Opting In: Making the Move from Government to Private Practice

By Jessie K. Liu

Much has been written in the last few years about women who “opt out” of private practice to pursue what some consider to be more rewarding, less-stressful career paths, including in the government. But very little has been said about women who “opt in”—that is, those who leave government jobs for private practice. At first glance, it may be hard to understand why anyone would make that move. Conventional wisdom holds that government legal jobs offer significant benefits over law firm life: more responsibility earlier in your career, more freedom to pursue cases that interest you, and better work-life balance. Still, every year, many women (and men) leave successful public sector careers to join law firms. And plenty of great reasons support the switch to private law firms. But once you make the switch, it is important to realize that in many ways, private practice is a whole different ballgame, and you need to do things differently to succeed.

First things first. Besides potential economic incentives, why make the switch to private practice? For starters, the change has the potential to diversify and expand your legal experiences. As a government attorney, you spend your career advocating for one client. You may start seeing both the facts and the law from that client’s point of view. Moving to private practice makes it possible for you not only to represent another client and to learn to see things through that client’s eyes, but to also represent a number of different clients at the same time, often on diverse topics. This is good for your professional development, because your judgment is better when you have a broad and diverse range of experiences and when you have evaluated cases from many different perspectives.

Private practice also gives you a chance to be a counselor in the truest sense of the word. Your client is no longer a faceless entity or an abstract concept, like “the government” or “the people,” but rather a specific individual or company (run by specific individuals) looking for advice and advocacy. To represent such a client well, you not only have to master the facts and the law, but you also have to understand your client’s business and how your case might affect that business. In addition to helping clients in trouble, you have to find ways to keep them out of trouble in the first place. That means giving them wise counsel in real time. It can also mean advising your clients of new developments in the law that might affect them, training their businesspeople and their lawyers in best practices, and generally working hand-in-hand with them on difficult issues.
Additionally, private practice offers unparalleled entrepreneurial opportunities. Although it’s often true that young government lawyers have more autonomy and responsibility than young associates, a more senior government attorney who enters a law firm as a partner or counsel has opportunities to build a practice in ways that simply do not exist in government. And, in some respects, private practice can offer more freedom than government, whereas big decisions on major cases often require several levels of supervisory approval.

If you have decided to switch from government to private practice, the transition period can be difficult. Suddenly, you’re worried about billing hours and bringing in business. What can you do to maximize your chances of success? The following are some tips to keep in mind:

1. Negotiate for yourself. Many studies have shown that women simply do not negotiate with their employers, and, as a result, get less pay and perks than men. Do not let that be you. Has a firm offered you an of-counsel position? Make a case for why your experience and contacts are more commensurate with that of a non-equity or equity partner. Have you tried a dozen cases to a jury or developed strong relationships with government officials after years working in a regulatory agency? Let your prospective firm know the breadth of your experience and depth of your contacts. Do not fear negotiating your salary. What is the typical compensation for someone at your level? Be prepared to explain why you should receive your expected level of compensation and origination credit.

2. Make sure you and your firm have shared expectations about your first year. Usually, it takes months, and sometimes longer, for a new lawyer to become fully integrated into the firm, and it can take years to bring in that first client. You’ll likely spend your first few months sending out announcements about your new position, getting to know your new colleagues, meeting the firm’s clients, and lunching with contacts. Find out the following information before you start work: How much does your firm expect you to bill in your first year? How much new business does your firm expect you to bring in—and when? What will you do until you have your own business? Will your firm staff you on cases while you build your practice? What kind of cases? If you’re a white-collar crime expert, will the firm want you to be a civil litigator until you have your own clients? Or will it expect you to “eat what you kill,” and will get impatient if you don’t kill anything for awhile? Find out the answers to these questions (and whether you can live with the answers) in advance.
3. Learn to communicate with clients. Learning to deal with clients, especially in these tough economic times, can be one of the greatest challenges of transitioning from government to private practice. For example, many government lawyers operate with a fair amount of autonomy and few budget constraints. In private practice, on the other hand, clients often expect close consultation, regular reporting, and accurate and detailed budgeting. When you start working on a matter, find out (whether from the senior partner or directly from the client) what is expected of you in terms of communication with the client. What kinds of decisions can you make on your own? What decisions require client approval?

On a similar note, what does the client want with respect to reporting? A monthly memorandum? A weekly report? A daily email? From whom should these communications come—and to whom should they be sent? For example, you may be one of two junior partners on a complex case. Several in-house counsel might be involved, including the corporation’s general counsel, the in-house chief of litigation, and the business unit general counsel. With whom are you expected to communicate? Will someone else on your team keep the others in the loop?

Learn to put together budgets. Now more than ever, cost is a major concern for clients. And even in the best of times, clients need to be able to plan for their legal expenses. As an attorney new to private practice, it probably will be difficult for you to estimate how much time certain tasks will take and how much they will cost, but mastering the business side of practicing law is well worth your time. And if you are responsible for the budget, be sure to let your senior partners (and the clients, if necessary) know if you see expenses running ahead of budget. There are few things more frustrating to a client than finding out after the fact that the first quarter legal budget has been exceeded.

4. Get to know your new colleagues, but stay in touch with your old colleagues and former classmates. Unlike your summer associate days, there probably won’t be a welcome wagon of new colleagues asking you out to lunch your first week at the firm. You need to make the first move. Introduce yourself to your new partners. Invite colleagues to grab a sandwich or a cup of coffee with you, and ask them about their experiences at the firm and their advice for success. Attend firm events—you can’t get to know your new colleagues unless you show up.
At the same time, stay in touch with your former colleagues and classmates. Yes, you’ve got billable hours requirements now. And yes, you’re busy meeting your new colleagues and hobnobbing with clients. But this is not the time to lose touch with your former contacts and colleagues, as well as classmates from law school, college, and even high school. Be sure to update your contact list. Send them your firm’s announcement about your arrival and your new contact information. When the holidays roll around, send a firm card with a short personalized note. Get together with your former colleagues and classmates when you can. Even an occasional cup of coffee goes a long way toward sustaining a relationship.

5. Get involved in speaking and writing. As a government lawyer, it’s often hard to be active in extracurricular activities. Many government agencies do not offer financial assistance for their employees to join bar associations and travel to conferences. They also may place strict limitations on what their employees can say in public. Moreover, such extracurriculars may provide limited benefits to government lawyers, because although speaking and publishing are powerful marketing tools, government attorneys don’t have to worry about bringing in business.

That all changes once you enter private practice. Speaking and publishing raises your public profile and, by extension, helps you get clients. So get involved, but be smart about it. Rather than writing a slew of articles on a random assortment of topics, focus on an area in which you want to become an expert and in which your credentials make you credible as an expert. Unless your practice area is heavily referral-based, speaking to a group of law firm partners is unlikely to get you much business, so try to get yourself in front of industry groups when you can.

6. Relax. In an ideal world, you’d do it all. You’d golf every week with your new partners and then meet your old colleagues for drinks. You’d write an article a month and bill 2,000 hours a year. But you can’t do everything, and if you tried, you’d drive yourself crazy. So focus on a few manageable goals, and don’t lose sight of all the things that are just as (or more) important than work. Life is long, and it might take a little time, but success will come.

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