

Why on Earth Would I Call a LAP?

By Rebecca Nerison

They probably didn't tell you in law school that lawyering can be hazardous to your health. It's easy for even the smartest attorneys to become overwhelmed by workloads, life/work imbalance, or the stresses of establishing a career. Lawyer Assistance Programs (LAPs) exist to prevent—or to mitigate—damage as a result of substance abuse, marital conflict, unethical activities, or other problematic behaviors. Regardless of where you practice, your state has a LAP that can help lawyers regain productivity and balance.

Why on earth would I call a LAP?

Young lawyers call LAPs for all kinds of reasons. LAP staff are professionals who know the available resources to help you deal with any problem. In addition, because the programs are generally supported by state bars, courts, or foundations, fees for services are usually lower than those for independent professionals.

Some lawyers who call LAPs for help may be suffering serious disabilities, while others may want help with less dramatic situations. Calls may involve one or more of the following topics:

- Managing stress and family demands
- Finding a job or making a career transition
- Lacking the energy or motivation to do clients' work

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Bankruptcy Basics

By Colin T. Darke and Latanishia D. Watters

For many attorneys, bankruptcy law is unfamiliar and difficult to understand. For example, Charlie Creditor and Danny Debtor negotiate a resolution regarding a debt Danny owes Charlie. Danny pays down the entire outstanding account in one lump-sum payment but still has trouble paying his other creditors and is forced to file for bankruptcy protection under Chapter 7 of the Bankruptcy Code. The Chapter 7 trustee (who administers Danny's new bankruptcy estate) sues Charlie Creditor to recover the lump-sum payment for the bankruptcy estate, claiming it was a preferential transfer—and the

sue a creditor who received payment of an antecedent debt within 90 days prior to the debtor's filing for bankruptcy protection (or within one year if the payment was to an insider). Creditors, however, have certain defenses to a preference avoidance action: The Bankruptcy Code protects transfers made in the ordinary course of business. For example, when two parties have a long-standing business relationship whereby the debtor pays the creditor \$50 on the 15th of every month, those payments may not be avoidable. The Bankruptcy Code also protects transfers to the degree that the creditor provided the debtor

exist. When in doubt, however, the party is better off asking for permission to continue collection efforts because a violation of the automatic stay may result in stiff penalties such as punitive damages—along with the action's being voided from inception.

Prebankruptcy Planning: All is not lost. Prebankruptcy planning is done prior to filing bankruptcy to protect assets. It allows a debtor to take maximum advantage of exemptions by converting nonexempt assets into exempt assets. Exempt assets are those a debtor can keep out of the hands of a creditor. Typical examples include a homestead exemption for the debtor's principal residence, retirement plans, annuities, and insurance policies. There are both federal and state exemptions. One possible pitfall

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trustee is probably right.

Policy issues aside, bankruptcy concerns run throughout many areas of law and may be at play without your even realizing it. This article is a brief overview of some common bankruptcy concepts.

Preference Actions: "Fair" share. The example above illustrates a preference action that is part of a Chapter 7 trustee's arsenal in bringing money back into a debtor's bankruptcy estate. The trustee has a duty and obligation to bring certain pre-petition transfers (or the value thereof) back into the bankruptcy estate so that the money may be redistributed among the debtor's creditors on a pro rata basis. Specifically, the trustee may

with new value (i.e., goods or services) after the transfer.

Automatic Stay: Stop everything. The Bankruptcy Code imposes, with few exceptions, an immediate stay against all entities from any actions against the debtor or the debtor's property (there are no notice requirements for the stay to be effective). A creditor who fails to stop certain collection efforts would violate federal law. For example, a creditor would violate the automatic stay if she sought to enforce a judgment or perfect a security interest (with some exceptions) against the debtor. Certain exceptions to the automatic stay, such as the continuation of certain criminal proceedings or the collection of alimony, do

to consider is the debtor's conversion of nonexempt property within one year of filing bankruptcy with the intent to "hinder, delay or defraud" a creditor. The risk is that the conversion may result in a denial of the claim of exemption or (more extreme) a denial of discharge.

Proof of Claim: Know your rights. Charlie can file a proof of claim listing all debts owed to him by Danny, including any amounts the trustee may have recovered from Charlie in the preference avoidance action. A proof of claim is a written statement setting forth a creditor's claim—it is what the trustee uses to distribute any monies he has recovered for the benefit of the estate. If the



claim is based on a writing, the writing must be filed with the proof of claim. If the claim is secured, it must be accompanied by evidence that the security interest has been perfected. Creditors have a certain amount of time—typically set by the court soon after the date of the creditors' first meeting—within which to file claims, so awareness of this deadline is crucial.

