Tips to power your practice
With layoffs and declines in firm revenue expected to continue in the coming months, shoring up your practice may be the best idea to ensure survival in the bad economy. Reid Trautz, one of the authors of *The Busy Lawyer’s Guide to Success: Essential Tips to Power Your Practice*, offers some advice to struggling lawyers and those looking to take their business to the next level. Read more...

Eye on Ethics
Ringing or stinging endorsements?
You work in a small law firm. You have been contemplating a marketing program to increase your business and would like to ask some of your clients to provide you with endorsements that you would place on your firm Web site. Can you do so?

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Discuss this issue

Technology Translators
Making better presentations inside and outside of the courtroom
Technology has become a critical part of making presentations, whether during trial or speaking one-on-one with a client. Which software is most appropriate for your situation? This month's Tech Translators offers guidance on improving your electronic presentations.

Read more...

Free ABA teleconference series helps lawyers survive tough economy
For lawyers seeking professional guidance during the economic downturn, the ABA Recession Recovery Teleconference Series offers help. Consisting of four audio programs on practical tips and strategies for success in today's career climate, the series is free to ABA members. Read more...

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Tips on developing a successful practice
Lawyers pursuing a practice that captures their enthusiasm and utilizes their skills will likely find high job satisfaction, a key component of successful law practices. "Clients will see through lawyers trying to fit a square peg into a round hole,"
says Kendyl Hanks, member of the executive board of the Young Lawyers Division, sharing advice on practice success. Read more...

**Advice on holding onto your job in this down economy**
With the economy in turmoil, many lawyers are wondering how to best ensure they do not find themselves among the ranks of the unemployed. Career expert Anne Dewey-Balzhiser offers some wisdom on the subject. Read more...

**Advising the troubled client in troubling economic times**
When clients are in financial distress, lawyers can help them through the issues of insolvency and bankruptcy. But troubled clients need help sooner rather than later, according to a panel at the Section of Business Law spring meeting. Read more...

**Rainmaking starts with a sound business plan**
Attracting new clients during this economic downturn is a challenge. But developing a strategic business plan with both long- and short-term goals can help, according to a recent session during the Section of International Law spring meeting. Read more...

**What lawyers need to know about suicide during a recession**
Studies indicate that suicide among lawyers may be anywhere from twice to six times as prevalent as the general population. Learn how lawyers can become involved in suicide prevention and get practical strategies for dealing with the issue, whether it's a colleague or a client who is in crisis. Read more...

**A will to win: effective will drafting and execution**
In a will contest, challenges or questions about the will’s validity may serve to reduce the value of the settlement, said expert Mark A. Robertson of Fulbright & Jaworski LLP, who emphasizes the importance of carefully drafting wills. "Don't assume that a jury will believe you just because you are a lawyer," he warned. Read more...

**The write stuff: advice on better legal writing**
To become a good legal writer lawyers need to go through two stages of intellectual growth. The first is to learn the law, which is very complex; the second is to organize that complex information in such a way that readers can understand it as easily and clearly as possible, explained Timothy Terrell, author of *Thinking Like a Writer*. Read more...

**Members Hynes, Silkenat honored by New York City Bar Association for diversity efforts**
ABA members Hon. Charles J. Hynes and James R. Silkenat are the recipients of the New York City Bar Association’s 2009 Diversity Champion Award, which honors individuals who have initiated and sustained diversity-enhancing efforts within their organizations and the New York legal community. Read more...

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Tips to power your practice

With layoffs and declines in firm revenue expected to continue in the coming months, shoring up your practice may be the best idea to ensure survival in the bad economy. Reid Trautz, one of the authors of *The Busy Lawyer's Guide to Success: Essential Tips to Power Your Practice*, offers some advice to struggling lawyers and those looking to take their business to the next level.

Let's start with the title of the book you co-authored with Dan Pinnington. For purposes of your writing, how did you – or do you – define "success?"

Dan and I have been advising lawyers, each for more than 10 years, after practicing law ourselves. What we found from practice and as we talk with other lawyers, is that the most difficult tasks lawyers have in achieving success are on the business side of practicing law: How can they manage their client inflow? How do they deal with cash flow and expenses? How can they get more clients to come in? How can they better manage their staff, even if they just have one or two people? How can they leave the office earlier?

And so, in the book we really define success as improvements to the business side of law practice so that lawyers can have a more fulfilling practice that is more efficient, effective, enjoyable and profitable.

What are some of the first steps lawyers can take to become more successful in their practice?

Lawyers—especially those who are owners of their own firm or partnership, or serve as solo practitioners—wear multiple hats. They’re not just lawyers who bill hours every day, every week, every month. They also have to take time to operate and manage their practice.
Having that understanding is really key because so many lawyers come out of law school and join a firm as an associate, where their job is to bill, bill, bill. But as they leave that role of associate and build their own book of business or firm, they have to become managers, marketers and entrepreneurs, too. They have to build time into their day to focus on these other roles. One of my favorite quotes is “Your billable time determines your income, but your non-billable time determines your future.”

Recognizing the importance of a hands-on role in managing a practice, and scheduling time on the calendar to work on these business issues are the key first steps to building a successful practice.

Now more than ever it’s critical that lawyers get paid by their clients. Can you offer tips to help ensure that happens?

Our book has many tips in this area. One tip is that lawyers need to attract the right clients for them, with the right marketing message.

When prospective clients come in for an initial consultation, it's important to remember that, while they are evaluating you to be their lawyer, you are also evaluating them to be your client. This includes evaluating whether they will be able to afford your services, whether they are going to be appreciative clients and whether you can meet their client service expectations.

