

# the YOUNG LAWYER

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FIND YOUR CREATIVE SIDE

## Creativity—You're Full of It!

By Kevin E. Houchin

**Y**ou're full of it! You really are. There's no way that I'm the first person to tell you. You can't deny it. You're full of it up to your eyebrows.

Full of creativity. You were born with it. You are made of wonderful, delicious, colorful, smelly, heaping globs of creativity!

As a child, your humanity burned with the divine spirit of creativity. You imagined games. You imagined friends. And, you even created vivid experiences that existed only in your mind but existed nonetheless.

Then, you went to school.

You learned to live by other peoples' rules and *their* ideas of how and what you "should" be. Walls grew that blocked your view of those wonderful places in your imagination. Those walls grew until finally the creativity of your heart, spirit, and right brain were all but abandoned in favor of subjects that could be objectively tested with multiple-choice exams and computer-graded bubble sheets.

Then, you went to law school.

Your walls were adorned with thorns and you were not even allowed to *have* ideas of your own. Any creativity you were allowed to display was carefully disguised as nuanced synthesis of precedent (other people's ideas—the older and less original the better).

It felt like you had suddenly

become unworthy of being the source of an idea or thought. You felt like a slave to a footnote or maybe like a footnote yourself.

But, you're not in law school anymore. Now, you're the only "source" that really matters. Your senior partner may determine your job status and salary, but you get to decide how much credibility to give those things.

If you're feeling trapped in a job that doesn't allow you to express your creativity, you have the power to change that. You don't have to leave your job to feel more fulfilled. Rather, start chopping through the thorns and breaking down the walls that decades of education have placed around your creative spirit. Trust me, you can do this and still be an effective lawyer. It may even be the secret prerequisite to a happy and satisfied life in the law.

There's no simple seven-step process to recovering your creative spirit. The journey is different for each of us. A simple start is to look for creative opportunities that already surround you. You happen to be holding one of them in your hand. This issue of *The Young Lawyer* is dedicated to helping lawyers recognize opportunities for expressing creativity in their lives and work. Use it to jumpstart ideas for creative outlets that you would enjoy. Paint, play music, sail, climb, write, spend time with family, do community service, sing—do *something* other than work.

It's time to start living a more creative life. Read these articles. Fuel your spark of creativity, and then share your flame. You're full of it!

Kevin E. Houchin is a speaker and attorney from Fort Collins, Colorado, and can be contacted at [www.houchinlaw.com](http://www.houchinlaw.com).

## Arts Law: Not Just for the Entertainment Lawyer

By Elizabeth T Russell

**C**hances are, you already practice arts law. You may not practice *art* law because few attorneys do. But *arts* law? Very likely.

**Art law** is a niche field of practice. It involves legal issues surrounding the creation, protection, distribution, and disposition of visual art otherwise known as "pictorial, graphic, and sculptural works" (PiGS) under Section 102 of the federal Copyright Act of 1976 (17 U.S.C. § 102). *Art* law practitioners provide counsel in transactions among fine artists, galleries, dealers, and collectors. They negotiate and draft fine art commissioning agreements and help clients navigate state laws that govern prints and fine art multiples. They also advise artists about moral rights, resale rights, First Amendment issues, and, of course, copyright and trademark.

*Art* law is not just about the artist's intellectual property interests. It is just as much about dealers and collectors buying, selling, and transferring the physical media embodying an artist's work. Accordingly, *art* law attorneys need to understand trusts and estates, taxation, secured transactions, and the Uniform Commercial Code. *Art* law practitioners also advise on international treaties and patrimony laws concerning the illicit trade in art and cultural property.

PiGS is only one category of works of authorship protected under section 102. **Entertainment law** is a much broader field of practice that often involves the other seven categories:

- literary works;
- musical works, including any accompanying words;
- dramatic works, including any accompanying music;
- pantomimes and choreographic works;
- motion pictures and other audiovisual works;
- sound recordings; and
- architectural works.

