BREAKING THE BURDENS OF SOLO PRACTICE

By Dimitri L. Karapelou

I am a solo lawyer who launched a private practice in February 2010 to take advantage of a then-booming market for bankruptcy services. Going solo was the best career decision I have ever made for both personal and professional reasons. Before then, I had toiled for two law firms making decent money but my best life—the simultaneous achievement of economic potential and personal growth—did not happen until 2010. Yet changing one's life comes at a cost. It is not always financial nor is it apparent until it is often too late to alter the course of things. Going it alone creates a number of burdens for a practitioner. Some of these nuisances seem amorphous but can grow so large that they weigh on the practitioner, making it harder to realize the economic and personal opportunities that were the reason for going solo in the first place. In this piece, I have detailed several hurdles I've had to overcome as a lone practitioner. Hopefully, my experiences can serve as a guide to those who are also launching a solo career—the ride is worth it as long as you can handle the curves.

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Most new clients are referrals but there is always a reason why the referring lawyer thought of you as the "right" person for the engagement.

Solo practitioners love getting referrals from other lawyers, particularly when it's a friendly lawyer who has previously referred them cases. But after the initial feel-good rush of a new case, reality quickly sets in. The case is complicated, there seems to be no exit strategy and, of course, the client neglects to share crucial information that later comes out in discovery. After assessing the situation, you start to wonder why you took the case in the first place. The old expression "you know what flows downhill" applies often to solo work. Most solo attorneys do not want to question their referral sources but that is absolutely necessary. Inquire about the background of the client; the reason why the referring lawyer cannot handle the case; whether the referring lawyer has a personal relationship with the client; the identity of the opposing counsel; and then whether that counsel made any explicit comments about the merits of the matter to the referring lawyer. Finally, very importantly, ask whether the client can pay for the services requested. Certainly, there are even more important questions to ask depending on the nature of the engagement. *Information about the client can be just as valuable as the money the client will eventually pay you*.

Once you get into a case, it's really hard to get out.

Lawyers instinctively want to enter into as many lawsuits as possible for the client. It's fun to play the hero, and clients need immediate representation to avoid consequences of a default or dismissal. But before you step into the colosseum with the gladiators, pause, reflect, and form a strategy—for yourself as well as the client. Judges are not always so quick to let a lawyer withdraw from a lawsuit. To avoid tension with the court, there are several actions you can take. The most important thing, which is sometimes overlooked, is to make sure your client contact is the same person who can sign the engagement letter, assume control of the litigation, and give you permission to enter and withdraw your appearance. Craft an engagement letter that establishes clear boundaries of the representation—the dos and don'ts of your services. The engagement may say it does not include appeals; some clients want to take appeals even though they likely have no chance. Seek out all the potential sources of documentation a client may have–business records, emails, correspondence, etc. The case is usually as good as the discovery you get from your own client. These tasks will help set you up to file a proper motion to withdraw in the event the client becomes difficult, non-responsive or does not follow guidance of counsel. While the engagement letter can be brief, it is advantageous to send a follow-up email outlining what is expected from the client during the representation. *Clients can ignore lawyers, but they do not have the leisure to shirk their responsibilities*.

Clients can be emotional vampires, draining solo lawyers of much needed vigor and energy.

Solo attorneys often end up doing battle with their clients more than opposing counsel working for firms. Litigation and transactions can fuel client anxiety, paranoia, and hostility. The most difficult task can sometimes be explaining to the client the reality of their situation. There may be no winnable strategy, the deck may be stacked against the client, or the forum is not likely to produce a clear result in the near future. The client hired the lawyer to avoid getting to acceptance of what has always been—and may always be—a bad situation. The opposite situation can be just as challenging. The client has a very good case on paper and wants results fast. Clients in both scenarios can be equally demanding for different reasons. The attorney-client relationship is based, if nothing else, on one thing: trust. If you have trust, keep it—do not dilute it by indulging a client's worst emotions. Conserve your best energies for the case itself. Find a way to harness a client's concerns without letting them take you on an emotional ride. Use time-tested psychology, brain-behavior techniques and neuroscience—whatever you can learn independently as a complement to your role and practice.