For example, let's assume someone comes in who expects a lot of individualized service in other parts of his life. Let's say he's used to shopping at Nordstrom's. But you may have a practice based on lower costs and higher volume, something more akin to a Wal-mart business model. That client is not right for you.

Another tip is to watch your accounts receivables, and not let those get out of control.

It's important to stay on top of knowing which clients may owe you money, to contact them to say to them, "I'm calling you about the fees you owe the firm. I stay on top of my business, just like you do yours. I don't want you to think 'Hey, if he is so apathetic about his own business, is my lawyer apathetic about my legal work?' So let's discuss your fees."

If you have that conversation with clients, more often than not, you will come to an understanding so that they start to pay again, whether it's paying in full or sticking to a
payment plan. And that's what will keep the cash flow coming in.

Click here for Trautz and Pinnington's “Fourteen Tips to Select Clients Who Want to Pay Your Fees” and here for their tips on creating a client report card.

When I flipped through your book, one of the sections that caught my eye was the one titled, "A Dozen Topics for Productive Monthly Staff Meetings." Can you address that a bit of advice you offered and why you thought this was a necessary topic in a book on achieving success?

Most firms could not operate without their staff. For this reason it is key to keep the staff engaged in their work and feeling like they are part of the team. Many firms—even small ones—do not have regular meetings where staff can talk about issues within the firm. For example, staff may need to change procedures or maybe they've got administrative questions that are relevant to everyone in the firm. Monthly meetings greatly improve communications and the way a firm works.

Our list of tips will help firms hold staff meetings where there will be open productive discussions on the issues that people really want to discuss and resolve. Many employees say, "You know, we always talk about the same things all the time." So, for purposes of our book, we took 12 topics that we think are important ones for law firms to talk about—one topic for each month. Other topics can be discussed in a meeting, but this one item should be the primary topic.

For example, we think all firms should have a meeting every year to remind staff about the confidentiality requirement of lawyers. Lawyers and staff can review their bar's confidentiality rule—usually it's Rule 1.6—and discuss with staff about not talking about clients outside of the office, or how former employees still need to keep that confidence if they leave the employ of the firm, or how to address such issues as a client overhearing a receptionist talk about a case of another client.

That's one example of the kind of issues we believe that firms should be addressing periodically with staff. Some others include the firm's annual review process, telephone etiquette, job cross-training and technology tips.

Click here for Trautz and Pinnington's “Staff Morale-Boosting Tips That Return Dividends.”

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You address marketing yourself, and mention how to do so at low or no cost. What are some ways that lawyers can do that, especially in the context of technology currently available?

I'll mention a couple favorites that are free. First, lawyers can add a signature block to their e-mail that promotes their firm, that promotes upcoming speaking engagements that they have, or briefly describes the practice areas of the firm. Many lawyers send out dozens of e-mails each day, and sometimes those e-mails get re-sent and re-forwarded to others. It's a quick way to do some marketing.

Another way that has recently come upon the scene is for lawyers to join a professional or social networking site, like LinkedIn or even Facebook—which are becoming mainstream for lawyers. These on-line services are free and easy to join to start linking to friends, colleagues and current or potential referral sources.

With these Web sites, lawyers now have a new method of finding new clients, and also a way to find people who can help their clients. Lawyers now have a new referral source to send out business to other lawyers in their town.

So, e-mail signature blocks and networking sites are quick and free ways to build your marketing.

**Any advice on finding the time to accomplish these tasks?**

Yes. We know lawyers are very busy and often have good intentions about making improvements to their practice. But these intentions often fall by the wayside because of client matters and other things can overtake them.

Lawyers need to schedule time on their calendar for firm-related business tasks, just like a client appointment. It doesn't have to be much time each week, just as long as it happens and is productive.

That's why Dan and I wrote our book in a format of lists--so readers have short nuggets of really helpful information. You don't have to read a chapter or two to get something out of the book. You can instantly implement our tips almost as fast as you can read them. The idea is that easy and tiny steps can lead to big changes. Take baby steps, a little bit at a time, but over the course of months or even a year, lawyers can make great strides towards greater success in the practice of law.

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ABA teleconference series helps lawyers survive down economy

For lawyers seeking professional guidance during the economic downturn, the ABA Recession Recovery Teleconference Series offers help. Continuing through June 30, the series consists of four audio programs on practical tips and strategies for success in today’s career climate.

The ABA Recession Recovery Teleconference Series is the ABA’s latest resource to assist lawyers in combating the woes of the tough economy, which have included slow growth for law firm revenue in the United States and nearly 11,000 lawyer layoffs by major U.S. law firms in the last 16 months. Other ABA economic recovery offerings include reduced fees on ABA products and a Web portal of online resources to help lawyers weather the recession.

To maximize the reach of the teleconference series, the ABA joined forces with more than 20 state and local bar associations across the country. These local organizations are hosting the teleconferences in their communities. Many associations are also using the series to develop a broader economic recovery program for lawyers in their local area.

Available via telephone or Internet broadcast, the audio teleconference programs are offered for free to ABA members and attendees of bar association-organized group listening events. Other participants pay a reduced fee.

The series began earlier this month with a teleconference on self-marketing. The remaining programs in the series include:

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Developing a successful practice
Holding onto your job
Advising troubled clients
Business plans for lawyers
Lawyers and suicide
Effective will drafting
Improving legal writing
NYCBA honorees
Sound off
ABA members share their thoughts
“Solutions: Overcoming the Obstacles of Going and Being Solo in a Down Economy” will feature seasoned solo practitioners who will advise listeners on the steps involved in setting-up shop as a first-time solo lawyer. (June 2)

“Recession-Proof Yourself: Take Control in a Down Economy” will help lawyers build a solid foundation to reach their career development goals and financial stability. Topics include goal development, work-life balance, networking best practices and safeguarding finances. (June 16)

“Staying Positive in a Down Economy: Beyond the ‘Group Hug’” will offer techniques to help displaced lawyers maintain motivation and morale as they seek new career opportunities. (June 30)

CLE credit is not available for these sessions.