Entertainment lawyers serve the music, film, television, theater, and publishing industries and work in many different practice areas, including intellectual property (copyright/trademark/privacy/publicity), labor and employment, real estate, bankruptcy, securities, antitrust, immigration, international, tax, and insurance. The entertainment industry is tough and fast-paced, and transactions involve substantial sums. Entertainment law clients are typically at or climbing to the top of their game and generate a lot of money for a lot of people. Attorneys who wish to practice *entertainment* law are well-advised to secure employment in a large firm or company with offices near salt water or in a city beginning with "N" and ending with "ashville."

But not every client is a mega-star. Most hobbyists and arts entrepreneurs, in fact, write, paint, or record simply for the love of it. These clients might not be wealthy, but many do make a living from their artistic work. They confront many of the same legal issues as big stars, just on a smaller scale. Let's face it. If the average painter, sculptor, or local gallery owner walked

into a big New York City law firm seeking representation from its *art* law group, it wouldn't happen. The dollars aren't there. Similarly, the local singer-songwriter hasn't a chance with a large *entertainment* law firm. Where do these clients turn for legal advice or representation? An **arts law** attorney.

In my view, *art* law and *entertainment* law practitioners focus on the stars. *Arts* law attorneys serve everyone else. *Arts* law is an umbrella that includes not only *art* law and *entertainment* law, but also legal service to the average creative person and smaller-scale creative business. In my practice, I call upon the same legal training and apply the same legal concepts as *art* and *entertainment* attorneys; however, I choose to work with local, regional, and emerging artists and businesses that might never rise to stardom or notable financial success. (There are, by the way, far more of these clients than there are big stars!) Because it's such a different practice, I refer to myself as an *arts* attorney rather than an *art* or *entertainment* practitioner.

But what about you? I began this article with the suggestion that you may already practice *arts* law. The creative industries employ millions of people and contribute significantly to our national economy. A 2007 report from Americans for the Arts showed that in 2007 there were 546,558 U.S. businesses involved in the creation or distribution of the arts, employing nearly 2.7 million people. Representative sectors include museums and collections; the performing arts; visual art and photography; film, radio, and television; design and publishing; and arts schools and services. If you are providing tax, real estate, or litigation services, for example, for these types of

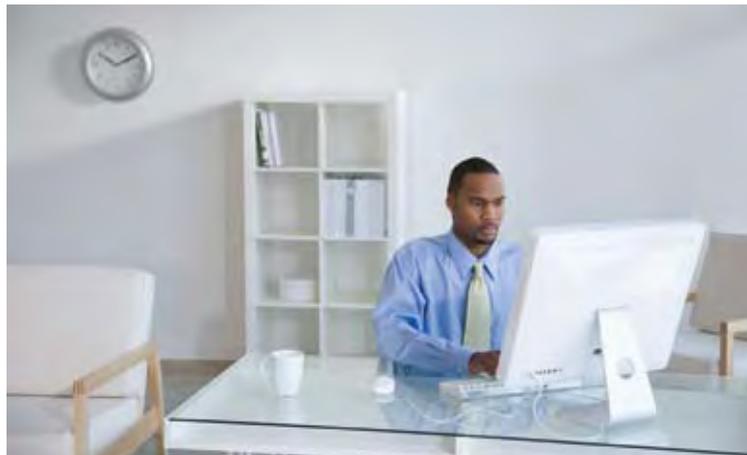
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# Reflect Your Style: Law Offices Redesigned

By Lois Goodell

The newest generations of workers are not content to work inside the four walls of a conventional office that is void of personality. They want to see the fresh outlook that they bring to their work reflected in their workplaces. Fortunately for young professionals, office personalization is gaining traction due in large part to an increasingly younger workforce and more companies leveraging interior design to demonstrate a particular brand and value set to their clients.



Law firms, in particular, have come a long way. Traditional corner offices, elegant dining rooms, and dark wood paneling and brass fixtures are no longer representative of some modern firms. Culture and technology have engendered major changes in law firms' interior design. Attorney offices have been reduced in size but are more efficiently designed with ergonomic furnishings and more layout space to support collaborative work. Large sub-dividable multipurpose rooms provide an onsite conferencing center, while fully-wired, mixed-use casual meeting spaces take pressure off formal conference rooms. A new focus on "identity" to distinguish a firm is resulting in the addition of trendy cafés and ultra-contemporary reception areas.

