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Casino Patrons Win Gamble on Fraud Action

By Beth Manes

New Jersey casinos once believed that they operated under a different set of rules than other businesses in the Garden State. This perception was their reality until a few casino patrons took them to court. In a landmark decision, the New Jersey Appellate Division ruled that the Consumer Fraud Act applies

to casinos.

The events that gave rise to this case are simple, and probably familiar to many casino patrons. Harrah's casino sent an offer of "Birthday Cash" to the plaintiffs. This offer required only that they present the mailed coupon and valid identification at the redemption center within a certain time frame on any of a few particular dates. Plaintiffs were induced to visit Harrah's casino and planned their trip to Atlantic City around those dates. When they presented their coupons, Harrah's refused to honor them. Plaintiffs were told by casino workers that the redemption center was closed. Confused, plaintiffs checked the coupons against their calendars and watches, and although the casino workers agreed that they were presenting the coupons within the requisite time period, they advised the plaintiffs that there would not be anyone there to assist them until the following morning. The patrons had no choice but to leave, empty handed.

The difference between these patrons and others who are duped by casinos on a daily basis is that these patrons knew that what had happened was not just unfair—it was fraudulent. The patrons filed suit against the casino under the Consumer Fraud Act, among other statutes. The casino filed a motion to dismiss the complaint, arguing that the Consumer Fraud Act did not apply to casinos because they are regulated by a state agency, the Casino Control Commission.

The Casino Control Commission has promulgated regulations that govern the conduct of casinos, specifically, the Casino Control Act. These regulations proscribe false and misleading advertising. The defendant casino argued that because the Casino Control Act regulated its advertising, to apply the Consumer Fraud Act would be superfluous. The casino further argued that the Casino Control Commission had exclusive jurisdiction over the conduct of casinos. This was patently false. There are vast differences between the Casino Control Act and the Consumer Fraud Act. Even if the rules pertaining to advertising are the same, that is, that a casino's advertising cannot be false or misleading, the penalties for failing to comply are different. The processes for dealing with noncompliance are also different.

To seek redress under the Casino Control Act, a casino patron must begin by filing a "patron complaint" with the Casino Control Commission, and then hope for the best. The Casino Control Commission will decide whether or not to refer the complaint to the Department of Gaming Enforcement. Even if the Department of Gaming Enforcement does pursue the claim, the best a wronged patron can hope for is restitution. While it is nice that the patron might be made whole, there is no deterrence for the casino to halt the practice that gave rise to the claim, or to cease deceiving future casino patrons.

Under the Consumer Fraud Act, however, if a consumer files a complaint, there is discovery, even the possibility of a jury trial. If a consumer wins, he or she can be awarded treble damages, as well as costs and attorney's fees. The case described here was filed as a class action; therefore, a loss by the casino would clearly be far more than the slap on the wrist they would receive under the Casino Control Act.

The trial court was unmoved by those arguments. Rather, the trial court was concerned about potential conflict between the Consumer Fraud Act and the Casino Control Act. The trial court held that the Casino Control Commission should have exclusive jurisdiction over the claims arising from activity governed by the Casino Control Act, and the trial court dismissed the case. Plaintiffs appealed, arguing that the trial court incorrectly applied the test for preemption, as previously established by the New Jersey Supreme Court:

In order to overcome the presumption that the CFA applies to a covered activity, a court must be satisfied . . . that a direct and unavoidable conflict exists between application of the CFA and application of the other regulatory scheme or schemes. It must be convinced that the other source or sources of regulation deal specifically, concretely, and pervasively with the particular activity, implying a legislative intent not to subject parties to multiple regulations that, as applied, will work at cross-purposes. We stress that the conflict must be patent and sharp, and must not simply constitute a mere possibility of incompatibility.

Lemelledo v. Beneficial Mgmt. Corp. of Am., 150 N.J. 255, 270 (1997).

New Jersey courts had analyzed the potential conflict between the Consumer Fraud Act and the Casino Control Act in several prior cases. The Casino Control Act was found to preempt the Consumer Fraud Act when the activity giving rise to the complaint fell within the exclusive jurisdiction of the Casino Control Commission, that is, gaming or other activities about which the Casino Control Commission has particular expertise. See, e.g., *Marcangelo v. Boardwalk Regency Corp.*, 847 F. Supp. 1222 (D.C.N.J. 1994), *aff'd on other grounds*, 47 F.3d 88 (3d Cir. 1995) (Casino Control Act applied where Plaintiff's complaint arose from signage on a slot machine); *Decker v. Bally's Grand Hotel Casino*, 280 N.J. Super. 217 (App. Div. 1994) (Casino Control Act applied where Plaintiff's complaint arose from signage on a slot machine); *Doug Grant, Inc. v. Greate Bay Casino Corp.*, 232 F.3d 173 (3d Cir. 2000), cert. denied, 532 U.S. 1038, 121 S. Ct. 2000, 149 L. Ed. 2d 1003 (2001) (Casino Control Act applied where Plaintiff's complaint arose from shuffling-at-will in black jack game).

Conversely, the New Jersey courts found that Consumer Fraud Claims survive when the activity complained of does not fall within the specific expertise of the Casino Control Commission. See, e.g. *Campione v. Adamar of N.J.*, 155 N.J. 245 (1998) (Court preserved Plaintiff's common law claim for discrimination).

