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What Is “Sports Law” and Who Is a “Sports Lawyer”?

By Matthew J. Mitten

When you think of a “sports lawyer,” do you envision a lawyer who represents only a narrow pool of high-profile clients, such as professional athletes, sports leagues, or sports clubs? To the contrary, “sports lawyers” represent a wide variety of clients who need legal advice and representation that usually requires knowledge of several areas of law.

In my career as a sports lawyer (and now a sports law professor), I provided legal advice in a major league baseball player’s medical malpractice suit against his former team. I represented Harris County, Texas, in litigation concerning the Houston Oilers NFL club’s relocation to Nashville. But I also have been involved in a wider array of sport-related matters, especially in the area of intellectual property law.

I registered trademarks and copyrights on behalf of sports industry clients; provided advice

regarding a trademark licensor’s potential legal liability for defective playing equipment manufactured by its licensee; defended a restaurant in a copyright infringement suit for showing a “blacked out” game to its patrons; filed an amicus brief on behalf of two sports medicine physician organizations in an Americans with Disabilities Act suit filed by a college basketball player against Northwestern University; and served as an expert witness in Title IX gender equity litigation.

As a sports lawyer, you might find yourself representing clients such as amateur and professional players; coaches, referees and officials; leagues; governing bodies of the sports industry; athletics administrators; educational institutions; and sports facility owners and operators. Even more broadly, your representation might extend to sports broadcasters; sports equipment manufacturers; sports medicine care providers; businesses that

sponsor athletic events or athletes; and concessionaires who serve food and drink to fans at games.

Virtually every field of law regulates or is relevant to one or more aspects of youth, high school, college, Olympic and international, professional, or recreational sports. The sports industry is vast in scope; has millions of athletes (but less than



10,000 U.S. major league and top-level individual sport professional athletes) and spectators; and generates billions of dollars annually. In fact, it is debatable whether “sports law” (like cyber law or healthcare law) is actually a discrete area of law or merely the application of many areas of law to a unique industry.

The eclectic nature of the sports law field requires sports lawyers to have expertise in several areas of law to effectively represent their clients. Sports law courses are a relatively recent addition to the curriculum at most law schools. Yet several courses I took as a law student, particularly antitrust, tort, and intellectual property law, provided me with enough general knowledge to represent clients in several sports-related matters and to teach sports law.

Counsel for professional leagues and clubs need a general understanding of contract, labor, private association, antitrust, tort, tax, and intellectual property law. Those representing professional athletes must be familiar with labor and employment, contract, federal and state tax, and worker’s compensation law, as well as athlete-agent regulation. A sports lawyer must have strong contract negotiation and drafting skills to represent professional sports industry clients. An understanding of the arbitration process is also important because most employment-related disputes between professional athletes and leagues or their respective clubs are resolved by mandatory arbitra-

tion. Representation of individuals, educational institutions, and governing bodies that are part of the youth, high school, college, or Olympic sports industries also requires broad knowledge of contract, private association, tort, and constitutional law (if the requisite “state action” exists) and of arbitration (for Olympic sports).

Although sports lawyers have varied backgrounds, most of them did not obtain full-time employment with sports organizations or have a stable of sports industry clients upon graduation from law school. Rather, they gained legal knowledge, skills, and experience representing clients in other industries that transferred into handling sports-related matters. Very few attorneys spend a majority of their time practicing sports law, but many lawyers perform professional services for one or more clients who are part of the sports industry.

What legal knowledge, skills, and experience have you acquired thus far that may be useful in practicing “sports law”?

Matthew J. Mitten is a law professor and director of the National Sports Law Institute, Marquette University Law School, in Milwaukee.

Regain Control from Your BlackBerry®

By Irwin Karp

Is your BlackBerry® use getting out of control? Here are some suggestions for reclaiming control of your time (and life):

Be wary of multitasking—learn to focus. E-mail will interrupt your work if you let it. A 2005 survey in England found that constantly interrupting your work to check new e-mail messages damages productivity

and results in a greater loss of IQ than smoking marijuana or losing an entire night of sleep. Allowing yourself to constantly be distracted by e-mails causes your focus to suffer and your work to take longer.

Have you ever attended a meeting where participants are constantly checking their BlackBerries? They are not engaged in the meeting. While there is

the impression of great productivity, there is also the risk of missing something important. In *CrazyBusy: Overstretched, Overbooked, and About to Snap! Strategies for a World Gone ADD* (Ballantine Books 2006), Dr. Edward M. Hallowell states that “it is a myth that you can perform two tasks simultaneously as well as you can perform one. It is fine to believe that multitask-

ing is a skill necessary in the modern world, but to believe it is an equivalent substitute for single-minded focus on one task is incorrect.”

