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The author looks back on the 16-year journey that led to the publication of this book.

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By Elise F. Buie

The latest installment in our series on civility in the practice of family law considers the need for a family lawyers’ oath to reinforce ethical behavior, prioritizing the need to solve divorces quickly, fairly, and with limited long-term adverse effects on the children.

Substantive Law

TAXATION

Surviving an IRS Tax Audit: The Tax Litigation Process, Part 1
By Julie Houth

The first of our two-part series on surviving an IRS tax audit examines how to prepare for an audit and respond to a notice of deficiency.

CONSTRUCTION
Resolving Construction Disputes through Baseball Arbitration
By Lochlin B. Samples

Experience indicates the construction industry would benefit from the adaptation of "baseball arbitration" for the resolution of some construction disputes.

CLIENT PROTECTION

Attorneys Must Self-Report Errors to Current Clients
By C. Thea Pitzen

Lawyers have a duty to disclose a material error to current, but not former, clients.

FAMILY

Expectations of Privacy in Audio and Video Recording in a Family Law Context
By Rose L. Hubbard

You wouldn’t want to make your clients afraid to use technology to record, but recording should be done with a keen awareness of applicable laws, risks, and benefits.

HEALTH

Recent Trends in Health Savings Account Limits
By Ima E. Nsien

This article discusses recent changes to contribution limits attributable to HSAs for family coverage.

Upcoming...

MILITARY & VETERANS

In the March/April GPSolo Magazine: Military Law

By Alan E. DeWoskin

Learn how you can better serve your clients who are military servicemembers, veterans, and their families.

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GPSolo eReport is a member benefit of the ABA Solo, Small Firm and General Practice Division. It is a monthly electronic newsletter that includes valuable practice tips, news, technology trends, and feature articles on substantive practice areas.

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Welcome to the latest installment of our monthly Q&A column, where a panel of experts answers your questions about using technology in your law practice.

This month we answer readers’ questions about how to secure your privacy on Facebook, what are the cheap alternatives to Adobe Acrobat Pro DC, and whether you should hold off buying a new smartphone until 5G becomes available.

Q: What security features does Facebook offer and how do I use them?

A: Despite its troubled history, Facebook now offers a robust set of tools for controlling what people can learn about you on their platform. Here are some steps you can take to keep advertisers, strangers, and third-party applications restricted.

To begin, on your Facebook page on the desktop (it also can be done on your mobile device, but it will be easier to navigate on the desktop), look at the blue menu bar along the top of your screen. On the far right there is a downward-pointing arrow. Click on that and then select Settings. This will get you into the screen where most of your settings take place.

1. **Remove the apps you no longer use.** Your first stop should be "Apps and Websites"; here you can remove the apps accessing your personal information that you have not used in a while. Check the box next to anything that is not familiar or useful to you, and then click the blue “Remove” icon.

2. **Update your Ad Preferences.** Head back to the Settings menu and go down a bit further, and you will find a menu labeled “Ads.” Here you can set your Ad preferences, such as whether you want friends to see that you liked an advertising page, read through these options, and choose what works best for you.

3. **Remove Business Integrations that you no longer use.** Again, back in the Settings menu, look for an option labeled “Business Integrations.” This area manages other sites that are connect to your Facebook account, usually from when you chose to create your profile with Facebook for more convenient access. From here, you can review the information that Business Integrations can request and remove those integrations you no longer wish to provide access to.

There are more features you can explore, but these steps will go a long way toward securing your privacy.

—Ashley Hallene, JD, GPSolo eReport Technology Subcommittee Chair/Deputy Editor, Macpherson Energy Corporation, 661/393-3204, ext. 4105

Q: I’ve been using Adobe Acrobat for PDF files. I need to be able to add Bates numbers and redact parts of documents. Only Adobe Acrobat Pro DC does this, and it’s going to cost me $179.88 per year. Is there a less expensive option?

A: Yes, you can spend a lot less and still do Bates numbering and redacting. I took a close look at three alternatives to Adobe Acrobat Pro. Here are the prices for lifetime licenses:

- **PDFXChange Editor:** $43.50
- **Nitro Pro:** $159 (25% off until 3/31/2019)
Clearly, PDFXChange wins on price. I have been pleased with the interface and the feature set. I am using the Plus version, $11 more, which adds the capability to create and edit fillable PDF forms. If you want to create long PDF documents with clickable tables of contents from Microsoft Word documents, you will need PDFXChange Pro for $93.50.

Both Nitro Pro and PhantomPDF include their own cloud features that support sharing their PDF documents with other people over the Internet. PDFXChange does not have its own sharing service; however, it integrates with cloud file services SharePoint, One Drive, Google Drive, Dropbox, and Box.

A word of caution: Before abandoning Adobe Acrobat for a lower-priced product, make sure that you are not relying on an Acrobat integration with a third-party product.

For example, Time Matters practice management software puts a TM Save button into Adobe Acrobat. That button lets you rename, profile, and save PDF documents and link them to Contacts and Matters. It also copies them automatically into the correct client and matter folders. This Time Matters feature does not work with the PDF alternatives to Acrobat.

There is a neat money-saving trick with Time Matters. You can install the free Adobe Acrobat Reader DC and use the TM Save button in that software. You can also have PDFXChange Editor installed and use it for creating and editing PDF files.

To get a feel for PDFXChange Editor, you can download it and test it for free indefinitely. If you use any of the advanced features, it warns you and places watermarks on all pages when you save the PDF file. This approach lets you try out all the features that are important to you before you pay for the product.


Q: Should I Buy a New Smartphone with 5G on the Horizon?

A: Enough readers have heard rumors about 5G that we are starting to get some questions about it. For those of you who have not heard of it, and for those who have heard the term “5G” but don’t know what it is, 5G refers to the fifth generation of cellular communications. Most of us currently use 4G, but in some parts of the world, 3G and even 2G remain in service as we still do not have universal 4G coverage. Anticipate that some carriers will start to roll out experimental 5G programs later this year or early in 2020. Expect that 4G, 3G, and maybe even 2G will continue in service when that happens and for some time in the future. In the past, new devices that worked on the latest “G” had backwards compatibility, so that if a 4G phone found itself in an area with 3G but no 4G service, it would use the 3G service. Accordingly, when 5G comes onto the scene, the devices that use it will most likely continue to work with lower-numbered Gs. Note that devices that were designed for 4G will continue to run 4G and 3G, etc., but will not have the ability to run 5G. You will need a 5G device to use 5G when it comes out.

Eventually, we will all want to be on 5G as it will work faster and better than 4G. Do not expect that for a while, as the first releases will likely be somewhat spotty and certainly not universal.

Most hardware currently for sale will not run 5G. There are a few devices that have 5G compatibility. For example, I have a 5G-capable cellular hot spot. As far as phones are concerned, however, I know of no models currently on the market that work on 5G. Samsung has announced a version of its Galaxy S10 that will work on 5G, but they have not provided a release date or a price. Motorola has announced an attachment that makes its 4G phone 5G compatible, but it has not released it yet.

Providers are talking about a handful of 5G markets by the end of 2019 and more in 2020. Manufacturers of phones have not announced release dates yet, but I would not expect to see any 5G phones until the end of 2019 or 2020. According to Bloomberg,
Apple has decided not to release a 5G phone until 2020. As Apple generally releases its phones later in the year, I would anticipate that we might see a 5G iPhone in the fall of 2020.

Bottom line: Don't worry about 5G until it actually comes out and gets some coverage. If you need a new phone, go ahead and get what you need on 4G. By the time there is reasonable 5G coverage, you will probably want to upgrade your phone anyway.

—By Jeffrey Allen, GPSolo eReport Editor-in-Chief, jallenlawtek@aol.com

What’s YOUR Question?

If you have a technology question, please forward it to Managing Editor Rob Salkin (robert.salkin@americanbar.org) at your earliest convenience. Our response team selects the questions for response and publication. Our regular response team includes Jeffrey Allen, Wells H. Anderson, Jordan L. Couch, Ashley Hallene, Al Harrison, and Patrick Palace. We publish submitted questions anonymously, just in case you do not want someone else to know you asked the question.

Please send in your questions today!
The Portable Document Format, or PDF, is one of the most popular file formats in law practice. No matter what kind of desktop, laptop, tablet, or mobile device you use, the PDF works. No matter what operating system you have or how many different fonts or images, it still works. The highly compressed nature of a PDF file means it is easy to e-mail, download, and print. If you create, send, or view PDFs on a regular basis, or you have ever found yourself at a loss for how to edit, encrypt, or export one, hopefully the following tips will assist you.

Tip 1: There’s more than one way to skin a cat ... and convert a file to PDF.

As Charles Kingsley indicated in his 1855 novel *Westward Ho!*, “[t]here are more ways of killing a cat than choking it with cream.” By no means do we encourage harm to animals (even when Ashley loses sleep over the cicadas her Niko and Deja bring in), it is simply a way of stating there are more ways than one for achieving your aims. In this instance, you can convert a file from its native format (Word, Excel, etc.) into a PDF document a multitude of ways, including:

1. From within the open file. In Microsoft Excel and Word, you can go to File > Export and select the option to “Create PDF/XPS Document.”
Exporting to PDF

2. In any file, open the printer dialog box and choose to print to your PDF software.

Printing to PDF

3. If you are using Adobe Acrobat, open your PDF software, either from the menu bar anchored at the top or in the File menu, go to Create > PDF from File, then a dialog box will open allowing you to navigate to the file where you can create your PDF.

4. Drag the file icon over to the Adobe PDF icon and drop it on there; it will automatically convert the file to a PDF.
You can also print the file and then scan it into a PDF document, although this may waste more paper than necessary.

Tip 2: Set up form fields within the PDF that anyone can fill in without changing the rest of the document.

With Adobe Acrobat you can set up form fields that allow text to be added by anyone with access to the PDF. Each form can then have its own specific criteria: number, date, multiple-choice answers, etc. Your existing forms can be converted and easily set up, allowing others to complete information digitally and send it back faster. As an example of how to create a fillable form, if you have Adobe Acrobat XI Pro, all you need to do is convert your word document form into a PDF. Then open the PDF in Adobe Acrobat and look to the tools menu on the right side of the window. Click the arrow next to “Forms” to open the Forms Menu options and choose “Create.” This will open up a wizard that will guide you through converting your PDF into a fillable form.

Creating fillable fields in a PDF

Tip 3: Collaborate on a PDF document by adding annotations, edits, or comments.

When you create a PDF document, you can allow other users to contribute annotations or comments, or suggest edits. To do so, select the text you would like to comment on, then right-click for options such as Add Sticky Note to Replace Text, Edit Text or Images, Add Bookmark, and more.
Tip 4: You can combine multiple files into a PDF document without printing and scanning them together.

