A Message from the Chair

The Young Lawyers Division had a busy and productive summer!

Young Lawyer Summer Summit

Our 2018 YLD Summer Summit was held at the Penn Stater Hotel and Conference Center in State College on July 18-20. This annual premier legal conference is planned by young lawyers for young lawyers. We offered six CLEs on a wide range of topics, including mindfulness, family law and magisterial district courts. The YLD was honored to host several judges on CLE panels, including Judge D. Michael Fisher, U.S. Court of Appeals for the Third Circuit, as well as Judge Thomas Kistler, Judge Julia Munley and Judge John Hodge from the Courts of Common Pleas. The 2017-18 Bar Leadership Institute Class also presented a tremendous CLE on implicit bias. The Summer Summit offered much more than just CLEs. There were plenty of opportunities for young lawyers to interact with each other in a relaxed atmosphere. Former Zone Governor Jim Antoniono led a hike up Mount Nittany to enjoy the beautiful views. We also enjoyed a trivia night after our welcome dinner and danced the night away at our farewell dinner. If you were not able to join us this year, please make sure to join us next summer! (See pages 10-12 for photos from the Summit.)

Zone Caravan Events

Our YLD zone chairs also started to kick off caravan events across the commonwealth. Zone 9 held its first caravan event on July 11 at Boardroom Spirits Distillery in Lansdale. Judge Trauger, Judge Weilheimer and Judge Walsh from the Courts of Common Pleas participated on a panel and presented a “Tips from the Bench” CLE. Zone 8 held a great family-friendly caravan event at the Altoona Curves game on July 27. While the Curves might not have had the best night, fun was had by all.

Engaging Young Lawyers and Law Students

As we gear up for this fall, we will be focusing on ways to engage more young lawyers and law students. We are currently in the process of appointing YLD liaisons to any committee and section that requests one. The YLD liaison program offers young lawyers an opportunity to be integrated into and active in a committee or section, while offering them valuable leadership opportunities. We are also working to develop a law student and young lawyer mentorship program. Stay tuned for more details.

We are also committed to reaching more young lawyers and engaging with current members in a more effective way. To that end, the YLD Council authorized the formation of a subcommittee on social media to explore ways that the YLD can more effectively use social media. As the young lawyers of the PBA, we would also like to explore recommendations that we can make to the PBA at-large for its use of social media. If you are a social media-savvy young lawyer who would like to share your expertise, please reach out to Jonathan Koltash, YLD immediate past chair and chair of the subcommittee on social media, at jonathan.koltash@gmail.com. We need volunteers!

Upcoming Events

The YLD will next meet at PBA Committee/Section Day at the Red Lion Hotel Harrisburg East on Nov. 15. Please check our upcoming events on page 15 of the newsletter and mark your calendar! Following our Facebook page is also a great way to learn about our upcoming events around the commonwealth.
PBA Names Young Lawyers for Bar Institute Institute Class of 2018-19

PBA President Charles Eppolito III has named 11 Pennsylvania lawyers to the 2018-19 class of the association’s Bar Leadership Institute (BLI). “These are the future leaders of the Pennsylvania Bar Association and the profession,” said Eppolito. “I am thrilled to be working with them and watch them flourish as they develop professionally, connect and form relationships with more seasoned members and learn more about the varied paths to leadership within the PBA.”

The new BLI class members include:

**Beaver County**
- Mollie Patterson, Beaver County Public Defender’s Office and Law Office of Mollie K. Patterson, Ambridge
- Michelle Ross, The Elder Law Office of Olimpi & Kramer LLC, Beaver

**Bucks County**
- Gabriela Rafal, Galfand Berger LLP, Reading

**Butler County**
- Andrea Boyle, Boyle & Price, Butler

**Monroe County**
- Jessica Jones, Monroe County Court of Common Pleas, Stroudsburg

**Montgomery County**
- Karen Grethlein, Marshall Dennehey Warner Coleman & Goggin, King of Prussia

**Philadelphia County**
- Raphael Castro, Pond Lehocky Stern Giordano, Philadelphia
- Peter Johnson, Superior Court of Pennsylvania, Philadelphia
- Zane Johnson, Philadelphia Lawyers for Social Equity, Philadelphia
- Skye Nickalls, Dilworth Paxson LLP, Philadelphia

**York County**
- Thomas Markey, McNees Wallace & Nurick LLC, York

This year’s BLI co-chairs are Melinda C. Ghilardi, Office of the Federal Public Defender, U.S. District Court for the Middle District of Pennsylvania, Scranton, and Philip H. Yoon, Superior Court of Pennsylvania, Philadelphia. Both Ghilardi and Yoon have served in a number of PBA leadership roles.
With each passing year, social media occupies more space in our lives. It impacts how we communicate, intake information, relate to one another and—as courts must increasingly encounter—how we litigate. Recent Pennsylvania case law explores how courts should treat social media evidence and its admission at trial. The Superior Court’s opinion in Commonwealth v. Mangel, 181 A.3d 1154 (Pa. Super 2018), handed down this March, provides useful guidance on social media evidence authentication in Pennsylvania.

