

Starting all over again

After years in a partnership, becoming a sole practitioner has rewards and more than its share of challenges

By Chuck Geerhart

On March 1, 2021, after 23 years in a successful law partnership, I hung out my own shingle. You might think that with two decades of plaintiff-side practice under my belt that it was easy to start up a new practice. Yes and no. Although there were lots of lessons learned from the previous 23 years, there are tons of details, big and small, that must be attended to. So I'm writing this article as a primer for anyone who might be thinking about doing the same thing, and to offer some thoughts about running a "quality of life" practice.

Real estate

Anyone starting a firm has to ask whether having an office is necessary. This was true even before the pandemic. But now everyone is accustomed to working from home. I have signed clients without ever meeting them face to face. Since the COVID era started, I've settled large cases communicating with the client solely by phone or Zoom. I know it's not ideal. I have always preferred to be very close with my clients, and often develop friendships with them that last long after the case has resolved.

Ultimately, I decided to get an office. My wife continues to work out of our home office, and I thought it would be good to have a space to go to each day. I rented office space with some friends who are also plaintiffs' lawyers. I got a pretty good deal reflecting the dip in San Francisco commercial real estate. I still work from home about half the time.

A major benefit of being in an office is that you can interact with other lawyers. If they are also plaintiffs' lawyers, this can be an excellent way to workshop cases, which in turn reduces stress.

Insurance, especially tail coverage

Lawyers need insurance. The easy kind to obtain is basic liability coverage, required by my landlord and costing about $500/year for $2 million in coverage. You can also get all kinds of fancy coverages for data loss.

The harder call is malpractice, or errors and omissions (E & O). You have to have it, unless you like risking your retirement years. I believe it is a moral

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obligation for plaintiffs' lawyers to carry lots of E & O insurance. If you're handling seven-figure cases, you should have seven figures of insurance. Yes, that costs more, but it's worth it for the peace of mind, and the ability to do right by the client if you ever do screw up.

An even harder decision when you're coming out of a prior practice is getting Tail Insurance, how much, and for what term. Tail coverage is insurance for everything you did in the prior practice and could potentially get sued for. I do not hold myself out as a coverage specialist, but the basic issue is this: Imagine a case where you did something three years ago (drafted a pleading, answered discovery, did or did not retain an expert). Now you have your own practice. But it turns out there was a problem with what you did three years ago that is now causing a potential malpractice problem. Your current E & O policy won't cover this. You need tail coverage. This can be extremely expensive, depending on your limits and how many years of coverage you get. I went with a two-year, $5 million policy (covering the previous 23 years of conduct) so I can sleep at night. This was actually the single most expensive aspect of starting my new practice, by a wide margin.

What about the old firm's cases?

What happens to the prior firm's cases? Although there are lots of ethical issues involved, beyond the scope of this article, suffice it to say that some clients stayed with me. As these existing cases settled, the fees were worked out on a quantum meruit basis. What this means is that each partner makes a good faith estimate of the time spent and value provided to the case while it was being handled under the auspices of the old firm. If very little work has been done since the split, most of the fee would be apportioned to the old firm. But if a lot of work has been done since the split, very little fee might be attributed to the prior firm.

It's important to have an accurate cost ledger for each case from the prior firm's books so you know how to reimburse costs.

Accounting for costs was actually pretty easy. My bookkeeper set up my new firm on the same QuickBooks platform as before. I can actually look at the old firm's books with one click.

What do you need to run a solo practice?

What we do today would have been impossible 30 or 40 years ago. Computers and the Internet make everything smoother. For starters, we can store thousands of pages of documents (like medical records) in pdf format that takes up very little space. I have every letter, pleading and discovery response I've ever done in my computer. I use a service called LogMeIn so I can look at my office computer (including QuickBooks) from my home PC.

For the first time, I do not have a land line or answering machine. Everything comes to my cell phone. Clients these days want and expect their lawyer to pick up the phone. When signing a new client, the fact that you talked to them first may mean the difference between signing and not signing the case. Obviously, if I ran a volume practice where I was getting scores of calls a day, I would want to have staff to answer the phone. But that is not the path I have chosen.

