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By Jason Bland

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Simplifying the Solo Practice With Free and Open Source Software

Vol. 1, No. 2

Jason Bland

Jason Bland is with law firm marketing company SEO | Law Firm™. In 2005, he cofounded SEO | Law Firm's parent company Adviatech and has been the innovating force behind their lawyer-focused solutions. Under his direction, the company's talented team has helped law firms in most major metro areas attract new clients through content-based marketing solutions, social networking, and conversion-oriented design. In 2010, he founded Law Firm Newswire. Also owned by Adviatech, Law Firm Newswire is a news distribution service for attorneys. He can be reached at jasonbland@seolawfirm.com.

Opening up to open source software can save the solo practitioner thousands of dollars in software licensing fees, yet most attorneys do not embrace such solutions to cut costs. Open source software is often more functional than its commercial competitors.

The open source movement grew out of frustration with large software companies refusing to release their proprietary software code. Companies that build operating systems and software applications need independent developers to improve the value of their own products. It is the wide compatibility of third-party software that makes an operating system valuable.

In the 1990s, volunteer programmers organized projects and started making their own software and their own rules. The prime directive of the movement was simply that everyone should be able to modify code. With much of the programming performed by volunteers, ownership belonged to the community. The project organizers primarily wanted to get the source code out and attract more volunteers. This open contribution platform resulted in the rapid evolution of open source programs. Today, they are a commodity for the large corporation, governments, and the solo attorney.

To the normal user of open source software and most lawyers, the value is not in modifying the code. Most users do not possess the skill to edit software, and having the license to do so is not the allure. What matters is that software performs well, and provides a solution without going over budget.

Thousands of open source applications are freely available for your computer, web environment, and mobile device. Below are a small handful of free programs that might help your practice run efficiently without increasing expenses.

Office Software

One of the most popular open source applications is Oracle's OpenOffice.org suite of office applications. The free download was originally developed as an alternative to Microsoft Office. The suite comes with applications for word processing, spreadsheets, database management, desktop publishing, and presentation creation. All but the desktop publishing tool (OpenOffice Draw) are compatible with their Microsoft Office counterparts.

After Oracle's acquisition of Sun Microsystems, some OpenOffice.org contributors decided to create a



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new project outside of Oracle's umbrella. That project is LibreOffice. The two office solutions are very similar, but many in the development community are shifting loyalties to LibreOffice. Linux operating system, Ubuntu, discontinued support for OpenOffice.org in their latest release, choosing to include LibreOffice with their standard distribution.

Both applications easily install on your Windows, Mac, or Linux-based computer.

Web-Based Applications Time Tracking

Nothing is more valuable than time, especially billable time. The Kimai Open Source Time Tracking project is a great solution to keep track of your billable hours if you are not using a case management system.

Kimai is a web-based solution, which means that it will need to be installed on your website. Most web hosting companies provide basic installation services for \$20–\$50. You can test the application using the demo available on the project's website.

The functionality of Kimai is what makes it attractive to the small law firm. You can set up users, customers, projects, and tasks. The users would represent you, an assistant, or paralegal. The customer would reflect your client, projects would reflect cases, and tasks break down the various aspects of the case.

With the users reflecting you and your assistants, each task is connected to a project (case) that is connected to a client. After a few people have worked on the case, you can export the detailed timesheet to a PDF or spreadsheet. The program also supports invoicing, but that function is anemic at this stage of the project.

WordPress

WordPress started as an open source blog but has evolved into a fully expandable content management system. The platform is widely used by law firms of all sizes as it is widely supported and intuitive. When needing additional features and functions, the free repository of add-ons (referred to as plugins) is almost 16,000 strong. Other plugins are available but may come with fees. Most web-hosting companies offer a one-click install of WordPress or will install it for a small fee.

Here are some free WordPress plugins that have helped law firms take their online presence to the next level.

Blubrry PowerPress Podcasting Plugin

Podcasting is an incredibly effective way to get an audience, and show your knowledge and expertise while attracting new clients. Putting aside an hour every other week or once a month to record a podcast can pay off for your practice. The Blubrry PowerPress Podcasting plugin can be added to your WordPress site with three clicks. No manual installation is required thanks to the built-in WordPress plugin installer.

Once you record a couple episodes of your podcast, the plugin simplifies formatting of the podcast feed and prepares your podcast for iTunes. It also provides links to help get your podcast approved in iTunes.

WP-Invoice

This plugin is a great way to give your clients large-firm convenience by enabling them to pay their invoices online. It installs with one click like most WordPress plugins, but fully configuring it may require a little patience or a helping hand from a friendly geek. Once set up, it is very easy for you and your clients to use it.

When you add an invoice to WP-Invoice, it emails a notice to your client. The client then clicks on a link where they can pay the invoice online. With little technical savvy, you can set up PayPal as the payment provider. For a more traditional payment solution, the plugin works well with Authorize.net's credit card payment gateway.

The plugin's developer, Usability Dynamics, Inc. supports the plugin through an active online forum.

The free plugin gives your clients a convenient payment solution that is set up with minimal expense.

Twitter Tools

Although WordPress has become a full content management system, it stays true to its provenance of being a high-powered blog. You should be blogging regularly to keep your website active and up to date. Twitter Tools helps broadcast your blog by automatically Tweeting your blog entries. Once configured, this plugin will automatically tweet your blog posts to your Twitter profile with a shortened URL linking back to your blog.

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By syncing your blog with your Twitter profile, you can blog and stay active on Twitter simultaneously. The tool also allows you to automatically create blog posts of your tweets. Both functions are easy to set up.

Google Apps

Google's Gmail service is free with many perks to professional users. From the ability to use Google Docs to sending email as you@example.com rather than the traditional gmail.com extension, it is a powerful email system with more features than many paid solutions.

However, Gmail has a few shortcomings. If you have an assistant, you will not have any control over their account or access should they change their password. Also, setting up the domain name requires that your site be hosted somewhere else with a mail server that allows email forwarding. For the serious lawyer, there is Google Apps.

Under their small business plan, Google Apps offers a solution for \$5/month per user or \$50 per year. However, before getting out your credit card, scroll down to the bottom left corner of [the Google Apps website](#) and look for a tiny link under "Solutions" that looks like this: Google Apps (Free).

If you require fewer than 10 email accounts, you can use Google Apps free of charge. The free Google Apps comes with Gmail (with the account ending in your domain name), Google Docs, Google Calendar, Google Sites, and business-level security. You will see Google Ads in your free Google Apps email just as you do in Gmail. Google Apps supports most major mobile operating systems, so connecting with your iPhone, Blackberry, or Android device will be simple.

From marketing your law firm, basic office tasks, time management, and customer service to email and document sharing, open source software and free professional grade services can help you run a small practice with the same technology used by Fortune 500 companies. Open source technology is quickly advancing, making it the more functional option and the most economic.



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Macnotes: In Like a Lion . . .

Vol. 1, No. 2

Jeffrey Allen

Jeffrey Allen is the principal in the law firm of Graves & Allen with a general practice that, since 1973, has emphasized negotiation, structuring, and documentation of real estate acquisitions, loans and other business transactions, receiverships, related litigation, and bankruptcy. Graves & Allen is a small firm in Oakland, California. Mr. Allen also works extensively as an arbitrator and a mediator. He serves as the editor-in-chief and the Technology Editor of GPSolo magazine and the GPSolo eReport and as a member of the Board of Editors of the ABA Journal. Mr. Allen regularly presents at substantive law and technology-oriented programs for attorneys and writes for several legal trade magazines. In addition to being licensed as an attorney in California, he has been admitted as a Solicitor of the Supreme Court of England and Wales. He is an associate professor at California State University East Bay and the University of Phoenix. You can contact him via e-mail at jallenlawtek@aol.com. Mr. Allen also blogs on technology at www.jallenlawtekblog.com.

The release of OS X version 10.7 (aka Lion) represents the biggest news in the world of Mac this month. As I have had some experience with Lion (I installed it on an iMac and three laptops), I thought I would write about some of the issues I encountered and some of the fixes that you can implement to correct problems should you run into them.

I installed Lion on an iMac, a 13" Mac Book Air, a 13" Mac Book Pro and a 15" MacBook Pro. The iMac and the 13" MacBook Pro represent the current iterations of their lines. The 13" Mac Book Air and 15" Mac Book Pro came out at the end of 2010 and represent lines that Apple recently refreshed. I acquired the Lion software from the App Store (the only venue that sells it for after purchase installation). As Apple tells you to do, I made sure that each computer had the most recent software updates to the Snow Leopard OS.

After purchasing the software, I downloaded it. The download consists of just under four gigabytes, so it takes a while. I expect that the download took longer due to the fact that many of us purchased Lion when it first came out, and that caused a slowdown in delivery. I expected that and just note it for informational purposes. I have since downloaded it again and it took much less time, supporting that hypothesis.

I installed the Lion OS on the four computers. One of them (the iMac) did not take the first time, so I reinstalled it. The installation went through the second time. The laptop computers all installed on the first try.

After installing Lion, I discovered that all four of my computers suffered from similar problems (although they reflected different levels of impact). All of the computers slowed down dramatically and froze often (shades of Windows!). They also developed a particularly annoying tendency to garble the order of letters, so that if I typed my name "Jeffrey" it might come out "effrJey." For some reason, the first letter of typing after a break in typing would show up 4 or 5 letters later.

I talked to Apple's tech support staff. As Apple had just released Lion, they had not had a lot of experience in dealing with post-Lion installation problems. Nevertheless, they worked very hard to try to solve the problem. Ultimately, after escalation of the issues in the Tech Support Department, the Apple tech and I were able to solve the problem on one of the computers. As replicating the

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corrective measures on the other computers also appears to have resolved the issues with those computers as well, I conclude that the problems (none of which existed prior to the Lion install and all of which started immediately following it) related to the installation of Lion and that we found a viable solution to the problems.

What remains unclear is whether my computers had some unusual configuration of software that interacted inappropriately with the Lion installation. As the steps we followed to solve the problem will likely clean up many issues with computers that have started to slow down, I thought it made sense to take you step-by-step through the process, so that you could duplicate it on your own.

If you have a computer with a wireless keyboard, you may have some problems getting the computer to perform the corrective measures. I experienced that problem with my iMac and Apple Wireless Keyboard. I solved the problem by taking out an old Apple wired keyboard and plugging it into the iMac. I learned a long time ago that wireless keyboards generally work just fine, but that sometimes a computer will not recognize the wireless keyboard early in the boot up stage and that you should keep a wired keyboard around for troubleshooting (and trouble solving).

OK. The first thing you will want to do is go the Library and find the folder labeled "Caches" and drag it to the garbage. You will also want to go the "Launch Agents" folder and throw everything that does not have the word "Apple" in its name into the garbage. You may have a difficult time finding the "Library" folder, as Lion hides it. To find it, go to the finder (click on your desktop background and you will see the word "Finder" in the upper left corner of your screen). You will see a pull-down menu labeled "Go." Click on that menu and hold it open while you press the Option key. You will then see the "Library" folder. Click on it and you will find the "Caches" and "Launch Agents" files. Next go the "Preferences" folder, find and drag to the trash the file labeled: "com.apple.systemuiserver.plist".

Next go to your System Preferences (under the Apple pull down menu). Go to "Users & Groups," unlock the lock, and choose your user profile. Click on "Login Items" and delete all the login items one at a time by clicking on each of them and then clicking the "-" button to delete that file.

