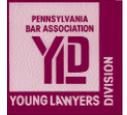




FOR PENNSYLVANIA YOUNG
LAWYERS, HERE'S WHAT'S...



AT ISSUE

A PUBLICATION BY AND FOR THE YOUNG LAWYERS DIVISION
OF THE PENNSYLVANIA BAR ASSOCIATION

DETERMINING DAMAGES IN THE KEYSTONE STATE

By Chad Staller

Your potential new client has outlined a compelling case. Before signing off on the retainer agreement, however, take some time to consider what the case is worth: What are the economic damages?

Economic (compensatory) damages, as opposed to damages for less quantifiable claims such as pain, suffering and loss of consortium, are an excellent gauge of the value of a case. With recent caps on noncompensatory damages, developing a comprehensive picture of the plaintiff's measurable loss is as important as assessing probable liability.

A good first step is to review applicable law. We in the Keystone State enjoy a varied (some would say eccentric) array of statutes and case law governing how damages are calculated and argued. Probably the most remarkable feature of Pennsylvania damages law is the use of the "total offset" method of calculating damages, as mandated in *Kaczkowski v. Bolubasz*, 421 A.2d 1027 (1980).

Future earnings can be expected to grow over a plaintiff's lifetime due to inflation, personal productivity (the value of experience and maturity) and national increases in productivity (e.g., technological advances such as the Internet.)

While future earnings can be expected to grow due to productivity, awards for future damages are discounted to present value. The present value of future damages is the amount of money that, if placed in a safe investment today, will yield what the plaintiff will need in the future.

Pennsylvania is the only state that uses the total offset method, as outlined in *Kaczkowski v. Bolubasz*. The total offset

method is based on the theory that over time, inflationary growth in wages is equal to and thus offsets the rate of return on a safe investment (the discount rate), leaving only productivity in the equation. Thus, the present value of future wages is current earnings times the number of years the earnings will be received, increased by the rate of productivity. This is highly advantageous to plaintiffs.

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Kaczkowski does not apply to medical-malpractice cases brought on or after March 22, 2002, the effective date of Pennsylvania's new MCARE Act (Medical Care Availability and Reduction of Error). MCARE radically changed the medical-malpractice damages landscape. Besides replacing *Kaczkowski* with a reduction to present value, MCARE calls for certain caps, deductions and periodic payments.

Another key feature of damages in the Keystone State is our generous Survival Act (42 Pa. C.S. § 8302). Here, unlike in many other states (including New Jersey), the decedent's estate may recover earnings the decedent would have enjoyed throughout his or her lifetime minus the cost of maintenance (food, shelter, clothing etc.). See

Incollingo v. Ewing, 444 Pa. 263, 282 A.2d 1206 (1971).

Once you have reviewed applicable law, it is a good idea to next consider three key questions:

How Much?

"How much?" is a key element of damages, which relates to a plaintiff's base of earnings or lost earning capacity. "How much?" requires a consideration of the following questions: Where was the plaintiff employed at the time of the accident? What profession would the plaintiff likely have pursued had the accident not occurred? If the plaintiff is a child, what type of grades did the child receive in school and what is the level of educational attainment of the child's parents?

Bear in mind that "earning capacity" is not a blank check. We can't all hit a baseball like Barry Bonds or dribble a basketball like Steve Nash. Thus, claims for lost earning capacity must be grounded in something other than the plaintiff's fondest dreams. The key here is to obtain documentation such as tax returns, W-2s, Social Security records, employment files, school records and test results. You want to avoid the following situation: The client tells you he was making \$75,000 a year as a carpenter. However, in his deposition he states that he worked for the last five years at Old Navy, earning \$25,000 per annum. You eventually learn that he had not worked in the carpentry industry for over 10 years.

"How much?" also includes a consideration of the plaintiff's lost fringe benefits, such as a pension; loss of household

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WAYS TO PERFORM EFFECTIVELY AT AN APPELLATE ARGUMENT

By Scott B. Cooper

The briefs have been filed and your case is ready to be heard by the Supreme or Superior Court at oral argument. You have pressed your outfit, read all of the cases and practiced your argument for an entire week in front of anyone who would listen.

