

Young Lawyers, Meet GINA

By Scott H. Husbands

On May 21, 2008, the federal government added yet another acronym to the vocabulary of employment lawyers, human resource administrators, and countless other professionals: GINA (the Genetic Information Nondiscrimination Act). GINA aims to protect insurance policyholders and employees from discrimination based on genetic information. If you are a general practitioner or employment lawyer, you will

need to get to know GINA.

You will hear more about GINA in the coming months as Title I of GINA, which relates to healthcare coverage, just took effect in part on May 22 and will be fully in effect by May 21, 2010. Title II of GINA, which relates to employment, will take effect on November 21, 2009.

GINA's journey from drafting to enacted law was a long one (almost thirteen years according to one group), and its eventual passage was considered a major victory by groups that closely follow genetic research issues. As genetic testing becomes more commonplace, GINA will no doubt play a prominent role in our legal careers.

Prior to GINA's passage, many state legislatures had passed similar legislation. Like other federal legislation, GINA sets a floor for states. No state may provide less protection than GINA requires.

But, federal regulators certainly won't blink if your clients decide to provide more protection than it mandates.

According to the U.S. Department of Health and Human Services (HHS), Title I of GINA generally prohibits health insurers or health plan administrators from requesting genetic information of an individual or an individual's family members. It also prohibits use of the same information to make decisions about coverage, rates, or preexisting conditions.

Title II of GINA prohibits most employers from using genetic information for hiring, firing, promotion, or any other decisions regarding terms of employment. Employers with fewer than fifteen employees can take a deep breath though—they're excluded from GINA's Title II employment-related requirements; such employers should still beware as they may not be excluded from coverage under similar state laws.

GINA is not retroactive, which means that it will be inapplicable to acts or omissions that predate

its applicable effective dates. Any future acts or omissions that are based on information collected before its effective dates can still create problems. With that in mind, it will be important to help our clients develop top-down, bottom-up, and side-to-side comprehensive approaches to managing sensitive genetic information and collection practices. We should help them to review all current forms and processes to make sure they are compliant.

Know the exceptions to GINA's employment-related requirements and GINA's general definitions. These were a major focus of the U.S. Equal Employment Opportunity Commission's (EEOC's) proposed regulations, which required comment by May 2009. Exceptions include, among others, employers that inadvertently request genetic information, FMLA-required practices, and DNA testing for law enforcement. Keep a close eye out for announcements relating to EEOC's final regulations.

GINA will undoubtedly touch many of our careers if its state-

based versions haven't already. As lawyers, we should understand the ins and outs of GINA to make sure our clients' practices are consistent with federal (and state) required minimums. Additional information on GINA is available from HHS at www.hhs.gov and EEOC at www.eeoc.gov.

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NEXT STEPS

- Free download: "How to Become a Civil Rights Lawyer." *101 Practice Series: Breaking Down the Basics* (ABA YLD). www.abanet.org/yld/101practiceseries/careerdev.shtml
- *The New Genetic Information Non-Discrimination Act and Its Impact on the Workplace* (Audio Download). 2008. ABA CLE and the Section of Labor and Employment Law. PC # CET08NGIPOD.

To order online, visit www.ababooks.org.



Networking Advice for Second-Career Lawyers

By Steven C. Bennett

In this day and age, how many of us stick with our first career our entire lives? Many of us will experience at least two or three career moves in a lifetime. And many lawyers start out working in a completely different field.

For second-career lawyers, business development (finding and keeping clients) can be particularly difficult. But as for all lawyers, the key to business development for second-career lawyers is networking. True networking takes focus and persistence. You can use this article as

a guide to get started and stay on track.

You Can Do This

As a second-career lawyer, you may be getting a later start than some lawyers, but you also have many advantages in the networking game:

- You're focused; you know what you want.
- You're mature and stable.
- You have gravitas/presence and the credibility that life's experiences can bring.
- Your network of friends, ac-

quaintances, and colleagues is also more mature and better placed to help you.

- You've already built up a reservoir of "good will" in many quarters.

Recognize and use these natural advantages whenever possible.

Figure Out What You Want

Like any project, effective networking requires planning. Unfocused or misfocused networking may be as ineffective and dispiriting as no networking. Answer the following questions. Putting them on paper will help.

