

*“The future is in the hands of those who can give tomorrow’s generations valid reasons to live and hope.”*

—Pierre Tielhard de Chardin

- [\*\*Brustin Out All Over\*\*](#)  
Instead of spinning his wheels purposelessly, Gary Brustin turned his love of cycling into a successful practice.
- [\*\*Alan Olson: Outstanding Achiever\*\*](#)  
Doing your homework shows up in the marketplace.
- [\*\*Seeing Into the Future\*\*](#)  
Try creating your own crystal ball.
- [\*\*What Successful Lawyers Do\*\*](#)  
Ten tips for building your practice and yourself.
- [\*\*It’s a Wonderful iLife\*\*](#)
- [\*\*The Old Man’s Words of Wisdom\*\*](#)  
Equal justice for the have-nots.
- [\*\*Words of Wisdom by a Young Man\*\*](#)  
Ballpoint ink stains never, ever come out.
- [\*\*Dear Mike\*\*](#)  
Working in Snow County: The Land of White Powder.
- [\*\*Legal Trivia\*\*](#)  
Which president appointed the most justices to the Supreme Court?

[\*\*GP Solo Website\*\*](#)

[\*\*ABA Website\*\*](#)

[\*\*Contact Us\*\*](#)

[\*\*Join GP Solo Section\*\*](#)

[\*\*Section News and Upcoming\*\*](#)

## Events

- [Advocational Vocab](#)  
To be taken seriously, check your vocabulary on our vocab page, then test your colleagues. Check it out.
- [Don't Let Ethics Jeopardize Litigation](#)  
Valuable information from our books program.
- [GPSolo Links](#)  
Visit these links for more useful information.
- [Contacts and Legal Stuff](#)  
Who is responsible for all this?
- Click [here](#) to open a PDF version of this issue, suitable for printing

## Feedback

- [Tell us what's on your mind!](#)
- [Want to write an article?](#)

Your e-mail address will only be used within the ABA and its entities. We do not sell or rent e-mail addresses to anyone outside the ABA.

To change your e-mail address or remove your name from any future general distribution e-mails, complete the form at <https://www.abanet.org/members/join/coa2.html>. If you prefer, call us at 800-285-2221 or write to:

American Bar Association  
Service Center  
541 North Fairbanks Court  
Chicago, IL 60611

To review our privacy statement, go to [http://www.abanet.org/privacy\\_statement.html](http://www.abanet.org/privacy_statement.html)



## **Gary C. Brustin: Bicycle Attorney**

**By Joseph V. Sebelin Jr.**

Some forty years ago, Gary C. Brustin fell in love with bicycling. At that time, Gary desperately wanted to purchase a Schwinn Coppertone Continental. Because he could not afford to do so, he purchased another less expensive model. From that day forward, Gary continued cycling. To date, and several bicycles later, Gary has logged over 100,000 miles. Gary's love of cycling has transcended from a past time to professional mission. As a lawyer, Gary developed a unique niche personal injury law practice specializing in cycling-injury-related cases. As a cyclist, Gary understands the dangers cyclists face when sharing the road with other motor vehicles. Gary believes that through his practice, he helps make the roads safer for all by aggressively pursuing claims against negligent drivers.

Since 1987, Gary has specialized in representing cyclists. Gary notes that while representing the injured cyclist is akin to representation of other injured plaintiffs, there are unique concerns that arise in cycling injury cases. Often jurors are unfamiliar with the perspective of the cyclist. As part of his trial preparation, Gary will often retrace the bicyclist's route, both by car and bike. By doing so, he is able to accurately evaluate the events of the accident and make a credible presentation to the jury. Conveying the impact of the cyclist's injuries to the jury is another challenge. Beyond the broken bones lie the love and enjoyment of cycling. Through his experience as a cyclist, and having sustained injury in cycling-related accidents, Gary has a unique insight into the concerns that confront the injured cyclist-plaintiff. As a result, he is better situated to convey such concerns to the jury.

Perhaps the greatest challenge in presenting a cycling injury case is that jurors often remain unsympathetic to the claims of cyclists. Comparative negligence, the enemy of any plaintiff, is especially problematic for cyclists. Despite cyclists' right to travel the public roads, defendants often suggest that the cyclist could have avoided injury by simply selecting a less traveled route. To confront this false concept, Gary stresses that cyclists are entitled to the same use of the road as any other motorist.

Gary is passionate about the development of his niche practice and stresses that personal interest and involvement created his niche. Although this niche practice arose from his own interest in cycling, developing this niche involved more than proclaiming himself a "bicycle attorney." Gary stresses that his success in niche practice is a result of his personal interest and continued involvement in the community he services.

Gary is active in the cycling community. He frequently speaks at bike clubs, advertises in bike magazines, and sponsors cycling teams and individual cyclists. He views his work as a lawyer as a battle to keep the roads safe for cycling enthusiasts. Gary stresses that "every attorney should specialize in a field of the law that rings true in both their heart and their mind." Once the lawyer determines the appropriate field, involvement is the key. Becoming involved in the targeted community is more productive than advertising or business luncheons. Given Gary's lifelong interest in bicycling, his niche personal injury practice is the perfect fit.

Gary C. Brustin is a lawyer licensed to practice in California and maintains offices in both Los Angeles and San Jose. He has assisted with cycling related cases throughout the country. He may be reached at (800) 841-2453, via e-mail at [gbrustin@aol.com](mailto:gbrustin@aol.com), or on the web at [www.bicyclelawyer.com](http://www.bicyclelawyer.com).

