

Practice Management

Going Green In a Small Firm: *Is it for you?*

by Andrew T. Bockis

Have you ever wanted to do something but had no idea how to begin? Not knowing how to do something often acts as an easy excuse for putting it off. It happens to all of us.

My wife and I had been wanting to install a ceiling fan in our house for months. Not having done that work before, we kept putting it off. Yet after we did the research and realized how easy it was to install, we wondered why we put it off for so long.

I'm sure each of us has a similar example. As it turns out, the notion of environmental sustainability might just fall into that category. What is sustainability? It's development that meets present-day needs without compromising the ability of future generations to meet their own needs.

In May of this year, the PBA gave the green light to the PLUS (Pennsylvania Lawyers United for Sustainability) Program. Designed for Pennsylvania lawyers and law firms by PBA's Environmental and Energy Law Section, the PLUS Program gives us an opportunity to publicly demonstrate our commitment to sustainability.

But where should we start? A recent McKinsey & Company study of nearly 2,000 executives from companies representing a wide range of industries and regions found that 72 percent of those companies felt sustainability was "extremely" or "very" important. But only 29 percent of the companies felt that they had successfully integrated sustainability into their business practices.

Perhaps not surprisingly, one of the main reasons the study identified as to why so many businesses don't actively address sustainability in their operations is that many of them have no clear definition of what sustainability is. That said – *and this*

is the important part – over 75 percent of the executives responding to the survey saw sustainability as something creating real value.

This shouldn't come as a surprise. People have evolving sensibilities. These days, with greater access to information, greater accountability is unavoidable. Just 15 years ago, very few coffee drinkers paused to think about the farmers who grew coffee beans (aside, perhaps, from recalling the fictional Juan Valdez's appearance in an occasional commercial). Today, many people are willing to pay a premium for coffee with a Fair Trade seal.

As a recent *Harvard Business Review* cover article summed up the situation, consumers "know everything about your company – not just its carbon emissions but its countless other 'invisible' effects on the globe. That has changed the rules of business forever."

Now, more than ever, companies are taking ownership over the once-invisible impacts their actions have on others. And many of our clients are facing the issues related to living in a transparent world.

Where does the PBA fit in?

In 2009, PBA's Environmental and Energy Law Section formed a committee to develop a program aimed at providing Pennsylvania attorneys and law firms with an opportunity to publicly demonstrate their commitment to sustainability in their professional practices. The committee developed the PLUS Program in response to requests from within the PBA.

The PBA PLUS program is modeled after similar programs by the California, Oregon, and Massachusetts Bar Associations. Closer to home, the Philadelphia Bar Association and the Greater Philadelphia Green Business Program have launched their own sustainability initiatives.

Using input from other PBA sections, the Environmental and Energy Law Section developed a list of guidelines at the heart of the PLUS Program. These guidelines cover five separate areas: energy savings, paper reduction, recycling and waste reduction, transportation, and sustainable purchasing.

The guidelines offer program participants suggestions and provide specific examples of how to make a law practice more sustainable. They stretch from straightforward suggestions, such as installing motion detectors in offices and ensuring your office copiers and printers have an automatic duplex option, to providing a procedure for recycling items not accepted in standard recycling, such as Tyvek® envelopes, batteries, plastic bags, and computers. These guidelines aim to take the uncertainty out of what it means to be sustainable.

The PLUS Program is voluntary and its participants are self-monitoring. Taking part in the initiative can strengthen a firm's reputation and help to increase its efficiency, productivity, and employee recruitment and retention. Participation may also help to align a law firm with the growing number of current and potential clients embracing sustainable practices in a meaningful way.

Participating attorneys and firms are encouraged to advertise their participation in the PLUS Program. The Environmental and Energy Law Section



Andrew T. Bockis

(continued on page 2)

Message From the Chair...

by Marion Laffey-Ferry

Greetings and Salutations. If you're on the Section listserv, you should already be familiar with this greeting. I use it whenever I contact the membership or the Council.

When considering what I should write about in my first *From the Chair*, I thought back to how I first came to be involved with the PBA and the Section. This led me to consider how the PBA views the role of Committees and Sections – and how the Committees and Sections view themselves.

After 15 years in the House of Delegates, six on the Foundation Board of Directors, and 25 on various Committees and in the leadership of two Sections, I've concluded that the PBA sees our Section as an audience for the ideas and resolutions that other Sections and Committees submit to the PBA leadership, especially to the extent that those ideas and resolutions may have a direct or indirect impact on solo practitioners and small firms.

To fulfill my two-year obligation to you, when the leadership asks for input, I'll first circulate that request to Section Council with a comment deadline, asking whether we wish to take a position. If Council believes that doing so is in the Section's interest, or that the Section is in some way impacted, I'll then submit the proposal for comment to the listserv,

again giving a deadline for responses.

When the comment deadline has passed, I'll poll Council and tally the vote. Our final response to leadership will be consistent with the decision of the majority of those Council members voting.

If you have an issue that you would like the Section to present to PBA leadership, reverse that procedure: raise it on the listserv for referral to Council. Upon an affirmative Council vote, we will draft and submit a resolution and report in accordance with the time constraints and other procedures established by the PBA bylaws.

From time to time, there may be issues that come to Council's attention requiring the Section to take a position or submit a resolution to the Board of Governors without sufficient time to seek input from the Section membership. I hope that you have elected us as your Council with the knowledge that we will act in a manner that we believe to be in your best interest as Section members.

The more members actively participating in Section activities and seeking leadership roles in the Section, the more accurately your Council's actions will reflect the majority's goals and views. The Section is a resource to answer questions, supply forms for pleadings, and

provide referrals to attorneys in other practice or geographic areas – but we are so much more!

Before our August meeting, members raised questions about the and the direction our activities would take in the future. Most of the August meeting was devoted to that discussion and the establishment of an ad hoc committee to study those issues in depth and present the findings on Section Day in November. By the time you read this, we should have that report and you will read about its conclusions on the listserv if you're a subscriber.

This should give you an idea of my approach to Section leadership. We Section members exist to help each other make our practices as professional and profitable as possible; we also inform the PBA leadership of our needs and wishes. To be successful in these efforts, we *must* communicate effectively with each other. This means we must be more proactive!

Please come to as many meetings as possible, and if you can't be there in



Marion Laffey-Ferry

(continued on page 4)

Practice Management: Going Green In a Small Firm (continued from page 1)

is also considering recognition of the participants at the annual Environmental Law Forum.