The next step is to restart your computer. When you restart it, hold down the Command and R keys simultaneously. Hold them down until the computer boots up. This will take you to a special partition that Lion created on your hard drive during the installation. Go to Disk Utilities, select your computer's hard disk and then select "Repair Disk." When the program finishes that process, select "Repair Disk Permissions" and wait for the computer to finish that process.

Restart the computer and this time, as soon as you hear the startup chime, press the Command, Option, P, and R keys simultaneously and hold them down until you hear the computer chime two more times. Then release them and let the computer finish its boot up process. Congratulations, you have just reset your computer's parameter RAM.

Once the computer has finished that process, you will want to restart your computer one more time; this time, hold down the Shift key during the boot up process. This causes your computer to boot into "Safe" mode, and in the process it may correct a few more system issues.

At this point, you can restart your computer, and it should work much better and faster than it did before you started this process.

After going through the process I have outlined for you, three of my computers worked properly again. The fourth had a problem booting up into "Safe" mode, so after letting it try for several hours, I turned it off and let it boot normally and then reinstalled Lion over the existing installation (be sure to have the current version of Lion as Apple has already released version 10.7.1). You can download the 10.7.1 installer as an update in the App Store.

Now, for a touch of irony. I have used the Mac OS and hardware in my law office since the mid-1980s. In all that time, I have installed and upgraded operating systems many times. I have done so without any serious issues arising in connection with the installation or as a result of it. By contrast, I regularly ran into problems with the upgrading and operation of computers using various iterations of Windows. For many years, pundits described Windows as more and more "Mac-like." Turnabout being fair play, I guess we can say Lion is the most Windows-like upgrade process that I have experienced on the Mac.

That said, and the problems now behind me, I do like the Lion OS. The system brings many new and useful features that make it even easier to operate. Apple claims the upgrade introduces 250 new features. In all honesty, I have not identified all of them yet; but I do like several that I have identified, including Launch Pad and Mission Control, quite a bit. The Mail system needed an upgrade and got one. It takes some getting used to, but ultimately, it presents a clearer and better way of dealing with your mail. If you find it too daunting at first, you have the option of looking at the mail in "classic" mode, meaning the way it used to look before you upgraded to Lion. The implementation of gestures as a means of navigation gives you a much better and more flexible means of navigation. It works well on laptops as they all have track pads. Many of you will not yet have one for your desktop. Apple does make and sell track pads to match your keyboard. If you get Lion, you will want to get a track pad to take advantage of the more fully implemented gesture navigation.

The bottom line is that after all the problems and the efforts to solve them, Lion works very well and introduces new features well worth having. Would I do the install over again? Yes; but I would go through the corrective clean up process a lot earlier this time.

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Product Note: Turning Over a Brightleaf: Platform Offers Template Production and Document Assembly for Legal

Vol. 1, No. 2

Jared D. Correia

Jared D. Correia, Esq. is the law practice advisor with the [Massachusetts Law Office Management Assistance Program](#).

Brightleaf is a cloud-based SaaS system that labels itself a "legal document automation platform." The easiest entry point might be to consider the Brightleaf system as HotDocs for legal; and, though it's tempting to seek for a simple comparison like that, Brightleaf is a decently sophisticated product in its own right, and features workflow options specifically designed to integrate within the practicing attorney's environment.

How Does It Work?

Brightleaf is a template creation and assembly program for legal documents. Step one is to create Brightleaf versions of your existing legal template documents. Step two is to assemble those documents tailored to the specific needs of your clients. Step three is to rinse and repeat.

Brightleaf is all about effective choices, and meaningful options; that's what's inherent in every phase of the platform, from the initial setup through continuing use. The staging platform for Brightleaf involves the addition of template documents. Users must have at least some (at least one) template documents in place before Brightleaf's editing features can be actualized. And, here is where paths begin to diverge: Brightleaf users have a few options (plus some combinations thereof) for investing the system with templates. You can (a) start with some simplistic existing templates that Brightleaf loads onto the platform; and/or (b) build your own templates using Brightleaf's assembly protocol (for premier level users); and/or (c) submit your documents to Brightleaf, so that its staff can map your documents and build for you templates that will work within the system. Not surprisingly, the brightest leaves (and bulk of users) choose letter (c) for template creation, for a couple of clear reasons: (1) the users don't have to do anything (beyond submitting their template documents) aside from providing their ongoing input and making a final approval of submitted documents converted for use in Brightleaf; and, (2) it's a flat fee versus a per-template charge. That Brightleaf is willing to upload templates (a labor-intensive, core program process) for a flat fee offers cost control to users. Brightleaf's reasoning is that a flat fee encourages users to add more templates to the platform, to make it more likely that they'll use the program more often, and more effectively, thus improving their return on investment. The system is priced out per month, per user (at two levels), with additional charges (on a per hour basis) for template revisions after initial creation and loading.

When templates have been mapped and are loaded into the platform, Brightleaf is ready for use. In addition to your Template Library, you'll also have access to a Clause Library, from which you can draw extracted segments of text, to add those to the client documents that you create. Client documents are constructed in Brightleaf by providing answers to a series of questions. Following the



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document mapping that lies intricately beneath each of Brightleaf's templates, the answers to questions fill in the specific information that converts each of the templates into unique client matter. Because the number of questions tends to grow given the higher complexity of a document, Brightleaf has added filtering features, including for delineating unanswered/unprocessed questions. The Brightleaf control panel appears in the left sidebar, and that's where you'll answer questions to fill in your templates with client-specific information, adding, among other things, elements (simpler, and repetitive information, like dates and client information) and those clauses (the sections of text). (For adding information from, and generally for pulling inputs from your existing, internal systems, Brightleaf utilizes its Connector Factory technology to make its system talk with yours, in order to fill in those document specifics that are drawn from your client, and related, records.) An edit pencil available within Brightleaf allows you to change the existing document map, to add questions, or prompts you to submit elements. In addition to the Brightleaf editing tools, users also have the ability to edit in Microsoft Word. In fact, the central pane within Brightleaf is your raw (and building) document, as it would appear in Word; Brightleaf, then, looks and acts very much like a gargantuan toolbar overarching Word, or a Word document. (Brightleaf is compatible with Word 2003, 2007, and 2010.) In addition to editing template documents via Brightleaf's question-and-answer and insert processes, users are also able to edit (and save) their documents (in Word/to their folders/server), by means of the central Word pane. In addition to these systemic and on-the-fly editing capabilities, Brightleaf offers some other helpful features, including internal folders, shareable with and viewable/editable by those with access to the Brightleaf system/your account (including, potentially, clients). (Brightleaf allows administrators to set user- and role-based permissions.) It offers tabbing organization across the top, similar to the display in most recent versions of most web browsers. Finally, it features one-to-many document creation functionality, i.e., clauses drop out based on jurisdiction triggers and so forth. Brightleaf's most recent release is version 3.5, which includes updates for ease of use with regard to assembly options, role assignments, date entries, and one-to-many document creation.

The Best and the Brightest

There are a number of additional points respecting the Brightleaf features alluded to above that merit mention, and some yet-to-be-addressed functionality that deserves some measure of attention. Brightleaf, through its folder sharing capabilities, allows lawyers to invite their clients into the document assembly process like never before. For the growing number of technology-savvy clients demanding more transparency from their law firms, access to their documents via Brightleaf, or systems like it, will become a sine qua non respecting hiring and retention decisions. Moreover, Brightleaf can have a positive effect on the bottom line by increasing efficiency, including in the realm of reducing the learning curve for new hires and in saving the time of senior attorneys who would otherwise have had to instruct starting lawyers in the intricacies of documents. Those intricacies are laid bare and made clear by the application, in practice, of Brightleaf's document mapping. The ability to edit within a traditional Word environment means that those unfamiliar with Brightleaf, including clients, will find the system to be intuitive, as long as they can also follow the simple question-and-answer prompts, even if they don't ever, or don't ever want to, come to understand the underlying template construction. For those attorneys who and law firms that wish to most intimately connect their clients to the drafting process, the premier edition of Brightleaf offers the ability to create "Leaflets," which are essentially restricted questionnaires for clients to complete in order to generate, in part, their own legal documents. Leaflets drive document assembly via an attractive client interface (bespeaking potential marketing opportunities), and can replace the checklists and rundowns that a number of firms maintain for acquiring basic document creation information. This saves lawyers time, and clients frustration. Leaflets are, essentially, a beta addition to Brightleaf at this time, and the future promises further additional features. The tabbing functionality within Brightleaf makes it easy to toggle back and forth between tasks within the platform, all while maintaining the anchored Brightleaf menu and static Word pane. Because this system, if applied across a firm and/or for clients' usage, requires various levels of permissions, the ability for administrators to set user-specific and role-based access is essential.

Of course, being of human invention, Brightleaf is not a perfect creation, and there are some drawbacks to the use of the platform. For one, it runs only in Internet Explorer (7, 8, and 9). It's not a big deal to download the browser, or to update it, if you don't have it already; but, Chrome, Firefox, and Safari users may chafe at being forced to maneuver away from their favorite surfing spots. (However, I am told that wider browser functionality is on the way.) Although Brightleaf offers support to existing users, there is not an easily accessible, free knowledge base of the kinds that have grown up around some longer-standing products. The included Brightleaf system templates (save for certain ones built for industry groups, like the National Venture Capital Association's model financing documents) are not recommended for use; upload your own, or have your own uploaded, instead. Finally, I don't know that access to Template Factory (for creating your own templates) and Leaflets (pretty packages for getting your clients to do some data entry), as sole additional benefits, are worth the premium user upgrade and associated cost. (However, Leaflets, as client access/interaction tools, hold great potential, and may one day make the additional cost more worth it.)

Behind the Curtain

Before you can apply Brightleaf in your environment, you'll need to run the "Brightleaf Analyzer," which will check your system requirements with regard to interaction with and across the Brightleaf

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platform. Assuming everything checks out, Brightleaf will require your permission to run the SOAP Microsoft Plug-In (in order to allow Brightleaf to talk to Word); accept Brightleaf as a trusted website; carve out a pop-up exception for Brightleaf; accept Brightleaf's Verisign certificate; and allow Brightleaf to run macros on Word. All fairly standard stuff, given the uses of the product. Once you've done all that, Brightleaf access is by <https://>. Brightleaf is also SA70 certified.

If you decide to buy Brightleaf, you're looking at \$125/month/user for the basic package. Premier users access the system at \$250/month, which includes access to the aforementioned Template Factory and to Leaflets. (Pricing contemplates some support, including training, and general template maintenance.) Significant template updates, once original Brightleaf versions have been finalized and uploaded, are made at a consulting fee of \$75–100/hour.

* * *

A Comedic Postlude

Of course, [Conan O'Brien tells it funnier than I do](#).

