

Practice What You Preach

ESTATE PLANNING FOR YOUNG ATTORNEYS

By Kathryn Grant Madigan

The untimely death of Anna Nicole Smith made headlines not only for the way Ms. Smith lived but for the way she died, leaving behind a legal quagmire that unraveled in courts as far flung as Florida, the Bahamas, and Texas.

Many families are forced to deal with similar issues everyday that are no less contentious or difficult just because they are not played out in the spotlight. Young

list of all your assets, including their value, title (or beneficiary), and location. Keep it up-to-date and accessible to your loved ones and your estate planner.

2. Execute a will. Your will is the cornerstone of your estate plan. Name an alternate for every beneficiary. If you have a young family, plan for the possibility of a common disaster by designating contingent beneficiaries beyond your spouse and children.

Leave the trustee a letter of instruction about your goals for your children or young beneficiaries and any other relevant information, such as your choice of advisors.

4. Nominate a guardian if you have minor children. Name the spouse first, and two alternates who are willing and able to parent your children until they reach eighteen. The guardian can, but need not be, the trustee.

Consider a trust for every beneficiary under the age of 25.

lawyers are not immune. Lawyers in particular should get their own "house in order" and practice what they preach to clients about the importance of preplanning.

Here are some tips that will help you avoid leaving your loved ones in a state of confusion after you are gone:

1. Inventory your assets. Estate planning is like genius. It is 1 percent inspiration and 99 percent perspiration. Begin with a

3. A trust is a must if you have young beneficiaries. Many young people in their twenties have difficulty managing even modest inheritances. Consider a trust for every beneficiary under the age of 25 or even older, depending upon the maturity of the beneficiary and the amount of the expected inheritance. Choose a trustee, and an alternate, who will exercise good judgment, and give the person full discretion to distribute the income and principal as needed.

5. Nominate an executor and an alternate. Your executor will make funeral and burial or cremation arrangements before your will is probated. Make sure the person is aware of your wishes. The executor will marshal and value your assets, pay your bills, distribute your estate according to your wishes, and fully account to your beneficiaries. It is an important and demanding job. Choose wisely. In the event of conflict or lack of suitable family members or friends, consider an institutional trustee or personal attorney.

6. Review life insurance and retirement assets. Many young lawyers, and their spouses, are underinsured. Consider additional coverage. Your bar association may provide economical group-term insurance. Conform the beneficiary designations to your overall estate plan. If you have a trust in your will for

■ continued on page 2

Transcending Client Communications

By Jeremy R. Krum

All lawyers appreciate the ethical and practical guidelines of keeping clients reasonably informed. It doesn't take long to realize, though, that keeping clients informed is an arduous and time-consuming responsibility. By adhering to these five practice tips, you can rest assured that you have not only satisfied your ethical duties as an advocate and counselor, but also that you have fully prepared your client and provided quality representation:

Forward all notices and orders with reports. Send brief summaries and assessments of court notices, orders, and memoranda to the client. Reporting saves the client time and earns dividends on client satisfaction. Clients appreciate receiving copies of relevant and important documents for their own review for their personal records. More importantly, clients appreciate receiving your frank explanation as to the nature and content of those documents. Take this opportunity to keep the client apprised of and interested in the case.

Forward all discovery and depositions with your substantive analysis. Written discovery responses, depositions, exhibits, witness statements, and other discovery should be offered to the client, if they desire them. Even if they don't, the most pertinent case dispositive discovery should always go to the client. Develop the practice of providing both a subjective and objective analy-

sis of the substantive facts and applicable law as the case develops. The client can make an informed decision only if he or she has a complete, accurate, and straightforward understanding of the case.



Encourage client meetings and conference calls with every letter. Keep the client involved as the case progresses by encouraging meetings and conference calls every time you report. Even if you don't meet with the client often, make yourself available, and keep the client aware that you are available when they need you. Active clients will respond, and inactive clients will know they are in good hands.

