The Art of Lawyering
by

Baird B. Brown
Brown and Castle, P.C.
1250 East Sherwood Drive
Grand Junction, Colorado 81501
970.243.8250
baird@brownandcastle.com
www.TheArtofLawyering.com

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Introduction

This outline is the beginning of a long journey to develop an interactive website that can be used by lawyers as a resource to assist them in answering their questions regarding practice management and development. I feel a bit like Frodo and Sam in that I too have a quest that must be fulfilled. Over 28 years of practicing law I have learned much about myself and where I excel. IMHO I get top grades in practice development and management. I have a passion for the rainmaking side of the practice and office efficiencies.

Contained in this outline are tips and ideas on practice management and development. It is more detailed in some respects than others and in fact quite skeletal in some respects. It is a work in progress or "under construction."

I hope to hear from each reader of their owns ideas on practice management and development that I can incorporate into this paper. Please feel free to give me instructive and/or constructive ideas and thoughts on how this topic can be further refined. They can be sent to me via the above address either in paper or electronic form.

I have decided to use an outline format (versus essay format) in this paper to set out the general ideas and thoughts which I have on The Art of Lawyering.[1] The outline of my thoughts an ideas follows:

1. **The www.TheArtofLawyering.com website** For in-depth materials on law practice management and development try out this website which admittedly is still under construction. Please be patient.

    1. The site should up and running by the time you read these materials.

    2. Open your browser to the TheArtofLawyering.com website for more detail on all of the items discussed below. This paper is in outline form whereas the detail to many of the ideas set forth herein are in essay format on the website.

3. **Disclaimer**- For the most part the The.ArtofLawyering.com website is a low-cost fee based website. It is still developing at the time of the deadline for this paper so what it eventually will involve into remains in many ways yet to be determined.

2. <u>**Ethics**</u> The beginning point of any successful law practice is the establishment of ethical criteria and practice standards that are adhered to by all members of any legal firm. Although a condition to the continued eligibility to practice law it is also a cornerstone for building and retaining a successful practice. Without setting the ethical bar sufficiently high enabling the lawyer to achieve the highest degree of success in the practice, measured by personal gratification, community recognition and financial success, will not likely be attainable. Below are listed a few tips to help you maintain the highest degree of professional ethics.

    1. The lawyer's professional responsibilities:

        1. Professional responsibilities of lawyers in an elder law, trust or estate planning practice often are difficult to assess and comprehend. The professional responsibility issues of elder law, trust or estate lawyers are often different than lawyers who practice in other areas of the law, such as those in a litigation practice. Finding guidance to solve professional responsibility issues for the elder law, trust or estate planning lawyer is equally as difficult.

        2. All states have adopted rules that govern lawyers' conduct as well as their responsibilities to their clients and others. Many states (approximately 41) have adopted a version of the Model Rules of Professional conduct (hereinafter MRPC). Other states have adopted the Code of Professional Responsibility (hereinafter CPR).

        3. The rules applied in the various states vary widely. Even where two states may adopt versions of the CPR or MRCP, the interpretation and application of those rules in each state will usually vary It is important to review each situation on a state by state basis.

    2. Available Resources–In addition to your own state's version of either the MRCP or the CPR, the elder law, trust or estate planning lawyer might find the following resources informative:

        1. <u>American College of Trust and Estate Counsel (ACTEC)</u>. Elder law, trust and estate planning lawyers encounter many issues in representing their clients that are unique in the practice of law. In attempting to define the unique role and resulting duties of the lawyer in an elder law, trust or

estate planning practice, the American College of Trust and Estate Counsel (ACTEC) drafted the ACTEC Commentaries on the Model Rules of Professional Conduct *Third Edition* (hereinafter Commentaries).[2] The basic themes of the Commentaries are described as follows:

> "(1) The relative freedom that lawyers and clients have to write their own charter with respect to a representation in the trusts and estates field; (2) the generally non-adversarial nature of the trusts and estates practice; (3) the utility and propriety, in this area of law, of representing multiple clients, whose interests may differ but are not necessarily adversarial; and (4) the opportunity, with full disclosure, to moderate or eliminate many problems that might otherwise arise under the MRPC."

