
Starting a Virtual Environmental Practice

Shawna Bligh and Chris Wendelbo

In March 2011, we made the leap from a small environmental law firm to operating our own boutique environmental law firm. Since that time, we have experienced more professional satisfaction than during any other time in our practice of law. During this last year and a half, we have also learned more about the business of law, practice management, and the delicate balance between developing more business, servicing existing legal work, and handling the administrative tasks associated with having one's own firm. We have also discovered the gratification that comes with determining one's own fate.

We left with the fundamental belief that the legal profession was undergoing a watershed transformation due, in part, to increasing numbers of competing lawyers, a severely weakened economy, encroachment and increasing competition from other professions, and reduced spending by corporate clients. To meet these challenges, we decided to adopt an entrepreneurial approach and look at diverse, even nonlegal business models. We left, free of any obligations owed to our old firm, on a Friday and were up and running as a new entity by close of business the following Monday.

Between that Friday and the following Monday, we had launched a "do-it-yourself" website (which has subsequently been modified and updated professionally), secured a web-based practice management service, submitted all necessary business formation paperwork with the State of Missouri, submitted our initial request for quotes on malpractice and health insurance, opened firm operating and trust accounts, finalized the design and "feel" of new business cards and firm letterhead, and started sending out web-based announcements. Within a week, we had legal work coming in the "door." Within a month, we took our first distribution from our new firm, albeit very small. At the conclusion of our first fiscal year, we were "in the black." We must be completely candid, however, by stating that while we met our initial business metrics and growth milestones, we were certainly not at our desired gross or net revenue levels. We anticipate that it will take at least three years to begin *consistently* generating a level of net income that is commensurate with what our salaries might be at another environmental boutique firm. In our second-year evaluation of our year-over-year business milestones, we see continued growth at a steady and sustainable pace.

We decided that, for the time being, our firm would be scaled to a two-person firm without dedicated personnel or assistants. We also decided to limit our practice to certain niche areas of law. The niche areas of law in which we practice are appellate law, civil litigation, and environmental law. These areas fit well with our respective areas of expertise. Both my law partner and I have LL.M.s in environmental law. My law partner has handled more than 200 appeals, and I have handled numerous litigation matters, as well as appellate matters. We recognize that we cannot be all things to all prospective clients. As such, when matters fall outside our particular areas of expertise, we appreciate that it is in the best interest of a prospective client to refer them to another

attorney or law firm. We maintain a list of attorneys or firms to whom we can refer such prospective clients. In turn, these attorneys or firms often refer work to our firm.

We were very fortunate to have landed several environmental and regulatory matters shortly after establishing our firm. For our firm, we want a diverse portfolio of environmental work, including compliance, transactional, and litigation allocated among several industry sectors, which includes representation of municipalities and quasi-governmental entities, as well as the corporate sector. Fortunately, this is just the type of work that we obtained. Since starting our firm, we have handled, and are currently handling, environmental litigation matters arising in both federal and state courts. We also represent a municipality with respect to their wet weather issues and were selected as outside environmental counsel for a quasi-governmental entity. We are also engaged in a handful of permitting matters involving a private sector client that owns an underground limestone quarry. Our permitting work has included obtaining a New Source Review permit, and we are currently in the process of securing a land reclamation permit to allow for the expansion of mining operations. We also negotiated settlement of two separate OSHA enforcement actions, including resolving a whistleblower claim. Our transaction practice includes environmental due diligence for a publicly traded REIT. We also handle matters tangentially related to environmental law. For instance, we are currently involved in a multiparty federal lawsuit involving the assessment of liquidated damages stemming from a rehabilitation project at wastewater treatment facility. The rehabilitation work was required pursuant to a local government's obligations under the Clean Water Act.

The "secret" to the success we have had in our first year is, in part, attributable to long known sustainable business practices—keep your overhead low, put the client first, and embrace constant optimization of your processes and procedures to an ever-changing economic climate. Because we are working to develop a niche practice, we focus on marketing our firm as an excellent, cost-effective alternative to traditional "big-firm" environmental lawyers.

We realize that while you can't reduce your way to profitability, you can definitely spend your way to the poor house. One of the ways in which we keep our overhead low is through a virtual law office. In starting our practice, we knew that we would not be able to take on a lease payment for dedicated office space. However, as we gained momentum financially, we realized there was simply no need for office space. That may change, but if so, we will explore flexible office arrangements. When we started, we also obtained a membership with the Jackson County Law Library. We pay \$13/month, total, for unlimited Westlaw access and conference room space (with a great view of downtown Kansas City) and the use of any other library resources, including, but not limited to, a high-speed scanner (at no cost), copier, and notary on-hand (at no cost). We have arranged other à la carte space availability should we need it for meetings or depositions.