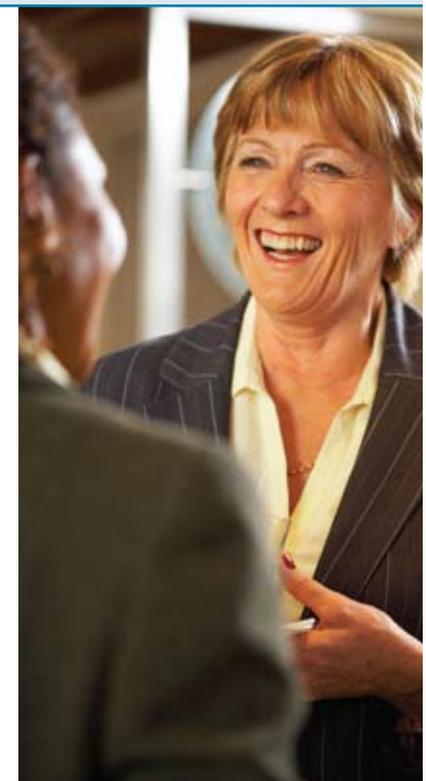
- Who are your ideal clients? Who has need of your services (and can pay for them)? What kinds of individuals and organizations

would you find interesting and pleasant as clients?

- Who does your existing network include? Is there any overlap with your picture of the "ideal" client? Can any of your current contacts provide connections to ideal clients or mentor you in this effort?
- What do you like to do when you're not working directly on client matters? Teaching? Writing? Speaking? Organizing a group? Organizing events? Effective networking requires dedication; you will not show such dedication to potential clients unless you like what you do.

Now Go and Get It

- Develop your "story," résumé,
 - continued on page 2



One Friend Too Many

FACEBOOK AND YOUR PRACTICE

By Joe Perry

A district court judge was recently publicly reprimanded by the North Carolina Judicial Standards Commission for “friending” on Facebook the counsel for the defense during child custody proceedings. The judge and defense counsel posted messages on Facebook to one another that referred to specifics of the case. Although most young lawyers are probably savvy enough to avoid conducting unauthorized, ex parte communications online, there are less obvious dangers lurking within the rapidly expanding world of online social networking. Facebook is no exception. Always keep the following in mind when using Facebook.

Your Profile as a Billboard
First, even if you are not actively soliciting business through your Facebook profile (a practice involving ethical considerations beyond the scope of this article), your profile still represents an advertisement for yourself. Because you never know who might be your next client, you should be cautious when friending anyone.

As the public has plenty of attorneys to choose from, potential clients may ultimately make decisions on who to represent them based on attorneys’ political affiliations, religious convictions, and/or personal interests. Seemingly harmless statements on your Facebook profile can turn off clients. Ask yourself this: If

your life were on the line and you had narrowed things down to two attorneys who otherwise appeared qualified, would you take the one who lists *Law and Order* as her favorite television show or the one who decorates his profile page with pictures of SpongeBob SquarePants?

may still err on the side of caution when it comes to questions of disqualification and/or recusal.

Lawyer, Babysitter

Finally, for attorneys, regulating your own online conduct is only half the battle. You need to be aware of your client’s online

offices or courtrooms. They’re wonderful places where we can openly admit that, all else being equal, we would rather be a professional basketball player.

But even in these new, joyful environs, young lawyers must be careful as closely monitoring who gets “friended” may not be

What if, unbeknownst to you, that new friend you added on Facebook also happens to be your judge’s son-in-law?

Status: Conflicted

Second, if you are one of those Facebook users who enjoy accumulating heaps of friends or someone who feels guilty turning down anyone’s friend request, you are probably befriending individuals without careful screening. Although making these kinds of connections can be part of the fun, attorneys must remember that relationships create conflicts. What if, unbeknownst to you, that new friend you added also happens to be your judge’s son-in-law? There is no distinction between a bosom buddy and a bare acquaintance on Facebook, and just try arguing to a court that you are only *really* friends with someone if you “poke” them more than five times a day. Even if you are lucky enough to draw Facebook-literate judges, they

practices as well. Suppose you are trying to establish your client’s fitness as a parent or that your client is genuinely remorseful about a wrong he has acknowledged committing. The last thing you need is pictures of him partying hard showing up online the day before trial. Even if your client thinks he is among friends, your case may be in danger if someone in the room has: (1) a camera, (2) a Facebook profile, and (3) a friend of a friend of a friend who once sold a used car to your opposing counsel.

