

Perspective

A publication of the Young Lawyers Section
of the New York State Bar Association

A Message from the Section Chair

In my initial Chair's message back in the fall, I indicated that one of the main focuses in my year as Chair would be to increase Section membership and also the activity level of current Section members. In reviewing my goals at this halfway point, it appears that we have been able to make progress. However, there is still room for significant improvement.



In December, I was asked by a prominent legal periodical to author an article to be published in conjunction with the NYSBA annual meeting. That article was aimed at law firm leadership and other employers of new and young attorneys. The purpose was to encourage those people to support Bar Association participation among the newer attorneys. I asked those same leaders to make it known to the younger attorneys that Bar Association participation was not only encouraged but also highly valued.

All of us can remember starting our first legal job and immediately feeling the pressure to perform. Unless the employer makes Bar

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The Pitfalls of Interviewing at a Law Firm

By Andrea M. Alonso and Kevin G. Faley

While interviewing young lawyers for associate positions in our insurance defense firm, we have seen many qualified applicants continuously commit the same problems over and over. Basically, many young attorneys do not know enough about the firm they are interviewing with, have unclear personal and professional goals and fail to understand the needs of the particular law firm. These pitfalls can all be avoided with proper preparation, self-examination and some thought as to the interviewer's perspective on the candidate.

There is the old joke involving the CEO of a corporation who interviews a CPA, an MBA and an attorney for a job. He hands the CPA a line of figures and asks him "What is the total?" The CPA answers: "\$4,376." He asks the same of the MBA who responds, "\$5,786." He hands the figures to the attorney who responds: "What number do you want it to be?" The attorney was hired.

While this joke is often recited to poke fun at attorneys, it can also be used as an example for interviews. The attorney was hired because he viewed the task from the CEO's perspective, not from his own. Young lawyers commit critical errors when

they direct the interview towards their wants, their needs, their expectations and not towards those of their prospective employer.

Preparation: Know the Enemy

As in any lawsuit, preparation is the key to winning the case. Information is the mother of victory. This is also true of the interviewing process. A young lawyer must do extensive

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From the Editor's Desk

Welcome to the Spring 2000 issue of *Perspective*. I must first and foremost thank Barb Samel, who has done an extraordinary job as the Editor-in-Chief for the



past three years. She has definitely "raised the bar," so to speak, and I can only hope to maintain the level of professionalism she has set. I also wish to thank Terry Scheid and the newsletter department at the State Bar for their guidance and patience with me during this learning process.

With this issue I would like to announce a new regular feature entitled "**SOUND OFF!!!**" This feature will provide a unique outlet for our Section members to *anonymously* express their viewpoints on any number of issues, unhindered and without fear of reprisal. The way it will work is simple. Each issue a suggested topic will be listed, and all readers are encouraged to respond via email both to that topic and/or any other recent topic of interest. Unlike substantive articles, messages should be brief (30-50 words maximum).

The ultimate goal of "**SOUND OFF!!!**" is to flesh out key areas of interest to our members, for better or worse. All readers are strongly encouraged to briefly express their opinions on such topics as CLE requirements, law school loans, pro bono work, billable hours, general working conditions, working/dealing with older or more experienced attorneys, recent cases, regulations or statutes that may prove to be controversial, movies or books portraying young attorneys, comments/criticism of this magazine or even the Young Lawyers Section, etc. The fea-

ture should not be viewed as only a place to voice complaints, however, as complimentary or merely informative responses are encouraged as well. While I wish to impose as few rules as possible, the magazine reserves the right to edit or not print responses which are in poor taste.

The main topic I have chosen for "**SOUND OFF!!!**" (responses to be printed in the next issue of *Perspective*) is the ever-rising cost of law school. Despite various articles on this subject, I do not think the public at large or legal employers truly recognize the enormous debt and sacrifice most lawyers incur for a mere three years of law school. I often become upset when I hear commentators stating that the average law school debt is \$30-\$40k, when it seems that a great number of people I went to law school with easily fell into the \$60-70k range (or higher), and that was five years ago! I think this is an issue that needs to be explored and analyzed, as the pressures of overcoming such a debt can and have led to serious problems for some young attorneys. Such pressures were apparently not lost on radio "shock-jock" Howard Stern, who recently offered to partially pay off a young lawyer's student loans if she would wear a bikini on his show (the lawyer refused). More details of "**SOUND OFF!!!**" can be found in the ad in this issue on page 3. Please send all comments via email to: jamesrizzo9@juno.com.

In addition to your substantive articles, I am also interested in receiving artwork, cartoons, photographs, humorous anecdotes and memorable quotes of interest to our Section members. **Please note that the deadline for submissions for the Fall issue of *Perspective* is August 18, 2000**, so all material must be received at least a few weeks before that time to allow for editing. My primary goal is to supply you

with a magazine that is useful, informative and entertaining, and hopefully inspires you to get more involved with the Young Lawyers Section.

In the relatively short time I've been involved with the Section, I've had the honor of standing only feet away from the Justices of the U.S. Supreme Court as I was sworn in to the bar of that Court (along with other Section members), was part of a small group who met and talked with Chief Judge Judith Kaye, who generously gave us a personal tour of the Court of Appeals, and have attended numerous social events where I have met young lawyers across the state. I also had the distinct privilege of having my picture in the *New York Law Journal* as part of a rib-eating contest, but that's another story.

On a more serious note, I would like to dedicate this issue of *Perspective* to the Presiding Justice of the Fourth Department, M. Dolores Denman, who passed away on January 17, 2000, at the age of 68. In 1991, she became the first woman named a Presiding Justice at New York's Appellate Division level. Although I did not know her personally, Justice Denman struck me as a person of great intelligence, wit, and humor. I recall her speaking at my admission ceremony in 1996, and I believe she inspired many to feel that the last three years of law school were well worth the effort. She was also quite generous to me when I nervously appeared before her to argue my first appeal a short time thereafter. Justice Denman has made an impact on the decisional law of this state which will not be forgotten.

I hope you enjoy this issue of *Perspective*. Your comments, suggestions and contributions are always welcome.

James S. Rizzo

Tired of Long Hours, CLE Requirements, or Maybe You Just Want to Congratulate a Colleague on a Recent Accomplishment? If So, Then It Is Time for You to . . .

SOUND OFF!!!

Perspective is proud to offer a first-ever chance for our Section members to anonymously express their opinions, complaints and/or other assorted commentary on any number of subjects affecting young lawyers today. The way it works is simple. Each issue a primary topic will be given for readers to comment on (see below). However, submissions are strongly encouraged on any other recent topic of interest (controversial local, state or federal laws being considered, a new regulation affecting young attorneys, law school/bar exam/law firm war stories, an attorney or program you'd like to congratulate or publicize, etc.). Names and contact information will only be published if the author requests it. All responses will be published in the next issue of *Perspective*.

All comments should be brief (30–50 words) and should be sent to *Perspective's* Editor-in-Chief via email at: jamesrizzo9@juno.com. *Perspective* reserves the right to edit responses and the right not to publish responses considered inappropriate.

Sound Off!!! Would Like Your Response to the Following Question:

DO YOU FEEL YOU HAVE PAID TOO MUCH FOR LAW SCHOOL?

Responses may include the total cost and/or amount of student loans incurred, terms of loan(s), satisfaction level with your law school and/or loan company, opinions on the rising cost of law school, satisfaction with your career choice, etc.

We look forward to hearing from you!

Eight Steps to Better Time Management for Lawyers

By Eva Wisnik

An inherent part of practicing law is working in a reactive work environment. Being client-focused means that you are always responding to others' demands, including those of senior attorneys, partners and clients. Time management is an essential tool that will enable you to respond to these demands fully and appropriately, yet maintain some sense of control. My goal in this article is to share specific tools and strategies that will help you to manage your time effectively.

By employing proven time management techniques, you will be more focused and productive because you will be "on top" of your assignments instead of feeling buried under them. By learning to plan, prioritize, organize and delegate your daily actions more efficiently, you will enjoy greater job confidence and, therefore, be perceived as competent. The following strategies may seem obvious, but they will work only if you commit to daily planning, focus on your priorities and take daily action steps to most efficiently use your most limited resource—time.

1. Start your day with an action plan. Invest 15 minutes to plan each day. To begin, identify the key goals for the day. Plan how you can achieve these goals by breaking them down into manageable action steps. Make sure these goals are realistic. Be honest with yourself and do not confuse your daily action plan with a wish list.

In designing your action plan for the day:

- Identify the three goals you would like to accomplish that will, by the end of the day, make you feel that your time was well invested.

- Estimate the time it will take to complete the action steps (keep in mind that on a productive day you can plan on accomplishing 4-5 hours of concentrative work).