Sometimes the easiest way to combine multiple files into one cohesive whole is to save them all together in a single PDF. To do this in Adobe Acrobat, click on File > Create > Combine Files into a Single PDF. You may also do this by selecting Create from the menu bar anchored at the top.

Tip 5: Familiarize yourself with the Protection Features in Adobe Acrobat.

Adobe Acrobat Professional has a host of tools for protecting the data in your documents. To view, go to the Tools menu anchored on the right side of the window, click the arrow next to “Protection,” and you will find a variety of options, including:

- **Restrict Editing**: Allows you to add a password to limit who may edit the document.

- **Encrypt**: Allows you to encrypt the document with a certificate or password, or manage your security policies. Encrypting the document with a certificate means the user will need to have access to a specific private key to access the document. Encrypting with a password means the user will simply need the password to open the document.

- **Mark for Redaction**: Allows you to mark content to be permanently blacked out, removing sensitive information. Redaction is a two-step process: First you will go through and mark content for redaction, then you will need to select “Apply Redactions.” It is important to keep in mind that redactions are not applied permanently until you select “Apply Redactions.”
Protection features in Acrobat

These suggestions are just the tip of the iceberg (pun intended). There is more to Adobe Acrobat that makes it a vital tool to have on your belt. More important than having the tool is understanding how to use it.

Next Article > > >
March 22, 2019

TECHNOLOGY

Product Note: 2018 MacBook Pro, 13-inch

By Nicole Black

A few months ago my trusty MacBook Air began to have battery issues. After trying unsuccessfully to troubleshoot the problem with both Apple and our IT department, I realized it was time for an upgrade. My prior two computers had been MacBook Airs, but because the new MacBook Pros were so light and powerful, I ended up going that route.

I've now spent a few months with my new MacBook Pro, so of course it's time for me to review it and share my thoughts on its pros and cons. But first, here are its specifications.

My MacBook is the 13-inch model and has four Thunderbolt 3 ports. It has a 2.7 GHz Intel Core i7 processor with 512 GB SSD storage, 16 GB 2133 MHz LPDDR3 memory, Retina Display with True Tone, and Intel Iris Plus Graphics 655. It also features a Touch Bar and Touch ID—one of the highlights of this laptop that sets it apart from the rest—which I'll discuss more fully below.
Thus far I've really enjoyed using this computer. It's quite small, compact, and light, weighing in at just over 3 lbs., which is something I greatly appreciate because I travel frequently. It's also quite thin, at just over half an inch. Its overall width is nearly 12 inches, and its depth is just over 8.3 inches, as can be seen below.


The battery life is good, but not great. Although Apple claims it has up to 10 hours of battery power, I typically find that it lasts about 7 hours or so with typical Internet usage before the battery begins to run low.

One of my least favorite features of the newer MacBook Pros is that they include only Thunderbolt ports that are compatible with USB-C. The problem is that most people typically have multiple devices that use different types of connectors, including USB-A, Thunderbolt 1, Thunderbolt 2, DisplayPort, and HDMI. The only way to connect those devices to the new MacBook Pros is by using an adaptor such as the OWC Thunderbolt 3 Dock for Macs that I reviewed previously [here](https://www.americanbar.org/groups/gpsolo/publications/gpsolo_ereport/2019/march-2019/product-note-13-inch-2018-macbook-pro/). So, if you'll be purchasing a new MacBook Pro anytime soon, you're going to have to also invest in a multiport adaptor.

Other notable features include the backlit keyboard, which is quiet and responsive. The touchpad on this MacBook is larger than the ones on my two prior MacBook Airs, measuring 3 inches by a little over 4 inches, which is a nice bonus.
And last, but not least, there’s the Touch Bar, which is located right at the top of the keyboard. As the name implies, it’s a touch-sensitive bar that allows you to control your MacBook’s systems and the different programs that run on your laptop. So, you’re able to control the volume and display brightness and are also able to activate Siri. For some people that Siri button might be useful, but I found that I inadvertently kept touching the Siri button, so I removed it from the Touch Bar.

The Touch Bar also works with various apps, including your web browser, Pages, Calendar, Facetime, and more. Whenever you open a compatible program, controls for the program appear on the Touch Bar, allowing you to interact with and control the program.

The Touch Bar has a lot of “wow” value, but isn’t something I would consider to be a must-have feature. I don’t use it that often, and typically find myself using the volume and brightness settings the most. But depending on your habits and the programs you use, you may find that you use it more often than I do.

The Touch Bar is an optional feature, and if you want it included on your MacBook, you’re going to pay $300 more for it. The increased price is somewhat significant given that the 13-inch MacBook Pro already has a fairly high entry point at $1,299 for the least expensive model. So, make sure it’s a feature that you truly will take advantage of prior to spending the extra money.

All in all, I’d recommend the 13-inch MacBook with the specs my laptop has, especially if you’ve already bought into the Apple ecosystem. It’s a powerful, compact laptop, and you always have the option to pay more for lots of bells and whistles, if that’s where your interests lie.

Neither the ABA nor ABA entities endorse non-ABA products or services. This review should not be construed as an endorsement.
Music and selfie lovers go to Coachella. Explorers and artists go to Burning Man. Legal geeks and legal-tech aficionados go to ABA TECHSHOW.

ABA TECHSHOW is a joy-inspiring legal festival for people who are interested in legal technology and for companies that want to reach out to those people. I’ve broken down this article into categories that I think will catch you up on what you missed and help any readers on the fence figure out whether this is the event for them next year.

The Format

The first day began with a start-up pitch competition in which 15 start-ups pitched their ideas and concepts. Then, for the next two days, attendees had free reign to attend any of the more than 60 different panels and talks in broadly divided categories, including cybersecurity, advanced IT, Core technology, litigation, and solo/small firm, including an academic track and a more theoretical, “beyond the tech” track. In addition, the EXPO hall, which was open all day, had countless vendors and legal tech companies, both small and large. There were small seating areas in the EXPO hall as well. This was where an attendee could spot some of the speakers from the panels, as a lot of the panels were sponsored and several of the speakers were affiliated with the exhibitor companies.

The day was broken up with several “EXPO hall breaks,” some keynotes, and bookended with 12-step meetings and exercises or meals.

Panels

This format does not allow for much decision making on the fly, and the committed attendee likely will benefit most by deciding in advance which of the panels to attend and which vendors to meet in the exhibit hall because there is no possible way to take in and truly savor all the tech and all the panels in the two days of ABA TECHSHOW. The good thing is, you are almost guaranteed to
stay engaged the entire time because of the people you will meet, the panels, and the vendors. The bad thing about the format is the discouraging sense of being overwhelmed that comes with choosing or compromising on panels. Several other ABA sections and conferences have begun rotating the same popular panels throughout the conference more than once so that those panels can accommodate all the attendees, and attendees don’t feel like they have to miss too many things. The only reason this is even problematic is that the panels and speakers are so good! They range from very advanced legal tech speakers to very basic, intro-level speakers discussing topics ranging from Cybersecurity to coding, from bitcoin and blockchain to the basics of marketing. There was something for everyone, and despite being transparently affiliated with some of the vendors, the speakers provided good information and did not appear to be salesy.

EXPO Hall

The EXPO hall was where most of my meaningful interactions took place. This year the Law Practice Division’s seating area was a good landmark to meet friends and reconnect with colleagues. There were dozens of vendors in the EXPO hall, with practice management software companies dominating the space. This is another place that an attendee can strategically determine which vendors they are interested in speaking with, whether to find out about new technology because of their interest or to explore new software for their firms or projects.

The EXPO hall’s layout was interesting; all the vendors that could afford large tables were in the center, and along the walls were the smaller, more interesting tech start-ups. The EXPO hall was clearly a numbers game, and the companies with the most financial backing were able to have the most space. The trends I noticed in legal vendors and legal tech start-ups are detailed below, but I would have liked to see a greater variety of vendors beyond practice management software.

In speaking with tech vendors, I could tell a lot of them were there to scope out potential collaborators, and, perhaps, competition. One of the vendors said, “It was inspiring to see how law firms are continuing to embrace technology during ABA TECHSHOW. For us, the theme of the show was partnerships—the amount of inbound interest we received from new technology vendors looking for partnership opportunities far surpassed most other shows in the past. We are excited to learn more about some of these complementary legal technologies, to see how we can collectively serve our customers and the legal industry over the years to come.”

Lastly, I was pleasantly surprised by the nontraditional things that some legal start-ups were doing to make the attendees feel connected and truly use emotional intelligence to get their point
The one that stood out most is a security company called Bright-wise. Bright-wise’s CEO is the subject of a book titled *Breaking and Entering: The Extraordinary Story of a Hacker Called “Alien.”* Bright-wise invited the author, Jeremy N. Smith, to sign and give away copies of the book, which in my opinion was an extraordinary marketing technique that truly made Bright-wise stand out from the rest.

So, when it comes to the EXPO hall, beauty is truly in the eye of the beholder. If people find themselves at ABA TECHSHOW, it may be because they like exploring legal tech, and this could truly be a kid-in-a-candy-store situation—their eyes could be bigger than the amount of time they have to explore!

The Attendees

In my opinion, this is one of the most important parts of ABA TECHSHOW. A lot of people—lawyers and non-lawyers alike—go to ABA TECHSHOW to catch up with like-minded, legal-tech geeks. And to listen to each other talk about their ideas, theories, start-ups, etc.

As a solo/small firm lawyer, I found the connections made at the event were the most valuable, and then the panels and EXPO hall. A surprising number of attendees that I personally met were lawyers who were venturing into legal tech, whether at a small scale or by partnering with other companies. I was surprised not to have met more solo and small firm lawyers from across the country, and I suspect the costs associated with ABA TECHSHOW might have had something to do with that.

All in all, quality over quantity matters a lot when it came to the attendees. The attendees/recovering attorneys, legal-tech lawyers, etc., were mostly individuals of high caliber on the cusp of legal-tech breakthroughs.

Trends

As I mentioned previously, practice management software vendors were the largest contingency at EXPO hall. In spite of some competition, the thing I noticed most was collaboration between companies and the connections that companies were making.

I went into ABA TECHSHOW expecting a lot of buzz about cybersecurity, artificial intelligence (AI), and automation. There were a handful of automation vendors, but cybersecurity vendors that
provide B2B services to solo and small law firms were a very, very small group.

The technology that stood out most and will likely continue to be buzzed about is the use of text messaging to communicate with clients, whether it’s reminders for deadlines, simple communication, or appointment reminders. Smaller start-ups such as Zipwhip and Heymarket seem to be gravitating toward the legal industry steadily and for good reason. I didn’t see any text messaging apps or software geared specifically and exclusively to attorneys, which may turn out to be a good thing so long as these companies are able to create checks to adhere with local privacy and confidentiality laws.

