

6-19-2015

Video: Going Your Own Way: What You Need to Know About Starting Your Own Law Practice or Business

Russell Miller-Thompson

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Law Center Plus: Continuing Your Legal Education

**Going Your Own Way
What You Need to Know About Starting Your Own Law Practice or Business**

**Friday, June 19, 2015
7:30 am – 9:30 am
3305 College Avenue
Ft. Lauderdale, FL 33314**

Law Center Plus

Going Your Own Way: What You Need to Know About Starting Your Own Law Practice or Business

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Speaker Biography

Russell Miller-Thompson, Esq.

Mr. Miller-Thompson has been practicing law in Broward County for over 30 years. He was admitted to the Florida Bar in 1985. After many years in business and corporate law, he put his legal knowledge and management skills to work for his private clients. Mr. Miller-Thompson has extensive legal experience in both business and private practice. He is a Broward County Traffic Court Hearing Officer (Magistrate), a mentor with the Broward County Bar Association's Mentorship program and a member of the Broward County Bar Association's Board of Directors. Elected Vice President for Education in June 2012 with Toastmasters International Achievers Club 2903 in Coral Springs, Florida, he is also the founding member of the Broward County Bar Association's Toastmasters Club for all members of the Broward County legal community.

Mr. Miller-Thompson is a workshop presenter for Broward SCORE and teaches the workshops "Legal & Tax Implications When Setting Up Your Business in Florida" and "Simple Steps for Starting Your Business." He is also a SCORE Certified business mentor; mentoring small business owners and individuals looking to start a business in Broward County.

In 2011 and 2013 Mr. Miller-Thompson received awards for Outstanding Pro Bono Service from Broward Lawyers Care - Coast to Coast Legal Aid of South Florida. He is also a volunteer attorney for the Mission United Veteran's Project and the Tracey McPharlin Dependency Pro Bono Project, providing legal representation to veterans and to children within the dependency court system.

Course Title & Outline:

Going Your Own Way: What You Need to Know About Starting Your Own Law Practice or Business

Date: Friday, June 19, 2015

Time: 8:00 am to 9:30 am

Location: Nova Southeastern University, Shepard Broad Law Center, 3305 College Avenue, Fort Lauderdale, FL 33314

Registration & Continental Breakfast:

7:30 to 7:55 am

Atrium & Lecture Room

Welcome & Introduction:

7:55 to 8:00 am

Elena Rose Minicucci, J.D., Director of Alumni Relations, NSU Shepard Broad Law Center

- Welcome
- Introduce **Russell Miller Thompson, Esq.** of the Law Offices of Russell M. Thompson, Sunrise, Florida.

Seminar Presentation

8:00 am to 9:30 am

Russell M. Thompson, Esq.

THE “PRACTICE” OF LAW IS A PROFESSION

A lawyer is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice. Preamble to the Florida Rules of Professional Conduct [Chapter 4]

- In all professional functions a lawyer should be competent, prompt, and diligent.
- A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs.
- As a public citizen, a lawyer should seek improvement of the law, the administration of justice, and the quality of service rendered by the legal profession.
- Zealous advocacy is not inconsistent with justice.
- Ethical problems may arise from conflict between a lawyer's responsibility to a client and the lawyer's own sense of personal honor, including

obligations to society and the legal profession. The Rules of Professional Conduct prescribe terms for resolving such conflicts.

- Toll-free Ethics Hotline: 800-235-8619. Attorneys may seek written ethics opinions by sending an email to: eto@flabar.org

A “LAW PRACTICE” IS A BUSINESS

“Hard work alone does not guarantee financial success. A business plan and budget are essential for any firm, new or old, and can help you better understand the finances of your practice to ensure a more profitable future.” ABA Law Practice Management

Resources:

The Florida Bar <http://www.floridabar.org> click on “Practice Resource Institute” icon on Home page or enter that term in search box to access podcasts, articles and more to assist you with your law practice.

The ABA http://www.americanbar.org/portals/solo_home/solo_home.html

- Whether practicing solo, with a single partner or as a partner in a big firm you will be running a business.
- You must know and apply good business practices.
- Knowledge of basic business skills is an advantage. Yet lawyers learn nothing about running a business in law school.
- Most people are not trained on how to achieve success. We are trained only to want and to be employees.

DO YOU HAVE WHAT IT TAKES?

- It’s not luck – its hard work!
 - Be Positive, Persistent and Purposeful
- Don’t listen to the PESSIMISTS
- Never give up!
- When you stumble....

[Inspirational Video]

AGENDA

- The Start-up Essentials
- Assessing Your Journey
- Funding and Cash Management
- Business Development and Marketing
- Next Step

WORKSHOP BENEFITS

- Will help you develop *Your* Feasibility Plan

- Takes you through the decision making process
- Provides you with the information to help make a “go or no-go” decision
- Have information to create a business plan for bankers and lenders
- Gives you the key information needed to get started

CRITICAL SUCCESS FACTORS

- Adequate Capital
- Ability to manage and multi-task
- Education/Experience
- Strong work ethic
- Effective time management
- Willing to ask for input from others
 - ABA – Listserv “SoloSez”
<http://www.americanbar.org/groups/gpsolo/resources/solosez.html>
 - Mentor

ENTREPRENEUR CHARACTERISTICS

- Self-Starter
- Resourceful
- Responsible
- Organized
- Hard Worker
- Persistent
- Decisive
- Healthy
- Supportive Family

EVERY BUSINESS OWNER NEEDS

- Banker
- Lawyer
- Accountant
- Insurance Agent
- Mentor
 - BCBA Broward County Bar Association <http://www.browardbar.org/>
 - Inns of Court <http://home.innsofcourt.org>
 - SCORE <https://broward.score.org/>

KEY TO BEING A SUCCESSFUL ENTREPRENEUR

- The ability to come up with great idea is not enough!
 - Ideas are worthless unless implemented properly.
- The most important qualities of an entrepreneur are:
 - Ability to follow through with your plan.
 - Many entrepreneurs fizzle after just a couple of months.
 - Set a pace you can maintain for years, not months.