"By learning to plan, prioritize, organize and delegate your daily actions more efficiently, you will enjoy greater job confidence and, therefore, be perceived as competent."

- Add in time for delays, obstacles and interruptions (this is where the other 6-8 hours are spent).
- Identify those available resources that can help you achieve your goals. Planning will allow you to identify and utilize existing resources such as the library, established precedents or brief banks, and word-processing. These resources will enable you to use your time and smarts to do the aspect of the legal work where you add the greatest value. For example, before diving into a memo, you may want to speak to the librarian about locating specific precedents or call an associate who has worked on similar cases. Taking the time to think through how you can most efficiently use your available resources will save you time that can then be invested in improving your final work product. Remember, when you plan ahead and line up the resources you need, you will not have to stand by the copy machine for 35 minutes when your secretary has left for the day.

2. Prioritize your action steps.
Apply the 80/20 rule and identify

the steps that will generate the greatest results. In most areas of your life, you will find that 80% of your results come from 20% of your actions. Therefore, by identifying and focusing on the actions that will produce the greatest results, you will be most productive. For example, if doing a first draft of a client memo is the most important item on your daily action plan, identify possible resources and complete the outline for the memo before returning routine phone calls. By focusing throughout the day on the assignments that deserve the greatest priority, you will leave the office feeling that you used your time and resources most effectively. The rule that the most efficient and productive attorneys use is to do the items that they have identified as "most important" first. Productivity increases when you save tedious tasks, as well as projects with later deadlines, until after you have completed at least one of your three most important goals for the day. In addition, it helps to confront challenging projects immediately; they lose their intimidating face once you tackle them. For example, if you need to speak with a partner who has a reputation for being difficult about an assignment you are working on, talk to him or her the first chance you get. Otherwise, you will be distracted by NOT taking this action and you will barely be able to focus on your other projects.

3. Delegate responsibilities.
Learning to delegate effectively is a challenge. You should never confuse delegating with dumping! Even if you work in a small firm where there are fewer resources, you must begin to distinguish between the actions you need to take and those that are best delegated. Here are two rules to apply in making this determination:

A. Will mastering this task enhance your professional development? Will you be adding to your learning curve by completing this task? When you begin practicing, there are some tasks you want to know how to do so that you never feel disabled. For example, learning how to use the fax machine or making minor edits to a client document on the computer.

B. Is my doing this task at my billable rate in the best interest of the client? For example, if your billing rate is \$80 per hour should you be inputting a document into the computer or would the client prefer for a secretary, temp or wordprocessor to do it at a much lower rate per hour?

Possible tasks to delegate include:

- Confirming appointments/meetings
- Entering billable hours into system
- Scheduling meetings
- Correspondence
- Faxing
- Organizing documents
- Travel arrangements
- Creating files
- Filing
- Research
- Photocopying
- Pulling cases
- Updating your rolodex
- Preparing Fed Ex airbills

Think of your secretary, paralegals and other associates as resources. By taking the time to identify and delegate certain tasks, you can then spend time on those parts of the project to which you add the greatest value. However, you must be willing to invest time in explaining what you want. And you must be prepared to trust your co-work-

ers. The following tips can guide you towards successful delegation:

- Fully explain what it is you want the end product to look like (i.e., how should the document be laid out, where do you want the page breaks, etc.).
- Let your co-workers have full responsibility for delivering the end product that you have outlined, but provide them with possible resources, such as precedents or samples of similar work.
- Point out possible obstacles and challenges.
- Give both critical feedback and praise for well accomplished tasks.
- **Trust them!**

By learning to delegate effectively, you will be able to devote more of your own time to accomplish those action steps that require both your expertise and your time.

4. Create systems that will support your work. Ideally, when a partner comes into your office and asks for his client's file, you immediately want to locate it to show how easily you can retrieve information. If you establish uniform procedures for organizing each case or deal, you will be able to locate any file at a moment's notice. To stay on top of all the paper that flows into your office, you may want to:

- Start a new legal pad for each new assignment, which includes:
 - Basic client information – client charge number, phone numbers, fax numbers, names of parties involved in the matter, etc.
 - Deadlines
 - Research data
 - Outlines and drafts of memos
 - Project Action Plan
- Create a Redweld file folder for each new case, which includes a

labeled file folder for documents such as:

- Distribution lists
- Original documents
- Research
- Drafts
- Faxes
- Pleadings

At the end of each day, invest five minutes in placing all loose papers into the appropriate files. By creating these organizing systems from the start, your office and desk will look cleaner and neater and you will feel more in control. In addition, attorneys who work with you will have increased confidence in you and your work.

5. Learn to control interruptions. In all legal environments, interruptions are a normal part of the day. Your phone will ring, e-mail will beep, and visitors will stop by unexpectedly. Too often, by constantly responding to interference, we *allow* ourselves to get interrupted. The problem is that it usually takes longer to recover from the interruption and refocus on the project, than it takes to deal with the actual interruption. However, there are moments when you have a choice. For example, when you come into the office early to draft a memo, do not allow yourself to be distracted by a ringing phone. Remember, the caller doesn't know that you're in yet, so let your voice-mail retrieve the call. In order to better control interruptions:

- Always add in extra time for interruptions when planning your day.
- Change your voice-mail daily.
- Return non-urgent phone calls in "batches" after important projects are completed.
- Answer e-mails a maximum of 6 times a day—twice in the morning, before and after lunch and twice in the afternoon—as

opposed to each time a new one arrives.

- Visit colleagues, as opposed to having them visiting you, so you can control the length of the visit.
- If you are in the middle of an important project, ask if you can get back to the caller as soon as you are finished, instead of stopping and then hoping to get back into the project.

"Deciding when you want to be interrupted is a vital key to time management. You will not be able to eliminate interruptions, but you can better control them."

You have more control over your time than you sometimes may believe. Deciding when you want to be interrupted is a vital key to time management. You will not be able to eliminate interruptions, but you can better control them.

6. Block out time. Lawyers who are most effective at time management block out time during the day to accomplish their most important projects. For example, after completing all routine tasks, such as answering e-mails and returning phone calls, they ask their assistants to tell callers that they are "in a meeting." They don't necessarily clarify that it is a meeting with themselves. These attorneys then do concentrative work, such as research or drafting for 1–2 hours. By being able to block out 2–4 hours daily to complete the important projects, they are able to accomplish significant pieces of client work before 5 p.m.

7. Learn to communicate and ask questions—now. Poor communication can be the biggest time waster, as the following true story illustrates. A junior associate was once assigned a time-consuming project. For five straight days she locked

herself in the library to do research. She produced an extremely impressive product. Unfortunately, she did not receive any credit for her work. As it happened, the client no longer needed the firm's help. Because the associate did not keep in touch with her supervising attorney, she failed to learn of this change. In addition, she also lost precious time that could have been used to complete other client work. To avoid such a scenario, you should:

- Ask questions to clarify assignments.
- Ask for possible resources.
- Ask for deadlines.
- Keep those you work with well informed of your progress.
- Address possible obstacles directly and ask for help.

Learning how to communicate effectively with other attorneys, clients, and staff is critical to successful time management and a successful career. If you take responsibility for staying in touch with supervisors and colleagues, you will get the information you need to prioritize your time most efficiently.

8. Work as a team with your secretarial assistant. Your assistant is one of your most valuable resources. He or she has the ability to help you achieve your goals. You can maximize your secretary's capabilities by facing projects as a team. To support this essential relationship:

- Make sure your secretary has a copy of your daily calendar so he or she always knows where you are.
- Update your secretary on all of your current projects and any projects you will be working on in the future.
- Communicate your weekly schedule and plan ahead with your secretary.
- Clarify what needs to get done and when.
- Help your secretary to prioritize the most urgent tasks on a daily basis.
- Acknowledge your secretary's contributions regularly.
- Know your secretary's talents. Use them and praise them.

Your secretary can be your most valuable tool for managing your time.

By mastering the skills outlined in this article, you will be perceived as the competent professional that you are. As a result, those you report to will trust you and your work.

Eva Wisnik, President of Wisnik Career Strategies, Inc., has trained over 2,000 attorneys in CLE-approved Time Management Skills. She is the former Director of Recruitment and Training at Schulte Roth & Zabel and Cadwalader, Wickersham & Taft.

"No written law has ever been more binding than unwritten custom supported by popular opinion."

**— Carrie Chapman Catt,
American feminist (1859-1947)**

Who Ever Said There's No Humor in the Practice of Law?

By Andy Brick

For my first job as an attorney, I had the unique experience of serving as the administrator for a parking violations bureau on Long Island. Twice a month we would hold trials before a hearing officer. Prior to trial, we would conference the case in an attempt to achieve a plea bargain. People would explain their side and we would make a determination to dismiss, offer a reduced fine, or take the matter to trial. One of my first management decisions was to require all staff to keep a record of the wackiest excuses people used to try to get out of their ticket. Below are some of my favorites. Needless to say, each resulted in a quick conviction!