---

*Joseph V. Sebelin, Jr. is an associate with William G. Schwab & Associates, a general practice firm in Lehighton, Pennsylvania. Attorney Sebelin's interests outside the law include weightlifting and mountain biking*

 [back to top](#)  [back to home](#)



## Seeing Into the Future

By Jason Zac Christman

What is a professional development plan? Don't be put off or intimidated by the thought of drafting a professional development plan. Unless it is part of work assignment, there are no set boundaries. The simple goal is craft a document that will help guide your career. A road map may be the best way to theorize the process. Not a roadmap from point A to point B, but more a general plan for a tour of the country.

### Assess

The best way to begin is where you are. Tautologies aside, without some assessment of where you are professionally *at the time you draft it*, a professional development plan will be nothing but a list of goals. What type of practice are you in? What level have you reached in the firm or in your legal community? Are you actively involved in practice groups, bar associations or community groups? What contacts do you have *already* that may be instrumental in achieving your career goals, be they marketing and income or becoming a judge. An assessment of where you are is the first part of drafting the road map for your career.

### Set a Schedule

The next step is to pick a point in the near future. Six months or a year seemed ideal to me, but any time frame that will give you an opportunity to achieve your first set of professional development goals will suffice.

Where do you want to be in  $x$  months? Because the professional development plan is a tool to help you market yourself, marketing should have some role in your  $x$ -month goals, even if it

just a goal of acquiring a list of contacts within the firm that will help you become a partner. A more developed plan could have particular marketing goals, such as the goal to research the cost in time and money of a marketing plan, be it a newspaper ad for your particular practice or development of a television ad campaign.

Another laudable line of goals is literal professional development. Do you want to develop a new practice area, or enhance your knowledge of particular practice area that has potential to have an impact on your career? For those with more experience, the goal of teaching continuing legal education courses might be appropriate. Don't forget that marketing and legal education are not mutually exclusive. For example, my own professional development plan calls for me to develop a greater knowledge of real estate law and practice, but at the same time develop a contact list of people I meet at continuing legal education courses so that once I start to market that area of my practice, I won't be starting from scratch.

### **Prognosticate**

The next and last step is to take a look farther down the road. Whether you want to look out two years, four years, ten years, *or all three* (there is no reason not to have a three- or four-step professional development plan), reaching your long-term goals is what you want a professional development plan to assist you with. Do you want to qualify to sit for a certification as an expert in a practice area? Do you want to qualify to be a bankruptcy trustee? Do you want to have the contacts that will be necessary to have a chance at becoming a judge? Some of you may want to skip to this part, and there is no reason not to. Intuitively, most of us look at our long-term goals when trying to ascertain what our short-term goals should be.

Whether you start with a long-term goal based on what you want to do or with short-term goals based on what you like to do, the goal of developing a road map is the same. What's the use of a road map? Refer to your professional development plan six months after you begin it. See if you are still on course. Use your professional development plan to focus your efforts on your long-term goals and stay the course over time. The best part is, if you are off course, you can choose between getting back on track or modifying your professional development plan to meet your new goals, or even to achieve the same long-term goals with different interim steps.

---

*Jason Zac Christman is an associate with William G. Schwab & Associates, a general practice firm in Lehighton, Pennsylvania. Christman focuses on bankruptcy law but has a professional development plan to develop a more diverse consumer law practice, including real estate law.*

[● back to top](#) [● back to home](#)



## Alan Olson: Outstanding Achiever

By Michelle Wolfe

Alan Olson—invert his initials and you get “OA,” for outstanding achievement. I spoke with him only briefly, but our discussion was a great opportunity to explore what people can achieve if they have a plan and follow through. Olson, at the young age of 36, has earned numerous academic achievements and has a successful practice in the type of law he chose at a very early time in his career.

While in high school, Olson already knew he wanted to be a trial lawyer. As an undergrad at Drake University, he was involved in the legal field and participated in the Mock Trial Tournament. His team won the National Championship. It was during this time that he met his current associate, Patricia L. Notch, who just joined his firm in March of this year. In fact, even after law school, he remained active with Drake’s Mock Trial team, and coached the team all the way to another National Championship in 1993.

Olson stayed on at Drake University to attend law school, and graduated in 1992. It was then that he began his career as a law clerk for the Honorable Dick R. Schlegel, of the Iowa Court of Appeals. He chose this particular career path at the appellate level to gain exposure and learn from the other lawyers, which gave him the opportunity to view their strategies and the records that were created, as well as the thought process of the judges making decisions. Thereafter, he chose to be employed by an Insurance Defense firm to gain insight about the insurance industry. Although he always planned to be a plaintiff’s lawyer, he knew that it was important to get in the heads of the insurance industry professionals.

He then went on to join, as an associate, a premier plaintiff's law firm, where he finally represented the plaintiffs. But within a year and half, he was again on a new career path when he opened his own firm in January 1997. Although he began as a solo practitioner, during the period of 1999 through October 2002, he formed a partnership with a colleague, Kathleen Beebout. However, in the fall of 2002, he again ventured out on his own, and currently maintains a successful practice with one associate. His practice primarily focuses on personal injury and wrongful death cases on behalf of the plaintiff.

By a review of his community achievements and activities, you can see that he truly appreciates the essence of the bar associations. He values the bar associations because of the public and member services they provide. Olson has been active in bar associations during his schooling and career. He is a member of the Polk County Bar Association, the Iowa State Bar Association (where he was on the Board of Governors during 1996 to 1999), and the Administrative Committee for 1998–1999. He is also active in the American Bar Association, where he is currently on the Standing Committee on Membership, and was the Chair of the Young Lawyers Division, as well as the Chair of General Practice, Solo and Small Firm Section and on the Corporate Sponsorship Committee. He also remains active in the Iowa Trial Lawyers Association, the Association of Trial Lawyers of America, and the Mock Trial Association, where he was the received the Chief Justice W.W. Reynoldson Award in 1993.

