

Chapter Nine

Staffing

WHAT STAFF DO I NEED FOR MY LAW PRACTICE?

Strategic and appropriate staffing for any law practice is the key to getting you the help you need to adequately represent clients. The components of successful staffing include recruitment, hiring, retaining, supervising, and evaluating the staff. Whether staff members are full-time, part-time, contract workers, or paid interns, these components still apply. Just like all of the other “business aspects” of law practice, what the practice needs and what the practice can realistically afford are key factors.

Outsourcing Work

You can outsource administrative tasks, business tasks, legal work, or any combination of the three. Bookkeeping, payroll, accounting, IT support, and receptionist duties are examples of administrative tasks that can easily be outsourced. Marketing is an example of a business task that many solo and small firm lawyers outsource. Various legal tasks can also be outsourced. The most popular example is research, but others could include drafting a pleading, covering a routine status in court, or issuing or responding to discovery. When outsourcing legal tasks, lawyers should be mindful of ethics rules, particularly rules pertaining to conflicts of interest, confidentiality, and supervision. Outsource work only if it will save you time, save the client money, and allow you to deliver a work product that is equivalent to or better than the work product you would deliver had you done the work yourself.

Hiring Staff

Your firm may grow to a point where outsourcing work no longer satisfies your firm needs and you need to hire staff. Strategic and effective staffing involves hiring the right people; training, supervising, and evaluating them; and then keeping them happy so you can retain them for long periods of time.

The first step to successful recruiting of strategic and appropriate staff is for the attorney to accurately determine what the practice needs. Key factors in this assessment include the following:

Identify Tasks: Look at the type of cases, clients, and nature of your practice to identify the tasks that need to be completed. Determine what kinds of tasks need to be completed (*e.g.*, workflow management, going to court, drafting pleadings, marketing) and what type of staff member needs to complete them (*e.g.*, a lawyer, a paralegal, a law student, other).

Identify Who Needs to Accomplish the Tasks: Determine which tasks need to be completed by you as the lawyer, by paralegals, or by other staff. Ideally, you should delegate as much work as you can to other staff members so you can spend as much time as possible doing work that requires a law license. See the CBA's Guidelines for the Utilization of Paralegals and Paralegals and Law Office Support Staff webpage (www.cobar.org). Remember, when delegating tasks, that you are responsible for the ethics and the competence of the work, so it is essential to train your staff to complete the delegated tasks and to evaluate their competence. (See Colo. RPC 5.3.)

Employment Status: After you determine what type of staff member you need to hire, it is then important that you consider:

- *Differences in Employment Status.* What is a full-time employee versus a part-time employee versus an independent contractor? Where do interns and law clerks fit in? What is the difference between exempt staff and non-exempt staff? Caution — this area is a minefield, so proceed carefully!
- *Differences in Tax and Benefit Packages for Each Employment Status.* Who qualifies for which benefits? What taxes need to be withheld for which types of staff members?

Create Job Descriptions and Post: After identifying the tasks and determining what skills are needed for the tasks, you should draft job descriptions to advertise or post the job notices. Spend some time carefully crafting your job description, as it will dictate who applies for the job and drive the selection process. At a minimum, the job description should include:

- The job or position title;
- The reporting structure for the position;
- A list of the position's essential or key job duties;
- The qualifications and educational requirements for the position;
- The qualities or attributes you would like the new staff member to have;
- The salary and benefits associated with the position; and
- How interested candidates can apply.

Good places to post job descriptions include bar association and paralegal/secretary job boards, such as the CBA Employment and Classified Ads (www.cobar.org), and online job posting sites such as Craigslist (but be prepared to receive a ton of responses) and indeed.org.

Screening Applicants: Rule out applications that are sloppy, contain misspellings, or are addressed to the incorrect firm or person, as this lack of attention to detail will likely carry forward into the applicant's work at your firm. Be on the lookout for red flags, such as employment gaps, and do your due diligence prior to offering someone an interview or job. Formal and informal (social media) background checks are easy to conduct online, and reference checks can take less than an hour. Don't forget to ask for references and make the calls to check those references.