- I parked in the fire zone but I was just returning movies, not renting any.
- I am allowed to park in that handicapped space, I was in a coma.

- I didn't know it was a handicapped space because I'm color-blind and didn't realize the sign was blue.
- I'm allowed to park in a fire zone, I'm a volunteer fireman.
- Under the law it wasn't parked, it was standing because I left the motor running and my children were in the car.
- I had to park in the fire zone because all the handicapped spaces were taken.
- I only parked there so I could complain to the store manager about the lack of parking.
- I was not parked, I was changing a tire and your officer must not have seen me.
- Technically, I was handicapped by the lack of parking spaces.

- The line at the drive-thru was too long.
- I was in the fire zone because I thought there was a fire.
- I just ran in for a second to buy more beer.
- I had to park in front of the hydrant because my driveway was being resealed.
- I didn't see the hydrant because it was on the passenger side.

And my personal favorite:

- Our car could not have been parked at the beach on that date because my husband and I were in Europe and our teenage son isn't old enough to drive.

Andy Brick is counsel for the New York Conference of Mayors in Albany, New York.

"Committee—a group of [persons] who individually can do nothing, but as a group decide that nothing can be done."

— Fred Allen, comedian (1894-1956)

Ten Tips for the Newly Admitted

By Anne E. Thar

Statistically, new lawyers can expect three legal malpractice claims during their careers. You can beat the odds by following these tips.

1. Don't start your own firm without "apprenticing" first with a more seasoned lawyer. Sorry, but that clinic you took in law school didn't make you a lawyer. Rather than flying solo, take a position with the most respected lawyer in town—even if only for six months at slave wages. Use the opportunity not only to gain substantive legal experience but to learn about file management, billing and collections, conflict of interest systems, client relations, and the other business aspects of practice.
2. Establish good working habits. Nearly 50 percent of the legal malpractice claims reported each year are caused by administrative problems and poor client relations. Missed deadlines, poor documentation, fee disputes, and unanswered telephone calls are signs of a law office that doesn't maintain strict procedures and attorneys with poor work habits.

In short, it's the little stuff that can kill you from a legal malpractice perspective. As a novice, you can either discipline yourself to do things the right way or develop bad habits that will increase your exposure to legal malpractice and impede your success.

3. Ask questions. Lots of questions. Your number one goal as a rookie lawyer is to

acquire legal knowledge and skill. If you're in an environment that stifles questions, get out quickly.

4. Consider concentrating your practice. Why? First, no lawyer can know it all, which is why general practitioners have a disproportionately high incidence of legal malpractice compared to lawyers who concentrate their practices. Second, you'll stand out from the crowd much more quickly. Third, you'll derive a greater sense of satisfaction from your job as you develop a knowledge base with which to tackle complex issues (i.e., the cool stuff). Finally, you'll enjoy greater peace of mind, which beats that nauseating feeling you get when you don't know what you're doing.
5. Develop time management skills. Some attorneys rush from one emergency to the next all day long. They're actually no busier than others, but they've never mastered the skill of time management. Practicing legal triage will inevitably lead to claims, not to mention high anxiety.

Time management includes prioritizing projects each day, scheduling daily uninterrupted work time, and developing timelines for each case or project that identifies dates by which certain tasks should be accomplished. If you lack time management skills, take one of the many daylong courses on the subject. It could be the most productive day you have all year.

6. Start a sample form and checklist file immediately. Great lawyers have at least one thing that rookies haven't—a wonderful set of sample forms and checklists. The next time that you run across a well-drafted complaint or a superb buy/sell agreement, add it to your form file. Likewise, obtain sample checklists from the library or other firm members for each of the major types of work you perform—real estate closings, will drafting, corporate formations, or personal injury suits, to name a few. As you identify nuances or hidden tasks, add them to your checklists.
7. Take vacations and pursue your passions. Maintain a sense of balance in life, unless you plan to become the workaholic down the hall that no one really likes on a professional or personal level.
8. Find a mentor. Wherever you practice, seek out at least one experienced lawyer. If you're lucky, you'll create relationships with several mentors, each of whom will provide a different type of advice or skill. One may help you develop your writing skills. Another may be the perfect role model for trial or negotiation skills. Yet a third may coach you through the dangerous waters of office politics. If no one at your office or firm fills the bill, look for a mentor at your favorite state, local, specialty or ethnic bar association.

9. Don't take the risk of substance abuse and depression lightly. The legal profession has a higher-than-average incidence of substance abuse and mental illness. Know the warning signs. If your method of relieving stress in college and law school involved alcohol or other stimulants or depressants, you're already on a treacherous road. And don't ignore feelings of depression. The pressures of being a lawyer can affect even well grounded attorneys.

10. Maintain legal malpractice insurance. Make sure that you are continuously covered by a legal malpractice insurance policy while you're in private practice. As a new attorney, don't feel reluctant to ask your firm whether or not it maintains a professional liability policy and whether it covers you. If you're practicing alone and have limited financial resources, purchase the lowest limits available. (The premium is often less expensive than car insurance.)

Finally, good luck to all of you as you start your legal careers; a little good luck never hurt anyone.

Anne E. Thar is Vice President and General Counsel, ISBA Mutual Insurance Company.

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"From *The Devil's Dictionary* by Ambrose Bierce:

"Being instated as an archangel, Satan made himself multifariously objectionable and was finally expelled from Heaven. Halfway in his descent he paused, bent his head in thought a moment and at last went back. 'There is one favor that I should like to ask,' said he.

'Name it,' [said the Creator].

'Man, I understand, is about to be created. He will need laws.'

'What, wretch! you his appointed adversary, charged from the dawn of eternity with hatred of his soul—you ask for the right to make his laws?'

'Pardon; what I have to ask is that he be permitted to make them himself.'

It was so ordered."

Editor's Note: *The Devil's Dictionary*, originally published in 1911, is a witty, satirical and sometimes caustic volume of "definitions," which will forever alter the way you view dictionaries. It is highly recommended "non-legal" reading, but can also be a handy volume to spice up any speech, article or newsletter.

Young Lawyers Section News and Events

The Young Lawyers Section held its Fall meeting in Albany on October 15, 1999, with a visit to the New York Court of Appeals. The fortunate attendees were able to spend over an hour with Chief Judge Judith S. Kaye, who spoke about her experiences as head of the state's highest Court. Besides answering questions, Judge Kaye treated the group to a personal tour of the Court facilities, including her office, where she proudly displayed the desk once used by Justice Benjamin Cardozo. She even demonstrated how the simple press of a button rigged to the desk could summon all members of the Court at a moment's notice. Personal introductions were given from each member and Judge Kaye encouraged everyone to join her on the bench for group photos. All agreed that the visit was unforgettable and were impressed with the warmth, humor and generosity displayed by the Chief Judge.

The Section also sponsored a two-part MCLE program at the



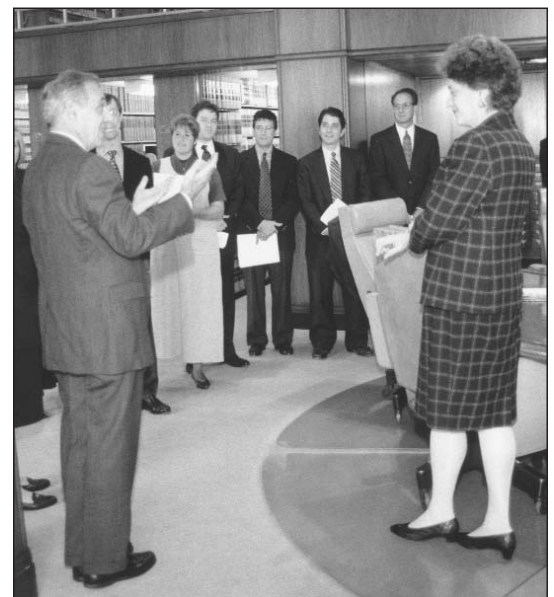
YLS Section members were privileged to view the Court of Appeals from the Judges' perspectives. Chief Judge Judith S. Kaye is seated in her usual chair surrounded by YLS members who attended a lecture and tour of the Court of Appeals.

NYSBA's Annual Meeting held in New York City on January 26, 2000, hosted by Section Chair Todd D. Kilpatrick and Program Chair Jonathan L. Bing. The program, entitled "New York Civil Practice and Legal Ethics: What Every Lawyer Must Know," began with the ever-popular "New York CPLR Update" presented by Distinguished Professor of Law David D. Siegel. Professor Siegel was followed by an ethics roundtable which discussed such issues as "Balancing Ethical Obligations with the Drive to Succeed," "Recent Changes in the Disciplinary Rules," and "Real-Life Ethical Dilemmas Facing Lawyers." Panel speakers featured United States Senior District Judge Richard Owen (SDNY), Steven C. Krane, NYSBA

contact the Section for more information if you are interested.

