

INDEPENDENCE DAY—IMMIGRATION LAW AND THE SOLO PRACTITIONER

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INTRODUCTION

Independence is probably the single most often cited reason for wanting to strike out on one's own as a solo practitioner. Suddenly, a lawyer is free from the whims of current supervising attorneys and partners. Free to build the type of practice of which they dream, in the area of law they most enjoy. Free to practice according to their most deeply-held principles.

Also, free from a steady and reliable paycheck. Free from someone to appeal to for advice (or to share blame with when something goes wrong). Free from a large and specialized support staff handling all aspects of the business.

Freedom, it seems, comes at a price. Part of this toll exacted on the solo practitioner is the need to be both lawyer and renaissance professional: accountant, bookkeeper, Chief Technology Officer, Marketer, and Corporate Strategist. With planning, however, nothing is impossible.

DEVELOPING AND MAINTAINING CRITICAL RELATIONSHIPS

Although you're a solo practitioner, you're not alone. Maintaining certain critical relationships is the backbone of any solo immigration practice.

First and foremost is your relationship with your *clients*. They are the *raison d'être* of your practice, and managing their expectations is the key to your success. Before you start a case, make sure your client has a clear understanding of your fee structure. Educate your clients regarding the timing of the case, and update them if this changes. Keep your clients in the loop—if you are proactive in providing information, you will spend less time fending off status calls. Finally, make sure your client understands the chances of success from the outset.

Perhaps the next most important relationship in this high-tech age is with your *IT services provider(s)*. You can and should take advantage of the technology that is available to you, but unless you are an IT expert, you will need someone to guide you through this process. Choose your IT services provider carefully, as this person can make or break your business. The same goes for providers of forms management software; many options exist in the market and you should assess them carefully to determine the best fit for your office in terms of features, cost, and usability.

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Lisa York recently started a solo-immigration practice in Denver, Colorado. She focuses her practice on employment-based immigration for small businesses, colleges and universities, researchers, and students. She is hopeful that her extraordinary ability clients will discover the path to eternal life while eradicating all disease and disability, thus rendering the need for death and disability planning obsolete.

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You will also find yourself interacting with *financial services professionals*, such as accountants and bookkeepers and bankers. It is important to choose these relationships carefully, as they can have a significant impact on your business.

Other *lawyers* are critical to the success of any solo practitioner. Since you do not have a stable of colleagues waiting down the hall to brainstorm cases with you, you should take advantage of the many resources AILA has to offer. Review and post on the MessageCenter and utilize the Mentor program. Of course, you may also need the services of other lawyers for business reasons (incorporation of your law firm, employment issues, etc.).

Another critical resource is the *practice management professional*. AILA's Practice & Professionalism Center provides a wealth of practice management resources. Your local bar also may be an excellent source of information and guidance; for example the DC Bar offers free onsite practice management consultations. Private business coaches offer support and guidance for a fee; for women lawyers www.makemineamillion.org is an excellent resource.

Some other important relationships include *insurance agents* (malpractice, workers' comp, business owners', life, health and disability) and *payroll companies* (as your practice grows you may find a professional payroll service to be a godsend).

To project a professional image and secure your online presence you may retain the services of *web developers* or *marketing firms*. And unless you work out of a home office, you will find that having a relationship with a *commercial real estate broker* (as well as developing and nurturing the relationship with your *commercial landlord*) is key.

Professional associations can provide many important networking and business development opportunities. The importance of AILA membership goes without saying; immigration attorneys may also consider joining other relevant professional associations (i.e. industry associations).

Last but not least, be sure to nurture your relationship with your *family, friends*, and those who keep you in good mental and physical health (i.e., your *personal trainer/yoga instructor/massage therapist*). The solo practice of immigration law can sometimes be overwhelming; do not forget to add these important people to your "to do" list!

CORE PRINCIPLES OF LEGAL MARKETING

Certain basic marketing concepts are critical to success as a solo practitioner. While not individually complex, many solos misunderstand or skip important steps.

