Contemporary Law Office Management 2nd edition Tripoli Test Bank

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Instructor's Manual and Test Bank

Contemporary Law Office Management

Second Edition

Lori Tripoli

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Preface

Law Office Management is a dynamic course to teach because it brings so many elements of a student's education together: substantive areas of the law, research skills, technology, ethics, and communication. Just as the law is not static, just as the practice of law has changed, so too has the running of a successful law office evolved. Lawyers and their support staff have always had to adapt to changing times, shifting economies, and technological advances.

This is an exciting time to be working in the legal field in any capacity. Even as opportunities in some segments of the market are contracting a bit, the potential for innovative entrepreneurship in the field seems infinite. There's space in this field for technical types, for project management whizzes, for brilliant legal minds, for capable business administrators, for creative sorts, for change-the-world mindsets. Legal advice is being delivered in so many new and accessible ways, I can't help but be optimistic both about the field's present as well as its future.

What students may not have contemplated before taking a Law Office Management course is the business component of any law practice and the attendant people skills necessary to keep a workplace running smoothly. The moral dilemmas that can confront those who work in the legal field, and the vibrant, deadline-oriented pace of any law practice, make careers in law office management—and courses on the subject—of interest to students who may only have been minimally exposed to the job opportunities in this area. A good textbook can engage students well; an energetic instructor can change the course of those students' lives. Even those who have no intention of becoming law office managers will benefit from the concepts and principles addressed here; they are applicable in many workplaces and are very much a component of any lawyer, paralegal, or support staff's daily existence at a law firm.

This new edition very much focuses on skills and career-building practices, which students should appreciate as they learn about the dynamics of the legal arena, construct their own portfolios of work, and begin their job search or proceed up the career ladder.

This instructor manual is but one more tool for professors as they build their courses. Here, discussion topics for seminars will be suggested, and learning outcomes that might be emphasized as students cover each chapter in *Contemporary Law Office Management* are identified. Instructors should also make use of the Discussion Starters and Case Studies included at the end of each chapter in the textbook itself. Some commentary for these is provided here.

In addition to choosing *Contemporary Law Office Management* as a textbook, instructors might also want to assign the American Bar Association's *Model Rules of Professional Conduct*, which are available in print form in annotated and unannotated versions on the ABA's Web site at http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct.html. An online version of the rules is available at no charge at http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents.html.

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Students should also be encouraged to read legal trade newspapers and magazines regularly, such as the *ABA Journal* and the *National Law Journal*. Encouraging students to discuss recently reported items in publications such as these can bring a classroom discussion to life.

I very much welcome your thoughts about teaching law office management and your comments on contemporary issues the face lawyers and those who work with them on a daily basis. Please feel free to visit me on my blog at http://contemporarylawofficemanagement.blogspot.com/, to follow me on Twitter @LegallyLori, or to join me on Facebook at https://www.facebook.com/ContemporaryLawOfficeManagement (or, to make it easier, just search for Contemporary Law Office Management when you are in Facebook itself). I'd love to learn about your best practices and your successes.

Lori Tripoli
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Chapter 1
Introduction: What Do Law Office Managers Do?

Learning Objectives:

The student will be able to:

o describe the changing role of the law office manager

o identify the members of a legal team

o distinguish between the practice of law and the business of law

Student Preparation for Seminar:

Ask students to come to class prepared to talk about what lawyers do on a daily basis. You may want to direct students to watch a certain film or contemporary television program and to compare the lawyers' activities in the media with the real-world operation of a law firm. You might also ask students to bring in a current help-wanted ad for a law office manager.

Lesson Plan:

Students are likely to have fixed impressions about what lawyers do. Discuss student impressions and contrast them to real-world practices. Students may believe that lawyers appear in court on a far more frequent basis than they actually do. Review the roles of the law office manager, and identify members of the legal team, their relative pay scales, and discuss the educational requirements and experience required for each of these roles. You may want to ask students to think about their own post-college plans and what jobs, in particular, they would like in the legal field. Ask what appeals to them about their selected roles and what might be less attractive in these jobs. Discuss the help-wanted ads that student bring to class, and compare and contrast the responsibilities and qualifications required for each of these jobs.

