10 Ways to Annoy Your Biggest Clients

By Lindsey Bierzonski

1. Failing to keep the client informed and failing to promptly return phone calls or e-mails.

This is always the biggest client complaint – yet the easiest to avoid. You already copy opposing counsel on documents. Get in the habit of similarly copying your client on every document and correspondence that concerns the client’s matter. It’s a relatively quick and easy way to always let the client know that you are working. Consider the act of a client calling you for a status update to be a major warning sign; you need to be more proactive about informing the client. For calls and e-mails, if you don’t have time to give a full response, send a quick message saying exactly that and you will get back to the client at such and such a time. Otherwise, then the client follows up with a call, which makes you feel like the client is annoyingly disrupting your work, the client feels forgotten, and by that point, you are both annoyed.

2. Sending invoices several months after the work was performed or billing for every possible minute.

Don’t let billing slide undone for months while your client forgets what you even did. Bill regularly. And don’t bill for every possible expenditure – try to work short phone calls, postage, copies, etc., into your regular billable hour so that you don’t have to bill separately for them. Also, throw the client a few freebies once in a while – put the time you spent sending an article of interest to the client on the invoice to reflect time worked, but don’t bill for it. Your client will see that you are thinking of the client’s interests even when not directly working on the client’s matter.

3. Failing to listen to the client.

The first time you meet with a client, one of the most important questions to ask is: What is his or her ideal way to resolve the problem? Albeit, clients don’t always respond with clear-cut answers. Sometimes you need to read between the lines to figure out what your client wants – does your client really want a huge

YLD Collects Pajamas, Books For Needy Children

During the Pennsylvania Bar Association House of Delegates meeting on Nov. 18 in Harrisburg, the PBA Young Lawyers Division collected monetary and in-kind donations to supply more than 80 pairs of new pajamas and 80 books to children who have been removed from neglectful or abusive home settings. This drive, along with the national Pajama Program, is a way to provide comfort and to help children entering a strange (albeit safe) environment. The donations were provided to children and youth agencies around the state, including those in Berks, Lehigh, Somerset, Tioga, Warren and Westmoreland counties.

The YLD hopes to hold another collection in May. For more information about the project, contact Hope Guy, YLD chair, at hopeguy6@gmail.com or (412) 651-4540.

Pictured with some of the items collected are Hope Guy, YLD chair, and Jacob A. Gurwitz, YLD chair-elect.
PBA YLD SEeks 2012-2013 Nominations

The PBA Young Lawyers Division’s Nominating Committee, chaired by Kevin Taccino, is accepting applications from YLD members interested in seeking nominations to run as candidates for the division’s 2012-2013 chair-elect, secretary, treasurer and ABA representative positions. The terms for those elected will begin at the 2012 Annual Meeting (May 9-11, at the Lancaster Marriott at Penn Square, Lancaster, Pa.).

If you are interested in being nominated by the Nominating Committee under Article IV, Section 2, of the bylaws, please submit your qualifications and a brief biographical sketch by March 25 to Kevin Taccino, Stiltner, Taccino & Hamilton, 25 Penncraft Ave., Suite 310, Chambersburg, Pa. 17201. Materials also may be faxed to Taccino at (717) 262-9095.

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 April 9 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.


Taccino can be reached at (717) 264-0060 to answer any questions you may have regarding the election process.

WILLS FOR HEROES IN 2011

To view a summary of the YLD’s Wills for Heroes events held across Pennsylvania in 2011, click here.

PBA Launches ‘Recruit & Cruise’ Membership-building Campaign

The PBA has launched a new membership campaign, “Recruit & Cruise,” that holds the possibility to a first-class vacation for a lucky participant.

Each PBA member participating in the campaign who gets five new dues-paying members to join the association earns a chance to win a $2,500 cruise for two to a destination of his or her choice.

“This is a great opportunity to help recruit new members for your professional association and, at the same time, be entered to win a fabulous prize,” said Barry Simpson, PBA executive director.

“This is the first time the PBA has launched a membership campaign. So, we look forward to seeing how much excitement it generates, which we hope will be quite a bit,” Simpson said.

The “Recruit & Cruise” member sign-up/cruise giveaway deadline is March 30. Read the contest rules and regulations and download the entry form. Questions about the contest can be directed to 800-932-0311, Ext. 2227.
The September following my graduation from law school, I had the opportunity to return to campus. It was not to welcome the incoming students nor was it to visit a favorite professor. It was to remember a classmate who had succumbed to her long battle with depression. As I stood at her memorial service, I wondered who among my fellow lawyers was also suffering from depression in silence.

As a profession, we have begun to acknowledge the toll that the practice of law takes on many of us. For some, the stresses of practice lead to substance abuse. For others, marriages and friendships suffer. For many, depression becomes an overpowering burden.

Recently, concerned members of the legal profession have established positive support systems for other attorneys to turn to when addiction, depression and stress become overwhelming. Yet, despite the advances we have made in helping other members of the bar, we have historically overlooked a group in our midst who suffers from the same afflictions. We have traditionally forgotten the law students.

Attorney Andrew Sparkler has not forgotten. The suicide of Dave Nee in 2005, shortly after his graduation from New York’s Fordham Law School, left an indelible mark on Sparkler and many others. To remember Nee, Sparkler, along with Wynne Kelly and other friends and family of Nee, started the Dave Nee Foundation to provide support and education to law students suffering from depression.

To raise awareness of depression, to decrease the stigma surrounding mental health issues and to provide information regarding the support systems available to law students, Sparkler and Kelly speak to every first-year law student at Fordham through their legal writing classes. The students commonly voice a concern that they will not be found to have sufficient moral character to become a member of the bar if they see a therapist for mental health issues. If they admit they are depressed or anxious, they worry that the bar will reject them. Sparkler’s response: If every lawyer who has seen or should see a counselor or psychiatrist for help with mental health issues was excluded from the bar, there would be very few lawyers left.

In addition to speaking to law students, the board of the Dave Nee Foundation hosts a website, which provides resources for individuals experiencing depression and presents a number of revealing statistics. For example, depression among law students is 8 to 9 percent prior to matriculation, 27 percent after one semester, 34 percent after two semesters, and 40 percent after three years.1 Stress among law students is 96 percent, compared to 70 percent in medical students and 43 percent in graduate students.2 Entering law school, law students have a psychological profile similar to that of the general public. After law school, 20 to 40 percent have a psychological dysfunction.3

Sparkler likens law school to the perfect storm for depression. Those who choose law school tend to be intelligent, driven, successful people. They are used to working hard and reaping their earned rewards. The teaching style, in which an individual is singled out in front of all of his classmates; the grading system, in which a semester is made or broken based on one exam; and the competitive atmosphere, in which hundreds of graduates compete against one another for limited jobs, mean that despite their hard work, many students will not see a reward. The usually successful student may become depressed, yet refuse to admit it to himself or others. To admit depression may be to admit defeat, which may be a first for the historically successful law student. The independent law students are often unwilling to ask for help.

While the Dave Nee Foundation is able to reach out to law students at a number of law schools in New York, Sparkler admits that more is needed. The dialogue started by Sparkler, Kelly and others needs to expand, not only geographically outside of New York, but also to other members of the legal community. Only when administrators, students, lawyers and other professionals can speak freely about depression will the stigma disappear and those burdened with depression will be free to seek help.

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3 (Deborah Rhode, Legal Education: Professional Interests and Public Values, 34 Ind. L. Rev. 1 (2000)).

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Julie Ganz is an attorney in the Exton office of Fox Rothschild LLP. She concentrates her practice in family law matters and serves as an advocate for clients throughout eastern Pennsylvania. She currently holds the position of president of the Doris Jonas Freed American Inn of Court and is a member of several professional organizations, including the Family Law Section Council for the Pennsylvania Bar Association. Ganz also serves on the Women Build Committee of the Habitat for Humanity of Chester County and is actively involved with the Alumni Society of Episcopal Academy. She earned her J.D., cum laude, from University of Pennsylvania Law School and her B.A. and master’s in bioethics from University of Pennsylvania.
set him or her with respect to some
the client trust and pay you to repre-
client's name right. And why should
client feel more involved (remember
will empower the client, make the
client to choose from alternatives
for ants, you need to find a way to
waiting for fear of losing the client, but bid-
ing too low will create an unreas-
sonable expectation. Even if you’re
well-versed in that particular area of
law, it may be impossible to gauge
accurately. One thing you can try to
do is give a range of costs for each
stage that the matter might reach.
But what if you still have absolutely
no idea? Don’t guess. Stick to your
hourly fee and explain that it is the
fairest method for the both of you or
have a conference with your cli-
tor, or whoever, no matter
you, be it a prospective client, oppos-
Commit it to memory. Remember
admire (or maybe fear) the title and
waitress before I finished law school,
funny; I was never introduced as a
public, too. We don’t stop being at-
ments, but remember that clients know
for females, but anyone in general.
Obviously, be polite to your cli-
ents, but remember that clients know
people who will run into you out in
public, too. We don’t stop being at-
torneys when we leave the office. It’s
funky; I was never introduced as a
waitress before I finished law school,
but now my name in any introduc-
tion always seems to be followed
with “Oh, she’s an attorney.” People
admiral (or maybe fear) the title and
commit it to memory. Remember
that someone is always observing
you, be it a prospective client, oppos-
ing counsel, or whoever, no matter
where you are or what you are doing.
So remember your manners.

5. Letting your client run
wild with bad ideas or
telling the client “No”
without coming up with
alternatives.

If a client comes to you and
wants to market a tiny clothing line
for ants, you need to find a way to
tell the client that it’s a bad idea
without completely crushing the cli-
ent’s dreams. Always suggest a few al-
ternatives, especially when you have
to tell the client bad news. Allowing
the client to choose from alternatives
will empower the client, make the
client feel more involved (remember
those listening skills!) and add to the
client’s overall satisfaction.

6. Sending sloppy docu-
ments either to or on
behalf of the client.

For everyone’s sake, just spell
the client’s name right. And why should
the client trust and pay you to repre-
sent him or her with respect to some
of the most intimate aspects of the
client’s life if you aren’t even savvy
enough to use proper grammar and
spelling? You may not be the best
writer, but you made it this far, and
you owe it to your client to always
have someone proofread your docu-
ments.

7. Failing to be respectful –
use your manners.

I’m pleased to have entered a pro-
ession that prides itself on civility —
we are taught to use proper manners
with judges and opposing counsel.
During law school, the running joke
was that you could always tell the
“One Ls” from the upperclassmen.
Whereas the upperclassmen had ob-
served and learned to copy our es-
teeded attorneys in all mannerisms,
the One Ls hurriedly rushed through
doors and failed to take even a couple
seconds to hold doors open, not just
for females, but anyone in general.

Obviously, be polite to your cli-
ents, but remember that clients know
people who will run into you out in
public, too. We don’t stop being at-
torneys when we leave the office. It’s
funky; I was never introduced as a
waitress before I finished law school,
but now my name in any introduc-
tion always seems to be followed
with “Oh, she’s an attorney.” People
admire (or maybe fear) the title and
commit it to memory. Remember
that someone is always observing
you, be it a prospective client, oppos-
ing counsel, or whoever, no matter
where you are or what you are doing.
So remember your manners.