Diary cases for review. Personally review your active cases with a complete assessment no less than once every three months, and never let an active case go more than three months without a client contact. Even if you inform your client that there is "nothing new" to report, the client will appreciate the update. A firm diary or personal diary system will most often prevent you

■ continued on page 3



Tortious Interference in a Business Relationship

LIABILITY CONCERNS IN POSTING A "FOR SALE" SIGN

By Shaun K. Ramey

The law is filled with situations in which normal, mundane, and otherwise legal acts are transformed into liability nightmares based upon the greater context in which they took place. Seemingly legal acts can lead to liability for tortious interference if the motive for committing the act can be called into question. Take for example an individual who places a "for sale" sign on his or her own property. This "legal" act, a Florida appellate court held in *Walters v. Blankenship*, 931 So.2d 137, 138 (Fla. Dist. Ct. App. 2006), may constitute tortious interference with another's business relationships.

The Walters, owners of four luxury condominium units, listed all four of their units for sale through a real-estate auction company. Potential bidders were required to give a deposit as a precondition to participating as a bidder in the auction. There was no reserve listed for the auction, and twenty-some bidders gave a deposit. On the day before the auction, the Walters alleged that one of their neighbors confronted another unit owner and said, "You

wait until the day of the sale and see what we are going to do to Dick Walters." On the day of the auction, that neighbor, along with four other neighbors, put "for sale by owner" signs in front of their respective units. Those neighbors removed all of their signs immediately after the auction. While all of the Walters' units sold at the auction, the Walters alleged that the combined acts of the neighbors posting the "for sale" signs caused financial and emotional damage and that, as a proximate result, each unit sold at a substantial loss.

The elements used in Florida to determine cause of action based on tortious interference with a business relationship are similar to the elements used by other states. They are (1) the existence of a business relationship, (2) the defendant's knowledge of the relationship, (3) the defendant's intentional and unjustified interference with the relationship, and (4) damage to the plaintiff as a result of the breach of the relationship. In this case, the court held that the Walters had alleged sufficient facts to state a cause of action for tortious interference.

In holding as such, the court first held that the allegations involved much more than a "mere offer to sell," which normally does not create a business relationship. The court observed that once the Walters agreed to the auction without a reserve, they were obligated to accept the offers on their units irrespective of the price. Thus, the parties had progressed beyond the stage of a mere offer to sell, and hence, a business relationship had been established. Second, the court stressed that the defendants' acts were unjustified because they did not have a legitimate reason for posting their "for sale" signs. Their units were not for sale as best evidenced by the fact that the signs were removed as soon as the auction concluded. The court further stated that the defendants did not have an absolute First Amendment right to post the "for sale" signs. In doing so, the court inferred that a legitimate motive must still support the act of posting the sign in order to be protected as free speech.

As the *Walters* court noted, almost all, if not all, tortious interference cases involve acts

that are otherwise "legal." The issue is thus not whether the act is "legal" but whether it was "unjustified." That question requires a balancing of interests and turns on what is "right" and "just" under the "rules of the game." In *Walters*, no legitimate interests were advanced by the interference. Conversely, the right of plaintiffs to sell their property was of paramount importance.

Walters is significant because, for perhaps the first time, it forces real-estate owners to question their own motives before they offer or otherwise advertise their property for sale. So the question becomes what type of motives are "legitimate" for posting a "for sale" sign? Does an owner actually have to be planning to sell their property? What about homeowners who are merely "fishing" or "testing the waters" and thus may not actually be in the market of selling their home? And what about homeowners who post such signs merely to get a fair-market appraisal of their property? Can these reasons be considered "legitimate" or legitimate enough?

Like answers to most legal



tests, a balancing of interests will likely be required. The *Walters* decision, nevertheless, adds another item to sellers' checklists before they sell or advertise their property. It also highlights the need for attorneys, especially newer attorneys, to dig deeper and look behind the mere act(s) to motive when assessing liability.

This article is a revised version of "Think Twice Before Posting a 'For Sale' Sign: Tortious Interference with Another's Business Relationship" by Shaun K. Ramey published in Business Torts Journal, Volume 14, No. 2, Winter 2007. Copyright © 2007 by the American Bar Association. Reprinted with permission.

Shaun K. Ramey is an associate with Sirote & Permutt, PC, in Birmingham, Alabama. He may be contacted at sramey@sirote.com.

READY RESOURCES

■ *Business Torts and Unfair Competition Handbook, Second Ed.* 2006. PC # 5030485. Section of Antitrust Law.

To order online, visit www.ababooks.org.

