The Time Has Come
After seven years and endless roadblocks, Missouri’s judges finally see a modest pay raise.
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America’s Future:
It Depends on You
Lawyers — through their bar associations and individually — have a crucial role to play in addressing one of the nation’s biggest challenges: improving the civic awareness of Americans.
A Fresh Start

Welcome to the premiere edition of Precedent. We hope that this new quarterly publication will, in the months and years ahead, become a valuable source of information and assistance to all practicing members of The Missouri Bar.

Precedent represents a bit of a departure from its predecessor, The Missouri Bar Bulletin. Whereas the Bulletin emphasized news of bar activities and events, Precedent will focus on ways in which busy practitioners can maximize the efficiency and effectiveness of their practices. Inside this issue – and in future issues – readers will find valuable information on topics related to law practice management, professionalism, law office technology, marketing, career choices, improved writing techniques, the proper balance between work and play, ethical decisions, and the perspectives of state court judges regarding the contemporary practice of law.

In addition, Precedent will showcase two longer articles addressing timely issues of the day. In this edition, those features focus on two of The Missouri Bar’s most important goals: adequate compensation for judges and improved civic education for all Missourians.

That’s not to say that the Bulletin has completely disappeared. Some of the most recognizable features of that publication – such as the popular “Transitions” and “Around the Bar” columns – can still be found inside Precedent.

All members of The Missouri Bar are receiving a print version of the debut issue of Precedent. However, future issues will be sent electronically to all Missouri Bar members who currently receive our weekly electronic newsletter, ESQ. Those members who do not currently receive ESQ will get future issues of Precedent in printed form. Of course, all members will be able to change their preferred delivery method, and additional information on how to do just that will be found in the next issue.

In the meantime, don’t hesitate to let us know what you think of Precedent: what we did right, what we did wrong and, most importantly, what we can do to make this new publication more valuable to you. Send your comments to precedent@mobar.org, or to me at P.O. Box 119, Jefferson City, MO 65102.

Sincerely,
Gary P. Toohey
Editor

Precedent welcomes letters from readers. We do not run letters that have been printed in, or are pending before, other legal publications whose readership overlaps ours. Letters should be no more than 250 words in length and e-mailed to precedent@mobar.org or mailed to:
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We reserve the right to edit letters. Precedent does not print anonymous letters, and reserves the right to select and excerpt letters for publication.

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Keith A. Birkes Gary P. Toohey
Executive Director Editor

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Precedent
Defending the Courts

By Keith A. Birkes

A primary purpose of The Missouri Bar is to ensure that Missouri citizens have an efficient and fair judicial system. Preserving such a system requires adequate funding, the selection of good judges, and a work environment free of undue influence and interference. We are fortunate, in Missouri, that we have had these requisites in the past, and we must be vigilant about protecting them in the future.

Missouri’s judges have not had a pay increase for the past six years, and general funding for the judicial branch has been inadequate during recent difficult economic times for the state. The Citizens’ Commission on Compensation for Elected Officials filed a proposed salary increase for statewide elected officials, including judges, that is reasonable and affordable. Fortunately, the salary increases have been sustained and on July 1, 2007 our state judges will receive a modest salary increase. The general funding for the judicial branch should improve this year, too, as the state’s economic fortunes have substantially improved. We will be working to ensure that the co-equal judicial branch of Missouri government receives adequate funding in order to operate in a fashion that best serves our citizens.

The selection of good judges is something about which Missouri should be proud. The Missouri Non-Partisan Court Plan is the nation’s leading model for the merit selection of judges. The Missouri Bar worked for the establishment of this selection plan 65 years ago and continues to defend this system for selecting appellate and metropolitan area trial judges. In the balance of the state, where citizens are better able to know the candidates for judicial office, a partisan election system is used. This selection system has withstood the test of time; however, we should always be open to reasonable efforts to improve and enhance the selection of the best possible judges in our state. Vigilance against any effort to politicize or influence the selection process unduly is crucial and must continue.

For more than 30 years, The Missouri Bar has evaluated non-partisan judges standing in retention elections. We partner with the Bar Association of Metropolitan St. Louis and the Kansas City Metropolitan Bar Association to allow lawyers with personal and direct knowledge of non-partisan judges to rate those judges. This information is provided to the public in all ways possible. On a pilot basis, we expanded the evaluation to jurors in St. Louis County last year. We expect to expand the evaluation to jurors in other non-partisan circuits in 2008, and are exploring other ways to include additional citizens in the evaluation process. In his State of the Judiciary Address on January 10 to the Missouri General Assembly, Chief Justice Michael A. Wolff asked The Missouri Bar to convene a committee, made up of lawyers and lay people, to consider additional ways that we can provide the public with information about the qualifications of judges standing for retention and election. A special committee is now being constituted for that purpose, and a particular focus will be on how we can better inform more Missouri citizens about the results of those evaluations. Additionally, efforts will be made to work with judges to help them address problems and concerns that surface through the evaluation process.

Finally, The Missouri Bar is committed to allowing the judiciary to function in an atmosphere as free as possible from undue, unfair and inaccurate criticism. During the last general election, we saw, both in Missouri and in other states, blatant efforts to intimidate the judiciary. The organized bar and individual lawyers have a responsibility to assist individual judges who are unfairly and inaccurately attacked. Such attacks are frequently eleventh-hour surprises, which can be difficult to address. For this reason, during the next year The Missouri Bar will be working with local bars throughout the state to assist them in preparing to appropriately respond to unfair and inaccurate attacks, should they occur. This effort obviously should not and will not interfere with fair and accurate criticism. Indeed, the most important consideration is the determination of what is unfair and inaccurate.

We have much to be proud of in Missouri regarding our judicial branch of government. We are pleased that the Citizens’ Commission on Compensation (Continued on page 14)
After seven years and endless roadblocks, Missouri’s judges finally see a modest pay raise.
By Gary Toohey

As the ornate clocks hanging in the hallways of the State Capitol in Jefferson City struck midnight on January 31, it marked more than the transition from January to February. It also marked the end of a long seven years of frustration for members of Missouri’s judiciary.

When the Missouri General Assembly failed to disapprove recommended judicial salary increases by a February 1 deadline, those raises went into effect. As a result, beginning July 1, the 365 men and women who serve as trial and appellate judges in the state’s courts will see their first salary increase since 2000. The pay raises, recommended by the Missouri Citizens’ Commission on Compensation for Elected Officials, give most judges the equivalent of the $1,200 and 4% pay raises provided to state employees in recent years.

Under the pay plan, judges of the Supreme Court of Missouri will see their annual salary climb from $123,000 to $129,168; Court of Appeals judges’ salaries from $115,000 to $120,848; circuit judges’ compensation from $108,000 to $113,568; and associate circuit judges’ salaries from $96,000 to $101,088. Associate circuit judges will also receive an additional $2,000 per year “to partially compensate for the Circuit Court duties currently being assumed by Associate Circuit Judges throughout the state.”

In addition, the commission recommended that judicial salaries be increased for the fiscal years beginning in July 2007 and July 2008 to the same extent of any increase in compensation for the average state employee.

While the judicial salary increases are clearly welcomed by those whom they effect, many of those who work in or with the justice system wonder why it took seven long years to get to this point.

“The third branch of government now gets 0.8 percent of the overall state budget,” said C. Patrick McLarney, a Kansas City lawyer and former Kansas City Metropolitan Bar Association president who has been a staunch advocate for better judicial compensation.

“We’re spending an enormous amount of time trying to get what is, in fact, a very modest pay raise,” he said in an interview. “You couldn’t build one mile of highway for the money we’re talking about.”

The long path to an adjustment in judicial compensation was completed only after working through constitutional dilemmas, a sometimes reluctant legislature, indifference by the executive branch, political considerations, and the state’s budget crisis.

RECOMMENDATIONS AND ENDLESS FRUSTRATIONS

For many years, judges received salary increases just as did other state employees – through the General Assembly’s appropriations process. However, in 1994 the people of Missouri voted to amend the state Constitution to create a Citizens’ Commission on Compensation for Elected Officials. The commission [commonly known as the “salary commission”] was created to establish, during even-numbered years, salary schedules for statewide elected officials (such as governor, attorney general, etc.), legislators, and appellate and trial judges. Article XIII, section 3 of the Constitution outlines the commission’s purpose: “to ensure that the power to control the rate of compensation of elected officials . . . is retained and exercised by the tax paying citizens of the state.”

Under the terms of the amendment approved by voters in 1994, the commission was to consist of 22 members, appointed as follows:

- Twelve citizens appointed by the governor, with no more than six from the same political party, including: a person experienced in personnel management, a representative of organized labor, a small business representative, a chief executive officer of a business, and a representative of the health care and agriculture industries, among others, from specified parts of the state;
- Nine citizens who are resident voters, one from each of Missouri’s nine congressional districts, whom the Secretary of State is to select at random from voter lists; and
- A retired judge appointed by the Supreme Court of Missouri.

While this scenario would seem to provide a reliable way to ensure reasonable salary adjustments for statewide officeholders, legislators and judges, there were two problems with the constitutional amendment. First, when the General Assembly proposed the amendment creating the commission in 1994, it reserved the right to veto each commission’s report (by simple majority vote of both the House and Senate) on or before February 1 of the year following the commission’s report. In addition, the General Assembly made the commission’s recommendations “subject to appropriation.” As a result of these two stipulations, the commission’s recommendations were regularly ignored.

For example, the commission made salary recommendations in 1996, 1998 and 2002, but those recommendations were rejected each time by a concurrent resolution of the General Assembly. The commission’s 2000 recommendations were not rejected, but the
Our judiciary will not properly serve its constitutional role if it is restricted to (1) persons so wealthy that they can afford to be indifferent to the level of judicial compensation, or (2) people for whom the judicial salary represents a pay increase. Do not get me wrong – there are very good judges in both of those categories. But a judiciary drawn more and more from only those categories would not be the sort of judiciary on which we have historically depended to protect the rule of law in this country.”

Chief Justice John Roberts
United States Supreme Court
2006 Year-End Report on the Judiciary

legislature – using the “subject to appropriations” language of the constitution – did not allocate money to fund the recommended salary adjustments.

“The Citizens’ Commission was an attempt to bring rationality to the process,” said Chief Justice Michael A. Wolff of the Supreme Court of Missouri, “but when you leave the legislature involved with it, it becomes a political process.”

Frustration with this situation bubbled over in the executive summary of the commission’s report to the General Assembly in 2002:

The recommendations of the Commission were ignored and criticized in 1996, 1998, and 2000. Members of the Commission recognize that this year’s recommendations may receive the same fate. If that is the case then it is clear that the current constitutional provisions are not working and will not work.

The members recommend that if the General Assembly does not fund in whole, or in part, the recommendations of the Commission, that a constitutional amendment be submitted to the voters in August 2004 to either:

a. Change the structure of the Commission so that the recommendations are binding upon the General Assembly and stand appropriated, or
b. Abolish the Commission.

When government tries an activity that does not work it should be changed or eliminated. Continuation of the Commission and the reaction to its recommendations only serve to bring state government into disrepute with Missourians. It is unfair to our citizens and the members of the Commission who take time out of their lives to serve the state to continue this process as currently constituted.

The circuitous road to judicial salary adjustments hit additional roadblocks in 2004 and again in 2006, when neither the governor nor the secretary of state made appointments to the commission. Without a commission in place, no salary recommendations could be forthcoming. This was particularly frustrating to advocates of increased judicial compensation, such as McLarney.

“Much to my chagrin, I found out that not only were the judges not getting a pay raise, there wasn’t even a mechanism in place for them to get a pay raise,” he said.

State Court Administrator Michael Buenger agrees. “Clearly, the old system wasn’t working, as evidenced by the fact that no commissions were appointed,” he said. “That was the result of the mechanics of the system.”

“The Citizens’ Commission and constitutional structure was just broken. It didn’t function,” said Sen. Matt Bartle (R-8) of Lee’s Summit and current chair of the Senate Judiciary Committee. “When [voters] set that commission up, I don’t think they had any idea that it would be as dysfunctional as it was.”

AN UNEXPECTED CRISIS

Further complicating efforts to increase judicial compensation in the first half of the decade was the sudden downturn in Missouri’s economy and a state budget crisis that resulted in a freeze on new state hiring and major cuts in funding for many state services and programs. As a result, efforts to increase
judicial salaries took a back seat to preservation of a functioning judiciary.

At the forefront of efforts to ensure adequate funding for the judicial system as a whole was 2003-2004 Missouri Bar President William M. Corrigan, Jr. of St. Louis. Through letters, meetings, presentations and other opportunities, Corrigan relentlessly encouraged the news media, the public and members of the legal community to contact legislators and urge preservation of funding for the judicial branch. Citing statistics showing that one-third to one-half of all Missourians are impacted by courts in some way or another, he argued that cuts to overall judicial funding would result in justice being delayed or even denied. Because of his efforts, and those of other supporters of the judiciary, funding for state courts was largely preserved throughout the dark days of the budget crisis.

“We had to pick our battle,” Corrigan recalls. “The important issue of the day then was just preserving the judiciary’s budget, even though we all knew at the time that the judiciary and their staffs – the court clerks who receive very minor salaries – hadn’t received a raise in some time. We didn’t feel like we had the ability to talk about pay raises at that point, because the most important issue of the day was preservation of the judicial budget.”

“Whereas in the past we certainly could have made the case that judicial salaries were not where they should be, we all knew that the reality was that there wasn’t any money to address the problem,” recalled Clayton attorney Douglas A. Copeland, who served as president of The Missouri Bar in 2005-2006.

Nevertheless, Buenger said, “I’ve always thought [the two issues] were integrated. I don’t think you can speak of the judiciary’s budget as independent of adequate compensation for judges.”

THE EFFECT

Advocates of improved judicial salaries say that seven years without a compensation adjustment has affected the quality and diversity of the state’s judiciary, and posed a morale problem within the justice system.

Copeland outlined the problem in a column written for the Journal of The Missouri Bar last year:

Associate circuit judges sit on the bench and gaze out at the fresh young lawyers from large law firms appearing before them, realizing that those newest admittees to the bar are receiving salaries that exceed their own – because those judges are still paid the same amount as they received in 2000. The thoughts of Supreme Court judges wander westward from Jefferson City, and ponder the equity of municipal judges in Kansas City earning significantly more salary than is paid a Missouri Supreme Court judge.2

“It’s just assumed that most practicing lawyers who are doing well just aren’t going to consider [seeking judicial positions],” McLarney said. “In Jackson County, the average lawyer makes $150,000. Who wants to take a 50 percent cut over what they could get as a starting lawyer to take a judicial position? People are willing to take less to perform public service, but there is a limit – and we’re way past that limit.”

“I’m embarrassed by the levels of judicial compensation in Missouri,” said Sen. Bartle. “I’m thinking of one of the largest law firms in the state of Missouri – a firm that has literally run thousands and thousands of lawyers through its doors. In all the career moves that lawyers made at this firm – one of the largest in Missouri and one of the largest in this country – they’ve only had one [lawyer] who left to go to the bench, and that was more than a decade ago. I bet if you had the 10 largest firms in the state of Missouri, there would only be a tiny handful who left those jobs to work in the state judiciary. The state judiciary just can’t compete.

“What you end up with is a much more inexperienced lawyer [accepting

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### How Missouri judicial salaries compare to surrounding states

<table>
<thead>
<tr>
<th>State</th>
<th>Population (2005 Estimate)</th>
<th>Highest Court</th>
<th>Intermediate Court</th>
<th>Trial Court</th>
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<td>$129,168</td>
<td>$120,548</td>
<td>$113,568**</td>
</tr>
</tbody>
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* includes 2007 increases
** circuit judges
By limiting the number of those interested in pursuing judicial vacancies, low judicial salaries also hinder the diversity of those sitting on the bench. For example, McLarney said, a business community also interested in promoting diversity among its leaders competes with the judiciary – and at an economic advantage – for good, qualified lawyers.

“If you want to draw a broad bank of folks, your compensation has to be at a level that will draw from all different types of practices,” current Missouri Bar President C. Ronald Baird of Springfield noted. “If it’s too low, you’re not going to get a certain person. If it’s not competitive, you’re not going to get the people you need competing for that job.”

Another ramification of stagnant judicial pay is the effect it has on those who have already made the commitment to serve on the bench, according to Buenger.

“I think it has really caused people to question whether that is a career path they want to go through,” he said. “Internally, I think it has . . . a morale impact. You have people out there every day dealing with some of the state’s most pressing problems – really making the system of justice work – and then to go seven years without a pay increase has a devastating effect on morale. That cannot help but trickle down to impact how the system operates. I’ve worked in three different states, and I have never seen a system where morale is this low.

“Everybody has an interest in making sure that justice is going to be administered according to the law and fairly,” he continued. “I think there are judges across the state who have been doing just that, and to then turn around and find that they cannot get even a small pay increase has an absolutely devastating impact.”

Still, there are those in the General Assembly who say that those serving on the bench – as well as those seeking those positions – should be prepared to sacrifice some compensation as a public servant. Among them is Rep. Bryan Pratt (R-55) of Blue Springs, despite his overall support for improved judicial salaries.

“I’ve had numerous great lawyers in the state tell me, very pointedly, that they simply can’t afford to become a judge,” he said. “Being a judge is a public service. Judges need to understand that you are never going to get rich becoming a judge.”

“The Missouri Bar’s take on fair and adequate judicial compensation is to make sure that we continue to provide to the citizens of Missouri an excellent judicial system,” said Baird. “In order to do that, you must have people who have the skills and the training to judge the facts and apply the law fairly. In today’s environment, you have to have fair compensation. With the salaries of young associates moving up, it is becoming more and more difficult to compete for salaries.”

**ANOTHER SETBACK**

As the 2006 legislative session got underway, a warning was proclaimed by Chief Justice Wolff during his State of the Judiciary Address to a joint session of both chambers on January 25, 2006:

The state of judicial salaries is having a negative impact on our ability to attract the state’s best lawyers to judicial service to provide the best service to our citizens . . . .”

There now are Missouri attorneys fresh out of law school who are
paid more in their very first legal jobs than some state trial judges before whom they appear. For Missouri lawyers older than 36 years of age, the average salary is as much as one and a half times that of a state Supreme Court judge.

We all know that the calling to public service involves financial sacrifice. . . . But when the gap between the private sector and public service gets too large, good people will not sacrifice their families’ financial interests to answer the call.

Chief Justice Wolff’s warning was picked up by then-Missouri Bar President Copeland, who in the March-April 2006 issue of the Journal of The Missouri Bar wrote:

There comes a point when compensation is a real barrier to an attorney considering a move to the bench. Would you be willing to cut your salary in half to go on the bench? How about a third? What about the lack of opportunity for, or anticipation of, increases in salary? . . . It is undeniable that, by failing to keep pace with judicial and court staff salaries, we have significantly reduced the pool of willing candidates to fill those positions . . . . What kind of candidates do we want to attract to the bench in the trial and appellate courts in Missouri? What kind of salary is it going to take to do that?

Hopes for some sort of judicial salary increase were raised early in the 2006 legislative session when Governor Matt Blunt, during his “State of the State Address,” called for a 4% cost of living adjustment (COLA) for most state employees. Although the governor’s proposed pay hike did not specifically include members of the judiciary, a proposal to do just was filed in the House of Representatives. In fact, the House included $1.6 million for a judicial COLA in the nearly $21 billion state budget it approved and sent to the Senate.

The state’s improved financial picture was a key impetus toward movement on judicial salaries, according to Copeland. “Before there really wasn’t a question that the money just wasn’t there,” he said. “The most significant change came in a different picture with the state budget and the monies that were available. It opened the opportunity to not just ‘circle the wagons’ and hold our own, but make some progress toward getting us to where we needed to be [in regard to judicial salaries].”

As the legislature debated the proposed COLA, advocates for enhanced judicial salaries found themselves torn as to whether the inclusion of judges was, in fact, constitutional. At the center of that internal debate was the Supreme Court of Missouri’s decision in a 1999 case, Weinstock v. Holden. In that case, the Court construed the “subject to appropriations” language of the Missouri Constitution to give the legislature a choice on whether or not to fund the salaries recommended by the Citizens’ Commission. The Court’s ruling said, in essence, that lawmakers were required to provide any adjustments to each of the three groups under the jurisdiction of the commission.

The constitutional provision also specifies that the legislature is free to grant, in addition to the schedule of compensation, “periodic uniform general cost-of-living increases or decreases for all employees of the state of Missouri and such cost-of-living increases or decreases may also be extended to those persons affected by the compensation schedule . . .” whether or not the schedule is effective or funded. Mo. Const. art XIII, sec. 3.8. Designation of the cost-of-living (COLA) benefit that may be extended as one that is “uniform” “for all employees” cannot be ignored. As a “uniform” benefit it must be extended uniformly. No authority is allowed the legislature to extend this benefit other than on a “uniform” basis on those individuals affected by the schedule. Otherwise, the legislature could negate an “effective” schedule established by the Citizen’s Commission by granting COLA increases to some but not to others. While the legislature is free to fund COLA increases, or not, for individuals covered by the schedule, whatever amount is appropriated must be uniform to all. To hold otherwise would allow the legislature to destroy the Citizens’ Commission’s schedule by altering the relationships of the various offices included by the use of disproportionate COLAs.

Since the proposal in the legislature was to provide a COLA to judges only – and not to lawmakers or statewide elected officials – it posed a
constitutional dilemma for supporters of a judicial pay raise.

“The position that [The Missouri Bar’s] Executive Committee took [on the COLA] is that we were firmly behind increasing judicial salaries by whatever method the legislature felt was appropriate,” Copeland said.

In the end, the constitutional issue didn’t matter, as the Missouri Senate – “citing threats of a judicial veto” – voted to remove the 4% raise for judges that the House had included in its version of the state budget.

Senate Appropriations Committee Chairman Chuck Gross said it didn’t make sense to leave the pay raise in the budget and risk losing the ability to spend $1.6 million on something else.

“This committee would be silly to leave it in there because it’s very, very likely that it will get vetoed,” he said . . .

