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*When everyone is against you,  
it means that you are  
absolutely wrong—or  
absolutely right.*

*Albert Guinon (1863–1923)*

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One lawyer felt bottled up as a lawyer, and so he uncorked his experience to become a winemaker, too.
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Ask yourself five questions and learn how to say “no” to new clients.
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How to make certain you defend yourself against cases that are not for you and select cases that give you the best shot.
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How to market yourself aggressively without the guilt.
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“I feel that my career is at a dead end . . .”

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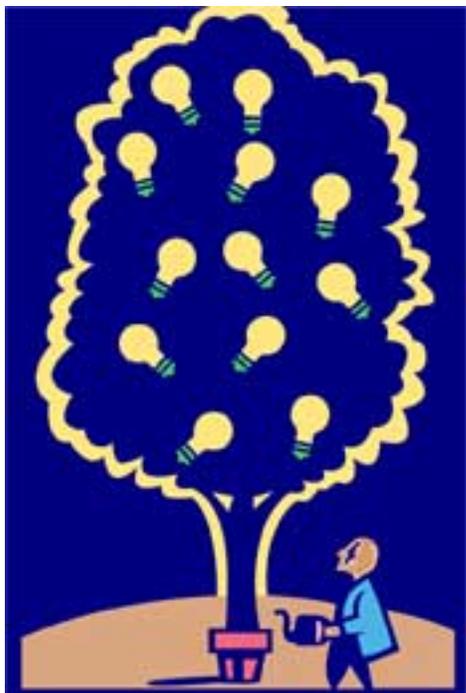
# Legal Trivia



**Truth as a defense against libel came after Peter Zenger attacked Governor William Cosby in 1733. What did Zenger accuse him of having?**

Bad denture breath

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## Have You Heard the Buzz About Marketing?

By Gretchen Otto

Marketing is a full time job from which you never get a break. The good news is that it doesn't have to be difficult or time consuming. With proper routine care and maintenance it will soon become second nature and even something you may enjoy.

### The Word on the Street

Step one in launching your marketing plan is easy. Tell everyone you know that you are a lawyer. My colleagues and I have routinely heard from clients that when they needed a lawyer (particularly unexpectedly), they didn't know one. Never underestimate anyone's likelihood to need your services now or in the future.

### Stretch Your Comfort Zone!

Now that the word is out among everyone you know, it is time to lose the shyness and tell people that you don't know that you are a lawyer. Practice with a friend or in front of a mirror if you have to. Get comfortable striking up friendly banter to improve your chances of meeting lots of potential clients. Join your bar association, Toastmasters International, or a local business network if you find this part difficult. Practice will make it easier. This strategy can also be rewarding in other ways. You may meet all sorts of business people you may need some day, get a date, or even make a new friend!

### It's All in the Cards

Always have your business cards handy. Reorder immediately when you get low. While standing with someone waiting for a cab, you don't want to be fumbling for pen and paper and lose the opportunity to gain a new client.

### **Think Outside the Box**

Sure, we all know that you can do many traditional things to attract clients. You can run an ad in the yellow pages, volunteer at a legal clinic, or sign up for your bar association's referral service, but running an ad in your church bulletin or posting a notice at your local community center or other public meeting place can also be very effective. Try to focus some of your efforts in places where you do not see other lawyers advertise.

### **Be a Team Player**

Join forces with colleagues who work in areas of practice other than your own. Write your law school classmates and all the lawyers you know a letter announcing your areas of practice and seeking their referrals. Offer to refer business to them, and they will refer back to you. Always write them a prompt "thank you" note for their referral business.

### **Remember That You Are Happy With Your Product!**

Lose the guilt concerning aggressively marketing your practice. Remember that you are a fantastic lawyer willing to work hard for your client, and offering your services will benefit them as much as it will benefit you. Thus, you should always have an "easy sell!"

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*Gretchen Otto ([gretchenotto@cox.net](mailto:gretchenotto@cox.net)) is freelance author living and working in Northern Virginia.*

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## The Big Bad Client

By Greg Lawless

### *Ask Yourself Five Questions and Learn How to Say ‘No’ to New Clients*

While the advertising you see in bar journals talks a great deal about marketing and attracting clients, I have found that what is not only more difficult, but also more important, is the ability to say “no” to prospective new clients.