Lastly, the number of integrations provided by non-legal-tech start-ups with the most popular practice management software was encouraging to see.

All in all, the trends at ABA TECHSHOW may not have been fully representative of legal-tech industry trends, but, in my opinion, they were close.

Conclusion

The ABA TECHSHOW has a lot going on, which means it has something for everyone. From 12-step meetings to evening mixers, and all the well-thought-out panels in between, the hard work of the ABA TECHSHOW Board was very visible. Chris Fortier, one of the TECHSHOW Board Members, captured the essence of ABA TECHSHOW well: “If you want to be amongst a crowd of people who challenge the way you think and push you to improve the way you do things, ABA TECHSHOW is the place to be.” The diversity of speakers was testament to the hard work of the Board in assembling the roster.

For someone to get the most out of ABA TECHSHOW, the best practice is to plan ahead so you know exactly which people and companies you want to connect with and which sessions you want to attend. Otherwise, you can easily get lost in the noise.

All in all, ABA TECHSHOW was outstanding, inspiring, and like any festival, I came back with a rush of adrenaline and excitement for the next ABA TECHSHOW.
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The practice of mindfulness, and the growing body of mindfulness training programs, are of increasing interest to members of the legal profession. With so many offerings from so many different sources, some fundamentals can be lost or diluted. This month, we’ll touch on a few mindfulness basics to offer a broader framework for understanding and exploring mindfulness.

The Difference Between “Mindfulness” and “Mindfulness Practice”

“Mindfulness” can be thought of as the awareness that arises when we are present, engaged, and open to the unfolding of life, moment by moment. Each of us can draw on our own experience to identify the qualities that emerge when we are mindfully engaged. These might include: focus, patience, openness, ease, comfort amid uncertainty, less reactivity, non-judgmental awareness, compassion, and the list goes on. Importantly, these qualities are inherent in what it means to be a human being; they often arise without trying, and though they can be elusive, they are always accessible.

Confusion arises when the term “mindfulness” is used to refer to what are more properly termed “mindfulness practices.” These are the practices of breath awareness, concentration, body awareness, open monitoring, mindful walking, mindfulness listening, mindful eating, and so on, that are taught in mindfulness seminars, workshops, and training programs and found on websites and apps. In contrast to “mindfulness,” as an awareness that arises, these are exercises that are deliberately practiced. People who says they are “interested in mindfulness” are likely referring to the fact that they practice one or more mindfulness exercises.

Why is this distinction important? Many regard mindfulness as something special. When viewed from the lens of being aware, open, patient, and compassionate, it becomes clear that these are qualities that we all experience, and most would agree that they are beneficial and worthy of cultivating. Also, one need not engage in mindfulness practices to develop these qualities. When we get enough sleep, eat well, exercise, engage in periods of reflection, and spend time in
supportive relationships, we are more likely to experience these states and live a more mindful life. At the same time, just as with sleep, nutrition, and exercise, things we know are good for us that we “do,” so, too, mindfulness practices can serve a related end, and we can add them to the list of things we “do” that are good for us. The word “do” can get a little sticky, as really we are practicing “being” present. But just as with sleep, exercise, eating well, and spending time in supportive relationships, the more we practice mindfulness, the more likely we are to benefit.

The Difference Between “Mindfulness Practices” and “Relaxation Practices”

Many believe that mindfulness practices are intended to help us feel less stressed and more relaxed. This may be the main reason that “mindfulness” has entered the legal landscape. And, indeed, most of us can benefit from feeling calmer and less overwhelmed given the high-stress, high-stakes, and fast-paced world in which we live and work. When we feel more relaxed, our mental health and well-being benefit, as does our performance. But as important as relaxation is, it is not the primary objective of mindfulness practice. Rather, relaxation is secondary to the aspiration of “seeing things more clearly.” As mindfulness teacher Sharon Salzberg explains, “mindfulness is being able to tell the difference between what is taking place and the story we tell ourselves about what is taking place.” A great deal of stress comes from the stories we tell ourselves and believe.

A relaxation practice is one that brings about a shift to a more relaxed and calm state. Many meditations, visualizations, deep breathing, and muscle relaxation exercises all can serve this desirable end. Greater awareness and stability of mind may follow, but as a general rule, that is not top of mind when people sit down to meditate; rather, they want to “feel better.”

A key component to many mindfulness practices also is a key component to many relaxation practices: the breath. In the relaxation realm, taking a series of slower, deeper breaths reliably leads to feeling more relaxed. In the mindfulness realm, the practice of bringing awareness to the breath (not altering it) calls for concentrating the mind and leads to greater awareness. Confusion can arise in the complementary aspects of the breath across different practices. For example, many mindfulness practices begin with the instruction to take a series of “slower, deeper breaths.” While this is not necessary to cultivate greater awareness, when we feel more relaxed it is easier to sustain attention on an object. This can be especially helpful because the mindfulness practice—as distinct from a relaxation practice—invites us to observe the arising of challenging states of mind and body, such as judgmental thoughts, agitated emotions, and tension in the body. Why subject ourselves to these unpleasant moments? Among the many reasons, is (1) they inevitably pass, (2) we develop resilience in learning to ride through the cycle of these all-to-human experiences, (3) we become
more self-aware, and (4) we may experience greater insight. The relationship between a relaxation practice and a mindfulness practice can be understood as one in which a more relaxed state facilitates a more mindful state. And a more mindful state tends to lead to a more relaxed state.

The above review of the differences between mindfulness and mindfulness practices, and between mindfulness practices and relaxation practices, may shed some light on the heart of mindfulness and on why it may be worthwhile to take time out of our busy day to engage in mindfulness practices. The primary takeaway is that many discussions of mindfulness are referring to mindfulness practices, and mindfulness practices are not merely practiced to reduce stress—to feel better—but to become more aware.
March 22, 2019

PRACTICE MANAGEMENT

Defining Moments: Insights into the Lawyer’s Soul: Sneak Peek into the Final Product

By Melanie Bragg

It’s a good thing my LEAD line in the upcoming book, *Defining Moments: Insights into the Lawyer’s Soul*, is “Never, Ever Give Up!” because that is what I never did. The journey toward getting this project out has been one of determination. And I am pleased to announce that the book will be out in May 2019. Over several years I interviewed a variety of lawyers, and in the process I learned a lot about interviewing and how to get a good story from people. In the beginning I knew nothing. I wasn't even sure what the book was going to be, I just knew I wanted to do it.
As I explain in the introduction, part of my motivation came when I asked Jack Canfield at a writers’
retreat why he never did a *Chicken Soup for the Lawyer’s Soul* book, and with his quick wit, he
quipped, “I don’t know, wouldn’t that kind of be like the book, *What Men Know About Women*,
where you open the pages and there is nothing on them?”

That was in 2003, and I was really stunned by that comment. It took me a few minutes to get over it,
and I wanted to stand up right there and defend our profession. That evening in my hotel room in
Santa Barbara, I just could not shake the feeling that I wanted to show people that lawyers do have
souls and big, huge hearts. After all, since I was in law school, I had been involved in bar work and
public service work, and that has been one of the biggest joys of my life. It has been the juice that
has given my life meaning.

Helping people and seeing the immediate results is a huge motivator. I loved doing a law school
placement program in my second year of law school, a program that was the genesis of the Texas
Job Fair. I loved being on the Courthouse Visitation Committee of the Houston Young Lawyers
Committee and taking children around the courtroom as far back as 1984. So how Jack could feel
that lawyers weren’t people with souls, even in a joking manner, well, that really got me. The genesis
of this book came then. That was 16 years ago.

It wasn’t until around 2010 that I really began the project. I conducted interviews, and as each
interview passed, I began to learn how to craft the stories. At first it was just a chronological
detailing of these lawyers’ lives from childhood to now. The interviews were long, some of them 50
pages. And I learned that getting people to want to talk about themselves is even an artform in and
of itself. Inevitably, the ones who said they had nothing to say were the ones with the most tear-
jerking stories. There were some of them where we cried several times during the interview.

And then we got to the editing stage and trying to figure out how to tell the stories, what format,
what order, it was just a quandary, and I found myself going around and around. I would work on it
furiously with my staff and then I would set it down. A year or two passed in a flash. Then I would
pick it back up and try again. When it finally gelled into the leadership model of the LEAD lines—
Legacy, Excellence, Authenticity, and Determination—it became easier. All the interviews just
naturally gravitated to the right spot. I was amazed. How could that have happened? I could then
parse the huge interviews into one story, one point, but that meant that I was not able to tell the
whole story on each amazing person I interviewed. That was a huge struggle for me. How to get the
stories down to two or three pages and still do them justice? I finally just dug down deep and got it
done. I hope when you see the book you will think it all looks easy, but in fact it was very
challenging. There is no manual on how to do this, and in the end I just had to do the best I could with my overall goal in mind: to show how awesome lawyers are and what amazing leaders and public servants we are.

What dream in your life do you have that you have toyed with but never actually completed?

Think about your secret dreams. Maybe the one you have never shared with anyone. My experience with this project has taught me to never, ever give up. If you have a dream, it’s never too late. You are not too old, too young, too smart, too dumb to accomplish it. You just have to take action. And you have to allow yourself the time for that creativity to percolate. Things always seem to work out in the right way and in the right timing. Trust yourself that the dream can be complete. And then get started.

Have you studied and done your part to make the dream happen?

Big dreams can take a lot of time and work. Are you willing to commit to that dream by taking courses, investing in coaching, reading books on the subject, and really honing your “craft?” Do you have mentors to go to for advice? Do you surround yourself with people who support you in your dreams? I am talking about our law practices but also our secret dreams, the things that we really want besides putting a roof over our heads or food in our mouths.

GPSolo eReport let me do this column starting in 2013. Since that time, I have written every other month on leadership subjects and particularly featuring the interviewees in the book. This column helped me stay on track, and every year that I pushed the publication date back I was so grateful to the readers for helping me keep my dream alive. Now I can actually say that the book will be out in May and that you will be able to get it from the Shop ABA soon. Thank you for sticking with me and growing alongside me in my efforts to manage a small law practice and still achieve my dream of showcasing a sample of the best of the best of our profession. And to you—think of your dreams, follow your dreams, and they will happen. Please send me comments or queries about this article at melanie@bragglawpc.com.
When we think of a physician, we tend to envision someone we can trust to help maintain or restore our physical or mental health as quickly and effectively as possible. We may not think of the ethics of doctors per se when we go to the doctor's office, but the Hippocratic Oath remains paramount to the medical profession as a whole. Initially created by Hippocrates during the times of ancient Greece, it required physicians to swear to the gods that they would sustain certain ethics, which included using dietary regimens to treat patients to the best of their ability and judgment and not give them any lethal drugs if asked. Most physicians still hold the tenets of the Hippocratic Oath dearly and swear by a form of it to this day.