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READY RESOURCES

- *Attorney Liability in Bankruptcy*. 2006. PC # 5150415. ABA General Practice, Solo and Small Firm Division.
- *Portable Bankruptcy Code and Rules*, 2007 ed. PC # 5070549. ABA Section of Business Law.

Don't Take Yourself Too Seriously

(AND OTHER GOOD ADVICE)

Is there still any helpful information that the voice of experience can impart to younger lawyers? To find out, we circulated the following two questions among more experienced attorneys to find out what they know now that they didn't know then.

What one piece of advice do you have for an attorney just starting out?

- Remember that what you learned in law school was only the very beginning of what you will need to learn as you proceed through your career.
- Learn the rules of evidence and try a few cases as early in your career as possible. It will give you confidence and make the rest of your career more successful.

- Learn to cooperate and communicate with the court clerks. They generally have a wealth of information and with one phone call can often eliminate the need for hours of procedural research. They are also invaluable when lawyers have scheduling conflicts, wish to postpone or advance certain matters, or just need a sense of how a matter may play out. And if you mess up, they often play a critical role in sorting out the problem. The best clerks have a way of making the court system much more user friendly and practical. Get to know them, let them know you, and always show them the utmost respect.
- Decide what goal you want to accomplish in your career,

then develop a plan of action to reach that goal. But the plan isn't written in stone, and it should have flexibility. Review the plan periodically, and modify it when necessary.

- Get a mentor and build a network. The mentor can be an attorney at your firm or another practice, or someone you run into at local bar meetings. Think of someone that you know, like, and respect—and is good at business development. Make networking and business development daily habits. The steps don't have to be major and can be as simple as forwarding an article or having lunch with a referral source or client. Finally, get involved in community and volunteer work, engage in professional activities, and do an excellent job at everything you do.
- Don't rely on email as a substitute for conversation. When confronted with new

issues and challenges, it's often best to get out of your office, sit down with someone with more expertise, and have a conversation. E-mailing back and forth is not a good way to work through a problem.

- Don't be afraid to use your legal skills for other jobs such as teaching, investigating, or starting your own business. A law degree opens doors to other things, aside from the traditional practice of law, that lawyers find more rewarding. If you decide to practice law, remember your family and keep your body in good physical condition.
- There's more to being a lawyer than a big pay check.

What advice do you wish you had been given as a young attorney?

- The world is peopled by generally normal human beings, even if they happen to be wearing robes, suits, or

police uniforms or are your opponents. Treat them that way.

- Spending nonbillable time training yourself to understand issues thoroughly is well worth the investment.
- I wish I'd been told that I should take more vacations.
- "Perception is reality." It doesn't matter if you're right, if you can prove it, if you did something exactly the way you were told to, or if you did exactly what you were told to do: If a partner says you're wrong, you're wrong.
- Only partners have personal lives—you are not entitled to one. That goes for vacations and holidays as well.
- The one thing they don't teach you in law school that all lawyers starting out must know is the importance of business development to a young lawyer's career. Start networking as early as you can, preferably in law school,

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Feed Your Creative Side

Interview by Colin T. Darke

A young attorney has a difficult task in finding the right mix of time for work, family, friends, and other passions. This dilemma often results in the "time for other passions" ingredient being ignored. Some lawyers have found, however, that the time focused on something they feel passionate about enriches much of that other time spent at work, with family, and with friends. Just ask Marie Hejl, a young associate at Ogletree, Deakins, Nash, Smoak & Stewart, P.C., in Austin, Texas. Marie has found an unusual way to incorporate one of her passions—cooking—into her lawyerly life by hosting a broadcast cooking show that airs on 70 stations, nationwide and in New Zealand and Canada.

In between time spent on our work, our families, and our

friendships, Marie and I were able to sit down together so that I could ask her about being a young attorney and how she found the time to feed her creative side.

Your Web site (www.CookingWithMarie.com) states that your goal is "to make cooking an accessible, easy, and fun activity." How do you accomplish this?

I didn't go to culinary school, so the "easy and accessible" part comes naturally. I usually



Marie Hejl, a young associate and host of *Cooking with Marie*.

make dishes on the show that I learned at home, growing up and then during and after college and law school. Almost all of these dishes require basic ingredients, simple cooking methods, and short cooking times. I truly believe that if I can make it, my viewers can, too, regardless of their experience in the kitchen.

The "fun" part comes naturally as well. I make mistakes all the time and laugh a lot during the show. If I have a guest, we often joke around. I hope the light-hearted and laid-back nature of the show conveys to viewers that cooking is an activity to enjoy.

How has your passion for cooking influenced your legal career and vice versa?

The two complement each other in ways I never expected: primarily in networking, public speaking, and thinking and listening.

