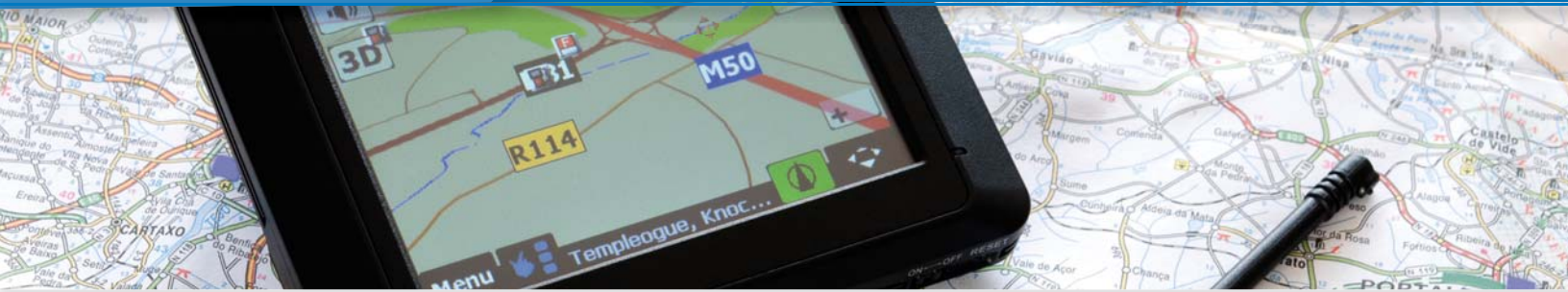


GPS Tracker

Publication of the General Practice Section
of the New York State Bar Association

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In the Driver's Seat—Navigating the Business of Law by Martin S. Kera, Esq.

Welcome to the second issue of GPS Tracker! We are proud to present this quarter's fine line-up of articles, dealing with effective attorney billing and collection practices, cultivating a good relationship with the press, hints for a small business's 401(k) plan, and tips from the ever-popular General Practice Section listserv.

As a General Practice Section member or NYSBA member who has expressed an interest in general practice, we have selected these articles to be of practical use to you as you

navigate the business of law. They're a quick read to fit into your busy schedule—but timely, and we hope germane to your daily practice.

As always, we welcome your suggestions for upcoming issues! Let us know what you think at generalpractice@nysba.org.



Martin S. Kera, Esq.
(Kera & Graubard, New York, NY), is Chair of the General Practice Section.

Financing the Trip—Nine Essential Billing and Collection Skills

by Joel A. Rose

Billing and collecting is a skill and not a talent.

1. Allow young lawyers to bill small matters. Make sure they have mentors to turn to for billing and collection questions.

2. Do not try to turn every lawyer into a biller and collector. Some lawyers can't do this work, or they don't want to learn. Remove billing responsibility from lawyers who are reluctant or refuse to send out timely bills. A manager who detects an inability in a young

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Rain in the Forecast— How Small Firms Can Cultivate Better Relations with the Press

by Paramjit L. Mahli

Getting the word out about your law practice in the market is a critical part of business development. There are various ways to do this, including getting press and building your own expert status. If getting press is part of your business development mix, and you are doing your own public relations, make sure you approach the press by putting your best foot forward.

Here are some basic rules to get you started in the right direction:

1. Reporter Calls.

Always return them: if your firm or partners don't want to respond to the question, say so right away so that the reporter can move on to his/her next source. As a rule of thumb, ask when the deadline is, and if you have the information that they need, respond as soon as possible. The sooner the better. Guaranteed, if you

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Rain in the Forecast—How Small Firms Can Cultivate Better Relations with the Press, continued

do this, reporters will come back to you when working on other stories.

2. Familiarize yourself with the reporter's area of expertise.

This is often the most annoying pet peeve for reporters. They expect you to do your homework. Find out what they cover, when their deadlines are, and their contact details. Don't phone them to get their e-mail address or telephone number. If they work in broadcast, find out good times to call.