During each interview, ask open-ended questions that will help you determine whether the candidate possesses the skills, education, and attributes needed to perform the job well. Let the candidates do the talking. Observe how the applicant presents himself or herself during the interview. Is the applicant well spoken, prepared, polite, and self-confident? Will the applicant fit in well in your office? Is the applicant tech savvy and a strong writer? Does he or she appear to be excited about the position? Take all of these considerations into account and offer the job to the best candidate. Keep in mind there are certain questions you cannot ask during an interview (see What You Can Ask and What You Can't — Legal/Illegal Interview Questions (www.mtu.edu/equity/pdfs/whatyoucanandcantasklongversion8-12-04.pdf)).

Training, Supervision, and Evaluation

Once you have hired a new staff member, it is important that you adequately train, supervise, and evaluate him or her. Some suggestions for supervision and evaluation include:

Provide Job Training and Orientation: Because your goal is to delegate as much work to this new staff member as possible, it is important that you invest time in training him or her well. All staff members, including lawyers, should be trained on ethical pitfalls, including client confidentiality, and office policies and procedures. Staff members who work with client trust accounts require additional training on how to properly handle and record the movement of client and firm funds.

Checklists and Manuals: Create procedure and process manuals. Encourage staff members to help keep manuals current and up-to-date.

Regular Feedback Systems: Construct a regular feedback system for staff to report to you on the progress of their projects. The system should include oral and written progress reports from staff members.

Encourage Questions: You may understandably like the "self-starter" staff member, but encourage questions about the nature and extent of tasks.

Emphasize Confidentiality Responsibilities: Have a confidentiality agreement for all employees, whether part-time, full-time, or independent contractors. Make sure that staff is aware of the special confidentiality concerns of the practice of law. (See Colo. RPC 1.6.)

Know Your Ethical Obligations: Colorado Rules of Professional Conduct 5.1, 5.2, and 5.3 outline a lawyer's responsibilities with respect to supervising lawyer and nonlawyer staff. Familiarize yourself with these rules and include them in your staff training. Encourage open communication at your firm and make it easy for staff members to voice their concerns to you so you can identify and solve problems as soon as they arise. Regularly check in with, evaluate, and offer constructive feedback to staff members as well.

TIPS

1. Consider outsourcing administrative tasks.
2. Know the difference between independent contractors and employees.
3. Do you have written policies for lawyers and support staff explaining the applicable duties to preserve client confidences? Colo. RPC 1.6.
4. Create and have employees sign a confidentiality agreement. Colo. RPC 1.6.
5. Create and review email usage policy with employees covering confidentiality and inadvertent disclosures. Colo. RPC 1.6 and 4.4.
6. Consider and discuss use of social media by staff. Colo. RPC 1.6, CBA Formal Opinion 90 — Preservation of client confidences in view of modern communications.
7. If using outside vendors, do you have a confidentiality policy? Colo. RPC 1.6. Don't forget vendors such as cleaning staff or computer maintenance vendors.
8. Be sure to train non-lawyer staff. Colo. RPC 5.3. By training, have you trained employees to avoid the unauthorized practice of law? Colo. RPC 5.5.
9. Beyond training, create a system to regularly supervise and evaluate employees. Colo. RPC 5.3.
10. Encourage and listen to staff feedback.
11. Is staff aware of the requirement to report ethical violations, misconduct, wrongdoing, alcohol or drug misuse, and any other matters that could cause harm to the attorney's reputation or client's satisfaction?
12. Do you conduct proper due diligence such as background checks before hiring employees?

