

GPS Tracker

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Program Your Destination—Navigating the Business of Law

by Zachary J. Abella, Esq.



Welcome to this third edition of *GPS Tracker*—the General Practice Section's periodic (because you're busy and you don't like a lot of mail) publication providing helpful tips to practitioners from Jamestown to Montauk. Our goal, as always, is to address in a quick, easy-to-digest format, important topics that are of practical use to you.

To wit, this edition of the *Tracker* contains some great, short articles:

It's the offer many of us simultaneously embrace and dread: we've been asked to give a speech. It's great to feel wanted, but now you actually have to write something. Start with an inoffensive joke, but then what? Andria Bentley weighs in with a piece on how to write something for a public address.

If you're in solo practice or at a small firm, you're all too familiar with the concept of being both an attorney and a businessperson. Laurie

Berke-Weiss's great article is a primer for lawyers in that situation.

If you're considering or advising on a merger with another company, John Gallagher provides ten tips to help you get started.

Additionally, there's more to your smartphone than sports scores, finding coffee shops, and distracting your kids on long road trips. There are many apps that can help your practice run smoothly. All that and more in this issue.

Please note that you are receiving this publication because either you are a member of the General Practice Section, or you are a NYSBA member who has indicated an interest in general practice. If you are already a GP Section member, I have no doubt that you are finding your membership to be a truly valuable asset to your practice. If you haven't yet joined, I encourage you to find out more about our Section and join. You can join online any time

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Rain in the Forecast—Writing an Effective Speech

by Andria Bentley

Even for experienced attorneys, public speaking can be an intimidating prospect. Preparing remarks can bolster your confidence, not only by giving you the security of having something to read if necessary, but also by helping you organize your thoughts and communicate them more effectively. The following considerations can help guide your speechwriting process.

The logistics.

Who is organizing the event? Who will be introducing you? You may want to thank them and briefly acknowledge other speakers or distinguished guests in the audience at the beginning of your speech.

How long are you expected to speak? Preparing and practicing your speech can keep you from frustrating your host or audience by going over the time allotted.

What is your purpose?

If you are speaking to share your expertise, think about exactly what you

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Financing the Trip—Law Firm Marriage – Ten Tips for a Blissful Merger

by John C. Gallagher III, Esq.

Combining forces with other lawyers can increase career fulfillment and present exciting new opportunities; without proper planning, however, it can also lead to miscommunication and conflict. To help keep you on the road toward a long and happy union, the following are some key points to keep in mind when contemplating a merger.

1. Define the Goals of the Merger.

Whether it is to share costs, better service clients or take advantage of cross-selling opportunities, the goals of the merger should be defined at the outset. Defining goals will assist you in determining if a merger is in the best interest of your practice and in identifying appropriate merger candidates.

2. Identify Conflicts. Potential conflicts should be vetted early on as they may prevent a merger outright or eliminate its potential benefits.

3. Name the Firm. Naming the new firm can be a sensitive matter and should be broached early in discussions. If naming the firm presents an immediate obstacle, it could be a sign that a merger is perhaps best avoided.

4. Exchange Financial Information. Know what you are getting into by conducting due diligence on merger candidates' finances. Be wary of any candidate unwilling to engage in meaningful financial disclosure pursuant to an appropriate confidentiality agreement.

5. Structure Compensation. Define how compensation will be determined and distributed, including, among other things, compensation for matter origination.

6. Prepare a Business Plan. Put a business plan in writing that sets out a budget, as well as marketing, client development and financial goals, and then implement that plan by reviewing it periodically against the firm's progress in each of those areas.

7. Ensure that the Firm is Insured. Before the merger is finalized, contact your insurance agent to ensure that you have appropriate insurance in place, and that the merger will not result in any gaps in coverage.

8. Pick a Business Form. Whether it is a P.C., LLC, PLLC, LLP or some other form, each structure has advantages and disadvantages

that should be considered in weighing which is the right fit for your new firm.

9. Put Your Agreement in Writing.

Regardless of the structure of your new firm, put your agreement in writing and make sure that every party to the agreement actually signs it. The agreement will serve as the keystone of a successful working relationship, and should define, among other things, contributions to the new venture, responsibility for debts and how distributions will be made.

10. Promote the New Firm. A merger presents a great opportunity to market your business to existing and potential clients. And don't forget to assure existing clients that it will continue to be business as usual.

John C. Gallagher III, Esq. (Gallagher Law Offices PLLC, New York, NY) represents businesses and individuals in connection with commercial transactions and disputes.

Rain in the Forecast—Writing an Effective Speech, continued

want to convey and how to explain it. Some studies indicate that listeners can only retain three major points made during a presentation. And although we typically avoid redundancy in written communication, repetition can be an effective tool to help your audience process information. It is often said that you should tell your audience what you're going to say, say it and then remind them of what you said.

On the other hand, if you've been invited to present or receive an award, motivate a group of people or deliver unpleasant news, retention may be a lower priority. Whatever your purpose, effective speeches are often those drafted and delivered in a conversational tone using contractions and short, relatively simple sentences.

Who is your audience?