3. Become a source for reporters.

Help them with the stories that they are working on. They're always looking for the latest information. Stay up-to-date on industry/sector-related developments, and provide articles, reports, and access to sources. That way, a relationship is built which will pay dividends in the long run.

4. Reporters can be trusted.

A large majority of them are trying to find all the facts of a story so that they present a bal-

anced view. Your perspective may not be theirs, but with few exceptions, all of them are working on tight deadlines trying to get all the facts. Reporters cover news: if your press release is timely and newsworthy, and sent to the appropriate reporter, chances are the reporter will contact you.

5. Don't send releases to all the reporters at a media outlet.

If more than one reporter ends up working on the story, they'll be thoroughly annoyed! As a rule of thumb, don't send the press release to more than one reporter or editor. For national television, send releases to the guest booker, producer and reporter who specialize in that area.

6. Don't belittle a reporter just because they work for a daily with a small circulation.

Remember, this person will be there tomorrow and could end up as the editor. It's all about relationship building. Also remember that in this day and age, nothing is local! You really don't know who will research from where and what results will pop up. I have conducted several

searches before interviews, and I've been "Googled" by interviewees.

7. If a reporter does catch you off-guard, don't become hostile.

Ask for a half hour or so to prepare information and to get the appropriate lawyers to answer questions.

8. Finally, in a global economy make certain that you have an "online newsroom" on your Web site.

Reporters will look your firm up on the Web; if there's no contact person listed, it will turn them off. On a basic level, make sure you have complete contact details.

Paramjit L. Mahli is founder of The Rainmakers Roundtable, "for lawyers who want to thrive in their practice." Her blog is www.profitwithpublicrelations.com, or she can be contacted by email at ceo@therainmakersroundtable.com, Ph: (646) 763-1407.

Passengers Along for the Ride—Are You O-"K"? - Some Basic Tips for a Small Business Regarding Its 401(k) Plan

by Andrew L. Oringer, Esq.

To some, 401(k) plans are now viewed as the centerpiece of American retirement policy. They can be a terrific employee benefit for many a small business and can form a critical part of an employer's pay package, sometimes being a major part of hiring and retention efforts. However, the plans are governed by extensive and complicated legal documents and subject to a thicket of regulatory rules, and even the thought of running up substantial legal and consulting fees just to establish such a plan may be troubling. For better or for worse, 401(k) plans have been largely commoditized, driving down the implementation costs—and, in some cases, reducing attention to legal compliance. Here are some items that may be among those that need continuing consideration.

1. Pay attention to what the documents say. Whether standardized or not, the 401(k) documents will set forth the rules under which the plan operates. Pay attention to the basic rules of the game—who's

responsible for what, how the administration works, what's required, when things have to happen, etc. Proceeding inconsistently with the documents could give rise to liabilities to participants and even threaten the tax-qualified status of the plan. Also, make sure that governing documentation is current and up to date, and that everything that needs to be executed is timely executed. A failure to stay current—even if a technical failure—can have dramatic adverse tax consequences. If an error emerges, whether documentary or operational, quickly explore voluntary correction programs. In some cases, adverse consequences can be substantially reduced if the employer catches the error before a government agency catches the employer.

2. Watch nondiscrimination testing. 401(k) plans can be subject to technical nondiscrimination rules intended to limit discrimination in favor of the highly compensated. Try to coordinate with providers to anticipate and address possible discrimination before it arises, and to take appropriate steps where discrimi-

nation may arise or has arisen. Where there is discrimination, the results can be undesirable, whether there needs to be more money given on behalf of the non-highly compensated or a limit on or refund of contributions for the highly compensated. Also, be careful of the "top heavy" rules, which can apply to accumulations within the plan, especially since those rules treat the employees' own elective deferrals as "employer contributions." Consider adopting a type of plan—a "SIMPLE" or other "safe harbor" plan—where a number of nondiscrimination requirements do not apply at all.

