NYSBA FALL/WINTER 2017 | VOL. 9 | NO. 2

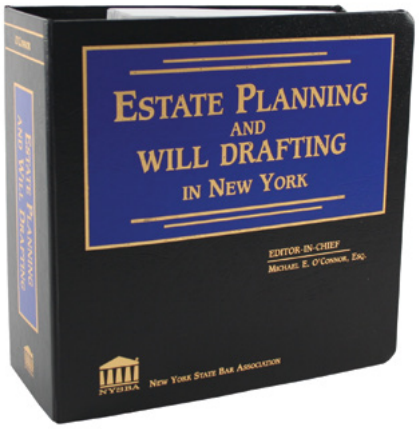
The Senior Lawyer

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

In This Issue

Estate Planning and Will Drafting in New York

2017 Revision



Editor-in-Chief

Michael E. O'Connor, Esq.
Costello Cooney & Fearon PLLC
Syracuse, NY

Product Description

Each chapter of the 2017 Revision has been reviewed and updated, including major changes to the chapters on IRAs and Tax-Qualified Plans and New York Estate and Gift Taxes.

This comprehensive text provides an excellent overview of the complex rules and considerations involved in estate planning in New York State. Whether your practice incorporates issues surrounding minors, marriage, the elderly, federal and state taxes, this text provides comprehensive guidance to attorneys. With useful practice comments, real-world examples and sample forms this text is also an invaluable practice guide for practitioners who are just entering this growing area.

PN: 4095C | Book w/2017 revision | loose-leaf
NYSBA Members $185 Non-Members $220

PN: 50957 | 2017 revision for past purchasers | loose-leaf
NYSBA Members $130 Non-Members $150

Contents at a Glance

To order call **1.800.582.2452** or visit us online at **www.nysba.org/pubs**

Order multiple titles to take advantage of our low flat rate shipping charge of $5.95 per order, regardless of the number of items shipped. $5.95 shipping and handling offer applies to orders shipped within the continental U.S. Shipping and handling charges for orders shipped outside the continental U.S. will be based on destination and added to your total. Prices do not include applicable sales tax.

Mention code: PUB8853N when ordering.

NYSBA

Table of Contents

Message from the Chair

Dear Section Members:

Section Caucus Concerns

November 3–4 saw the fall meeting of the NYSBA Sections Caucus in Albany (held prior to the House of Delegates meeting). This is a gathering of the delegates from the 25 Sections that are part of NYSBA. The delegates expressed concern about the state of the Association's finances and what impact that could have on Section programing. Over the last few years Association membership has been dropping and this obviously affects dues revenue.

This is not unique to NYSBA; the same is happening at the ABA and many county and specialty bars. Additionally NYSBA's CLE revenue is declining as attorneys now can choose from many vendors, and some choose in-house law firm CLEs. NYSBA will run a deficit in its 2017 budget, and even has a small planned deficit in its 2018 budget. More significantly the projections for 2018 are that revenue will be down from the 2017 budget projections by $1,190,000. The Finance Committee has reduced planned spending by enough that the projected 2018 deficit is only $93,000. Not surprisingly many of the reductions will fall on staff, with both departures that will not be immediately filled and a small number of layoffs.

The Section Caucus expressed its concerns that CLE programing will be affected and concerns that limited staff could mean the Sections might be constrained from offering as many CLEs as they desire. Executive Director Pam McDevitt addressed this, stating that the freedom of Sections to deliver CLEs was not going to be constrained, but better advanced planning was going to be necessary.

What Is the Solution?

The simple answer is more revenue. President Elect-Elect Hank Greenberg (term beginning June 2019) delivered a passionate and eloquent address to the Caucus that started with the proposition that we must focus on our *relevance.* The decision to join a Bar is driven by whether attorneys think the association is relevant to them, and increasingly lawyers, particularly younger lawyers, are not seeing that relevance. Hank laid out his vision on how to turn that perception around, and that he believes the Sections are key. It is the Sections, with their substantive practice areas, that are the magnet to keep existing members and attract new members.

Is the Senior Lawyer Section Relevant?

With our current 3,400 members we are one of the larger Sections. But without a substantive practice area membership may not seem to be compelling. People don't plot how to get and stay on our Executive Committee in order to enhance their resumes and gain referrals. We don't do destination meetings around the world or even around New York. Our membership criteria is age related, like the Young Lawyers, but YLS seems to be having more fun. A number of our members, and those eligible who do not join, don't want to be called "senior" and might prefer "experienced." However, if you look at the CLEs we have offered, since 2010 at both our fall and Annual Meeting programs, they are eclectic and interesting, such as:

- Sale and Valuation of a Law Practice
- Life Beyond the Blue Suit
- The Anywhere Law Office
- A Second Season of Service

You Can Help Make Us Relevant

We need help. If there is a subject that intrigues you, volunteer to put together a CLE segment on it. You don't have to chair a whole program, but just one subject of maybe four that would constitute a whole CLE. Recently we had a hands-on free technology program in New York City where attendees moved between stations with their devices to get help with programs and applications. In October we held a Meet, Greet & Learn free CLE and lunch in Rochester for members and potential members that dealt with ethics issues around retirement and practice change. We are planning on repeating that theme in Albany on Friday, April 13. We had a CLE in New York City on November 17 and will do another at the Annual Meeting on Thursday morning, January 25. Also at the beginning of that meeting we will once again present the Senior Lawyers Jonathan Lippman Pro Bono Award. I hope to see you there.

C. Bruce Lawrence
cblawrence@boylancode.com

Message from the Editor

As of June 1, 2017, we welcomed C. Bruce Lawrence as Chair of the Senior Lawyers Section, and I moved on to become Editor of *The Senior Lawyer*. The first issue of our publication was eight years ago; Willard H. DaSilva and Donald J. Snyder were the first co-editors, and in their first *Message from the Editors* they noted the diversity of knowledge and experience which characterizes our Section members and their aim that our publication "appeal to all of our members of this Section, regardless of what stage of professional endeavor or leisure activities may be our goals and/or activities.***As in most instances, not all articles will appeal to all, but at least some of them should appeal to all of us."

With that aim in mind, this issue of *The Senior Lawyer* contains the first installment of a three-part article on identity theft and articles addressing legal marketing, diversity issues, pro bono opportunities, tips on transitioning to a new position, equitable distribution, the work of the New York Bar Foundation, and mediation of employment disputes, as well as excerpts from *The Planning Ahead Guide* that are important for an attorney assuming responsibility for another attorney's practice. Also included in its entirety is *Palliative Care in New York State*, an extremely informative product of three organizations concerned with palliative and end-of-life care and advance planning.

Some of these articles are the result of requests from Section members, and I would encourage you to send me any requests/suggestions you may have. I also urge you to write for this journal; the more articles we have from Section members, the more relevant it will become to all of us. The deadline for our Spring/Summer issue is May 1, 2018.

In closing, I could use some help. If you would like to be a part of this project, I would love to hear from you.

Carole A. Burns
cabb1@optonline.net

The Very Real Risk of Identity Theft

By James LaPiedra and Jeffrey A. Kerman

Get Educated, Not Overwhelmed

When it comes to identity theft, ignorance does not equal bliss. What you don't know can damage your reputation, jeopardize your financial future, and even threaten your health. We can no longer afford to deny this very real threat and its potentially disastrous consequences. This is the first of a three-part series that provides the latest information on the current state of identity theft, the types of fraud to look out for, and next steps you can take to prevent, detect, and recover from identity fraud.

Preparation Is Key

In this fast-paced, technology-driven world, identity thieves are devising increasingly innovative and complex strategies to obtain and misuse your personal information. This explosive epidemic demands new protective measures beyond the limited reach of credit monitoring services. New vulnerabilities mean we must be more proactive, vigilant, and self-reliant than ever. *Prepare or Repair—the choice is yours.*

Identity Theft by the Numbers

According to the U.S. Department of Justice, *identity theft has officially surpassed drug trafficking as the number one crime in America*, with a new victim every two seconds. Identity theft costs victims billions of dollars, and hundreds of hours to correct. Given the number of large data breaches occurring regularly, and the massive scope of the recent Equifax breach—which compromised approximately 145 million personal records—it's not a matter of *if* you'll become a victim of identity theft, but *when*.

Theft vs. *Fraud*: An Important Distinction

Identity **theft** is the act of illegally obtaining personal information. Identity **fraud** is the act or acts of using that information to commit crimes.

What Constitutes Identity Theft?

The Identity Theft and Assumption Deterrence Act of 1998 states that identity theft takes place when: "a person knowingly transfers, possesses, or uses, without lawful authority, *a means of identification* of another person with the intent to commit, or to aid or abet, or in connection with, any unlawful activity that constitutes a violation of federal law, or that constitutes a felony under any applicable state or local law."

Simply put, identity theft is: A federal crime that occurs when a criminal steals your personal information with the intent of using it to assume your identity, commit fraud, and/or access your benefits.

The "means of identification" mentioned above can include: name, date of birth, social security number, driver's license number, official state or government issued identification number, alien registration number, passport number, employer identification number, or federal tax ID number; your unique biometric data—fingerprint, voiceprint, retina or iris image—or other unique physical representation; your unique electronic identification number, address, or routing code; telecommunication identifying information or access device (this includes any card, plate, code, account number, electronic serial number, mobile identification number, personal identification number, or other telecommunications service, equipment, or instrument identifier, or other means of account access that can be used to obtain money, goods, or services or to initiate a transfer of funds, other than a transfer originated solely by paper instrument).

In this digital age, we're known by our *personally identifiable information* or *PII* —name, address, phone number, driver's license number, social security number, ATM PIN, and credit or debit card numbers. These key identifiers are vital access points to our accounts and privileges. They can all be used to distinguish and trace an individual's identity—and they're prime targets for thieves to commit fraud.

James LaPiedra is the president and CEO of ID360°, an identity theft risk management and recovery provider. He holds the Certified Identity Theft Risk Management Specialist (CITRMS®) designation, and frequently speaks at identity theft seminars and workshops. Jim is the author of IDENTITY LOCKDOWN: Your Step-By-Step Guide to Identity Theft Protection. He is also a CERTIFIED FINANCIAL PLANNER™ focusing on retirement and distribution strategies. Jim earned a BBA in accounting from St. John's University and holds general securities and investment adviser representative licenses, as well as life, accident, and health insurance licenses. He is a highly decorated veteran of the New York City Police Department, where he served as the commander of several investigative and patrol units before retiring as a deputy inspector. **Jeffrey A. Kerman,** JD, CWS is an independent financial advisor who enjoys working with his clients and listening to their unique stories. As the Senior Managing Director of Wealth Partners Advisors LLC, Jeff focuses on combining the estate planning, financial, investments, insurance, tax and business planning processes for people who want more confidence and satisfaction in their financial matters. Jeff has spoken and published articles on various financial, investment, and retirement planning topics for the New York State Bar Association. He recently presented on "The Financial Elements of Retirement Income Planning" to the Senior Lawyers Section at the 2017 NYSBA Annual Conference, and he holds the Certified Identity Theft Risk Management Specialist (CITRMS®) designation.

How Thieves Can Steal Your Identity

Fraudulent activity ranges from low-tech to highly advanced schemes that require special skills. Here's a brief overview of the most common methods used today:

On the street: Thieves know that most people carry valuable items beyond cash. Your driver's license, credit and debit cards, and even your employment ID card are useful. Carrying anything beyond what's absolutely necessary that day puts you at risk.

Pickpockets target victims who have their guard down, or have "telegraphed" the location of their wallets, purses, and other valuables. Many work in teams, usually in highly trafficked areas. In a typical play, one distracts or directly engages the target by bumping him or initiating conversation, while the second removes the property.

In your home: Victims often leave themselves most vulnerable to theft where they feel the safest—in their own home. Leaving sensitive PII like financial statements, tax records, birth certificates, social security information, Medicare cards, and insurance policies unsecured makes you a prime target, not only for the burglar who enters illegally, but for those looking to capitalize on your trust (e.g., friends; relatives; nannies; health care, home improvement, and cleaning service employees).

"Victims often leave themselves most vulnerable to theft where they feel the safest—in their own home."

From your mailbox: Unsecured mailboxes are a hot target, typically stuffed with valuable PII (financial statements, insurance policies, credit card account information, personal records, and new checks). Pre-approved credit offers and convenience checks pose the greatest risk, since the victim isn't expecting them and might not even know if they're stolen.

From public records: Our biggest life events—birth, marriage, property ownership, criminal records, professional licenses, and death—are all part of public record and contain all an identity thief needs to commit fraud or assume someone's identity. Some public records have signatures that can be copied and transposed onto other documents. With the help of online tutorials, public records are relatively easy for thieves to search.

Exploiting insider access: Companies, government agencies, and organizations have a responsibility to protect the PII they collect, and while many have developed robust security policies and procedures to detect the misuse of sensitive information, insider access is still a big threat. Knowing these insiders have valuable information, thieves target and exploit them using bribery and/or extortion tactics. As we witnessed in the infamous NSA data leak, insiders can also steal records as an act of revenge or part of a misguided political agenda. Government agencies, businesses, hospitals, and schools have experienced insider thefts that exposed hundreds of millions of personal records.

Social engineering preys on our fears and our natural tendencies to trust and avoid confrontation. In these cases, thieves pretend or "pretext" to be a legitimate source before tricking you into sharing valuable information. "Scareware" schemes can include e-mails or pop-ups claiming that your computer or smartphone is infected with a virus. They then direct you to call a number for tech support or download a repair link, and once you do, a virus is installed with malware designed to capture files, usernames, and passwords to otherwise secure accounts. Thieves continue targeting the elderly in phone schemes by impersonating an official from the IRS, Social Security Administration, or a law enforcement agency, and using scare tactics to get them to provide personal information. Some even demand payment in the form of prepaid cards or wire transfers.

Hacking is an attempt to exploit vulnerabilities in an individual computer or network. Thieves then obtain personal information directly, or by paying other hackers for the information they've stolen. Hacking has evolved into a billion dollar global business. Perpetrators are often highly skilled experts who work alone, in teams, or even within government entities. The highly publicized hacking of Equifax, Target, NSA, Anthem Health, Facebook, JPMorgan and Citibank reflect just how vulnerable our personal information is these days.

Dumpster diving occurs when identity thieves rummage through residential and business trash, and even public garbage sites in search of information they can use to commit fraud or to assume another's identity. Dumpster divers also target discarded electronic devices that haven't been properly destroyed, knowing that most have internal hard drives that store valuable files and/or records of processed documents.

Shoulder surfing is the peering over one's shoulder as they enter passwords, PINS, or access codes on a computer, ATM machine, or point-of-sale terminal. Advanced techniques capture your information using hidden cameras mounted above the keypad.

Skimming is when thieves use a small electronic device to scan and store the information on your credit or debit card's magnetic strip. These devices have been used by restaurant and sales staff at point-of-sale terminals. Skimming devices are also placed over card receptacles at ATMs and gas station pumps. The information is then used to commit fraud or is sold to other thieves. It's important to note that while the new EMV smart chip cards are a positive step, the magnetic strip with your personal information can still be skimmed.

Types of Identity Fraud

Many believe that identity theft is mostly limited to bank accounts and credit card fraud, but non-financial identity theft is increasing at an alarming rate.

Financial identity theft occurs when a thief unlawfully obtains your unique PII and uses that information to commit financially-driven fraud. Thieves use your information to open new credit or checking accounts, take out loans, access existing bank and brokerage accounts, and even take out mortgages. They may max out or even deplete existing accounts. Even if you're not held liable for the activity, you are left with the daunting task of correcting it and trying to reclaim your financial reputation. From the perspective of creditors, you're required to prove your innocence. This task—known as *recovery*—is both time-consuming and stressful. While it's the most commonly known, financial fraud comprises only one-fourth to one-third of all ID theft cases. With *non-financial ID theft*, there are other driving factors, like disguising one's identity.