2. A copy of the *Third Edition* of the Commentaries may be obtained from the ACTEC office whose contact information can be obtained by viewing the ACTEC website at www.actec.org. An insert in the *Third Edition* of the Commentaries states:

> "Neither the Model Rules of Professional Conduct (MRCP) nor the Comments to them provide sufficiently explicit guidance regarding the professional responsibilities of lawyers engaged in a trusts and estates practice. Recognizing the need to fill this gap, ACTEC has developed the following Commentaries on selected rules to provide some particularized guidance to ACTEC Fellows and others regarding their professional responsibilities. The Commentaries may also assist courts, ethics committees and others concerned with issues regarding the professional responsibility of trusts and estates lawyers. The Commentaries generally seek to identify various ways in which common problems can be dealt with, without expressly mandating or prohibiting particular conduct by trusts and estates lawyers. While the Commentaries are intended to provide general guidance, ACTEC recognizes and respects the wide variation in the rules, decisions, and ethics opinions adopted by the several jurisdictions in regard to many of these subjects."[3]

3. The Commentaries are a guidepost to practitioners seeking guidance in an uncertain world of everyday ethical dilemmas facing the trust, estate and elder law practitioner.

4. Although much of the discussion in this presentation involves the MRCP, and the ACTEC commentaries (which emphasizes the MRCP), the rules generally apply to trust and estate practitioners in the CPR states such as

Oregon and are quite instructive in their application in other MRCP jurisdictions.

5. Within the Commentaries are many references to different state ethics Formal Opinions and case citations involving lawyer ethical issues. A review of those citations would be helpful to the practitioner.

3. Fordham Law Review No. 5 Special Issue *Ethical Issues in Representing Older Clients* (March 1994).[4] The Fordham Law Review Special Issue contains a variety of articles pertinent to the representation of elderly clients frequently encountered by the trust, estate and elder law, trusts and estates lawyer. Some of the articles include Determining Decisional Capacity: A Medical Perspective; Representation Involving Fiduciary Entities: Who Is the Client? and The Lawyer in Other Fiduciary Roles: Policy and Ethical Considerations. The Fordham Law Review Special Issue is a must for your reading and your library.

4. State bar association ethics opinions The opinions are usually published opinions by a state bar association ethics committee regarding specific fact patterns presented by practicing lawyers. These formal opinions carry the endorsement of the state bar association. Many ethics opinions may be viewed online.

5. State bar association ethics committees Many states have a state bar association ethics committee which usually comprises a group of lawyers volunteering their advise regarding ethical issues. The state bar association members commonly will answer questions of the inquiring lawyer on ethical issues and, where appropriate, seek the advise of the entire state bar ethics committee. The assistance provided is informal, non-binding, and is not confidential. No attorney-client relationship is usually established between callers and the lawyers employed by the bar association. Lawyers seeking confidential legal ethics advice should consult a lawyer of their choice in private practice.

6. Internet sites Most, if not all states, have sites available to discuss their state specific ethics rule. An internet portal site can be found at www.legalethics.com. It is a recommended site for your viewing.

3. **Economics of the practice of law** Second only to maintaining a high standard of ethical conduct, the need to exercise competent business practices in your law practice is essential. Following are a sampling of issues which must be addressed in establishing a successful and economically viable law practice.

1. The Business Plan

1. It all begins here

1. The development of a business plan is where the practice of law begins. After being armed with the license to practice too few lawyers know how to create and implement a business plan. Whether we like it or not we must have (or learn to develop) a good business sense to be able to continue to practice law.

2. A business plan consists of the following basics:

    (1) Defining your goals in the practice, which can be economic, professional or personal.

    (2) Start by reviewing the last year and identifying your areas of concern. The areas of concern should include a review of what you thought the income and costs would be with the actual income and cost expenditures.

    (3) Assuming you use a calendar year, the business plan should be reviewed in the last quarter of each year for the ensuing year.

    (4) After defining in writing (because if it is in writing it is likely to be something you will review periodically to insure you are on track and likely to complete) your goals for the ensuing year you must put them to the economic test by incorporating them into a spreadsheet.

2. The spreadsheet

    1. A sample spreadsheet is attached as an exhibit to these materials. In creating the spreadsheet you will be making certain assumptions regarding the hours you will work, your billable hourly rates, the expenses associated with doing business, etc. The assumptions you make will then be aside the actual performance of the office and become the foundation for the business decisions you will then be making. It will help you drive decisions regarding hiring new staff, billing rates, lease space requirements, etc. If used properly the business plan will become one of the most important tools you will have to help guide the day to day decisions you must make in your practice.

    2. Income Assumptions

        (1) I like to start with my calendar (more on this later) to identify the days I am willing to spend in the office

"producing" a work product which can be billed to the clients. Although much of the work I do is based on a flat fee (more on this later), I still resort to the use of an hourly rate for projection purposes. For example, I will get out the calendar for next year and mark off the days I know I will be spending out of the office for professional matters such as bar association meetings, weddings, personal days off, holidays, vacations, etc. Each month (and for the year) I will then have a number of days that I can say that I will be in the office and billing.