Since 2002, Olson has been promoting the "Junior Judges: Helping Kids Make Smart Choices" Program through the ABA, Young Lawyers Division. This program is implemented in all 50 states to prevent school violence. The program is geared to third and fourth graders to teach them the consequences of their actions. As a result of Olson's efforts, the program was awarded the Outstanding Public Service Award given jointly by the American Bar Endowment and the Young Lawyers Division. In addition, while Olson was chair of the Young Lawyers Division, Junior Judges won the ABA Section Officers Conference Meritorious Service Award in 2003. Mind you, Olson was only 35 years old when this award was given.

When asked what advice he would pass on to future generations of young lawyers, Olson quickly responded with "Whether or not you do your homework shows up in the market place. When you do succeed, don't linger too long at the table of success, because the only way at your next meal is to get hungry." I am sure we will continue to hear more about Alan Olson's accomplishments in the future, and about the impact he is having on others.

---

*Michelle Wolfe was a paralegal who went to law school. A graduate of the Widener School of Law in Delaware, she practices in a four-person firm in Carbon County, PA. In her spare time she raises horses. She may be reached at [mwolfe@uslawcenter.com](mailto:mwolfe@uslawcenter.com).*



## What Successful Lawyers Do

### Successful lawyers . . .

1. **Focus—Only do what you do best.**
2. **Practice the Golden Rule—The no. 1 client complaint is that the lawyer does not return calls.**
3. **Build Relationships—Give more than just basic core service.**
4. **Educate People That They Solve Problems and What Their Practice Areas Are. They feature their benefits and master the art of storytelling. Facts tell, stories sell.**
5. **Exceed Expectations—Give More Than Expected. Under-promise so you can exceed expectations.**
6. **Ask for Help—Marketing is not about who you know, but who they know. Ask for names for your mailing list.**
- 7.

**Make People Feel Good. Send notes of any kind, especially hand written.**

8.

**Understand Lifetime Value of Client. The value of repeat business and referrals can be enormous.**

9.

**Test—Try a lot of things and see what works. Track your activities.**

10.

**Give People What They Want. This is not the same as what they need. The fear of loss is easier to sell than fear of gain.**

These ten tips are from a seminar on marketing by David Ward at the 2004 ABA Midyear Meeting. Visit Mr. Ward's website at [attorneymarketing.com](http://attorneymarketing.com).

*William G. Schwab*

 [back to top](#)  [back to home](#)

# MacNotes

By Jeffrey Allen

This issue's MacNotes column focuses on having fun. One of the joys of owning a Macintosh computer for work is the entertainment it can provide both after and during office hours (c'mon folks, you all know that you take a few minutes of personal R&R time during a busy and hectic workday). We have known about the graphics and musical capabilities of Macintosh computers for some time. Apple has now expanded those capabilities through a combination of new hardware and software at extremely reasonable prices.

During his Keynote address at MacWorld early in January, Steve Jobs introduced iLife '04 to the world. Describing it as "Microsoft Office for the rest of your life," Jobs impressed virtually everyone in the standing-room-only auditorium at the Moscone Convention Center in San Francisco.



Apple introduced the original iLife package about a year ago. In the package, Apple included several programs that it had already made available without cost to Mac purchasers, upgrading some and augmenting the package with new software. The package included iPhoto for managing digital photographs; iTunes, the whiz-bang program created by Apple to handle your music, regardless of source, and the doorway to the online 24/7 iTunes store opened by Apple; and finally the iMovie application, which provided would-be videographers and moviemakers with a reasonable and competent video editor. At \$49, iLife represented an incredible value. But improvements and additions have been made in the latest version of the software.

**GarageBand.** As good a value as the original was, the '04 version of iLife offers a much better value. In addition to all the original programs (several of which Apple again upgraded), Apple added a new program to the mix, GarageBand. Simply put, GarageBand can make you look like a talented composer, even if you can't read music.



Jobs wowed the Apple faithful at MacWorld as he used GarageBand to seemingly effortlessly weave together a composition out of a combination of prerecorded music, a live guitarist, and a Macintosh. Jobs was assisted by a fairly decent USB musical keyboard that Apple sells for \$99 (Apple does not require that you use their musical keyboard: almost any USB keyboard will do).

Musical loops serve as the basic building block in GarageBand. The program comes with a library of about 1,000 loops. You can drag and drop the loops into the GarageBand window to create a new track. You can then modify the track by changing its duration, tempo, and key. You can build a composition by adding additional loops. Apple also sells a supplemental library of 2,000 loops for \$99 as the GarageBand Jam Pack. The Jam Pack also includes another 100 software instruments and additional presets and amplifier configurations, further expanding GarageBand's already substantial capabilities.

You can augment the musical loops with music created by you on software instruments that you can play through a software keyboard that appears on screen (or better, through the use of the USB keyboard referred to above). You can also add music from other prerecorded and live sources.

GarageBand will mix all the tracks down to a stereo AIFF file (full CD quality). You can export the finished composition to iTunes (Apple's music management program, also included in iLife '04) for inclusion in your computer music library and subsequent exportation to your MP3 or AAC format player, or to a CD.



**iTunes 4.2.** The new version of iTunes sets the program up to work well with the new iPod Mini as well as the traditional iPods. If your music library exceeds the capacity of your iPod or iPod Mini, iTunes will now prioritize to ensure that the portion of the library synced and downloaded to the iPod includes your play list songs, your most played songs and your top rated songs.