Determine a reasonable interval for checking messages. To keep e-mail from interfering with your ability to focus and get things done, try to develop a reasonable interval for checking e-mail given your responsibilities. Lawyers are often tied up for some period of time during court hearings, depositions, negotiations, client meetings, and closings. We make do with checking our BlackBerries



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Taking the Temperature of Ethics Among Today's Young Lawyers

By Josiah J. Puder

As the crisis that hit Wall Street this September makes clear, ethics in law and business must be reexamined and its virtues "re-extolled." Whether it be accountants who hid losses, the lawyers who looked the other way, or the executives that made millions while the savings of many Americans were washed away overnight, it is undeniable that the United States not only faces a financial crisis but an ethical one as well.

As young lawyers, you are in a unique position to be able to start your career by either subscribing to the "win at all costs" mentality that so prevails in our society today or by adhering to the highest ethical standards now and throughout your career,

focus is on the bottom line.

Your to-do list: If you have specific ethical issues, approach the appropriate partner at your firm about them. (If you are a solo practitioner or are employed in-house, consult with a colleague you respect and who has a solid ethical reputation.) Ask your law firm for its ethics guide, make sure you have a copy of your state and local ethics rules handy when questions come up, and ask your firm if they have any internal ethics training. If they do not, ask them if you can attend an ethics CLE or consider making a manual for the firm. Some firms may laugh or indicate that your billables were mighty low this month, but some firms may appreciate the proactive approach. You may find a niche

when they are being told to essentially bill a client for everything, including sometimes double-billing? Andrew Simons, a partner in a Santa Barbara business law firm, sees the mobility of opportunity to be a major difference between today's young lawyers and those of the past. "Things are moving faster today. There are more opportunities to make it big faster, and as a result, there are ethical issues that present to young lawyers that were not as much of an issue in the past," says Simons.

Your to-do list: Talk to senior lawyers about some of the questions or issues that you anticipate may be problematic (you will be surprised at the good stories they will relate to you). Understand that in an increasingly competitive world, it becomes even more difficult to balance your economic energy with your ethical conscience. Usually, your conscience will speak to you. Your "gut feeling" is often the right feeling.

This small survey reflects the trend of attorney ethics not

BlackBerry®

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during breaks. We should bring the same practice into the office when we are trying to concentrate on a project.

Many lawyers I work with say it is difficult to pause before responding to e-mails because they have spoiled the senders with habitually responding to them immediately. They think if they don't respond almost instantaneously, the sender will wonder what is going on with them. If you routinely respond to e-mails right away, then you will be continually distracted. Yes, you will get through your e-mails faster, but what else will you have accomplished?

Discuss expectations with colleagues and clients. Don't assume what your supervisor or client expects your response time to e-mail to be. Last year, the lawyers in the litigation practice group of a large law firm entered their conference room for a program on "overcoming information overload." Every associate put a Treo™ down on the table in front of them; none of the partners did so. I asked why the associates brought them as we were going to do a two-hour workshop. The answer: "So we can respond immediately to a partner's e-mail." I pointed out that none of the partners had their BlackBerries in the room.

The chair of the practice group asked an associate, "Who ever said that we expected an immediate response to our e-mails?" The associate responded that he assumed it. But the issue had never been discussed.

Unplug periodically—give it a rest. *The Wall Street Journal* article "BlackBerry Orphans" (Dec. 8, 2006) discussed the

impact that chronic use of the devices is having on family dynamics. In the article's side-bar "A 12-Step Program for Addicts," suggestions for curbing BlackBerry overuse included leaving the device in your car or at home when attending your child's functions; setting boundaries (letting colleagues know that it will be turned off for a designated period of time); and declaring a BlackBerry-free zone in your home.

Don't be rude. Have you ever been in a discussion or meeting with someone who steals glances at his or her BlackBerry? It's hard enough to be a good listener without additional distractions. The Web site CrackBerry.com, the self-described "#1 site for BlackBerry Users (& Abusers!)" has developed "13 steps to breaking a CrackBerry Addiction" because they didn't think 12 steps were enough. Step 6 suggests that abusers "make a list of all persons we have harmed through our rudeness, inconsideration and pretentious self-involvement, and make amends to them all."

How we decide to use our available tools is a personal choice. But if you can learn to recognize when your BlackBerry use is borderline addictive rather than purposeful, you may actually be more productive in the long run.

