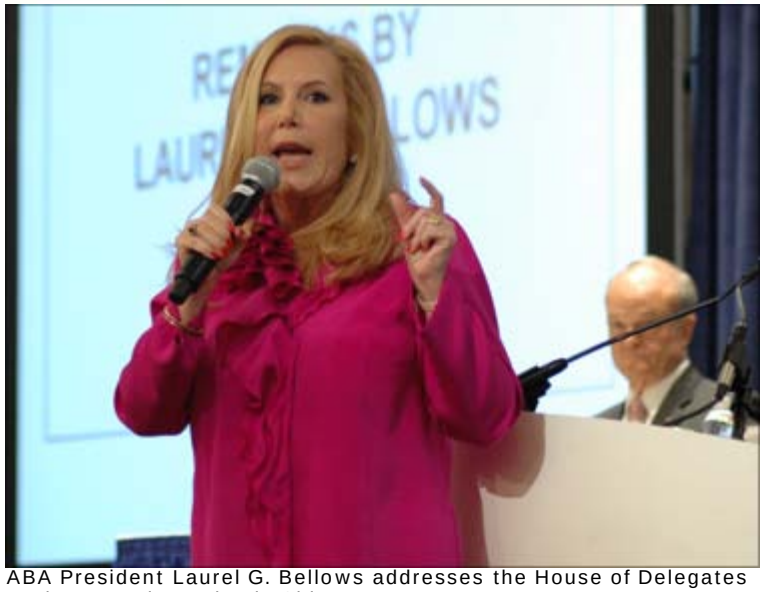
YOURABA
September 2012
e-news for members

First Focus



ABA President Laurel G. Bellows addresses the House of Delegates at the Annual Meeting in Chicago.

New ABA president will advocate for gender equity, among other issues

Meet Laurel Bellows, and learn more about her professional background and her initiatives for the association.
Preventing human trafficking also will be a focus >>

Around the Annual Meeting

Eyewitness identification: We have a long way to go

The legal framework of eyewitness identification is flawed, and training for administrators is extremely limited, said experts on a panel at the ABA Annual Meeting.
Memory should be treated as trace evidence >>

Developing a new impression of lawyers

Young associates must learn early on that clients are not interested in their toughness, but their successful track record, a principal at a Chicago law firm said.
Being a jerk does not advance the client's interests >>

E-lawyers offer tips on delivering 'unbundled' services

This kind of representation allows clients to pick and choose what they want from a lawyer, usually for less money than full representation.
Confirm all agreements in writing >>

Can my employer do that? The maze of social media and the workplace

Labor and employment lawyers get inconsistent guidance on social media and advising their clients, according to a panel at the ABA Annual Meeting.
How to answer clients' questions on social media usage >>

Save us from your spam filter! Don't miss an issue of *YourABA*! Please add youraba@americanbar.org to your safe senders list.

Eye on Ethics

Last rites for law practices

A sole practitioner and law firm partner are retiring after more than 30 years in practice. What are the retiring lawyers' obligations to their clients?

Read more >>

Technology Translators

Measuring up: Highlights from the 2012 ABA Legal Technology Survey Report

The *2012 Legal Technology Survey Report* was recently published, and we've pulled out 10 interesting facts and figures for you to consider.

Tech budgets are increasing >>

Center for CLE

The CLE Premier Speaker Series showcases a faculty of today's most prominent and influential legal practitioners. Each monthly program is available free of charge to ABA members.

Monday, September 10
"A Conversation on the Supreme Court: Last Term's Historic Decisions and Fall's Key Cases," featuring Neal Katyal, partner, Hogan

Adding to your practice across the pond: Not just for big firms anymore

As more and more clients need global legal advice, they increasingly demand business models that deliver better value.
Adopt an individualized approach >>

Hidden biases can hold back women of color as they advance in their careers

Such biases may limit opportunities for promotion and meaningful career development, said lawyers who are women of color from Fortune 500 companies.
Plus initial findings from survey on women of color in law >>

The consequences of 'pro se' representation

Against a backdrop of overwhelming need for *pro bono* legal aid, Illinois lawyers and judges discuss *pro se* litigants and successful strategies to help them navigate the justice system.
Sluggish economy sends pro se figures skyrocketing >>

ABA 'Lawyer as Citizen' initiative and website encourage lawyers to volunteer on Election Day

The new campaign urges lawyers to help fill the shortage of poll workers and to use the ABA Vote website to connect with their nearest polling place.
Take an active role in the election, ABA officials say >>

ABA Pro Bono Publico Awards honor 3 lawyers, a law firm and a state supreme court system

The awards recognize individuals or organizations that enhance the human dignity of others by improving or delivering volunteer legal services to the poor or disadvantaged.
See videos of each winner >>

For more coverage of the ABA Annual Meeting, see news bulletin 1 and 2.

New jobs posted on the ABA Job Board

Products Associate
Sedgwick LLP
San Francisco — Aug. 21

Experienced Trust & Estate Attorney
The Schreiner Law Group, P.C.
Nationwide — Aug. 18

Associate Director of Admissions and Financial Aid
Baylor University
Texas — Aug. 17

Paralegal
Altair Global Relocation
Plano, Texas — Aug. 16

Browse all job postings on the ***ABA Job Board***

YourABA is a monthly publication emailed to all ABA members who have provided an email address.

Lovells, and Ilya Shapiro, senior fellow, Cato Institute

Membership

Update your profile for a chance to win a $1,000 airline gift card

Update your member information and you'll be entered to win a $1,000 airline gift card.

The next drawing will be Oct. 16 >>

Member Advantage

Summer savings when you rent from Hertz!

ABA members save $40 on weekly airport rentals through Hertz.

Learn more >>

Dear Editor

Send a letter to the editor

Download . . .

Download a PDF of ***YourABA***

YourABA Archives

Request a past issue

Follow the ABA

If you would like information on joining the ABA, click here.

Your email address will only be used within the ABA and its entities. We do not sell or rent email addresses.

American Bar Association | 321 N Clark, Chicago, IL 60654-7598 |
800-285-2221 | 312-988-5522

YOURABA
September 2012
e-news for members

New ABA president will advocate for gender equity, among other issues

Laurel G. Bellows

For Laurel Bellows, the path to president of the American Bar Association began in her backyard. “My roots run deep in the local bar,” says the business litigator and executive compensation lawyer, who served as president of the Chicago Bar Association from 1991 to 1992 and focused on revamping the juvenile justice system in Cook County, Illinois, with husband Joel. “As president, I was fortunate to become actively involved with the National Conference of Bar Presidents and then become president of the NCBP. This eye-opening experience with the power of bar associations working in concert to effect real change set the stage for my journey into national bar leadership and introduced me to the world of the ABA.”

But it was Bellows’ involvement in the ABA’s Commission on Women in the Profession that made her a believer in what the association stands for and can accomplish. “Working hand in hand with these capable and dedicated women lawyers on substantive issues, I was empowered and incentivized to create real change,” she says.

Now Bellows, the new ABA president, plans to create change in her role by advocating for gender equity in the profession and fighting against human trafficking, among other goals.

YourABA spoke with Bellows about her background and her ABA initiatives.

Why did you decide to run to be president of the ABA?

I realized that the American Bar Association presented a unique national platform for making positive changes in important areas: individual rights, equality and access to justice.

The idea of becoming president of the ABA was not front and center in my mind. I simply wanted to play an active role in making and implementing effective policy for the ABA.