Following the MCLE programs, Clyde Jay Eisman was presented with the NYSBA's 2000 Outstanding Young Lawyer of the Year Award. A reception was held in his honor with many family and friends present. Attorney Eisman has a long record of accomplishments and the Section

President-elect Nominee and a partner with Proskauer Rose, LLP in New York, Professor Roy D. Simon, Jr., of Hofstra University School of Law and Patrick M. Connors, from the law firm of Hancock & Estabrook in Syracuse. Attendees received 2 MCLE credit hours of Ethics and 1 credit hour of Practice Management/Professional Practice. As the Young Lawyers Section offers many opportunities to participate and speak at MCLE programs, please do not hesitate to



While touring the Court of Appeals Library, Judge Joseph W. Bellacosa (left) dropped in to speak with Chief Judge Kaye and the YLS members.



Chief Judge Kaye addressed members of the Young Lawyers Section at the Court of Appeals tour during the Fall Section Meeting held in Albany. Pictured from left are: Todd D. Kilpatrick, Binghamton, YLS Chairperson; Norman Massry, Albany; Susan Bernis, Farmington, CT; John Szekeres, New York; and Veronica M. Wyckoff, Freehold.



Clyde Jay Eisman, New York (left) is presented with the Outstanding Young Lawyer Award by YLS Section Chair Todd D. Kilpatrick, Binghamton, during the Annual Meeting of the Section held at the Marriott Marquis in New York City. (see related article on page 17.)

was proud to honor this impressive young lawyer. See article, page 17.

At the conclusion of the Annual Meeting, the Young Lawyers Executive Committee retired to the Tennessee Mountain restaurant for a memorable (and for some, regrettable) rib-eating contest. A photographer from the *New York Law Journal* captured the sauce-covered and unsuspecting participants (Sue Ber-

nis, Barb Samel, Greg Amoroso and Jim Rizzo) in order to preserve our youthful indiscretions in perpetuity. The photo can be viewed in the January 28, 2000, *New York Law Journal* at page 23. Needless to say, a good time was had by all.

The Section further showed its fun side through various district events held throughout the state. A 3rd District social event was recently held at Jillian's in Albany in conjunction with the Albany County Bar Young Lawyers.

There was also a New York City gathering at the Brooklyn Brewery. Such events are a great way to network or simply have a good time with other young lawyers in a relaxed atmosphere.

Finally, I would like to encourage everyone to attend the spring meeting to be held on May 16, 2000, in Manhattan. More details of this event are discussed elsewhere in this issue. Please watch your "In Touch" fax newsletter for more information on upcoming district events near you. You can also visit our Section on the web at <http://www.nysba.org/sections/young>.



Part of the YLS MCLE program, held during the NYSBA 2K Annual Meeting in NYC provided 2 hours of ethics credits. Panelists (from left) Hofstra University School of Law Professor Roy D. Simon, Jr., Hempstead; NYSBA President-elect Designate Steve C. Krane, New York City; U.S. District Court, Southern District of NY Judge Richard Owen, New York City; Attorney Patrick M. Connors, Syracuse; and Program Moderator Jonathan L. Bing, New York City, discussed balancing ethical obligations with the drive to succeed, recent changes in the DRs and dilemmas facing lawyers today.

"Most of the things worth doing in the world had been declared impossible before they were done."

— Justice Louis D. Brandeis (1856-1941)

Ethical Obligations of Attorneys Handling Escrow Funds

By Mark S. Ochs

Introduction

There often is confusion and a lack of awareness of the role and responsibility of an attorney who has received money from a client or third party. This article addresses the handling of escrow funds by attorneys.

I. Attorney Escrow Accounts

An attorney who receives funds on behalf of a client or third party is a fiduciary and, as such, must safeguard those funds in accordance with the Code of Professional Responsibility¹ and the Judiciary Law. Any funds belonging to another person, received in the course of the attorney's practice of law, are to be maintained in a special account. This account is to be kept separate from any business or personal accounts of the attorney and separate from any accounts the attorney may maintain as executor, guardian, trustee or receiver, or in any other fiduciary capacity.²

A. Location of Account

The escrow account must be in a New York bank which agrees to provide reports pursuant to the Dishonored Check Rule.³ Records for the account must be located or available at the attorney's principal New York office. The account may be maintained in a bank outside of New York only if that bank complies with the Dishonored Check Rule and the attorney has obtained prior detailed *written* approval from the person to whom the funds belong.⁴

B. Title of Account

The account is to be in the name of the attorney or law firm and must contain the title "Attorney Special Account," "Attorney Trust Account,"

or "Attorney Escrow Account." Checks and deposit slips must also bear that designation.⁵ The account title may include other descriptive language as long as it does not conflict with the required language. For example, an attorney may add "Real Estate Account" or "Closing Account" below the title. If the escrow account is an IOLA account, which most are, an additional designation is required.⁶

C. Funds of Attorney

Other than an amount sufficient to maintain the account, no funds belonging to the attorney may be kept in the escrow account.⁷ Unearned attorney's fees deposited into an escrow account are to be withdrawn promptly when earned.⁸ Where an attorney's fee is deposited in escrow and a dispute thereafter arises, the disputed portion may not be withdrawn until the dispute is resolved.⁹

D. Earned Fees

Earned fees should not be deposited in an escrow account. They are the property of the attorney and their deposit constitutes commingling of personal funds with those belonging to clients.¹⁰

E. Personal Use of Escrow Account

Escrow accounts are not to be used to pay personal debts nor are they to be used to shelter an attorney's funds from judgment creditors or tax liens.¹¹ Funds due an attorney should be disbursed from the account by check payable to the attorney. They should not be withdrawn by issuing checks to third parties in satisfaction of personal obligations or business expenses unrelated to the particular matter.¹²

F. Payments from Escrow Account

Payments from the account may only be made to a named payee by check or with the prior written approval of the party entitled to the proceeds, by bank or wire transfer. Checks should not be made payable to cash and cash withdrawals or transactions using an ATM card are not permitted.¹³

G. Signatories

Only an attorney admitted in New York may be a signatory on an escrow account. Paralegals, office managers or other non-attorneys may not sign escrow account checks.¹⁴

H. Deposits

An attorney may not make disbursements against a deposit until the funds have been collected. Funds from an earlier transaction may not be used as a float to cover uncollected funds.¹⁵ The use of post-dated checks is a practice fraught with danger.

I. Overdrafts

Escrow accounts may not carry overdraft privileges and the account may not be associated or linked with any other account for the purpose of covering a shortage.

J. All Funds Must Be Deposited

All funds received or held by an attorney on behalf of others must be deposited in an escrow account. Cash may not be kept in an attorney's safe, even if segregated somehow from funds of other clients.¹⁶

K. Missing Clients

Where money is payable to a client who cannot be located, the attorney should apply for an order

directing payment of his or her fees and disbursements, with the balance to be delivered to the Lawyers' Fund for Client Protection for safeguarding and disbursement.¹⁷

L. Dissolution of Law Firm

The former partners or members of a dissolved law firm must arrange for one of them or a successor firm to maintain the bookkeeping records required under DR 9-102(D).¹⁸

M. Deceased Attorneys

When an attorney who is the sole signatory on an escrow account dies, neither the estate representative nor the attorney for the estate may issue checks from the deceased attorney's escrow account. In such a situation, an application needs to be made to Supreme Court for an order designating a successor signatory.¹⁹

II. Interest On Lawyer Accounts (IOLA)

An IOLA account is an unsegregated, interest bearing escrow account.²⁰ Funds which an attorney will deposit in an escrow account should be deposited into an IOLA escrow account when, in the judgment of the attorney, they are not expected to generate sufficient interest to justify the expense of administering a segregated account.

If a particular deposit is expected to earn less than \$150 in interest while in the attorney's control, the money should be placed in an IOLA account.²¹ Where the attorney determines that sufficient interest will be earned to justify a segregated escrow account for the benefit of the particular client, all interest earned on that account is the property of the client.²²

While an attorney may not be held liable for monetary damages or be made the subject of a disciplinary proceeding based upon a good faith decision to deposit funds into an IOLA account, the failure to maintain such an account has been held to constitute misconduct.²³

The obligation rests with the attorney to ensure that the IOLA fund is notified that the account has been established.²⁴

"If a particular deposit is expected to earn less than \$150 in interest while in the attorney's control, the money should be placed in an IOLA account."