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Vol. 1, No. 2

David Kaufman

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Vital Information for Successful Practitioners

Before You Take a Collaborative Law Case

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Before You Take a Collaborative Law Case

Vol. 1, No. 2

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Under the Model Rules Of Professional Conduct, lawyers have a duty to screen potential Collaborative Law (CL) cases for appropriateness and obtain clients' informed consent to use CL. The duty to screen cases is based on the "reasonableness" requirement of Rule 1.2(c) and the requirement to avoid conflicts of interest that might interfere with competent and diligent representation under Rule 1.7. Both rules require lawyers to obtain clients' informed consent to participate in a CL process. Although the Uniform Collaborative Law Act is not an ethical rule, sections 14 and 15 create relevant duties, including detailed provisions requiring lawyers to make certain disclosures, provide prospective clients with information needed to make an informed choice of dispute resolution process, inquire about and discuss the appropriateness of CL, and create a presumption against using CL in cases involving a history of a coercive or violent relationship. (The Uniform Law Commission approved the Uniform Collaborative Law Act at its July 2009 meeting. In response to criticisms by some members of the American Bar Association, the commission made some changes not relevant to this article. See [Uniform Law Commission, Uniform Collaborative Law Act](#).) Collaborative law is an impressive dispute resolution process that offers significant benefits for disputants in appropriate cases. In CL, lawyers and clients sign a four-way "participation agreement" promising to use an interest-based approach to negotiation and fully disclose all relevant information. A key element of the participation agreement is the "disqualification agreement," which provides that both parties' CL lawyers would be disqualified from representing the clients if the case is litigated. The disqualification agreement is intended to motivate parties and lawyers to negotiate constructively because termination of a CL process would require both parties to hire new lawyers if they want legal representation. Although a CL process can be used in many types of cases, almost all cases to date have been in family law matters.

It is especially important for lawyers to screen cases and obtain informed consent to use CL before their clients engage in the process. By definition, parties in CL risk losing the continued representation by their CL lawyers and, under standard professional procedures, once parties have signed a participation agreement, they cannot mutually rescind the disqualification agreement. Section 4(b)(2) of the Uniform Collaborative Law Act would codify that practice by prohibiting parties from waiving the disqualification agreement. Since the disqualification provision is irrevocable and disqualification can have significant consequences, the precautions of screening and obtaining informed consent prior to representing parties in CL are quite appropriate.

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Limiting the Scope of Representation

Rule 1.2(c) of the Model Rules of Professional Conduct states, "A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent." When lawyers provide CL representation, they limit the scope of their representation by excluding the possibility of representing CL clients in litigation. ABA Formal Ethics Opinion 07-447 (2007) confirms that CL is a "permissible limited scope representation under Model Rule 1.2, with the concomitant duties of competence, diligence, and communication." To date, ten state bar associations and the ABA have issued ethical opinions about CL. Except for the Colorado opinion, all have indicated that CL practice can comply with the applicable ethical rules. The Colorado opinion states that CL is an impermissible conflict of interest where lawyers enter contractual agreements requiring them to withdraw if the CL process is unsuccessful, though the process does not violate the rules if the parties, but not the lawyers, execute the participation agreement. Colorado Bar Ass'n Ethics Comm., Formal Op. 115 (2006). Of course, lawyers are governed only by binding opinions in their jurisdictions. [Ethics opinions governing CL are posted on the website of the ABA Section of Dispute Resolution's Collaborative Law Committee.](#)

Kentucky Bar Association Ethics Opinion E-425 (2005) states, "A lawyer cannot advise a client to use the collaborative process without assessing whether it is truly in the client's best interest." Pennsylvania Informal Opinion 2004-24, 2004 WL 2758094 (2004), states that CL lawyers "must consider each client's situation (especially those who are victims of domestic violence) when deciding whether a Rule 1.2(c) limitation on the scope of representation is reasonable and whether [they] can, indeed, provide competent representation to a client under the limited scope of representation." New Jersey Ethics Opinion 699, 14 N.J.L. 2474, 182 N.J.L.J. 1055, 2005 WL 3890576 (2005), provides some elaboration:

Whether the limitation that forbids a lawyer engaged in collaborative practice from participation in adversarial proceedings is "reasonable" within the meaning of [Rule] 1.2(c) is a determination that must be made in the first instance by the lawyer, exercising sound professional judgment in assessing the needs of the client. If, after the exercise of that judgment, the lawyer believes that a client's interests are likely to be well-served by participation in the collaborative law process, then this limitation would be reasonable and thus consistent with [Rule] 1.2(c). . . .

However, because of the particular potential for hardship to both clients if the collaborative law process should fail and an impasse result, we think it appropriate to give some more specific guidance to the Bar as to when this limitation upon representation is "reasonable" under the circumstances. Thus, given the harsh outcome in the event of such failure, we believe that such representation and putative withdrawal is not "reasonable" if the lawyer, based on her knowledge and experience and after being fully informed about the existing relationship between the parties, believes that there is a significant possibility that an impasse will result or the collaborative process otherwise will fail.

Books written by CL experts identify factors regarding appropriateness of CL including: (1) the motivation and suitability of the parties to participate effectively in a collaborative process, (2) the trustworthiness of the parties, (3) whether a party is intimidated from participating effectively in the collaborative process, (4) whether there has been a history of domestic violence between the parties, (5) whether a party has a mental illness, (6) whether a party is abusing alcohol or other drugs, (7) whether the lawyers are suitable for handling the case collaboratively, (8) whether the parties would use professional services in addition to collaborative legal services, (9) the parties' ability to afford to retain new lawyers if the collaborative process terminates without agreement, and (10) the parties' views about the risks of disqualification of lawyers and other professionals in the case. See John Lande and Forrest S. Mosten, "Collaborative Lawyers' Duties to Screen the Appropriateness of Collaborative Law and Obtain Clients' Informed Consent to Use Collaborative Law," 25 *Ohio State Journal of Dispute Resolution* 347 (2010). The existence of any of these factors does not necessarily preclude lawyers from undertaking a CL representation. Rather, these factors should help guide lawyers in complying with their ethical obligations.

If there is a significant risk that using CL in a case would not realistically advance a client's (or prospective client's) interests, the New Jersey opinion holds that undertaking a CL representation would not be a reasonable limitation of the scope of representation and would violate Rule 1.2. For example, if a CL client is a victim of domestic violence, is afraid that the other party is dishonest and would take advantage of the CL process, and/or cannot afford to hire litigation counsel in the event of termination of a CL process, it might be unreasonable for a lawyer to use CL. Although Rule 1.2 requires clients to provide informed consent to a limited-scope representation, such consent would be insufficient to authorize the representation if it would be found unreasonable under the circumstances. It can be difficult to assess the reasonableness of using CL and practitioners' honest professional judgments may differ from later determinations by ethics committees or courts. Practitioners should avoid undertaking CL cases when it clearly would be unreasonable. On the other hand, ethics committees and courts should not chill lawyers' reasonable efforts to help clients when it appears that CL might be appropriate considering the facts reasonably knowable at the time.

The ethical rules suggest that CL lawyers should continue to assess the appropriateness of CL throughout a case. If continued use of the process becomes unreasonable at any time, CL lawyers may be required to reassess whether the representation is permissible and, if they conclude that it is no longer reasonable, terminate the representation. Consider the following scenario: the parties have invested substantial time and money in a CL process, the prospects for settlement are doubtful, and if the CL process continues without reaching agreement, one or both parties may be unable to afford

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litigation. In another situation, at the outset of a CL case, the lawyers do not realize that a party has a serious substance abuse problem but, during the process, they discover the problem and the party refuses to get treatment and act cooperatively. In these situations, under Rule 1.2, lawyers would presumably be required to reassess the case and terminate representation if continuing would be unreasonable and/or harmful to clients.

Impermissible Conflicts of Interest

Rule 1.7 of the Model Rules of Professional Conduct requires CL lawyers to screen cases to avoid potential conflicts of interest and to obtain clients' informed consent prior to initiating representation. Rule 1.7 provides, in part:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:...(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to...a third person. . . .

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client; . . . ; and

(4) each affected client gives informed consent, confirmed in writing.

Comment 8 to Rule 1.7 states that "a conflict exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited by the lawyer's other responsibilities or interests."

The ABA ethics opinion is consistent with this analysis, stating that a "contractual obligation to withdraw creates on the part of each lawyer a 'responsibility to a third party' within the meaning of Rule 1.7(a)(2)" and concluding that "[r]esponsibilities to third parties constitute conflicts with one's own client only if there is a significant risk that those responsibilities will materially limit the lawyer's representation of the client."

Although the contractual structure of CL processes varies, many practitioners use CL participation agreements to establish contractual obligations to "third persons," namely the other lawyer and party. Standard 7.1.A(1) of the International Academy of Collaborative Professionals's (IACP) Ethical Standards for Collaborative Practitioners states that CL lawyers may not "knowingly withhold or misrepresent information material to the Collaborative process." Virtually all CL participation agreements include similar provisions. The IACP standards do not define "material information," but many participation agreements require disclosure of much more information than would legally be discoverable. For example, the model participation agreement in Pauline Tesler's book, *Collaborative Law: Achieving Effective Resolution in Divorce Without Litigation* (ABA Family Law Section, 2d ed. 2008), includes a provision committing lawyers and parties to "honesty and the full disclosure of all relevant information." Tesler argues that a CL process must be "transparent," which includes "honesty and candor about what one is doing and why one is doing it" and "candor about goals, priorities, and reasoning." Thus, CL requires parties to disclose what Professor Carrie Menkel-Meadow calls "settlement facts" which:

[M]ay not be legally relevant but which either go to the underlying needs, interests, and objectives of the parties—why they want what they want in a dispute—or such sensitive information as financial information, insurance coverage, trade secrets, future business plans that may affect the possible range of settlements or solutions but which would not necessarily be discoverable in litigation. Settlement facts are to be distinguished from "legal facts" (those which would be either discoverable or admissible in litigation).

Carrie Menkel-Meadow, "Ethics in Alternative Dispute Resolution: New Issues, No Answers From The Adversary Conception of Lawyers' Responsibilities," 38 S. *Texas Law Review* 407 (1997).

A second obligation of lawyers under many CL participation agreements is to correct mistakes made by the other lawyer or party. For example, a party to a participation agreement (which sometimes include lawyers) may be required to inform the other side of any suspected numerical miscalculations or typographical errors, inaccurate factual assumptions, or reliance by that counsel on legal authorities that have been overruled or superseded.

Third, by definition, lawyers are obliged to withdraw from a CL case if any party, including the opposing party, terminates the case. Thus, CL lawyers undertake obligations to third persons, and rule 1.7 requires lawyers to consider whether they can provide competent and diligent representation to their clients in a CL case.

In some situations, CL lawyers would have an impermissible conflict of interest because they would not be able to provide competent and diligent representation. The appropriateness factors listed in the preceding section would be relevant to this analysis. For example, if a lawyer represents a victim of domestic violence who seeks a divorce from her abuser, who has been proved to be untrustworthy and would likely seek to take advantage of a CL process, rule 1.7 would presumably prohibit the lawyer from representing the client in a CL process. In that situation, the victim's lawyer would be caught in a conflict between protecting the client, who may be harmed by participating in CL, and

complying with obligations under the CL participation agreement. For some vulnerable clients, merely participating in a process with an intimidating opponent may seriously undermine their ability to assert their interests. Abusers can send subtle signals to victims, which everyone else may miss, threatening the victims if he or she does not accede to the abuser's demands. In such situations, lawyers might have difficulty in diligently representing their clients' interests in negotiating an agreement with an unscrupulous adversary. Although it is possible that such lawyers could avoid an impermissible conflict of interest, it is a significant risk that lawyers should consider seriously.