I began to consider a run for chair of the House of Delegates, the association’s policymaking body. In 2006, I achieved my goal of becoming chair — the ABA’s second-highest office — and had a seat on the executive committee of the Board of Governors. Serving as chair opened yet another door in the ABA, as president, which is truly an extraordinary opportunity

and a serious platform from which to harness the power of lawyers and the people of this country to demand change in society's priorities.

What does the president of the ABA do?

As president, I speak for our association, expressing ABA policy as it is determined by the House of Delegates. I also express ABA policy before legislative bodies and governmental agencies.

I serve as ex officio member of the House of Delegates, the Board of Editors of the *ABA Journal*, and the Board of Governors, our governing body.

What is your legal experience?

I am a principal of The Bellows Law Group PC, in Chicago, with a strategic alliance with my husband's firm, Bellows and Bellows PC, where I cut my teeth in business law and litigation, in business fraud, commodities and securities law. I am a critical thinker, business strategist and problem solver for significant U.S.-based corporations. I spend much of my time counseling senior executives and corporations on employment issues, employment and severance agreements, and related executive compensation matters.

My expertise in executive compensation matters also includes change-in-control scenarios, midlevel-management compensation, benefit plans, and matters involving incentives, pensions, retirement and workforce restructuring.

As ABA president, what major projects will be your focus?

During the coming year, the ABA will advocate in these major areas of focus: on the abolition of human trafficking in the United States, gender equity, cybersecurity, the imperative of adequate funding for our court system, and the preservation of the civil jury trial.

What is the ABA doing about achieving gender equity in the legal profession?

The Commission on Women in the Profession has served for nearly 25 years as a national voice for women in the legal profession and has worked to ensure that women have equal opportunities for professional growth and advancement.

Although women have made great strides in law and in society as a whole, they remain grossly underrepresented in positions of power, influence and leadership. For example, did you know that despite the fact that close to half of law students are now women and more than half of judicial clerks are women, the percentage of women equity partners has remained static at 16 percent or less? Did you know that, according to our latest statistics, 85 percent of women of color left large firms after five years? Our Task Force on Gender Equity will launch a social-media "Did you know" campaign to share such statistics to educate men and women on the persistence of gender-equity barriers. (Share your "Did you know?" by tweeting it to @ABAGenderEquity.)

encourage lawyers to volunteer on Election Day

Pro Bono Publico Awards honor 3 lawyers, law firm and state supreme court

MEMBERSHIP

Update your profile for a chance to win a $1,000 airline gift card

MEMBER ADVANTAGE

Summer savings when you rent from Hertz!

There are many reasons that the glass ceiling continues to limit women's progress, including implicit bias and hidden stereotypes. To address these issues, the Task Force on Gender Equity will spotlight gender inequity in society and look at the long-standing pay disparity between female lawyers and their male counterparts. The task force will develop a Model Compensation Policy for law firm use and provide best practices to help lawyers negotiate their pay and gain opportunities in their firm. It will also create a "pay gap toolkit." State and local bar organizations will be able to use this kit to educate their members about the underlying reasons for the disparity in pay between female and male lawyers.

To begin coordination of the ABA's work in this area, the Section Officers Conference held a summit of section, division, forum, and ABA leadership and staff earlier this month. At the recent ABA Annual Meeting, women's affinity groups from our sections, divisions and forums gathered together for the first time to discuss how we can work effectively toward shared goals. Plus, we held a successful town hall meeting to discuss gender-equity issues.

What can law firms and women do to promote gender equity?

Law firms can create a climate where senior partners mentor entry-level women associates and *sponsor*, not simply mentor, women to ensure their success. Women must also shoulder the responsibility of sponsoring other women and promoting the achievements of other women inside and outside of their organization.

Law firms need to develop and implement internal systems that advance women in the firm to offset those opportunities traditionally available to an "old boys' network." We want an "all people network" working in the best interests of each person's advancement and the success of each firm as a whole. At the same time, women can confront their own internal gender bias by telling themselves, "I may not be perfect for this promotion, but I have the skills and the experience to lead."

Why is the fight against human trafficking important to you, and what, as ABA president, will you do to make a difference?

People are unfree in our land of the free. Hundreds of thousands of men, women and children are coerced into labor and sex for the profit of their captures within *our borders* every year. Nationally, 100,000 U.S. citizens are victims of human traffickers. I understand that each year in the Chicago metropolitan area, at least 16,000 women and girls are at risk for being coerced into prostitution. There are few places in the U.S. that are untouched by this modern slavery. Americans need to know that this shameful horror of human trafficking is taking place in our country.

The ABA will launch a multipronged attack on human trafficking. The new Task Force on Human Trafficking will propose business-conduct standards and best practices to eliminate slave labor in corporate supply chains; train police, prosecutors, defense counsel and judges to identify the perpetrators and recognize victims as victims, not defendants;

and facilitate *pro bono* training to increase the number of lawyers available to represent victims of human trafficking.

We will also promote public awareness of human trafficking through media campaigns dedicated to eradication of modern-day slavery in the U.S.

How do you plan to tackle the issue of cybersecurity?

Defense has evolved from bunkers and battlements to firewalls and passwords. The opponents and vectors of attack in the Internet age may be unfamiliar, but the dangers to our individual, corporate and national security are just as real.

The ABA recently created the Task Force on National Cybersecurity. Comprised of experts in national security, disaster preparedness, law and technology, the task force will examine risks posed by criminals, terrorists and nations that hope to steal personal and financial information, disrupt critical infrastructure, and wage a new kind of warfare on a battlefield of ones and zeros.

Government and private-sector responses to these risks are the task force's central concern. Our nation's response to a catastrophic cyberattack on military information systems or a computer virus that plunges millions into darkness should be a concern for every American. The task force will make recommendations to enhance business and national security while preserving the civil rights and liberties that define who we are.

Failing to address our cybersecurity vulnerabilities would put the United States in the crosshairs of any malevolent actor with an Internet connection. If we act to address these issues now, however, we can preserve the economic and information boon that is the Internet and avoid having to make far-reaching decisions at the very moment of a national crisis.

Court funding is an issue on which the ABA has had a strong voice. Will you carry on the work of past presidents to ensure improved and sustainable investments in our court system?

Under the leadership of Stephen Zack and Bill Robinson, we will highlight the imperative need for adequate funding of our justice system. What differentiates us from every dictatorship in the world is the courthouse, and our courts are the ultimate key to our democracy. But justice is disappearing in this country. Judicial benches are empty. Courtroom doors are closing. Individuals and corporations face waits for justice that stretch into years.

No one would suggest the military take Fridays off from protecting our nation. So why is it acceptable for the justice system to close down?

We ask lawyers and bar associations across the country to join together to fight this crisis. Each state bar should actively lobby its state legislator, write op-eds and letters to the editor to local newspapers, and visit rotary clubs, chambers of commerce, high schools and other groups to spread the word. We will

follow the lead of those bar associations that are mobilizing opinion leaders and have already developed Web pages, videos and Twitter accounts on this issue. We will encourage state bars to rally in front of courthouses, put billboards on interstates and assemble powerful campaigns to solve the underfunding crisis by engaging voters to elect legislators committed to allocating resources necessary to keep the door of our justice system open.

Back to top

YOUR ABA
September 2012
e-news for members

Eyewitness identification: We have a long way to go

How certain are you that you identified the perpetrator? How closely were you paying attention to the perpetrator in the video? Those were two of the questions posed to attendees at the ABA Annual Meeting program “Eyewitness Identification: A Radically Changing Landscape,” after being asked to pick out the perpetrator in a mock bomb planting.

The audience failed miserably in answering that the perpetrator in the video was not in the lineup at all. But this was only after a segment of the audience was told they had named the suspect. Attendees who were told they had correctly identified the guilty party — even though they hadn’t — expressed a greater certainty and confidence in their identification.

