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Lawyering in Today's Political Process

By Gretchen Sterns

For thirty-five days in the fall of 2000, America anxiously watched and waited as ballots were recounted in Florida. Before it was all over, several courts, including the U.S. Supreme Court, weighed in on the saga that ultimately decided the 2000 presidential election.

Since then, the role of lawyers has been thrust to the forefront of the political process in a country closely divided along partisan lines.

Candidates rely on lawyers to monitor Election Day activities. With the help of volunteers, lawyers ensure that no one who is entitled to vote is denied that opportunity. If a dispute arises within a polling station between a candidate's supporter and the judge of elections as to whether the supporter is entitled to vote, it is a lawyer who garners a provisional ballot for that supporter. Lawyers also work to keep provisional ballots segregated from regular ballots until it is determined if those casting provisional ballots were properly

registered to vote. Lawyers are called on Election Day to request injunctions when there are voting irregularities, such as a malfunctioning voting machine. Lawyers are the ones tasked with seeking to extend the amount of time the polls are open in the event of inclement weather and other abnormalities.

Lawyers' role in the political process is critical not just on Election Day but throughout the year. In many states, aspiring candidates for public office can appear on ballots only after fulfilling highly technical requirements that are fraught with legal pitfalls. For instance, in Pennsylvania, someone seeking to run for the state senate as a major party candidate must first: (1) garner valid signatures of 500 members of his party who reside in his election district; (2) submit a properly completed candidate's affidavit; and (3) submit a properly completed "statement of financial interest" to the Pennsylvania Bureau of Elections. Many candidates, even experienced incumbents, fail to meet these re-

quirements to the letter of the law, to the point where court battles over eligibility to be on the ballot are increasingly commonplace.

The enactment of myriad campaign finance laws, particularly the federal Bipartisan Campaign Reform Act of 2002 (BCRA) or "the McCain-Feingold law," has also increased the stock of lawyers in politics. Questions abound as to the legality of donations and how they are reported. Lawyers' role in these matters is critical to ensuring that clients avoid fines from the Federal Election Commission and state election authorities as well as negative publicity.

Outside the election cycle, lawyers have opportunities to take part in the political process through their respective political parties. The national, state, and local arms of political parties often encounter legal questions involving the application of their bylaws or the treatment of their members. Lawyers play an essential role in sorting out these issues to ensure that these organizations run as

smoothly as possible while providing openness to the registered voters that they represent. I have used my own background in business and municipal law to serve as solicitor for the Pennsylvania Young Republicans and aid the organization in establishing governing rules and reaching out to other young professionals to increase membership.

Both major political parties have organizations for young professionals, such as the National Young Democrats (www.yda.org) and the Federation of Young Republicans (www.yrmf.com). There are political groups specifically for lawyers, such as the Republican National Lawyers Association (www.rnla.org) and the Democratic Lawyers Counsel of New York (www.nydlc.org). These organizations train lawyers to be prepared for issues that may arise in balloting or other election law matters. Another way to be involved on a more local level is by contacting political parties or a candidate's campaign and offering to volunteer.

In addition to providing a valuable service, lawyering in the political process provides many opportunities to network. While helping candidates that I have supported and ensuring that the



rights of voters are protected, I have fostered many relationships with potential clients. I have even come to enjoy counting chad.

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READY RESOURCES

■ *America Votes! A Guide to Modern Election Law and Voting Rights*. 2008. PC # 5330200. Section of Administrative Law and Regulatory Practice, Government and Public Sector Lawyers Division, Section of Individual Rights and Responsibilities, Section of State and Local Government Law.

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How the "Millennial" Generation Works

By Lauren Stiller Rikleen

You have probably heard it many times during speeches or panel discussions. Sometimes the tone is harsh; other times there is a sense of resignation. Yet the premise is generally the same: "Associates today don't want to work hard." Then comes the inevitable comparisons of the experiences of the Baby Boom-

ers and the expectations of the generation currently graduating from law school.

"Law students today are asking questions I would never have dared ask," is a frequent refrain of law firm hiring committee members. Both men and women interviewees are questioning what a firm's culture is like, the firm's hourly expecta-

tions, and whether the firm allows for flexible work arrangements. Even as interviewers are surprised by the frequency of these questions, they are recognizing that for law firms to compete in today's talent pool the answers are essential.



Law firms also must recognize that these questions represent significant changes in attorney demographics that warrant far more than a reduced-hours policy. Critically, law firms must recognize that these are not the questions of people who are reluctant to work hard. In fact, the "Millennial Generation" entering today's workforce in ever-increasing numbers arrives accomplished and with high expectations.