Now you are ready to step up to the podium to argue as your case is called, and you are sure that you will prevail. Despite having completed the foregoing tasks, it is important to remember that your job is not yet finished; even while you are arguing there is a checklist of certain things to keep in mind and consid-



er. The following are ways to help you perform effectively at oral argument:

1. Know the recent cases: Even though the briefs were filed months ago, there may be very relevant and precedential cases that have been decided in the interim. Be prepared to address these cases and, if necessary, to distinguish them.

2. Know the court: In addition to knowing the recent cases, it is also important to know whether any of the judges or justices on your panel or the court have written opinions, majority or dissent, on the same or a similar issue. In certain instances, it can be helpful to cite a judge's decision in a particular case.

3. Answer the question: When a particular question is posed by the court, it should be answered promptly and directly. In some cases, the answer may not be

in your favor; however, you should still answer the question truthfully and honestly. Likewise, the question should be answered immediately and should not be delayed until a later point in your argument (when you feel like addressing it).

4. Know when to sit down: There may come a point during your argument when the court says, "Thank you, we think we understand your position." Unless some exceptional circumstance exists, this is the time for you to thank the court for its time, remind the court of the relief you are seeking and sit down.

Unnecessarily prolonging your argument and using up all of your allotted time is certain to make an unfavorable impression on the court.

5. Emphasize the impact the decision in your case may have on others: In some instances you may be able to explain to the court how the decision rendered in your case will affect others in similar circumstances. In essence, you are reminding the court of the big picture. For instance, if you are making an argument for insur-

ance coverage on behalf of an ambulance driver, it would be important to show how the court's decision in the ambulance driver's case might impact all future cases involving first responders.

6. Keep track of your time, and reserve time for rebuttal up front: In some appellate courts (i.e., Superior and Third Circuit), there is a certain amount of time you are allotted to present your argument. However, not all courts have digital displays or flashing lights to notify you when your time is up or is close to being up. Therefore, it is important to have some mechanism for keeping track of your time. Furthermore, if you intend to seek rebuttal time, make sure you reserve the rebuttal time before your argument since you will likely not be allowed to do so later on.

7. If you and another party are sharing time, notify the court: In most cases, there is a certain amount of time allotted to each side for oral argument. However, if there are multiple parties and attorneys involved, each party may not have the full amount of allotted

AT ISSUE

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time. Unless exceptional circumstances exist, the court will require the parties' lawyers to divide up the time and notify the court before the argument begins. Thus, if there are three lawyers arguing in the Superior Court and each lawyer is allotted five minutes, the first lawyer must be careful not to argue for the entire 15 minute period. If he or she uses the full amount of time, the other lawyers will not be permitted to argue.

8. Acknowledge your weaknesses: No case is perfect. Each side has certain weaknesses inherent to its argument. Therefore, it is important to acknowledge these weaknesses as a part of your argument and to be candid about them. You can then argue why those weakness-

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YLD SEEKS NOMINATIONS

The PBA Young Lawyers Division Nominating Committee, chaired by Traci Naugle, is accepting applications from YLD members interested in seeking nomination to run as candidates for division chairperson-elect, secretary, treasurer and division delegate at the 2008 Annual Meeting (June 4-6 at the Hershey Lodge, Hershey).

If you are interested in being nominated by the committee under Article IV, Section 2, of the bylaws, please submit your qualifications and a brief biographical sketch by April 21 to Traci Naugle, Hippo & Fleming Law Offices, 1218 Eleventh Ave., P.O. Box 550, Altoona, Pa. 16603. Materials may also be faxed to Traci at (814) 943-7656. If you wish to be nominated by petition under Article IV, Section 4, of the bylaws, please send your materials with a petition signed by at least 15 members of the YLD by May 6 to the above address or fax number. Send a copy of all materials to Maria Engles, YLD Coordinator, Pennsylvania Bar Association, 100 South St., P.O. Box 186, Harrisburg, Pa. 17108.

The YLD bylaws can be found on the PBA Web site at www.pabar.org. Traci Naugle can be reached at (814) 943-5500 to answer any questions regarding the election process.

DETERMINING DAMAGES

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services (since your client can no longer mow the lawn or repair his leaky faucet, and now has to pay someone for those services); and past and future medical care costs.

How Long?