From one perspective, a physician is to physical maladies what a family lawyer is to familial maladies. Clients hire family lawyers to solve family matters that often pertain to divorce, with the expectation that family lawyers will resolve divorce cases to the best of their ability. However, a place where physicians and family lawyers diverge is an oath: Most physicians swear by the Hippocratic Oath, while family lawyers, lacking an equivalent model, do not. The result? Compare the reputations of physicians and family lawyers.

Physicians are often seen as trustworthy and even a godsend, while family lawyers are often seen as the victors of divorce because the longer the divorce drags on, the larger their bank accounts grow. Family lawyers are also seen as the driver of much unnecessary conflict.

That said, many reputable family lawyers have the interests of their clients and their families at heart. These lawyers likely practice family law because they genuinely want to help families resolve their legal disputes. They understand that the virtues of family law ultimately stem from the same place they do in the medical profession. Physicians strive to remedy patients' health, while family lawyers strive to minimize the collateral damage divorce causes to families. In the field of family law, families are at stake. Clients could lose their homes, their savings, and, most importantly, their children. Divorces take a mental toll on everyone involved, especially kids, leaving it up to family lawyers to protect their clients' interests and reach fair compromises while minimizing the harm inflicted on everyone involved. The problem is that while many family lawyers are sincere and want to help these families, unfortunately, many others do not.

Family law is tragically lucrative for lawyers who do not practice with morality in mind. These are the practitioners who inject senseless conflicts into the divorce process, and by doing so prolong the process and enable themselves to make an extra buck while they are at it. These are the family lawyers who opt to work slower so they get paid for more time. The medical equivalent of these sadly common tactics would be physicians taking a longer time than necessary to diagnose and treat patients and even adding in some misdiagnoses along the way so that patients would have to stay in hospitals for more extended visits and pay higher medical bills. Such practices are deemed intolerable by the standards of the Hippocratic Oath; nonetheless, they are common practices in family law.

The current system does not work. While some family lawyers practice ethically, many do not and get away scot-free, leaving a trail of damage in their wake. As research has shown, there is a direct correlation between the length and intensity of parental conflict during a divorce and children's ability to succeed in life, meaning there is more damage associated with divorce than a client merely losing his or her savings. Children of long, intense, messy divorces are more likely to suffer psychological damage in the future. This outcome could be due to observational learning. Kids see their parents reacting negatively to conflict after conflict, some of which are fueled by unethical family lawyers acting out of greed instead of thinking first about what is in the best interests of the children.
As a result, children of high-conflict divorce become more likely to develop behavioral and relationship issues. Something drastic needs to be done to create a more constructive, rehabilitative system, but what?

Already, family law is being reformed to keep divorces out of courtrooms. More and more, divorcing couples seek alternative methods to resolve their conflicts. Divorcing parents may opt to address issues on their own, reach an agreement through mediation or collaboration, or use arbitration. These methods are growing in popularity because they emphasize teamwork. While divorce court is more likely to evoke a winner-takes-all mentality, alternative dispute resolution encourages a more holistic approach to divorce, where both parties try to negotiate a fair settlement out of the courtroom, and everyone, especially the children, wins. Because cooperation is fundamental to these alternative dispute methods, the well-being of the children is more likely to be prioritized, as well as sound financial decisions, while emotion and needless conflict are more likely to take a back seat in the divorce process. While alternative divorce methods are a significant step in the right direction for families, they still do not protect clients from unethical family lawyers.

So, what can family lawyers do to improve the current state of their profession? As it stands, divorce law as a practice area, in general, is suffering from a lack of ethics. A straightforward solution would, therefore, be to strengthen the foundation of family law by placing a greater emphasis on morality. If family lawyers treat their clients as patients, and clients look to family lawyers as healers, the process of divorce could evolve into a system for improving the long-term emotional health of clients. By charging family lawyers with the responsibility of passing the virtue of morality onto future family lawyers, as dictated in the Hippocratic Oath for doctors, the cycle of unethical abuse could end for good. To behave unethically would violate a sacred oath, not just one's own internal moral compass, which, at times, may be lacking. Lengthening billing hours by manufacturing conflict would become unthinkable, as would keeping a patient ill or deliberately hospitalizing him or her longer than necessary.

Family lawyers are essentially physicians for familial conflicts, so we should treat them as such. If they swear by a Hippocratic Oath tailored to the practice of family law, they will be much more likely to uphold it when negotiating a divorce. They would be bound by an oath to assist their clients to the best of their ability, and if they engaged in unethical practices, they would be in direct violation of it. This violation would, in a theoretical sense, create moral ramifications within the mind and soul of a family lawyer if they weren't there before, prompting him or her to revisit the Oath's tenets and, hopefully, work toward resolving the divorce as quickly, effectively, and collaboratively as possible with the children's best interests as the family law practice North Star.

A simple oath may not seem like much at first glance as a means to effectively reconstruct a profession that appears set in its unethical ways. But an emphasis on ethics is just what family lawyers need to solve divorces quickly, fairly, and with limited long-term adverse effects. History has shown that the Hippocratic Oath has successfully guided physicians for millennia. Perhaps implementing a Hippocratic Oath in the field of family law can transform the image of a family lawyer from greedy and troublemaking into trustworthy and even lifesaving.

Trustworthy and lifesaving—let's practice family law differently.

Next Article
Surviving an IRS Tax Audit: The Tax Litigation Process, Part 1

By Julie Houth

A tax audit is a procedure where the Internal Revenue Service (IRS) examines an individual’s or business’s financial records to ensure accuracy in the filed tax return. If the IRS finds errors or intentional misreporting, the taxpayer must pay the recalculated return amount and any interest penalties. Although most taxpayers do not get audited, the taxpayers that do get selected by the IRS should be aware of how to handle the process. This article is the first in a two-part series intended to provide guidance and outline the steps of the tax litigation process to tax lawyers and their clients from a tax lawyer with extensive experience in all stages of a tax audit.

Meet Mauro P. Colabianchi, Esq., LL.M Taxation

Mauro, a licensed attorney in California, is an associate attorney at McLaughlin Legal in San Diego, California, a boutique tax law firm providing legal services in civil and criminal tax disputes such as audits, appeals, and U.S. Tax Court litigation, in addition to tax and estate planning services for individuals, families, and businesses.

Before a Tax Audit

Q Hi, Mauro. What are the first steps you take when a client comes into your office with a tax matter? Do you have any advice or strategies at this stage?

A The first step is to make sure all the correct powers of attorney (POA) forms are filed and processed. Next, you will want to get an overview of the client’s account to see what is owed and what returns are missing. Finally, you will want to know what stage in the collection or examination process the taxpayer is at and whether they risk collection activity or missing a deadline to file a petition or collection due process hearing request. In most cases, one of the first steps in a tax litigation process is to contact the appropriate tax agency representative and establish a line of communication.
Q  How does your firm go about representing clients in tax litigation matters? And how do you ensure payment from your clients?

A  Our representation of a new client typically begins with a meeting to discuss the potential client’s tax issues. If the taxpayer decides to retain our services, we will provide him or her a retainer and fee agreement to sign and POA forms for the IRS or other tax agency. Once the forms are signed and the initial retainer received, we will submit the POA forms and begin work on the case.

At our firm, we send out monthly bills to all our clients. We also have a dedicated payroll professional who contacts clients to remind them of past-due balances. Clients can pay via (1) Clio, our case management software, (2) credit card, or (3) check. When a client is behind in their bill, we will work with them to bring them current. For example, we can set up payment plans for clients if they are not able to pay it all right away.

Preparing for the Audit

Note that there are different types of audits—correspondence audits, office audits, field audits, and compliance audits. Each audit has a separate set of requirements and can help determine what documents are needed, where to send those documents, and if hiring a tax professional is needed.

Q  How do you prepare for your client’s IRS tax audit? Are there certain documents that are essential to include? What is your experience with handling various tax audits, and do you have any advice for young lawyers or lawyers new to the tax practice?

A  Organization is key in any audit. If auditors have to do work, they are going to start nitpicking details. It is best to have all receipts organized by category and added up on a spreadsheet. If auditors can take a look at a stack of receipts and see that the first few match the spreadsheet, they are likely to trust additional documents you provide. Trust is a major component in any audit. When trust between the representative and auditor breaks down, the auditor will begin requesting more and more supporting documentation and start opening more years for examination. If you can provide a good first impression as a credible partner, then the auditor will typically make it easy for you.
Audit Aftermath

Once the audit is complete, the IRS agent submits a report and suggests a solution. Audits can end in a few ways, including (1) no change proposed; (2) the taxpayer agrees with the IRS's proposed changes; or (3) the taxpayer disagrees with the IRS's proposed changes.

Q Do you have any advice on how to interpret an IRS Information Document Request during a tax audit?

A For an Information Document Request (IDR), I would say that it is not always 100 percent necessary to produce everything requested. The best thing to do is compare the requested documents to the categories that are being audited, and instead of producing every single thing requested, try to produce documents that will back up the categories of income or expenses that are being examined. I will almost never produce tax returns to the IRS, because that just begs them to open up further years or categories for audit, and they can obtain the returns themselves if necessary. When interpreting the IDR, the most important part is on the front page, where it lists which categories are being examined.

Q Do you have any advice on how to interact with IRS Agents?

A When interacting with IRS agents, be polite but firm. If you are convinced they are wrong, then stand your ground and ask for their manager if they aren't seeing reason. In regards to collections, it is often helpful to understand what information the IRS has access to (returns, W-2s, 1099s) and what information they do not have access to, at least not right away (bank statements, mortgage statements, etc.). It can be helpful when preparing a response to review all the information the IRS has in front of them and tailor your strategy that way. It is best to be organized and prepared to present your case with the examination department because the quicker you can get the auditor to agree with you, the less likely you will have to take the case to appeals or Tax Court.

Q Do you have any advice to individuals who receive a Notice of Deficiency and their attorneys on how to interpret it?

A After an audit, the IRS may send a Notice of Deficiency (NOD). In a NOD, you will first want to pay special attention to the final date to petition the Tax Court. There is absolutely no leeway here if the date is missed. Next, take a look at the examination report contained within the NOD. This report will list all the proposed changes by the IRS. It’s often good to compare this report to the tax return to see what changes are proposed. There are also usually short
explanatory paragraphs that accompany the report that can be helpful because it provides clarity about any changed items. Finally, if taxpayers do not want to go through the cost and hassle of filing a Tax Court petition, they or their representative can still contact the examination department with new information or documents without petitioning the Tax Court. It is often possible to procure a favorable outcome even without a petition by just talking to the examination department.