Retention

Hiring staff is a big investment of time and money. Ideally, you want to retain each staff member for as long as possible. The best way to accomplish this goal is to keep staff members happy. Here are some suggestions on how to do this:

Offer Competitive Compensation and Benefits: Financial stability is very important, and employees who do not feel financially stable or properly compensated for their work will eventually look for a job elsewhere.

Provide Professional Development Opportunities: Many employees are looking to work for firms that will provide them with professional development opportunities as an added work benefit.

Recognize Good Work and Promote When Possible: All employees like to be recognized for the good work they do, and most employees strive to move up to the next level.

Provide a Good Work Environment: A good work environment with good people is just as important as compensation and benefits to many employees and helps retain them in the long run and motivate them to work harder. What constitutes a good work environment likely varies slightly by person and industry, but generally employees like environments that foster good communication, inspire them to work together toward a common goal, welcome creative and diverse opinions, and offer open physical spaces with plenty of natural light.

Say Thank You, Often: This one is easy. Be polite and thank people for working for you as often as possible. Yes, it is their job to complete certain tasks for you as outlined in the job description and employment agreement. Many employees can easily go elsewhere, though, so if you want to retain them, demonstrate your gratitude to them.

APPENDIX

CBA Resources

Chapter 9

Law Practice Management

- As a service to its members, the CBA Department of Law Practice Management provides information and resources on a variety of law practice management issues, including templates on Forms2Share, a collection of materials in the Lending Library, Tech Tuesday Webinars, and monthly newsletters.

The Colorado Lawyer

- Review of Legal Resources: “You Raised Us – Now Work With Us: Millennials, Career Success, and Building Strong Workplace Teams,” Frederic Marienthal (Sept. 2016)
- “Employee Rights and Social Media,” Lynn Feiger and Stephen E. Kapnik (Nov. 2012)
- “Disclosure to Clients of the Use of Temporary Lawyers and Outsourcing,” Eli Wald (April 2012)

IRS Resources

- Small Business and Self-Employed Tax Center
- Small Business and Self-Employed Online Learning and Educational Products
- Independent Contractor (Self-Employed) or Employee?

U.S. Department of Labor Resources

- Fair Labor Standards Act (FLSA) Advisor
- FLSA Checklist: Exempt vs. Non-exempt Status

Articles**Hiring & Managing Staff**

- “3 Tips for Finding the Best Law Firm Staff,” Greg Hamblin, Blog Post on FileVine.com (Oct. 23, 2015)
- “Hiring, Training, and Retaining Staff,” Robert A. Kraft, *GP Solo* (Oct./Nov. 2010)
- “Writing Effective Job Descriptions,” U.S. Small Business Administration, sba.gov (posting date unknown)
- “Twenty-Five Tips for Employee Training and Supervision,” Diane M. Ellis, State Bar of Arizona (date unknown)
- “How Important Is Your Work Environment?,” Matthew Walden, Blog Post on infinity-cs.com (March 25, 2015)
- “Hiring Workers: Employment Law Basics,” author unknown, Blog Post on HRHero.com (date unknown)
- Mountain States Employers Council, www.msec.org

Outsourcing

- “Outsourcing for Beginners,” Ruth Carter, Blog Post on AttorneyAtWork.com (Dec. 10, 2013)
- “Give Your Clients the Most by Outsourcing,” Nicole Bradick, Blog Post on AttorneyAtWork.com (Sept. 30, 2015)

Staffing

- “Five Sources for Professional Help in a Pinch,” Theda C. Snyder, Blog Post on AttorneyAtWork.com (Aug. 14, 2015)
- “For Law Firms and Lawyers, Outsourcing is ‘In,’” Edward Poll, Blog Post on SmallFirmInnovation.com (Aug. 28, 2013)
- “The Ethics of Using a Freelance Lawyer,” Benjamin Scott Wright, Research Memorandum on bswright.com (April 29, 2015)
- “Hire a Contractor or an Employee?,” SBA.gov