IT'S NOT EASY - YOU MUST WEAR MANY HATS!

- Lawyer/Production

- Accountant
- HR Manager
- Rain Maker/Sales Person
- Business Development/Marketing Manager

THE ESSENTIALS

- Entity Setup/Legal Structure
- Handout Rule 4-8.6 Authorized Business Entities
 - Sole proprietorships
 - Professional service corporations (P.A.)
 - Professional limited liability companies (P.L.L.C.)
 - General partnerships
 - Limited liability partnerships (L.L.P.)
- Income Tax Consequences
 - <http://www.irs.gov/>
 - Sole proprietor reports profit or loss on Schedule C (Profit or Loss from Business) Form 1040
 - Sole proprietor is liable for 100 percent of the self-employment tax (Social Security & Medicare)
 - P.A. by default is a C-Corp (double taxation) – must make an S-Corp election (File Form 2553)
 - General partnership, L.L.P. and P.L.L.C. by default are S-Corps (tax savings)
- Fla. Bar members can incorporate the “first time” for free at www.corporatecreations.com

LOCATION/OFFICE SPACE

- Traditional Commercial Office Space
- Shared Office Space with another Attorney
- Executive Suites – (permanent or as needed)
- Home Office/Virtual Law Office
- Handout: Location of Practice - Rule 4-7.12(a)(2)
 - All lawyer advertising must disclose the city, town or county of 1 or more bona fide office locations.
 - A lawyer may advertise “available for consultation” or “available by appointment” at a specified location.
 - Such designations are appropriate when the space is a “virtual office” under the control of another.

LIABILITY/MALPRACTICE INSURANCE

- No requirement that attorneys carry malpractice insurance.
- Florida Bar does not keep track of lawyers who have it.
- About 65 percent of lawyers in Florida have it; the rest “go bare”.
- Fla. Bar & BCBA referral service requires malpractice insurance to participate.
- Certain commercial clients require malpractice insurance, such as mortgage companies/real estate closings.

- You will be personally liable for your own malpractice.
- A limited liability entity can only shield you from other general business activities that occur in any profession/business. However, get liability insurance!
- <http://www.floridabar.org/memberbenefits>

TECHNOLOGY/HARDWARE

- Computer
 - Anti-virus/Anti-spam ware are a must (IT tech support)
 - Offsite backup/Automatic (Carbonite cloud based)
 - Ethical Obligation to Protect Confidential Client data
 - Obtain a “professional” domain/email (not Gmail/AOL)
- Printer/Copier/Scanner/Fax
 - Combinations are available
 - Ink-jet vs. Laser (check on the cost per copy)
 - E-filing/Paperless Office (faster scanner?) Cost = Speed
- Digital Dictation
 - With Voice Recognition Software (Dragon Naturally Speaking)
 - Use online transcription service (save employee costs)
- Bottom line, what is most practical for your situation?

TECHNOLOGY/SOFTWARE

Resource: The Florida Bar <http://www.floridabar.org> click on “Practice Resource Institute” icon on Home page or enter that term in search box to access podcasts, articles and more to assist you with your law practice.

- Productivity Software
 - (Word), email (Outlook), presentation (PowerPoint) and spreadsheets (Excel) are contained in Microsoft Office
 - Adobe Acrobat & Optical Character Recognition (OCR) software
 - Legal Research, FastCase, CaseText FREE, Westlaw, LexisNexis
 - Many, many more apps available (RTG)
- Practice Management Software (installed or cloud based?)
 - Installed Software (purchase a license, yearly maintenance)
 - Amicus; Abacus; Tabs3/PracticeMaster
 - Cloud Based Options (monthly charge)
 - Clio, Amicus, HoudiniESQ
 - Credenza FREE (w/in Outlook) & Credenza Pro (\$25/month)
 - Most options provide: Case Management; Conflicts Checking, Contacts; Calendaring; Document Management; Communications (telephone & emails); Time & Billing – some have accounting (back office)
- If you use cloud computing you must take reasonable precautions to ensure that confidentiality of client information is maintained. Handout: *Professional Ethics Of The Florida Bar, Opinion 12-3 (January 25, 2013)*
- Document Assembly Software

- Increase Productivity (Subject Matter Specific Forms)
 - ProDoc (Florida Forms)
 - HotDocs (the “Gold Standard” in document assembly)
 - Forms are updated as legislation & case law changes
 - Quick Parts; easy to use tool within Microsoft Word
 - The Form Tool™ (www.theformtool.com) Word Plug-in
- Accounting Software (keep track of revenue and expenses)
 - QuickBooks Pro has dominated the market
 - General ledger, P&L Reports & Keeping track of trust account
 - WAVE, for entrepreneurs and small businesses with 9 employees or less.
And it's 100% free!
- Accessibility of Data from Remote Location
 - DropBox FREE
 - TeamViewer FREE
- Keep a copy of all programs (including key codes, updates & passwords). Very helpful after a “crash” if your IT person needs to reinstall everything.