Criminal identity theft occurs when a victim's PII is misused during a contact with law enforcement. This can have devastating consequences for the victim, like having incorrect criminal records and even being improperly arrested. Others are fired or denied employment. This type of ID misuse is very hard to resolve and likely requires legal representation. According to the US Federal Trade Commission, approximately 12 percent of ID theft victims spend time correcting false criminal records.

Social security number ID theft and misuse happens in most ID theft cases, since that number is linked to credit cards, bank and brokerage accounts, government service programs, health insurance, and in some states, even your driver's license number. The *financial misuse* of a victim's SSN to compromise bank and credit accounts, brokerage accounts, insurance policies, etc., constitutes financial fraud. *Non-financial misuse* occurs when a thief applies for and receives social security, unemployment, Medicare, housing subsidies, or other government benefits. The thief can also obtain employment and avoid paying taxes with a victim's SSN.

Tax return fraud is becoming one of the fastest-growing crimes involving social security number misuse. Given the ease of electronic filing, approximately 140 million returns are filed electronically each year, allowing an easy method of filing fraudulent returns. Identity tax fraud has resulted in more than $5.8 billion in fraudulent payments since 2013, according to the General Accounting Office (GAO). In addition, the IRS estimates that over 750,000 false tax returns were filed in 2016.

Driver's license and identification theft is increasingly common since your driver's license or ID card number is the second most widely used identifier (after your SSN). Years ago, the most common cases of misuse were by teens trying to purchase alcohol or get into bars and clubs. Using the latest technology, thieves capitalize on system weaknesses to obtain these documents directly from the state's DMV office and make seemingly authentic licenses and identification cards. Armed with a driver's license bearing the victim's name and number, a thief can operate under the radar and ruin that person's driving record. Any driving offenses, suspended or revoked privileges, charges of DWI/DUI, and outstanding warrants are now all linked to the victim. Those linked offenses can turn a routine traffic stop into a false arrest or even jail time for the victim. Resolution isn't possible until the victim's true identity can be verified, and most cases require the representation of an attorney at the victim's expense.

"FACT: In 2012, the Minnesota Department of Vehicle Services found that upwards of 23,705 licenses were most likely fraudulently obtained."

FACT: In 2012, the Minnesota Department of Vehicle Services found that upwards of 23,705 licenses were most likely fraudulently obtained. In some cases, drivers are first discovering fraudulent activity after renewing their license through the mail and getting a card with someone else's picture on it.

Medical identity theft is a dangerous and potentially deadly form of identity fraud where thieves utilize a victim's information to obtain medical treatment, prescription drugs, and even surgery. The costs can range from several hundred to more than a million dollars per incident. Beyond the financial threat is that of erroneous medical files or the misinformation added to existing ones. False blood type, history of drug or alcohol abuse, test results, or diagnoses can lead to improper treatment, injury, illness, and even death. Medical records are extremely difficult to correct, and unfortunately, victims

of medical ID theft aren't extended the same rights and protections as victims of financial ID theft. Files are often shared with other entities—co-providers, insurance carriers, medical billing centers, hospitals, and pharmacies—making it nearly impossible to correct the information on such a wide span of networks.

Identity cloning is when the thief literally takes the victim's identity as his/her own, usually in an effort to conceal his/her own identity. All forms of identification are created using the victim's information, creating a duplicate of the victim's identity. Criminals use cloned identities to operate under the radar. The victim is then faced with correcting fraudulent activity and duplicate files maintained by creditors and government agencies.

Child identity theft occurs when thieves use a minor's social security number to commit fraud. Most children get their SSN's at birth and don't have credit histories until they're adults, so not only is their identity a clean slate, but the probability of detecting fraud is low. Thieves can establish lines of credit, obtain driver's licenses, or even buy a house with the child's identity, and by the time it's discovered, it may be too late for complete restoration. The impacts on the child's future are profound, threatening his or her chance of securing a student loan, a place to live, and even employment.

Knowing More Means You're Less Likely to Become a Victim

With a newfound awareness and deeper understanding of identity fraud in its many forms, you can now begin to imagine the scope, scale, and consequences. Victims often feel helpless navigating the daunting and complex maze of protocols and procedures to correct the compromise, but resources are available.

Take Next Steps Now

In the coming months, we'll be sharing follow-up articles about what you can do to detect and recover from identity fraud. In the meantime, find out how to protect yourself by visiting the Federal Trade Commission at www.ftc.gov, or the Identity Theft Resource Center at www.idtheftcenter.org.

Marketing to the Other Half

By Gina Pirozzi

Over several decades in the legal marketing industry, I've seen big changes. In the 90s, senior partners routinely believed that law firms didn't need marketing support. Eventually, that changed. Marketing departments grew at big firms and everyone from solos on up understood the power of marketing their services and expertise. Even with that acceptance, the vast majority of lawyers will articulate how they attract new clients the same way: We do good work. We build a professional and personal network who trusts in our ability. Members of that network refer prospects to us.

They're right. That *is* how they get new clients. However, when I ask them, "What about the clients you don't get? Why aren't you getting them?" I'm met with blank stares. There seems to be little recognition that other industries obsess over the business they don't get.

Recently, I saw a breakthrough. In a conversation with two name partners of a mid-sized metro-New York firm, one said to me, "We don't get any of our business from Google." Then, after a pause, the second looked at me and said, "But I feel like we should."

He couldn't have been more correct. A recent study I read reinforced the fact that about half of all clients surveyed either seek a referral from a friend or their current attorney if they need specialized legal service. While that's a powerful endorsement of "the way good lawyers have always gotten new clients," it also raises a huge question…. What about the other half? Not surprisingly, the survey goes on to say the other half are Googling, visiting online legal directories and using other digital resources in search of an attorney.

And the study didn't account for people in the first group who went online at some point in the process. Think about it. We all get trusted recommendations regarding where to eat, what contractor to use, or a medical specialist who might help us. We get them at our church, at our clubs, from our neighbors, or from "friends of friends." But that's not the whole process. We still may check that reference out on Google. Many people get multiple contractor names from their personal network and immediately Google each of them to see if one rises to the top. But, when the contractor asks, "How did you hear about me," we tell them they were referred by a friend without mentioning the role digital research played in the process. It stands to reason the same thing happens with lawyer referrals.

Gina Pirozzi (gina@gpirozzi.com) is a partner at G. Pirozzi Consulting (www.gpirozzi.com; 212-228-1249).

So what should a lawyer do to appeal to the other half? Here are three simple suggestions:

Jump into Social Media

Savvy marketers will tell you we are fast approaching a business climate wherein, "If you don't exist on social media, you don't exist." Just as businesses reluctantly accepted the credit card, cell phone, the internet, and e-mail, there is no way to avoid accepting social media. And why would you want to?

At its core, marketing is about targeting a select group of the population and sharing a targeted message with them. Social media is literally built for that exact functionality. You can decide exactly who to talk to and share precisely what you want as often as you want…and it doesn't cost anything.

Still, lawyers resist social media more than the business population at large. This is likely due to the fact they view it as a technology and may be uncomfortable with their lack of technical expertise. Frequent conference speaker David Shing, AOL's Digital Prophet (that's his actual job title), reminds his audiences to think of social media as a utility rather than a technology. We don't need to understand the ins and outs of electricity to hit the light switch and work a few hours after dark, or be masters of telecommunication to pick up the cell phone and call a potential client while on the road. Stop thinking about how social media works and concentrate on the simple fact that it is an impactful tool to share your message with a key audience. The vast majority of what you share with a potential client or referring attorney in person, by e-mail or on the phone can be shared more efficiently via social media.

Love the Sound of Your Digital Voice

Content is king online and you want a strong digital voice. Good content gets shared on social media and gets found by internet search engines—but only if you share it. Whatever it is that makes you unique—a specialty, a verdict, a fee structure, deep industry knowledge, a committee membership—should be part of your digital footprint beyond your own website. Whether you're sharing traditional law journal articles on your website, sharing pictures of your firm's community support on Facebook, or posting an update on LinkedIn, it becomes part of your searchable content and makes it easier for prospective clients to find you. This is even more effective with what are known as "long tail search terms." In other words, your chances of coming up in Google results when someone searches "New York attorney" may be remote. Long tail terms, however— "Bronx lawyer estates and guardian-

ships for disabled children" or "Online fantasy sports state by state laws"—can deliver the perfect client…. if, and only if, you have posted content that reflects your expertise in that area.

This may sound complicated, but it really is not. Just as they tell prospective writers to write, you must decide to jump in and share on your website, your social media pages, and by commenting on other people's content. When you read a magazine article that you'd tend to pass on to other members of your firm or to your clients, pass it on digitally. When the evening news covers a story with the potential to impact your clients, share that story and your comments about it on your website or Facebook page. When you have an idea for an article, write it and share it on your own blog. Sure you may need some help from a millennial to get started, but once you're in, you're simply speaking to an audience of clients and to "the other half."

Embrace Avvo

Of my three recommendations, I know this is the least popular and most controversial, but it may be the most vital. It's true that Avvo attorney ratings have a low degree of credibility today and that they are essentially muscling into the legal marketing arena demanding participation from lawyers. But they're following the tried and true digital business plan of Wikipedia, Angie's List and others that faced the same criticism before eventually bridging the consumer credibility gap and becoming mainstream tools. Avvo is well capitalized and began running national television commercials last year. Its CEO, Mark Britton, was EY's Entrepreneur of the Year in 2014. They doubled headcount in their Seattle headquarters in 2014 and again in 2015. Despite the controversies they've stirred and the pushback they're getting from multiple state Bar Associations, all indications are the company is growing in to a more important player every day and will eventually become a major client acquisition tool (especially for consumer-facing attorneys). Even today, if you Google your own name with the word "Attorney" after it, you'll likely get your Avvo profile as one of the first results. What's more, their system is actually fair and easy to work with. They want you to submit information about your career, references from colleagues, peers and clients and—if you do so—your numerical rating will rise accordingly. If you visit their site and find you have a 6.2 rating while a similar attorney in your trade area has a 9.8, don't get angry, get even! Don't refuse to work with them because your rating is not accurate. Work with them to make it accurate.

Assume Avvo is here to stay. Make it work for you!

At the end of the day, it's smart to spend a lot of time thinking about that "other half" and the clients you are not getting. Is your client base comprised of 50 percent or more direct referrals? If so, you are probably leaving potential new business on the table. You'd be wise to target that "other half" as a conscious business development strategy. Even if your client acquisition stats are more in line with the survey, you can always do better.

If you follow these three simple tips, you will gain control of your basic digital messaging and measurably strengthen your digital marketing ability in a matter of months. From that point, you can form a better strategy to effectively attract the clients you aren't getting.

If you want to know more, there are countless tutorials and best practice articles online regarding how to use LinkedIn, Avvo, Wordpress or other digital tools and, if time allows, there is nothing you won't be able to do yourself. If you do choose to consult with an expert, however, make certain to work with a marketer who specializes in law firms. Social media and other digital outlets are not exempt from attorney advertising ethics and it is extremely important to remain compliant.

Skills-Based Volunteering: Good for Communities and Good for You

By Courtney Darts

There is a lot of scientific research and anecdotal evidence to support the idea that volunteering helps not only the beneficiary, but also the volunteer. A recent *New York Times* article noted that the health benefits linked to volunteering include lower blood pressure and decreased mortality rates.[1] Of course, lawyers know that volunteering is important for many reasons; as a profession, we believe pro bono to be a fundamental obligation. But there is still a perception among some lawyers that pro bono means litigation and that pro bono opportunities for non-litigators don't exist. The truth is, there is no shortage of business legal assistance needed by amazing charitable organizations in New York. Nonprofit organizations have similar business legal needs as for-profit companies—they need contracts reviewed, leases negotiated, tax laws explained, and employment issues resolved. But for many small and even mid-sized nonprofits, hiring a lawyer to advise on day-to-day matters is not financially possible. In the absence of pro bono assistance, these organizations can only move forward without a lawyer and hope for the best.

Typical Nonprofit Legal Matters

- Compliance
- Contracts
- Corporate structure and governance
- Dissolution and bankruptcy
- Employment
- Incorporation/tax exemption
- Intellectual property
- Lending/finance
- Mergers/collaborations
- Real estate
- Tax

Pro Bono Resources

Pro Bono Partnership (the Partnership) is a 501(c)(3) organization that has been providing free transactional legal services to nonprofits in New York, New Jersey, and Connecticut for 20 years. The Partnership is the result of the vision of several corporate attorneys and the support of General Electric Company, and the founders' goal remains the same today: to strengthen nonprofits and communities by providing pro bono opportunities for in-house counsel and law firm attorneys in the neighborhoods where they live and work. Each year, Pro Bono Partnership's requests for legal assistance have increased. Thankfully, so have the number of our volunteer attorneys and supporters. For our nonprofit clients, the Partnership and its volunteers provide a range of transactional legal services free of charge. For our volunteers, the Partnership provides pre-screened, discrete pro bono matters; supportive expertise in nonprofit law; and model documents if needed. Many of our volunteers note that their pro bono matters are among their most rewarding professional experiences because of the satisfaction that comes from helping a good cause and the gratitude of their clients.

Whatever Your Interest, There's an Organization That Needs Pro Bono

From health and human services to education or animal welfare, there are all kinds of organizations that can more effectively further their missions with expert legal advice. Working with a pro bono provider like the Partnership, a lawyer can select pro bono matters based on the causes that are personally meaningful to that lawyer and, of course, the area of law in which the lawyer practices. Volunteers can choose to work with organizations close to home, or close to their hearts, since most of these matters are discrete and do not require in-person assistance. And there are resources to help any New York lawyer find the right pro bono provider. The New York State Bar Association's Department of Pro Bono Affairs (http://www.nysba.org/probono/) and the New York Attorney Emeritus Program (https://www.nycourts.gov/attorneys/volunteer/emeritus/) can help connect lawyers to legal service agencies assisting charitable nonprofits throughout New York State.

Start Today!

Lending your professional expertise to a nonprofit organization extends the impact of your volunteerism far broader than the matters you resolve. Helping a nonprofit strengthen its practices and avoid risk makes a genuine difference in the lives of the constituents the organization serves. Add to this the potential health benefits and the sense of purpose associated with giving back, and it's clear that "the best things in life are free" applies to both the giver and the recipient!

Endnote

1 Nicole Karlis, *Why Doing Good Is Good for the Do-Gooder*, The New York Times, October 26, 2017; https://www.nytimes.com/2017/10/26/well/mind/why-doing-good-is-good-for-the-do-gooder.html?emc=eta1.

Courtney Darts, Esq. is the Legal Director at Pro Bono Partnership (www.probonopartnership.org), providing oversight of legal services, educational programming, internships, and fellowships throughout the organization's service area. Courtney is a graduate of Fairfield University and Fordham University School of Law.

Palliative Care in New York State

Introduction

The Collaborative for Palliative Care, End of Life Choices New York and Finger Lakes Geriatric Education Center at the University of Rochester are pleased to share this important information with you and your loved ones about palliative and end-of-life care and advance care planning. This information is based upon New York State law and Department of Health guidance.

In New York State, individuals and patients with chronic or serious illness have many rights to ensure that their health care wishes are honored and that they get the care and treatment that they want, and do not get unwanted care and treatment.

Some of these rights, including those granted to us in laws governing palliative care, are described below as answers to questions.

General Health Care Rights

What rights do I have as a patient?

There are numerous rights patients have. Among the rights concerning the provision of health care are the rights to:

- Receive emergency treatment;
- Receive complete information about your diagnosis, treatment and prognosis;
- Receive all the information you need to give informed consent for any procedure or treatment; this information shall include the possible risks and benefits of the procedure or treatment;
- Refuse or stop treatment at any time and be told what effect this may have on your health;
- Receive all the information you need to give informed consent to an order not to be resuscitated under very specific circumstances; and
- Designate an individual called a health care agent to give consent if you are too ill to do so.

Palliative Care

What is palliative care?

Most people have never been told what palliative care is, but it is very important to know about.

