**Message from the Chair**

**Mac R. McCoy**  
Carlton Fields  
Tampa, FL

**Leadership Transition:**  
As the ABA Annual Meeting in Chicago approaches, I want to take the opportunity to thank Sherwin Simmons, the outgoing Chair of the Young Lawyer Committee (YLC), for his exceptional leadership over the past three years. Under Sherwin’s conscientious stewardship, the Committee has continued to expand its reputation, membership, and strategic vision. Most importantly, we have made tremendous strides in advancing the YLC’s ultimate mission of supporting young lawyer involvement in the Business Law Section by providing meaningful opportunities for education, training, public service, professional networking, socializing, leadership, and business development. Thank you, Sherwin, for creating a legacy that we can all be proud to carry into the future.

I also want to take the opportunity to thank two other members of the YLC executive committee, Stephanie Cohen and Richik Sarkar, for their extraordinary contributions and dedication to the YLC over the past six years. Stephanie and Richik have both played integral roles in shaping the future of the YLC through their tireless commitment to innovation and their advocacy on behalf of young lawyers within the Section.

**ABA Annual Meeting:**

If you plan to attend the ABA Annual Meeting in Chicago, please refer to the separate email communication you received on July 24 highlighting the various programs, meetings, and other activities of interest for young lawyers in the Business Law Section. Additionally, the YLC will be offering a free pre-Annual Meeting webinar on July 26th designed to help young lawyers and law students navigate and make the most of their attendance at the Annual Meeting. The time and registration information for this free webinar has been distributed to the YLC membership by a separate email.

**Leadership Opportunities:**

The YLC is comprised of seven subcommittees: Diversity, Communications & Technology, International Young Lawyers, Law Students, Membership, Pro Bono & Public Service, and Programming. Each subcommittee is led by one or more chairpersons and one or more vice chairpersons. There are currently four vacant leadership positions for which the YLC is seeking applicants: Vice Chair of Diversity, Vice Chair of International Young Lawyers, Vice Chair of Pro Bono & Public Service, Co-Vice Chair of Communications & Technology. Each of these appointments would be for a three-year term (2012-2015). To apply for an appointment or for more information, please contact me at mmccoy@carltonfields.com.

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**Featured Articles**

**Reasonable Compensation: Legally Saving Employment Taxes With S Corporations**  
By Drew A. Cummings, Scott, Quinlan, Willard, Barnes, & Keeshan

In recent years, Congress has considered eliminating a perceived loophole that saves many professionals considerable amounts in employment taxes. Using this mechanism, Newt Gingrich has saved $50,000 in employment...
By Rob Ricca, Gentry Locke Rakes & Moore, LLP

This perceived loophole involves S corporations splitting up their earnings between wage and non-wage distributions. S corporation shareholder-employees often attempt to minimize employment taxes by electing to receive non-wage distributions instead of earning wages. Congress is concerned with non-wage distributions because it greatly affects tax revenue. The Government Accountability Office estimated that in 2003 and 2004 alone, S corporations skirted paying employment taxes on $24 billion of earnings by underpaying their shareholders. This revenue-depleting loophole persists despite repeated congressional attempts to close it over the past several years. In light of this attention, this article examines how the S corporation rule operates, how the IRS audits these types of returns, and finally, recent bills that attempt to close the S corporation loophole.

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It's a Win-Win: Increase Productivity and Enhance Client Satisfaction While Saving Money
By Richard A. Heyeck and Nia M. Jenkins, American National Red Cross

Many attorneys find it challenging to utilize their paralegals effectively in the in-house environment. Attorneys may find themselves thinking: "I like to do everything myself so that it is completed correctly" or "Paralegals just slow me down." However, paralegals are proven assets to in-house legal departments. Paralegals assist in juggling large workloads and managing tight budgets. As an in-house attorney and paralegal, we will provide our perspective on how we work together as a team to increase productivity, enhance the experiences of our clients, and create opportunities for professional development. We have learned that working together to establish our expectations and goals in the areas of (1) workflow/client interaction, (2) professional development, and (3) overall in-house legal department benefits has led to a successful team.

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Tips for a Successful "Crowdfunding" Offering
By Rob Ricca, Gentry Locke Rakes & Moore, LLP

Crowd-sourced funding or "crowdfunding" is a means for entrepreneurs to raise capital by pooling large numbers of people who each contribute relatively small amounts of money. Potential investors are typically solicited online, which enables the entrepreneur to target people with common interests who might be willing to contribute to a venture.

While crowdfunding is frequently used by private companies to raise money through loans or donations, companies generally do not use crowdfunding to sell stock since such offerings inevitably require registration under the Securities Act of 1933. This is about to change. On April 5, 2012, President Obama signed into law the Jumpstart Our Business Startups Act (the "JOBS Act"). The JOBS Act provides a new exemption from securities registration requirements for crowdfunding.

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Practice Tips for Being Your Best
By Vincent Roldan, Vandenberg & Feliu LLP

This column will offer a different practice tip each issue to help young lawyers navigate the practice of law and be the best young lawyer.