BANKING/TRUST ACCOUNT

- Banking
 - Operating Account
 - Used to pay operating expenses of firm
 - Credit Card Processing (www.LawPay.com approved by Fla. Bar)
 - Tax Account (Excess Revenue Account)
 - Used for paying quarterly income taxes
 - Attorney Trust Account (IOTA) clearly labeled as a "trust account"
 - Used ONLY to hold client/third party funds
- Handout: Rule 5-1.2 Trust Accounting Records and Procedures
- Trust Account Required - Commingling of Funds Prohibited
- Rules Regulating Trust Accounts
- Fee Advance (Evergreen Retainer) vs. True Retainer (nonrefundable)
- True Retainers paid to guarantee availability are earned upon receipt
- True Retainers may not be placed in client's trust account
- All funds (not belonging to attorney), including advances for fees, costs, and expenses, must be kept in a trust account
- Fees must be withdrawn within reasonable time after they become earned, unless right to receive fee is disputed
- Portion in dispute kept separate until dispute is resolved
- Overdraft protection is prohibited (can maintain small balance to cover bank fees/costs)
- Minimum Trust Accounting Records
- Original or legible copies of deposit slips
 - identifying the date, source of funds received and client or matter

- Original or legible copies of canceled checks
 - consecutively numbered
 - identifying client, matter or case number in memo area
- Documentary support for all disbursements, including records of all electronic transfers from client trust accounts
- Separate file or ledger card for each client or matter, showing all receipts, disbursements, transfers and unexpended balance
- Firms of more than one attorney must have a written trust account plan
- Every attorney must file a trust accounting certificate showing compliance with trust account rules (part of yearly dues statement)

DEFINE YOUR PRACTICE

- Law is a very Competitive Business.
- How are you going to stand out?
- Develop expertise in a Niche
 - A geographic segment of market
 - A demographic segment of market
 - A subset of an existing substantive practice
 - A means of delivering services
 - Unbundled legal services (Vision 2016)
 - Family Law Rule 12.040
- A niche is not... Bargain basement rates!
- A niche must be... Unique Specialized Memorable!
- Trying to appeal to everyone means you appeal to no one!

[Thank You Dan Video; example of poor Advertising]

BUSINESS DEVELOPMENT/MARKETING

- How many potential clients? (Market Size)
- Where are your best clients? (segment/lifestyle/demographics)
- How can you reach them? (Retail/Wholesale/Online)
- What can you tell them? (Advertising - Features, Benefits, Price)
 - Must not be misleading!
 - READ: Florida Rules of Professional Conduct, Rule 4.7
HANDBOOK ON LAWYER ADVERTISING AND SOLICITATION

Resource <http://www.floridabar.org/> enter "Handbook on Lawyer Advertising and Solicitation" in search box to get this document.

- Client development will be your highest, most urgent priority!

WHO IS YOUR IDEAL CLIENT?

- It's not just anyone who walks in the door.
- It's someone who can:
 - Use your services (within your niche)

- Afford your services (discuss up-front)
- Will stick with you long term (\$\$\$ to get client)
- Will bring you referrals (building brick on brick)
- Once identified, go out and get them!
 - Build a referral network (Solo/Small Firm)
 - Internet, Social Media, Blogging (content/advice)
 - Follow reporters who cover your area of law
 - Discover a common frustration, find a way to SOLVE that frustration and you have uncovered a business opportunity!

LAW FIRM IDENTITY

- Name Recognition
- Qualification of Your Service
- Market Identity (logo design)
- Advertising
 - Remember Fla. Bar Rule 4.7
- Trade Name
 - Register as Fictitious Name
 - “A lawyer may practice under a trade name if the name is not deceptive..”, Florida Rules of Professional Conduct, Rule 4-7.22(b)

FUNDING AND CASH MANAGEMENT

- Your Personal Budget
 - Total Monthly Cost of Living
 - Areas where you can Cut Back
 - Outstanding Debt
 - Total Amount Needed to Cover 6 to 12 Months of Expenses
 - Amount in Savings

PRICING/BILLING RATE

- Rule 4-1.5 Fees and Costs For Legal Services
- Client Reaction to Price
 - Your billing rate will create expectations
 - Hourly Rate
 - Flat Rate
 - Contingency Fee
- Calculating Billable Hour
 - Determine fixed expenses
 - Expenses paid every month (rent, insurance, phone, etc.)
 - Calculate available hours
 - Days available each year to earn (225 after holidays/vaca/sick)
 - Hours available each day (6 after lunch/travel/admin)
- 225 days x by 6 billable hours per day = 1,350 billable hours per year

PROFITABILITY

- Break-Even (B/E) Analysis
 - Yearly estimated fixed expenses plus a draw & taxes
 - Fixed Expenses \$4,000/mo. \$48,000/year
 - Draw \$3,333.33/mo. \$40,000/year
 - Taxes (SS/Medicare/income) \$ 8,600/year
 - Total yearly expenses \$96,600
 - Divided by 1,350 billable hours = \$71.56 B/E billing rate
- Realization Rate (amount actually collected)
 - Billing for work done, does not mean you are going to collect it
 - Big firms report Realizations rates of 85% (need to bill \$84.20)
 - What really matters isn't your hourly rate, it's your realization rate (what you are actually paid)
 - Evergreen Retainer (billed when retainer minimum balance is reached)
 - Engagement Letter (fee agreement), Set Expectations
 - Flat Fee Billing (for routine and predictable tasks)
 - Tenant Evictions; Traffic Tickets; Uncontested Dissolutions
 - A Flat fee should be FIRM PREDICTION of your hourly costs

GOVERNMENT RULES/REGULATIONS

- Florida Rules of Professional Conduct - See <http://www.floridabar.org>
 - Some are imperatives, cast in terms of "shall" or "shall not"
 - Others are permissive; cast in term "may" (lawyer has professional discretion)
 - They define a lawyer's professional role
- Labor Laws (W/Comp, Min. Wage, O/T Pay)
- Business Licenses and Approvals
- Immigration Laws (eligibility to work I-9 form)
- IRS and Social Security Withholding & Payments
- Federal, State, County, Town, and HOA's

START-UP CASH NEEDS

- Technology Hardware/Software
- Leasehold Improvements
- Licenses and Permits
- Malpractice Insurance (deposits)
- Office Furniture
- Working Capital Reserve Fund
- And so on and so on . . .