**iPhoto 4.** Apple substantially improved its iPhoto software, releasing it as iPhoto 4. iPhoto 4 increases the program's capacity to handle photographs numbering up to 25,000. The new version handles the photographs more quickly, more easily, and more efficiently than its predecessor versions. It also adds a new sepia effect to enhance presentation and an increased facility for exchange with others through Rendezvous.



**iMovie 4.** iMovie 4 now allows editing in timeline form. It also allows simultaneous application of effects and transitions to multiple clips. Apple has substantially improved the program's editing capabilities as well. Additional improvements/features include new export options for your finished movie, new titling capabilities and the ability to import movie clips from Apple's iSight camera.

**iDVD 4.** Apple has added new themes to iDVD 4 as well as a number of new transition effects. The new version also includes new navigation tools. You can also incorporate an autoplay feature into movies or slide shows recorded to DVD.

**And On Another Subject:** Microsoft has announced that it plans to release Office 2004 for the Mac later this year. The new release will work only on System X and will require OS 10.2.8 or higher. It violates the newsletter's policy to review an unreleased product. Accordingly, I will not review it here—I will simply pass along the fact that the preliminary information that has been made available to and through the media promises an expanded, better integrated, more powerful, and more sophisticated package of programs than Office X and should bring the Mac version of the suite to substantial parity (if not, in some cases, outright superiority) over the current Windows version of the suite.

Jeffrey Allen ([jallenlawtek@aol.com](mailto:jallenlawtek@aol.com)) has a general practice in Oakland, California. His firm, Graves & Allen, emphasizes real estate and business transactions and litigation. He is a frequent speaker and author on technology topics and the Editor-in-Chief of the GPSolo Technology & Practice Guide and the Technology eReport.

 [back to top](#)  [back to home](#)



## The Old Man's Words of Wisdom

By William G. Schwab

Are we becoming a nation of haves and have-nots? As legal professionals, do we have a duty to insure equal justice for all to prevent this?

These questions nagged me after a dinner with my 24-year-old daughter who works as the director of an after-school program in inner-city Philadelphia. She discussed that growing up in rural America was a lot like what she faces in North Philly. She saw how education funding sacrifices the potential of youth in both areas. She talked about how money decides opportunity for each. She talked about how great it was that I was able to supplement her "education" because I was a lawyer. She observed that today in America only suburbia and the affluent areas of cities regularly afford these benefits to children. Unfortunately, I see the same is evolving with our justice system.

At a recent ABA meeting, I got a sticker for contributing to the Fund for Equal Justice. I didn't remember doing it, but it reinforced in me the have and have-nots concept is already effecting our justice system. I head the largest law firm in the county in which I practice. Most people would characterize me as successful and not one who "needs" a county position. Many wonder why I continue to be a part-time public defender. It's simple. I taught my children and practice the idea of giving back to my community. We cannot just take and take.

The Public Defender's Office in my county is staffed by hardworking and dedicated part-time lawyers who aren't there just for the money. We have computers for the lawyers, because I donated used ones from my office. The county couldn't afford it for the poor individuals we represent. We still operate with one phone for four lawyers. This, at times, makes things difficult. The four of us can only see one client at a time, because we don't have private offices to maintain confidentiality—we are in one big room. Such is life in rural America. I represent

the have-nots. The DA's office has almost twice the number of lawyers and a support staff of five to our one. We have no investigator. Representation is what we put into it. None of looks at the clock. We spend the time needed on each case.

As lawyers in the making and new lawyers, try to remember as you develop your career plan why you went into law school. Most of us went because we wanted to change our society and do good. Money for most of us was secondary. Equal justice for all is not just a slogan. It should become a way of life. Yes, your career path may take you into a practice area where you think you cannot help out, but what about a legal clinic at night? What about taking court conflicts in criminal cases? As a bankruptcy specialist, I bring a unique approach to white collar crime cases that affords my clients a better defense.

It's all about giving back. If we don't, we truly will become a country of haves and have-nots, not just in our society, but also our legal system. America was not founded on the concept that the amount of money you have controls the justice system. Everyone is equal and presumed innocent under the law.

What do you think?

*Bill Schwab*  
*Now learning the law for over 27 years*

[● back to top](#) [● back to home](#)



# Ball Point Ink Stains Never, Ever, Come Out

By Evan Loeffler

As a lawyer with several years' litigation experience, I do not think of myself as a mere novice in the courtroom. I recognize, however, that I can always learn a thing or two from my colleagues, so I try to remain open-minded when people give me advice. I have learned over the course of years that some advice from older lawyers, however well intentioned, is not of use to today's younger practitioner. This was most recently demonstrated when I heeded the advice of a respected and successful litigator.

“When you have a losing case with suspect facts, the most important thing to remember when addressing the jury is to command their attention,” the aged litigator said to me. “If they're not listening to your summary, they're not going to be thinking about the facts the way you want them to during deliberations.”

This seemed to me to be good advice, so I asked him if he had any tricks of the trade he would be willing to share. The lawyer smiled and indicated his pleasure at being asked by ordering another round of martinis and picking up the check.

“The best way I have found to arrest the jury's attention during a long closing argument is to refill my fountain pen,” he said. He explained then how he had perfected a technique of

waving his trusty Mont Blanc to hypnotize the members of the jury. Once they were all watching the pen, he would proceed to dismantle it, produce an inkwell, fill the pen and put it back together without either spilling a drop of ink or missing a beat in his speech.