Consider their interests and expectations. Where appropriate, tying your remarks into the

audience's experiences can engage listeners and make it easier to illustrate your points with particularly relevant examples.

Choosing a format.

Some speakers only use a handful of trigger words or talking points, while others prefer memorization. You can also prepare a full speech, familiarize yourself with it and underline certain words for emphasis, and then speak extemporaneously with full remarks to fall back on if necessary.

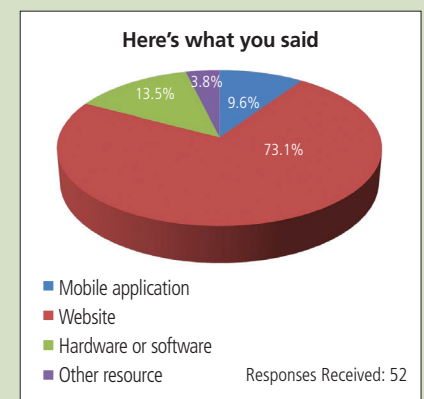
Finally, make sure to use a large enough font size, add sufficient spacing between lines, avoid breaking up sentences or thoughts across pages, and add page numbers.

Andria Bentley works as Executive Services Counsel for NYSBA, where she helps to prepare bar association officers for public events and appearances.

Roadside Assistance—e-Resources

We asked General Practice Section Members,

What is your favorite practice-related website, app, or resource – and why?



"Gmail. It lets me operate my practice on the road, at my desk, at the corner coffee shop, and automatically syncs all sent mails while filtering and threading conversations. I stopped using Outlook and never looked back." — Sarah Gold, Albany, NY

"www.NYcourts.gov Because I can find pleadings, look up opposing counsel, etc."

See more responses at
www.nysba.org/GSPoll3

Passengers Along for the Ride—Lawyer as Employer – Duty to Comply with Wage and Hour Laws

by Laurie Berke-Weiss, Esq.

New York law firms must comply with wage and hour obligations to their employees under the New York State Labor Law and the federal Fair Labor Standards Act. Solos and small firms can avoid costly pitfalls by following these tips:

Carefully analyze the decision to hire an employee as an independent contractor to avoid misclassification. The New York Department of Labor considers worker misclassification to be fraud, and employers who misclassify employees as independent contractors run the risk of incurring significant liability. [<http://www.labor.ny.gov/ui/employerinfo/employer-misclassification-of-workers.shtm>]. The test of a worker's independent contractor status is the level of "supervision, direction and control" exercised by the employer. Most law firm employees, whether part-time or full time, professional or support staff, are subject to supervision and control in contrast to an independent contractor who determines the time, manner and location of his work.

The negative consequences of misclassification come into sharp focus if an independent contractor files for unemployment insurance benefits. The Department of Labor will decide whether the "independent contractor" has been misclassified, and may notify other agencies as well. If the employee is found to have been misclassified, the employer will be liable for significant costs and penalties. Lawyer employers may need to address ethical issues if there has been a misclassification.

(See N.Y. Rules of Professional Conduct [22 N.Y.C.R.R. 1200.0] Rule 8.4, Misconduct.)

Employers also are at risk if non-exempt employees are not paid for all hours worked, including overtime. Law firm paralegals, secretaries, receptionists, and clerical support staff are generally non-exempt. Their pay must be calculated weekly and they are due time and a half for time worked over 40 hours in any given week. Even "salaried" non-exempt employees must be paid extra for time worked over 40 hours. If the employee is "salaried" for a set number of hours, the hourly rate must be calculated based on the number of hours in their usual work week – for example, 35, 37.5 or 40 hours – and he is entitled to be paid for each hour worked up to 40 at his hourly rate, and at time and a half of the hourly rate for any hours worked over 40. (See <http://labor.ny.gov/legal/counsel/pdf/overtime-frequently-asked-questions.pdf>.) If the employee is "salaried" with no set number of hours, then the hourly rate is calculated each week based on the number of hours worked during that week, and an additional 50% of that rate is due for each hour worked above forty.

Good recordkeeping is essential to ensure that employees are paid for all hours worked, and the employer is responsible for keeping these records. Also, employers cannot rely on an assertion that the employee "volunteered" to work over 40 hours as a means of avoiding the duty to pay for any additional hours worked. Employers who

do not pay for all hours worked will be liable for unpaid wages, liquidated damages, interest and attorneys' fees – and there is a 6 year statute of limitations under New York's Labor Law to bring any claim. Unpaid internships are under heightened scrutiny for this reason and must comply with strict requirements. (See www.dol.gov/whd/regs/compliance/whdfs71.pdf.)

Under New York's Wage Theft Protection Act, all New York employers must provide employees with written notice at time of hire and on or before February 1 of each successive year. The notice must include rate of pay, the basis of the rate of pay, when they will be paid, the employee's regular hourly and overtime rates of pay if eligible, along with other specific information their wages. Employers are required to obtain written acknowledgments from each employee of receipt of the notice. Penalties imposed for non-compliance can go up to \$2,500 for each employee, plus attorneys' fees. The notice educates employees about their rights to overtime pay and opens the door to claims of underpayment. Check the NYS DOL website for details about complying with this requirement. (See <http://www.labor.ny.gov/workerprotection/laborstandards/employer/wage-theft-prevention-act.shtm>.)