(2) For each day in the office 6 billable hours is an achievable goal to be used as a standard. With a 12 month year and an average of 6 hours per day (a conservative number) and an average of 18 billable days per month, then you will have total billable hours for the year of 1296 hours. If your hourly rate is $200 per hour then your total revenue that you will generate for the year will be $259,200.

(3) I arrive at the total expected revenue for the firm for the year by going through the revenue analysis for each individual in the firm.

(4) In arriving at your revenue goal you must take into account the delay in receiving the payments from clients as well as for a certain amount of un-collectables. A 5% reduction for un-collectables should be a conservative estimate.

3. Expense Assumptions

(1) I look at both fixed and variable expenses. For example, your rent is likely to be fixed expense but some of your employees cost may be variable if you pay your para-legals or associates on a base salary plus a percentage of production basis.

(2) I try to be conservative in estimating my expenses. Most expenses seem to go up each year and I try to anticipate those on the upside.

(3) Pay yourself right along with everyone else. Your salary and benefits are part of the budget and need to be included.

(4) Also, make sure you account for taxes that you have to pay on your income depending upon the income tax bracket that you will be in. Your goal is to find a net profit number.

(5) Variable expenses such as postage, faxes, overnight mailings are difficult at best to predict. As explained below using a flat fee for expenses (4 %) approach which is incorporated into the budget is a good way to insure your

4. The Bottom Line (Profit/Loss)

(1) At the end of the day, I try to have a return of 5-12% of net after tax profit.

(2) This is where it gets a bit dicey. Always try to have a profit rather than a loss. Duh! By the time you get to the bottom line you usually have to make some adjustments. After completing the first go around with the budget it may become apparent that you needed to increase revenues (by raising my billable hour, bring in more work, working more hours, etc.) or reduce expenses (cutting my salary, my staffs, not giving any raises, finding a lower cost law office). Often the only way to accomplish this is to raise the hourly rates of the individuals who were producing billable hours. Voila! You then have a plan that is a financial success assuming the market place accepts your work product at the rate you are asking. This is Economics 101 revisited!

5. Monitoring the business plan

(1) Beside the projected business plan income and expenses you should then set out your actual income and expenses. This should be completed monthly for your review to be able to assess where you are on and off of your target.

(2) Monitoring the business plan at least monthly is usually required. After a few months (or years, in some cases) you become quite adept at your monthly review and will know what if any changes you need to make in your assumptions.

3. Billable hours spreadsheet

1. In arriving at your assumptions regarding production you will want

a separate spread sheet that monitors the projected and actual billable hours that have been produced. Bring in the staff member whose billable hours are being estimated to the process early on to determine how many billable hours they believe are realistic that they can bill. By having a spreadsheet that sets out their goal along side their actual performance you will have created a valuable tool to use for employee evaluations, compensation structures, etc.

2. A sample form which can be used is attached.

2. <u>Billing out of pocket expenses</u>

1. An age old problem is determining whether to bill or not bill out of pocket expenses such as copying, faxing, long distance telephone calls, express mail, courier services, etc.

2. The problem:

1. It is very time consuming (and cost inefficient for your firm) to track individual costs associated with low cost items such as copying or faxing. The time (and expense to you) spent tracking and billing such items is perhaps a net loss in most cases.

2. Clients hate getting "nickel and dimed" as they say. For the $2400 bill to then charge $1.25 for a fax, $12.75 for an overnight delivery and whatever for something else sometimes infuriates clients.

3. An alternative:

1. Try assessing a flat percentage to cover your costs that is added on to all bills. A reasonable sum, such as 4%, as an additional cost to the client to cover some of the variable cost overhead items you incur. For example, on a $1,000 bill the client is billed $40 to cover those expenses.

2. Sample language which can be asserted in an engagement agreement is as follows:

> <u>Costs and Expenses</u>. In addition to legal fees, you will also be billed for any expenditures made on your behalf. Such costs might include recording documents with the clerk and recorder, certified mail, and computer research charges. **These cost (such as recording documents with the clerk and recorder) will be billed to you based on the actual**

amounts disbursed. All other costs as listed above will be covered by a monthly charge of four percent (4%) of the legal fees billed to you by my office for that month. This charge is separate from and in addition to the legal fees billed to you by my office. For example, if your bill for legal fees for any given month is $300.00, you will be charged $12.00 to cover the above-referenced costs (in addition to actual costs such as recording documents with the clerk and recorder).