“It never fails,” he stated. “The jury is mesmerized by the operation, and they’re impressed as all get out. The key is to continue speaking as if nothing is happening.”

I was then in the midst of a case that was a likely candidate for trying this procedure. I was defending a client in a dog bite case in which my client’s bull terrier had gotten away from him and bitten the plaintiff, who had been innocently poking at it with a sharp stick. Opposing counsel had won a preliminary injunction to leave the dog still attached to the leg of the victim. I had argued unsuccessfully that this would be unnecessarily suggestive to the jury. During the trial the testimony of the victim had been punctuated by her screams of agony each time the dog shifted its position. I needed some way of diverting the attention of the jury from the animal, and this pen-filling trick seemed to me to be as good an idea as any.

The problem was that I did not own a fountain pen. I researched the issue and determined that purchasing one was out of the question because a well-made pen costs hundreds of dollars, something in remarkably short supply in my office. Moreover, I found that fountain pens are far too complicated for me to use. I decided, therefore, to modify my learned colleague’s advice slightly and substitute his fountain pen with my ballpoint.

I was ready when it came time for my closing argument. When opposing counsel had finished his summation and given the terrier a nudge to elicit another yelp of pain from his client, I rose to my feet and began to speak.

“Ladies and gentlemen,” I said, removing my Bic™ Round Stic from my breast pocket. “Keep in mind that it was the plaintiff, and not my client, who set the train of events in motion that ended with her being bitten.”

I proceeded to outline our version of events and argue our side of the case. While doing so, I removed the cap of the pen and found I was unable to separate the writing nib from the plastic tube. Continuing with my speech, I replaced the cap and, with my thumbnail, removed the plastic cover from the end of the pen. This I accidentally dropped, requiring me to break eye contact with the jury while I went down on my hands and knees to retrieve it from under the opposing party’s table. The dog yipped in pain when I crawled over its tail, and bit down harder on the plaintiff, causing her to howl. I didn’t miss a beat in my speech.

Unfortunately, I still was not able to remove the ink cartridge from the pen. I returned my attention to the working end of the writing instrument and finally managed to remove the ink cartridge by placing the writing nib in my mouth and using my teeth to hold it in place while I pulled the rest of the pen free. This caused some of my speech to become somewhat garbled, as I found it difficult to enunciate words like “culpability” with my teeth clenched around the pen. Nevertheless, I forged ahead with my argument.

I was pleased to observe by this time that I had definitely arrested the attention of the jury. Each of them had fixed me with a quizzical stare. They continued to regard me thusly as I produced a package containing two replacement pen cartridges from my breast pocket and attempted to open it. This proved to be extremely difficult, as the manufacturer had seen fit to have the objects vacuum-sealed into a nearly impregnable cocoon of plastic and cardboard.

After struggling to open the package for some time I attempted to open it by ripping it down the middle, which succeeded in flinging the two cartridges in opposite directions. One of the cartridges embedded itself in the wall behind the jury box. The other cartridge hit the plaintiff who, startled, fell out of her chair and landed on the dog. The dog in its surprise released its grip on the plaintiff. Objecting to this change in the status quo, it searched out and sank its teeth into the nearest object it could find. This turned out to be plaintiff's counsel, who loudly voiced his displeasure and distracted me from my speech.

"Counsel," said the judge. "During your closing argument I have observed you assault opposing counsel, the plaintiff, the jury, and cause damage to exhibit 'A.' I am giving you fair warning that I will hold you in contempt if you assault the Court or any of my staff."

I assured the judge I would do no such thing and resumed my remarks to the jury. I had retrieved the ink cartridge from the plaintiff by this time and, while discussing such lofty concepts as the burden of proof, attempted to insert it into the empty pen. It was at this point I encountered an unforeseen obstacle: Cross™ replacement ink cartridges don't fit into Bic Round Stics.

Undaunted, I slammed the cartridge into place, giving the pen a few encouraging whacks on the bar of the witness box. Ink began to dribble from the back of the pen. I tried to stem the flow by replacing the end cap, but this succeeded only in getting ink on my hands. My frantic attempts to wipe the ink from my hands resulted in ink getting smeared on my face, suit, shirt, tie, the floor, the jury box, my client, and the dog.

By the time I finished my closing statement several members of the jury were trying to keep from laughing. Surprisingly, however, the speech was not a complete disaster. Opposing counsel was compelled to waive his rebuttal, partially because he, too, was nearly overcome with mirth, and partially because he found it difficult to stand with the dog still gnawing on his leg. The jury returned after a short time with a nominal verdict in favor of the plaintiff and several requests that I perform my closing argument at upcoming parties. The Court fined me the amount required to repair and dry clean opposing counsel's suit.

I learned a number of lessons from this experience. The bottom line was that the pen-filling trick was marginally successful. The jury retired to its deliberations and thought about something other than the plaintiff's case. In the future, however, I plan to refine my pen-filling procedure so as to avoid physical damage. The second lesson I learned is that while it is a

good thing to solicit and listen to the advice of a more seasoned lawyer, one must not follow it blindly without giving some thought as to its application.

The final lesson I learned was not as pleasant: ball point ink stains never, ever, come out.