"How long?" would the plaintiff's stream of earnings have lasted, absent the injury? Would the plaintiff have retired as soon as he or she was eligible for Social Security? Or would it be reasonable to assume, given the plaintiff's particular situation, that he or she would have worked well past the "normal" retirement age? A five- or 10-year adjustment to a plaintiff's probable worklife

can have an enormous effect on damages.

What Can the Plaintiff Do Now?

Even if the plaintiff can no longer perform services as a laborer, can he or she still participate in the labor market as a taxicab dispatcher, or a sales clerk, or is the plaintiff completely disabled? Plaintiffs are expected to mitigate their damages to the extent that they are able to do any work at all.

Asking these critical questions before taking a case can save you a lot of trouble, and will help you build a comprehensive and credible damages argument should you accept the case.

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WAYS TO PERFORM EFFECTIVELY

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es do not affect the outcome of your case,

9. **Know the record:** In all cases, the court will be well prepared and knowledgeable about the issues. The court will also have read the briefs. In some instances, however, the court will not have read the entire record or have the record available for review at the time of oral argument. If there is a portion of the record that is important to your case, you should be prepared to give a specific citation to the record.

10. **Do not read your argument:** As previously discussed, you are expected to

practice and to prepare for the oral argument. However, there is a danger in writing out your argument and reading from a "script." Since you are acquainted with every aspect of your case, you should forgo the script in favor of a single sheet of paper containing your notes and ideas. This reference sheet will prove useful should you lose your train of thought during the argument.

These are just a few suggestions to help you argue effectively when presenting your case to an appellate court. In reality, of course, there is no end to the preparation for oral argument.

Upcoming Events

Jan. 28-Feb. 23 — YLD
Statewide Mock Trial District
Competitions

Feb. 28-March 1 — Conference
of County Bar Leaders, The
Nittany Lion Inn, State College

March 26 — PBA Committee/
Section Day, Radisson Penn Harris,
Camp Hill

March 27 — PBA Board of
Governors Meeting, Hilton
Harrisburg, Harrisburg

March 28-29 — YLD Statewide
Mock Trial Finals, Crowne Plaza
Hotel & Dauphin County
Courthouse, Harrisburg

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EFFECTIVE AND ETHICAL LEGAL MARKETING IN THE 21ST CENTURY

By Timothy S. Burns

There are many aspects of operating a law practice that are not typically taught to law students. One of these aspects, which is particularly important in an ever-competitive legal environment, is advertising or marketing. In establishing a new law practice or office, proper, ethical and effective legal advertising can very well make or break a young lawyer's dream of operating his or her own practice.

In Cambria County, I believe that my legal advertising and marketing strategies have been key to building up my Ebensburg-based law practice in a county where the legal market is highly competitive — especially for a young start-up company. I firmly believe that legal advertising in this day and age is a necessity; however, I am also mindful of the many concerns and reservations that the senior members of our profession have with respect to lawyers who market themselves through various media outlets. As such, the goal of this article is to give guidance to my colleagues who wish to market themselves in a way that balances their business goals with the integrity of our profession.

It is hard to believe that at one time most states in our nation had bans on legal advertising. In fact, in most states, including Pennsylvania, the ban on legal advertising included everything except a listing in the white pages of the phone book and business cards. Everything changed as a result of the U.S. Supreme Court's decision in *Bates vs. State Bar of Arizona*, 433 U.S. 350 (1978). *Bates* involved a challenge by a group of lawyers to Arizona's ban on legal advertising in newspapers. Ruling on First Amendment grounds, Justice Blackmun writing for the majority, struck down the ban. Since then, an entire industry of legal advertising has emerged: some of it good, some of it not.

The cottage industry of legal advertising can be overwhelming to a young attorney who may be contemplating starting his or her own practice. Included among the various advertising outlets are

the local and online Yellow Pages, television, radio and the Internet.

Before you decide to market yourself and launch an advertising campaign, you should first decide what type of law you wish to practice (and market) and make sure that you are competent in that chosen field(s) of law. Remember, once you start to market yourself, you open the door to the public, who will call you and ask you questions about the fields of law you advertise.

I cringe when I see advertisements of lawyers who claim expertise in 30 or 40 different fields of law — this is impossible. The practice of law has become so specialized that you can generally focus on only a few fields of legal practice. Remember, when you begin to receive daily calls from the public, you will want to be able to competently respond to the questions.