In an unpublished opinion, the Appellate Division in the Harrah's case held that there was "nothing highly sophisticated or technical about Defendant's . . . promotional schemes" (p. 16). They agreed that the coupons did not contain anything that could only be analyzed or understood by the Casino Control Commission. In fact, the Appellate Division stated, the coupons "in issue raise only ordinary questions whether they contain false, deceptive or misleading statements—the type no one argues is within the Casino Control Commission's primary, much less exclusive jurisdiction to answer" (p. 16). The court acknowledged that the Casino Control Act regulates casino advertisement, but found that "that does not mean the Casino Control Commission has usurped the entire field" (p. 16). The court concluded finding the trial judge's dismissal to be in error and as such reinstated Plaintiffs' complaint. "Indeed, any other result would leave plaintiffs remediless since the Casino Control Act clearly does not empower the Casino Control commission to award damages in private matters" (p. 17).

The final outcome of the Harrah's case remains to be seen, as the Appellate Division's decision merely puts the case back at square one. However, the greater significance of this decision is that consumers and casinos now know that the mere existence of the Casino Control Commission, and the regulations it has promulgated, do not elevate the casino industry above the laws that govern all other New Jersey businesses that transact with consumers.

Beth Manes is a solo practitioner in Morristown, New Jersey, with a practice concentrating in estate planning, elder and disability law, and consumer rights.



Buying Solo

By David Levesque

It was August 2006, and I was sitting in the 10' x 10' office space that I started renting three and a half years prior when I started my solo practice. I received a call from a local real estate broker. She explained that she had a new listing, a house on Main Street in town, and that she thought that it would be a great place for a professional office. She wondered whether I was interested in taking a look at it.

Sort of curious and wanting to cultivate a relationship with the broker in hopes of future referrals, I told her that I was not really looking to move my office, but that I would take a look at the property.

Once I decided that working for someone else was not a great fit for me, I made a quick exit from the law firm that employed me. One of my immediate concerns was to obtain office space. I did not think I would be able to separate myself from my work if I had an office in my home, so I ruled the home office option out.

Purchasing a building was out of the question due to the lack of available properties in my town, the time it would take to acquire the property, and, most importantly, the lack of cash flow to make mortgage payment on the property. So the only clear option at that time was to rent office space.

Fortunately, another lawyer in town had recently built an office building on the outskirts of town, and he was looking for tenants. I rented a 10' x 10' space with a shared conference room. It was a good arrangement, the rent was reasonable, the owner had his office there so we could bounce ideas off each other, and the other tenants in the building were potential referral sources. Three and a half years passed.

As the broker walked me into the front of the house, she effectively explained her vision of a law office in the building: "Enter into the reception area, a conference room there, an office back there, and by the way did you notice the detail in the woodwork?" It did make sense but could I, should I, buy it? Long story short: I bought it.

Here are some of the thoughts, many of which overlapped, that went through my head as I lay awake in bed at night trying to decide if I should take advantage of the opportunity to purchase the house for my office.

Money Issues

Could I afford it? Would I be able to make the mortgage payments? Would I be able to obtain the financing that I needed? Would I be able to pay the utility bills, insurance, property taxes, lawn maintenance, snow removal, etc.? What about emergencies?

I spoke to my bank, and it was possible to obtain the financing. I did the numbers in my head and created a number of spreadsheets. My conclusion was that I could do it financially, but that it may be tight initially.

Because I did not need the whole building for my office use, I decided to offer the upper floors for rent as an apartment. I have not yet found a tenant for the apartment, but when I do, the rental income will be helpful in paying for the building.

Business Issues

Is it a good location? Is there enough parking? Is this location where I want to be for the long term? Should I

own it through a separate entity? What are the tax consequences?

Moving my office from the outskirts of town to the center (Main Street) of town made a lot of sense. It would shorten my commute from two miles to one mile, and the office would be much more visible.

I live and practice in the same community, and now that my solo practice is established and growing, it made sense to obtain a permanent office location, or at least one that is not subject to the expiration of a lease or an increase in rent.

I decided that there were tax benefits to owning the building through a limited liability company and having my law firm (an S-corporation) lease the office space from the limited liability company, so that is the ownership structure that I set up.

Operational Issues

Who will clean the office, remove the snow (no small consideration in Maine), and mow the lawn? Should I do it, or should I hire someone? Will I have the time to do those tasks and to make sure the house expenses get paid?

My rent check covered everything but my telephone and Internet service. However, as the owner of a building, I would have to make sure all the utility and maintenance bills were paid by their due dates.

Initially, I decided to do the cleaning, snow removal, and lawn maintenance myself to help with the cash flow issues. However, I am now hiring a neighbor's son to mow the grass. I am sure that eventually I will outsource all of those tasks.

The administrative tasks have not been too time-consuming. Good accounting software and calendaring and some organization has made these tasks just part of the daily routine.

Social and Health Issues

Will it be too quiet in the office? Will I still be able to bounce ideas off someone? Will I just be adding additional stress to my life?

I do not have an assistant or others who are regularly around the office, so at times it is really quiet in the office. However, the quietness is useful in getting work done, so this has not been a big issue. I do not need to be down the hall from someone to bounce ideas off someone. I can communicate with other lawyers in many other ways, so this, too, was not a huge drawback to purchasing a building.

I actually see more people on a day-to-day basis now because now I can walk to places in the downtown area (post office, other law firms, banks, etc.) and meet people on the street.

So should you buy or rent your office space? If you can afford to do it financially, buy it! The hassles of ownership are outweighed by the fact that you are paying yourself and investing in an appreciable asset rather than paying for someone else's investment. That sounds very similar to why many of us are solos...

David Levesque has a general civil practice with concentrations in tax, real estate, and estate planning that he conducts from his building on Main Street in Damariscotta, Maine. He can be reached at 207-563-7416 or david@levesquelaw.com.