Networking Tips For Young Lawyers
Law students are typically trained to analyze facts, research applicable law, figure out options and advise clients accordingly. They graduate and become young lawyers where they apply what they learned and hone their skills in whatever specialty they choose. As the practice of law has become more of a business, however, it has become critical for lawyers to build relationships and develop good contacts. To stand out and advance, it is no longer sufficient to simply be competent. Young lawyers are expected to bring in business, or at least show the potential to do so. I have compiled some tips and reminders that I have learned over the years that will help young attorneys build those relationships early on.

1. **You Make Your Money With Relationships.**

   A former boss once told me, "We make our money with words." That is partially true - we also make our money with relationships and the trust that builds the relationship. Clients give work to attorneys they trust. Attorneys refer work to attorneys they trust. Partners give work to associates they trust. Law firms hire associates they trust. You get the idea. So, where do you meet all these people with whom to start a long relationship? Think of yourself as your own business. In order to survive, you will need to attract customers and sell your services to somebody. Just like a business needs to devote resources to marketing, you will need to devote resources to marketing your services as well.

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ABA Connections

**Global Forums: A Potential Resource for Young Lawyers’ Domestic Practice**

*By Danute Debney Shaw, Life Resource Consulting, LLC*

In the fall of 2011, I had the opportunity to attend the ABA sponsored "Global Business Law Forum" in London. Attendees from twenty countries gathered to listen to forum panels from Great Britain, Canada and the United States present overviews on a range of topics affecting cross border issues confronting Business and Financial Services law firms. There was something to enlighten or provide a broadened perspective for everyone.

Surprisingly, a number of U.S. attorneys attending were from law firms involved in business law, but not necessarily international practice areas, and a good number were young lawyers. One visionary law school from Oklahoma sponsored a third-year law student's attendance. Upon returning home, I was asked about the benefits from the experience and whether I would recommend attorneys not directly involved in "international" business law practice or perhaps young in their practice to attend such events. I enthusiastically responded, “Yes!” for the following reasons.

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Subcommittee Feature

**Pro Bono and Public Service Subcommittee**

*By Victoria Newman, Co-Chair, Holland & Knight, LLP*

On Thursday, August 2nd, from 3:00 p.m. 4:30 p.m. prior to the start of the Business Law Section’s meetings at the ABA Annual Meeting in Chicago, the Pro Bono and Public Service Subcommittee, along with the Business Law Section’s Young Lawyer Committee, will partner with Junior Achievement of Chicago for "Ask an Expert Day." The volunteer team will meet with students from local high schools to discuss their career paths and education. The program is intended to assist students in understanding the relationship between obtaining an education and the working world. We are seeking volunteers for this effort. If you have any questions about this year’s volunteer opportunity, the plans for 2012 or would like to volunteer, contact...
Reasonable Compensation: Legally Saving Employment Taxes With S Corporations

In recent years, Congress has considered eliminating a perceived loophole that saves many professionals considerable amounts in employment taxes. Using this mechanism, Newt Gingrich has saved $50,000 in employment taxes, while John Edwards has saved over $500,000. This perceived loophole involves S corporations splitting up their earnings between wage and non-wage distributions. S corporation shareholder-employees often attempt to minimize employment taxes by electing to receive non-wage distributions instead of earning wages. Congress is concerned with non-wage distributions because it greatly affects tax revenue. The Government Accountability Office estimated that in 2003 and 2004 alone, S corporations skirted paying employment taxes on $24 billion of earnings by underpaying their shareholders. This revenue-depleting loophole persists despite repeated congressional attempts to close it over the past several years. In light of this attention, this article examines how the S corporation rule operates, how the IRS audits these types of returns, and finally, recent bills that attempt to close the S corporation loophole.

How the Rule Operates

S corporations differ from other business entities in regard to employment taxes. As an employee of any type of business, employment taxes are withheld automatically from paychecks by their employer. Corporations that are taxed under subchapter C of the Internal Revenue Code pay their shareholders as employees if they conduct more than minimal services. Sole proprietorships, partnerships, or Limited Liability Companies (“LLCs”) and other similar entities are subject to employment taxes on all earnings of the business that are attributed to them (their share of the profits).

S corporations—like sole proprietorships, partnerships, and LLCs—are able to pass-through income, losses, deductions, and credits to their shareholders for federal tax purposes. But unlike other pass-through entities, S corporations may differentiate payments to shareholders between wage and non-wage distributions; only the proportion determined to be wages is subject to employment taxes.

The IRS ruled in Revenue Ruling 59-221 that the distributive share of income required to be included in an S corporation shareholder's income is not derived from a trade or business carried on by the shareholder. As a result, an S corporation that pays a shareholder-employee no salary achieves significant employment tax savings, unlike other pass-through entities that cannot split up earnings between wages and non-wage distributions.