---

*Evan Loeffler is of counsel to the law firm Harrison, Benis & Spence, a small law firm in Seattle, Washington.*

[● back to top](#) [● back to home](#)



## Dear Mike

By Mike McBride

***The lawyer I'm working for has a drug and drinking problem. When I first started working for her, she seemed to be a fun person to work for. Now I just see it's the white powder and booze. What I'm worried about is now I think she is playing around with the office's trust account to feed her habit. There are only two of us in the office, and I'm only out of school a year. How do I handle this?***

***—Working in Snow Country***

Dear Working in Snow Country:

You have a serious problem, and you need help to address this situation immediately. First, you should try to do what you can to help your boss out. This will involve a confrontation with your boss to discuss this issue. Many suffering addiction do not want help or are in denial. Many state bar associations have Impaired Lawyer's Committees to provide help. The Oklahoma Bar Association, for example, has a "Lawyers Helping Lawyers" program that is a confidential service for the bar association members that can reach out to the lawyer and provide counseling and intervention resources. They have other resources to help address your boss's addiction problems. The RULES OF PROFESSIONAL CONDUCT for Oklahoma, for example, under **Rule 8.3(d)**, exempts lawyers working on the "Lawyers Helping Lawyers Committee" or the Oklahoma's "Management Assistance Program" in the course of helping other lawyers from reporting potential violations of the RULES OF PROFESSIONAL CONDUCT. This provides for confidentiality and encourages people to seek help.

However, the above analysis assumes your boss wants help, which may not be the case. In fact, her reaction when you confront her may be less than pleasant, and you may get fired on

the spot. However, if your boss has no desire to recognize her problem or to seek to change, it would be in your best interest to leave your present employment as soon as possible in any event.

Regardless of the nature of the reaction of your boss to the confrontation, there is a difficult problem because of the possibility that your client trust account funds may have been compromised by your boss. The AMERICAN BAR ASSOCIATION MODEL RULES OF PROFESSIONAL CONDUCT provides guidance. **Rule 1.15** “*Safekeeping of Property*” places a duty on us relative to keeping property segregated and safe, including client trust accounts. You would still have this duty even if you are fired or resign immediately after the confrontation. Further, if you remain at your present employment, **Rule 1.1**, competence may be relevant if her skills are so far impaired by her addiction that she is incompetent on representation matters, particularly if she is in fact stealing clients’ money from trust accounts. Ultimately, her impairment infringes upon the integrity of the profession.

Under **Rule 8.3**, “Reporting Professional Misconduct,” you have a duty to report her misconduct relative to the stealing or misappropriation of client trust funds. **Rule 8.3 (a)** provides “[a] lawyer having knowledge that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate professional authority.” Also, many states have different obligations for lawyers in other places. Oklahoma, for example, has RULES GOVERNING DISCIPLINARY PROCEEDINGS. **Rule 10.1** “*Definition*” defines “*personally incapable of practicing law*” as including (c) “Habitual use of alcoholic beverages or liquids of any alcoholic content, hallucinogens, sedatives, drugs, or other mentally or physically disabling substances of any character whatsoever to any extent which impairs or tends to impair the ability to conduct efficiently and properly the affairs undertaken for a client in the practice of law. Further, **Rule 12.1** “*Notice to General Counsel*” provides in relevant part “[u]pon . . . the incapacity (as defined in Rule 10.1) . . . of a lawyer, any lawyer, or law firm with which the lawyer was professionally associated, including office arrangements, . . . shall give notice to the General Counsel.

Make sure the trust account misappropriation or stealing is really the case, though. Be prepared to document and prove your report to bar association authorities. You do not want to make a mistake on this issue. Your job may be on the line, but we have an overriding duty as lawyers to protect our clients.

Bottom line is that your employer needs help, but it won’t be in your best interest to hang around if she doesn’t want help. If there are sufficient circumstances and evidence, you should contact authorities. You have the duty under the Model Rules of Professional Conduct to report misconduct (subject to the “Lawyers Helping Lawyers” exemption discussed above) and protect your clients.

**Dear Mike,**

**I just graduated, obtained my license, and am now looking forward to starting a second career practicing law. I have spent the last 16 years with the same company and was expecting to move into a legal capacity with this company. Due to downsizing, this has not occurred (and probably will not). How can I better sell this idea to my present employer? I have over ten years' experience in the environmental/ regulatory affairs arena, having served on national committees, directed affairs for multiple manufacturing facilities, and so forth. If I am not successful here, what is the best way to translate these skills into a promising legal career with a law firm or other company without having to start out totally at the bottom of the pack?**

**—Looking for Option**

Dear Looking for Options:

Congratulations on obtaining your Juris Doctorate! It is a powerful tool when combined with your environmental/regulatory experience. Identify your current goals and make sure they are your own and not someone else's. You should categorize and quantify your experiences and strengths, including significant transactions, responsibilities, and budgets that you have been responsible for and put those into both a resume and action plan. Target law firms and companies in industries and areas that you desire to work in. Parlay your experience with your newly earned J.D. into a promising career.

Although you are a "baby lawyer" as a newly minted J.D., your experience surpasses most brand-new, young lawyers graduating from law school who have yet not learned life's lessons or had the same responsibilities that you have had. Emphasize your experience and wisdom after you have targeted your next career move. Refocus your efforts to live your dreams.

---

Got a question for Mike?

E-mail D. Michael McBride III at [D.Michael.McBride.III@abanet.org](mailto:D.Michael.McBride.III@abanet.org)

*D. Michael McBride III is a Council member of the ABA General Practice, Solo and Small Firm Section. He also Chairs the Outreach Committee. McBride practices federal Indian law and litigation in Tulsa, Oklahoma, where he is a Director and Shareholder of Sneed Lang, P.C. He also serves the Kaw Nation as an Associate Justice of their Supreme Court.*

 [back to top](#)  [back to home](#)

# Legal Trivia



**Which president appointed the most justices to the Supreme Court?**

George Washington appointed 11 (of which 10 actually served). In the last century, FDR appointed 9; William Howard Taft, 6; and Eisenhower, 5.