A definition of palliative care adopted by the Center to Advance Palliative Care (www.capc.org) is as follows:

- Palliative care is specialized medical care for people with serious chronic or acute life-threatening illnesses. This type of care is focused on providing patients with relief from the symptoms, including the pain and stress of a serious illness, assisting with medical decisions and establishing goals of care – whatever the diagnosis and regardless of prognosis
- The goal of palliative care is to improve quality of life for the patient, and family and caregivers. Palliative care is provided by doctors, nurse practitioners, nurses, social workers and other specialists who work with a patient's other doctors to provide an extra layer of support.
- Palliative care is appropriate at any age and at any stage in a serious illness, and can be provided together with curative treatment.

What are the three main pillars of palliative care?

Palliative care has three main areas of focus, as follows:

- Advance care planning;
- Improved care coordination and communication; and
- Improved pain and other symptom management.

Are there differences between palliative care and hospice?

Yes, palliative care is appropriately offered at any time during a serious illness. It is not limited to end-of-life care.

One difference between palliative care and hospice care is that hospice care is a formal system of care specific to end of life care and is provided by certified hospice agencies. Palliative care is delivered throughout the course of an illness along with curative or life-prolonging care regardless of prognosis. Palliative care is therefore provided by many different types of providers in various settings including: hospitals, nursing homes, home health agencies, and concludes with hospice care when life expectancy is limited.

When should I be offered palliative care?

When you are told that you have a chronic or serious illness that may be long term and debilitating or you are diagnosed with an illness which might be life threatening, you should be offered palliative care. Examples of serious illnesses include heart disease, congestive heart failure, cancer, diabetes, kidney failure, respiratory disease such as COPD, HIV/AIDS, Alzheimer's disease, Parkinson's disease, amyotrophic lateral sclerosis (ALS) and multiple sclerosis (MS).

Individuals may and often do have more than one of these illnesses. In this way, palliative care can be in the form of information and counseling provided by your

primary attending health care practitioner, or from a specialist including a specialist in palliative care.

There are many symptoms that people have during the course of a serious illness that might indicate a need for palliative care whether or not it has yet been offered These include pain, shortness of breath, diarrhea, nausea, loss of appetite, depression, anxiety, constipation, fatigue, or difficulty sleeping. Patients may also have emotional distress or spiritual issues their medical providers have not addressed.

Is palliative care something that I should ask for if I or a loved one were to have a serious illness and it was not offered?

Yes. You should not hesitate to ask for palliative care. Because palliative care is a relatively new field of medicine, it is sometimes not offered to many patients who might benefit from it.

New York State has passed laws which provide that all patients with a life-limiting illness be offered both information on palliative care as well as access to palliative care services as needed to control symptoms associated with their illness or its treatments.

Will palliative care help me?

Palliative care, early in a disease course, has been demonstrated to be effective in improving the quality of life of patients. This is achieved by focusing on prevention and relief of suffering through detailed management of pain and other problems – physical, emotional or spiritual. In some cases, palliative care has been shown to extend life, reduce hospital stays, reduce visits to the emergency room, and improve patient and family satisfaction.

How does palliative care work with my own doctor?

The palliative care team, which includes doctors, nurses, social workers and other health professionals, as stated above, should also include access to and / or information on the role of chaplains, massage and other holistic therapists, pharmacists, nutritionists, who will work with your own doctor to provide more support for you and your family.

Who pays for palliative care?

Palliative care is covered by Medicare and Medicaid and commercial insurance plans similar to how your cardiologist, pulmonologist or other specialist is reimbursed. Access to a social worker or financial consultant through your palliative care provider should help you to understand your benefit coverage.

If you qualify for hospice care, the Medicare Hospice Benefit covers nursing care, durable medical equipment, some home health aide services, social work visits, pastoral care and other supportive services for you and your family. The Medicare Hospice Benefit also provides bereavement support for 18 months after their usual services have ended.

Will treatments prolong my life?

Some medical treatments aim to cure or cause reemission of disease, and prolong life. Palliative care interventions are not intended to hasten death nor prolong life, but aim to support quality of life and to relieve pain, suffering, and other distressing symptoms of illness or its treatments. In some instances, palliative care when provided at the same time as disease-modifying treatment may actually prolong life.

You will want to know whether the treatment you are considering is intended to prolong life, treat symptoms or both. Then based on your own needs, values and goals, you can decide if that is a treatment you want to pursue. Palliative care providers focus on helping you access the best information and evidence about treatment options so that you can make the best possible decisions based on your quality of life. Even if you were to decide to stop a particular treatment, the care you receive from the palliative care team never ceases.

What are the chances that a particular treatment will be effective?

Some disease specific treatments are standard and very effective. If standard treatments have lost their effectiveness or have not worked at all, your doctor may suggest a clinical trial. Regardless of whether treatment is standard or as part of a clinical trial, knowing the risks and benefits are important.

Risks and benefits are weighed in forming decisions about the worth of treatment associated with its expected or unexpected side effects and burdens. Only the patient (and the patient's family, caregivers, health care agents or surrogates in appropriate circumstances) can say if the likely benefits outweigh the burdens and risks, but you must make sure that your doctor and medical team share with you their knowledge and understanding, and the best evidence available so that you can make an informed decision about a particular treatment.

Palliative Care Access Act

Is there a law that enables me to get information and counseling about and receive palliative care?

Yes, the Palliative Care Access Act, Public Health Law Section 2997-d (effective 2011; See link to NYS Department of Health web site at end of booklet). If you are a patient in a hospital, nursing home, home care or a special needs or enhanced assisted living residence, and you have an advanced life limiting illness or condition, you have the right to receive information and counseling regarding palliative care, including associated pain management and access to appropriate palliative care

consultations and services, including pain management consultations and services.

How is palliative care defined under this law?

'"Palliative care" means health care treatment including interdisciplinary end-of-life care, and consultation with patients and family members, to prevent or relieve pain and suffering and to enhance the patient's quality of life, including hospice..."

What is an advanced life-limiting illness or condition?

It is generally a medical condition that causes significant functional and quality of life impairment, that is not likely to be reversed by curative therapies and that is likely to progress over time to dying.

When is palliative care offered?

According to the New York State Department of Health, "A palliative care assessment should be conducted on admission, when the patient's/resident's condition changes, and upon discharge. Palliative care should be offered based on assessment as appropriate."

What if I or my loved one who is a patient does not have the capacity to make medical decisions?

In such a situation a person legally authorized to make medical decisions such as your appointed health care agent, or if you have not appointed a health care agent, a surrogate selected from a priority list shall be provided with the information and counseling.

Palliative Care Information Act

Is there a law that enables me to receive information and counseling about palliative care if I am terminally ill?

Yes, the Palliative Care Information Act, Public Health Law Section 2997-c (effective 2011; See link to NYS Department of Health web site at end of booklet). It requires that attending health care practitioners, i.e., a physician or nurse practitioner, offer patients who have been determined to be terminally ill and are reasonably expected to die within six months, information and counseling appropriate to the patient regarding palliative and end-of-life options, or about any other appropriate treatments. However, earlier introduction of palliative care is often appropriate both to improve quality of life and to enable you to prepare for and make decisions about your treatment as your disease or illness progresses.

Therefore, if you are seriously ill, you should ask your attending health care practitioner for this information.

How is palliative care defined under this law?

It is defined the same way as under the Palliative Care Access Act. '"Palliative care" means health care treatment including interdisciplinary end-of-life care, and consultation with patients and family members, to prevent or relieve pain and suffering and to enhance the patient's quality of life, including hospice..."

Questions and Answers Applicable to Both the Palliative Care Access Act and Palliative Care Information Act

What must be included in the information and counseling?

You have the right to receive information and counseling including but not limited to: the range of options appropriate to you, the prognosis, risk and benefits of the various options, and your legal right to comprehensive pain and symptom management.

How should I as a patient interact with my health care practitioner?

Your health care practitioner should be sensitive both to your medical condition and your emotional and spiritual needs, and to your ability to understand the information and counseling provided. There should be ongoing discussions so that you may give careful consideration to your options. There should be sensitivity to cultural and religious considerations. You should not hesitate to ask questions, raise concerns, and to let the health care practitioner know if there are things you do not understand so that they may be repeated or explained differently. You should ask, if you have a concern, that the health care practitioner be completely honest with you. You should ask if you are not told of the risks and benefits of any options offered to you.

Who should or may be present when the information and counseling are given to me?

You should be able to decide who you may wish, if any person other than yourself, to be present when the information and counseling are provided. If you are not asked, you should tell the health care practitioner who if anyone you want to be present. If you decide to receive the information and counseling alone, you can later ask to have another person or persons participate at subsequent counseling.

What if my loved ones or I do not want the information and counseling?

You have a right to refuse to accept the information and counseling but if you do decline it, you may be treated in a way that is not consistent with your goals of care and health care wishes. Even if you do refuse the information and counseling when first offered, it is appropriate for the attending health care practitioner to ask you again at a later stage of your illness. At any

time, if you change your mind, you may ask for the information and counseling.

If I have received information and counseling once is that enough?

When you are at a different stage of your illness, different information and counseling and different options may be appropriate. So you should be offered information and counseling at different times as your condition changes and your illness progresses in order to make informed decisions consistent with your goals of care as your illness progresses.

What if my loved one, who is a patient, does not have the capacity to reasonably understand and make informed choices relating to palliative care?

In such a situation, a person who has legal authority to make health care decisions for the patient, including a health care agent (proxy) or surrogate, shall be provided with the information and counseling.

May the attending health care practitioner arrange to have the information and counseling provided by another qualified health care professional?

Yes, and that person might be another physician, nurse practitioner or social worker.

What if the attending health care practitioner is not willing to provide the information or counseling?

The attending health care practitioner must arrange for another physician or nurse practitioner to do so or transfer the patient to another physician or nurse practitioner willing to do so.

What are appropriate palliative care and end-of-life options?

Depending on your circumstances including your medical diagnosis, prognosis and symptoms, your doctor should be able to help you understand your circumstances. Usually palliative care and end-of-life care includes pain management, treatment to control various symptoms such as described above, and hospice care.

A palliative care plan might be developed to address pain and other symptoms, spiritual issues, family disruption and caregiver stress, psychiatric or psychological concerns, coordination of care among health care professionals, advance care planning to ensure your goals of care are honored, and communication issues with health care professionals or family members.

- Information and counseling may and usually should cover your right to receive or reject any treatments offered at any time including the withholding or withdrawal of life-sustaining treatments such as artificial nutrition and hydration, cardio-pulmonary resuscitation (CPR), electroshock, artificial/mechanical ventilation, dialysis, and antibiotics.

The information and counseling provided at first will often be different than information and counseling provided later. So it is important for information and counseling to be provided on an ongoing basis.

What do I need to know if I am experiencing pain and need to access good pain care and management?

Patients who have an advanced life-limiting or acute life-threatening illness may experience pain – either acute episodes of pain or sometimes chronic pain. Tell your health care practitioner or a loved one if you are suffering with pain during the course of your illness. Most pain can be controlled. Your health care practitioner may ask you to describe the pain and its intensity, and should rely on your self-report of pain.

If you are unable to communicate, there are ways that your pain can be assessed through observation. Your loved ones may also communicate with your health care practitioner about their observations about your pain, especially if they know you well and are familiar with your experiences. They themselves may experience pain also during your illness.

It may be useful to discuss the topic of pain and an appropriate plan for managing it with your health care provider in advance. This will allow time to discuss the available options including the range of over-the-counter to prescribed medications including opioids, their effectiveness, and their various risks and benefits (See section of this booklet on advance care planning).

Management of pain may be complicated and not always best managed by doctors or other clinical providers not specifically trained in pain. Ask your provider if he or she will refer you to a pain specialist if you feel your pain is not well controlled or if he or she is not willing to prescribe opioid drugs even if indicated for your pain. Pain that is left untreated or undertreated my lead to suffering; sometimes suffering that becomes intolerable and resistant to current treatment. Palliative care providers are well trained in a full range of approaches to relieving patients' pain and suffering.

Make sure you are heard if you feel you are not receiving enough attention for your pain and other needs.

What should I know about the risks of a particular palliative treatment?

Almost all treatments may have some kind of undesired consequence or side effect but these are sometimes not fully discussed by physicians. You should ask for more information, in writing, if you do not feel well informed about your treatment plan. Depending upon your disease, prognosis, symptoms and your goals of care, particular side effects or burdens and suffering that might be experienced may not be worth the potential

benefit of the treatment. For example, if the treatment will likely make you feel nauseated, weak, and tired but not prolong or improve the quality of your life, you might decide to decline it and focus on managing pain and symptom control and improving your comfort and well-being. An example of a medical decision that may call for weighing your options about whether to accept or decline treatment is chemotherapy.

Will I be referred to hospice care if it seems appropriate for me?

Hospice is appropriate for most people who are terminally ill and usually provides excellent quality medical and psychosocial care at the end-of-life to improve and maintain the best quality of life for patients. However, in New York State, compared to many other states, some patients who might benefit from hospice care may not be referred to hospice at the right time or even at all.

If you think you or a loved one might benefit from hospice and it has not been offered or discussed with you, then you should ask about information and a possible referral. If your health care practitioner is unwilling to refer you to a hospice and you think it might be beneficial, contact a hospice directly.

Is there a document that might be helpful to me when having discussions with my physician about my goals of care and to hopefully ensure that my health care wishes will be honored?

Yes. There are two important documents that can be completed – the New York State Health Care Proxy (HCP) (see more under Advance Care Planning) and the Medical Orders for Life Sustaining Treatment (MOLST).

- The New York State HCP is a document that allows you to identify a health care agent who is able to speak on your behalf if and when you are unable to do so regarding your medical care. Your agent should be aware of your medical decisions, choices, values and quality of life factors so that may be incorporated into your medical care. Everyone who is 18 years and older should complete a health care proxy.
- The MOLST is a medical order documented in a specific format –usually on bright pink paper, that is completed by you (or your health care agent or surrogate) and your doctor. It documents your wishes regarding life sustaining treatment, such as cardio-pulmonary resuscitation (CPR), intubation and mechanical ventilation, feeding tubes, intravenous fluids, and antibiotics and makes those decisions actual medical orders that will travel with you from home, to hospital and any other medical settings.

When should I have a MOLST?

You should ask your doctor if the MOLST might be right for you. Consider it if you reside in a long term care facility, reside in the community and need long term care services, want to avoid or receive all or some life sustaining treatment, or you have a limited life expectancy.

Will health care professionals who have responsibility under the Palliative Care Access Act and Palliative Care Information Act know of these laws and my rights under them?

They should know of your rights, but they may not. You may have to be an advocate for yourself, or a loved one may have to be your advocate if you no longer have decision-making capacity.

Are there health care professionals within the institutions covered by the Palliative Care Access Act or Palliative Care Access Act who may be especially helpful?

There are resources to help you with these laws. Ask if there is a palliative care team in the hospital or nursing home. If not, social workers can often be helpful with regard to providing certain information and counseling, and may be able to act as an advocate for you or your loved one.

Another source of information and support is the Patient Advocate or Ombudsman; most hospitals will have such a resource for all patients and families.

What if the rights I have under the Palliative Care Access Act or Palliative Care Information Act are violated?

There are a number of things which you can consider doing including:

- Asking for an ethics consultation;
- Asking to speak to someone in charge, a medical director or nursing director or administrator;
- Asking to speak with the institution ombudsperson or patient advocate;
- Contacting organizations which advocate for patients such as the Westchester End-of-Life Coalition or End of Life Choices New York; or
- Filing a complaint with the New York State Department of Health.

Where can I get more information on palliative care, the Palliative Care Access Act and Palliative Care Information Act?

The Internet can provide further information on these subjects. New York State has a web site, http://www.health.ny.gov that discusses the PCAA, PCIA and palliative care. The website for the Center to Advance Palliative

Care (www.capc.org) is also a good source of current information regarding palliative care. Some of these resources and others are listed at the end of the booklet.

Hospice

What is hospice?