• Non-Interest Bearing Escrow Accounts

There is no such thing as a non-interest bearing escrow account. Funds must either be deposited into an interest bearing escrow account with the interest credited to a specific client or an IOLA account. Even short-term special funding accounts established for mortgage transactions on behalf of financial institutions fall within these rules.

III. Alternatives to Escrow Accounts

In a situation where it would be appropriate for an attorney to establish a non-IOLA interest bearing account on behalf of a client, questions exist as to whether it is permissible for the attorney to place funds in a certificate of deposit, money market or brokerage account even with the written consent of the client or parties involved.

Specific language permitting deposit into an account other than an "identifiable bank account" was rejected when DR 9-102 was enacted.²⁵ Significant problems may arise when an attorney becomes more concerned with obtaining a higher rate of return than with safeguarding funds entrusted to him or her.

IV. Required Bookkeeping Records

Records of all financial transactions must be accurate and are to be

made at or near the time of the events recorded.²⁶ These record keeping requirements apply to all accounts associated with the attorney's practice, not just escrow accounts. For a period of seven years attorneys must maintain the following documentation:

- A record of all deposits and withdrawals identifying the date, source and description of each deposit, and date, payee and purpose of each withdrawal or disbursement;
- A record for escrow accounts, showing the source of all funds deposited, the names of all persons for whom the funds are held, the amount of such funds, the description and amounts, and the names of all persons to whom such funds were disbursed;²⁷
- All checkbooks and check stubs, bank statements, prenumbered canceled checks and duplicate deposit slips;
- Other non-banking documents relating to the attorney's representation of a client must also be retained. They are detailed in DR 9-102(D).

Attorneys are further required to maintain a running balance of trust account activity and complete periodic reconciliations.²⁸

All attorneys who are signatories on an escrow account are responsible for the activity in that account. Where an attorney in a law firm converts client funds, the failure to oversee or review the firm's books and bookkeeping practices exposes the otherwise innocent partner to discipline.²⁹ Lack of venal intent is not a defense to a charge of conversion. Intent only comes into play where the conversion charge is coupled with a charge under DR 1-102(A)(4), which requires a showing of intent to defraud, deceive or misrepresent.³⁰

V. Dishonored Check Reporting Rule

The Dishonored Check Reporting Rule³¹ provides that a bank must issue a report whenever a check from an attorney's escrow account is returned for insufficient funds.

A. Compliance with Rule

Escrow accounts may only be maintained in a bank which agrees to provide reports pursuant to the Dishonored Check Reporting Rule. All New York attorneys are deemed to have consented to the rule and the obligation rests with the attorney to make certain that the account is in compliance.

B. Report of Dishonored Check

A report is required from the depository bank whenever a properly payable instrument is presented against an escrow account which contains insufficient available funds, and the bank dishonors the instrument. This is not an overdraft rule. The check must in fact be dishonored.

C. Processing of Report

A dishonored check report is mailed to the Lawyers' Fund for Client Protection within five banking days after the date of presentment. The Lawyers' Fund holds the report for ten business days to enable the bank to withdraw the report. The report may only be withdrawn if it was issued by inadvertence or mistake. The curing of an insufficiency by the deposit of funds is not a basis for withdrawing a report. After ten business days, the Lawyers' Fund forwards the report to the appropriate grievance committee for investigation.

Conclusion

The safeguarding of escrow funds is one of the most important obligations an attorney has. The proper handling of these funds and attention to record keeping requirements makes sound business sense

and will help the practitioner avoid ethical problems that may arise.

A future article will deal with investigations relating to an attorney's escrow account by grievance committees, the audit process and the consequences of escrow irregularities. Non-escrow attorney accounts with escrow ramifications will also be discussed.

Endnotes

1. Disciplinary Rules of the Code of Professional Responsibility, promulgated as joint rules of the Appellate Division of the Supreme Court and set forth in Part 1200 of Title 22 of N.Y. Comp. Codes, R. and Regs. (N.Y.C.R.R.).
2. DR 9-102(B).
3. 22 N.Y.C.R.R. 1300 [Dishonored Check Reporting Rules for Attorney Special, Trust and Escrow Accounts].
4. DR 9-102(B)(1); 9-102(H); *In re Weisman*, 139 A.D.2d 249, 531 N.Y.S.2d 255 (1st Dep't, 1988).
5. DR 9-102(B)(2); *In re Holsberger*, 223 A.D.2d 920, 637 N.Y.S.2d 322 (3d Dep't, 1996); *In re Gambino*, 205 A.D.2d 212, 619 N.Y.S.2d 305 (2d Dep't, 1994).
6. *See*, IOLA ACCOUNTS, *infra*.
7. DR 9-102(B)(3).
8. *In re Orseck*, ___ A.D.2d ___, 692 N.Y.S.2d 766 (3d Dep't, 1999); *In re Elefterakis*, 238 A.D.2d 7, 667 N.Y.S.2d 55 (2d Dep't, 1997).
9. NYSBA ethics opinion #570.
10. *In re Gambino*, 205 A.D.2d 212, 619 N.Y.S.2d 305 (2d Dep't, 1994).
11. DR 9-102(A); 9-102(B)(4); *In re Betancourt*, 232 A.D.2d 9, 661 N.Y.S.2d 208 (1st Dep't, 1977); *In re Connolly*, 225 A.D.2d 241, 650 N.Y.S.2d 275 (2d Dep't, 1996).
12. *In re Eckelman*, 189 A.D.2d 263, 596 N.Y.S.2d 443 (2d Dep't, 1993).
13. DR 9-102(E); *In re Tinubu*, 255 A.D.2d 4, 688 N.Y.S.2d 611 (2d Dep't, 1999); *In re Bishop*, 235 A.D.2d 53, 663 N.Y.S.2d 241 (2d Dep't, 1997); *In re Amisano*, 225 A.D.2d 179, 649 N.Y.S.2d 601 (4th Dep't, 1996); *In re Ocasio*, 223 A.D.2d 339, 646 N.Y.S.2d 327 (1st Dep't, 1996); *In re Raphael*, 216 A.D.2d 788, 628 N.Y.S.2d 846 (3d Dep't, 1995); *In re Satta*, 211 A.D.2d 65, 626 N.Y.S.2d 100 (1st Dep't, 1995).
14. DR 9-102(E); *In re McMahon*, 251 A.D.2d 808, 674 N.Y.S.2d 474 (3d Dep't, 1998); *In re Takvorian*, 240 A.D.2d 95, 670 N.Y.S.2d 211 (2d Dep't, 1998); *cf.* New York State Bar Association Ethics Opinion #693.

15. *In re Elefterakis*, 238 A.D.2d 7, 667 N.Y.S.2d 55 (2d Dep't, 1997); *In re Joyce*, 236 A.D.2d 116, 665 N.Y.S.2d 430 (2d Dep't, 1997).
16. *In re Sullivan*, 253 A.D.2d 999, 678 N.Y.S.2d 169 (3d Dep't, 1998); *In re Collins*, 193 A.D.2d 22, 602 N.Y.S.2d 553 (2d Dep't, 1993).
17. DR 9-102(F).
18. DR 9-102(H).
19. DR 9-102(G).
20. Judiciary Law § 497.
21. 21 N.Y.C.R.R. 7000.10.
22. *In re Summer*, 238 A.D.2d 86, 667 N.Y.S.2d 150 (4th Dep't, 1997); *In re Matone*, 195 A.D.2d 91, 606 N.Y.S.2d 322 (2d Dep't, 1994); *In re Stella*, 193 A.D.2d 235, 602 N.Y.S.2d 636 (2d Dep't, 1993).
23. *In re Raymond*, 210 A.D.2d 694, 620 N.Y.S.2d 165 (3d Dep't, 1994).
24. Judiciary Law § 497(6)(a).
25. *See*, Gross, Marjorie E., *Amendments to the New York Code of Professional Responsibility*, 1990.
26. DR 9-102(D).
27. *In re Siddiqi*, 231 A.D.2d 150, 658 N.Y.S.2d 668 (2d Dep't, 1997).
28. *In re Warkow*, 242 A.D.2d 102, 673 N.Y.S.2d 437 (2d Dep't, 1998); *In re Capobianco*, 219 A.D.2d 179, 639 N.Y.S.2d 242 (4th Dep't, 1996).
29. *In re Ponzini*, 259 A.D.2d 142, 694 N.Y.S.2d 127 (2d Dep't, 1999); *In re Maroney*, 259 A.D.2d 206, 694 N.Y.S.2d 431 (2d Dep't, 1999); *In re Spencer*, 259 A.D.2d 218, 694 N.Y.S.2d 426 (2d Dep't, 1999); *In re Falanga*, 180 A.D.2d 83, 583 N.Y.S.2d 472 (2d Dep't, 1992); *In re Sykes*, 150 A.D.2d 126, 546 N.Y.S.2d 376 (2d Dep't, 1989); *In re Dahowski*, 103 A.D.2d 354, 479 N.Y.S.2d 755 (2d Dep't, 1984).
30. *In re Russakoff*, 79 N.Y.2d 520, 524, 583 N.Y.S.2d 949 (1992); *See also*, *In re Altomarianos*, 160 A.D.2d 96, 559 N.Y.S.2d 712 (1st Dep't, 1990); *In re Semple*, 225 A.D.2d 238, 650 N.Y.S.2d 146 (1st Dep't, 1996); *In re Baumgarten*, 197 A.D.2d 309, 613 N.Y.S.2d 361 (1st Dep't, 1994).
31. 22 N.Y.C.R.R. 1300.