OPERATING CASH NEEDS

- Salaries
 - Virtual Answering Service www.callruby.com
- Rent
- Insurance (liability/malpractice)
- Office Supplies

- Software Fees
- Taxes (Payroll/Income)
- Advertising
 - Client Development (lunch expense)
 - Website (SEO)
 - Networking Events
- Student Loan – Start-up Loan
- Utilities (phone/internet/electric)

SOURCES OF CAPITAL

- Equity/Ownership
 - Personal Savings
 - Partners' Contributions
 - Profits Retained in the Business
- Debt Does NOT Signify Ownership
 - Banks and Credit Unions (*Can possibly be guaranteed by SBA*)
 - Home Equity Line of Credit
 - Family/Private Loans
 - Small Business Incubators
 - Metro Broward Economic Development Corporation
 - Credit Cards (not recommended)

LENDER'S VIEW OF BORROWER

- Most Important are: Character, Commitment, Credit Rating, Cash Flow, Collateral, Capital and Competition (the 7 C's)
- They will also consider your:
 - Industry knowledge
 - Personal Investment
 - Financial History
 - Financial Projections
 - Management Skills

CASH: MOST IMPORTANT ASSET

- Open a separate bank account for your practice
- Do not pay personal expenses from business account
- Deposit & record all revenue
- Use a petty cash fund (discipline)
- Hang on to cash as long as possible
- Manage your receivable (fees not yet paid)
- Reconcile bank accounts monthly
 - Required for Trust Account
- Have an adequate cash reserve fund upon start-up
- Prepare a cash forecast for six months into the future

LET'S REVIEW

- The Start-up Essentials

- Funding & Cash Management
- Business Development/Marketing
- Assessing Your Journey
- Organization, Insurance, Regulations
- Funding and Cash Management
- Next Steps

Seminar Ends

9:30 am

Thank you and Critiques

RULE 4-8.6 AUTHORIZED BUSINESS ENTITIES

(a) Authorized Business Entities. Lawyers may practice law in the form of professional service corporations, professional limited liability companies, sole proprietorships, general partnerships, or limited liability partnerships organized or qualified under applicable law. Such forms of practice are authorized business entities under these rules.

(b) Practice of Law Limited to Members of The Florida Bar. No authorized business entity may engage in the practice of law in the state of Florida or render advice under or interpretations of Florida law except through officers, directors, partners, managers, agents, or employees who are qualified to render legal services in this state.

(c) Qualifications of Managers, Directors and Officers. No person may serve as a partner, manager, director or executive officer of an authorized business entity that is engaged in the practice of law in Florida unless such person is legally qualified to render legal services in this state. For purposes of this rule the term "executive officer" includes the president, vice-president, or any other officer who performs a policy-making function.

(d) Violation of Statute or Rule. A lawyer who, while acting as a shareholder, member, officer, director, partner, proprietor, manager, agent, or employee of an authorized business entity and engaged in the practice of law in Florida, violates or sanctions the violation of the authorized business entity statutes or the Rules Regulating The Florida Bar will be subject to disciplinary action.

(e) Disqualification of Shareholder, Member, Proprietor, or Partner; Severance of Financial Interests. Whenever a shareholder of a professional service corporation, a member of a professional limited liability company, proprietor, or partner in a limited liability partnership becomes legally disqualified to render legal services in this state, said shareholder, member, proprietor, or partner must sever all employment with and financial interests in such authorized business entity immediately. For purposes of this rule the term "legally disqualified" does not include suspension from the practice of law for a period of time less than 91 days. Severance of employment and financial interests required by this rule will not preclude the shareholder, member, proprietor, or partner from receiving compensation based on legal fees generated for legal services performed during the time when the shareholder, member, proprietor, or partner was legally qualified to render legal services in this state. This provision will not prohibit employment of a legally disqualified shareholder, member, proprietor, or partner in a position that does not render legal service nor payment to an existing profit sharing or pension plan to the extent permitted in rules 3-6.1 and 4-5.4(a)(3), or as required by applicable law.

(f) Cessation of Legal Services. Whenever all shareholders of a professional service corporation, or all members of a professional limited liability company, the proprietor of a solo practice, or all partners in a limited liability partnership become legally disqualified to render legal services in this state, the authorized business entity must cease the rendition of legal services in Florida.

(g) Application of Statutory Provisions. Unless otherwise provided in this rule, each shareholder, member, proprietor, or partner of an authorized business entity will possess all rights and benefits and will be subject to all duties applicable to such shareholder, member, proprietor, or partner provided by the statutes pursuant to which the authorized business entity was organized or qualified.

Comment

In 1961 this court recognized the authority of the legislature to enact statutory provisions creating corporations, particularly professional service corporations. But this court also noted that

"[e]nabling action by this Court is therefore an essential condition precedent to authorize members of The Florida Bar to qualify under and engage in the practice of their profession pursuant to The 1961 Act." In Re The Florida Bar, 133 So. 2d 554, at 555 (Fla. 1961).

The same is true today, whatever the form of business entity created by legislative enactment. Hence, this rule is adopted to continue authorization for members of the bar to practice law in the form of a professional service corporation, a professional limited liability company, or a limited liability partnership. This rule also permits a member of the bar to practice law as a sole proprietor or as a member of a general partnership. These types of entities are collectively referred to as authorized business entities.