3. Some clients may resist the 4% added charge, but those clients are few and far between (probably under 5%). The easiest way to eliminate client complaints is failing to meet the client's expectations. Let them know you are charging this fee in advance and they will pay it right along with the other portion of your bill.

3. <u>Cutting expenses (aka playing a good defensive game)</u>

    1. Telephone cards to reduce long distance telephone costs to around .04 cents per minute.

    2. Consider joining Sam's Club or Costco and shopping a locations such as Wal-Mart for your office supplies and equipment.

    3. Buying technology on line can also be an effective way to keep costs down.
        1. E-bay
        2. www. priceline.com
        3. www.internetishop.com

4. <u>Getting in the billing groove</u>
    1. Programs
        1. Tabs
        2. Timeslips
    2. Timing
        1. Billing cut-off date- last day of each month
        2. Bills in mail on the first
    3. More description in bill is usually better than less

5. <u>Setting Fees</u>
    1. Hourly rates
    2. Flat fees
    3. Flat fee minimum with a range
6. <u>Engagement agreements</u>

1. Meeting client expectations
2. Getting in writing
3. Sample agreements
    1. Long term care
    2. Estate planning
    3. Conservatorship/Guardianship
    4. Hourly

4. **<u>Time management</u>** This is not an easy task for any lawyer. To successfully conquer time in the office requires great discipline. These steps will help you achieve your goal of managing your time and not letting time get away needlessly.

    1. <u>Step #1 – Recognize that time is a commodity</u>

        1. Once it passes it is lost forever.

        2. How are you going to use it?

        3. Make efficient use of it!

        4. Time is a commodity in the legal profession and that is what we have to sell to our clients.

            1. How are we going to sell our commodity?

            2. How much of our commodity/time do we have to sell?

            3. Is it the 40 hour work week, the 60-hour work week or the 70-hour work week – what will it be?

        5. Our goal – **Bring order out of chaos without compromising spontaneity**.

        6. Our goal is worthy of repeating: "Bring order out of chaos without compromising spontaneity"

        7. <u>You only travel this way once so make the most of it!!</u>

    2. <u>Step #2 – Differentiate between your work and play time</u>

        1. Defining your work time?

            1. 30-70 hours at the office?

2. It is a choice and the limits we set will define our overall lifestyle.

3. Live to work v. work to live?

4. What is the correct balance?

5. Set realistic boundaries for your space.

2. Setting limits on your work time while maintaining flexibility

1. This is our goal, but it is very difficult to achieve.

3. <u>Never confuse having a career with having a life!!</u>

3. <u>Step #3 – Carving up our week, our month, our year and our years</u>

1. Defining our personal and professional goals

1. Make a list
(1) Personal goals
(1) Exercise over the lunch hour
(2) Talk to a friend or family member every day
(3) Dinner with my family almost every night
(4) Family time
1) Vacations
2) Evenings
3) Weekends
(5) Support groups
(6) Work out buddies
(7) Spiritual buddies
(2) Professional goals
(1) NAELA
(2) State bar
(3) Local bar
(4) Probono activities
(5) Write a book
(6) Give a speech
(7) Whatever!

2. Scheduling the week, month and year

1. Weekly and monthly calendars

2. Office calendar

(1) New clients
(2) Existing clients
(3) Special projects
(4) Return of telephone calls
(5) Staff meetings
    (1) Set weekly times
    (2) Monday-Thursday mornings
    (3) Friday mornings – my time
(6) Professional meetings
(7) Monthly billing time to insure bills go out on time
(8) No lunch appointments; instead, run or to the gym
(9) No weekend or evening appointments
(10) Maintaining flexibility
    (1) Friday appointments
    (2) The out-of-towners
    (3) To the hospital or nursing home

3. Personal calendar

(1) Time outs
    (1) Vacations
    (2) Family commitments
    (3) Dentist
    (4) Haircut
    (5) Civic activities
    (6) Volunteerism
    (7) etc.

(2) Scheduling of leisure activity

    (1) If you don't schedule it then your clients, staff or office demands will.

    (2) Get it on the calendar so that your office staff knows your expectations and can set work appointments around your leisure activity.

    (3) The most productive time of my day is when I am away from the office running (literally)!
        1) Clears my mind
        2) Opportunity to interact outside of the law office
        3) Gives me a fresh perspective for the afternoon

4. <u>Step #4 – Saying NO!</u>
    1. Once you have defined your goals, set your boundaries learn to say "NO!"