**HJR 55 AND AMENDMENT 7**

Near the end of the 2006 legislative session, Rep. Scott Lipke (R-157) of Jackson filed House Joint Resolution 55. That measure proposed submitting a constitutional amendment to the voters that would change section 3 of Article XIII with the hopes of making the work of the compensation commission meaningful.

Under the terms of the original proposal, the Missouri Constitution would be amended to repeal the legislature’s authority to disapprove the Citizens’ Commission’s schedule of compensation and to repeal language stating that the schedule was “subject to appropriations.” The version ultimately approved by the House of Representatives, with barely a week left in the legislative session, included these changes and also provided that no compensation schedule filed after the effective date would take effect for members of the General Assembly until 2009.

However, the Senate further modified the proposal during the last days of the session, passing a measure that adopted most, but not all, of the House’s version. The Senate reinstated the ability of the General Assembly to reject the salary schedules, but required a two-thirds majority in both the House and Senate to do so. On the last day of the session, the House accepted the revised ballot measure.

“The stated rationale was that they [legislators] still wanted to have some legislative oversight,” McLarney said.

While the final version of HJR 55 continued to link the three groups subject to the Citizens’ Commission’s salary schedule, it is important to note that it did not include the “subject to
appropriations” language previously found in the constitutional provision. Thus, under the final version of HJR 55, any pay schedule recommended by the Citizens’ Commission would go into effect automatically unless overridden by a two-thirds majority of both chambers.

With approval of HJR 55 by the General Assembly, a proposal to amend the constitution was put before voters as Amendment 7 at the November 2006 general election. When the counting of ballots was complete, the measure had passed overwhelmingly, gaining 84 percent of the vote.

In the wake of that vote, and facing a deadline of December 1 for submission of its report, a newly-constituted Citizens’ Commission on Compensation for Elected Officials went to work. Between its organizational meeting on November 20 and November 30, the commission conducted public hearings in Jefferson City, Kansas City, St. Louis and Cape Girardeau. The commission’s report, dated November 30, 2006, clearly outlined what it felt were its obligations:

Our first allegiance must be to our fellow citizens of Missouri, who have a right to expect a government that attracts the finest public servants with compensation levels that are reasonable, fair, and consistent with the entire government workforce and within the financial means of the State.

In recent years the benefit of a Citizens’ Commission has not been apparent to very many and as a result those public servants who can only be compensated under the schedules of these Commissions have endured six consecutive years of no increase whatsoever, while the consumer price index nationwide has advanced in excess of 20%.8

In its report, the commission recommended the salary increases for judges outlined at the beginning of this article. But the commission also recommended identical $1,200 and 4% raises for statewide elected officials and legislators. While salary adjustments for officeholders would occur on July 1, 2007, legislative pay raises would not take effect until January 1, 2009.

**The 2007 Legislative Session**

When lawmakers converged on Jefferson City for the January 3 start of the 2007 legislative session, the recommendations of the Citizens’ Commission were very much on their minds. Because the recommendations of the commission tied together judges, statewide elected officials and lawmakers, many legislators – either directly or indirectly – stated their fear of voter backlash should they not oppose a pay raise for themselves.

Indeed, during the month between the opening bell of the session and the February 1 deadline for consideration of the commission’s recommendations, no less than five concurrent resolutions – two in the House of Representatives and three in the Senate – were filed to disapprove those recommendations. One of these measures, HCR 13, made it out of committee and was passed by the House of Representatives on a 118-37 vote. Among those voting to reject the salary schedule during the House floor debate was Rep. Jim Lembke, who “said public service should not be about the money and judges who think they are not earning enough should go into private practice. ‘I hope that those serving in the judiciary will find some place in those soft, wonderful hearts to serve this state and the people of this state’ . . . .”9

HCR 13 was heard by the Senate Rules Committee on January 29. After the hearing, a motion was made by Sen. Luann Ridgeway to vote HCR 13 “do pass.” However, the motion died for lack of a second, effectively avoiding a legislative disapproval of the salary increases.

“I think the vast majority of the individuals who voted to reject the pay raise did it because the pay raise included elected officials,” said Rep. Pratt. “I think you have a legislature that has a will to provide a reasonable salary increase for judges, but I would absolutely, positively vote against any pay raise for any elected official.”

Also in play during the legislative debate was a perceived disparity between the workloads handled by urban and rural judges. That is one of the issues currently being addressed by an assessment of judicial resources and manpower being undertaken by Missouri’s judiciary.

“I think the primary backdoor effect is the feeling by rural legislators that their judges are more than adequately compensated,” Sen. Bartle said. “We don’t vary compensation by county, even though clearly the cost of living in rural counties is lower than the cost of living in suburban or urban counties. That’s been a factor.”

“We don’t vary compensation by county, even though clearly the cost of living in rural counties is lower than the cost of living in suburban or urban counties. That’s been a factor.”

Another potential factor in consideration of judicial pay raises is displeasure with recent rulings by state...
courts. Members of the St. Louis chapter of the Federalist Society – “a group of conservative St. Louis lawyers” – singled out the Missouri Supreme Court’s “recent ruling that killed a state law that would have required all Missouri voters on Election Day to show a government-issued photo ID before they could cast a ballot. [The local chapter president] also cited last year’s state high court ruling that Planned Parenthood was eligible for state money under a now-defunct state family-planning program.”

“I think that legislators’ displeasure with the courts’ rulings has had an impact,” said Sen. Bartle. “I do believe that. I don’t think it should, but I think it has.”

McLarney disagrees. “They [the courts] are the ones who are protectors of the Constitution. They’re just doing their job,” he said. “Acts of the legislature can be overturned by the courts. That’s the purpose of the third branch of government. Otherwise, you have no check on the legislature.”

Indeed, even though judicial pay raises have been approved after seven long years, more challenges remain. Other resolutions introduced during the early days of the current legislative session would: restrict state court jurisdiction in the areas of taxation, spending, and budgeting; require impeachment trials to be held by the Senate, rather than the Supreme Court of Missouri; and establish a single eight-year term for judges serving under Missouri’s Non-Partisan Court Plan.

“All of these measures, McLarney said, are a direct threat to the administration of justice in this state and reflective of public confusion over the proper role of the courts within the governmental structure.

“[Many] are not treating the third branch of government as an equal branch of government,” he said. “They’re treating it not as a branch, but as a twig.”

**Footnotes**

3 *Weinstock v. Holden*, 995 S.W.2d 411 (Mo. banc 1999).
4 Id.
5 *Judges Won’t Get Raise From Senate Budget Committee*, *Kansas City Business Journal* (April 8, 2006).
6 Id.
10 Joe Mannies, *Conservative lawyers speak out about court system*, *St. Louis Post-Dispatch*, January 18, 2007 at B3.

Gary Toohey is The Missouri Bar’s Director of Communications.

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**Responsibilities of the Bar**

(continued from page 5)

for Elected Officials’ recommendations regarding judicial compensation have been adopted. Those salary increases, although modest, at least are a step in the right direction. Regrettably, our judges will still be the lowest paid in the region. We are also hopeful that general funding will be increased for our courts and that undue interference with the fair, impartial operation of our courts will be avoided or addressed appropriately, if necessary. We are all partners in this responsibility, and I look forward to working with each and every member of The Missouri Bar to ensure the continuation of our impartial and effective justice system.

Keith Birkes is The Missouri Bar’s Executive Director.
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America’s Future
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- Only 17% of Americans aged 18-25 years voted in the 2000 and 2004 elections.
- More young people know where the Simpsons live than know that Washington, D.C. is the capital of the United States.
- More young people know who Leonardo DiCaprio is than President George W. Bush.
- One-third of the public cannot name any of the three branches of government.
- Two-thirds of twelfth-graders scored below “proficient” on the last national civics assessment in 1998, and only 9% could list two ways in which a democracy benefits from citizen participation.

Are You Scared Yet?
By Cynthia K. Heerboth

DEFINING THE PROBLEM

A multitude of studies conducted in recent years indicate that the United States is in need of a revival of civic education for its citizens. “Arguably, the greatest factors undermining high quality civic education in schools today are the requirements of state assessments and the Federal No Child Left Behind Act (NCLB) which largely ignore the civic mission of schools in favor of concentrating on math and reading.”1

In a 2006 study by the Center for Education Policy of 299 representative school districts in all 50 states, 71% of the surveyed districts reported they have reduced instructional time in at least one other subject to make more time for math and reading. Some districts, struggling to meet the requirements of NCLB, have had to double the amount of time allotted for reading and math, sometimes eliminating other subjects altogether.2

Dr. Richard J. Hardy, professor and chair of the Department of Political Science at Western Illinois University, stated, “In many schools today, civics, [the] study of American government, in high school is an elective. It’s an option.”3

In recent years, civic learning has increasingly been pushed aside. Until the 1960s, three courses in civics and government were common in American high schools; two of them, “civics” and “problems of democracy”, explored the role of citizens and encouraged students to discuss current events. Today those courses are very rare. What remains is a course on “American government” that usually spends little time on how people can – and why they should – participate as citizens.4

But it’s not only America’s young citizens who are lagging in civic participation. “Studies have shown that Americans give less and less time to the civic activities – such as serving on the PTA or helping to get out the vote – that have been hallmarks of our American democracy.”5

DEFINING THE SOLUTION

The future of the United States relies upon the leadership provided by its citizens. In September 2003, delegates attending the First Congressional Conference on Civic Education declared that “[c]ivic education is essential to maintaining our representative government.” Dr. Hardy concurred: “I believe that people ought to be informed and take part in their system. This is after all, a . . . representative democracy, where people are supposed to participate. . . . I think that it’s just too important to be left up to special interests.” “To quote [Justice] Felix Frankfurter, ‘Citizens hold the highest office in a democracy.’” Dr. Hardy reinforced this stating:

“If we do not take the time to socialize our young people – and I don’t mean indoctrinate, I mean socialize – politically socialize our people so that they become aware of the values, the nature of our government, why it’s important to vote, participate and be up on what’s going on around us . . . then we’re going to be very vulnerable, . . . as a country. . . . [C]itizenship brings that responsibility and, once again, that means to be informed, to take action and to have a stake in the society in which they live. You just shouldn’t sit on the sidelines in a democracy . . . [T]o quote Aristotle, “The fate of empire rests with the education of youth.”
Peter Levine, director of CIRCLE (The Center for Information and Research on Civics Learning and Engagement) wrote that “America needs its young people to do important work in politics and civic life for their own sake and for the vitality of our democracy.”

**Education Is the Solution**

The lack of civic education is being addressed in Missouri and nationwide. The problem has become so evident that, in addition to bar leaders, a prominent member of the entertainment industry is taking steps toward a solution. Missouri Bar President C. Ronald Baird and Oscar-winning actor Richard Dreyfuss share a similar goal; the desire to see a renewal of civic education in schools. In the United States, the public education system was designed to address the civic education needs of students – to serve democracy by educating students for productive citizenship. “Dreyfuss is launching a campaign to develop a civics curriculum for the nation’s schools” in response to a need “to educate young Americans about their rights and responsibilities as citizens.” According to Dreyfuss, “[t]he teaching of civics presently in the United States is dismal and startling.” At the beginning of his year as president of The Missouri Bar, Baird selected involvement in civics education as a focus issue when he discovered that, nationally, “half the schools don’t even have a civics curriculum.”

“I think there is a great need to educate our citizenry,” Dr. Hardy added. “I think that it’s not only important that we teach them about their rights, but also about their responsibilities. And I think citizenship does bring responsibilities.”

John Dewey, American philosopher and education reformer, is quoted as saying that “democracy needs to be reborn in each generation and education is its midwife.” The benefits of civic education are exponential. “Students who experience high quality civic learning are more tolerant of others, more willing to listen to differing points of view, take greater responsibility for their actions, and make attempts to help improve their communities.”

“In a 2004-2005 study of alumni (ages 18-34) of the Center for Civic Education’s We the People: the Citizen and the Constitution Program, 92% reported voting in the 2004 elections . . . and 85% . . . reported voting in all previous elections for which they were eligible to vote.”

Dr. Hardy said that on the university level many times students and future teachers taking government classes are “being taught that it’s not rational to vote.” Dr. Hardy disagrees. Voting gives a person the ability to “at least have some control over your life even in the most minute way, but it’s still better than just sitting on the sidelines letting the world revolve around you without any impact.”

When students receive a sustained and systematic civic education, they become more knowledgeable about their government and how it affects them; more interested in politics, the news, current events and government; more capable of identifying public policies that do or do not serve their interests and the common good; more consistent in their views on policies; more critical of politics and government – developing a healthy skepticism that does not alienate them from participation, but motivates them to participate in improving the system; more likely to participate in political and civic activities; more committed to fundamental democratic values and principles; and more tolerant of those who differ in their opinions.

How does Missouri rate? Missouri is one of 19 states that requires a half unit of civic education for high school graduation. Missouri also has civic education standards; most states do not. Section 160.257 of the Missouri statutes requires that “all school districts have a program of pupil testing which shall test competency in . . . social studies and civics.” Yet, in 2003 the Missouri General Assembly cut funding for the social studies (including civic education) testing — testing required by law. The problem is at our door.

**Be Part of the Solution**

There are approximately 29,000 lawyers in the state of Missouri. There are 2,182 public elementary and secondary schools in Missouri teaching approximately 897,980 students. Missouri Bar President Baird’s hope is to have lawyers doing outreach programs to the future leaders of our state and nation.

“Let [lawyers] go to their local schools, their communities, their civic groups, and their local legislators,” he said. Baird encourages attorneys to “join in their bar associations to start setting up a civic education committee that
could expand and continue to promulgate civic education throughout their communities.” He recommends that lawyers go any place in which they can find a forum “to talk about civic education and how all three branches of the government work.” “[B]eing a citizen means . . . being active in your communities, and putting something back into the system.” On a statewide level, Baird would like to see lawyers “joining in on Constitution Day and Bill of Rights Day.” These two programs focus on the significance of due process and the value of the First Amendment.

In agreement with Baird is Michelle A. Behnke, chair of the ABA Standing Committee on Bar Activities and Services. Ms. Behnke wrote “that bar associations are critical to solving the problem. The sheer number of lawyers within bar associations provides an incredible base of people to spread the message and connect with the people in their communities.” “Now more than ever, associations and bar leaders need to connect with education and the public to ensure a fundamental understanding of what” civic education and the Constitution “means to them personally.” Ms. Behnke further stated that “[i]n these educational efforts, we have to do more than recite the facts regarding the constitutional creation of the three branches of government . . . . We have to make this legal system . . . real for the public.”

President Baird has recommended two websites sponsored by The Missouri Bar. The first is www.ShowMeCourts.org, which offers a wealth of information about Missouri’s judicial system. It includes details about the structure of the state’s judiciary, the difference between partisan and non-partisan elections, information for jurors, and even lesson plans. The second site is www.mobabar.org, which has excellent sources of educational materials for lawyers interested in talking to students about civic education. (See accompanying article) “When we first got into this, we did this inventory [of civic education materials at The Missouri Bar], and I thought, ‘We already have all the tools. We just need to figure out how to start implementing the use of these tools [and educating Missouri lawyers as to] what tools we have,’” Baird said.

“I’m not interested in testing people,” Baird added. “I’m more interested in [their] hav[ing] a general understanding of how this all works. . . . As [University of Missouri-Columbia Deputy Chancellor Michael A.] Middleton pointed out on Constitution Day, [the Founding Fathers] never imagined [that] one day we’d be [asking], ‘Can they look in my car on a school parking lot?’ And how [the writers of the Constitution] could be thinking [how] the 4th Amendment applies to” a situation such as that.

To paraphrase President Baird, go to your community’s local schools and civic groups. Volunteer to be a part of the solution. Make a difference. As one volunteer attorney, Jon Baris, stated: “…I come out of the classroom with a huge smile on my face, and I always ask myself, ‘What else can I do?’” (See accompanying article).

THE MISSOURI BAR: MAKING A DIFFERENCE

For more than 30 years, The Missouri Bar has been committed to law-related education. This program receives guidance from the long-standing Advisory Committee on Citizenship Education (ACCE). This unique committee is comprised of lawyers and non-lawyers (primarily educators).

Last year, President Baird formed a special civic education committee. This committee asked ACCE to recommend a strategic plan. When asked about the relationship between the two committees, Cathy Dean, a Kansas City lawyer who is chair of the ACCE, stated that because the ACCE is comprised of lawyers and educators it “can help by identifying the ways we can educate the people of Missouri.” On January 11, Ms. Dean led a meeting providing those recommendations to the Civic Education Committee.

On January 31, 2007, the Civic Education Committee approved a name change for The Missouri Bar’s law-related education program. It is now known as The Missouri Bar Citizenship Education Program, and has a newly adopted mission statement with the purpose “to promote and encourage the civic education of all citizens and particularly to assist educators in preparing students for a lifetime of responsible citizenship through programs about the law, the Constitution and our system of government.”

In addition, the committee identified the following ACCE recommendations as short-term goals for the citizenship education program:

- Increasing efforts to inform Missouri’s educators about The Missouri Bar Citizenship Education Program. This could make teachers more receptive to lawyers volunteering in the classroom.
- Aligning all citizenship education program materials to the Department of Elementary and
LRE RESOURCES ARE AT YOUR FINGERTIPS (LITERALLY)

Go to www.mobar.org and select “Services and Resources” on the tool bar. As a future guest speaker for a civics classroom, select “For Educators.” This is a sample of what you’ll find:

- Multi-Media Lending Library
- Programs and Materials
- Constitution Day
- Bill of Rights Day
- Checks and Balances
- Online Civics Library of The Missouri Bar.

That last selection has more than 50 articles explaining the U.S. Constitution and its amendments. It also includes lesson plans, discussion points, handouts for the classroom, “Amazing Facts,” “Fun Facts,” activities and a time line. It explains due process and the freedom of speech. This website takes the stress out of what to do and how to do it when volunteering to talk to students.

Secondary Education’s grade level expectations. This would assure that the materials lawyers request fit the grade level of the students they address.

- Promote teaching civic education through literacy.
- Develop United States and Missouri Constitution tests, complete with study guides, professional development for teachers and Internet links to resources to assist in preparing students for the tests.
- Expand and continually update the civics library of The Missouri Bar with lesson plans, content materials and links to various Internet resources on civic education topics. Lawyers would have a reliable source of ever-changing materials so presentations would always be new to students.
- Develop and hold an annual institute for teachers on the Supreme Court of Missouri.

Ms. Dean affirmed that the “ACCE will support the goals of [the Civic Education] Committee.”

ACCEPT THE CHALLENGE

Lawyers were present at the inception of the United States of America. Now, today, lawyers are needed to ensure the future of this nation, not only in the courtroom, but in the classroom.

FOOTNOTES

1 Representative Democracy in America, Voices of the People, available at http://www.civiced.org. The “civic mission of schools” is the “determination to educate young Americans about their rights and responsibilities as citizens.” Id.
2 Id.
3 Interview with Dr. Richard J. Hardy, professor and chair of the Department of Political Science at Western Illinois University, at The Missouri Bar Fall Committee Meetings, November 17, 2006.
7 See Hollander.
9 Interview with C. Ronald Baird, President of The Missouri Bar, November 16, 2006.
11 Id. at page 3. We the People...The Citizen and the Constitution Program is directed by the Center for Civic Education and funded by the U.S. Department of Education via act of Congress. It involves simulated congressional hearings in which students participate. The primary goal of We the People is to promote civic competence and responsibility among the nation’s elementary and secondary students.

Cynthia K. Heerboth is The Missouri Bar’s Publications Assistant.
Civic Education Activities
Provided by The Missouri Bar

The Missouri Bar has always been committed to providing quality citizenship education opportunities for teachers and students throughout the state. The state bar sponsors workshops for teachers, coordinates lawyer resources for classrooms, and publishes and distributes law-related education publications and materials. The Missouri Bar also partners with other civic education groups, such as the YMCA Youth in Government program, KIDS Voting Missouri and 4-H.

For The Missouri Bar’s annual Statewide Conference for Educators, more than 70 Missouri government teachers gathered at the Supreme Court of Missouri on February 24, 2006, to learn about the role of the judiciary in both the federal and state governments.

The morning session of the conference featured Dr. Fred Spiegel, retired political scientist from the University of Missouri-Columbia and renowned constitutional scholar, and Chief Justice Michael A. Wolff expounding on various aspects of the judiciary in a dialogue between the two of them. Topics included the rule of law, the role of the judiciary in a system of checks and balances and separation of powers, judicial review, and the selection of judges.

In the afternoon, the participants were divided into six mock supreme courts in simulations instructors can use in their classrooms to teach about the judicial branch.

The conference theme will be repeated this year, as there are more than 170 teachers on the waiting list.

The Missouri Bar continues to serve as state coordinator for the various civic education programs funded through the Center for Civic Education, which is itself funded by Congress. We the People is a nationally acclaimed civic education program about the history and philosophy of the United States Constitution and Bill of Rights. The primary goal of We the People is to promote civic competence and responsibility among the nation’s elementary and secondary students. The culminating activity is a simulated congressional hearing in which students testify before a panel of judges. The Missouri Bar sponsors the statewide hearings in January, Missouri lawyers and judges comprising a substantial portion of the judging panel. Contact Millie Aulbur, director of citizenship efforts at The Missouri Bar, to find out how you can become part of this civic education event. The 2007 statewide hearings were held on January 29 in Jefferson City.

“The state bar sponsors workshops for teachers, coordinates lawyer resources for classrooms, and publishes and distributes law-related education publications and materials.”

In 2006, The Missouri Bar also coordinated the Center for Civic Education Project Citizen program. We the People . . . Project Citizen is a civic education program for middle school students that actively engages students in learning how to monitor and influence public policy and encourages civic participation among students, their parents, and members of the community. As a class project, students work together to identify and study a public policy issue, eventually developing an action plan for implementing their policy. Missouri’s Project Citizen Showcase is held annually at the State Capitol. The 2007 showcase will take place on March 5.

The Missouri Bar continues to head Missouri’s delegation to the annual Congressional Conference on Civic Education in September in Washington, D.C., which was called by leadership
from both parties and in both houses of Congress to improve civic education and restore the historic civic mission of our nation’s schools. In November 2006, more than 300 delegates from all 50 states and major national organizations participated in the fourth annual conference to map out strategies for increasing the teaching of civics and changing state education requirements and practices.