Limit on Differentiating Between Wages and Distributions: “Reasonable Compensation”

Employment tax relates to either self-employment tax or Federal Insurance Contributions Act (FICA) taxes depending on the business entity in question, as well as federal unemployment tax (FUTA).
So what is the upward limit for non-wage distributions? Moreover, what prevents an employer from claiming zero wages and receiving all of the business’ earnings as non-wage distributions? An employee must take “reasonable compensation” as a wage for services performed. If this shareholder-employee does perform services but is not reasonably compensated, the IRS may reclassify some of the non-wage distributions as wages and claim that the employer owes more taxes, which may include interest and penalties.

The IRS first addressed reclassifying non-wage distributions as wages in an S corporation setting in Revenue Ruling 74-44. There, the IRS held that non-wage distributions received by two sole shareholders of an S corporation were wages subject to employment tax where the shareholders received no salary. Revenue Ruling 74-44 also held that the non-wage distributions received were paid in lieu of compensation and therefore met the statutory definition of wages.

In a recent case, the IRS reclassified over $60,000 of non-wage distributions as wages. In Watson v. U.S., 668 F.3d 1008 (2012), a long-term partner at an accounting firm took a salary of $24,000, but received non-wage distributions over $200,000. The IRS investigated the firm and determined that it underpaid employment taxes. At trial, the Government’s expert determined that Watson’s salary should have exceeded $90,000 based on “several compensation surveys and studies particular to accountants . . . which contained adjustments for specific regions.” The Watson court accepted this reasoning, holding that the firm owed additional taxes, plus interest and penalties. The court based its reasoning on five main factors: (1) Watson was an exceedingly qualified accountant with an advanced degree and nearly 20 years of experience in accounting and taxation; (2) he worked 35–45 hours per week as one of the primary earners in a reputable firm, which had earnings much greater than comparable firms; (3) the firm had gross earnings over $2 million in 2002 and nearly $3 million in 2003; (4) $24,000 is unreasonably low compared to other similarly situated accountants; and (5) given the financial position of the firm, Watson’s experience, and his contributions to the firm, a $24,000 salary was exceedingly low when compared to the roughly $200,000 distributed to Watson in 2002 and 2003.

Under the facts in Watson, the court determined that the employee’s compensation was not reasonable. But each case is different. Courts have held that the question of reasonable compensation is a factual inquiry that is determined on a case-by-case basis. What is clear is that the shareholder-employee must take a salary—the IRS will reclassify non-wage distributions as wages if the taxpayer declares all earnings as non-wage distributions. However, determining what constitutes “reasonable compensation” is less clear.

S corporations must pay reasonable compensation to a shareholder-employee in return for services provided to the corporation before non-wage distributions may be made to the shareholder-employee. Furthermore, IRS fact sheet FS-2008-25, Wage Compensation for S Corporation Officers, states that the key to establishing reasonable compensation is determining
what the shareholder-employee did for the S corporation. As such, practitioners must look to the
source of the S corporation’s gross receipts, which include three major sources: (1) Services of
shareholder; (2) Services of non-shareholder employees; and (3) Capital and equipment. If the
gross receipts and profits come from services of non-shareholder employees or capital and
equipment, then the profits should not be associated with the shareholder-employees personal
services and need not be allocated as compensation. On the other hand, if most of the gross
receipts and profits are associated with the shareholders personal services, then most of the profit
distribution should be allocated as compensation.

The IRS has provided the following list of factors courts look to when determining if wages paid
are reasonable: the employee’s training and experience, duties and responsibilities, time and
effort devoted to the business, non-wage distribution history, payments to non-shareholder
employees, timing and manner of paying bonuses to key people, what comparable businesses
pay for similar services, compensation agreements, and the use of a formula to determine
compensation.

Practitioners differ on whether there is a set amount of compensation that an employee should
receive. Some practitioners recommend an even split between wage and non-wage distributions.
Others practitioners argue that employers should weight wages higher at 60%, with non-wage
distributions contributing up to 40% of compensation. Others argue that at least $7,000 should
be paid in wages so that FUTA taxes are off the table. Still other practitioners recommend
employers should pay at least $50,000 in wages if possible to keep a return off the IRS’s radar.

It is recommended that employers conduct research in the particular field that the business
operates in and the particular geographic region where services are performed. As in Watson,
the Government’s expert looked at a number of compensation surveys to determine what
constituted reasonable compensation for an accountant. One key in defending a wage position
against an audit is to document all research and analysis.

**Recent Congressional Challenges Have Fallen Short**

Recently, Congress has voted against closing this tax loophole. Student loan interest rates were
set to double on July 1, 2012. H.B. 2343 was a proposal for keeping student loan interest rates
low, which would have been paid for by closing the S corporation employment tax loophole.
The bill would have required shareholders in certain S corporations to pay employment taxes on
their earnings if their income exceeded $200,000 for unmarried individuals or $250,000 for joint
filers. The Senate voted this measure down on May 8 and 24. On June 6, President Obama
signed into law H.R. 4348. The law kept student loan interest rates low but did not contain any
language regarding S corporation employment taxes.
In 2010, in H.B. 4213, the Democrats offered a similar proposal, but it also failed to pass. In that version of the bill, S corporations would have been required to pay employment taxes if the business was based on the skill or expertise of three or fewer professional service providers.

