________, for the premises in which the offices of Seller’s practice are located;

c. A consent to assignment of lease duly executed by __________ [name of lessor] and acknowledged before a notary public, that consents to the assignment to Buyer of Seller’s interest in the lease dated __________, for the premises in which the offices of Seller’s practice are located; and

d. All other instruments as may be reasonably necessary or convenient to the operation of Seller’s practice by Buyer.

5. As additional consideration for the purchase and sale described in this CONTRACT, Buyer shall, in addition to the total purchase price specified in Paragraph 3 of this CONTRACT, assume and pay as they become due, the amounts remaining unpaid on the obligations and accounts incurred by Seller in establishing and maintaining the law library for the practice, for the purchase and subscription to books. Buyer shall execute and delivery to each book company or other creditor to whom an obligation is owed, the instruments the creditor may require to effect the assumption by Buyer of the described obligation or account. Seller warrants that none of the obligations or accounts described in this Paragraph are in default and that each has the remaining unpaid balance for it on the attached schedule (Exhibit C).

6. In connection with the sale by Seller to Buyer of the goodwill of Seller’s practice, Seller agrees that Seller shall not, either directly or indirectly, carry on or engage in the private practice of law defined to include recognized practice areas of __________ [specify practice type] in __________ County, Ohio and all adjacent counties for a period of __________ years from the date of this CONTRACT.

7. Seller warrants that attached to this CONTRACT (Exhibit D) is a true and complete list of all persons employed by Seller in Seller’s practice setting forth their names, Social Security numbers, positions, and salaries; the collective bargaining agreement, if any, covering each such employee; and the amount of contributions accruing to union welfare and pension funds, Christmas bonus funds, and vacation funds for each such employee.
8. Seller warrants that attached to this CONTRACT (Exhibit E) is a true and complete list of all service and other contracts pertaining to Seller’s practice on which Seller is obligated, setting forth the names of the parties to each contract; the services rendered or to be rendered under each contract; the compensation payable by Seller under each contract; and the term and expiration date of each contract.

9. “Work in progress” as used in this Paragraph means any matter, case, or other activity requiring the rendition of legal services that was commenced by Seller prior to the date of this CONTRACT and that has not been completed by Seller by the date specified in Paragraph 4 of this CONTRACT for consummation of the purchase and sale described in this CONTRACT. All work in progress of Seller’s practice shall remain the property and responsibility of Seller and shall be completed by Seller, provided, however, that Seller may, with the consent of the particular client involved, assign any work in progress to Buyer for completion by Buyer and be relieved by Buyer of all responsibility for its proper and satisfactory completion. Should Seller, with the consent of the particular client involved, assign any work in progress to Buyer for completion by Buyer, the fee or charge made to the client in completion of the work in progress shall be set by and be divided between Buyer and Seller by agreement between them. Should the particular client involved refuse to consent to the assignment to Buyer for completion by Buyer of any work in progress, Seller may assign the work in progress to any other qualified person acceptable to the client or complete it himself or herself.

Any matter, case, or other activity requiring the rendition of professional services undertaken by Seller as part of Seller’s practice between the date of this CONTRACT and the date specified in Paragraph 4 of this CONTRACT shall be undertaken by Seller only with the consent of Buyer and the understanding on the part of the client involved that, unless it is completed by the date specified in Paragraph 4 of this CONTRACT, the matter, case, or activity will be handled after that date and completed by Buyer. Buyer shall, after the date specified in Paragraph 4 of this CONTRACT, handle and conclude all matters, cases, or activities undertaken pursuant to this Paragraph by Seller, as part of Seller’s practice between the date of this CONTRACT and the date specified in Paragraph 4 of this CONTRACT, in a careful and competent manner.

10. The following items shall be prorated between Buyer and Seller, each paying to the other on the date specified in Paragraph 4 of this CONTRACT, his or her share of the amounts paid or to be paid by the other to a third party, on the basis of thirty-day months as of 12:01 a.m. on the date specified in Paragraph 4 of this CONTRACT:

a. All personal property taxes levied or assessed against any of the property described in this CONTRACT for the current tax year based on the amount shown on the latest available tax bill for each item of the property.

b. The rent payable for occupancy of the premises in which the offices of Seller’s practice are located.

c. Salaries of the employees of Seller’s practice as shown on the attached schedule of employee contracts (Exhibit D).
d. All social security taxes and all contributions to union welfare and pension funds, Christmas bonus funds, or vacation funds accruing because of the employment in Seller’s practice of any of the employees listed on the attached schedule of employee contracts (Exhibit D).

e. Charges accruing on any service or other contracts shown on the attached schedule of service contracts (Exhibit E) that Buyer wishes to continue in force and effect.

11. Except as otherwise expressly provided in this CONTRACT, Seller shall indemnify and hold Buyer and the property of Buyer, including the property described in this CONTRACT, free and harmless from any and all claims, losses, damages, injuries, and liabilities arising from or on account of Seller’s operation of Seller’s practice or Seller’s ownership of any of the property described in this CONTRACT.