Born between approximately 1980 and the early 1990s, Millennials (sometimes called Generation Y or Echo Boomers) are the most diverse generation

in U.S. history and the largest since the infamous Baby Boomers exploded into America's consciousness. Millennials overshadow their immediate predecessors, Gen X, because they outnumber them by nearly three times. In general, Millennials are born of working parents and have more disposable income than previous generations.

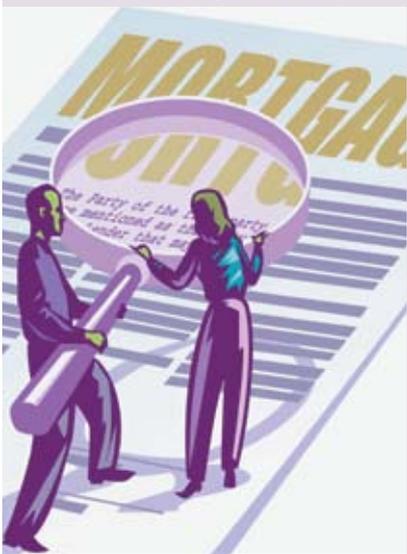
Unlike their rebellious Boomer parents, Millennials tend to have had stronger relationships with their own parents through their teenage years. They also are used to being regularly praised and rewarded for their efforts at school

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The Predatory Lending Mortgage Crisis: Play Your Part

By Roger Bertling

With the predatory lending mortgage crisis splashed all over the headlines, many young attorneys are wondering how to get involved and assist consumers who have been victimized by predatory lenders and saddled with mortgages they cannot afford. Many of these borrowers can be helped by some hard work and the application of legal skills that many of us already have. Below are three areas in which you can help.



Negotiation. As more lenders find themselves with more and more foreclosed loans and loans nearing foreclosure, borrowers and their attorneys have opportunities to negotiate their mortgage terms.

For those borrowers who wish to keep their homes, the typical negotiation involves a loan modification—a mutually agreed upon alteration of the terms of the mortgage contract. A common loan modification is a temporary or permanent interest rate reduction (or a change of the adjustable rate into a lower fixed rate) and a requirement that the arrears are paid off over a specific period of time or placed on the back of the loan. Lenders often want a good-faith, upfront payment in these types of negotiations.

For those who do not wish to or cannot afford to keep their homes, a common negotiation is a deed in lieu of foreclosure; this type of negotiation is one where the borrowers deed the house back to the lender rather than go through foreclosure. A

“short sale” is another common negotiation in which the borrower finds a third party who agrees to buy the home for less than the borrower owes and the lender agrees to write down its mortgage to the sale amount.

Be aware that in most cases a loan has been sold off in pieces to a myriad of investors, so your negotiations will not be with the investors directly but with the servicer—a company hired by the investors to manage the mortgage. Servicers sometimes have limited discretion, but as the mortgage crisis deepens, they are gaining more power to rework loans.

Also, be aware of potential tax consequences in any type of negotiation that results in forgiveness of loan principal.

Counseling. Homeowners in financial crisis are often bewildered by the language of their loans and do not understand their options. They need to discuss their loans with an attorney.

When counseling a financially distressed borrower, remember

that the homeowner simply may not be able to afford the mortgage, even if the loan is rewritten with a reduced interest rate and with arrears put onto the back of the mortgage. This is particularly true in high-cost (and high-mortgage) metropolitan areas. In the case of property with declining value, a homeowner needs to decide whether it is worthwhile to continue to throw money into such an asset. A good attorney can help the borrower decide the best course, while an attorney who only paints rosy scenarios for her client is not being an effective advocate. Sometimes a borrower needs to cut her losses and walk away.

Litigation. Many of the loans resulting in foreclosure today are filled with violations of federal and state law and are ripe with litigation opportunities for intrepid young attorneys. Having a working knowledge of the federal Truth in Lending Act, state statutory lending law, and common law is extremely helpful in litigating a case; knowledge of bankruptcy law is extremely

helpful as well for both counseling and litigation. It is always a good idea to consult with a more experienced attorney who can assist in reviewing loan documents. Also, remember there is always the possibility of recovering attorney fees and costs under the various fee-shifting statutes.

However you decide to get involved, many homeowners are out there waiting for your help. Stay positive, think of it as a learning experience, and you may even have fun.

Roger Bertling is a clinical instructor in the Predatory Lending/Consumer Protection Clinic at the Legal Services Center of Harvard Law School. He can be contacted at rbertling@law.harvard.edu.