Limitation on rendering legal services

No person may render legal services on behalf of an authorized business entity unless that person is otherwise authorized to do so via membership in the bar or through a motion for leave to appear. Neither the adoption of this rule nor the statutory provisions alter this limitation.

Employment by and financial interests in an authorized business entity

This rule and the statute require termination of employment of a shareholder, member, proprietor, or partner when same is "legally disqualified" to render legal services. The purpose of this provision is to prohibit compensation based on fees for legal services rendered at a time when the shareholder, member, proprietor, or partner cannot render the same type of services. Continued engagement in capacities other than rendering legal services with the same or similar compensation would allow circumvention of prohibitions of sharing legal fees with one not qualified to render legal services. Other rules prohibit the sharing of legal fees with non lawyers and this rule continues the application of that type of prohibition. However, nothing in this rule or the statute prohibits payment to the disqualified shareholder, member, proprietor, or partner for legal services rendered while the shareholder, member, proprietor, or partner was qualified to render same, even though payment for the legal services is not received until the shareholder, member, proprietor, or partner is legally disqualified.

Similarly, this rule and the statute require the severance of "financial interests" of a legally disqualified shareholder, member, proprietor, or partner. The same reasons apply to severance of financial interests as those that apply to severance of employment. Other provisions of these rules proscribe limits on employment and the types of duties that a legally disqualified shareholder, member, proprietor, or partner may be assigned.

Practical application of the statute and this rule to the requirements of the practice of law mandates exclusion of short term, temporary removal of qualifications to render legal services. Hence, any suspension of less than 91 days, including membership fees delinquency suspensions, is excluded from the definition of the term. These temporary impediments to the practice of law are such that with the passage of time or the completion of ministerial acts, the member of the bar is automatically qualified to render legal services. Severe tax consequences would result from forced severance and subsequent reestablishment (upon reinstatement of qualifications) of all financial interests in these instances.

However, the exclusion of such suspensions from the definition of the term does not authorize the payment to the disqualified shareholder, member, proprietor, or partner of compensation based on fees for legal services rendered during the time when the shareholder, member, proprietor, or partner is not personally qualified to render such services. Continuing the employment of a legally disqualified shareholder, member, proprietor, or partner during the term of a suspension of less than 91 days requires the authorized business entity to take steps to avoid the practice of law by the legally disqualified shareholder, member, proprietor, or partner, the ability of the legally

disqualified shareholder, member, proprietor, or partner to control the actions of members of the bar qualified to render legal services, and payment of compensation to the legally disqualified shareholder, member, proprietor, or partner based on legal services rendered while the legally disqualified shareholder, member, proprietor, or partner is not qualified to render them. Mere characterization of continued compensation, which is the same or similar to that the legally disqualified shareholder, member, proprietor, or partner received when qualified to render legal services, is not sufficient to satisfy the requirements of this rule.

Profit sharing or pension plans

To the extent that applicable law requires continued payment to existing profit sharing or pension plans, nothing in this rule or the statute may abridge such payments. However, if permitted under applicable law the amount paid to the plan for a legally disqualified shareholder, member, proprietor, or partner will not include payments based on legal services rendered while the legally disqualified shareholder, member, proprietor, or partner was not qualified to render legal services.

Interstate practice

This rule permits members of The Florida Bar to engage in the practice of law with lawyers licensed to practice elsewhere in an authorized business entity organized under the laws of another jurisdiction and qualified under the laws of Florida (or vice-versa), but nothing in this rule is intended to affect the ability of non-members of The Florida Bar to practice law in Florida. See, e.g., *The Florida Bar v. Savitt*, 363 So. 2d 559 (Fla. 1978).

The terms qualified and legally disqualified are imported from the Professional Service Corporation Act (Chapter 621, Florida Statutes).

Added June 8, 1989 (544 So.2d 193); Amended: July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); June 27, 1996, effective July 1, 1996 (677 So.2d 272); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); May 20, 2004 (SC03-705); corrected opinion issued July 7, 2004 (875 So.2d 448); December 8, 2005, the Supreme Court of Florida issued a revised version of its original October 6, 2005 opinion adopting this amendment, effective January 1, 2006 (SC05-206), (916 So.2d 655); amended May 29, 2014; effective June 1, 2014 (SC12-2234).

RULE 4-7.12 REQUIRED CONTENT

(a) Name and Office Location. All advertisements for legal employment must include:

(1) the name of at least 1 lawyer, the law firm, the lawyer referral service if the advertisement is for the lawyer referral service, or the lawyer directory if the advertisement is for the lawyer directory, responsible for the content of the advertisement; and

(2) the city, town, or county of 1 or more bona fide office locations of the lawyer who will perform the services advertised.

(b) Referrals. If the case or matter will be referred to another lawyer or law firm, the advertisement must include a statement to such effect.

(c) Languages Used in Advertising. Any words or statements required by this subchapter to appear in an advertisement must appear in the same language in which the advertisement appears. If more than 1 language is used in an advertisement, any words or statements required by this subchapter must appear in each language used in the advertisement.

(d) Legibility. Any information required by these rules to appear in an advertisement must be reasonably prominent and clearly legible if written, or intelligible if spoken.

Comment

Name of Lawyer or Lawyer Referral Service

All advertisements are required to contain the name of at least 1 lawyer who is responsible for the content of the advertisement. For purposes of this rule, including the name of the law firm is sufficient. A lawyer referral service or lawyer directory must include its actual legal name or a registered fictitious name in all advertisements in order to comply with this requirement.