For detailed information, check out the PLUS Program guidelines, and submit a pledge form if you're interested, on the PBA website (<http://bit.ly/aLeDtI>).

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What Does ADHD Cost Your Practice?

by Beth Main, CAC

Lauren, an estate attorney in her own practice, is intelligent, effervescent, and well spoken – qualities that help her land nearly all of the clients who come to see her for a consultation. She's dedicated to her career and knows the law related to her practice inside and out.

Trouble is, she's not making enough money to justify the long hours she spends on her practice. She frequently stays up most of the night trying to meet a deadline – and she doesn't always make it. She has very few repeat clients and even fewer referrals. A closer look at her work style reveals that she usually operates in crisis mode, putting things off until the last minute, then panicking. She often misses important details in her work and forgets or loses things. Her frustration level is off the charts.

What's happening here?

Lauren has adult Attention Deficit/Hyperactivity Disorder (ADHD), sometimes simply called Attention Deficit Disorder (ADD).

Most people think of ADHD as a childhood disorder. Most of us usually associate it with out-of-control kids running around in classrooms, restaurants, and supermarkets. But have you considered what happens to these kids when they grow up? They become ADHD adults. They become *your clients*. One of them may even be *you* – whether or not you've been diagnosed.

Because ADHD was virtually unheard of 20 years ago, many people don't even realize that they have it, or want to accept it. About half the kids with ADHD will continue to struggle with it when they grow up. That equates to more than 10 million adults – about 5% of the adult US population.

ADHD's primary symptoms are inattention, impulsivity, and sometimes hyperactivity. But those broad categories don't really describe what it's like to live with ADHD.

People with this unique brain wiring are easily distracted and can't control their attention. They have an inordinate amount of difficulty with tasks that involve planning and organization. They lose anything that isn't tied down. They procrastinate. They lack follow-

through. They're restless and impulsive. They're extremely forgetful. They tend to overlook details, leading to mistakes. They interrupt. They're chronically late. They're easily bored, thriving on novelty and instant gratification.

What does this mean for a law practice? Lost income. Missed opportunities. Angry clients – even if it's the *client's* ADHD that's causing the problem. You might think you have things together enough that nobody notices. But do you?

Most clients won't tell you when they're dissatisfied with your service. They just won't hire you again.

Here are some of ADHD's potential pitfalls – and how to avoid them:

- *Lack of organization.*

People with ADHD tend to be woefully disorganized. How much time do you spend looking for client files, documents, and correspondence? Have you ever had to redo work you'd already done once because you couldn't find it later? What do these things cost you in terms of time and money?

An intuitive organization system that includes places for action items, reference materials, and client information is a must-have. It has to be easy to use, so you actually use it. You might claim that sticky-note farms and towers of paper are efficient, but they're *not*. A cluttered workspace makes it easy to lose stuff – and hard to concentrate.

- *Poor time management.*

Even though you may not have the strict billable hours requirements that many large firm attorneys have, your time is still money. Are you as efficient as you can be? How much time do you waste time on trivial tasks that don't generate income? On e-mail? Social networking sites?

Time is one of your most precious assets. Maintaining control over it is crucial to your success as a solo or small firm practitioner.

- *Poor task management.*

Closely related to time management is task management: keeping track of all the stuff you have to do. How do you remember everything you want or need to take action on? Are the exact steps clearly defined (like "Call Mike to schedule

appointment"), or are they a m b i g u o u s (like "web site project")? When does each thing need to be done? Is everything all in one place, or do you have a menagerie of post-its, scraps of paper, calendar items and mental notes?



Beth Main

A good task management system solves all these problems, whether it's electronic or paper based.

- *Inability to prioritize.*

Even if your work day is all business, and your "to do" list is in good shape, are you effectively prioritizing? Are you scheduling time for the things that will move you closer towards your goals, or do you spend most of your time in crisis mode?

ADHD impulsivity can lead us to work on whatever seems important at the moment, or whatever novel idea has caught our attention. If you don't consciously choose to work on things like business development, for example, you may not have to worry about those emergencies – because you won't be getting any clients.

- *Planning.*

If you have a trial scheduled in three months, what tasks must you complete to be ready on time? What do you need from your client, and when do you need those things? When do you need to request them, so that your client has enough lead time? What about time for emergencies and last minute changes?

Planning can be excruciatingly difficult for people with ADHD. But the alternative is late nights and missed deadlines, not to mention cranky clients. One effective strategy is to create a timeline for each case, noting what is needed and when. Then enter the deliverables into your task management system. Daily and weekly planning sessions – coupled with good time management - will help keep you on track.

(continued on page 5)

Danke Schoen Ferris Bueller: *Enlightening Thoughts for Lawyers From an Epic Hero*

by Daniel E. Cummins

With its tribute to the late movie director John Hughes, the 2010 Academy Awards telecast brought to mind many of the teen epic movies of the 1980s, along with their famous characters. Perhaps the most unforgettable of these would be the title role, perfectly played by Matthew Broderick, in Ferris Bueller's Day Off, released in 1986.

For those readers not of the '80s teen generation or who are otherwise unfamiliar (despite the near-constant reruns of the movie in both broadcast and cable/satellite offerings), this film followed a day in the life of high school senior Ferris Bueller, who decided to skip school and instead spend one beautiful spring day in downtown Chicago.

Accompanied by his girlfriend and his best friend Cameron Frye, Ferris creatively avoids his school's Dean of Students, his resentful sister, and his parents throughout the day. During the film, Ferris Bueller occasionally turns to the camera and explains to the audience his techniques and thoughts.

Some of those humorously enlightening thoughts of Ferris Bueller, as set forth below, could serve to assist in easing a few of the burdens of the law profession.

How could I possibly be expected to handle school on a day like this?

Ferris asks the foregoing question in the opening scenes of the film when he awakes to clear blue skies with wispy clouds and bright sunshine – it's a beautiful 70-degree Chicago spring day.

With the obvious answer, Ferris gets to work on his plan to get out of having to go to school.

How often have you heard another lawyer exclaim what a beautiful day it is outside and lament that he or she is "stuck in here" doing work? While it may not always be feasible to "pull a Ferris" and take advantage of an entire beautiful, sunshiny day, perhaps you could take your lunch to a nice outside spot. Or take a leisurely stroll through the colors of the fall. Get some fresh air and clear your head for an hour or so.

On those rare occasions when a sudden, splendid day coincides with a lull in the calendar, see if you can take the day as a way to rejuvenate on a "mental health" day. Spend it with family, or (keeping sight of your bottom line) take a client out to the golf course to build on your relationship.

