



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



AT ISSUE

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

A DOZEN MARKETING TIPS FOR THE TIME-STARVED LAWYER

By Ellen Ostrow, Ph.D.

"It is the greatest of all mistakes to do nothing because you can do only a little. Do what you can."

— *Sidney Smith*

"Every man [sic] takes the limits of his [sic] field of vision for the limits of the world."

— *Arthur Schopenhauer*

Many of the lawyers I coach feel stymied in their efforts to market their services successfully. Some are blocked by their perception of what marketing entails. They see it as a succession of uncomfortable cold calls — and as any-

thing but professional. Most feel that it's simply not possible to fulfill billable-hour requirements, attend to their families and also find time for marketing activities.

One of the interesting things about this situation is that most of these attorneys actually have many opportunities to market their services that don't require the burden of substantial amounts of additional work. Marketing is so much easier if you are aware of all the things you're already doing that have the potential to promote your work and all the

opportunities for marketing that occur in your day-to-day interactions with others.

Here are 12 tips for the lawyer who knows s/he needs to market but doesn't have the time:



1. *Redefine Marketing*

Many lawyers avoid marketing because they consider it to be repugnant and unprofessional. But marketing is developing a sense of yourself and your strengths and communicating this to others with the goal of helping them solve a problem. And there are many ways other than cold calling to communicate your unique expertise and talent. Stop telling yourself you have to be a superstar to market your skills. There is no one "right way." Marketing is only effective if you do it — and you're far more likely to do it if your marketing activities fit comfortably in your life.

2. *Take Control*

These days, it's not realistic to say that you don't have time to market. Instead, consider how you can best use the time you have to do what must be done.

Even more important — marketing is the best way to implement your career plan and control your life, empowering you to further your own success. Designing your career, developing a network consistent with your goals and acquiring a client book are the pathways to true career autonomy.

GOOD CLIENT RELATIONS: A VIEW FROM THE BENCH

By Judge Todd Seelig

As a judge, I often hear from many claimants who express concern and sometimes dissatisfaction with their legal representation. I recently attended a seminar by Jay G. Foonberg, Esq., regarding client relationships and marketing.¹ Many practitioners would benefit from following his straightforward advice, which goes a long way in keeping clients satisfied.

A recent study performed by the American Bar Association through Temple University surveyed the difference between satisfied and dissatisfied clients.² Some of the most interesting findings involved the following aspects of the lawyer/client relationship: returning phone calls; keeping the client informed; and listening to the client. Although this study seemingly

emphasizes some of the basics of client relations, I nonetheless hear these complaints time and again.

Notably, 83 percent of satisfied clients felt that their attorneys were prompt in returning phone calls, while only 42 percent of dissatisfied clients thought the same about their attorneys. According to Foonberg, studies have shown that clients expect to receive a return call within two hours of leaving a message, even if it is merely support staff calling to explain your absence and when you will call back. One of Foonberg's "rules" is, "Never let the sun go down on an unreturned phone call." As Foonberg predicts, the same is true of my experience. The No. 1 complaint I hear

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EDITOR'S NOTE:

AS A NATION, WE HAVE BEEN SUBJECT TO AN UNSPEAKABLE CRIME. WHILE THE EVENTS OF SEPTEMBER 11, 2001 HAVE DEEPLY AFFECTED US ALL, SOME HAVE SUFFERED THE UNIMAGINABLE LOSS OF LOVED ONES, DEAR FRIENDS AND/OR VALUED COLLEAGUES ON THAT DAY. PLEASE KNOW THAT OUR THOUGHTS AND PRAYERS GO OUT TO ALL OF YOU WHO HAVE SUFFERED SO GRIEVOUS A LOSS.

FALL 2001 VOL. 25 NO. 2

WHAT'S AT ISSUE

This August, we had one of our most successful events in years — the YLD Summer Meeting at the Rocky Gap Golf Resort in Cumberland, Md. This was the first time in over 20 years that the location of the meeting was changed from Tofrees in State College. For a variety of



Mendelsohn

reasons, including making the meeting more “family friendly,” we decided to take the meeting south to Rocky Gap.

For three days, attendees and their families enjoyed swimming, boating and golf at the resort. Young lawyers had the opportunity to pick up CLE credits with courses on stress management/quality of life issues, obtaining and keeping clients and practice tips from the bench. While parents attended CLE courses or enjoyed quiet time at the spa, children participated in Rocky Gap’s nature program and explored the surrounding state park.

We were honored to be joined at Rocky Gap by the PBA Board of Governors. The board held its own meeting at Rocky Gap, and I thank PBA President Reg Belden for bringing the board to Maryland. The board members (of which there are three YLD members) joined our division throughout the weekend and experienced the check donation to the YLD for over \$57,000 worth of LexisNexis research hours to benefit pro bono organizations throughout the commonwealth.

We were also honored to be joined by Laura Farber, chair of the American Bar Association’s YLD. Laura is devoting her year as chair to making our schools safer by teaching tolerance to elementary school students. By flying to the meeting from her home in Pasadena, Calif., Laura also won the award for the person who

traveled the farthest to be there. To commemorate this achievement, she left with Hershey’s Kisses and assorted Pennsylvania memorabilia.

With the summer meeting behind us, planning is under way for the PBA’s Day on the Hill. This event will be held on Oct. 16 in Harrisburg. The purpose of the event is to provide lawyers an opportunity to learn more about our Legislature and, more important, to have an opportunity to meet their elected representatives. A morning CLE session will examine the hot topic of judicial selection and offer a panel discussion among many of the foremost authorities on the subject, which will be moderated by one of our own — Judge Todd B. Seelig, Zone 9 co-chair. Following the discussion, we will have lunch with the General Assembly at the new Whitaker Center in downtown

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Harrisburg. After lunch, there will be a panel discussion on how to run for public office. This is one of the best events of the year, and I strongly encourage you to attend. For more information about Day on the Hill, please check out the PBA Web site at www.pabar.org.

In other news, the YLD is becoming more involved in Project PEACE. Project PEACE is a program designed to reduce conflict and violence in elementary schools by teaching students how to discuss and mediate disagreements peacefully. This program is jointly sponsored by the PBA and Attorney General Mike Fisher. Twelve elementary schools from throughout the commonwealth will be chosen to participate. Attorneys assist the selected schools with the implementation of the program. Last year, YLD members Todd Kerstetter, Jim Wells and A.J. Mendelsohn, my wife, served as attorney partners to three of the selected schools. Applications from interested

At Issue

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At Issue is published quarterly by the PBA Young Lawyers Division. Editorial items, news material and correspondence should be sent to the PBA Communications Department, P.O. Box 186, Harrisburg, Pa. 17108-0186.