ABA members may download each teleconference for free after its first air-date; non-members may download these sessions at a reduced cost.
Tips on developing a successful practice

Long-term planning and an honest look at one's strengths and weaknesses as well as goals are critical steps in developing a successful law practice, according to author Kendyl Taylor Hanks in "Developing Your Practice," a recent article in The Young Lawyer, a publication of the Young Lawyers Division.

Lawyers with successful practices pursue areas of the law that fit their personalities, strengths and interests. "Are you a strong writer, a whiz with numbers, or a successful negotiator?" asks Hanks. "As a general rule if you love what you do, you will be good at it." Lawyers pursuing a practice that captures their enthusiasm and utilizes their skills will likely find high job satisfaction, a key component of successful law practices. Clients will see through lawyers trying to fit a square peg into a round hole, says Hanks.

Having mentors who will provide candid advice and constructive criticism can also benefit growing practices. Mentors don't have to practice in the same firm as their mentees, nor do they even need to be lawyers at all. Rather, lawyers should consider mentors who can help them achieve their goals.

Building a strong reputation is also important, and that doesn't necessarily mean winning a specific case or two. Lawyers should consider serving as leaders in bar organizations, writing articles, blogging and speaking at conferences on topics of interest. Doing one or more of these activities will help lawyers develop expertise in a specific practice area; business is likely to follow.

Quality relationships with both clients and colleagues are also beneficial to practice
development. "Everyone has conflicts and refers out clients. Do your best to steer referrals to your contacts, and they will do the same for you."

A final point that Hanks addresses is that of economics. Lawyers should understand their market—clients may include government agencies, large businesses or individuals—and where their practice fits in that market.

Kendyl Taylor Hanks is a lawyer with Haynes and Boone, LLP in New York City. To read "Developing Your Practice" in its entirety, click here.
Ringing or stinging endorsements?

By Peter Geraghty, Director, ETHICSearch

You work in a small law firm. You have been contemplating a marketing program to increase your business and would like to ask some of your clients to provide you with endorsements that you would place on your firm Web site. Can you do so?

Discussion

I. ABA Model Rule 7.1

Changes to ABA Model Rule 7.1 in 2002 inspired by the ABA Ethics 2000 Commission's (E2K) recommendations have relaxed restrictions that limited a lawyer's ability to use client testimonials under the Model Rules. Prior to the E2K amendments to the Rules, subparagraphs (b) and (c) of the Rule stated that a communication about the lawyer or the lawyer's services would be false or misleading if it was likely to create an unjustified expectation about the results a lawyer could achieve or that compares the lawyer's services with other lawyer's services unless the comparison could be factually substantiated. The Comment to the Rule listed a client testimonial as an example of a communication that could be considered to be false or misleading.

Paragraph 1 of the comment stated:

This Rule governs all communications about a lawyer's services, including advertising permitted by Rule 7.2. Whatever means are used to make known a lawyer's services, statements about them should be truthful. The prohibition in paragraph (b) of statements that may create "unjustified expectations" would ordinarily preclude advertisements about results obtained on behalf of a client, such as the amount of a damage award or the lawyer's record in obtaining favorable verdicts, and advertisements containing client endorsements. Such information may create the unjustified
expectation that similar results can be obtained for others without reference to the specific factual and legal circumstances.

As part of its recommendations to amend the Model Rules, E2K removed subparagraphs (b) and (c) because it felt that the restrictions regarding unjustified expectations were overly broad. (The E2K official Reporters Explanation of Changes memos for each of the Model Rules is available on the E2K Web site. Much of the content of (b) and (c) (less the specific reference to client testimonials) was moved to paragraphs 2 and 3 of the Comment to the Rule, so that the Rule now states as follows:

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

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Paragraphs 2 and 3 of the Comment to the current Rule 7.1 state:

[2] Truthful statements that are misleading are also prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation.

[3] An advertisement that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated comparison of the lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise
mislead a prospective client.

II. State bar ethics opinions

The Virginia, Utah and Pennsylvania state bar associations have recently issued opinions on a lawyer's use of client testimonials. Virginia Opinion 1750 (2008) addressed the question of whether a lawyer could use a client testimonial that stated that the lawyer is "the best" and that he will get you "quick results". Since the testimonial made a comparison ("the best") that could not be substantiated, and also in effect made a guarantee of results ("quick"), the Committee stated that the lawyers' use of such a testimonial would be in violation of the Rule. The Committee did however approve of the use of "soft" endorsements, such as "the lawyer always returned phone calls," and "always appeared concerned."

See, Philadelphia Bar Opinion 91-17 (1992) that defines a soft endorsement as follows:

...soft endorsements are distinguishable in that they describe characteristics of the lawyer's concern for the clients, and do not relate to the actual success or failure by the attorney in his representation of these clients.

See Also Utah Opinion 08-03 (2009), which stated that testimonials could be deemed to be false or misleading unless they "were paired with cautionary language about how results may differ depending on the case."