Intellectual Property for the General Practitioner

By Brett J. Trout

Nearly everyone has heard the terms [patent](#), [copyright](#) and [trademark](#). Many even know that these are all types of intellectual property protection. When it comes to defining what actually constitutes a patent or a trademark, however, most lawyers are in the dark. Although an intangible may be protected under more than one type of intellectual property, it is critically important not to confuse the different categories. The laws governing each type of intellectual property are vastly different from one another. Failure to properly identify and distinguish among the different types of protection available can be the difference between whether a client's business lives or dies. All of the intellectual property protection in the world is not going to salvage a bad idea, but failure to properly protect a great idea can put your clients' most valuable assets into the hands of their competitors.



Patent

A patent is a legal document defining an invention. A patent does not allow its owner to do anything; it only prevents others from making, using, or selling the invention without a license. Patents protect inventions. A patent would protect something like a new mousetrap. Patentable inventions include new and useful processes, machines, manufactures or compositions of matter, as well as any new and useful improvement thereof. Federal law covers patents. There is no state or common law patent protection. Federal patent law provides inventors with attorneys' fees and treble damages in situations where an infringer is willful. Patents used to be protected 17 years from the date of their issuance, but patents now expire 20 years from the date of their filing. For a simple invention, a patent will cost \$8,000 or more and take approximately two years to obtain.

Patent law does not protect any ideas, any obvious combinations of pre-existing devices, illegal or immoral matter, pure research, or anything that is simply a novelty or curiosity. Items such as perpetual motion machines are summarily rejected by the United States Patent and Trademark Office (USPTO).

While any lawyer can file for trademark or copyright protection on behalf of clients, only a patent attorney (or a patent agent) may file a patent for another party. Inventors may file for a patent on their own, but even the USPTO recommends against filing a patent without the aid of a professional. Examples of patents can be found on the [USPTO website](#) or [Google Patent Search](#).

Just as drafting a patent requires special expertise, so does litigating a patent dispute. Patent cases are some of the most complex types of litigation. The complexities and nuances associated with the nonintuitive area of patent law are compounded by the technology associated with the underlying patent. It is not surprising that attorneys' fees in a patent lawsuit average well over \$1.5 million per side. Although it is not necessary to have a patent attorney try the case, it is imperative to enlist a seasoned litigator with substantial patent litigation experience.

Trademark

A trademark is a word, name, phrase, or symbol used as a brand identifier of a good or a service. Trademark rights arise only through use. For this reason, "naked" assignments of a trademark are not allowed. A valid

assignment must also assign the goodwill associated with the trademark. As soon as a trademark is used in commerce in association with a good or service, common law rights to the trademark attach. These common law rights can be effective in obtaining an injunction or a judgment against an infringer. States also provide trademark protection. State laws provide for both registration and enforcement. These state law protections, however, are often no more valuable than common law rights. Accordingly, most trademark owners opt for either common law or federal law protection.

Federal trademark registration provides several benefits, including treble damages and attorneys' fees for willful infringement. Federal registration also provides national constructive notice of the owner's trademark rights. While federal trademark registrations must be renewed every ten years, trademark rights themselves are indefinite, lasting until the mark becomes abandoned, or in rare cases, generic. Obtaining a federal trademark registration covering a single type of goods or services costs about \$1,200 and takes approximately eighteen months to obtain.

The protection afforded a particular trademark depends in large part on how descriptive the mark is of the particular product or service provided in association with the mark. For example, if the product is apples, the mark "APPLE" would be deemed "generic," the mark "RED" would be deemed "descriptive," the mark "DEVIL'S FRUIT" would be "suggestive," the mark "ROYAL" would be "arbitrary," and the mark "QWIPPLE" would be "fanciful." These distinctions are important as generic marks are neither protectable nor registerable, while suggestive, arbitrary and fanciful marks are both protectable and registerable. Descriptive marks may or may not be registerable, depending upon whether the owner can demonstrate that consumers have attached a "secondary meaning" to the mark apart from its ordinary descriptive meaning.

While any lawyer can legally file for a trademark application on behalf of a client, it is best to enlist an experienced trademark attorney to do the work. Mistakes during the prosecution of a federal trademark application may not become apparent until a dispute arises. By that time, it may be too late to correct the error, and the client's rights may become irrevocably abandoned. Trademark litigation does involve a certain level of complexity, but a seasoned litigator with access to a good trademark attorney can usually navigate a typical trademark case.

Copyright

Copyright protects many different forms of authorship, including literature, music, drama, choreography, pictorial, graphic and sculptural, motion picture, sound recordings, and architectural works. Proof of infringement of a copyrighted work requires proof of ownership of the copyright, and evidence of copying.

Copyright is the exclusive right of its owner to copy, distribute, and perform the work. All copyright law is federal—there are no provisions for copyright protection under either state statutes or common law. Once an original work of authorship is fixed in a tangible medium, copyright protection attaches. Although federal registration is not mandatory, it is required to file suit in the United States and may entitle the author to attorneys' fees and statutory damages. Unique to copyright law is the potential for the defendant to obtain attorneys' fees in certain frivolous actions.

Copyright endures for a [term](#) consisting of the life of the author, plus 70 years after the author's death. In the case of joint works, the term consists of the life of the last surviving author plus 70 years. In the case of an anonymous, pseudonymous or work made for hire, the term is 95 years from the date of its first publication, or a term of 120 years from the date of its creation, whichever expires first. As uniqueness is not a prerequisite of copyright, it is hypothetically possible for two authors to obtain separate copyright registrations on an identical work. For this reason, the Copyright Office does not search an application for registration against existing registered works. This keeps the cost of copyright registration much lower than the cost of patent or trademark registration. The cost of obtaining a copyright registration on a literary work costs about \$250 and usually takes less than a year to obtain.