I have been practicing law since 1978, always in small law firms. My practice focuses mostly on real estate transactions. Many of us enter the practice of law because we find it challenging and because we have an innate desire to help people. In a sense, it is that latter trait that gets us into trouble. When a potential new client walks in the door, the natural tendency is to take on the matter because we know we can help that individual, and we want to. The desire to take on new clients is particularly strong with a new lawyer, because expanding the client base is a major goal.

Beware. There is nothing worse than a bad client. Bad clients take on many forms, but the most common traits are: (1) they will not listen to your advice; (2) they are unappreciative of your efforts; (3) they are time consuming; and (4) they do not pay their bill on time, or at all. By handling the affairs of a bad client, you now are less available to a good client. Your time is spent in an enterprise both unsatisfying and financially unrewarding. Have the courage to just say “no.”

When considering taking on a new matter, review the following checklist to see if it is really something you should do.

1.  
Is the case a good one? You don't want to spend time working on lost causes. You can advise the client "We have less than a 10 percent chance," or "The odds are against us." He or she will urge you forward with reckless abandon. Then, when the judge rules against you, the client will place the blame on you. As an added fringe disadvantage, you have also caused the judge and opposing counsel's opinion of your law practice to plummet because they have decided you either have not screened your cases, or cannot screen your cases.
2.  
Do you communicate well with the client? Ultimately the relationship is about your advice, the client giving the input you need, and the client following your advice. If you do not communicate well, then problems will arise down the line. Here, go with your instincts. If you do not like a client, and can't articulate why, honor your subconscious and do not represent that person
3.  
Does this case make financial sense? If you're not going to get paid, or it is unlikely you will get paid, then you would be better off doing \_\_\_\_\_ (fill in the blank with your favorite pastime).
4.  
Can I do the matter efficiently and effectively? If the matter is way outside what you normally do, then you have two alternatives. Either invest a huge amount of time, and discount your bill massively, or bill the client for all your time, secure in the knowledge you are taking unfair advantage of that client. Neither is an acceptable alternative.
5.  
Do I want to do this? A file that you dread quickly becomes a daily burden, taking much of the joy out of the practice of law. If you can honestly answer "This is something I want to do," then your odds of success and your odds of enjoying the process are very high.

There are millions of clients out there. You cannot represent them all. There are millions of lawyers out there too. If you can steel yourself to represent only those clients who get past my five questions your practice will thrive, and the bad clients can find some other lawyer as their victim.

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*Greg Lawless practices at the Lawless Partnership in Seattle, Washington.*

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# The Triangle Defense

By Carl Palmer

When you open a new file or represent a new client, consciously or subconsciously you are making an evaluation about the case and the client. When starting out in a new practice, you might want to consider a more formalized evaluation system.

My case evaluation system is simple. I imagine an equilateral triangle upon which I hang my three concerns. At the first angle I attach “client,” on the next angle I attach “law,” and on the third angle I hang “fees.”

“Client” is the most important assessment, so I start with it, and often return to it. There’s a joke running around presently that has a punch line of, “But would you have lunch with them?” That is sometimes a good question to ask. If you have to spend a lot of time in close quarters with a particular client, what is the personal cost going to be?

Life is short. Perhaps the fee angle is so appealing in a case that an unappealing client (think: day-after-day depositions, traveling together, phone messages, staff being repulsed by them, etc.) is really of no matter. Perhaps the wolf-at-the-door is more of a problem. Particularly when the “law angle” is an area in which you have extensive experience, you might want to weigh the “client” verses the “fee” angles. That can be a seductive scenario. You know the law cold—you’re about as abrasive as the prospective client (you feel), and you see the fees in your account up front. My advice is don’t jump in.

The threat of bankruptcy can often impair how clearly you assess the client and fee angles, so make certain that in this situation your first-level assessment of a prospective case is thorough.

There are other dynamics at work among the angles. A likeable personal injury client will

have an effect on whether the case is one for the jury or not (the “law” angle). Of course, a low-value personal injury case, which probably will be settled without litigation, will suit just about any client personality (the “fee” angle).

In a case where the “law” angle represents a steep learning curve for you, the concerns for the client and your fees are about to be tested for their ambiguity tolerance. It’s okay to learn on the client’s dime. That’s the way it works. There is a point, though, at which your “learning of the law” may cause you not to bill the client.