Tyler Mangel was prosecuted for aggravated assault and harassment. The Commonwealth attempted to admit as evidence Facebook chat messages sent from an account named “Tyler Mangel.” The Commonwealth’s computer forensics expert presented compelling evidence linking the Tyler Mangel account to the defendant: she found a cell phone number listed on the Facebook page, obtained a court order for the Verizon subscriber records associated with this phone number and found the Verizon account holder’s address was the same as the address listed in the criminal complaint filed against Mangel.

Despite this evidence, the Commonwealth’s attempt to authenticate the Facebook messages was unsuccessful. Authenticating the account was not enough—the chat messages themselves had to connect to Mangel. When the Commonwealth replied to the objection, insisting the account was clearly Mangel’s, the trial court said:

The Court: No. That [ ] Mangel actually [wrote these messages]. You can do that with a reasonable degree of certainty? You can say that he did this? That no one else intervened or someone else grabbed the account? You can do that?

[Detective] Styn: I cannot, Judge.

The Court: So, objection sustained.

Mangel, 181 A.3d at 1157. Should the trial court have excluded the messages? What evidence could the Commonwealth have presented to successfully admit the evidence? The Superior Court provides a thorough analysis of social media evidence, leaving us with several key takeaways about the direction of social media evidence authentication in Pennsylvania.

### New Evidence, Old Rules

To determine how Facebook content should be authenticated, the Mangel court begins its analysis by “look[ing] to the treatment accorded [to] other types of electronic communications.” Mangel, 181 A.3d at 1159. It draws parallels between Facebook posts and the analysis of text messages in Commonwealth v. Koch, 39 A.3d 996 (Pa. Super. 2011). The analysis in Koch harkens back to In re F.P., 878 A.2d 91 (Pa. Super. 2005), which analyzed instant messages and email, foregrounding in its conclusion previous courts’ treatment of the old-school, hand-written letter. This line of cases speaks to the stance Pennsylvania courts continue to take on the authentication of social media evidence: new forms of evidence do not require new rules.

In In re F.P., the court points out that “a signature can be forged; a letter can be typed on another’s typewriter; distinct letterhead stationary can be copied or stolen.” In re F.P., 878 A.2d at 95. Instead of attempting to create a new body of law for electronic evidence, courts should use the existing framework of Pa.R.E. 901 and Pennsylvania case law.

Affirming this reasoning, the Mangel court makes clear that 13 years of technological development since In re F.P. have not rendered the existing rules of evidence out-of-date.

### Practical Authentication Techniques

The Mangel court provides two options for authenticating social media evidence: direct testimony and circumstantial evidence. If the witness is willing to testify to the identity

**Continued on page 4**
After Mangel
Continued from page 3

and authenticity of the social media content, that testimony will likely be sufficient to authenticate the evidence. Ideally, the witness should confirm (1) he or she posted the content, (2) when the content was posted, and (3) whether it has been altered since its original posting.

Witness testimony, however, is not always an option. For one, the witness may be unavailable or unwilling to testify. For another, the witness may deny in court that he or she created the social media content, even when it appears his or her social media account is clearly connected to the content; in such instances, circumstantial evidence is required.

The Mangel court, in the end, did not admit the Facebook content, because “the mere fact that the Facebook account in question bore Mangel’s name, hometown and high school was insufficient to authenticate the online and mobile device chat messages as having been authored by Mangel.” 181 A.3d at 1164.

The circumstantial evidence the Mangel court required can take many forms. For example, the messages may reference specific information of which only the defendant would be aware. Comparing styles of writing between the messages in question and prior Facebook posts may also suggest that the messages match the user’s unique writing styles. The recipient of messages may also have insight regarding circumstantial evidence, such as personal knowledge that something in the declarant’s messages helps identify him or her.

Circumstantial evidence can also be used to oppose the admission of evidence. A witness denying authorship may testify that he or she was in a meeting or driving when the time stamp shows a post was uploaded, which can suggest to a jury that someone else with access to the account made the post. If the user provided his or her username and password credentials to other people, the diminished security of the account will help to discredit the content’s reliability.