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schools are being accepted until Nov. 1. If you know of a school that could benefit from this program, please have them apply. The application materials are available on our Web site.

Finally, as you can see from this issue of *At Issue*, we are continuing to try to give you tips about the practice of law, technology and information about how to become involved in the YLD. I thank the editor, Jennifer “JJ” Clark, and her assistant co-editors, Taryn Goldstein and Liz Goldstein, for their efforts. Please feel free to contact them if you would like to be published. Hope to see you at Day on the Hill.

LEARN ABOUT THE NEW YLD
CHAIR, SETH MENDELSON ...
GO TO “CHAIR PROFILE”
ON PAGE 7.

DAY ON THE HILL IS FAST
APPROACHING (OCT. 16)!
FOR DETAILS, CALL SUE
DONMOYER AT 1-800-932-
0311, EXT. 2223.

3. Choose the Right Strategy for Your Goals

Before they can hire you, prospective clients must be aware of you and perceive you to have the expertise they need. You can become more visible and credible by writing articles for publications read by your market, giving speeches at their trade association meetings, sending newsletters to targeted companies and hosting seminars for industry leaders.

However, credibility isn't enough to get you hired. Direct contact is essential for building the relationships you'll need to get hired. Cold calling, warm calls, arranging an appointment, sending a personal letter of introduction and meeting for lunch or coffee are all ways of making contact.

But the single most important part of your strategy is networking.

4. Networking Develops and Maintains Meaningful Relationships

Networking is a sincere and consistent effort to help others, with the hope that they will, in turn, help you. You can help people in your network by providing them with information, introductions, ideas, referrals, advice, emotional support and free PR. Your hope is that they will reciprocate.

The most important skills in relationship building are active listening and showing that you understand the other person's situation and experience.

5. Follow the "Rules of Romance"

Management consultant and author David Maister encourages lawyers to approach prospects and clients as people with whom you'd like to have a long-term romantic relationship. Maister's rules are: communicate honestly; listen and work to understand; communicate frequently; be supportive and understanding, not critical; genuinely care about the relationship; and express appreciation.

Maister emphasizes that the best way to achieve success is to do work you feel passionate about and for people about whom you care.

6. Planning is Essential

Developing your own individual marketing plan enables you to make optimal

use of the time you have and to avoid time wasters that don't fit with your priorities. A marketing plan also allows you to stop thinking about marketing as an overwhelming project by breaking it down into small steps that you can easily accomplish.

Many lawyers find that coaching enables them to develop a realistic plan, simplify marketing activities into manageable action steps and follow through successfully.

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7. Plan Marketing with Your Whole Life in Mind

In order to achieve career success — without sacrificing a fulfilling life — it's critical to design your career by taking your whole life into account. At least once a year, take the time to write out all of your important life roles (as parent, partner, child of aging parent, lawyer, friend, community member, person who needs to nurture your health and outside interests). Ask yourself what you want to accomplish in each of these roles during the coming year. Refer to your life plan as you schedule your monthly, weekly and daily planner.

8. Emphasize Activities that Fulfill Multiple Goals

Changing your concept of marketing can change your feelings, attitudes and behavior. Marketing is more of a mindset than the ability to devote time to particular tasks. Once you've redefined marketing, you will become aware of all of the opportunities for marketing that were

there all along. Marketing then becomes a natural part of your daily activities, and time becomes less of an issue. You begin to realize that you have opportunities to market in almost every context in which you interact with people.

9. Balance and Flexibility are Crucial

When we allow work to consume our lives, we tend to become myopic and ungenerous. It is essential to maintain sufficient balance and flexibility to behave like the caring person you really are. Simply treat others the way you'd like to be treated.

10. Leverage

A single work project can be recycled into a plethora of marketing activities. Give a presentation to a group of clients demonstrating how your project is relevant to them. Submit an article about the project to your niche's industry publication. Contact organizations like Fulcrum and offer to speak on the topic. You can make this the core of a speech you deliver at other meetings your niche attends.

Leveraging is a way to get maximum use out of the work you're already doing. It's a great time saver.

11. Recognize the Resources You Already Have

To begin, make a list of all the people you used to know, those you currently know, those who know you and those you would like to know. It's often the case that if you list all the people connected with your network members, you'll find a route to the people you want to meet.

To build and maintain relationships with selected people in your network, you can sit on boards, participate in volunteer activities, serve on industry committees and maintain regular contact through phone calls, e-mail and lunches.

12. Be Patient

Don't expect instant results from your marketing activities. If you do, you'll get discouraged and give up too quickly. Keep in mind that it takes a long time for marketing activities to bear fruit. Right now you're just planting seeds. Persistence and patience are the keys.

Dr. Ostrow is a member of the International Coach Federation Graduate MentorCoach Program™. You can contact her at (301) 585-5539 or by e-mail at Ellen@lawyerslife-coach.com. LawyersLifeCoach.com is a professional and personal coaching firm specializing in working virtually (by phone, with e-mail and fax backup) with attorneys interested in developing strategies to find greater satisfaction in their careers within the law or in exploring career alternatives for lawyers.

GET YOUR AUTUMN READING LIST READY WITH THE BOOK REVIEW ON PAGE 11.

SERVING ON NON-PROFIT BOARDS: ANSWERS TO QUESTIONS YOU WERE AFRAID TO ASK

By Elizabeth J. Goldstein

You know you want to contribute to your community, so you volunteer to serve on a board of a non-profit. You plan to attend board meetings and raise some money. Simple, right? Well, not exactly.

To find out what issues might arise in a lawyer's membership on a non-profit board, I spoke with an expert in the field. Penina K. Lieber, Esq., represents non-profits, associations and foundations exclusively. At the University of Pittsburgh School of Law, she teaches courses in domestic and international nonprofit law. She is the founding director of the Law School's Program on Global Nonprofit Law, a comparative study of the world's non-profit legal systems. Lieber is currently completing a treatise on non-profit law and a book on the international tax treatment of non-governmental organizations. She recently spoke at an international tax conference in Johannesburg, South Africa on American non-profit law. The following is Professor Lieber's advice regarding membership on non-profit boards.

Q If a young lawyer is asked to serve on a non-profit board, what should the young lawyer do before accepting the position?

A The young lawyer should perform some due diligence. Serving as a board member is a heavy responsibility. The day of being a trophy board member is over. The young lawyer should ask the following questions:

1. What is the non-profit's mission?
2. Is it a mission in which the young lawyer has a genuine interest?
3. When was the non-profit started and what is its history?
4. What is the non-profit's financial condition?
5. Who serves on the board and how long has each board member served?
6. Who is the non-profit's executive director? How long has the executive director held that position?
7. How is the non-profit funded?
8. What is expected of the board members?
9. Does the young lawyer's employer have a policy regarding serving on non-

profit boards?