Before you decide to market yourself and launch an advertising campaign, you should first decide what type of law you wish to practice (and market) and make sure that you are competent in that chosen field(s) of law.

Marketing and advertising plans should begin slowly once you decide to launch your practice — perhaps over a year's time. Before getting overwhelmed with clients, you will want to ensure that your office is stable and you are able to pay your bills, which is critical. Thereafter, you can explore various ways to market yourself and expand your client base.

The most basic form of legal advertising is the telephone book. In fact, I timed the launch of my own private practice to ensure that I would be listed in the latest issue of the telephone book. The deadline for inclusion in a telephone book is often six to nine months prior to its publication. So, keep this in mind when deciding when to launch a practice. You do not want to have a practice that is not listed in the Yellow Pages during your first year of operation.

Once you have been listed in the telephone book and have at least a year of solo practice under your belt, you can explore other modes of advertising. In

my practice, I place a heavy emphasis on newspaper and cable television advertising. There are other ways to advertise, such as via radio, church bulletins, place-mats, high school sports programs, the Internet, etc. More recently, my law practice has become a corporate sponsor for our local minor league hockey team.

In regard to costs, you should create a budget and not stretch yourself too thin financially. Some advertisers, such as the telephone book companies, permit monthly payments. I am cautious about signing any long-term commitments with advertisers, because you never know when there will be an economic downturn in your practice.

The costs of advertising vary depending on your location. For example, the costs of advertising on cable television or in the newspaper in a rural county are significantly less than the advertising costs in Philadelphia or Pittsburgh. Likewise, the operating costs for a law practice in a rural county are considerably less than those of the more populated counties.

Once you begin to advertise, you will be bombarded with solicitations from prospective advertisers. Some advertisers can be very intimidating to someone who has little advertising or marketing experience. On several occasions, I have had advertisers essentially tell me that if I did not agree to their proposals then my practice would go under. Do not be intimidated by advertisers! Do not think you need the largest advertisement in a phone book, or that you need to run an advertisement several times a week in a newspaper to generate business. Once an advertiser realizes you are not going to fall prey to an aggressive sales pitch, they will negotiate on prices and plans.

I have been fortunate to have developed very positive relationships with my television and newspaper advertisers. In fact, I probably spend at least one to two hours a week focusing on my practice's advertising and marketing strategies. I normally consult with my advertisers on a weekly basis about the content of my advertisements, which I change constantly, especially in the newspaper.

This brings me to probably the most important aspect of legal advertising, and that is the content of the advertise-

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Timothy S. Burns operates a general practice law firm located in Ebensburg, Cambria County. He is in his second term as Treasurer of the PBA-YLD.

INTEGRITY, INDEPENDENCE AND COMMITMENT: SPEECH EXCERPTS FROM THE PBA PRESIDENT

By Andrew Susko

I am asked from time to time what principal advice I would give to newly-admitted lawyers to help them succeed in the legal profession. I know I do not have all of the answers, but offer the following as beginning points for you to consider. For me, three areas are at the top of the list: (1) professional honesty and integrity; (2) independence of professional judgment and fidelity to the rule of law; and (3) active engagement in the issues confronting our profession. You will find these points frequently the subject of discussion at the national, state and local bar association levels. Focus on these three areas and you will find that your professional success and enjoyment can be enhanced greatly. I will borrow from remarks given at the August orientation of approximately 500 new law students at Widener School of Law in Harrisburg and Duquesne University School of Law in Pittsburgh:

"I want to talk first about honesty in the profession, because being true to your word, is a quintessential, defining virtue of an excellent lawyer. Practicing honesty so that it becomes habitual in everything you do in your professional life will ensure a significant measure of professional success. Lincoln was a great American president known to everyone, but perhaps a little less known was the fact that he was an outstanding trial lawyer. He tried cases by telling stories. Lincoln has many very famous quotes and I want to read one of them to you about honesty. This quote is taken from one of my favorite books, titled *The Face of Lincoln*:

'There is a vague popular belief that lawyers are necessarily dishonest. I say vague, because when we consider to what extent confidence and honors are reposed in and conferred upon lawyers by the people, it appears improbable that their impression of dishonesty is very distinct and vivid, yet the impression is common, almost universal. Let no young man [my apologies to the women in the audience], let no young man choosing the law for a calling for a moment yield to that popular belief. Resolve to be hon-

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est at all events and if in your own judgment you cannot be an honest lawyer, resolve to be honest without being a lawyer.'