The legal framework of eyewitness identification is flawed, and training for administrators is extremely limited, said panelists Karen Newirth, eyewitness litigation fellow with the Innocence Project; Thomas Sullivan, former U.S. attorney, Northern District of Illinois and partner in Jenner & Block in Chicago; and Sgt. Paul Carroll (retired from the Chicago Police Department) during the ABA’s Individual Rights and Responsibilities-sponsored program.

The Innocence Project has helped exonerate 289 people to date, with eyewitness misidentification being a contributing cause of wrongful convictions in 72 percent of the cases. Of the eyewitness identification exonerations, 141 of 161 — 80 percent — showed evidence of suggestion or unreliability in witness identification in the trial record.

The Manson balancing test, used to determine the admissibility of eyewitness identification evidence, studies whether procedures are impermissibly suggestive, and if so, balances the effects of suggestion against “reliability.” Reliability factors include an opportunity to view, degree of attention of the eyewitness, certainty/confidence in the identification, and the time between the crime and confrontation, among others.

Indeed, identification requires a fragile, three-stage process of memory, storage and recall, Carroll said. A general proposition is that memory declines gradually and steadily, but, in fact, it declines steeply after a very brief time, he continued.

Newirth suggested a new legal architecture, one that eliminates the balancing test; provides juries with proper guidance and a “context” so they can evaluate evidence appropriately; treats memory as trace evidence and shifts the

burden of proof to the proponent of the evidence; and uses pretrial admissibility hearings to determine the witness's reliability by hearing from him or her.

Sullivan called for giving instructions to eyewitnesses before the identification process; implementing double-blind methods in which neither the witness nor the administrator knows the suspect to eliminate the power of suggestion; and using sequential, rather than simultaneous comparisons, so the eyewitness must answer a "yes" or "no" with each member of the lineup rather than making a comparison between all the members of the lineup.

Carroll explained that police administering eyewitness identification tests aren't properly trained and that police departments don't have policies regarding the implementation of such tests.

This session was sponsored by the ABA Section of Individual Rights and Responsibilities. Seth Miller, executive director of the Innocence Project of Florida, moderated the program.

Back to top

YOUR ABA
September 2012
e-news for members

Developing a new impression of lawyers

The panel discussion “Not in My Playground: Civility and Professionalism in Your Workplace” at the ABA Annual Meeting focused on how to dismantle unflattering longtime stereotypes about the legal profession. Panelists said it will take time and a collective effort to do so.

“The stereotype [is] of the ambulance chaser, someone who is greedy and wants to make money at someone else’s expense, arrogant, obnoxious, knows it all. These are really embarrassing stereotypes for all of us, for which we all should feel responsible,” said Diane I. Smason, a supervisory trial attorney with the U.S. Equal Employment Opportunity Commission in Chicago. “I do. When I meet people who are not lawyers and they ask me what I do, I often feel the need to say, ‘I’m a lawyer, but you know, I’m one of the nice ones, one of the good ones.’”

Smason said it is time to develop new impressions of lawyers. She said, “We can and do have respect for the justice system and for all people we come across in our work.”

Professionalism and civility is an extension of the golden rule.

William A. Widmer III, a principal at Carmell Charone Widmer Moss & Barr in Chicago, said it is important for new associates to learn early on that clients are not interested in their toughness, but their successful track record. “You are successful by conducting yourself in a manner that advances the clients’ interests,” Widmer said. “I don’t see how you advance the clients’ interests by being a jerk. You have to be very careful in picking your shots.”

Donald L. Sapir, a partner at Sapir & Frumkin LLP in White Plains, N.Y., said experience is a good teacher of professionalism and civility. “I very much wish I could take back some of the things I did 30 years ago that I would have handled differently had those things arisen today,” Sapir said.

Sapir agreed with an audience member who said litigation is a hard way to make a living, but added that if you conduct yourself in a way “to be proud of,” it will be an easier living. “To a large extent, professionalism and civility is an extension of the golden rule,” added Sapir, who is also president of the College of Labor and Employment Lawyers, an organization for labor and employment lawyers who “exemplify, by their conduct, the highest level of civility and professionalism.”

Kathlyn E. Noecker, a partner at Faegre Baker Daniels LLP

in Minneapolis, said establishing a culture of civility in the workplace should be methodical. She gave five key steps in establishing such an environment:

- Set a tone at the top in which employees know that they can talk about tough situations.
- Communicate frequently. The use of newsletters can be helpful.
- Ensure that employees know what is expected of them. Initiate a training program, if you don't have one already.
- Perform evaluations, assessing how employees interact both internally and externally.
- Establish consequences for poor behavior. Enforce the rules to the point of financial hardship (sometimes to the point of asking someone to leave).

Panelists also provided various tips to encourage civility inside the workplace and when dealing with opposing counsel.

Being professional at work:

- Set the tone of professionalism and civility in the office. Everyone, for example, should be entitled to his or her own opinion without being attacked.
- Have open discussions with lawyers and support staff about professionalism and civility.
- Be a role model for less-experienced lawyers by exemplifying good behavior in the office and in the courtroom.

Dealing with opposing counsel civilly:

- If you are concerned that the opposing counsel will misrepresent what you say, have a second person in on the conversation.
- Reinforce your verbal conversations with opposing counsel in writing. Email has made this easier.
- Be direct with the other side.
- Do not respond to opposing counsel with the same negative actions. Try to rise above their actions and remain civil.
- Use courts as a last resort. Make an effort to resolve the case through arbitration or mediation.
- Agree to schedule extensions, because you never know when you will have an emergency and may need one.
- Do not take shots at the other lawyer in a brief. Provide the facts and the law.

The panel was sponsored by the ABA Section of Labor and Employment Law. Max G. Brittain Jr., a partner at Schiff Hardin LLP in Chicago, moderated the session.

Back to top

---

honor 3 lawyers, law firm and state supreme court

MEMBERSHIP

Update your profile for a chance to win a $1,000 airline gift card

MEMBER ADVANTAGE

Summer savings when you rent from Hertz!

YOUR ABA
September 2012
e-news for members

E-lawyers offer tips on delivering 'unbundled' legal services

To expand business during the bad economy, more lawyers than ever are providing “unbundled” legal services. Just as iTunes allows consumers to buy specific tracks off an album for a cheaper price than paying for a full album, this kind of representation allows clients to pick and choose what they want from a lawyer, usually for less money than full representation.

At an ABA Annual Meeting program, “Delivering ‘Unbundled Legal Services’ Over the Internet,” sponsored by the Standing Committee on the Delivery of Legal Services, a panel of experts on e-lawyering discussed the trend of providing limited-scope representation.

For those interested in offering such services, panelists Richard Granat of Granat Legal Services; Will Hornsby, staff counsel for the ABA; and Stephanie Kimbro of Burton Law LLC shared these best practices:

Get an agreement in writing. Informed consent is very important when dealing with unbundling, according to the panelists. When providing limited-scope representation, confirm all agreements in writing, so clients know what your responsibilities are.

Do not exceed the scope of your agreement. You may amend your agreement at any time to add or take away duties, but you should always get signed permission from your client first, especially if these new duties will increase the cost of services.

Create a checklist of duties for your client. There may be many tasks for clients to do, so developing a checklist with timelines will help them hold up their part of the agreement — without delaying yours.

Learn your state’s ghostwriting laws. Depending on where you live, your client may or may not have to inform the judge that he or she used the help of a lawyer in *pro se* litigation. In some states, judges may even require clients to identify their lawyer.