10. Will the young lawyer have the time needed to serve the non-profit board?

11. What is expected of board members financially? Is there a minimum contribution expected of all board members?

12. Does the non-profit carry directors' and officers' liability insurance?

The young lawyer should also ask to review the following documents:

1. the bylaws,
2. the articles of incorporation,
3. the financial statements, and
4. any auditor reports.

Q What are the duties of board members?

A Board members have fiduciary duties to the non-profit. These duties are the duty of loyalty and duty of care. These duties are not owed to any particular individual of the organization such as the executive director or board president. Instead, these duties are owed to the organization as a whole.

The duty of loyalty requires that the board member put the organization's interest above all others. Therefore, a young lawyer should be sensitive to conflicts of interest between these duties and other duties owed to clients or others. Board members must disclose any direct, indirect, actual or potential conflict of interest with the organization.

The duty of care requires that board members attend meetings regularly and review carefully all material provided by the organization to the board member such as financial statements.

Q When a young lawyer joins a board, what issues require the most scrutiny?

A The young lawyer should pay attention to what type of relationships the executive director and staff have with the board. Sometimes the individuals running the organization do not think that the board needs to know information regarding important matters such as the financials of the organization. However, it is important for board members to be aware

of all aspects of the financial management of the organization. The non-profit staff and board may be veering in different directions. This is not a good sign and should prompt inquiries.

The young lawyer also needs to examine the current status of the organization and how well it is performing its mission. For example, if the non-profit's service base is eroding, the board should analyze the relevance of the organization.

The young lawyer should assess whether the non-profit is in compliance with the law. For example, the young lawyer should inquire whether tax returns are filed as required.

Q What governmental entities regulate non-profits?

A The Internal Revenue Service, the Pennsylvania Attorney General and the Pennsylvania Bureau of Charitable Organizations all regulate non-profits.

Q Why is it important for non-profits to keep accurate corporate records?

A The Internal Revenue Service may penalize individuals who improperly benefit from a non-profit. The Internal Revenue Service may require that the individual return the monetary benefit received or it may impose a substantial tax on unauthorized gains. (Such behavior may also risk the non-profit status of the organization.)

If the non-profit keeps proper corporate records, then the law will grant the non-profit a rebuttable presumption that the organization is running properly and that no one is receiving an improper personal benefit from the organization. Therefore, the non-profit should be as diligent as a for-profit corporation in keeping corporate records such as written meeting minutes and resolutions. The young lawyer should insist that the non-profit keep these records.

Q Should the young lawyer serve as a board member and give legal advice to the board?

A The board may expect that the young lawyer provide all their legal advice.

Elizabeth J. Goldstein focuses on business and corporate services, health-care law, and estate planning and administration at Keefer, Wood, Allen & Rahal's Camp Hill office. She is also an assistant co-editor of At Issue and a YLD Zone 3 co-chair.

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GOOD CLIENT RELATIONS

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from litigants is that their attorney does not return their phone calls. Unfortunately, many times this is revealed in the context of a request for new counsel. Don't let this happen to you.

Another noteworthy statistic is that 84 percent of satisfied clients, versus only 34 percent of dissatisfied clients, believed that their attorneys kept them adequately informed of the pertinent legal matter. In this vein, Foonberg recommends "bombarding your clients with paper." This includes pleadings and discovery. However, he recommends stamping this material "For Your Information Only, No Reply Necessary" to avoid unnecessary phone calls over many legal documents. I continually hear claimants complaining that they do not know what is happening in their cases. In a workers' compensation case, oftentimes the claimant testifies early in the progression of the case, and much of the work thereafter focuses on testimony by physicians and vocational experts. However, if the attorney is not keeping the client abreast of the continuing progress of the case, the client may feel neglected and abandoned. Clients want to be involved in their cases and satisfied clients feel involved because their attorney keeps them informed.

Foonberg also instructs that listening is an important skill in keeping clients satisfied. The study found that 93 percent of

satisfied clients felt their attorneys listened to them and paid attention to their needs. Only 47 percent of dissatisfied clients felt the same way. As a rule of thumb, Foonberg believes that an attorney is not listening properly if he or she is talking more than one-third of the time when meeting with the client. A surprise often occurs on the stand when the attorney has not listened to the client and therefore does not know the whole story. In one case before me, after a claimant testified, I heard the attorney ask why the client had never informed him of certain specific information. The reply was, "You never asked me." With regard to client meetings, Foonberg recommends ending the meeting with two questions: "Is there anything else you want to say?" and "Is there anything else you want to ask me?"

Lastly, Foonberg says, identify bad cases, "dogs" and "bad news" clients and get rid of them. In appropriate matters, he recommends that "cash up front" is a rule by which to live. As Lincoln described this rule, "When a client has paid up front, the client knows he has a lawyer and the lawyer knows he has a client." Yet many times I see attorneys take on or refuse to dump the loser case and the impossible client. Problem clients are expensive to their attorneys, not only monetarily but also in lost sleep and unneeded aggravation. Keeping these types of cases and

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clients is simply not worth the overall cost; it inevitably results in a tremendous burden on the attorney, and it can hurt your reputation with the bench as well as create unrealistic expectations by the client.

Young lawyers have the advantage of not having developed bad habits with regard to client relations. Following these simple rules of returning phone calls, keeping the client informed, listening and disposing of the problem clients and cases will go a long way in developing your practice. More important, if young attorneys follow these rules, I would be spared the request I dread most: "Your Honor, I need a continuance to retain new counsel."

¹Jay Foonberg is the author of several books and articles, including the bestsellers *How to Start and Build a Law Practice* and *How to Get and Keep Good Clients*.

²The report is titled, "Report on the Legal Needs of the Low- and Moderate-Income Public. Findings of the Comprehensive Legal Needs Study" and is available from the American Bar Association.

Judge Seelig is a workers' compensation judge in Philadelphia and an adjunct professor at Villanova University School of Law. He is a current member of the PBA Workers' Compensation Section Council and a frequent lecturer on workers' compensation.

NON-PROFIT BOARDS

CONTINUED FROM PAGE 4

The young lawyer may not have the specialized knowledge required to advise the non-profit on every legal issue that arises. If the young lawyer decides to serve as a board member and legal counsel to the board, the young lawyer must disclose any legal fees he or she receives from the non-profit. Conflicts may arise between the young lawyer's role as board member and the young lawyer's role as counsel to the board. To avoid potential or actual conflicts, the young lawyer may want to be named as solicitor to the board in an ex officio position rather than wearing the two hats of board member and legal counsel.