Rule 1.7 requires a lawyer to obtain a client's informed consent before representing the client in a conflict-of-interest situation, though the client's consent is not sufficient to authorize the representation if the lawyer cannot provide competent and diligent representation. If the concerns described above are reasonably addressed, however, CL lawyers can provide competent and diligent representation that fully meets ethical standards.

Obtaining Informed Consent

Rule 1.0(e) defines informed consent as "the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct." Comment 6 to rule 1.0 states:

The communication necessary to obtain such consent will vary according to the Rule involved and the circumstances giving rise to the need to obtain informed consent. The lawyer must make reasonable efforts to ensure that the client or other person possesses information reasonably adequate to make an informed decision. Ordinarily, this will require communication that includes a disclosure of the facts and circumstances giving rise to the situation, any explanation reasonably necessary to inform the client or other person of the material advantages and disadvantages of the proposed course of conduct and a discussion of the client's or other person's options and alternatives....In determining whether the information and explanation provided are reasonably adequate, relevant factors include whether the client or other person is experienced in legal matters generally and in making decisions of the type involved, and whether the client or other person is independently represented by other counsel in giving the consent.

The ethics opinions set high standards for informed consent in a CL process. For example, the Kentucky opinion states, "[B]ecause the relationship between the [CL] lawyer and the client is different from what would normally be expected, the lawyer has a heightened obligation to communicate with the client regarding the representation and the special implications of collaborative law process. . . ." This opinion states that CL lawyers must advise clients about a list of potential risks.

The client must consent to the limited representation, which means he or she must be advised of the limited nature of the relationship and the implications of the arrangement. For example, obtaining new counsel will entail additional time and cost; the client may feel pressured to settle in order to avoid having to obtain new counsel; and the failure to reach a settlement, necessitating new counsel, is not within the exclusive control of the client—the opponent can effectively disqualify both counsel. The client may be willing to assume these and other risks of the collaborative process but, as previously discussed, the lawyer must communicate sufficient information so that the client has an adequate basis upon which to base such a decision.

The New Jersey opinion also notes significant risks in CL, indicates that CL lawyers have a heightened duty of disclosure, and warns CL lawyers that they must provide clients with a reasonable analysis of the clients' interests regarding possible use of CL, even if this conflicts with the lawyers' interests in getting CL cases:

[I]t is easy to imagine situations in which a lawyer who practices collaborative law would be naturally inclined to describe [the] risks and benefits to the client in a way that promotes the creation of the relationship, even if the client's interests might be better served by a more traditional form of legal representation....We are not prepared to conclude categorically at this juncture that lawyers who engage in collaborative law would be unable to deal with those conflicts honorably, or could not give the client the information necessary to decide whether to consent to the limitation. But informed consent regarding the limited scope of representation that applies in the collaborative law process is especially demanded, and the lawyer's requirement of disclosure of the potential risks and consequences of failure is concomitantly heightened, because of the consequences of a failed process to the client, or, alternatively, the possibility that the parties could become "captives" to a process that does not suit their needs.

The Kentucky opinion indicates that mere signing of a CL participation agreement is insufficient to constitute informed consent and that CL lawyers should discuss the process with clients and provide an opportunity for questions.

Although the collaborative law agreement may touch on these matters [such as advantages and risks of different processes], it is unlikely that, standing alone, it is sufficient to meet the requirements of the rules relating to consultation and informed

decision making. The agreement may serve as a starting point, but it should be amplified by a fuller explanation and an opportunity for the client to ask questions and discuss the matter. Those conversations must be tailored to the specific needs of the client and the circumstances of the particular representation. The Committee recommends that before having the client sign the collaborative agreement, the lawyer confirm in writing the lawyer's explanation of the collaborative process and the client's consent to its use.

Thus the ethical opinions make clear that lawyers must engage in a thorough discussion with clients to comply with the obligation of obtaining informed consent.

Conclusion

Lawyers offering CL representation must comply with all ethical rules for lawyers generally. Under the rules governing a limited scope of representation and conflicts of interest, before undertaking a CL representation, lawyers must determine if the process is appropriate for a prospective client and obtain informed consent. Although the consent is normally in writing, lawyers do not comply with their duties if they obtain clients' signatures without a careful discussion of the benefits and risks of CL and other dispute resolution options. By providing appropriate information before parties decide whether to use CL, lawyers can have greater confidence that parties will have realistic expectations, participate in the process more constructively, and be less likely to terminate a CL case.

Although preventing all problems is impossible, compliance with these duties seems likely to prevent some, but certainly not all, complaints about CL (or any form of practice), as well as maximize competent client care. Clearly, complying with these ethical duties advances the interests of clients and lawyers. Not only are clients better protected, but also such compliance increases confidence in and use of CL, which is growing in consumer demand and acceptance by lawyers and judges.

This article is adapted from John Lande and Forrest S. Mosten, "Collaborative Lawyers' Duties to Screen the Appropriateness of Collaborative Law and Obtain Clients' Informed Consent to Use Collaborative Law," 25 Ohio State Journal on Dispute Resolution 347 (2010).

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Vol. 1, No. 2

L. Rush Hunt

L. Rush Hunt is currently engaged in the private practice of law in Madisonville, Kentucky, where he devotes much of his time to areas of estate and trust law. Mr. Hunt brings more than thirty years of experience in estate planning and related areas of the law to the writing of this text, including not only his legal experience but also his experience as a certified financial planner and his previous employment as a vice-president of trust services for Citizens Bank of Kentucky, where he supervised trust administration and investments. Mr. Hunt earned his B.S. in accounting from Murray State University, his J.D. from the University of Louisville School of Law, and his Ph.D. in public law at Southern Illinois University. A frequent lecturer at continuing legal education seminars for both lawyers and accountants, Mr. Hunt is a member of the General Practice, Solo and Small Firm Section of the American Bar Association; the Kentucky Bar Association; and the Christian Legal Society.

From the book *Estate Planning Forms*

1. Testator and Family Information

1.1 Name of Testator

1.2 Testator City and State

1.3 Name of Spouse

1.4 Names of Children

1.5 Are any of the above-named children step-children? Yes / No

(See This Will Paragraph 1, Option 2)

1.6 Are provisions needed for after-born children? Yes / No

(See This Will Paragraph 1, Option 3)



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1.7 Are provisions needed for adopted and/or illegitimately born children? Yes / No

(See Master Will Paragraph 1, Option 4 at page 25)

1.8 Are any children to be disinherited? Yes / No

(See Master Will Paragraph 1, Option 5 at page 26)

Name of disinherited child:

1.9 Are any loans or gifts/advancements to be considered for any child? Yes / No

Name of Child:

Is loan or gift/advancement to be considered in making distribution? Yes / No

(See Master Will Paragraphs 4 and 5, Options 1 and 2 at page 28)

2. Specific Bequests and Legacies

2.1 Specific Gifts (See Master Will Paragraph 3 at pages 27 and 28)

- a. Description
- b. Primary Beneficiary
- c. Contingent Beneficiary
- d. Survivorship Period

2.2 Tangible Personal Property (spouse, and if not surviving, to children)

If no agreement among children as to division:

(See Master Will Paragraph 6 at page 29)

Personal Representative Decides? Yes / No

Sell and Distribute Proceeds to Residue? Yes / No

3. Residuary Estate if No Surviving Spouse

3.1 Separate testamentary trusts for children? (Option 1) Yes / No

a. Provide for distribution one-half at each of two ages? Yes / No

If yes: Initial age to inherit:

Final age to inherit:

b. If a child is deceased:

Deceased child's share distributed to such child's estate? (Option 1) Yes / No

Or Deceased child's share distributed per stirpes to lineal descendants? (Option 2) Yes / No

c. Provision for educational incentive? Yes / No

d. Provision for trustee authority to withhold? Yes / No

3.2 Single testamentary trust for children? (Option 2) Yes / No

a. Final age to inherit:

b. Deceased child's share:

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Allocated per stirpes to lineal descendants? Yes / No

If no, what distribution

(See Option 1, Paragraph 4.c)

c. Provision for trustee authority to withhold? Yes / No

4. Default Provisions, If All Named Beneficiaries Are Deceased:

5. Powers

Environmental Powers? Yes / No

(See Master Will Paragraph 15 beginning at page 38)

Farm Powers? Yes / No

(See Master Will Paragraph 16 beginning at page 39)

Limitation on Trustee Powers? Yes / No

6. Trustees

Name of initial trustee:

Name of successor trustee:

Corporate trustee compensation? (Option 1) Yes / No

Individual reimbursed for expenses but no compensation? (Option 2) Yes / No

Individual receives compensation? (Option 3) Yes / No

Amount of compensation: \$

7. Personal Representative

7.1 Spouse named initial personal representative? Yes / No

7.2 If spouse not initial personal representative:

Name

Address

7.3 Successor Personal Representative:

Name

Relationship

Address

7.4 Surety Bond Waived? Yes / No

8. Incompetency

One physician decides? (Option 1) Yes / No

Two physicians decide and one board certified? (Option 2) Yes / No

9. Guardian, If Spouse Not Surviving:

Name

Relationship

Address

Successor

Relationship

Address

Surety Bond Waived? Yes / No

Special provisions or bequests for guardian?

10. Miscellaneous

Is no contest provision needed? Yes / No

Is employment of law firm needed? Yes / No

Will with Testamentary Trust for Young Children Worksheet

11. Survivorship

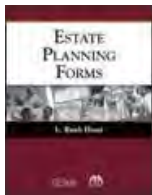
(See Master Will Paragraph 29 at page 44)

1. Simultaneous Death Yes / No

If yes, which spouse is presumed to die first?

2. General Survivorship _____ days

Does this apply to spouse? Yes / No



Estate Planning Forms

Did you find this article helpful? Do you think more information like this would help you? More information is available. This material is excerpted from [Estate Planning Forms](#), 2009, by L. Rush Hunt, published by the American Bar Association General Practice, Solo and Small Firm Division. Copyright © 2009 by the American Bar Association. Reprinted with permission. All rights reserved. This information or any or portion thereof may not be copied or disseminated in any form or by any means or stored in an electronic database or retrieval system without the express written consent of the American Bar Association. GP/Solo members can purchase this book at a discount.

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Selections: Letters for Small Business Lawyers

Vol. 1, No. 2

Jean L. Batman

Jean L. Batman founded Legal Venture Counsel, Inc. in 2004 to provide outside general counsel services to investors, entrepreneurs, and small businesses. Prior to forming Legal Venture Counsel, Ms. Batman was a Partner in the San Francisco offices of Duane Morris LLP, one of the country's 100 largest law firms. As outside general counsel to a variety of companies and individuals, Ms. Batman provides business and financial legal services to privately held entities operating in a broad range of industries including real estate development, financial and professional services, manufacturing, software, retail, biotechnology/specialty pharmaceutical, and high technology.

From the book *Letters for Small Business Lawyers*

Copyright Protection for Software

{Date}
{Name}
{Company Name}
{Address}
{City, State, Zip Code}

RE: Copyright Protection for Software

Dear {Salutation}:

Pursuant to our recent telephone conversation, here is some initial information about obtaining a registered copyright for your computer software product.

Copyright protection extends to all of the copyrightable expression embodied in the computer program. It is best to register the copyright within three months of first publication (and prior to any infringement) so that you will be entitled to statutory damages in the case of infringement.