Educate your client. Make sure your client is fully aware of everything you are responsible for, and — more important — inform them of what is not your responsibility.

Get feedback from your client and adjust your procedures accordingly. Also, keep digital records of all interactions with your client.

After representation, terminate the limited-scope

agreement. Always get a signed termination agreement after you finish your work with a client. If there are any additional steps that clients must do after the agreement, it is a good practice to follow up with them to make sure they have turned in any final paperwork or anything else you could be held liable for.

Back to top

---

and state supreme court

MEMBERSHIP

Update your profile
for a chance to win
a $1,000 airline gift card

MEMBER ADVANTAGE

Summer savings when
you rent from Hertz!

YOUR ABA
September 2012
e-news for members

Can my employer do that? The maze of social media and the workplace

Labor and employment lawyers get inconsistent guidance with respect to social media and advising their clients, based on an array of case law, administrative law judges' rulings, advice directives and three National Labor Relations Board general counsel memoranda.

An ABA Section of Labor and Employment Law-sponsored program at the Annual Meeting, "Can My Employer Really Require Me to Friend It? The Latest Word in Social Media, What It Is and What Are the Lawful Uses of This Information," highlighted some of those court cases and directives, and covered some recent legislative action in social media, and what is and is not allowed by law.

W.V. Bernie Siebert, with Sherman & Howard LLC in Denver, prefaced the discussion with a short primer about Section 7 of the National Relations Labor Act, the "bible for labor and employment lawyers," which has historically covered union organizing, collective bargaining and other mutual aid activities. The provision covers employees' rights vis-à-vis concerted and protected activity in relation to repercussions from their employer.

Tweeting and posting to Facebook open up a number of new questions as to the nuances of "concerted" and "protected" activities. Is "liking" someone's Facebook post an indication of concerted activity? Is an employee protected if she posts that her supervisor is a "scumbag"?

As panelist Angie Cowan Hamada, of Allison, Slutsky & Kennedy PC in Chicago, explained, NLRB's Division of Advice guidance in a Wal-Mart matter in which a co-worker replied "hang in there" to another's Facebook post was that there was sympathy but no group action meeting the concerted activity requirement. However, in an American Medical Response of Connecticut case, the 2011 directive stated that a response post of "chin up" was a concerted activity.

Given these nuances, how should lawyers advise their clients on social media usage questions? Hamada, whose work is on the side of employees and unions, suggests that a lawyer try to show that an online communication points to a continuation of an earlier or subsequent conversation to demostrate concerted action; meet the concerted threshold by using such language as "we" and "us" versus "I" or "me"; avoid showing simply sympathetic responses (as in "hang in there"); and highlight conditions of employment, such as wages and benefits, to meet the "protected activity" bar.

Amy Jo Zdravecky, of Franczek Radelet PC in Chicago, represents employers. Zdravecky echoed Hamada's comments about the inconsistency in guidelines that have been handed down to date. She addressed employer policy regarding social media. It is unlawful for an employer to restrict a protected concerted activity or to have policies that can be reasonably construed to chill such activity.

While there is also some inconsistency as to the lawfulness of certain policy language, Zdravecky said that employers can — through their policy — prohibit harassment and discriminatory and unlawful practices. It is lawful for an employer to prohibit an employee from speaking "on behalf" of the company, and to direct employees to be "honest and accurate" in their communications. However, it is unlawful for an employer's policy to prohibit "completely accurate and not misleading" practices, because employees don't necessarily have access to the complete scope of a circumstance.

A number of non-NLRB cases were outlined by Mark D. Risk of Mark Risk PC in New York, including ones addressing employer access to password-protected websites: *Pietrylo v. Hillstone Restaurant Group*; *Konop v. Hawaiian Airlines*; and *City of Ontario, California, et al v. Quon*. Maryland and Illinois have passed legislation outlawing the practice of employers seeking access to a job applicant's Facebook pages. And Sens. Charles Schumer and Richard Blumenthal are seeking an investigation by the Department of Justice and Equal Employment Opportunity Commission about the practice of employers requesting social media information.

Back to top

YOUR ABA
September 2012
e-news for members

Adding to your practice across the pond: Not just for big firms anymore

David Steiger, author and member of the adjunct faculty at the DePaul University School for New Learning, provided a rationale and tips for lawyers working overseas during the Annual Meeting program "A Global Practice for Everyone: Insights Into Creation and Management of Overseas Operations."

Clients needing global legal advice are demanding business models that deliver better value.

The Great Recession has not halted the trend toward globalization, Steiger said. Further, roughly half of the U.S. companies able to export for the first time or increase exports to new markets in 2011 were small- and medium-sized enterprises. As more and more clients need global legal advice, they increasingly demand business models that deliver better value.

What will better value mean in the future? According to J. Stephen Poor's recent *New York Times* article — as Steiger described — lawyers should be thinking outside the box. The article states, "Lawyers today should be asking themselves nontraditional questions: how to apply resources more effectively, to shorten cycle time and lower the cost of their work product and other deliverables, while raising the level of service. In the end, your client will reward you by giving you more work across more areas, and your relationship will deepen."

In order to be effective with a global practice, Steiger explained that lawyers need to recognize a client's needs and limitations by adopting an individualized approach; lawyers need to know what they themselves don't know; and lawyers need to know how to get the necessary answers. Lawyers can serve as both quarterbacks for and counselors to their clients, Steiger continued. Having a general industry knowledge as well as understanding specific business risk factors are aspects of the quarterback role, he said.

Among the components of serving as counselor, according to Steiger:

- Questioning the basis for decisions reached to ensure potential risks are addressed;
- Appreciating the value in telling a client that what he wants to do doesn't make sense and following up with what does make sense;
- Ensuring that clients know their ultimate goals at the

onset;
- Advising on the necessity of full management and stakeholder buy-in; and
- Helping a client get out of the local or even national mindset in a global environment.

Careful planning before closing a deal and continued due diligence is critical, Steiger emphasized. Diligence on location is an aspect of this planning and implementing.

China and India are not the only games in town, added the speaker; virtually every country is a possible target for business. Some of the factors to be considered in determining where to work, listed Steiger, are prevailing labor costs, culture, business environment, infrastructure, time zone displacement, communications and the ecosystem.

Additional tips and advice that Steiger provided before wrapping up included reviewing vendor competencies, longevity and conflicts; securing the right players for the cross-border team; and understanding that the timing and pace of a negotiation may be beyond one's control.

The program was sponsored by the ABA General Practice, Solo & Small Firm Division (renamed the Solo, Small Firm and General Practice Division later in the Annual Meeting). Steiger is the author of *The Globalized Lawyer: Secrets to Managing Outsourcing, Joint Ventures and Other Cross-Border Transactions*.

Back to top

YOUR ABA
September 2012
e-news for members

Hidden biases can hold back women of color as they advance in their careers

Implicit bias, also known as hidden or unconscious bias, is more evident as women of color climb the corporate ladder, said lawyers from Fortune 500 companies at "Visible Invisibility," a panel discussion during the ABA Annual Meeting.

"You don't see overt bias today, but we're at the front end of the conversation about implicit bias. When it comes to implicit bias, it's a whole [different] thing going on out there," said Wendy C. Shiba, president-elect of the National Asian Pacific American Bar Association and former executive vice president, general counsel and secretary of KB Home.

Related video from "Visible Invisibility: Top women lawyers of color share "best advice" for career advancement

Shiba said implicit bias is obvious in fewer opportunities for promotion and meaningful career development, though she added that it has been present in various hiring phases of her career.