"So honesty is an essential virtue of being a lawyer, and I will tell you that if you practice honesty in the practice of law, it will serve you well. Therefore, begin by resolving to do so in your law school endeavors.

"The second hallmark of being a successful lawyer is independence of judgment. How many of you have heard of the Enron scandal? Enron involved pro-



professionals who failed in their duties. Someone should have stood up and acted as a gatekeeper with independent professional judgment, and stated that the proposed conduct was wrong, a violation of the law. Yet no effective voice was either raised or heard. I cannot speak about the concept and importance of independence of judgment more eloquently than did past PBA President Marvin Comisky, on the 75th Anniversary of the Pennsylvania Bar Association. He said, and I quote:

'Let me be blunt, 75 years ago, typical lawyers were much more their own person than most of us are today. We were not nearly so much the prisoner of our

clients; we were consulted and respected and our clients accepted our advice. No client, and no client's interest, stifled our independence. We stated what we thought about every issue. We were looked up to in our community because we had character and courage and because we valued our independence more than our income. Put to the choice, we chose quickly and we chose the right, no matter what the cost to ourselves. We were the popular champion and frequently the only champion standing beside the poor, the despised, and the persecuted. Keep your independence of judgment.'

"The last message I want to give to you is to invest in yourselves by becoming actively involved in our Pennsylvania Bar Association and your local bar associations as well. I am a big believer — and I think it starts in law school — in making sure newly admitted lawyers and law students understand that they are the stewards of their own professional development. Absent a great mentor, you are responsible and in charge of making sure that you have what you require in your own background to succeed. That means you need to invest in your own professional development. One way you can invest is by getting active in your state and local bar associations, Inns of Court or other organizations that your law school offers. Active engagement in your profession, coupled with taking the time to meet with other lawyers and judges in a professional setting to discuss the issues and challenges confronting both the profession and justice system, affords you the opportunity for professional development and success. So get involved, get engaged and give something back to your community because the legal profession has given you the privilege and the license to practice law. Doing this will serve you well over the course of your career."

I hope that these messages of honesty, independence of professional judgment, and investing in your own professional development by active participation in your state and local bar associations have been helpful to you. If you believe they have been, let me know the next time you see me in my travels across the commonwealth!

COURTHOUSE CAFÉ

By Traci Naugle

Editor's Note: Young lawyers are often sent to the ends of the earth (or at least to Central Pennsylvania) by their firms to appear in court. It is enough of a worry for these young lawyers to figure out where the courthouse is located in unfamiliar counties, let alone where they are going to eat lunch after their hearings. At Issue is therefore reviving its "Courthouse Café" series to share tips about eateries located close to the courthouse in a featured county.

Featured County: Blair

The next time you have to appear in court in Blair County, check out these Hollidaysburg restaurants, all within walking distance of the courthouse:

The Capitol Hotel: About 1½ blocks to the right (southwest) of the courthouse. At one time, this was "the" place for attorneys to eat and be seen during the day. Many of the older attorneys still gather at the restaurant every day for lunch and sit at a large round table in the back. They are a friendly group, so introduce yourself — they will probably invite you to join them. The cuisine is diner-style and the prices are reasonable.

D'Ottavio's: About 1½ blocks to the right of the courthouse (southwest). This restaurant serves Italian food, specializing in pizza, strombolis and hoagies. Prices are reasonable.

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St. Drago Café: About one block to the left (northeast) of the courthouse. This small delicatessen has reasonable to moderately priced food, but not a lot of seating.

Front Street Deli: Two blocks to the right (southwest) of the courthouse and around the corner. This delicatessen serves sandwiches, pizza and other fare at reasonable prices.

Main Moon Restaurant: About two blocks to the right (southwest) of the courthouse. This restaurant serves Chinese food that is reasonably priced.

Luigetta's Sandwich Shop: Three blocks to the right (southwest) of the courthouse. As the name would suggest, Luigetta's serves sandwiches and hoagies. Prices are reasonable. To return to the courthouse from the restaurant, you have to walk up a rather steep hill. Therefore, you should probably not eat here if you have to go back to court on a hot summer day or if you are in very high heels.