    2. Even Superman had his limits

        1. Kryptonite would kill him.

        2. Client and other professional demands are the lawyer's kryptonite It will weaken and even kill us if we don't take control of it.

    3. Taking control of our own selves means saying NO!
        1. The client who waits until the last minute.
        2. The client who wants us to work without pay
        3. The client who makes his or her crisis your crisis..
        4. The volunteer board position that impairs your ability to meet your family or professional goals, just because it might look good on your resume.
        5. That extra speaking engagement or article to be written that can only be completed by taking away from our personal goals.

5. <u>Step #5 – Staying on the road and out of the ditch! More Golden Rules.</u>
    1. Telephone calls

        1. Certain callers always get put through
            (1) Family
            (2) Running buddies
            (3) Lawyers in the office
                (1) They should know when to interrupt and when to wait
            (4) To anyone else tell the receptionist to put through during the day.
                (1) Wiping the slate clean each day.
        2. All other calls
            (1) "I am sorry but Mr. Brown is unavailable at the moment. Can I have him return the call or is there perhaps someone else to whom I can direct your call? Perhaps A, B or ????"
            (2) Clients will get used to it; they too like structure.

        3. Schedule time to return calls

                (1) Try to return the call during the scheduled time.

                (2) The receptionist should always inquire of the callers

telephone message and nature of the inquiry. The receptionist should be on the alert for the annoying sales call.

4. Redirect to paralegal, bookkeeper or client relations/business development director.

2. Setting appointments

    1. Client relations/business development director
        - (1) Trained to take all new calls

    2. Initial consultations
        - (1) $175 flat fee
        - (2) No quoting of fees over the telephone

3. Staff meetings

    1. Monday through Thursday mornings
        - (1) 1-3 hour staff meetings
        - (2) Make an ongoing list of items to discuss at a staff meeting
        - (3) The rolling agenda – See Exhibit #4
        - (4) Don't bother your staff all the time, but do give them an opportunity to know that they are special
            - (1) They get some of your most valuable commodity, i.e. – your time

4. Intra-office e-mail
    1. Make sure everyone knows how to use it and USE IT!
    2. It is efficient
    3. Lets you communicate on the sender's schedule
    4. Great for the little questions that we don't want to forget, but also don't need interruption during the day

5. **Marketing and business development**
    1. Expanding the scope of practice
        1. Mediation
        2. Trust management as trustee

    2. Electronic
        1. Faxletter
        2. E-letter

    3. Periodic newsletters

    4. Referral thank you cards

5. Office seminars
    1. High Tea
    2.
6. Web Page

6. **Office environment**
    1. Cats
    2. Receptionist–first impressions
    3. Seating
    4. Lighting

7. **Malpractice insurance**
    1. Options to

8. **Management style**
    1. Horizontal versus vertical
    2. Whose the boss
    3. When is everyone their own boss
    4. Accountable and responsibility

9. **Staffing**
    1. Paraglegal v. Associates
        1. Paralegal
            1. Advantages
            2. Disadvantages
        2. Associates
            1. Advantages
            2. Disadvantages
    2. Compensation structures
        1. What employees really want- a place where they can work and call home
        2. Base plus incentive compensation-paralegal compensation structure
        3. Year end bonus
    3. Annual review
    4. Hiring employees
        1. Testing
            1. Spelling
            2. Grammar
            3. Left-Brain v. Right Brain

10. **Technology in the practice**
    1. E-mail
        1. Avoiding spam
            1. ihatespam.com

        - 2. spamassasin
    - 2. Home page
        - 1. Creating
        - 2. Updating
    - 3. Domain names
    - 4. Remote access to the office network
    - 5. Software choices
        - 1. Case management-Timematters, etc.
    - 6. Spam
        - 1. According to an article in <u>Investor's Business Daily</u> (October 23, 2003):
            - 1. Proliferation of spam
                - (1) ISPs estimate 50-60% of all e-mail is spam
                - (2) Look at Postini, Inc.
            - 2. Folks are using e-mail less because of spam
                - (1) Cut their e-mail use 25%
                - (2) Made them trust e-mail less 52%
                - (3) Make going on-line annoying 72%
            - 3. How e-mail users ditch spam
                - (1) Immediately click to delete 86%
                - (2) Avoid giving out their e-mail address73%
                - (3) Avoid posting e-mail address online 69%
                - (4) Apply spam filters to e-mail 37%
        - 2. Filters
            - 1. A major concern is having filter "filter out" the wanted e-mail.
                - (1) Goal of a good spam filter company is to insure less than one in 250,000 items of spam will get through.
                - (2) In my experience they are failing in their quest. I am seeing 1 in 30 to 1 in 40 that are spam that get through my filters.
            - 2. Filter alternatives
                - (1) E-mail programs have spam filters
                    - (1) E.g. Microsoft Outlook Express allows a user to:
                        - 1) block senders
                        - 2) Message rule- go to Tools>Message rules>Mail
                - (2) ISP
                    - (1) Your ISP will sometimes offer free/sometimes for a fee spam filters
                        - 1) E.g. Postini, Inc
                - (3) Stand alone products
                    - (1) Symantec's Norton AntiSpam 2004- $40 for 12 months
                        - 1) Allowed list