Mark S. Ochs is a 1974 graduate of Boston College and a 1977 graduate of Albany Law School of Union University. He is the Past President of the New York State Association of Disciplinary Attorneys and is a frequent lecturer at state bar events. He is currently the Chief Attorney for the Committee on Professional Standards, a position he has held since 1990.

The Master of Your Domain Name

By David P. Miranda

In today's cyberworld a memorable domain name is as important as a prestigious office address, and a company with a well-known trademark will likely seek to use that mark as its domain name. Every address on the Internet is identified by a series of characters called a domain name. The rights to use the domain name "business.com" were recently sold for \$7.5 million and "altavista.com," one of the Internet's most popular search engines and "loans.com," were reportedly sold for \$3 million. For the cost of an Internet domain name registration fee, currently about \$70, an enterprising individual can register a domain name. Parties who reserve domain names with the intent to resell or license domain names back to the companies who actually own the trademark, have been referred to as "cybersquatters." Cybersquatting can cause a great deal of frustration as well as loss of potential business to a trademark owner when they seek to have their product or services advertised or sold on the Internet.

Although two companies can have non-exclusive trademark rights in a name, such as Apple computers and Apple records, only one company can be assigned a domain name for that trademark such as "apple.com." The exclusive quality of domain names has pitted business owners against each other when attempting to establish a commercial presence on the Internet. The frustration of a trademark holder's inability to use its own mark as its domain name is further compounded by "cybersquatters" who reserve someone else's trademark as their domain name. Network Solutions, Inc. (NSI), the company assigned by the federal government to register and administer Internet domain names, recently changed its policy for resolving domain name disputes between parties making claim to the same domain name. Generally, domain name ownership is provided on a first-

come first-serve basis, with NSI performing no independent search as to whether a particular domain name is infringing upon another's trademark. Pursuant to an agreement with ICANN, the Internet Corporation for Assigned Names and Numbers, domain name disputes involving names registered under Network Solutions and other registrars are subject to a new Uniform Domain Name Resolution Policy that began January 1, 2000. Under the new rules, a complaint must be filed with an ICANN-approved dispute resolution provider at a cost starting at about \$1000. The provider will then appoint a panelist (or panel of 3) that has the power to transfer possession of the domain name to a person or party with superior rights to the domain name.

There has also been litigation in federal courts between trademark owners and "cyber-squatters," individuals who register Internet domain names that represent the trademarks of others with the intention of selling the domains back to the trademark owners, or otherwise profit from an affiliation with a well established trademark. Courts have been reluctant to find trademark infringement when a name is used for dissimilar goods or services. Often there is no trademark infringement as the result of the mere registration of a domain address that is similar to the trademark of another, because use of a domain name will not necessarily cause confusion to a consumer. However, the federal Trademark Dilution Act of 1995 assists a trademark owner in stopping the use of an offending domain name when it dilutes the ability of the trademark owner to identify its product. The Ninth U.S. Circuit Court of Appeals recently affirmed a finding of trademark dilution against a "cybersquatter" who reserved Internet domain names and attempted to sell them back to trademark owners. *Panavision v. Toepfen and Network Solutions Inc.*,

97-55467 (9th Cir., 1998). When the defendant claimed he had made no use of the plaintiff's mark in commerce, the Ninth Circuit disagreed and held that offering the domain name for sale was a sufficient commercial use to maintain a cause of action. The court upheld a finding that the federal Trademark Dilution Act was violated because the attempt to sell the domain constituted a commercial use and the use of the mark as the defendant's domain name diluted the distinctive quality of the trademark.

Congress recently passed legislation that would provide additional relief to trademark owners and others harmed by cybersquatting. Under the new Trademark Cyberpiracy Prevention Act, a person shall be liable in a civil action by the owner of a trademark or famous personal name if they register a domain name with "a bad faith intent to profit" from a name that is identical, dilutive or confusingly similar to a trademark or other covered name. In addition to recovery of the name, statutory damages of up to \$100,000 may be recovered under certain circumstances.

Despite the relatively minimal cost required to register a domain name, serious consideration should be given to trademark issues and recent legal developments before choosing a domain name.

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This article was originally published in the Rowley Forrest Newsletter "Legal Insight" and is reprinted with permission.

Book Briefs

By Michelle Levine

DOUBLE BILLING: A Young Lawyer's Tale of Greed, Sex, Lies, and the Pursuit of a Swivel Chair, by Cameron Stracher. William Morrow and Company, Inc., New York, 228 pages.

The subtitle of this book promises more than it delivers. It would have been far more accurate to call Mr. Stracher's story a tale of cynicism, woe, disillusionment, and the pursuit of a better job. A familiar tale, perhaps, but not an uplifting one. This is also a cautionary tale that provides a glimpse into what happens when one gets what one wished for. In *Double Billing*, we meet a 26-year-old Harvard Law School graduate embarking on a coveted career at the fictitious Crowley & Cavanaugh, an elite New York City firm. The right degree. The right job. The dream of countless law school hopefuls. But as Mr. Stracher relates to his audience, that dream, once realized, rapidly morphs into a living nightmare.

Unfortunately, the question of who exactly is Mr. Stracher's audience was the only thing I took away from this book. Members of the profession would certainly recognize themselves. Mr. Stracher reveals many truths about the life of a young attorney, especially one working at a big firm. However, one of those truths is that personal time becomes a rare commodity, leaving one to wonder when a new associate might read this book and why. After all, any lawyer at a big firm is leading the life Mr. Stracher describes and learning firsthand the lessons he tries to impart. Misery may love company, but it is hard to imagine Mr. Stracher's counterparts voraciously consuming details they are all too familiar with. Maybe laymen are trudging through this memoir, delighted to learn how miserable those overpaid lawyers they love to hate are.

In prose littered with similes, the author painstakingly recounts vignette after vignette culled from his big-firm experience: document production in Detroit, the first deposition, the first memorandum of law. The moments of doubt and panic

"Any practicing attorney can empathize with the author's predicament, but they certainly don't teach you about it in law school."

that usually accompany these milestones are successfully captured. The other characters in the book are also recognizable, but only as representatives of various stereotypes. The partners are egotistical and inconsiderate; the associates are competitive and gossipy. There's the long-suffering girlfriend, the flirtatious paralegal, and the tacky secretary with a heart of gold. There are also genuinely funny observations and cleverly written insights.

Perhaps the most effective element in Mr. Stracher's story involves running—his love for it and his struggle to keep doing it. Memories of long, cathartic runs in Boston grow increasingly distant in the face of conference room dinners and weekends at work. Then, the author learns that C&C runs in the Corporate Challenge, and the furtive training begins. It involves the shower in the partners' bathroom and an off-hours running schedule, but it pays off. Mr. Stracher wins the race, gets the firm reported in *The New York Times*, and briefly enjoys celebrity

status at work. Everyone loves a winner, but running isn't billable.

Illustrating the extreme measures he has to take simply to enjoy a leisure activity, Mr. Stracher easily conveys the constant battle most attorneys wage against losing all balance in their lives. Having personal time become a guilty pleasure is indubitably one source of the jaded tone that pervades this book. Any practicing attorney can empathize with the author's predicament, but they certainly don't teach you about it in law school. And maybe they shouldn't. Not every first-year law student is there as the result of a calculated decision to pursue a law degree. Not every student graduates into an unfulfilling job. There are still law students full of idealism and passion; their outlook should not be marred prematurely by confronting the harsh view of the actual practice of law presented in *Double Billing*. Mr. Stracher refers to *One L*, Scott Turow's enduring guide to the rigors of first year, and opines, "It's time to read another book." It should not be this one. Let Mr. Stracher's audience be those young lawyers who are already full of inner conflict and will find comfort in a story that echoes their own sad tales.

Michelle Levine is a 1996 graduate of Brooklyn Law School and a 1991 graduate of the University of Pennsylvania. In 1999, she received recognition from the New York County Lawyers' Association as a "Rising Star." Ms. Levine is currently an associate at Peluso & Touger, a firm in Manhattan, where she practices in the areas of civil litigation and criminal defense.