8. Making a mistake and
not fessing up or blaming
it on your staff.

Everyone makes mistakes. In fact,
some clients retain you only after
making a mistake themselves. Come
up with a few ways to remedy or
mitigate the problem you caused and
then have a conference with your cli-
ent. Is it really in your best interest
to wait for another party, say oppos-
ing counsel, to blow the problem out
of proportion when you could miti-
gate damages from the start? Also,
ever offer up incompetent staff as
an excuse; remember who is respon-
sible for your staff. If anything, you
should have trained them better.

9. Waiting until the last
minute on a deadline
before requesting infor-
mation from the client.

In the ideal world, we would nev-
er procrastinate. Nobody likes the
last-minute scramble. Unfortunately,
it happens. What you can do is take a
few minutes to preview each project
as you receive it. Skim it over, and see
what it entails. Then if necessary, you
can send it to the client or request in-
formation from the client right away
and avoid imposing on the client’s
lifestyle by forcing the client to rush
around at the last minute.

10. Failing to have a life
other than living solely
to answer your client’s
needs.

This one doesn’t directly annoy
clients; some might think they really
do want you to immediately answer
their 4 a.m. emails. However, having
your own life outside of work will not
only de-stress you but also give you
some non-work-related ways to con-
nect on a personal level with your
client. Find out what interests your
client has and share in some mutual
ones together. If you can turn a client
into a friend, you’ll have a client for
life.

Lindsey Bierzonski
graduated from
Widener Law School
in Harrisburg and
joined the Artell Law
Group as an associate
in 2010. She
practices primarily
in litigation, labor
and employment law and corporate
law. While at Widener, she was
awarded a certificate of achievement
in business planning. In her free time,
she has volunteered to provide free legal
services in a Wills for Heroes program,
and was a mentor in the Pennsylvania
Bar Association’s Bar Passage Program.
As a younger attorney, on several occasions I have faced the situation of an older, more experienced attorney, representing the opposing side, raising his voice either out of frustration or as a negotiation tactic. Once a side loses control of his or her temper (either by impulse or by tactic), there is a very simple way that you can politely shut down the conversation without retreating, but allow both sides to come back to the table or phone line at a later date as though the blowup never occurred. The trick is in 11 simple words ... but first, we have to examine the impetus of why some attorneys feel as though yelling was a good choice.

Personally, I find that older attorneys from smaller firms or solo practitioners are those most likely to start yelling. This might be because I work at a smaller firm and deal with smaller firms more regularly than larger firms. Sometimes the blowup will come after a period of increasing volume, but just as often, an opposing attorney may start yelling out of the blue.

I find that when opposing sides start to yell, it is usually due to one of two things. First, it could be that negotiation is at a stopgap, and the opposing attorney feels that yelling might be a good way to get you to give up some ground. Second, I often find that an opposing attorney might start yelling when one of my clients, prior to getting representation, was dealing directly with the opposing attorney, and the opposing attorney has become frustrated with either the client’s behavior prior to representation or with the difference in client’s position from pre-representation to post-representation. While I can understand that this latter category can be quite frustrating for an attorney trying to protect his own client’s interests, it is never a good strategy to start yelling.

So, when an opposing attorney starts yelling at you, it is most important that you do not yell back or raise your own voice. It is equally important that you don’t shrink back from the assault. Rather, following an opposing attorney’s outburst, feel free to take a moment or two to collect yourself, as well as to process the situation.

After a brief moment or two, unleash the secret weapon. Ask the opposing attorney, in a firm, but calm and moderate voice, “I’m not sure why you’re speaking to me in that tone?”

The phrasing should not be aggressive or angry, but rather, it should be almost inquisitive, as if you could not fathom the possibility of one attorney yelling at another. A good way to practice the delivery is when you are at home by yourself, pretend you are Baskin Robbins, and ask, “What flavors of ice cream do you have today?” After running through the line a few times, switch the words to “I’m not sure why you’re speaking to me in that tone?” and you’ll have developed the shut-down switch.

I find that asking this question points out to the other attorney that his or her behavior is not acceptable, instructs him or her that he or she may not speak to you in such a fashion and also allows him or her to realize the ridiculousness of his or her own behavior. Also, the question really has no answer, so the opposing attorney will likely find himself at a loss for words.

The vast majority of times that I have used this tactic, the opposing attorney has regained his or her composure nearly immediately.

Assuming that the opposing attorney then stops his or her yelling, it is likely that the conversation will end for the time being. He or she is likely to be somewhat embarrassed and may not have his or her own thoughts collected. At this time, you can take control of the situation by saying something like, “It doesn’t seem as though we’ll come to an agreement today, I will telephone you tomorrow at 2 p.m. after we’ve both had a chance to review our own notes. I look forward to speaking to you then.” This gives the other attorney an out while keeping you in control of the situation.

There is always the less-likely scenario that the other attorney will keep yelling. While this is unusual, it’s possible. If the other attorney does keep yelling, maintain a calm demeanor, remain firm and state bluntly, “You may not speak to me in that tone. If you continue, I will end the phone call.” If the other attorney continues to yell, hang up and call back in a week or so. If he or she stops yelling, suggest setting up another meeting for the next day or so.

Of course, there’s no absolute way to get another party that has lost his temper to cool it. Also, getting a hothead back down won’t necessarily get you a favorable outcome. But, you won’t get what you want when the other side is yelling (outside the court room, anyway), so it is important to de-escalate the situation. At the very least, if you get the other side to stop yelling, it lets him or her know that you’ve got a backbone and must be treated as any other attorney, as opposed to a first-year law grad.

If you see yourself as someone that will not engage in a yelling match, so will the other side.

John Gentile is a first-year attorney licensed in California, Pennsylvania and New Jersey. He practices civil litigation at Margolis and Associates in Milpitas, Calif.
Understanding Damages:
Earning Capacity Issues in Injury Litigation

By Chad L. Staller

What is a case worth? A good understanding of economic damages issues in injury cases is essential to successful representation. Economic damages assessment is the analytical examination of differences. The objective in the damages phase of civil litigation is to show the difference between the plaintiff’s economic status before the tort and after the tort. One of the chief elements of loss is earning capacity (other significant elements may include lost fringe benefits such as pension benefits, household services – the value of the plaintiff’s or decedent’s contributions to household maintenance and upkeep – and future medical costs).

Earning capacity is often a matter of great contention in settlement negotiations and at trial and deserves careful consideration and thorough discovery.

Earning capacity has been defined as:

The capability of worker to sell his labor or services in any market reasonably accessible to him, taking into consideration his general physical functional impairment resulting from his accident, any previous disability, his occupation, age at the time of injury, nature of injury and his wages prior to and after the injury.

Sims v. Industrial Commission, 10 Ariz.App. 574, 560 P.2D 1003, 1006. The term [earning capacity] does not necessarily mean the actual earnings ... at the time the injuries were sustained, but refers to that which, by virtue of the training, the experience, and the business acumen possessed, an individual is capable of earning.

– Black's Law Dictionary, 5th Edition

While the measure of damages is, technically, earning capacity, as a practical matter, actual earnings may have a strong influence on the trier of fact. For example, a trained surgeon who has spent 20 years working as a missionary would, for purposes of damages assessment, be regarded as a missionary, notwithstanding his ability to perform surgery.

Earning capacity is expected income taking into consideration such factors as age, education, personal attributes, health, labor-market conditions and actual earnings.

The two fundamental questions in determining lost earnings therefore are: how much (pre- and post-tort earning capacity) and how long (worklife)?

How Much?

Where was the plaintiff employed at the time of the accident? What profession would the plaintiff likely have pursued had the accident not occurred? The state of the industry in which the individual is or was employed also affects pre-incident earning capacity, as do reductions-in-force, plant closings and industry slowdowns.

What occupations are available to the plaintiff post-tort? Often times, the question of residual earning capacity is addressed by:

- Vocational specialists (employment capabilities)
- Headhunters (job market, career path)
- Industry experts (testimony on specific fields)

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. Economists often times rely on various types of studies to project worklife expectancy for an injured plaintiff based on various factors, including age, educational attainment level and occupation. Worklife data relied upon by economists includes worklife tables, modal retirement age studies, corporate retirement data and active-life expectancy data.

Few workers can expect to be continuously employed throughout their careers, and it is not a given that a worker will retire at age 65. Estimates of lost earning capacity should take into account likely workforce absences due to illness, job search, education, possible periods of unemployment, as well as other causes. Various academic studies track the average amount of absences from the workforce for a variety of occupations and worker cohorts.

“The phrase ‘work-life expectancy’ literally reflects its meaning: the average number of years that a person of a certain age will both live and work. Such an average is not conclusive. It may be shown by evidence that a particular person, by virtue

Continued on Page 8
The subject of my charitable efforts over the past two years has recently been making front-page news – child sexual abuse. Since Nov. 6, 2011, when the Penn State scandal broke, child abuse has been the subject of many discussions, news reports and heated arguments. One of the positive aspects of the national media attention is that it has raised awareness of the prevalence of child abuse in our country. In effect, citizens are looking to become involved in child abuse prevention, reporting and awareness. As attorneys, we can help. Charitable efforts in this area may also benefit your career in unexpected ways. This article encourages young lawyers to become involved at the inception of their career and to provide guidance by example of my own experiences.

Get started:

Bite the bullet:
As young attorneys, we have the task of setting aside our book knowledge from law school and learning how to be practicing attorneys. Especially in the first years of practice, this task is incredibly time-consuming and may cause you to feel that there is no time for “non-billables.” Nevertheless, non-billable hours, in the form of networking and charity are important aspects of a lawyer’s career. Networking helps build a client base and collegial relationships with other attorneys. Networking through philanthropy has the added benefit of giving back to the community in which we serve.

I began working at Bennett & Associates after law school. My boss, Libby Bennett, encouraged me to attend a Mission Kids Fundraising luncheon. At the time, I was feeling overwhelmed, and I did not feel that I had extra time to dedicate to non-billables. Bennett never hesitated to pile on the challenges. She encouraged me to find my passion but made clear that I had no choice but to bite the bullet and get involved somehow, somehow.

Find your passion:
I recommend getting involved not for the sake of getting involved; that will never last. The key is finding something you are passionate about. It is certain you will be buried in files and would much rather go home at the end of the day than to a meeting or benefit, especially in the dark days of winter. If you are passionate about your cause, motivation to make that monthly meeting will come easier than expected. If you are an environmental lawyer, you don’t necessarily need to volunteer on Earth Day. The important aspect is finding a cause that fits your passion, whatever it may be.

Mission Kids is a non-profit child advocacy center in Montgomery County. The center serves victims of child abuse by videotaping forensic interviews of a child victim. This process avoids repeatedly traumatizing the child who would otherwise have to retell his/her story to police, child services, the district attorney, a jury and so on. The cause happened to jive with my past efforts as a student volunteering for various organizations focusing on children in need, and I began attending meetings regularly.

Start out small – show up:
Consider the time commitment before joining and actually attend the meetings. Then, give careful thought to your own background, skills and ideas and offer them up. You might not have experience in fundraising or specific, detailed knowledge about the cause, but, mostly, organizations are looking for a helping hand and new ideas. In the end, I have learned this: Get out of your own way. Everyone has something different to offer, and our own insecurities are more dangerous than the judgments of others.