Geographic Location

For the purposes of this rule, a bona fide office is defined as a physical location maintained by the lawyer or law firm where the lawyer or law firm reasonably expects to furnish legal services in a substantial way on a regular and continuing basis.

An office in which there is little or no full-time staff, the lawyer is not present on a regular and continuing basis, and where a substantial portion of the necessary legal services will not be provided, is not a bona fide office for purposes of this rule. An advertisement cannot state or imply that a lawyer has offices in a location where the lawyer has no bona fide office. However, an advertisement may state that a lawyer is "available for consultation" or "available by appointment" or has a "satellite" office at a location where the lawyer does not have a bona fide office, if the statement is true.

Referrals to Other Lawyers

If the advertising lawyer knows at the time the advertisement is disseminated that the lawyer intends to refer some cases generated from an advertisement to another lawyer, the advertisement must state that fact. An example of an appropriate disclaimer is as follows: "Your case may be referred to another lawyer."

Language of Advertisement

Any information required by these rules to appear in an advertisement must appear in all languages used in the advertisement. If a specific disclaimer is required in order to avoid the advertisement misleading the viewer, the disclaimer must be made in the same language that the statement requiring the disclaimer appears.

Adopted January 31, 2013, effective May 1, 2013 (SC11-1327).

PROFESSIONAL ETHICS OF THE FLORIDA BAR
Opinion 12-3
(January 25, 2013)

Lawyers may use cloud computing if they take reasonable precautions to ensure that confidentiality of client information is maintained, that the service provider maintains adequate security, and that the lawyer has adequate access to the information stored remotely. The lawyer should research the service provider to be used.

Note: This opinion was affirmed by the Board of Governors with slight modification on July 26, 2013.

RPC: 4-1.6

Opinions: 10-2, 07-2, Alabama 2010-02, Arizona 09-04, Iowa 11-01, Nevada 33, New York State 842, Pennsylvania 2011-200

The Professional Ethics Committee has been directed by The Florida Bar Board of Governors to issue an opinion regarding lawyers' use of cloud computing. "Cloud computing" is defined as "Internet-based computing in which large groups of remote servers are networked so as to allow sharing of data-processing tasks, centralized data storage, and online access to computer services or resources."¹ It is also defined as "A model of computer use in which services stored on the internet are provided to users on a temporary basis."² Because cloud computing involves the use of a third party as a provider of services and involves the storage and use of data at a remote location that is also used by others outside an individual law firm, the use of cloud computing raises ethics concerns of confidentiality, competence, and proper supervision of non lawyers.

In other words, cloud computing involves use of an outside service provider which provides computing software and data storage from a remote location that the lawyer accesses over the Internet via a web browser, such as Internet Explorer, or via an "app" on smart phones and tablets. The lawyer's files are stored at the service provider's remote server(s). The lawyer can thus access the lawyer's files from any computer or smart device and can share files with others. Software is purchased, maintained, and updated by the service provider. Many lawyers and others are computing "in the cloud" because of convenience and potential cost savings.

The main concern regarding cloud computing relates to confidentiality. Lawyers have an obligation to maintain as confidential all information that relates to a client's representation, regardless of the source. Rule 4-1.6, Rules Regulating The Florida Bar. A lawyer may not voluntarily disclose any information relating to a client's representation without either application of an exception to the confidentiality rule or the client's informed consent. *Id.* A lawyer has the obligation to ensure that confidentiality of information is maintained by non lawyers under the lawyer's supervision, including non lawyers that are third parties used by the lawyer in the provision of legal services. See, Florida Ethics Opinion 07-2 and 10-2.

Additionally, this Committee has previously opined that lawyers have an obligation to remain current not only in developments in the law, but also developments in technology that affect the practice of law. Florida Ethics Opinion 10-2. Lawyers who use cloud computing therefore have an ethical obligation to understand the technology they are using and how it potentially impacts confidentiality of information relating to client matters, so that the lawyers may take appropriate steps to comply with their ethical obligations.

Other states that have addressed the issue of cloud computing have generally determined that there are ethics concerns regarding confidentiality of information, but that a lawyer may compute via the cloud if the lawyer takes reasonable steps. See, e.g., Alabama Ethics Opinion 2010-02 (Lawyer may outsource storage of client files through cloud computing if they take reasonable steps to make sure data is protected); Arizona Ethics Opinion 09-04 (2009) (Lawyer may use online file storage and retrieval system that enables clients to access their files over the Internet, as long as the firm takes reasonable precautions to protect confidentiality of the information); Iowa Ethics Opinion 11-01 (2011) (Appropriate due diligence a lawyer should perform before storing files electronically with a third party using SaaS (cloud computing), includes determining that the lawyer will have adequate access to the stored information, the lawyer will be able to restrict access of others to the stored information, whether data is encrypted and password protected, and what will happen to the information in the event the lawyer defaults on an agreement with the third party provider or terminates the relationship with the third party provider); Nevada Formal Ethics Opinion 33 (2006) (Attorney may store client files electronically on a remote server controlled by a third party as long as the firm takes precautions to safeguard confidential information such as obtaining the third party's agreement to maintain confidentiality); New York State Bar Ethics Opinion 842 (2010) (Lawyer may use an online computer data storage system to store client files provided the attorney takes reasonable care to maintain confidentiality, and the lawyer must stay informed of both technological advances that could affect confidentiality and changes in the law that could affect privilege); and Pennsylvania Ethics Opinion 2011-200 ("An attorney may ethically allow client confidential material to be stored in 'the cloud' provided the attorney takes reasonable care to assure that (1) all such materials remain confidential, and (2) reasonable safeguards are employed to ensure that the data is protected from breaches, data loss and other risks").