In 2005, The Missouri Bar Advisory Committee on Citizenship Education (ACCE) formed a partnership with the Missouri School Boards Association (MSBA), the Supreme Court of Missouri and the Department of Elementary and Secondary Education’s Service Learning in a pilot program linking the Supreme Court of Missouri and Missouri’s General Assembly to classroom teachers and their students through the MSBA’s technology. The name of the project is Missouri’s System of Separation of Powers and Checks and Balances. From February to April 2006, there were four broadcasts featuring Chief Justice Wolff on the judiciary and four broadcasts featuring panels of legislators. Through MSBA’s technology, students were able to interact with Judge Wolff and with the legislative panels. The program was highly successful and will be expanded in the 2006-2007 school year to include more schools and the executive branch of government. Governor Matt Blunt, Secretary of State Robin Carnahan and Attorney General Jay Nixon will be featured, and more schools will have access to the program. This expansion is almost entirely funded through the Department of Elementary and Secondary Education, Missouri Service-Learning office.

For the second consecutive year, a grant from the Constitutional Rights Foundation has allowed The Missouri Bar to sponsor a two-day program in the spring that will help high school teachers learn how to teach about controversial issues.”

At first glance, lawyer Jon Baris and educator Laney McCurren would seem to have little in common. But Baris, assistant director of career services at Saint Louis University, and Ms. McCurren, a civics teacher at Simonsen Ninth Grade Center in Jefferson City, share two very important qualities: dedication to the students with whom they work and a clear understanding of the value of classroom visits by lawyers.

Both Baris and Ms. McCurren have demonstrated their commitment to classroom interaction among lawyers and students – Baris as a volunteer and coordinator of such efforts and Ms. McCurren through her frequent use of lawyers in the classroom. They agree that lawyer involvement in a civics curriculum can pay huge dividends. “In my experience, teachers in the classroom have been extremely receptive to anyone who wants to come in and do a program,” Baris said. “It gives teachers a break and gives students the chance to see and hear from people who offer a unique perspective.”

“Kids can read about something in a book, but if they have a real expert come in, it really brings it to life,” Ms. McCurren agreed.
In addition, The Missouri Bar Young Lawyers’ Section has been instrumental in getting lawyers into schools to help coordinate and oversee the mock elections held in many schools as part of the “Vote Missouri” program.

“I’m really proud of what the bar associations have done, which is why I’ve been so happy to be involved,” Baris said. “I think the bar associations and lawyers have done as much as they can to promote positive things going on in schools. We always hear bad things about lawyers, but lawyers – whether through the bar associations, through other organizations, or on their own – do a lot of good things to help people.

“Every year when I do the ‘Read Across America’ program, I come out of the classroom with a huge smile on my face, and I always ask myself, ‘What else can I do?’ I know a lot of lawyers who have participated in these programs have contacted schools on their own to say, ‘What can I do to help?’

“The opportunities are there for anyone who wants to get involved.”

LANEY MCCUREN

Ms. McCurren has taught civics at Simonsen Ninth Grade Center in Jefferson City for about 10 years following several years teaching at Jefferson City High School. One of five civics teachers addressing the needs of ninth graders in the capital city, she learned quickly that something other than conventional teaching methods was needed to keep the attention of young people.

“I looked at the civics book and thought, ‘Wow, this is like learning economics.’ I had to do something to make it more interesting or I was going to lose them (the students),” she said.

As a result, she quickly began combining traditional classroom teaching with field trips and outside speakers – typically local lawyers – to perk up the classroom civics experience for her students. She says lawyers have a strong impact on her students, and she is often surprised to find that a lawyer’s visit will unexpectedly stimulate an outpouring of interest from students who typically aren’t responsive to classroom teaching.

Among the lawyers she has invited to speak to her classes is Millie Aulbur, director of The Missouri Bar’s citizenship education program. “Millie is just wonderful,” Ms. McCurren said. “As a former teacher, she knows how to reach kids. She uses actual cases and develops scenarios based on them, which really draws the kids into the discussion.”

Ms. McCurren also has high praise for the mock trials and other curriculum materials The Missouri Bar offers to educators. She sometimes has a lawyer help conduct a mock trial in which students play the roles of judge, attorneys, witnesses and jurors. Having a lawyer work with the students and explain the intricacies of a real trial has a powerful impact, she added.

She does encourage teachers who are planning to invite a lawyer into the classroom to talk with the lawyer in advance and remind the lawyer that he or she will be dealing with youngsters. Likewise, she always asks her students to write out their questions in advance.

“You don’t want this be a bad experience, because [a lawyer’s] time is valuable,” she said.
Attorney Discipline and the Rule of Law

By Sam Phillips

For the past year, Missouri Supreme Court Chief Justice Michael Wolff and Missouri Bar President Ron Baird have been leading a civics refresher course in Missouri, reminding lawyers and non-lawyers about separation of powers, the role of courts in America, and the rule of law. As I was thinking about their effort, I was reminded of some lessons I learned on a recent trip to Eastern Europe. On that trip it became especially clear to me that one of the best ways that we, as lawyers, support the rule of law is to submit to it. Specifically, it seemed to me that an attorney discipline system not only protects the public and encourages confidence in our profession; it actually provides powerful evidence to the public that the rule of law is paramount in our society.

In 2004, I traveled to the Republic of Moldova to work with the American Bar Association’s rule of law initiative in Eastern Europe. Through that program, the Central European and Eurasian Law Initiative (CEELI), hundreds of American lawyers and judges have traveled to Eastern Europe and Central Asia to foster an attitude within the local legal profession that the rule of law should consistently prevail. Some Eastern European countries had transitioned from feudal rule to Soviet-style totalitarianism, and had limited exposure to the rule of law as Americans know and appreciate it. As the Soviet system fell apart, Eastern Europeans eagerly anticipated new freedoms and new rights. Lawyers led the way in the creation of laws regulating commerce and preserving the peace, while trying to protect newly gained civil liberties.

Unfortunately, great apprehension of corruption remained, sometimes within the legal profession. I had the great honor to work closely with Moldovan attorneys, the Moldova Bar Association and their ethics committees, and the Moldova Supreme Court to help address those concerns about corruption and to professionalize the attorney discipline system. Their challenge, as the country emerged from a culture of pervasive corruption, was to create an efficient and transparent legal system, including an attorney discipline system that reduced risks of cronyism. Many lawyers were convinced that the attorney discipline system was rigged; as I understood it, they also believed most legal systems were subject to corruption. My challenge was to assist the Moldova bar in creating an attorney discipline system that would instill confidence not only in the integrity of the legal profession, but ultimately the rule of law.

As we worked through various ideas for a successful system, we agreed on some basic principles. We all agreed that a fair and transparent attorney discipline system is essential to any effort to promote the rule of law. We recognized that, to most non-lawyers, lawyers embody the law. With that understanding, we recognized that in a society where public corruption had almost been a way of life, lawyers’ willingness to police themselves might show the public that the rule of law can work.

Admittedly, the Eastern European situation I saw shines a bright (perhaps glaring) light on the need for a fair and open attorney discipline system. But that principle – of using the attorney discipline system to show the public that we are willing to police ourselves – readily applies in the middle of America. As Missouri Supreme Court Judge Mary R. Russell explains, that is a basic function of the system: “The goal of our disciplinary system is to protect the public and preserve their confidence in our great and honorable profession.”

In re Carey & Danis, 89 S.W.3d 477, 503 (Mo. banc 2002). John C. Dods, the long-time chair of the Missouri Supreme Court’s Advisory
Committee, points with pride to our self-administered disciplinary system:

The privilege of being a lawyer carries with it an obligation to assure that the judicial system and our own practice of law are competent and honorable. The enforcement of the Rules of Professional Conduct through our self-administered disciplinary system is intended to protect the public’s interest in these ideals. A hallmark of our profession is that we impose upon ourselves high standards of conduct and that we ourselves administer the disciplinary system.

To meet the obligations and goals that Judge Russell, Ron Baird, and John Dods describe, our attorney disciplinary system is written into law. “The Supreme Court may establish rules relating to practice, procedure and pleading for all courts and tribunals, which shall have the force and effect of law.” Mo. Constitution, art. V, § 5. In Missouri, Supreme Court Rule 4 contains the Rules of Professional Conduct; that rule provides the ethical guidelines for lawyers’ behavior. Supreme Court Rule 5 governs the disciplinary process, establishing procedures for investigation and prosecution of alleged professional misconduct. Judge Russell describes the system: “We, through the Office of Chief Disciplinary Counsel, the Advisory Committee, the Disciplinary Panels, and this Court, have the important responsibility to ‘police’ the members of our profession who do not conduct themselves in accordance with the Rules of Professional Conduct and ethical standards.” In deciding discipline cases, the Missouri Supreme Court has also relied on its inherent authority: “From the very earliest times the right to punish attorneys by suspension or disbarment, as well as for contempt, has been exercised by the Courts as an inherent power.” In re Richards, 333 Mo. 907, 913; 63 S.W.2d 672, 674 (Mo. banc 1933).

Many Missouri lawyers want to support the civics course being led by Chief Justice Wolff and Missouri Bar President Ron Baird; we will have many opportunities and methods to do so. In my view, one approach would be to proudly direct the public to our attorney discipline system. That system, based in law, provides the lesson that lawyers not only use, argue, stretch, explain, and sometimes help change the law, we also promote it by accepting it and submitting to it.

Sam Phillips is serving as Deputy Disciplinary Counsel within the Office of Chief Disciplinary Counsel.

Around Missouri

Association of Missouri Mediators Annual Meeting Report
St. Louis attorney-mediator Bruce S. Feldacker was elected president of the Association of Missouri Mediators at the association’s annual meeting held in Columbia. Missouri Supreme Court Judge Richard B. Teitelman received the association’s annual honor award in recognition of his service to the mediation field.

Kansas City Metropolitan Bar Foundation Honors Non-Lawyer With Liberty & Justice Award
The Kansas City Metropolitan Bar Foundation presented Bobbie Lou Nailling-Files, the first non-lawyer recipient, with the 2006 Liberty & Justice Legacy Award during the foundation’s annual dinner. The award is given in recognition of the recipient’s dedication to the principles of liberty and justice through exemplary professional, civic and community service.

Nailling-Files served as the executive director of the Kansas City Metropolitan Bar Association from May 1970 until December 2000.

Coburn Award Presented at Justice for All Campaign Reception
Attorney Richard W. Miller, of the Miller Law Firm, was presented with the 2006 Honorable H. Michael Coburn Community Service Award during the Justice for All Campaign Kickoff reception.

The campaign provides support for the work of Legal Aid of Western Missouri, which provides free civil legal assistance to low-income people in 40 counties in western Missouri.
Informal advisory opinions are issued by the Legal Ethics Counsel under Rule 5.30. The Legal Ethics Counsel only issues opinions to attorneys for their own guidance involving an existing set of facts. Informal advisory opinions cannot be issued on hypotheticals or regarding the conduct of an attorney other than the one asking for the opinion.

Although an effort has been made to summarize the important facts of the question, not all details are included in each summary. Therefore, these summaries should be used only for general guidance. Only summaries are available; actual copies of the opinion request and answer are not available. The first four digits of the opinion number indicate the year the opinion was issued.


Informal Opinion 2006-0003

Question: Attorney represented Husband in a divorce action against Wife. Wife was represented by Attorney’s former law partner. Attorney’s partner was with a different firm at the time of the divorce and the case was settled several years ago. Wife has now filed a motion to modify child support and visitation against Husband. Attorney hired an attorney from Attorney’s partner’s old firm. Attorney entered an appearance for Husband on the motion to modify. Attorney’s partner has no contact with the file and has no involvement in the matter whatsoever since the divorce. Does Attorney have a conflict?

Answer: Attorney has a conflict of interest that prevents Attorney from representing Husband, unless Wife consents. Attorney’s partner has a conflict under Rule 4-1.9(a). Rule 4-1.10(a) imputes that conflict to Attorney. Despite the fact that Attorney’s partner has had no contact with the matter in Attorney’s office, screening does not avoid the application of Rule 4-1.10, although it sometimes facilitates persuading the former client to waive the conflict.

Informal Opinion 2006-0004

Question: Attorney prepared an agreement for a client who is now deceased. Litigation is pending between the estate of the deceased, and various entities and heirs of the deceased. Attorney provided copies of the agreement to each attorney involved in the litigation. Attorney has since been served with a subpoena to have a deposition taken and to produce all files and documentation regarding the deceased. It is Attorney’s understanding that Attorney may only disclose the information if a court orders Attorney to do so after the issue of confidentiality has been fully raised. What should Attorney do to present the issue of confidentiality to the court? Is it Attorney’s responsibility to initiate a proceeding to obtain the court order? If the other attorneys involved in the litigation present the issues to the court, is Attorney required to be present at the hearing?

Answer: Attorney can only provide the information pursuant to a court order after the issue of confidentiality has been fully presented. Attorney should seek to have such an order as specific and limited as possible.

There are many ways in which the issue can be presented to the court. It is permissible for Attorney to cooperate with the other attorneys and parties involved and to stipulate to facts, other than those related to the confidential information at issue. Attorney and the other attorneys can work out whether Attorney will file a motion, such as a motion to quash or for a protective order, or whether they will file a motion to compel. This is an area in which a stipulation might establish the necessary facts without the need for going through the process of a deposition at which Attorney would refuse to answer.

It will be necessary for Attorney to know that the issue of confidentiality has been fully presented. If Attorney knows that another attorney will be fully presenting that issue, it is not necessary for Attorney to be present. However, it is probably advisable for Attorney to be present in the event that the court has questions for Attorney.
INFORMAL OPINION 2006-0005

Question: Rule 4-7.2(f) states that advertisements or communications must conspicuously contain the statement: “The choice of a lawyer is an important decision and should not be based solely on advertisements.” Attorney has a website and a small listing in the Yellow Pages. Does the information referred to in Attorney’s website and Yellow Page ad need to contain the statement set forth in Rule 4-7.2(f)?

Answer: Rule 4-7.2(f) applies to websites. Websites are considered advertising. It is not necessary to include the Rule 4-7.2(f) statement in a print ad or website that is limited to the information listed in Rule 4-7.2(g). Rule 4-7.2(g) exempts an advertisement from 4-7.2(f) if it is limited to some or all of the following:

1. the name of the law firm and the names of lawyers in the firm;
2. one or more fields of law in which the lawyer or law firm practices;
3. the date and place of admission to the bar of state and federal courts; and
4. the address, including e-mail and web site address, telephone number, and office hours.

INFORMAL OPINION 2006-0030

Question: Attorney’s practice consists of probate and estate planning. Attorney occasionally amends traffic tickets for a flat fee, which is paid in advance when Attorney receives the ticket. For estate planning matters, Attorney usually has a flat fee based on the estate planning documents that Attorney will prepare. Attorney usually requires the client to pay half of Attorney’s fee before Attorney will start preparing the documents. The other half of Attorney’s fee is paid after the documents are finalized and signed by the client. Attorney occasionally charges by the hour if it is a trust amendment or an exceptional case. In that situation, Attorney bills at the end of the representation for services already rendered. Attorney deposits checks for payment of these attorney’s fees directly into Attorney’s operating account.

Answer: If Attorney is charging a flat fee, flat fees are considered earned upon receipt for trust account purposes. Therefore, Attorney is not required to deposit them into a trust account. If Attorney is charging a flat fee for estate planning and just receiving it in increments, it would be treated the same as any other flat fee and would not have to be deposited into Attorney’s trust account. Attorneys who do a lot of flat fee work are encouraged to segregate those funds in some fashion, until they are earned for refund purposes, against the possibility of a catastrophic accident or illness suddenly requiring mass refunds.

If Attorney requires any fees, other than flat fees, to be paid in advance, those fees must be deposited into Attorney’s trust account even if Attorney expects to earn them within a short period of time. Attorney usually deposits these checks into Attorney’s operating account but disburses a check to the court simultaneously when depositing the client’s check.

Is Attorney required to open a trust account to deposit attorney’s fees that are paid in advance even though the amounts are usually not significant and the work is usually performed within a short period of time? Is Attorney required to deposit Attorney’s one-half partial payments for estate planning services to the trust account, or can Attorney deposit them directly to Attorney’s operating account? May Attorney continue to deposit client checks for court filing fees into Attorney’s operating account?

Answer: Court filing fees must be deposited into Attorney’s trust account unless Attorney has already disbursed Attorney’s own funds for the filing fee and is reimbursing oneself. This may require a slight modification in timing from Attorney’s current practice.
INFORMAL OPINION 2006-0053

**Question:** Attorney has reason to believe that a Trustee misappropriated, and perhaps stole, funds from a Trust. Since Attorney represented the Trustee, is Attorney permitted to notify and inform the other beneficiaries of the Trustee’s management of the Trust and of Attorney’s suspicions? To Attorney’s knowledge, the other beneficiaries have received no information regarding the Trust, and they have not contacted Attorney.

**Answer:** Attorney may not disclose the information to the other beneficiaries, unless Attorney has the consent of the Trustee. If the Trustee will come forward with the necessary information, Attorney may continue to represent the Trustee in attempting to resolve any problems. It is permissible for Attorney to advise the Trustee that Attorney will withdraw if the Trustee is unwilling to take the steps Attorney believes to be necessary, including consenting to disclosure to the other beneficiaries. It is also permissible for Attorney to withdraw, at this point, regardless of the steps the Trustee is willing to take. If the Trustee is not willing to take the steps necessary to resolve the problem and Attorney believes that the Trustee’s conduct is fraudulent or criminal, Attorney must withdraw if Attorney’s representation would assist the fraudulent or criminal activity.

INFORMAL OPINION 2006-0062

**Question:** An administrative tribunal’s hearing officers, who are licensed attorneys, preside over cases heard by the tribunal. The tribunal received complaints for review by a single-member LLC and a single-member S Corporation. The tribunal’s concern is that if the single member of the LLC or S Corporation appears before the tribunal without an attorney, he or she may be in violation of § 484.010. If such an appearance is practicing law without a license, that subjects the tribunal’s attorney hearing officers who preside over the hearings to ethical problems. Is it necessary for single-member LLC or S Corporations to be represented by an attorney in cases before the tribunal?

**Answer:** Neither an LLC nor an S Corporation can appear in a tribunal through an officer or other nonlawyer, if that tribunal requires representation by an attorney for any party not appearing pro se. Joseph Sansone Company v. Bay View Golf Course, 97 S.W.3d 531 (2003). In other words, if the conduct will constitute the practice of law, an LLC, S Corporation, or other corporate entity is not permitted to appear pro se, absent specific authorizing statutes, rules, etc, unless there is law that makes a distinction for a single-member entity. However, not every act in an administrative tribunal constitutes the practice of law. See, State ex rel., Missouri Department of Social Services v. Administrative Hearing Commission, 814 S.W.2d 700 (Mo. App. W.D. 1991).

If a non-lawyer’s conduct, on behalf of an LLC or S Corporation, will constitute the practice of law and there is no statute, rule, or other legal authority permitting the particular conduct by a nonlawyer, the attorneys who participate in the proceeding will be assisting the unauthorized practice of law. The attorneys should take steps to stop or prevent this conduct.

INFORMAL OPINION 2006-0069

**Question:** A non-attorney with experience in the insurance field inquired of Attorney as to the legality of using experience and training to assist attorneys with preparing and settling insurance claims in the State of Missouri. The non-attorney would be acting independently, rather than under Attorney’s control and supervision. The non-attorney would handle case preparation, including taking statements, obtaining medical records, correspondence regarding the case, and negotiation with insurers and others. The non-attorney would provide attorney with a recommended settlement value. The compensation schedule would be based on the amount of recovery. Would this violate Rule 4-5.5? If not, does the contractual...
arrangement constitute an imper-
missible splitting of attorney’s fee under
Rule 4-1.5?
Answer: The arrangement, as
described, would not be permissible. It
would not be permissible under Rule 4-
5.3 for the non-attorney to act without
supervision by Attorney. Second, a
compensation schedule based on the
amount of the recovery would constitute
fee sharing with a non-attorney, which
is prohibited by Rule 4-5.4.

INFORMAL OPINION 2006-0071

Question: Is there any requirement
that plaintiffs’ attorneys pay clients out
of their trust accounts rather than out of
their operating accounts? Is it ethical
for Attorney to give the client Attorney’s
own money while waiting for a
settlement check to clear Attorney’s
trust account? Attorney’s practice has
been to deposit the insurance check in
Attorney’s trust account and
immediately issue a post-dated check to
the client.
Answer: It is permissible for
Attorney to write a check to the client
out of Attorney’s operating account or
other non-trust account when Attorney
has deposited the settlement check into
Attorney’s trust account, if attorney
reasonably believes there will be no
problems with the check. This conduct
will not violate the Rule 4 1.8(e)
prohibition against providing financial
assistance to clients. However, if there
are problems with the check that
attorney should have reasonably
anticipated, attorney runs the risk of
having provided prohibited financial
assistance to the client.

If Attorney is disbursing the funds
directly from Attorney’s trust account,
it is risky to give the client any check,
even a post-dated check, before
Attorney is reasonably certain that the
funds from the insurance check are
actually in Attorney’s trust account.

INFORMAL OPINION 2006-0073

Question: Can Attorney tell a client
that Attorney will provide free or
reduced cost estate planning services to
a client who leaves a portion of their
estate to a not-for-profit organization?
Answer: It is permissible for
Attorney to offer a discount on estate
planning to clients who leave a portion
of their estates to a not-for-profit
organization. Attorney must clearly and
fully disclose Attorney’s relationship
with the organization. Attorney must
provide objective advice and
consultation to the clients regarding
their options and the effects of their
choices.

INFORMAL OPINION 2006-0074

Question: Attorney’s former law
firm continues to post Attorney’s picture
and biographical profile on their website
even though Attorney has not been with
the firm for several months. Attorney
wants the information removed from the
website. Is there an ethical rule which
prohibits firms from committing acts
such as this? How can this situation be
resolved without having it mushroom
into professional misconduct that must
be reported and investigated?
Answer: It is recommended that
Attorney review Rule 4-7.1 and bring
that rule to the attention of Attorney’s
former firm. Attorney should document
the communications to the former firm
requesting that information about
Attorney be removed from the firm’s
website.