**Conclusion**

It appears that Congress will not close the S corporation employment tax loophole during this session. For the time being, many professionals will continue to pay reduced employment taxes so long as their record keeping can show that the employee’s compensation is reasonable.

Drew A. Cummings is an associate in Topeka, Kansas at Scott, Quinlan, Willard, Barnes, and Keeshan, where his practice focuses on probate, taxes, and real estate matters. Mr. Cummings will be attending Georgetown University Law Center beginning this fall to obtain his LL.M. in taxation as a Graduate Tax Scholar.
It’s a Win-Win: Increase Productivity and Enhance Client Satisfaction While Saving Money

A First-hand Attorney and Paralegal Perspective on Working Together Effectively in the In-House Environment

Many attorneys find it challenging to utilize their paralegals effectively in the in-house environment. Attorneys may find themselves thinking: “I like to do everything myself so that it is completed correctly” or “Paralegals just slow me down.” However, paralegals are proven assets to in-house legal departments. Paralegals assist in juggling large workloads and managing tight budgets. As an in-house attorney and paralegal, we will provide our perspective on how we work together as a team to increase productivity, enhance the experiences of our clients, and create opportunities for professional development. We have learned that working together to establish our expectations and goals in the areas of (1) workflow/client interaction, (2) professional development, and (3) overall in-house legal department benefits has led to a successful team.

(1) Workflow/Client Interaction - Entrust your paralegal to lighten your workload and to be a major point of contact for clients.

Attorney Perspective

To establish a consistent and efficient work flow, it is imperative to create a team approach to your services. Rick and I created a workflow plan for all incoming work. Rick will take the first review of all contracts and other client requests. As part of his review, he confirms that we have all documents and information needed to provide advice or guidance to the client. This process eliminates my time spent on following up with clients for ancillary documents, filings, or emails.

After Rick reviews the contracts provided, he approaches me with any questions or comments. Addressing his questions is very important, as he learns how to resolve the issue next time. This step decreases the amount of time I spend on my review of any contract, as Rick has provided background on the contract and highlighted various questions or concerns. The time that Rick’s assistance helps free up in my day is especially important so that I can focus on other matters, to include negotiation and strategy sessions, conference calls, and client meetings.

Client interaction is essential. Rick must be considered a valuable team member for our clients as well. If he is perceived internally as an extension of me and my services, clients will feel as though they have another person to turn to for help in resolving any questions or concerns. Most importantly, clients do not feel slighted if I am unable to attend all meetings and calls if they are working with someone whom they know and trust.

Paralegal Perspective

In my time with the organization, I worked with several attorneys in the department; each with different approaches and workflow processes. Nia has an “open door” policy that allows for excellent communication and collaboration on projects. I never hesitate to drop by

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1 While transactional work is our primary focus, the principles in this article can be applied to paralegals and attorneys across different practice areas.
her office with a quick question. I will review the contract first and provide my comments and edits to Nia. After Nia’s review, she takes time with me to explain why she made certain changes. This open communication is paramount to workflow efficiency in the contract review process. In fact, I can anticipate many issues and changes she will have with a particular contract. In some cases, she will not have many changes to my comments and edits, which I think provides great satisfaction in both of our minds. I am not slowing her down, but rather I am lightening her workload because she has done a great job of explaining things up front and along the way.²

I value the opportunity to interact with clients directly. It is great not to feel like you are “hidden” in a back room, only allowed to do work behind the scenes. Nia always gives me the option to attend her client meetings and contract negotiation calls. The meetings help me understand the client’s concerns, business requirements, and expectations, which facilitate my contract review process and remove the burden on Nia to relay information to me. Moreover, sitting in on contract negotiation calls with the client and the opposing party provides me with important context for how Nia argues our organization’s position on certain contract provisions as well as how, and when, the opposing party pushes back.

(2) Professional Development - Empower your paralegal to gain more knowledge in your areas of practice.

Attorney Perspective

It is important to treat the development of your paralegal as part of your own development as he/she is a valued member of your team. I make sure to pass along articles of interest that impact our practice. Additionally, about every two weeks we try to schedule time to sit through a CLE webcast or an internal presentation. I find that this exercise prompts me to devote time to professional development at least twice a month. Moreover, sitting through these presentations as a team provides an opportunity to discuss our current practice. After the CLEs, we ask ourselves whether we need to improve our approach, expand our research, or even seek outside guidance in various areas of our practice.

Rick is encouraged to provide various internal presentations to the transactions team, which include various electronic filing/storage practices and technology programs that further the practice of our entire team. These presentations are fabulous opportunities to demonstrate his leadership and knowledge to those who do not work with him on a day-to-day basis.