This Committee agrees with the opinions issued by the states that have addressed the issue. Cloud computing is permissible as long as the lawyer adequately addresses the potential risks associated with it. As indicated by other states that have addressed the issue, lawyers must perform due diligence in researching the outside service provider(s) to ensure that adequate safeguards exist to protect information stored by the service provider(s). New York State Bar Ethics Opinion 842 suggests the following steps involve the appropriate due diligence:


- Ensuring that the online data storage provider has an enforceable obligation to preserve confidentiality and security, and that the provider will notify the lawyer if served with process requiring the production of client information;
- Investigating the online data storage provider's security measures, policies, recoverability methods, and other procedures to determine if they are adequate under the circumstances;
- Employing available technology to guard against reasonably foreseeable attempts to infiltrate the data that is stored.

Of particular practical assistance is Iowa Ethics Opinion 11-01. As suggested by the Iowa opinion, lawyers must be able to access the lawyer's own information without limit, others should not be able to access the information, but lawyers must be able to provide limited access to third parties to specific information, yet must be able to restrict their access to only that information. Iowa Ethics Opinion 11-01 also recommends considering the

reputation of the service provider to be used, its location, its user agreement and whether it chooses the law or forum in which any dispute will be decided, whether it limits the service provider's liability, whether the service provider retains the information in the event the lawyer terminates the relationship with the service provider, what access the lawyer has to the data on termination of the relationship with the service provider, and whether the agreement creates "any proprietary or user rights" over the data the lawyer stores with the service provider. It also suggests that the lawyer determine whether the information is password protected, whether the information is encrypted, and whether the lawyer will have the ability to further encrypt the information if additional security measures are required because of the special nature of a particular matter or piece of information. It further suggests that the lawyer consider whether the information stored via cloud computing is also stored elsewhere by the lawyer in the event the lawyer cannot access the information via "the cloud."

This Committee agrees with the advice given by both Iowa and New York State. Additionally, this Committee believes that the lawyer should consider whether the lawyer should use the outside service provider or use additional security in specific matters in which the lawyer has proprietary client information or has other particularly sensitive information.

In summary, lawyers may use cloud computing if they take reasonable precautions to ensure that confidentiality of client information is maintained, that the service provider maintains adequate security, and that the lawyer has adequate access to the information stored remotely. The lawyer should research the service provider to be used.

1 *Collins English Dictionary - Complete & Unabridged 10th Edition*. HarperCollins Publishers. 10 Sep. 2012. <Dictionary.com
<http://dictionary.reference.com/browse/cloud%20computing> > .

2 Id.

[Revised: 07-30-2013]

RULE 5-1.2 TRUST ACCOUNTING RECORDS AND PROCEDURES

(a) Applicability. The provisions of these rules apply to all trust funds received or disbursed by members of The Florida Bar in the course of their professional practice of law as members of The Florida Bar except special trust funds received or disbursed by a lawyer as guardian, personal representative, receiver, or in a similar capacity such as trustee under a specific trust document where the trust funds are maintained in a segregated special trust account and not the general trust account and where this special trust position has been created, approved, or sanctioned by law or an order of a court that has authority or duty to issue orders pertaining to maintenance of such special trust account. These rules apply to matters in which a choice of laws analysis indicates that such matters are governed by the laws of Florida. As set forth in this rule, “lawyer” denotes a person who is a member of The Florida Bar or otherwise authorized to practice in any court of the state of Florida. “Law firm” denotes a lawyer or lawyers in a private firm who handle client trust funds.

(b) Minimum Trust Accounting Records. Records may be maintained in their original format or stored in digital media as long as the copies include all data contained in the original documents and may be produced when required. The following are the minimum trust accounting records that must be maintained:

(1) a separate bank or savings and loan association account or accounts in the name of the lawyer or law firm and clearly labeled and designated as a “trust account”;

(2) original or clearly legible copies of deposit slips if the copies include all data on the originals and, in the case of currency or coin, an additional cash receipts book, clearly identifying the date and source of all trust funds received and the client or matter for which the funds were received;

(3) original canceled checks or clearly legible copies of original canceled checks for all funds disbursed from the trust account, all of which must:

(A) be numbered consecutively

(B) include all endorsements and all other data and tracking information, and

(C) clearly identify the client or case by number or name in the memo area of the check;

(4) other documentary support for all disbursements and transfers from the trust account including records of all electronic transfers from client trust accounts, including:

(A) the name of the person authorizing the transfer;

(B) the name of the recipient;

(C) confirmation from the banking institution confirming the number of the trust account from which money is withdrawn; and

(D) the date and time the transfer was completed;

(5) original or clearly legible digital copies of all records regarding all wire transfers into or out of the trust account, which at a minimum must include the receiving and sending financial institutions’ ABA routing numbers and names, and the receiving and sending account holder’s name, address and account number. If the receiving financial institution processes through a correspondent or intermediary bank, then the records must include the ABA routing number and name for the intermediary bank. The wire transfer information must also include the name of the client or matter for which the funds were transferred or received, and the purpose of the wire transfer, (e.g., “payment on invoice 1234” or “John Doe closing”).

(6) a separate cash receipts and disbursements journal, including columns for receipts, disbursements, transfers, and the account balance, and containing at least:

(A) the identification of the client or matter for which the funds were received, disbursed, or transferred;

(B) the date on which all trust funds were received, disbursed, or transferred;

(C) the check number for all disbursements; and
(D) the reason for which all trust funds were received, disbursed, or transferred;
(7) a separate file or ledger with an individual card or page for each client or matter, showing all individual receipts, disbursements, or transfers and any unexpended balance, and containing:

(A) the identification of the client or matter for which trust funds were received, disbursed, or transferred;

(B) the date on which all trust funds were received, disbursed, or transferred;

(C) the check number for all disbursements; and

(D) the reason for which all trust funds were received, disbursed, or transferred;

and

(8) all bank or savings and loan association statements for all trust accounts.