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This article is a version of an excerpt from "How to Regain Control from Your BlackBerry," Law Practice Management Today, available at www.abanet.org/lpm/lpt/articles.

Your "gut feeling" is often the right feeling.

without ceding any "edge."

So just how are young lawyers doing when it comes to ethics? To find out, I interviewed partners in law firms across the country to take the temperature of ethics among young lawyers today.

Q: What are some of the most common ethical problems/issues you see young lawyers dealing with today? Do law firms do a good job ensuring that young lawyers understand their ethical duties to clients, their firm, and the profession?

A: Most of the respondents (all partner-level lawyers) answered that a lack of training on ethical issues is a problem and admitted that law firms do not do a good job of ensuring that young lawyers receive proper ethics training on the job. With busy schedules, partners often rely upon a young lawyer's intuition instead of any specific internal training. Several lawyers admitted that while law firms pay lip service to ethics, their

as the "go-to" person for ethical questions and conflicts. You can also make use of your local bar hotline or the ABA's ETHICSearch, a comprehensive service available at www.abanet.org/cpr/ethics-search/home.html.

Q: Are ethical issues among younger lawyers today any different from those faced by young lawyers in the past?

A: Most of the respondents said no. James Mulcahy, a principal and partner in a boutique Irvine, California, law firm and a former partner at a large firm in Chicago, observed that "while ethical issues presented to young lawyers have not dramatically changed, the issues have become more complex due to larger firms, less individual oversight, and the requisite conflict issues involved in representation." Many respondents remarked that the ever-greater pressure on associates to produce billable hours has also created an ethics issue. How can an associate adhere to his or her own sense of ethics

receiving the focus it should. The good news is that as young lawyers, the ball is in your court to turn the tide and start making ethics as important as the paycheck you collect. Phil Chapman, a 1961 Harvard Law School graduate currently of counsel for a prominent New Jersey law firm, states that it simply is not practical to take the easy road around ethical responsibilities: "Prudence and ethics merge. Ethical and practical considerations often dictate the same course of action, which is best for your firm and its client."

While it is nice that you may have recently won a summary judgment motion in district court, your ethical reputation will outlast and carry significantly more import over time than your last "win." Focus your attention on your ethical temperature and ask "how am I doing?"

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Did You Know?

The Junior Bar Conference (now known as the ABA Young Lawyers Division) was established in August 1934 in Milwaukee by 125 young lawyers attending the ABA Annual Meeting. Today, the ABA YLD is composed of approximately 147,000 members.

Developing Your Practice

By Kendyl Taylor Hanks

Developing a successful practice requires long-term planning and a candid look at where you are now and where you want to be down the road. Here are the basic, but critical, aspects of successful practice development.

1. Avocation as vocation. Be candid with yourself about your personality and your skills. Are you outgoing or an introvert? Are you a strong writer, a whiz with numbers, or a successful negotiator? Assess how your personality and skills fit within your field, and be honest about whether it's a good match. Playing to your strengths and your personality will make you shine.

As a general rule if you love what you do, you will be good at it. Clients and partners can

tell the difference between a happy lawyer who is enthusiastic about her work and a miserable one (which one would you prefer to work with?). Be honest about your desires and priorities, and whether your firm is the right place to fulfill them.

2. Mentors. Sometimes the best mentors are found outside the firm, or they don't practice law at all. Choose wisely. Not all good lawyers are good mentors, and not all good mentors are superstar lawyers. Ultimately you should go with your instinct. Your mentor must be someone who can help you achieve your goals and who will give candid advice and constructive criticism. Ideally, your mentor will be a source of business for you.

Take the initiative, and don't be afraid to approach someone about being a mentor. Most will be flattered by your interest. But don't expect wisdom automatically to flow your way—to get the most out of the relationship, you must be an active "mentee."

3. Reputation. Identify opportunities to build a reputation in the relevant market. Bar organizations, professional and trade groups, pro bono organizations, and social networks that have relevance to your chosen practice area are great starts. Choose groups in which you would enjoy being involved to increase the chances that you will be.

Be prepared to spend time (nonbillable, alas) building your reputation. Take pro bono cases in your field, volunteer to write articles, speak on topics of interest, and serve as a leader of bar organizations and substantive committees. Become an expert in something. Pitch it as a CLE program. Make your articles available on your Web site. You will develop a reputation as someone with a special expertise, and the calls will follow. And remember a good reputation is hard to build but easy to lose—guard it jealously.

4. Clients. Keeping your existing clients happy is a significant

component of practice development. Provide the best and most cost-effective client service possible. Be proactive, responsive, and prompt. Learn about your clients, their businesses, and the legal services they require. Follow the latest developments in their industries (try Google alerts for this purpose). Send updates to clients when you hear about a legal development or lawsuit that might interest them, whether or not you are currently working on their files.