I started going to monthly Annual Event Committee meetings for Mission Kids – mostly sitting silently, taking it all in and only speaking when spoken to. The board has some very high-profile members. As a new lawyer, I was insecure. Due to a wonderful group of open-minded, cooperative people, we brainstormed what I could offer to the organization.

I was given the task of organizing a new section of Mission Kids – Young Friends of Mission Kids, a network of young professionals who could encourage young people to be charitable donors, future leaders and fundraisers. Since then, we have had three successful fundraising events as a Young Friends organization, and we continue to grow. I now sit on the board of Mission Kids as the chair of Young Friends.

Why it’s important:

Build a client base:
For a small-firm attorney, networking is an important aspect of the job. Credibility and trust are essential to gaining and retaining clients. Clients are looking for someone who is active in their own community, known and trusted. Clients are looking for attorneys who are sensitive and approachable.

I lost count of the number of phone calls and emails I have received in which someone says, “I heard about your work as a child advocate...” and that’s not even my day job.

Personal reward:
Once you dedicate yourself to a cause, you will find that the hours you spend on non-billables may be the most rewarding part of your career. Your emotional evolution from volunteering and information you acquire may assist you in your billable work. Pro bono efforts may take you to new courthouses, before different judges and into the lives of those in need, making you a well-rounded attorney.

Now, I am a guardian ad litem on a pro bono basis through the Montgomery County Advocacy Project. Child abuse is a silent crime (more than 6 million children are victims each year). When I heard the statistics in Montgomery County alone, I resolved to dedicate a portion of my career to this cause. I was recruited to be a part of an incredibly complicated termination of parental rights case with three small children.
as my clients. I attended school meetings and court proceedings. I obtained invaluable experience before various judges in Juvenile and Orphans Court. I may have never stepped into those courtrooms if not for my pro bono case.

In the wake of the Penn State tragedy, I have never felt more resolved or dedicated. Child abuse affects all races and socioeconomic groups. My continued philanthropic efforts will not only make me a better lawyer, but a better person as well. For every young lawyer, there is a worthy cause in need just waiting for you to show up.

Sara McGeever is an associate attorney with Bennett & Associates located in Wayne, Pa., practicing exclusively in the area of family law. She graduated from Widener University School of Law in 2009 with honors and is licensed to practice in Pennsylvania and New Jersey. She can be reached at 610-254-6090 or sara@ebennetlaw.com.

Understanding Damages

Continued from Page 6

of his health or occupation or other factors, is likely to live and work a longer, or shorter, period than the average. Absent such evidence, however, computations should be based on the statistical average.” Madore v. Ingram Tank Ships, Inc., 732 F. 2d 475, 5th Circuit Court of Appeals (1984).

Additional considerations beyond statistical sources for worklife include evidence specific to the individual, such as pre-existing health issues, the individual’s stated retirement-age intentions and the individual’s personal financial situation.

Working With Your Economist

In personal-injury and wrongful-death matters, the economist performs several functions. First, the economist identifies the potential elements of damages and the data needed to quantify damages.

Effective damages analysis requires detailed data. To put together the damages argument, the economist may assist the attorney by critiquing the opposing side’s damages argument and help the attorney identify areas to explore on cross-examination.

Earning Capacity Discovery Checklist

- Pre-injury employment records, including compensation information and records of overtime worked. (A list of lifetime employers and earnings can be obtained from the Social Security Administration)
- W-2s, 1099s
- Tax Records, Form 1040, with schedules
- Plaintiff’s resume showing frequency of job changes
- Pre-and post-injury medical records indicating possible pre-tort earning-capacity limitations
- Employer records relevant to average retirement age, such as summary plan description for a pension plan.
- School records
- Union or trade-association data
Beggars Can (and Should) be Choosers
Picking the Right Clients to Avoid Damage to Your Professional Reputation and Pocketbook

By Jacob R. Lauser

Introduction

If you’ve been practicing law for any appreciable time, you’re likely run across that client that seems like a godsend. He comes into your office with a stack of cash and a perfect set of facts that make you lean forward in your chair a little, rolling causes of action over in your mind before he even finishes his story. If you’re new to the bar and having trouble finding clients, it can be an even greater temptation to sign him up right then, no questions asked. But for new attorneys, being picky about who you accept as a client can be even more important than getting clients in the door.

While I’m not denying that some clients are the real deal, and your skillful representation of them could indeed make your career, such clients are few and far between, and they rarely just walk through your door or call you on the telephone. The adage is true that if a potential client seems just a bit too good to be true, he probably is. In law, as with many other professions, a healthy dose of skepticism is essential in choosing your clients. If you ignore the warning signs of a potentially bad client, you may be putting your professional reputation and future practice at even greater risk than you think.

Catching the Warning Signs

There are many warning signs of a potentially bad client. The sign I see most often is where a person is more eager to talk about the bad work of his previous attorney than he is about the merits of his own case. I have found this especially true in family law matters. Admittedly, there are clients out there with complicated legal issues that inexperienced attorneys take on without thinking about how far in over their heads they are. However, it has been my experience that not all lawyers are as inept as dissatisfied clients claim. When a potential client smears his former attorney to you for a half-hour before he mentions that he has three restraining orders against him for domestic violence, and he was arrested last night on his fifth DUI charge, you should probably listen to the warning bells. These clients are generally repeat offenders, and if you don’t handle the case the way they want, you’ll be next on their smear list. They are particularly fond of online lawyer rating sites and complaint boards, and a libelous “review” can cost you your good reputation and business online. Such clients are usually more trouble than they’re worth for a new attorney, and I have referred such people to more experienced counsel on several occasions, just to be safe.

If you do decide to accept him or her as a client though, it is important to lay some ground rules for your representation. I have found that a thorough representation outline attached to your client fee agreement, which explains your role as an attorney, helps potential clients understand that you cannot abuse the other party or play dirty tricks to get what you want from them. Attorneys are not hired thugs in suits. Also, retaining an attorney is no guarantee that the client will win his or her case; only that he or she will have adequate representation in court. Having no tolerance for the defamation of fellow bar members also sends the message that you understand your client’s frustrations, but you are not interested in his crusade for revenge, only in addressing his underlying legal problems. Unless the client alleges some serious, demonstrable malpractice, I explain to him that no attorney is perfect, and that if he is truly unhappy with an outcome, it is often best simply to find another attorney. Threatening to sue your former attorney or badmouthing the attorney to others is not the best way to approach the situation. Serious allegations can be referred to the bar or Disciplinary Board, but not before speaking with the alleged offender to gauge the situation, and certainly not for petty complaints or fee disputes.

Another example of a potential problem client is the “wealthy” civil litigant. Clients who show up to a consultation with a stack of cash or an open checkbook, seeming just a bit too eager, are usually carrying some extra baggage that could seriously complicate your working relationship. Now, it’s always great when clients are conscientious in remitting payment and making sure you have the resources you need to pursue their case in court. No attorney likes running out of money when he or she still has three depositions to take and an expert witness to hire. However, it is important to get enough background about the case to make sure you don’t have a potential nightmare on your hands. I cringe when I’ve taken a chance on this sort of client, only to have him refuse to pay more money when the case takes longer than anticipated, or worse yet, when he insists that the $3,000 he paid you should have been enough to carry the case through a complicated six-month trial when all he hired you for was a two-day hearing and a settlement conference. This is where a good representation outline comes in handy again. Explaining to a client in writing the potential costs of a lawsuit helps clarify the situa-

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PART III: ETHICAL CONSIDERATIONS FOR PENNSYLVANIA ATTORNEYS USING COVERT ADVERTISING ON SOCIAL NETWORKING SITES

By Drew Gray Miller

Editor’s note: This is the last in a three-part series. Part 2 can be found in the Summer 2011 issue.

Many companies are starting to reap the benefits of using social networking sites to covertly advertise. A recent example was the ingenious social media campaign from Old Spice that ran during this past July on YouTube. In the videos, the Old Spice Man would answer live questions from people contacting him via Twitter. The 150-plus videos promoting Old Spice immediately went viral and are still being shared to this day. It has since become one of the most successful social media advertising campaigns in history.

This final section will describe how to market yourself using Twitter and YouTube and will conclude by examining potential ethical considerations arising from the use of social networking sites to advertise.

Twitter

Twitter not only offers a way for people to follow their favorite celebrities, it also offers businesses a way to advertise their products and services to followers. In most cases, followers of an attorney on Twitter will only see “tweets” by that attorney. Thus, an attorney could establish a Twitter page that makes him/her look like an extremely successful attorney who wins every case.

Most would agree this type of marketing is not unethical. But what about a tweet like this from an attorney:

- <Attorney>:
  - RT @ <Famous Pittsburgh Steeler>:@ <attorney> You are the BEST attorney in Pittsburgh!

Suppose further that below that was an earlier tweet by the attorney that says:

- <Attorney>:
  - Won yet another case. Sometimes I think it’s impossible for me to lose.

Remember, everyone in America is able to see this. Some may argue that this could lead a reasonable person to form an unjustified expectation that the attorney is the best in Pittsburgh and will win that person’s case, thus potentially violating Rule 7.1 of the Pennsylvania Rules of Professional Conduct. In addition, since the attorney publicized the post by the famous Pittsburgh Steeler, it could also be argued that this attorney is in violation of Rule 7.2(d), prohibiting endorsements by a celebrity or public figure. So far, this type of communication has not been deemed “advertising,” and it is therefore highly doubtful that this would be an example of an ethical violation.

YouTube

YouTube offers its users the ability to create a profile showing the world what videos that user has uploaded and allows other users the opportunity to subscribe to a “channel” so that they can receive notifications when a channel uploads a new video. If done correctly, YouTube could be the most cost-effective way to disseminate information in a video format.

Attorneys who are already familiar with traditional and expensive television advertising have also made the crossover to the free and effective YouTube. In fact, Pittsburgh’s own Edgar Snyder – the successful and ubiquitous personal injury attorney (and vice chair of the Pennsylvania Bar Association’s Task Force on Lawyer Advertising) – currently has approximately 210 commercial videos on his channel.

Although YouTube provides a unique way for attorneys to market their abilities, it also provides an opportunity for attorneys to inadvertently circumvent the Rules of Professional Conduct in regards to advertising. Video blogging is the newest way for people to communicate their ideas or talents to the whole world. At what point does bragging about your accomplishments become a form of advertising?

Is it ethical for an attorney to create a video blog talking about his recent successful court case that caused his client to win a million dollars and retire young? This may sound farfetched, but law firms are already doing this.

The New York law firm, Frekhtman & Associates, has one YouTube video with almost 12,000 views. The video begins with the attorney saying:

Our law firm has received some of the top record-setting verdicts in the history of New York State. We received a verdict of $69,225,000 in a car accident case; a few years later, we received a $30 million verdict in a medical malpractice case. We have our verdicts and settlements link right on our homepage, and you can take a look at some of the cases that we’ve been involved in and some of the results that we’ve achieved.

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In the comments section below the video, the highest-rated came from *jimwilson8*: “It could be a traumatic experience for anyone who has suffered personal injury...Frekhtman and Associate’s outstanding track record speaks for itself...and they provide legal consultation free of cost.” Could “jimwilson8” be a made-up user name by the law firm disguised to look like a former client? Is this considered a testimonial? Is this considered advertising? Are tactics like this unethical? The bars of each state may be forced to address this issue in the near future.