Discussion Starters:

1. Search for a case where an attorney was directed to take law office management classes. What was the attorney accused of? Why did the court direct the attorney to take law office management classes?

Guide students on their search. What online databases might they access? What files should they search? What search terms should be used?

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2. Find your state's bar association online. What sort of material, if any, does it offer on law office management?

Comparing and contrasting the different types of materials that bar associations make available may be enlightening to students as they notice differences in quality among bar associations. Also talk about what materials may be located behind a paywall and the merits and cost of membership in the bar association.

3. A prospective client at your firm has inquired about its sustainability activities. As the firm's law office manager, you haven't really been active in this area. Where would you seek information about sustainability policies in law firms? Might all clients appreciate a law firm's sustainability efforts?

Students might begin to appreciate how what they may perceive as an inherently good idea—environmentally responsible practices—can have repercussions. If a firm represents the oil industry, will clients really be pleased if a firm develops a sustainability policy denouncing the use of fossil fuels? If a firm represents the pesticide industry, will clients really appreciate an "all organic" policy for food at the firm's social functions?

4. What promotion potential does a law office manager have?

Discuss the limitations that a law office manager at a law firm experience as far as career advancement is concerned, but also talk about the greater responsibilities a law office manager at a small firm might shoulder. Contrast with the responsibilities of various law office management personnel at a major firm.

5. As a paralegal, would you rather work for an associate or for a partner?

Topics that might come up here concern workload, managerial styles, prestige, pay scales, and perquisites.

6. Search legal news articles for an example of a law firm outsourcing some aspect of its business. What was the result of the outsourcing effort? Did the firm save money? Were clients pleased? Were clients even aware that certain tasks had been outsourced?

Discuss the pros and cons of outsourcing from a business standpoint. Ask students whether they have considered a career as a service provider to a law firm.

7. If offered a job at a law firm, how would you decide whether to accept the position? What factors would you consider?

Job responsibility, job security, pay scale, benefits, promotion potential, and work environment might be addressed.

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Case Studies:

1. Consider this scenario: A senior paralegal who has the biggest work-station and a window view is retiring. Who should get that paralegal's work station?

In discussing this case study, talk about both efficiency for the firm as well as workplace morale. Would any of the choices enhance both equally?

In formulating your answer, address the following questions:
a. How should workstation assignments be made? Should there be some "system" in place?
b. Should the decision be based on the proximity of the paralegal to his or her practice group?
c. Should the workstation be assigned to the managing partner's favorite paralegal?
d. Should the workstation go to the paralegal who bills the highest number of hours?
e. Should the decision be based on paralegal seniority?
f. What does seniority mean? The number of years in the profession? The number of years since graduating from college? The number of years with the firm? Age?
g. Should workstation assignments be based on performance? Should the paralegal with the best performance appraisals get the spot?
h. What if the paralegal assigned to the workstation telecommutes from home three days a week, in which case that workstation is unused
for part of the time? Should the workstation go to someone else instead?
i. Should the workstation simply be raffled off?

2. A large Chicago firm recently raised its first-year associates' salaries. Suppose you're a partner at a competing law firm. Your firm currently pays first-years $20,000 less per year. Should you increase salaries?

In assessing this case study, remind students of the impact of increased first-year salaries on the salaries of more senior associates. Once the firm increases first-year salaries, it will have to increase the pay scale at each tier.

In formulating your response, consider the following questions:
a. What would be the advantage of increasing associates' salaries?
b. Who would pay for these higher salaries? Partners? Clients?
c. How could the firm raise salaries for first-years without reducing partner profits?
d. Suppose you raised salaries in your firm's Chicago office. Should first-years in Washington, D.C., be paid the same amount? What about first-years in Louisville, Ky.? What about first-years in Hong Kong?
e. If you keep your salaries at the same level in Chicago, how could you hope to recruit top law school graduates? How would you persuade them to join your firm rather than the higher-paying one?
f. What will you do if your firm does not raise salaries for associates and, all of a sudden, the firm starts losing more associates than usual to other firms that are paying more?