Taking On the Correct Burden

The Mangel court continues its analysis to say “there were no contextual clues in the chat messages that identified Mangel as the sender of the messages.” Mangel, 181 A.3d at 1164. It seems odd, however, that Mangel’s ownership of the account does not count as even some contextual clue linking Mangel to the messages. The Mangel decision establishes that authenticating a Facebook account and authenticating the content within that account are two very separate tasks. This analysis does not necessarily mean the burden of authenticating social media evidence has become heavier, but rather the litigant must bore on the correct burden to be successful.

As courts become more familiar with social media, its vast and differing components will come into focus. Facebook posts may be treated according to different standards than direct messages, for example, and the mechanisms of each social media platform will demand understanding and analysis. Although the courts continue to swear by Pa. R. Evid. 901 as a sufficient framework for authentication, Mangel provides an important reminder that we need more than just a framework to understand the complexity of today’s technology. As new technologies arise, so will increasingly nuanced caselaw: remaining current with new opinions such as Mangel will provide you with a critical upper hand when faced with similar questions in the courtroom.

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Samantha Gowing is a prospective law student and paralegal at the firm.
How to Use Learned Treatises in Pennsylvania

By Michelle Anne Paznokas, Esq.

A “learned treatise” is simply a published work, such as a periodical, scientific article, or medical textbook, that is considered authoritative in a given field. Learned treatises can be a great aide in the courtroom for supporting your experts’ opinions, impeaching opposing counsel’s experts, discreetly rebutting theories of liability or defense or shielding expert testimony from motions in limine and appeal. Nevertheless, law students and litigators alike struggle with the dreaded “learned-treatise doctrine” and its confusing relationship with the hearsay rules of evidence.

Statements from learned treatises are generally recognized as hearsay because they are often introduced to prove the truth of the matter asserted. For example, Gray’s Anatomy is an accepted authority on medicine and could be used to establish a doctor’s breach of the necessary standard of care while treating a patient. Because of the inherent reliability of treatises, many states permit authoritative texts to be read into evidence as an exception to the rule against hearsay. See, e.g., N.J.R.E. 803(18). Pennsylvania, however, has not adopted this exception, largely due to legislators’ concerns about placing too much emphasis on literature or confusing a jury of laypeople with excessive scientific or technical information. As a result, the learned treatise doctrine is governed by common law.

In this commonwealth, the admissibility of expert testimony is held to the Frye standard, i.e., whether “the expert’s methodology is generally accepted in the relevant field.” See Pa.R.E. 702. An expert may utilize her education, training, and experience to analyze the facts of a case and form opinions as to whether the defendants deviated from the applicable standard of care, provided her methods are “acceptable.”

A learned treatise can help establish the general acceptance of an expert’s methodology, but beware—that is a fine line between identifying a learned treatise (admissible non-hearsay) and offering it as substantive evidence (inadmissible hearsay). On direct examination, an expert may recognize literature as a basis of her opinion. For example:

“Gray’s Anatomy is consistent with my opinion that antibiotics should have been administered to the patient.”

The above quote likely presents no issues in terms of admissibility. However, a litigator must be careful to not allow her expert to appear as if she is offering the literature to prove or disprove any theories or principles. To illustrate, your expert should avoid providing opinions such as:

“This excerpt from Gray’s Anatomy proves my opinion that Dr. Brown was negligent,” or “I believe Dr. Brown should have administered antibiotics because Gray’s Anatomy says so.”

Klein v. Aronchick, 85 A.3d 487 (Pa. Super. 2014) demonstrates this delicate balance between identification and hearsay. The defendant in Klein prescribed an off-label use of a sodium phosphate drug, which allegedly caused permanent kidney disease. Klein, 85 A.3d at 489. On appeal, the Superior Court considered whether the trial court erred in allowing the defense to introduce medical literature. Id. at 490. Specifically, the defense expert relied on several studies while opining that the drug did not cause the plaintiff’s injuries, testifying that “[the author of the studies] is probably the leader in the field in this area. He has found in his world search less than 40 patients who he thinks . . . have a problem taking large doses of sodium phosphate in preparation for their colonoscopy.” Id. at 503. The court held that the expert offered the studies for their “direct substantive effect” and to “bolster
and corroborate his own opinion” and that such a use of the studies was impermissible. Id. at 503-04.

Through Klein, litigators understand that treatises may only be used to clarify the foundation of an expert’s opinion, but not as a substitute for, nor as corroboration with, expert testimony. Any attempt to introduce a treatise into evidence will be immediately suspect, therefore, on direct examination, an attorney should avoid asking her expert to read from the treatise or describe it in detail. Sticking to a brief line of questioning—such as “Is Gray’s Anatomy compatible with your expert opinions?” or “Did you cite Gray’s Anatomy in your expert report?”—is the safest bet.