Taxpayer Rights

The IRS generally has three years to initiate an audit from the time the tax return is filed or April 15, whichever is later, to assess a taxpayer for additional taxes, unless the IRS discovers tax fraud or significant underreporting of income. Note that the IRS wants a response to their initial notice within 30 days, but a request for additional time is an option. After an audit, the taxpayer has several options, including the right to administrative appeals, the right to petition to go to Tax Court, and the right to a trial after the audit, which will be discussed in next month’s article.

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Authors

American Bar Association

Resolving Construction Disputes through Baseball Arbitration

By Lochlin B. Samples

Professional baseball has successfully implemented a dispute-resolution procedure that has both decreased the costs of arbitration and expedited resolution of disputes. The construction industry would benefit from the incorporation and adaptation of the “baseball arbitration” procedure in construction disputes. This article is not theoretical; it is based on experience adapting baseball arbitration concepts to construction disputes.

General Overview of Baseball Arbitration

Baseball arbitration arose as an alternative to free agency for professional baseball players. Instead of free agency, players and teams could request salary arbitration utilizing a three-member panel. Both parties would put on evidence supporting the requested salary amount, which would depend on factors such as overall team record, player performance, fan appeal, past compensation, mental or physical defects, and comparative salaries. Both parties then submit their own proposed salary numbers.

While the procedure up to the presentation of evidence is virtually identical to standard arbitration, baseball arbitration imposes strict limits on the panel’s ability to make an award. The panel is only empowered to do one of two actions: accept the player’s proposed salary or accept the team’s proposed salary. The panel is not empowered to split the baby or award a salary other
than the amount requested by the player or the team. The award is final and is issued without explanation.

Benefits of Baseball Arbitration for Construction Disputes

Utilizing the all-or-nothing approach of baseball arbitration along with the issuance of a final decision without explanation both present useful options for incorporation into the construction industry. The all-or-nothing approach—i.e., the panel is only empowered to award what the petitioner or the respondent requests—forces both parties to perform a realistic assessment of the claimed damages. By forcing the parties to examine, in detail, the claim amounts, wise parties will consider the risks and benefits of claiming certain amounts. Simply put, it rewards parties for approaching disputes with a degree of reasonableness.

By rewarding the parties for reasonable claims, while also penalizing parties for unreasonable positions, the process helps eliminate inflated or bogus claims. Today, it is far too common to see inflated claims in construction arbitration. Whether this stems from concerns over arbitrators “splitting the baby,” poor claim management, or other causes, the inflated claims and meritless assertions only serve to delay the proceedings, causing all parties to incur additional expenses that could easily be avoided through the use of reasoned claims. Although some parties will inevitably choose to continue to “swing for the fence” by asserting riskier and less supported claims, the baseball arbitration system will be more apt to reward parties that take a more reasonable approach. A side benefit of the all-or-nothing baseball style is that it also eliminates concerns that arbitrators simply “split the baby,” because the arbitrators only have authority to award the amount requested by the prevailing party.

Baseball arbitration also encourages party decision-makers to take an in-depth look at the claim earlier, rather than later. Too often, party decision-makers are not fully briefed on the relative risks and merits of the claims until the dispute is well underway and both parties have incurred significant costs. Inclusion of baseball arbitration requires the parties to take an early and in-depth look at the relative claims as part of the initial submissions. Ultimately, this results in a significant closing of the gap between the parties, which encourages settlement.

No Reasoned Decision or Explanation

Forgoing a reasoned decision is the second element worth incorporating for some construction disputes. This is particularly appealing for projects where the dispute only relates to the amount
of a payment—not whether the party is entitled to a claim—and where the work is ongoing. Bypassing any reasoned decision allows the panel to quickly enter an award for either the full amount requested by the petitioner or for the full amount presented by the respondent. This elimination further assists in a speedy resolution by encouraging the parties to stick to the issues at hand. It also helps limit bad feelings on the job, as the panel simply adopts either the petitioner’s or respondent’s amount, without any explanation. The decision, which simply adopts a number, does not indicate whether the panel agrees with the arguments of the parties or not; instead, the decision indicates only that the number presented by one party was more reasonable than the number presented by the opposing party.

Drawbacks and Limitations of Baseball Arbitration in Construction Disputes

There are differences in the nature of the disputes between the construction industry and MLB salary negotiations that provide some limits on the use of baseball arbitration in construction disputes. The primary limitation is that construction disputes often involve multiple claims from numerous entities that may or may not be parties to the arbitration. Pass-through claims are particularly problematic because the presenting party in the arbitration might have limited abilities to reduce or modify the claim. For instance, consider a dispute between a general contractor and an owner related to added electrical scope work. The general contractor is passing through its electrical subcontractor’s claim against the owner in arbitration. If the arbitration is governed by baseball rules, the general contractor must choose between passing along the full amount of the claim, including elements that the general contractor may find objectionable, or reducing the claim in the arbitration, thereby exposing the general contractor to additional liability from the electrical subcontractor as well as causing harm to the subcontractor relationship. While there are ways to reduce this risk, such as requiring subcontractors to participate in the arbitration with the owner, these risks must be considered and managed at the time an agreement to arbitrate is reached.

A second drawback relates to the attorneys. To succeed in a baseball-style arbitration, the party must submit a more reasonable claim than the opponent. Depending on the nature of the claim, attorneys may be required to inform clients that the risk of asserting unsupported claim amounts outweighs the reward of asserting the claim. This can lead to hard conversations between the attorney and client about the right amount to put forward.

Recommendations for Use of Baseball Arbitration
Baseball arbitration works best in the construction industry when the dispute is between two parties and the claims do not involve any significant third-party amounts or interference. For instance, scope claims between a general contractor and subcontractor are good candidates for baseball arbitration, as are payment claims between general contractors and subcontractors. For owners, baseball arbitration is often difficult with a general contractor due to the prevalence of subcontractor claims; however, the owner may benefit from baseball arbitration with its designers or design team. While the process can work with multi-party claims, including pass-through claims from subcontractors, additional steps must be taken, particularly for the general contractor, in order to encourage overall fairness.

Additional Considerations

Every project and dispute presents its own unique challenges and requires an independent evaluation. What follows are some general considerations attorneys should consider when determining whether to use baseball arbitration as well as when drafting the arbitration agreement:

When do the parties have to submit their claim numbers, and can the numbers be subsequently amended? The parties should decide both when the claim amounts have to be submitted as well as a deadline for revising the numbers, if any. Allowing revisions encourages the parties to make adjustments for additional information; however, it can also add to the cost of the arbitration. The parties should also decide whether the revisions allow new claims to be added or simply current claim amounts to be revised.

Are there multiple claims from each party? If so, is the panel empowered to go claim by claim, or must the panel award the final number of either the petitioner or respondent?

Are there subcontractor claims or pass-through claims? If so, what rights, if any, do the parties have to adjust the claim amount? Is the award binding on the subcontractor with the pass-through claim?

Conclusion

The construction industry could benefit from the selective incorporation of baseball arbitration concepts. Particularly in simple two-party disputes, the all-or-nothing approach encourages the parties to present reasonable offers. By encouraging the removal of less-supported components,
the parties are able to focus on the core claim elements. Parties often realize that their positions are not as far apart as they initially seemed.
March 22, 2019

SUBSTANTIVE LAW

Attorneys Must Self-Report Errors to Current Clients

By C. Thea Pitzen

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A lawyer who commits a material error in the representation of a current client is ethically obligated to disclose that error to the client.

According to the ABA Standing Committee on Ethics and Professional Responsibility’s Formal Opinion 481, Rule 1.4 of the ABA Model Rules of Professional Conduct does not permit a lawyer to conceal a mistake from a client and simply hope for the best. Rather, the ethical lawyer must “self-report” a material mistake to a current client and deal with the consequences that may result.

Materiality of a Mistake Is Fact-Specific

Under the opinion, an error is material “if a disinterested lawyer would conclude that it is (a) reasonably likely to harm or prejudice a client; or (b) of such a nature that it would reasonably cause a client to consider terminating the representation even in the absence of harm or prejudice.” This requires an objective evaluation by the lawyer. “Even if a lawyer subjectively believes in good faith that an error is not material, that alone is not determinative under this objective standard,” advises Ethan T. Tidmore, Birmingham, AL, cochair of the ABA Section of Litigation’s Pretrial Practice & Discovery Committee.

A lawyer who has made an error “oftentimes will not be able to disengage from the situation sufficiently to clearly assess the situation,” cautions Robert E. Poundstone IV, Montgomery, AL, cochair of the Section of Litigation’s Ethics & Professionalism Committee. Poundstone
Attorneys Must Self-Report Errors to Current Clients

 recommends that lawyers who have firm counsel available “seek that counsel’s opinions to get a perspective more in line with the disinterested lawyer.”

An error that does not necessarily prejudice a client may still need to be disclosed, notes John M. Barkett, Miami, FL, cochair of the Section’s Ethics & Professionalism Committee and a member of the ABA Standing Committee on Ethics and Professional Responsibility. For example, a series of errors not independently prejudicial “may say something about your organization, the care with which you are handling the matter, or the way you schedule things, and may give the client pause about whether to continue the representation,” suggests Barkett. In those cases, the opinion requires disclosure, he says.

The timing of disclosure is also important. “Disclosure must be prompt notice under the circumstances, which is very fact-specific,” says Barkett. While some errors can be resolved without any client impact, “once it becomes apparent there is no immediate remedy, it is imperative that the lawyer promptly notify the client,” urges Poundstone. “In all cases, the client must be notified well before the delay causes impact to the client beyond the initial impact of the error itself,” he adds.

Current and Former Clients Distinguished

Under this opinion, if a lawyer does not discover an error until after the representation has ended, the lawyer has no obligation to inform the former client—even if the error is material. But Section leaders caution that best practices may warrant disclosure of an error, even after the representation of that client has ended. “In finding that the obligations of disclosure do not extend to errors that present after the end of the engagement, the opinion does correctly note that there may very well be business and risk management reasons that a lawyer should still disclose an error to the former client,” says Poundstone. And disclosure to a former client may be more than just good business and risk management. “In most circumstances, disclosure to the former client is absolutely the right thing to do,” concludes Poundstone, particularly when the former client may be able to avoid negative consequences or lessen the impact of the error.

Err on the Side of Disclosure

Section leaders advise erring on the side of disclosure when evaluating whether a client is a current client and whether an error is material. Clients with retainer agreements are still current clients, even if they do not have a current active matter, notes Barkett. If there is any ambiguity
about whether a client would believe themselves to still be a current client, a lawyer should err on the side of disclosing, Tidmore adds. Lawyers also should remember that disclosure obligations will apply to material mistakes made by people they supervise, Barkett advises.

Determining materiality of an error calls for the same approach. “As a general rule, if a lawyer is in doubt whether or not an error is material, the lawyer should go ahead and promptly disclose the error to the client,” Poundstone says. “Hindsight is 20/20 and you may not realize an error is material until some time has passed,” he explains. “It would seem a much better course of action to disclose an error that ends up being immaterial than failing to disclose one that ends up being significant,” Poundstone notes.