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g. Suppose you're a client of this firm. How do you feel about being billed for the legal services provided by an inexperienced lawyer who is only 25 years old? Would you continue to use the services of the firm if billing rates rose? Would you switch firms? What would be a disadvantage to switching firms?

3. An eighth-year associate at a firm will be considered for partnership next year. In evaluating the associate's candidacy, what should the partners consider?

Broach the delicate subject of a partner's personal life. Ask students if they think partners will talk about whether the prospective partner might be taking a leave of absence or seek reduced hours for family reasons. Also talk about reasons an associate might not want to be promoted to partner—especially given the liability of partners should the firm seek bankruptcy protection. Here, instructors might want to use the collapse of Dewey &LeBoeuf as an example.

4. Why might partners who passed over an associate for partnership status consider retaining that associate in some lesser capacity?

Discuss quality of life issues along with career advancement and prestige. Ask students if they would be happy serving as counsel to a firm? Might they even prefer to be counsel rather than a partner? Would they be happy if they were designated *permanent associates*?

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Chapter 2
The Changing Structure of Law Firms from Solo to Mega

Learning Objectives:

The student will be able to

o compare and contrast various law firm structures

o discuss the evolution of the legal business

o distinguish between the authorized and unauthorized practice of law

o describe the difference between multidisciplinary practice and multijurisdictional practice

Student Preparation for Seminar:

Ask students to prepare a list of three law firms they might be interested in working for and to be prepared to discuss the firm, its size, its specialties, and whether it has any "big name" lawyers. Ask students what drew them to the firm and what role they would like to have at the firm. Also have students identify three non-firm organizations where they might be interested in pursuing a legal career.

Lesson Plan:

Review the history of the law firm and the continued merger trend. Have students debate the need for a national bar. Talk about whether ethical constraints on law practices and diversification are too strident. Discuss the merits and pitfalls of different firm structures. Talk about positive implications for the legal field from challenging economic times.

Discussion Starters:

1. Search for your state's unauthorized practice of law statute. Does your state law require lawyers to be physically present in the state when they give advice to clients?

Have students practice their citation skills by preparing Bluebook citations to the statutes they found. Go through citation practice step by step, beginning with the identification of the type of material (case? statute? regulation?) being cited. You might also discuss the merits of appropriate Bluebook citation and the implications, both positive and negative, if citations are not perfect.

2. Compare Cal. Ct. R. 9.47 (2013), *available at* http://www.courts.ca.gov/cms/rules/index.cfm?title=nine&linkid=rule9_47, with Cal. Ct. R. 9.48 (see Fig. 2-1) and rules in your state on the practice of law by out-of-state attorneys. Which rules are more restrictive? Why? How do the rules protect clients? How might a client, dissatisfied with the outcome of a matter, use the rules against his or her lawyer? Do the rules sufficiently protect attorneys from disgruntled clients?

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You might also discuss how the rules have evolved over the years and talk about whether rules are changed at a sufficiently fast pace. You might also discuss who has an interest in keeping the rules as they are, and whether those entities have more power and influence than those who might want to modify the rules.

3. Consider law firm size from the perspective of a client. What sort of client would be drawn to a sole practitioner, to a small firm, to a megafirm?

Here, talk about variations in the quality of service provided to clients and whether a small firm could handle monster litigation or whether a smaller client would get the same level of attention as a large client at a megafirm. You might also want to raise the problem of conflicts of interest at large firms and the problems these can cause in recruiting top-tier lawyers. Talk, too, about whether a firm might want to decline representation of a smaller client because its sights are on a larger, more significant prospective client.

4. Why might a major client still choose a midsize firm for some legal work?

Address the type of law firm a corporation would want for a "bet the company" case as opposed to more routine litigation. Also talk about the job security of a general counsel who chose a second-tier firm that then lost a case. Is there a certain amount of "cover all the bases" in selecting the biggest-name firm when a major lawsuit is involved? Discuss how corporations might use some firms to handle a lot of routine work, such as banks using certain firms for all of their foreclosure work. Have students identify the hazards associated with deluging lawyers with a high volume of work.