On cross-examination, learned treatises can be used to impeach an expert. The expert need not have relied on the treatise when forming her opinions, but she must recognize its scholarly merit. See Majdic v. Cincinnati Mach. Co., 537 A.2d 334, 339 (Pa. Super. 1988). Litigators should push the opposing expert to use “magic words” such as “recognized work,” “standard,” or “reliable authority.” Once this foundation is established, counsel may cross-examine the expert with the treatise and call her credibility into question.

In light of this jumble of rules and practice tips, would it not be safest to avoid using learned treatises all together? Unfortunately, the plot further thickens with Snizavich v. Rohm & Haas Co., 83 A.3d 191 (Pa. Super. 2013), a toxic exposure case in which the plaintiff suffered brain cancer as a result of chemical exposure in the workplace. Curiously, the defense sought to exclude the plaintiff’s causation expert under Frye because he did not cite to any scientific authority (as opposed to seeking to preclude the expert for relying too heavily on a scientific authority). See Snizavich, 83 A.3d at 193. The Snizavich court held that “[w]hen an expert fails to include [scientific] authority, the trial court has no choice but to conclude that the expert opinion reflects nothing more than mere personal belief.” Id. at 197 (emphasis added). The opinion suggested that, in certain scenarios, (1) an expert’s testimony must depend on or cite scientific authority, (2) an expert must apply the cited authority to the facts at issue, and (3) the authority must support the expert’s conclusions. See id. The court also noted that the plaintiff’s causation expert cited to a report that directly contradicted his opinions and was inconclusive on causation. See id. at 197-98.

Fortunately, the Snizavich holding has a limited application. A wealth of medical malpractice case law indicates that an expert’s education, training and experience as applied to the facts of a case can be enough to support her opinions. For example, in Catlin v. Hamburg, 56 A.3d 914 (Pa. Super. 2012), the court held that “an expert witness need not cite to medical literature ... to support his opinion,” and that literature speaks to the weight of the testimony rather than its admissibility. Catlin, 56 A.3d at 920-21. In a more recent case, Tillery v. CHOP, 156 A.3d 1233 (Pa. Super.), appeal denied, 172 A.3d 592 (Pa. 2017), the court agreed to apply Snizavich but concluded that the plaintiff proved causation because her experts relied on the “wealth of facts drawn from Minor-Plaintiff’s extensive medical records” in conjunction with the “application of their expertise.” Tillery, 156 A.3d at 1242 n.2.

In sum, the learned-treatise doctrine may seem daunting—especially in a commonwealth without a hearsay exception—but there are a few takeaways that can help any litigator utilize published authorities to their advantage:

1. On direct, your expert can identify, without elaborating or bolstering, a learned treatise as a basis of her opinion.
2. On cross, an expert can be impeached with a treatise so long as she recognizes its scholarly merit.
3. Depending on the nature of your expert’s testimony, failure to cite to a supportive treatise may open the door to a Snizavich attack by opposing counsel.
4. In an abundance of caution, your expert should be able to cite to a learned treatise which forms a basis for her opinions in addition to her education, training and experience as applied to the facts of the case.

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Ordinarily, Pennsylvania law views pets merely as property, akin to any other chattel. Accordingly, your clients’ legal rights are typically limited to those granted to other forms of property. But, your clients may be able to obtain enhanced rights for their pets at home, at work, in places of business and when traveling if your client qualifies to register their pet as a therapy or disability service animal.

In the canine context, Pennsylvania law defines a service dog as one that “has been trained to do work or perform tasks for the benefit of an individual with a disability.” 3 P.S. § 459-101. The services provided by these dogs can include (but are not limited to) guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, and pulling a wheelchair or fetching dropped items. In Pennsylvania, registering a service animal usually only requires a note from a therapist or doctor, although additional training is sometimes required.

If someone infringes upon the unique rights provided to service animals, the law provides for enhanced civil and criminal claims. See, e.g., 18 P.S. § 5511 (cruelty to guide dogs); 18 Pa. C.S. § 7325 (providing for a summary criminal offense against places of public accommodation that discriminate against individuals with service dogs).

Pursuant to the Pennsylvania Human Relations Act, 43 P.S. §§ 951-963, housing providers such as landlords, condominium associations and the government may not discriminate against those with service animals. See 43 P.S. § 953. Specifically, the Act provides:

the use of a guide or support animal because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals is hereby recognized as and declared to be a civil right which shall be enforceable as set forth in this act.