If the former firm does not remove
Attorney’s information within a
reasonable time frame and does not
provide a reasonable explanation for the
failure to do so, under Rule 8.3, Attorney
should report this matter to OCDC so
they can investigate to determine
whether a violation has occurred. An
opinion about the conduct of the
attorneys in the firm cannot be formed
without the opportunity for those
attorneys to provide information.

Got a Great Idea?

Why not share the wealth by turning it into an article for the *Journal of The Missouri Bar*?

The *Journal of The Missouri Bar* is always looking for good articles – articles that enlighten your colleagues, keep them abreast of important changes in the law, and help them meet their professional obligations.

If you know of a legal topic or issue worthy of illumination, we invite you to consider preparing an article for the *Journal*. It’s simple — just let us know the topic in which you’re interested and we’ll send you all the materials you need to get the creative process started.

The *Journal* currently has only a small backlog of articles, which means that your article, if approved for publication, will appear in print quickly. That’s all the more incentive to spread the word on that “hot” legal topic!

To reserve a topic for publication, send a brief letter outlining the issue in question to: Gary Toohey, Editor, *Journal of The Missouri Bar*, P.O. Box 119, Jefferson City, MO 65102-0119. We’ll get right back to you with further information.

Let’s Get Busy!
Marketing to Foreign-Born Clients

Law firms whose marketing strategy fails to differentiate among the range of publics in need of legal services may be missing out on a significant opportunity. While there is much to learn about marketing and providing services to those whose language and culture may be unfamiliar, becoming the go-to firm for one of these target markets can bring significant rewards.

By Nina Ivanichvili

There is an under-represented, largely untapped market in multilingual America. It is growing exponentially — and so is its purchasing power. In 2002, more than 11 percent of the total U.S. population, or 32.5 million people, were foreign born. Among them, 52 percent were born in Latin America, 26 percent in Asia, 14 percent in Europe, and the remaining 8 percent in other regions of the world, such as Africa and Oceania.\(^1\) The national buying power of Hispanics, pegged by the Selig Center for Economic Growth, was $653 billion in 2003, and is projected to exceed a trillion dollars in 2008.\(^2\) The buying power of Asian consumers was $344 billion in 2003, and is projected to reach $526 billion in 2008.\(^3\)

Based on the above, many foreign-born Americans are likely to own their own businesses, obtain mortgages and buy homes,\(^4\) acquire college degrees, and generally create great marketing opportunities for law firms that pay attention to their needs. Clearly, their participation in the economy would generate a need for legal services.
pertaining to such areas as business law, immigration law, family law, civil litigation, workers’ compensation, and criminal law. On occasion, foreign-born Americans also are likely to need legal advice related to government contracts, labor law, franchises, landlord/tenant law, liquor licensing, insurance law, real estate law, condominium law, construction law, estate planning, and elder law.

Unlike their predecessors, newcomers to the country continue to keep their sense of cultural identity by retaining their native languages and customs. Today, almost one in five Americans speaks a language other than English at home. In 1999, for example, 22 percent of the total student population of the Denver Public School system was enrolled in English as a Second Language (“ESL”) classes. The top five languages spoken by ESL students were Spanish, Vietnamese, Chinese, Russian, and Arabic. For purposes of this article, such individuals, often called “ethnic Americans,” are referred to as “foreign-born.” “Foreign-born” persons are defined here as those who have been raised in a foreign country, currently reside in the United States, and speak little or no English.

Many law firms make no concerted effort to connect with and market directly to this potentially lucrative niche market. Some law firms may not want to deviate from an existing marketing strategy, and would rather wait for this market to come to them. Other law firms discount this market as unworthy of time and effort, due to the often-parochial perception of such clients as “difficult.” Still other firms may assume that foreign-born clients should be served only by lawyers who speak their own native languages.

In the past, many law firms have hired minority attorneys fluent in the languages of such clients. However, despite initiatives undertaken by many law-related organizations, there is a scarcity of minority attorneys and, perhaps, bilingual attorneys in the marketplace. Minority entry into the legal profession has slowed significantly since 1995, making it prudent for law firms to seek other means for representing foreign-born clients effectively.

This article suggests ways American law firms can establish key points of differentiation, or gain a competitive edge, in the minds of foreign-born clients. It discusses the need to develop cultural sensitivity and bias-free language skills, the way to become a foreign-language-friendly law practice, and the alternatives to advertising in the traditional mainstream media. Finally, the article provides practical tips for positioning the law firm as an “expert” in serving foreign-born clients.

**DO MARKET RESEARCH TO DISCOVER A NICHE**

Targeted marketing to foreign-born clients, as any targeted marketing, can generate a higher return on investment than mass marketing to the general public. To be successful, targeted marketing needs to be based on sound facts and a high level of understanding of the target audience. The law firm’s positioning decisions can be influenced by such factors as a partner who has Polish-ethnic background or a paralegal who speaks Laotian.

To find niche markets within the ranks of the foreign-born, a law firm can start by asking the following questions.

- Are there groups of potential clients whose needs are not met by other law firms?
- What situations will trigger a prospect’s need for the law firm’s services?

- How can the law firm exploit the fact that some target market’s members have retained its services in the past?
- Where would members of the target culture typically look for a lawyer?
- Who are the law firm’s important competitors in the given market?
- What advantages do the competitors have?
- What is the target clientele’s level of literacy and education?
- Is the target clientele’s culture based on individualism or collectivism?
- How litigious is the prospect’s culture?
- Is the prospect’s culture similar to the U.S. culture, in that it views conflicts as part of the human interaction, or is the culture similar to Asian cultures, in that it disdains direct confrontation?
- How do people in the target clientele’s culture resolve conflicts?
- How do people in that culture conduct business: are they used to a let’s-get-down-to-business routine or do they engage in small talk and other rituals to build rapport, respect, and trust prior to discussing business matters?

Based on market research findings, the law firm may choose to position itself as a law practice that serves, for example, all foreign-born clients who reside in Kansas City. Alternatively, it can decide to specialize in working with a narrower category of clients, such as Vietnamese-speaking small business owners based in the metro Kansas City area. The more the law firm segments its target market, the easier it will be to develop new marketing messages or customize the existing ones to resonate with the target audience.

**BECOME A FOREIGN-LANGUAGE-FRIENDLY FIRM**

Law firms should use the services of an interpreter during meetings with a non-English-speaking prospective or
existing client. This is an effective and tangible demonstration to clients that the firm respects their language and culture. It also shows that the firm is interested in pursuing the client-attorney relationship in a way that will be comfortable for the client. Without an interpreter present, a client may not be able to understand the difference between a “contingent fee” and “time-based fee,” or may not have a clue about plea-bargaining or probation. With an interpreter, the clients should feel more in control and “in the loop.” Be advised that well-meaning bilingual friends or relatives of the foreign-born client typically do not understand the role of an interpreter. As a result, they are likely to interpret only what they consider to be relevant and may omit or edit some important statements made by the non-English speaker.8

Most people remember only 20 percent of what they hear — even less when their stress level is high, which is often the case when trying to grasp the importance of legal documents. A non-English-speaker is especially “at risk” for confusion and might not be held accountable for remembering the meaning of any legal document, even if the text of that document were interpreted by an interpreter. To serve the non-English-speaking client more effectively, important documents should be translated and put in writing for the client to read before signing.

The firm should keep a copy of each translated document in the client’s file, and provide the client with his or her copy to keep at home. Such documents may include retainer agreements, disclosure statements, and settlement agreements.

Professionally translated documents also will enhance the law firm’s image and should be viewed as strategic marketing assets, differentiating the law firm from its competitors. The fact that the law firm makes important documents available in the languages spoken by its non-English-speaking clients sends the highly marketable message that the firm is friendly to those who are not fluent in English, that the firm cares about foreign-born clients, and that the firm is accustomed to serving the interests of such clients.

“Law firms should use the services of an interpreter during meetings with a non-English speaking prospective or existing client. This is an effective and tangible demonstration to clients that the firm respects their language and culture.”

Most important, foreign-born clients are likely to perceive that the law firm is providing a value added service with greater benefits than other firms.

GAIN COMPETITIVE EDGE THROUGH CULTURAL SENSITIVITY

Effective marketing starts with a clear view of the clientele — the target audience. This requires insight into the clients’ attitudes and values, challenges, and expectations. When faced with a legal problem in their new homeland, foreign-born individuals are likely to manifest fear, insecurity, agitation, and mistrust. It is important to bear in mind that many of them have never before been in contact with lawyers. They also are likely to have different communication styles, lack knowledge of the U.S. legal system, and have no understanding about specialization in the legal profession. They may perceive crime and conflict differently than American-born citizens, based on their own cultural imperatives.

Lawyers committed to serving foreign-born clients, therefore, need to develop cross-cultural empathy. This is the critical ability to see the client’s good place to start such research is Infoplease,® which is searchable by key words.9 It provides links to up-to-date reference information encompassing the history and culture, as well as the language and political system of various countries. Other resources include the following:

- Amnesty International (“AI”)10 and Human Rights Watch11 websites offer information on human rights violations in various countries of the world.
- FindLaw provides a collection of international resources.12
- Columbia Law School presents information on finding foreign law resources on the Internet.13
- International Trade Data System (“ITDS”) delivers information on a country’s exports and imports.14
- The website embassyworld.com lists the world’s embassies and consulates.15

Knowledge of a foreign-born client’s culture would provide an American attorney with a context for interpreting, for example, a battered immigrant woman’s behavior. As noted below, domestic violence is not a legal matter in many countries. Therefore, such
women are likely to treat abuse as a very private matter and be reluctant to testify against the abuser. On a different note, potential roadblocks in attorney-client conversations can be caused by a lack of understanding of how business is conducted in different countries. German banks, for example, do not mail monthly bank statements to their customers. It is up to the customer to request a bank statement while visiting the bank in person. Therefore, a German-speaking client who tells his U.S.-born attorney that he has no possibility and cannot easily obtain the bank in person. Therefore, a German-speaking client who tells his U.S.-born attorney that he has no, German bank statements in his possession and cannot easily obtain them is not necessarily being uncooperative.

**USE BIAS-FREE LANGUAGE**

Foreign-born clients, as a rule, are proud of their ethnic identity, and law firm personnel should be respectful of that. For example, attorneys need to recognize the possibility that many Spanish-speaking individuals do not think of themselves as “Latino” or “Hispanic,” but as Mexican, for example, or as Puerto Rican. Generally, “Latino” and “Latina” should be used to refer only to persons who have Latin-American ancestry. Also, although “Hispanic” may be an accurate term for describing people in the United States whose ancestors came from a Spanish-speaking country, it “homogenizes” many diverse peoples. It could be offensive to some because it was coined by the U.S. government and does not have the benefit of “being self-chosen.”

Similarly, the word “Oriental” may be considered by some to be an ethnic slur. Not only does this term reflect a Eurocentric perspective, but it also retains a long-ago connotation of Asian countries as exotic lands of romance and intrigue. As with the words “Hispanic” and “Latino,” the term “Oriental” tends to reduce an entire continent of diverse races and cultures to a single ethnic identity. Although some may think “Asian American” an appropriate generic term, it is better to use a more specific term, such as “Chinese American” or “Filipino American,” whenever possible.

Another important fact to remember is that certain Middle Eastern people should be called Arab or Arabic (coffee and language also are Arabic). However, horses are Arabian. Also, the “terms ‘Arab’ and ‘Muslim’ are not interchangeable — most Muslims are not Arab, and many Arabs are not Muslim.” Likewise, ethnic Armenians or Kazakhs, who come from the republics that used to be part of the former Soviet Union, do not appreciate being referred to as “Russians,” even though they may be fluent in Russian.

Generally, it is not recommended to lump groups of people with varying histories, cultures, and languages under a generic term. To avoid inadvertently offending and alienating prospective existing clients, it is better not to use a label in communication with them until the attorney determines how the client wants to be identified; that is, which appellation, if any, the client prefers.

**HOLD A FOCUS GROUP**

No law firm can understand everything about the niche market it is trying to reach. When marketing to the foreign born, it helps to look at things from a prospective client’s perspective. The law firm may assume that foreign-born individuals, when faced with a legal problem, are likely to look through advertisements in a newspaper or in the Yellow Pages, or simply enter the first building they see with a “Law Office” sign. However, a faulty marketing hypothesis could lead to financial disaster if a law firm relies on a wrong assumption. Therefore, it may be expedient to hold a focus group prior to finalizing such important business decisions as opening a new office in a prospective niche market’s locale, hiring bilingual staff, or launching a new multilingual marketing campaign. Always think, “Is this something our clients want?”

A focus group panel should comprise eight to fifteen individuals with demographic characteristics identical to those of the law firm’s niche market. During a controlled discussion, the focus group participants can shed priceless insights into the target audience’s “hot buttons,” as well as their thoughts and emotional processes. For example, they can explain such concepts as the loss of face in their culture, why some members of that culture may self-medicate work-related injuries instead of seeking medical attention, what constitutes a ground for divorce, how alimony arrangements are handled, how banking is done, and whether intoxication is a rite of passage.

The panel also can review and help refine the law firm’s marketing materials, attempting to make sure the target audience would understand the law firm’s marketing message the way it was intended and would not be inadvertently offended by its form or content. Finally, the panel can advise the law firm regarding specific cultural responses to such things as color in the law firm’s marketing materials and on the law firm’s website. In Japan, for
example, black and white banners are used during funerals. Also in Japan, cheap and discounted products have red price tags attached to them. Therefore, too much of the color black or red in a professional services brochure may not bring up appropriate associations for a person from that culture.

**Educate Prospective Clients**

Differentiation is critical to successful marketing in any profession, but especially important when targeting clients from abroad. The last thing a law firm wants is to be perceived as fungible by its prospects. For the law firm’s marketing message to be successful, it needs to differentiate itself in a compelling way in the minds of its foreign-born prospects and clients. One way to do this is to preemptively position the law firm as having expertise in the types of legal problems the prospects are likely to encounter. Knowing that foreign-born clients are, literally, hungry for accurate information on many legal issues, law firms can satisfy that need by crafting customized education-based marketing messages in the languages of foreign-born prospects and clients. “For the law firm’s marketing message to be successful, it needs to differentiate itself in a compelling way in the minds of its foreign-born prospects and clients.”

messages in the languages of foreign born clients and include such messages in the law firm’s marketing materials and website. As with any marketing and advertising in English, law firms need to be mindful of the Code of Professional Conduct and other ethics standards before finalizing its foreign language marketing and advertising messages.20

Professionally translated marketing materials should convey legal expertise, cross-cultural sensitivity, and empathy. These materials should not be perceived as part of a sales pitch. Their role is to position an attorney or a law firm as a generous source of free and reliable information in the minds of prospective foreign-born clients. Although such information typically would be available in the public domain, the law firm should assume that their foreign-born prospects and clients may not know how to find it, especially in their own languages. As a result, such clients would be less intimidated contacting that attorney when they need help.

A marketing plan may further include publishing articles or columns in the ethnic print media and on ethnic websites in the languages of the niche market to educate foreign-born readers on various subjects. Some of the topics might include: what constitutes a misdemeanor or crime; Miranda rights; the attorney-client privilege; the role of the federal and state courts; the jury system; wills and probate; and what business owners and employees need to know about business entities and liability issues, workers compensation, and labor law.

The law firm also should post published articles on the law firm’s website, as well as include them in the information packets provided to prospective clients who attend educational seminars sponsored by the law firm. Further, such articles may be incorporated into the law firm’s online newsletters and be made available electronically by subscription. Another idea is to add a “frequently asked questions” (“FAQs”) section on the law firm’s website to educate prospective and existing clients on key legal concepts and terms relevant to the law firm’s practice areas. Make the FAQs available in languages of the law firm’s niche market.

**Use Public Service Announcements**

Another education-based message is the public service announcement (“PSA”) that addresses topics of interest to the target audience in the languages of the target audience. For example, consider alerting non-English-speaking victims of domestic violence, irrespective of their country of origin and cultural background, to the fact that battering is a criminal offense in the United States, and there are services available to help them. Foreign-born women who have been victimized in this way often fear they will be deported or will lose their children through divorce due to the often-false information instilled in them by the batterer. Law firms may inform them of their immigration status options and U.S. laws, such as the Violence Against Women Act.21

Similarly, alerting Spanish speakers to the very limited role that notaries play in the United States is both a public service and a boost for an individual law firm. The “notario publico” in Latin American countries (known as an “escribano publico” in Argentina) is a well-respected attorney who has taken an additional certification exam and actually draws up documents, known as “public notarial instruments” or “public deeds.” Also, although it is wise for a U.S. attorney to seek a Mexican attorney who is also a notario to represent his or her client in a land transaction or probate action in Mexico,22 a U.S. notary not only does not perform the same role, but “is forbidden from preparing legal documents or giving advice on immigration or other matters, unless he or she is also an attorney.”23

To protect consumers, some states have passed legislation prohibiting the
use of the term “notario publico” in advertising aimed at the Spanish-speaking public. Specifically, in Colorado, §1(V) of Senate Bill 04-127 prohibits using “the phrase ‘notario’ or ‘notario publico’ to advertise the services of a notary public, whether by sign, pamphlet, stationery, or other written communication, or by radio, television, or other nonwritten communication.” 24 A law firm that provides information of this nature might gain a lot of credibility in the Spanish-speaking community.

ADVERTISE IN ETHNIC MEDIA

It should be noted that five areas of the law—personal injury, bankruptcy, criminal law, family law, and workers’ compensation—account for 95 percent of all legal ads in the Yellow Pages. 25 However, traditional Yellow Pages advertisements, as well as advertisements in mainstream national and general-interest magazines and newspapers, may attract only a marginal number of non-English speakers. Foreign-born clients are more likely to respond to culturally relevant marketing messages they hear on “in-language” television and radio stations, see in the ethnic print media or ethnic Yellow Pages.

“Foreign-born clients are more likely to respond to culturally relevant marketing messages they hear on ‘in-language’ television and radio stations, see in the ethnic print media or ethnic Yellow Pages . . .”

Advantages of ethnic newspapers are that they are less saturated with advertisements from competing law firms, are fairly affordable, and have a longer shelf life than mainstream English-language newspapers. Moreover, due to their limited circulation and unique content, ethnic weekly or bimonthly papers often are passed around and even consulted in lieu of Yellow Pages in the markets where ethnic Yellow Pages are unavailable.

The law firm’s return on its investment for advertising in a niche publication can be outstanding. To increase response to the law firm’s advertisements, consider placing ads with attention-grabbing headlines, such as “Ten Secrets You Should Know About . . . (the area of law firm’s expertise). Call this phone number . . . for a free booklet.” When foreign-born prospects call the phone number in the ad, they should hear a welcoming, pre-recorded message in their language, giving them reasons to request a free booklet. Once they leave their mailing address and phone number on the voice mail, the law firm should mail them the promised free booklet in their language and, from then on, can continue to market legal services to them directly.

SUPPORT THE ETHNIC COMMUNITY

Attorneys who are sincerely committed to fostering mutual respect, trust, and long-term relationships with ethnic constituents might consider giving something back to that community and promoting goodwill. Ways to become involved in such a community include: joining a local ethnic chamber of commerce (for example, the Asian-American Chamber of Commerce); contributing to a charitable cause; sponsoring an ethnic community outreach program, an event celebrating ethnic holidays (such as the Chinese New Year), or foreign film festival; volunteering for a legal clinic at a local ethnic community center or a radio or television station; or performing pro bono service for ethnic non-profit organizations.

Still another way to support the local ethnic community would be through teaching or coaching. Consider teaching a class or conducting a seminar jointly with one of the Small Business Administration’s business development centers, 26 or at a public library or ethnic community center. If the seminar is open to the public, write and distribute an announcement about it to the local press, libraries, ethnic community centers,
chambers of commerce, and ethnic websites. Many newspapers would publish this announcement in the calendar of community events. Finally, law firms may prepare seminar materials in the language(s) of the law firm’s niche market and include a flier with the law firm’s address, phone number, and website.

BE DILIGENT IN TARGETED MARKETING

Abraham Lincoln said, “The leading rule for the lawyer, as for the man of every other calling, is diligence.” The successful marketing of legal services will not happen overnight. Attorneys committed to establishing an attorney-client relationship with someone whose language and customs are different will experience a learning curve. It will take perseverance and flexibility to set aside established perceptions and beliefs in order to connect with foreign-born prospects and clients. Clearly, foresighted attorneys will use targeted marketing both as an opportunity to learn to represent foreign-born clients more effectively and as a chance to break away from the pack and open up a whole new market for legal services. This can uniquely position the law firm as a law firm of choice in the eyes and minds of members of that niche market and, in turn, lead to an ongoing stream of referrals.

FOOTNOTES


3 Id.


5 See http://www.cde.state.co.us/c-tag/downloadpdf/immiexecsum_pdf. Also, general demographic profiles for all Colorado school districts are available at http://www.dlg.oem2.state.co.us/demog/Census/SummaryFile/SF1SchoolDistricts.htm.


13 For country profiles, see http://www.its.treas.gov/countryprof.html.


16 Id.

17 Id.


19 From Colorado, see www.cobar.org, then click on Member Resources, Legal Resources, and CO Rules of Professional Conduct. See also “Ethics of Legal Services Marketing,” available at http://www.abanet.org/legalservices/clientdevelopment/marketingethics.html. The following website provides links to ethics opinions and advertising rules, searchable by state: http://www.legalethics.com/ethics_law.


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The Right to a Reader

By Douglas A. Abrams

People sometimes say that writing is difficult enough as it is, but that writing about writing is even more difficult because it shines the spotlight on someone presumptuous enough to lecture others. A daunting task, but one I undertake enthusiastically because lawyers thrive on communication, with so much accomplished through the written word.

Law is a literary profession. Briefs, motion papers and transactional documents dominate client representation; judges speak through written opinions; and lawyers draft legislation, administrative regulations and other government documents. Lawyers and judges write treatises, law journal articles, and continuing legal education materials. Lawyers also discuss important policy questions in magazine articles, newspaper columns and Internet postings. Some lawyers even write novels or screenplays about law.