For legal research, there are endless possibilities. I think you could conceivably have no legal research contract and just do it all on Google and the various free services out there. However, I like the Westlaw platform. I pay about $175/month for unlimited California research, including access to the Rutter Guides. I spend a lot of time in the Rutter Guides' Civil Procedure Before Trial and Civil Trials and Evidence.

I do not have a secretary or paralegal. Over the years, when I have gotten busy, I have hired a local law student on a part-time basis. Law students are reasonably inexpensive, and can learn most of the basics (such as how to do a proof of service) fairly quickly.

A high-quality scanner is a must. Scansnap via Fujitsu is what I use (about $400). I transmit almost all documents and letters via email, and scanned attachments are the norm.

I cannot figure out the amazing persistence of faxes, but many insurance carriers still fax. So, I got an online fax service called Formswift. For about $100/year, you have your own dedicated fax number, but do not have to deal with AT&T or a similar carrier.

One thing I did spend on was quality stationery. I think a quality letterhead with logo is worth it, on both letter and envelopes. My logo was designed by the firm that built my website. I still send some things (like demand letters) via the U.S. postal service (in addition to email), because I like the recipient (i.e., defendant or insurance carrier) to have something tangible on the desk reminding it of me, the most persistent plaintiff's lawyer they have ever encountered.

What kind of cases to take

When I first started representing plaintiffs, my firm got a lot of work from a firm with a full-page Yellow Pages ad. That was a big deal in 1998, akin to being on the first page of Google now. The typical case that was referred to us was a minor fender bender with about $3,000 in chiropractic care. Can you imagine how hard it was to settle these cases? The reason the cases were referred to us was that the carriers weren't buying the damages. So, I would spin my wheels, answering and propounding discovery, going to judicial arbitration, and sometimes even taking these cases to trial. After a few years of this, I vowed not to handle cases like this ever again. I was wasting my time and my clients' time, for minimal reward.

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My practice is focused on having a small number of high-value cases, while leaving room for some pro bono work and smaller cases for friends or friends of friends. I refer out most cases worth less than $100,000. I have found over the years that I spend as much time on a $15,000 to $30,000 case as I do on a $250,000 case. The people with the smaller cases deserve representation, but it should be someone "younger and hungrier," based on my business plan and where I am in my career.

If a prospective client comes to me with a case worth $15K or less, I often encourage them to negotiate it on their own and threaten the carrier with small claims court (which has a limit of $10,000). If I like the prospective client, I will give her a sample demand letter and offer to consult for free as they get into negotiations. This accomplishes three things: first, I don't burn time on a small case. Second, the client is grateful and may refer future work. Third, I have done a service to the client by helping her potentially get to a settlement without having to pay a lawyer.

How do people know about your new practice?

I took the time to send announcement letters to about 1,000 people. It's important for your friends (and even your foes) to know what you are doing in your new practice.

Historically, I have gotten most of my work through other lawyers (I pay a referral fee in accordance with State Bar rules), friends, and former clients.

I also spent a fair amount on a new website. I think it's critical to have a high-quality site that personalizes you and informs prospective clients (or other lawyers) about what you do, and what your track record is.

This leads into the big question: What to do about search engine optimization? You can spend as much as you want on this. Unless you are a volume practice, you have to draw the line somewhere. I retained a company that had been successful for a friend of mine to design my website and take steps to make me easier to find on the web. Caveat: It takes about a year to build up visibility if you want to be found on Google (assuming you are not doing pay per click, which can be prohibitively expensive).

Another way for people to know about your new practice is to sponsor events or organizations, such as your local trial lawyer association, bicycle coalitions, pedestrian safety groups and the like.

And, of course, the finest way of all to get noticed is to go try cases and win.

What is quality of life worth?