5. What are your state's rules on specialization? In researching your answer, visit the American Bar Association Standing Committee on Specialization Web site at http://apps.americanbar.org/legalservices/specialization/directory/. How do your state's rules compare to the rules pertaining to lawyers in neighboring states?

Have students compare the ease of searching the ABA's site with searches of commercial databases, such as Lexis or Westlaw.

6. Research a legal specialty, such as environmental law, energy law, or immigration law. What sort of legal work is involved? What kinds of clients do lawyers who work in the field represent?

Talk with students about the merits and disadvantages of specialization. Are the specialties of the 1980s the specialties of today? How can lawyers adapt and maintain their depth of knowledge about a certain area of the law?

7. Some commentators on the legal industry stress the need for lawyers to exercise independent judgment and assert that lawyers should work for "independent" law firms. In 1990, L. Harold Levinson, a law professor at Vanderbilt University, wrote:

> By the term independent law firm, I mean one that comes close to having all of the following attributes: (1) the firm's only business is the practice of law; (2) the firm is

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> owned exclusively by one or more lawyers who are engaged actively in the firm's practice (with narrow exceptions); (3) the firm requires its lawyers to exercise independent professional judgment (or, if the firm consists of one lawyer, that person exercises independent professional judgment); (4) the firm does not have any significant financial involvement with any of its clients other than cost reimbursements and fees payable in money; and (5) the firm does not expect to receive a major percentage of its fees from any one client.

L. Harold Levinson, *Independent Law Firms That Practice Law Only: Society's Need, the Legal Profession's Responsibility*, 51 Ohio St. L.J. 229, 229 (1990).

Ask students if lawyers at major firms currently exercise independent judgment and, if not, what might restrain their independence.

8. Research your jurisdiction's rules on virtual law offices. Are they permissible? What ethical rules must lawyers practicing in virtual law offices take care not to violate? Why might virtual law offices appeal to both lawyers and to clients? Are clients at any disadvantage by hiring a lawyer who has a virtual law office?

Case Studies:

1. A group of five friends from law school is planning to go into practice together after graduation. What form of business organization should they consider? What are the advantages and drawbacks of each form? Will the same sort of organization work as well for the friends after they have been in business for ten years? What sort of protections should the friends employ in case their legal business does not succeed?

Students might consider the assets the young lawyers are likely to have compared with fees they are likely to incur as they set up their business. Instructors might also discuss the advantages and disadvantages for support staff who might be joining a startup.

2. A ten-lawyer firm in Philadelphia that focuses on family law is interested in merging with another firm. What firms should it consider, and why? What would be the advantages of merging with a like-sized firm? With a firm that is larger? What would be the disadvantages?

Students might ponder the merits of cross-selling if the lawyers join a firm with other specialties. If the family law firm merges with another family law firm, the lawyers might think about leadership roles at the new firm and whether the lawyers themselves would be diminished in some way.

3. A junior lawyer is interested in obtaining more litigation experience. What types of law offices should she consider? Where is she likely to obtain the most courtroom experience in the shortest amount of time?

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Students might answer that a lawyer in the litigation department of a mega firm may have the most opportunity whereas there may actually may be a greater likelihood that a lawyer in a smaller firm will gain meaningful trial assistance sooner.

4. Research attorney job listings in your area. How do pay rates and job responsibilities vary?

As an instructor, consider discussing information about pay rates in other parts of the country.

5. Find one recent case involving the dissolution of a law firm. What form of business organization did the firm employ? Why did the firm break up? Was the dissolution voluntary or involuntary?

Also talk about how support staff and paralegals might have protected themselves better.

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Chapter 3
Clients

Learning Objectives:

The student will be able to

o evaluate ethical quandaries arising in attorney-client relationships

o formulate processes and approaches to manage the attorney-client relationship

o identify client types

o develop proposals for obtaining legal work appropriately

o explain the significance of a firm's client base to its overall success in the marketplace

Student Preparation for Seminar:

Ask students to come to seminar with a recent news article describing an attorney-client relationship. Have them explain why the attorney-client relationship is being discussed in the article. How might the attorney-client relationship have been strengthened?