QWhy should a young lawyer join a non-profit?

AA young lawyer has specialized expertise in such matters as contracts and insurance. A young lawyer can play a vital role in contributing to the community by serving on a non-profit board while making important contacts with leaders in the community. However, a young lawyer should be selective about the boards upon which he or she serves and treat the board position with the same level of care he or she would apply in representing a paying client.

POETRY CORNER

The Parting of the Divorce Lawyer
Do not spit those angry words at me;
I worked for years to set you free.
I filed, argued, and plead, although
the process is innately slow.
There are many assets to be gained,
yet divorce is often fraught with pain.
Your marriage is cleaved, the union
crushed.
Do you feel the swift uplifting rush
from the prospect of a quiet night?
It was I who led you through the fight.
Do not spit those angry epithets.
Your choice, not mine, begot the mess.

- Mary Kollas Kennedy

COURTHOUSE CAFÉ

By Nathan J. Prepelka

Featuring: Pittsburgh

Let's talk about Pittsburgh, food and where to get it if you are in federal court. The U.S. District Court for the Western District of Pennsylvania is at one end of Grant Avenue, one heck of a walk from the state level courts on the other end. Actually, the places to grab lunch (or dinner) are somewhat limited on the federal court side of Grant. Unless, of course, you don't mind trekking all over the city. It's not as if Pittsburgh is huge anyway. In any case, here we go.

Roughly two blocks from the courthouse is The Strip (Smallman St.), which has tons of restaurants and bars (beer is certainly more my specialty). Immediately as you enter The Strip on your right is Valhalla, a good micro-brew lunch-and-or-dinner place. Better for dinner and brew after your court gig anyhow. I hear that the federal courthouse has its own restaurant in the basement, but I've never ventured there. I also hear that a hamburger must be requisitioned and costs roughly \$2,345.99, but note that there is no tax!

Down the street, on the corner of Seventh Avenue and William Penn Way is

Palmer's, a greasy-spoon sort of cafeteria. They probably make a mean meatloaf and mashed potatoes with gravy. The basement of the Koppers Building (where I work) is the Paragon. This place



has good food, soups, salads, a grille, a sandwich bar, homemade pizza, etc. (can you tell I frequent the place?) The prices are a bit high, but the food is fine. And you can stop and visit me after lunch.

Finally, the basement of the USX (United States Steel Building) Tower has a number of quick places to eat, like Au Bon Pain (God bless you), Georgio's Pizza, Fat Franks and Si Senor. If you can't tell what type of food these places have by their names, I'm not telling. Also, each of these places has a "stand" during the summer months in the Steel Plaza (plaza next to the Steel Building).

That's about it. Of course, if you like to walk, way down Liberty Avenue, past all the risqué boutiques (what the heck do they sell in there?) is Yovi's, my favorite by far — the

Pittsburgh home of the "Chicago Dog." Good stuff and not really expensive. But, make sure you don't rest the bag against you or you'll have one big grease stain on your shirt.

How to get there (and take these with a grain of salt):

From the west: From Interstate 80 going west, bear left onto US-220 (SR-150) for approximately 28 miles. US-220 exits and joins with I-99 for another 25 miles or so. Take the US-22 west exit, and stay on that for about 75 miles. Merge onto I-376 (still US-22 west) for about 13 miles. Get off at exit 3, and turn right onto Grant Street. The federal courthouse is about half-mile down on Seventh Avenue and Grant.

From the north: From I-79 south, take I-279 south for about 11 miles. Exit I-279 at I-579 for a few tenths of a mile, then take the Seventh Avenue exit. Turn right onto Seventh Avenue, and the courthouse is just ahead.

Nate Prepelka is an associate at The Webb Law Firm, where he specializes in intellectual property, and a YLD Zone 12 co-chair.

CHANGE OR DIE

By Christopher T. Hildebrandt

Are you still refusing to merge onto the information highway? If so, let me give you 2.5 million reasons why you had better hop on. Now.

Slade McLaughlin has a medical malpractice case. The target hospital is located in Montgomery County. Problem is, his case is worth substantially more in Philadelphia County, possibly \$2.5 million more.

The Internet solved his problem, and his case against a Montgomery County hospital will be heard in Philadelphia. How, you are asking, did he manage this? It was easy — all he did was read the hospital's Web site. On its site, the hospital publicized a program that it offered in conjunction with Children's Hospital in Philadelphia. In essence, the hospital, through its Web site, was soliciting patients by assuring them that they could access "big city" physicians close to home. McLaughlin supplied the court with a hard copy of both hospitals' Web sites

that boasted about the program, and the court decided that the Montgomery County hospital regularly conducts business in Philadelphia.

This, of course, leads to today's lesson. The Internet is often referred to as the "Wild Wild West," and for good measure. The Internet is only in its infancy, and every company — big or small — is sprinting to establish a Web page. These Web pages, however, are often designed by PR-types who have only one mission: disseminate information. Take a look and see for yourself. You will be amazed at the information — the veritable gems — that can be found on some Web sites.

I regularly use the Internet to research target defendants prior to filing a complaint. In one case, a small company had a page devoted to its employees. Soon after a complaint was filed against the company, this page disappeared. Coincidence?

Fortunately, however, I had already printed a hard copy of the Web page. I now had the company's employee directory — without the hassle of formal discovery.

Lesson 1: ALWAYS make a hard copy of any information you may deem significant. "Easy come, easy go" applies tenfold on the Internet.

I have also had great success researching experts, both plaintiff and defendant. The most efficient manner in which to research any expert is to type the name into any good search engine. You may be surprised to find copies of opinions (published and unpublished), news articles, testimonials or even the expert's own Web page — and you can just imagine what some of these guys say on their Web sites!

Lesson 2: ALWAYS check the Internet for information on the expert you intend to hire. It is far better that you find his skeletons before opposing counsel dangles them in front of the judge or a jury. You must assume that opposing counsel has already printed

Christopher T. Hildebrandt is an associate with the Pittsburgh firm of Richards & Kelly, L.L.P. He handles all types of litigation matters, focusing on medical malpractice and personal injury litigation. You may reach him at cth@r-klaw.com.

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CHAIR PROFILE: SETH A. MENDELSON

By Lisa L. Granite

SETH, TELL ME A LITTLE ABOUT YOUR BACKGROUND.