Pennsylvania State Bar Opinion 2008-1 (2008) addressed a situation where a lawyer used photographs of himself with several famous athletes. The Pennsylvania Committee found such an advertising method to be inappropriate stating:

Because no caption or explanation of the photographs is intended, one might argue that the intended message is benign, but that is plainly not so. The usage of the photographs in the manner described would violate this provision in that the clear intent of their use is to imply either that the prominent persons depicted have endorsed the usage of the lawyers' services, and/or that the inquirer's association with prominent figures enables him to achieve better results than lawyers not associated with such persons.
Note that Tennessee follows a version of Rule 7.1 that is identical to the pre-E2K ABA Model Rule 7.1. The Tennessee Committee stated:

Lawyers' advertisements containing testimonials or endorsements by a current or former client must comply with RPC 7.1, particularly with regard to avoiding creating an unjustified expectation about the results the lawyer may obtain and/or comparing the lawyer's services and fees.

**See Also In re Keller** 792 N.E. 2d 865 (2003) in which the Indiana Supreme Court found that a law firm's advertising campaign that used Robert Vaughn to make laudatory statements about the firm violated Indiana's version of Rule 7.1:

In the advertisements, Vaughn tells viewers, “[t]he insurance companies know the name Keller & Keller,” “[t]ell the insurance companies you mean business. Tell them you've called Keller & Keller ...,” and, finally, “[t]hey go after your rights piece by piece by piece until you get every dollar you deserve.” The purpose of these statements is to reinforce the notion established in the “Strategy Session” advertisement that the name Keller & Keller alone achieves results. In advising that the respondents “go after your rights piece by piece” until every possible dollar is recovered, Vaughn clearly is supporting the respondents and their ability to secure a positive result for the client, and even implies by these statements that, based on past successes, this is the respondents' usual outcome. Vaughn clearly implies that Keller & Keller can provide the services that the viewers need. He is not just encouraging the public to seek legal assistance, he is endorsing their contact with the firm of Keller & Keller because of their reputation. There is a distinction between simply suggesting that viewers call Keller & Keller, and suggesting that viewers who call Keller & Keller will obtain a favorable outcome. Because of Vaughn's endorsement of the respondent's services, we find the respondents violated Prof.Cond.R. 7.1(d)(3).

### III. I'm not a lawyer but I play one on TV

Some state bar opinions have addressed situations where lawyers use actors to portray either themselves or their clients in dramatizations that include testimonials to promote their practices. **See**, e.g. Tennessee Supreme Court Bd. of Professional Responsibility,
Lawyers' advertisements shall not contain any testimonial or endorsement of Tennessee lawyers by simulated current or former clients unless notice is provided in a prominent fashion that such clients are simulations. Such advertisements by simulated clients are false or misleading in the absence of such notice. Lawyers' advertising containing any testimonials or endorsements by individuals, including current or former clients, actors, public figures, or celebrities who are compensated in any manner for their participation in the advertisement are prohibited. RPC 7.2(c).

See Also Virginia State Bar opinion 1750 (2008):

...Rule 7.2(a) articulates several examples of communications which are prohibited, including an advertisement which contains a portrayal of a client by a non-client without a disclosure that the depiction is a dramatization. Rule 7.2(a)(2). The Committee considered the issue of whether a television advertisement is misleading when an attorney or law firm uses an actor to portray an attorney associated with the law firm without disclosing that fact in the advertisement.

The Committee viewed numerous advertisements in which, either by direct statement or by implication, it appears that a person is an attorney associated with the advertised law firm, even though that person is not, in fact, an employee or member of the law firm. In particular, when actors are speaking they frequently include first person references to themselves as lawyers or as members of the law firm being advertised. The Committee is of the opinion that failing to disclose that the actor is not truly an employee or member of the law firm, when the language used implies otherwise, is misleading or deceptive.

Therefore, the Committee concludes that advertisements which use actors who portray attorneys or employees of a law firm are misleading and deceptive, absent a clear disclosure that the actor is not a member or employee of the firm or that the depiction is a dramatization. See also LAO-0101. – Virginia State Bar Opinion
Some state bar rules of professional conduct also specifically address lawyers' use of actors to provide testimonials about the lawyer or the lawyers' firms. See the discussion below.

IV. State rules of professional conduct

Note that there can be significant variations in the various states’ versions of Rule 7.1. Some state bar rules ban client testimonials outright. See, e.g. Florida State Bar Rule 4-7(2)(b), Nevada Rule 195(6), South Carolina Rule 7.1(d) and Wyoming Rule 7.1. Others permit them provided that they are accompanied by appropriate disclaimers. See, e.g. the Wisconsin version of Rule 7.1 (paid testimonials and endorsements are forbidden without an acknowledgement of that fact), California Standard (2) to Rule 1-400, which requires an express disclaimer such as “this testimonial or endorsement does not constitute a guarantee, warranty, or prediction regarding the outcome of your legal matter.” In Missouri Rule 4-7.1(g) if a lawyer uses a paid endorsement, or if the endorsement is made by someone who is not an actual client, the lawyer must disclose those facts. See Also Oregon Rules 7.1(a)(6) and (7) and Virginia Rule 7.2.

Some states have adopted the E2K recommended changes to the Rule, while others have not. For further information about the various state bar versions of Rule 7.1, see the document entitled, “Differences between State Advertising and Solicitation Rules and the ABA Model Rules of Professional Conduct” (last updated April 3, 2009), which appears on the ABA Center for Professional Responsibility's Web site.

V. Additional Resources


For further information on a wide variety of issues that relate to lawyer advertising, including cites to recent articles, ethics opinions, pending cases, court rulings and proposed rule changes, see the ABA Center for Professional Responsibility's Information on Professionalism and Ethics in Lawyer Advertising Web site that is frequently updated.
The ABA’s Legal Technology Resource Center, an ABA member benefit, provides a hotline for personalized technology assistance, as well as many other resources. Visit us online at [www.lawtechnology.org](http://www.lawtechnology.org) or call the LTRC hotline at 312-988-5465.

