

“So You Want To Open A Law Office”

After admission to the bar you have to decide how you will practice. Will you work in a large or small firm? Will you practice as a sole practitioner or with others? Will you practice as a partnership, a professional association, a limited liability company or a corporation?

The form and style in which you will practice is a subject for another discussion. The purpose of this writing is to identify some expenses which are commonly encountered without pretending to be a complete list or 100% accurate. In most cases, expenses have been minimized.

The practice of law is a profession and also a business. The state, and in most cases the city, in which you practice require you to acquire a business license before you may legally commence practice.

The requirement for State licensure is found at 30 Del. C. § 2301(b). That section lists amongst those required to be licensed: “every person engaging or continuing to practice in any...profession...there is hereby levied and there shall be collected an annual service license fee of \$75.”

Subsection (d)(1) adds to the license fee .307% of gross receipts in excess of 80,000 per month collected which is required to be paid monthly.

State License Applications may be made online at www.revenue.delaware.gov or in Wilmington at the Department of Revenue in the Carvel State Office Building, telephone number 302-577-8778; in Dover at Suite 2, The Thomas Collier Building, telephone number 302-344-1085; in Georgetown at 422 North duPont Highway, telephone number 302-856-5358.

If you practice in Wilmington application for a city license is through the Wilmington Department of Licenses and Inspections, License Division, telephone number 516-2415. A

Wilmington City license currently costs \$181 and runs from January 1 to December 31 in each year. Dover City applicants should call 302-736-7010. The charge is \$303 per year and the license is issued from June 30 to June 30 of the following year.

In Georgetown applicants for licensure may call 302-853-0104 for information. Licensure is good from January 1 to December 31 of each year. The license fee is \$65 per year with 1 to 10 employees; \$150 for 11 to 50 employees and \$225 for more than 50 employees.

If you practice as a professional association the charge by the Secretary of State for formation is \$119 and the annual franchise tax is \$60; as an LLC the formation charge by the Secretary of State is \$120 with an annual service charge of \$200 per hour.

After admission by the Supreme Court each lawyer must file an annual registration statement. The registration statement is a multi-page document which contains instructions, a required certificate of compliance, a list of assessments, and the opportunity to elect or opt out of IOLTA, a designation of lawyer in event of death or disability and information about banking and record keeping. The form also requires the lawyer to designate the Clerk of the Court for acceptance of service of process. Assessments must be paid to the court to support the operation of various Supreme Court committees. The assessments are based upon the length of service as a lawyer and status. The assessments differ based on years admitted, employment by government, by a Delaware court or inactive status.

For privately practicing lawyers the aggregate of assessments for the year 2008 run from \$335 for those who are in practice more than ten years to \$165 per year for those in practice less than five years. A copy of the registration statement is annexed hereto.

The certificate of compliance which is attached to the Supreme Court Registration Statement is designed to ensure compliance with Professional Conduct Rule 1.15. That Rule has as its purpose to ensure that client funds are not abused or wrongfully used. That Rule must be reviewed and observed. In brief outline only some of the requirements are listed below:

- a. To hold property of others which is in his or her possession separate from his or her own property.
- b. To advise the person or entity entitled that he has possession of the property and to deliver it promptly to the rightful owner and to provide a full accounting.
- c. The lawyer must maintain financial books and records and all related documents for a period of five years.

Rule 1.15 contains a laundry list of requirements which will not be repeated here. A lawyer may not engage in private practice without establishing one account specifically attorney operating account which must be used only for funds held in a non-fiduciary capacity and a second account designated as trust account or “escrow account.” The trust account can only be used for funds held in a fiduciary capacity. There is prohibition against depositing funds that belong to the lawyer in the trust account or allowing funds that have been earned to remain in the trust for a long period of time.

IOLTA (Interest on Lawyers Trust Accounts) should be utilized for the trust accounts. It is a device to support legal services for the poor and related projects for the administration of justice. While it is advertised as a way in which lawyers support these services, it is more appropriately a way in which lawyer’s clients support these worthwhile endeavors. Failure to

elect IOLTA does not benefit the practicing lawyer except insofar as it reflects a desire not to help finance community projects because if the interest does not go to the IOLTA account the lawyer may not possess it.

In addition to the mandatory expenditures, there are a number of recurring yearly expenses which most lawyers pay on a voluntary basis.

The most important of the fees paid on a voluntary basis are Bar Association dues. The Delaware State Bar Association is the voice of the Delaware lawyer. It is the primary source for Continuing Legal Education. It is the source of the only regularly published news about Delaware lawyers and Delaware courts. It provides services from vendors offered at a discount to members of the Bar Association and sponsors meetings at which all members of the Bar may be heard. It is impossible to practice law in Delaware and maintain state-wide communication with other lawyers without being a members of the Delaware State Bar Association. Delaware State Bar Association dues range from \$95 for the first five years of practice, to \$180 for practicing for ten to fifteen years and \$230 for practicing for more than fifteen years. Other associations which are equally important but more limited in scope are the Delaware Trial Lawyers Association and the Federal Bar Association.

The Delaware Bar Foundation has as its principle function the administration of IOLTA funds. Membership dues are \$25 per year. Besides investing the proceeds from IOLTA it, each year, makes grants to agencies (primarily those providing legal services to the poor but also supports projects related to the administration of justice.) Every Delaware lawyer should support it.