**The Implications**

To illustrate how the Internet and social networking sites could give young Pennsylvania attorneys a competitive edge, assume that a Pittsburgh-based attorney named Stefano Chiado created a professional-looking website: ChiadoLawFirm.com. He hires an article marketing company for under $1,000 to write articles and blogs about him being the best real estate attorney in Pittsburgh, when in reality he knows very little about real estate and is far from being an expert. After joining LinkedIn, he solicits 10 of his close friends to recommend him, and they do. Stefano creates a Facebook page dedicated to the Chiado Law Firm, talking about his recent legal accomplishments and acquires 2,000 fans. During his free time, he works to create YouTube video blogs talking about his success in court.

Assume further that a home.builder, specializing in single-family homes, decides to now develop commercial real estate and determines he needs an exceptional real estate attorney. The homebuilder goes to Google and does a search for “best real estate attorney in Pittsburgh.” This search would return ChiadoLawFirm.com as the first suggestion. The homebuilder then clicks on the website and learns about Stefano Chiado while viewing a number of positive testimonials from past clients. If the homebuilder went back to Google and typed “Stefano Chiado” into the search engine, it would produce results linking to his law firm’s Facebook page of 2,000 fans and numerous testimonials, a LinkedIn page showing that 10 people in the profession recommend him, numerous blogs and articles all touting Stefano’s expertise, and a YouTube channel where Stefano has kept several video blogs describing his legal accomplishments. Stefano Chiado’s hard work of utilizing social networks has caused him to acquire a wealthy new client. Unfortunately for the homebuilder, Stefano Chiado is not, as he thought, the best real estate attorney in Pittsburgh.

It is somewhat interesting that some of the aforementioned tactics in this series would most likely be deemed unethical in Florida, but good business sense in Pennsylvania. Utilizing social networks in order to advertise your legal skills is an issue the Pennsylvania bar will most likely have to address in the near future in order to determine whether such actions are ethical. While it is impossible to say with any great certainty whether these techniques are truly unethical, one fact remains true: Using social networks to covertly advertise legal services is an inexpensive and effective way for young lawyers to have a competitive edge over their older counterparts.

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**Covert Advertising**

*Continued from Page 10*

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The Young Lawyer in 2012: Where Are the Opportunities Looking Ahead?

As I provide career consultations to young lawyers, from recent graduates to newly-minted partners, I am often asked if opportunities have changed since the onset of the economic recession in late 2007. The answer is an unqualified — yes. The practice of law might well have transitioned in this decade anyway, but has been accelerated by the 5-year-old stagnant economy, with erosion of positions throughout the profession, from law firms to in-house corporate to government jobs.

For years, upon graduation, most young lawyers have pursued traditional avenues in the tightly focused “triad” noted above, with a smaller percentage pursuing not-for-profit or public service/social enterprise jobs.

Some associates with three to five years’ experience as large firm refugees have chosen to skip the partner track for a shingle on their own, or with colleagues, recognizing their entrepreneurship spirit. Others have done it for a lifestyle choice more than financial remuneration. In addition, a recent survey by CISCO, the giant international telecommunications company, reflected that flexibility may be more important than compensation. The survey stated that to employ and retain professionals, including lawyers, telecommuting options need to be considered as part of some package practices.

As we move through this decade, a significant amount of opportunities for young lawyers will be positions that did not exist in the last decade. Aside from legal and social skills, many will require entrepreneur and business know-how.

Although there will still be a certain percentage of young lawyers under 40 in lockstep up the ladder to partnership, firms in this decade will not require as many practitioners as they did prior to 2007. Increased management efficiencies of scale, outsourcing, increased client billing oversight, developing legal technology and contract employment will result in less permanent opportunities.

The catalyst for change will result in YLD practitioners pursuing positions with legal service firms and related businesses, the fastest growing sectors of the profession. They include names such as Novus Law, E-Law, Legal Zoom, Practical Law, Cybersettler, Pange3 and Mindcrest. These and other growing business enterprises do work that previously may have been done by firms themselves.

This paradigm shift is probably here to stay, impacting law firms’ productivity, efficiencies and ultimately profitability. After all, besides serving clients, law firms are a business run by equity partners.

Those of you who have or will look outside the traditional areas of employment, rather than viewed through “tunnel vision,” cannot be risk averse in today’s market. The best opportunities may be those that scare us the most. I started my private practice in career counseling at the height of massive inflation; Microsoft did so during a recession, and the late founder and CEO of Apple, Steve Jobs noted his success was due in large part to “adapting to the times and taking risks.”

An entry-level position after law school or an uninspiring job you might be in now is not a permanent career ending. I have found in counseling lawyers over these 30 years that “things don’t always fit neatly together in life.” The next opportunity may utilize your developing client and relationship skills, analytical ability, initiative, interests and enthusiasm for a career choice you might well not have thought about or considered while in law school!

In the challenging employment environment ahead, it does pay to also “think outside the box” of traditional choices, recognizing that achieving internal gratification may be as important to you in the long run as financial/external gratification.

David E. Behrend, M.ED., director of Career Planning Services for Lawyers in Ardmore (www.lawcareercounseling.com), serves the career needs of Pennsylvania lawyers going through career or employment transitions. To e-mail him questions for “Career Corner,” e-mail him at yld@pabar.org.
Survival Tactics for Law Students — The Specifics

By Angie M. Kandil

Refrain from cramming reading assignments the week before the exam. Outline, outline, outline. Ask questions. Be prepared for class. Beware of the dreaded Socratic Method. Does this sound familiar? The truth is, most law schools will provide you with the same generalized advice. While this effort is undoubtedly commendable, it may prove cumbersome to implement simply because they lack specificity. Law students are aware of what they should be doing, and yet they... don’t. The following is a compilation of some “survival tactics” that former and current law students have used and achieved fruitful results.

“The Combo”

There are three unavoidable aspects of law school: intimidating professors, mind-boggling course material and the legendary Socratic Method. They are literally inescapable. Here is a student-designed method that will combine these three aspects into a cumulative, rewarding effort.

Whether you adore them or sputter indignantly at their differing stances on issues, professors are your key to learning the material. Granted, some professors, albeit knowledgeable and experienced, simply do not know how to teach. Some professors read from a power point presentation, without any plausible explanations. Some professors will mix up critical terminology. And some professors, in an effort to get students to think independently, will simply pose endless hypotheticals during a class period, never to answer them, leaving you more confused than ever. So what can a student do to make the most of your mounting loans?

Well, while some professors may prove to be ineffective educators, they are attorneys, so they are able to answer questions. You incessantly hear this from professors: “Come to my office hours.” Still, many students choose not to. They naively believe that they can teach themselves. If that were possible, then why would anyone need to attend law school? The enormity of this error in judgment is irreparable. Students feel if they do not understand in the classroom, what is to change during office hours? The answer is simple: Your questions and your tenacity in getting your answers will not only yield a better understanding of the material, but even respect from your professor. Write down any questions you may have and go to your professor with that list. And do not leave until you have those questions answered.

By forcing yourself to go to office hours, you will have the opportunity to speak one-on-one with your professor. By conversing with your professor outside of the classroom setting, that intimidation barrier may very well be dissolved. Furthermore, you will also obtain a stronger grasp on the material. These two accomplishments will help with the dreaded, and perhaps even more intimidating than final examinations, “The Socratic Method.”

Nothing makes students squirm and fidget in their seats quite like getting called on, then grilled for what seems like hours by their larger-than-life professors. Students will freeze, sweat and/or stutter incoherently, among other uncomfortable reactions. A primary cause of this dread of hearing your name called is because of the intimidating professor darting question after question at you. If this is the first time you are actually engaging in active dialogue with your professor, the prospect is daunting. However, the pressure could be ameliorated if you and your professor have already established a rapport. This could be established by, and here is “The Combo,” attending his office hours and having discussions based on the concepts covered in class. You will feel more at ease answering his questions and discussing the material simply because you have already done so previously.

In the Classroom

Everyone knows attending class is imperative. It is not dispositive, however, of achieving competitive grades. So what steps can a law student partake in to get the most out of attending class?

Sit in the front. Sitting in the front poses many benefits. You are less likely to surf the web or text, because, well, the professor will take notice, and the consequences could be embarrassing and unpleasant, suffice it to say. Sitting in the front will deter you from multi-tasking, aka, become distracted and missing key points during lecture. In addition, you will not get distracted by others’ surfing the web. The student scrolling through Facebook pictures in front of you could understandably be more tempting than paying attention to your professor drone on and on about the always exciting 12 (b) (6) Motion to Dismiss. Do yourself a favor, and make a beeline for the front of the classroom.

Keep your cell phones in your car and turn Internet connection off. Eliminate the option of you, in a moment of weakness or boredom, grabbing your phone or shopping online. This will force you to pay attention while in class without the typical distractions.

Handwrite your notes. For some, this idea is ludicrous. Handwriting notes can be tiresome, illegible and outdated. However, think of the process. In class, you are unlikely to write every single thing that is said, as your fingers will cramp. Hence, you will write the main points. After class, spend a half-hour typing up those handwritten notes and fill in the gaps using your own words. You will avoid the stenographer effect and reinforce the material you learned in class. While this practice could be time-consuming in the beginning, it is very effective.
10 Must-Answer Questions When Drafting a Will

By Lindsey Bierzonski

1. Does your client have a prior will?

If your client has a previous will and only wants to make a minor change, such as whom the executor will be, your client probably only needs a codicil and not an entirely new will. If your client wants to change the distribution of the estate or make other major changes, you should revise the entire will.

2. Are there tax implications to your client’s estate?

Most people do not know that probate, non-probate and jointly-held assets are all included in the gross value of the estate for tax purposes. This means the value of life insurance policies are included. Currently the federal government taxes estates that total $5 million at a 35 percent rate, although this amount may be modified again within a few years. Also, your state may tax estates at a lower amount, or it may tax the inheritances to the beneficiaries instead of the estate itself. You may want to consider some tax planning by keeping estate distributions within the family. Note that clients may be able to leave an unlimited amount of property to a spouse tax-free with limited tax on distributions to close family members, but this may not be the best tactic for your client.

3. Should your client be making inter vivos gifts?

Your client may be able to diminish some of his or her taxable estate by making gifts to certain people or organizations during his or her lifetime. Despite recent changes in legislation affecting estates, the federal gift tax is in effect at 35 percent on any amounts gifted over $13,000 annually or $5 million over a lifetime.

4. Does your client need a trust?

Most clients hear trusts are beneficial and request them but do not understand what they are. Trusts do not usually avoid taxes, unless you properly set up an irrevocable life insurance trust, but they do avoid the probate process and may be beneficial in some circumstances. The primary benefit of a trust is to separate the management from the beneficiary of the property such that one person manages assets or money for another person. If your client has minor children, a disabled child, an unmarried life partner, a pet to care for or wants to disinherit a potentially troublesome family member, your client may be benefitted by putting his or her estate into a trust.