Although there is a "fair use" exception tempering copyright enforcement, this exception is very narrow and should not be relied upon without a prior written opinion as to the applicability to a particular situation. In determining whether a particular use constitutes "fair use" under the United States copyright laws, the court examines the purpose and character of the work, the nature of the copyrighted work, the amount of the work

taken, and the economic impact of the particular taking. Courts will view noncommercial usage, formbook usage, de minimis takings, and takings of low economic impact as more of a “fair use.” Conversely, commercial takings extracting the heart of a copyrightable work to usurp the profits and royalties associated therewith are less likely to be perceived as “fair use.” As a general rule, parody and critical commentary are given a wider “fair use” berth than commercial usage.

A work is afforded copyright protection just by being published. A 1989 federal statute lifted the prerequisite to register a copyrighted work prior to its publication, to prevent it from moving into the public domain. The United States, however, does require the copyrighted work to be registered prior to instigation of infringement litigation, and does limit damages associated with acts undertaken prior to the registration. Although copyright registration may take eight to ten months, the Copyright Office provides expedited service for an increased fee in the situation when an infringement has already occurred.

Because direct evidence of copying is rarely available, courts will accept evidence of the accused infringer’s access to the copyrighted work, and a substantial similarity between the two works as rebuttable proof of copying. Obviously, the more similar the two works, the lower the requirement for proof of access and vice versa. Once infringement is shown, damages may include an injunction, as well as the copyright owner’s damages or the infringer’s profits. Federal copyright laws provide for statutory damages of five hundred to two thousand dollars for infringement, and up to one hundred thousand dollars in the case of willful and malicious infringement. As with patents and trademarks, attorneys’ fees are available, but unlike patents and trademarks, the statute provides for the defendant to recoup attorneys’ fees if the copyright owner brings an action that is frivolous or unreasonable.

As with trademarks, any attorney can file for copyright registration on behalf of a client. Subtle nuances associated with the application for registration, however, advocate using an experienced copyright attorney to apply for the registration. Given their familiarity with the application process, copyright attorneys can often obtain a copyright registration more cost effectively than a lower cost, but less experienced general practice attorney, and without the increased risk of a mistake being made in the application. As with trademark litigation, copyright litigation involves a certain level of complexity. A seasoned litigator, however, working closely with a copyright attorney, should be able to handle most copyright cases.

Trade Secrets and More

Other types of intellectual property include [trade secrets](#), [domain names](#), trade dress, and the right of publicity. Like patents, trademarks, and copyright, each of these types of intellectual property includes a unique set of rules governing their protection and defense. It may be tempting for the general practitioner to delve into one of these more lucrative areas of law unaided. However, the complexity of intellectual property law and the high likelihood of making a crucial error in either protection or defense mandates discussing nearly every intellectual property issue with an experienced intellectual property attorney. Both your clients and your malpractice carrier will be glad you did.

Brett J. Trout is the founder of The Law Offices of Brett J. Trout, P.C. Mr. Trout is a patent lawyer, frequent lecturer, and author of the book *Internet Laws Affecting Your Company*. For more information visit [BlawgIT](#).

Be Wary, But Buy a BlackBerry

By Kelley W. Strain

I must admit, I am a self-proclaimed BlackBerry addict. I affectionately call my precious little device my “CrackBerry.” It is never far away from my wingspan, lest I be sent into a crazed panic.

I sleep with my CrackBerry by my bedside. Its shrieking alarm jerks me out of my slumber every morning, as I have become immune to the drone of my regular clock radio. As soon as my contact lenses cease to stick to the back of my eyelids, I turn off the piercing CrackBerry alarm. Back in my clock radio days, at this point I would stagger to the kitchen for my coffee fix. Now, I have a new fix—instead of coffee, I immediately check to see if I received any email while I was asleep, and answer as many as I possibly can before my feet even hit the floor from the bed.

If I am in a rush in the morning, sometimes I answer the bulk of the email while en route to work as I sit at various red lights. I often find myself praying for some of these red lights so that I can have just a little more time to finish replying to the email on my CrackBerry. However, this behavior is not exclusive to the morning ride to work—I find myself hoping for red lights pretty much any time I am in the car so that I can reply to email. Dangerous, I know.

Immediately upon entering my office, I turn on my computer and plug in my darling CrackBerry so that my PC and my CrackBerry are “synchronized” (meaning, each “backs up” the information in the other). By doing so, all of my contact information, my calendar, my tasks, etc., are all up-to-date and organized. During this time, I also bill for the time that I spent earlier that morning responding to email. This is not necessarily BlackBerry abuse; however, it becomes abuse when I find myself sending email while I am walking down the street to the court house, when I am on my way to lunch (or worse, at lunch), and when I am waiting for the copy machine to finish copying. I am also guilty of sending email as I wait in line at a Clerk of Court’s office to file pleadings, or when I wait for my turn for just about anything during the course of the day that requires me to be away from my desk.

Of course, my drive home is more or less a repeat of what my morning drive to work was like—sending email while stopped at various red lights. After I get home, the CrackBerry joins me on my walk with my two dogs (a miniature dachshund named Bourbon, and a black Lab named Gumbo). The sight is something to be seen—the big dog and the little dog pulling me to walk faster on the neutral ground of Napoleon Avenue as I furiously struggle to use my thumbs to send an email or a text message via my CrackBerry. After I make it back to my front door with the CrackBerry and the dogs, the CrackBerry remains by my side at all times as I wait for the little sound it makes telling me that I have an email or a text message, to which I usually immediately reply. It is like this all evening until my precious CrackBerry is placed on my night stand while I sleep.