Id. Landlords may not charge a pet fee for service animals, regardless of what is provided for within the leasing contract. With respect to employment, employers must provide reasonable accommodations to service animals, which may include allowing them to be present at the workplace. See generally 43 P.S. §955. The Pennsylvania Human Relations Act, however, does not expressly provide for these same protections to be extended to emotional support animals that alleviate depression and anxiety. Despite this, circumstances still exist in which emotional support animals may also receive additional protections under the law.

Further, individuals also have the right to travel with a service animal, including traveling on airplanes. Within the last few years, Uber settled a lawsuit in which blind persons alleged that Uber refused to provide them service because of their service animals. See, e.g., Nat’l Fed’n of the Blind of Cal. v. Uber Tech. Inc., 14-cv-04086 NC (N.D. Cal.). As part of the settlement, Uber updated its service animal policy and now requires drivers to acknowledge the legal obligations related to accepting service animals on trips.

Looking beyond Pennsylvania law, the Americans with Disabilities Act (ADA) does not limit the term of “service animal” to dogs alone. The ADA provides that, in certain circumstances, miniature horses may also qualify as service animals. Miniature horses live about twice as long as dogs and, therefore, require less frequent training. In order to be covered under the ADA, a miniature horse may receive accommodations if (1) it is housebroken, (2) it is under the owner’s control, (3) the accommodating facility can handle the horse’s type, size and weight, and (4) the miniature horse’s presence will not compromise legitimate safety requirements necessary for safe operation of the facility. See United States Department of Justice, Service Animals, available at https://www.ada.gov/service_animals_2010.htm.
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Service Animal Rights

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The steps required to certify a pet as a service animal varies according to the jurisdiction under which your client seeks to register. The most stringent jurisdictions impose species limitations, require particularized training, require a note from a doctor, and exclude emotional support or comfort animals. The least stringent jurisdictions merely require evidence of a disability-related need for the animal, and they do not impose species restrictions.

Although this article provides general guidance, there are always exceptions. If you have a disabled client with a service animal that qualifies for registration, ensure that your client’s rights (and the animal’s rights) are protected. Contact an attorney working in this practice area for more information.

Changing Demographics and How We Can Respond, Part One

By Richard Roberts Jr., Esq. and Sandy Feliz

Editor’s Note: This will run as a two-part article, with Part One illustrating the issues present in our society and Part Two presenting possible solutions to those issues.

Hispanics are the largest ethnic minority in the United States, currently numbering 57.5 million or 17.8 percent of the total American population. The Hispanic population is growing every year. In fact, the U.S. Census Bureau estimates that, by the year 2060, the Hispanic population will be 119 million and 28.6 percent of the population.

This is not only a problem for the future, but today. Although Hispanics comprise a considerable part of the current and projected U.S. population, they are underrepresented in the legal community. The American Bar Association estimates that there are presently 1,338,678 attorneys in the United States, of which 53,542 (5 percent) are Hispanic.

The U.S. Census Bureau estimates that, as of 2016, 40 million U.S. residents lived in primarily Spanish-speaking households.

How can we hope to effectively serve this large and growing community when Hispanics represent such a small percentage of our profession? Can we relate to their experienc-
Try creating a connection with a person speaking a language you do not understand. It is almost impossible. Try relating to a client whose culture, concerns and community you don’t understand or can’t relate to because you simply are not exposed to it. As Atticus Finch said in "To Kill A Mockingbird," “You never really understand a person until you consider things from his point of view ... until you climb in his skin and walk around in it.” How can we “walk around” when we have such a deficiency in understanding?

Envision this scenario: You are in court one day and a particular judge you have a fondness for asks if you would take a case involving a local juvenile, who is charged as an adult for allegedly striking another juvenile with a gun during a melee. Of course, you agree. The judge knows you grew up in the same city and in fact went to the same high school as your new client. You walked the same streets, interacted with the same peer groups, dealt with the same lack of funding and all the pressures that come from going to an inner-city high school. Frankly, the judge appointed you because you could relate, understand and “climb in his skin and walk around in it.”

The above scenario happened to me, and I regard the experience as a point of pride. The case was eventually resolved in juvenile rather than adult court, but it wasn’t the result that was so much a point of pride, but rather the connection made with the young man. When we spoke, I understood his experiences and his frustrations. I understood the trappings of his community and how easy it was to follow the “wrong” path. I had the same experiences; I could relate. I understood his community and his culture and where he was coming from. I could see the world the way he did. It allowed me to provide not only effective, but excellent representation because I understood his background, his culture and his language. This is something we cannot do when a growing segment of the Hispanic population is underrepresented in the legal community.

Generally, our professional community lacks connections to the Hispanic community, and most attorneys do not have someone they can ask.