I was born and raised in Harrisburg. After graduating high school in 1988, I attended the University of Pittsburgh and received a B.A. in political science. I then attended the Dickinson School of Law, graduated in 1995 and then began clerking for Judge Donald E. Wieand of the Superior Court. After that, I was with the Pennsylvania Board of Probation and Parole for about one year. As I was working on cases with the Office of Attorney General, Civil Litigation Section, they had an opening in their office. They offered me a position to come over and handle civil litigation before federal civil litigation for all the state agencies, and I've been there ever since.

HOW DOES YOUR OFFICE FEEL ABOUT YOUR BEING ELECTED YLD CHAIR?

I'm very fortunate — my boss, Attorney General Mike Fisher, has been extremely supportive of the PBA. In fact, he himself has been active in being a delegate to the House of Delegates and also being a co-chair for the Multijurisdictional Practice Committee. The office has been very supportive in recognizing the demands that being the chair of this organization has, and I appreciate all of their support and the support of Attorney General Fisher.

A.J., HOW DID YOU MEET SETH?

A.J.: We actually met in law school. I was a young first-year law student and Seth was the older, wiser third-year law student. At least I thought he was wiser!

Seth: She was easily fooled.

WHAT ARE YOUR GOALS AS YLD CHAIR?

I think we have to do more for the young lawyers of Pennsylvania. We have lawyers who are facing more law school debt than they ever have before. Just the young lawyers who are taking federal student loans have at least \$39,000 in debt. Most of our young lawyers graduate with \$70,000 to \$90,000 in debt. So we're confronted with a situation where we have young lawyers working harder than ever, some making very good money, some making not so good money, but being burdened with unbelievable amounts of debt.

I think as goals what we need to do is become more responsive to the needs of these young lawyers. One of my goals is to increase the number of substantive pro-

grams that we put on for young lawyers to help them improve their practices and marketing of themselves, as well as manage stress in their lives to cope with the pressures that all of us face as young lawyers.

We also need to recruit new members. We have 8,000 young lawyers in the YLD, 28,000 members in PBA. We need to get these young lawyers and new members to become members of the PBA.

The final thing we need to do is retain these members. We really need to give young lawyers substantive programs, opportunities to network among themselves and meet lawyers who are going through the same things they are. So those are my goals for the year.

THIS QUESTION IS FOR BOTH OF YOU: WHY DID YOU BECOME A LAWYER?

Seth: I was drawn at first to the idea of being in the courtroom. And that's what I do today, certainly not as often as anyone who litigates cases would like to be — we always like to be in the courtroom. But it's something that actually first was an attraction to the law for me. And now I'm doing exactly what I wanted to do and I really do enjoy each day of it. The other good part with litigation is that I have the opportunity to learn something new every day. I had a federal trial back in October regarding used car dealerships. Before that point, I really knew nothing about used car dealerships, but by the time we got to trial, I could almost tell

you every PennDOT form that is available, how to register a car and what it means to title a car. So it is a great learning experience to be in litigation.

A.J.: I don't know exactly when I started wanting to be a lawyer, but I have always remembered wanting to do it, since I was a child. I think it grew through watching Perry Mason and Matlock, since I didn't have any family members who were lawyers. I was just impressed with what lawyers did in the courtroom. Right now I practice in the area of estate planning, so I don't really get in the courtroom too much, but nevertheless it's still a very interesting and fulfilling type of work to do.

It's nice that we have two different areas of law that we practice in, so I get to see what he does and he, whether he wants to or not, (laughs) gets to hear about all the exciting tax laws I run into.

Seth: There's really nothing better than when A.J. comes home with a new tax regulation.

A.J.: We definitely understand each other's schedules and the demands of the profession.

ON THAT NOTE, HOW DO YOU LIKE BEING MARRIED TO ANOTHER LAWYER?

Seth: I like very much being married to another lawyer. People warned us. ... They

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YLD Chair Seth A. Mendelsohn (center), his wife A.J. Mendelsohn (left) and PBA/YLD Division Delegate Mary Kollas Kennedy pictured at the Cumberland County Bar Association 100th anniversary celebration May 17 at the West Shore Country Club.

CHAIR PROFILE

CONTINUED FROM PAGE 7

said two lawyers cannot be married to each other, you have to get away from it, but I very much like it. A.J. and I try to walk together every day and I like to hear her stories and bounce ideas off her to get a different perspective.

A.J.: It is great to brainstorm, because you have someone who understands and another mind to help you think through problems. I know when we got married people did warn us and they made fun of us quite a bit at our wedding — they played “Lawyers in Love” and had a really good time with us. But, in fact, I think it’s even better that we’re both in the same profession.

Seth: We do try to take at least one vacation a year where we’re not allowed to mention work or the law at all.

SETH, HOW DID YOU GET INVOLVED WITH THE YLD?

My cousin Michael Solomon had been the treasurer for the YLD in the late ‘80s, and when I returned to Harrisburg following my judicial clerkship, he told me I should get involved with the YLD. I had previously joined the PBA and had read the publications, but I wasn’t involved with the YLD. So I became a chair for Zone 3, and from that point I very much enjoyed it. I’ve also enjoyed being the chair-elect and not having all of the responsibility ... and certainly I’ve had an excellent teacher in the past chair, Jacci Vigilante.

WHAT IS THE BEST REASON YOU CAN THINK OF FOR JOINING THE YLD?

I truly believe there are many benefits, and I think it depends on who you are. For myself, I have greatly enjoyed meeting other young lawyers throughout the state. I think that is one thing the bar association does very well by providing you opportunities to meet attorneys outside the office. Someone in my office once had a case involving a certain attorney, and I actually knew the attorney from the bar association, but this attorney in my office didn’t care for the attorney as much as I did because they didn’t have the opportunity to meet outside the courtroom. So I think it’s so important to be able to meet people on that level.

ANOTHER QUESTION FOR BOTH OF YOU: NAME SOMEONE YOU CONSIDER A MENTOR.

Seth: Judge Dale Shughart, who is now deceased. I met Judge Shughart when I was

at Dickinson. He taught Pennsylvania civil practice, and he had been the president judge in Cumberland County for something like four decades. He was writing a book titled *Pennsylvania Civil Practice*, and I eventually became his student assistant and worked on the book with him. The reason he was a mentor was because I would go to his home (he didn’t have an office) and we would just talk about the law, and I found it amazing that he had been in law school in the 1930s and he still had the same experiences that I was having in law school.

Also, Judge Wieand, working for him. ... He has also since passed away, but he taught me a lot about the way to look at cases (he was an appellate judge) and also the way to practice law, that you don’t have to fight with people...it can be a dignified practice. I think about that and try to honor his memory by doing that.

Seth: “I truly believe there are many benefits [to joining the YLD], and I think it depends on who you are. For myself, I have greatly enjoyed meeting other young lawyers throughout the state.