3. Investments, Investments, Investments. Don't assume that the investment choices are necessarily an easily-managed piece of the puzzle. Make sure that the investment alternatives have been given adequate consideration, and continue to monitor the alternatives for ongoing appropriateness. Keep records that show the process by which the investment-related decisions are made. As indicated above, one

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Passengers Along for the Ride—Are You O-“K”?, continued

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part of this process will be to make sure that the parties responsible under the documents for this aspect of the plan are doing what they're supposed to be doing under the documents. Also, decide whether investment education or advice, or both, will be provided to participants and beneficiaries, and, if so, how. Investments are one area where it may make particular sense to get at least a baseline level of legal advice, so that the basic outline of what may be required can be generally better understood.

4. Communication and other disclosure.

Communicate the plan adequately and accurately to participants and beneficiaries. In a number of cases, the participants and beneficiaries will see only the basic communications, as opposed to other plan documents. Pay special attention to the content of communications, not only in terms of substance, but also in terms of style. The communications documents can be critical to getting people appropriately excited about the plan, and it may be unfortunate if an important employee benefit goes needlessly underappreciated.

5. Reporting. Watch obligations relating to governmental reporting (e.g., reporting on the “Form 5500”). Others may help the “plan administrator” complete the forms, but the administrator is ultimately responsible. Also, relatively new rules expand the extent to which certain direct and indirect compensation arrangements must be reported, and employers will want to make sure they have obtained and reviewed the appropriate information.

As can be seen, when it comes to maintaining and administering 401(k) plans, there's not nothing to do. But the idea here is not that the need to dot i's and cross t's is somehow a reason not to proceed with a 401(k) plan. Indeed, most employers find the regulatory gauntlet ultimately to be a manageable one. The keys include an awareness of what does need to be done, and then proceeding accordingly. The careful employer will then hopefully have a plan that is a benefit, rather than a burden, to the employer and the employees alike.

Andrew L. Oringer, Esq. leads Ropes & Gray's Employee Retirement Income Security Act (ERISA) and executive compensation practice in NY.

Financing the Trip—Nine Essential Billing and Collection Skills, continued

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lawyer to bill should act quickly to find the cause. It takes training to develop good billers and collectors.

3. Every firm should set written billing policies and procedures. Regularly bill every possible transaction, for example, on a monthly basis.

4. Follow-up is essential if you want to turn receivables into cash. Send a new statement when the first one is more than 30 days old, and further follow-up letters at 60 and 90 days. At the end of 90 days, remove the account from the billing lawyer and turn it over to someone else for collection.

5. Make sure your bills describe your services. A client who can easily understand the work you did is likely to find your fee acceptable and pay promptly.

6. Effective collections require timely billing. The sooner you send your bill after completing client work, the faster the client will pay.

7. Ask for cash retainers. Some firms are experimenting with refundable advance retainers. These firms refund this type of retainer at the end of a matter, provided the client has paid all outstanding bills and expenses.

8. Have clients pay all larger disbursements directly to outside suppliers. Outstanding disbursements are merely interest-free loans to clients.

9. Use financial reports to help stimulate better billing and collections habits. All partners should receive each other's work-in-progress and aged accounts receivable lists. Your managing partner or director of administration should review these reports with lawyers who are behind in their billings and collections. The publication of these reports is an effective way to prod lawyers into action. You should not overlook the power of “the fear of a sneer from a peer.”

If your firm's culture does not support and stimulate a team approach, use one or more of these seven aggressive collection options:

- Hold monthly Saturday billing meetings.
- Withhold the draws of partners who do not meet their billing obligations.
- Charge clients interest for late payments, using appropriate truth in lending forms signed by clients.
- Insist on advance cash retainers.
- Bill weekly.
- Sue deadbeat clients.
- Have the managing partner or a committee approve the acceptance of new clients or work.

Execute these practices in a firm culture where team play and individual responsibility reign, and you will have cash, not work-in-progress and receivables.

Joel A. Rose is a certified management consultant and president of Joel A. Rose & Associates in Cherry Hill, N.J., which consults to the legal profession. He can be reached at JRose63827@aol.com. Hear more from Mr. Rose in a recent NYSBA CLE Web-cast recording at www.nysba.org/BillCollectionCLE.