As attorneys, our work can be a source of great pride and satisfaction, but it also can be stifling. Online networking sites like Facebook provide a liberating opportunity for self-expression outside the confines of our

enough. There is no control over who might be looking over your friend’s shoulder at the wrong moment. Worse, even if opposing counsel has never seen the page in question, if she can convince a judge there is relevant evidence contained therein you may find yourself subject to a very unpleasant brand of court-ordered socializing.

Joe Perry is a law clerk for the D.C. Office of Bar Counsel in Washington, D.C., and can be contacted at perryj@dcobc.org.

NEXT STEPS

- Free download: “Social Networking in the Workplace: Too Much Information?” *101 Practice Series: Breaking Down the Basics* (ABA YLD). www.abanet.org/yld/101practiceseries/careerdev.shtml



Second-Career Lawyers

■ continued from page 1

and other marketing materials (such as articles and white papers). When you encounter a new contact, be prepared to briefly explain your background and interests.

- Carry business cards everywhere you go.
- Ask for help within your firm, your community, your family, and any group, school, employer, or other organization with whom you have positive

relations. Make sure your current contacts know your “story,” at least in outline form, and give them a picture of the professional contacts you hope to develop.

- Cast a wide net at first. Try as many networking avenues as you can imagine, and then concentrate on the ones that really work for you.
- You don’t need to spend a lot of money. Don’t lock yourself into an expensive or time-consuming activity, like membership in some “exclusive” club, unless you’re sure

it will bear fruit and that you will enjoy the experience. High-profile contacts that “look good on paper” may never pay off. But your child’s pre-school parent group, your church choir, or a fan you met at a ball game can be a source of business.

- Do a little bit of networking every day. Think of ways to make it fun and interesting. In this way, networking can be a welcome break from the nitty-gritty of everyday work instead of a chore.

- Close the deal. When you encounter a good contact, follow up. Sustain communication. Listen to the prospective client’s needs. Research the client’s industry and circumstances. Be helpful, even when you can’t do work immediately for the client. Offer referrals, career (and even personal) advice, and introductions to your circle of acquaintances.
- When you get work, do your very best. Return phone calls; meet deadlines; work efficiently.

Get more second-career networking advice from this author online at www.abanet.org/yld/publications/home.shtml.

Steven C. Bennett is a partner in the New York City offices of Jones, Day and can be contacted at sbennett@JonesDay.com. The views expressed are solely those of the author.

NEXT STEPS

- “A Skeptic’s Guide to Networking: Some Assembly Required” (downloadable article). 2009. PC # 17101003304PDFA05. Division for Bar Services. To order online, visit www.ababooks.org.

Location, Location, Location

SAME-SEX RELATIONSHIP RIGHTS BY STATE

By Daniel R. Pinello

The number one rule in real estate—location, location, location—also applies to the relationship rights of same-sex partners in the United States. Where lesbian or gay couples live will determine what rights they have, and those rights vary greatly depending on the couples' home states. Attorneys should understand the different legal regimes regarding same-sex couples to adequately advise their affected clients.

Six jurisdictions currently

Court of Appeals (the state court of last resort).

Another six jurisdictions have broad relationship-recognition laws (typically termed "civil unions" or "domestic partnerships") that extend to same-sex couples all or nearly all of the rights and responsibilities given to married couples under state law: California, the District of Columbia, Nevada, New Jersey, Oregon, and Washington. Four other states provide limited relationship recognition: Colorado, Hawaii, Maryland, and Wisconsin.

New Mexico and Rhode Island do not regulate the recognition of same-sex relationships one way or another.

Despite some states recognizing same-sex marriages or relationships, the 1996 federal Defense of Marriage Act (DOMA) specifies that no state is required to honor same-sex marriages performed elsewhere. In addition, DOMA limits federal marital benefits to opposite-sex couples. Hence, married gay and lesbian pairs in, say, Massachusetts, may not file joint federal income-tax returns or receive Social Security survivor benefits.