"When I was vetted for one of my jobs, the question that came back from the CEO was, 'Is she tough enough?' Think about what's behind that question," Shiba said. "I really doubt if the white male candidate was vetted the same way. … You can draw your own conclusions."

For women of color, biases are also heightened when they have families, said panelists.

Kim Rivera, chief legal officer and corporate secretary at the health care company DaVita, said she's known as a hard worker, and she recalls an effort by executives at her company to "protect her from herself" when she was pregnant. They wanted to lighten her workload.

Rivera said she knows the executives meant well, but she had to remind them that she would be the one to manage her life: "I said, 'I got this. If it becomes a problem, I'll let you know.'"

Panelists said from their experiences, women with children or other family commitments are perceived as less committed and less ambitious than "family men."

As a result, women are put on the defensive. Paula Boggs, former executive vice president, general counsel and secretary at Starbucks, shared a story about a gifted female lawyer in her company who had come to her when she learned she was pregnant. Boggs said the lawyer let her know that "she didn't

want to be put on a mommy track." The mommy track most often results in fewer chances for promotion and meaningful career development.

The panel's moderator, Ruthe Catolico Ashley, founder and president of the workplace consulting firm Diversity Matters, asked fellow panelist Mary L. Smith if the combination of gender and color form an additional barrier in having limited access to professional networks.

Smith, president-elect of the National Native American Bar Association and counselor in the civil division at the U.S. Department of Justice, said women need to be proactive about establishing their own networks instead of trying to fit into others. She encouraged women to keep in touch with college friends and associates. "You have a lot more [networks] than you think you do," Smith said.

The panel was sponsored by the ABA Commission on Women in the Profession.

How women of color fare in Fortune 500 legal departments

Initial findings from the ABA Commission on Women in the Profession survey "Visible Invisibility: Women of Color in Fortune 500 Legal Departments" found that women of color are underpaid, underestimated and undervalued.

According to an executive summary of the survey, "Sadly, female attorneys of color often are treated as second-class citizens in a profession that ironically is charged with the responsibility of ensuring justice and equality for all."

Nine years ago, the Commission on Women in the Profession created its Women of Color Research Initiative, which has produced surveys to bring attention to the inequities women of color contend with in the profession.

The first phase of this initiative explored the career experiences of women of color in law firms. The current phase of the initiative focuses on those women in corporate law departments during four aspects of their careers: hiring, recruitment, retention and advancement.

So far, the survey has found that women of color did not experience bias in hiring, but as they progressed in their careers, they experienced it in the retention and advancement phases.

Lorelie S. Masters, the co-chair for the Women of Color Research Initiative Committee, said that other initial findings revealed that 48 percent of white men reported satisfaction with their careers in-house compared with 17 percent of African-American women. Though pleased with the decision to work for in-house Fortune 500 legal departments, African-American women's overall satisfaction was significantly less.

The survey determined that compensation was a key factor in job satisfaction during each phase of a lawyer's career. Masters said that one study highlighted that the pay gap in the beginning may start at a $2,000 annual difference between

encourage lawyers to volunteer on Election Day

Pro Bono Publico Awards honor 3 lawyers, law firm and state supreme court

MEMBERSHIP

Update your profile for a chance to win a $1,000 airline gift card

MEMBER ADVANTAGE

Summer savings when you rent from Hertz!

male and female associates earning up to $66,000 a year. She said, “We all understand, and certainly women of color as much as anyone, that compensation is a measure of how an organization values one’s contribution.”

The full report of the nationwide survey of 1,000 in-house lawyers at Fortune 500 companies will be published in the fall.

Back to top

YOUR ABA
September 2012
e-news for members

The consequences of 'pro se' representation

According to lawyer Karina Ayala-Bermejo, 12 percent of Illinois residents live in poverty. They may also need to go to court.

Living paycheck to paycheck means that unanticipated expenses like medical bills, a rent hike, or a court case can send a family over a budgetary cliff. The vast majority of families never expect to go to court or budget for a lawyer. As a result, impoverished families would be hard pressed to pay for legal advice, even if they did plan ahead.

Self-representation becomes the only option. Indeed, the sluggish economy has sent *pro se* figures rocketing, although the trend of self-representation of litigants in court has been increasing for decades. In fact, Bob Glaves, executive director of the Chicago Bar Foundation, said that "*pro se* is more common than represented."

Against a backdrop of overwhelming need for *pro bono* legal aid, Illinois lawyers and judges convened at the ABA Annual Meeting in Chicago to discuss *pro se* litigants and successful local strategies to help them navigate the justice system.

Ignorance of the administrative and procedural methods of the law by *pro se* litigants poses serious challenges for courts across the country. Glaves knows that "is not news to anybody." Filing complicated paperwork before consequential deadlines, making motions in the courtroom and understanding the legal jargon used as a matter of course are daunting access-to-justice barriers for the public. Many court petitioners with objectively meritorious claims fail for lack of legal expertise. Making matters more complicated, "48 percent of [non-English speaking] *pro se* litigants don't even have a translator," Ayala-Bermejo added. Subsequently, bar associations and courts in Illinois have developed *pro bono* programs to help *pro se* litigants press their cases.

Cook County Circuit Court Judge Thomas Donnelly knows firsthand the impact of *pro se* on a court. "We have approximately 245,000 *pro se* litigants," said Donnelly. "The amount of *pro se* cases is larger than the entire rest of the docket."

Donnelly has worked with the Chicago Bar Association to create the Cook County Municipal Court Pro Bono Program, which provides legal aid to low-income residents facing a jury trial without a lawyer. "I had a lot of good ideas when I was a lawyer, but I find that people listen to me more as a judge," he said. Ultimately, Donnelly believes having a lawyer "makes the system fair."

Judge Marvin Aspen of the U.S. District Court for the Northern District of Illinois has a multipart program to help *pro se* litigants in his court that he believes can be applied anywhere. The first component is a help desk whose members offer procedural assistance like filling out forms but do not provide any research or appear in court with claimants. To date, the help desk has provided 1,200 consultations involving 500 litigants. The district court also offers a settlement assistance program. After 60 undertakings, the program boasts an impressive 70 percent success rate.

Aspen also offered the story of a centenarian friend who practiced law for many decades. At the retired jurist's 100th birthday celebration, Aspen asked what his proudest achievement was. "He sat on the federal bench, he represented mobsters, he's been to the Supreme Court a few times," but, said Aspen, the accomplishment foremost in his mind was his body of *pro bono* work.

The program, "Pro Se But Not Alone: Promoting Access to Justice with Court/Public Interest/Private Practice Pro Bono Partnerships," was sponsored by the ABA Section of Litigation.

Back to top

YOUR ABA
September 2012
e-news for members

ABA 'Lawyer as Citizen' initiative and website encourage lawyers to volunteer on Election Day

The "Lawyer as Citizen" campaign, which encourages counsel to volunteer at the polls in the November election, kicked off at the American Bar Association's recent Annual Meeting in Chicago. During the meeting, the ABA rolled out the website www.ambar.org/vote that will be a resource for lawyers who want to become more involved in the electoral process.

The ABA began this initiative because of its belief that lawyers can play an important and necessary role in the administration of elections, says Elizabeth Yang, director of the ABA Standing Committee on Election Law.

"Encouraging lawyers to serve as official nonpartisan poll workers can only enhance the public's understanding of and confidence in the rule of law as it pertains to elections," Yang says. "In addition, lawyers possess the experience, knowledge and skill sets to enhance confidence in our nation's voting process, the bedrock of our democracy."

"Lawyers possess the experience, knowledge and skill sets to enhance confidence in our nation's voting process," Yang says.