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Copyright protection is not available for ideas, program logic, algorithms, systems, methods, concepts, or layouts. Therefore, you may also wish to consider obtaining one or more patents to fully protect the intellectual property reflected in the program. Please note that a patent application must be filed within one year of publication of the software or it will be statutorily barred.

To complete an application for copyright registration, I will need to know the year of creation and the exact date of first publication of the program. The filing fee is nominal, so most of the cost is in the preparation of the application and materials to be submitted for registration.

In general, copies of all or a portion of the program source code must be submitted with the application for registration. To determine how much of the program source code must be submitted and the appropriate format, you need to decide whether the program contains any trade secrets.

If the program does not contain trade secrets, we will submit one copy of the identifying portions of the program (i.e., the first 25 and last 25 pages of source code) in human-readable form, together with the page or equivalent unit containing the copyright notice, if any. If a published user's manual or other printed documentation accompanies the computer program, we will include a copy of the user's manual along with the identifying portions of the program. In addition, if the program is embodied in a CD-ROM, ordinarily the entire CD-ROM package must be deposited, including a complete copy of any accompanying operating software and instructional manual.

If the computer program does contain trade secrets, the requirements are similar, but the registrant may block out those portions of the code that contain trade secrets. There are some limitations here, so if this pertains to your product, we should discuss this further.

If you are also seeking to protect screen displays (i.e., the visual component of the program), we will reference them in the application and submit identifying material for the screens.

I hope this answers some of your initial questions. I look forward to further discussion with you.

Very truly,

FIRM NAME

Lawyer Name

Doing Business in More Than One State

{Date}

{Name}

{Company Name}

{Address}

{City, State, Zip Code}

RE: Doing Business in More Than One State

Dear {Salutation}:

All states require foreign entities (i.e., ones not organized in that state) to qualify before doing business in their state. Qualification typically consists of a filing with the Secretary of State's Office, payment of a fee, and appointment of a resident agent for service of process. Thereafter, you can expect filings and fees due annually, as well as tax obligations specific to each state in which COMPANY operates.

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"Doing business" is more often defined by the exceptions than by particular acts that constitute doing business in a particular state. However, if COMPANY elects to open an office in another state, as you have indicated it may, it will be required to qualify in that state. Failure to qualify may result in financial penalties as well as the inability to bring suit in the courts of the state with respect to acts and transactions in the state during the period of the violation.

Please let me know when COMPANY begins operating in another state so I can assist you in qualifying to do business in the other jurisdiction. In the meantime, please do not hesitate to call me with any questions with regard to the above.

Very truly,

FIRM NAME

Lawyer Name

Letter to Corporation With Reminder Re: Corporate Governance Matters

{Date}

{Name}

{Company Name}

{Address}

{City, State, Zip Code}

RE: Corporate Compliance

Dear {Salutation}:

As you know, the regular observance of corporate formalities is an important aspect of maintaining the protections and advantages of being incorporated, not the least of which is the protection of shareholders against personal liability for the financial obligations of the corporation.

Three of the most important areas of corporate formalities are shareholder decision making, director decision making, and separation of corporate assets from personal assets. Federal and state tax returns, employment tax returns, and Statements of Information (California), Annual Lists (Nevada), Annual Reports (Delaware), and similar filings are also required, depending on where the corporation is incorporated and qualified to do business.

The shareholders should take action to elect the board of directors of the corporation annually. In addition, certain specified fundamental changes in the corporation require the consent or approval of the shareholders, including, but not limited to:

1. Amendment of the Articles of Incorporation.
2. Sale of all or substantially all of the assets of the corporation.
3. Merger or consolidation of the corporation with or into any other corporation.
4. Winding up and dissolution of the corporation.

Matters of more general operating policy should be considered and authorized by the company's board of directors. Although there is no statutory requirement with respect to how frequently the board of directors should act, it is typical that the board meets quarterly and calls special meetings in which action is required before the next regular meeting. Matters appropriate for director action include the following:

1. Annual appointment of officers, setting of salaries, and declaration of bonuses.
2. Appointment of board committees, if any.
3. Corporate borrowing and the giving of security in connection therewith.
4. Contracts for the acquisition or lease of significant assets or services or the disposition of assets, or for the rendition of services outside the ordinary course of the business of the corporation.
5. Policy decisions with respect to the corporation's operating budget.
6. The adoption of pension, profit-sharing, bonus, and other employee benefit plans.
7. The declaration of dividends or the redemption of shares.
8. Amendment of the bylaws.
9. Review of financial statements of the corporation.
10. Appointment of auditors, if any.
11. Any action that requires a shareholder vote.
12. The issuance and sale by the corporation of additional shares or the grant of options to purchase additional shares.

According to our records, the date of your last shareholder meeting and/or shareholder action by written consent was DATE. The date of your last director meeting and/or director action by written consent was DATE. The corporation is incorporated in STATE and is qualified to do business in the following additional states: _____. The date of your last Statement of Information (or equivalent state filing in each state where the corporation is qualified to do business) was DATE. We do not have a record of what tax returns have been filed by the corporation.

Finally, we have drafts of the following documents in your corporate record book for which we have not received executed signature pages: _____

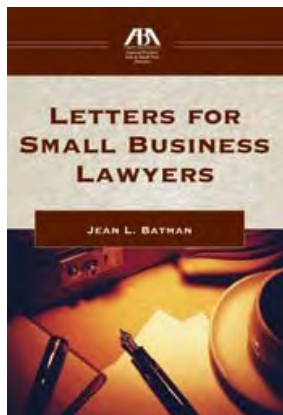
Please let us know if our records are out of date and/or if we can assist you in bringing your records current.

Very truly,

FIRM NAME

Lawyer Name

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Letters for Small Business Lawyers

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Basic Title Coverage and Related Agreements

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Basic Title Coverage and Related Agreements

Vol. 1, No. 2

James P. McAndrews

James P. McAndrews was formerly a partner with a partner with the law firm of Benesch, Friedlander, Coplan & Aronoff. He currently resides in Fairfax, Virginia.

From *Commercial Real Estate Practice Manual With Forms*, Second Edition, Chapter 10

Title Policy

In most states today title insurance policies are standard in form. A title insurance policy is considered a contract of indemnity and not a guaranty.¹ In determining liability under the policy, the entire contract, including the exclusions, exceptions, and conditions, is examined.² As a general rule, ambiguities are construed in favor of the insured and against the insurer.³ The first page of a title policy contains the insuring provisions, subject to the exceptions to coverage that appear in "Schedule B" of the policy and the "Exclusions from Coverage," both of which will be discussed later.

The Owner's Policy insures against any loss an insured owner might sustain by reason of:

1. Title to the estate or the interest of the insured being vested other than as stated in the policy.⁴
2. Any defects in, or liens or encumbrances upon, the title:⁵
 - (a) This covers defects caused by:
 - i. forgery, fraud, undue influence, duress, incompetency, incapacity or impersonation.
 - ii. lack of authority of any person acting on behalf of true owner.
 - iii. failure of proper creation, execution, witnessing, acknowledgment, notarization or delivery of any document affecting title.
 - iv. failure to create a document by electronic means authorized by law.
 - v. execution under power of attorney that is invalid because it has expired.
 - vi. failure of documents to be properly filed, recorded or indexed in the public records.
 - vii. any defect in any judicial or administrative proceeding through which title or the lien of the insured mortgage is derived.
 - (b) the lien of real estate taxes or assessments imposed on the title by a governmental agency due and payable, but unpaid; or
 - (c) relative to encroachments or adverse circumstances.
3. Unmarketability of title.⁶

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4. Lack of a right of access to and from the land to a public roadway.⁷
5. Recorded notice of violations or enforcement of various laws or regulations restricting or prohibiting the use or enjoyment of the land.
6. Recorded notice of any enforcement action based on the exercise of any other governmental police power not addressed in covered risk 5.
7. The exercise of the right of eminent domain if notice of the exercise is recorded.
8. Any taking by a governmental body if notice of the right to exercise is recorded.
9. Avoidance in whole or in part based upon voidability of transaction vesting title under the federal bankruptcy or state insolvency creditors' rights laws.
10. Any defect in or lien on the title filed or recorded prior to the recording of the deed and not covered in risks 1 through 9 above.

The insurer also agrees to pay costs, attorneys' fees, and expenses incurred in the defense of the title it has insured.

The new forms eliminate the coinsurance provision, the apportionment provision, and the requirement for sworn proof within 90 days after an insured determines facts giving rise to a loss and for production of policy as a condition for payment of loss. Additionally, the new forms add an automatic 10% increase in coverage provision if the insurer pursues the right to litigate, a choice of laws forum provision, and an endorsement incorporation reference provision.

The Loan Policy insuring the mortgagee's interest in a parcel of real property also insures against loss an insured lender may sustain, besides the insured items, covered risks, and cost of defense insured in the Owner's Policy, by reason of the following:

1. The invalidity or unenforceability of the lien of the insured mortgage upon the title.
2. The priority of any lien or encumbrance over the lien of the insured mortgage.
3. The lack of priority of the lien of the insured mortgage over any statutory lien for services, labor or material:
 - (a) arising from any improvement or work related to the land which is contracted for or commenced prior to the date of the policy; or
 - (b) arising from any improvement or work which is contracted for or commenced subsequent to the date of the policy but which was financed by proceeds of an indebtedness secured by the insured mortgage which at the date of the policy insured had not advanced or is obligated to advance funds.
4. The invalidity or unenforceability of an assignment of an insured mortgage provided the assignment is shown on Schedule A.

In addition to the abovementioned eliminations and additions, the Loan Policy eliminates the "last dollar" problem and, if needed, will require a last dollar endorsement. The Loan Policy also added that the insured may choose to have loss determined on either the date the claim is made or the date the claim is settled and paid. Additionally, the Loan Policy revised the arbitration clause to increase the threshold from \$1 million to \$2 million in which the arbitration can be unilaterally invoked by the insurer or the insured.

Exclusions From Coverage

On the second page of the Owner's Policy, there are "Exclusions from Coverage."⁸ The exclusions include:

1. Any law affecting the occupancy, use or enjoyment of the land, environmental protection laws, police power, and other similar laws;
2. Eminent domain unless notice was in the public records on the date the policy was issued;
3. Defects created by the insured, or known to the insured but not by the insurer, and any defects causing no loss to the insured or attaching subsequent to the date of the policy;⁹
4. The insured's failure to pay value for its interest; and
5. Any creditor's rights claim or bankruptcy law but excluding creditor's rights in the past chain of title.

The Loan Policy adds to the following to those exclusions:

- a. Unenforceability of the lien of the insured's mortgage because of the inability or failure of the

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insured to comply with the "doing business" laws of the state;

b. Invalidity or unenforceability because of usury or consumer protection or truth-in-lending laws; and

c. Dealing with post-date of policy, real estate tax, and assessment liens that became due and payable between the date of the policy and the date of recording of the mortgage.

The third exclusion above is very important and is the one most often overlooked. If a defect in title is known to the insured but not to the insurer, the insurer will not be liable for any loss incurred as a result of that defect. The mere fact that the insured may have been fortunate enough to be issued a policy without the insurer having found out about the defect does not give the insured any protection. Because of this exclusion, it is always better to advise the insurer in writing of any defects in title or to have the insurer list the defects in the title binder or title commitment. The insurer should indicate that it is insuring title notwithstanding the defects by either acknowledging receipt of written notice of the defects or showing that the defects are being omitted or removed from the title binder or title commitment. If possible, it would be wise to have the insurer give affirmative insurance against the defects.