Ten state constitutions have been amended to include "Mini-DOMAs" (limiting marriage to one man and one woman): Alaska, Arizona, California, Colorado, Mississippi, Missouri, Montana, Nevada, Oregon, and Tennessee. Another ten states have statutory (but not constitutionally based) Mini-DOMAs: Delaware, Hawaii, Illinois, Indiana, Minnesota, North Carolina, Pennsylvania, Washington, West Virginia, and Wyoming. The distinction between statutes and constitutional amendments is important, of course, because the former are easier to repeal than the latter.

Nineteen state constitutions have been amended to incorporate "Super-DOMAs" (denying all forms of relationship recogni-

authorize civil marriage for same-sex partners: Connecticut, Iowa, Maine, Massachusetts, New Hampshire, and Vermont. Although the 2009 Maine marriage-equality statute may be subject to a "people's veto" in November 2009, the right of gay and lesbian couples to marry in the other five states appears secure.

Even though they do not permit same-sex nuptials within their own borders, New York and the District of Columbia presently recognize the marriages of lesbian and gay pairs validly performed in other jurisdictions. However, the in-state legitimacy of such out-of-state ceremonies is pending before the New York



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tion, e.g., marriage, civil unions, domestic partnerships, to same-sex couples), so that lesbians and gays in relationships there may be only legal strangers to one another: Alabama, Arkansas, Florida, Georgia, Idaho, Kansas, Kentucky, Louisiana, Michigan, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, Virginia,

and Wisconsin. Alaska and Montana have statutory Super-DOMAs.

Read more about specific state laws and the rights of same-sex couples at www.abanet.org/yld/publications/home.shtml.

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Justice of the City University of New York. He can be contacted at dpinello@jjay.cuny.edu.

NEXT STEPS

■ *Gay, Lesbian and Transgender Clients: A Lawyer's Guide* (Book). 2007. General Practice, Solo, and Small Firm Division. PC # 5150317. To order online, visit www.ababooks.org.

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Volume 13
Number 11
September 2009

YLD Chair—Kelly-Ann Clarke
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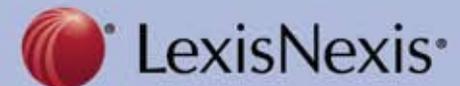
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Do You Believe in Magic?

By Kelly-Ann Clarke

One visit to Birmingham, Alabama, and you will! Birmingham, nicknamed the Magic City, offers the charms of a Southern town with the comforts of a modern city, which makes it an ideal location for this year's ABA Young Lawyers Division's Fall

Conference. Despite Birmingham's shadowy civil rights history during the 1950s–60s, it now boasts a modern, enlightened vision that is the perfect backdrop to kickoff YLD's 2009–10 public service project, *They Had a Dream Too: Young Leaders of the Civil Rights Movement*. It also offers an enchanting atmosphere where conference attendees can make lasting personal and professional connections with one another. The lawyers of Birmingham are excited to show us their Southern hospitality and show off their hidden gem!

The Fall Conference offers

attendees CLE, professional development, and networking opportunities, with a few unexpected treats. Join us on Friday, Oct. 23, in Kelly Ingram Park, where the Children's March of 1963 began, to launch our public service project and visit the Birmingham Civil Rights Institute and Sixteenth Street Baptist Church. Don't miss our gala later that evening at a sleek, sexy, and shiny car museum that overlooks a Porsche race track!

Make your travel plans early as college football will be center

stage on Saturday, Oct. 24 with fans attending the Alabama vs. Tennessee game. *Reserve your room now at the Sheraton Birmingham at conference rates by Sept. 21*, take advantage of airfare wars, and set your sights on YLD's Fall Conference Oct. 22–24, 2009, because the magic awaits you! For more information and to register, visit: www.abanet.org/yld/fall09.

Kelly-Ann Clarke of Greer Herz & Adams in Galveston, Texas, is the ABA YLD chair for 2009–2010 and can be contacted at clarke.kellyann@gmail.com.

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