Understand your marketing role. You need to have a clear sense of your role in firm marketing. In today's environment, the differences in roles are truly just a matter of degree. Understand and accept that you are running a business, and that you must balance the roles of lawyer, entrepreneur and manager. Marketing will be forever.

Have a marketing plan. Keep it simple, and make it measurable. Use it to avoid a shotgun approach, which is the biggest waste of time and money. Approach marketing strategically. Do some simple market research, then act: What do I want my practice to look like? Where do my best clients come from? What is my most profitable type of client or work? Where can I find more of the work I want?

Specialize in a unique aspect of your area. Be the best in your niche. Become known as "the expert" in your field. It could be representing dog owners in veterinary malpractice, motor sports drivers in immigration matters, or start-up telecommunications companies. Limiting your practice makes your message resonate longer and louder.

Understand your marketplace. Knowing who you serve (or want to serve) is the only way to target your marketing efforts. Who is your target market? What lawyer attributes are important to them? Does your marketing message fit the audience?

Differentiate your firm from others in the marketplace. This is also known as a Unique Selling Proposition. Common ways to differentiate include client service, practice area specialization, form of business model, and pricing; however, general claims and promises often are not effective. Be specific.

Focus on client needs, not on the firm's attributes. Clients are looking for a lawyer to solve their problem, not regale them with prior conquests. Clients want answers, not egos. Do more listening than talking.

Leverage technology. Use common computer tools to increase the quantity and quality of your marketing efforts. Use a contact manager such as Outlook to increase the frequency of contact with people in your network and simplify the process of meaningful communication. Build a web site that people find and use as a resource. Buy a business card scanner and use it to build new relationships.

Create, practice, and hone your personal marketing message. Create your own 5-second sound bite and 30-second "elevator" speech. Refine each one until they feel right. Develop variations based on different audiences/market segments.

Develop an operational plan to handle your new client business. Review your present ability to handle client work, and adapt or change your processes to handle more work. You may need new software, more administrative help, more lawyers or law clerks, and new file cabinets, just to name a few common operational changes.

Marketing is an ongoing effort that doesn't end when the pipeline of new business is full. Those cases will eventually be completed, and only constant attention to the process—from your role all the way through to how your firm will deliver on its promise to clients—will attract tomorrow's clients.

TECHNOLOGY CONSIDERATIONS

Decisions about technology will need to be made throughout your career as a solo practitioner. Some of the most critical will concern how to initially equip a practice—and these decisions aren't becoming any easier as technology advances.

You first must consider what will serve your needs—how will you be working? Will you have a physical office or virtual? Will you often work remotely? Will you often need to travel for your practice?

The decision encompasses more than the traditional desktop vs. laptop conundrum. Prices have become so competitive that it is possible to have both for not much more than the cost of one (if you look carefully, package deals including both desktops and laptops—including printers and monitors—are available from major vendors, though all of the items in the package may not be the best options for your environment).

The real decision deals with how you will store and access your information. You can store all sensitive data on an in-office desktop machine, and access this machine remotely via ubiquitous remote-access software such as [GoToMyPc.com](https://www.gotomypc.com/)¹ or [LogMeIn.com](https://secure.logmein.com/US/home.aspx).² No sensitive data need be kept on easily broken, lost, or stolen laptops. Also, this lowers what you might require in a laptop, allowing you to avail yourself of ever-lighter, ever-more-inexpensive "netbooks."

In keeping your client data on your own office machine, you control your sensitive client data but take on the worry of failure through mechanical lapse or disaster, along with responsibility for backup and recovery plans and execution. If you maintain the software you use to work with this data, you need to maintain and upgrade this software.

Increasingly, software is being offered online through a subscription model: "Software as a Service." It may make sense to license the right to use the software, rather than the software itself. With a high-bandwidth connection (almost essential for most businesses at this point), you download the portions of a software application you need at any point in time and work within an internet browser—the licensing company is responsible for maintaining and patching the software, and sometimes for storing your data as well. Providers in this area will normally having a robust, multi-site professionally managed backup strategy in place where data is stored in multiple managed data centers (you will hear the term "cloud computing" in connection with these concepts).