They bought it. Incredible. One of the worst performances of my career, and they never doubted it for a second.

This Ferris comment comes after he succeeds in persuading his parents that on that gorgeous morning that he is too ill to be sent off to school. The lesson, of course, is not that fakery is good; rather, this shows that we at times can surprise ourselves with how persuasive we can be.

In trial, or negotiations, the key to being persuasive is to believe in one's own objective and the points being presented to reach that objective. If an attorney does not entirely believe in the case presented, the radar of jury or opposing party will

certainly pick up on that lack of confidence and reject the argument.

An excellent tool for an attorney's use in making a persuasive presentation is demonstrative evidence – particularly, in this day and age, the use of PowerPoint presentations. A lawyer presenting his case via repeated use of professional, computer-powered graphics is surely more persuasive than a "talking head" attorney without exhibits.

As the fictional attorney Billy Flynn explains his trial strategy in the song "Razzle Dazzle" in the musical Chicago: *Give 'em the old razzle dazzle/ ... Give 'em an act with lots of flash in it / Then the reaction will be passionate....*

So razzle dazzle 'em, and your client may benefit – even if you don't have the better position.

Do you realize that if we played by the rules right now, we'd be in gym?

Ferris utters this comment as he goes through his day of playing hooky, becoming increasingly frustrated with how nervous and uptight his best friend Cameron is about getting caught.

Attorneys are born to follow rules, so for many of us the thought of not following the rules may be repugnant. There may be times, however, when taking calculated risks and throwing caution to wind – while still playing within the rules and the applicable law – may be in a client's best interest.

Taking the time to think outside of the box – do the unexpected – could make a major difference in your outlook. For Ferris, this led to the vast divergence from the norm (being in gym class, forced to climb up a rope or do something equally uninteresting) of attending a Chicago Cubs day game and catching a foul ball.

For an attorney, taking risks (such as



Daniel E. Cummins

Message From the Chair *(continued from page 2)*

person, participate by phone when that option is available. Our success as a Section depends on you!

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County Bar Association Judiciary Committee, serves in the PBA House of Delegates and its Reform Task Force, and is a member of the PBA's Three Year Planning Committee and its Family Law Section Council.



offering dispositive motions at trial) could make the substantial difference between success and failure.

Not that I condone fascism, or any -ism for that matter. -ism's in my opinion are not good. A person should not believe in an -ism; he should believe in himself. I quote John Lennon, "I don't believe in Beatles, I just believe in me." Good point there.

Believe in yourself and what you do and no one can doubt you or your motives. Enough said.

Cameron: Ferris, my father loves this car more than life itself.

Ferris: A man with priorities so far out of whack doesn't deserve such a fine automobile.

This conversation takes place in Cameron's parents' garage as the two teens look at Cameron's father's mint condition, shiny red, 1961 Ferrari GT California. With this comment young Ferris proves himself to be wise beyond his years.

Sometimes the 24-7 relentlessness of

the practice of law makes it is easy to lose sight of what's important, both within and outside of your practice. Stopping on occasion to re-evaluate one's status in life and re-prioritize never hurts.

Maybe it will even help your outlook on life to take a moment to actually write down what is important to you in the grand scheme of your life and in terms of your goals both in and out of work. Then, don't just push that paper aside: make it a priority to put your thoughts into action – today, not tomorrow.

Life moves pretty fast. You don't stop and look around once in a while, you could miss it.

Ferris looks right into the camera and hits you with this one. So simply put, and so true.

The law really is only one piece of our short lives. A balance between work and life outside of work should not only be sought but encouraged. Devoting all of your energies to the practice of law to the detriment of your family or your social/recreational life could lead to burnout, not to mention great regret.

There's no slowing down life, and it seems the older we get, the faster it goes. So take some moments to stop. Just stop. Look around. See what you see in your life, and seize and enjoy the moments.

Channeling a good portion of your time and energies instead to those important aspects of life outside of work may ultimately have the benefit of making you a happier person and, therefore, a more productive and less stressed lawyer.

I end this article as Ferris ended his day off, as the last credits rolled onscreen: "You're still here? It's over! Go home! Go!"

Daniel E. Cummins, Esquire is a civil litigator and partner in the Scranton, Pennsylvania law firm of Foley, Cognito, Comerford, Cimini & Cummins and a civil litigation columnist with the Pennsylvania Law Weekly. He also writes the blog Tort Talk (www.torttalk.com) where he periodically provides updates on important cases and trends in Pennsylvania tort law. This article is adapted from one that appeared in the Pennsylvania Law Weekly's April 27, 2010 edition.

Practice Management: What Does ADHD Cost Your Practice *(continued from page 4)*

• Client management.

Speaking of cranky clients, what about your clients who have ADHD-like tendencies themselves? You know, the ones who disappear like the morning dew in August when you need something from them.

Don't assume that your clients will complete your requests on time – or complete them at all – just because they're paying you. Failure to follow up will cost *both* of you. You need a good reminder system for things you're waiting for from others.

• Communication skills.

You might have the flair of F. Lee Bailey in the courtroom, but how well do you communicate with your clients on a day-to-day basis? Do they understand what you need, where you're coming from, why you're taking a certain



approach? Do their eyes glaze over when you try to explain something to them?

Do you tend to be argumentative? What about your emails – are they clear and concise, or do you usually get a confused phone call after you hit "send"? Problems in these areas - common with ADHD – may hurt your client retention rate. You need to communicate effectively to learn what they really want from you.

• Attention to detail.

There's no arguing that the legal profession requires exquisite attention to detail, something else that people with ADHD generally lack. One missed fact can result in a bad outcome – or a legal malpractice claim.

Make it a point to proofread every document before you send it out. Better yet, have someone else do it for you. The credibility you save will be well worth the effort.

How do ADHD tendencies affect *your* practice? Recognizing these traits in yourself and your clients is the first step towards correcting them. Here are some resources that may help:

- Attention Deficit Disorder Association – www.add.org
- ADDitude Magazine – www.additudemag.com
- Attention Deficit Hyperactivity Disorder Forums – www.addforums.com
- ADHD Solutions – www.adhdsolutions.net

Beth Main is a Certified ADHD Coach and the founder of ADHD Solutions. She coaches adults whose attention-related challenges get in the way of their success, whether they have a formal diagnosis or simply exhibit some of the traits of Attention Deficit Disorder, assisting them with time management, planning, organization, prioritizing, focus and distractibility, life balance, and relationship issues. For more information, visit her website, www.adhdsolutions.net.