Hospice is a system of care for individuals who have a life-limiting illness that is no longer responsive to curative treatment and life expectancy is approximately 6 months or less. Hospice is covered by most commercial insurance and is fully covered under the Medicare Hospice Benefit. Hospice care provides an interdisciplinary team of professionals and volunteers who are experts in end-of-life care, and focuses on symptom management needs and the quality of life of the patient. Hospice is not a specific place. Although hospice facilities or hospice homes may be in your community, hospice care is routinely provided at home, in nursing homes, and in hospitals – wherever the patient may be located the hospice can be there. If you or a loved one has been determined to be terminally ill, then hospice care may be appropriate and should be part of the important discussions about goals of care.

Who is on the team?

The hospice team will have physicians, nurses, social workers, chaplains, therapists, etc, all of who have been trained to work with people who have terminal illnesses.

What is the goal of hospice?

The goal of hospice is to provide high quality services, care and support to the patient while working with the patient and family to improve quality of life and to ease suffering.

Where is hospice provided?

Most people receive hospice care in their homes but it can be provided in nursing homes, assisted living facilities, hospice residences and hospitals.

What specific services does hospice provide?

The many services that hospice provides include:

- Patient support and comfort including pain and other symptom control;
- Medical and social assessment;
- Nursing visits;
- Individual, family and group psycho-social and spiritual counseling;
- The provision of necessary equipment and supplies;
- Support for caregivers;
- Physical, occupational, speech or other types of therapy which might include pet or music therapy as appropriate;
- Dietary and nutritional advice;
- Homemaking and home health aide assistance; and
- Grief and bereavement support up to a year (or longer) for family members following the death of the patient.

How can I receive hospice care?

If a patient chooses to elect hospice care under the Medicare Hospice Benefit (MHB), then a physician and the hospice medical director must certify the patient is eligible under the MHB as explained above (i.e., physician certifies that death is likely to occur within 6 months or less if the disease runs its natural course). If a patient is enrolling under some other form of payment or benefit, physician referral and certification requirements may be different. Patients have to consent to hospice enrollment, and if they lack capacity then agents and surrogates can step in to make the decision.

Can my own doctor continue to treat me?

Yes, if that is what you want. The interdisciplinary team will work with your doctor and develop an individualized plan of care.

Am I giving up on hope if I am in hospice?

No, not at all, you are not giving up on hope if you enroll in hospice. The time when hospice care is appropriate is usually the time when hope turns from curative goals to goals of maintaining or having quality of life, time with family and loved ones, comfort care and finding dignity in each day.

Do I have to stay in hospice once I am enrolled?

No. Most patients and family members are very satisfied with hospice. However, you can leave hospice or switch to another hospice. You may also sign yourself out of a hospice program and return to various other forms of medical care if you believe that it would be beneficial for you. It is your choice. If your disease stabilizes and you are no longer expected to have a limited prognosis, you can be discharged from hospice care and have the option to elect it again later when needed if your health condition changes.

Is hospice covered by insurance?

Hospice is generally covered by Medicare, Medicaid and most private insurance.

Advance Care Planning

Introduction

The vast majority of us will at some point lose the ability to make our own health care decisions. This means that someone else will have to make health care decisions for us, including decisions about end-of-life

care. If you want to ensure that your goals, values, and your health care wishes are honored, there are things that you can and should do.

What is the most important thing to do to so that my health care wishes will be respected both while I have capacity and when I am no longer able to make health care decisions?

Communication is key to having your health care wishes honored. While you have the ability to do so, you should discuss your goals of care and communicate your health care preferences to loved ones and to your health care providers, explaining what your goals of care are and what treatments you would want, not want, or want on a trial basis in various situations. Your wishes will be appropriately documented by your health care practitioners in your health records (see HCP or MOLST section).

You should also consider appointing a trusted person as your health care agent to make health care decisions for you when you are no longer able to do so. This health care agent appointment or designation may be made by completing a health care proxy form (See Appendix). You may also have your wishes documented through the MOLST Program. (Please note that a MOLST form does not take the place of appointing a health care agent.) Both documents alone or together are a gift to you and your loved ones.

When should I do this?

You should have these conversations preferably when you are young and healthy because anything can happen to you that might put at risk your ability to make health care decisions. The leading cases involving loss of decision making capacity, which you may have heard of, involve young people including the Cruzan, Schiavo and Quinlan cases.

Why is it so important that I appoint a health care agent?

When people know your wishes and understand the reasons behind them, it is more likely that your wishes will be honored; communication between loved ones and doctors will be facilitated; serious and sometimes never-ending conflicts, which often arise between and among family members, will be avoided; and you may feel good about having had these discussions.

Failure to appoint a health care agent and have appropriate conversations about your health care wishes makes it much more likely that when you can no longer make decisions for yourself, these decisions may be made by someone you would not have chosen to make them. (See Appendix for NYS Health Care Proxy.)

What specifically should be discussed?

Consider discussing your values, religious and otherwise, about what makes life worthwhile, what gives life meaning. Decisions concerning life-sustaining treatment are the most difficult for people to make and so you might discuss different scenarios to help guide the person making decisions for you as well as other family members. A few short examples of situations that might arise and that might be considered for discussion are:

- You have advanced dementia, are 90 years old, have been bedridden for years and no longer recognize your loved ones. You now cannot eat or even be hand-fed. Would you want a feeding tube?
- If you are seriously ill and in great pain, what types of analgesics would be appropriate to control your pain, and what are their risks and side effects?
- If you are permanently unconscious, would you want a feeding tube? Artificial nutrition and hydration? Antibiotics?

Is it difficult to complete the health care proxy?

Completing the simple two-page health care proxy form, for which a lawyer is not needed (two witnesses are needed, neither of whom can be the agent who is appointed), is easy to do. It may require thought and reflection on your part to decide who you choose to be your health care agent. You may not want to choose your spouse, for example, if you are not confident that your spouse could honor your wishes. The person appointed as your agent (an alternate agent should also be appointed) should be willing to speak on your behalf, be able to act on your wishes even if different from his/hers, be a strong advocate whom you trust, be someone who knows you well and understands what is important to you and who would be able to handle conflict if it arises.

What should I do after having discussions and completing the health care proxy?

After discussions have been had with loved ones and your doctors and the health care proxy form is completed, copies should be made for everyone involved. Continue to have discussions about end-of-life preferences through the years as your thinking may change and you want to be sure that your loved ones continue to understand you and your current preferences. By having conversations about health care and end-of-life decisions and appointing a health care agent, a significant gift will be given to those who most matter to you — as well as to you. Do it today.

What if my loved ones do not want to discuss these things?

If there is reluctance on the part of family members and/or others to have these discussions, you can explain to them the importance of having conversations and how it might benefit both you and them. Most people are

happy and even relieved to have these discussions and once started they usually go well. Another suggestion is to discuss end-of-life issues and requests with your health care provider who knows you well. Ask them to keep a copy of your requests and decisions if there is no one in your life at present who is willing or available to act as your agent.

Resources

There are a number of resources that include, among others:

- Center to Advance Palliative Care, http://www.capc.org/
- Collaborative for Palliative Care, http://www.cpcwestchester.org/
- End of Life Choices New York, http://www.endoflifechoicesny.org/
- Compassion and Support, http://www.compassionandsupport.org/
- Get Palliative Care, http://www.getpalliativecare.org /
- New York State Health Care Proxy: http://www.health.ny.gov/forms/doh-1430.pdf
- New York State Department of Health - Palliative Care: https://www.health.ny.gov/professionals/patients/patient_rights/palliative_care/
- Westchester End-of-Life Coalition, http://westchesterendoflife.org/

This informational booklet is funded and made possible by support from the Collaborative for Palliative Care and End of Life Choices New York.

Getting to Gender Equality Starts With Realizing How Far We Have to Go

By Sheryl Sandberg and Rachel Thomas

Gender inequality is so pervasive that we often don't see it.

Nearly 50% of men think that when just 1 in 10 senior leaders in their company is a woman, that's sufficient. And remarkably, a third of women agree. When so many people see a leadership team that's only 10% women—who, let's remember, are half the population—and think, "That's good enough," it's a sign that we're too comfortable with the status quo.

This is a key finding of the 2017 Women in the Workplace report, a joint study by LeanIn.Org and McKinsey & Co. that's being released today. It reflects input from 222 companies employing more than 12 million people. To our knowledge, that makes this the largest study of its kind.

This year's report shows that progress toward equality in the workplace continues to be slow—and may even be stalling.

Women on average are still underrepresented at every step of the corporate ladder. The gap begins with entry-level jobs and widens the higher you climb. This isn't because of attrition; women and men stay with their companies at roughly the same rate. And it's not for lack of asking; women seek promotions at the same rate as men, but are promoted less often. The situation is worse for women of color, who face more obstacles and receive less support. All told, only 1 in 5 C-suite executives is a woman—and not even 1 in 30 is a woman of color.

It's a sobering picture, and it raises a critical question. These gender gaps persist even though companies' commitment to gender diversity is at an all-time high. What's going wrong?

The study's findings point to at least part of the answer: Blind spots are getting in our way. It's hard to solve a problem we don't fully see or understand—and when it comes to gender in the workplace, too often we miss the scope and scale of the issue.

Many men look right past it. More than 60% of men believe that their company is already doing what it takes to improve gender diversity. And 50% of men think their managers already consider a diverse lineup of candidates to fill open slots. On both counts, women disagree. And on a key question—"How is disrespectful behavior toward women handled by your company?" —men are 60% more likely than women to say that it's addressed quickly all or most of the time.

Companies have blind spots, too. Many overlook women of color, who face distinct challenges shaped by the intersection of gender and race. On virtually every measure—from how often they are promoted to whether their managers defend their work—Asian-American women and Latinas receive less support than white women, and black women receive the least support of all. It's profoundly unfair. As one black woman put it, "We can have the same degree, the same years of work. . .[but] we are not tapped on our shoulders as often as other folks are. And we're not getting feedback on why."

Here's the good news. For companies that want to do better—and many do—there are steps they can take to get on the right track.

First, make a compelling case for gender diversity—and link it to business results. Illustrating how supporting women helps an organization's long-term success can bring more employees on board. While 78% of companies say they already articulate a business case for equality, only 16% back it up with numbers. And firms should show their commitment: When employees see higher-ups prioritizing equality, they're more likely to do the same.

Second, recognize the key role that managers play. They make many of the day-to-day decisions that shape women's careers. They're often the ones who decide whether a companywide program or policy is embraced or ignored. When they're committed to gender diversity, their teams follow their lead. Companies should take steps to ensure that managers understand why equality matters, have the tools and training to make a difference, and are rewarded when they do.

And third, resist a one-size-fits-all approach. More companies prioritize gender diversity than racial diversity, perhaps hoping that focusing on gender alone will be sufficient to support all women. But women of color face bias both for being women and for being people of color, and this double discrimination leads to a complex set of constraints and barriers. When companies fail to see this, they miss the chance to level the playing field for everyone.

In a competitive global economy, no business can afford to leave talent on the sidelines. And in a country founded on equality, everyone deserves a fair shot at success, no matter his or her gender, race, background or beliefs. We need to resist the tyranny of low expectations. We need to open our eyes to the inequality that remains. We won't unlock the full potential of the workplace until we see how far from equality we really are.

Sheryl Sandberg is the chief operating officer of Facebook Inc. and the founder of LeanIn.Org. **Rachel Thomas** is the president of Lean In.

Do You Need a Job Coach?

By Melvin Simensky

You've been practicing law for some years now, but you are growing restless in the profession and you don't know why. You want to keep practicing law but you think you might need to look for a new job; however, you aren't sure what kind of a legal job would be more fulfilling. Or maybe it's not a matter of choice – maybe you want to keep practicing law but are being forced out of your firm and have no idea what to do next. Whatever the circumstances, you are a lawyer in transition. Where do you turn for help? A headhunter? An employment agency? A therapist, mentor or advisor? Perhaps even a sympathetic colleague or friend? You might try a different course. You might turn to a job coach.

Many lawyers who are grappling with one or more of the above dilemmas often do seek the help of a coach and, when moving from one job on the legal spectrum to another, the overwhelming majority of lawyers in transition remain in the legal profession. Accordingly, this article will focus on the relationship between coaching's "role of change" and the jobs lawyers in transition express interest in. Put another way, the question is how does a lawyer's desire for "change" influence the lawyer's selection of new employment, and the path by which this new employment may be attained? When trying to respond to this question, it's possible, if not probable, that lawyers in transition will experience the stress and confusion of change, "sometimes beyond (their) apparent resources."[1] In these circumstances, the lawyer in transition may seek a "helper (namely, a coach) to partner with them in designing the lawyer's desired future."[2]

What Is Coaching?

Coaching is a method of communication between a coach and another person (in this case a "lawyer in transition" or "lawyer") to collect information about the lawyer for the purpose of helping the lawyer realize his or her full potential, including bestowing upon the lawyer a greater sense of fulfillment, purpose and empowerment. Coaching is a "profession that works with individual clients to help them . . . sustain life-changing behavior in their lives and careers . . . and has an emphasis on producing action and uncovering learning that can lead to more fulfilment and more balance."[3]

A job coach won't tell you what to do. A good coach will enable you to decide what course to take, and why. The single most important function of coaching is its development of concrete actions aimed at creating significant changes in the lawyer, such as alteration of the lawyer's outlook on life, conduct or thinking, in order to actualize the lawyer's potential so that he or she can achieve his or her goals over time. The lawyer can't keep doing the same things over and over and expect different results. It's the job of the coach, working with the lawyer, to alter this dynamic and elicit from the lawyer a new sense of commitment, connection, empowerment and transition. These are indicators of personal growth that serve to encourage the lawyer to trust and believe in his or her coach, and so be motivated to take a leap of faith, if required, to attain the goals sought**.** Coaching

> aims to draw out a person's potential . . . It develops rather than imposes. It reflects rather than directs . . . It enables people, rather than trains them . . . Empathy is central to the coaching process. Good personal coaching seeks to help the other person's understanding of himself or herself.[4]

Coaching includes several activities, such as offering guidance, support, and supervision, and teaching the lawyer in transition. Coaching does something important that no other job placement service does, and that is to work with the lawyer's potential – not his or her present status of abilities and qualifications. Coaching is about vision and possibilities.

Another way to define coaching is to separate it from what it is not. "Coaching is not mentoring, training, psychotherapy or counseling. While coaching shares the end goals of learning and growth with these professions, the focus and process of coaching differ in significant ways."[5] Therapy focuses on past trauma to relieve present pathological symptoms, such as depression/anxiety. Both therapy and coaching empower the lawyer in transition to alter his or her life, but the expressions of these commonalities differ. Therapy seeks to overcome a client's past psychological difficulties, so as to change and return the client to health. By contrast, the changes coaching contemplates are meant to alter a client's present persona in order to gain future reinvention, in the form of a client reaching his or her goals. Therapy points to a past to relieve the present. Coaching moves from the present to an enhanced future.

Melvin Simensky is a lawyer, life coach, teacher and author. While practicing entertainment and intellectual property law, Mel taught as an adjunct in the Graduate Division of New York University School of Law for 17 years. With colleagues, he co-published five legal texts, and singly published more than 20 legal articles. Mel also served as the Entertainment and Intellectual Property Law columnist for the *New York Law Journal*. Undertaking his own transition, Mel is now a life coach, focusing on career/transitional coaching for professionals, especially lawyers. He has both published and chaired workshops on the subject of lawyers in transition. Mel can be reached at melvinsimensky@gmail.com. This articie originally appeared in the July/August NYSBA *Journal*.

Coaching isn't advising, either.