Under this model, you can access both your data and the software through any computer anywhere in the world as long as you have a high-bandwidth connection and your password. Of course, your sensitive and

¹ <https://www.gotomypc.com/>.

² <https://secure.logmein.com/US/home.aspx>.

privileged client data is now in the hands of a vendor—so you would do well to carefully review privacy and access policies and practices, as well as service history, before signing on.

Standard “Office Productivity Suites” (word processing, spreadsheets, presentation graphics, etc.)—and file storage—are offered by Google today through the Google Docs³ feature, with other vendors offering something similar or moving to do so. You will need to explore and decide if the utility offered by the Service model adds value to your practice.

Many of the major, comprehensive Case Management Systems offer a service or subscription model as well, which can be priced very attractively compared to their offerings which you manage in-house. The question becomes whether you as a solo require this level of sophistication, at least initially. Several levels of solution are available when it comes to immigration forms:

- Forms-only (such as the package offered as part of AILA’s AILALink⁴ research subscription package),
- Database-driven forms packages which tie forms to a case and auto-fill forms with client data;
- Comprehensive systems with modules for billing, marketing, and online client access.

You need to assess what you need (and can afford), but also here what your competitors in your market use.

Legal research solutions can also be largely technology-based, allowing freedom from update services (and the need for storage of large quantities of books and binders). As useful and economical as the technology may be, careful thought should be given to purchasing physical books in certain cases where they are used often and frequently highlighted—certain popular desk references, certain volumes of regulations, etc.

But what of more traditional office technology such as phones and faxes? With regard to telephones, the choice for many years has been whether to remain with traditional analog phone lines or move to Voice of Internet Protocol, or “VOIP,” where phone service is delivered over a high-speed internet line. Quality is now comparable, and VOIP carriers now offer significant cost savings for long distance.

A voice line may still be a necessity if you need a traditional fax machine—however, online alternatives exist here too—companies such as eFax⁵ and jConnect⁶ allow you to receive incoming faxes as e-mails over a dedicated fax number they provide to you, and have phone numbers available in most area codes. They also allow you to send right from your desktop.

Finally, some time should be spent thinking about cellular service—voice and data (for e-mail access anywhere, anytime), coverage, and comparative pricing. The latest offering in this area includes personal wifi hotspots, allowing connection by smart phone or laptop anywhere via cellular network—a possible advantage depending on your practice profile.

HUMAN RESOURCES ISSUES—PEOPLE HELPING YOU HELP OTHER PEOPLE

At some point, if everything else goes well, you may find that you have more work than you can truly handle all by yourself—even after adjusting your work habits and investing in technology for maximum efficiency. You will need to get someone else to help, but there are many ways to do this. The question you now need to answer is how best to complete the work you need to get done.

Questions you might ask yourself at this point include whether you expect the additional workload to be temporary or permanent? What kind of work needs to be done (requiring what level of expertise)? What is the current state of the labor market?

If you’ll be recruiting for the position directly, consider online job postings (such as craigslist). These can be the most economical and fastest way to locate qualified staff. Even for short-term staff, you need to screen candidates carefully. In addition to reviewing resumes for desired qualifications, you might create a pre-

³ <http://www.docs.google.com/>.

⁴ <http://www.ailapubs.org/ailalink.html> and www.ailalink.org.

⁵ <http://www.efax.com/>.

⁶ <http://www.j2.com/>.

interview questionnaire to identify the candidates that are the best fit for your firm, or give a homework assignment to candidates you've interviewed to see the quality of their work.

A short-term need, such as that arising from a peak time of year for certain visas or one particularly difficult appellate case—may be filled at any level of the labor market. Secretarial or administrative staff may be hired on a temporary basis through firms specializing in provisional staffing, while specialty firms exist in most major metropolitan areas to handle skilled paralegal staffing, even on a temporary basis. Eager attorney-level staff can often be found through local law schools with clinical or internship programs, although there may be a high learning curve for such a short assignment.