You're Only As Small As You Feel

by Ellen Freedman, CLM

I'm always grateful that I grew up with the old-world wisdom of two wonderful and wise grandmothers. They each had favorite sayings that were easy to remember, inevitably reducing uncertainties and anxieties about the world in which we lived.

For example, I was not blessed with the tall lanky build reflected in my older brother and sister. I used to stress about it and feel insecure regarding my appearance. My grandmothers helped me get over it by assuring me that in fact I was not pudgy; I was just "height challenged". Ok, it's funny now, but somehow it managed to soothe my insecurities. Or at the least helped me laugh about them at an early age.

I know a lot about insecurities and how to overcome them; it's a skill I've carefully developed over the years. And from time to time I write about how I do it in an effort to help others. This I know: when it comes to size, solo and small firm ("SSF") lawyers can feel pretty darned insecure.

It's OK to admit: sometimes you may feel insecure when comparing your own firm to BigLaw. After all, BigLaw firms have large budgets for client development and retention, continually undertake technology initiatives, and have an abundance of staff to keep their work flowing smoothly.

Even in today's leaner times, most big firms have plenty of young associates to assist in research and writing of articles, seminar research and preparation, and other initiatives. It's virtually impossible not to occasionally suffer some insecurity. My goodness, a small firm practitioner can't help but wonder whether there's any way to compete on a level playing field with these behemoths.

Most of you made a conscious decision to work in a solo or small firm environment. Many of you are "escapees" from BigLaw. You eschewed the complexity, administrative burden, and often the aggravation caused by partners with big egos and hidden agendas. You wanted more control over the balance between home and work. You wanted to be master of your destiny, crafting a firm

culture that more closely reflects your own values and ethics. And despite the global recession-induced temporary strain many of you are enduring, you know you've made the right decision.

But still, there's that size issue. It inevitably pops up from time to time.

My grandmothers had a saying reflected in this article's title. In point of fact, there are many ways in which solo and small firms can outshine BigLaw. If you keep reminding yourself of this fact, and work to ensure that your firm is one of those that has the ability to survive and thrive, you need never feel insecure about size again. Your small size may actually be more of an advantage than a disadvantage to your viability.

When I think about the most strategically important SSF advantage, it's clearly a greater degree of flexibility. Your compact size enables you to be more nimble in dancing to the client's tune. Implementing changes to your technology, procedures, practice area staffing, and billing arrangements requires a lot less effort.

SSFs are like powerboats that may be redirected at will, with little effort. BigLaw firms are like huge ocean liners: it takes tremendous space and energy to change course.

Consider implementation of a case management or litigation support system. For the SSF, the price may seem high, but compare that to the fact that the simplest technology initiatives can add up to hundreds of thousands for BigLaw. By the time they arrange to purchase software licenses, perform pilot group testing, roll out the installation, and undertake customization and training, there's a huge investment of time and dollars. And let's not forget the enormous number of hours spent in research and evaluation first, and then in seeking sufficient support for the initiative.

You may be thinking that this all works out the same proportionately. Not necessarily so. Ok, if you're a firm that decides everything by consensus, you're surely not so nimble, and you probably have frequent bouts of decision paralysis. But when you do decide, getting from

decision to implementation is much faster and less expensive.

Another area where SSFs easily top BigLaw in performance is in delivering superior client service. I find that SSF

attorneys very carefully monitor the service being provided to their clients by staff and other attorneys in the firm. Because you are critically aware of your BigLaw competition and the depth of talent these giants offer in a multitude of practice areas, you know that you have to excel when it comes to service.

You also usually leave the attitude at the door when dealing with your clients. I rarely find SSF attorneys who are full of themselves. You'll do whatever you can to remain approachable and down to earth, and you keep your antennae up for any hint of client dissatisfaction. You search for ways to monitor and ensure consistent quality of representation. Corresponding BigLaw quality initiatives are complex and costly.

Except for those SSFs in less populated areas forced to be general practice firms, most of today's SSFs usually have a focus on meeting narrowly defined client needs. This strategy enables most SSF attorneys to concentrate on complex matters and higher-value work. Developing a reputation for excellence is easier for narrowly developed niche practices. In some areas, the SSF may actually offer greater depth than BigLaw.

SSF attorneys don't usually have the luxury of pushing work down multiple layers as a training exercise. Professional staffing is usually lean; slackers or hackers don't survive for long. So too, operating expenses are usually much lower per attorney.

Often the SSF provides its client with greater value for the dollar than BigLaw. But a reduced rate doesn't necessarily



Ellen Freedman

(continued on page 7)

Franchising 101: Evaluating a Franchise Business Opportunity

by Kenneth P. Milner

One of the benefits I derive from practicing franchise law is that I am able to learn about all sorts of businesses and business ideas. However, this can become a double-edged sword: because franchise law is still considered a somewhat specialized practice area, my clients may at times be looking to me as much for business advice as for legal advice. The beauty of writing this article is that I can discuss business issues without worrying about the effect it will have upon my firm's professional liability policy premiums.

With that in mind, here are some guidelines for handling a franchise deal:

Personal considerations:

You start by performing two primary services for any client interested in becoming a franchisee. The first is obvious: help the client to determine whether the franchisor's information and documentation dovetail with the potential franchisee's expectations and confirm your client's understanding of the business opportunity. This requires a careful review and analysis of the Franchise Disclosure Document ("FDD") and other relevant documents and materials from the franchisor.

The second service is less obvious but no less important: you must help your client decide if the franchise business opportunity is a good match for the client's wants and needs. No matter how strong the concept or opportunity may be, it's not necessarily appropriate for everyone. For example, some franchises

depend upon the franchisee's active, day-to-day participation in franchise operations. If your client prefers to pursue other activities and have managers run the business, this type of intensive operation may not be suitable.

Other franchise businesses require a large population base or high-volume, drive-by traffic. While these businesses may be wonderful opportunities in the right location, they may not be suitable for the client who intends to establish the business in an isolated area.

Accordingly, before you start analyzing the FDD, remember first to analyze your client. Obtain complete client financial information. Be certain you're aware of your client's goals. Determine the amount of support (emotional, practical and financial) that your client may draw from family, friends, and other sources, and talk with any other professional advisors your client may have.

When you have a clear picture of your client, you will be better able to make a critical, client-specific review of the FDD and related materials.