● back to top ● back to home



## Advocational Vocab

Test your vocabulary. Do you notice the differences among the following?

**facetious**  
**factitious**  
**fictitious**

**flew**  
**flue**  
**flu**

Answers

- Facetious—(adj.) witty
- Factitious—(adj.) artificial
- Fictitious—(adj.) imaginary
- Flew—(v., past tense) did fly
- Flue—(n.) a chimney
- Flu—(n.) short for influenza

Now test your friends and colleagues.

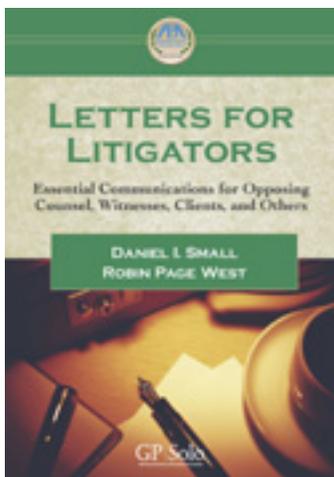
[● back to top](#) [● back to home](#)



## Don't Let Ethics Jeopardize Litigation

Ethical concerns can jeopardize the outcome of the litigation, the lawyers' involvement in the case, and quite possibly the lawyers' continuing ability to practice law, should a disciplinary body become involved. Discretion is always appropriate in this context, whether you are raising or responding to the particular ethical concern. While it is impossible to generalize about ethical issues, the importance of addressing them promptly and ethically, and memorializing the resolution in writing, cannot be overstated.

From *Letters for Litigators: Essential Communications for Opposing Counsel, Witnesses, Clients, and Others*



<http://www.abanet.org/abapubs/books/5150291>



# GPSolo New Lawyer Links—Ties That Bind!

- **GPSolo Home Page**—All the up-to-date information about the GPSSF Section.  
<http://www.abanet.org/genpractice/home.html>
- **GPSolo Magazine Archive**—See what we talked about in the past!  
<http://www.abanet.org/genpractice/magazine/archives.html>
- **Technology eReport**—Find out the latest on the technology front.  
<http://www.abanet.org/genpractice/ereport.html>
- **GPSolo Directory**—Need to know who's who?  
<http://www.abanet.org/genpractice/contact/contact.html>
- **GPSolo Awards**—Do you know an award-worthy person or project?  
<http://www.abanet.org/genpractice/awards.html>
- **GPSolo Committees**—Find out what's going on in our committees.  
<http://www.abanet.org/genpractice/committees/index.html>
- **Online CLE**  
<http://www.abanet.org/genpractice/westlegaledcenter/home.html>

**General Practice, Solo and Small Firm Section**

Copyright © 2004 American Bar Association.  
General Information: [genpractice@abanet.org](mailto:genpractice@abanet.org)



**William T. Hogan III**, GPSolo Section Chair  
66 Long Wharf, Boston, MA 02110-3605  
617-367-0330; [whogan@hrmlaw.com](mailto:whogan@hrmlaw.com)



**Michael J. McBride III**, GPSolo Outreach  
Committee Chairperson  
2300 Williams Ctr Twr II, 2 W. 2nd St., Tulsa, OK  
74103  
[D.Michael.McBrideIII@abanet.org](mailto:D.Michael.McBrideIII@abanet.org)



**William G. Schwab**, *GPSolo New Lawyer*  
Editor  
P.O. Box 56, Lehighon, PA 18235  
610-377-5200; [schwab@uslawcenter.com](mailto:schwab@uslawcenter.com)



**Evan Loeffler**, *GPSolo New Lawyer* Assistant  
Editor  
2033 6th Ave. Suite 1040, Seattle, WA 98121  
206-448-0402; [eloeffler@hbslegal.com](mailto:eloeffler@hbslegal.com)



**Amy Lin Meyerson**, *GPSolo New Lawyer*  
Assistant Editor  
28 Powder Horn Hill Road, Weston, CT 06883-1409  
203-232-4322; [ameyersonesq@optonline.net](mailto:ameyersonesq@optonline.net)



**Alexa Giacomini**, *Section Director*  
750 N. Lake Shore Dr., Chicago, IL 60611  
312-988-5636; [giacomia@staff.abanet.org](mailto:giacomia@staff.abanet.org)

---

**ABA Publishing**

750 N. Lake Shore Drive  
Chicago, IL 60611

Director

**Bryan Kay**

Editorial Director

**Susan Yessne**

Design Director

**Russell A. Glidden**

Editor

**Tom Campbell**

Art Director

**Jill Tedhams**

### **Free Permission for Reproduction**

The authors of the articles in this newsletter have granted permission for reproduction of the text of their articles for classroom use in an institution of higher learning and for use by not-for-profit organizations, provided that such use is for informational, noncommercial purposes only and that any reproduction of the article or portion thereof acknowledges original publication in this issue of *GPSolo New Lawyer*, citing volume, issue, and date, and includes the title of the article, the name of the author, and the legend "Reprinted by permission of the American Bar Association." In addition, please send a copy of your reuse to ABA address above.

[● back to top](#) [● back to home](#)



## Section News

### In This Issue's Section News:

- [Diversity Fellowships Available](#)
  - [Call for Award Nominations](#)
  - [2004 Spring Meeting—Sun, Golf, and A True American Hero](#)
  - [Save the Date! 2004 Annual Meeting Passport Information](#)
  - [Save the Date! 2004 SOLO DAY](#)
  - [GP|Solo Young Lawyers Page \(\*please bookmark!\*\)](#)
-



*Captain William E. Brown*



*Olu A. Stevens*



*Edd Vasquez*

## **Now Accepting Applications for the 2004–2005 Diversity Fellows Program**

The General Practice, Solo and Small Firm Section's Diversity Fellows Program is designed to promote ethnic diversity within the Section, recruit members of color, and provide leadership development opportunities within the Section for members of color.