Beyond these cultural differences, language barriers impose yet another hurdle to understanding. As an example, let’s say you have a Hispanic client who has come to you because he believes he has a wrongful termination claim against his former employer. As an attorney, you do the right thing and bring in an interpreter to help you translate everything being said. If you do not speak the language, how can you gauge what the interpreter is telling the client? For all you know, you are explaining the severity of the case to the client, while the interpreter is telling the client how beautiful it is outside. The client starts smiling and nodding his head. You think he understands what you are saying, but in reality he’s just agreeing that it’s a beautiful day. Unfortunately, there is nothing you can do at this point.

Here in Pennsylvania, as of July 1, 2017, the Hispanic population (896,388) is 7 percent of the population. This is an entire market we have not been able to break into, not because we cannot adequately represent them, but because we do not have enough people to help us understand or relate to them.

It is important to remember that, as attorneys, we have certain obligations under the Rules of Professional Conduct. There are three sections we should all be aware of: Rule 1.1 (competence), Rule 1.3 (diligence) and Rule 1.4 (communications). Each of these requires us to make sure we do our best to provide the absolute best service to our clients. We cannot do that, however, if we cannot understand them or communicate effectively.

Part Two of this article, to be published in the next issue, will address possible solutions to better meet the needs of our clients with cultural or language differences.
Mother of All Issues: A Guide to Maternity Leave for the Expecting Attorney (Part II)
By: Colleen A. Baird, Esq.

In the second half of the article, we continue our analysis of maternity leave issues affecting working parents.

Enjoy your time!
Repeat after me: you will never get this time back. You have a lifetime to work, but only a small opportunity to enjoy your children as babies. Therefore, enjoy your maternity leave, enjoy your little one, and know that your temporary exit and re-entry into work may feel a little bumpy, but know that things will work themselves out.

Arrange for childcare.
I suggest researching childcare options during the tail end of your pregnancy. Narrow your choices down, take tours of the facilities, or interview nannies if you are able. Give everyone a heads up about your due date and an estimate of when the baby would begin daycare. When your baby arrives, follow up to make sure they are accepting new children and secure your spot with a deposit. Getting this out of the way early on will make you feel better toward the end of your leave because you know everything is taken care of.

Plan ahead accordingly.
Make arrangements early on with your HR department if you are breastfeeding and will require special accommodation to pump and store breastmilk while at work. The Fair Labor Standards Act (FLSA) was amended in 2010 to require that employers provide “reasonable break time for an employee to express breast milk for her nursing child for one (1) year after the child’s birth each time such employee has need to express the milk.” 29 U.S.C. § 207(r)(1). Employers are also required to provide “a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.” Id.

Ease back in.
A few weeks before your leave is set to end, begin making arrangements for your transition back to work. My best suggestion for easing back in following maternity leave is to start back on a Wednesday. Starting midweek allows for you to slowly get acclimated, while at the same time know the weekend is just around the corner. Let clients know you are back in waves – maybe a few emails a day to prioritized clients. This will hopefully avoid you being bombarded with dozens of “emergencies” your first days back.

Ask about flexible work arrangements.
Another item to address before, during, or after maternity leave is whether your workplace offers flexible work arrangements for mothers and/or new parents. Some examples of flexible or part-time work arrangements include reduced billing hours, reduced number of days in the office, and work-from-home options. I would suggest looking into this before you begin maternity leave and talking to the HR department about your options.

Ask for help.
Going back to work after having a baby is a difficult transition, no matter how many times you’ve done it. This transition, coupled with the emotions and exhaustion you’ve experienced post-baby, can intensify and worsen any postpartum depression or anxiety issues you’ve been experiencing.
A Guide to Maternity Leave
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Experiencing. Make a note to do a mental checkup every week to assess how you are handling this transition. Be honest with yourself about how you are feeling and lean on your partner, family, or friends for support. Lastly, don’t hesitate to reach out to a medical professional or therapist to discuss your treatment options. Suffering from postpartum depression and anxiety is no longer a taboo subject that is casually swept under the rug. The priority is your mental health and safety of you and your baby. Know that you are not alone.

Pay someone else to tackle the to-do list.

When you bring your first child home, you will quickly notice that the concept formerly known as “free time” no longer exists. Whereas before you had plenty of time to clean, vacuum, laundry, do yardwork, etc., that same amount of time is no longer at your disposal. If you have the means, do not be afraid to delegate some of the pre-baby work to hired professionals. In the long run, you will spare yourself a load of stress.

Repeat after me: “The work-life balance does not exist.”