In all its versatility, writing is a two-way street, with the writer on one side and readers on the other. Writers communicate best when we recognize that just because we put something on paper does not necessarily mean that people will read it, wholly or even in large part. When writers pick up the pen or turn on the computer, we must earn the “right to a reader.”

“Measured Brevity”

Writers earn the right to a reader by encouraging communication free from avoidable barriers to understanding. Future columns will discuss various ways to advance this goal, but the rest of this column discusses “measured brevity,” the need to convey the written message as efficiently and economically as possible.

If we can convey our message in five pages, we risk losing the audience if we consume ten. Readers with a choice may not even start a lengthy document, and readers growing weary may stop well before the end. The nation’s leading law reviews, for example, have finally gotten the point. The reviews recently announced that because nearly 90% of law professors agree that “the length of articles has become excessive,” shorter manuscripts will now receive more favorable consideration from editors deciding which ones to publish. When I write a law review article or newspaper column, I assume I can usually double the readership by cutting the length in half. I cannot prove the math, but I like the formula.

Measured brevity is particularly important in today’s frenetic legal practice. Federal and state judicial dockets have increased faster than population growth for most of the past generation or so, leaving judges with limited patience for overwritten submissions. Judges may sense when they have read enough of a brief, just as counsel researching precedents may grow bored with an overwritten judicial opinion. Counsel may have no choice but to plod through an opponent’s unwieldy brief or motion papers, or through unnecessarily verbose legislation or administrative regulations, but even here the writer risks obscuring important points amid the excess verbiage. British poet Alexander Pope said that “[w]ords are like leaves; and where they most abound, much fruit of sense beneath is rarely found.”

Outside the legal arena too, writers cannot take the audience’s patience for granted these days because technology generates an unprecedented volume of readily accessible written material, leaving readers with more choices than ever before. Publishing houses release about 1,000 new books each week, an imposing number that may soon be seem insignificant because about 200,000 new self-published books were available for sale on the Internet in 2005 alone, with sales of some reportedly brisk. Libraries with stocked shelves also hold a growing number of digital and electronic resources. One Sunday’s edition of the New York Times contains more written information than the typical person received in a lifetime in the sixteenth century, but readers now also have convenient daily access to most of the world’s major newspapers and magazines on-line. Websites with solid information on legal matters and other important social issues have mushroomed in recent years, while around-the-clock cable and satellite
television news and educational programming offer attractive alternatives to the written word.

Even in today’s information age, however, measured brevity remains a judgment call that depends on the nature of the legal writer’s message. Where full exposition of a legal doctrine or argument requires more extended discussion, a longer presentation may be essential to effective communication. Unwarranted brevity may compromise the sound administration of justice or the rights of clients. Efficient, economical expression remains key to holding the reader’s attention, but Justice Joseph Story offered the wise advice that sometimes “[b]revity becomes of itself a source of obscurity.”5

ROLE MODELS FOR THE LEGAL WRITER

Legal writers pondering whether (as Shakespeare put it in Hamlet) “brevity is the soul of wit” can look to two familiar role models in the law.6 Some of the Supreme Court’s most elegant, most memorable — and briefest — opinions flowed from the pen of Justice Oliver Wendell Holmes, Jr. To her surprise, Fanny Dixwell Holmes entered her husband’s office one day and found him writing while standing at a podium. “Nothing conduces to brevity,” he explained, “like a caving in of the knees.”7

Holmes was a 22-year-old lieutenant colonel in the Union army on November 19, 1863, when one of the nineteenth century’s most celebrated country lawyers dedicated a national cemetery to fallen Civil War soldiers.8 Preceding the country lawyer to the podium was Edward Everett, widely regarded as the greatest orator of the day. After Everett spoke for more than two hours, the country lawyer surprised the 15,000 listeners with a speech consisting of fewer than 300 words and lasting less than two minutes. Years at the bar had taught the country lawyer how to sense his audience’s needs and earn the right to a reader. Mindful that the nation’s newspaper and magazine readers needed a concise, stirring and readily embraceable rationale for wartime perseverance, he knew that his audience extended beyond the shadows of the cemetery.

The country lawyer was Abraham Lincoln, and the speech was the Gettysburg Address, perhaps the most famous speech in American history, one that has remained on the lips of American schoolchildren ever since. The leather-lunged Everett, whose interminable oration bequeathed no word or phrase worth remembering today, knew he had been outdone. “I should be glad,” he wrote the President the next day, “if . . . I came as near the central idea of the occasion in two hours, as you did in two minutes.”9

Wisdom worth pondering whenever we lawyers seek an audience for our own writing.

FOOTNOTES

5 Joseph Story, Story’s Miscellaneous Writings 153 (1835).
7 Catherine Drinker Bowen, Yankee From Olympus 324 (1944).
8 Id. at 188; Sheldon M. Novick, Honorable Justice: The Life of Oliver Wendell Holmes 80-89 (1989); Mark E. Steiner, An Honest Calling: The Law Practice of Abraham Lincoln (2006).
Rx for Communication
Faux Pas that Cause Ill Will with Your Clients and Colleagues

By Linda Oligschlaeger

There seems to be a pill for just about every ailment these days, but no drug company has come up with a prescription for the epidemic of poor communication protocol and etiquette that threatens us. We have all been exposed to incessant yakking on cell phones, voice mail hell and email overload, not to mention the slippage of proper face-to-face communications. The epidemic has all but obliterated the most basic of business courtesies. And there seems to be no sign of a cure!

In the days before iPods and Blackberries, business communication was primarily done by telephone and regular U. S. Postal Service mail. The pace of communications was much slower and more formal. Then along came the fax machine. Suddenly, the communication pace quickened and now it is zooming by, powered by email, cell phones and instant messaging. Clients and other lawyers expect you to be reached whenever and wherever you are; when that doesn’t happen, tempers start to rise. Even among lawyers, formal letters are written much less frequently today. More formal communication by letter sent via the U. S. Post Service (aka snail mail) may seem archaic and out-of-pace with today’s communications expectations. Unfortunately, along with the formality, appropriate communication etiquette seems to be dying. Proper grammar is also in decline, left behind as hurried messages are sent off in cyber land without any thought of proofing or a tone check. Although today’s methods of communication can be very productive, communication blunders and rudeness can cause clients to desert you and colleagues to misunderstand you.

Isn’t it ironic that in the era of the greatest technological communication advancements ever known that we regularly suffer from miscommunication and communication frustrations?

In spite of the poor health of our business communications, many natural remedies are available to help. Let’s take a look at a few of these.

PREFERRED METHOD OF COMMUNICATION

Everyone has a preference when it comes to communication. Some people prefer to communicate by telephone; others would much rather use email. A few good people still prefer to receive your communication by fax or letter. Still others prefer face-to-face meetings. Oftentimes, the key to connecting the communication lines is to determine the other person’s preferred method of communication. You’re likely to avoid a great deal of personal frustration, serve your clients much better, and actually receive responses from your colleagues, if you take the time to find out how they prefer to communicate. At the beginning of the attorney-client relationship, this is an important question to ask on the client intake information.

TELEPHONE COMMUNICATION AILMENTS AND REMEDIES

Call Your Office – It can be very productive to have friends or associates call your office occasionally, as if they are new clients. You’ll learn a lot about how they are greeted and treated by your staff. You will be surprised what you can learn for use in an office training session. What kind of a first impression does your staff leave with the caller who might be an important new client?

Train Your Staff — Everyone knows how to use the phone, so why would you want to spend money on training for that? Your staff may know how to use the telephone itself, but have you trained them on how to handle rude or angry callers or a caller with a foreign accent who is difficult to understand? Or, how should they respond if asked a question to which they don’t know the answer? Training should include awareness
about keeping a friendly tone and being helpful.

Use Caller’s Name Carefully – Everyone likes to be called by their name; it personalizes the conversation. However, it’s important to be careful how you use their name. Although more formal names (Mr. Jones, Mrs. Smith) have given way to first names, common sense should dictate when and under what circumstances to use a first name, particularly with older people. If in doubt, use the formal name until told otherwise.

Be Aware of Unintentional Rudeness – Here’s an example that I come across very frequently when calling law offices on Missouri Bar business. I happen to have a long last name (13 letters) that is not familiar to many who live outside of central Missouri. I’m accustomed to spelling my last name and willingly do so many times during the day. I’m often amazed by the unintentional comments that I receive about my last name, such as, “What kind of a name is that?” or “How old were your children before they could spell their name?” I’m not particularly sensitive, so the comments don’t offend me, but such unintentional comments could offend a client or, at the least, not leave a good impression.

Ask Permission to Place the Call on Hold – Staff should always ask permission to place the caller on hold. There’s nothing more frustrating than being told “Please hold,” followed by a click into elevator music. Maybe the caller doesn’t have time to hold. It’s a small courtesy that’s appreciated.

Return Calls Promptly or Delegate Your Response — The #1 complaint that clients have about lawyers is unreturned phone calls. I often hear the same complaint from lawyers – lawyers not returning calls to other lawyers. There is simply no excuse for not returning telephone calls. If your schedule is so packed that you’re not able to return calls yourself, delegate the task to someone who can at least acknowledge the call and offer to help.

Ask Permission to Use the Speaker Phone – Speaker phones can be very handy, especially for lengthy conversations. When used in routine calls, you risk sounding as if you’re in a tunnel and cause the caller to wonder who is overhearing your conversation. The use of speaker phones can also lead to the temptation to multitask, thus not giving your full attention to the call. Paper rattling or chair squeaking is taboo on business calls. If you need to use your speaker phone, it’s best to ask the caller for permission before doing so and assure them that your call is not being overheard by others.

Call-Screening Taboos – Although there are times when some form of call screening is necessary, the process can lead to problems. An abrupt tone such as, “What this in reference to?” or “What’s this in regard to?” certainly can give the wrong message and put the client caller on the defensive. No one wants to feel as if they are not important enough for you to take their call.

Too Busy to Take a Message – Staff should never ask a client to call back if you’re not available. Such a response sends the message that they are either too busy or too lazy to take a message.

VOICE MAIL COMMUNICATION AILMENTS AND REMEDIES

Voice mail can drive some people up the wall; however, it remains a very productive tool if used correctly. Here are a few cures for voice mail woes.

Voice Mail Greeting – The voice mail greeting should be concise and helpful. You can skip the part about being away from your desk or on another call because that’s trite and obvious. In a concise, but friendly tone, the message should start with stating your first and last name and what firm you’re with, which is particularly helpful with direct dial numbers. Ask the caller to leave a message. If possible, provide an alternative to reach a live person, either your assistant or the receptionist. Change your greeting if you will be delayed retrieving messages and returning calls, such as when you’re out all day or on vacation.

Leaving a Message on Voice Mail – When you leave a voice message, it’s again important to be concise and courteous. Messages should not exceed 30 seconds. State your first and last name, as well as your firm’s name. Be sure to state your name slowly and clearly. I’ve spent a lot of time replaying messages to try to guess at names. State why you’re calling – not simply, “Call me back.” The goal is to make communication progress. Be sure to state the best time to return your call, especially if you’re hard to reach. Avoid the return-number marathon; leave your number at the speed where it can easily be jotted down. Always include your phone number at the beginning and end of your message.

EMAIL/LISTSERV COMMUNICATION AILMENTS

Email Merry-Go-Round – If more than two or three emails have not resolved the question, it’s probably time for a phone call or face-to-face meeting. Long email messages might call for the same prescription. Be careful about confidential communication by email.

“Reply to All” Responses – Fast fingers that accidentally push the “reply to all” email option can annoy others or get you in trouble if the message is only intended for one person.
Be Careful What You Say — Never put in writing what you wouldn’t want to see posted on a bulletin board. Keep in mind that email can easily be forwarded and forwarded and forwarded.

Smart Subject Lines – With the proliferation of spam, your genuine email is not likely to be missed if your subject line is detailed. Catch the reader’s attention with the subject line, which will be appreciated.

Signature Lines – Be courteous by providing a signature line with your contact information.

Pop-Off Email — Never answer email when you’re angry. It’s too easy to pop off a message that you’re sure to regret as soon as you hit “Send.”

Tone and Email Misunderstandings – It’s very easy to misunderstand the tone of an email message, particularly given the informal nature of this form of communication and the little thought that is often given to quick replies. Learn accepted email protocol, such as typing in all caps to give the impression of shouting. And, if you’re joking or have a dry sense of humor, be sure the receiver understands that.

Don’t Forget Your Manners and Your Grammar – Your mother probably taught you to say “please” and “thank you.” Given the nature of email, this simple gesture is very important and easy to use to acknowledge a message. In addition, good grammar should extend to email usage as well as other forms of communication. For some reason, many email users seem to think that it is acceptable to let down their grammar guard when using email. It’s still an important communication and you should want all your communications to be professional.

Life with Listservs – Listservs can be a great resource, but they can rob you of your time unless managed properly. Be sure to learn the rules of the list. If replying to one person, be sure to do so off list. Never “flame,” attack, or take your frustrations out on other list mates. And, avoid the “me too” replies that don’t add anything to the discussion. Filter your listserv messages to separate them from your regular email.

Cell Phone Communication Ailments and Remedies

Cell phones are both a blessing and a curse. They make it possible for you to be reached almost anywhere at any time. However, besides spam and telemarketing calls, they are probably the greatest source of annoyance and bad manners in our society today. Cell phone addicts generate steady streams of an ever-increasing amount of idle chit chat that is forced upon those unfortunate to be around them.

Don’t Take Calls in Public Areas – Your clients certainly wouldn’t appreciate you discussing their business where it could be easily overhead, which could also breach the duty of confidentiality. It’s nearly impossible to be in an airport waiting area these days without being in the middle of six or eight different conversations. When it comes to cell phone usage, it seems that courtesy to others is a forgotten virtue. If you must talk in public areas, find a location that is out of ear shot of others. Also, avoid walking around plugged into your cell phone, seemingly talking to yourself and gesturing to an absent audience.

Mute Cell Phones in Meetings – Have you ever been in church or at a funeral when someone’s cell phone rang? It’s fairly common today for cell phones to ring during meetings, during CLE programs, or other group settings. And, what is even more surprising is that those calls are taken during meetings. I’ve even seen people put their cell phone on vibrate and then set it on the table in front of them so that when a call comes in, it distracts those in the meeting as much as if the darn thing rang. If you’re expecting an important call, be sure to mute your phone and locate it where you can sense the vibration without disturbing others. If the call is very important, excuse yourself to answer the call after you’ve exited the room.

Avoid Annoying, Cutesy Ringers – Save the cutesy ringers for the teenagers and select a ring with a business-like tone.

No Need to Yell – For some reason, some cell phone users think they need to yell to be heard. Perhaps it’s the “Can you hear me now?” syndrome. Talking loudly doesn’t make you easier to hear. It works much better to lower your voice and move to a quiet location.

Don’t Drive and Dial – Not only have cell phones become an annoyance, they’ve become a safety issue. This is one area where you should avoid multitasking for your safety, and the safety of others, on the road. Many vehicles today are equipped with hands-free cell phone equipment, although cell phone calls still distract you from the important task of driving.

Face-to-Face Office Communication Ailments and Remedies

You only have one chance to make a good impression, and that is often delegated to your staff. Office staff should be trained in how to greet your clients and others visiting your office.

Maintain a Friendly, Helpful Attitude – There’s absolutely no other alternative. Clients are often involved in an unsettling situation when seeing
their lawyer and may be extremely stressed. A helpful and caring attitude can make that experience much easier and will certainly be remembered by clients. That client’s first impression of your service is often made by your front line staff. I’ve had clients tell me that they were very pleased with their lawyer, but went somewhere else because the front-line staff person was rude to them or made them feel uncomfortable.

**Gossiping About Others in Waiting Area** — Why is it that office staff sometimes act as if those in your waiting area are hearing impaired and won’t overhear what they’re saying to each other? It’s usually quiet and no one else is talking but them, so everything they say is overheard by those waiting. Office gossip makes the person waiting wonder what is said about them after they leave. Careful consideration should be given not to discuss any confidential or sensitive information while someone is in earshot.

**Your Full Attention** — You and your staff should be certain that you give your clients or visitors to your office your full attention when meeting with them in person. Taking calls from others or doing other things while meeting with them sends a message that others are more important.

**The Cure**

The epidemic of high-tech communications problems can — and should — be stopped from spreading any further. If you haven’t guessed by now, the cure for most communication ills and woes is simply a healthy dose of courtesy and common sense. In fact, no form of communications technology is incompatible with good manners. Effective communication — whether by cell phone, email, telephone and voice mail, or in person — is critical to a successful and efficient practice and can make your professional life much more enjoyable and productive.

Linda Oligschlaeger is The Missouri Bar’s Membership Services Director.
By Sarah J. Read and Susanne C. Medley

“They don’t want to pay their dues and work hard – like we did.”

“They don’t respect my time.”

“I never would have dared to say no; I can’t believe the attitude.”

“She waited until Friday to ask for that motion; it’s totally unreasonable.”

If you hear such cross-talk from partners and associates in your office, you are not alone. There are currently four generations in the workplace, commonly referred to as the “Greatest” or “GI” Generation, the “Baby Boomers,” “Generation X,” and “Generation Y” (or “Millennials”). Each generation filters information through the lens of its experiences and has its own set of values and expectations as to “how the world should work.” These are neither right nor wrong, but they are different.

Although there have always been generational differences in the workplace, those that now exist reflect a century of rapid technological and cultural change, are more evident, and are more difficult to manage. In particular, differences in the expectations and leadership styles of the Baby Boomers, and the expectations and collaborative, team-oriented approaches of the younger generations, have presented challenges for firms across the U.S. Indeed, the entire June 2006 issue of the ABA’s Law Practice magazine focused on these generational issues, with one article concluding that “[h]ow you manage the issues presented by multigenerationalism will be critical to your firm’s future.” Nancy R. Peppard, Closing The Generation Gap, 32 Law Practice 30, 31 (June 2006).

Some differences between the generations, such as the ability and willingness to use or experiment with new technologies, are obvious. Others are less so. For example, the Baby Boomers, born between 1946 and 1964 and currently leading most firms, are more likely than the younger generations to focus on individual achievement, to sacrifice personal time and interests for work demands or financial rewards, and value the status that comes with titles or corner offices. The youngest members of our profession, “Gen Y” (born between 1981 and 1999), who were, in general, raised with a greater emphasis on group work and cooperation, and less on individual achievement, are more likely to resist a hierarchy of status or authority and to value and seek recognition as contributing members of the group. They are also more likely to expect affirmative expressions of support from group members and to be valued as a “whole person,” not just for the work that they do. In between the Baby Boomers and Gen Y are the “Gen Xers,” born between 1965 and 1980, who tend to be less group-oriented than the Gen Ys, but who also value engagement, seek independence, and require that their loyalty to an individual or an institution be earned. They will accept, and even expect, financial rewards, although those rewards will not always work as incentives to meet the expectations set by the Baby Boomers.

We have heard partners complain that younger attorneys “have no work ethic” and younger attorneys complain that their older counterparts are unfeeling workaholics who care only about money. Such “generation bashing” is not unique to lawyers. Both surveys and anecdotal evidence in other employment settings indicate that workers of all ages at times feel dismissed or discounted by generations above and below. We believe these feelings often arise from misunderstandings of the different values and expectations each generation brings to the workplace. For example, older lawyers are often more comfortable with a hierarchical style of leadership and younger lawyers are more comfortable with a more inclusive style of leadership. Consider, for example, the following quotes on leadership, written by a member of Gen Y:

“The best leaders know when to relinquish control.”
“All leaders also must possess good listening and speaking skills, organization, empathy, composure, and above all, compassion and respect for others.”

“I believe if others are going to follow, you must be able to relate to their lives in some way and have a basic understanding of what propels their thoughts and actions.”

Young lawyers with these expectations for senior members of the firm are likely to react negatively to last minute assignments, particularly those that interfere with weekend and evening plans, to expect and want opportunities to lead within the firm or with a client, and to expect acknowledgement of what they are being asked to give up when work demands conflict with personal plans. Simple awareness, acknowledgement, and discussion of these differences can go a long way towards diffusing tension. The book When Generations Collide, by Lynne C. Lancaster & David Stillman (Collins Business 2002), provides a good overview of generational differences and many examples of how day-to-day communications can be tailored to avoid or resolve unnecessary conflicts.

Another useful resource for senior lawyers looking for new approaches is PRIMAL LEADERSHIP, by Daniel Goleman, Richard Boyatzis & Annie McKee (Harvard Business School Press 2002), which discusses six leadership styles. Most senior lawyers will recognize two of these styles, the “pacesetting” (see if you can keep up with me) and “commanding” (I say, you do) styles. These, however, are identified as “dissont” styles – styles that, while effective in certain situations, can cause stress and tension and lose effectiveness when used in others. Id. at 71. Four other styles, denominated as the “visionary, coaching, affiliative, and democratic styles,” may be less familiar. These are identified as “resonant” styles – those more likely to connect people with their work and with each other. Id. at 53. By consciously using these resonant styles when working with younger lawyers, senior lawyers can better engage younger workers who are often idealistic (visionary) and eager to build their skills (coaching), and who value relationships (affiliative) and like to be heard (democratic).

Overall, lawyers within a firm can gain a greater understanding of each other, their different needs, and of the work that needs to be done through structured dialogue. “Dialogue” as used here is a communication pattern that promotes sharing of perspectives, information and values in a manner that promotes mutual understanding rather than debate or dismissal. Two of the key skills used in dialogue are listening and sharing of personal experience. Through dialogue, members of different generations often find they have much in common, and can work in ways that better build on the strengths each brings to a task or issue. Dialogue-based management methods are aligned with the resonant styles identified above, and offer firms an opportunity to build better relationships across the generations, increase productivity, and do so in a cost-effective manner.

Older lawyers may find, for example, that mutual planning of assignments on a project, and open discussion of expectations for the work to be done, minimizes their own stress and results in the follow-through desired from their younger counterparts. As another example, asking young lawyers what skills they would like to build and providing opportunities to do so, or helping them build relationships with clients and within the profession, can help with retention at a time when associate attrition is at an all time high. Elizabeth Goldberg, Exit Strategy, THE AMERICAN LAWYER (Aug. 2006). Although dialogue-based methods require more planning and also mutual accountability, they have the potential to lead to greater effectiveness, efficiency, and loyalty.