Another one would be Josh Lock, who’s here in Harrisburg. Josh was the first attorney that I really ever knew. If I ever get into any trouble, I would consider him the best criminal defense attorney. Also Herschel Lock, Josh’s brother, has definitely taught me a lot and is someone I can bounce ideas off of.

A.J.: If I had to pick one person, right now I would say Henry Rhoads, who is one of the most senior partners in the law firm I work for. The reason I look up to him is he is just the consummate gentleman lawyer. He is very intelligent, he has years of experience and practices in several different areas of law. Henry is involved with the community and really cares about his clients and is very family-oriented...he seems to have struck a balance, somehow, between being an excellent lawyer and a very well-respected lawyer and having a good relationship with his family, which unfortunately you don’t always see, especially in larger law firms like the one in which I work.

ALSO FOR THE BOTH OF YOU: NAME YOUR FAVORITE REALITY TV SHOW.

Seth: Temptation Island was the one we

enjoyed watching. It was so bad, yet it was interesting.

A.J.: If we have to admit it, it had to be Temptation Island. It was so cheesy, you just had to watch. You’re watching it, and yet you’re embarrassed you’re watching it, but it was fascinating, so you still watch it. Now, we don’t watch Survivor because we didn’t want to be tied in to that many weeks. It’s too much of a commitment!

ONE MORE QUESTION FOR YOU BOTH: WHAT STAR WARS CHARACTER DO YOU MOST IDENTIFY WITH AND WHY?

A.J.: When I was a child and Star Wars first came out, I loved Princess Leia. In fact, one year I think I was Princess Leia for Halloween, because I had long hair and I braided it and curled it around my ears. That was even a fashion trend in my elementary school! She was a very good role model for young women — she was tough, she was out there fighting and did some stuff besides just look pretty. She was a good princess, not a fancy princess.

Seth: I guess I always liked Luke. He was heroic, seemed relatively calm under pressure. He had those great scenes at the end. I have to go with Luke. He had that cool plane, too.

A.J.: You could say Jabba the Hutt because you really like to eat. Seth is definitely more the good-guy Luke type ... he’s really not the rebellious Han Solo type. But he’s fast approaching Yoda.

CHANGE OR DIE —

CONTINUED FROM PAGE 6

hard copies of the information she intends to use on cross-examination.

Finally, Lesson 3: Live by the sword, die by the sword. If you already have a Web page, you may want to review its content from the perspective of opposing counsel. Does your site contain any information opposing counsel can use against your client — any tips or techniques that may be inappropriate for the Internet medium? Have you tipped your hand without realizing it? Remember, what may make perfect sense to you may be easily misconstrued and taken out of context when viewed on your Web site. In your rush to show the world how much you know, you may be making your opponent’s job easier.

THE INS AND OUTS OF LAWFUL HIRING AND FIRING

By Taryn F. Goldstein

Every employer in Pennsylvania should understand the ins and outs of lawful hiring and firing, even when those employers are lawyers studied in the law and practicing in firms or on their own.

The employment application is usually the first opportunity in the hiring process for an employer to obtain information on which to base a hiring decision. Many federal and state laws and regulations prohibiting employment discrimination restrict the information that can be collected on the job application. These include the Americans with Disabilities Act (ADA), Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act (ADEA), the National Labor Relations Act (NLRA), and, for federal contractors, the Rehabilitation Act of 1973. Such laws prohibit discrimination in the hiring process on the basis of race, color, religion, sex, national origin, age, disability and union membership, affiliation or activity. State laws and city ordinances can provide even greater protection than those offered by federal laws.

It is good practice for the employer to acknowledge the various anti-discrimination laws in an equal-opportunity statement printed prominently on the face of the application. It goes without saying that none of the questions on the application should relate to any of these protected areas. In fact, all questions on an employment application should be reviewed for relevancy and job-relatedness. Employers should also remember that facially neutral questions may have a disparate impact on individuals in a protected class, thus making the question unlawful, and such questions should be edited out of the application.

In Pennsylvania, employers may not ask an applicant about his or her arrest record, but may ask an applicant if he or she has been convicted of a felony or misdemeanor offense and what the offense was if the answer is yes. If a decision not to hire an applicant was based in whole or in part on criminal-record information, the employer must notify the applicant in writing. However, the employer should be able to show a relevant, employment-related reason for asking the question. Once the application is completed, the applicant should be asked to sign it, declaring that

his or her answers are true, correct and complete. The application should also state that false or incomplete answers constitute cause for termination of the hiring process or grounds to terminate employment at a future point in time. Finally, and very importantly, the employer should establish the at-will nature of any potential employment in the application. Such a provision should be boldly displayed in the application, and the applicant should declare that he or she has read and understood it.

Before making a job offer, an employer may wish to verify the employment background listed on the application. Because many employers fear defamation claims arising from references, it is a good idea for the employer to ask the applicant to sign a release authorizing the previous employer to discuss the applicant's prior work experience and releasing that employer from any potential liability related to the disclosure. Additionally, if an employer wishes to check the credit history of employees or applicants, an employer may request reports from a consumer reporting agency in conjunction with the requirements of the Fair Credit Reporting Act.

It is good practice for the employer to acknowledge the various anti-discrimination laws in an equal-opportunity statement printed prominently on the face of the application. It goes without saying that none of the questions on the application should relate to any of these protected areas.

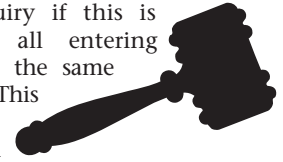
Following the application process, employers may use tests of skill, aptitude or other objective criteria in determining an applicant's suitability for a particular position. However, it is important to note that these tests must assess the actual skills required of a particular position. Thus, they must be job related and consistent with business necessity, and the tests and criteria should be applied uniformly to all applicants for the same or similar positions. Under the ADA, an employer may not require a job applicant to take a medical examination or respond to medical inquiries. Note, though, that an employer may condition a job offer on the satisfac-

tory result of a post-offer medical inquiry if this is required of all entering employees in the same job category. This post-offer examination does not have

to be job related, and individuals with known or obvious disabilities may be asked questions concerning the disability if the questions focus on the individual's ability to perform the essential functions of the position. However, a post-offer medical examination may not disqualify an individual with a disability who is currently able to perform the essential functions of the position. After employment, any medical examination or inquiry must be job related and justified by job necessity.