That’s right, the sham is up. There is no such thing as a “work-life balance.” Any requirement to reach the pinnacle of working motherhood that is supposedly the “work-life balance” is hereby revoked. The quicker you realize this, the less you will feel shackled by what society expects of the working parent. Our personal family goal is simple: survival. From day-to-day, your life will be hectic. There will be days when everything is balanced and at peace, and others when you might wonder if you’ll be alive at the end of the day. Embrace the chaotic nature of life as a working parent and survive however you are able. No one will judge you if your dinner is cereal (for the third night in a row) and the laundry isn’t done.

Share your experience.

Now that you’re a working/parenting pro, reach out to your colleagues and friends when you see them going through pregnancy and returning to work. Use your experience to help aid their transitions and officially welcome them to the club.

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EU TU, BRUTE? How to React When Senior Attorneys Behave Badly
By Jesse Markley, Esq.

Maya Angelou once said: “At the end of the day, people won’t remember what you said or did, they will remember how you made them feel.” And she’s right. During my career, I have made referrals based on the decorum and tact of attorneys I barely knew. I consider such a level of professionalism to be a calling card. When a downtrodden member of the consuming public seeks help from the legal profession, good bedside manner is just as important as competence. In my opinion, it’s what makes good attorneys great—consummate professionalism.

But what happens when, as a younger attorney, you come up against a senior attorney behaving badly? Since I started practicing law in 2013, I have had my fair share of run-ins with senior attorneys doing just that. Not only rude and abrasive attorneys, but also ones that are dishonest and willing to misrepresent facts. These experiences tend to be very disheartening. The first time I had such an experience was during my time practicing in York, Pa. During a telephone call with opposing counsel, we agreed to stipulate to certain facts of the case. At the conclusion of the call, opposing counsel requested I follow up with him via email. In the hurried rush of my day, I forgot about his request for an email. When we arrived to court, I relied upon the rep-
presentation that opposing counsel would willingly stipulate to the facts discussed during our previous telephone call. When the judge raised the issue, opposing counsel feigned ignorance and refused to stipulate to the facts required for me to move forward with my case. In my opinion, it was a cheap shot toward a junior attorney, but also a valuable lesson. I was furious. It wasn’t fair, and I felt that attorneys should be better than stooping to mere gamesmanship in pursuit of a win.

On another occasion, I found myself on a conference call with opposing counsel’s entire legal team. Based on the lesson learned when I didn’t send an email, I followed up with a very detailed email memorializing what had been discussed and agreed to during the conference call. Shockingly, opposing counsel denied everything I had written and essentially called my ethics and professionalism into question! When I pressed him to respond with an email memorializing his understanding of the contents of our discussion, he did not respond. Plausibly, he chose not to respond because doing so would have required him to either lie or agree with my previous email.

From senior attorneys threatening to ask the judge to hold me in contempt to blatant name calling during depositions, I’ve engaged in my fair share of brawls with opposing counsel. But as frustrating as these events were, I never lost my cool. I believe it is imperative to maintain our ethical stature, even in the face of senior attorneys not doing the same. On several occasions, I have found myself disappointed by the example set by senior attorneys. But sharing these stories with your client or colleagues helps establish your reputation, in addition to shedding light on opposing counsel’s poor regard for the stature of our great profession. This is not to say that we should avoid fighting for our clients by providing zealous representation; to the contrary, I enjoy sparring with opposing counsel. But not when ethics are sacrificed in the name of representation.

One of my favorite quotes is from Julius Caesar. While Brutus is speaking to Cassius, he says: “There is a tide in the affairs of men, which taken at the flood, leads on to fortune. Omitted, all the voyage of their life is bound in shallows and in miseries. On such a full sea are we now afloat. And we must take the current when it serves, or lose our ventures.” In wondering what is “the tide in the affairs of men” to which Brutus refers, I’ve always taken it to mean opportunity, and what is opportunity if not a result of our own efforts to brand ourselves as assets worth obtaining and investing in? Whether it is an opportunity to work in someone else’s law firm, to start your own firm, or the opportunity that comes from clients seeking us out because of our reputation, opportunity is a derivative of our reputation. Hold yourself to the high standards of the senior attorneys you admire and respect, and not only will you avoid standing in the way of opportunity, but you will also maintain the pillars of professional conduct which make this profession a truly invaluable asset to the communities in which we live.