If the need for additional staff will be an ongoing one, even greater thought will need to be given to hiring. Beyond considering the level of professional needed and how best to recruit such a person, additional considerations will include:

- Thinking through a hiring process more fully to ensure a long-term fit;
- Setting of policies (for salary and benefits, acceptable office behavior, vacation, etc.);
- What type of career path will be available to a good employee (will a good administrative support person be trained and promoted to Paralegal? Will a good attorney be able to become a partner?);
- If an employee does not meet expectations, what circumstances will justify termination, and how will this be handled?
- Are financial arrangements in place to ensure that payroll will be met even in lean times?

Ultimately—and especially if staff will interact directly with clients—your reputation depends as much on the professionalism of your staff as that of yourself. Human resources decisions will therefore be among the most critical you will make.

HOPE FOR THE BEST, PREPARE FOR THE WORST: DEATH & DISABILITY

Scenario 1: Harold, a well-respected immigration attorney from New York, who practiced law on his own, finally took his dream vacation to South Africa. He promised himself that he would not check email on his iPhone for the entire trip. During a walking safari in Kruger National Park, Harold made one fatal mistake. In a single moment of weakness, he could not resist his iPhone. He was checking for 3G coverage when he accidentally stepped on Amelia, a normally solitary black mamba,⁷ who is ruthless when provoked. Harold never knew what hit him as Amelia rose to her full height and struck Harold in his gluteus maximus. Harold died instantly.

Scenario 2: Betty, a nationally-renowned immigration attorney who prepared exceptional extraordinary ability petitions, just informed her client, Vladimir, that his extraordinary ability petition had been approved in only two days. Vladimir, a truly talented biologist who works for the Department of Defense, was so excited about the approval that he rushed over to Betty's office to express his gratitude and show her his latest experiment. Unfortunately, something went terribly wrong in Betty's conference room. Vladimir accidentally dropped his Petri dish which contained a virulent form of flesh eating bacteria. In a single moment of sputtering dust and spores, Betty was infected. Although she survived the attack, she was never quite the same and she could no longer prepare exceptional extraordinary ability petitions.

Unfortunately, bad things happen. What can a solo practitioner do to protect his or her clients' interests if something bad happens? The American Bar Association's (ABA) Standing Committee on Ethics and Professional Responsibility tackled this issue in a formal opinion titled "Disposition of Deceased Sole Practitioners' Client Files and Property."⁸ Solo practitioners have a fiduciary duty to protect their clients' interests even

⁷ "The black mamba (*Dendroaspis polylepis*) is an elapid snake found in Africa. It inhabits a wide range of locations throughout the continent, as it is found in Ethiopia, Kenya, Uganda, Zambia, Zimbabwe, Angola, Namibia, Malawi, Mozambique, Swaziland, South Africa and the Congo. It one of Africa's most venomous and feared snakes. It is known for being very aggressive when threatened, and will not hesitate to strike with deadly precision." Wikipedia, available at http://en.wikipedia.org/wiki/Black_mamba.

⁸ See ABA Formal Opinion 92-369, available at www.abanet.org/cpr/clientpro/client.html#Retirement.

after the solo practitioner dies. Some jurisdictions have sanctioned attorneys when they neglected client matters due to illness, attempted retirement, or personal problems.⁹ The same issues arise when a lawyer dies, thus implying that solo practitioners who do not have a plan to designate another lawyer to wind-up their affairs when they die or are disabled, are guilty of neglect. The ABA's opinion condones sanctioning attorneys who have inadequately prepared to protect their clients in the event of the attorney's death. While such actions won't affect the deceased attorney, these actions may expose the deceased lawyer's estate to malpractice suits and thus, impact the deceased lawyer's family. Therefore, every solo practitioner should have a "Death & Disability Plan."