### Making better presentations inside and outside of the courtroom

Pop culture is dominated by images of lawyers in the courtroom, from Perry Mason and Law & Order on television to movies To Kill a Mockingbird and A Few Good Men. In reality, many lawyers never set foot in a courtroom in their professional lives. Nonetheless, lawyers of all types regularly make presentations before groups of people; and these days, they often turn to presentation software to enhance their efforts.

Most presentation software packages for lawyers are dedicated to trial presentations. They include Sanction, Verdical and Trial Director. These programs offer robust features, including the ability to store vast amounts of evidence in an easy-to-access database, on-the-fly annotation capabilities, the ability to build and display elaborate timelines, video playback of depositions, presented side-by-side with the deposition transcript, and much more.

While especially beneficial for litigators presenting complex information, the software may not be suited for all lawyers. Some litigators involved in simpler cases on a lower budget may find the software to be overkill. Others may find the software ill-suited for non-courtroom presentations such as explaining a complicated estate plan to a client, guiding parties through mediation or teaching a continuing legal education seminar. In those cases, the vast majority of lawyers turn to Microsoft PowerPoint. According to the [2009 ABA Legal Technology Survey Report](http://www.lawtechnology.org), 97 percent of respondents reported using PowerPoint for general presentations and 75 percent reported using the software for trial presentations.

Regardless of which software is used, there is a variety of tips that can help lawyers make their presentations more effective:

- Consider investing in a good presentation remote with an integrated laser pointer.
The pointer will free you to move about more naturally before your audience rather than be tethered to a computer, and it can be used to highlight important elements on the screen.

- Know the limitations of your software. PowerPoint, for example, creates linear presentations. If your presentation involves going back and forth from one point to another—as is often the case at trial—you may find PowerPoint ill-suited to your needs. Indeed, constantly scrolling back through a series of slides to find the material you seek may be distracting and confusing to your audience.

PowerPoint will let you jump to a specific slide during a live presentation by typing in the slide number and hitting “enter” or by using the alternate click to call up a list of slides with titles. However, those techniques are only practical for a slide deck with a limited number of slides.

- Practice makes perfect. Practice is always important when giving a presentation, but when technology is involved, it becomes essential. Know the technology you're going to use backwards and forwards and be prepared to deal with glitches should they arise. Technical difficulties may undermine your credibility with an audience during trial or an important client meeting. In a heartbeat, your technology can go from a benefit to a liability.

- In adversarial situations, such as trial, don't ambush your opponent with your technology. Let all parties—and especially the court—know what technology you plan to use in advance to avoid last minute battles that could leave you without it.

- Turn off the technology when you want the audience to focus on you. Any time your screen is on, whether it's displaying a PowerPoint slide or an exhibit, some portion of your audience focuses on the screen and not on what you're saying. Use the projector's remote to blank the screen or insert blank slides into your PowerPoint presentation at appropriate times to achieve a similar effect.

Alternatively, pressing the letters “B” or “W” during a PowerPoint presentation will create a plain black or white background. By pressing B or W again you can toggle back to the slide presentation. Some remote presentation devices also make this function available.

- Invest time into making your presentations visually appealing. Your audience probably won't take you seriously if you show up to court in ripped shorts and a t-shirt, and they're unlikely to take your presentation seriously if looks like you tossed it together the night before. Avoid tacky clip-art, make sure you have a strong contrast between the text and the background, and use large elements that will be legible from a distance.

- Ultimately, keep in mind that good technology won't save a bad presentation, but bad technology may hurt an otherwise good presentation. Remember that the content of your presentation should be the focus, and apply your best judgment in deciding when to use technology and when to let the content stand for itself.
Career help from Anne Dewey-Balzhiser

What advice can you give those who just want to hold onto the jobs they have in this down economy?

With our entire economy in turmoil, many of you may be wondering how to best ensure that you do not find yourselves among the ranks of the unemployed.

First of all, stay abreast of the latest news. Use reliable sources to keep informed about what's happening in the economic sector in which you work as well as to your specific employer. While it may also be helpful to stay plugged into your organization's grapevine, don't rely solely on internal rumors for your assessment.

Second, actively demonstrate your utility and loyalty to your place of employment. Volunteer for high profile assignments. Complete your projects on time. Enthusiastically embrace changes that promote efficient operations. Suggest such changes.

Third, avoid negative behavior. Now is not the time to complain that the raises aren't big enough, to hang around talking about your weekend plans, or to resist going to required training. Your managers are already stressed out by the volatility in the market and have less patience for dealing with kvetching employees.
The goal is to be one of the employees who is considered essential to your organization's continued existence—which is an assessment top management often makes regardless of experience level or seniority. With the right combination of foresight, positivity, stellar performance and, yes, a little luck, you can endure through this downturn.

Anne Dewey-Balzhiser is president of Women Lead LLC, where she provides leadership training, career counseling and executive coaching.

This article is reprinted from the Government and Public Sector Lawyers Division spring 2009 newsletter.
Advising the troubled client in troubling economic times

When business clients are facing economic problems, they usually are aware they have a problem, but generally there is one factor—either they are cut by a key vendor for slow pay, they lose a key customer or they cannot make payroll—that sends them over the edge. “When one of those instances happens, the client has entered the zone of insolvency,” said George Blanco of BDO Seidman in Los Angeles, one of the panelists for “Ethically Advising the Troubled Business Client in Troubling Economic Times,” a program of the Section of Business Law spring meeting.