A greater percentage of Delaware lawyers belong to the American Bar Association than any group of lawyers in any other state or community. Membership in the ABA is almost as important as membership in the Delaware State Bar Association. It is the largest organization of lawyers in the world. It provides services which are unavailable through any other source. Through various committees the ABA has developed essentially what are the Rules of Professional Conduct. In every state, discipline almost everywhere is governed by precepts originating in the ABA. It provides a national organization which is dedicated to the improvement of the quality of service to the public and has been in forefront both in the administration of justice and the adoption and implementation of social concepts based upon law which marks American society as the most Democratic society in the history of the world. The ABA has led the fight for equality of all citizens, for diversity both in the profession and in the court system, for the appointment of qualified members of the Bar to the federal judiciary, the enhancement and maintenance of the quality of the profession which enhance concepts of collegiality, professionalism and civility. The membership is free for those admitted one year, \$125 per year for those admitted two years with an increase each year to \$399 per year after ten years.

The American Judicature Society is the second largest organization of lawyers in the country. This organization's emphasis is on the administration of justice. It is very active in improving the operation of the court system.

Both the Fellows in the American Bar Foundation and the American College of Trial Lawyers are organizations directed towards the administration of justice but as to which admission is by invitation only.

The Supreme Court Historical Society is a voluntary organization which is dedicated to the preservation and education of the history of the Supreme Court of the United States. The yearly dues to be a member of the Supreme Court Historical Society are \$75.

There are various publications in which lawyers are entitled to list the members of their firm, describe the nature of their practice and note their availability for service. These publications include Martindale-Hubbell, Insurance Management Institute and a whole raft of other lawyer lists too numerous to mention here. Most lawyers will utilize the Martindale-Hubbell law list. This is especially so if a lawyer has a multi-state practice or a practice which requires his clients to deal with lawyers in other states. Martindale-Hubbell, through a community rating system, rates lawyers and is generally regarded as an important source for attracting referrals from lawyers out-of-state.

Summarized below are a list of some of the recurring expenses for lawyers who have been admitted to practice. They are as follows:

REQUIRED EXPENSES FOR OPERATING AN OFFICE
(One Lawyer)

Cost of Space (800 Sq. Ft. @ \$22.00 per Square foot)	\$17,600.00
Office Equipment (Initial Expense)	\$3,500.00
Telephone Service	\$1,000.00

Support Staff	
Salary	\$30,000.00
Accompanying payroll taxes and benefits	\$9,500.00
Medical Insurance – Individual	\$5,800.00
Telephone Listing in Yellow Pages	\$550.00
Postage	\$900.00
Stationery/Supplies	<u>\$1,500.00</u>
Total Expenses	\$70,350.00

PROFESSIONAL EXPENSES

Delaware Business License	\$75.00
City License -Wilmington	\$181.00
-Dover	\$275.00
-Georgetown	\$75.00
LLC – Formation	\$120.00*
- Annual Charge per year	\$200.00*
Professional Association Formation	\$119.00*
Annual Charge	\$60.00*
Supreme Court Registration	
Less than 5 years	\$165.00
5-9 years	\$225.00
More than 10 years	\$335.00
Wilmington Net Profits tax @ 1.25%	\$625.00
Based on \$50,000 net income before taxes	
Delaware Gross Receipts Tax	
Based on \$86,000 gross income	\$0.00
Professional Liability Insurance	\$2,000.00

CLE (12 credit/year)	\$380.00
Delaware Bar Foundation (not mandatory)*	\$25.00*
DSBA Dues*	<u>\$80.00</u>
ABA Dues – First year free	
Total Professional Expenses	<u>\$3,426.00</u>
Total Professional Expenses and Operating Expenses	\$73,776.00

*Since optional, not included in total.

Pre-Tax Gross Income		\$50,000.00
		\$73,776.00
	<u>\$50,000.00</u>	
Total Expenses And Pre-Tax Income	\$123,776.00	\$123,776.00
Federal and State Payments		
A. Federal Income Tax	\$8,500.00	
B. State Income Tax	\$2,388.50	
C. FICA	<u>\$7,650.00</u>	
Federal and State Tax and FICA payments		<u>\$18,538.50</u>
Net Income after taxes and FICA		\$31,461.50

A lawyer practicing alone would have to have gross revenue of about \$123,776.00 in order to have disposable income of \$31,461.00. It would require 100% utilization of about 1,500 billable hours per year at about \$82.00 per hour to attain gross revenue sufficient to generate

spendable income of \$31,461.00. To achieve 1,500 billable hours per year assuming two weeks of vacation or other non-billable time away from the office, I have assumed an eight hour work day reduced by time for professional reading, sick time, personal errands, CLE time, etc. Many lawyers are able to log more than 1,500 billable hours and some less.

The itemization of expenses listed here is in no sense to be considered as all the expenses you may be required to meet. No items are listed for purchase of law books (use the law library), bookkeeping services, life insurance, retirement, travel expenses, software and computer expenses, contributions, a rainy day fund or other expenses you are liable to encounter.

It is likely that first year expenses including disposable income of about \$31,400.00 will require revenues in excess of \$123,776.00.

A word of caution. The contingent fee agreement can be a wonderful concept. For the client who otherwise could not afford to hire a lawyer it may be the only way in which his or her claim may be presented to the court. To the lawyer it holds out the promise of compensation based upon the result and not upon the usual hourly rate. When a claim is successfully prosecuted and where the reward is sufficiently large, the compensation to the lawyer can be pleasantly rewarding. Make no mistake about it, however, all contingent fee cases involve a degree of risk and in some contingent fee cases the risk does not justify the potential reward. It is important to be cautious in accepting cases on a contingent fee basis. The prudent lawyer will examine the case from the point of view of the potential value of the claim and the measure of risk involved. Some contingent fee cases claims are not pursued to a successful conclusion. In some contingent fee cases the return does not justify the expenditure of time and expense

necessary to bring the claim to a successful conclusion. Lawyers who load up on contingent fee cases can be at substantial risk.