Technology Roadmap—NYSBA's Ethics App

It's no secret that the legal profession is relying more and more on mobile technology. As a way of acknowledging both the need for mobility and the need to stay on top of ethical issues, NYSBA has launched the new NYSBA Mobile Ethics App. Since its launch, the app has been downloaded more than 3,000 times, with glowing reviews from legal press, bloggers, and working attorneys alike. The portable, searchable app offers attorneys the full collection of NYSBA ethics opinions resident on their mobile device. Visit www.nysba.org/ethicsapp for more information and to download.

For those who prefer not to use apps, the full collection of NYSBA Ethics Opinions is available online at www.nysba.org/ethics.





ADDRESS SERVICE REQUESTED

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

The General Practice Section's listserve continues to be one of the most popular benefits of Section membership—and for good reason. From referrals for dental malpractice to sample trade secrets agreements and setting up a 501(c)(3), the topics discussed on the listserve are as diverse as the issues facing our members. Here's a brief taste of the activity on the listserve since the last issue of GPS Tracker:

A disgruntled office tenant's office directly faces a monumental building project. He's subjected to continuous racket and claims to have lost regular clients because of it. What grounds would he have to unilaterally end the contract and summarily move elsewhere because of the harm being done to his livelihood?

- "A breach of contract occurs when one of the parties to the agreement causes a material breach. Check the contract for a provision about quiet enjoyment. However, you still need to establish actual damages in order to recover in a lawsuit. Your client, an expert, or a witness with knowledge, will have to testify as to damages." — Marvin D. Skedelsky, Queens
- "You really need to read the lease. Unless the landlord is causing the condition your client will have no recourse, or if there is a "good guy guarantee", your client might be able to walk away with relatively limited personal liability." — Michael Treybich, New York

My client told the judge she did not want me to represent her. The judge gave her a lengthy explanation as to why she should not proceed unrepresented, and then ordered me

to submit a motion to be relieved. Should a motion be required?

- "The procedure under the CPLR is that you must proceed via an Order to Show Cause, as opposed to just making a motion. The Order will have to be served upon the client as well as the other party or parties to the action, in the manner set forth by the court. The grounds you will want to show in your affirmation in support of the application is that the client wants to discharge you. The court must grant the motion, because a client has the right to discharge his or her attorney. The judge's order will give the client 30 days to find another lawyer, during which time the action will be stayed. Be sure to serve the order on the client." — Steven Siegel, Queens

A local clergyman quoted a poem in a sermon and later posted the sermon on the church's website. The church has now received a demand by the poem's author for payment in lieu of litigation.

- "Based on the information you have provided, my guess is that the clergyman may well come under the "fair use" exemption and is therefore not liable for copyright infringement. My argument would be that a sermon is an educational use of the material, but "fair use" is the most gray of gray areas in copyright law." — Nancy Baum Delain, Schenectady

If you are not a member of the listserve and would like to be, simply email generalpractice@nysba.org with your request to join. (Be sure that your General Practice

Section membership is up-to-date! This is a members-only benefit.) If you do not wish to receive listserve messages in real time, you can change your settings by visiting the Forums/ Listserves tab at www.nysba.org.

Compiled by Zachary J. Abella, Esq. (New York, NY), Chair-Elect of the General Practice Section.

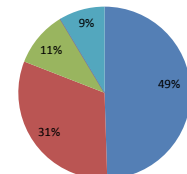
Roadside Assistance—

Dealing with Difficult Clients

We asked General Practice Section Members,

How have you successfully dealt with a client whose behavior was particularly abrasive?

Here's what you said



- Confronted the client directly about their behavior
- Addressed only the behavior/s that had direct bearing on the matter at hand
- Ignored the behavior
- Involved a third party (0%)
- Other

Responses Received: 105

"Having good client control is essential. An attorney has obligations to the Court, and to the client. If the client cannot work effectively with the lawyer, chances of a positive result are lessened dramatically." — Bradney Griffin, Lake Placid, NY

See more "Other" responses at www.nysba.org/GPSPoll2