READY RESOURCES

- *Mortgage Crisis: What the Truth in Lending Act Can Do for Borrowers* (Audio CD Package). 2007. PC # CET07PBPC. Center for CLE and Section of Real Property, Trust and Estate Law.
- *Anatomy of a Mortgage: Understanding and Negotiating Commercial Real Estate Loans*. 2001. PC # 5430423. Section of Real Property, Trust and Estate Law.

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“Millennial” Generation

■ continued from page 1

and at play. They have been referred to as the “Everybody Gets a Trophy” generation because of their parents’ insistence that their early sports experiences be collaborative and positive opportunities. From their early days of shared rewards, constant media stimulation, and technology savvy, they have become a generation accustomed to quick answers, a constant flow of information and new ideas, and immediate gratification. These are the characteristics that the Millennials bring into workplaces largely led by the Baby Boomer generation, whose own youthful experiences were markedly different.

Teenage Boomers demanded change through rebellion and revolutionary tactics. Their early

years were permeated by street protests and standing up against an unpopular war and military draft that threatened all income levels. Their friends were killed, their heroes were assassinated, the political establishment seemed oblivious to the changing world, and generational conflict was rampant.

Despite their very different upbringings, Baby Boomers and their progeny are two generations that should have the capacity to work extraordinarily well together. They are both smart, work at a fast pace, and often exhibit great passion for what they do. Yet the differences between their styles and expectations, which are shaped by their life experiences, lead Baby Boomers to lament that associates today are not committed workers.

The reality is that Boomers have much to learn from their younger workers. The Millennial

Generation is, in fact, willing to work hard. They reject, however, the notion of “face time” as a means of success and expect clear assignments, regular feedback, and reward for their efforts. They also expect to be active and engaged parents, which means having the time to parent. They will not stay for long if they do not understand the big picture and the opportunities that lie ahead. The expectations of the Millennials actually translate into the fundamentals of a better workplace. An organization that carefully trains all of its employees, sets clear goals and expectations, and provides regular feedback to ensure that individuals learn with each assignment is a model for success.

For Millennials to communicate their needs effectively with Boomers and avoid the “lazy” stereotype, they must demonstrate respect for the

choices the Boomers have made. Remember, most of the Boomers in legal workplaces are there because work is a fundamental value in their lives. When Millennials focus on time away from work, the Boomers often read it as a dismissal of their own work ethic. Millennials may find allies in senior lawyers who are comfortable talking about their own children, who seem devoted to attending family events, or whose lives may be currently impacted by the needs of aging parents. These individuals are more likely to help a younger lawyer navigate the workplace and address any concerns.

Millennials who seek better training or mentoring programs should approach their Boomer supervisors with concrete suggestions that, if implemented, will help stem attrition and develop better lawyers. This type

of feedback is more likely to be viewed as creating improvements for the greater good of the firm rather than asking for personal favors. Fortunately, more law firms and other legal workplaces are beginning to understand the huge economic costs of continued high attrition and should be more willing to listen.

If law firms are to be truly successful in recruiting and retaining law school graduates, Baby Boomer firm managers need to understand the defining characteristics of the “Millennial Generation.” Then they can put in place strategies to ensure that today’s new lawyers are tomorrow’s law firm leaders.

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The Double Billing Dilemma

By Daniel L. Cevallos

The scene: Three attorneys from the same large, Philadelphia-based law firm are traveling on the train from Philadelphia to New York to attend a hearing for Client A. All three attorneys are billing their travel to Client A and have turned on their laptop computers. Attorney 1 is working on his oral argument for Client A's hearing. Attorney 2 is working on a brief for another client, Client B. Attorney 3 is watching *Spiderman 2* and dozing in and out of sleep with a soda and a bag of chips close by. Which of these attorneys is the most "productive" biller?

The answer is all three attorneys are equally productive because each is prohibited from "double billing." Double billing is

the act of charging more than one client for services that are rendered at the same time, i.e., generating an hour of billing for Client A and an hour of billing for Client B during the same single hour. According to most commentators, double billing is unethical and violates two of the American Bar Association's Model Rules of Professional Conduct: Rule 8.4, which prohibits dishonesty, and Rule 1.5, which prohibits a lawyer from charging an unreasonable fee. Most commentators agree that if an attorney completes work for more than one client at the same time, the attorney should bill only one client and the other clients should benefit from the attorney's efficiency for free.

In the scenario above, Attorney 1 is prohibited from bill-

ing Client A twice in the same hour—once for traveling and again for working on the oral argument during that travel time. Attorney 2 cannot bill Client B if he is already billing that hour to Client A.