> There's a huge difference between coaching and advising: Coaching is centered around the client, whereas [advising] tends to be based on the beliefs, values, and opinions of the [advisor] . . . The coach's role, and the coaching concept, is to help the other person find their own solutions, not to have them follow an advisor's recommendations and suggestions. This is a fundamental principle.[6]

Consider this hypothetical example: A lawyer in transition enters into a relationship with a coach to confirm what he thinks he wants to do, which is new employment as a psychotherapist. He becomes a lawyer in transition. The lawyer and coach know little about psychotherapy. Nevertheless, the coach still guides and teaches the attorney about the need to study as much about psychotherapy as possible. Then something big happens. The lawyer says he doesn't want to practice psychotherapy. After speaking with several therapists, reading relevant texts and working with the support and supervision of his coach, the lawyer in transition explains that he doesn't want to constantly work with others' pain and suffering. Absent the need to explore the subject of doing therapy, the parties turn elsewhere and exchange questions about the legal profession. All the while, the coach supports and comforts the lawyer. As a result of this interplay, the lawyer decides to remain in the profession, at least for the present. This is after considering, with his coach, what the lawyer is good at, what the lawyer likes to do in the law, and what specialized category of legal practice the lawyer thinks he would most like to do, including writing, analysis, counseling, teaching, research and management.[7]

While the above hypothetical shows how coaching produces results, another hypothetical shows how a coach uses his or her skills to get those results. Consider the plight of Liz. She is a manager at a large HMO, and had been a director there when she took a break to earn a J.D. She thought her law degree would propel her into upper management at the HMO but it hasn't worked out that way. As a result she is unhappy and frustrated. She has gained weight and finds her work a "bore." At the same time, she is applying for high-level management positions that, quite frankly, her resume will not qualify her for. Liz has turned to a job coach for help and provided all the above information during her first session. And now the coach faces some challenges for the second session: What questions will the coach ask? What layers need to be peeled? What straightforward things should the coach say while being unconditionally supportive at the same time? These aren't easy questions to answer, but a skilled coach will know where to start and how to follow through.

Why Not a Headhunter or Placement Agency Instead?

Some observers have considered coaching and headhunting to be contradictory. But not so in all cases; rather, the two are often complementary. The sole function of lawyer headhunters is to place attorneys in law jobs, and sometimes in law-related jobs. The function of coaching is to help lawyers in transition discover what they want to do with their lives and then help them to do it. If as a result of coaching a lawyer in transition decides to work in a law firm, perhaps a large firm, then a headhunter would be the appropriate person to whom referral should be made.

One of the most significant differences between coaching and headhunting is the speed with which headhunting can find someone a new job. Generally, this means a matter of weeks. By contrast, it could take several months for a coach to help a lawyer in transition determine what he or she wants in a job, and then pursue a way to get that job. Coaching faces challenges headhunting does not. These challenges sometime involve coaching's discovery of a different personality within the lawyer, one more amenable to an assertion of growth, change and realizing one's potential. The management of these assertions takes time. Because of the extra time and care coaching affords – in contrast to headhunting and all other law placement services – it is more likely that the position obtained via coaching will turn out to be more suitable and appropriate for the lawyer in transition.

Headhunting and other legal placement services cannot match the attention coaching can provide because their business model doesn't allow it. Their business model provides for fee payments only upon a satisfactory job placement. This means that for headhunters to make a living and more they must place their lawyer clients quickly. When a prospective employer contacts a headhunter, the headhunter has to respond with speed, or else lose the placement opportunity, and with it the fee.

Who Are the Job Coaches?

Job coaches come from different walks of life with various backgrounds. Lawyers hire coaches for many reasons. One commentator has written that a "life coach helps (a lawyer) maximize his or her accomplishments. A life coach helps (a lawyer) gain clarity on his or her life. A life coach helps (a lawyer) find purpose in his or her life. A life coach pushes a lawyer to follow his or her dreams."[8] Another observer has written that a coach helps a lawyer "set far better goals that motivate (the lawyer in a healthy way) . . . [the coach will help the lawyer move up to the next level of his or her professional and personal life.] . . . A life coach can help a lawyer be happier with his or her life . . . [and finally], the coach can help the lawyer gain a 'better life, not just a better lifestyle.'"[9] Often coaches are called life coaches whose clients may have non-work-related goals, such a losing weight or gaining self-confi-

dence. For the purposes of this article, though, the focus will be on job coaching for lawyers in transition.

Job coaches could be fellow lawyers or persons who are professionals or others. Many come from the mental health field and have done therapy or counseling. It matters not so much the previous work the coaches may have done, but the qualities they exhibit. One observer has said that a

> good coach is self aware . . . a good coach treats individuals as partners . . . a good coach knows the strengths and weaknesses [of the client] . . . a good coach listens to others and tries to understand their points of view [and] a good coach expresses encouragement and optimism when both easy and difficult issues are discussed.[10]

Another commentator has said that to be effective "coaches need to be patient, detached, supportive, interested, perceptive, aware, self-aware and attentive . . . They require various core skills: the ability to create rapport . . . asking powerful questions."[11] Still another commentator states that it is recommended that the prospective coach have four different qualities, including "a regular habit of gathering new information . . . the ability to see patterns and trends . . . a creative ability, and a personal chemistry that engenders trust."[12]

At present, there is no requirement in the United States that a coach must be licensed or otherwise regulated. There are many coaches who are psychologists or social workers who must be licensed. This sets up the syllogism that if psychologists and social workers must be licensed, and they form a significant segment of all coaches, then it is safe to conclude that the time will come – sooner rather than later – that coaches will also have to be licensed. In place of licensure, many coaches seek what is called "certification" by an external organization, such as the International Coach Federation, which declares that the prospective coach is or is not sufficiently competent to undertake normal coaching activities. "Certification" generally requires that a prospective coach attend an accredited coaching school, lasting from several months to a year, and that the prospective coach perform several hours of coaching, followed by taking and passing a written test.

> Coaching may fail for a number of reasons: The coach may have a tendency to prescribe simplistic solutions . . . The coach may share his/her opinions too early . . . The coach may fail to follow through on monitoring and homework . . . The coach may respond to self-imposed pressure from the person being coached . . . to achieve quick results …[13]

What Are the Logistics?

There are certain logistical considerations surrounding coaching that give it further definition. These include, for example, (1) when not coaching attorneys for transitions, what other issues are suitable for attorney coaching; (2) when the client should retain a coach; (3) how to find a good coach; (4) how long should coaching last; and (5) the average cost of a coach.

First, as to what issues are appropriate for attorney coaching, some attorneys use a coach to acquire business development skills, to help reverse "attorney burnout" and to improve their office communications.

Second, when should a client hire a coach? "There is no 'right' time . . . the time to hire a coach is 'ideally before the 'need' for an objective perspective is acutely felt' . . . Attorneys will not usually hire a coach until they feel a pressing need," or at various distinct stages of an attorney's career.[14]

Third, "Getting a referral is the best way to find a genuinely and consistently successful coach. Referrals can come from many sources, including therapists, friends, colleagues, human resource professionals, and university career center staff . . . Hirsch recommends looking at what coaches have published."[15] There are also directories online listing the names and addresses of recommended coaches. Coach trade associations, such as the International Coach Federation, can also help in the search.

Fourth, "coaching relationships can vary in duration and complexity . . . Short term, feedback coaching generally takes from one to six months and is intended to provide immediate feedback to the individual to help him or her develop a plan to address specific needs . . . . Longer term: This type of coaching will involve more in depth collection and analysis with intensive feedback sessions, lasting from 6 to 12 months."[16]

Fifth, many coaches charge a fixed monthly fee. Others bill on the basis of a set charge per hour. These latter hourly fees average $125 or more to $175 or more. Some coaches establish a set number of sessions, usually twice a month. Many, if not most, coaches have flexible arrangements with their clients, such as using a sliding scale for billing.[17]

Who Are the Lawyer-Clients?

Generally, clients can be any lawyer at any point in his or her career. They may work in large firms or small ones, as in-house counsel or as solo practitioners, but all have one thing in common – they are lawyers seeking to strike out on a new path, usually in the form of finding a new legal job. They also face the risks that are common in making a life-changing decision – anxiety, loss of professional identity, no salary for a time. Job coaches can help clients cope with these risks without being paralyzed by them.

While clients are of all ages and legal specialties, perhaps no group of lawyers can benefit more from coaching than Baby Boomers who have been, or are about to be, squeezed out of their firms. While Congress passed the Age Discrimination in Employment Act of 1967 to protect older workers, there are two exceptions that allow employers to justify terminating older employees, such as a law firm depending on the orderly departure of senior partners to allow for the arrival of younger partners to smooth the transition of the firm's clients to new attorneys. This means that large and small law firms in New York State and elsewhere will disgorge thousands of senior lawyers over time, many if not most of whom are still capable of effectively practicing law. Some may want to continue practicing on their own; others may be interested in mediation or not-for-profit work, or other fields. The number of senior lawyers is large – about one quarter of all attorneys in the United States.

Where do they go for help? Generally, they are too old to go to headhunters or other job placement services. And talking to senior lawyers in big firms with forced retirement policies will also not prove helpful. Speaking to friends may or may not be useful. In contrast to these activities, coaching can be a productive and effective means of helping them decide what they want to do with the rest of their lives, and then guiding them in achieving their goals.

"In coaching, power is granted to the coaching relationship—not to the coach. The client and coach work together to design an alliance that meets the client's needs."

How Do Coaches Work?

In coaching, power is granted to the coaching relationship – not to the coach. The client and coach work together to design an alliance that meets the client's needs. Coaching clients do not buy a packaged program. Instead, they are involved in creating a powerful relationship that fits the coach's and client's working and learning styles. "Coaching approaches the whole of a person's life . . . It's one of the reasons why coaches almost always do a broad assessment (early in coaching] . . . Health affects career; finances and recreation are intertwined; relationships are interwoven throughout. It's hard to pull a thread out without bringing two or three other pieces with it."[18]

Individual coaching of a lawyer resembles a conversation between two persons using a Q&A format to obtain as much information about the lawyer as possible. This information is important because it constitutes the raw material from which attorneys determine their goals and, with their coaches, develop means by which such objectives can be obtained.

Lawyers are particularly well-suited to a coaching experience. A coach uses a questioning format because it's the best way to obtain information. Similarly, a lawyer's stock in trade is the capacity to ask good questions that might discover significant information. This is whether the matter is a corporate issue, or litigation oriented. A litigator, for example, must know how to use various legal vehicles that have been developed to obtain information from questioning. These include such legal tools as depositions, questions at trial, document productions and interrogatories.

Based on the elicited information, coaches can then begin to chart a path with their clients.

> Coaches often have to train their clients in a new way of thinking, speaking and listening, especially if those clients have been involved in therapy. Psychotherapy . . . [is] a way for clients to grasp their self-identity . . . Coaching, on the other hand . . . [may often involve] leaps of faith . . . Coaching supports clients in redefining themselves in such a way that they are actually enabling themselves and their lives in a wonderfully creative way . . . In addition to the above specification of qualities comprising a good coach, another very respected expert in the field has written that a coach should have the ability to let go of his or her needs for being liked, good and loveable . . . should have the conviction that clients can realize their highest potential . . . Being . . . a cheerleader. Willing to explore with your clients, without an attachment to the outcome, or how you think it ought to be . . . We are in the business of empowering our clients [not egotistically empowering ourselves].[19]

What Tools Do Coaches Use?

Coaches mainly use four methods, or tools, to guide clients – assessments, values, goals, and alignments.

An assessment is the evaluation or estimation of the nature, quality or ability of someone to engage in some activity. Synonyms are judgment, appraisal, analysis and

opinion. Put another way, an assessment is the gathering and discussing of information in order to develop a person's deeper understanding and knowledge of himself or herself and his or her environment. An assessment refers to the methods or tools used to evaluate and analyze collected information.

In coaching, many, if not most, coaches use assessment activities, along with values considerations, as some of the most important functions of the entire coaching cycle. This is because the information used in coaching comes primarily from doing assessments, and the interpretations of this information depend heavily on one's values. This information constitutes the raw material on which the entire coaching regime depends.

There are primarily three categories of assessments used in coaching. The first one consists of the client's answers to self-awareness questionnaires. The second is collecting information revealed by the client in answering questions from the coach. The third is the client's answers to questions propounded by outside independent exams. These tests use indirect and sometimes oblique questions (making it difficult to scam the test) whose purpose is to determine the personality of a client. A well-known and widely used personality exam in coaching is the Myers Briggs Type Indicator (MBTI). It is nationally considered to be a truthful and accurate assessment, and is used by many coaches. Data supporting the accuracy and truthfulness of the test has been collected for at least five or six decades.

Besides MBTI, other outside independent tests are the DiSC, the Hartman Value Profile, the StrengthsFinder and the Conflicts Dynamics Profile. A challenge using these tests is that the data produced may require outside interpreters to read the exam's results. Coaches who interpret these exams are generally certified.

As for values, clients "frequently come into coaching because they are experiencing a radical rift between their current external or internal way of being and their core values. They may not recognize that this issue is central to many of the challenges in their lives . . . For example, imagine clients who value family, but who are working on a job that requires long hours, which precludes much quality time with family members. If those clients' work situation mandates the violation of a deeply held value, they will likely experience serious inner conflict. If clients value respect, yet their opinions and views are not listened to at work, their lives are in conflict with one of their values . . . ."[20]

"Core values are the three to five critically important personal values we hold. When we are not living our values, we are likely to feel dissatisfied, depressed, embarrassed, and even ashamed. It's impossible to lead a fulfilling life that does not honor or is out of alignment with our core values." "The deepest, most powerful, and most centering force for an individual . . . is [his or her] values . . . An individual's personal values are a reflection of the highest principles of mind and thought, and may even be part of the spiritual domain . . . When clients live their life in line with their values, it engenders a sense of well-being, self-respect, and self-esteem."[21]

A client's values are intertwined with his or her goals. In the language of coaching, a goal is "an outcome that the client would like to achieve. Goals are most helpful when they are measurable, specific, are owned by the client, have a date by which they will be accomplished, are made public (in order to achieve support and accountability), and constitute a reasonable stretch for the client."[22]

Subject to the qualification below, the role of a goal in coaching is the "reward or prize" that the client originally sought from coaching, and which the client subsequently obtains, resulting from the required changes the client has made in his or her life. This is so regardless whether such goals, to the outside world, seem large or small, significant or not, transformative or not.

The qualification is that if the goal the client seeks is to be fully realized, the goal should be in "alignment" with a client's values and subsequent actions aimed at obtaining such a goal. The process of alignment means "the proper positioning or state of adjustment of parts . . . in relation to each other:"[23] What this definition lacks, however, is the "special purpose" for which alignment is established in the first place. I suggest that the purpose of aligning assessments, values, goals and subsequent effectuating actions is to give us meaning in life to be used "as guiding principles to make our lives easier and more fulfilled."[24] So long as a person's values, goals and subsequent actions are in alignment, individually and in combination, and serve a good purpose, such circumstances will generate good things for the client. However, if this alignment is not honored, it's possible, if not likely, that the client will experience just the opposite of what he or she originally wanted, and be left with a life filled with dissatisfaction and dissonance.

To give a coach some ability to predict whether a particular goal that the client seeks will align with the client's values, and so be considered valid and effective, coaches use a tool expressed as the acronym SMART. This is short for goals that are Specific, Measurable, Attainable, Realistic and Timely.

> A specific goal has a much greater chance of being accomplished than a general goal. To set a specific goal, [the client] must answer six "W" questions: Who: Who is involved? What: What do you want to accomplish? Where: Identify a location. When: Establish a time frame. Which: Identify requirements and restraints. Why? Identify the reason(s) for seeking the objective.[25]

The link between values and fulfillment is so obvious it may be invisible. Helping clients discover and clarify their values is a way to create a map that will guide them through the decision paths of their lives. When you clarify values with the client you learn more about what makes the client tick: what's important and what's not. Clients discover what is truly essential to them in their lives. It helps them take a stand and make choices based on what is fulfilling to them.[26]

What Do Coaches Expect from Clients?