5. Will your client have any significant life events in the near future?

If your client plans to have a child, marriage, divorce or other significant life event in the near future, you should take that event into consideration when drafting the will. Depending on the situation, holding off on drafting the will until after the life event occurs may benefit your client. Certain provisions, such as disinheriting an unborn child, will simply not be enforced by a court. Also, make sure your client understands overall how significant life events can affect his or her will in the future and when the client should update the will.

6. Does your client need a power of attorney?

The argument can be made that every client should have one, but if your client seems especially susceptible to vulnerability or medical handicaps as the client ages, you should strongly encourage your client to provide a trusted individual with a power of attorney to manage finances and assets. Powers of attorney can be written to be as broad or narrow as the client directs, for example to include or avoid certain accounts or assets, and can be revoked at any time as the client desires.

7. Does your client have properties located out of state or the jurisdiction?

Out-of-state properties must go through not only the probate process in the client’s home jurisdiction but also the court process in the other jurisdiction, which is commonly called ancillary probate, and will have the added hassle of additional filings and fees. Also, keep in mind that real estate is distributed based upon the laws in which it is located. Common ways to avoid the ancillary probate include titling the property jointly with another individual or setting up a living trust.

8. Does your client understand the difference between probate and non-probate assets?

Both sets of assets will be included in the estate for tax purposes. However, only probate assets, those passing under the will, must pass the court’s review for distribution purposes. Non-probate assets usually include life insurance, joint bank accounts, other jointly held property, TOD and POD assets and accounts, and assets held by tenancies by the entireties.

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Exam Time

Stressful is an understatement when describing exam time. There is really nothing that one can do to completely eliminate the stress, except to sleep until exam period is over, which is not really an option. There are certain ways a student can get the most out of exam preparation time and be more confident on test day.

First, explain to friends, family, significant others and anyone else whom you are in regular contact with that after Thanksgiving, you will only be available when you are able to be available. This will be the time you are studying and in high stress mode. Having any contact with unpleasant conversations or learning about a negative event will affect your studying. Keep your phone conversations limited: “Hi. I’m studying. Have a great day.” Explain once exams are over, you will return to your normal self.

Similarly, turn your cell phones off the night before you have an exam. Do not talk to anyone in case they tell you anything remotely unpleasant. You want to go to sleep with your outline on the brain. Keep the negative news at a distance by keeping your phone off the night before.

Study groups. Some students perform much better by studying individually, while others prefer study groups. Here is some advice about study groups. Keep them small. Too many will result in chaos. Also, be clear about what your study group will be covering. If you want to use study group time to hash out complex fact patterns, then your study group members should already have their elements established. You do not want to spend the entire time going over the elements of a rule when everyone should already have it. This would be a waste of your time.

Treat Yourself — Each Day

It is easy to get feelings of depression when your days consist of the same activities, alas devoid of any “spices.” That is precisely the reason to treat yourself every single day. This does not necessarily mean go into the city every single night, which is probably not the smartest idea. The key is to have a small treat every single day. Have a show that you tune into. If you enjoy magazines, go to a local Barnes and Noble near your school when you’ve completed your assignments, and treat yourself to a nice drink and read some tabloids. Go to the gym for a workout class to help clear your head. Buy yourself a bag of cookies after a rough day. Whatever it is that would make you look forward to the end of the day, do it. You will work more efficiently throughout the day so that you can finally reward yourself at the end. Law school is a difficult and trying experience, each day. Reward yourself. You’ve earned it.

Survival Tactics for Law Students

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9. Where should your client keep the will?

You should encourage the client to keep the will in a fireproof safe, safety deposit box or other filing cabinet where important documents are saved. Your client should keep it easily accessible to the appointed executor. You may encourage clients to provide their appointed executor with a copy of the will, which goes over pretty well as long as the executor holds it in confidence and the client keeps the same executor until death.

10. When should the client update the will?

Clients should be strongly encouraged to update their wills after any significant life events, which include marriage, divorce, birth or adoption of children, the attainment of the age of majority of children, and any other changes that would affect the client’s desired distribution of the estate. ■

Lindsey Bierzonski graduated from Widener Law School in Harrisburg and joined the Artell Law Group as an associate in 2010. She practices primarily in litigation, labor and employment law and corporate law. While at Widener, she was awarded a certificate of achievement in business planning. In her free time, she has volunteered to provide free legal services in a Wills for Heroes program, has returned to Widener to judge the annual Hugh B. Pearce Competition, and was a mentor in the Pennsylvania Bar Association’s Bar Passage Program.

Angie Kandil is a second-year law student at Widener University School of Law-Delaware. She is a member of Phi Alpha Delta Law School Fraternity. She graduated from Rutgers University in 2009 with a double major in journalism and media studies and political science.
As a law clerk I deal with lawyers of every experience level on a daily basis, and I see lawyers of every experience level make mistakes. Why do they make mistakes? It could be because: they are new and just don't know yet; they have become complacent over their years of practicing; they have always done it this way and no one has told them any differently; or they are just too busy to double-check everything and mistakes get through. This article will probably not teach you anything that you do not already instinctively know, but it might refresh your memory.

1. Respect the Court.
   Of course, as attorneys, we all know to respect the court. It is something that is taught in every law school, but what does it mean? It means:
   - When the judge personally takes the time to call you – call the judge back. Opinions of people are formed by the littlest thing, and whether it affects your case or not, you want the judge to have a high opinion of you.
   - When the law clerk calls you – call them back. The law clerk is likely calling you for one of two things: 1) He/she has a message from the judge or 2) He/she wants to give you a heads-up before taking something to the judge – maybe a chance to correct your mistake. It is in your best interest to see what the law clerk wants. Creating an ally in the law clerk is a good idea; they are great sources of knowledge on both legal and procedural issues. Additionally, guess who is going to know if you don’t return the calls from the law clerk – the judge! Respecting the judge’s staff is respecting the judge.

2. Know the rules.
   It is amazing to me how many attorneys either do not know or follow the local rules, which leads to many non-compliance orders and wasted time for the court, the client, and the attorney.
   Additionally, it is important to be familiar with your rules of civil/criminal procedure. Arguably the divorce procedure, especially consent divorces, is one of the easier things an attorney will do, and there is no reason not to get it right on the first try. That being said, on a daily basis I send “rejection letters” to attorneys, highlighting what needs to be corrected in order to proceed. Why is this? My only idea is that because it is so easy, we take it for granted. You know the big case that is really hard and in-depth, you spend the time making sure everything is perfect. With the “easy” stuff, you pass it off to get finished, sign your name and never give it a thought. Therein lies your mistake. To your client, every claim/complaint is important, and the court is taking notice of who is continuously not getting the procedures correct.

3. Respect your work.
   If you respect your work and your workplace, others will respect you. When you are respected, people are more willing to go the extra mile for you, and it helps your reputation. People who work in courthouses have friends, friends with legal issues, and we get asked what attorney they should use; I might not be able to tell you which attorney you should use, but I can tell you which attorney not to use! Law is still a big reputation and word-of-mouth business – a bad reputation equals bad or no business.

4. Know the law.
   The court knows the law, your opposition knows the law, and so should you. The other day I heard a very good argument, and based on the argument there was no way this client was going to lose. If only the attorney was arguing the right standard. Court is not the bar exam, where, if you can’t remember the exact rule, you can make it up and then use the facts to support your new rule. Do your research; know the standards and the applicable cases to argue.

While this article is nothing that

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**Mediation – The Future of Family Law?**

By Andrea M. Singley

For young attorneys coming out of law school and entering the field of family law, an adversarial system is no longer considered the only, or most effective, means of practice. A look at family law practice in many Pennsylvania jurisdictions shows that conciliation and mediation models are becoming increasingly common in addressing custody and divorce litigation. While mediation was initially slow to catch on in Pennsylvania, the concept, along with collaborative law and other types of alternative dispute resolution, provides a way to handle cases that fosters healthier communication between the parties involved.

In the early 1980s, mediation began to take root nationally as a dispute resolution method for divorce matters and was quickly expanded to other fields of law. Bar associations began forming committees to pursue alternative forms of dispute resolution. Several states developed statewide offices devoted to mediation, and judges began referring cases to be mediated as opposed to traditional litigation.

However, in Pennsylvania, statewide acceptance of the practice was much slower. This hesitance was seen to have resulted due to several issues; first, Pennsylvania had no centralized office or agency to endorse mediation. Also, a lack of funding for mediation programs has limited its use within the state. In a 2003 Report of Focus Groups conducted by the Pennsylvania Bar Association, the Allegheny County Bar Association and the Pennsylvania Council of Mediators, the focus groups surveyed indicated that they felt Pennsylvania was a less-friendly mediation state than many others. Some members of the focus groups felt that the lack of support for mediation was the result of a resistance within the Pennsylvania court systems to embrace new practices and ideas.

The 2003 focus groups also varied greatly on what they felt “institutionalized mediation” would look like. Ideas ranged from a judicial system in which all cases go to mandatory mediation prior to proceeding to the adversarial litigation process, to a statewide mediation office where mediation matters would be organized and funded. This office would handle all aspects of the mediation process, including the training and certification of facilitators and oversight issues. The focus groups further indicated that a major roadblock facing the growth of mediation is the fact that many attorneys and members of the public don’t understand the mediation process and its benefits. The focus groups made a number of recommendations for the expansion and support of the mediation process, such as seeking support from the Pennsylvania Supreme Court to explore implementing mediation practices in the court system.

In Pennsylvania, mediation programs are authorized by Title 23, Chapter 39, of the Pennsylvania Statutes. This section gives courts the authority to establish mediation programs for divorce or custody disputes, directing courts to establish local rules to administer programs and directing the Pennsylvania Supreme Court to develop model guidelines for such programs. Since the passage of this statute in 1996, many jurisdictions within Pennsylvania have adopted mandatory mediation or conciliation programs for custody disputes in particular. Such programs cut down on the burden of the courts to hear such cases and gives parties an effort to reach an agreement, with assistance, that they could not come to on their own.

Why is mediation growing as an alternative practice to the regular adversarial system? Unlike standard litigation or arbitration, mediation allows parties to make their own decisions and assist in crafting an agreement. Largely, both divorce and child custody matters involve parties whose communication level has dwindled and is mostly negative by the time the matter reaches litigation. Mediators can assist the parties in changing their interactions to make decisions that are constructive and positive for the family. In custody matters especially, a change in the communication pattern between the parents can lead to better future communication that will benefit the children involved. In the alternative, experienced family lawyers can attest that adversarial family law proceedings only work to continue the negative communication between parties, who often engage in “mud-slinging” when custody or divorce matters proceed to a hearing. According to the Pennsylvania Council of Mediators, the concept of mediation is based on the belief that “the parties themselves are best able to define the issues and generate options leading to a solution that responds to their own needs.” ([www.pamediation.org](http://www.pamediation.org))

While there is not a licensing process for mediators in Pennsylvania, the Pennsylvania Council of Mediators recommends the following training to become a credentialed basic mediator:

- Mediation training consisting of a minimum of 22 hours of substantive content, skill building and role playing;
- Training including information gathering, relationship and interaction skills, communication skills, problem-solving, decision-making, agreement formalization and ethics;
- Participation as a co-mediator, along with a credentialed mediator for a minimum of six cases.