I can spot fellow BlackBerry addicts. I can easily spot them at meetings and CLEs—they start doing the “BlackBerry Prayer,” where they glaze downward, and then bow their head over their BlackBerry to check for and answer email at various points during the meeting. Fellow BlackBerry addicts also can be identified by their “ringxiety.” Most BlackBerry users use the same ring tone, so when a BlackBerry rings, all the BlackBerry owners, especially the addicts, begin to frantically check their pockets and bags for the singing BlackBerry—this is “ringxiety.” There are also the BlackBerry addicts who have the “CrackBerry Face,” where they have held the CrackBerry to their face so hard and for so long that the side of their face is sweaty and has little imprints on their cheek from the buttons on the BlackBerry. The most hard-core BlackBerry addicts, however, are those who sport “CrackBerry Thumbs”—you see them wiggling their thumbs, and pulling and massaging on them, because their thumbs are in severe pain due to the excessive typing of text messages and email. I personally

have exhibited each of these behaviors, and I am sure I have exhibited other BlackBerry addict behaviors that have yet to be identified or named. I am telling you, I am seriously attached to my CrackBerry.

BlackBerry addicts gravitate toward other BlackBerry addicts. Recently, while at the Jefferson Bar Association's Day at the Races at the Fairgrounds, I met a fellow BlackBerry addict. We probably spent more time discussing our CrackBerries than we did betting on the horses. He knew more about my precious BlackBerry than I did—he even introduced me to the BrickBreaker game, at which I have become quite proficient. In fact, I think it was fate that I met him, for he helped me through “The Dark Period” involving my cherished CrackBerry. One day, my BlackBerry refused to receive email, and I could not figure out why. I immediately called my fellow BlackBerry addict, and he offered several solutions in an attempt to fix it, none of which worked. Then, in an extraordinary extension of fellow BlackBerry addict compassion, he offered to take my CrackBerry to be examined by a man in his office who was a real, live BlackBerry technician.

It was bad enough that my BlackBerry was not receiving email all morning (although it did receive text messages), but it was *even worse* to be separated from it all afternoon. I was seriously going through withdrawal, and I nearly choked when I heard from my fellow BlackBerry addict that the man in his office could not fix my CrackBerry. I took drastic measures—I called the technical support number that was listed in the brochure that accompanied my BlackBerry, and the techie was very patient as he tried to help me fix my BlackBerry. Unfortunately, this techie could not fix my BlackBerry either; apparently, my BlackBerry was so sick that he had to get his supervisor to help me. I began to panic when the supervisor told me that she could not help me either, that she would have to submit an engineering request, and that it might take *two days* to resolve the problem. I was devastated. What was I going to do without my CrackBerry for two days?

Those two days without my BlackBerry were actually very eye-opening for me. Those two days allowed me to see the depth of depravity that I had reached regarding my BlackBerry addiction. It allowed me to see how blurred the line had become between my professional life and my personal life, and how I was the one who was responsible for blurring that line. I realized that I had turned myself into a BlackBerry addict.

Let's face it—the BlackBerry is an amazing tool for a lawyer. It permits you to stay in constant contact with your clients, and for you to respond more quickly to clients. It allows you to work away from your desk, thereby increasing your billable hours and reducing your daily to-do list. Moreover, attorneys no longer have to carry a laptop with them to be able to check their email, and can check their email in places where there is no Internet connection for a laptop. The BlackBerry also keeps the lawyer current regarding his or her calendar and contact information, and to receive up-to-date information via email. Moreover, it is very useful in assisting a lawyer in being productive while she is away from the office, whether it be in court, while waiting to catch a flight in an airport, or while waiting for a meeting to start.

Rather than freeing me from the workplace, however, my BlackBerry inadvertently extends my workday—the multitasking that the device allows has definitely enabled my Type-A personality to totally sink into BlackBerry addiction. I knew that I had to seek some sort of help for my addiction while my BlackBerry was still on hiatus, so I looked to my friends and colleagues that were clearly not BlackBerry addicts. A common thread among them was this: it is okay for them to be away from the BlackBerry. My non-BlackBerry addict friends generally do not bring the BlackBerry into their homes after work, and do not use it over the weekends or while on vacation. In fact, a few of my colleagues actually rid themselves of their BlackBerries altogether, and replaced them with regular cell phones. I still have not wrapped my brain around this concept of one choosing to give up their BlackBerry for a regular cell phone. However, I did absorb the advice that I leave my BlackBerry alone after work, on weekends, and on vacation.

Then my BlackBerry was fixed. Now I had to reconcile my newly felt feelings of BlackBerry liberation with the aching wants and desires of a BlackBerry addict. Suffice to say, it has been nearly two weeks (as of the time I write this article) since my BlackBerry was restored, and I have reverted to my old BlackBerry addict ways. My CrackBerry is again permanently grafted to the palm of my hand, and all of my old CrackBerry habits have slowly returned. I do not envision myself as being “cured” anytime soon, especially now that my CrackBerry is getting old (it is now one year old), and there are new BlackBerries on the market that have better features—megapixel digital camera, media player, expandable memory slot . . . Oh, how I covet the new BlackBerries.

Should you get a BlackBerry? My answer is a reserved “yes.” It truly is an excellent tool—it can be customized to fit your particular practice’s needs, and it can increase your productivity; you just need to remember to set parameters immediately for when you use it, so you do not end up a crazed BlackBerry addict like me.

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Lawyers Behaving Badly: A Continuing Column, Unfortunately

By Timothy M. Ravich

This installment of *Lawyers Behaving Badly* is about a lawyer's misstep made worse by unprofessional and unhelpful staff behavior.

It was calendar call. The plaintiff's case, which was five years old, was first for trial. The plaintiff's lawyer was nowhere to be seen.

ACT I

Scene: Calendar Call.

Judge: "Case number 123. Is anybody here for case number 123. I see defense counsel. Where is plaintiff?"