Estate Planning

■ continued from page 1

your children, **do not** name them as beneficiary; name the trustee under your will instead. Retirement accounts are often overlooked, even though they are likely to be your largest asset besides your home. Review and revise the beneficiary of your retirement assets as required, and make it a priority to set aside the maximum allowed in your retirement fund each year.

7. Review and update. Your will "speaks as of the date of death." Review and update your plan as needed every three to five years or around life-changing events, such as marriage, retirement, relocation

out of state, a birth, or the death of a loved one.

8. Power of attorney and healthcare directives.

Incapacity is three times more likely to occur than premature death. The three major right-to-die cases, *Quinlan*, *Cruzan*, and *Schiavo*, involved young women. Name your spouse and at least two alternates on a power of attorney, often the same persons you named as executor. Leave the original with your lawyer for safekeeping. Make multiple copies of your healthcare directives and "paper the world" by distributing them to family and healthcare providers.

Don't be the proverbial cobbler whose children had

no shoes. If you are part of a gay or lesbian couple, the laws of intestacy are especially onerous. Protect yourself and your loved ones by taking the time—right now—to get your legal house in order.

Kathryn Grant Madigan, president of the New York State Bar Association and a partner at Levene Gouldin & Thompson, LLP, in Binghamton, New York, may be reached at kmadigan@binghamtonlaw.com.

READY RESOURCES

- *Estate and Trust Planning*. 2005. PC # 5430458. Section of Real Property, Probate and Trust Law. To order online, visit www.ababooks.org.
- For information on insurance offered to ABA Members, visit www.abendowment.org/yld.asp

ABA YLD FALL CONFERENCE

OCTOBER 4–6, 2007 CHARLOTTE, NORTH CAROLINA

Join us to expand your network, sharpen your skills, participate in young-lawyer idea exchanges, and help local first responders.

Fall Conference highlights include:

- Extensive networking opportunities
- Over twelve CLE and professional-development program options
- The Young Bar Leader Summit, which will provide state, local, and specialty young-lawyer organization leaders public-service and leadership training and an opportunity to discuss their concerns, including membership, structure, and project funding
- The implementation of the ABA YLD 2007–2008 Public Service Project "Wills for Heroes," which allows us to devise simple wills for first responders on a pro bono basis

Registration Fees

- ABA Member before September 3: \$49
- ABA Member after September 3: \$99
- Non-Member before September 3: \$99
- Non-Member after September 3: \$129

Go online for more information and to register: www.abanet.org/yld/fall07



Communications

■ continued from page 1

from forgetting important deadlines and from leaving the client in the dark.

Make the case the client's case, not the lawyer's case.

Keeping the client informed includes keeping the client as the decision maker. Always present the options available to the client with a risk-benefit analysis, and make sure to obtain client approval for decisions. For more tactical decisions, such as choosing the best expert witnesses and crafting legal arguments, obtain client approval both as a matter of courtesy and as a matter of ethics. Always listen to the client, but make sure the client also listens to you.

If clients know that their input is not only important, but necessary, they will keep themselves close to the case. And when that one small and

seemingly innocuous case turns into a client's worst business disaster, you'll be glad your client is informed and ready to address the problem. Last but not least, with refinement of these practical tips, when you close the case, you will know that you still have a client.

Jeremy R. Krum is an associate with Armstrong, Donohue, Ceppos & Vaughan, Chartered, in Rockville, Maryland. He can be reached at jrk@adclawfirm.com.

READY RESOURCES

- *The Lawyer's Toolkit*. 2006. PC # 5150305P. General Practice, Solo, and Small Firm Division.
 - *Letters for Lawyers: Essential Communications for Clients, Prospects, and Others, Second Ed.* 2004. PC # 5150290. General Practice, Solo, and Small Firm Division.
 - *How to Get and Keep Good Clients, Second Ed.* 1994. PC # 5110347. Law Practice Management Section.
- To order online, visit www.ababooks.org.

ANNOUNCEMENT: BAR/BRI CLASS ACTION

If you purchased a bar review course from BAR/BRI anywhere in the United States anytime from August 1997 through July 31, 2006, (the "Class"), you may be affected by a proposed settlement of a class action lawsuit pending in the United States District Court for the Central District of California called *Rodriguez, et. al v. West Publishing Corp., d/b/a BAR/BRI, and Kaplan, Inc.*, Case No. CV-05-3222 R (MCx).