The U.S. Hotel: About three blocks parallel (south) to the courthouse. This restaurant has diner-style food and a lot of history. The restaurant has been used for everything from a rest stop for work-



ers on the old Pennsylvania canal system to a modern day wedding reception hall. Despite its age, the restaurant has a "young" feel. Additionally, the facility is supposedly haunted by as many as 16 spirits. Prices are moderate (although the hauntings are free).

Dining Options Along U.S. Route 22: A short drive east on U.S. Route 22 will take you to **The Dream** restaurant, a moderately-priced restaurant serving traditional American cuisine, just like Mom used to prepare. Also on U.S. Route 22 is **Best Way Pizza**, which, of course, serves pizza. It has a quieter setting than the downtown restaurants, which is beneficial should you need to review your case. Finally, there is a **Sheetz** on U.S. Route 22. You can fill up your vehicle's gasoline tank and also get a made-to-order sandwich and soda for the road.

YLD DON'T MISS THE
YLD SUMMER MEETING
YLD JULY 25-27
YLD SEVEN SPRINGS RESORT, CHAMPION
YLD SUMMER MEETING

WATCH THE PBA WEB SITE (WWW.PABAR.ORG) FOR UPDATES!

U.S. IMMIGRATION LAW: A PRIMER

By Ysabel Williams

U.S. Immigration Law labels persons as either U.S. citizens or aliens (legal and illegal). There are no hybrid categories, except for a very small group of people known as U.S. nationals. To understand the current state of our immigration laws, it is necessary to examine the history of how those laws came to be and the policy considerations that originated them. The first comprehensive legislation dealing with immigration policy, the McCarran-Walter Act, was enacted in 1952. The McCarran-Walter Act is still in effect and is commonly referred to as the Immigration and Nationality Act or "INA." Since 1952, the INA has been amended several times.

In 1965, Congress reformed INA and, among other things, created the immediate relative category. This reform is what allows U.S. citizens and legal permanent residents to file immigrant visa petitions on behalf of their immediate relatives such as parents, spouses and children.

Subsequently, in 1980, Congress enacted the Refugee Act of 1980, which is applicable to individuals applying for refugee or asylee status because of fear of persecution in their home countries. In the late 1980s, Congress granted a blanket amnesty to all undocumented agricultural workers and to all persons who could prove that they were present in the United States as of 1982. At about the same time, Congress enacted the Immigration Marriage Fraud Amendment, which created the current two-tier process to obtain lawful permanent residency based on marriage to a U.S. citizen.

As an initial step, a couple must prove that their marriage was entered into in good faith and not for the purpose of obtaining or conveying immigration benefits. Upon establishing the marriage's legitimacy, the beneficiary of the application for permanent residency is

granted a conditional two-year green card (which, incidentally, is not green). Ninety days prior to expiration of the temporary green card, the beneficiary must file an application to remove the condition on his or her green card. An interview is usually scheduled, and the beneficiary has to prove that a good faith marriage relationship exists.

In the early 1990s Congress enacted the Immigration Act of 1990 (IMMACT90), which set a worldwide annual quota for family- and employment-based immigrant visas. This act also created the Diversity Visa Lottery, which allows citizens from certain countries to apply for an immigrant visa through a lottery. IMMACT90 also creat-

Haitians. That same year, Congress implemented a United Nations treaty known as the Convention Against Torture (CAT). CAT essentially provides that the United States will not deport a person to his or her country of origin if that person would be subjected to torture in such country.

Family-based immigration was again reformed in 2000 with passage of the Legal Immigration Family Equity Act (LIFE). It created a "V" visa category for families of permanent residents that had been waiting for a visa number to become available to them. LIFE also created the "K3" visa category, which allows spouses of U.S. citizens to enter the United States while their immigrant visa petitions are pending. In reality, the time frame for preparing and processing a K3 visa petition is usually the same as that of the immediate relative petition; therefore, it is seldom used by immigration practitioners.

After Sept. 11, 2001, Congress enacted the Patriot Act, which implemented several security related measures in the immigration arena. Most recently, in 2005, the REAL ID Act was passed. This law removed the initial jurisdiction that federal district courts had with respect to immigration cases. In addition, under REAL ID, all chal-

lenges to immigration decisions must be appealed directly to a court of appeals as a "petition for review."