2) blocked list
3) trusted mode

(2) McAfee SpamKiller Home $40 "packaged" and $35 by "subscription"

3. Spam sending viruses
   1. SoBig Virus
      (1) August 2003
      (2) Postini, Inc reported
         (1) A Sunday in August
            1) 1400 instances of the virus
         (2) Monday
            1) 3.5 million
         (3) In October they are apparently still blocking 3-5 million of the viruses attached to spam
      (3) Key words-
         (1) "your application"
         (2) "wicked screensaver"
         (3) "that movie"

4. What are e-mail marketers doing?
   1. Bonded Sender- an industry self policing company that requires the spammers to follow certain rules.
      (1) www.bondedsender.com
      (2) Certification program for spammers

5. Congressional action
   1. Congress has passed and the President has signed a new anti-spam bill
   2. Generally, he bill provides

6. What I use
   1. ISP- www.estreet.com
      (1) Postini, Inc

   2. Outlook Express filter
      (1) Blocked sender
      (2) Message rules

7. Pop-ups
   1. Popup killer programs
      1. Many still exist and you can find them by searching for the term

"pop-up blocker"
(1) Some are free
(2) Some are for a fee
(3) No recommendation except with Google (see below)
(4) Adaware- Downloaded and it started sending me pop-ups and I could not rid my computer of their pop-up ads. I have to restore my computer to earlier settings to eliminate it. BE CAREFUL of such programs.

2. Google toolbar
   1. Www.toolbar.google.com
   2. Go to http://toolbar.google.com/popup_help.html for an explanation of the use of this very effective and FREE pop-up blocker

8. Wireless
   1. Wi-Fi

      1. Wi-Fi will be everywhere, linking everything to everything
         (1) Wireless video cams
         (2) Music connections
         (3) Health statistics to your physician's office
         (4) PDA
         (5) Etc.etc,etc

      2. Wi-Fi and your operating system
         (1) Works best (right out of the box) using Windows XP Home or Pro edition
      3. How Wi-Fi works-the simple view
         (1) Wireless card fits into your computer (notebook or desktop)
            (1) The card is both a transmitter and receiver
            (2) Bytes of data are converted into wireless and then reconverted to data when picked up by the receiver.
         (2) The Access point or Router
            (1) When the wireless card in your computer needs to talk to something it sends its data to an access point or a router.
            (2) The access point and/or router is the point or device where the signals you send connect into your office wired intranet. An access point is the equipment you use to transmit into an existing hard wired office intranet. If you don't have an office intranet, but want to create a Wi-Fi intranet then the signals

go into a router which hooks into the internet through your DSL or other broadband connection.

(3) The connection to the internet through an Access point or Router can be in your office, home or other business. When used in a business setting the access to the internet using Wi-Fi can be free or it can be a pay per usage.

(4) The Access point is equivalent to a network hub, which is connected to the intranet that allows data to be collected/distributed amongst various wireless cards.

(5) There are 11 different channels that can be used to transmit data and you can switch between channels to avoid interference from other channels.

(6) Don't be confused: Access points, Gateways and Routers all seem to be doing a lot of the same functions. The words seem to be used interchangeably from time to time, but the general idea of their utility is that the wireless data is being transformed into data that can them pass through an intra-net (through an access point) or into the internet through a router.

(3) Wi-Fi Hot spots

- (1) Buildings such as hotels, office buildings, cafes, etc.
    - 1) Marriott is supposedly offering Wi-Fi in 400 hotels in the U.S., U.K. and Germany
- (2) Wireless providers are intending to build them (at a cost) across the country
- (3) Fee v. Free
- (4) Password v. easy access
    - 1) DaysInn- no password required and free
    - 2) Others require password
        - 1) distribute a cd that loads the password
- (5) Concern- there are relative few hot spots allowing you to access a Wi-Fi connection to the internet.
- (6) Your own router can be a hot spot. If you have a router that ties directly to the internet at it sends out a Wi-Fi signal others in the neighborhood can grab your signal and use it to access the internet.