As most attorneys know, BAR/BRI provides full-service bar-review courses throughout the United States in preparation for state bar examinations. The plaintiffs allege that BAR/BRI violated the federal antitrust laws by agreeing with Kaplan, Inc., to prevent competition in the market for full-service bar-review courses. BAR/BRI is entering into a settlement for the class action, where they will reimburse part of the fee spent on their bar review courses from August 1997 to July 31, 2006.

For more information go to www.barbri-classaction.com. You must fill out a claim form and provide information on when you took the course and how much you paid. If you cannot remember how much you paid for the bar review course, call the number given on the Web site, and they can research how much you paid. It is expected that the settlement amount being reimbursed is about 25 percent of the cost paid for the course. **Claim forms must be postmarked no later than September 17, 2007.**

THE YOUNG LAWYER

Becoming a better lawyer

- Finding time to help others
- Staying current on ethics issues
- Maintaining an efficient, successful practice
- Learning how to enhance quality of life.

Every month, this quick read comes to you because you are an ABA Young Lawyer.



It's about you.



Over 30 Sections to customize your career

Administrative Law and Regulatory Practice ■ Affordable Housing and Community Development Law Forum ■ Air and Space Law Forum ■ Antitrust Law ■ Business Law ■ Communications Law Forum ■ Construction Industry Forum ■ Criminal Justice ■ Dispute Resolution ■ Entertainment and Sports Industries Forum ■ Environment, Energy, and Resources ■ Family Law ■ Franchising Forum ■ General Practice, Solo and Small Firm Division ■ Government and Public Sector Lawyers Division ■ Health Law ■ Individual Rights and Responsibilities ■ Intellectual Property Law ■ International Law ■ Judicial Division ■ Labor and Employment Law ■ Law Practice Management ■ Legal Education and Admissions to the Bar ■ Litigation ■ Public Contract Law ■ Public Utility, Communications and Transportation Law ■ Real Property, Probate and Trust Law ■ Science and Technology Law ■ Senior Lawyers Division ■ State and Local Government Law ■ Taxation ■ Tort Trial and Insurance Practice (TIPS)

ABA Sections

Custom made for your career

Only ABA members are entitled to exclusive memberships in ABA Sections and the powerful professional resources they provide.

- Specialized publications focusing on today's critical legal issues
- Expert analysis on recent case law and pending legislation
- Timely email updates on legal topics relevant to you
- In-depth CLE via teleconference, online, or in person
- Networking opportunities with top lawyers in your field

Take advantage of all that Section membership has to offer. Choose from 32 specialty Sections for about \$50 per Section.

Call 1.800.285.2221 or visit www.abanet.org/join today to customize your ABA membership.

SECTION OF INTELLECTUAL PROPERTY LAW ANNOUNCES YOUNG LAWYERS FELLOWSHIP PROGRAM

The ABA Section of Intellectual Property Law (IPL) seeks nominees to fill at least two three-year positions in its Fellowship Program. This specialized program was designed to encourage young lawyers to become actively and integrally involved in the Section's meetings and committees.

The Fellowship Program provides young lawyers with the opportunity to participate in key meetings that contribute significantly to the development of our system for the protection of intellectual property rights. The selected fellows will receive funding of up to \$1,500 per year, for three years, to attend the IPL Section's meetings.

Participants in the IPL Young Lawyers Fellowship Program will be expected to attend the IPL Fall Leadership Meeting and Annual Intellectual Property Law Conference (held each spring) for three consecutive years, as well as participate in any stand-alone meetings of their committees.

If you are a proven leader in the ABA Young Lawyers Division, the IPL Section's Young Lawyers Committee, or your local intellectual property or young-lawyers bar associations, become a part of the future in the ABA IPL Section.

Contact Robert Fergan for application information at 734/302-6036 or rfergan@brinkshofer.com. Applications must be received by August 31, 2007, to be considered.



AMERICAN BAR ASSOCIATION
YOUNG LAWYERS DIVISION
321 N. Clark Street
Chicago, IL 60610-4714
www.abanet.org/yld

Non-Profit
Organization
U.S. Postage
PAID
American Bar
Association

the YOUNG LAWYER

Volume 11
Number 10
August 2007

THE YOUNG LAWYER IS PROVIDED FREE TO ALL ABA YOUNG LAWYERS DIVISION MEMBERS.