Lesson Plan:

In seminar, discuss the ethical quandaries that lawyers find themselves in with clients. Review pertinent ethical rules. Talk about which types of clients are preferable for certain practices and how each type of client might be appropriately pursued by a lawyer seeking to gain more business. Talk about how much time must be dedicated to getting clients and to keeping clients satisfied. As time allows, you might also discuss legal project management in some depth.

Discussion Starters:

1. Running up a client's legal bill by doing excessive work on the case can be very tempting to lawyers who must generate income to pay their own bills. Consider the following:

> Virtually all the economics of law practice—including those of the large firms who charge $250-600 per hour for their services—cut against ethical behavior. If a client has a deep pocket and is able to pay the lawyers' fees many lawyers churn the case in order to enhance earnings. If the clients cannot afford the fees as the case progresses they risk receiving only "partial" representation in which lawyers may do just enough work to justify having used up the available money. When funds are depleted the lawyers then figure out how to dispose of the problem or claim, or provide bargain basement service in the sense of "you get what you pay for."

David Barnhizer, *Profession Deleted: Using Market and Liability Forces to Regulate the Very Ordinary Business of Law Practice for Profit*, 17 Geo. J. Legal Ethics 203, 223 (2004).

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What ethical rules are violated by the practice of churning? How can churning be proven? How can lawyers avoid the temptation to churn cases?

The ethical rules that can be violated by churning include:

Rule 1.3 Diligence
Rule 1.5 Fees
Rule 8.4 Misconduct

2. In 2013, emails about cost overruns from lawyers within a major law firm became part of the court record in a billing-dispute lawsuit. One of the emails read that a lawyer within the firm "had random people working full time on random research projects in standard … 'churn that bill, baby!' mode. That bill shall know no limits." Another lawyer wrote in regarding the matter, "I hear we are already 200k over our estimate-that's Team DLA Piper!" Exhibit 5 to Supporting Affidavit of Larry Hutcher, DLA Piper LLP (US) v. Victor, No. 650374/2012 (N.Y. Sup. Ct. filed Mar. 21, 2013). Much negative publicity followed, and the firm issued a statement maintaining that the emails simply represented "an unfortunate attempt at humor" and that the client was not overbilled. DLA Piper Calls E-Mails Cited in Lawsuit an 'Offensive'Attempt at Humor, N.Y. Times DealB%k (Mar. 26, 2013), http://dealbook.nytimes.com/2013/03/26/dla-piper-warns-employees-against-offensive-humor-in-e-mails/.

If you worked at the firm where this happened, how might you have addressed the negative publicity? Given the existence of these emails, did the firm's leadership make a cost-effective decision to pursue litigation seeking legal fees from the particular client at issue in this matter? If you became aware that a law firm's lawyers had written emails such as this, would you still retain the firm? What precautions might you take to ensure bills were not inappropriately padded?

With students, talk about how the message about what happened might vary to clients, to prospective clients, and to people working at the firm. How might a client react if a first-year associate got on the phone to apologize rather than the managing partner or the partner who brought in the business?

3. Read *Florida Bar v. Barrett*. Were Barrett's clients dissatisfied with the service they received? Was Barrett effective at representing his clients? Was the punishment Barrett received too harsh? Look up your state's rules on solicitation of clients.

Have students brief this case using FIRAC (Facts, Issue, Rule, Application, Conclusion) format.

4. Research legal project management. Are there any negative impacts of implementing legal project management at a law firm? Why might anyone be opposed to legal project management at his or her firm? Might a client be opposed to legal project management? How can any resistance, by a law firm or by a client, be overcome?

Talk with students about the problems that a problems manager who does not have a law degree might face in overseeing legal project management at a law firm. Will the process become more important than the result?

5. Read *Ruby v. Abington Memorial Hospital*. What did you learn about partnership

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agreements from this case? Why was the lawyer at the center of this case dismissed from his previous firm? What impact do you think this litigation had on the client that was involved? Would this litigation impact client opinions about either law firm involved?