² Attorneys and paralegals should be mindful to avoid the unauthorized practice of law. Legal work performed by a paralegal should always be reviewed by an attorney. Paralegals should never misrepresent themselves to clients as an attorney that can provide legal advice.
**Paralegal Perspective**

Nia encourages me seek out educational opportunities in the same manner as she does as an attorney, whether it is attending CLEs or reading articles in legal publications. It is a great opportunity for us to share information and have an open dialogue on topical issues. For example, as cloud computing is becoming an increasingly practical option for businesses, Nia and I attended CLEs and read several articles on the topic, which generated several impromptu discussions on important contractual issues. In fact, Nia and I plan to present on contractual issues in cloud computing at an upcoming staff meeting.

**3) In-House Legal Department Benefits – Work as a team to reduce departmental costs and utilize resources efficiently. Communicate the status of various projects and share the location of important documents.**

**Attorney Perspective**

With the help of Rick, I am more efficient in my review of various contracts. Rick is able to vet the questions we receive and point clients in the right direction, which may not be our legal department. Therefore, the matters I review are those that are truly to be handled by the legal department. As a result, I handle more work and spend less on outside counsel assistance, thereby reducing the bottom line of the department.

What if I win the lottery tomorrow? I want to make sure others in the department are able to pick up my work and continue to move my transactions forward. With this realization in mind, I make time to meet with Rick almost everyday and go through the list of current open matters. I discuss even mundane issues, concerns, and hold-ups. Additionally, I copy Rick on all communications, even if there are not any specific action items for him.

Most importantly, we created a filing system that both of us understand and are comfortable using. We save all documents in these shared areas, even if they are in the process of being reviewed. We each know where our files are kept so that if either one of us is out of the office, we are easily able to access information from the other.

**Paralegal Perspective**

With shrinking budgets prevalent in many organizations, paralegals are relied upon to reduce the workloads of attorneys. Nia and I are successful in distributing our workload in a cost-effective manner. However, beyond workload distribution, there is a vital knowledge transfer role paralegals can play in the legal department. Nia ensures I am in the loop on all matters she is working on, even if I am not working as closely with her on certain projects. As a result, I can serve as an important information hub, if Nia is unavailable, for other attorneys in the office who want to know the status of projects or how we have handled certain legal issues on a given matter. In addition, the paralegals on the transactions team are included in the attorneys’ meetings in our department, which allows me to stay more informed, ask questions, and discuss relevant issues with which I encounter or deal, all of which create an improved team environment.

Overall, we found that working together as a team is a win-win for all – attorney, paralegal, legal department, and clients. If you are willing to invest time in establishing open lines of communication to empower your paralegal with more knowledge in your area of
practice and to entrust your paralegal with substantive work and client interaction, you will receive huge returns!

Nia M. Jenkins is an attorney at the American National Red Cross. Richard A. Heyeck is a paralegal at the American National Red Cross.
**TIPS FOR A SUCCESSFUL “CROWDFUNDING” OFFERING**

*As the excitement mounts for crowdfunding post-enactment of the JOBS Act, there are several issues that young lawyers should consider and address when assisting clients in raising money from the “crowd.”*

Crowd-sourced funding or “crowdfunding” is a means for entrepreneurs to raise capital by pooling large numbers of people who each contribute relatively small amounts of money. Potential investors are typically solicited online, which enables the entrepreneur to target people with common interests who might be willing to contribute to a venture.

While crowdfunding is frequently used by private companies to raise money through loans or donations, companies generally do not use crowdfunding to sell stock since such offerings inevitably require registration under the Securities Act of 1933. This is about to change. On April 5, 2012, President Obama signed into law the Jumpstart Our Business Startups Act (the “JOBS Act”). The JOBS Act provides a new exemption from securities registration requirements for crowdfunding.

The crowdfunding exemption permits private companies to sell up to $1 million of securities per year to an unlimited number of investors. Unlike with many traditional forms of private securities offerings, there is no limit on the number of non-accredited investors permitted in a crowdfunding offering. This means that crowdfunding will open up private company investing to a large segment of the investing public that previously had very limited access to investments in private companies.

Crowdfunding offerings will undoubtedly be a useful tool for many start-ups and small businesses to raise capital, but before your clients start signing up investors, you should consider and address the following issues in structuring any crowdfunding offering.

1. **Don’t start yet.**

   While your clients may be eager to start raising money from the crowd, the U.S. Securities and Exchange Commission (“SEC”) issued a warning in late April to remind potential crowdfunders that although the JOBS Act was signed into law, Section 302(c) of the JOBS Act requires the SEC to implement the new exemption through rulemaking, which the SEC is required to complete by the end of 2012. The SEC warns that until then “any offers or sales of securities purporting to rely on the crowdfunding exemption would be unlawful under the federal securities laws.”

2. **Crowdfunding is NOT exclusive to technology companies.**

   Crowdfunding can be used by any type of company, and in fact, it will probably be used less by technology companies than by companies in other industries. Tech companies, particularly software and web-based companies, tend to be successful in raising capital from “angel” investors and venture capitalists

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1 Note that the SEC has been late on many recent rule-makings, and it is likely that the 2012 deadline will not be met for the crowdfunding exemption. The full text of the SEC warning is available on the SEC’s website at http://www.sec.gov/spotlight/jobsact/crowdfundingexemption.htm.
and will likely stick to raising money through those channels. Non-technology related start-ups and small businesses that traditionally find it difficult to raise capital from angels and VCs, or even from banks through loans or credit, are the more likely candidates for crowdfunding.