“At that time, the best advice the lawyer can offer is to suggest that the client bring in bankruptcy counsel and to assemble an internal team along with an external team to help manage both the ongoing business and the bankruptcy,” he said.

The next step, he noted, is to appoint a key professional to identify all the issues and actions related to the bankruptcy.

Company creditors are going to ask company management things like whether the CFO is part of the problem or whether she will be part of the solution, said panelist Christopher Bayley of Snell & Wilmer in Phoenix. In these cases, the company’s management team will need their own lawyers, he said.

Panelist Patricia Redmond of Sterns Weaver Miller Weissler Caldwell & Berkowitz in Miami said that sometimes executives do not see why they have to pay for two lawyers, one for the company and one for themselves.
Bayley noted that especially in mid-sized companies, owners may have treated the organization as theirs. “As soon as you remind them about such things as leases and letters of credit, they begin to see the need for personal representation.

“When there are shareholders, it is especially important for the principals to step aside in favor of the chief restructuring officer so that on a day-to-day basis the operations are not taking instructions from someone wearing two hats.”

“That's true in Miami,” Redmond noted. “The company doesn't want the guy who operated the company before [it became insolvent] to represent it in front of a bankruptcy judge.”

Panel Chair David Weinstein of Richardson & Patel in Los Angeles said that disclosures under bankruptcy are complicated and that reality is rarely segmented as neatly as sections of bankruptcy law.

According to Redmond, loaning money for restructuring to a debtor who is already insolvent is problematic. In some cases, to avoid a fraudulent transfer, the debt may be recharacterized as equity.

When the loan cannot be recharacterized, management needs to be careful it does not pay off the previous lender while the company is insolvent. That action could be perceived as preferential treatment and create its own issues in bankruptcy.

The issue of fraudulent transfer results in a series of questions: Is the debtor insolvent? Was the debtor left with an unreasonably small amount of capital for operations? Did debtor willingly take on more debt that he can hope to pay?

Weinstein said, “These questions become an I-know-it-when-I-see-it test and the person who has to see is it a judge.”

Blanco noted that lenders may be creating a situation with loans that will cause the company to become insolvent.

With values of real property dropping, often there is not enough equity to pay the first lien. “If it's called, the result can be insolvency,” said Redmond.

“There are a lot of companies in distress,” said panelist David C. Christian II of Seyfarth Shaw in Chicago.
Christian said what is unique about the current situation is that everyone is standing around. “There’s no financing, there’s no market, there’s no adjustment to the loan, there’s no comfort and no forbearance. Nothing is happening.”

Right now, he suggested, “It’s better to act early. Whether you’re a debtor or creditor, there are things that can’t be done.”

“The basic question,” said Blanco, “is whether the company has a right to exist.”

If not, that decision should be made sooner rather than later, the panelists agreed.

Jessica Gable, Georgia State Law School, formerly of Covington Burling in San Francisco, also served on the panel.

For materials distributed in conjunction with the program, click here.
Rainmaking starts with a sound business plan

Attracting new clients during this economic downturn is a challenge. But developing a strategic business plan with both long- and short-term goals can help, according to a recent CLE session, “How to Draft Business Plans for Lawyers,” during the Section of International Law spring meeting last month.

Creating a business plan provides opportunity for lawyers to clarify their goals and develop strategies to attain them. Lawyers should first ask themselves: What and who are you today? And who and what do you want to represent in the future? These first questions will help lawyers identify the type of services they plan to offer and the goals they’d like to reach.

Next, lawyers should research the market for their services by identifying the types of clients they’d like to reach and by looking into the demand for their services.

Marketing strategies are an important part of a business plan. Once lawyers have identified their target audiences, they can begin to think about how to reach them. Panelists suggested lawyers informally track how and where they have met clients in the past, which can provide ideas on the best places to network and meet potential clients.

Marketing also involves building credibility. Lawyers can publish articles on the topics of their expertise, create blogs, present material at association meetings and join committees of professional organizations to build authority in a certain area of the law.
These activities will also expand lawyers' network of contacts, broadening the reach of marketing efforts.

Ensuring the resources to execute a business plan is a critical part of the process. Panelists suggested lawyers create a financial forecast that complements their goals. This forecast will help determine which goals are reachable and will likely result in a good return on investment. First, lawyers should evaluate their current income and determine which clients bring in the most money and those who least affect their bottom line. Next, they should consider the people they'd like to reach and the demand for their services. An analysis should include consideration of the resources needed to retain old clients and win new ones.

Depending on their long-term goals, lawyers may need to change or update their professional skill set. Lawyers should factor in the new resources, training or investments they will need to meet the future goals in their financial forecast.

If lawyers are making a big change to their brand or the services they offer, their business plan should also include an evaluation of what could go wrong and strategies to address those potential problems.

Panelists urged lawyers to consult their business plan on a regular basis as an internal guide to run their firm, reach goals and track progress.

A good business plan helps lawyers cope with the economic climate of today and ensures their future long-term success.

Panelists for this session included Janet Moore, International Lawyers Coach Inc. of Houston; Ellen Yost, Fragomen Del Rey, Bernsen & Loewy LLP; and Brad D. Cherniak, Sapient Capital Partners. The program was moderated by program chair Cyndee Todgham Cherniak of Lang Michener LLP.
What lawyers need to know about suicide during a recession

Studies indicate that suicide among lawyers may be anywhere from twice to six times as prevalent as it is in the general population. During a free ABA program, "What Lawyers Need to Know About Suicide During a Recession: Prevention, Identity and Law Firm Responsibility," several experts offered advice on how lawyers can become involved in suicide prevention and practical strategies for dealing with the issue, whether it's a colleague or a client who is in crisis.