Have students brief the case using FIRAC format (facts, issue, rule, application, conclusion).

6. Draft a sample letter to a client informing her that your law firm is merging with another. What information should be included in such a letter? Of what rights should the client be informed? Should a letter be written in a way intended to keep the client as a client?

Have students share their letters with other students and have them role play, with one student acting as the client and the other as a member of the legal team.

7. Draft a sample letter to a client informing her that the lawyer working on her case is moving to another law firm. What information should be included in such a letter? How should this letter differ from the one involving a law firm merger?

8. Look up some sample client satisfaction surveys, and research recent law review articles on these surveys. What questions should be asked on such a survey? How might those questions be posed to generate a highly informative answer?

Some sample client satisfaction surveys are available at

http://www.michbar.org/pmrc/articles/0000014.doc
http://www.fitzgeraldlawcompany.com/clients-talk/customer-satisfaction-survey.php
http://www.sdswillslawfirm.com/client-satisfaction-survey/

9. Suppose you work for a nonprofit organization dedicated to providing food to poor people in your state. The nonprofit is seeking outside counsel. What qualifications would you look for in a law firm? What size firm might be an ideal match for the nonprofit?

Talk here about whether law firms should discount their rates for certain types clients, such as nonprofits. Consider, too, the salaries earned by the leaders of the nonprofit. Are they competitive with comparable positions in the private sector?

Case Studies:

1. Select one large corporation in your area and conduct some competitive intelligence on it. What types of legal problems might the company face? Who is the company's general counsel? What law school did that general counsel attend? Who currently represents the corporation?

Have students compile this information into the report. Ask them to explain why the corporation would make a good client. Remind students that they might be able to learn more about the corporation by searching for legal cases in which the corporation has been involved.

2. Your law firm is considering pitching both Walmart and Sears for legal work. What sort of legal representation might these two companies need? Who are their current counsel? What might be the advantage of working for one corporation rather than the other?

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Students might also consider the requirements that corporations impose on their suppliers. Walmart, for instance, has been quite active in requiring certain suppliers to become more sustainable. Walmart also has a certain reputation regarding how it treats its employees. Instructors might talk about how there is not really a "perfect" client, but there are plenty of flawed ones—which is why clients need good representation in the first place.

3. Look up a case where a lawyer sued a client for nonpayment of the client's bill. Were there any early indicators that the lawyer-client relationship would sour? Why didn't the client pay the bill? What was the outcome of the case?

Have students note whether the client, in turned, filed suit against the lawyer.

4. Your client tells your firm that she will call the firm from her car while she is driving to her next appointment. Suppose that talking on a cell phone without a separate headset while driving is illegal in your state. Is your firm obligated to terminate its representation of the client?

Here, an instructor might talk about minor infractions as contrasted with major violations of the law.

5. Look up your state's rules on returning client files to the client when representation is terminated. You may also need to research caselaw and ethical opinions to determine the answers to the following questions: Must a lawyer's notes be provided to the client? Must copies of all emails be provided to the client? Should managerial documents (for instance, giving an assignment related to the file to an associate and specifying the number of hours to be spent on the task) be included?

Talk about whether client files are ever inappropriately held hostage. What must a client do if she requests her file and an attorney does not provide it to her? Why might a lawyer be slow to respond to a request that a file be returned?

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Chapter 4
Ethics

Learning Objectives:

The student will be able to

o discuss ethical standards applicable to attorneys and to others working in the legal field

o identify ethical quandaries present in factual scenarios

o apply rules of professional conduct

o take measures to prevent violations of ethical rules

Student Preparation for Seminar:

Have students come to class with an article addressing an attorney who was professionally disciplined. Discuss with students ways that the problem could have been avoided in the first instance and how a law office manager might have put procedures in place aimed at protecting against these sorts of situations. Discuss the accessibility of information about disciplinary actions and how that accessibility might affect a lawyer's decision to defend against charges of inappropriate behavior.