Recognition that generational differences may be one source of tension at the firm is a first step to improving working relationships. Cconsciously communicating to those around you in a way that will resonate with them is the next step to creating a harmonious, productive working environment. It’s worth a try.

In the next issue of Precedent, look for the second article in this three-part series. That article will address redefining marketing and business development efforts to transcend the generational divide.

Sarah J. Read, a Baby Boomer, is an attorney in Columbia. She is also the president of The Communications Center, Inc., a consulting firm that works with businesses to improve communication skills, build better relationships, and work more effectively. For additional information, visit www.buildingdialogue.com.

Susanne C. Medley, a Gen Xer, is the president and owner of the Customer Communication Group, an organizational effectiveness and communication consulting firm based near Jefferson City that assists organizations connect with their internal and external customers through strategic thinking and communications. For additional information, visit www.thinkccg.biz.
File Retention and Destruction

By Karolin Solorzano Walker

Anyone who has ever worked in a law office knows that storage of files is important, necessary and cumbersome. There are solo and small firm practitioners who have sheds and garages full of old client files gradually taking over the bike rack and gardening buckets. To other lawyers and law firms, it is an expense that never ends. I’ve heard a lawyer say, “I could have a whole other life for what I pay to store my old files.”

Well, it seems as if the Supreme Court heard the pleas and prayers of those practitioners. In January 2005 a new file rule came into effect that allows attorneys to destroy a client’s closed file 10 years after completion or termination of the representation without obtaining consent from the client. That rule was designed to ease the burden of attorneys trapped in the interminable miasma of file retention.

The first important questions to answer are: “Who owns the file?” and “What does it consist of?” Rule 4-1.15 of the Rules of Professional Conduct, entitled “Safekeeping Property,” says that a file is the absolute property of the client. The attorney is required to give the client the original file without charge within a reasonable period of time after the client asks for the file. The contents of the file, copies of pleadings, notes, telephone messages, documents and correspondence must be given to the client. The only exception is that the attorney can keep items for which they have paid and not been reimbursed, such as transcripts. Even then the attorney can only keep those items until the client reimburses the attorney and then the attorney must turn over the original documents. Even if the client owes you money, you cannot keep the file.

If you want a copy of the file, then you must make a copy at your own expense. If you have sent the client correspondence, documents and pleadings during the representation and the client requests those items again, you have to give the client the original documents.

The best and brightest thing about the rule is the provision that files that are 10 years old can be disposed of without notifying the client. The old informal advisory opinions related to file retention required an attorney to make all reasonable attempts to notify clients before destroying files whenever the attorney wanted to destroy the files. Reasonable attempts under the old opinions included sending a notice in the form of a certified letter saying that you intend to destroy the file to the last known address in the file, telephoning the client using the numbers contained in the file, or publishing a notice in the newspaper. If there is no response to those efforts, then the attorney was required to wait a reasonable time before destroying the file – with the length of that wait depending on the circumstances of the representation. The factors that determined the length of time to wait before destroying the file included the length of the representation, how much client contact you had, and how long it had been since the representation ended.

Under the new rule, if you want to shred your files before the 10-year deadline is over, you must have an arrangement with the client – unless you already have an agreement, preferably in writing, with the client as to when the files may be destroyed.

How can you get out of the nightmare of trying to locate this client? Have a file policy that you include in a letter of engagement or representation agreement. If there is a file destruction agreement, there is no need to notify the client unless required by the agreement. Your file policy should tell your client how long you will keep the file before it is destroyed. Your agreement can also tell your client if you want to deliver the file to the client during or at the close of representation, and how that will happen.

There are two remaining issues in the destruction of files that attorneys should be aware of: malpractice and the document destruction exception. Even though you can now destroy files after 10 years (or before with your file policy), the malpractice rules have not changed. It is important to review your files and assess your malpractice risk before destroying the files. When I reference the document destruction exception, I mean documents that evidence a client’s interest in funds or property – such as original wills, deeds, trusts and other exceptions – cannot be destroyed.

Again, when you are destroying files you need to assess the situation before you shred. For example, if you have a case that might later lend itself to a shareholder’s lawsuit or a minor child who might have a claim that extends into the future or matures when the child matures, you might want to keep those
If you want to read more about the issue of file retention, the penultimate case is *In the Matter of Cupples*, 952 S.W.2d 266 (Mo. banc 1997). In addition, you will want to reference Formal Advisory Opinion 115 and Rules 4-1.15 and 4-1.16. If you want some sample fee agreements, they are available online via The Missouri Bar’s website at http://members.mobar.org/pdfs/fdr/fdrsamples.pdf.

Happy shredding!

Charles Blakey Blackmar, senior judge and former chief justice of the Supreme Court of Missouri, died after a brief illness on Jan. 19, 2007, in Clearwater, Fla. He was 84.

“We have lost a great judge, scholar, teacher and an enjoyable friend,” Chief Justice Michael A. Wolff said. “Judge Blackmar was passionately involved with the advancement of the law and the judiciary for 60 years. We certainly will miss him.”

Blackmar took office as a Supreme Court judge Dec. 15, 1982, and was retained in office by voters statewide at the November 1984 general election. He served as chief justice from July 1, 1989, through June 30, 1991. Pursuant to the state constitution’s mandatory retirement age for judges, Blackmar retired from the Court April 1, 1992, just a few weeks before his 70th birthday on April 19. He continued to hear cases before the Court as a senior judge through last fall.

Born and raised in Kansas City, Blackmar earned his bachelor’s degree *summa cum laude* in 1942 from Princeton University and was named to Phi Beta Kappa. Following graduation, he served four years in the U.S. Army and earned the Silver Star, Purple Heart, Bronze Star and Combat Infantry Badge awards for his service in the European Theater during World War II. He was discharged in 1946 at the rank of first lieutenant. Blackmar then earned his law degree in 1948 from the University of Michigan Law School, where he served as associate editor of the *Michigan Law Review* and was named to the Order of the Coif. He also received an honorary doctorate in law in 1991 from Saint Louis University.

Blackmar practiced law from 1948 to 1977 in Kansas City at the firm now known as Swanson Midgley and also served as a professorial lecturer in law from 1949 to 1957 at what is now the University of Missouri-Kansas City School of Law. He was a professor of law from 1966 to 1982 at Saint Louis University. He also served as a special assistant attorney general for the state of Missouri from 1969 to 1977 and as a professional labor arbitrator throughout the Midwest from 1967 to 1982.

The author and co-author of numerous law books and articles throughout his career – including co-authoring West’s Federal Practice Guide Manual and several editions of West’s Federal Jury Practice and Instructions – Blackmar was a member of Scribes, the American Society of Legal Writers, and served as its president in 1986. He also was a fellow of the American Bar Association and a member of The Missouri Bar, the American Law Institute and the National Academy of Arbitrators. He was the first chairman of the Fair Public Accommodations Commission of Kansas City, serving from 1963 to 1966, and additionally served on the Kansas City Human Relations Commission from 1964 to 1966. He also was a passionate defender of the independence of the judiciary and a proponent of the Missouri Non-Partisan Court Plan. In 1983, Legal Services of Eastern Missouri presented Blackmar with its Equal Justice Award.

Blackmar’s survivors include his second wife, Dr. Jeanne Stephens Lee, whom he married in October 1984; a sister; four children; three stepchildren; eight grandchildren; five step-grandchildren; one great-grandchild; and numerous nieces and nephews. He was preceded in death by his first wife, Ellen Day Bonnifield, whom he married in July 1943; one son and one granddaughter. He also leaves behind his beloved dog, Sugarplum.

Funeral services were held at 11 a.m. on Friday, Jan. 26, at Country Club Christian Church in Kansas City. Private interment was at Mt. Washington Cemetery in Kansas City. Memorial donations made by made to The Charles Blackmar Fund at Saint Louis University Law School or The Missouri Bar Foundation in Jefferson City.

Former Missouri Chief Justice

Charles B. Blackmar Dies
Web 2.0 for Lawyers

By Patrick J. Hindert

Just when you were getting comfortable with surfing the World Wide Web, a new generation of Internet services has arrived that is bound to change – and enhance – the way you practice. Welcome to the world of Web 2.0.

Simply put, Web 2.0, according to online encyclopedia Wikipedia, “refers to a second generation of services available on the World Wide Web that lets people collaborate and share information online.”

What are these new online services? Is Web 2.0 merely the latest Internet buzzword? Or, are these new technical and social developments really changing the way we communicate, learn and work? How does Web 2.0 impact lawyers?

Also referred to as “social software” or the “participatory web,” the term “Web 2.0” was first popularized by Tim O’Reilly of O’Reilly Media in 2005¹ and has subsequently spawned related themes such as Law 2.0, Library 2.0 and Learning 2.0,² as well as critics who view Web 2.0 as describing anything new on the Internet.

Wikipedia, which most commentators consider to be a primary example of Web 2.0 as well as a standard resource for Web 2.0 definitions, further characterizes Web 2.0 as “emphasizing tools and platforms that enable the user to tag, blog, comment, modify, augment, select from, rank, and generally talk back to the contributions of other users . . . .”

Web 2.0 is also defined by and results from multiple new web technologies, including XML, RSS, AJAX and MP3.

Examples of Web 2.0 tools and platforms include:

- **Wikis** – A wiki is a webpage that can be edited by anyone with access. Some wikis, such as Wikipedia, allow public access. Wiki-Law³ is an example of a legal wiki that anyone can edit. Other wikis have restricted access. Socialtext⁴ is an example of a wiki tool for private work groups or enterprises. Among other applications, wikis represent a simple and powerful co-authoring tool.

- **Weblogs (aka blogs)** – Blogs are websites that resemble personal journals. Entries are displayed in reverse chronological order and typically include links to other blogs as well as to audio or video podcasts. A “Taxonomy of Legal Blogs,” developed by Ian Best, highlights the active use of blogs by lawyers. A recent symposium at the Berkman Center for Internet & Society at Harvard Law School was titled, “Bloggership: How Blogs are Transforming Legal Scholarship.”

- **Podcasts** – Podcasts are a method of distributing audio and video programming over the Internet for playback on computers or mobile devices such as iPods. Podcasts and blogs share similar distribution and subscription technologies (RSS: Really Simple Syndication). The Legal Broadcast Network⁵ and The Legal Talk Network⁶ are podcast distributors focusing on legal issues.

- **Concept Maps** – Concept maps are diagrams for visualizing and communicating concepts as well as the relationship between or among concepts. Concept maps have many applications, including knowledge capture, training, and communicating complex ideas and arguments.

- **Additional Examples** – Other examples of Web 2.0 tools include: VoIP (Voice over Internet Protocol), Del.icio.us (tagging), Flickr (digital photo sharing) and Google (search engine).

Important concepts related to Web 2.0 include:

- **Knowledge Management** – Knowledge Management (KM) means organizing knowledge to achieve productive work, competitive advantage, and business value. KM provides a professional discipline for personalizing Web 2.0 technology to help workers understand and manage personal, organizational and industry knowledge. Most professionals and business organizations have not acquired the skill sets needed to work productively using Web 2.0 technologies. KM enhances the abilities of individuals and organizations to perform, compete and survive in this new environment.⁹

- **Community of Practice** – Community of Practice (CoP) refers
to the process of social learning that occurs when a group sharing professional interests collaborates over time to share ideas, address common issues, and build innovative solutions. Unlike traditional professional associations, Internet-based CoPs achieve these objectives asynchronously without the necessity of a common physical location. Web 2.0 technologies facilitate and empower CoPs.

- **Social Network** – Like CoPs, social networks represent important web 2.0 organizational structures for professional learning and collaboration. As articulated by James Surowiecki in his book *The Wisdom of Crowds*: “Knowledge is embodied in people gathered in communities and networks. The road to knowledge is via people, conversations, connections and relationships. Knowledge surfaces through dialog, all knowledge is socially mediated and access to knowledge is by connecting to people that know or know who to contact.”Web 2.0 technologies greatly enhance and improve traditional methods for sharing and creating knowledge.

- **Web Feed** – A web feed is an XML-based website that contains content summaries and/or links to longer versions which may originate as news articles, blogs or podcasts. Users subscribe and unsubscribe to web feeds using specialized search engines called aggregators (aka feed readers). Aggregators check for and retrieve new content at regular intervals determined by the user. Bloglines (for blogs) and iTunes (for podcasts) are examples of aggregators.

- **Social Bookmarking** – Social bookmarking (aka folksonomy) is a collaborative, web-based labeling system and represents an important component of emerging Web 2.0 social software. Social bookmarking enables users to easily categorize contents using one word “tags.” Additional participants can then locate the content by using these tags to improve their searches. Examples of web-based social software with tagging capabilities include: Del.icio.us; Feedmaker; Technorati; and Flickr.

- **Mashup** – A mashup is a website or web application that uses web feeds, or an application programming interface, to access and incorporate content from other sources to create new content or a new service. For example, a single blog post might include hyperlinks to blog posts, podcasts, concept maps and/or news articles authored by other persons. Relatively easy to design and requiring limited technical expertise, mashups represent a prototypical Web 2.0 work product.

- **Unconference** – Unconferences represent an extension of traditional meetings or educational conferences using Web 2.0 technologies and resources. Content is created and developed by participants instead of by a single organizer or speaker. Examples include wikis to develop agendas and bookmark resources, real-time blogging during the conference (both on- and off-site) and podcasting before, during, or following the conference.

**Impact of Web 2.0**

Web 2.0 is already transforming the way Internet users locate, access, communicate and share information and knowledge. Among the earliest adaptors are the news media, political campaigns, and librarians. Lawyers are also early adaptors as evidenced by some of the examples and resources identified above. Many potential applications exist for lawyers, including establishing or enhancing professional online identity, as well as improved communications, learning, marketing, and work product collaboration.

**FOOTNOTES**

4 Socialtext: www.socialtext.com/.
6 Berkman Center for Internet & Society, “Bloggership: How Blogs are Transforming Legal Scholarship:” http://cyber.law.harvard.edu/home/bloggership.
11 See Denham Gray’s excellent online presentations wiki (“Knowledge Sharing and Social Software,” http://wok.wikispaces.com/) for additional information about social search and bookmarking.

Patrick J. Hindert is a lawyer and managing director of 52KM Limited in Terrace Park, Ohio. He is a graduate of Harvard College and the University of Michigan Law School. Article reprinted with permission from the Cincinnati Bar Association.
This article is intended to be shared with law office staff to help them improve the efficiency and effectiveness of your law practice.

**Tips, Tricks and Tactics**

(How to keep your head when all around you others are losing theirs!)

By Sandra (Sandy) Gros

**Tips:**
(tip: a useful hint or idea; a basic, practical fact.)

Sometimes you have to change (add or delete) punctuation to make your meaning clear. There is a big difference in the picture painted by the following two sentences. While the words are the same, the punctuation changes everything.

1) The Panda eats, shoots and leaves.
2) The Panda eats shoots and leaves.

*(Eats, Shoots and Leaves: The Zero Tolerance Approach to Punctuation, by Lynne Truss.)*

A *comma* is a “rolling stop” (pause). A *period* is a “full stop.”

**Punctuation with quotation marks**

*Commas and periods* always go *inside* the closing quotation mark.

*Semicolons and colons* always go *outside* the closing quotation mark.

**Exclamation points and question marks** can go either place, depending upon the sentence. At the end of a sentence, a question mark or an exclamation point goes *inside* the closing quotation mark when it applies only to the quoted material. They go *outside* the closing quotation mark when they apply to the entire sentence.

**Exceptions:** For those who work on legal or government documents or any manuscripts containing any kind of computer documentation, you need to be especially alert to the following exceptions: Commas and periods **not part of a law, government regulation, computer command, or the like should not be placed inside the closing quotation marks** (e.g., “To reach me by e-mail, type ‘john.smith@whatevercompany.com’.” Another example would be, “At Mr. Melody’s request, we have filed a federal trademark registration for the mark “Music Is Magic”.)

**Fragments**

A fragment is a group of words that begins with a capitalized word and ends with a period, yet it does not form a complete sentence. For a group of words to be considered a sentence, it must have both a subject and a verb. Lacking either, the group of words in question is a fragment. Fragments are usually either some kind of verbal phrase or a subordinate clause punctuated as a sentence.

**Commonly Misused Words/Abbreviations**

*e.g. / i.e.*

Among the most commonly misused abbreviations are “e.g.” and “i.e.” Because their uses are so similar, they are easily confused. The abbreviation *e.g.* is for the Latin *exempli gratia*, “for example.” The abbreviation *i.e.* is for the Latin *id est*, “that is” or “which is to say.” They are not interchangeable. Both abbreviations should be followed by a comma.

**Affect / Effect**

*Affect* (verb) – to alter, influence or change.

*Effect* (noun) – to bring about a change, impression, results (verb) to cause.

**Eminent / Imminent**

*Eminent* – high in rank.

*Imminent* – about to occur.

**Ensure / Insure / Assure**

*Ensure* – (verb) to make certain.

*Insure* – (verb) to protect against loss.

*Assure* – (verb) to give someone confidence.
Numbers: Figures or Words

Express as words:

- Exact amounts when they begin a sentence.
- Smaller of two numbers when used together.
- Approximate amounts and fractions.
- To express ordinals in running text.
- To express time if the word “o’clock” is understood.

Express as figures:

- When writing percentages within text.
- Dates and times, except in formal writing.
- Dimensions and weights.
- Dates in business letters.
- Numbers following nouns (such as page, chapter, room, and rule).

Tricks:

(trick: a special skill; a knack; a convention or specialized skill peculiar to a particular field or activity.)

If you are a person who is totally dedicated to your mouse when using your computer, and you feel that the only purpose the keyboard serves is for entering words in a word-processing software program, what would you do if one late night while you are in the middle of an important project, your mouse decided that it had enough of life with you and died? To make matters worse, you have no backup mouse and all the computer stores are closed. What a dilemma! What can you do? Well, you can use the following keyboard tricks (shortcuts) to pull you through.

Universal Keyboard Shortcuts

These “universal” keyboard shortcuts will generally work in nearly every Windows-based program you work with; they are generic options.
- CTRL + A = select available text/image
- CTRL + X = cut selected text/image
- CTRL + C = copy selected text/image
- CTRL + V = paste copied or cut text/image
- CTRL + S = save current document
- CTRL + O = open a document within the current program
- CTRL + W = close current window
- CTRL + N = create new document within the current program
- CTRL + P = print current document
- CTRL + Z = undo the previous action
- CTRL + Y = redo
- CTRL + F = find certain text in current document
- F1 = help menu
- ALT + Tab = switch back and forth between open programs
- ALT + F4 = close current program
- ALT + Shift + F3 = show/hide paragraph tags
- Ctrl + E = align center
- Ctrl + J = align justified / full
- Ctrl + L = align left
- Ctrl + R = align right
- Ctrl + W = insert symbol/special character
- Ctrl + Enter = new page
- Shift + Enter = line break
- F3 = save as
- F7 = indent

(Continued on page 64)
How to place an announcement:
If you are a Missouri Bar member and you’ve moved, been promoted, hired an associate, taken on a partner, or received a promotion or award, we’d like to hear from you. Talks, speeches (unless they are of national stature), CLE presentations and political announcements are not accepted. In addition, Precedent will not print notices of honors determined by other publications (e.g., Super Lawyers Best Lawyers, etc.). Notices are printed at no cost, must be submitted in writing, and are subject to editing. Items are printed as space is available. News releases regarding lawyers who are not Missouri Bar members in good standing will not be printed. Contact Cynthia Heerboth at (573) 635-4128 if you have questions.

Kansas City Area
The law firm of Polsinelli, Shalton, Welte, Suelthaus, P.C. announces that its new name is Polsinelli, Shalton, Flanigan, Suelthaus, P.C. The new name reflects the addition of Daniel J. Flanigan, a shareholder since 1999, to the firm’s marquee. David A. Welte left the firm to join the Stowers Institute for Medical Research as its general counsel.

Michelle R. Albano has joined Legal Aid of Western Missouri as a public benefits Medicaid appeals attorney.

Ryane E. Newberry has joined Sanders, Conkright & Warren, L.L.P. as an associate.

The Missouri State Public Defender System announces that Colin S. Welsh has joined the Kansas City Juvenile Public Defender’s office. Janel R. Matheson, formerly with the Harrisonville office, has joined the Liberty office.

Stephen M. Todd has retired from his position as regional counsel for Chicago Title Insurance Company after 34 years with the company.

J. R. Hobbs, a shareholder in the firm of Wyrsch Hobbs & Mirakian, P.C., has been named as Practitioner of the Year by the University of Missouri-Kansas City Law School Alumni Association.

Charles W. German, a shareholder in the firm of Rouse, Hendricks, German, May, P.C., is the new president of the Kansas City Metropolitan Bar Association.

The firm of Lathrop & Gage, L.C. has announced the promotion of Robyn L. Anderson, Pat Fanning, Nicol S. Fitzhugh and Brian Holland to members (partners) in its Kansas City office. Nancy Schmidt Roush, formerly of Shook, Hardy & Bacon, L.L.P., has joined Lathrop & Gage, L.C. as a member of the firm’s business division.

Mid-Missouri Area
W. R. (Trip) England, III, of the Jefferson City law firm of Brydon, Swearengen & England, P.C., was elected chair of the State Capital Global Law Firm Group at its annual meeting in Baltimore, Maryland. M. Melissa Manda, an attorney with the firm, has graduated from the Leadership Missouri program. Ms. Manda was one of 34 candidates who completed the seven-month course.

Christopher L. Benne has joined the Jefferson City office of Husch & Eppenberger, L.L.C. as an associate.

Attorney General Jay Nixon has appointed the Honorable Edward D. “Chip” Robertson, Jr. of Jefferson City to the community advisory committee for the Missouri Foundation for Health.

Springfield Area
Chad J. Courtney and Ann Littell Mills have opened their firm, Courtney & Mills, L.L.C. The office is located at 540 E. Chestnut Expressway, Suite 100, Springfield 65806.