Business considerations:

- *What will your client get for the money?*

When you strip away phrases such as "we will endeavor", "franchisor will assist", "from time to time", "if we determine", and "at franchisor's sole discretion", a potential franchisee should be able to realize that a large number of franchisors have little to offer for the

money they expect the franchisee to pay. It's a given that each franchisor should have a special product or service, a trademark or name, and a certain amount of goodwill attached to the franchise. However, many franchisors provide little in the way of expertise, lease support, new ideas, fresh marketing plans, or continuing assistance to their franchisees.

The fact that a franchisor may provide little or no continuing assistance doesn't necessarily mean that your client should abandon the venture. Some franchisors have such strong names, goodwill, or novel products that the franchisee can benefit simply by having the opportunity to operate a business under the franchisor's flag. However, if your client requires the franchisor's continuing assistance, or if the franchise product or service isn't a moneymaker on its own merits, then you and your client need to make certain the franchisor will do more than just collect its royalty check.

- *What's the business hook (distinguishing characteristics)?*

The best way to make money is to have a business built around a product

(continued on page 8)



Kenneth P. Milner

Practice Management: You're Only As Small As You Feel (Continued from page 6)

equal value, at least not in the client's mind. So it's important that you use your monthly billing as an opportunity to communicate your continued value to the client.

For those who know how to do it, the innate ability of the SSF to deliver superior value can win over prized corporate clients. Corporate budgets are stretched to the limit, so they're all about finding real value.

Don't feel you have to make excuses for your firm's diminutive size. Instead,



reflect on the variety of ways your compact size offers strategic advantages that work to benefit both you and your clients. Remember: you're only as small as you feel you are!

Ellen Freedman, CLM is PBA's Law Practice Management Coordinator, assisting PBA members with issues and problems on the business side of their practice. Ellen is also president of Freedman Consulting and founder of The Managing Partner Development Institute.®

Ellen encourages your feedback and questions. Contact her at 1-800-932-0311 x2228, or by email at lawpractice@pabar.org.

or service which fills a marketplace hole, something people generally need and want. These products and services are rare, so you and your client must determine whether the franchise opportunity has something special that will attract customers and separate the product or service from any competitor's similar offering.

Quite simply, a business in a competitive field needs a "hook" to bring in customers. This hook could be a lifetime warranty program, exceptionally fast service for a normally tedious process, use of the highest quality materials available, a special economic incentive for the customer, or a tie-in with another well-established product or service.

Though there are some franchisors who have created exceptional goodwill by offering a consistently high-caliber product or service alone, these franchises have generated goodwill by doing what they do for a long time. Your client should be wary of a business in a competitive field with no hook, long-term goodwill, and established trade name/mark behind it.

Your client should also look with a critical eye at any franchises built upon seasonal products and fads. While the yo-yo may make a comeback every few years, that may not be enough to sustain a business over the typical ten to fifteen year franchise period.

• Can the Business Make Money?

Because of the upfront costs, financing charges, continuing fees, and time-consuming obligations that often face a franchisee, the franchisee may have little chance to actually make money in the business. High sales figures alone aren't enough.

If the franchise is a service business, try to figure out how many customers

your client would reasonably be able to serve in a day, week, month, or year. Then calculate the expenses associated with providing those services. Often, the remainder will be pitifully small.

Look for caps on advertising and royalty fees. This will allow your client to increase sales without increasing the cost of doing business. Also, keep in mind that franchisor-prepared pro forma documents often ignore the impact of taxes.

• Where's the opportunity for change and growth?

There is no shortage of business ideas. Over 3,000 different types of franchised businesses currently operate in the US alone. However, not every good business is suited to franchising.

A franchise relationship is generally lengthy, and the obligations of the franchisee to the franchisor, both financial and operational, usually continue for more than a decade. Most successful franchisors leave room in their systems to grow and change their respective businesses. Whether offering new products (such as new fast food items) or additional services (for example, adding lube jobs to a muffler shop's repertoire), successful franchisors are constantly seeking ways to bring in new customers or add to what they offer to existing customers.

• What is the required real estate commitment?

Until we colonize outer space, we will continue to have increasingly less room for more people and businesses. Though there may be an occasional real estate bust, the cost of buying and leasing real estate is high and will increase over time. Franchisees forced to pay license fees and financing costs are hard-pressed to pay real estate costs as well.

Further, landlords are generally unwilling to commit to a lease with a term as long as the typical franchise

relationship. This usually means the franchisee is exposed to higher rental costs or the insecurity of having to leave a location where the franchisee has just spent several years developing market presence.

A franchisee who can operate the business out of a kiosk or, better yet, a van (which can be a depreciable asset) or a home will have a better chance of making a profit than the franchisee saddled with high rent, cost-of-living increases, and net lease provisions. Your client may well benefit from establishing a relationship with a franchisor offering a business opportunity with little or no real estate commitment.

Final thoughts:

Keep in mind that this article is a basic introduction to evaluating a franchise business from a *business* perspective. If you want to properly represent a potential franchisee, you will have to take everything I've mentioned and match it with a critical review of the FDD and other documents your client brings to you. You and your client can then take your findings and combine them with those of your client's accountant and other members of your client's advisory team. The result should provide an evaluation of true value.

Kenneth P. Milner is special counsel to Krauth Harris P.C. in Blue Bell, and the chair-elect of the Section. This article, adapted from PBI presentations he has given on franchise law, is the second in a series of occasional articles Ken has written for the Section newsletter about counseling potential franchisors and franchisees. His firm's website is www.krauthharris.com.

Small Firm Attorneys Highlighted In This Year's PBA WIP Report Card

For 16 consecutive years, the PBA's Women In the Profession Commission has issued its "Report Card" detailing the status of female lawyers in large firms, government, and the judiciary. But this year, there's an addition: for the first time, the Report Card includes profiles of women practicing in small firm and solo environmental. Five of our Section members are profiled in this year's PBA report card: Kelly Phillips Erb, Marion Laffey-Ferry, Kim Lengert, Rebecca Rinehardt, and Jan Matthew Tamanini. To read the 2010 report card, go to the PBA website at <http://bit.ly/cZBvSk>

The Home Office Advantage: Making “Home Work” Work!

by Jan Matthew Tamanini

One of the biggest concerns I had about five years ago when I first seriously contemplated making a move from government lawyer to solo practitioner was office space: where could I find a convenient, work-friendly environment that wouldn't break the bank?

I resolved this dilemma by deciding I'd work from home, using a post office box as an official office address and meeting clients at remote locations, never at my house. So far it's worked very well for me, and I can't imagine being back in a more traditional office environment on a daily basis. But you have to plan the mechanics of your practice and how you market yourself to prospective clients to make the home office work for you.