Another motivation behind the initiative: reports from election administrators that there is a critical need for volunteers to work the polls this fall. There is "a shortage of citizens willing to act as election officials on Election Day," says Jack Young, chair of the Lawyer as Citizen Initiative and co-chair of the Advisory Commission to the Standing Committee on Election Law. "Lawyers can play a significant role in the voting process by serving as these officials. … The ABA's 'Lawyer as Citizen' program seeks to fill the gap in the number of election officials and thereby work to improve our electoral system."

The new ABA Vote website will connect lawyers to their polling places in several steps that include selecting your state as well as your county or city to arrive at your local election website. Local election sites will list the requirements and duties of serving as a poll worker and may allow the registration process to begin online.

The site provides a "quick and easy means for lawyers to register and be qualified to serve in this capacity in compliance with the specific requirements of their local jurisdiction," says Benjamin Griffith, chair of the Standing Committee on Election Law. Griffith recently released the second edition of *America Votes! A Guide to Modern Election*

Law and Voting Rights, which provides key information and perspective on election-law questions that the courts are now addressing or will soon be considering.

“Let’s give real meaning to service and take an active role” in this election, Griffith says.

The new ABA Vote website is sponsored by the ABA Standing Committee on Election Law and the Division for Public Education.

Back to top

YOUR ABA
September 2012
e-news for members

Pro Bono Publico Awards honor 3 lawyers, a law firm and a state supreme court

Three lawyers, a law firm and a state supreme court received the 2012 Pro Bono Publico Awards from the American Bar Association Standing Committee on Pro Bono and Public Service.

The awards were presented at the Pro Bono Publico Awards Assembly Luncheon during the ABA Annual Meeting in Chicago.

"Lawyers are making a positive difference every day all across our great nation," said ABA Immediate Past-President Wm. T. (Bill) Robinson III. "*Pro bono* work is a key component of our legal system, and these good deeds help to fill the void left by devastating budget cuts. Let us celebrate these awardees because they are outstanding examples of lawyer volunteers who make our communities stronger by ensuring meaningful access to justice for thousands of Americans.

Amy Lorenz-Moser, a partner with Armstrong Teasdale, has provided pro bono legal counsel to domestic violence victims for most of her adult life.

Robinson presented the 2012 awards. The keynote speaker for the luncheon was Cruz Reynoso, professor of law emeritus at the University of California, Davis, School of Law and former associate justice of the California Supreme Court.

Award recipients included Akin Gump Strauss Hauer & Feld LLP, a Washington, D.C., law firm; Howard Goffen, Highland Park, Ill.; Amy Lorenz-Moser, St. Louis; Neal Minahan, Somerville, Mass.; and the Supreme Court of the State of New York, Rochester, N.Y.

The Pro Bono Publico Awards honor individuals or organizations in the legal community that enhance the human dignity of others by improving or delivering volunteer legal services to the poor or disadvantaged.

A brief description of the recipients' *pro bono* work follows:

- The U.S. offices of the global law firm of Akin Gump Strauss Hauer & Feld LLP devoted more than 67,000 hours to *pro bono* work, representing an average of 84 hours per U.S. lawyer in 2011, and have increased their *pro bono* hours by 50 percent since 2006. Akin Gump has represented charter schools, nonprofits and

international development organizations, but its primary focus is on low-income individuals, both in traditional poverty law matters and in immigration issues. The firm also established the first corporate counsel medical-legal partnership in the United States by partnering with Wal-Mart to help eliminate barriers to health care.
Video: 2012 Pro Bono Publico Award recipient: Akin Gump Strauss Hauer & Feld

- Howard Goffen, the principal at the Law Offices of Howard T. Goffen & Associates, has provided *pro bono* legal services to low-income and elderly clients in the Chicago area for more than seven years. Goffen devotes nearly 30 hours a week to *pro bono* assistance. A total investment of nearly 7,000 hours to the Legal Assistance Foundation of Metropolitan Chicago (now known as LAF) has assisted 160 of its clients, some of Chicago's most vulnerable citizens.
Video: 2012 Pro Bono Publico Award recipient: Howard Goffen

- Amy Lorenz-Moser, a partner with Armstrong Teasdale, has provided *pro bono* legal counsel and representation to victims of domestic violence for most of her adult life. As a law student, Lorenz-Moser worked with the Clemency Project, which focuses on the injustices that occur in domestic violence-influenced murder convictions. She continues to advance the cause for clemency for domestic violence victims through the Clemency Project. Most of those women, who committed acts of violence to protect themselves against their abusers, received life sentences without the possibility of parole for 50 years. However, through the tireless efforts of Lorenz-Moser and others at the Clemency Project, several women were freed through pardon, parole or clemency.
Video: 2012 Pro Bono Publico Award recipient: Amy Lorenz-Moser

- Neal Minahan, a partner with McDermott Will & Emery LLP in Boston, has yielded more than 2,500 hours of *pro bono* workin eight years, primarily because of a series of landmark civil-rights cases affecting incarcerated people in Massachusetts. His commitment to the civil rights of inmates in the prison system has resulted in broad institutional reforms and has set an important precedent for the rights of incarcerated people.
Video: 2012 Pro Bono Publico Award recipient: Neal Minahan

- The Supreme Court of the State of New York, Fourth Department, established the department's Policy Statement on Pro Bono Legal and Volunteer Services, the first *pro bono* policy for appellate-court lawyers and staff in New York State. The policy encourages appellate-court lawyers to set a personal goal of achieving at least 20 hours of *pro bono* service per year. Over the last three years, lawyers in the Appellate Division, Fourth Department, have provided *pro bono* service to more than 200 low-income clients through the Volunteer Legal Services Project's Family Law Clinic, Pro Se Divorce

Clinic, Alternatives for Battered Women Clinic, Wills Clinic and Consumer Law Hotline. Lawyers have also accepted case referrals for employment insurance-benefit denials and wills for seriously ill clients.

Video:* *2012 Pro Bono Publico Award recipient: New York Supreme Court, Fourth Department

Back to top

YOUR ABA
September 2012
e-news for members

Do you have a question about legal ethics that affects your practice? ETHICSearch can help. For quick and confidential research assistance, click here to send your questions.

Last rites for law practices

By Peter Geraghty
Director, ETHICSearch

Peter Geraghty is the director of ETHICSearch, a legal ethics research service in the ABA Center for Professional Responsibility.

Scenario 1: Bill has been a sole practitioner concentrating in probate and real estate matters for his entire career of more than 35 years. During this time, he has accumulated thousands of client files, most of which are now inactive. For the past few months, he has been considering retirement to spend more time with his grandchildren, and now seems to be the best time to do so. Bill plans to keep busy and will continue being active in his local bar association's pro bono activities.

Scenario 2: Susan has been a partner with two other lawyers in the ABC partnership for the past 30 years in a practice concentrating in family law and general litigation. She has long had an interest in real estate development and thinks that now is the time to launch her own business. Susan realizes that she will not be able to devote sufficient attention to her law practice and run the new business at the same time, so she has decided to withdraw from the partnership and cease practicing law.

In these scenarios, what are the retiring lawyers' obligations to their clients? What if any notice must the lawyers give them of the impending retirement? What are the lawyers' obligations with respect both to their closed and their active client files?

The primary ethical issues that can arise when a lawyer retires or winds down a practice include the lawyer's obligations to provide adequate notice to clients of the impending retirement (including the effect, if any, it will have on the clients' matters) and the lawyer's responsibilities with regard to the disposition of active and inactive client files.