**Disengagement Letters Can Provide Clarity**

Another important takeaway for litigators is the need for formal disengagement letters that give formal notice to a client that the lawyer’s representation has ended. “This opinion underscores the importance of sending a closing letter to the client upon the conclusion of the representation,” advises Tidmore. “Lawyers can sometimes fall into a bad habit of not sending a disengagement letter because they are hopeful the client will continue to look to them as their lawyer,” says Barkett. “But the best practice is to send the disengagement letter so you and your client know your obligations as to that matter are concluded,” he adds.
Expectations of Privacy in Audio and Video Recording in a Family Law Context

By Rose L. Hubbard

Several years ago, I was traveling with my brother and his family to a funeral. He and I were having a vigorous discussion over whether it was appropriate for him to try to program his GPS while driving on winding mountain roads. After he put his hands back on the steering wheel, his preteen daughter began playing an audio-video recording of our discussion. He thought she was the cleverest girl in the world to record an adult conversation without the adults knowing she was doing it. I was not so amused. I made it very clear to my brother that the recording was illegal, and beyond that, it was a poor example of appropriate behavior, both on his part, for thinking it was clever, and on his daughter’s part, for doing it. His response was simple: get with the program, Rose, this is the age of the cellphone and tablet, where everyone is recording everything all the time. It’s just the way the world works.

He has a point. I have heard that our images are recorded at stores, at traffic lights, and in personal pictures upwards of fifty times a day. Social media has funny, sad, outrageous videos of people doing stupid things when they didn’t know they were being recorded. Lawsuits are won and lost when there is evidence created by someone whipping out a cellphone and recording an accident or a police arrest. We are alternatively hypervigilant about our data privacy and blasé about our personal image and audio privacy.

Both Federal and State Laws Apply
My brother was also wrong. Despite the argument that “everybody does it,” it is still illegal to record audio unless certain conditions are met. It’s difficult to know what those conditions are because both federal and state laws apply, and the state laws vary. The Federal Wiretap Act creates civil and criminal liability for using a device to intentionally intercept wire, oral, electronic, and other kinds of communications. Under the federal law, it is not illegal to “intercept” or record a wire, oral, or electronic communication if one party to the communication has given consent. Thirty-eight states have adopted the “one-party consent” rule, and so, if one person to the communication consents, it is not illegal to record the communication.

There are also nuances to different states’ laws. Hawaii, for example, is a one-party-consent rule state, unless the recording device is in a private place. Massachusetts bans all “secret” recordings, rather than requiring consent. Eleven states (California, Delaware, Florida, Illinois, Maryland, Massachusetts, Montana, Nevada, New Hampshire, Pennsylvania, and Washington) require all parties in a communication to consent to the recording of the communication.

Which State Law Controls?

There is also a question as to which state law controls. If you are on your cellphone that originated in California, where you used to live, but you made the call from Oregon and are calling someone in Washington, which state law applies to the recording? If the phone call crosses state lines, does that make it subject to federal law? Or is it subject to federal and state law? In California, all parties must give their consent to be recorded, and if the caller in a one-party state is in conversation with someone in California, the more restrictive state law applies. Which puts you into a factual and legal bind: do you know where the person you are calling and recording is located? And do you know the law of that state and how it compares to your own? More important, where are you litigating and what are the “choice of law” rules in that state?

The Definition of Consent

Another significant issue arises out of the definition of “consent.” In some states, consent is given if all parties are aware that the conversation is being recorded—consent is implied. In other states, consent must be affirmatively given. And where does the recording take place? If the recording takes place in your home and you consent to the recording, that is not illegal in states such as Oregon, even if you are not one of the parties being recorded. That’s the whole idea of the “nanny cams,” where you can set up audio-video equipment in your own home even if it is recording other people. There can also be a distinction between audio and video recordings. In some states,
what is regulated is audio recordings. That’s why you have traffic (video) cams at most stoplights and several in every store parking lot.

Is the Case Civil or Criminal?

Laws governing audio and video recordings can also differ depending upon whether a case is civil or criminal. For example, in Connecticut, in a criminal case for illegal recording, it is a one-party consent state. If it is a civil case where you are suing for damages relating to the recording in Connecticut, it is a two-party consent state. Evidentiary rules may additionally distinguish between evidence gathered in criminal versus civil cases. A recording may not be admissible in a criminal prosecution for illegal recording but may be admissible in a civil case for illegal recording. If you are being prosecuted for an assault and have an audio-video recording you are trying to bring into evidence, whether it is allowed or not may be controlled by the rules of evidence—or they may be controlled by the recording laws.

Reasonable Expectations of Privacy

This is all about what “expectations of privacy” you should reasonably be expected to have. The Federal Wiretap Act promises a “reasonable expectation of privacy.” It assumes that you are in a location and in a circumstance where you have a reasonable expectation of privacy. This is why most social media posts are not illegal. The events being recorded are in public, and you don’t have a reasonable expectation of privacy in a public place. If you are within your own home, there is a strong expectation of privacy. However, there are still gray areas. For example, a privately owned business office may seem like a private location, but some states, such as Florida, do not recognize an absolute right to privacy in a party’s office or place of business. Even in a public place, however, there still might be an expectation of privacy if you are having a conversation with another person. That’s where the whole issue of whether one party or all parties must consent to the recording comes in.

Scenarios

What does all of this mean in a family law context? Whether you are an attorney advising your client or you are someone who wants to understand what the laws are before you take action, you need to know the laws—or the lack of clarity in the laws—or you risk taking action that is illegal.
Your client suspects her teenage son is buying illegal drugs, so she puts a recording device on the home phone to monitor his calls without his consent. That's okay, right? It's for the son's own good. But what if your client wants to record the son's cellphone calls and arranges with the cellphone company to record all conversations. After all, the client pays for the phone, and it's for the son's own good, right? But what if your client's son is late for curfew, and she goes out looking for him. She sees him talking to a person of questionable quality. No problem. She whips out her cellphone, that wonderful smartphone that has audio- and video-recording capacity, and starts recording the son and that person of questionable quality. She brings the recording to you as her attorney. You can't hear what they are saying at first, and the son can't see his mom, but your client moves closer and closer, video recording . . . and now she is starting to pick up audio. Sure enough, the moment she feared is happening. Her son hands that questionable person money and then takes a small bag of white powder in exchange. It's still all good, right? It's for his own good.

Maybe not.

Or maybe your client is getting a divorce. He is standing outside the house, and his wife opens the door and gives a very intimate embrace to the appliance repair man, far more intimate than what the client has received in a long time. He lifts up his phone, flips on the video recorder, and records the whole steamy conversation and the nonverbal communication. That's what those phones are for, right? Anyone who visits YouTube will see video recordings of funny scenes in which the other person doesn't know he or she is being recorded. Everybody does it, so it must be legal, right?

Maybe not.

Your client is recording the telephone call of his child when the child is talking to the other parent, and the client hears the other parent encouraging the child to not obey the rules of your client's household. Your client later confronts the other parent with the evidence of the recording, and the other parent is outraged that your client intruded on a private conversation. Your client is in hot water, right?

Maybe not.

If the client owns and pays for the son's phone, your client probably can put a recording device on the phone if it is a one-party consent state. If the phone is in the client's house, she has the
authority to put a recording device on her own phone. She can probably record the video of the interaction between her son on the corner, but probably cannot record the audio.

As for recording the telephone call of your client’s child with the other parent, it probably isn’t illegal in a civil damages context unless the recorder lives in a two-party consent state or there is a choice of laws question and the more restrictive state laws apply. However, offering it as evidence in a divorce trial is probably not illegal—but it probably violates a court order. Many parenting plans have language that states that neither parent will monitor or interfere with the conversation of the other parent and the child, and that requirement would be enforceable by the court. This is not an absolute, however. For example, if your client is hearing from his or her child that the other parent is being verbally abusive or threatening and your client is seeking to modify parenting time, getting evidence that the verbal abuse is happening would be very helpful to the judge in making a decision without having to bring the child into court to testify against the other parent.

The Tough Questions

Then the tough question comes up for the attorney. Your client has brought you all of these recordings, and they range from voicemail messages to pickup and drop-off scenes to recordings with the other parent and recordings of conversations with the other parent and the child. The first thing you need to do is determine whether these recordings are legal within your state and whether another state law might be implicated. If any of the recordings are illegal, you need to immediately tell your client to stop the recordings. If any of the recordings are legal but would not be considered appropriate by a court, you need to have that conversation with your client to the effect of, a judge isn’t going to view it favorably if your client has dozens of recordings.

The second question is whether you are required to turn over the recordings as part of discovery. My standard request for production asks for recordings made between spouses or between parent and child, including all text messages and emails. Beyond the obvious question of whether the request for hundreds of records is objectionable because the request is burdensome, if the recordings are legal, they need to be turned over. If the recordings are illegal, you are in the position of stating that turning over recordings might violate your client’s Fifth Amendment right against self-incrimination, which essentially admits that the records exist.

What Can and Should Your Clients Do?
Now that you are thoroughly confused as to how to guide your clients so that they are absolutely certain about what they can and can’t legally record, what can they do in a family law context, and more important, what should they do?

Most importantly, you and your client need to have a heightened sense of awareness about being recorded. Just as your client should assume that any emails written to the spouse might end up in front of a judge, your client should assume that every phone call he or she has with the spouse might end up in front of a judge—and very possibly out of context.

However, just because your client should have a heightened sense of awareness about being recorded does not mean that your client should feel free to record everyone else if you are in a one-party consent state. Recording might be not criminal, and it might not be the basis for a civil lawsuit, but that does not mean that a family law judge will view the recordings favorably. Years ago, when answering machines were the technology of the day, I had a client who came to court and, when asked a question as to how he remembered what was said, dumped a gallon size bag of minidiscs on the table, proudly announcing that he had all of the voicemail messages and all of his conversations with his wife recorded. He was certain that what was on the tapes had to be convincing proof. The judge was convinced, all right, but it had nothing to do with the content of the messages, but rather with the character of a parent who would record all conversations with his former spouse without her knowledge.

A judge might decide not to allow recordings as evidence if there is any question as to whether the recordings are hearsay. A judge also might not allow the recordings because there is a question as to whether the recordings are “complete” and unaltered, which is almost impossible to tell unless you have a telecommunications expert examine the recordings. More likely, however, a judge will allow recordings to come into evidence but he or she will disfavor the recordings of the other spouse, especially recordings made of the other spouse and the children, because of the conflict created for the children in the middle of the dispute.