Mediation training is available through numerous organizations all

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The learning curve for a new attorney is steep. Steep to the point that there are days (or nights, usually around 2 a.m. for me) when panic sets in, and you are positive that you have slipped down that steep curve and won’t be able to pull yourself back out. I was admitted to practice in April and have had my shares of those moments. My gut tells me, the longer I practice, the worse it will get! Obviously, I’m new to this, and many of you reading this know far more than I do. But some of things I have figured out since April seem so obvious that no one ever says them, so I thought I would state the seemingly obvious things (that took me awhile to catch onto).

First, one thing that no one ever mentioned in law school is that, apparently, time sped up on the day I started practicing. Here’s how it goes: A complaint comes in, and you have 20 days to file a response. Twenty days means 20 actual days, not business days. In that time (at a minimum), you need to talk to your client, review the complaint with him, draft an answer, get the answer verified, and then you can file the answer. Twenty days is gone in the blink of an eye. In practice courses in law school, 20 days sounds as if it’s plenty of time. But, in reality, the time pressures of each case build up and can quickly become unwieldy.

This may sound like complaining on my part. That could not be further from the truth; I enjoy my job and am lucky to have the opportunity to be busy. That said, busy is busy, and work needs to get done. So, while I haven’t totally figured out how to prioritize everything on my desk, at least I know what is on my desk, if it’s on my calendar. It almost seems too simple to be advice — to use your calendar. But I don’t just mean to indicate meetings and court appearances, note everything: assignments, deadlines for you and deadlines for the opposing side in your case. The best thing I have learned is to do this quickly; don’t wait until tomorrow. Tomorrow, you will not remember what you were going to put on your calendar yesterday morning. For instance, when you talk to opposing counsel and give him five extra days to answer discovery, diary that deadline. You think you will remember when you are on the phone, but as soon as you hang up, the phone rings again, and you get four emails. By the time you remember to calendar that five-day deadline, 10 days have passed. While this isn’t necessarily going to make or break your case, it does affect your case. Most likely, you gave a certain extension of time for a reason. Don’t let days and weeks pass before you realize it. Because I’m telling you, they do.

The second piece of advice, again, seems obvious, but requires more work on your part, so it isn’t always easy to follow through. Don’t ask a question of someone else — client, partner, associate, paralegal, anyone — until you have checked into what you can. Try to anticipate the questions they will have of you. I don’t mean not to ask questions; that’s ridiculous. I have more questions on a daily basis then I ever thought possible. Just remember that everyone’s time is valuable, and respect that. I have yet to encounter someone in my firm who will not help me figure out the best way to handle a situation or answer one of the countless questions I have in a day. But I try to make sure that I can provide any answers I need in the discussion. For example, in civil litigation, it’s not unusual to have a question that directly or indirectly involves the Rules of Civil Procedure. As straightforward as the rules may sound, there is often a difference in the statement of the rule and the rule in practice. My rule: Before I go and ask any question, read the rules! I don’t rely on what I think I remember or what I think I read last week. I read the rule and the notes every time. If a rule refers me to another rule, yes, I read that too. Many times, when I finish my review, I have answered my own question. For those times that I do not, when I talk my question over with someone else, and his/her first question is, “What does the rule say?”, I know the answer.

Finally, I’ve learned that the pressure of law school was nothing compared to actual practice. The jump from law school hypothetical to the actual practice is daunting. Nothing quite prepares you for that change. This is not a job that you leave at work. You will take files home, get to your desk earlier than you could ever imagine, and learn more, in a shorter period of time, than you could ever imagine. The learning curve is certainly steep for a new attorney. Maybe you came out of law school knowing these things of law school knowing these things that took me months to figure out. If so, I’m jealous. If not, hopefully I’ve helped spare you some difficult moments.

Colleen Preston earned her J.D. from Widener University School of Law in December 2010 and was admitted to the Pennsylvania and New Jersey bars in early 2011. Preston’s practice has concentrated in the litigation department, focusing on loan workout and civil litigation at Buckley, Brion, McGuire, Morris & Sommer LLP.
Beggars Can (and Should) be Choosers

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tion beforehand and denies him or her a common complaint later on. I advise potential clients that it makes no sense to “spend a dollar to save a dime” and that assessing the potential risks and costs to them in court beforehand is an important first step in representation. It can also help them look at their legal options (and their expectations of you as their attorney) more realistically.

Lastly, clients with a history of bad debts can negatively impact your own bottom line and spell disaster for your firm. Many young solo attorneys overlook this fact to their detriment. While I strongly encourage fellow attorneys to serve disadvantaged clients in their communities at no charge, and bars across the country are now making pro bono service an annual requirement for licensing, it is important to remember that a law practice is a business. Checking a client’s credit before agreeing to represent him seems a bit extreme, but if he tells you he skipped out on his last attorney and still owes her a lot of money, you might want some further information about your client’s ability to pay you, or a large payment up front, against which he will be billed. I have seen many cases in which an attorney works diligently for a client and wins the case, only to have his or her entire bill written off in the client’s post-case bankruptcy, costing him or her valuable time and lost income.

Making Smart Client Choices

Ultimately, choosing clients carefully can help minimize the risks you are exposed to as a young lawyer and can better enable you to take calculated chances on clients you aren’t sure about or are willing to help pro bono. Many attorneys use a “gut test” to help them choose a potential client, and while this method may seem subjective, when combined with some common sense and an abundance of caution, it can work well to avoid damage to your reputation and business. If you do find yourself on the other side of a troubled client relationship, learn from your mistakes and apply those lessons to your future choices.

Jacob R. Lauser is licensed to practice in Pennsylvania, Nebraska, and Washington, D.C., and maintains a solo general practice office in Lancaster County. He graduated in 2009 from Appalachian School of Law in Grundy, Va., where he earned several distinctions for his leadership in various academic and community service organizations. He currently lives in California, where he is on sabbatical with his wife and daughter studying community property law and law practice management. He has written several articles on judicial accountability and energy and mineral law and is an active member of the Pennsylvania Bar Association.

Mediation – The Future of Family Law?

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over Pennsylvania. Along with basic mediation training, specialized training is available in various areas of law, including divorce, custody and workplace/employment law.

For young attorneys beginning to practice in the field of family law, mediation provides an alternative method for resolving disputes that can often significantly reduce cost to the client and reduce the time spent by attorneys on litigation. The process also allows clients to take ownership of decisions that affect their families – to have a say in decisions, instead of walking away from the judicial process with a sense that personal issues had been placed solely in the hands of a third party. While mediation may not be appropriate in every case, a family law attorney can use the process as a valuable tool in advancing a family law practice.

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Advice from a Law Clerk

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you have not heard or read before, these common-sense mistakes are being made, if not daily, weekly, by new and old attorneys. And because we are attorneys, my disclaimer follows. This article in no way is representative of the thoughts or feelings of the Lycoming County Court of Common Pleas.

Francesca R. Schultz graduated from Widener Law School in Harrisburg in 2010. She is currently a law clerk for Judge Joy Reynolds McCoy of the Lycoming County Court of Common Pleas. While at Widener, she was co-editor-in-chief of the Widener Journal of Law, Economics & Race and was recipient of the Outstanding Service Award and WJLER Outstanding Executive Board Member Award. Schultz is active in her local law association and the PBA. She is currently a regional coordinator for the PBA Statewide Mock Trial Competition.
On Sept. 7, 2011, Pennsylvania’s oil and gas community, an essential employer for young local attorneys, was collectively “rocked” (pun intended) by the Superior Court opinion and order in the case of John E. and Mary Josephine Butler v. Charles Powers Estate et al., William H. Pritchard and Craig L. Pritchard (No. 1795 MDA 2010, 2011 PA Super 198). Through a broad lens, the opinion issued by the Superior Court in the Butler dispute questions whether the “Dunham Rule,” a long-established rule of deed construction developed out of Pennsylvania case law, is applicable to the Marcellus shale and, consequently, the natural gas contained therein.

Under the Dunham Rule, “if, in connection with the conveyance of land, there is a reservation or an exception of ‘minerals’ without any specific mention of natural gas or oil, a presumption, rebuttable in nature, arises that the word ‘minerals’ was not intended by the parties to include natural gas or oil.” Highland v. Commonwealth of Pennsylvania, 161 A.2d 390 (Pa. 1960). This presumption can only be overcome by “clear and convincing evidence that the parties intended that natural gas be included within the term ‘minerals’.” Id. It is the duty of the court then, in interpreting a deed, to determine and bring about what the parties to such a deed intended. In doing so, acknowledgment must be made to the fact that contracting parties have viewed Dunham as instructive in writing deeds for more than a century. To fashion a new version of the longstanding rule could change the original intent of such parties to thousands of deeds. The Butler opinion leaves the door open to do just that.

The Butler case involves an 1881 deed reservation of “one-half of the minerals and Petroleum Oils” within and underlying a 244-acre parcel in Susquehanna County. The Butlers acquired title to the 244-acre tract, subject to the reservation, and subsequently, on July 21, 2009, brought an action to quiet title, claiming ownership of the land in fee simple, and ownership of all minerals and petroleum oils underlying the property by adverse possession. In response to the quiet title action, William H. Pritchard and Craig L. Pritchard, heirs of the Estate of Charles Powers, filed a Declaratory Judgment action, challenging the claim of adverse possession and also requesting that the court declare that the Marcellus shale was included in the 1881 deed reservation of minerals. At odds with the Pritchards’ claim that the 1881 deed reservation included one-half of the natural gas contained within the Marcellus shale, and relying on the Dunham Rule and its progeny, the Court of Common Pleas granted a preliminary objection asserted by the Butlers in the nature of a demurrer and dismissed the Pritchards’ request for declaratory judgment with prejudice. On Feb. 16, 2010, the Pritchards filed a notice of appeal, and the case was sent to the Superior Court of Pennsylvania for review.

The Superior Court did not rule on the merits of the Pritchards’ claim, but reversed and remanded the lower court’s ruling to sustain the preliminary objection of the Butlers, stating that it is not impossible, as a matter of law, that the Pritchards have set forth a valid cause of action based on their claim of ownership of the Marcellus shale. The court further stated that the parties “should have the opportunity to obtain appropriate experts on whether Marcellus shale constitutes a type of mineral such that the gas in it falls within the deed’s reservation.” Here, the Superior Court sought to expand the scope of the analysis of the deed reservation in Butler beyond that of the Dunham Rule, raising numerous questions about the nature of Marcellus shale. Chief among those questions raised were: (i) whether Marcellus shale constitutes a mineral; (ii) whether Marcellus shale gas constitutes the type of conventional natural gas contemplated in the Dunham case and following decisions; and (iii) whether Marcellus shale is similar to coal in that whoever owns the shale, owns the shale gas.1 In developing this final question, the Superior Court likened Butler to the case in US Steel Corp. v. Hoge, 468 A.2d 1380 (Pa. 1983), wherein the Supreme Court noted that the “unconventional”2 “gas found in coal must necessarily belong to the owner of the coal.”