12. Buyer agrees with and represents to Seller that Seller’s practice, the property described in this CONTRACT, and the books of account for Seller’s practice, have been inspected by Buyer and that the property and practice described in this CONTRACT are being purchased by BUYER as a result of that inspection and not as a result of any representations made to Buyer by Seller or by any agent of Seller that are not incorporated in this CONTRACT. Except as provided in Paragraphs 10 and 11 of this CONTRACT, Buyer expressly waives any and all claims for damages or for rescission or cancellation of this CONTRACT because of any representations made by Seller or any agent of Seller other than the representations contained in this CONTRACT.

13. Buyer shall indemnify and hold Seller and the property of Seller, including any interest given Seller as security for payment of any portion of the purchase price specified in this CONTRACT, free and harmless from any and all claims, losses, damages, injuries and liabilities arising from or in connection with the operation of Seller’s practice or the ownership, control, or management of any assets or property described in this CONTRACT after the consummation of the purchase and sale described in this CONTRACT.

14. This CONTRACT constitutes the sole and only agreement between Buyer and Seller respecting Seller’s practice and property or the sale and purchase described in this CONTRACT and correctly sets forth the obligations of Buyer and Seller to each other as of its date. Any agreements or representations respecting the property or its sale to Buyer not expressly set forth in this CONTRACT are null and void.

15. Any controversy or claim arising out of or relating to this contract, or the breach thereof, will be settled by arbitration in accordance with ORC 2711.01, et seq., the commercial arbitration rules of the American Arbitration Association, or any other recognized commercial arbitration process, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

16. This CONTRACT shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties.

17. The law of Ohio shall apply to this CONTRACT and where applicable the Ohio Rules of Professional Conduct.
Executed at __________ [city], Ohio on the day and year first above written

SELLER

__________________________ [signature]
[typed name]

BUYER

__________________________ [signature]
[typed name]

Exhibits:
A Inventory – furniture, fixtures, equipment, library, accounts receivable
B Files, records, client files
C Obligations and Accounts Payable
D Employee List and information
E Service Contracts
NOTICE OF SALE TO CLIENTS

Pursuant to Rule 1.17(e)

Joseph Client
123 Main Street
Anywhere, Ohio

Subject: Sale of Law Practice and File Transfer

Dear __________ [Current Client/Inactive Client/Former Client]:

We are jointly writing to provide you with NOTICE OF SALE OF THE LAW PRACTICE to __________ [name], Buyer who maintains offices at __________ [address].

Specific information you should know about due to your status as a [client/inactive client/former client] includes:

1. **Effective Date.** The anticipated effective date of the proposed sale will be ________.
2. **Legal Fees.** The Buyer, __________ will honor all existing fee agreements for legal representation that is ongoing and active as of ________ [date of sale]. If you have a new legal problem after the sale the terms and conditions of compensation for the legal services will be negotiated between you and Mr./Ms. _________ as the new attorney.
3. **Client Rights.** You have the right to retain other legal counsel or take possession of your case files. We recommend you use Mr./Ms. ________ as the new attorney and we will be working with him/her in the transition period, but the final choice to select and use any attorney is always yours.
4. **Consent.** If we do not hear from you within ninety (90) days of receipt of this notice, we shall assume you have authorized and consented to the transfer of your file to the Buyer Attorney and expect there will be further communication from him/her.
5. **Purchasing Attorney Information.** Biographical and professional qualification information about the Purchasing Attorney includes:
   a. [Purchasing Attorney full name, address, firm structure and affiliations]
   b. [Fields of practice and specialization]
   c. [Date and place of birth]
   d. [Date and place of all bar admissions]
   e. [College and Law School attendance and degree conferred]
   f. [Any teaching positions]
   g. [Authored publications]
   h. [Bar association and professional group memberships]
   i. [Technical and professional licenses]
   j. [Military Service]
   k. [Foreign language abilities]
   l. [Information as to any disciplinary action under Gov. Bar Rule V, Section 6(D)(1)]
If you have any questions, please contact either of the undersigned at your earliest convenience.

Very truly yours,

_________________________________________  ______________________________________
Seller                                        Buyer
Name & Address                                Name & Address
CLIENT CONSENT FORM

Pursuant to Rule 1.17(f)

To: Purchasing Attorney

Subject: Sale of Law Practice – Client Consent

Dear __________:

The undersigned as a client of __________ [Selling Attorney] who is now __________ [deceased/disabled/disappeared] (a) acknowledges receipt of a written notice dated __________ of the sale of the law practice of __________ [Selling Attorney] to __________ [Purchasing Attorney], (b) consents to allow __________ [Purchasing Attorney] to act on behalf of the undersigned as successor attorney, and (c) understands the prior terms of the representation with __________ [Selling Attorney] shall continue unchanged unless the undersigned agrees to changes in writing.

_________________________                      ________________
Date                                             Client

_________________________
Address

_________________________
Telephone Number