It is easy for us to all agree that we need to plan ahead for run-ins with black mambas or flesh eating bacteria. However, developing and implementing such a plan is easier said than done. Here are 10 suggestions for developing and implementing an effective plan:¹⁰

- Check your state bar rules.
- Appoint a "buddy" attorney. Who does your buddy represent? You? Your Clients? Or is your buddy a neutral file transferring agent? Your buddy's ethical obligation to report your grievable mistakes (not that you've made any) to your state bar, and/or to your clients will change depending on the type of relationship you establish. Is your buddy going to take over your practice, sell your practice or take some cases and transfer your remaining cases to another attorney? Again, check your state bar rules to see if a particular form of relationship is mandated in your jurisdiction.
- Designate a "bank buddy" to be an authorized signor on your business bank accounts, as well as your client trust account. It is recommended that the authorized signor on your client trust account be another attorney because he or she will be handling your client's money. Contact your bank to find out the procedure to authorize an additional signor on your account. Do you want your bank buddy to be the same as your buddy or do you want to appoint another attorney to handle the money? Do you want to give your bank buddy complete access to your accounts or do you want to provide limited access for a specific period of time (i.e. a vacation), or only after a specific event occurs (i.e. black mamba bite)?
- Make sure your buddy is familiar with your office systems, and staff. Keep your buddy apprised of changes.
- Maintain an up-to-date office procedure manual that includes the following information: how to conduct a conflicts check; calendar deadlines; generate client contact and status lists; where to find open and closed files, financial records, bank information; and how to access voicemail, your computer, locked cabinets, etc.
- Familiarize your buddy with your office procedures manual and how to access it.
- Communicate your "death & disability plan" to your clients, and get authorization to disclose confidential information to your buddy in your fee agreement or engagement letter.
- Introduce your buddy to your staff and make sure everyone knows how to contact each other. Make sure your buddy knows how to contact your spouse/family, bank buddy, and all other important people (i.e. your landlord to gain access to your office).
- Things to do now (before Amelia strikes!)
 - Make sure all your deadlines are calendared;
 - Document your files, keep case notes up-to-date;
 - Keep time records and billing records up-to-date;

⁹ See *In re Jamieson*, 658 P.2d 1244 (Wash. 1983) (neglect due to poor health and attempted retirement); see also *In Re Whitlock*, 441 A.2d 989 (D.C. App. 1982) (neglect due to poor health, marital difficulties and heavy caseload); *Committee on Legal Ethics of West Virginia State Bar v. Smith*, 194 S.E. 665 (W. Va. 1973) (neglect due to illness and personal problems).

¹⁰ The list of suggestions come from the Colo. Supreme Ct., Office of Attorney Counsel, *Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death (One of Which Is Inevitable)* (2007), available at www.cobar.org/repository/LPM%20Dept/JohnGleasonTransitionsComm.pdf. It appears that many states have similar manuals, so check with your state bar association.

- Have an office policy to return original documents; and
- Draft letters to send to clients informing them of your death or disability.
- Draft a will. Maintain life and disability insurance. Review and revise your plan annually and keep your buddy informed of changes.

Luckily, both Harold and Betty read this article before these unfortunate events happened to them. Their buddies were able to competently and effectively close Harold and Betty’s law practices because of the plans Harold and Betty had in place. You never know when it will happen to you (and yes, it is inevitable that you will die), so start working on your plan now!¹¹

CONCLUSION

The freedom that comes with having your own solo practice is genuine, but it isn’t total. You still will be answerable not only to clients, but to the needs—current and future—of your practice. However, if you can make the right decisions for your practice, you will find life as a solo practitioner rewarding.

The informed and prepared solo practitioner can look forward to a sense of true self-determination and practice according to the dictates of their own conscience—all while earning a living and still remembering the names of most immediate family members.

¹¹ For additional resources on the subject go www.abanet.org/cpr/clientpro/client.html#Retirement. The book *Being Prepared: A Lawyer’s Guide for Dealing with Disability or Unexpected Events* by L. Cohen & D. Cohen (ABA 2008) is a step-by-step manual to developing a “death and disability plan” that includes a CD with all the worksheets available to download. Practice Pointer: Check out the book from your State bar association’s lending library.