Opposing lawyers will write nasty emails and motions to your client and even you.

Most solo attorneys do not have the time, energy or motivation to participate in battles that do not deliver immediate value to their client. Opposing counsel knows this and there is little or no moral hazard to mitigate their wild actions. What can be done? When faced with hostile and frivolous motions, solo lawyers should respond sparingly and rely on the record of the case, rather than the passions of counsel. You can also consider raising these concerns with the court. *It is permissible and sometimes required to alert the court when an opposing counsel is acting unethically or with reckless or careless disregard for procedures, civility, and professionalism*.

You will be asked to speak at continuing education seminars for which you receive no financial compensation and which almost never seem to lead to further opportunity.

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So why do lawyers do this? Solo attorneys often want the extra attention and recognition that go with a significant speaking engagement. Most get reeled in by course planners who are always searching for new talent to hire. A three-hour or less seminar can involve 20-plus hours of time to prepare detailed materials, not to mention a lost workday for the event. Lawyers earning salaries with firms can afford such indulgences. But often it's not worth it for solo lawyers who never seem satisfied with the acclaimed benefits of giving a seminar presentation, such as free class credits, publication of the materials to a wide audience, and some soft advertising of one's name. My suggestion is simple: find speaking engagements where you can stand out as a high-level lawyer in your niche at a seminar full of peers—judges, industry lawyers, government lawyers, and others who would see you shine. The less publicized and attended seminars may not be worth all the preparation time and will only distract you from attending to your many solo practice tasks.

Cases that should settle easily never do.

Cases do not settle for various reasons. The client may hire a solo lawyer knowing he or she is much cheaper than a large firm, and, therefore, be willing to spend money early in the case on heavy-duty litigation. After all, many clients hire lawyers for the sole reason of throwing punches at their nemesis. All this shadow boxing is counterproductive. The beginning of a case is when lawyers make their first impressions. Two tigers scowling at each other makes it hard to resolve anything. Instead, get started early on seeking compromise. A different, and very common, scenario is that clients have some money to litigate, but not nearly enough to settle. Everyone

has heard the proverbial client say, "I would rather spend money on legal fees than pay the other side." Yes, for maybe a few months, but what then?

I suggest making it abundantly clear at the first meeting that 98% of lawsuits settle, and this one should not be the exception. Sometimes it helps to start discussing the mechanics of a settlement very early in the representation, touching on issues such as: payment source; the client's expectations from the other side; the fact that it's more efficient for the lawyer to use part of the retainer to start lobbying for a settlement; and how a settlement can improve the client's situation. The longer you wait to discuss settlement, the more challenging it becomes to start that conversation with your client, let alone ink the final deal. And if you wait, you miss the opportunity to blame the opposing side when the case drags on. Lawyers do not control their adversaries, but they can set up situational dynamics to stimulate compromise at best, or, at worst, expose their adversary's flaws.

Judges display scant empathy for solo attorneys.

Let us not get too deep into the judiciary, a noble group who works for modest pay and fleeting reward. However, judges often can be insensitive to the constraints faced by solo lawyers. Yet, if a solo is smart and efficient, a judge can be very accommodating. The trick for a solo practitioner is to stand out from a crowd of larger law firms. Here are a few suggestions, which are very easy to implement.

First, make your pleadings succinct by employing the inverted pyramid of a news reporter—place the important material at the beginning. The meat of the brief should read like a news article, packed with tightly worded case extracts providing the strongest possible support. Leave the other fluff out.

Second, always wear the white hat. While it's tempting to go into attack mode, judges like to dispense justice to those who deserve it.

Third, make every attempt to thin out the case for the judge's consideration, including filing motions early in the case. And finally, when the court asks if the parties are interested in settlement, the answer should always be "YES" (even if you know the case cannot settle). No judge wants to fill his or her courtroom with nothing but cowboy lawyers.

No one really cares about what a lawyer thinks, they want to know what a lawyer can do. Use every opportunity to keep the wheels of the matter going over bumpy roads and swiftly down the smooth ones. ■

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