Defense Counsel: "Afternoon, judge. I'm not sure. He has notice of this."

(The court begins to schedule other matters for trial.)

Judge: "Is the lawyer for case number 123 here yet? Let's get him on the phone. I can't imagine missing calendar call."

Plaintiff's lawfirm: "Hello."

"Yes, is Mr. Lawyer there, please?"

"Who is this?"

"This is the judge who Mr. Lawyer is supposed to be in front of on calendar call 30 minutes ago today on case number 123."

"Oh, okay, hold on a second." (Several minutes elapse.)

ACT II

A new person takes the call. "Hello?"

"Where is Mr. Lawyer?"

"Who is this?"

"This is a Miami-Dade Circuit Court Judge wondering why Mr. Lawyer is not in front of me for calendar call for case number 123."

"Oh, okay, hold on a second." (Several minutes elapse.)

"Hello. Yes, he's in a deposition"

"He's in a deposition! His client's case is scheduled for calendar call today? Get him out of his deposition."



“Um, okay, well I’m not sure. Hold on a second.” (Several minutes elapse.)

The call is terminated, and the judge calls back.

ACT III

“Hello?”

“Yeah, hi. This is the judge, again. Could somebody please tell me where Mr. Lawyer is and why he is not at calendar call today and why he is not on the phone with me? I have a courtroom full of lawyers, and we are all wondering where Mr. Lawyer is to schedule his case.”

“Who is this?”

“This is the judge.”

“Oh, okay, how do you spell your name?”

“JUDGE. J-U-D-G-E. Judge.”

“Ahh, okay, hold on a second.” (Several minutes elapse.)

“Hi sir, he’s in a deposition.”

“Get him.”

“Well, okay. I’m not sure. Hold on a second.” (Several minutes elapse.)

ACT IV

“Mr. Lawyer” finally took the judge’s call after almost twenty-five minutes from the time of the judge’s initial call. The judge expressed his disappointment and advised Mr. Lawyer of the date and time he should appear—preferably with a lawyer—to show cause why he should not be held in contempt for not showing for a calendar call about which he was properly noticed.

MORAL

“For many lawyers, a good staff is the most critical component of producing excellent legal services.” Debra Moss Curtis, *Supervising Your Lawyers and Staff: Avoiding Serious Ramifications*, 76 Fla. B.J. 74 (2002). Under the Florida Bar’s Rules of Professional Conduct and many other states as well, a lawyer with direct supervisory authority over a nonlawyer must make reasonable efforts to ensure that the nonlawyer’s conduct is compatible with the professional obligations of the lawyer. (Rules Reg. The Florida Bar 4-5.3(b)(2) (2007).) In certain circumstances, the rules also hold a lawyer responsible for the nonlawyer’s conduct that would be in violation of the Rules of Professional Conduct if engaged in by a lawyer. (*Id.* at 4-5.3(b)(3) (2007).) The Florida Bar also addresses ethical issues concerning “Legal Assistants and Nonlawyer Employees” at <http://www.floridabar.org/tfb/TFBETOpin.nsf/EthicsIndex?OpenForm>. Where professionalism-related issues are concerned, however, common sense and courtesy have not been codified.

The End.

Timothy M. Ravich is a trial lawyer in Miami, Florida, and president-elect of the Dade County Bar Association, Florida’s largest and oldest voluntary bar association. Submit your comments to Timothy M. Ravich at ravicht@bellsouth.net with the subject line “Lawyers Behaving Badly.”

Note: this article was previously published in the July 2007 issue of the Dade County Bar Association Bulletin. ©2007 Dade County Bar Association. Reprinted by permission.

Looking for an opportunity to visit Philadelphia?

GP|Solo is hosting the [Second Annual National Solo & Small Firm Conference](#) in Philly on **October 5-6, 2007**, in conjunction with the Division's [Fall Meeting](#). Register now and take advantage of unmissable CLE and key networking opportunities, all while taking in the many hot recommendations from this handy guide!

Learn more at www.abanet.org/solo »

Philadelphia Guide

By Nicole Gerson

When I graduated from college, I told my favorite professor (history and law) I was returning to Philadelphia for law school. His response was that Philadelphia was a great city, with more 18th century buildings than any other city in the country. In my mind, Philadelphia is not only my hometown, but also the birthplace of America, full of our country's history. But there is much more to this city.

For starters, there is a reason Philadelphia was recently on the fattest city list. Philadelphia is famous for some of its food. A local breakfast is either a quick soft pretzel from a vendor, or a sit down eggs, scrapple, and toast. I can't vouch for scrapple as I've never eaten it, but locals love it. A great place to try it would be either the Amish counter or the Diner at the Reading Terminal between 11th and 12th and Filbert and Arch Streets. Lunch, of course, is a Philly steak sandwich. They are offered at nearly every pizzeria and sandwich shop in the city, but my family has always been partial to Jim's at 4th and South. Across the street you can try a burger (almost any type), fries, and a margarita at Copacabana. For a little snack, stop in at WaWa, and grab a drink and a tastykake. There are some great brunch spots, like Sabrina's, Honey's Sit and Eat, and Carmine's Country Kitchen (call ahead for this one).

Philadelphia really is a great food town. There are so many great choices for dinner. If you are looking for historic atmosphere, try City Tavern on 2nd and Walnut. For divine cuisine, there is Le Bec Fin (French) on 15th and Walnut—restaurant row. Or, for similar food a la carte, head to Brasserie Perrier at 16th and Walnut. On nice nights, locals hang out on Rittenhouse Square at either Rouge or Devon. Amada (3rd? & Chesnut) and Dmitris (3rd and Catherine or 22nd and Pine) are great for tapas. You can never go wrong with Stephen Starr's restaurants: Continental (tapas), Jones (homey), Morimoto (Japanese), Pod, Alma de Cuba (Cuban), Barclay Prime (steak), Buddakan (Asian), Tangerine (Moroccan), Striped Bass (seafood) and Washington Square.