I never thought that my show might lead to new relationships with people in the business and legal communities. Yet, over the past couple of years, I've met hundreds of new friends in Austin and around the country—

people who saw the show or read an article about it, visited my Web site, served as a guest on the show, or participated in one of my classes. Networking "for the sake of networking" has never really appealed to me, but this is completely different. These friendships are natural connections based on a common interest, and I expect that many will last a lifetime.

I remember standing in front of a jury last year at a trial in federal court. As I began to speak, I realized that [the case theory] was much like explaining a recipe to the camera. I had to speak slowly and clearly, and in a way that people who didn't know as much about the case as I did could understand. The same is true when I'm teaching people how to cook a new dish on television.

Having guests on my show also has taught me to think quickly on my feet. I never know what my guests are going to say. In order to ask intelligent follow-up questions and maintain interesting conversation, I have to listen well, host the show, and cook at the same

time. This same "thinking/talking/listening" skill comes in handy during depositions. It has taught me to ask better questions, listen to answers, and make well-founded objections.

Many young attorneys feel overwhelmed by the transition from law school to law practice and have a feeling of constantly playing catch-up. What's your advice for young attorneys who feel that they just don't have any extra time to follow a passion outside of the law? Accept the fact that you will never be "caught up." If you want to pursue a passion outside of the law, you have to be willing to leave work at work. It's not always easy. But I believe that you will be more successful at work (and happier at home) if you have balance in your life.

READY RESOURCES

- *The Lawyer's Guide to Balancing Life and Work*, Second Ed. 2006. PC # 5110566. Law Practice Management Section.
 - *Nonlegal Careers for Lawyers*, Fifth Ed. 2006. PC # 5110567.
- To order online, visit www.ababooks.org.

and establish and nurture a network of contacts and referral sources. Join your local bar association and civic groups, and become (and stay) visible in your community.

- Work hard, but keep everything in perspective. This took nearly ten years for me to realize! As my father (who is an attorney) has tried for years to teach me, everyone is replaceable. He always tells me, "When you think work is too much or you are too important or busy to spend time with your family, take a day off, go to the gym, whatever." Try taking a walk through a graveyard and reading the headstones. You will realize that everyone is replaceable and we are really here for only a short time. Make it fun!
- Find one or more mentors whom you admire and who will take the time to show you the ropes.
- Dream big.

LAP

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- Procrastinating and missing deadlines
- Feeling overwhelmed by doing legal *and* administrative work
- Earning too little
- Having relational or family problems
- Drinking, drugging, or other compulsive behaviors

Lawyers who focus solely on their clients' or firms' needs, without regard to their own, end up burned out and used up. They can end up in the disciplinary system of their state bar association after clients complain. Stress and burnout are occupational hazards even for young lawyers.

What can I expect when I call?

LAPs around the country vary in the breadth and depth of the services they offer. Small LAPs may consist of a telephone and a lawyer or mental health profes-

sional who offers information and referrals. A few of the larger LAPs also offer individual or group counseling by mental health professionals. Many LAPs also have a network of lawyers who have been through their own recoveries and provide support and resources during whatever treatment may be deemed necessary.

Are LAP services confidential?

Yes, in most states, under most circumstances. Your state or local LAP can let you know about specific limitations. Most clients receive the same degree of confidentiality and privilege as they would from private mental health practitioners or agencies.

How can I help a colleague whom I suspect is impaired?

Most LAPs are equipped to advise you on reaching out to lawyers who aren't asking for help themselves but probably should be. In most states, you can call the LAP and confidentially discuss your concerns, and your call will not



be mentioned to your colleague. In some cases your initial contact can be the start of an intervention that may even save someone's career or life.

Is intervention the same as discipline?

No. LAPs generally do not "report" lawyers who use—or are considering using—their services to disciplinary agents, and their rules of confidentiality protect their information. Check with your jurisdiction to be sure.

But I should be able to figure this out by myself!

Wrong. The sooner you disabuse yourself of this notion, the better your life and career will be.

The only truly dumb thing you can do is to realize you need help and then not ask for it. And I think you're smarter than that.

Rebecca Nerison is a licensed psychologist who works with lawyers at the Washington State Bar Association's LAP. She can be contacted at rebeccan@wsba.org.

If you have trouble accessing your local LAP, call the ABA's Commission on Lawyer Assistance Programs at (866) 529-5277 (866-LAW-LAPS) or check the resources at www.abanet.org/legalservices/colap, which links to programs for each state and U.S. territory.

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READY RESOURCES

- *A Lawyer's Guide to Healing: Solutions for Addiction and Depression.* 2006. PC # 3190033. ABA Commission on Lawyer Assistance Programs (CoLAP). To order online, visit www.ababooks.org.



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Leadership Mentoring Program

LAW PRACTICE MANAGEMENT SECTION

As part of its continuing efforts to reach out to young lawyers, the ABA Law Practice Management Section (LPM) offers a Leadership Mentoring Program to involve and mentor future leaders of the Section. Imagine the opportunities to meet and network with some of the country's foremost experts on topics related to the business of practicing law—marketing, management, technology, and finance—as well as to discuss personal career and work/life balance questions.