There are times when your client should be recording, and openly recording. If there is a history of verbal abuse at transition times, you can often stop the behavior from occurring if you or someone else holds up a phone and says, “I’m recording this.” If the verbal or physical abuse continues despite the knowledge of being recorded, that sends a strong message to a judge that the parent who has bad behavior, particularly in front of the children, is not exercising good judgment. The judge will then structure a parenting plan in light of that information.
It is less clear whether recording is legal if you turn on your phone to record and walk around with it in your hand. That kind of recording is becoming more common with everyone having a phone in hand much of the time, and law enforcement is unlikely to criminally prosecute what is a relatively common behavior. The question that you have to ask is less about whether you will be criminally prosecuted and more about the goal of the recording. If your client is being threatened, a recording of the threat, particularly when there is more than just the bare bones of a threat, can support a criminal action or an abuse restraining order.

There are also times when your client’s child is telling him or her about something such as physical abuse that happened, and your client wants to record what the child is saying in order to report it to the police. This is an appropriate use of recording, assuming that you are not asking leading questions, thereby contaminating the reporting. However, if your client engages in a pattern of recording the child’s statements, a judge might view the pattern as being psychologically damaging to the child because it puts the child in the middle of a parental conflict. Moreover, if there is a pattern of recording the child’s statements or a habit of recording openly every transition between parents, a judge might admit recordings because the potential for harm in requiring a parent to wait to capture that one bad act would outweigh the risk of psychological harm to the child from being recorded. The reality of video and audio recordings is here to stay. It is an everyday reality, and every parent has to evaluate whether recording would be intrusive in a way that affects the psychological well-being of his or her child and to decide, therefore, whether it should or shouldn’t be used.

Be Aware—Be Very Aware

You wouldn’t want to induce fear of using technology to record, but recording should be done with an awareness of its risks and goals. Be very aware, also, of what the laws are, what the pitfalls are, and what the benefits of audio and video recording are. After all—paranoia is a heightened sense of awareness, and just because someone’s paranoid doesn’t mean they’re wrong.
Recent Trends in Health Savings Account Limits

By Ima E. Nsien

Health Savings Accounts ("HSAs") established in connection with employment-based group health plans are typically structured to avoid the reach of The Employee Retirement Income Security Act of 1974 ("ERISA"),[1] unlike the health plans they accompany. An HSA is a tax-exempt trust or custodial account that eligible individuals covered under a high deductible health plan ("HDHP") can set up with a qualified HSA trustee to use pre-tax contributions to pay or reimburse certain medical expenses incurred.[2] Due to the HSAs favorable tax status, HSA holders are eligible to claim tax deductions for contributions made and earn tax-free interest on HSA assets, among other benefits.

The U.S. Department of Labor ("DOL") administers ERISA and previously issued guidance in April 2004 regarding the applicability of ERISA to HSAs.[3] The DOL stated unequivocally that HSAs “meeting the conditions of the safe harbor for group or group-type insurance programs” are not employee welfare benefit plans subject to ERISA.[4] However, the tax implications of HSAs bring them under the purview of the Internal Revenue Service ("IRS"), and reaping the tax-free benefits of HSAs requires strict adherence to IRS regulations. This article discusses recent changes to contribution limits attributable to HSAs for family coverage.

HSA Contributions

Under the Internal Revenue Code of 1986, as amended ("Code"), an eligible individual with family coverage under an HDHP can contribute a certain amount of funds into a HSA every tax year.[5] That individual may then take as a deduction for the taxable year an amount equal to the aggregate annual contribution he or she made to the HSA during the same taxable year.[6]
year, the IRS, an agency of the United States Treasury, releases a revenue procedure designed to set inflation-adjusted limits to HSA contributions. In April 2016, the IRS issued Revenue Procedure 2016-28, setting the 2017 inflation-adjusted annual limitation on deductions for individuals with self-only and family coverage under an HDHP.[7] The annual limitation for family coverage was set at $6,750, which was no change from the 2016 limit. On May 22, 2017, the IRS announced the 2018 inflation-adjusted annual limitation on deductions in Revenue Procedure 2017-37.[8] The annual limitation for family coverage was set at $6,900, which reflected an increase of $150 over 2016-2017 levels. As they had in years prior, individuals, employers and HSA administrators relied on this figure going into 2018, many choosing to maximize their HSA contributions for the coming year.

Changes to Inflation Measures: CPI vs. Chained CPI

However, tax reform legislation enacted late 2017, the Tax Cuts and Jobs Act,[9] made changes to how the IRS must calculate inflation adjustments. In the past, the Code used a traditional Consumer Price Index (“CPI”) measure issued annually by the DOL to determine the general increase in the prices of goods and services, or inflation. Under the CPI, inflation was computed by “multiplying the percentage price change for each item that people purchase by that item’s share of consumer spending in a period before the prices changed and then adding up those changes for all items.”[10] The actual cost-of-living increase, however, tended to be lower than the rate of inflation as measured by the CPI. The CPI tends to overestimate inflation largely because it does not account for substitution bias. Namely, many consumers lessen the impact of rising prices by purchasing less of those more expensive goods or services and substituting them for goods or services that have not risen as much, or at all, in price.[11]

Under the new tax law, the Code uses chained CPI to measure inflation.[12] Chained CPI is said to account for substitution bias, and provides “a more accurate estimate of changes in the cost of living from one month to the next by using market baskets from both months, thus ‘chaining’ the two months together.”[13] The real effect of chained CPI is that it makes inflation appear lower, causing incomes to at least appear to rise faster than inflation adjustments, which pushes people into higher tax brackets more quickly and/or limits the number of people eligible for certain deductions.

Accordingly, on March 5, 2018 the IRS issued Revenue Procedure 2018-18, which inter alia adjusted the 2018 inflation-adjusted annual limitation for HSA contributions downward to $6,850.[14] The revenue procedure did not provide any explicit mechanism for those individuals who had
maximized their HSA contributions to $6,900, in reliance on previous IRS guidance. Without further action, those individuals would be subject to excess contribution penalties for having contributed $50 more than the allowable contribution amount. Under the current regulatory scheme, an excess contribution is not deductible under Section 223 of the Code and the excess amount is included in the HSA owner’s gross taxable income.[15] The IRS also imposes an additional tax of six percent on excess contributions to the HSA for every year that the account remains in excess of annual limits.[16] Following the release of Revenue Procedure 2018-18, HSA holders found themselves having to decide on a plan of action to avoid excess contribution penalties literally overnight.

There is one way to avoid excess contribution tax liability: removal of excess contributions. IRS guidance provides that if prior to the tax filing deadline, an individual withdraws from the HSA all income attributable to the excess contribution, as well as any distributions related to such income, the six percent tax liability can be avoided.[17] However, the excess contributions are included in taxable gross income. The distributions, or income, earned on the removed contributions should also be taxed as other income. These changes trigger the HSA trustee to file revised Forms 1099-SA and 5498-SA to clarify to the government that there are no excess HSA contributions for that tax year.[18] Fortunately, for those HSA holders who made the full $6,900 contribution, a six percent tax on $50 comes to just $3, a small penalty.

IRS Transition Relief

After the release of Revenue Procedure 2018-18 in March, numerous employers, trade groups, and other stakeholders affected by the downward adjustment urged the IRS to reconsider and allow the $6,900 limit that so many had relied on to be reinstated. On April 26, 2018, the IRS released Revenue Procedure 2018-27, stating: “For 2018, taxpayers may treat $6,900 as the annual limitation on the deduction for an individual with family coverage under an HDHP.”[19] In reinstating the $6,900 contribution limit, the IRS cited the fact that many individuals had already made the maximum HSA contribution for the 2018 year prior to the $50 reduction in the deduction limitation. Also, stakeholders effectively persuaded the government that the costs of making modifications to reflect the reduced contribution amount would be significantly greater than any tax relief associated with an excess HSA contribution. The Treasury Department and IRS thus determined “it is in the best interest of sound and efficient tax administration to allow taxpayers to treat the $6,900 annual limitation originally published in Rev. Proc. 2017-37 as the 2018 inflation adjusted limitation on HSA contributions for eligible individuals with family coverage under an HDHP.”[20]
Conclusion

Despite the IRS' temporary decision to reduce 2018 HSA contribution limits for eligible individuals with family coverage to $6850 from $6900, HSA contribution limits trend upward historically. The first iteration of HSAs in 2004 allowed for eligible individuals with family coverage to contribute $5,140.[21] In May 2018, the IRS announced HSA contribution limits for 2019. For an individual with family coverage, the contribution limit will be $7,000.[22] This represents a $100 increase from 2018. Accordingly, 2019 continues the trend of rising HSA contribution limits despite the new inflation measures implemented under the Tax Cuts and Jobs Act.

Notes

1. The Employee Retirement Income Security Act (“ERISA”) is codified at Chapter 18 of Title 29 of the United States Code. ERISA sets minimum standards for most voluntarily established pensions and health plans in private industry to protect the individuals in these plans. It requires, among other things, that plans provide participants with certain information on plan features and funding and that those who manage and control plan assets maintain fiduciary responsibilities. ERISA also provides participants with standing to sue for benefits and breaches of fiduciary duty.


4. Id. at Analysis, ¶2.


6. Id. at § 223(a).


11. Id.


16. 26 U.S. Code § 4973(a), (g).


20. Id.

The March/April 2019 issue of GPSolo magazine concerns “Military Law” matters for the non-military attorney. The numerous articles will guide you on subjects that you may not have thought about, but which you might encounter in fields as diverse as family law, employment law, and health law. These articles will provide you with sufficient background information to begin to recognize the unique needs of clients who are military servicemembers, veterans, and their families.

Author Joseph A. DeWoskin explains to us “How to Represent Military Personnel and Their Families in Divorce.” Author Lindsay Beaver explains the importance of “The Uniform Deployed Parents Custody and Visitation Act.” Many of us may have not heard of this legislation. While we may have heard of “Military Service Benefits” (Karen Robbins), do we understand these benefits and related issues dealing with military service, such as “Dividing Military Pensions in Divorce” (Mark E. Sullivan), “Servicemembers Civil Relief Act” (Phillip J. Tucker), “Uniformed Services Employment and Reemployment Rights Act” (Katie M. Reynolds, Aracely Lopez, and Evelyn Saxton), and “Changes to the Uniform Code of Military Justice” (Sara M. Root)? We hope this issue will provide a path for you to understand these vital and important subjects.

The issue also contains articles on such practice management and legal technology topics as “How to Use Online Reviews to Develop New Business,” “Troubleshooting Basics,” and “What Are Your Practice Management Priorities for 2019?”

Please enjoy this issue and keep it for your future use and reference. I am confident that you will want to save the articles in this issue for reference in your library; they will prove themselves of practical value to you many times over.
March 22, 2019

GPSOLO DIVISION NEWS

Division Announcements

Share this:

2019 – 2020 GPSolo Diversity Fellowship Program

The GPSolo Diversity Fellowship Program aims to promote diversity within the Division and the ABA while providing leadership opportunities within the Division for historically underrepresented groups, including racial and ethnic minorities, women, LGBT individuals, and persons with disabilities.