Concurrently, social networks have influenced the next generation of workers, who are

accustomed to open and collaborative communication. This trend is paralleled in the legal workplace, where there has been a shift from a partner-client relationship toward a more team-oriented client service approach. For example, the majority of client meetings are now being held in the public zone of conference rooms near the reception area. As firms' public spaces move toward being more dynamic, your personal workspace should follow.

While every firm's brand is

different, there are some universal and cost-effective solutions to add your own personal touch to your office. These easy-to-implement design tips will improve morale and productivity.

- **Use color.** Color impacts mood and can be a powerful tool in defining your own personal brand and style. Use it to your advantage and enhance your workspace with pops of color in your personal accessories. All shades of green are popular right now, perhaps due to the association with sustainability and the environment.
- **Choose your artwork carefully.** Posters are fine for college dorms, but if you really want to take your office to the next level begin collecting original paintings and sculptures. There are pieces that work for every budget.

Even something as simple as a framed children's drawing lends a professional air to a whimsical sketch. A framed map from a recent trip connotes a world traveler. Each piece provides a glimpse into the person behind the desk.

- **Add a personal touch.** A tack panel can be a great way to display your favorite cartoon strips or photos of friends. It's compact, organized, and very portable. If you have to move offices at some point in the future, it's easy to carry down the hall.
- **Add layers and interest.** A small area rug can add color and pattern to your office, which can enliven a space and create an inviting environment. Or, designate a particular shelf or bookcase for mementos: a pint-size MINI Cooper®, a graphic postcard, and professional recognitions can make quite an interesting collection.
- **Take initiative.** Be active in forming or joining a committee that considers the design of office space. Together, the group can balance the needs of the law firm (e.g., maintenance, flexibility) with the desire for employees to express themselves. It also could provide you with a voice when the firm is making big design decisions, such as overall office renovations.
- **There are some "don'ts."** For example, fake flowers are always a "no." In this vein, plants can be a nice touch, but if you can't take care of them they're better off with the firm's green thumb.

Just remember that a simple approach often works best. Too much clutter in your office space may make it difficult to concentrate on your first priority—your clients and your career. Your office space should reflect a balance of personal professionalism.

Lois Goodell is a principal and the director of Interior Design at CBT Architects in Boston. She can be contacted at [goodell@cbtarchitects.com](mailto:goodell@cbtarchitects.com).

## Networking vs. Business Development

### WHAT'S THE DIFFERENCE?

By Kari Petrusek and Keri-Ann C. Baker

Networking and business development are not interchangeable terms. *Networking* involves building relationships that are useful and worthwhile to others. The focus of networking should be on how you can help another person not how that person can help you. *Business development* is relationship building to generate revenue.

Both of these techniques are creative processes, but each requires a different skill set.

- Effective networking requires:
- creating an elevator speech;
  - listening for ways to provide value;
  - emphasizing your strengths (e.g., expertise, experience);
  - avoiding monopolizing conversations;
  - being genuine; and
  - following up (multiple times).

Business development requires an entirely different approach. Effective business development techniques include:

- providing excellent legal services;
- targeting your existing clients;
- listening to clients for business opportunities;
- developing a distinctive selling style; and
- planning specific sales advances.

While networking builds relationships, business development involves identifying those existing and potential relationships that can turn into attorney-client relationships. Success in networking can lead to success in business development. To develop business, young attorneys must take a measured approach to using and creating networks, identifying the right business opportunities, and then asking for work. Whether seeking work from existing clients or potential future clients, a good business developer will make an educated pitch for business within their zone of expertise.

These topics and more were explored in a panel discussion called "Networking vs. Business Development" as part of the 2009–2010 ABA YLD Member Service Project "Making Connections: How to Develop Lasting Personal and Professional Relationships."