Craving a juicy steak? How about Ruth's Chris, the Palm, Capital Grille, Smith & Wollensky, Morton's, or the Prime Rib? Then again, if you want authentic Italian cuisine, head to South Philly (Ralph's is the most well known), or some other local center city favorites, such as BYOBs Radicchio (4th and Wood) and Melograno (22nd and Spruce); or for full service, try Café di Roma (2nd and South), Bistro Romano (2nd and Lombard), Osteria, Panorama (Front and Market), Le Castagne, Spasso (Front and Market), Sfizzio, and Prima Donna (15th and Locust). If you are more in the mood for Asian cuisine, head to Chinatown. Pasion (15th and Locust) is top-rated Nuevo Latino food. Django is a great BYOB at 4th and South. You will not go hungry in this town.

Once your belly is full, it is time to see the city. Philadelphia is home to Independence Hall, the Liberty Bell, Betsy Ross's house, Elfreth's Alley, Christ Church, Ben Franklin's printing press, and so much more. But if you want to see history from a different perspective, try the evening Independence After Hours tour, given Friday



and Saturday nights at 5:30. The cost is \$76 per person, including a three-course meal at City Tavern. For more information, see www.onceuponanation.org. Or try a ghost tour. Supposedly, Philadelphia is the most haunted city in America. That might explain why Edgar Allen Poe lived and wrote here. (Yes, you can even visit his home.) Ghost tours are \$15, and leave at 7:30 p.m. For more information, see www.ghosttour.com.

For some culture, the Philadelphia Museum of Art is hosting an exhibit featuring 70 of Renoir's landscapes. This is the only U.S. stop for this exhibit. The cost is \$14. Philadelphia also has the nation's oldest zoo, a Rodin museum, the Barnes Foundation museum (I highly recommend this if you have access to a car, but make a reservation—this museum will be moving soon, and after the move, it will not be set up as originally intended. It was a private home collection of famous artists' works), the Franklin Institute of Science, the University of Pennsylvania Museum (which will still have a special Egypt exhibit even though the King Tut exhibit will no longer be in town), the Mutter Museum (for medical oddities), the Pennsylvania Academy of Fine Art (small, but beautiful building), the New Jersey Aquarium, and many other museums in the nearby area. Military fans can tour the USS Olympia, the Battleship New Jersey (in Camden), and the Becuna submarine. On the first Friday of every month, the art galleries in Old City open their doors to everyone.

If you are interested in a show, *Defending the Caveman* will be playing at the Kimmel Center, as will the Philadelphia Orchestra (Midori Plays Britten), Peter Nero and the Philly Pops (Broadway Showstoppers—Best of the Tony's), and Verdi's *Rigoletto* at the Academy of Music. These tickets can be purchased through www.kimmelcenter.org. There is also *Man of La Mancha* at the Walnut Street Theatre (the oldest theater in the country), *Amadeus* at the Wilma Theatre, or *Assassins* at the Arden Theatre. For a more lively show, invite yourself to *Tony 'n Tina's Wedding* on the Spirit of Philadelphia, a boat on the Delaware River.

Of course, don't forget the shopping. There is no sales tax on most items in Pennsylvania, so shop away. One of the largest stores is a Macy's across the street from City Hall. (Speaking of which, you can also tour City Hall, and go to the feet of William Penn.) At noon on Mondays–Saturdays, as well as at 5:30 on Mondays, Tuesdays, Thursdays, and Saturdays (Wednesday and Friday at 7), you can hear the organ recital while shopping at Macy's. If that isn't enough, just walk up Walnut Street from Broad Street for some familiar shops. The largest shopping mall, outside of Mall of America, is in nearby King of Prussia, but you will need a car for that trip.

If you want to extend your trip, visit the Pennsylvania Dutch in Lancaster County or check out nearby Atlantic City. The Amish country has plenty to do, especially for children. On the other hand, Atlantic City is a playground for adults, and is nice in October when the crowds thin out and the weather is a bit cooler.

No matter what you do, you'll find a mix of history, 18th-century buildings (for my college professor), modern cuisine, culture, and fun in this friendly city of brotherly love.

Nicole Gerson is a solo practitioner specializing in general civil litigation, including negligence, consumer fraud, contract disputes, and family law, who was born and raised, and currently practices, in metro Philadelphia.



Balancing Act: Lessons Learned

By Ellen Rappaport Tanowitz

While my column usually focuses on the balance of work and home life, occasionally something will happen that makes me take a giant step back and examine my life as a whole and learn a lesson or two.

My now five year old met Luke at family day care before they were each one year old. I confess, I did not get to know Luke's parents until my son was ready for drop-off play dates, and he began to ask if Luke could come over. Luke's parents and I began speaking to arrange play dates—and last spring and summer we got into a sort of routine. Luke's mom worked in a nearby school system, so she was not available during the school year. Luke's dad, though, was a golf pro at a local country club, so he was more available during the winter and spring. Luke's dad would call me on a beautiful morning and say, "Ellen, could you take Luke for the day? I have some private lessons that I can schedule." I, of course, was only too glad to have Luke over. Those of you with kids know about kid math—if you have

one child and you add another child, you end up with no children because the two kids go off and entertain themselves, without the need for you to be around. In turn, Luke's dad would take my son for me, sometimes to the golf course, leaving me free to work for a few hours in the afternoon while my youngest child napped.