We believe the key to a virtual office is the use of web-based law practice management and litigation document management programs. We utilize a fantastic law practice management program called Clio. Clio costs us \$100 per month and is included in our fixed overhead amount. Through Clio we create matter-specific files in which to store documents. Clio provides unlimited data storage and backs up our information at two separate data centers. We also back up our information on detachable servers in two separate locations. Clio also

offers shared calendaring, time tracking, note-taking, document management, trust and operating accounting, managing retainers, billing, and productivity and profitability reporting. There are other reputable web-based law practice management firms, including Rocket Legal and Total Attorney. Counsel must be careful, however, to fully evaluate these third-party providers to ensure that ethical obligations are met in utilizing these emerging tools. See American Bar Association & Commission on Ethics 20/20 Revised Draft Resolutions for Comment—Technology and Confidentiality (Feb. 21, 2012).

We also utilize a terrific litigation document management program called Lexbe. In one case alone, we have about 15,000 documents to review. Lexbe costs us about \$140 per month. It is a web-based application that allows us to bates-stamp and tag documents to the issues and facts relevant to our claims and defenses in the litigation. By utilizing programs such as Lexbe, we have the bench strength to manage document intensive litigation matters.

We discuss with all existing and prospective clients that our rates are lower because we have lower overhead costs. Individuals, governmental entities, and companies alike are looking for ways to reduce legal costs. Our ability to charge less while maintaining good profit margins gives us a competitive advantage.

Given our prior work experiences, we know too well the cycle of meeting a prescribed number of billable hours and carrying significant balances of accounts receivables. We have implemented a hybrid approach to billing, utilizing primarily the billable hour method, flat fee, and indefinite delivery/indefinite quantity master contracts coupled with individual task orders for a given action where we often utilize a “not-to-exceed” hourly quote. We utilize reduced hourly rates but require more “up-front” evergreen retainers, or the requirement that bills be paid no longer than net-30 with the obligation to fund a larger retainer should that not occur. We believe that consistent cash flow is more important than large accounts receivables that might need to be written off.

Marketing is one the most critical tasks when establishing a niche practice. Because a niche firm will not receive referral of environmental matters by existing clients, which naturally evolve within a traditional full-service law firm, the firm will need to spend considerable effort in marketing. The centerpiece of our marketing is our website. While we don’t believe most environmental clients rely solely on websites to select environmental counsel, we believe that clients do examine the firm website when conducting due diligence into the firm. When we started, we also utilized social marketing to spread the word about our new firm,

including Facebook, LinkedIn, and Twitter. We utilize a feature on Facebook that allows us to post news feed, which then populates to our respective LinkedIn profiles and Twitter account.

To date, we have not utilized traditional modes of advertising due to the perceived lack of return on investment and our perception that yellow page ads and fliers do not move the clients we want to reach. Establishing a good lawyer-to-lawyer referral network with other general and niche practitioners in your area is absolutely critical. As such, we participate heavily in local and state bar associations and the American Bar Association to try to gain lawyer-to-lawyer referrals. In addition, we publish articles and speak to nonlegal groups to promote awareness of our firm. Finally, we market by individual face-to-face interaction.

One of the greatest things that we have experienced in our first eighteen months of a niche practice is greater empathy for our clients. When you merely enter your billable time into a software program, there is often a disconnect between the billable time entered, and the significance to your client of the amount due on the final monthly bill. Niche providers are likely to have increased “face-time” with a municipality, individual, or small company that is struggling with legal issues as well as “making payroll.” In managing the administrative details of our own firm, we have a much greater empathy for the financial realities of the cost associated with the legal services we provide. This translates into more efficient legal representation. We are constantly balancing rigorous advocacy with the ultimate goals of our client and the reality of the client’s financial position. This translates into exploring every possible scenario and weighing each option for your clients so that they can make an informed business decision regarding how to proceed. Sometimes, what may be a gain for us financially simply is not the best choice for the client.

In this time of incredible economic uncertainty, significant competition from a saturated legal marketplace, including encroachment from nonlegal providers, and web-based “do it yourself” legal services, we believe that the application of emerging or nontraditional business techniques to the management of a law office are absolutely essential to survival. Because of the uncertainty surrounding a legal practice today, we view flexibility to respond and react as an essential component of any successful practice. 🌳

Ms. Bligh is a member of BW Law Group and a member of the Editorial Board of Natural Resources & Environment. She may be reached at shauna@bwlawgrp.com. Mr. Wendelbo is a member of BW Law Group and may be reached at chris@bwlawgrp.com.