Any lawyer or judge who is a member of the Division with a diverse background and experiences as defined by ABA Goal III may apply. The Division's Diversity Board will select four applicants to serve as Fellows for the following bar year. The selection will be based on the individual's achievement and commitment to the organized bar and to GPSolo's mission and goals.

Fellows will be required to attend the Division's 2019 Solo & Small Firm Summit (October 17 – 19, 2019, at the Park Hyatt Aviara in Carlsbad, California) and Spring Meeting (April 30 – May 2, 2020, at the La Concha Renaissance Resort in San Juan, Puerto Rico) with reimbursement of up to $500 for airfare and a $100 per diem for two days for each meeting. Fellows may also show their commitment to the Division by attending the ABA Annual Meeting; however, reimbursement for this meeting is not available.

Deadline: Friday, April 12, 2019.

Apply today!

2019 – 2020 GPSolo Young Lawyers Fellowship Program

The GPSolo Young Lawyers Fellowship Program provides leadership opportunities for young lawyers. GPSolo is committed to increasing the participation of young lawyers in Division activities. This program will provide young lawyers the opportunity to become integrally involved in the Division.
A candidate must be an active member of the ABA Young Lawyers Division (YLD) or a previously active member who has aged out within the past three years. Successful candidates will have demonstrated involvement in bar association and non-bar related activities. Candidates do not need to be current members of GPSolo but must join upon selection.

GPSolo’s Young Lawyers Committee will select two applicants to serve as fellows for the following bar year. The selection will be based on the individual’s achievement and commitment to the organized bar and GPSolo’s mission and goals.

Fellows will be required to attend the Division’s 2019 Solo & Small Firm Summit (October 17 – 19, 2019, at the Park Hyatt Aviara in Carlsbad, California) and Spring Meeting (April 30 – May 2, 2020, at the La Concha Renaissance Resort in San Juan, Puerto Rico) with reimbursement of up to $500 for airfare and a $100 per diem for two days for each meeting. Fellows may also show their commitment to the Division by attending the ABA Annual Meeting; however, reimbursement for this meeting is not available.

The selected fellows will be appointed to the GPSolo Young Lawyers Committee and will be expected to complete a substantive project for the Division. Each fellow will also be paired with a mentor. Finally, fellows must remain an active member of the Division for two years after their Fellowship concludes.

Deadline: Friday, April 12, 2019.

Apply today!

GPSolo Discounts

Zeamo

Zeamo is the simplest way to find and access nearby gyms that meet your workout preferences without a membership or subscription. Simply choose your gym, download a pass, walk in, and work out. With locations across 50 major U.S. cities and international travel destinations, Zeamo makes it easy to exercise wherever you are in the world. Learn more here on how it works for GPSolo members here.

Solo Practice University®
Solo Practice University® offers GPSolo members an exclusive discount on tuition when they enroll here. Solo Practice University® is the only online educational and professional networking community designed to help lawyers and law students create and build their solo and small firm practices.

GPSolo Podcasts

GPSolo’s Brown Bag and Hot Off the Press podcasts are recorded as live teleconference calls and available as podcast recordings for GPSolo members at no additional cost! The Brown Bag Series features presentations on timely legal topics and is recorded on the second Wednesday of every month. The Hot Off the Press Series features a GPSolo book presented by the author and are recorded the third Wednesday of every other month.

Join us for our upcoming live podcasts or check out our [podcast library](https://www.americanbar.org/groups/gpsolo/publications/gpsolo_ereport/2019/march-2019/division-announcements/).

**Brown Bag Series**
Wednesday, April 10, 2019
12:00 P.M. – 1:00 P.M. Central

**Hot Off the Press Series**
Wednesday, May 15, 2019
12:00 P.M. – 1:00 P.M. Central

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Never break stride.
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American Bar Association
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Division Meetings

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2019 Section of Litigation & Solo, Small Firm and General Practice Division CLE Conference

May 1 – 4, 2019
Marriott Marquis
New York, New York

The Section of Litigation & Solo, Small Firm and General Practice Division Annual CLE Conference is THE premier event for litigators and solo and small firm practitioners. It brings together lawyers and judges from across the United States to share the very latest in trial advocacy, litigation strategy, and case management. Enjoy more than 60 high-quality CLE programs with top speakers, and eight networking events.

Register here. Certain attendees may qualify for a special rate of $399. From the drop-down menu, select the group that best describes you to see if you qualify.

Confirm Hotel Reservation
New York Marriott Marquis
1535 Broadway,
New York, New York, 10036

Individuals are responsible for making their own travel accommodations. A block of rooms has been reserved at the discounted rate of $334, plus 14.75% tax for single/double rooms. The deadline for room reservations at the discounted rate is Monday, April 8, 2019, at 5:00 P.M. (CST). All reservations are subject to availability.

For reservations call 212-398-1900 or 800-843-4849 and reference the 2019 Section of Litigation & Solo, Small Firm and General Practice CLE Conference. Or book online here. Cancellation Policy:
Individuals with guaranteed reservations must cancel their reservations 24 hours prior to the scheduled day of arrival to avoid a one-night cancellation charge.

Click here for the conference brochure.

Click here for the GPSolo meeting schedule.

**Closing Night Dinner**

Friday, May 3
6:00 P.M. to 8:00 P.M.
Cost: $125
Location: Bond 45, 221 W. 46th Street, New York, New York 10036

The conference caps off with an evening of drinks, fine dining, and unrivaled networking opportunities, hosted by GPSolo. After dinner, catch a play at one of the many nearby Broadway theaters. What a perfect way to end your visit!

**2019 Solo and Small Firm Summit**

October 16–19, 2019
Park Hyatt Aviara Resort
7100 Aviara Resort Drive
Carlsbad, California, 92011

*Registration opening soon*

The Solo and Small Firm Summit engages and informs attorneys at all levels of practice while also bringing together members of the ABA Solo, Small Firm and General Practice Division (GPSolo). The CLE will cover a spectrum of legal topics that address issues of law practice management. Attendance is estimated at 175 conference delegates from all practice areas coming from across the nation. This unique event provides an all-in-one environment for education, networking, exhibiting, and idea sharing.

**Things to do in Carlsbad, California**

Special Events
Leadership Dinner
Date: Wednesday, October 16
Time: 6:30 P.M. – 9:00 P.M.
Cost: $100
Location: Vigilucci Seafood and Steakhouse, 3878 Carlsbad Boulevard, Carlsbad, California 92008

Golf Tournament
Date: Saturday October 19
Time: 12:00 P.M. – 4:00 P.M.
Cost: $159 per person; includes greens fees, carts, range access, day locker access, bag storage.
Boxed lunch available for an additional fee, gratuity not included. The tournament will be played in a Scramble format.
Location: Aviara Golf Club, 7447 Batiquitos Drive, Carlsbad, California 92011

Golf Award and Happy Hour, 4:00 P.M. – 5:30 P.M.
Military Legal Assistance Issues

Sign up to attend in-person or via webinar.

Wednesday, March 27, 2019

In-Person: Jackson Walker LLP, 112 East Pecan Street, Suite 2400, San Antonio, TX 78205

Times and Topics:

8:45 a.m. – 12:30 p.m. Central
Military Legal Assistance Issues: Special Needs Topics, Sexual Assault Victims, and Pro Se Programs
3.5 CLE hours requested

The morning session will include a variety of military legal assistance issues: special needs topics that include educational and school related issues, special needs trusts, and guardianship; the military’s Special Victims’ Counsel program that represents sexual assault victims, including children who have suffered sexual abuse; and pro se programs that help with divorce, name changes, and probate.

1:45 P.M. – 4:30 P.M. Central
Military Legal Assistance Issues: Consumer Law, Financial Issues, and the SCRA
2.5 CLE hours requested
The afternoon session will focus on a variety of consumer law and financial issues that affect military personnel, veterans, and their families, along with recent legislative changes to the Servicemembers Civil Relief Act (SCRA).

Costs:

**In-person:** The in-person CLE in San Antonio is **FREE for all attendees.**

**Morning webinar session:** $70 for this 3.5-hour CLE session. **FREE for all military attorneys (Judge Advocates), military paralegals, and civilians employed by the military.**

**Afternoon webinar session:** $50 for this 2.5-hour CLE session. **FREE for all military attorneys (Judge Advocates), military paralegals, and civilians employed by the military.**

**Register now**

**National Conference on Access to Justice for Children and Families**

The Division is proud to be a co-sponsor of the ABA Center on Children and the Law’s upcoming conferences: **National Conference on Access to Justice for Children and Families** (April 9 – 10) and **National Conference on Parent Representation** (April 11 – 12) in Washington, D.C.

The agendas for **April 9 – 10** and **April 11 – 12** cover many topics at the core of the work of solo practitioners, including a focus on litigation skills:

- Cross-examining child witnesses
- Objections and offers of proof in child protection cases
- Introducing and challenging expert testimony
- Handling special issues in termination of parental rights cases
- Motivational client interviewing

We hope to see you at one or both excellent conferences.

**Register now** and **book your hotel.**
Online registration questions: contact Donna Prather Williams or at 312-988-6210.

To reach the ABA Center on Children and the Law directly, contact Joanne Correia or at 202-662-1721.
Division Book Releases

The Commercial Property Insurance Policy Deskbook

The Commercial Property Insurance Policy Deskbook: How to Acquire a Commercial Property Policy and Present and Collect a First-Party Property Insurance Claim

The Commercial Property Insurance Policy Deskbook is an indispensable resource on acquiring a commercial property policy and presenting and collecting first-party property insurance claims.

From the Trenches III: Pretrial Strategies for Success

From the Trenches III, Pretrial Strategies for Success

From the Trenches III, Pretrial Strategies for Success provides important insights from experienced trial lawyers from across the country. This valuable resource is a general reference tool with solid insight for both beginning lawyers and seasoned trial veterans.
The Law and Liability of Small Aircraft

*The Law and Liability of Small Aircraft* contains a compelling representation of judicial decisions—divided between product liability lawsuits and those that deal with the regulatory scheme that oversees aviation—that present the typical dilemmas of the courts in this area of law.
SoloSez™ is the internet discussion forum for solos and small firm lawyers. As the ABAs most active e-mail listserv, SoloSez™ features approximately 850 solo and small firm e-mail subscribers discussing everything from tech tips and legal opinions to what to wear to court.

Popular Threads, February 2019

- Credit Card "Administrative" Fee
- How Do You (Politely) Tell Folks They Aren't Your Client and to Stop Bugging You?
- Is Going Beyond the Scope of a Fee Agreement Malpractice?
- Oral Argument Tips?
- Simple Accounting Software Options

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