Unresolved chronic stress is the number one predictor of depression, and untreated depression increases the risk of suicide, said program moderator Joan Bibelhausen, executive director of Lawyers Concerned for Lawyers.

"Thwarted belongingness" and the loss of identity—often resulting from being disbarred or suspended, or losing one's job—also lead to an elevated risk. Other factors contributing to suicide risk include alcohol abuse and addiction.

Competent care is critical for these treatable problems of abuse and depression, advised panelist Bill Kane, director of the New Jersey Lawyers Assistance Program.

"How can lawyers make a difference?" asked Bibelhausen. First, lawyers can share 1-800-273-TALK (8255), the National Suicide Prevention Lifeline, with clients, colleagues and others, suggested panelist Skip Simpson of Law Offices of Skip Simpson. Further, lawyers hearing about someone in immediate distress can find out additional details, such as whether the individual has access to a gun, has taken pills out of the bottle or similar actions. Those behaviors can be shared with the appropriate
professionals, if necessary.

If lawyers make themselves available to a client or colleague who is distressed, it is important that they follow through. When talking with someone in crisis, lawyers should listen in an unhurried and calm manner, stressed Simpson.

Confidentiality rules may concern lawyers seeking help for clients. Panelist Judge Harriet Turney spoke about the relevant ethical rules. While admitting that she had not looked into every case on the issue, Judge Turney stated that she had never heard of a lawyer being disciplined for a limited amount of disclosure. The general consensus has been that a lawyer may disclose, but she is not obligated to do so. Mental health experts, law enforcement, family and clergy are among those persons to whom the limited disclosure may apply.

Lawyers are so used to offering advice, many find it hard to ask for help themselves. Understanding the signs of suicide may be key to knowing when to get help for those struggling lawyers.

Depressed individuals thinking about suicide often engage in "tidying up" behavior before acting. As panelist Paul Quinnett, clinical psychologist and the president and CEO of the QPR Institute, stated, persons contemplating suicide often work to get their affairs in order so that they are not a burden for those they leave behind. Writing a will or planning an allocation of wealth are among those tidying up actions. Lawyers themselves may tidy up by referring their cases to other attorneys, or by cleaning out their offices.

Other warning signs include: threatening or talking about harming oneself, talking about death, feelings of hopelessness and helplessness, feeling trapped with no way out, withdrawing from one's family or society, increasing alcohol or drug usage, feeling anxious or agitated, a change in sleep patterns, drastic mood changes and loss of purpose in life.

Readers wishing to listen to the program and access related materials may do so by logging onto http://www.abanet.org/cle/programs/t09wn1.html. The free program was cosponsored by the ABA Commission on Lawyer Assistance Programs, Center for Professional Responsibility, Law Practice Management Section, Section of Business Law, Young Lawyers Division and the Center for Continuing Legal Education.

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A will to win: effective will drafting and execution

In a will contest, challenges or questions about the will’s validity may serve to reduce the value of the settlement, said panelist Mark A. Robertson of Fulbright & Jaworski LLP, who emphasized the importance of carefully drafting wills in a recent ABA continuing legal education program, “Drafting to Win: How to Win the Will Contest at the Drafting Stage.” “Don’t assume that a jury will believe you just because you are a lawyer,” he warned.

In addition to attention to drafting, Robertson shared other advice:

- **Meet with the testator or testatrix alone.** This will reduce the likelihood of one of the most common challenges to a will: undue influence.
- **Use independent witnesses for the will execution.** Avoid not only beneficiaries of the will, but also employees of your client or of the beneficiary.
- **Create a memorandum to the file about meetings and will execution.** This will provide a lawyer a base for recalling details in the event she is called to testify at a later point; having something in writing also raises the confidence of a judge or jury in that recollection or statement.

Robertson cautioned that challengers to a will are likely to review lawyers’ time records, handwritten notes and e-mails. Attorney-client privilege will not prevent the will-challenger from obtaining those records during discovery.

Robertson advised that lawyers should define their activities accurately and carefully on their time entries so they cannot be misconstrued during a challenge. Elaborating his
Robertson recalled writing a short time entry that read, “teleconference with beneficiary; draft will.” During the will contest, the opposing lawyer argued that the beneficiary was giving instructions for the drafting of the will, which was not the case. A better time entry would have included specific information: “teleconference with beneficiary about bills he has to pay for his mother as attorney-in-fact; drafted will pursuant to instructions from testatrix.”

Likewise, e-mail can be misconstrued during a challenge. It’s better to communicate in person or by phone, Robertson said.

Despite preparation, sometimes a will contest is inevitable. “Anytime a beneficiary is treated differently from the others, you should assume a will contest,” Roberston said. Examples include one beneficiary receiving an inheritance straight out while another receives the inheritance via a trust; or, when beneficiaries receive varying amounts of money.

“Drafting to Win: How to Win the Will Contest at the Drafting Stage” was moderated by Laura M. Twomey, partner, Fulbright & Jaworski LLP.

The program was sponsored by the Section of Real Property, Trust and Estate Law; General Practice, Solo and Small Firm Division; and the Center for Continuing Legal Education.

To access course materials, click here.
The write stuff: advice on better legal writing

In "Legal Writing for the Young Lawyer: Moving from Logic to Coherence," Professor Timothy P. Terrell, Emory University School of Law in Atlanta, outlined principles for "thinking like a writer."