Project Management

- “Building Bridges with Clients in Mind,” Tom Bolt, *Law Practice Magazine* (Nov./Dec. 2015)

Taxes

- <https://lawyerist.com/78128/year-end-tax-planning-lawyers/>

Websites

- ABA Law Technology Resource Center — FYI: Starting a Website (www.americanbar.org)
- “How to Design the Best Law Firm Website,” Mike Ramsey, Blog Post on AttorneyAtWork.com (Sept. 11, 2013)

Authorities

Colorado Rules of Professional Conduct

- Colo. RPC 1.5, Fees
- Colo. RPC 1.6, Confidentiality of Information
- Colo. RPC 1.7, Conflict of Interest: Current Clients
- Colo. RPC 1.8, Conflict of Interest: Current Clients: Specific Rules
- Colo. RPC 1.10, Imputation of Conflicts of Interest: General Rule
- Colo. RPC 4.4, Respect of Rights for Third Persons
- Colo. RPC 5.1, Responsibilities of a Partner or Supervisory Lawyer
- Colo. RPC 5.2, Responsibilities of a Subordinate Lawyer
- Colo. RPC 5.3, Responsibilities Regarding Nonlawyer Assistants
- Colo. RPC 5.4, Professional Independence of a Lawyer
- Colo. RPC 5.5, Unauthorized Practice of Law
- Colo. RPC 7.1, Communications Concerning a Lawyer’s Services
- Colo. RPC 7.2, Advertising
- Colo. RPC 7.5, Firm Names and Letterheads

Colorado Ethics Opinions

- CBA Ethics Committee Formal Opinion 8, Office Sharing – “Associates”
- CBA Ethics Committee Formal Opinion 9, Office Sharing – “Associates”
- CBA Ethics Committee Formal Opinion 13, Office Sharing – Municipal Judge
- CBA Ethics Committee Formal Opinion 50, Definition of Associates as Applied to Lawyers
- CBA Ethics Committee Formal Opinion 61, Legal Assistants
- CBA Ethics Committee Formal Opinion 76, Lawyer Advertising Guidelines
- CBA Ethics Committee Formal Opinion 79, Use of Legal Assistants in Client Representation
- CBA Ethics Committee Formal Opinion 84, Listing of Support Personnel Names on Letterhead and Business Cards
- CBA Ethics Committee Formal Opinion 87, Collaboration with Non-Lawyers in Preparation and Marketing of Estate Planning Documents
- CBA Ethics Committee Formal Opinion 89, Office Sharing – Conflicts, Confidentiality, Letterheads and Names
- CBA Ethics Committee Formal Opinion 90, Preservation of Client Confidences in View of Modern Communication Technology
- CBA Ethics Committee Formal Opinion 105, Opinion on Temporary Lawyers
- CBA Ethics Committee Formal Opinion 106, Referral Fees and Networking Organizations
- CBA Ethics Committee Formal Opinion 108, Inadvertent Disclosure of Confidential Documents
- CBA Ethics Committee Formal Opinion 116, Ethical Consideration in the Dissolution of a Law Firm or a Lawyer’s Departure from a Law Firm
- CBA Ethics Committee Formal Opinion 121, Use of Temporary Lawyers and Other Professionals Not Admitted to Practice Law in Colorado (“Outsourcing”)
- CBA Ethics Committee Formal Opinion 122, The Applicability of Colo. RPC 7.2 to Internet-Based Lawyer Marketing Programs

American Bar Association Ethics Opinions

- ABA Formal Ethics Opinion 87-354, Lawyer’s Use of Medical-Legal Consulting Firm
- ABA Formal Ethics Opinion 88-356, Temporary Lawyers
- ABA Formal Ethics Opinion 90-357, Use of Designation “Of Counsel”
- ABA Formal Ethics Opinion 00-420, Surcharge to Client for Use of a Contract Lawyer
- ABA Formal Ethics Opinion 08-451, Outsourcing Legal Work