This will sometimes lead to putting priority on cases that can be billed and collected rather than in cases where you are learning more law. Fees then have their interplay with both the client and law areas of your triangle. In the evaluation process, you may return to the client angle to assess exit strategies in case the fees are no longer recoverable should that come to pass. The possibility of withdrawing from representation is usually discussed with the prospective client, but in your evaluation before taking the case you might reach the conclusion that this is not a client you would want to fire once underway in their case.

If you make your living at the practice of law, there is no case where the client’s cause is so noble that you can ignore the other two concerns. There is no fee so great that it should blind your review of the other issues. And, if you want to work on the path of the laws there is so much *pro bono publico* to do. You don’t have to look at the law and fee angles in pro bono work. I still look at the client angle in them however, for that personal reward in helping those who but for pro bono services would be without legal representation. Try the triangle approach in both types of cases next year.

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*Carl Palmer is a lawyer practicing at the Seattle law firm of McCune, Godfrey & Emerick, Inc., P.S. He has clerked for a federal judge and worked for both small and large law firms.*

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## Legal Consulting: Is It For You?

By Amy Cashore Mariani

In the past few years, many lawyers have left law firm practice to use their legal skills in a variety of ways. One emerging trend is the development of legal consultant practices. Legal consulting provides individuals with opportunities to utilize their legal skills in ways not traditionally associated with firm practice. Before becoming a legal consultant, however, there are a number of factors that you should consider. Judy Loitherstein, an employment law consultant in the Boston area, has some helpful hints for those considering entering the realm of legal consulting.

Judy left large-firm practice to start her own consulting business after she saw many situations that needlessly escalated to litigation. After almost two years of balancing a litigation practice with two to three days a week of training, she decided to leave the traditional practice of law to become a consultant, focusing full-time on training and working with employers to develop business strategies for maximizing employee performance and minimizing legal liability.

Though she no longer practices in a traditional setting, Judy's law degree and prior experiences as an employment litigator are invaluable. Specifically, her past experiences are the foundation for the training and consulting services that she provides. These services include advising employers who do not have their own in-house employment counsel on day-to-day employment law issues and conducting investigations into allegations of employee misconduct. This work incorporates her legal knowledge as well as the skills she developed as a supervisor and human resources professional before becoming a lawyer.

Judy feels that the biggest challenge for any consultant is identifying the services that you want to provide, and to develop a strategy to market to the clients interested in those services. Judy first focused her marketing efforts on in-house lawyers because legal departments often purchase legal services, but she soon realized that her services align more closely with human resources departments, and she tailored her marketing accordingly. Judy now focuses her networking on local and national organizations that attract human resources professionals. According to Judy, identifying and marketing to the correct client base is a significant step that any consultant needs to accomplish in order to succeed.

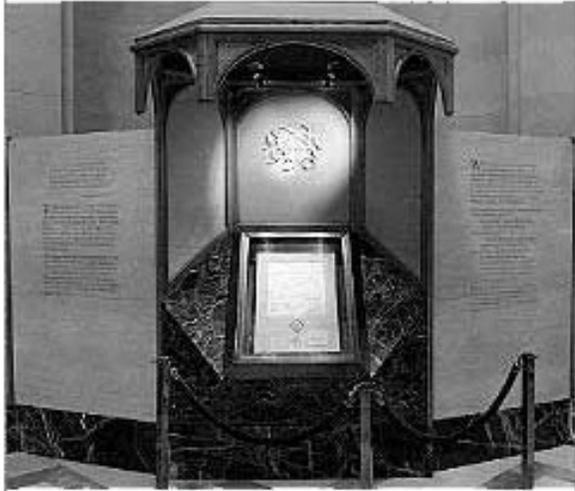
For those considering leaving traditional practice, Judy recommends assessing all of your strengths and experiences, not just your legal experience, to see how they combine to make you different from other ‘nonlawyer lawyers’ out there. She also suggests that it is important to spend some time in a traditional legal practice to develop a solid understanding of the legal issues in the subject area in which you wish to provide services; this enables you to offer something to your clients that a nonlawyer consultant cannot.

In short, preparation, planning, appropriate marketing, and hard work are the keys to success as a legal consultant. For further information on Judy’s business, please contact her at Judy S. Loitherstein, Esq., Loitherstein Employment Law Services, 617-738-6333, [jsl@jslemploymentlaw.com](mailto:jsl@jslemploymentlaw.com).