The most successful crowdfunders will be companies that boast popular products or services. For examples, see the most funded products on Kickstarter, a website that allows the public to back creative projects. Other successful crowdfunders will include local businesses like restaurants and hardware stores with customers who believe in boosting the local economy and socially responsible businesses through investors who are focused as much on a company’s social impact as on financial returns.

3. Be mindful of the $1 million offering limitation.

All sales of a company’s securities made under the crowdfunding exemption will be aggregated to determine whether the company has hit the limit of selling no more than $1 million worth of securities in any 12-month period under the exemption. Crowdfunders that would exceed the limit need to wait to conduct an exempt crowdfunding offering or use another exemption from registration requirements for their capital raise. Hopefully the SEC will implement rules clarifying that crowdfunding offerings will not be integrated with other exempt offerings of a company’s stock, otherwise crowdfunders will run the risk of blowing through the $1 million crowdfunding limit because of stock issued through other exemptions.

4. Set appropriate targets.

The JOBS Act requires that crowdfunders disclose a target offering amount to the SEC and potential investors, including disclosing a deadline for reaching the target amount. Until the target is reached or exceeded, crowdfunders will not receive any offering proceeds. Crowdfunders will also need to provide regular progress updates during the offering to report achievement against their targets.

5. Be sure to use an SEC-registered intermediary.

While clients may believe they can conduct crowdfunding offerings through their own company websites, or through Facebook or other social media sites, crowdfunding offerings must be conducted through a broker/dealer or funding portal that is registered with the SEC and any applicable self-regulatory organizations. The intermediary will be subject to many requirements in conducting an offering, including that the intermediary must:

- provide disclosures related to risks and other investor education materials;
- take measures to prevent fraud, including background and regulatory checks on the officers, directors and 20% equity holders of the crowdfunder; and
- take measures to ensure that investors do not purchase more than the maximum amount of securities permitted during any 12-month period (the maximum amount an investor is permitted to invest in crowdfunding offerings within a 12-month period is limited to either (i) the greater of

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2 The most funded projects on Kickstarter since 2009 are listed on Kickstarter’s website at http://www.kickstarter.com/discover/most-funded.
$2,000 or 5% of the investor’s annual net income or net worth if the investor’s annual net income of net worth is less than $100,000; or (ii) the lesser of $100,000 or 10% of the investor’s annual income or net worth if the investor’s annual income or net worth is $100,000 or more).³

6. No advertising.

Since the JOBS Act directs the SEC to amend Regulation D to permit general solicitation in offerings sold solely to accredited investors under Rule 506, some of your clients may think advertising is permitted for crowdfunding offerings. However, other than providing a notice that directs potential investors to the website for the broker or funding portal, advertising of crowdfunding offerings is not permitted.

7. Ensure proper disclosures.

Clients that issue securities in crowdfunding offerings will be required to make disclosures to the SEC, to the investors and potential investors, and to the broker or funding portal intermediary for the offering. Perhaps most importantly, crowdfunders will need to provide disclosures on their financial condition, including that crowdfunders with target offering amounts within a 12-month period of:

- $100,000 or less – must provide their most recently filed annual income tax returns, if any, and financial statements certified by their principal executive officer;
- over $100,000 up to $500,000 – must provide financial statements reviewed by an independent public accountant; and
- more than $500,000 – must provide audited financial statements.

8. No material misstatements or omissions.

Investors will inevitably lose money in some crowdfunding offerings and shareholder lawsuits are sure to follow. Many suits will allege that the crowdfunding disclosure documents contained misstatements of material facts or omitted material facts that the investor would have considered significant in making an investment decision. In anticipation of such suits, attorneys should work closely with their clients to draft accurate and complete disclosures in crowdfunding offerings.

9. Use transfer restrictions.

While the JOBS Act already requires that shares purchased in a crowdfunding offering generally not be resold for one year post-offering, you should consider whether additional restrictions on trading are appropriate. Under the new thresholds set by the JOBS Act, a company with $10 million in assets is required to start reporting with the SEC once its shareholder base hits 2,000 holders of record or 500 non-accredited holders. While there is a carve-out from the threshold for purchasers in crowdfunding offerings, if those

³ Note that the SEC will need to provide additional rules on these investment limitations since the JOBS Act fails to clarify whether an investor with $100,000 or more in only one of the annual net income or net worth categories will be permitted to use the higher investment limitation.
crowdfunding purchasers then sell their shares, the transferees will generally count towards the limit, thus putting crowdfunders at risk of becoming SEC-reporting companies.