I began my legal career working for two difference civil defense practices (both defunct today), in which I had to bill 1900 or more hours a year. I spent nine years working for the man, and it was soul deadening. First of all, you're spending all your time trying to save money for insurance carriers or big corporations (in my case, such worthy charity cases as PG&E, Ford Motor, The Stanley Works and Kmart). This adds basically zero, zilch, nada to the improvement of society. (Apologies to any defense lawyers reading this!) Second, you're reducing the value of what you do to billable hours or decimal increments of same. I opened a letter? Bill the firm minimum of .2 hours. Third, you get no personal satisfaction from improving a real person's life. I often say that in nine years, I *never* got a thank you note from an insurance carrier or corporate client. Today, I routinely get wonderful thank you notes from clients when we resolve a case. Often, a client will take me out to dinner after a case resolves. I remain good friends with many clients long after the case is over.

A big problem with the billable hour is that it forces lawyers to carry a lot of cases in order to "feed the beast." You may have heard the notion of billable hour slavery, in which defense lawyers get accustomed to a nice lifestyle, so they cannot conceive of reducing their workload. They also feel they cannot get out of law firm life. A plaintiff-side contingent-fee lawyer gets to define how much time s/he wants to spend working.

I'm not dissing hard work. And I know some lawyers, including many of our friends in the plaintiffs' bar, believe "work is play" and thus routinely work 80- or 100-hour weeks. I'm just saying it's not for everyone. One thing the coronavirus taught me was that I love getting out one weekday every week for a nice long hike on a Bay Area trail. In fact, I define a good week as one in which I get a good hike in.

So, I basically work a four-day week. It's true that I take phone calls after hours, and respond to emails at all hours and on weekends. Many of you probably do as well. What I do to ensure quality of life is not dwelling on these things once I am off the job. If a hot client email comes in at 8:30 at night, usually it can wait until the next day. I encourage clients not to call me after hours. I have found that if you draw that boundary, they will respect it.

Make money: turn down cases

The beauty of being in a plaintiff's contingent-fee practice is that I get to pick my clients and pick my cases. There is an old saying in the plaintiffs' bar, often attributed to Bruce Walkup, "I finally started making money when I started turning down cases." This goes back to the notion of turning down smallish cases in order to focus on the bigger ones. There is also the old 80-20 rule (aka the Pareto Principle), which in a law practice is as follows: 80% of income comes from 20% of our cases. We therefore should devote 80% of our time to the 20% of cases that are most valuable. This is hard to do if you're carrying 50 cases and half of them are dogs.

I carry about 10 to 15 cases, and most of them are solid and medium to high value. A few turn into dogs. I also like to keep a few pro bono cases in my inventory, because part of our obligation to law and society is to help others.

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A key for me is to represent clients I really like. I can often make that determination at the intake stage. If I make a mistake and begin representing a client I really don't like (due to the client's conduct), I give the client a few chances to improve. I draw boundaries. If the client persists in what I consider unacceptable behavior, I will cut that client loose. I'm not talking about client behavior that is illegal or unethical – they have to go! I'm talking about clients I just don't like. Quality of life in a law practice includes not having to spend time on people you don't like. Life is too short.


Geerhart

Chuck Geerhart is the owner of Law Office of Chuck Geerhart, *a San Francisco plaintiff's trial practice specializing in major injury cases. He will be President of the San Francisco Trial Lawyer Association (SFTLA) in 2022. In 2013, he was a finalist for the SFTLA Trial Lawyer of the Year Award for a $2.5 million jury verdict in a case against Round Table Pizza and Foster Farms involving a bone fragment in a BBQ chicken pizza that nearly killed his client. Chuck has tried 16 cases to verdict, and is a member of ABOTA. He is a graduate of Cornell University and the UCLA School of Law.*

Endnotes:

[1] You can also spend a fortune on radio or TV advertising, or having your name on the side of buses, billboards or cars. That's not my jam. One lawyer has been boasting for about a year now on radio about how much money he has, which he says will help clients get a good recovery. Not sure that's a good look for the plaintiff's bar.

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