2000 Outstanding Young Lawyer Award

Clyde Jay Eisman

The New York State Bar Association Young Lawyers Section honors Clyde Jay Eisman with the 2000 Outstanding Young Lawyer Award.



The award is presented annually to recognize the contribution of a New York attorney admitted to practice less than 10 years who has made significant contributions to the betterment of the community and the legal profession.

Nominated by New York attorney H. Elliot Wales, a member of the NYSBA House of Delegates, Eisman has also received the American Bar Association's Bar Leaders of the Year Award, and was named a "Rising Star" honoree from the New York

County Lawyers Association (NYCLA).

These numerous awards were presented to Mr. Eisman in recognition of his hard work and dedication to the profession, having published a quarterly newsletter titled, "The Solo Practitioner" of which approximately 20% of law schools in the nation currently subscribe. Additionally, he authors the monthly "Solo Practice Column" for the *New York Law Journal*.

In 1997 he traveled to hostile, war-torn Bosnia-Herzegovina to supervise the municipal election in the country for six weeks through the European-based Organization for Security and Cooperation in Europe. He returned to the country one year later to fulfill a promise to the children of Derventa, to personally deliver \$10,000 in sporting goods and equipment solicited by Eisman from American companies.

Mr. Eisman is a member of the Board of Directors and Executive Committee of the NYCLA where he proposed and now serves as chair of the Solo and Small Firm Practice Committee, which has become the largest and most active committee of NYCLA.

After attending Aberdeen University in Scotland for one year, Mr. Eisman earned his undergraduate degree from Berlin College, OH, and his law degree from Tulane Law School in New Orleans, LA. In 1995 he established his own solo practice in New York City.

The significant contributions that Mr. Eisman has made to the public service and legal community, along with his volunteer efforts, make him a truly deserving recipient of the Outstanding Young Lawyer Award.

REQUEST FOR ARTICLES

Perspective welcomes the submission of substantive articles, humor, artwork, photographs, anecdotes, reviews and quotes of timely interest to our Section, in addition to comments and suggestions for future issues.

Please send to:

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Articles should be submitted on a 3 1/2" floppy disk, preferably in Microsoft Word 4.0 format, along with a double-spaced, printed original, biographical information and a photograph (if desired). Please note that any articles previously published in another forum will need written permission from that publisher before they can be reprinted in Perspective.

research on the firm, its clients, and the particular partner who is conducting the interview. Fertile sources for this information include: Martindale-Hubbell, Best's Directory of Recommended Insurance Attorneys, Westlaw, LEXIS and of course, the Internet. If the attorney knows someone in the firm or in a similar firm, he should speak to him about the firm's reputation. A check of recent recorded cases being handled by the firm should be run and the potential candidate should read at length the most recent ones and familiarize himself with the others. At the interview, he should express interest in the nature and outcome of these cases.

If the young attorney has the advantage of knowing who the interviewing partners are, he should investigate their background. He should know his or her undergraduate school, law school, area of expertise and, if applicable, express a desire to become involved in that area. For example, if the partner has a special reputation in products liability, the young attorney should discuss the cases he has handled in products liability or the seminars he has attended regarding products liability.

The Dress Code

The law remains a very conservative profession. At any given moment a young attorney can be called to court on a conference or hearing and he must be dressed accordingly.

Conservative dress on an interview still is the norm. Unless the Rolling Stones are your clients in an entertainment firm, most insurance company executives do not appreciate men with facial jewelry or ponytails. Woman attorneys should not wear multiple earrings, "big hair," excessively long nails (with patterned designs) or excessively high heels. In colder climates an overcoat is essential. Ski parkas over a suit do not give a professional appearance.

True, clothes are not a measure of your legal talents or abilities, but clients base their initial opinion of a firm to a great extent on the outward appearance of their attorneys. A firm does not want to give the impression that young lawyers fresh out of law school are handling their cases.

"The most important concept that the young lawyer wants to impart at the interview is that he wants to do exactly the work this law firm does and he wants to do it at that particular firm."

The Actual Interview

A young lawyer must arrive early for the interview. Announce you are early at your entrance and agree to wait. It will be assumed that if you are late for an interview, it is likely that you will be late for court. Take this opportunity to observe the firm. Do not, while you are waiting, eat, drink coffee or do paper work. It looks sloppy. Have a neat, professional-looking attaché or folder with multiple copies of your resume and writing samples to hand to the interviewing committee. If you are unprepared and without resumes, chances are you will be unprepared in court. Remember to thank the receptionist/secretary before and after your interview.

When entering the conference room or partner's office where the interview takes place, remember to extend your hand to the men present (women must first extend their hand) and do not take a seat until all are seated. Although this may sound like an etiquette course, you must remember that your ability to relate to clients and perform in social situations is being evaluated at the interview, as well as your legal abilities. Be sure you do not direct your responses to only one attorney in the room. The white-haired partner may

not be the final decision-maker in the law firm.

The most important concept that the young lawyer wants to impart at the interview is that he wants to do exactly the work this law firm does and he wants to do it at that particular firm. An interview is not the time for career counseling questions or self-analysis. When a partner in a firm asks, "What kind of law interests you?," one's answer should be "Insurance Defense," (or trial practice, appellate practice, products liability, construction cases, automobile cases, professional malpractice, etc.). Do not state a dislike of any of the firm's practice groups, for example: "I do not enjoy medical malpractice." You will not be useful to a firm if they cannot use you in all of their practice groups.

It would be inappropriate to try to be humorous at any interview or to discuss politics, religion, ethnicity or sexual preference. Do not comment on personal objects or pictures on the interviewing attorney's desk or in the office. Your opinion of their children's photographs, for example, is not relevant or necessary.

Above all, show enthusiasm and passion for your profession. Demonstrate that you love the law and the law firm environment. The interview is not the place for statements like, "I think I might want to try cases, but I may be too shy," or "I'd like to try my hand at litigating and then formulate government policy." Remember your ability to communicate with the interviewing committee is a direct reflection of your ability to communicate with the client, the judge and the jury. Keep steady eye contact; inspire confidence. Try to imagine yourself through the eyes of the managing partner. Would you proudly introduce this junior associate to a client?

Although required billable hours and the total compensation package are foremost in a young attorney's mind, they should not be the focus of the questions and discussions with the committee. Experience, pro-

professional growth and personal satisfaction are your goals. The first question to the committee should not be, "What is your vacation policy?," but rather, "Do I handle my own case-load?," or "Will I be given the opportunity to try cases?," or something of that nature.

The Close

There is a basic rule in salesmanship and that is, "Ask for the order." It is one of the hardest things to do in business. Similarly, the young interviewee should ask for the job. He or she should state why he feels he is uniquely qualified for the job and why he will work harder than most to succeed in his new position. A follow-up letter thanking the firm for the interview should be sent immediately. It shows good form and the ability to follow through. Follow up also with phone calls, polite but firm. Ask for a deadline. Attempt to see the firm's partners in other settings such as speaking engagements or alumni events. If the

firm rejects you, reapply after you gain some experience. A law firm's needs ebb and flow and at times it is merely a question of timing that determines who gets hired and who does not. When you gain added experience, write to the firm and emphasize your broader experience level.

Summary

The Devil approached a young lawyer and asked, "Are you tired of making no money? Sick of not being respected like your cousin the Doctor? Frustrated by the long hours?" The young lawyer answered, "Yes." The Devil stated, "Here's my offer: \$1 million a year income. Penthouse in Manhattan. Private jet. Oceanside mansion. A vacation every other week. Gorgeous companions of your choice. And in return, all I ask for is your eternal soul."

The young lawyer eyed the Devil. He concentrated, then he sighed and asked, "OK, what's the catch?"

We do not advocate selling your soul to the Devil during a job interview, however, we do advise the following:

- Know the prospective employer.
- Respond to *their* needs, not your own.
- Be calm and confident.

Remember the firm is looking for hard-working, directed, dedicated individuals. Project an image of maturity, professionalism and dedication and the job is yours.

Andrea M. Alonso is a graduate of Colgate University and St. John's University School of Law. Kevin G. Faley is a graduate of St. John's University and St. John's University School of Law. They are both named partners in the insurance defense firm of Morris, Duffy, Alonso & Faley, LLP, in New York City, and specialize in insurance defense, premises and automobile liability and professional malpractice.

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A Message from the Section Chair

(Continued from page 1)

Association participation a priority, the natural reaction for the younger attorney is to fear that such activities will have a detrimental impact on production and that they are frowned upon. Lawyers in leadership positions must help dispel those fears. It is only when the younger attorney has the support of his or her employer that he or she will ever feel comfortable in becoming fully active in all that the NYSBA and the YLS has to offer.