The short answer is trust and accountability. A good and meaningful relationship between a coach and client goes a long way in helping the client achieve his or her dreams and goals. In one relevant study, 35 coaches were teamed with 35 clients and interviewed to determine the effectiveness of their relationship in producing positive change. The findings showed that clients attributed the "effectiveness of their coaching in large part to the relationship they had with their coach. Receiving unconditional acceptance and respect from the coach was not only a facilitative condition but also directly responsible for change . . . There is something that is common to every individual relationship . . . [that] if developed and leveraged . . . has the potential to create unparalleled success and prosperity . . . That something is 'trust.' [Trust] is the fundamental element to a successful coaching relationship."[27] "For a relationship to be healthy, trust needs to be reciprocated. Trust is the essential ingredient of any good coaching relationship – without it, the client is not going to tell you, the coach, those confidential things that may be necessary to allow you to be of real help."[28]

Building a trusting relationship takes time, of course, but that is why coaching is so unique and meaningful. Where else can clients work with someone who will help them learn about themselves, develop their potential, and decide to change or not – and then send them out in the world. Yes, this is a process that takes time, but it is really the only way it can be done. Some clients won't have the time to invest X number of months in the effort, so the coach does the best that he or she can.

In any case, in a relationship based on trust coaches can expect that "clients account for what they said they were going to do. It is determined by three questions: (1) What are you going to do? (2) By when will you do this? and (3) How will I know? Accountability does not include blame or judgment. Rather, the coach holds the client accountable to the client's vision or commitment and asks the client to account for the results of the intended action. If need be, holding the client accountable includes defining new actions to be taken."[29]

In professional coaching, accountability does not include scolding or punishment. Accountability is a tool for the client's action and learning. To be accountable means simply to give an account. What worked? What didn't work? What happened? What would you do differently next time?

Clients are moving into new territory, stretching their boundaries, finding a new resourcefulness. They are coming up with new ways of operating and overcoming old resistance. Accountability gives structure to this growth. As coaches, we hold clients accountable – not to see them perform but to empower the change they want to make. Accountability can provide the means for change and creates a great opportunity to acknowledge how they succeeded. This ultimately is what clients are accountable for: their own lives, their own agenda.

What Can Lawyer-Clients Expect from Coaching?

"The coaching process puts the lawyer in a very active role. Nothing much of importance will happen as a result of coaching unless the lawyer in transition wants it to happen . . . It is up to the lawyer how best the [coaching process] can be leveraged. The lawyer's job is to keep the train in continuous motion to reach the lawyer's desired destination; should the lawyer choose to be a stationary train and expect the destination to reach him or her, the coaching relationship is likely to break. The coach will not bring results to [the lawyer in transition]. It is the lawyer who will bring results with the help of the heightened awareness created by the coach."[30]

Reflections

Coaching can help a lawyer in transition obtain the goal he or she seeks through personal change, especially if the goal is finding a new, more fulfilling job.

The purpose of coaching is to help the lawyer obtain the goal sought not in the present time but to be realized at a future time. This is because coaching first tries to determine what goal the lawyer wants to achieve and, second, works with the lawyer to help him or her achieve it. Coaching seeks to realize a client's potential. This is a process that requires time as the coach needs to elicit information from the client and then apply it to the situation at hand. The process of coaching relies substantially on acts of assessment, value clarification, goal selection and alignment. These activities breathe life into coaching and give the lawyer-client hope that he or she can change enough to secure the "prize" he or she seeks.

Employers can't wait to hire based on a lawyer's potential – they must hire based on the lawyer's present credentials. Thus, a lawyer who seeks change on his or her own might well end up accepting a new job just like the old one he or she wanted to leave. But for the lawyer who seeks the help of a coach, the chances are that much greater that whatever new job the lawyer selects will be the right "fit" for his or her goals.

Consider this: A lawyer-client works with a coach and the end result is finding a job that can be more meaningful,

relevant and appropriate than any other placement organization can achieve. In this way, not only is the lawyer in transition extremely "vetted" but the prospective employer knows he or she is getting someone who wants to be employed there. And the same from the client's point of view. Aren't lawyers who feel themselves appreciated and in a job they care about happier people, better employees?

Endnotes

1. Laura Whitworth, Henry Kimsey-House and Phil Sandahl, *Co-Active Coaching* (Davies-Black Publishing 1998), at Foreword.
2. Patrick Williams and Diane S. Menendez, *Becoming a Professional Life Coach* (W.W.Norton & Co. 2007), at Introduction.
3. Whitworth et al., *supra* note 1, at xi.
4. Alan Chapman, *Life Coaching and Personal Coaching*, Businessballs, www.businessballs.com/lifecoaching.htm.
5. Martha Lasley, Virginia Kellogg, Richard Michaels and Sharon Brown, *Coaching for Transformation: A Process* (Discover Press, 2011). For further treatment of this issue, see David Skibbins, *Becoming a Life Coach*, New Harbinger press, 2007, at 29–38.
6. Chapman, *supra* note 4.
7. Liz Brown, *Life After Law: Finding Work You Love with the JD You Have* (Bibliomotion, 2013), pp. 33–48.
8. Nicolas Charlet *Reasons-to-Hire-a-Life-Coach*, Sept. 5, 2016, www.nicolascharlet.com/blog/reasons-to-hire-a-life-coach.
9. *Top 10 Reasons to Hire a Coach*, MindBridge NLP Trainings, https://www.mindbridgetraining.com/articles/reasons-to-hire-a-coach. *See also* D. Coutu and C. Kaufman, *What Can Coaches Do for You?*, Harvard Business Review, January 2009, commenting that "most [business] coaching is about developing the capabilities of high-potential performers."
10. Christopher. Munsey, *Coaching the Coaches*, Monitor on Psychology, American Psychological Association,Vol. 41, No. 4 (2010), http://www.apa.org/monitor/2010/04/coaching.aspx.
11. Sandra Fielden, *Literature review*: *coaching effectiveness – a summary*, NHS Leadership Centre, Centre for Diversity and Work Psychology, Manchester Business School, University of Manchester, 2005, at 2.
12. Liz Brown, *supra* note 7, at 47.
13. Fieldon, supra note 11, at 5.
14. Andrea Goldman & Stephen E. Seckler, *Professional Coaching for Lawyers*, GP Solo, Jan./Feb. 2011,GP Solo, American Bar Assn., https://www.americanbar.org/publications/gp_solo/2011/january_february/professional_coachingforlawyers.html.
15. Liz Brown, *supra* note 7, at 47.
16. Herb Stevenson, *What You Need to Know About Coaching Services*, Cleveland Consulting Group, Inc., http://www.clevelandconsultinggroup.com/articles/coaching/-services.php.
17. Goldman & Seckler, *supra* note 14.
18. Whitworth et al., *supra* note 1.
19. Lasley et al., *supra* note 5.
20. Patrick Williams & Diane S. Menendez, *supra* note 2, at 216–17.
21. *Id*.
22. Whitworth et al., *supra* note 1, at 256.
23. Merriam Webster, http://www.merriam-webster.com/dictionary/alignment.
24. Rosie Kropp, *The Importance of Values and Alignment in Working Life*, International Coach Academy, December 2012, http://www.lcoachacademy.com/blog/coaching_niche/executive_coaching/rosie-kropp-the-importance-of-values-and-value-alignment-in-working-life.
25. Whitworth et al., *supra* note 1, at 256.
26. *Id*. at 119.
27. Marianne van Woerkom, *The Relationship Between Coach and Coachee*: *A Crucial Factor for Coaching Effectiveness* (Springer Lick, 2015), at 256–67.
28. Kevin McAlpin and Dawn Wilkinson, *Coaching and relationships*: *Trust is the foundation*, Articles PCI-Performance Coaching International, http://www.performancecoachinginternational.com/resources/articles/relationships.php.
29. Whitworth et al., *supra* note 1, at 253.
30. Stevenson, *supra* note 16.

The New York Bar Foundation: Why Your Support Is Critical

By Susan Lindenauer

As a former Chair of the Senior Lawyers Section I was delighted to be asked to write a brief article for the Section's Newsletter about The New York Bar Foundation on whose Board I serve. While The New York Bar Foundation is a distinct and separate charitable organization it is viewed as the charitable arm of the bar. For me this article is an opportunity to describe some of the activities of The New York Bar Foundation that may be of interest to the members of the Senior Lawyers Section. My objective is to persuade the Senior Lawyers Section and its individual members to become active donors to The Foundation. The generous contributions of lawyers, law firms, corporations and Sections of the New York State Bar Association, which may, with approval of the Bar Association's Finance Committee, make contributions from their respective surpluses, provide essential support for the work of The Foundation.

The mission of The Foundation includes improving access to justice for all by facilitating the delivery of legal services to low income New Yorkers; increasing the public understanding of the law; and improving the justice system and the law, Consistent with that mission, in 2016, The Foundation made grants to ninety nine nonprofit agencies across New York State, with grants made in all judicial districts of the state. Those grants totaled almost six hundred thousand dollars and were made to legal services organizations and other organizations utilizing lawyers to provide a wide range of legal services. In 2016, seventy per cent of The Foundations grants facilitated the delivery of legal services, nineteen per cent were directed to programs that improve the legal system and eleven percent of the grant funding focused on increasing public understanding of the law. The Foundation has received more than one hundred twenty applications for grants in 2018. It is obvious that the need for additional support from the legal community is critical if The Foundation is going to be able to make an increasing number of grants to meet the growing need for support.

Organizations funded by The Foundation provide essential legal services in communities throughout New York. These services impact the quality of life for low-income New Yorkers. Illustrative of the types of grants made by The Foundation are grants made in 2016 to address senior citizen homelessness prevention, domestic violence, veterans' legal services needs, re-entry issues and foreclosure prevention. The applications for funding reflect the most pressing legal needs of those who cannot afford private counsel who turn to legal services organizations for assistance and those organizations which are severely underfunded turn to The Foundation for grants to help meet their client's legal needs.

Donations to The Foundation include individual or firm gifts in support of the general fund of The Foundation, gifts to honor a member of the bar on a special occasion or at the time of an outstanding achievement, memorial gifts and bequest or other types of planned giving. The Foundation has a Legacy Society to recognize those who provide The Foundation with information regarding a bequest or other future planned gift. For more information about the program contact Deborah Auspelmyer, the Foundation Executive. dauspelmyer@tnybf.org or download the form at www.tnybf.org/legacysociety.

New York State Bar Association Sections make meaningful gifts to The Foundation. These gifts may support The Foundation's general fund which in turn provides funding for grant applications. For example, the General Practice Section made a gift of $25,000 to The Foundation which was used to support a number of pro bono initiatives. Among the recipients was the Veteran's Pro Bono Project of Legal Assistance of Western New York, Inc. The project assist veterans file claims for veterans disability benefits and assists with other claims such as military discharge upgrades. This project is innovative in that it is based at the VA Medical Center in Canandaigua, New York where the veterans can consult with pro bon attorneys at the same location where they receive other services. The project uses Rochester-based volunteer attorneys to serve a rural veteran population in counties with fewer attorneys available to provide pro bono legal services.

Another example of an innovative Section effort on behalf of The Foundation is that of the Young Lawyers Section. The Young Lawyers developed a program called Young Lawyer Friends of The Foundation and, working with The Foundation staff, launched a 24-hour giving challenge to raise $5,000 to assist veterans in need of legal services. They easily exceeded their goal. Other Sections have established funds to be used to provide fellowships or scholarships for law students work as interns at non-profit agencies that provide legal services.

There are numerous ways that Senior Lawyers Section members as well as the Section itself can assist The Foundation by providing support for The Foundation's efforts. I ask that you consider joining in this effort by providing your support.

Tips for Being an Effective Mediator of Employment Disputes

By Ruth D. Raisfeld

Mediation has become an integral process in the life of labor and employment disputes. Each of the federal courts and an increasing number of state courts not only have ADR programs, but may require mediation of pending cases right out of the box or later during a litigation. More and more attorneys have an opportunity to serve as a mediator, either through court-annexed appointments, volunteer assignments or when retained by parties who believe they can help serve as an honest broker in a private or pending matter.

The bridge from being a litigator to becoming an effective mediator, however, is neither straight nor short! It is essential to be mindful of the transition from the role of advocate to that of a neutral third party dedicated to resolving the dispute. Here are some tips that may help in making it easier to wear the hat of "mediator."

1. Be Neutral

The mediator's role is to facilitate negotiations leading to a settlement of a pending litigation. It is not to be the lawyer for one side or the other or both. This is true even if you would handle the case differently for one side or the other or believe that the attorneys who have appeared are not as prepared or thoughtful as you would be. Strive to be neutral!

2. Respect the Attorney-Client Relationships

The mediator is there to help but not to commandeer the negotiations. It is important not to criticize or critique the performance of each side's lawyer or to do anything that would undermine the lawyer in front of his or her client. If you believe a lawyer is an obstacle to effective negotiations, in certain circumstances you might consider talking to the lawyer outside the presence of the client or calling for an "all lawyers" meeting and attempt to put the lawyers on a more productive and constructive path, but it is rarely appropriate to diminish the lawyer in the eyes of his or her client.

3. Be Prepared

The parties should provide submissions in advance of the mediation. Read them in advance. You can also call each attorney in advance especially if you have an inkling that they haven't prepared. This does not mean you need to do extensive research: ask them to send you cases they think you should read. Further, encourage counsel to get you important documents or testimony before the mediation; it is very hard to get the essence of the argument when things are read for the first time at the mediation.

4. Encourage Parties to Calculate Best Case/Worst Case Damage Scenarios

If the parties haven't done this in advance, work with each side separately prior to and during the mediation to do damage estimates depending on the nature of the case, remedies available, whether plaintiff has lost employment or become reemployed, out-of-pocket expenses, medical expenses, emotional distress, attorneys' fees, etc. This helps to get the parties "reality testing" on their own before the mediation, so some of the hard work of getting to a settlement zone is done without you.

> *"Sometimes inexperienced counsel and clients will turn to the mediator and say 'What do you think the case is worth?' This is not your job."*

5. Do Not Put a Value on the Case

Sometimes inexperienced counsel and clients will turn to the mediator and say *"What do you think the case is worth?"* This is not your job. Whatever you say, one side will think you don't believe them or you are taking sides. While at some point you might offer a mediator's proposal to break impasse, you should be careful to say, "This is not what I think the case is worth, but this is what I think both sides can agree to and live with."

6. Listen

Be sure to give both sides an opportunity to share their side of the story with you before you start to reality test. Remind the participants that you are not the judge or the jury but simply there to discuss some of the strengths and weaknesses that they may wish to factor into their settlement analysis. Be sensitive to the needs of the parties and remember that there are potential emotional issues on both sides. A plaintiff's emotional state will probably be different in a sexual harassment case than it would be in a wage case. Similarly, a large employer will often have different needs and requirements than a small

---

Ruth D. Raisfeld is a mediator and arbitrator in the New York Metro area. This article originally appeared in the Summer/Fall 2016 issue of the *Labor and Employment Law Journal*.

employer. Don't size up the situation without fully listening and letting participants speak.

7. Mix It Up

Be creative in conducting joint and separate sessions. Sometimes it is helpful to speak with counsel separately from their clients; it is never appropriate to speak with clients without counsel present. Sometimes it may be helpful to reconvene a joint session or to allow clients to speak with each other privately.

8. Keep Track of Time

Do not burn through the entire day discussing the facts and the law. At some point, state, "Well, it sounds like the parties can agree to disagree," and move to a discussion of the future. With a plaintiff, ask questions such as: Have you found a job? Are you getting emotional support and/or medical attention? Do you understand how long and complicated lawsuits can be? With a defendant, ask questions such as: Has the employee and/or supervisor been replaced? Are potential witnesses available? Do you have access to documents? Does the defendant understand how much time, effort and expense goes into defending an employment decision?

9. Be Persistent

Do not give up on settling just because the parties are far apart at 2 p.m. Mediation of employment disputes takes a long time but MOST disputes do settle within one day.

10. It Ain't Over 'til It's Over

If the parties come to an agreement, assist in the preparation of a terms sheet, or if there is time, an agreement. If the parties do not sign a final agreement in your presence, then set a schedule for drafting the agreement, notifying the court, and filing a stipulation. After the mediation, follow up. Many settlements are derailed by delay and remorse.

Article 3—Equitable Distribution

By Joann Feld

Divorce can be one of the most difficult and stressful events in a person's life and the division of marital property can be challenging and rife with emotions. New York is an Equitable Distribution State, Section 236B of the Domestic Relations Law of New York State. The basic preliminary assumption of divorcing parties is that all marital assets and all marital debts will be divided equally between husband and wife. I caution the practitioner to realize this does not necessarily happen, since property may be acquired throughout a marriage by gift, bequest, devise, descent or as provided for in a prenuptial or postnuptial agreement or as compensation from a personal injury case.