Once the decision is made to offer a job to an applicant, letters offering employment to prospective employees should include a clear statement that nothing in the offer should be construed to create a contract for a specified term or under specified employment conditions and that the employee will be an employee at will, terminable with or without notice at any time for any reason or for no reason (but not, of course, for an unlawful reason). Similar disclaimers should be included in all employee manuals and policies and it is a good idea for an employer to require an employee to sign a separate acknowledgment that he or she has read the disclaimer and understood it. Such a disclaimer could potentially undercut an employee's future claim for breach of contract. In addition, if an employer wishes to enter into a contract with an employee to bind the employee to certain terms of employment, such contracts should be drafted carefully so as to not intentionally guarantee any additional contractual rights. If the employment is not for a set term, a prominent at-will disclaimer in the contract itself may protect the employer.

Although there are other areas of employment hiring, including drug testing, covenants not to compete and the special case of independent contractors, the above information should at least familiarize employers with the most obvious pit-



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THE SUMMONS: A PLAINTIFF'S PASSPORT TO FEDERAL CIVIL LITIGATION

By J.J. Clark

It is unthinkable to travel abroad without a valid passport, as those who have arrived at the airport ready to embark on their honeymoon in the French Riviera without their passport can attest. The airlines won't even let you board the plane without a valid passport. The bottom line is, without a valid passport, there is absolutely no chance you will get to the place you want to go.

As plaintiff's counsel in federal civil litigation,¹ service of a valid summons upon defendants is your passport to the courtroom, and the importance of a valid summons and proper service must not be underestimated. As defense counsel in a federal civil case, we all know about the motion to dismiss for ineffective process and ineffective service of process pursuant to Federal Rules of Civil Procedure (FRCP) 12(b)(4) and 12(b)(5) when our clients are served with an invalid summons. But perhaps a better basis for dismissal, according to the Third Circuit Court of Appeals, is a motion to dismiss for lack of personal jurisdiction under FRCP 12(b)(2). In some cases, service of an invalid summons is devastatingly terminal and can rob the plaintiff of his day in court. So, while lawyers cannot win cases by following the rules for effectuating proper service, they can certainly lose those cases before getting out of the gate for failing to follow the rather straightforward rules of service in FRCP 4. From either side of the litigation fence, the importance of the summons is paramount in federal civil litigation.

FRCP 4 governs the manner by which a plaintiff may effectuate proper service upon a defendant. Those methods of service, when employed by a plaintiff, are per se sufficient to satisfy the constitutional notion of due process by providing the defendant with appropriate notice of the claim(s) against him. But, as the rule itself indicates, following those mandates in FRCP 4 also confers personal jurisdiction upon the court over the defendant in an action. Service of a valid summons upon a defendant is therefore of paramount importance because a court may not impose personal liability upon a party over whom it lacks personal jurisdiction: "[A] summons is process because its service subjects the person served

to the court's jurisdiction, which is necessary to validate a judgment that the court might render against the person.'" *Ayres v. Jacobs & Crumplar, P.A.*, 99 F.3d 565, 568 (3d Cir. 1996) (citing Fed.R.Civ.P. 4, 28 U.S.C.A. Practice Commentary C4-4 (1992 & Supp. 1996)) (emphasis added). See also *Omni Capital Int'l v. Rudolf Wolff & Co.*, 484 U.S. 97, 104 (1987).

So, while lawyers cannot win cases by following the rules for effectuating proper service, they can certainly lose those cases before getting out of the gate for failing to follow the rather straightforward rules of service in FRCP 4. From either side of the litigation fence, the importance of the summons is paramount in federal civil litigation

For plaintiffs' counsel, FRCP 4(c)(1) specifically mandates that it is the responsibility of the plaintiff or, if represented, of his attorney, to serve the summons and complaint upon the defendant in accordance with the rules. What are those rules? For the summons, the requirements are simple. FRCP 4(a) requires that a summons be "signed by the clerk [and] bear the seal of court," and that the summons contain sufficient information regarding the parties and the time in which the defendant must appear and defend. When the plaintiff (or his counsel) files a complaint, those underappreciated deputy clerks in the Clerk's Office will issue the summonses by signing the documents and affixing the seal of the court to the summons. Service upon defendants must then be made in any manner provided in FRCP 4 for that specific type of defendant. However, in any event, service of the complaint and summons must be made within 120 days from the date the complaint was filed pursuant to FRCP 4(m).

So, what if the plaintiff (or plaintiff's counsel) makes a mistake and doesn't have the clerk sign or seal the summons? Is it a curable mistake? Well, that depends on what actions defense counsel has taken, and when the statute of limitations will run (or has run) on the cause(s) of action in your

complaint. The most consequential consideration, as the Third Circuit Court of Appeals *Ayres* decision instructs, is that if the defendant raised the issue of an invalid summons in the first responsive pleading or in a FRCP



Clark

12(b) motion, the case should be dismissed without prejudice, no exceptions. This is not a problem for the plaintiff if the statute of limitations has not yet run. All he needs to do is file another complaint, have a proper summons issued by the Clerk's Office and serve it properly under the rules. But, practically speaking, if the statute of limitations has run on the claims in the complaint, the dismissal without prejudice will, in effect, act as a dismissal with prejudice, and the plaintiff is out of court and out of luck.

"Seems harsh," you say? Well, lurking in the background in the event that service has not been made within 120 days is FRCP 4(m). Under the previous federal rule governing extensions of time to effectuate service, a court was without the discretion to extend time for a plaintiff to serve a defendant beyond the 120-day time limit unless the plaintiff could show good cause for such failure. Since amendment of that rule in 1995, however, courts currently have discretionary authority to extend the time for proper service regardless of whether a plaintiff can demonstrate good cause for his failure to serve in accordance with the rules.

"But wait a minute," you say. "If FRCP 4(m) permits a plaintiff to seek an extension of time to make service, especially if the statute of limitations has run, why isn't that extension possible to cure service of an invalid summons? Don't courts hate to see a plaintiff lose his day in court and the opportunity to have his case heard?" Well, that's where the *Ayres* case is crucial in the invalid summons analysis. According to the Third Circuit, FRCP 4(m) is not implicated in the specific situation where an invalid summons was served and a subsequent motion to dismiss is filed or the defendant raises an affirmative defense. So then, what

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EDITOR'S COMMENT

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falls of the hiring process.

The flip side of hiring employees is firing them. Once again, the same state and federal laws and regulations apply (as they do throughout the employment relationship), as well as a few other state and federal laws. In order to make fair and defensible discharge decisions, employers should have certain practices in place before the need arises to terminate an employee's employment. Although an employee at will may be fired at any time for any reason with or without notice, an introductory period may provide further protection for an employer in the termination process. While the length of that period will depend on the work and work force involved, it should be long enough to enable an employer to evaluate an employee adequately. Moreover, an effective performance appraisal system is critical to the defense of a performance-based termination. It provides documentary support of deficient job performance and puts an employee on notice of the performance deficiency. Importantly, performance

appraisals should always be administered consistently. Handbooks and manuals distributed to all employees, drafted carefully to avoid creating an implied contract, are also helpful tools in effectively notifying employees of work rules and policies. Again, all rules and policies should be fairly and consistently applied.