**Watch for announcements of more "Making Connections" programs throughout the 2009–2010 bar year in *The Young Lawyer* and on the ABA YLD Web site [www.abanet.org/yld](http://www.abanet.org/yld).** These programs also are available for use by ABA affiliates.

Kari Petrusek and Keri-Ann C. Baker are members of the ABA YLD Member Service Team. Ms. Petrusek is an attorney at the Carson Law Group, P.S. in Everett, Washington. Ms. Baker is an attorney at Lewis, Longman & Walker, P.A. in West Palm Beach, Florida.

### Arts Law

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clients, you are practicing arts law.

Arts law also plays an increasingly significant role in the general business world. Businesses that use social networking as a business development tool need content clearance and protection. Does your client use

music for those on hold, online, or in the background of its retail space? Did a client retain a Web designer? A videographer? Does a client's Web site solicit user-generated content?

Look around. Arts law is everywhere.

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# Fiction Writing

## A GREAT ESCAPE—AND POSSIBLE ETHICS TRAP—FOR LAWYERS

By Michael L. Seigel

**M**any lawyers dream of writing the next great American novel. Well, if not the great American novel, at least a murder mystery as successful as those penned by John Grisham, Scott Turow, or Erle Stanley Gardner. Most of us won't reach that level of success, but many will try. Why? While the practice of law is rewarding in many ways, it does not offer much of a creative outlet. Writing fiction is a creative outlet, and it comes naturally to many lawyers. After all, we all have been trained to write, and many of us have experience with exciting cases and courtroom drama. Before you decide to take the plunge and write fiction, you must navigate around ethical pitfalls to ensure that your hobby doesn't turn into a career-ending venture.

**Don't plagiarize or fail to fact check.** You might start out thinking that your work will never see the light of day, which might lead you to take some shortcuts. Then, the next thing you know, your fiction novel is published for the public to read. You do not want to have your novel raise questions about your integrity and diligence. This could have serious repercussions on your professional standing. Rule 8.4(c) of the ABA Model Rules of Professional Conduct (ABA Model Rules) prohibits conduct "involving dishonesty, fraud, deceit, or misrepresentation." To avoid such ethical entanglements, you should credit sources and fact check from the outset.

**Get permission from or at least notify your employer.** It is not a good idea to pursue significant non-legal work activity without providing advance notice to your law firm. First, anything you write that is published (whether formally or via the Internet) could impact your reputation and your firm's reputation. If you decide to write a

spicy scene or express possible controversial views, it can come back to haunt you. Second, your employer could think that you are sacrificing your legal work for the benefit of your personal project. You should address this issue with your firm and provide assurances upfront.



**Establish the extent to which you may use firm resources.** You may find yourself using your work e-mail to correspond with editors and publishers, your firm's computers to draft your novel, and your firm's administrative assistants for managing your writing project. If the use of firm resources is minimal, a firm is likely to acquiesce to such use. If it is more significant, the firm may want reimbursement from you. Also, to the extent that you use firm resources to publish your book, your firm may have claim to share proceeds if and when your book is successful. You should have a written understanding with your firm about use of firm resources before pursuing your writing project.

**Take care in converting fact to fiction.** If you are a typical fledgling author, much of your story line will be pretty close to home. However, using personal sources of inspiration could come at a hefty price. ABA Model Rule 1.8(d) and accompanying Comment [9] prohibit a lawyer from negotiating literary or media rights to any story based "in substantial part" on the representation of a present client. More generally,

if you base fictional characters on real, identifiable people and the portrayal is negative, the recipients of such attention may not be happy. If a fictional character is the managing partner of your firm, the outcome could be serious. If a fictional character is a judge, you should study ABA Model Rule 8.2, which prohibits the disparagement of judges and

other legal officers.

Writing takes a lot of dedication and becoming published is a grueling process. My mystery novel was rejected by 150 agents before one decided to take it, and then she had trouble finding a traditional publisher. I resorted to an on-demand printing service and marketing through Web sites, such as Amazon.com, which is a

growing trend. When you finally see your work in print, the mental liberation and emotional exhilaration make it all worthwhile. Are you ready to write?