Attorneys should discuss various post-offering matters with their clients. Under the JOBS Act, companies that complete crowdfunding offerings are required to provide annual disclosures to their investors and the SEC. The investors in crowdfunding offerings will obtain rights as shareholders, including the right to vote on major corporate actions under state laws, and if common stock is sold in the offering, those rights may include standard shareholder rights like the ability to vote in elections of directors. Most importantly, be sure to advise your clients of the fiduciary duties that officers and directors will owe to crowdfunding investors. Many first-time crowdfunders will likely be closely-held businesses, so it will be necessary to provide appropriate guidance on dealing with a broad shareholder base.

By thinking through and addressing these issues, you will help your clients to conduct successful crowdfunding offerings and prepare them for future business growth.

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Networking Tips For Young Lawyers

Law students are typically trained to analyze facts, research applicable law, figure out options and advise clients accordingly. They graduate and become young lawyers where they apply what they learned and hone their skills in whatever specialty they choose. As the practice of law has become more of a business, however, it has become critical for lawyers to build relationships and develop good contacts. To stand out and advance, it is no longer sufficient to simply be competent. Young lawyers are expected to bring in business, or at least show the potential to do so. I have compiled some tips and reminders that I have learned over the years that will help young attorneys build those relationships early on.

1. **You Make Your Money With Relationships.**

   A former boss once told me, “We make our money with words.” That is partially true – we also make our money with relationships and the trust that builds the relationship. Clients give work to attorneys they trust. Attorneys refer work to attorneys they trust. Partners give work to associates they trust. Law firms hire associates they trust. You get the idea. So, where do you meet all these people with whom to start a long relationship? Think of yourself as your own business. In order to survive, you will need to attract customers and sell your services to somebody. Just like a business needs to devote resources to marketing, you will need to devote resources to marketing your services as well.

2. **Use Networking Events.**

   One way to market yourself is to literally put yourself in front of your own colleagues at networking events. There are many events available for young attorneys to build contacts. Whether the event focuses on a particular industry, practice area, or a geographic location, the event is an opportunity to meet a future client, referral source or even employer. Also, it does
not have to be a bar association event. I consider participation in book clubs, softball teams, and other social groups to be networking at “events.” There are also events that are geared towards networking for junior and midlevel professionals. As those younger professionals advance in their careers, they will one day be decision makers just like you.

Of course, once you go to a networking event, you will need to actually do something productive while there. It is perfectly fine to chat with people that you know, but if you spend the entire event with only people you know and have not met anybody new, then the event is a wasted opportunity. So, say hello to your friend but find some other time to catch up with her. Instead, try to meet a few people you have never met before. Study the attendee list and try to find some folks you need to meet. Take plenty of business cards and jot down some notes on the card, or discreetly email yourself some notes, to help you remember what you talked about.

3. **What Do I Say To People?**

Networking events can be awkward, especially if you don’t know anyone. Law students are not necessarily trained to engage in small talk and some might say they are trained to compete with each other. However, when your business depends upon your relationships and being well-known, that may be the motivation you need to overlook the initial awkwardness. So, work on that “elevator pitch.” If you can’t explain what you do, confidently, in 30 seconds, keep practicing—in the shower, on the way to work, or in an actual elevator by yourself. The more you use it, the less it will feel awkward to meet new people.

If you are shy about meeting new people, perhaps it may help to think of the networking event as a learning opportunity. For instance, if there is a panel discussion, listen closely and try to meet one of the panelists and ask some follow up questions. Or, if you read an article and the
author is in the room, try to meet her and ask about her article. I have found that these folks appreciate the connection with the audience and are more than happy to speak for a few minutes.

4. **Follow Up.**

Let’s say you go to a networking event and for three hours you charm everybody in the room. All that great work may go for naught if you don’t follow up with an email or phone call shortly after the event. Offer to treat your new referral source to lunch. If she is unavailable, then offer to treat her to breakfast or coffee or a drink after work. There are many possible times for you two to meet.

So let’s say you never connect and many weeks or months pass. Picking up the phone and calling this person after six months may seem awkward, because it is. If you are looking for a way to start a conversation, reading an article and forwarding it to your contact may help. Similarly, if you see some recent news about her law firm, that is another good conversation starter. These techniques will keep you on her radar and will also indicate that you were actually listening and remembered what she told you when you first met.

5. **Be a Connector.**

Too often young lawyers think of themselves as “silos” of information. These silos grow taller and taller, as the young lawyer gains more experience, alongside other silos. However, it is important to get a general understanding of what these other silos have to offer, especially if you work at a large law firm. It is very rare that you will meet someone who has needs that squarely fit your skill set. Instead of simply shaking hands and walking away, introduce her to someone who can help her—your own colleagues, someone in your firm, a friend of yours or even someone else you just met. Your new contact will appreciate that you are trying to help them.
Similarly, your colleagues will remember that you thought about them, which greatly increases the chance that they return the favor.

6. **Don’t Forget Your Current Friends and Family.**

Many young lawyers forget that they already have a network of friends and family who could be great referral sources. These existing relationships need to be grown and maintained just like the new ones that are made throughout your career. Keep those within your inner circle aware of your expertise, and perhaps Aunt Jennie will think of you when her neighbor, CEO of Widgets R Us, needs a lawyer.