Once a discharge decision has been made, make sure you gather all relevant documents, do an investigation surrounding the reasons for discharge (and you may need to suspend an employee during the investigation) and thoroughly document the termination. In the end, make sure the decision has been carefully considered, well documented, thoroughly investigated, fairly executed and is consistent with prior similar actions.

Finally, in implementing an employment termination, certain considerations should come into play. Decide whether advance notice or immediate termination is appropriate. Plan a time that the employee can collect his or her belongings. Consider whether it is beneficial to offer

the employee a severance package with a release from all liability arising from the termination. Tell the employee the true reasons for the termination and have two company representatives present at the meeting. Inform the employee of his or her rights, if any, regarding unemployment compensation and rights involving COBRA. Consider having the final paycheck ready for distribution. Consider having an "exit" interview to help tie all loose ends. With regard to references, as stated above, liability can arise under defamation laws. Therefore, it is advisable to have a policy that you will only give the employee's name, dates employed and jobs held to inquiring prospective employers. In the alternative, at the exit interview the employee could approve a general reference letter or sign a release respecting references given out to future potential employers.

In sum, although hiring and firing employees can be fraught with legal pitfalls, if the employer always treats employees fairly and consistently, always remembers to document all decisions and, of course, runs all decisions by employment counsel, then the employer should be on good footing.

Taryn F. Goldstein practices social security disability and employment law with the Office of General Counsel at the Social Security Administration. She is also an assistant co-editor of At Issue and a YLD Zone 1 co-chair.

BOOK REVIEW

Do you want to curl up with a good book this fall while sipping a cup of hot cider? Here are some book suggestions that will take you far beyond the billable hour, all the way to India:

Interpreter of Maladies: Stories by Jhumpa Lahiri

Jhumpa Lahiri is a gifted storyteller who won the Pulitzer Prize for this book of short stories. She uses powerful prose to share India's rich culture with her readers. For example, in the story "Mrs. Sen's," Lahiri contrasts the loneliness of an American boy living with his single mother with the loneliness of an Indian woman living in America, separated from her extended family. This is one of the few books I finished, then immedi-

ately started reading again from the beginning!

The God of Small Things by Arundhati Roy

In her debut novel, Arundhati Roy gives readers a richly textured story centered on the lives of twins, Rahel and Estha, growing up in Southern India. This story uncoils in a circular narrative that revolves around the recurring themes of taboo and caste. The language is exquisite, and the story is unforgettable.

Sherlock Holmes: The Missing Years by Jamyang Norbu

In this book, Tibetan author Norbu solves the mystery of Sherlock Holmes' missing years. In 1891, Sir Arthur Conan

Doyle killed off his most popular character, Sherlock Holmes. After two years of overwhelming public outcry, Doyle resurrected the famous detective. To explain his absence, Holmes told a stunned Dr. Watson in "The



Goldstein

Adventure of the Empty House" that he was traveling during the hiatus. In this good page-turner, Norbu takes readers through India and Tibet, sharing with them vivid descriptions of Indian and Tibetan life in 1891 while weaving an excellent new Sherlock Holmes detective story.

Elizabeth J. Goldstein focuses on business and corporate services, health-care law, and estate planning and administration at Keefer, Wood, Allen & Rahal's Camp Hill office. She is also an assistant co-editor of At Issue and a YLD Zone 3 co-chair.



LETTERS TO THE EDITOR

Dear Editors:

Great job on the all-new *At Issue!* The new design was eye-catching and sharp. I also found the articles very impressive. While scholarly articles are still a necessary and important component of *At Issue*, you have brought the focus of the articles of *At Issue* back to where they should be — practical advice for new lawyers. Part of the role of the PBA YLD is to assist new lawyers in their transition from law student to seasoned lawyer. The YLD's focus, particularly this year, on the concerns of new lawyers is seen not only in the YLD's CLE courses addressing stress relief, balance of life and courtroom tips, but now also in *At Issue* articles discussing the impact of values and priorities on a young lawyer's employment choices and lunch options near Scranton's Courthouse Square. Each of these topics addresses young lawyers' concerns, from the more serious to the "it would be nice to know." The articles were informative, as well as easy to read. After researching and drafting arguments all day, I found the conversational style of the articles to be a pleasure to read. Thanks again for the great articles and keep up the good work!

Very truly yours,
C.F.

Dear CF:

Thanks for taking the time to let us know how you think we are doing with our new editing responsibilities. As young lawyers ourselves, we are trying to provide the information we would enjoy reading during that 10-minute lunch we seem to face day after day. After all, this publication is designed to be a useful tool and interesting read for all of us! Please keep us informed, and let us know what you find most helpful, and perhaps not so helpful. We always appreciate feedback!

Your editors,
J.J. Clark, Liz Goldstein and Taryn Goldstein

THE SUMMONS

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is the purpose of FRCP 4(m)? To permit the court the discretion to extend the time for a plaintiff to effectuate service if the court believes that such time is warranted under the facts of a particular situation. For example, the defendant may be "on the lam" or evading service, unable to be located, etc. Notably, those examples do not involve service of a void summons, but the inability (or failure) of a plaintiff to effectuate service. As attorneys, we are charged with and have affirmed that we possess a firm knowledge of the rules of the courts in which we practice. More important, we are certainly charged with the fundamental knowledge of jurisdiction over the person and the sub-

ject matter of the case or controversy as two cornerstones of litigation.

The bottom line for plaintiffs is this: Take the time to ensure that the summons you serve is valid in all respects and that the complaint and summons are served well within that 120-day time limit mandated by FRCP 4(m). And, in the best of all possible worlds, give yourself enough time before the statute of limitations runs to have the complaint filed and served upon the defendants. That way any affirmative defenses that challenge the sufficiency of service or of process or any defense motions under FRCP 12(b) can be thoroughly investigated and cured in time to refile the complaint before

the statute runs and the unthinkable happens. Defense attorneys, take the time to investigate the manner and timing of service upon your clients and examine your summonses well. Raise all challenges to service or process at the same time in the same submission to the court. As the "border guards," it is your responsibility to ensure that the plaintiff does not get into court without a passport.

¹ While this article focuses on the federal litigation process, service of a valid summons is equally important in state court proceedings.

A newsletter published by the Pennsylvania Bar Association Young Lawyers Division, P.O. Box 186, Harrisburg, Pa. 17108-0186

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