Notifying clients. Louisiana State Bar Opinion 2005-01 (2005) goes into considerable detail about various issues as they relate to a lawyer's winding down a law practice, including the types of notice that lawyers should give to their clients. With regard to matters that are active, the opinion

states that the client should be given reasonable advance notice of the retirement:

> If the case is in active litigation, we recommend that, in order to protect the client's interests, the client should be given reasonable notice of the impending retirement. In addition to written notice the lawyer should consider personal and telephonic communication. The client should be advised of any pending court dates and directed to obtain other counsel as soon as possible; and, if possible, the lawyer should assist the client in finding new counsel.

In the event that clients with active and open files do not provide instructions as to whom the files should be transferred, the Louisiana Committee states that the lawyer should analyze the file and provide the client with written instructions as to the steps the client needs to take to protect his or her interests. If the client cannot be located, the lawyer should send a letter to the client's last known address notifying the client that he or she may come to pick up the files or property from the lawyer or the lawyer's representative.

Michigan State Bar Opinion RI-100 (1991) states that the retiring lawyer would need to contact clients and advise them as to how their matters would be handled and by whom. The Michigan Committee states further that the lawyer could have active matters reassigned to another lawyer in the firm provided that he or she was competent to handle the matter. With client consent, the lawyer could also refer the matter to a lawyer outside the firm or simply notify the client that representation will no longer be available and that the client should seek new counsel. The Committee emphasizes that it is ultimately the clients' decision as to whom they want to represent them. In all matters involving the transfer of client files, the lawyer should take steps to protect the confidentiality of client information under Rule 1.6, *Confidentiality of Information,* of the ABA Model Rules of Professional Conduct.

Both the Louisiana and Michigan opinions also refer to Rule 1.16(d), *Declining or Terminating Representation,* stating that in all matters pending before a court, a lawyer must get the court's consent before withdrawing from the matter.

Several of these opinions stress the importance of the lawyer's acting competently and diligently under Rules 1.1, *Competence,* and 1.3, *Diligence,* to help the client secure new counsel who is competent to handle the representation.

The Louisiana Bar offers some practical tips for retiring lawyers as well, suggesting that such lawyers retain their law licenses in the event that they might consider returning to the practice at a later date, and that they keep up with their CLE requirements to keep their licenses in good standing. This would be particularly important for the lawyer in Scenario 1 above, who wishes to remain active in *pro bono* bar activities.

Handling client files and property. When a lawyer decides to wind down a practice, the disposition of closed or

dormant client files becomes an important issue. A lawyer who has been in private practice for an extended period of time may well accumulate thousands of client files, most of which will have become inactive when the lawyer decides to retire. Files that are active require careful attention and active maintenance. Responsibilities with regard to closed and/or dormant client files are less clear. Many state bar opinions addressing client file retention issues refer back to ABA Informal Opinion 1384, Disposition of a Lawyer's Closed or Dormant Files Relating to Representation of or Services to Clients (1977), for guidance in this area. This opinion provides a number of guidelines to keep in mind when considering whether to keep or discard closed or dormant client files. These include the obligation to:

- Retain items that clearly belong to the client, such as original documents;
- Keep information that the lawyer knows the client may need in the future, including items the client may need to defend himself or herself in a matter for which the applicable statute of limitations has not yet expired;
- Maintain indefinitely complete records of client trust-account transactions; and
- Keep a list of the files that the lawyer has disposed of or destroyed.

The Louisiana Committee notes that it cannot provide a specific date for the amount of time that a lawyer should retain client files. Nevertheless, it cautions that, because there is no statute of limitations on lawyer disciplinary cases, a lawyer may be prudent to examine old files on a case-by-case basis and decide which ones to retain, as it would be difficult for the lawyer to defend against such claims without a copy of the file.

ABA Model Rule 1.15, *Safekeeping Property,* mandates the preservation of client trust-account funds and other client property for a period of five years. This time period can vary state by state. Check your local rules.

Of particular interest to the lawyer in Scenario 1 is the Committee on Legal Ethics and Professional Conduct of the Ohio State Bar Association Informal Opinion 98-2 (1998), which provides the following guidance to a lawyer who wished to retire and who inquired as to what he should do with original client wills that he assumed responsibility for upon the death of two senior partners:

> It is the Committee's opinion that your ethical obligations with respect to these wills is to ascertain whether the makers are still living and, if so, to return the wills to them; and, if the maker is deceased, then your obligation is to locate and deliver the will to the maker's personal representative. Your ethical obligation is to make a diligent effort to locate either the client or, if the client is deceased, his or her personal representative. If, after undertaking this effort, there remain clients whose whereabouts you cannot determine, then, the Committee is of the opinion that you must preserve and retain

> the wills. You should leave instructions that upon your death, if there is no responsible party willing to assume appropriate responsibility, then the wills should be delivered to the chair of the local certified grievance committee or Disciplinary Counsel.

Other thorny issues are present when a lawyer who is a partner in a law firm decides to retire and leaves his old client files with his former law firm. This type of issue could arise under Scenario 2 above and has been addressed by various state bar associations in different permutations. In general, these opinions suggest that both the departing lawyer and the law firm have joint obligations with regard to the client files. See New York State Bar Opinion 623 (1991) and New Jersey Advisory Opinion 692 (revised; 2002).

Nassau County Bar Association 93-23 (1993) discusses the joint ethical obligations of the lawyers who were formerly partners in a now-dissolved law firm. The lawyers who withdrew made arrangements to store their inactive files with the lawyers who remained to form a successor law firm. The successor firm then contacted the former partners and gave them a list of the files the firm had in storage. The former partners instructed the firm to send them approximately 30 percent of the files and to destroy the rest. The successor firm inquired as to its obligations with regard to the remaining files in its possession. The Committee states that the successor lawyers had joint responsibility with the withdrawing partners to maintain the client files, even if the lawyers in the successor law firm had no knowledge of the withdrawing partners' client files:

> Neither the fact that inquiring counsel and his present partners have no knowledge of the files which remain in their custody, changes their obligations with respect to the files. … Thus, while the private contractual agreement may have the effect of allocating among the former partners the economic burden of dealing with particular files … it cannot shift the ethical burden which is joint and several as to (a) all the former partners, both "withdrawing partners" and those remaining at the successor firm and (b) any new partners of the successor firm.

See also State Bar of Wisconsin Committee on Professional Ethics Opinion E-98-01 (1998):

> The fact that the firm has dissolved or that the lawyers maintaining the files may not have been involved in the representation does not alter the duties of either the lawyer or firm that performed the engagement or the lawyer or firm that now maintains the files. Each retains responsibilities to the client. Lawyers in firms that are dissolving should agree among themselves on the handling of client files, and shall transfer files to a departing or new lawyer upon client request. However, those arrangements do not obviate the ethical and

> fiduciary duty to maintain and properly handle client files. See Nassau County B. Ass'n Op. 93-23 (1993). Both the lawyers who handled the engagement and the lawyers who may have voluntarily assumed custody of the file owe the same obligation to handle the return or destruction in a reasonable fashion as described above.

Putting a plan in place. Ethics issues in this area are also informed by a line of authority that addresses the steps sole practitioners should take to prevent the neglect of their client matters in the event of their death or disability.

See, for example, ABA Formal Opinion 92-369, Disposition of Deceased Sole Practitioners' Client Files and Property (1992). In this opinion, the ABA Standing Committee on Ethics and Professional Responsibility states that under ABA Model Rules of Professional Conduct Rule 1.1, *Competence,* and Rule 1.3, *Diligence,* sole practitioners should have a plan in place that provides for the orderly transfer of client matters to successor counsel in the event of the lawyers' death or disability.