The law firm of Schmidt, Kirby & Sullivan, P.C. announces that Laura Sides Reinbold has joined the firm as an associate.
Michael S. Nichols has been named a member of the law firm of Husch & Eppenberger, L.L.C. Heather L. Rooney has joined the firm as an associate.

The Courtney Law Firm announces that Jason D. Smith has joined the firm.

Adam D. Woody has joined the Springfield Public Defender’s office.

The law firm of McAnany, Van Cleave & Phillips has opened an office located at 1721 West Elfindale Street, Suite 207, Springfield 65807. Patricia L. Musick, a shareholder with the firm, is managing the office. Robert O. Musick has joined the firm’s Springfield office.

Mark A. Fletcher has been promoted to member (partner) with the firm of Lathrop & Gage, L.C.

Keli N. Robertson has joined Sandberg, Phoenix & von Gontard, P.C. as an of counsel attorney. Jonathan T. Barton, Timothy P. Dugan, Jeffrey L. Dunn, Russell L. Makepeace, Sara J. McAvoy, Mark A. Prost and Todd C. Stanton have been named shareholders in the firm. Stacie A. Owens has joined the firm as an associate.

Rabbitt, Pitzer & Snodgrass, P.C. announces the addition of new associates. Allison E. Stoll joins the firm’s products liability group, and joining the firm’s construction/architect professional liability group are Jeffrey M. York, Nicholas B. Bunnell and David J. Page.

Misty A. Watson has joined the law firm of Glick Finley, L.L.C. as an associate.

Castor J. Armesto has joined Blumenfeld, Kaplan & Sandweiss, P.C. as an associate.

Philip Sholtz has joined Spencer, Fane, Britt & Browne, L.L.P. as of counsel. Anne M. Lindner, Patrick J. Sweeney and Matthew J. Wilson have joined the firm as associates.

Oelbaum & Brown announces that Christine A. Alsop has joined the firm as a partner.

Courtney M. Brunsfeld has joined Lashly & Baer, P.C. as an associate.
Husch & Eppenberger, L.L.C. has approved the addition of Caroline L. Hermeling and Christine F. Miller to its firm-wide executive committee. Ms. Hermeling recently assumed the role of chief executive officer of the firm.

Newly named members of the firm include Melissa Z. Baris, Mathew G. Eilerts, Erik L. Hansell, Adam D. Hirtz, Steven F. McCandless, Michael D. Montgomery, H. Frederick Rusche and Stacy Engles Wipfler.

Husch & Eppenberger attorney Gary H. Feder has been named president of the board of directors of the Clayton Chamber of Commerce.

Attorneys Heather G. Buethe, Sarah J. Davis, Eric A. Ess, Nicholas W. Hendon, Benjamin J. Kelly, J. Ryan Kelly, Kristopher P. Lyle, Brian M. O’Neal, Matthew P. Posey, Justin M. Stephens, Matthew D. Guymon and Frank J. Smith, Jr. have joined the firm as associates.

Kurt A. Hentz has joined the law firm of Hepler, Broom, MacDonald, Hebrank, True & Noce, L.L.P. as a partner. In addition, Lisa D. Shannon and Andrew C. Speciale have joined the firm as associates.

The Barklage Law Firm, L.L.C. announces that addition of a new associate, Nicholas M. Burkemper.

Megan I. Siebelts has joined the Law Offices of Rick Barry, P.C. as an associate.

Rodney J. Boyd and Kevin D. Gunn have joined the public law and policy strategies group of Sonnenschein, Nath & Rosenthal, L.L.P. as members.
Armstrong Teasdale, L.L.P. senior counsel and former partner John R. Barsanti, Jr. was elected to serve as the chairman of the board of directors for St. Andrews Resources for Seniors. Bridget L. Halquist and Nicholas J. Garzia have joined the firm as associates in the business services department.

The Missouri State Public Defender System announces that David M. Amen, Daniel B. Rousseau, Geralyn R. Reuss and Jolene A. Taaffe have joined the St. Louis City office. Ruess was formerly with the Hillsboro office. Taaffe was formerly with the Farmington office. Michelle Morgan Burriel, formerly with the St. Louis City Public Defender’s office, has joined the St. Louis County office.

The Missouri State Public Defender System announces the following attorneys have joined public defender offices: Renee Gotviagehya (Carthage); Doreen Saltiel (Moberly); Rebecca M. Winka (Sedalia); Ramona A. Capkovic (Hannibal); Samuel W. Moore (Farmington); Melissa M. Harvey (Rolla); Lesley A. Lynn (Carthursville) and Kimberly D. May (Chillicothe). Karie E. Comstock is the new district defender of the Lebanon office. Joseph O. Collier, formerly with the Farmington office, has joined the Hillsboro office. John T. Clark and Todd M. Schultz have joined the Harrisonville office. Schultz was formerly with the Kansas City Public Defender office.

The Missouri State Public Defender System announces the following attorneys have joined public defender offices: Renee Gotviagehya (Carthage); Doreen Saltiel (Moberly); Rebecca M. Winka (Sedalia); Ramona A. Capkovic (Hannibal); Samuel W. Moore (Farmington); Melissa M. Harvey (Rolla); Lesley A. Lynn (Carthursville) and Kimberly D. May (Chillicothe). Karie E. Comstock is the new district defender of the Lebanon office. Joseph O. Collier, formerly with the Farmington office, has joined the Hillsboro office. John T. Clark and Todd M. Schultz have joined the Harrisonville office. Schultz was formerly with the Kansas City Public Defender office.

The firm of Danna McKitrick has announced that James A. Borchers has become a principal of the firm. Borchers will work part of the time in the firm’s Clayton office, but also plans to work from an office in St. Charles.

Katherine L. Nash has joined the law firm of Tueth, Keeney, Cooper, Mohan & Jackstadt, P.C. The firm’s shareholders appointed Melanie Gurley Keeney, Ian P. Cooper and Robert L. Jackstadt to the firm’s management committee. Ms. Keeney, Cooper and Jackstadt are founding shareholders of the law firm. The firm’s office has relocated to 34 North Meramec Avenue, Suite 600, St. Louis 63105.

Dennis B. Mertz and Mavis W. Kennedy have announced the formation of South County Senior Law & Estate Planning Center, L.L.C. The new firm is in the same Oakville location as its predecessor, South County Senior Law & Estate Planning Center. Christine F. Hart has joined the firm as a senior associate.

The law firm of Blackwell, Sanders, Peper, Martin announces the addition of a new partner, Terry R. Lueckenhoff, in the litigation department.

Joseph F. Callahan and Caroline M. Tinsley have been named members of Baker, Sterchi, Cowden & Rice, L.L.C.

Robert G. Jones has joined the Belleville, Illinois office of Brown & James, P.C. as an associate in the firm’s business and commercial litigation and professional liability practice groups.

A. Scott Waddell has joined the Overland Park, Kansas office of Sanders, Conkright & Warren, L.L.P. as an associate.

Other States

The Edwardsville, Illinois law firm of Burroughs, Hepler, Broom, MacDonald, Hebrank & True, L.L.P. announces that it has changed its name to Hepler, Broom, MacDonald, Hebrank, True & Noce, L.L.P.
Looking Back, and Looking Forward, to a Highly Functional, Modern Judiciary

By Judge Michael A. Wolff

In 1976 the Pittsburgh Steelers beat the Dallas Cowboys to win the Super Bowl, “One Flew Over the Cuckoo’s Nest” starring Jack Nicholson won the Academy Award for Best Picture, and the foundation for our modern judiciary was laid with the voters’ approval of a sweeping revision of the judicial article, Art.V of the Missouri Constitution.

Clearly the most significant of the three, the 1976 article established a unified court system, created the position of associate circuit judge (while eliminating other categories of judges), and created a coherent judicial management structure. There are Super Bowl and Academy Award winners every year, but the constitutional change of ’76 expanded the jurisdiction of the court of appeals and set up today’s jurisdictional boundaries for the Supreme Court that has lasted for three decades. Well over half of today’s practicing lawyers have known only this system.

The 1976 constitutional change provides a basis for continuing improvements. I recently delivered the State of the Judiciary address to the General Assembly and outlined three steps we are taking to keep improving our system. I believe these steps show that we are a highly functioning branch of government fully capable of managing its resources and performing its various and essential roles in our society. The three steps are:

**STEP ONE: JUDGING THE JUDICIARY**

First, to help us understand where we are and where we should be going, I accepted an offer from the American Bar Association’s Standing Committee on Judicial Independence to conduct a thorough examination last year of our Missouri court system – at no cost to us. This is the first – and only – such study that has been done of an American court system. They used criteria the ABA developed for advising emerging democracies around the world about what constitutes an adequate and effective judiciary. They studied the structure of Missouri’s courts and conducted in-depth interviews with civic leaders, political leaders, journalists, members of the bar and others about their perceptions of the strengths and needs of the Missouri judiciary.

Fortunately, most of the assessment was quite positive. We were rated favorably on our professionalism, the quality and tenure of our judges, and our basic unified structure. Our ongoing plan for the use of information technology also was well received. The weaknesses the ABA committee identified in its assessment report all relate to lack of resources. One of these relates to the impact of judicial salaries in Missouri, a matter that I hope is back on track, thanks to the great work of many of you.

**STEP TWO: EVALUATING JUDGES’ PERFORMANCE**

Our second step is to enhance our courts’ accountability to the public through elections. How do voters get information about judicial performance? Until we have opportunity to walk the red carpet in front of the paparazzi like actors attending the Academy Awards, we’ll have to use other methods. In most of Missouri’s counties, the populations are small enough that the public can get to know their judges and candidates without costly campaigns. However, for trial courts in the larger counties, the Supreme Court and the Court of Appeals, I believe we should enhance the opportunities for the public to get to know judges on whom they vote and to have an evaluation system that provides timely critiques for the benefit of both the public and our judges.

Currently, The Missouri Bar conducts judicial evaluation surveys for every judge on the ballot for retention in nonpartisan plan jurisdictions. The results are available to the media, to the public in printed form in various...
locations, and on the bar’s web site. The bar does all it can to publicize the results given the resources it has, and it should be given great credit for continuing to undertake this valuable service. Most of our citizenry, however, remains uninformed in such elections, mostly because they don’t know where to look for information, and this may result in a lack of confidence about our system.

We should try to remedy the lack of information about judges. I have asked The Missouri Bar to convene a fair cross-section of citizens – non-lawyers as well as lawyers – to review our judicial evaluation system, to look at systems in place in other states, and to propose a model that gives useful information about judges that can be communicated effectively to the electorate.

A judicial evaluation system should include not just the voices of attorneys, but also the voices of jurors, litigants, witnesses, court staff and others who have direct experience with the judges. These evaluations should be timed both to allow judges to have an opportunity to improve as a result of the review and to give voters information before elections where the judges’ futures are decided. I believe that the vast majority of judges will be rated highly and that even the most highly rated judges will learn something useful about how they do their jobs.

My hope is that the group of citizens convened by The Missouri Bar will propose a judicial evaluation system that is driven by non-lawyers as well as by the members of the bar; that is independent and nonpartisan; and that produces credible results made widely available to the voting public.

**Step Three: Using Our Resources Wisely**

Our third step is to evaluate ourselves in the use and distribution of our resources. Four years ago, an Interim Committee on Judicial Resources made several recommendations, some dealing with judicial procedure and others dealing with judicial personnel. Many of the recommendations have been implemented.

But because there is no consistent understanding of judicial resource needs, attempts to fashion a consistent process for creating judgeships in this state have languished.

To get a true picture of our needs across the state, we have undertaken a substantial study – the first of its kind in Missouri – to review the weighted workload of Missouri’s trial judges. I say “workload,” not “caseload,” because if you just count cases, you will not necessarily get a useful answer. A 15-minute hearing involving a traffic ticket and a two-week murder trial each counts as one “case,” but each obviously has a much different impact on judicial time, both in preparation and in the courtroom. Likewise, judges whose circuit includes as many as five counties spend time moving from county to county to hear cases – we must account for this travel time.

America’s expert in conducting judicial weighted workload studies is the National Center for State Courts, which we have engaged to direct Missouri’s study. A cross-section of Missouri’s trial judges is serving as a steering committee to guide the study, and the National Center is using methodology that has been used in many other states with similar population distributions between urban and rural areas.

This study, which they are conducting this spring, is essential for our future to provide useful information to us, to the public, and to the legislature, so that we might make more informed decisions about judicial personnel needs. We need to assure adequate judicial service in every county of the state.

**Help Needed**

In the eight and a half years I have served on the Supreme Court – and especially in these last 18 months as chief justice – I have gotten to know many of the fine men and women who serve in the judicial branch as judges, as clerks and as support staff in communities throughout the state. I am very proud of their dedication and of the work they do, week in and week out, to uphold the rule of law and to maintain a stable, civil society in our state through the fair and impartial administration of justice.

On their behalf, I assured the General Assembly, and I assure you as members of the bar, that we in the judiciary will continue to be responsive to the public’s needs, and we will continue to evaluate ourselves – subject to the scrutiny of others – in the spirit of honesty and accountability that all Missourians should expect of us.

My concluding words to the Legislature are equally apt to members of the bar: I hope that you will continue to work with us toward the goal of giving Missouri the greatest judicial system possible. Without your continued support, we cannot meet this goal. But with your support, I am certain that we will.

The Honorable Michael A. Wolff is Chief Justice of the Supreme Court of Missouri.
Networking: Creating Crucial Connections

By Ellen Ostrow

The connections you make with people can find you the job you want, provide needed support, get you answers to important questions, bring you business, and sustain you over the long haul. Here’s what you need to know to craft those crucial connections.

In recent coaching conversations with lawyers, I’ve been asked the following questions:

“How might I find people with whom to do informational interviews?”

“I’d like to do work for ‘ABC’ client, but I don’t know anyone there. What can I do?”

“My firm invited a marketing consultant to do a presentation on business development. The consultant told us to call two people every day. I hate making cold calls and imposing on people. Is that really what I have to do to bring in business?”

“Inviting people to lunch just to try to get their business feels so sleazy. Aren’t there any other options?”

“I sent in my resume to xxxx. I guess there’s nothing more for me to do now except just wait and see, right?”

Building and maintaining a network is yet another aspect of a lawyer’s life you won’t learn about in law school.
Some attorneys are natural networkers: they’re extroverted, make friends easily, and enjoy helping and maintaining contact with people they like. However, many lawyers don’t quite understand why networking is important.

Effective networking is a crucial part of a career-management strategy. The connections you make with people can find you the job you want, provide needed support, get you answers to important questions, bring you business, and sustain you over the long haul.

You probably network many times a day without realizing it – if you’ve ever called a friend to recommend a good restaurant for a client lunch or for a suggestion about childcare, you have networked.

Becoming more effective at networking is really just a matter of having a clear picture of what you’re trying to accomplish, planning systematically, and using your strengths to accomplish your goals. Here’s what you need to know to craft crucial connections.

**Understand Networking**

Networking is developing and maintaining mutually beneficial relationships. In building your network, you establish and nurture relationships for the purpose of exchanging knowledge, support, recommendations, referrals, information, and introductions to others.

When you cultivate a networking relationship, you’re focused on understanding the other person’s goals, needs, and interests. As you learn more about an individual, you’re thinking about the people who might be able to help your new contact. As you learn new information, you’re thinking about people in your network who would appreciate you informing them.

Networking is primarily about generosity and thoughtfulness. You create relationships and sustain them unselfishly, at the same time hoping for reciprocity. Odds are that if you’ve nurtured a relationship with a colleague, he or she will be happy to provide you with the advice or assistance you may one day need.

In short, networking relationships are “real” relationships, not superficial encounters.

**Know What Networking is Not**

Networking is NOT about:

- “Schmoozing”
- Using people
- Intruding on people
- Shaking someone’s hands at a meeting and not following up afterward
- Collecting as many business cards as you can at a networking function
- Being “phony” or insincere

**Networking Accomplishes What Technical Competence Cannot**

Networking is a crucial part of your job, not a trivial distraction or a social luxury. Without connections, it’s nearly impossible to get anywhere.

Certainly, doing excellent work is essential. But without connections, where will it get you? Visibility is necessary for professional success. Networking enables you to make your strengths and accomplishments visible to people in decision-making positions.

**Networking Goals**

Networking is especially crucial in accomplishing the following goals:

1) **Career Changes and Job Searches.** Networking is the most effective way to learn about careers and get access to job opportunities. If you’re exploring career alternatives, your network members will introduce you to people who will meet with you for informational interviews. As you describe your interests to people in the network, they’re likely to come up with ideas that hadn’t occurred to you.

Furthermore, research consistently shows that roughly 80 percent of jobs are found through networking. And before you accept an offer, networking will provide you with the insider information you’ll need to make a good choice.

Even after you apply for a position, your networking activities can influence the outcome. For example, a lawyer I was coaching hoped to work for a particular non-profit. After sending in her application, she contacted a friend from law school who also did non-profit work. The friend happened to know the executive director of the organization to which she was applying. All it took was a phone call from one colleague to another for her application to got to the top of the pile.

Had my client maintained the relationship with her law school friend in order to get this contact? Of course not. But over the years they’d stayed in touch, supporting and advising one another along the way. So when my client needed some help, she had someone who wanted to help her.

2) **Professional success.** The fact that exclusion from informal networks has been among the major obstacles to success for women in law firms attests to the importance of networking.

To be successful within an organization, you’ll need to have a good relationship with a powerful advocate. As you develop connections within your workplace, you’ll learn whom not to cross, how to get great work, and so on. You need to connect with people who can help you advance in your career.

Having a knowledge network is essential for providing great client service. There’s simply too much
information for any one person to know everything on any given subject. If a client calls requesting information you don’t have, knowing who does have it is essential.

No matter how excellent your work, you’re unlikely to live up to your potential if you’re not visible, both within and outside of your workplace. Networking allows you to ensure that others are aware of your abilities and achievements.

Networking is also essential to business development. As you network, others become aware of your expertise. When they need someone to speak on the subject, you’ll come to mind. Business referrals most often come from people you know – colleagues and former clients with whom you’ve maintained ties and who can verify your integrity and competence.

3) **Support.** Lawyers face so many challenges that it’s difficult to imagine how you can overcome them all without a support network. These crucial connections remind women lawyers especially that you’re not the only one who’s trying to balance work and life, or who is taken for the secretary when who is trying to balance work and life, especially that you’re not the only one

connections remind women lawyers especially that you’re not the only one

among other people involved in hiring decisions.

3) **Who Needs to Know About What You Offer?** If you’re networking for business development purposes, you need to connect with those you’d like to serve. There are many ways to provide others with the information they need in order to hire you as their attorney.

First, know what meetings and conferences members of your target market attend. When you participate in these meetings, people already in your network can introduce you to new contacts.

Second, offer to make presentations to these groups. Your speeches will make you visible and establish your credibility. More importantly, your conversations with people after you speak allow you to build new networking relationships. These relationships may lead you to new business.

4) **What to Do When You Make New Contacts.** Active listening is your most important tool in establishing these new relationships. Many people put pressure on themselves to say “the right thing” when they meet someone new. Instead, let your genuine interest in the other person lead you. Listen for what’s most important to this person and how you might help her.

It’s useful to have a brief way of describing who you are and what benefits you can provide. If you’ve prepared this in advance, you won’t have to come up with it in the moment. Don’t try to sell yourself or anything else. Be genuine. Hopefully, you’re doing work you love, so you can talk about it with authentic enthusiasm.

5) **Follow Up.** If you want the people you met to be a part of your network, you’ll need to follow up after the first meeting, preferably within 48 hours. Send an email letting them know how much you enjoyed meeting them and expressing your wish to talk further. Send the article you promised you would.

6) **Don’t Allow Rejection Concerns to Stop You.** Many lawyers are concerned about imposing on others. Be sure to turn on your social radar and pay attention to the reactions you’re getting. It’s relatively rare to get a negative response when you’re communicating genuine interest and a desire to be helpful. But if you think you’re reading a negative response, don’t make assumptions. Often people who fear appearing “needy” will interpret a less-than-engaged response as a brush-off. Remember that the other person probably has as much on her plate as you do. Instead of worrying, ask her if there would be a better time to connect.

(Continued on page 66)
Business and Commercial Litigation in Federal Courts — Second Edition

Robert L. Haig, Editor-in-Chief
Reviewed by Stephen B. Higgins and Daniel C. Cox

Published by West, Business and Commercial Litigation in Federal Courts—Second Edition, is a user-friendly, mini-library of procedure, trial advocacy, substantive law, and strategic and tactical advice. This eight-volume treatise provides the practitioner with a manageable 96 chapters, covering all phases of litigation, from case assessment, investigation, pleadings, motions, discovery, and trials, through appeals, settlement, and enforcement of judgments. The work, edited by Robert L. Haig and authored by a variety of distinguished lawyers and judges, covers both procedural and substantive law topics and serves as a practical guide for the inexperienced lawyer as well as a thorough reference manual for the seasoned federal court litigator.

The Authors
Haig recruited 199 experts (federal practitioners and judges) in the field of commercial litigation to present the law, procedure, and strategic planning advice for both plaintiff and defense counsel. Each chapter is written by one or more of those experts. The authors include 17 federal judges, numerous members of the American College of Trial Lawyers, heads of litigation departments or practice groups in the country’s leading law firms, and some of the most distinguished and high-profile members of our nation’s business litigation bar: David Boies (Ch. 56, Litigation Technology), who served as special trial counsel for the United States Department of Justice in its antitrust suit against Microsoft; Warren Christopher (Ch. 18, Litigating International Disputes in Federal Courts), the 63rd United States Secretary of State; and Drew S. Days, III (Ch. 10, Arbitration vs. Litigation), Solicitor General, 1993-1996.

Many of the chapters providing valuable judicial perspective and insight are authored by United States District and Circuit Court Judges: Chapter 9, Removal (The Hon. Roger Vinson); Chapter 27, Summary Judgment (The Hon. Solomon Oliver, Jr.); Chapter 29, Scheduling and Pretrial Conferences and Orders (The Hon. William C. Lee); Chapter 31, Jury Selection (The Hon. David Hittner); and Chapter 40, Jury Conduct, Instructions, and Verdicts (The Hon. Susan P. Graber, The Hon. M. Margaret McKeown, and The Hon. Jeffrey T. Miller).