These are classic examples of double billing and common dilemmas for associates who travel frequently. Associates are charged with deciding which client to bill and which to essentially give free services—something that might not sit well with partners and superiors. This can be a challenging responsibility for young associates. In addition, although most new associates are highly industrious and likely to pull out work on a train instead of watch laptop movies, they are not provided much motivation when Attorney 3, who is lounging and watching action movies, is, under the ABA Model Rules, not only following the rules but *equally as productive* in generating hourly fees as his apparently more industrious

associates.

So how do associates decide whom to benefit with free labor? The best advice for new associates is the same advice that solves 90 percent of other first-year problems: ask someone. Associates should never think that billing is too small an issue to bring to a partner's attention. After all, billing is the lifeblood of firms and the issue that partners are constantly addressing. Partners will be happy to guide you on billing issues and will appreciate that you care about them. Almost all partners dread having to review submitted bills and reconstruct their associates' work before they can submit these crucial bills to clients each month. Anything new associates can do to lessen this burden on partners is likely to be appreciated and welcomed.

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THE SECTION OF REAL PROPERTY, TRUST AND ESTATE LAW'S SECOND ANNUAL YOUNG LAWYERS' INSTITUTE | WASHINGTON, D.C.
www.abanet.org/rppt/2008/home.html

MAY 21, 2008

PREPARING FOR TRIAL:
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www.abanet.org/cle/connection.html#may

MAY 22, 2008

PRIMER ON ISSUES FACED BY TAX-EXEMPT
 HEALTHCARE ORGANIZATIONS 
www.abanet.org/cle/programs/t08pif1.html

JUNE 15, 2008

DEADLINE TO APPLY FOR 2008-09 ABA YLD SCHOLARSHIPS
 Want to get involved? This program is designed to encourage the participation of minority, solo/small firm, government, private sector, and military service attorneys in the Young Lawyers Division.
www.abanet.org/yld/scholarships/home.html

JUNE 19, 2008

FUNDAMENTALS OF MANAGED CARE 
www.abanet.org/cle/programs/t08fmc1.html

AUG 7-9, 2008

ABA YLD ANNUAL MEETING 2008 | NEW YORK, NY
www.abanet.org/yld/annual08

OCT. 2-4, 2008

ABA YLD FALL CONFERENCE 2008 | SAN DIEGO, CA
www.abanet.org/yld/fall08/

Visit the ABA YLD Calendar for additional information:
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“Year of the Summit” Ends, Conversation Continues

By Christina J. Vassiliou and Griselda Vega

How can law firms and other legal employers better prepare and train young lawyers for professional success?

What do law schools need to change in their curriculum to better prepare their students for the practice of law?

How can young lawyers improve their quality of life?

These are the types of tough questions young lawyers, experienced attorneys, law students, and members of the National Association for Law Placement asked and helped answer at the “Young Lawyers: The Next Generation” Summit held in Beverly Hills, California, February 8 during the ABA Young Lawyers Division Midyear Meeting. The

Young Lawyer Summit was the third in a series of four summits over the 2007–08 bar year intended to elicit resolutions for consideration by ABA leadership to help change the future of the profession.

The final summit in the series, the “Diversity: The Next Generation” Summit, was held at the YLD Spring Conference in Washington, D.C., on April 19. ABA YLD Summit Coordinator Griselda Vega notes, “Diversify-

ing the profession is critical to the future of our profession. If we are to best serve the needs of our clients, our membership needs to start to mirror those diverse backgrounds.” Participants helped the profession take the critical next steps in diversifying the profession by sharing diversity-related personal experiences and brainstorming possible initiatives.

YLD Chair Justin Goldstein’s goal with the “Year of the Summit” was for the YLD, as the national voice of young lawyers, to provide a forum where members could come together to discuss current issues, have direct input, and showcase their expertise on issues affecting young lawyers both personally

and professionally. “The Summits were meant to be the start of these discussions,” said Goldstein. “The Summit teams will also compile the feedback from the various Summits in white papers, which we hope young lawyers can use to continue the discussion with their local organizations and institute some of the proposed steps that will create a better future for all.” The summit discussions also yielded possible resolutions to be presented at the YLD Assembly.

Be part of improving the future of the profession. Continue the discussion on the YLD Discussion board (www.abanet.org/yld/webboard), because even though the Summits have ended, the work has just begun.

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YOUNG? NEW?

WHAT'S IT TO YOU?

Did you know that the ABA YLD was once designated the Junior Bar Conference? The ABA YLD has had four different names throughout its history. Some young lawyer organizations call themselves “New” lawyer organizations. What is the best possible name for a young lawyer organization? Please suggest alternative names on the ABA YLD discussion board at www.abanet.org/yld/webboard.