Working from home without client meeting space does have some significant advantages over the more traditional solo office. Here are my personal top ten:

1. No outside rent and associated costs to drain your budget.

This is a big plus for new solos starting out with limited capital or for an existing practice affected by the economic downturn of the last couple of years (and who isn't in at least one of these groups?). If you're careful in following IRS rules for a home office, you may be able to take a personal income tax deduction for your dedicated space (assuming your business form is a pass-through for federal tax purposes). Just be sure you know the IRS's home office parameters before you start (see <http://bit.ly/U73I>).

2. No requirement to have set office hours.

If you have an outside office, chances are that you keep regular hours there. While you might still want to put yourself on a set schedule with a home-based practice, there's no need to formalize or advertise this. This is a HUGE advantage for anyone with family issues that require your availability on short notice. If you want to take an impromptu afternoon break for a movie at the daytime bargain rate and make up for that escape by working a bit later, there's no reason for you to stress that someone will come looking for you and find your office empty.

3. You have scheduling freedom.

Have all client meetings at *your* convenience! Want some flexibility to accommodate those who may need evening times? Build it in on either a sporadic or regular basis. And each week I routinely set aside at least one work day where I do *no* client appointments, using the time to concentrate on existing projects and take care of my practice management.

4. Low paper volume means practice portability.

With limited exceptions, my entire filing system is on my MacBook (with redundant backups, of course). When I have outside client meetings, which I do on a frequent basis, I just drop the laptop into my briefcase and go. Sometimes you have to use paper documents, but if you keep most things digital rather than in hard copies, you should be able to take almost anything with you.

Need a document or record? Pull it up instantly! A stick scanner to scan client docs for your files is a plus, or ask the client to fax you the documents. Use an Internet-based fax service, and you'll have electronic copies of the faxed documents ready to drag and drop into the appropriate file.

5. You get a better picture of your clients when you see them in their environment.

If you're interested in getting to know your clients, going to their location means you can find out more in a few minutes there than through hours of meetings elsewhere. Going to a client's location also means there's immediate access to most additional information that might be relevant to your work.

6. Take advantage of free or low-cost meeting space when you need a room.

The amount of free or ridiculously inexpensive meeting spaces available in most locales is truly amazing. From a private room at a restaurant or club to the community room at your local public library or shopping center, venue options are plentiful. Even better, some groups provide free meeting space to any member upon request. For the cost of an annual membership at my regional Chamber of

Commerce, I get to bring clients and others to impressive meeting rooms with nothing more than a quick e-mail or phone call in advance to confirm the time and date. In some instances when things are flying fast and furious in a negotiation, I've literally called from the road to schedule a room for that day.

If you're not part of a group that offers rooms for members to use for meetings, often local libraries or other public buildings have rooms you may reserve in advance, either at no charge or for a nominal fee. And restaurants are always good for working lunches or dinners.

For those who prefer something more traditional, there are businesses that specialize in providing virtual office space. Regus, DaVinci, and Intelligent Office are three of the companies that do this, and all are continuously expanding their locations. Your locality may even have its own homegrown virtual office purveyor. Just Google “virtual office” and see what pops up. You may be surprised at what could be right around the corner!

7. Save on support staff!

No clients coming to your office eliminates the need for a physically present receptionist to greet people. It also eliminates the distractions and security issues of walk-ins, though you'll still get cold calls by phone. Speaking of calls...

Handling your phone could be as easy as having all calls go through a voicemail “receptionist” to your voicemail box (no cost) to hiring a virtual receptionist to manage your calls (low cost). There are dozens of companies both national and local who are eager to do your work without the bringing along the burdens that an employee presents (payroll, taxes, HR



Jan Matthew Tamanini

(continued on page 10)

issues). Some are better than others; check around, or go to the ABA Solosez archives and look through the many threads on this topic (membership in the ABA isn't required to join that listserv).

No outside office also means you don't need a commercial cleaning service (though having someone clean your home office – and your house – can be a great time and sanity saver!).

8. Gain better focus for both you and your clients.

Having a home office with no client space helps you to manage time in other ways. Consider scheduling all client in-person meetings and phone calls in advance; no walk-ins (or phone-ins) allowed. Tell prospective clients up front that both their time and yours is too important to waste playing phone tag! Unless there's a dire emergency, or I have a client who is averse to computers, I set all my appointments (live and phone) via e-mail. Though some people may initially question this practice, most appreciate the concept, and virtually everyone is a fan after the first call or two. Some of my service business clients have even adopted the practice in their own operations!

How does this result in better focus? You build in preparation time. For initial consultations, I ask each prospective client to complete a questionnaire I've developed for the specific type of requested service (examples: business formation, estate planning, business development) to be returned at least a full day before the scheduled appointment. If the client doesn't follow through, I'll send a reminder e-mail and ask for the information by the end of that day, including a line that if there's no follow-through, we'll have to reschedule the appointment for a later date, after I've receive the completed questionnaire.

Completing a questionnaire helps the client to focus on what's relevant, and getting the answers in advance allows you to learn a fair amount of information about your prospect before the initial meeting. It may also help you determine whether this client is one you'd want to engage, or whether you may want to decline politely and send the prospect to your bar's lawyer referral service. If your prospect can't adequately complete a questionnaire, or where the prospect

provides irrelevant or ranting answers, it's a good indication that this is what you'd face in any attorney-client relationship.

For established clients, send an e-mail asking for specific information (for instance, a bulleted list of discussion points) to be provided in advance via fax or e-mail. Then before you talk send your own followup to the client with points to consider. Rather than spending significant time getting the client to explain the issues in a call or at a meeting, addressing these preliminaries beforehand gets everyone focused on what the client wants to accomplish and helps to avoid wasted meeting time to pinpoint the issues.

9. Easy-to-manage client communications (and expectations).

In addition to using scheduled phone calls as a management tool, you have the flexibility to answer e-mails at any hour of the day or night – BUT, and this is important, keep the message in your "drafts" folder to be sent during standard business hours. For years before I went solo, I was well known among clients for sending wee-hours and weekend e-mails with information and attachments related their issues. If you feel you're on a roll at 8 p.m. – or even 1 a.m. – go for it! Finish whatever you're working on; answer that client question; type the cover for sending that fax or memo. Then store it in your mail drafts folder and set a calendar alert to send it during the next regular business day.