This opinion inspired the ABA Ethics 2000 Commission (E2K), which conducted an extensive review of the ABA Model Rules of Professional Conduct from 1998 to 2002 to add a new paragraph [5] to the Comment to Rule 1.3:

> To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action. Cf. Rule 28 of the American Bar Association Model Rules for Lawyer Disciplinary Enforcement (providing for court appointment of a lawyer to inventory files and take other protective action in absence of a plan providing for another lawyer to protect the interests of the clients of a deceased or disabled lawyer).

Completing the transition. When closing down a law practice, a lawyer has an obligation to provide active clients with adequate notice of the closure and should inform them as to how the closure will affect their matters. A lawyer should also consider offering them assistance in locating new counsel. When making decisions as to the disposition of closed or dormant client files, a lawyer should review the contents of the files and should keep items that clearly belong to the clients, such as original documents and any other items that the client may need in the future, as suggested in ABA Informal Opinion 1384. Finally, a sole practitioner should have a plan in place to protect clients' interests in the event of the lawyer's death or disability.

When questions arise, consult with your state or local bar. Chances are they have fielded many questions in this area

and may even have prepared written guidelines as you transition to the next phase of your life.

This article originally appeared in the July/August issue of the GP Solo Magazine that featured several articles on various topicsrelated tobuying, selling or closing a law practice. The entire issue of the magazine is availableon the GP Solo website here.

Back to top

YOUR ABA
September 2012
e-news for members

Measuring up: Highlights from the 2012 ABA Legal Technology Survey Report

Technology is the motor that keeps the modern law firm running. Applied carefully, technology can make a firm run more efficiently and effectively, allowing the talent and legal expertise of the firm's lawyers to shine. In a competitive market, however, poorly implemented or missing technology can bring a firm to a standstill.

The challenge with technology is striking the right balance between cost, utility and innovation. Firms that invest in the latest and greatest are often disappointed by the return on their investment, while firms that prioritize cost above all else may find themselves lagging behind their competitors in more ways than one.

For more than 20 years, the ABA Legal Technology Resource Center has collected data from lawyers in private practice to help provide practitioners with guidance on difficult technology issues. The *2012 ABA Legal Technology Survey Report* was recently published, and we've pulled out 10 interesting facts and figures for you to consider:

- iPhone moves into the lead. In terms of the "big three" smartphone platforms — BlackBerry, iPhone and Android — BlackBerry devices have consistently come out on top in our annual surveys. The iPhone has made gains in each year since its launch, though, and this year it finally broke through: Forty-nine percent of respondents overall reported using the iPhone versus 31 percent who used BlackBerry and 18 percent who used Android. The numbers looked quite different at the biggest firms (500-plus lawyers): Just 39 percent of those respondents reported using the iPhone versus 57 percent who used BlackBerry and 6 percent who used Android. (Percentages don't add up to 100 because the poll allowed for several responses.)

- 3 percent is 3 percent too many. Three percent of respondents in 2012 reported that they don't back up firm computers, while 27 percent didn't know if their firm backed up. To put the danger of failing to back up into context, 15 percent of respondents reported that their firm has experienced a natural or manmade disaster, and 40 percent reported having experienced a hard-drive failure.

- Preferred tablet: iPad. Tablet use grew in 2012, with 33 percent of respondents overall reporting that they use a tablet for work outside of the office. Large-firm lawyers (100 to 499 lawyers) were the most likely to report using

a tablet, at 40 percent, while solo practitioners were the least likely, at 24 percent. It might be more accurate, however, to replace the word “tablet” with “iPad”: 91 percent of respondents reported that their tablet device was powered by Apple’s iOS.

- Landing a client in the Twitter era. According to our respondents, blogging was the most effective social media tool for client development in 2012. Of those who blogged, 39 percent reported retaining a client directly or via referral as a result. The number dropped to 17 percent for online communities/social-networking sites and 11 percent for Twitter.

- Budgets heading up? In 2012, 39 percent reported that their technology budget increased, 27 percent said it stayed the same, and 8 percent said it decreased. The remaining 26 percent didn’t know if their firm’s budget had changed. Compare that with 2011, when 34 percent said budgets increased, 28 percent said they stayed the same, 11 percent said they decreased, and 27 percent weren’t sure if there was a change.

- Fee-based software generates more satisfactory results. In general, respondents in 2012 reported higher satisfaction with their research results when using fee-based online resources versus free resources. For example, when asked about depth of coverage, 13 percent were very satisfied with free resources, while 64 percent were very satisfied with fee-based resources.

- The cloud has room to grow. Despite the hype, the adoption of cloud computing remains fairly low: Just 21 percent of respondents overall reported ever using the cloud. The No. 1 reason cited by those who have yet to use the cloud? Unfamiliarity with the technology (55 percent).

- Litigation support focuses on fundamentals. Not surprisingly, the most useful features in litigation-support software, according to our respondents, are the most basic: full-text search (35 percent), document review (27 percent) and Bates stamping (22 percent). Least popular of the options offered? Conceptual grouping or clustering, at 5 percent.

- Email security habits improving? While respondents continued to report that they rely on confidentiality statements for email security (75 percent overall), the number reporting that they use encryption jumped substantially, from 23 percent in 2011 to 33 percent in 2012.

- Connecting to clients via secure portals. The 2012 results saw a growing number of respondents report that they offer clients access to a secure client portal: 25 percent versus 20 percent in 2011. Solo and small firm practitioners (two to nine lawyers) drove much of that growth, jumping from 1 percent and 3 percent,

respectively, in 2011 to 11 percent for both groups in 2012.

Learn more about the *2012 ABA Legal Technology Survey Report*.

Back to top

YOURABA
September 2012
e-news for members

Update your profile for a chance to win a $1,000 airline gift card

Address change? New practice specialty? Take a few minutes to update your member information and you'll be entered to win a $1,000 airline gift card.

By customizing your member profile, you're defining the ABA communications that you'd like to receive, which will make your ABA membership more relevant!

Update your profile and claim your chance for a fabulous getaway. Gift card drawings are scheduled four times in the 2012-13 membership year. The next drawing will be Oct. 16.

Back to top

---

and state supreme court

MEMBERSHIP

Update your profile
for a chance to win
a $1,000 airline gift card

MEMBER ADVANTAGE

Summer savings when
you rent from Hertz!

Summer savings when you rent from Hertz!

Take advantage of special summer savings from Hertz! Include PC# 172841 in your reservation to save $40 on your next weekly rental of any car class at the airport through Nov. 9, 2012.

Also for ABA members, upgrade to Hertz Gold Plus Rewards™ status at no charge — a $60 value that means you don't stand in line to pick up a car. It's ready and waiting for you. Enroll today.

$40 off Weekly Airport: Advance reservations required. Modifying your reservation may result in a change in your rate and/or invalidate this offer. Subject to availability, this offer is redeemable at participating Hertz Corporate Airport locations in the U.S., Canada, Puerto Rico and Mexico. This offer has no cash value, may not be used with Pre-Pay Rates, Tour Rates, Insurance Replacement Rates or hourly rentals and cannot be combined with any other certificate, voucher, offer or promotion. Hertz age, driver, credit and weekly rate qualifications for the renting location apply. Taxes, tax reimbursement, age differential charges, fees and optional service charges, such as refueling, are not included. Discounts apply to time and mileage charges only. Discounts in local currency on redemption. Offer valid for vehicle pickup between 8/15/12 and 11/9/12.

Back to top

and state supreme court

MEMBERSHIP

Update your profile
for a chance to win
a $1,000 airline gift card

MEMBER ADVANTAGE

Summer savings when
you rent from Hertz!