Also, under the third exclusion, there might be a defect in title, such as an easement, which was not known at the time of the closing but might not cause the insured to lose any money. Under those circumstances, the insured will not have a claim against the insurer.¹⁰

In addition to the above-noted exclusions, the Loan Policy adds the following additional exclusion:

Statutory liens for services arising for work contracted for or commenced after the date of the policy and not paid for from the loan proceeds.

It should be noted that while the insurer is insuring the validity and enforceability of the lien of the mortgage, it is not insuring the validity or collectability of the mortgage debt.¹¹ A title based on a forged instrument, however, is insured under the policy.¹²

Schedule A

Following the "Exclusions from Coverage" and usually on page 3 of the policy is Schedule A. This is a very important part of the policy. It will set forth the following:

1. Insurer—The name and address of the insurer will be included. This will be a quick reference of the place where claims are to be sent.
2. Amount of insurance—This should be the purchase price of the property or the amount of the mortgage lien, as the case may be.
3. Date and time of the policy—This is the date and the time up to which title was searched and is insured. If an insured is obtaining an Owner's Policy, it will want the date and time after the deed is recorded. If the insured is a mortgagee, it will want the title and lien insured up to the time the mortgage is recorded.
4. Name or names of the insureds—This should be as broad as possible. Parties who have a participating interest in the purchase of the property or in a mortgage loan should be identified in the title insurance policy or they will not be covered under the policy.¹³ In the *Fairway Development Company* case,¹⁴ one of the two original partners transferred his interest in the general partnership to the other general partner, who, in turn, transferred the departing partner's interest to a third party. The court said that the original partnership, which was insured, dissolved when one of the original partners sold his interest. A new general partnership was created when the third party bought the interest, previously held by the departing partner. Because the new general partnership was not the named insured, although it had the same name, the insurer was not liable. As is discussed in Chapter 11, there is a Fairway Endorsement that can protect a partnership in the event of transfer of a partnership interest.
5. Estate or interest being covered by the policy—This can be a fee estate, a life estate, a leasehold estate, an easement, a first or second mortgage lien, or some other form of interest or tenancy in the real property.
6. Name or names of persons or entities holding the interest being insured—This can be the fee simple owner, if the mortgagee's lien is being insured.
7. Legal description of the interest—Some policies will refer to Schedule C for the legal description. If a leasehold estate is being insured, the description must contain the complete identification of the lease. In a leasehold endorsement, a leasehold estate is defined as "the right of possession for the Lease Term." The "Lease Term" is defined as "the duration of the Leasehold Estate, including any renewals or extended terms if valid option to renew or extend is contained in the Lease." The "Lease" is defined as "the lease agreement described in Exhibit A." It would appear that it is no longer

necessary to set forth the term of the lease in Schedule A. One must be certain that only the lease is properly identified in Schedule A, together with identifying any modifications and amendments to the lease.

8. Endorsements—A new optional section is added to the Schedule of the 2006 Loan Policy for insurers electing to use this section. It is a “check the box” list of commonly used endorsements. If the box is checked, that particular endorsement is incorporated in the policy.

Schedule B

The next section of the Policy is Schedule B, which pertains to the liens, encumbrances, easements, judgments, encroachments, and other items affecting the title to the property being insured that the insurer is excluding from the coverage. In other words, the insurer represents that the insured has good or clear title or right to the estate being insured except for the items listed in Schedule B.

In an Owner’s Policy, the insurer will except from coverage initially in the title commitment and then, unless evidence is furnished to satisfy the insurer sufficiently so that the insurer may delete the items as exceptions, in the Title Policy, the following standard exceptions:

1. The first mortgage, if the insured obtains a purchase money mortgage to acquire the property or any other mortgages made by the owner insured to acquire the real property;
2. The rights or claims of parties in possession not shown on the public records;
3. Any encroachments, overlaps, boundary line disputes, and any other matters disclosed by an accurate survey and inspection of the premises;
4. Any easements or claims of easements not shown on the public records;
5. Any lien or right to a lien, for services, labor or materials furnished, that is imposed by law and that is not shown on the public records; and
6. Real estate taxes or special assessments that are not shown as existing liens on the public records.

Standard exceptions Nos. 2 and 5 above are usually removed upon delivery of an affidavit of the owner to the insurer stating that there are no persons in possession, other than the owner and the owner’s family, or tenants under leases, and stating that no work has been done on the property for a certain period of time, usually 90 days. The time is dependent upon the period fixed by state law in which a laborer, materialman or contractor could file a mechanic’s lien after doing work on the insured property.

Standard exceptions Nos. 3 and 4 above usually are removed if a current survey and report of inspection of the property are furnished to the insurer, but the insurer may except from insurance any specific encroachments, easements, or other defects or violations that are shown on the survey. At times, the insurer might want an additional certificate from the surveyor as to the facts after a visual inspection of the property.

Standard exception No. 6 above can be removed if the insurer does a special tax search. But if any assessments are found or if any assessments have been authorized by law but not imposed at that time, the insurer would except those assessments. In some states, real estate taxes can be a lien, although they are not due and payable. The insurer will take exception to those real estate taxes and the exception will be acceptable to the insured, but the insured should ask the insurer to give affirmative insurance that the real estate taxes excepted “are not yet due and payable.”

Endnotes

1. *Sattler v. Philadelphia Title Ins. Co.*, 162 A.2d 22 (Pa. Super. Ct. 1960); *Maggio v. Abstract Title & Mortgage Corp.*, 98 N.Y.S.2d 1011 (1950).
2. *Dist.-Realty Title Ins. Corp. v. Jack Spicer Real Estate, Inc.*, 373 A.2d 952 (Md. 1977); *Batdorf v. Transamerica Title Ins. Co.*, 702 P.2d 1211 (Wash. App. 1985); *First Amer. Title Ins. Co. v. Seaboard S&L Ass’n*, 315 S.E.2d 842 (Va. 1984).
3. *First Nat’l Bank of Minn. v. Fidelity Nat’l Title Ins. Co.*, 572 F.2d 155 (1978); *First Amer. Title Ins. Co. v. Seaboard S&L Ass’n*, 315 S.E.2d 842 (Va. 1984).
4. *Laabs v. Chicago Title Ins. Co.*, 241 N.W.2d 434 (Va. 1984).
5. *Hall v. San Jose Abstract & Title Ins. Co.*, 342 P.2d 362 (Cal. App. 1959); *Foehrenbach v. German-Amer. Title & Trust Co.*, 217 Pa. 331 (1907).
6. *Allison v. Ticor Title Ins. Co.*, 907 F.2d 645 (7th Cir. 1990), *appeal after remand*, 979 F.2d 1187 (7th Cir. 1992); *Lick Mill Creek Apts. v. Chicago Title Ins. Co.*, 231 Cal. App. 3d 1654 (App. 1991).
7. *Gates v. Chicago Title Ins. Co.*, 813 S.W.2d 10 (Mo. App. 1991); *Marriott Fin. Servs., Inc. v. Capitol Funds, Inc.*, 217 S.E.2d 551 (N.C. 1975), *rev’g part, aff’g part*, 209 S.E.2d 423 (N.C. App.

1994); Krause v. Title & Trust Co. of Fla., 390 So. 2d 805 (Fla. App. 1980).

8. Blaylock Inv. Corp. v. Standard Title Ins. Co., 335 F. Supp. 1284 (W.D. La. 1971); Muscat v. Lawyers Title Ins. Corp., 351 N.W.2d 893 (Mich. App. 1984)

9. Schultz Mgmt. v. Title Guarantee Co., 551 N.Y.S.2d 527 (A.D., 1st Dept. 1990).

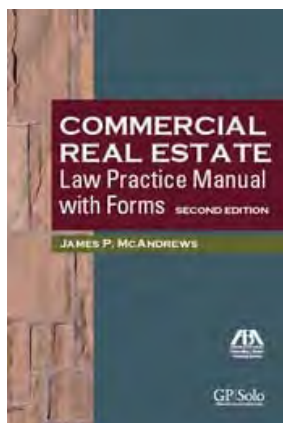
10. Gibraltar Savings. v. Commonwealth Land Title Ins. Co., 905 F.2d 1203 (8th Cir. 1990); Cale v. Transamerica Title Ins. Co., 225 Cal. App. 3d. 422 (App. 1990); Youngblood v. Lawyers Title Ins. Corp., 923 F.2d 161 (11th Cir. 1991).

11. Bank of Miami Beach v. Fidelity & Casualty Co. of N.Y., 239 So. 2d 97 (Fla. 1970).

12. Parker v. Title & Trust Co. of Fla., 429 So. 2d 1267 (Fla. App. 1983); Coast Mutual Building-Loan Assn. v. Security Title Ins. & Guarantee Co., 57 P.2d 1392 (Cal. App. 1936).

13. Border City S&L Ass'n v. First Amer. Title Ins. Co. of Mid-Amer., 768 F.2d 89 (6th Cir. 1985).

14. Fairway Dev. Co. v. Title Ins. Co. of Minn., 621 F. Supp. 120 (N.D. Ohio 1985); *but see* Ticor Title Ins. Co. of Cal. v. Amer. Resources, Ltd., 859 F.2d 772 (9th Cir. 1988).



Commercial Real Estate Practice Manual With Forms, 2d Edition

Did you find this article helpful? Do you think more information like this would help you? More information is available. This material is excerpted from [Commercial Real Estate Practice Manual With Forms, 2d Edition](#), 2009, by James P. McAndrews, published by the American Bar Association General Practice, Solo and Small Firm Division. Copyright © 2009 by the American Bar Association. Reprinted with permission. All rights reserved. This information or any or portion thereof may not be copied or disseminated in any form or by any means or stored in an electronic database or retrieval system without the express written consent of the American Bar Association. GP/Solo members can purchase this book at a discount.



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Vital Information for Successful Practitioners

Collaborative Law: Tools for a New Age

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Collaborative Law: Tools for a New Age

Vol. 1, No. 2

Holly M. Hohlbein

Holly M. Hohlbein is a family law attorney in Kirkland, Washington. She is an early pioneer of collaborative practice in the Northwest and is a trainer, author, and presenter on CP. She is a founder and leader of various local and regional CP organizations. Contact her at hollyh@hhattorney.com or visit her on the web at www.hhattorney.com.

The last 30 years have seen unprecedented growth in alternatives to the traditional legal system. Escalating client—and lawyer—dissatisfaction with litigation coupled with myriad economic and cultural changes have fueled the development of new and improved models of conflict resolution. One of these evolving models is collaborative law, developed by lawyer Stu Webb over 20 years ago in Minnesota. More than just a friendly agreement to be civil and “work things out,” collaborative law and other processes like it are literally rewiring practitioners to a new way of lawyering, and paving the way for a new age of conflict resolution.

Collaborative What?