(4) Security

- (1) To be able to access the "Access point" an encryption key is used to allow those with the key access.

(2) Security can be a problem and use of downloaded security devises can be helpful.
(3) Wireless security sites to explore:
1) www.michiganwireless.org/tools/AIRsnare?
2) www.airmagnet.com

(5) Protocols (or I think of them as wireless languages)
(1) Three different "protocols" have been approved to allow construction of compatible hardware components. You will need to choose one of these when you decide to go wireless as you will have to choose the "platform" to be used to transmit your data. The three choices are:
1) 802.11 b
2) 802.11 a
3) 802.11 g

(2) 802.11 b (Wireless B)
1) The first protocol that works most everywhere.
2) 2.4 Ghz frequency band
3) **11 Mbps**
4) provides complete compatibility amongst all equipment manufacturers.
5) many PDA wireless systems use the Wireless B protocol
6) Advantages
1) Wide usage
2) Impressive range of 500 feet in a completely open area, but in the real world you will have walls, furniture, and other obstructions.
7) Disadvantages
11. slower transmission

(1) 802.11 a (Wireless A)
1) **54 Mbps** = faster
2) Advantages
3) Disadvantages
1) limited range of about 100 feet
2) requires more electricity (battery life)
3) equipment is more expensive
4) 5- Ghz frequency means it does not operate in the same range as

Wireless B and is therefore not compatible so for most users not being able to talk to the Wireless B group was a major deficiency. (Note: Broadband at home can only get to about 2Mbps, but with other drawbacks it does not make sense for most users.)

(2) 802.11 g (Wireless G)
   1) Hole Grail of wireless (Hmmm)
   2) **54 Mbps** (but can be increased to 100 Mbps by a booster produced by US Robotics.
   3) Advantages
   4) faster speed of the **54 Mbps**
   5) 500 feet range although 250 is more realistic and even that stat is somewhat misleading.
   6) In office sweet spot is 40 feet
   7) less power consumed in the 2.4 Ghz range
   8) Compatible with Wireless B

(3) Disadvantages

(4) The Future is 802.16
   1) A range of up to 30 miles
   2) Transmission speeds of 70Mbps

(5) Speed comparison
      1) Wired intranet speeds are 1000 Mbps

(6) Internet connection a few Mbps

(7) Wireless is not the hold up at 11 or 52 or 100 Mbps.

(8) The problem is cramming the high speed over a slow internet connection.

(2) The new chip on the old block
   (1) Broadcom Corp recently announced the entry into the chip market with a “tiny” low-power Wi-Fi chip called the “Air Force One”. It combines a 2.4 Ghz rradio, power amplifier, 802.11 b processor, etc on a chip smaller than a postage stamp. It promises to make wireless capabilities to be installed most everywhere and claims to use 70 percent transmit power, 80 percent less receiver power, 97% less standby power than the typical Centrino Intel chip. The cost for the chip is only about $12 and is expected to start appearing in many small

appliances. (See PC Magazine, October 28, 2003)

2. Wi-Fi in the Law office
   (1) Pros
      (1) No wires
      (2) Less expensive than traditional ethernet connections

   (2) Cons
      (1) Doors, microwaves, walls, cordless phones can all contribute to the transmission signal.
      (2) Connection seems very slow when running wireless from the battery. All applications seem to slow as the wireless and all other applications drain the battery rapidly.
   (3) Office use
      (1) meeting with clients-demo of software (e.g.- Viewplan, if networked version)
      (2) Access to calendar, client notes, documents, etc.
      (3) Staff meetings
         1) access to office server for files such as
         2) wordprocessing
         3) time and billing
   (4) Wi-Fi sweetspot is 20 feet for Wireless G, 30 feet for Wireless B and 10 feet for Wireless A from the access point or router.
   (5) 6069(5))Tj12 00 12 263.2225 387.186BT5)

(1) Access of client files, other information
(2) Wi-Fi card in your laptop
(3) Either a service provider or a free Hot Spot
(1) Providers setting up service plans include AT&T Wireless, Boingo, iPass, T-Mobile, Telia HomeRun and Wayport.
(2) You must be a hot spot area serviced by your provider.
(3) Few providers have sharing agreements.