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*Amy Cashore Mariani is a contract attorney in Cambridge, Massachusetts, who specializes in the defense of employment discrimination and complex tort claims. At present, she is of counsel to the law firm of Fitzhugh, Parker & Alvaro, LLP in Boston, Massachusetts.*

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## The Old Man's Words of Wisdom

By William G. Schwab

It is just a piece of lambskin. Really not more than the size of the front page of the tabloid newspaper *The National Enquirer*. I could not understand a word of what was written in the unfamiliar Latin script.

There it lay under glass in the Cloister of the Salisbury Cathedral, inches from my touch. I never expected the effect it would have on me. I had made a pilgrimage to England to see the Magna Carta.

I had seen the Declaration of Independence, the Bill of Rights, and the Constitution before this excursion. They are great documents in law, but as I read a modern translation of the Magna Carta, I came to appreciate that all our freedoms began with a 12th Century bunch of royals who were turning against the King—rebels, in other words.

Freedom of religion. Trial before your peers. The right to confront the witnesses against you. No cruel and unusual punishment. The whole notation of due process. No one is above the law. All these rights arose from this little piece of lambskin.

Although it took centuries for these same liberties to be extended to the common person, today here in America they are. But will they remain?

This hit me particularly upon my return when I was working on a matter involving the Patriot Act. I had to ask long-time clients of mine for identification to prove they were not terrorists. I have to keep a copy of it on file for future reference should the government wish to check it

later. I know we are in a war against terrorism. I know how I felt on 9/11, when I couldn't reach my daughter who was living two blocks from the White House that morning, but somehow I wonder if we are not giving up rights that took centuries to achieve in the name of national security. I believe there has to be a happy medium balancing both our national defense and our right to live without government interference. When it affects my relationship and how I deal with clients, has it gone too far?

I have no answer to this question. I think it is one that each of us must answer for ourselves. I just know I am uneasy about where we as a country are going in the name of fighting terrorism. It has made me more protective of our freedoms.

What do you think? I'd like to know.

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

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Note: This op-ed column reflects the viewpoints of the author. The views expressed here have not been approved by the Section, the House of Delegates, or Board of Governors of the ABA

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## Dear Mike

By Mike McBride

***Dear Mike,***

***I currently work in house for a corporation, and I hate what I do. I find that I spend more time doing legal management rather than practicing law. I have been trying to go back to working in a law firm to get better legal experience. However, most attorneys tell me that my experience is junior to what they are looking for because as they put it, in-house experience is not as extensive and all encompassing as law firm experience. Thus, I feel that my career is at a dead end, and I am not interested in going to work for another corporation doing the same type of stuff. I feel that my only alternative is to hang out my own shingle. Yet, I am married with a home, school debt, car payments, etc., and no money in my bank account. Any ideas as to making my next move?***  
***—Making the Next Move***

Dear Making the Next Move:

First, identify your current goals and determine whether they are your goals or someone else's. With your family and financial commitments, whatever option you choose, you should first focus on taking care of your family. Next, assess your skills and strengths that you have developed through your in-house corporate experience as well as those skills that you gained from previously working at a law firm. Make a list of significant responsibilities, including the management of others, significant transactions, litigation, and so forth that you have conducted. Do research about the type of legal career that would make you happy and that you are interested in. Now after that, refocus your efforts to live your dream. If you choose to pursue law firm experience, emphasize your strengths and experiences.

Your career is not at a dead end. It's at a new beginning. If you choose to go the solo route, be prepared to weather some lean times and plan to live on some savings for a while until you can get established. I recommend J. Foonberg's HOW TO START AND BUILD A LAW PRACTICE, now in its fourth edition, published by the American Bar Association, Section of Law Practice Management. I also recommend FLYING SOLO (3rd Ed.) by Jeffery A. Simmons—both good resources in planning a solo practice.

Whichever direction you choose, cultivate your existing contacts for both business and job leads. If you choose to go to a firm, your existing contacts may know of openings. Additionally, gracefully exit your existing corporation. Perhaps you could gain spin-off work from your company. A lateral-hire lawyer with a book of business is much more valuable than one without. Your own book of business makes you more attractive and enables you to command a higher salary and other negotiated benefits and status.