When a married couple divorces, only the marital property is to be divided equitably or fairly, but not necessarily equally, and since separate property is an equitable distribution consideration, then the property ought to be valued and assigned a dollar amount.

Presumably, each spouse enters into his or her marriage with separate or non-marital property. Separate property is the property, money, investments and assets each of the people owns prior to saying "I do."

Separate property includes real and personal property owned or inherited prior to the marriage; the proceeds of a vested pension wherein the payee became legally entitled to receive the pension proceeds prior to the marriage; property obtained by inheritance or gift from someone other than the spouse during the marriage; property obtained during the marriage in exchange for separate property; property identified as separate in a written agreement between the spouses; the increase in value of the separate property—to the point the increase in value is not due to efforts or contributions of either spouse during the marriage, in other words, if the asset has appreciated in value, then the marital portion or the appreciation would be subject to equitable distribution based upon the contributions made; or compensation for personal injuries during the marriage, unrelated to loss of wages or earning capacity.

So, unless you have commingled (mixed) your separate property with marital property, separate it does remain. Conversely, if you commingle your separate property with marital property, it may just lose its classification as separate property and be deemed marital, and thus subject to division with your divorcing spouse. For instance, if you deposit money into a jointly held bank account, most likely that money will be transmuted or altered into marital property, having lost its character as separate property.

Please note that generally, such rule does not apply to real estate, where there may be a separate property contribution at the time of the purchase. This event will be commonly termed a "look-back" and you should be able to get your separate property contribution returned to you, typically after the property is sold.

But just as a new couple you begin to form a life together, so too are you building a marital estate. Marital property acquired during the term of the marriage is often times referred to as the marital estate. Property obtained during the marriage is marital property.

By contrast, marital property includes personal property bought during the marriage; bank accounts, cash, retirement accounts acquired during the marriage; advanced educational degrees acquired during the marriage; and real estate purchased during the marriage.

A prenuptial or postnuptial agreement is a marital agreement, which may, by written agreement executed with the proper formalities, exclude certain property from the marital estate.

New York property will not automatically be divided down the middle or in half. This means that property must be valued and divided equitably or fairly.

> With the use of a neutral, third party mediator rather than a judge, if the clients do not agree on the type of property being addressed, the clients produce proof of separate ownership for consideration. However, if they cannot agree on a division of the property, then after trial, the court will decide what would be fair and equitable, not necessarily equal since property is not automatically divided by two and distributed to each spouse. But keep in mind, if the property was acquired during the marriage, the spouse claiming that property is his or her separate property carries the burden of proving the property is in fact, separate property and that debt obligations are also taken into consideration when dividing marital property for equitable distribution purposes.

Joann Feld, Esq. is the sole proprietor of Joann Feld Attorney at Law and Divorce Mediation in Dix Hills, NY. She practices Estate and Elder Law as well as being a Divorce and Family Mediator. She has worked extensively with mediated matrimonial matters involving transgender disputes, custody issues, maintenance, equitable distribution disputes and pre-nuptial agreements. This article originally appeared in the spring issue of *One on One*, a publication of the General Practice Section.

Bearing all this in mind, a court may look to the following factors by which to determine the equitable nature of the property:

1. The income and property of each spouse at the time of the marriage, and at the time of the divorce;
2. The length of the marriage and the age and health of both spouses;
3. If there are minor children involved, the need of the spouse who has custody of the children to live in the marital residence and to use or own its household contents;
4. The loss of inheritance and pension rights of each spouse because of the divorce;
5. The loss of health insurance benefits of each spouse because of the divorce;
6. Any award of support or maintenance the court will be making;
7. Whether one spouse made contributions to marital property that the spouse does not have title to; for example, where one spouse helps the other spouse increase their ability to earn more money by getting a degree or certification;
8. The liquid or non-liquid character of all marital property ("liquid" means that the property can easily be converted to cash);
9. The probable future financial circumstances of each party;
10. The impossibility or difficulty of determining the value of certain assets, like interests in a business, and whether one spouse should be awarded the business so it can be run without interference by the other spouse;
11. The tax consequences to each party;
12. Whether either spouse has wasted or used up any of the marital property while the divorce was ongoing;
13. Whether either spouse transferred or disposed of marital property at less than market value, knowing that the divorce would be happening.

In New York divorces, whether referred to as pensions, profit sharing plans, 401ks or Individual Retirement Accounts, retirement plans are taken into consideration when structuring an equitable distribution award. Under the Equitable Distribution Law in New York, the value of these assets can be ascertained and then divided and awarded to each spouse within the context of equitable distribution.

To the extent that the retirement plans benefits accrued during a marriage and before the commencement date of the divorce action, these benefits are subject to equitable distribution. Oftentimes as not, the courts and mediators will employ the *Majauskas* formula to calculate the split of retirement plans with the accrued benefit to be received by the spouse upon his or her retirement. A Qualified Domestic Relation Order ("QDRO") will divide most retirement plans and must be signed by a Judge. A QDRO is a court order detailing proper procedure for the distribution of the payee's retirement benefits in the future, ensuring that each spouse receives his or her rightful benefits.

"IRAs that are funded with earnings earned during the course of the marriage will entitle the other spouse to a proportionate amount of IRA assets."

IRAs that are funded with earnings earned during the course of the marriage will entitle the other spouse to a proportionate amount of IRA assets. IRA funds are transferred tax-free from one spouse to the other, so long as it is in a written Judgment of Divorce or unless it is rolled or transferred into his or her own IRA. Without such documentation, a 20% federal income tax will be imposed.

Also worthy to note, the IRS does not generally consider the transfer of assets between divorcing spouses to be a taxable event. So long as it can be shown that the reason behind the asset transfer was a divorce, then it is not a taxable event.

Some assets are not easy to divide between the spouses. An interest in a business or professional practice may be difficult to value or divide, yet the educational degree, profession or license is considered "property" and will be subject to equitable distribution. For some of these impractical occasions, a court may order a distributive award or if in mediation, a couple may introduce a payment to balance things out. In other words, the court may order a sum to balance out the irregular distribution of the marital property.

An Overview of the New York Rules of Professional Conduct in the Context of Mediation

By Marcy Einhorn

> *Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser—in fees, and expenses, and waste of time*. Abraham Lincoln (circa 1850)

In the spirit of Honest Abe, New York again celebrated Mediation Settlement Day on October 18 this year with a host of activities designed to promote mediation as a means of resolving disputes without going to court.

According to the New York State Court website, "Mediation is an efficient, user-friendly means for resolving conflicts and disputes. Instead of asking a judge to make a decision in court, parties in conflict meet with a trained mediator who helps them communicate with one another and if possible, reach an agreement that satisfies everyone."[1]

A recent survey of New York litigators reveals, surprisingly perhaps, that this group of attorneys is almost 90 percent behind the use of mediation as a means of resolving disputes.[2] Here, we'll take a look behind that rosy endorsement to see what litigators like and don't like about mediation in order to gain a better understanding of the obstacles to the mediation of disputes. Next, this article will discuss some of the Rules of Professional Conduct that are relevant to attorneys who mediate. Finally, the article will discuss the ethical obligation of truthfulness to third parties as a standard of conduct in the mediation context.

The first priority of an advocate in mediation is always to further the client's goals and interests.[3] Although volumes could be written on the ways and means of meeting a client's objectives, suffice it to say here that the Rules give some general guidance, but leave the specifics to the individual practitioner, to implement in their infinite wisdom as a professional.[4]

With respect to the favorability of mediation as a means of resolving disputes, participants in the State Bar's recent survey pointed to the success rate of mediation, the speed in which a resolution can be reached, the cost savings, the focus on resolution and the emphasis on realistic expectations as some of the reasons why they favored mediation.[5] To give a complete picture, participants in the survey also responded to questions about what they disliked about mediation. Top of the list were flaws in the process, followed by the lack of commitment to settle on the part of the attorneys or the parties, the low success rate, the effect it had on delaying resolution, the cost, the push for everyone to give up something in order to settle, and overly aggressive mediators.[6] It is worth noting that a high percentage of the attorneys surveyed said that even when mediation was not successful, there were several other beneficial effects that made mediation worthwhile including the opportunity to understand and assess the strengths and weaknesses of your own and your adversary's case, the chance to start a process that could ultimately lead to a settlement, the exchange of information without formal discovery, the "reality testing" of your position that mediation provides, and the opportunity to "lower the emotional temperature" of a dispute.[7]

Likes and dislikes aside, mediation raises a unique set of ethical issues that advocates are not likely to confront in litigation. While the rules regarding confidentiality,[8] your role as an advisor,[9] and truthfulness in relation to third parties[10] apply to professional conduct regardless of the forum in which a dispute is heard, there are no Rules of Professional Conduct that specifically address the ethics involved in mediating disputes. In fact, a close reading of the Rules makes it quite clear that the Rules regarding conduct in a dispute apply to disputes pending before a tribunal,[11] and mediators are not included in the definition of what constitutes a tribunal under the Rules.[12]

The obligation of truthfulness to third parties is of particular concern in the mediation setting. This issue was addressed in an ethical opinion issued by the ABA Standing Committee on Ethics and Professional Responsibility.[13] There it was stated that certain statements are considered to be "nonactionable hyperbole," are merely a reflection of the speaker's state of mind, and are not to be considered misstatements of fact or law. In the case under consideration by the ABA Ethics Committee, a lawyer representing an employer in labor negotiations was found to have gone beyond mere puffery when he informed the union's lawyers that a particular employee benefit would cost an additional $100 per employee when the lawyer knew it would actual cost only $20 per employee.[14]

Marcy Einhorn is an experienced attorney who has undergone extensive training in mediation. She previously worked as a Court Attorney in the New York State Court system, drafting judges' opinions and supervising discovery conferences. She regularly serves as a Court Evaluator in guardianship proceedings, is a Hearing Officer in New York City administrative hearings, and was recently accepted onto the New York City Family Court panel of mediators. This article originally appeared in the spring issue of *NY Litigator,* a publication of the Commercial and Federal Litigation Section.

This distinction between "puffery" and misrepresentation is discussed in the Comments to New York Rule 4.1. Although the Comments have not been officially adopted as part of the Rules, they do carry great weight within the profession.[15]

At least one writer asks whether the goals of representing a client in a mediation should be any different than the advocate's goals in a more adversarial setting, such as arbitration or litigation.[16] The author concludes that there are few "bright-line" differences between the ethical obligations of attorneys representing clients in mediations and those of attorneys in litigation.[17] However, when it comes to truthfulness, this author suggests that advocates may have an even higher duty when dealing with mediators since a crucial part of the process involves providing the mediator with accurate information so that the mediator can be effective in helping the parties to reach a workable solution to their dispute.[18] Failing this, a lawyer may not find himself or herself in violation of the Rules regarding truthfulness, but may violate Rule 1.1, which addresses the duty to provide competent representation.[19]

From a practical standpoint, mediator Alida Camp describes the problem with truthfulness, or a lack thereof, this way:

> Part of what is necessary for a successful mediation is information because it can persuade parties that they should be flexible in their proposals. Yet it can be difficult for counsel to impart information that they would rather keep in their back pockets for litigation or other reasons. Counsel's reluctance to provide facts or confirmation of impending actions that would have an impact on settlement conversations may be considered an impediment to continued talks, the cause of delay in productive talks, or leading the opposing party down the so-called primrose path. None of these outcomes furthers the mediation, leading to objections of bad faith or a disheartening reluctance to continue talking with accusations of being lied to once the truth emerges.[20]

Other than the mistrust that a lack of truthfulness can generate, misrepresentations that rise to the level of fraud[21] could actually impose a duty on opposing counsel to take affirmative steps to report such conduct, which would certainly muddy the waters for a possible settlement of the underlying dispute, to say the least.[22]

In conclusion, advocates in mediations need to be familiar with the same obligations that an advocate at an adversarial proceeding must know, with the added proviso that in a mediation advocates must be sure to keep their clients' goals and interests as a first priority while abiding by the ethical rules that apply to more adversarial proceedings.

Endnotes

1. https://www.nycourts.gov/ip/adr/MSD.shtml
2. "Mediation: Through the Eyes of New York Litigators," Report of the Mediation Committee of the New York State Bar Association Dispute Resolution Section and The Alternative Dispute Resolution Committee of the New York City Bar Association, January 27, 2011, p. 4.
3. "Ethics for Lawyers Representing Clients in Mediations," John A. Sherrill, 6 Am. J. Mediation 29, 2012, p. 38. See, New York Rules of Professional Conduct, as amended through 1/1/17, Rule 1.2: SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER

   > (a) Subject to the provisions herein, a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision whether to settle a matter.

4. *See* Comment (2) to Rule 1.2(a): [2] Clients normally defer to the special knowledge and skill of their lawyer with respect to the means to be used to accomplish their objectives, particularly with respect to technical, legal and tactical matters. On the other hand, lawyers usually defer to their clients regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. On occasion, however, a lawyer and a client may disagree about the means to be used to accomplish the client's objectives. Because of the varied nature of the matters about which a lawyer and client might disagree, and because the actions in question may implicate the interests of a tribunal or other persons, this Rule does not prescribe how such disagreements are to be resolved. Other law, however, may be applicable and should be consulted by the lawyer. The lawyer should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental disagreement with the client, the lawyer may withdraw from the representation. See Rule 1.16(c)(4). Likewise, the client may resolve the disagreement by discharging the lawyer, in which case the lawyer must withdraw from the representation. See Rule 1.16(b)(3).
5. *Id.*
6. *Id.*
7. *Id.* at p. 6.
8. RULE 1.6: CONFIDENTIALITY OF INFORMATION:

   > (a) A lawyer shall not knowingly reveal confidential information, as defined in this Rule, or use such information to the disadvantage of a client or for the advantage of the lawyer or a third person, …

9. RULE 2.1: ADVISOR:

   > In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social, psychological, and political factors that may be relevant to the client's situation.

10. RULE 4.1: TRUTHFULNESS IN STATEMENTS TO OTHERS:

    > In the course of representing a client, a lawyer shall not knowingly make a false statement of fact or law to a third person.

11. RULE 3.3: CONDUCT BEFORE A TRIBUNAL:

    (a) A lawyer shall not knowingly:

    (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

12. Rule 1.0: DEFINITION:

    (w) "Tribunal" denotes a court, an arbitrator in an arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a legal judgment directly affecting a party's interests in a particular matter.

13. ABA Comm. on Ethics and Professional Responsibility, formal Op. 06-439 (2006).

14. See *Ethics for Counsel in the Business World*, James Q. Walker, PLI (2017).

15. See Comment to Rule 4.1: Statements of Fact [2] This Rule refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on the circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of fact. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are ordinarily in this category; so is the existence of an undisclosed principal, except where nondisclosure of the principal would constitute fraud. Lawyers should be mindful of their obligations under applicable law to avoid criminal and tortious misrepresentation.

16. *Ethics for Lawyers Representing Clients in Mediations, supra*, p. 29.

17. *Id.* at p. 38.

18. *Id.* at p. 34.

19. *Id.* See Rule 1.1: COMPETENCE:

    (a) A lawyer should provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

20. Alida Camp, ADR Offices of Alida Camp, alicampny@gmail.com.

21. Rule 8.4: MISCONDUCT**:**

    A lawyer or law firm shall not:

    (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

    (b) engage in illegal conduct that adversely reflects on the lawyer's honesty, trustworthiness or fitness as a lawyer;

    (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;…

22. RULE 8.3: REPORTING PROFESSIONAL MISCONDUCT:

    (a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.

Checklist of Concerns When Assuming the Responsibility For Another Attorney's Practice (Purchase Or Acquisition)

The term "Acquiring Attorney" refers to the attorney purchasing or acquiring the law practice. "Selling Attorney" refers to the attorney selling, transferring or otherwise terminating the practice. Make sure you are familiar with RPC 1.17.