**Michael L. Seigel is an author and a University of Florida Foundation Research Professor at the Levin College of Law in Gainesville, Florida. He can be contacted at [seigel@law.ufl.edu](mailto:seigel@law.ufl.edu).**

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# YLD CALENDAR & CONFERENCES

NOV. 3, 2009



YLD TELECONFERENCE SERIES  
Anatomy of an Appeal Part II: Persuasion

NOV. 4-7, 2009

THE FUNDAMENTALS TRACK OF THE ABA SECTION OF  
LABOR AND EMPLOYMENT LAW  
3RD ANNUAL CLE CONFERENCE | WASHINGTON, DC

NOV. 5, 2009

FUNDAMENTALS OF CONSTRUCTION LAW | BOSTON, MA,  
DENVER, CO, FT. LAUDERDALE, FL, NASHVILLE, TN,  
AND SAN DIEGO, CA

NOV. 12, 2009



FUNDAMENTALS OF MEDICARE/MEDICAID

NOV. 20-21, 2009

MS. JD'S 3RD ANNUAL CONFERENCE ON WOMEN IN THE LAW:  
AVENUES TO ADVANCEMENT | CHICAGO, IL

DEC. 10, 2009



ETHICS FOR HEALTHCARE ATTORNEYS

JAN. 14, 2010



FUNDAMENTALS OF MEDICAL STAFF AND PEER REVIEW

FEB. 4-6, 2010

2010 ABA YLD MIDYEAR MEETING | ORLANDO, FL

FEB. 15, 2010

2010-2011 YLD APPOINTMENT APPLICATION DEADLINE

Visit the ABA YLD Calendar for additional information:  
[www.abanet.org/yld/meetings.html](http://www.abanet.org/yld/meetings.html)



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## the **digitale**edge

### How About Blogging as a Creative Retreat?

By Hanishi Thanawalla Ali

**M**any of us choose legal careers because we value the concept of justice, we want to make a difference, and we envision having a good work/life balance. A good work/life balance involves having substantial control and freedom to carry out meaningful work and time for leisure and hobbies. The sign of a good work/life balance is feeling that you have a satisfying life.

Yet, how many of us constantly live in catch-up mode with ever-increasing work and family responsibilities and little or no time for to pursue hobbies or passions? Well, this year, my New Year's resolution was to find time for my creative pursuits and pursue my hobbies. My hobbies are writing,

photography, and cooking healthy meals for my family and friends. I decided to pursue all three of these hobbies by creating a food blog.

I started my blog "The Culinary Chronicles" on blogger.com as a culinary blog for simple but healthy and delicious meals. I was amazed by the sheer number and diversity of other food

blogs and by the support of the food blogging community. Even though my blog is still a work in progress, it really is a work of art for me. My blog allows me to share photographs of my favorite recipes, experiment with new foods, share my enthusiasm for cooking, and eat great food on my own terms. It is a way for me to keep track of my family's



favorite everyday recipes and of the recipes that I've inherited from my mother and my grandmother. The best part of food blogging is seeing my blog grow and learning in the process.

I recently joined Twitter and began "tweeting" about my food blog. My Twitter name has taken on a life of its own with more than eighty followers. If you have a passion or a hobby but are unable to find time to pursue it, start blogging about that passion just for fun and share your passion with others. Blogging can be stimulating and relaxing. It's fun, free, easy, and filter-free. Once you start blogging frequently, you'll find how enjoyable it is and be hooked!

To start your own blog, look at blogger.com and wordpress.org as they offer free blog service with a variety of user-friendly blogging tools. Whether or not you're techno-savvy, it is pretty easy

to set up your own customizable blog within twenty to thirty minutes. Try to post content on your blog regularly to keep readers interested and to optimize your blog's searchability as updated pages show up higher in Google search results.

If you want to find my blog on Google you would use the keywords "blogspot and Culinary Chronicles and Hanishi." For two great blogging resources, visit wpcandy.com, which has tips, tricks, tutorials, and resources related to the blog engine wordpress.org, and problogger.net.

I hope that I have inspired you to blog or at least follow someone else's!

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