Lesson Plan:

In seminar, address the pressures that lawyers and others on the legal team experience as they work with clients and prospective clients. Discuss ways that lawyers, paralegals, and support staff can avoid ethical quandaries. Explain how a proactive law office manager can steer lawyers and staff away from these sorts of problems. Address the problems that megafirms experience re conflicts of interest and contrast these problems with their growth. Talk about virtual law firms and the challenges they face re ethics. Also address ethical quandaries lawyers might find them in as a result of technological advances, such as the advent of cloud computing and the use of social media. As time allows, identify and discuss conflict-of-interest software and run through a demonstration with students.

Discussion Starters:

1. Research statistics on disciplinary actions in your state. What are the most frequent types of violations that lawyers in your state commit? What types of punishments are meted out most frequently?

Have students compare these statistics with the number of lawyers actively engaged in the practice of in the state. Are students heartened by the numbers of lawyers who are professionally disciplined, or are they concerned about the statistics that they find?

2. Look up and compare the application for bar admissions of two states. Does one ask more

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invasive questions than the other? Would a person with bipolar disorder be admitted? Would a person who has declared bankruptcy be admitted? May people with bipolar disorder or who have declared bankruptcy remain members of the bar if they are diagnosed or seek bankruptcy protection after admission? How do the number of disciplinary actions against attorneys in the two states compare?

Remind students that they might want to think about their own past and how that might be reflected on a bar application.

3. Look up one recent legal decision in which an attorney was disbarred. What infraction was involved? How might the lawyer have avoided such a severe disciplinary action?

Have students discuss whether the attorneys facing disbarment committed a single act of wrongdoing or multiple ones.

4. Read *James v. Shapiro*. How did the law firm characterize the legal secretary who brought the action? Did the legal secretary agree with the law firm's explanation of her work history at the firm?

Ask students if they would have decided the case the same way.

5. Look up the unauthorized practice of law statute in your state. Does the statute really bar nonlawyers from engaging in any form of law practice? May a nonlawyer represent herself pro se in court? Is the 'practice of law' defined? May a nonlawyer draft a will for himself? Is that practicing law? May a nonlawyer find a sample contract online and give it to a friend to use to draft a contract? Would that be the unauthorized practice of law?

Talk about the growth of "do-it-yourself" legal sites. Might the owners of some of these sites be engaging in the unauthorized practice of law?

6. Review *Shattles v. Bioprogress PLC*. How did the dispute addressed in the case arise? Did the plaintiff seeking to have the law firm disqualified from representing the defendant have a written contract with the law firm? Why did the court determine that an attorney-client relationship existed between the firm and the plaintiff?

Have students discuss situations where an attorney-client relationship might be inadvertently created. Might attorney-client relationships be established via blog or via interactions on Facebook, LinkedIn, or Twitter?

7. Look up and read *Owens v. First Family Financial Services*, 379 F. Supp. 2d 840 (S.D. Miss. 2005). Who was determined to have a conflict of interest in the case? Why wasn't an ethical wall sufficient to shield the person who had the conflict of interest?

8. Select three commercially available conflict-of-interest programs. Which would be ideal for a large firm? Which would be optimal for a sole practitioner?

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Ask students what factors they would consider and how they would weight each of those factors as they make a decision.

9. Consider the following excerpt from *City & County of San Francisco v. Cobra Solutions, Inc.,* 38 Cal.4th 839, 847–48, 43 Cal.Rptr.3d 771, 135 P.3d 20 (2006) (internal citations and quotation marks omitted), *quoted in* J2 Global Communications, Inc. v. Easylink Services International Corp., No. CV 09–04189 DDP (AJWx), 2012 WL 6618609 at *4 (C.D. Cal. Dec. 19, 2012)

> That enduring duty to preserve client confidences precludes an attorney from later agreeing to represent an adversary of the attorney's former client unless the former client provides an informed written consent waiving the conflict. If the attorney fails to obtain such consent and undertakes to represent the adversary, the former client may disqualify the attorney by showing a substantial relationship between the subjects of the prior and the current representations. To determine whether there is a substantial relationship between successive representations, a court must first determine whether the attorney had a direct professional relationship with the former client in which the attorney personally provided legal advice and services on a legal issue that is closely related to the legal issue in the present representation. If the former representation involved such a direct relationship with the client, the former client need not prove that the attorney possesses actual confidential information. Instead, the attorney is presumed to possess confidential information if the subject of the prior representation put the attorney in a position in which confidences material to the current representation would normally have been imparted to counsel.... When a substantial relationship between the two representations is established, the attorney is automatically disqualified from representing the second client.... Vicarious disqualification rules are a product of decisional law. Normally, an attorney's conflict is imputed to the law firm as a whole on the rationale that attorneys, working together and practicing law in a professional association, share each other's, and their clients', confidential information.