1. Status of Files. If possible, the Acquiring Attorney and the Selling Attorney should discuss the status of open files—what has been completed, what has not, what has been billed, what has been paid, etc.
2. Consider the overhead costs involved in acquiring a practice or the responsibility for a practice for an interim period.
3. Where the Acquiring Attorney does not have the expertise in one or more of the areas in which the Selling Attorney practiced, the Acquiring Attorney may refer such matters to other practitioners.
4. Immediately determine responsibility or the lack of responsibility for the IOLA and attorney escrow accounts. Rights and obligations of the Acquiring Attorney must be known—potential liability is significant.
5. Consider and recognize the personalities and practice habits of the Selling Attorney and Acquiring Attorney. For example, if the Selling Attorney met with clients in their homes or places of business, or if the staff was actively involved in the Selling Attorney's client relations, etc., the Acquiring Attorney should consider continuing in this same manner or advising the clients of the Acquiring Attorney's practices.
6. Consider whether to maintain the same fee policy as the Selling Attorney. If possible, determine in advance whether hourly rates or set fees will be used, and at what amounts, and whether to use retainer agreements. Disclosure of these items is required under the rules governing the sale of a law practice. (See RPC 1.17).
7. If time and the Selling Attorney's condition allow, that attorney should introduce the Acquiring Attorney to nonlawyer staff members, and referral sources such as insurance agents, bankers, realtors, accountants with whom the Selling Attorney worked. If the Selling Attorney is not available to assist in this capacity, the Acquiring Attorney should make immediate contact with those individuals, not only for purposes of preserving client relations, but to determine location of any missing clients, history of clients, etc. Many clients work with a team of advisors, and with the client's consent, the Acquiring Attorney should have discussions with each of these other professionals.
8. Review and analyze the Selling Attorney's technology systems for compatibility with Acquiring Attorney's systems. Because of the constant change in technology, the Selling Attorney or his or her staff should not only participate in transferring current technology in use, but also provide access to systems that historically have been used by the Selling Attorney but which are not kept current. There is a significant amount of client information in the old files and systems.
9. If the practice is being sold, whether by the Selling Attorney or his or her estate, RPC 1.17 must be fully reviewed and understood. There are critical notice and time requirements which must be followed.
10. Immediately notify the Selling Attorney's accountant and/or bookkeeper and schedule a meeting in order to fully understand the financial reporting policy and habits of the Selling Attorney. If the Selling Attorney did his or her own accounting and tax preparation, the Acquiring Attorney's accountant should be given immediate access to those books and records that may be available to determine tax and financial liabilities of the Selling Attorney and the Acquiring Attorney.
11. Contact firms or practices with which the Selling Attorney was associated to determine whether any files remain with those practices. This will save the Acquiring Attorney a significant amount of time "searching" for files demanded by clients for past representation by the Selling Attorney. Also determine who bears the cost and the responsibility for acquiring or copying those files: the Acquiring Attorney or the Selling Attorney.
12. Consider file storage. The older the practice, the more time and expense will be involved in file review and management. This can be an expensive and cumbersome long-term solution. Bear in mind that, eventually, someone will have to review stored files and make sure they are returned to clients or disposed of in a manner that protects client confidentiality.

The following articles appear as Appendix 2E and 2F, respectively, in the *Planning Ahead Guide—Establishing an Advance Exit Plan to Protect Your Clients' Interests in the Event of Your Disability, Retirement or Death*, published by the New York State Bar Association's Law Practice Management Committee.

13. Determine whether "closed" files contain valuable or original documents such as wills, agreements, etc. Practices differ: one attorney's "closed" files may be considered another attorney's "open and continuing" files. For example, an attorney may habitually notify clients following every service that the representation has ceased and close a file. Others may never take this step and always assume that the client may be coming back for further representation.

14. In returning files, ensure that you are returning files to the "client." Obtain appropriate written consents from the clients or an authorized personal representative before returning files to a client's spouse, or family members.

15. Review "vendor" relationships with the Selling Attorney's vendors to determine whether prepayments were made for services or products that are not going to be used and whether bills are due for storage of files, stationery, supplies, etc.

16. In open estate files, determine whether the Selling Attorney's practices are consistent with the Acquiring Attorney's practices with respect to what services are covered on a quoted fee. For example, is a fee for probate limited to just the probate of the will or does it cover estate tax return preparation, will contests, etc.? Carefully review retainer letters and send modifications if necessary. Note that the RPC 1.17 requires notice as to whether the Acquiring Attorney is going to honor the Selling Attorney's retainer/engagement agreements and arrangements. Arrangements differ. As the Acquiring Attorney, make sure you know what you are agreeing to before stating that you are honoring "all" the arrangements with all the clients.

17. Review accounts receivable when you are purchasing an attorney's practice. You may need to take steps with clients who have a poor payment history.

18. Consider referring a client to another attorney. Know your limitations, both with time and expertise. You need not assume all clients as an Acquiring Attorney.

19. When returning files to clients who have requested them, make a decision as to what you are returning. Will it be everything in the file? Are you responsible for anything in the file for which you will want to retain copies for your own liability protection? Are there documents that, under the rules, can and should be retained? Clients are entitled to original copies of their files (assuming they have paid their bills), but copies of the files may be retained for the benefit of the Selling Attorney so that the attorney or his or her estate could defend any claims against them. Proceed with caution.

20. Continuing liability insurance. If the attorney has died or has retired from practice, reporting endorsement coverage or "tail coverage" should be obtained. In the event of death, the policy may provide reporting endorsement coverage for a period of time at no additional cost. See Appendix 24 for further information.

Checklist for the Fiduciary of a Solo Practitioner

If you have been appointed as the Executor or Administrator of the estate of an attorney who is practicing as a solo practitioner at the time of his or her death, it is important to quickly address many issues that are unique to the deceased practitioner's practice. This is especially true if the death of the solo practitioner was sudden and unexpected.

If a solo practitioner has died, his or her clients for whom services were being performed at the time of death must be advised immediately. In addition, steps must be taken to insure that those clients are properly advised as to the status of their matter and how they may retain substitute counsel. This must be done in a manner that will preserve the attorney-client privilege. This checklist is intended to address those matters that are unique to being the executor of an attorney's estate. It is not, however, an exhaustive list of all matters that are to be handled by an executor of an estate. The estate's legal counsel should be consulted to ensure that your duties are properly carried out during the administration of the estate.

As stated below, all of these issues should be addressed while the attorney is alive and well. Many matters involving an attorney's practice are time sensitive and, if not handled properly in the event of death, the estate may find itself faced with unnecessary liability. Hopefully, this checklist can act as a planning tool as well as a tool to be used in a time of crisis upon an attorney's death.

1. Retain legal counsel immediately. Legal counsel should be retained immediately to review the open matters that were being handled by the deceased attorney. If the attorney has designated an attorney to handle the closing of his or her office that attorney should be contacted immediately. The attorney's will and other estate planning documents including trusts or written instructions should be reviewed.

A designated attorney can ensure that the attorney-client privilege is maintained for the protection of the client. Hopefully, he or she has also had conversations with the planning attorney so that new counsel is aware of what needs to be done with respect to closing or transferring the practice.

2. The Advisory Team. There will, of course, be many matters that must be handled during the administration of an estate. The items listed above are only a few of the many matters that must be addressed. However, a solo practitioner's practice is unique in that it cannot continue to operate during the administration of an estate without a licensed and qualified attorney in place to take care of clients' matters. Because it may not be possible for someone to immediately step in and take over a practice, it is extremely important that a team of qualified advisors be quickly assembled to ensure that the practice and its clients are protected.

3. Work with staff. If the attorney had a secretary or assistants working with him or her at the time of death, contact them and determine what emergencies must be attended to and what needs to be done to begin the closing process.

   If possible, retain and compensate staff during the closing phase of the practice. In many cases, staff members have a relationship with the clients of the practice and a great deal of knowledge that will be helpful to you as executor and to the advisors for the estate.

4. Preservation of the practice. It may be important to the attorney's estate to ensure that the value of the practice is maintained in order to allow the estate to sell the practice to another attorney or law firm. If an Assisting Attorney has been designated as described above, he or she may be the intended transferee. Consult with legal counsel for the estate to be certain that the proper steps are being taken to maintain the value of the practice within the estate.

5. Contact accountant. Contact the deceased attorney's bookkeeper and accountant immediately to ensure that work in process is properly billed, that receivables are collected and that all financial matters involving the practice are properly taken care of as soon as possible. All trust accounts should be carefully reviewed by estate counsel and the accountant for the firm to ensure that funds are properly handled during the administration of the estate.

6. Office matters. Contact the landlord and, if necessary, desirable and appropriate, arrange for the assignment of the lease to the Assisting Attorney, the termination of the lease or the subletting of the lease to another party.

   Contact all vendors and stop services as soon as possible. Cancel all subscriptions and electronic or online legal research services.

   Contact equipment leasing companies (including vehicle leasing companies) as soon as possible. In some cases, vehicle lease arrangements will provide for a termination of the lease in the event of death. This should be investigated. If leases cannot be terminated without penalty, subleasing should be considered. Otherwise, it will be necessary to set aside enough funds in order to pay the leasing fees for the duration of the lease terms.

   Notify utility companies of the change in the customer. During the administration of the estate, it may be necessary to have the estate as the customer.

   Contact all associations with which the attorney had memberships and terminate the memberships. This would include the New York, American and any local or specialty bar associations. Office staff should be helpful in determining what memberships are in effect.

   Continue malpractice insurance if necessary. Most policies will provide that the insured must be insured at the time a claim is made against the attorney. Therefore, obtain "Reporting Endorsement Coverage" that will provide protection to the attorney's estate until all applicable statutes of limitations expire. The carrier may provide such coverage at no cost in the event of death. This should be determined immediately.

7. Plan Ahead. A practice and its value can quickly disappear without proper administration at the time of death. In addition there can be significant liability for the estate if the practice is not properly taken care of in such a time of crisis. If a solo practitioner has requested that you act as the executor or trustee for his or her estate, you should address all of these items with the attorney during the estate planning stages. None of these matters should be left until the time of death to address.

Section Committees and Chairs

The Seniors Lawyers Section encourages members to participate in its programs and to volunteer to serve on the Committees listed below. Please contact the Section Officers or Committee Chairs for information about these Committees.

Age Discrimination
Gilson B. Gray III
Duane Morris LLP
1540 Broadway
New York, NY 10036-4086
gbgray@duanemorris.com

John R. Dunne
Whiteman Osterman & Hanna LLP
One Commerce Plaza, 19th Floor
Albany, NY 12260
jdunne@woh.com

Diversity
Susan B. Lindenauer
45 Gramercy Park North
New York, NY 10010
alindenauer@nyc.rr.com

Financial and Quality of Life Planning
Rosemary C. Byrne
Step-by-Step Coaching LLC
319 Audubon Road
Englewood, NJ 07631
rcbcci@aol.com

Law Practice Continuity
Anthony Robert Palermo
Woods Oviatt Gilman LLP
700 Crossroads Building
2 State Street
Rochester, NY 14614
apalermo@woodsoviatt.com

Robert L. Ostertag
Ostertag O'Leary Barrett & Faulkner
301 Manchester Road, Suite 201
Poughkeepsie, NY 12603
b.ostertag55@gmail.com

Legislation
A. Thomas Levin
Meyer, Suozzi, English & Klein P.C.
990 Stewart Avenue, Suite 300
P.O. Box 9194
Garden City, NY 11530-9194
atl@atlevin.com

Membership
Elizabeth J. McDonald
Rochester City Court
6 Hall of Justice
Rochester, NY 14614
bethmcd@att.net

Publications
Carole A. Burns
64 Twilight Road
Rocky Point, NY 11778-9790
cabb1@optonline.net

Pro Bono
Fern Schair
Fordham Law School
33 West 60th Street, 9th Floor
New York, NY 10020
schair@law.fordham.edu

Technology
C. Bruce Lawrence
Boylan Code LLP
The Culver Road Armory
145 Culver Road, Suite 100
Rochester, NY 14620
cblawrence@boylancode.com

Jay Hollander
Hollander and Company LLC
5 Penn Plaza, 19th Floor
New York, NY 10001
jh@hollanderco.com

THE SENIOR LAWYER

Submission Guidelines

The Senior Lawyer welcomes the submission of articles of timely interest to members of the Section in addition to comments and suggestions for future issues. Articles should be submitted to the Editor whose name and address appears on this page.

For ease of publication, articles should be submitted via e-mail to the Editor, or if e-mail is not available, on a disk or CD, preferably in Microsoft Word or WordPerfect (pdfs are NOT acceptable). Accepted articles fall generally in the range of 7-18 typewritten, double-spaced pages. Please use endnotes in lieu of footnotes. The Editor requests that all submissions for consideration to be published in this journal use gender-neutral terms where appropriate or, alternatively, the masculine and feminine forms may both be used. Please contact the Editor regarding further requirements for the submission of articles.

Unless stated to the contrary, all published articles represent the viewpoint of the author and should not be regarded as representing the views of the Editor, Board of Editors or the Section or substantive approval of the contents therein.

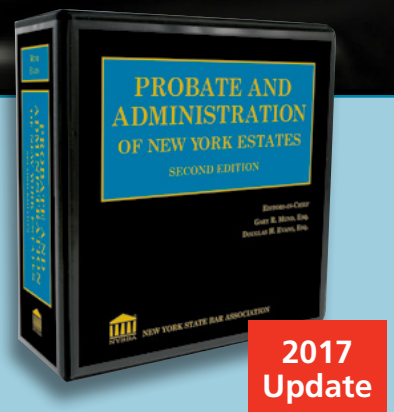
The Senior Lawyer is published for members of the Senior Lawyers Section of the New York State Bar Association.

ISSN 1949-8322 (print) ISSN 1949-8330 (online)

SENIOR LAWYERS SECTION

Accommodations for Persons with Disabilities:
NYSBA welcomes participation by individuals with disabilities. NYSBA is committed to complying with all applicable laws that prohibit discrimination against individuals on the basis of disability in the full and equal enjoyment of its goods, services, programs, activities, facilities, privileges, advantages, or accommodations. To request auxiliary aids or services or if you have any questions regarding accessibility, please contact the Bar Center at (518) 463-3200.

From the NYSBA Book Store



2017 Update

Also available as an e-book

Probate and Administration of New York Estates,

Second Edition

Includes the just-released 2017 Revision

This comprehensive, practical reference covers all aspects of probate and administration, from the preparation of the estate to settling the account.

Probate offers step-by-step guidance on estate issues, detailed appendixes, sample forms and checklists. Of particular note in this edition are chapters on federal and New York estate tax, and fiduciary income-tax planning.

Probate is written and edited by experienced attorneys from across New York State, whose expertise is invaluable to novice and experienced practitioners alike. Periodic updates will make *Probate and Administration of New York Estates* the first reference you turn to when handling an estate.

EDITORS-IN-CHIEF

Gary R. Mund, Esq.
Attorney-at-law, NY

Douglas H. Evans, Esq.
Sullivan & Cromwell LLP, NY

PRODUCT INFO AND PRICES

PN: 40054 (Print) | 2017 | 1,096 PP. | loose-leaf
PN: 40054E (E-Book) | 2017 | 1,096 PP. | PDF
NYSBA Members $185 | List $220

$5.95 shipping and handling within the continental U.S. The cost for shipping and handling outside the continental U.S. will be based on destination and added to your order. Prices do not include applicable sales tax.

Get the Information Edge

NEW YORK STATE BAR ASSOCIATION
1.800.582.2452 www.nysba.org/pubs
Mention Code: PUB8854N

NYSBA

NEW YORK STATE BAR ASSOCIATION
SENIOR LAWYERS SECTION
One Elk Street, Albany, New York 12207-1002

ADDRESS SERVICE REQUESTED

NEW YORK STATE BAR ASSOCIATION

NEW YORK CITY
New York Hilton Midtown

ANNUAL MEETING

2018
JANUARY 22 – 26

Get Social: #nysba18