2. Remote office
(1) Hot spots (usually using the 802.11b (Wireless B) protocol
(1) secure (requiring a key to access) v. open hot spots
1) Starbucks is an open hot spot
(2) can subscribe to hot spots in a particular location
(2) Wi-Fi Zones
(1) www.wi-fi.org is a site where you can register your hot spot and be identified as a legitimate provider with a standardized product.
(3) Instant Internet Café
(1) Zyxel ZyAir B-4000- For $650 you can buy your hot spot access point which allows you to track usage and bill for it on an a per usage basis. It is promoted as "complete, turnkey Internet café' appliance for wireless connectivity. (See PC Magazine, October 28, 2003)

2. Wireless additional thoughts

(1) Finding a WiFi connection

(1) Use your notebook computer with WiFi card.

(2) Windows XP includes a utility that automatically searches for active connections.

(3) Many cards come with software that scans for hot spots.

(4) Kensington WiFi Finder.

1) A device that retails for under $20 and is small enough to fit in a shirt pocket allows alerts you when you are in range of a WiFi

host. Product info from the manufacturer can be found at http://www.kensington.com/html/3720.html.

2) But CNET, in a July, 2003 review, says the WiFi Finder is inconsistent and rates it "Mediocre". http://reviews.cnet.com/4505-3284_7-30468829.html

(2) Before you travel, use an online directory
   (1) http://www.wi-fizone.org
   (2) http://www.jiwire.com
   (3) http://hotspothaven.com

3. The future: WiFi overload

   (1) As WiFi and other wireless connections become more common, will congestion of the airways become a problem? (Remember, 802.16 services will have a range of up to 30 miles.) For a thought-provoking article at eWeek, see http://www.eweek.com/article2/0,4149,1261299,00.asp.

3. Cellular service
   1. Traditional cell service providers jump on board
      (1) Nokia and Ericsson are offering internet connectivity through cell systems.
      (2) Note Sprint promotion which also advertises the use of a card in a computer to access a cellular wireless connection.
   2. Advantages
      (1) Can be used when outside of Wi-Fi range, but within cell range. Easier to use on the go. An example would be driving where cell connectivity would be better than Wi-Fi.
   3. Disadvantages
      (1) Slower than wireless which is 10 times faster
   4. Merger of Wi-Fi with cellular
      (1) Proponents say merger would be Nirvana, but whether skeptics abound as to the practicality.
      (2) T-Mobile offers both Wi-Fi and cellular as a combined package where you get one bill for both.
      (3) To be able to merge the two formats you would need a "dual-mode PC Card modem (E.g- Nokia D311 card)

4. Bibliography
    1. Wireless Home Networking for Dummies
    2. Wi-Fi AtoZ , PC Upgrade Learning Series, Bedford Communications, Inc. Volume 1, Issue 4 (see www.techworthy.com)

12. **Professional organizations**
    1. The role they play in education and networking
    2. Listservs

13. **Forms**
    1. Engagement agreements
    2. Partnership agreements

14. **Resources**
    1. Helpful Links
    2. Bibliography of other works

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1. I use the term lawyer in discussing what it is that I and others do while they practice law. Others may use the term attorney, but I prefer to avoid it's usage as others may be an attorney although they don't have a license to practice law. For example there are attorneys who are agents under powers of attorney.

2. The purpose of the American College of Trust and Estate Counsel (ACTEC) is to "maintain an association, international in scope, of lawyers skilled and experienced in the preparation of wills and trusts; estate planning; probate procedure and administration of trusts and estates of decedents, minors and incompetents; to improve and reform probate, trust and tax laws,
procedures, and professional responsibility; to bring together qualified lawyers, whose character and ability will contribute to the achievement of the purposes of the College (ACTEC); and to cooperate with bar associations and other organizations with similar purposes. The College (ACTEC) is a nonprofit mutual benefit corporation organized under the laws of the State of California. The College (ACTEC) is not organized for profit and no part of its net earnings will inure to the benefit of any member or individual. On dissolution all assets of the College (ACTEC) will be distributed to one or more organizations exempt from taxation under subsection 501(c)(6) of the Internal Revenue Code of 1986, as amended."

3. Although the Commentaries only refer to the roles of the trust and estate lawyers, the role of the elder law lawyer is similar, if not identical. A large portion of the legal services performed by the elder law lawyer consists of trust and estate matters. Therefore, the Commentaries apply to the elder law lawyer's practice.

4. The Fordham Law Review Special Issue *Ethical Issues of Representing Older Clients,* March 1994. Contact Fordham Law Review Lincoln Center, 140 West 62nd Street, New York, NY 10023.