Is the concept of 'vicarious disqualification' fair to attorneys who have no actual knowledge of confidential information about one of their colleagues' clients? Should attorneys be vicariously qualified? Consider the decision by the court in *J2 Global Communications* (cited above), in which the above excerpt was quoted. Did the court in that case disqualify a law firm from a representation that had not done anything wrong or hired an attorney with a conflict of interest? Was the outcome in that case fair?

10. Look up the *Code of Ethics and Professional Responsibility* issued by the National Association of Legal Assistants, Inc., at http://www.nala.org/code.aspx. Is the code fair to legal assistants? What portions of the code would be most difficult to adhere to? What would you do if, as a legal assistant, your supervisor asked you to do something that would require you to violate the code?

Ask students if the NALA's code is compatible with ABA's *Model Rules of Professional Conduct*.

11. Research letters that waive conflicts of interest. For instance, take a look at one available on the Milwaukee Bar Association's Professionalism Committee Web site, at http://www.milwbar.org/pdf/formletter_4.pdf. Compare and contrast several letters. What elements should such a letter include?

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Have students critique various letters. As clients, which would they be most likely to sign?

Case Studies:

1. A trucking company wants to retain your law firm to represent it in litigation over the cleanup of a hazardous waste site in New Jersey. Many years ago, the company hauled waste to the site and dumped it there. Now the federal government is suing polluters of the site to recover its cleanup costs. Your firm also represents a chemical company that sent its trash to the site. Can your firm represent the trucking company as well?

Have students draft a conflict of interest waiver for clients to sign.

2. Your law firm has its only office in California. One of the firm's clients is sued in Nevada. How can a lawyer from the firm represent the client in the Nevada litigation?

Talk about local counsel and problems that can arise in the relationship between lead counsel and local counsel.

3. Suppose you are a paralegal in a law firm. A friend of yours is having trouble with her landlord. The apartment has leaking pipes, and the heat isn't working properly. Your friends asks you to do her a favor and send a threatening letter to the landlord on law firm letterhead so the landlord will be intimidated and fix up the property. You do. Have you violated any ethical rules? Has an attorney-client relationship been established?

Discuss with students whether, if they were working at a law firm in a nonattorney capacity, they would ask their supervisor to write and/or sign a threatening letter as a favor.

4. A paralegal in a law firm is calculating the amount of time she worked on a client's case. Her supervising attorney tells her to "round up" when determining the hours worked on the matter. Have any ethical rules been broken? What should the paralegal do?

Ask students whether their course of action would vary if their supervising attorney was a first-year associate or the managing partner of the firm.

5. A law firm's nonlawyer marketing coordinator, charged with updating and maintaining the firm's website, revised it to specify that one practice group at the firm specializes in sustainability and helps businesses report their sustainability progress to their stockholders and customers. The firm's practice group has, in fact, done this. Have any rules of professional responsibility been broken? Could a supervising attorney be held responsible for the breaking of any of these rules?

Have a discussion about how clients might be duped by lawyers who claim to be 'specialists.'

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6. A lawyer tweets that her opposing counsel in a civil trial looks "fresh-faced and inexperienced." What rules of professional responsibility may have been violated?

Suppose the opposition actually is fresh-faced and inexperienced. Would truth be a defense here?

7. A hacker breached a cloud computing service and gained access to drafts of a client's contract for sale of his company to a larger company. What actions should the client's lawyer and law firm take?

Also discuss the importance of timing. How soon must a law firm act after learning of the breach?

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