The recent Pennsylvania federal court decision in Hoffman v. Arcelormittal Pristine Resources, Inc., No. 11-cv-0322 (W.D.Pa. May 10, 2011) has addressed at least one of the Superior Court’s questions by asking whether the Marcellus shale, and the gas contained therein, should be differentiated from other natural gas formations. In its 2011 opinion, the court favored the application of Dunham to the Marcellus shale, declaring to rule against Dunham would be “tantamount to an eradication of countless oil and gas estates and leases recorded in the history of this Commonwealth, and would profoundly change the landscape of property law as it has developed over hundreds of years.” Although federal court opinions do not bind state courts, it should be noted, so not to slow the growth of Pennsylvania’s oil and gas community any further, that it is imperative that the state courts view Hoffman as instructive.

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The Effectiveness of Legal Services Programs for the Poor and the Impact of Medical-Legal Partnerships on Health Outcomes

By Shloka Joshi

“Equal justice under law is not merely a caption on the facade of the Supreme Court building, it is perhaps the most inspiring ideal of our society. It is one of the ends for which our entire legal system exists ... it is fundamental that justice should be the same, in substance and availability, without regard to economic status.”

- Lewis Powell Jr.
U.S. Supreme Court Justice (ret.)

Introduction

In the words of Justice Learned Hand, “if we are to keep our democracy, there must be one commandment: thou shalt not ration justice.” Access to legal services is a vital part of the American government system and was considered important enough for the devotion of federal funds beginning in 1964 to allow low-income individuals the opportunity to afford attorneys. Even before 1964, there had been a history of legal aid initiatives to help those in poverty improve their quality of life. Unfortunately, the passage of time has not illustrated a decrease in the legal needs of the poor nor does it indicate that these needs are being addressed by attorneys. Tumultuous economic circumstances can bring to the forefront the plight of the poor. How legal services are provided must reflect the rising number of individuals and families living in poverty.

Assessment of Legal Services Accessible to the Indigent

In 2009, the Legal Services Corporation (LSC) published a comprehensive report analyzing the presence of a “justice gap” in the United States, that the civil-legal needs of low-income people in America outnumbered legal aid lawyers and legal aid programs. Results of the study indicated that 944,376 cases per year were being rejected by the LSC because of insufficient resources. Although the figure is large, it is important to note that those who seek legal aid typically represent only a fraction of those who would benefit from legal help, so this figure may potentially be an understatement of the need for legal services. On average, families were faced with 1.3-3.0 legal issues each year, and not surprisingly, less than one in five legal problems experienced by a low-income family was ever brought to the attention of an attorney, pro bono and private included. The LSC further stated that the ratio of legal aid attorneys to the number of people estimated to be living at 125 percent of poverty or lower was 1:6,415, while the ratio for private attorneys to the general population was 1:429.

Needs are obviously not being met. There may be a better way to allocate resources to ameliorate adverse results associated with a lack of legal representation when necessary. Several factors would need to be addressed when searching for a more effective system: reaching clients before their legal problems escalate out of control, accessing clients who would otherwise fail to seek legal help and providing legal services in a way that establishes a relationship rather than an impersonal, transactional approach (just to identify a few factors). If programs possessing these qualities can be developed and assessed, they should replace the Legal Services Corporation as the primary legal aid model in the United States.

Creating Allies and Advocating for a Better Future: Medical-Legal Partnerships

In 2005, The New Yorker published a cartoon epitomizing the perceived and perhaps existing relationship between doctors and lawyers: “Hippocrates off the record: First, treat no lawyers.” While issues such as medical malpractice have divided doctors and lawyers, it is noteworthy that “both professions have ethical aspirations and legal obligations to provide services to the community and individuals who cannot afford to pay them.”

The concept of a medical-legal partnership (MLP) was first implemented at the Boston Medical Center in 1993. By combining the skill sets of medical professionals and lawyers to treat and teach social determinants of health, professionals were able to ensure that laws impacting health were implemented and enforced, particularly among vulnerable populations. “Common barri-
THE EFFECTIVENESS OF LEGAL SERVICES PROGRAMS

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ers to good health include food and income insecurity, lack of health insurance, inappropriate education or utilities access, poor housing conditions, and lack of personal stability and safety.”10 These barriers undercut the effectiveness of treatment regimens prescribed by physicians to treat strictly medical issues.11 MLPs, by function, use various methods of assessment to identify legal problems faced by families which, with remedies, could not only improve their quality of life, but also have a direct impact on their health and well-being.

Utilizing legal remedies, a doctor-lawyer team may be able to reduce the impacts of social factors and, in turn, alter the health of patients. “Health reform efforts have focused on how to insure the millions of Americans who lack coverage and on improving efficiencies within the healthcare system. However, health is as dependent on social circumstances as it is on health care received.”12 Patients who see a physician on a regular basis are likely to establish a relationship in which the physician is continuously informed of the social factors surrounding the patient. Paired with legal staff, if the social circumstances for a patient change, there may be ways that trained staff may be able to assist an otherwise uninformed patient. For example, parents of a child who is diagnosed with a learning disability have the right to an individualized education plan within a public school. Parents may not know their rights or where to go to find out how they can take charge of the situation. If they go to a regularly scheduled appointment with a primary care provider and express their frustrations, a doctor-lawyer team would easily be able to assess the situation and offer viable solutions.

The Future of Legal Services - In a Perfect World

Because virtually every legal need directly or proximately affects an individual or families’ health, professionals in medicine and law can work together to identify and address legal problems that negatively impact health.13 Everyone has, at some point in his/her life, visited a physician, whether it was for a routine check-up or for a more pressing medical matter. It is very practical to place legal professionals into health care settings because patients have relationships with their physicians and feel comfortable sharing difficulties that they are facing. If these difficulties can be addressed with legal action or even simply though advocacy (or assurance to a patient that there is someone “in their corner”), issues that would otherwise go unnoticed could be resolved.

In a perfect world there would be no shortage of legal aid funding, and no one would be turned away from receiving legal assistance. However, this is not the case and something needs to change. While the effectiveness of LSC services has been debated within the legal sphere, a change in focus would serve our society better.

Conclusion

The law should help protect the indigent where it can be applied. Families and communities with younger means are the easiest to exploit and denigrate by those who have the means and intention. Public benefits are in existence so that low-income individuals or those with a disability can access funds to supplement their cost of living. For many, it is their means of providing food or health insurance. However, not everyone who is eligible for these benefits know they exist and many others do not believe they qualify.

The MLP model, while still relatively new, has shown promise wherever it has been incorporated. It has already begun to receive national attention from the government, American Bar Association and the American Medical Association, among others. If implemented on the coattails of a nationwide primary care system, perhaps those living below the federal poverty guidelines will have greater access and better health outcomes than has ever been possible.

1 http://www.nlada.org/News/Equal_Jus-tice_Quotes
2 http://www.nlada.org/News/Equal_Jus-

Shloka Joshi is a third-year student at Widener University School of Law. She is currently a student within the law school’s Veterans Law Clinic and a legal intern at the Crozer Keystone Health System in Springfield, Pa. At Widener, she is the co-chair of the Widener Law Health Law Society and an active board member Alternative Dispute Resolution Society. She has spent much of her law school career working with the Widener Law Medical Legal Partnership in Chester, Pa., and upon graduation, she hopes pursue a career in health law.
The Stop Online Piracy Act, or SOPA, is currently before the House of Representatives. The bill has been the subject of widespread debate and criticism. If passed, SOPA would essentially authorize the government to block certain websites that are deemed to violate copyright law, thereby protecting the interests of copyright holders.

Copyright protection is of major concern as online piracy has grown increasingly prevalent with the widespread availability of copyrighted material over the Internet. Although the Internet has created a sea of change in terms of the availability of copyrighted material, it is important to keep in mind that this is not the first time the copyright lobby has claimed that we must act immediately to protect their interests.

In the early 1900s the distributors of sheet music demanded an outright ban on the player piano. They claimed this device would make music reproduction so simple that artists wouldn't be able to make a living. Throughout the history of the United States we can see similar reactions by the copyright lobby upon the introduction of such devices as radio, television, the photocopier, cassette tapes, the compact disc and digital music formats. With the introduction and acceptance of every new technology, the copyright industry has claimed that its well-being is in grave danger.

Although there have been criminal penalties in place for violation of copyright law for sometime, if SOPA is passed, the unauthorized streaming of copyrighted material will be a felony. Meaning, websites such as Youtube, Facebook and Google could face major liability for failure to comply with the take-down requirements established in SOPA.

Furthermore, SOPA has even more potentially damaging ramifications in terms of free speech protections. SOPA gives the attorney general the ability to issue court orders to block any website that is deemed to be facilitating the commission of piracy. SOPA even goes as far as to allow for removal of the infringing site from search engines and to prohibit the website's financial service providers, such as Paypal or Visa, from engaging in business with the infringing website.

The real danger is that SOPA not only requires that access to the infringing material be blocked or that access to the infringing portion of the website be blocked, the language of SOPA is so broad that it allows the government to block the site entirely or even erase proof of the sites existence from the face of the Internet.

Internet censorship is commonplace in many countries such as Iran, China, Vietnam and North Korea. However, in the United States we believe in the promotion of free speech and the protection of procedural process. Although SOPA may be well intentioned, the over-reaching language in the bill could pave the way for dangerous censorship of the Internet.

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In early 2010, I volunteered to deploy to Afghanistan and serve as a staff attorney at Combined Joint Interagency Task Force (CJIATF) 435. During my year-long deployment, I had the honor to work on rule of law development with a focus on governance and courts. In this essay, I discuss my observations about the situation in Afghanistan and propose methods by which young Pennsylvania attorneys can help. My proposals apply not only to Afghanistan but to all countries with underdeveloped legal systems.

Ten years after the fall of the Taliban regime, Afghanistan faces many challenges from decades of war and internal strife. As frequently reported in the media and elsewhere, the Afghan people have little confidence in a central government that they perceive to be ineffectual. Sadly, the best young minds eschew public service and seek to emigrate. Of particular concern is the weakness of the legal system. In a mostly agrarian economy, land disputes in southern Afghanistan have been a particularly troubling source of violence.

The Afghan people have historically adjudicated their disputes through one of two distinct systems: an informal justice system and a formal justice system. The informal justice system, which consists of local jirgas (“councils”) composed of male village elders, resolves disputes using local norms and customs. The formal justice system, mostly developed in the mid-20th century, consists of courts, prosecutors and prisons. The Afghan government, however, has never been able to fully integrate the two systems. The Afghan people primarily prefer the informal justice system because they distrust the central government.

For the United States, this reluctance poses serious challenges as the informal justice system may dispense justice in accordance with Taliban norms. As one senior Afghan minister explained to me, the informal justice system undermines the formal justice system. Manifold weaknesses plague the formal justice system, including poor case management and a dearth of minimally qualified attorneys. The corrections system is barely compliant with Afghan law, let alone international law. An Afghan legal official informed me that judges often issue one-line opinions with no analysis. These enormous structural deficiencies can be disheartening to all observers.

A new generation of young Afghan attorneys, unaffected by decades of war, could provide the answer to these challenges. I, therefore, became extremely interested in Afghan legal education, which surprisingly has a rich and vibrant history. Kabul University has two law schools — a Faculty of Shar’ia Law and a Faculty of Law and Political Science. The former teaches Shar’ia Law, while the latter focuses on the secular legal system. Sadly, when I visited them, both schools were in deplorable physical condition. The classrooms hadn’t been painted in decades, and the light fixtures did not work. Computer labs lacked networking equipment, leaving inoperable computers covered in dust. The law students lacked textbooks and basic writing implements.