Collaborative law (sometimes called collaborative practice or collaborative divorce) departs from litigation in that it is organized around the idea of “turning down the heat” for people in conflict, in contrast to litigation that turns the heat up. In a collaborative case, all parties and professionals sign a contract that they will do settlement work only, and will not litigate the case. Either party may terminate the process at any time, at which point all professionals must withdraw. The withdrawal (or “disqualification”) allows for a safe container in which all possibilities may be explored without fear of litigation . . . and litigators. You might wonder; “what replaces the threat of a trial in order to get warring parties to be reasonable?” The answer might surprise you: Strategically engineered mutual self-interest. Collaborative law’s success is built on creating the conditions under which human beings will work together because it gets them closer to achieving their goals than if they operate on their own. If you’re curious about how this works, try Googling “the prisoner’s dilemma.” Other core collaborative law principles include full transparency, strict confidentiality, and fully integrated “teams” of interdisciplinary professionals such as financial analysts and mental health practitioners (particularly for divorce work). Although collaborative law is used predominately in family law, it has a growing presence in other areas such as employer-employee relations, business disputes, elder law, and medical malpractice.

Learn the Ropes

There are no legal requirements to become a collaborative professional. However, the majority of collaborative professionals are members of professional organizations that have training requirements, practice protocols, and standardized forms. In addition to the nuts and bolts of how to conduct a case, the introductory training focuses on skill-building in interest-based negotiations, facilitative dialogue, the principles of “strategic cooperation,” the neuroscience of conflict, and other cutting-edge techniques. Once practitioners are fully trained they can begin to work cases, usually within a supportive community of collaborative colleagues while they “learn the ropes.” Collaborative



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lawyers generally experience more job satisfaction than their litigation colleagues, partly due to the fact that their clients are more satisfied with the process and outcome. This is true even for contentious cases with high conflict and difficult legal issues. For more information about collaborative practice, visit www.collaborativepractice.com. There are also books written for practitioners; a few of the best I've found are *Collaborative Divorce Handbook: Helping Families Without Going to Court*, by Forrest S. Mosten (2010); and *Collaborative Law: Achieving Effective Resolution Without Litigation*, by Pauline H. Tesler (2009).

Everyone Can Benefit from Collaboration

Interestingly, the skills acquired in collaborative training aren't limited to collaborative practice; these skills are critical to *all* types of negotiations. Acquiring them can help every lawyer become a higher level negotiator. Studies suggest the benefits of self-interested cooperation in theory and in practice. A 2006 study of family law attorneys by Andrea Kupfer Schneider at made a surprising discovery: negotiators who were considered by colleagues to be flexible, helpful, and trustworthy had better negotiated outcomes than those who used "hardball" tactics. While it's not too surprising that the former are considered *skilled* negotiators, you may be surprised to learn that they also are considered *better* negotiators than their hardball colleagues. The ABA's *Lawyering with Planned Early Negotiations: How You Can Get Good Results for Clients and Make Money* (2011) is a must-read for any lawyer who negotiates (professionally or personally; think about the last time you talked to your spouse about where to vacation or how to spend that unexpected bonus money). The brainchild of law professor John Lande, planned early negotiation (PEN) uses many of the skills that collaborative practitioners excel at. In addition, Lande's book is a "how to" text on building a successful practice no matter what area of law you practice in.

Knowledge Is Power

Even if you aren't interested in becoming a collaborative practitioner yourself, it's useful to understand how it works. Part of our ethical responsibility as lawyers is knowing what options exist for clients in resolving the problems they bring to us. Being educated about collaborative law helps ensure that you are fully informing your clients about *all* of the options that might help them achieve their goals. Like Macy's sending a customer to Gimbel's for something Macy's doesn't carry in the movie *Miracle on 34th Street*, you can build client goodwill and generate future referrals even when you refer to a practice area you don't do. You might even refer them to one of the books targeted to potential collaborative clients, such as *The Collaborative Way to Divorce* by Stuart G. Webb/Ronald D. Ousky (2007), and *Collaborative Divorce* by Pauline H. Tesler and Dr. Peggy Thompson (2007).

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Vital Information for Successful Practitioners

KIND: Helping Children Alone in the United States

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KIND: Helping Children Alone in the United States

Vol. 1, No. 2

Megan M. McKenna

For the next three years, the Division has adopted a collaborative project with KIND (Kids In Need of Defense) to provide opportunities to our members to give back. Beginning with our Fall National Solo and Small Firm Conference from October 20–22 in Denver, Colorado, at the Westin Downtown Denver, we are working with KIND to put on training on immigration law proceedings so that our members can take on a pro bono matter in their communities. The training will be available at the conference and also via a webcast for those who are not able to attend in person. The cases to be assigned to our members will match a member with an unaccompanied child (who could be as young as three, four, or five years of age) and who would otherwise be representing themselves. Not only will our members be provided with this training, but they will also be matched up with a mentor so that our members are not on their own. This unique opportunity will also allow our trained members to expand their practices into the area of immigration. So whatever the motivation, we have a valuable opportunity for our members and an especially valuable opportunity for a young, vulnerable unaccompanied child. Please join us in making a difference in the life of a child. To register for the in-person meeting, please click [here](#). To register for the webcast, please click [here](#).

—Laura V. Farber

* * *

Celia and Amina are sisters from West Africa, ages 16 and 5. Both underwent female genital mutilation (FGM)—Celia when she was 14, Amina when she was 3 years old. The family members who organized the FGM had also arranged for Celia to be married to a much older man from the village. Others in the family opposed this marriage and feared for Celia and Amina's future. They managed to get the girls to the United States; however, neither the girls nor their caretaker in the US could afford a lawyer to help the girls apply for US protection. They came to KIND, which found them a pro bono attorney who is helping the girls with their asylum case.*

Jose had been abandoned by his parents in Central America when he was 6 years old. He was taken in by a grandmother and some cousins who abused him violently for many years—beating him, depriving him of food and education, and even tying him to a tree for periods of time. No one in the community would help him. At 12 years old, Jose decided to try to escape and come to the United States, where he hoped he would find protection. KIND found him a dedicated pro bono attorney who was successful in gaining US protection for Jose. He is now 14 and enjoying what had been denied to him all these years—a safe and happy childhood.

Each year approximately 8,000 children who come to the United States without a parent or legal guardian are placed in US custody and in deportation proceedings. Many of these children are escaping severe abuse, persecution, natural disasters, life-threatening poverty, or violence; others are victims of trafficking, have been abandoned by their families, or are trying to find parents who left them behind years previously. A common trait of all these children is desperation.



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When these children are apprehended by US government officials and face immigration proceedings, the majority must do so without a lawyer. Immigrants who are in deportation proceedings in the United States do not have a right to free legal assistance—even if they are children.

Without counsel, most children can't understand the complex procedures they face and the options open to them. They are no match for the government attorney who is arguing for their deportation. Too often, children with viable claims are unable to present them and, as a result, can be sent back to perilous fates, where their well-being, or even their lives, may be in danger.

Kids in Need of Defense (KIND) was founded by the Microsoft Corporation and Angelina Jolie in late 2008 to help provide competent and compassionate legal counsel to these children. KIND has partnered with more than 115 major law firms and corporate legal departments who have committed to representing unaccompanied children.

Attorneys who volunteer with KIND do not need immigration experience. KIND trains and mentors volunteers throughout the life of their cases to ensure that the children receive the best representation possible. Attorneys who take KIND cases gain new skills, get courtroom experience, and have direct interaction with the children they are representing. Most of all, they give these at risk children new hope for their futures.

KIND is committed to creating a national network of trained attorneys who can be a resource for unaccompanied children in desperate need across the country. To date, KIND has trained more than 3,000 attorneys. KIND holds regular training sessions in all its offices for new volunteers or for those who want to gain more in-depth knowledge about representing children in a variety of scenarios. KIND's goal is to ensure 100 percent representation of unaccompanied children in the cities in which we work.

KIND's headquarters are in Washington, DC; it has field offices in Baltimore, Boston, Houston, Los Angeles, Newark, New York City, and Washington, DC. KIND also has an affiliate in Seattle, Washington, Volunteer Advocates for Immigrant Justice, which was cofounded by the Microsoft Corporation and the American Bar Association's Commission on Immigration.

Children have been coming to KIND in increasing numbers ever since it became operational in January 2009. KIND has received more than 3,000 referrals to date; clients are as young as 2 years old with an average age of 14.5.

KIND also advocates for changes in US law, procedure, and practice to protect the rights of unaccompanied children. KIND helps craft and support legislation to promote the increased protection of these children, and also works with federal agencies to improve their treatment and care.

KIND recognizes that not all unaccompanied children are eligible for US protection. A number of children will have to return to their home countries, often to the conditions that they felt they had to escape in the first place. KIND has embarked with The Global Fund for Children on a pilot project to help unaccompanied children who are returning home to Guatemala—either voluntarily or through deportation—so they can integrate back into the community successfully and in a way that is sustainable.

When a child decides that she/he wants to participate in the Guatemalan Child Return and Reintegration Project (GCRRP), a KIND social worker will discuss with the child the needs that the child anticipates upon return—for example, shelter, job skills training, counseling, or education. The KIND social worker then devises a care plan that is sent to KIND's five local nongovernmental organization partners in Guatemala; they then implement the plan to best meet the child's needs. KIND monitors the child's situation for some time after her/his return to determine if the child's reintegration has been successful and what else the child might need to ensure their well-being. KIND will develop best practices from this three-year pilot project so it can be replicated in other countries in the region and around the world.

KIND is working to shine a light on this largely invisible, but highly vulnerable, group of children by creating an ever-growing movement on their behalf that will change the way they are treated in this country. As a leader in the protection of the most vulnerable, providing pro bono representation to children who came to this country alone in search of safe haven is the least we can do. No child, regardless of where they are from, should face court in the United States without representation.

*The names of the children have been changed to protect their privacy.

* * *

Immigration Hearings 101: A Complete Tool Kit for Representing Children in Immigration Court

Friday, October 21, 2011

Part 1: 1:30 p.m. - 2:30 p.m. Mountain Time

Part 2: 2:45 p.m. - 3:45 p.m. Mountain Time

This comprehensive CLE will be taught by experienced immigration lawyers and trainers and will provide lawyers with the tools needed to competently represent children in the immigration courts. This program is being sponsored by the GPSolo Pro Bono & Public Service Committee and upon completion of the training, attendees will be offered the opportunity to participate in immigration

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Graves & Allen
Oakland, California

proceedings representing unaccompanied children, through established pro bono programs that identify and screen clients, and provide mentors and support.

Speakers: Diana Castaneda (New York, NY) and Christina Fiflis (Denver, CO)



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Division Announcements

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Division Announcements

Vol. 1, No. 2

Congratulations to GPSolo's Chair-Elect, Benes Aldana!

ABA GPSolo's Chair-Elect, Commander Benes Aldana, has been selected for promotion to Captain, United States Coast Guard. This is extremely exciting news, and we congratulate him on this accomplishment.

Call for Division Secretary and Members-At-Large Council Nominations

The Nominating Committee will meet during the 2011 Fall Meeting in Denver, Colorado, from October 20 to 22 at the Westin Denver Downtown Hotel to nominate individuals for the positions of Division Secretary and Members-At-Large of the 2012–2013 Council. In accordance with § 7.3.1 of the 2012 revised bylaws, the committee will nominate five Council Members-At-Large to serve four-year terms. Minority applicants are encouraged. The duties, terms of office, and eligibility requirements for each of the positions to be filled are outlined in the Division Bylaws.