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**Dear Mike,**

***I am a middle-aged man looking at switching careers from operations management/human resources to law. I did my time in law school at night. Despite having a J.D., no one (employers) wants to talk to me. Is there an unwritten code against hiring old guys like me in this profession? You would think work ethic, wisdom, experience and talent would mean something!***

**Thanks,**

**—Disenchanted with a J.D.**

Dear Disenchanted with a J.D.:

With gray hair comes wisdom, and experience is invaluable. But can you make money for someone else? I recommend emphasizing your operations/human resources experience to a legal career related to employment law and human resource issues. Cataloging your demonstrated experience together with a newly minted J.D. should make you a very valuable lawyer to a corporation or to a law firm. Emphasize your marketable skills. You have learned life's lessons that younger associates have not yet. Revel in your age and wisdom!

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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.*

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## A Glass of Wine With Your Law

**By Joseph V. Sebelin Jr.**

Enjoy a fine French wine or microbrew, but can't find exactly what you want? That was what faced Washington lawyer Paul Beveridge after law school. His solution was to make his art of winemaking into a career and build his own winery.

Paul's path from attorney to winemaker began in Paul's early childhood. Paul credits his father's love of wine for his deep interest in wine. While Paul was a young boy, his father studied to become an Episcopal priest and worked as intern at the Napa Valley Mental Hospital. Given the proximity to the famous wine region and the senior Beveridge's interest in wine, Paul's family would enjoy family outings at the various vineyards. While Paul's mother and father sampled the numerous vintages, Paul and his brothers would explore the wine cellars and caves. Paul recalls that his favorite winery in those days was Louis Martini, "because they served grape juice to kids and had the best cheese and crackers."

Paul's interest in the art of winemaking grew while he attended Whitman College, located in the heart of Washington winemaking country in Walla Walla. There, he met his future wife and winemaking partner, Lysle Wilhelmi. In addition, he discovered the Washington wine industry. This initial exposure to the wine industry piqued Paul's interest in owning a winery. In particular, Paul was fascinated by the fact that a Whitman board member who owned a prominent Washington winery. In light of the board member's schedule and commitments, Paul noted the possibility of winery ownership as a part-time venture.

Paul left Whitman in his junior year for Columbia Law School. In New York, Paul embraced the availability of fine French wines. With money earned from working for law firms, he could afford to purchase them. Yet, Paul missed the various and sundry microbrewery beers produced in Washington State. because Paul could not find a suitable New York substitute, he decided to make his own beer. Paul credits this beer brewing as the beginning of his winemaking career and his eventual decision to open the Wilridge Winery, located in the historic Madrona neighborhood of Seattle, Washington.

In 1985, Paul graduated from Columbia and began work as an environmental lawyer in Washington, D.C. Even as a new lawyer Paul infused his interest in winemaking into his practice. His first major project involved extensive travel to California. Paul saw this as an opportunity to indulge in wine tasting in the Sonoma Valley. By 1986, Paul and his wife, Lysle, moved back to Washington State so that she could attend medical school at the University of Washington in Seattle. Paul practiced environmental law with a Seattle law firm. Paul noted that one of the partners operated a small winery in his garage. Paul theorized that if a partner could enjoy such a hobby, so could an associate.

Soon Paul's wife decided to explore her interest in restaurant operation. She decided to take a year off from school and work as cook. Within a few years, the couple decided to open their own restaurant in their home. The business plan was simple - a European-style bistro where Lysle made the food and Paul made the wine. The restaurant, which opened in 1991, was on the first floor, living quarters on the second floor, and the winery in the cellar. The restaurant, Madrona Bistro, opened to critical acclaim.

Paul's law license soon became entwined with the operation of the business as "tied house" laws prevented the Bistro from selling Wilridge wine. Paul embarked upon a legal battle to permit the sale of wine at the restaurant. With some help from the Washington Wine Institute, Paul successfully fought to change these "tied house" laws. Two years after the restaurant opened, Wilridge wines were sold at Madrona Bistro.

Citing the rigors of operation, the couple reluctantly closed the restaurant in 1994. They continued to operate the Wilridge Winery, however. By 1996, demand had increased such that the couple expanded the winery by lifting their house (and former restaurant) and excavating a 1,500 square foot cellar/winery. The new facility gave increased Wilridge's production capacity.

Paul still practices environmental law full time at Heller Ehrman, White & McAuliffe LLP, where he has been practicing for 18 years. For 15 of those years he has also operated the winery.