Jesse Markley is the owner of Markley Law Firm, a Pennsylvania-based law practice currently representing business clientele with services including representation through commercial litigation and in-house business operations. Jesse is also in-house counsel for a government contractor based throughout the Black Sea Region in support of global operations in Eastern Europe, Central Asia, West Africa and the islands of South East Asia. He is also the owner of Weekend Legal, a firm leveraging technology to provide legal services remotely to businesses and individuals. He currently spends his time in Eastern Europe with his client or back home with his friends and family in Central Pennsylvania.
Young Lawyer Summer Summit
July 18-20, 2018 • The Penn Stater Hotel and Conference Center, State College

Mindful Lawyering: Training the Brain to Heal Painful Habits

PBA YLD Summer Summit
Tips & Traps in Federal Practice
July 20, 2018
The Penn Stater – State College

An Introduction to Protection from Abuse Actions

Implicit Association and Unconscious Bias
2018 PA Bar Association Bar Leadership Institute Class
Pennsylvania Bar Association Environmental & Energy Law Section

Global Climate Change Program and Reception

Thursday, September 13, 2018

6 p.m. - Meet & Greet Reception
7 p.m. - Program begins

Lewis Katz Building, Bigler Road, Penn State University, University Park, PA

What Lawyers Need to Know About Climate Change

The PBA Environmental and Energy Law Section and Penn State Law are sponsoring a panel discussion on what lawyers need to know about climate change. Join our distinguished panelists for an evening of stimulating discussion about how to use the powers at our disposal to address global climate change and participate in the review and development of appropriate policies to reduce greenhouse gas emissions.

Light snacks and beverages will be served at the reception following the program.

There is no charge to attend this event, but registration is required. Register online here. The deadline to register is August 31.

For more information, contact Pam Kance, PBA section relations coordinator, at pam.kance@pabar.org.

PANELISTS

- Hari M. Osofsky is dean of Penn State Law and the Penn State School of International Affairs and Distinguished Professor of Law, professor of international affairs and professor of geography. Her 50-plus publications focus on improving governance and addressing injustice in energy and climate change regulation. Her scholarship includes Cambridge University Press books on climate change litigation, textbooks about both energy and climate change law and articles in leading law and geography journals.

- John Dernbach, Commonwealth Professor of Environmental Law and Sustainability at Widener University Commonwealth Law School, is a nationally and internationally recognized authority on sustainable development, climate change and environmental law. The director of the Environmental Law and Sustainability Center, he brings his expertise into the classroom in courses about property, environmental law, international law and sustainability.

- Richard Alley is the Evan Pugh University professor of geosciences and an associate of the Earth and Environmental Systems Institute at Penn State. His current research interests include glaciology, ice sheet stability, paleoclimates from ice cores, physical properties of ice cores and erosion and sedimentation by ice sheets. He is a member of the U.S. National Academy of Sciences and Foreign Member of the Royal Society.
October 17, 2018
Minority and Women Lawyers’ Business Development Forum
Come • Connect • Succeed!

October 18, 2018
Minority Bar Committee 10th Diversity Summit
Advancing Inclusion, Justice and Fairness in the 21st Century

Both events will be held at the PBI CLE Conference Center
The Wanamaker Building, 100 E. Penn Square, 10th Floor, Philadelphia, PA 19107
The 10th Diversity Summit will also be simulcast at PBI Mechanicsburg & PBI Pittsburgh.

Get the brochure and register online.
Upcoming Events

Sept. 2  **YLD Zone 3 Caravan**, Binghamton
Rumble Ponies vs. Altoona Curve

Sept. 5  **YLD Zone 4 Caravan**, Knoebels
Amusement Resort

Sept. 13  **Environmental & Energy Law Section Global Climate Change Program & Reception**, Lewis Katz
Building, University Park

Sept. 18  **YLD Zone 10 Caravan**, Pittsburgh
Pirates vs. Marlins

Sept. 20  **Civil Litigation Section Harrisburg Regional Dinner**,
Harrisburg Hilton

Oct. 17  **Minority and Women Lawyers’ Business Development Forum**, PBI CLE Conference Center,
Philadelphia

Oct. 18  **Minority Bar Committee 10th Diversity Summit**, PBI CLE Conference Center, Philadelphia
& simulcast at PBI Mechanicsburg and PBI Pittsburgh

Nov. 9-10  **Commission on Women in the Profession Fall Retreat**, Hershey Hotel

Nov. 15  **Committee Section Day***, Red Lion Hotel, Harrisburg

* YLD business meeting will take place during the event.

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Calling all writers!
The YLD *At Issue* editor is now accepting article submissions. The subject matter should be relevant to young lawyers. Articles should be no longer than 1,200 words. Longer articles may be considered to run as a series. All submissions should include a short author biography and a digital photo of the author (300 dpi resolution preferred).

Email articles to Mark Kovalcin at kovalcin.mark@gmail.com.

*Articles for the next issue are due Oct. 31, 2018.*
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