Developing new clients is not just for partners! Clients want smart, enthusiastic lawyers to do their work. Keep track of colleagues who go in-house or move to other firms. Everyone has conflicts and refers out clients. And everyone likes to send those clients to good lawyers who also happen to be friends. Do your best to steer referrals to your contacts, and they will do the same for you.

5. Economics. Understand where your practice fits into the firm's economics and how your

career trajectory corresponds with the firm's business plan. Your practice must be valuable (however that's measured). The more compatible the value of your practice is with the culture, structure and future of your firm, the faster your practice will grow and the more rewarding it will be.

Know your market and be flexible. Your market may include a few clients or many. It may include government agencies, large businesses or individuals. It will vary depending on your geographic location, the size of your law firm and the local and national economies. It may change from year to year. Pay attention to it, understand it and respond to it. If your practice is not flexible because it is highly specialized or dependent on one partner or one client, think about your backup plan should either disappear.

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DEC. 1, 2008

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JAN. 6, 2009

ANATOMY OF A TRIAL SERIES: OPENING STATEMENTS/
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JAN. 15, 2009

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FEB. 5, 2009

STARK LAW BASICS 

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 AND PREVENTION WEEK

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FEB. 12-14, 2009

ABA YLD MIDYEAR MEETING | BOSTON, MA

www.abanet.org/yld/midyear09/

FEB. 15, 2009

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A Pharmacy Law Lesson

By Kim Burns

Pharmacists are highly educated professionals in a highly regulated legal field. Legal compliance for pharmacy providers requires familiarity and compliance with a myriad of state and federal laws and regulations, including, but not limited to, state pharmacy practice acts and regulations, Medicaid and Medicare requirements, the Controlled Substances Act (CSA), the Food Drug and Cosmetic Act (FDCA), the Poison Prevention Packaging Act, and the Health Insurance Portability and Accountability Act (HIPAA).

The legal consequences of noncompliance with a law, regulation, or professional standard related to pharmacy practice may be imposed through civil, administrative, and/or criminal actions. Civil actions typically involve negligence or malpractice

actions against the pharmacy or pharmacist. Previously, malpractice actions against pharmacists were based solely on inaccuracy in dispensing prescriptions. For example, a pharmacist would have been found to be negligent for inadvertently dispensing a drug other than that prescribed, resulting in the patient consuming the wrong medication and suffering an injury.

However, as the professional role of a pharmacist has expanded in recent decades to include more involvement in patient care (e.g., a more active role in disease-state management, clinical interventions, patient education and counseling, the administering of immunizations, and drug therapy management), so has the potential for professional liability. As a result, pharmacists are increasingly facing allegations of intellectual errors involving scenarios in which the pharmacist accurately filled the prescription as prescribed but failed to detect an inappropriate dose or duration of drug therapy, perform a drug review,

or counsel the patient about potential side effects.

Pharmacies and pharmacists might face administrative and disciplinary actions by state boards of pharmacy if they are found to be noncompliant with state and/or federal laws or if they engage in unprofessional conduct. Disciplinary actions can range from a public reprimand to revocation of the pharmacy license that is required in order to practice at the state level.

Likewise, pharmacy providers have also faced criminal actions for violating various state and federal laws related to pharmacy. For example, federal and state controlled substance laws contain criminal penalties for dispensing controlled substance prescriptions that do not comply with legal requirements.

In addition to legal oversight, professional ethical standards have long been an integral part of pharmacy practice. Public recognition supports this concept, as pharmacists have consistently been highly rated by the public as being honest

and ethical professionals. To help guide the pharmacist-patient relationship, pharmacists display and apply various ethical principles, such as beneficence, nonmaleficence, justice, autonomy, and fidelity. In addition, the pharmacy profession has its own formal code of ethics.

However, even with this guidance, ethical dilemmas within pharmacy practice can and do occur. Often, the moral parameters and personal values of the pharmacist may differ with community or patient values. When this occurs, there may be contrasting clinical decisions. For example, one specific ethical dilemma within pharmacy practice that has made national news in recent years involves how pharmacists view their role in dispensing lawfully prescribed emergency contraception prescriptions to patients.

The profession of pharmacy is guided by numerous regulations, laws, and ethical principles. As pharmacists continue to expand their role in health care, the legal



and ethical aspects of the profession will also continue to expand. Knowing these basics will allow you to be ready if you encounter a case concerning pharmacy law.

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