YLD Chair—Jay E. Ray
Editor—Assata N. Peterson
Issue Editor—Hope Caldwell
Assistant Issue Editor—Keathan Frink
Managing Editor—Lori Lyons
Art Director—Kelly Book

THE YOUNG LAWYER (ISSN 1090-6878) is published eleven times a year, by ABA Publishing for the Young Lawyers Division, American Bar Association, 321 N. Clark Street, Chicago, IL 60610. Nonmember annual subscriptions: \$29.95. The views expressed herein are those of the authors and not necessarily those of the American Bar Association, its Young Lawyers Division, or the employers of the authors. Copyright © 2007 American Bar Association. THE YOUNG LAWYER comprises a registered trademark of the American Bar Association. All rights reserved.

Visit TYL online at www.abanet.org/yld/publications.html.

Mentoring for the Government Attorney FROM BOTH PERSPECTIVES

By Jeff McDermott and Amy Bowser

Mentee: When I received an offer to work at the U.S. Government Accountability Office (GAO) after law school, I didn't know the first thing about practicing government law. I was assigned to the Budget and Appropriations group and was not even sure how the government defined the word "appropriation." As I faced the reality of beginning my professional career, I quickly realized that I was moving to a new city to start a new job in a field completely new to me, and I was scared.

Luckily, the GAO had a formal mentoring program in place to help new attorneys transition into the office. My designated mentor contacted me prior to my arrival, which helped to alleviate my anxiety. While the formal

mentorship helped me hit the ground running, it later became important to seek both formal and informal guidance from other coworkers. I have since come to rely on many others as mentors due to their areas of expertise, their knowledge of both the substantive and procedural aspects of the office, and my ability to relate to them.

For me, a mentor is more than a model employee with a wealth of experience who is well versed in the inner workings of the office; a mentor is someone who you trust and admire and who is willing to help you not only at work but in life. I was fortunate that my office both assigned a mentor to assist me in the early days and provided the flexibility for

me to seek out a mentor of my choosing to guide me as my career progressed. My current mentor, Jeff, helps me daily by answering minor procedural questions, acting as a sounding board, and talking through complex legal issues.

Mentor: I remember the days when I, too, had a formal mentor assigned to me. I found it invaluable to have someone to go to lunch with, to teach me the formal and informal protocols of the office, and to be available for my many questions. As my career progressed, I also sought out other informal mentors, and even found that more experienced attorneys in other divisions or offices can be useful mentors, as a certain level of comfort is derived from the fact that the person from whom you are soliciting advice is not your supervisor.

To get the most out of a mentoring relationship, particularly in a government job, look for mentors who can help you in the following ways:

- **Providing reliable information.** Look for trustworthy colleagues who have good diplomacy skills and experience in the specific areas of the law in which you need information.
- **Navigating office politics.** It is equally important to have someone well versed in office politics who can share experiences with you and warn of potential pitfalls.
- **Serving as a sounding board.** Find a mentor who you are comfortable with and respect; it is always beneficial to have someone with whom to talk over an issue, whether it is legal or personal. A sounding board can be a more senior attorney, a peer, or even a newer attorney; trust and judgment are key.
- **Networking.** Seek out colleagues who can connect you with other attorneys, both within and outside your government agency. As a new attorney, it is important to have a mentor to introduce you to your new office colleagues, and in the feder-

al government, it is crucial to connect with attorneys at other agencies and across branches of government. Your mentor can help you make these connections, so when you need a quick answer to a pressing legal issue, you won't have to make a "cold call."

If your government agency or office does not have a formal mentorship program, seek out individuals on your own who can serve in these important roles.

Jeff McDermott is a senior attorney and Amy Bowser is a staff attorney at the U.S. Government Accountability Office in Washington, D.C. They may be contacted at mcdermottj@gao.gov and bowsera@gao.gov, respectively.

READY RESOURCES

- *Judge for Yourself: Clarity, Choice, and Action in Your Legal Career.* 2006. PC # CEV05JFYB. ABA Career Resource Center and Center for CLE.

To order online, visit www.ababooks.org.