The Section's Diversity Committee and Membership Board identifies and nominates three lawyers of color who will be appointed by the Chair-Elect to funded fellowship positions within the Section, effective during the following bar year. Upon completion of successful active participation in the first scholarship year, these participants will then be appointed to regularly funded positions within the Section the following bar year, giving consideration to the Section's existing needs and the participants' preferences based upon the first year participation.

This year's Diversity Fellows are Captain William E. Brown of Atlanta, GA; Olu A. Stevens of Louisville, KY; and Edd Vasquez of Washington, DC. Other former Fellows include George Johnson, Amy Lin Meyerson, Laura Farber, Jeannie Hong, Leslye M. Huff, Charlene L. Usher, Major James M. Durant III, Richard M. Macias, and Judy A. Toyer.

For more information on the Diversity Fellows Program and to fill out our online application, please visit <http://www.abanet.org/genpractice/diversity/fellows.html>.

Applications are due by May 7, 2004.

---



## **Call for Award Nominations**

The ABA General Practice, Solo and Small Firm Section is pleased to announce a call for nominations for its 2004 Awards Program recognizing dedication to the practice of law as general practitioners or solo/small firm lawyers and also the bar associations and bar leaders working to meet their needs. Available awards include:

### **AWARDS FOR SOLO AND SMALL FIRM LEADERS**

- Donald C. Rikli Solo Lifetime Achievement Award
- Sole Practitioner of the Year Award
- Annual Sole Practitioner Merit Award
- Annual Small Firm Practitioner Merit Award

### **AWARDS FOR BAR ASSOCIATIONS AND BAR LEADERS**

- GP Solo and Small Firm Project Award is designed to award bar leaders and associations for their successful projects.
- Annual Bar Leader Award recognizes the significant contributions of a current or past bar leader of a general practice, solo practice, or small firm entity.

For a complete description of the awards and application process, please visit our awards homepage found at <http://www.abanet.org/genpractice/awards.html>.

Applications are due by April 30, 2004.

---



## 2004 GP/Solo Section Spring Meeting

ABA GPSolo Section Chair William Hogan invites you to join us for what will truly be a most memorable meeting from April 21–25, at the Gold Canyon Golf Resort located at the foothills of the Superstition Mountains outside of sunny Phoenix, Arizona. The Section will be presenting our Lifetime Achievement–Difference Maker Award to the esteemed General E. E. Anderson. Highlights of the meeting will include an Opening Session on Thursday and the Difference Makers Dinner on Friday, both of which will include significant military guests and addresses by ABA President-Elect Robert J. Grey, Jr. In addition, the Section will be holding numerous committee meetings, hosting a golf tournament, implementing the Section’s public service project–Tolerance Through Education–at a local school, and enjoying a tour of the “Junior Grand Canyon” at a Dolly Steamboat Dinner. You won’t want to miss out on all the fun!

*(Did we mention most of the rooms at the Resort have their own hot tubs and that the Resort’s golf course was rated as the #1 public golf course in Arizona? Rooms/casitas start at \$122!)*

For more information and to register for this meeting, please visit <http://www.abanet.org/genpractice/events/04spring/index.html>.

---



## Save the Date: 2004 Atlanta Annual Meeting Passport

**ABA 2004 Annual Meeting**

**Atlanta, Georgia**

**August 5–8, 2004**

**Omni Hotel at CNN Center**

**The GP|Solo Section is pleased to announce the availability of Section Passports!**

Passports include admission the Section's Friday CLE programs as well as to all LPM and Litigation Section CLE programs at no additional cost!

*(Admission to Solo Day excluded.)*

### **PASSPORT PRICES**

**\$150 for Section Members**

\$175 for non-Section members

\$100 YLD, govt. and judges

\$0 law students

For more information and to buy a GPSolo Passport, please visit

<http://www.abanet.org/annual/2004/home.html>.



## Save the Date: SOLO DAY 2004—August 5th

While in Atlanta Be Sure Not to Miss . . .

Solo Day 2004

‘We Are a Team: 99 Tips for Maximizing Your Potential’

Solo Day is a half-day program featuring CLE designed specifically for the sole practitioner. Solo Day 2004 includes **informative sessions** on *marketing for solos, avoiding trouble by making your malpractice carrier a part of your team, and teaming with other attorneys WITHOUT losing your clients.*

All Solo Day attendees will receive a copy of ‘We Are a Team’: 99 Tips for Maximizing Your Potential—A list of 99 of the best tips from the Solo Day Program.

Join us after the program for the GPSolo Section’s Diversity Committee Reception.

Price Information

**\$125.00, includes copy of Thomas Kane's Letters for Lawyers.**

**\$ 75.00 without the book**

For more information on registering for the meeting and purchasing Passports or Event Tickets please visit: <http://www.abanet.org/genpractice/home.html>.

---



## GP/Solo Section Young Lawyers Page

Don’t forget to bookmark the Section’s Young Lawyers Welcome Page! Our Page provides a wealth of resources at your fingertips—from finding out more about the Section’s benefits, to highlighting recent *New Lawyer* articles, to providing book suggestions on topics relevant to your level of practice.

Please visit the Young Lawyers Page at <http://www.abanet.org/genpractice/younglawyers/>