Hopefully my article was successful in reaching at least a portion of its intended audience. If even a few who read it were motivated to seek out an associate or younger counsel and encourage that person to become active, the effort was worthwhile. My purpose in this message is to reach out to those of you who have been members of the YLS for some time and have had thoughts about becoming more active. For those of you who have, I submit that there is no better time than the present. For those who have not before thought about becoming more active, I urge you to explore the many opportunities that the Section has to offer.

The Young Lawyers Section maintains a unique position within the NYSBA. We are the voice of new and young attorneys within the Association. The YLS is allotted four sustaining positions in the NYSBA House of Delegates. The YLS is regularly asked by Association leadership to comment on issues pertinent to the practice of law and the perception of the profession as a whole. The YLS provides new practitioners an almost immediate opportunity to sit on an Executive Committee of an Association Section, to publish scholarly articles in a professional periodical with a circulation of over 2,500, and to speak at substantive programs on issues pertinent to their area(s) of practice. Section involvement also provides you with endless networking opportunities and access

to similarly situated lawyers throughout the state of New York and beyond. There is no better way to have your name become known throughout the profession and to meet and interact with the top practitioners in all substantive areas. The YLS maintains several sustaining projects including the Mentor Program, Senior Citizens Handbook and Supreme Court Admissions Program. Many other projects are currently in the planning stages. Involvement in one of the existing projects or one of those still in the planning stages is a great introduction to the Section.

Where to start? The YLS will be teaming up with the New York County Lawyers Association to present a substantive program on May 19, 2000, at the County Lawyers headquarters in Manhattan. The program will include segments on computer-generated legal research, ethics and practice management issues. Newly admitted MCLE credits will be available. Social activities are also being planned, including a possible trip to Shea Stadium to catch the Mets in action. The YLS will be convening an Executive Committee meeting at that time so this event provides a great opportunity to meet the current leadership of the Section

and to explore available opportunities for increased participation. We have kept in mind the financial constraints often experienced by young and newly admitted attorneys and have priced the full-day seminar under \$75. Attendees will receive four MCLE credits at an extremely reasonable cost. We all hope to see you there.

In that this will be my final Chair's message, I would also like to take the opportunity to express my sincere gratitude to those who have preceded me in this position, especially Richard Horowitz, Steve Milon and Emily Franchina. All of you have provided support as both mentors and friends. I would also like to take the opportunity to publicly thank the one person who has been most influential in my continued NYSBA activities. That person is Terry Scheid, the NYSBA bar services coordinator and liaison to the YLS. Terry, you are a real gem. Without you, I fear the YLS would crumble. Your dedication, interest and most of all, friendship, will serve as my most enduring memory of my time with the YLS. On behalf of all of the YLS officers, thank you for all you do.

Todd D. Kilpatrick

"It is not necessary to understand things in order to argue about them."

**— Pierre Augustin Caron de Beaumarchais,
French author and dramatist (1732-1799)**

Can Those Who Write Articles for Your Section Newsletter Get MCLE Credit? How Do They Do So? What About Editors of Newsletters?

Under New York's Mandatory CLE Rule, MCLE credits may be earned for legal research-based writing, directed to an attorney audience. This might take the form of an article for a periodical, such as your Section's newsletter. The applicable portion of the MCLE Rule, at Part 1500.22(h), says:

Credit may be earned for legal research-based writing upon application to the CLE Board, provided the activity (i) produced material published or to be published in the form of an article, chapter or book written, in whole or in substantial part, by the applicant, and (ii) contributed substantially to the continuing legal education of the applicant and other attorneys. Authorship of articles for general circulation, newspapers or magazines directed to a nonlawyer audience does not qualify for CLE credit. Allocation of credit of jointly authored publications should be divided between or among the joint authors to reflect the proportional effort devoted to the research and writing of the publication.

Further explanation of this portion of the Rule is provided in the Regulations and Guidelines which pertain to the Rule. At Section 3.c.9 of those Regulations and Guidelines, one finds the specific criteria and procedure for earning credits for writing. In brief, they are as follows:

- the writing must be legal research-based

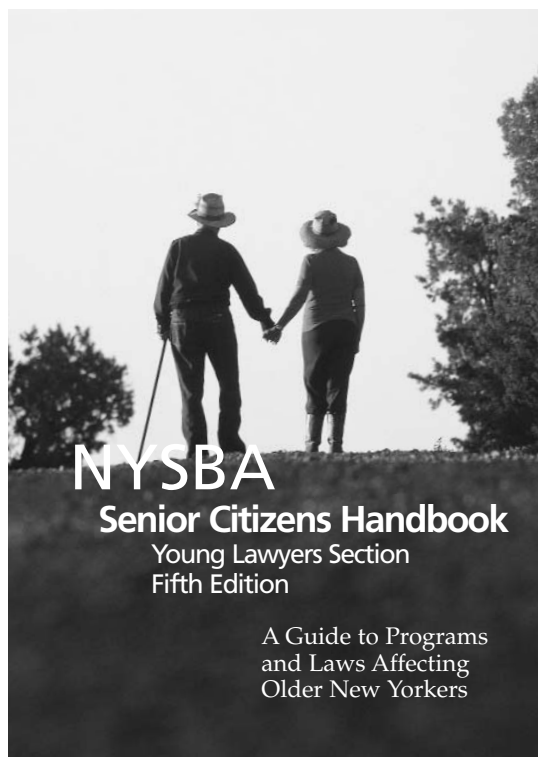
- the writing must be such that it contributes substantially to the continuing legal education of the author and other attorneys
- it must be published or accepted for publication
- it must have been written in whole or in substantial part by the applicant
- one credit is given for each hour of research or writing, up to a maximum of 12 credits
- only a maximum of 12 credit hours may be earned for writing in any one reporting cycle
- articles written for general circulation, newspapers and magazines directed at a non-lawyer audience don't qualify for credit
- only writings published or accepted for publication after January 1, 1998 can be used to earn credits
- credits (a maximum of 12) can be earned for updates and revisions of materials previously granted credit within any one reporting cycle
- **NO CREDIT CAN BE EARNED FOR EDITING SUCH WRITINGS** (this has particular relevance to Editors of Section newsletters)
- allocation of credit for jointly authored publications shall be divided between or among the joint authors to reflect the proportional effort devoted to the research or writing of the publication
- only attorneys admitted more than 24 months may earn credits for writing

In order to receive credit, the applicant must send a copy of the writing to the New York State Continuing Legal Education Board (hereafter, Board), 25 Beaver Street, 11th floor, NYC, NY 10004. A cover letter should be sent with the materials, and should include the following supporting documentation indicating:

- the legal research-based writing has been published or has been accepted for publication (after Jan. 1, 1998)
- how the writing substantially contributed to the continuing legal education of the author and other attorneys
- the time spent on research or writing
- a calculation of New York CLE credits earned and a breakdown of categories of credit (for the senior bar—those beyond the first 24 months of admission—there are two categories of credit: (1) ethics and professionalism; and (2) everything else (skills, practice management and traditional areas of practice))

After review of the correspondence and materials, the Board will notify the applicant by first class mail of its decision and the number of credits earned. Copies of the MCLE Rules and the Regulations and Guidelines can be downloaded from the Unified Court System web site (<http://www.courts.state.ny.us/mcle.htm>) or obtained by calling the New York State Continuing Legal Education Board at (212) 428-2105 (for calls outside of New York City, toll-free at 1-877-NYS-4CLE). Questions about MCLE requirements may also be directed to the Board by e-mail at: CLE@courts.state.ny.us.

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***"It is as fatal as it is cowardly to
blink [at] facts because they are
not to our taste."***

**— John Tyndall,
English physicist (1820-1893)**

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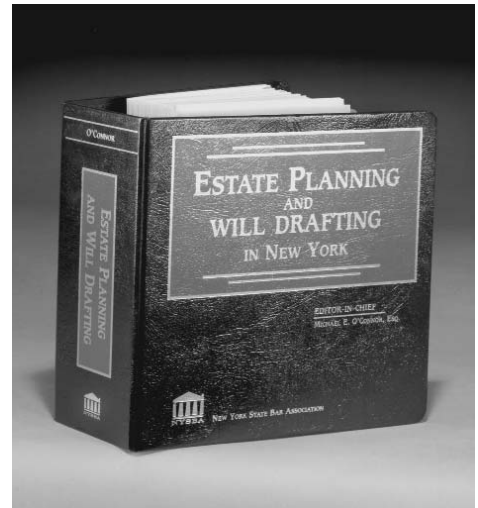
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***"I was married by a judge. I
should have asked for a jury."***

— Groucho Marx (1890-1977)

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