The Wilridge Winery specializes in handcrafted red wines made from selected single vineyard sites in Washington State. The grapes are picked in Red Mountain, Yakima, and Walla Walla.

They are crushed, pressed, and aged in new French oak barrels at the winery. For more information about Paul's wine, please visit [www.wilridgewinery.com](http://www.wilridgewinery.com).

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*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*

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## Advocational Vocab

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

**hall**

**haul**

**rote**

**wrote**

Answers

- Hall—(n) a corridor
-

Haul—(v) to drag

- Rote—(n) 1. the use of memory, usually with little intelligence; 2. routine or repetition carried out mechanically or unthinkingly.
- Wrote—(v) did write (past tense of write)

Now test your friends and colleagues.

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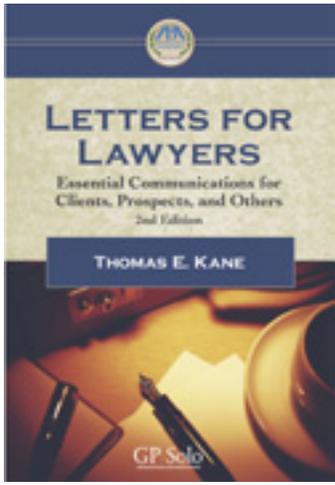
## Client Service Starts With Communication

Here's a valuable tip from a recently published book from the ABA GPSSF Section.

Many state bar associations have pointed out that 70 to 80 percent of the grievances filed against lawyers are due to a “lack of communications,” “inattention to the client’s matter,” “failure to communicate,” or “failure to keep clients advised about their matter.” Often the lawyer is paying attention to a client’s matter quite appropriately, but is not communicating often enough with the client to instill confidence that he or she is doing so. Further, the grievance, although not malpractice on its face, can lead to the filing of a malpractice action by a frustrated client. Even if the lawsuit does not succeed, it must be defended—at a cost—and undoubtedly will lead to greater scrutiny by the lawyer’s professional liability insurance carrier. In short, a lawyer’s lack of communication can lead to higher insurance rates and lost referrals in addition to the time and money he or she may need to spend defending themselves in court.

From *Letters for Lawyers: Essential Communications for Clients, Prospects, and Others, 2nd Edition*

By Thomas E. Kane



<http://www.abanet.org/abapubs/books/5150290>

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# GPSolo New Lawyer Links—Ties That Bind!

- **GPSolo Home Page**—All the up-to-date information about the GPSSF Section.  
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## Section News

### In This Issue's Section News:

- [2004 Spring Meeting – Sun, Golf, and a True American Hero](#)
  - [NEW! GPSolo Young Lawyers Page \(please bookmark!\)](#)
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  - [GPSolo Section Member Discount for ABA TECHSHOW ®](#)
-



## Save the Date: 2004 GPSolo 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. In addition to the gala dinner on Friday to fete our award winner, the Section will be holding numerous committee meetings as well as hosting a golf tournament. 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 No. 1 public golf course in Arizona? Rooms/casitas start at \$122!)*

For more information on this meeting, please visit

<http://www.abanet.org/genpractice/events/index.html>

## GP/Solo Section Young Lawyers Page



Judge Jennifer Rymell, Chair of the Section's Young Lawyers Committee, invites you to visit the Section's newest resource for our young lawyers. Our Young Lawyers Welcome 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/>

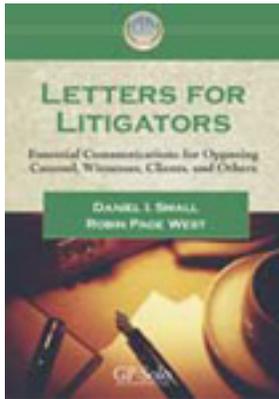
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## Hot Off the Presses...

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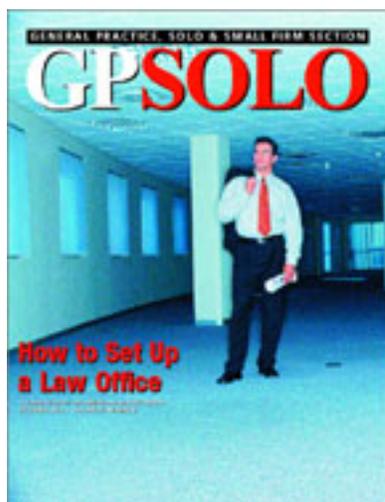
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