LPM Section leaders choose at least two candidates each year to serve two-year terms. The appointees will have the opportunity to attend Section meetings and serve on important committees that affect the strategic direction of the Section and its service to members. LPM holds quarterly Section meetings, including at the ABA Annual and Midyear Meetings, and offers a generous reimbursement policy. Applications are accepted throughout the year.

Submission deadline for the 2007–2008 bar year is June 1, 2007.

For more information and to apply, visit www.abanet.org/lpm/yl/home.shtml.

Child Advocacy Award

THE YOUNG LAWYERS DIVISION

The ABA Young Lawyers Division Child Advocacy Award recognizes contributions to the legal profession by advocates who have actively labored on behalf of children. Two awards will be given: one to a young lawyer and another to a non-young lawyer. Any lawyer or judge involved in child advocacy is eligible. The awards will be presented August 4, 2007, during the YLD Assembly at the ABA Annual Meeting in San Francisco. Each winner will receive round-trip coach airfare and one complimentary night's stay at a San Francisco hotel.

Deadline for nominations is April 30, 2007. For more information, contact Tracy Kaempf at (312) 988-5626.

Information is online at www.abanet.org/yl/awardschildadvocacy.html.



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www.abanet.org/yl

E-Discovery Tips

By Kenneth Reiss

The e-discovery amendments to the Federal Rules of Civil Procedure are now effective and will no doubt change the face of litigation. Here are ten tips to remember when dealing with e-discovery.

1. Read the rules. There is no substitute for actually reading the text of the amendments and the associated Advisory Committee Notes. In particular, read Federal Rules of Civil Procedure 16(b); 26(a), (b) and (f); 33(d); 34; 37(f); and 45.

2. E-discovery does not mean that everything needs to be saved. Some people mistakenly believe that the new rules require companies to save all electronic information, especially e-mails, as part of their normal retention requirements. The rules in fact do not prohibit companies from implementing

document-management policies that limit how long information is retained. Once litigation is reasonably anticipated, though, clients will need to suspend operations that would otherwise eliminate relevant information.

3. Preserve immediately. You can't necessarily wait until a lawsuit is filed against your client before you issue a preservation memo. As soon as litigation is reasonably anticipated, your client needs to save relevant information. And don't just send a boiler-plate preservation memo. Ensure that the witnesses understand their obligations.

4. Understand your client's information systems. It's difficult to effectively collect electronic information without a basic understanding of how your client manages its information. Consider all sources where pertinent electronic data may be stored, including network servers, hard drives, backup tapes, personal devices such as blackberries, and removable storage media. Pay particular attention to how your client's

e-mails are managed. When litigation begins, quickly consider whether automatic purging practices and backup-tape recycling need to be halted.

5. Understand what is reasonably accessible. Just because relevant information exists within your client's systems doesn't necessarily mean that you will have to produce it. You need to first determine whether the data is reasonably accessible. If it is unduly burdensome or costly to produce, the requesting party will need to demonstrate good cause before a court will order production.

6. Be prepared for the initial discovery conference. The new rules require you to discuss e-discovery with your adversary at least 21 days before the initial scheduling conference. If you do

not have a handle on what information is available, what format it's in, and its relative accessibility early in the case, you are far more vulnerable down the road to future motions practice and onerous e-discovery obligations.

7. Work closely with your client's IT personnel. You need to educate your client's IT personnel about e-discovery. Once litigation begins, work closely with them to ensure that relevant data is gathered. It is especially important to understand each other's terminology so that you're speaking the same language. And don't forget to utilize their expertise in obtaining electronic information from the other side.

8. Consider an early privilege waiver agreement. The risks of inadvertently producing privileged information are significantly higher when discovery of electronic information is sought. To minimize the risk of waiver, consider seeking an agreement with your adversary that inadvertent production will not waive the privilege. Get any such agreement reduced to a court order.

9. Don't forget about metadata. Most applications such as e-mail and word-processing systems store hidden data about your data. This metadata usually is not visible if you just print information in hardcopy form. Preserve your data in electronic format so that metadata is not destroyed.

10. Be prepared to explain. Opposing counsel is likely to be far more inquisitive on e-discovery issues. Be prepared to answer discovery requests and provide deposition testimony about your client's computer systems and the processes you used to preserve and collect relevant information.

Kenneth Reiss is Senior Counsel for Litigation with Northrop Grumman Corporation in Arlington, Virginia.

READY RESOURCES

■ *The Electronic Evidence and Discovery Handbook: Forms, Checklists and Guidelines*. 2006. PC # 5110569. Law Practice Management Section.

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