To become a good legal writer, Terrell explained—in materials distributed in conjunction with the session—that lawyers need to go through two stages of intellectual growth. The first is to learn the law, which is very complex; the second is to organize that complex information in such a way that "readers can understand it as easily and clearly as possible."

In order to do so, the writing lawyer must put focus before the details. Readers are better able to grasp information if they "understand its significance as soon as they see it." Lay out the core concept before adding smaller, supporting elements.

In addition, Terrell recommends that the legal writer provide familiar material before new information. "Provide the reader with what they know before what they don't." The old adage of knowing one's audience comes into play here: the writer needs to know what her readers know in order to effectively communicate with them.

Putting the old before the new also applies to structuring a paragraph. A second sentence of a paragraph should begin where the first sentence has left off. For example, "To determine whether a citizen's rights have been violated in a search, the Supreme Court applies a reasonableness test. This test balances the citizen's privacy
interests against the government's interests that are furthered by the search."
Connecting the two sentences by using the same subject in both enhances the flow of the writing.

Terrell points out that relatively short pieces of information are better understood and absorbed by readers than long, complex material. He recommends that the writer vary the length of sentences to enhance the readability of her writing and avoid monotony.

Finally, Terrell advocates matching form with substance: "Match the organization of your information to the logic of your analysis."

The program was part of the Section of Litigation spring meeting held in Atlanta April 29 – May 1.

To access program materials from this session, click here.

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Members Hynes, Silkenat honored by New York City Bar Association for diversity efforts

ABA members Hon. Charles J. Hynes and James R. Silkenat are the recipients of the New York City Bar Association's 2009 Diversity Champion Award, which honors individuals who have initiated and sustained diversity-enhancing efforts within their organizations and the New York legal community.

Hynes is recognized for his commitment to diversity as the district attorney of Kings County, New York. Now in his fifth term, Hynes has always insisted that his office reflect the diversity of the community in which he serves. His staff is more than 50 percent diverse, comprised of men and women of all races, ages, religions, sexual orientations and nationalities. Additionally, according to the NYCBA, “As both a community leader and prosecutor, Hynes has used his expansive view of diversity and inclusion to establish innovative programs that empower and strengthen Brooklyn’s diverse community while at the same time serve as nationwide models for others to follow.”

Hynes is chair-elect of the Criminal Justice Section.

Silkenat, partner at Arent Fox LLP, is recognized for his role in the creation, funding and operation of the ABA Legal Opportunity Scholarship Fund, which has provided three-year law scholarships to 180 minority students, to date. Currently the chair of the
In addition to chairing the fundraising committee, Silkenat is finance officer for the Section of Individual Rights and Responsibilities, special advisor to the Section of International Law, chair of the Commission on the World Justice Project, member of the Commission on Women in the Profession and member of the House of Delegates.

In addition to Hynes and Silkenat, LaShann DeArcy, associate of Gibson Dunn and Crutcher LLP, will also receive the 2009 Diversity Champion Award.

NYCBA will present the awards at its fifth annual diversity conference on May 27.
ABA members share their thoughts:

What advice do you have for young lawyers just entering the profession during these turbulent economic times?

Express your thoughts on the YourABA discussion board.

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Membership

Finding the hidden gems of ABA entities
Hidden gems of ABA entities

Did you know that the ABA’s sections, divisions and forums provide tomorrow’s solutions for today’s problems? Section membership offers exclusive tools unique to your practice. It is hard to know all that the ABA does and provides, so here are just some of the ABA’s hidden gems that can streamline your practice, enhance your efficiency and provide the resources you need to excel in your career.

**Section of Environment, Energy, and Resources’ Law Office Climate Challenge** - The section, in cooperation with the EPA, encourages law offices to take specific steps to conserve energy and resources, as well as reduce emissions of greenhouse gases and other pollutants. Law offices may meet the climate challenge by undertaking best practices for office paper management or by participating in one or more of three EPA partnership programs.

**Section of Family Law’s Case Update** - Delivered monthly via e-mail, this newsletter keeps members current on recent family law case developments and legislation throughout the country.

**Section of Health Law’s teleconferences** - The section’s employee benefits and executive compensation interest group develops periodic teleconferences on hot topics in the area of health law, which are uploaded to the Web after the live event.

**Section of Intellectual Property Law’s legislative updates** - The section’s legislative consultant in Washington, D.C., Hayden Gregory, sends members updates on intellectual property legislation as soon as news breaks.

**Section of Litigation’s podcasts** - Once a month, the section’s podcast feed serves up practical tips, tactics and interviews with today’s leading trial lawyers. For example, check out "Aristotle’s Methods for Outstanding Oral Arguments" or "A List of the Things That I Wish I Was Told".
Section of Science and Technology’s Lunch and Learn iTunes presentation - Learn how to navigate the challenges and opportunities in a troubled and unsettled economic environment. Download this iTunes presentation recorded at Suffolk Law School.

Tort Trial and Insurance Practice Section’s Legal TIPS & The Legal Talk Network - This special legal podcast series presents creative approaches to old problems in the practice of tort and insurance law.

Section of Family Law’s Online Resource Center - This one-stop allows members of the section to share documents while building a downloadable collection of family law model forms, checklists, articles, pleadings and other related resources.

Section of Intellectual Property Law’s committee members directly influence the law - Committee members write, critique and comment on current and proposed policies, laws, rules and cases relating to intellectual property. Their work is often the basis of ABA action in Washington, D.C., in the U.S. Patent and Trademark Office, in the U.S. Copyright Office, in other agencies and in the courts.

Join an ABA section, division or forum today to ensure that you are receiving the benefits you need to make an ordinary career extraordinary. For more information on these and other sections, divisions and forums, visit www.abanet.org/sections.