Each chapter begins with a discussion of the preliminary and strategic considerations for that topic and an explanation of how lawyering skills and techniques can be used, offensively and defensively, in a variety of situations. For example, Chapter 12, Multidistrict Litigation (John Strauch, Robert Weber, and Laura Ellsworth), highlights numerous procedural alternatives to multidistrict litigation that can assist in the coordination of mass litigation, and provides a detailed analysis of the advantages and disadvantages of a party’s strategic options, which the practitioner will need to consult with and advise the client of. Haig’s masterful editing and compilation of the chapters creates a treatise that is logically sequenced and substantively interrelated.

The Content
This is not an academic work that simply tracks the federal rules, referencing cases interpreting those rules. Instead, it is a strategic, chronological guide through each stage of a federal case written by and for the federal court litigator. Each chapter begins with a roadmap of its contents and strategy considerations, includes comprehensive citations to controlling legal authority, and concludes with useful practice aids (checklists, forms and/or jury instructions). The publication includes a CD-ROM in Rich Text Format (rtf) that contains the checklists, forms and jury instructions included in the printed eight volume set, all of which can be copied and customized for the practitioner’s particular needs.

Procedural Law Chapters
The first four volumes cover federal trial court procedure. Volume 1 begins with an overview of federal jurisdiction, service and venue (Chapters 1-3). These
chapters comprehensively explain the scope and limitations of federal court subject matter jurisdiction and provide, among other things, a useful analysis of and reference for the split among the circuits over the application of the due process analysis for personal jurisdiction based on particular activities, including use of the Internet. In addition to the statutory bases for venue, Chapter 3 addresses the enforceability of forum selection clauses and strategy considerations for challenges to venue. Volume 1 also addresses, among other topics, preparing and filing complaints, third-party practice, removal to federal court, and arbitration.

Volumes 2 and 3 provide a detailed analysis of discovery issues, including chapters on discovery strategy and privileges, depositions, requests for admissions and interrogatories, experts, and motion practice. In Chapter 22, Discovery of Electronic Information, authors Judge Shira A. Scheindlin and Jonathan M. Redgrave tackle this expanding area of discovery and explain how attorneys and their clients can (and must) satisfy their separate obligations under the Rules for the preservation of such information.3

Particularly impressive in its breadth, scope, and detail is the 259-page, 26-subpart chapter on Class Actions, Volume 2, Chapter 16. Not only does this chapter address defense and prosecution strategies and particular types of actions (e.g., antitrust, securities, mass tort, consumer fraud, employment), it analyzes, in an eminently practical way, the uniquely sensitive ethical issues presented by settlement negotiations. The practice aids for this chapter include numerous checklists and forms used in class action litigation, including a sample notice of certification of litigation class and exclusion form.

Chapters 31 through 45 (Volumes 3 and 4) focus on trial issues, such as Jury Selection (Chapter 31), Cross Examination (Chapter 36), Expert Witnesses (Chapter 37), Final Arguments in Jury and Bench Trials (Chapter 39), and Trial and Post-Trial Motions (Chapter 45). Volume 4 also contains Judgments (Chapter 46) and Costs and Disbursements (Chapter 49).

Volume 5 begins with two excellent chapters on appeals: Chapter 51, Appeals to the Courts of Appeals, and Chapter 52, Appeals to the Supreme Court. Six of the treatise’s 16 new chapters are in this volume: Litigation Avoidance and Prevention, Techniques for Expediting and Streamlining Litigation, Litigation Technology, Litigation Management by Law Firms, Litigation Management by Corporations, and Civility.

SUBSTANTIVE LAW CHAPTERS

The final four Volumes (5-8) contain 36 chapters, each of which covers a specific area of substantive law commonly encountered by the federal court commercial litigator. Those topics include Contracts, Insurance, Banking, ERISA, Products Liability, Patents, Trademark, Copyright, Employment Discrimination, Torts of Competition, Construction, and Commercial Real Estate.

The substantive law chapter on civil RICO litigation (Chapter 80) is especially comprehensive and informative, with extensive case citations, practical advice and easy to follow summaries of the legal elements of this oft-misunderstood (and misused) cause of action. The 15 sections of this chapter range from Standing and Jurisdiction, Venue and Preemption to RICO Class Actions. Like the authors of the other chapters, the authors of Chapter 80 provide, as an introduction to the subject matter, quality practical and strategic advice to those pursuing and defending RICO claims. For example, they give us

[a] word of caution about defending cases where RICO claims are combined with common law claims, such as fraud or breach of fiduciary duty:

There is a temptation to focus energy on defeating the RICO claims while paying less attention to the common law claims. This can be a serious mistake, especially where the common law claims allow punitive damages, which most courts have agreed are not available under RICO. Even if compensatory damages are trebled on the RICO claim, they might very well be eclipsed by a punitive damages award on the common law claims.

Similarly, plaintiffs should think carefully before playing the RICO card when the plaintiff has other common law claims arising from the same conduct. Plaintiffs may be better off in state court asserting common law claims that give punitive damages than in federal court where dismissal of the RICO claims might very well result in the dismissal of any state law claims that arise from the same alleged misconduct.

And, like the other chapters, that chapter concludes with a practice aids section: (1) A checklist of essential allegations for counsel to consider when prosecuting or defending a RICO case; (2) forms (a sample RICO case statement and sample complaint); (3)
RICO jury instructions; (4) the statutory language; and (5) a listing of the state RICO statutes.

CONCLUSION
A word of caution: The treatise is not an in-depth guide to every possible aspect of federal court litigation. For example, Chapter 1, VII, “Immunity From Federal Jurisdiction,” provides only a limited discussion of federal sovereign immunity. The treatise does not purport to guide the practitioner through the labyrinth of procedural requirements for bringing such claims. It does, however, alert the reader to the relevant statutes and case law that provide for and interpret the (limited) waivers of that immunity. In that instance, it is a useful place to begin the relevant research and analysis for federal litigation. But in the majority of situations, such as those described above, Haig’s treatise is a comprehensive, practice-oriented summary of and guide to the applicable substantive law and procedural rules, complete with practice forms and checklists. As a comprehensive treatment of the subject matter of federal court commercial litigation, not covered in this manner by any other work, this treatise is a uniquely valuable addition to the commercial litigation’s library of reference materials.

In his foreword, Haig describes Business and Commercial Litigation in Federal Courts — Second Edition as “not only a law book that is valuable as a research tool and a source of legal knowledge and citations...[but] an idea book filled with nuggets of wisdom and perspective that could only have been gained by years of experience in handling cases from the most simple to the most complex.” What he brings us certainly supports that description. It is hard to imagine a single more useful reference source for a business litigator.

FOOTNOTES
1 Robert L. Haig is a partner in the firm of Kelley Drye & Warren LLP in New York City.
2 The Second Edition is a substantial evolution of the practice guide first published in 1998. More than just a consolidation of its annual Pocket Parts, this expanded edition contains 16 new chapters and a separately bound paperback appendix (Volume 9) of Tables (of jury instructions, forms, laws and rules, and cases) and Index. The new chapters are: Case Evaluation, Discovery of Electronic Information, Litigation Avoidance and Prevention, Techniques for Expediting and Streamlining Litigation, Litigation Technology, Litigation Management by Law Firms, Litigation Management by Corporations, Civility, Director and Officer Liability, Mergers and Acquisitions, Broker Dealer Arbitration, Partnerships, Commercial Defamation and Disparagement, Commercial Real Estate, Government Entity Litigation, and E-Commerce.
3 As the law in these areas evolve, so will the treatise, through its annual Pocket Part supplements. Chapter 22 was written prior to the implementation of the then proposed amendments to the Federal Rules of Civil Procedure relating to electronic discovery. With those rules now amended, the annual Pocket Parts will no doubt supplement that chapter to incorporate those amendments. Still, the checklists and forms provided are outstanding and a useful tool for assuring compliance with the new rules.

Stephen B. Higgins is a commercial litigation partner and chair of the Business Litigation Practice group at St. Louis-based Thompson Coburn LLP, where his practice is devoted to the litigation of complex business and commercial disputes, corporate compliance and white collar defense, and class action litigation. He served as United States Attorney for the Eastern District of Missouri from 1990 through 1993 and previously as an Assistant United States Attorney in that district.

Daniel C. Cox is a commercial litigation partner at Thompson Coburn and served from 1991 through 1995 as a trial attorney in the Civil Division of the United States Department of Justice.

Baseball’s Reserve System — The Case and Trial of Curt Flood
By Neil F. Flynn
Reviewed by Michael B. Smallwood

Baseball’s Reserve System – The Case and Trial of Curt Flood, by Neil F. Flynn, provides an in-depth look at Curt Flood’s 1970 trial versus Major League Baseball. The book is masterfully written and an eminently readable insight to the Curt Flood trial and its amazing aftermath. While the outcome of Curt Flood vs. Bowie Kuhn, et al. had a tremendous impact upon the business and operations of Major League Baseball, the trial itself has been overlooked and perhaps even misunderstood for more than 30 years.

On October 8, 1969, Curt Flood, the center fielder for the St. Louis Cardinals, was traded to the Philadelphia Phillies. At that time, Curt Flood was a three-time All Star, seven-time Gold Glove winner, at the peak of his career, and believed, by most, to be the best center
fielder in baseball. In professional baseball, trades are a regular part of the business, and this trade presented nothing out of the ordinary from a business perspective. But what was different about this trade was that Curt Flood refused to recognize the “right” of the Cardinals to trade him to another team without his consent. In doing so, Flood challenged a practice that was designed and enforced by the professional baseball club owners for more than 80 years—a practice known as the “reserve system.”

Baseball’s “reserve system” was a long-standing practice of Major League Baseball. It allowed owners total and unwavering control of every player’s career. The system was rigid, draconian, and, as Flood would argue, tantamount to slavery. As the book explains, the concept of “free agency” in baseball was most certainly not an option for any major league player during or before 1970. However, all other major league sports, at the time, had “free agency.”

As Flynn explains, Flood’s decision to challenge the lily-white Major League Baseball establishment cost him his baseball career, a multitude of personal problems, and any shot at the Hall of Fame. Despite the U.S. Supreme Court’s denial of Flood’s claims and ruling (in 1972) that professional baseball was exempt from federal antitrust regulation, professional baseball players had free agency by 1975. The author effortlessly connects the dots from Flood’s trial to the conception of free agency within Major League Baseball. The story also illustrates the many sacrifices Flood made in order to begin that process, and sadly enough, Flood was never able to reap the fruits of his labor. In fact, Curt Flood’s sacrifice was ultimately forgotten and unsung.

Flynn is a practicing attorney, and he has reviewed more than 2,000 pages of the trial transcripts (the first ever to do so), conducted interviews with lawyers and witnesses present at trial, and researched the personal and professional life of Curt Flood. The book incorporates all of these aspects in order to present a clear, accurate and comprehensive understanding of the trial. The book takes the reader through the 15-day trial in the spring of 1970; analyzes the testimony of each of the 22 witnesses; discusses the inherent conflict between Flood’s arguments and the legal position asserted by the Major League Baseball Players’ Association; and offers some compelling views and criticism of baseball’s reserve system presented by Commissioner Bowie Kuhn and the owners. Finally, Flynn’s clear writing style effectively places the significance of Flood’s trial in a historically accurate perspective and in its proper chronological place with regard to the attainment of player “free agency” by 1975. The book is a must read for the serious baseball fan and a compelling read for even the casual fan.

Michael B. Smallwood is a trial lawyer in St. Louis, and has practiced law for 27 years in Missouri and Illinois. A 1979 graduate of the University of Missouri-Columbia School of Law, he has also been a broadcaster on KFNS 590 and ESPN 1380 for the past 15 years.

Practice Made Perfect
(from page 51)

Tactics:
(tactic: a plan, procedure, or expedient for promoting a desired end result)

Sometimes it is not what you know, but the fact that you know where to go to find what you need!


Law dictionary – http://dictionary.law.com

Legal articles/statutes – www.findlaw.com

Legal articles/statutes – www.law.com

Madison County, IL – http://www.co.madison.il.us

Maps – www.mapquest.com

Missouri courts — www.courts.mo.gov

Missouri Secretary of State – www.sos.mo.gov

Online encyclopedia — www.wikipedia.org

Robert Rules – www.rulesonline.com

Search Engine – www.google.com

Search Engine – www.yahoo.com

Search Engine – www.msn.com

Search Engine – www.altavista.com

St. Clair County, IL – http://www.co.st-clair.il.us

St. Louis area news – www.stltoday.com

For additional useful websites, be sure to check out:

NALS...the association for legal professionals (www.nals.org) and click on the “links” hyperlink.

NALS of Missouri (www.nalsofmissouri.org) and click on the “links” hyperlink.

Sandra (Sandy) Gross, PP, PLS, is a legal secretary at Thompson Coburn LLP in St. Louis. She has 30 years’ experience in the legal support field and has been a member of NALS, the association of legal professionals, since 1991. She is also a member of NALS of Missouri and is the immediate past president of one of NALS’ local chapters, the St. Louis County Association of Legal Professionals. She obtained her certification as a certified Professional Legal Secretary in 2002 and a certified Professional Paralegal in 2003.
“Turn that thing off and go outside and play!” My mom used to say that fairly often when I was a squirt. I would be glued to the tube for the old-time cowboy movies, but she would run me outside into the fresh air. Mom was right. As hard as it was to pry myself away from the adventures on the screen, once I got outside I always had a great time.

In much the same way, many lawyers today are totally preoccupied with their work, and never have a chance to “turn off” and really enjoy themselves. Are you one of those who are always “on duty?” Can you enjoy your family, your home, your hobbies, your activities in the community? Or is the cell phone ringing? Are you drafting at home? Responding to client email? Thinking obsessively about tough cases? When do you ever get to “turn the thing off and go play?”

For several years I commuted to my job in a small carpool. The riders agreed to a couple of rules for our travels. One was that it was OK to talk shop and debrief the day until we got to the halfway point of the drive. After that landmark, only home and family talk was allowed. We all knew right where that sign was. What’s the “sign” for you? For some lawyers, turning out the office lights and locking the door is the signal that they are off-duty and can return to being ordinary humans, with thoughts, feelings, and affections of their own. For others, it is pulling into their own driveway, or changing out of their “court clothes” into something that’s really them. I hope you’re not still lawyering once you’re in your loungewear! I think we all need a sign or signal as to when it’s time to turn it off.

I am a huge fan of vacations, as my colleagues will tell you, and I promote that vigorously to lawyers. Shorter and more frequent time off is a mantra for me. I often talk about holidays. When the courthouse is closed, it’s time for lawyers to be having fun. I recommend padding a Monday holiday with a Friday and the following Tuesday off, turning a court holiday into a five-day weekend. But when I suggest this to lawyers, they protest! They say court holidays are quiet times for analysis and drafting, and certainly not time to be out of the office!

I certainly realize that lawyering is serious business, and needs to be taken seriously. But I argue that even super lawyers are still human beings who need rest, respite, and emotional refreshment. All work and no play makes both Jack and Jill dull, and probably irritable and illness-prone as well.

In his popular book The Seven Habits of Highly Effective People, Steven Covey tells a story of two loggers. As a stranger walks by, they are struggling mightily to saw down a tree with a two-person saw. The stranger watches for a moment as they sweat away, working very hard. It’s obvious that the old saw isn’t very effective. “You know,” says the stranger, “you really should stop and sharpen your saw.” One of the loggers snaps back, “We don’t have time for that, we’re too busy working!” Covey’s point is that successful people are constantly upgrading their skills and knowledge so that they are more effective in their work. I want to take his point one step further. I contend that emotional refreshment and balanced living make for a sharper lawyer.

Now the question is how to make that happen despite the demands of clients, opponents, dockets, et al. I think some analysis is in order as to what is driving this relentless attention to work. I think a few lawyers are doing this just to prove that they can really do it. For them, it’s a matter of constantly demonstrating that they really belong in the ranks of attorneys. I wish they would just accept the summary judgment that they are competent and effective, and let it rest. For a few others, it’s a distorted view of client service. If the client wants it now, they are convinced that the client needs it now. How soon is “now?” Granted, some things are “now” issues, but many aren’t. Maybe a one-page flyer on timelines would be good to distribute with a client’s copy of the engagement agreement. Even if you put some realistic time guidelines on paper, many clients won’t believe it. There is no exception to the rule that everyone thinks that they are an exception to the rule. Still, efforts toward realistic client expectations seem a good thing.

A second issue in the relentless pressure is the saying, “No problem.” Who wants to tell the judge, “No, I can’t, I have non-refundable tickets?” Saying “no” to clients or opposing counsel brings the risk of a very negative
response. But consider this: No matter how hard you try or how hard you work, there are some grumpy judges, irascible clients, and condescending and bellicose opponents who will be loudly unhappy. Since the world will not devote itself to making them happy, you have to hear about it. If you can’t win with them, then why play? Such a conclusion has consequences, but it’s also a relief.

Third, I suggest a new approach to to-do lists. I think it important to accept the fact that you will never be caught up. Get over thinking that you will! I never finish my list. Is it because I don’t work hard enough? Or is the list just too long? Or is it because more stuff always keeps coming up? Is it because I’m really willing to get in there and do stuff? Is it because I like to do a lot of different things and use all my skills? A list with no end is a sort of compliment. People keep asking because you keep producing. If people stop asking you for things, then it’s time to get worried. But, now, what to do with that never-ending list? Stop when it’s time to stop and let it sit. As one of my colleagues used to say, “Let’s try another slice tomorrow.”

You could shorten your list by saying, “No.” Do you really want all those cases? I overheard one lawyer discussing the maturing of his practice. He said to a small group of other lawyers, “Well, at first I took everything, but I was chasing myself. So after a while, I started taking less and charging more.” He seemed a lot happier with that arrangement. He sounds wiser too, so he’s probably worth the extra fees as well.

I certainly realize that taking fewer cases has a financial impact. But if you are trading peace of mind for the huge aggravation that comes with extra cases and more income, is that a good deal? As one lawyer commented at a CLE program, “I’m about as rich as I need to be.” If income is just about taking care of needs, and not about keeping score, then he’s probably right.

It’s time to turn it off and go play. If you can’t, or if you would like to argue with me about that, I welcome your call at MOLAP, 800-688-7859. Meanwhile, may all your sleepless nights be due to stary skies.

Jim Brady is director of The Missouri Bar’s Lawyers’ Assistance Program (MOLAP)

Career Path (from page 62)

Of course, occasionally you will experience rejection. When this happens, make yourself list every alternative explanation for it other than one that’s your fault. Examples might include: they’re too busy; they’ve been pressured for business by lawyers before and are making an incorrect assumption about you; or you caught them on a really bad day.

Maintaining Crucial Connections

Networks dissolve through neglect. Keep track of your networking contacts. Some attorneys do this through contract management software. Your contact-maintenance plan will vary depending on the nature of the relationship.

Whatever the frequency and nature of the communication (having lunch, exchanging articles of interest, mailing newsletters, and so on), it’s important to keep in touch in a way that meets the needs of the other person.

Try to manage expectations and try to be reliable. If you’re often on the road and have trouble scheduling lunches, it’s best to inform your new connection about this directly rather than to continually decline her invitations.

Of course, as with any other important relationship, do what you say you will do. Don’t promise more than you can deliver.

Women’s Networks

Although the “good old boys” network is a decreasingly effective approach to business development, such networks continue to exist and being excluded can be a frustrating and disheartening experience. If you find this door closed, open another. Establishing women lawyers’ networks often provides an effective alternative as well as a haven for women trying to make rain.

A Final Tip

Networking is one of those activities in which the journey can be as, or more, rewarding, than the destination. Developing connections can be one of the most satisfying aspects of your professional life. Try taking the pressure off yourself, and just enjoy the relationships. You may be surprised to find this strategy to be more effective.

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Ellen Ostrow, Ph.D., is the founder of LawyersLifeCoach LLC, providing personal and career coaching for lawyers. She is editor of the free online newspaper, Beyond the Billable Hour. This article is excerpted from Issue #36 of the newsletter, located at http://lawyerslifecoach.com/newsletter/issue36.html.
The Missouri Bar

Solo & Small Firm Conference

JUNE 7-9, 2007
Tan-Tar-A Resort - Osage Beach, MO

10 TIPS

to get the MOST from the 2007 Solo & Small Firm Conference

When you attend the Solo & Small Firm Conference you’re in for an exciting experience. First of all, you’ll meet some of the friendliest and helpful colleagues from all over the state and some from neighboring states. You’ll want to take advantage of all this event has to offer as you’re sure to learn from others and well as rounding out this experience with good times. You’re about to experience a power-packed event filled with your choice of high-quality educational programs as well as some great opportunities to network with some of the best solo and small firm lawyers in the state. You’ll also enjoy time relaxing in one of the state’s best resort areas, and you’re sure to have lots of fun in the process. This family-friendly event is also a good opportunity to spend some time away with those closest to you. The goal of this conference is to recharge your professional batteries, perfect your legal skills, and arm you with new information to put to work in your law practice.

Tip #1: Mark June 7-9, 2007 on your calendar and reserve the time to attend.
Tip #2: Register early to take advantage of the discounted registration pricing.
Tip #3: Reserve your hotel room as early as possible - the most desirable rooms sell out early.
Tip #4: Visit the conference website often for updated information – www.sasfconference.org.
Tip #5: Check out the program schedule ahead of time and plan your schedule.
Tip #6: Review course materials online. An email with a link to materials will be sent in advance.
Tip #7: Don’t be shy – dive into the activities. You’re sure to make some wonderful new friends.
Tip #8: Take advantage of all the Conference has to offer – social & recreational events, exploring the Exhibit Hall, as well as the educational programs.
Tip #9: Let The Missouri Bar staff know if you need assistance or have questions.
Tip #10: Relax, and have a great time!

Register TODAY!!

Call 888-253-6013 or Online WWW.SASFCONFERENCE.ORG

Bargain Registration Pricing for High-Quality Event
SAVE $50 if you register by April 3, 2007

Please make payment by Check, Credit Card or Debit Card. The Missouri Bar does NOT accept cash.
Don’t know where to turn?

When personal problems intrude, MOLAP can help.

For confidential assistance:
800-688-7859