Over the summer, while Luke's dad was busy on the golf course, Luke's mom took my son to the beach (again, under the theory of kid math) or to other places. The kids had a great time, and I'd chat with Luke's parents about purchasing their first house and, once completed, their move to it. While we were on a cruise last August, we played some golf, and my husband and I talked about how we should get Luke's dad to give our son some lessons.

When we returned home, I called Luke's house to arrange a playdate because the boys had not seen each other for a while. It was then I learned that, while we were away, Luke's dad had been diagnosed with stage four cancer of the esophagus.

Luke's dad fought the cancer; he started chemo immediately, and he made the best of his new, forced time off. He played in a PGA golf tournament (and won) in Georgia. Luke's whole family traveled to the Cayman Islands for Christmas last year, and Luke and his dad went to opening day at Fenway Park. By April, he had grown considerably weaker and thinner. Nonetheless, he made it to nearly all of Luke's T-ball games, even though the downhill walk from the parking area to the field took him a long time. Throughout the entire ordeal, Luke's dad always had a smile on his face and a positive attitude.

This past Monday, I attended Luke's dad funeral. My heart breaks for Luke and his mom. Luke will start kindergarten in the fall; his mom, a young woman. I wish I had gotten to know Luke's dad better; that we had been given more time to develop our friendship. Luke's dad has taught me some very valuable lessons, that I plan to carry with me and that I share with you. First, if something is really important to you, find a way to do it. Don't wait for the perfect time or until you have enough money—don't be frivolous or reckless or use it as an

excuse to hit the spending limit on your credit cards—but do it, because really, the perfect time rarely arrives. Second, I am sure I am not the only one who can tell such a story. I know that most of us know families like Luke's or maybe we are Luke's family. So when the minutiae of life has got you down—take a deep breath and try to look at the bigger picture and try to realize that things really aren't that bad.

Legal Trivia

What was the first law school founded in the United States?

Answer: William and Mary in Williamsburg, Virginia.



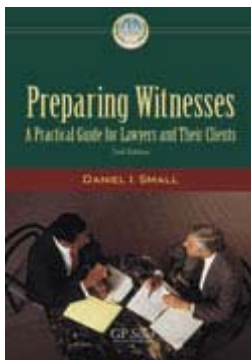
PRACTICE TIP

Ethical Witness Preparation

In preparing a witness to testify, a lawyer is permitted to invite the witness to provide truthful testimony that is favorable to the lawyer's client, as long as the lawyer does not encourage the witness to deviate from the truth. Both the witness and the lawyer share a responsibility for ensuring the truth of the witness's testimony. This means that the witness should never testify to something he or she does not believe to be true. Additionally, as a lawyer, you should never permit the witness to testify to what you, as the lawyer, believe to be false.

The Restatement of the Law Governing Lawyers provides that as long as it does not elicit false or misleading testimony, preparation consistent with a lawyer's duties to a client and to the court may include:

1. Discussing the role of the witness and effective courtroom demeanor
2. Discussing the witness's recollection and probable testimony
3. Revealing to the witness other testimony or evidence that will be presented and asking the witness to reconsider the witness's recollection of events in that light
4. Discussing the applicability of law to the events at issue
5. Reviewing the factual context into which the witness's observations or opinions will fit
6. Reviewing documents or other physical evidence that may be introduced
7. Discussing probable lines of hostile cross-examination that the witness should be prepared to meet
8. Rehearsing the witness's testimony and suggesting choice of words



Find out more in

[*Preparing Witnesses: A Practical Guide for Lawyers and Their Clients, Second Edition*](#)

By Daniel I. Small

Product Code: 5150295

GP|Solo Division Notes:

- Second Annual National Solo & Small Firm Conference
- GP|Solo Book Spotlight
- Popular Topics on Solosez



Note: Information on all this and more can be found on our Website at <http://www.abanet.org/genpractice>.

Second Annual National Solo & Small Firm Conference

2nd Annual National Solo & Small Firm Conference

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It's a growing trend for small-firm lawyers to get together to hear well-known speakers, network with other like-minded lawyers, get information on technology products appropriate to their size of practice, and just generally have a good time. The National Solo & Small Firm Conference allows you to build a network and develop referral sources from all across the country.

The educational offerings at the conference feature presentations from a mix of nationally known legal technology experts, veteran active members of the GP|Solo Division with advice to share, active participants in the [Solosez](#) online community, practice management advisors and other solo and small firm lawyers just like you.

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The fast paced and ever-popular *60 Tips in 60 Minutes*
The Lawyer as Employer: Hiring, Firing, Managing and More
E-Discovery for the Rest of Us: Essential Small-Firm Primer
Keeping Them Satisfied: Exceeding Client Expectations Everyday!
15 Tips for Stress-LESS Solo & Small Firm Practice in 60 Minutes
Immigration 'Gotcha's' for Non-Immigration Lawyers
How NOT to Commit Malpractice With Your Computer

To see all of the speakers and scheduled presentations, and to get more information about the conference and register, visit the National Solo & Small Firm Conference website at:

» www.abanet.org/solo «

GP|Solo Book Spotlight

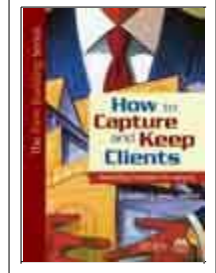
[How to Capture and Keep Clients: Marketing Strategies for Lawyers](#)

Edited by jennifer j. rose

In this in-depth book with accompanying audio CDs, the best and most innovative solo and small firm lawyers give you their secrets, approaches, and strategies to that age-old puzzle of growing your law firm. Through this wealth of savvy advice, you'll learn how to ask for business, attract and keep clients, partner with other lawyers, market a specialty or boutique practice, market to ethnic communities, market in a small town, brand your law firm just like the big firms do and more.

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