The deans of both schools described the challenges they faced, including inadequately-educated faculty members and female matriculates who drop out of the Shar’ia school because they are not taught Arabic when young. The chancellor explained that the central government has very little funding for higher education. When I asked him, “What do you need?”, he responded by picking up a pencil, saying, “If you can just give me one pencil, give me one pencil.” I did considerably better and put together a project that renovated classrooms, installed working computer labs with software, and provided paper and pens.

Because of my efforts, Dean Kenneth Holland of Ball State University invited me to speak at a conference on Afghan education. It was the first gathering of its kind, bringing together Afghan educators and American organizations engaged in assistance to Afghan higher education. I left the conference convinced that much more could be done to tap the broader resources available in the United States. While commendable, most efforts with
respect to Afghan legal education lack involvement by American law schools and bar associations. These institutions constitute a vast, untapped resource in assisting rule of law development in Afghanistan and other underdeveloped countries.

Pennsylvania attorneys have a particularly useful heritage to share with Afghan attorneys. Like Afghanistan, colonial Pennsylvania struggled to reconcile the Quaker meeting, a form of informal justice, with the formal colonial government authorized by the English king and the Penn proprietors. The norms of the Quaker meeting house, however, eventually found their way into the early Pennsylvania codes. Indeed, because of this melding of culture and crown, Pennsylvania was at the forefront of the development of American criminal law statutes and penal reform. Our own unique history could be a valuable model for the Afghan people.

Young Pennsylvania attorneys can do a great deal. I propose the following:

1. Be proactive within the Pennsylvania bar:
   Ask the Pennsylvania bar to partner with the Afghan Independent Bar Association and similar institutions in other countries. Engage in dialogues with Afghan law students, many of whom speak English. Modern technology facilitates this valuable global discourse. Not only will you assist a young Afghan attorney, but you will be enriched by the perspective of an ancient culture and noble people. For those who work with Pennsylvania judges, encourage them to correspond with Afghan judges about judicial ethics and decision-making.

2. Organize donations to legal education in the developing world:
   Young attorneys working at large firms should encourage donations or scholarships for young attorneys in developing parts of the world. By studying at law schools in Europe or the United States, future lawyers and government officials from nations such as Afghanistan will be exposed to progressive legal system and create vital proposals for reform.

3. Stay engaged at your law school:
   Some U.S. law schools have formed partnerships with law schools around the world. Encourage your law school to form a partnership, particularly with a law school in underdeveloped countries in Africa and Asia. Building an exchange program where law professors from foreign nations can study here for a year will transform legal education.

4. Follow international affairs:
   Although Afghanistan is on the other side of the world, events there affect each of us here in the United States. Today, a revolution of rising expectations is toppling dictatorships across the Arab world. The opportunities for progress are immense, but the risks of instability are equally as great. We must seize this golden opportunity to transform a dangerous region into stable democracies.

   Young Pennsylvania attorneys can make a substantial difference in Afghanistan and around the world. By empowering a young female prosecutor or future judge, we enable the Afghan people to develop their own Wythes, Marshalls and Cardozos. Without ever leaving your law office, and with minimal time and expense, you can enable other nations to embrace progress and stability.

   In 1963, President Kennedy welcomed the then-king of Afghanistan, Mohammad Zahir Shah, to Washington, D.C, and said: “Even though Afghanistan and the United States are separated by a good many thousands of miles, by history, by culture, by religion, I do think, Your Majesty, that we share one great, overriding, overarching conviction, and that is the strong desire of both of our peoples to maintain their independence, to live in freedom, and to look to the future with hope.” Kennedy added, “It seems to me that it is possible for us to make the world a much smaller place.”

   What Kennedy said then remains true today. It is possible for each of us to make the world a smaller and a more hopeful place, and I encourage you to do so.

Joseph M. Moyer is a lifelong Pennsylvanian. He graduated from Temple University Beasley School of Law and passed the Pennsylvania bar in 2008. He is still a Navy judge advocate and is currently serving as a law clerk at the Navy-Marine Corps Court of Criminal Appeals. His views are entirely his own and do not reflect those of the Department of the Navy.

Joseph M. Moyer (left) is shown with Nasrullah Stanikzai, legal adviser to President Karzai and law professor at Kabul University.
ESSAY

LEGAL SKILLS AND ATTITUDE NEEDED TO ADVANCE YOUR CAREER

By David E. Behrend

This past fall I had the opportunity of being asked to do a workshop in Boston through a Massachusetts State Bar Association affiliate. The topic was “Legal Skills and Attitude Needed to Advance Your Career.”

The group was comprised of displaced/unemployed lawyers, many in their 30s. The workshop gave me greater appreciation and insight into what “confronts” these laid-off lawyers. As we look ahead from 2012 through the decade, where will these lawyers who are “on the outside, looking in” find opportunities utilizing their J.D., skills, knowledge and interest?

Those of you in your 30s and up graduated and, for the most part, pursued positions in the traditional triad of “law firms, in-house corporate or government,” with a limited number going into public service and not for profits.

When starting my Career Planning Services For Lawyers practice many years ago, it took a lot of persistence, patience and perseverance to accomplish what I wanted. Fortunately, I had passion for counseling lawyers and other professionals that were going through an employment or career transition. Besides that, I was filling a need, which in large part is what employment hiring is all about today.

It is fair to say that since the legal recession hit (starting late in 2007 through today), the number of opportunities with the “triad” noted above is becoming less available for the multitude of lawyers pursuing these diminishing positions. Big law, which traditionally was a pyramid for many years, is now forming like a diamond, with many staff attorneys, senior associates and non-equity partners in the middle and fewer lower level associates at one end and limited equity partners at the other end of the diamond. We know that many corporations are now keeping work in-house as much as possible, and one has read of county and state government laying off legal staff.

Some of you will retain positions in the triad, maybe not for 25-30 years, but for a period of time in your career. But ultimately, many may choose to pursue employment opportunities elsewhere — and get increasing gratification from it. I don’t need to tell you the number of JDs I know of and you do too, who utilize their legal background in a different venue. Believe it or not, the outstanding, recently retired baseball manager of the St. Louis Cardinals World Series champion team, which knocked my beloved Phillies out of the playoffs last year, Tony La Russa is a lawyer. Our second eldest son is at The Wharton School of business and is a lawyer. Our second eldest son is at The Wharton School of business and is a lawyer.

What I am saying is that your skills, analytical ability, knowledge and business sense can be utilized outside the big three triad noted. If your “career compass” is stuck, get help. If you are on “cruise control” with your career, it may be time to explore other options.

I explained to the legal group in Boston that while there may not be growth in traditional sectors, due in part to a lack of retirement by older lawyers, greater efficiency, technology, outsourcing, etc., there are opportunities in — legal service firms! Believe it or not, lawyers with some creative thinking, seeing a need to be filled, have started national and even some global services for lawyers. Some of you may have heard of business vendors and legal services firms that provide such: Novis Law, E-Law, Integreon, Legal Zoom.com, Practical Law, Cybersettle, Mindcrest, United Lex and Pangea3.

I am not suggesting any particular business or legal service firm, but I’m mentioning it only to get into the “little grey cells” of the brain to incorporate your thinking and attitude looking ahead. While in your 30s, even 40s, there are opportunities being created if you can view outside the “tunnel vision” that a lot of lawyers possess.

You may be risk averse in today’s market, even with some circumstances beyond your control, but the best opportunities are often the ones that scare you the most. Before starting my own private practice, after a merger put me out on the street at age 38, there was a genuine trepidation about going off on my own. Steve Jobs was not risk averse and constantly adapted to what he saw as filling a need, and he too was fired in 1992 as CEO and founder of Apple; we know the rest of his rejuvenation at the company until his death last fall.

You need to think whether the 2007 recession has been a market cycle or a serious paradigm/pattern shift through the decade. Those who bet against substantial change not occurring are probably betting against the future. ■

David E. Behrend, M.Ed., director of Career Planning Services for Lawyers in Ardmore (www.lawcareercounseling.com), serves the career needs of Pennsylvania lawyers going through career or employment transitions.
The Superior Court’s poorly-timed decision in Butler has clouded, and may depose, a fundamental issue in Pennsylvania real property law as it applies to the Marcellus shale, instilling uncertainty and potentially halting production on lands with mineral reservations like that in Butler. Further, it is likely, due to the procedural posture of Butler, that a final decision to this issue will be long-playing. Such unpredictability cannot be taken lightly, as it could permit countless oil and gas leases, depending on their terms, to expire. However, for now, Pennsylvania’s oil and gas community, including numerous oil and gas companies that have signed leases based on the Dunham Rule, can do little more than wait with bated breath on what is certain to be a precedential conclusion.

1 On the coattails of the Superior Court’s decision, by a Petition for Allowance of Appeal filed with the Supreme Court of Pennsylvania on Oct. 7, 2011, the Butlers have requested immediate Supreme Court review of the Superior Court opinion and order. To date, the Supreme Court has yet to decide if it will grant such a review. However, if the court denies the review at this time, the case is slated to go back to the trial court, and then probably on appeal to the Pennsylvania Superior or Supreme Court.

2 Unconventional gas is gas which is highly imbedded in the rock, rather than in a concentrated pocket over oil or water. Common types of unconventional gas are deposits in shale (“shale gas”), sandstone (“tight gas”) or in coal (“coalbed methane”).

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Hershey Bears hockey game at the Giant Center on Dec. 18 in Hershey, Pa.

Skate-A-Thon on Nov. 29 at The Rink at PPG Place in Pittsburgh.
VOLUNTEERISM: Zone 1

Members of PBA YLD Zone 1 teamed up with students at Temple University Beasley School of Law to collect donations for Toys for Tots this past holiday season.

Phil Yoon, Zone 1 co-chair, said this about the volunteer effort: “I think we can call the toy drive a big success. Temple Law School and I delivered many bags of toys to a Philadelphia firehouse for Toys for Tots, and the firemen were clearly overwhelmed with gratefulness.

“(Above) are some pictures, first of some of the Temple Law students involved in the collection with the toys, and then of my delivering the toys to the firehouse on Broad and Fitzwater Streets in Philadelphia. Many, MANY thanks to Meredith Galto, director of student affairs, and Lauren Fitzgerald, 2L and small events coordinator for the Student Public Interest Network, for all of their help! Toys for Tots in Philadelphia was suffering from a significant shortage in donations this year, so their efforts, along with those of the Temple Law community, made a huge impact.”

CALLING ALL WRITERS!

The YLD At Issue editors are now accepting article submissions. Criteria are as follows:

1. The subject matter should be relevant to Pennsylvania young lawyers.
2. Articles should be no longer than 1,200 words in length. Longer articles may be considered to run as a series.
3. All submissions must include a short author biography at the end of the article and must be accompanied by a digital photo (300 dpi resolution preferred) of the author for publication.
4. Electronic submissions (MS Word) are acceptable and preferred. Please transmit electronic submissions to Bill Higgins Jr. at Bill@BillHigginsJr.net or to Robert Datorre at rdatorre@gmail.com.
5. Articles are due no later than April 30, 2012.