Please return your completed questionnaire to [the Division Office via email](#), via fax to 312-988-5711, or by mail directly to ABA, General Practice, Solo and Small Firm Division, 321 N. Clark Street, Chicago, IL 60654. Questionnaires must be postmarked by **Monday, October 3, 2011**.

Please click on the following to access the information. This information may also be found on the Division's website under News & Announcements.

[Nominating Memo FY12](#)

[Nominating Questionnaire FY12](#)

Call for Fall Meeting Council Agenda Items and Committee Reports

All Division Leaders should committee report, action item, or informational item. **All materials should be sent to the Division Office** and to your committee's Group Director. For more information visit the website at www.americanbar.org/genpractice in the News and Announcements section or contact Dee Lee at the Division Office at 312-988-5659.

Brown Bag Sessions

ABA GPSolo's Brown Bag Sessions are short, informal educational events on timely topics organized by committees and held entirely by teleconference. The sessions normally last one hour and are held during lunch hours. Due to the informal nature of the programs, and the fact that accompanying written materials may not always be prepared and distributed, the Division does not offer continuing legal education credits for these programs. Past sessions such as "House of Delegates 101: How to Make ABA Policy" have been recorded and may be accessed at [House of Delegates 101: How to Make](#)

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[ABA Policy](#). Join us for the next Brown Bag Session:

David vs. Goliath

October 12, 2011

12:00 Noon–1:00 p.m. Central time

Call-in Number: 866-646-6488

International Only 707-287-9583

Conference code: 6752837174#

Changes to Division Staff

Please join the ABA General Practice, Solo & Small Firm Division in welcoming Steve Wildi and Jonnita Dockens to the team!

Who Is Steve Wildi?

ABA GPSolo's Program Assistant, primarily responsible for providing administrative and programmatic support to the Division staff and members

Formally, Steven K. Wildi

Born in Evanston, IL; raised in Morton Grove, IL

Lives on Chicago's north side, near the lake

Studied advertising/graphic design at the American Academy of Art in Chicago

Worked in graphic design and office administration

Loves to travel

Fan of history, art, and architecture

Enjoys live music and theater

Regularly hunts for treasures at estate sales and auctions

Who Is Jonnita Dockens?

ABA GPSolo's Membership/Marketing Associate, primarily responsibility for executing the Division's membership/marketing strategy

Formally, a devout vegetarian (with aspirations to become a vegan)

Lives in the Chicago suburbs with her 12-year-old son

Received a B.A. in communications from Western Illinois University

Learned to drive and purchased her first car at 25 years of age

Interests include traveling, reading books, and meeting new people

Lover of jazz, disco, and country music

Frequent speaker to school age youth (especially high school students)

Authored an antiviolence initiative that is being utilized to combat youth violence

Committee Highlight: ABA GPSolo's Ethics and Professional Responsibility Committee

The Ethics and Professional Responsibility Committee is responsible for providing leadership in coordinating the Division's efforts regarding lawyer ethics, discipline, and professionalism including the study of issues involving professional ethics, discipline, and professionalism; promotion of high standards of ethics and professionalism for our constituency; providing information, education, and analysis of current issues in ethics and professionalism; and assisting the Council in dealing with ethics and professionalism issues. More information on this Committee may be found [here](#).

This year, the Committee will be primarily focused on gathering feedback from solo and small firm members and constituents so the Committee can provide a recommendation to the Division Council regarding how to respond to the various ABA Commission on Ethics 20/20 proposals. The Committee has created an Ethics 20/20 Task Force to assist with this task.

GPSolo's Ethics 20/20 Task Force

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Oakland, California

The Committee would like your full participation on the various Ethics 20/20 issues related to solo and small firm lawyers. We want to provide any member of GPSolo or anyone who is interested in these issues to have the opportunity to write and discuss their position among their colleagues. We've tried to make it as easy as possible for you to comment. Any ABA member can post a comment to the Discussion Board, which is located on the Task Force's webpage. If you are not an ABA member, you can use the following listserv at GP-Ethics2020@Mail.americanbar.org. More information on the Task Force may be found [here](#).

The Committee is also holding a CLE session at the upcoming National Solo & Small Firm Conference. Remember you can attend In-Person or via Webcast!

Lawyers' Use of Evolving Technologies: Ethical Issues and Proposed Solutions

Friday, October 21, 2011

1:30 p.m. Mountain Time

The Westin Denver Downtown Hotel

Denver, CO

Whether operating in "the Cloud" or using Internet-based services to disseminate information about the law and legal services as well as to attract new clients, lawyers' use of technology will continue to grow. Small firm and solo practitioners are most often the early adopters of these new technologies. As technology evolves at an unprecedented pace, so do its ethical implications for lawyers. This panel will engage participants in a discussion about those ethical issues and the recent technology related proposals of the ABA Commission on Ethics 20/20.

Speakers

Honorable Daniel Crothers, Justice of the Supreme Court of North Dakota, Bismarck, ND
Frederick S. Ury, Fairfield, CT
Ellyn S. Rosen, Chicago, IL

To register for the in-person meeting, please click [here](#); to register for the webcast, please click [here](#)

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Division Meetings

Vol. 1, No. 2

Fall Meeting & National Solo and Small Firm Conference

October 20–22, 2011

The Westin Denver Downtown Hotel

Denver, CO

To register for the in-person meeting, please click [here](#).

To register for the webcast, please click [here](#).

New this year! You can attend in person, virtually, or via access to the video recorded offerings after the conference ends. If you register for either the conference or the webcasting, you will get a code that will give you access to more than 20 hours of CLE to use at your convenience **during the next 18 months**. There is no reason not to participate!

The Fall Meeting and National Solo & Small Firm Conference will help you to hone your skills and provide excellent services to your client, regardless of your area of practice, whether you are a solo, a small firm lawyer, or a general practitioner. Through diverse and high quality programming, the conference is designed for new and experienced lawyers looking for substantive and practical programming.

CLE

Here is a quick overview of some of the CLE offerings at the meeting:

- Tips in Technology
- Ten Ways WordPerfect Can Make You Better, Stronger, Faster
- RESPA, Dodd-Frank, and Consumer Financial Protection for Real Estate Practice
- Residential Foreclosure Update
- Taxes: How Do They Affect Lawyers?
- Credit Scores, Credit Reporting, and the FCRA
- How to Get More Clients Out of Legal Plan Participation
- What Solo and Small Firm Practitioners Need to Know About the Professional Discipline System
- Veterans Disability Compensation

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- Bankruptcy for Nonbankruptcy Lawyers
- 60 Technology Tips in 60 Minutes
- Setting Up a Law Office
- Ethics and Internet/Website Use
- Technology for the Solo or Small Office
- How to Avoid Electronic Malpractice
- How to Have Happier Clients
- An Introduction to Special Education Law

Diversity, Pro Bono, and Public Service Opportunities

The Division has a special focus on public service, pro bono, and diversity efforts this year. Pulitzer Prize winning author of *Enrique's Journey*, **Sonia Nazario**, is the keynote speaker at the Division's prestigious **Difference Makers Awards Luncheon** celebrating extraordinary lawyers who make a difference by breaking down barriers for women, people of color, and people with disabilities, regardless of sexual orientation.

A special training session will be offered by the Kids In Need of Defense (KIND) organization to allow attorneys to assist unaccompanied children, some only three, four, or five years old, who currently represent themselves, in immigration court proceedings. If you are thinking about expanding your practice into the area of immigration or are willing to provide pro bono services for a vulnerable child, this session is for you.

We will also offer a program in collaboration with the **Procurement Technical Assistance Center** in the Denver area, which assists attorneys in becoming certified to obtain business from the government. Further, we will put on a CLE program to assist minority- and women-owned solo and small firm practices (as well as all solos and small firm lawyers) in using strategies to attract business from corporations, traditionally big firm clients.

For the Division's Public Service Project, attendees will be able to donate needed items for the Literacy Coalition of Colorado. Click [here](#) for more information on items and the LCC.

Of course, this conference involves more than just programming. The two-day conference is chock-full of networking opportunities with a Welcome Reception, Women's Roundtable, Diversity Roundtable, breakfasts, lunches, and hospitality suite.

Don't wait! Register now for the wide variety of CLE sessions and events. We look forward to seeing you in October! To register for the in-person meeting, please click [here](#). To register for the webcast, please click [here](#).

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Did You Miss Last Month's Teleconference? Don't Worry: You Can Still Listen to It!

[Approaching and Interpreting the UCC: The Basic Tools for Success](#) (Audio CD-ROM)

Product Code: CET11APUCDR

Faculty: Robert LeVine

[Secured Transactions: Article 9 of the Uniform Commercial Code and Impact of Article 1](#) (Audio CD-ROM)

Product Code: CET11STSCDR

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Moving Diversity Forward: How to Go from Well-Meaning to Well-Doing

Vol. 1, No. 2

Vernā A. Myers



Moving Diversity Forward: How to Go from Well-Meaning to Well-Doing

What People Are Saying

"Moving Diversity Forward, a fabulous read, is a revealing, comprehensive and practical diversity guide. Vernā's voice is compelling and opens the door to a deeper understanding of self and others as we look through a diversity lens."

—Barbara L. Becker, Partner & Chair Global Diversity Committee, Gibson, Dunn & Crutcher LLP

"If you believe that your organization has done everything it can to enhance its diversity, and if you are still frustrated at how little progress you have made, Moving Diversity Forward is for you. It is an instructive read for all of those who wish to live and work in a multicultural world where everyone has a fair chance to succeed and contribute."

—Frank P. Barron, Chief Legal Officer, Morgan Stanley

"The numerous publications about diversity render it difficult to offer a new perspective, but Vernā Myers has done so. Moving Diversity Forward takes head on underlying challenges to successful diversity and inclusion efforts that often are left unspoken—and she has done so without being inflammatory."

—William A. Von Hoene, Jr., Executive Vice President, Finance and Legal, Exelon Corporation

"The promise of this book is in the title—how to go from well-meaning to well-doing. If that is your goal, Moving Diversity Forward is for you! Myers delivers on her promise with a great blend of accessible theory and tools for practical application that can benefit any reader willing to learn."

—Beverly Daniel Tatum, Ph.D., President, Spelman College; author of Why Are All the Black Kids

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Sitting Together in the Cafeteria?

“Diversity isn’t rocket science. It’s harder than that. Attorney Vernā Myers has written a pathway to address the issues of diversity, and to make sure we have those difficult conversations.”

—**Charles J. Ogletree**, Professor of Law, Harvard Law School and Executive Director, Charles Hamilton Houston Institute for Race & Justice

“If you, like me, are a white male who believes in inclusion but sometimes feels on shaky ground in how to achieve it, this book is for you. Ms. Myers reveals the unconscious biases that inhibit inclusion, debunks the well-meaning but misguided arguments often used against inclusion, and provides clear and concrete steps we can take to move from well-meaning to well-doing.”

—**Mark E. (Rick) Richardson**, VP & Associate General Counsel, GlaxoSmithKline

“In *Moving Diversity Forward*, Vernā Myers has written a much-needed handbook for those who are committed to tackling the problem of diversifying our law firms. The writing is crisp and intelligent. The advice is of substance. I highly recommend it.”

—**Harold J. McElhinny**, Managing Partner, Morrison & Foerster LLP

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SoloSez Popular Threads

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[Calling All Grammar Mavens With a Possessive Bend](#)

[Electronic Signature on Documents](#)


[How to Move Into New Computer](#)

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