Laurie Berke-Weiss, Esq. (Partner, Berke-Weiss & Pechman LLP, New York, NY) represents businesses, partnerships, not-for-profits and corporations in employment issues, commercial disputes and transactions.

Technology Roadmap—Using Apps to Make Your Practice More Efficient

by Barbara Beauchamp

There are seemingly endless choices in the market for apps directed at lawyers. Having pages and pages of apps on your device will do two things: frustrate you and slow down your device. Picking a few essential apps that you will actually use will make your practice more efficient and will actually allow you to become the nimble lawyer-on-the-go you want to be.

Start with Dropbox. This app allows you to move files from your desktop to your device with tremendous ease. It's free. It works on

all platforms. It transfers even large files. This is a must-have.

If you use a cloud-based practice management system make sure you've installed the app. For example, users of Clio (offered to NYSBA members at a discount on the monthly fee) can use an app that allows them to take their practice anywhere they go. A good practice management app can handle time keeping, billing, matter management, etc. If you want to be an iPad lawyer, start by getting a cloud-based practice management system.

Next, get the FastCase app for legal research. Again, this app is free. It does a great job for your basic, on-the-run research needs. If you are a research attorney spending 40+ hours a week on Westlaw, you probably need something more than this. In that case, get the Westlaw app – you will need to login with your Westlaw credentials. (The Lexis app is similar, FYI.) If you are a general practitioner who just needs to answer a quick question and you aren't near those impressive



ADDRESS SERVICE REQUESTED

Let's Not Reinvent the Wheel—Tips for Using the GP Section Listserve

The General Practice Section's listserve remains an active and informative email forum that can serve as an invaluable resource for GP Section members. Since the last *GPS Tracker*, a sampling of the diverse topics discussed on the listserve by members includes:

Dealing with an uncooperative witness; Supervision of paralegals; HIPAA violation; Ethics questions; Identity theft; Utility company liability; Real estate issues; Wrongful death claim; Sample answer and discovery demands in a landlord lead paint defense; Child custody; and Representing a dentist who is buying a practice.

Members: Participate Real-Time, or at Your Convenience

Real-time participation in the listserve keeps you up-to-date as messages are posted. If you prefer not to receive multiple messages in your inbox, however, you can still participate by updating your account preferences.

If you are already a member of the General Practice Section listserve, here's how you can update your account:

- (1) Log into your NYSBA member record at www.nysba.org then click on the "Forums / Listserves" tab on the left
- (2) Select "my account" in the upper right side of the page
- (3) Under the General Practice Section listing, use the dropdown menu to select your preference of the following options:
 - a. **Mail** — Receive list messages at your email address as they are posted
 - b. **Nomail** — Do not receive any messages at your email address. If selecting this option, you may still view discussions and contribute online at your convenience

nience from the Forums / Listserves area at www.nysba.org.

- c. **Index** — Receive one email message daily with a list of subject lines from the prior day's discussions. If any particular subject is of interest, you can read the full messages online at Forums / Listserves at www.nysba.org.
- d. **Digest** — Receive one email message daily with a list of subject lines from the prior day's discussions, followed by the text of each message posted.

Not a Member?

Please note that the General Practice Section listserve is an exclusive benefit for members of the GP Section. If you are not a member of the Section and would like to join, please visit www.nysba.org/GP, or call the State Bar Service Center at 800.582.2452. Section dues are just \$25/year with your NYSBA membership.

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at www.nysba.org/GP (membership is only \$25 per year with your NYSBA dues). Thanks, and have a great summer.

If you have any comments or questions, I welcome your feedback. Please do not hesitate to contact us at generalpractice@nysba.org. I hope you enjoy this edition of *GPS Tracker*!

Zachary J. Abella, Esq. is Chair of the General Practice Section.

Please be sure to check out NYSBA's forum guidelines at www.nysba.org/forumguidelines.

Questions?

Contact generalpractice@nysba.org.

Technology Roadmap—

Using Apps to Make Your Practice More Efficient

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law books you use to decorate your office, use the FastCase app.

If you really want to work in a fully mobile environment, you will need a software suite — and there's an app for that. Actually, there are several, but Documents To Go is widely considered the best of the bunch. It's available for all the platforms. There is a free version that allows you to view documents, but invest the \$14.99 for the full version if you plan to do business on your device (and actually edit documents).

The final tool in the toolbox is a PDF reader. You can get a free app from Adobe.com for either iOS or Android devices.

Please note: It's time to let the Blackberry go. Lawyers love their Blackberries — but the technology is now outdated. Upgrade to a smartphone, a tablet or both. If the thing you love most about your Blackberry is the keyboard, spend an extra \$99 and get a keyboard case when you invest in an iPad for your practice.

Barbara Beauchamp is NYSBA's Manager of Internet Services, dealing with the Web, blogs, social media, ecommunications, and more.