If you actually send e-mail messages at all hours, you'll create an "I can ask my attorney for something at any time" mindset with many clients. Using your drafts folder as a management tool gives the impression that you're not working all hours (even when you are!). And that helps to maintain client expectations at a reasonable level.

10. Be comfortable in your environment!

While some attorneys feel so-called "pajamas practice" may distract them or interfere their work ethic, there's something to be said for being comfortable in your environment. Dressing as you wish without having to maintain third-party expectations when you don't have scheduled outside meetings certainly saves on the clothing budget!

And working from home means you

can have your pets with you as you work without worrying about clients who may be fearful, or have allergies, or be just plain annoyed (non pet people may not appreciate having animals around). My two fantastic greyhounds are the best support staff I can imagine: they provide everything from stress relief (check the medical studies that show stroking a pet is good for your health) to entertainment value, and they force me to take at least a couple of breaks a day for a brief neighborhood stroll.

Though "home work" may not be for everyone, if you're intrigued by the possibilities, you might want to give it some serious thought. It could open a whole new world to you!

Jan Matthew Tamanini concentrates her solo practice on small businesses and nonprofit organizations, as well as simple estate planning; she also consults with other attorneys on state procurement and legislative drafting. A member of Section Council, Jan chairs the PBA's Plain English committee, edits the Section newsletter, and serves on the ABA GP Solo Division's Communications Committee and the Solo e-newsletter board.

Beware of Online Scams Targeting Attorneys!

If you subscribe to our Section listserv, you'll find several threads about suspicious e-mails from would-be "clients" from overseas allegedly seeking representation in the United States to resolve a divorce or other legal matter. A number of members have been contacting the PBA Ethics Hotline to report these scams as well. PBA is advising those with concerns to file a complaint with the Internet Crime Complaint Center (IC3), a partnership of the FBI, the National White Collar Crime Center and the Bureau of Justice Assistance. Go to the FBI's IC3 advisory about the scams for more information: <http://bit.ly/8Zftpr>.

Treating With the Company Doctor: Myths Versus Realities

by Daniel J. Siegel

The myths that we as lawyers routinely confront constantly amaze me. Our clients (and our friends) tell us something about a legal issue that they heard over lunch somewhere, something clearly inconsistent with legal realities. We are then left to explain to them why that information is inaccurate. Then too, our clients and friends tend to view us lawyers as experts on every legal subject, when the reality is that we each have particular areas of expertise.

When it comes to workers' compensation, for example, I am consistently amazed at the amount of misinformation the public has accepted, and how people perceive these myths as truth. One of the great misconceptions in the workers' comp area is the belief that every injured worker must treat with a company doctor.

Consider this description of the "90-Day Rule" from the website of one Pennsylvania law firm that advertises its representation of injured workers (Editor's note: identical language appears on a Kentucky law firm's website; how both firms came to have verbatim web descriptions is beyond the scope of this article, but use your imagination):

In seeking medical treatment for your work-related injury, you must find out if your employer has posted a list of physicians or health care providers in your work place. If the employer has done

this, then you are required to visit one of them for initial treatment. You are to continue treatment with that provider or another on the list for a period of 90 days following the first visit. If your employer's health care provider prescribes invasive surgery, you are entitled to a second opinion which will be paid for by your employer/insurer. Treatment recommended as a result of the second opinion must be provided by a list provider for 90 days. After the 90 days in cases where there is no list of providers, you may treat with any provider you like. You are required to notify your employer of the provider you have selected.

This explanation is quite simply wrong. To the contrary, an injured worker is rarely required to treat with a designated physician.

Under Section 306(f.1)(1)(i) of the Pennsylvania Workers' Compensation Act, before an injured worker is required to treat with an employer-designated medical provider, the employer must provide the employee "a clearly written notification" of the employee's rights and duties. The employer must then obtain the employee's "written acknowledgment" that he or she has been advised of the requirement. Verbal notice alone is inadequate.

In fact, the Bureau of Workers' Compensation has created a form, Notice: Medical Treatment for Your Work Injury or Occupational Illness (available for download at <http://bit.ly/9xm4DD>). If employers choose to provide notice, they must do so in writing, consistent with 34 Pa. Code 127.755(c)'s requirement that this notice to the employee "...shall be provided at the time the employee is hired and immediately after the injury, or as soon thereafter as possible under the circumstances of the injury."

Providing the written notice alone, however, is not enough; employers must do more. They may not, for example, require employees to treat with only one particular doctor, nor may they require that an employee treat at only one multi-purpose facility, such as a hospital's workers' compensation clinic. And 34 Pa. Code 127.751(c) specifies that an employer may not "restrict the employee from switching from one designated provider to another designated provider."

Only when an employer complies with both the Act and its implementing regulations must an employee treat with



Daniel J. Siegel

(continued on page 12)

Help Publicize the PBA's Consumer Credit Rights Campaign - Know Your Credit Rights brochure

As a result of the Federal Reserve's recent regulatory actions designed to protect credit card users from unreasonable late payment and penalty fees and requiring credit card companies to reconsider interest rate increases, the Pennsylvania Bar Association and 33 local bar associations across the state are launching a credit rights public education campaign, complete with a free brochure, Know Your Credit Rights - Be an Educated Credit Consumer.

The brochure also highlights new Federal Trade Commission rules designed to crack down on unscrupulous debt-settlement companies making fraudulent claims about their abilities to reduce consumers' debt balances, interest rates and penalty fees. It includes details about the new rules and a number of other consumer credit issues. PBA president Gretchen Mundorff announced the campaign during a news conference at the state Capitol Rotunda on October 18th, along with executive deputy attorney general Alexis Barbieri, director of OAG's Public Protection Division, and David Bleicken, deputy secretary, Non-Depository Institutions and Consumer Services, Pennsylvania Department of Banking.

Help publicize the campaign with your clients by downloading a .pdf copy of the brochure at <http://www.pabar.org/clips/knowyourcreditrightrights.pdf> and have it available at your office.

Tales From the Trenches: *Mutable Urgency*

by Miriam N. Jacobson

A potential client called me one December Saturday. He and his wife were about to go to settlement on Monday morning on a house they were buying, but they felt there were still serious unresolved issues concerning the house's condition. Hubby also told me that his wife was "very" pregnant and they therefore had to move into their new home ASAP.

Of course, the couple hadn't bothered to get legal representation before they signed the agreement of sale nor during the home inspection period. They'd already signed a Realtor-prepared addendum to the agreement that was supposed to deal with all of the inspection items requiring repair. This didn't list any specifics; it said only that it resolved all of the inspection issues for a seller-to-buyer credit of about \$2,000.