(c) Responsibility of Lawyers for Firm Trust Accounts and Reporting.

(1) Every law firm with more than 1 lawyer must have a written plan in place for supervision and compliance with this rule for each of the firm's trust account(s), which plan must be disseminated to each lawyer in the firm. The written plan must include the name(s) of the lawyer(s) who sign trust account checks for the law firm, the name(s) of the lawyer(s) who are responsible for reconciliation of the law firm's trust account(s) monthly and annually and the name(s) of the lawyer(s) who are responsible for answering any questions that lawyers in the firm may have about the firm's trust account(s). This written plan must be updated and re-issued to each lawyer in the firm whenever there are material changes to the plan, such as a change in the lawyer(s) signing trust account checks and/or reconciliation of the firm's trust account(s).

(2) Every lawyer is responsible for that lawyer's own actions regarding trust account funds subject to the requirements of chapter 4 of these rules. Any lawyer who has actual knowledge that the firm's trust account(s) or trust accounting procedures are not in compliance with chapter 5 may report the noncompliance to the managing partner or shareholder of the lawyer's firm. If the noncompliance is not corrected within a reasonable time, the lawyer must report the noncompliance to staff counsel for the bar if required to do so pursuant to the reporting requirements of chapter 4.

(d) Minimum Trust Accounting Procedures. The minimum trust accounting procedures that must be followed by all members of The Florida Bar (when a choice of laws analysis indicates that the laws of Florida apply) who receive or disburse trust money or property are as follows:

(1) The lawyer is required to make monthly:

(A) reconciliations of all trust bank or savings and loan association accounts, disclosing the balance per bank, deposits in transit, outstanding checks identified by date and check number, and any other items necessary to reconcile the balance per bank with the balance per the checkbook and the cash receipts and disbursements journal;
and

(B) a comparison between the total of the reconciled balances of all trust accounts and the total of the trust ledger cards or pages, together with specific descriptions of any differences between the 2 totals and reasons for the differences.

(2) The lawyer is required to prepare an annual detailed list identifying the balance of the unexpended trust money held for each client or matter.

(3) The above reconciliations, comparisons, and listings must be retained for at least 6 years.

(4) The lawyer or law firm must authorize, at the time the account is opened, and request any bank or savings and loan association where the lawyer is a signatory on a trust account to notify Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, in the event the account is overdrawn or any trust check is dishonored or returned due to insufficient funds or uncollected funds, absent bank error.

(5) The lawyer must file with The Florida Bar between June 1 and August 15 of each year a trust accounting certificate showing compliance with these rules on a form approved by the board of governors. If the lawyer fails to file the trust accounting certificate, the lawyer will be deemed a delinquent member and ineligible to practice law.

(e) Electronic Wire Transfers. Authorized electronic transfers from a lawyer or law firm's trust account are limited to:

- (1) money required to be paid to a client or third party on behalf of a client;
- (2) expenses properly incurred on behalf of a client, such as filing fees or payment to third parties for services rendered in connection with the representation;
- (3) money transferred to the lawyer for fees which are earned in connection with the representation and which are not in dispute; or
- (4) money transferred from one trust account to another trust account.

(f) Record Retention. A lawyer or law firm that receives and disburses client or third party funds or property must maintain the records required by this chapter for 6 years subsequent to the final conclusion of each representation in which the trust funds or property were received.

(g) Audits. Any of the following are cause for The Florida Bar to order an audit of a trust account:

- (1) failure to file the trust account certificate required by rule 5-1.2(c)(5);
- (2) return of a trust account check for insufficient funds or for uncollected funds, absent bank error;
- (3) filing of a petition for creditor relief on behalf of a lawyer;
- (4) filing of felony charges against a lawyer;
- (5) adjudication of insanity or incompetence or hospitalization of a lawyer under The Florida Mental Health Act;
- (6) filing of a claim against a lawyer with the Clients' Security Fund;
- (7) when requested by the chair or vice chair of a grievance committee or the board of governors; or
- (8) upon court order; or
- (9) upon entry of an order of disbarment, on consent or otherwise.

(h) Cost of Audit. Audits conducted in any of the circumstances enumerated in this rule will be at the cost of the lawyer audited only when the audit reveals that the lawyer was not in substantial compliance with the trust accounting requirements. It will be the obligation of any lawyer who is being audited to produce all records and papers concerning property and funds held in trust and to provide such explanations as may be required for the audit. Records of general accounts are not required to be produced except to verify that trust money has not been deposited in them. If it has been determined that trust money has been deposited into a general account, all of the transactions pertaining to any firm account will be subject to audit.

(i) Failure to Comply With Subpoena for Trust Accounting Records. Failure of a member to timely produce trust accounting records will be considered as a matter of contempt and process in the manner provided in subdivision (d) and (f) of rule 3-7.11, Rules Regulating The Florida Bar.

Amended Oct. 10, 1991, effective Jan. 1, 1992 (587 So.2d 1121); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 17, 1997 (697 So.2d 115); April 25, 2002 (820 So.2d 210); July 3, 2003 (850 So.2d 499); May 20, 2004 (SC03-705) (875 So.2d 448); November 19, 2009, effective February 1, 2010 (SC08-1890) (34

Fla.L.Weekly S628a). Amended April 12, 2012, effective July 1, 2012 (SC10-1967); amended May 29, 2014, effective June 1, 2014 (SC12-2234).



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