A provision known as 245(i), named after the section in INA where it is found, allowed persons who were otherwise ineligible for an immigrant visa to legalize their status based on a family or employment based petition by paying a \$1,000 fine. That provision expired on April 30, 2001. Applicants who filed an approvable immigration petition or a request for labor certification from the Department of Labor prior to that date are considered grandfathered in and are still allowed to adjust their status.

In addition to the above-mentioned legislation, there are several other sources of immigration law, such as Title 8 of the Code of Federal Regulations. Several government agencies enact their



ed a temporary protected status as well as two new categories of aggravated felonies: crimes of violence and money laundering.

In the late 1990s, Congress enacted the Antiterrorism and Effective Death Penalty Act (AEDPA) and later the Illegal Immigration Reform and Responsibility Act. AEDPA established a deportation procedure that substantially removed due process protections and curtailed judicial review as well as habeas corpus relief for aliens. It eliminated most forms of relief from deportation for aliens with certain criminal convictions.

The Nicaraguan Adjustment and Central America Relief Act was enacted in 1997 to allow adjustments of status for Nicaraguans and Cubans. It was later expanded to provide some relief from deportation to Salvadorians, while a separate legislation afforded benefits to

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EFFECTIVE LEGAL MARKETING

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ments. As we all know, the public is bombarded daily with legal advertisements that, quite frankly, give our profession a bad name and an ugly reputation. Many lawyers throughout the commonwealth may not know that the Pennsylvania Rules of Professional Conduct (PRPC) provide ethical guidelines for lawyers to follow when advertising. Specific guidelines for lawyer advertising are set forth in Rules 7.1 and 7.2 of the PRPC.

I recommend that any young lawyer thinking about legal advertising review the ethics rules on legal advertising, and commit them to memory. An important guideline that Pennsylvania lawyers must follow when advertising is to not give false or misleading information to potential clients. In particular, you cannot give potential clients an unjustified expectation of success. In other words, you can not advertise that you "are the best," or that you "will win." Such advertisements violate our state's ethics rules

on advertising because they mislead clients into having unjustified expectations.

Other PRPC rules and guidelines require that the advertisement specify the geographic location of the law office, and that lawyers appearing in the advertisement be a part of the practice. Likewise, a nonlawyer cannot portray a lawyer in an advertisement. Endorsements by celebrities and public figures are also forbidden. Similarly, a nonclient can not claim to be a lawyer's former client. Lastly, a lawyer must maintain a record of all advertisements for at least two years. Most legitimate advertisers are aware of this rule and do keep copies of legal advertisements such as video tapes of commercials.)

I believe that the content of legal advertisements should be in good taste and stay true to the integrity of our profession. For example, my television spots have been informative in nature,

explaining issues such as alimony and domestic violence. I also sponsor public service announcements. My newspaper advertisements are fairly straightforward; they explain who I am and what I do.

In sum, legal advertising is an essential component of establishing a law practice in the 21st century. Always remember, however, that when advertising your legal practice, you are not selling cars. You are advertising professional services for individuals who are in need of legal counsel and guidance. As such, you should pursue a professional advertising campaign that reflects positively upon the services that our profession provides. If you think an advertisement in a particular medium may be too risqué, it probably is. Always keep your marketing strategy within appropriate financial and ethical boundaries. Legal advertisements reflect on all of us, well or poorly, so keep this in mind when you decide to advertise.

U.S. IMMIGRATION LAW

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own regulations and memoranda, including the Citizenship and Immigration Service (formerly Immigration and Naturalization Service), the Department of State, Immigration and Customs Enforcement, Customs and Border Protection, the Executive Office for Immigration Review, the Department of Justice, the Board of Immigration Appeals, the Department of Labor and

the Board of Alien Labor Certification Appeals.

Immigration law is very complex subject matter. A person with an immigration-related case should consult an immigration attorney before attempting to file a document with any of the foregoing agencies. Unfortunately, unlike defendants in criminal cases, aliens have no right to a public defender and typi-

cally must pay for legal representation themselves. (There are several nonprofit agencies nationwide that provide limited assistance in some cases.) However, what is at stake is too important to entrust to "immigration consultants" and other nonattorneys who lack the legal education required to properly analyze the facts of each individual case.

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