I emailed a fee agreement/engagement letter: my fee agreements and discussions with new clients are explicit about my hourly fee, the required retainer, and that the retainer amount was not in any way related to what my total fee would be. We agreed to meet the

following day – a Sunday – so that I could get more details and see their agreement, home inspection report, the addendum, and any other documents related to the transaction.

When we met, they provided me with my fee letter, which they had signed, and their check for the retainer. They also gave me a fat packet of papers tabbed with yellow post-it notes. The couple proceeded to explain their view of what had happened, what was wrong with it, and how anxious they were to complete settlement.

I should have seen the red flags popping up when I first met them in person: the wife wasn't even visibly pregnant. When I asked about how she looked compared to what the husband had described on the phone, they explained they were trying to convey urgency and their seriousness for completing the purchase.

Blithely ignoring this omen, I proceeded during the next five days to have almost nonstop conferences and emails with the Realtors, my clients, and, once the sellers brought in a lawyer, with

the sellers' lawyer. I soon figured out that my buyers had waited past contingency deadlines to continue asking for new repairs and credits for which they had already signed away the rights.

There was actually a serious roof problem, but it's really hard to try to work out a satisfactory solution when your client has already signed away any further rights and you're brought in the day before settlement. I did manage to get a postponement to try to work something out, which the Realtors seemed to indicate was a possibility. During this extension, the clients' goals changed from being desperate to close on the purchase to wanting considerable concessions to, by the end of the week, wanting to terminate the agreement with a full refund of their deposit.



Miriam N. Jacobson

(continued on page 13)

Employment Law (Continued from page 11)

one or more of six designated company doctors for 90 days after the first doctor visit, not 90 days after the date of injury or 90 days from some other date relevant to the claim. Note that this 90-day treatment period begins on the date of the first visit to one of the designated medical providers on the six-doctor list.

Because most employers choose not to comply with this part of the Act, most injured workers aren't required to treat with their employers' designated doctors after a work injury. Despite this legal reality, many employers and insurance companies routinely direct injured employees to go to a particular doctor or clinic, implying that if they go elsewhere the insurance company will not pay for their medical care.

This is a misrepresentation of the Workers' Compensation Act, which never

gives an employer or insurance company the right either to mandate that an injured worker treat with only one provider, or under most circumstances to "pre-deny" payment for care. Making matters worse, because of the so-called "90-Day Rule," many independent doctors will refuse to treat an injured worker during the first 90 days after a work-related injury because they have heard or been told that they will not be paid for any care they may provide during this period.

Employers have the right to make certain that their injured workers obtain medical care from doctors whom the employers know and trust. But to do so, employers (and insurers) must comply with the Workers' Compensation Act and its applicable regulations. If they don't comply, employers and insurers have no one to blame but themselves when their

workers go elsewhere for care – and attorneys have no one else to blame when they accept the myth of the 90-Day Rule as truth.

Daniel J. Siegel practices in Havertown PA. A member of the Section Council and the PBA Committee on Legal Ethics and Professional Responsibility, Dan is also active in the Philadelphia Bar Association and the American, Philadelphia, and Pennsylvania Trial Lawyers Associations. His column "Recent Appellate Decisions" in the Philadelphia Trial Lawyers Association's monthly, *The Verdict*, has appeared in that publication for more than 15 years. For more information, visit his website at www.danieljsiegel.com.

During this hectic week, I started getting emails from the clients setting out the exact wording they wanted me to write in letters to the sellers' lawyer and the Realtors. I explained that I was their lawyer, not their secretary, and that I could not and would not say what they were asking for. They kept coming up with their own varying theories, with "facts" [remember, these kept changing] to support those theories. After four days of constant negotiation, including with my own clients, I gently fired them by suggesting that we seemed to have such different views of how to proceed, they would probably be happier finding another lawyer to complete the transaction.

Needless to say, when I billed for my services, they were quick to tell me how they had managed to resolve everything within one day with assistance from a

"lawyer friend." And, that they were shocked by the amount billed, which was in excess of the retainer.

Because I try to keep nasty clients from bad-mouthing me, I ended up knocking off about 1/3 of my total fee. I don't know if that was "lesson learned"; I've had clients complain before about an invoice item (for instance for a billed telephone conversation) because I, not they, initiated the phone call. Rather than have a full-on fight, I've compromised that fee as well.

On the brighter side, I recently represented a couple who really were well along in a pregnancy. They brought me in while they were still looking for a home, so I was able to address and resolve problems before they blossomed into poison flowers. At the settlement, they presented both the Realtors and me with a bottle of well-known good champagne.

I remember headier days, when the housing market was hot and Realtors and lawyers would bring gifts for the buyers to settlement, so receiving a gift in this market was a pleasant surprise.

I continue to practice because over the years I've become better at weeding out PITA clients before they've engaged me, although there are still lapses such as the one I've described here. Most of my clients are very happy with me, and I with them.

Miriam N. Jacobson practices real estate law and estate planning in Pennsylvania and New Jersey. Her website is www.miriamjacobsonlaw.com.



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Save The Date:

**PBA Committee/Section Day:
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**PBA Annual Meeting:
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Photo: Independence Hall, Philadelphia, Pa.

Are You Wasting Money On Legal Research? Use Your Incite®!

by Jan Matthew Tamanini

Everyone is looking for ways to cut expenses right now, whether you're doing well or just getting by. So if you're paying for a subscription legal research service, you may be able to cut that cost by using one of PBA's best member benefits: InCite®, a customized legal research program powered by LexisNexis™. InCite provides a large selection of LexisNexis services at no additional cost to all PBA members; all you have to do is sign in on the PBA website and start InCite's free features include:

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PBA Midyear Meeting Feb. 2-6, 2011

A long, paved walkway lined with palm trees leading to a beach and ocean. The walkway is flanked by a low wall and a shallow water feature. The scene is captured in a blue-tinted, high-angle shot.

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Inside this issue:

Practice Management	1
<i>Going Green In a Small Firm: Is it for you?</i>	
A Message from the Chair	2
Practice Management	3
<i>What Does ADHD Cost Your Practice?</i>	
Work/Life Balance	4
Practice Management	6
<i>You're Only As Small As You Feel</i>	
Business Law	7
Practice Management	9
<i>The Home Office Advantage: Making "Home Work" Work!</i>	
Employment Law	11
War Stories	12
InCite	14