7. **Remember Your Adversaries, Too.**

Okay, so you don’t like going to networking events because you don’t like to be in a room full of dozens of people who are looking for business just like you. What do you do then to build contacts? One thing you can do is treat each opposing counsel as a potential contact. I have learned that adversaries can be great connectors and referral sources. After the deal is done, meet with your adversary over lunch or coffee. If you were a competent and professional adversary, it will be remembered and you may get some conflicts work out of it.

8. **Be Competent And Professional.**

I said earlier that it is not enough to be competent, but it will be difficult to build contacts if you have a bad reputation. Nobody will trust you if you are known for doing poor work. Similarly, if you are known for not returning phone calls, missing deadlines or simply being an irrational jerk, you will limit future referrals or job opportunities.

9. **It’s Non-Billable. So What?**

After a stressful day dealing with nasty adversaries, demanding clients and fast-approaching deadlines, it is difficult to make time for anything that is not billable. You will need
to remember, however, that networking brings along great long term benefits to your career that makes it well worth the effort. Those extra few hours per week you spend having lunch with contacts, attending a networking event or writing an article (another effective way to get your name out) will over time lead to a robust set of contacts. Remember, you are your own business. Nobody will be looking to grow that business except you.

10. **Focus on the Long Term.**

Finally, try not to get frustrated if none of this works immediately. The goal is not to hunt for business; the goal is to plant seeds that will eventually grow into long-lasting relationships. The person you meet at Wednesday’s networking event probably will not help you on Thursday, but the connection may lead to something big a year from now.

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ABA CONNECTIONS:
Global Forums: A Potential Resource for Young Lawyers’ Domestic Practice

In the fall of 2011, I had the opportunity to attend the ABA sponsored “Global Business Law Forum” in London. Attendees from twenty countries gathered to listen to forum panels from Great Britain, Canada and the United States present overviews on a range of topics affecting cross border issues confronting Business and Financial Services law firms. There was something to enlighten or provide a broadened perspective for everyone.

Surprisingly, a number of U.S. attorneys attending were from law firms involved in business law, but not necessarily international practice areas, and a good number were young lawyers. One visionary law school from Oklahoma sponsored a third-year law student’s attendance. Upon returning home, I was asked about the benefits from the experience and whether I would recommend attorneys not directly involved in “international” business law practice or perhaps young in their practice to attend such events. I enthusiastically responded, "Yes!" for the following reasons.

As most of us can see in the news around us, serious global financial concerns continue, and as they do, United States economic involvement is likely. This potential could cause additional concerns for legal services providers who work closely with the financial/business industry and may affect a firm or practitioner directly. Additionally, whether representing financial institutions, corporations or private clients, most would agree, the world has already become quite small. There are too may cross-border holdings, affiliates, partnering agreements, outsourcing efforts and more. National regulations in individual countries are increasingly and inevitably going to have impact across borders; consequently, there will be a need for practitioners to expand their awareness and possibly their practices. Most pertinently, an opportunity to participate in a global business forum that addresses the future implications of such an array of possibilities can develop an attorney’s awareness. Being aware and therefore prepared can have a positive impact in all areas of a legal professional’s practice. And, it isn’t often that a working attorney can be free from distractions at the office in order to be immersed in a new or developing subject area.

Panel topics at the ABA Global Business Forum were well organized and thoughtfully developed. These panels provided attendees an opportunity to learn more about substantive US law having cross-border impacts and how other countries have developed, and are applying their laws in similar areas.

Gaining perspective can only help a young, legal practitioner in client counseling. Panelists at the Global Forum were members of the legal community who are “in the trenches” both in the U.S. and abroad. Attendees not only had the opportunity to receive
substantive information, but also to hear examples of how that substantive law has been applied and with what concerns.

Such informed perspectives on what may be anticipated don’t just shed more light on current laws, but also on the driving forces behind those laws and what resulting impetus may be motivating changes. While these considerations might seem esoteric or a philosophical indulgence to practicing attorneys who are perhaps just trying to keep up with their cases and who don’t often have the time or resources to ruminate on matters in this manner, taking the time to acquire a deeper understanding of underlying considerations by participating in such a forum only strengthens a practitioners legal approach and builds more confidence within the practice. Also, attending on behalf of a law firm allows an attorney to share information and contacts made through the Forum with his firm.

The ABA Global Business Forum also presented numerous networking opportunities during breakfast, lunch, on breaks and at evening receptions. The panel presentations were followed by some lively exchanges among panel members and during the attendee question and answer periods. International participants provided the benefit of valuable and diverse perspectives that could benefit a young practitioner.

Participation is a key. Opportunities abounded to express interest, awareness, knowledge and eagerness to know more. Not all global forums are held in Europe, and often there are affordable group rates available. Listening consciously and engaging others can facilitate a clearer understanding and an identification of resources to develop further opportunities. Using this understanding and the resources available can create the necessary platform for preparedness. It may also allow for more controlled impact to a practitioner’s practice, career development, or even a law firm’s direction. As we say, it can mean the difference between success and something far less.

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