

Oregon State Bar
Solo & Small Firm Practitioner's Section Annual CLE

The Business of Law: Banishing Your Blind Spot

Friday, November 15, 2013
9:00 a.m. to 5:00 p.m. at the OSB Center in Tigard

1 Ethics and 4.5 General/Practical Skills Credits

Agenda:

:

8:00 Registration

8:55 Welcome

Heather Brann

Chair-Elect, Solo & Small Firm Practitioner Section

9:00 Health Care Reform / Health Insurance Reform

What do you need to know about Cover Oregon?

Marvin Revoal

Pacific Benefits Planner Insuran

10:00 Retirement Plans & Disability Protection

Are you ready for this?

Alan Bacharach

Wealth Strategies, Guardian Life

10:30 Morning Break

10:40 Property & Casualty Insurance

Have you properly insured your employees and business?

Anna Johnson

Pacific Benefits Planner Insuran

11:15 Owner's Guide to Bookkeeping & Accounting

What you need to know.

Barbara Fisher

Fisher Business Management

Noon - Lunch

1:00 Trust Accounting

How would a bookkeeper do it?

Barbara Fisher

Fisher Business Management

1:30 Personnel Management

How do I get what I need without doing it myself?

Barbara Fisher

Fisher Business Management

2:30 Afternoon Break

2:40 Branding

How do you visual communicate your practice?

Ian Henderson

Hendersonian Design

3:10 Marketing

How you can use Social Media

Brittany Smith

Build Social, LLC

4:00 The Ethics of Social Media: Traps for the Unwary

Amber Hollister

Oregon State Bar

5:00 Adjourn

The set up:



VIOLET Solo attorney working from virtual office. She has been practice for the past three years. She personally preforms all aspects of running her own firm.

VIOLET, PC

OFFICE: Works from home, meetings clients in friend's conference rooms or in coffee shops.

EMPLOYEE(S): None. Co-counsels on cases and hires contract attorneys to help with cases.

FINANCIAL MANAGEMENT: Keeps her own books and hires an Accounting Firm to do her taxes.

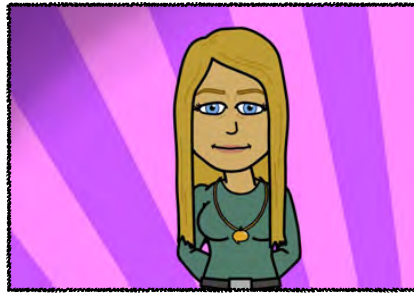
BRANDING: Created her own logo, slogan and website. She prints her own letter head, and ordered her business cards from online provider.

MARKETING: Relies on a community reputation and word of mouth to get referrals. Serves on two boards, a handful of committees, speaks at local nonprofits. Attend local lawyer events to make contacts. She blogs on her website, sends some tweets, and has a firm Facebook page.

HEALTH INSURANCE: Provided by spouses' employer.

DISABILITY INSURANCE: None.

PROPERTY & CASUALTY INSURANCE: Has property insurance on the house.



MELISSA Solo attorney working from a commercial office with other professionals. She hires one staff member on a part-time basis to help with daily tasks.

MELISSA, LLC

OFFICE: Rents office space from a commercial landlord.

EMPLOYEE(S): One. Employs a part-time administrative assistant to keep up with paper work in the office.

FINANCIAL MANAGEMENT: Keeps her own books and hires an Accounting Firm to do her taxes.

BRANDING: Contracted with a local designer (recent graduate) to create her logo and graphics. Prints her Letter head and business cards at a local print shop. Used a simple template to create and set up the firm's website.

MARKETING: Relies on a community reputation and word of mouth to get referrals. Speaks at CLEs. Pays for add in the local paper.

HEALTH INSURANCE: Self purchased.

DISABILITY INSURANCE: None.

PROPERTY & CASUALTY INSURANCE: Self bought, as required by lease agreement.



KATHY A partner with one other attorney. The firm employs an associate and three other staff members. The firm owns the office building which generates a steady flow of income.

KATHY, LLP

OFFICE: Owner of commercial building. Rents office space to other practitioners.

EMPLOYEE(S):Four. One associate with billable hour requirement. One full time office manager. Two paralegals, each full time. One part time receptionist.

FINANCIAL MANAGEMENT: Officer manager keeps books and the firm hires out an Accounting Firm to do taxes and compliance. Have a contract with company that generates paychecks on a monthly basis.

BRANDING: Contracted with a national company to create their logo, slogans, business cards, brochures, website, and maintain their bog on their website.

MARKETING: Contracts with marketing company to optimize SEO, and create and maintain online ads. Partners have speaking engagements in the community, volunteer at various local nonprofits, and sponsor social legal events.

HEALTH INSURANCE: Group plan.

DISABILITY INSURANCE: Group plan.

PROPERTY & CASUALTY INSURANCE: Insurance on the building and the assets of the firm.



Alan Bacharach:

Alan provides attorneys, law firms, businesses and their key people with sound financial strategies & benefits, for 15 year This includes reliable protections and sound long-range planning, tailored to the needs & desires of each individual. Representing most major insurers, leading fund families and retirement plan providers.



Barb Fisher:

Barb is a graduate of the Lundquist College of Business at University of Oregon and has an MBA from the University of Phoenix. She is also the President and Lead Consultant at Fisher Business Management, a business management consulting firm that specializes in owner-operated small businesses. Her clients range from construction and manufacturing companies to professional service sole proprietors. While streamlining processes, ensuring accurate records, and coaching management, Barb strives to preserve each business's unique culture. She has extensive Quickbooks experience in job costing, and her firm specializes in small business management, human resources, marketing, and accounting. Due to her firm's continued success, it was awarded the 62nd spot on the Portland Business Journal's Fastest-Growing Private 100 Companies in 2012. She also serves on the boards for Planned Parenthood Columbia Willamette, Full Life Foundation, Sorella Forte Cycling Club, and Winterhaven PTA.



Ian Henderson:

After working for over 20 years in the graphic design profession, Ian Henderson established his own design firm, Hendersonian Design, DBA in the summer of 2009.

Ian's knowledge of the profession informs every project he works on. The foundation to his future career was laid down at one of Canada's best art and design schools, Ontario College of Art and Design. Practical experience was gained through hands-on work with everything from designing directly on computers (then new to the graphics industry), to pre-press production and even binding books and journals himself.



Amber A. Hollister

Amber Hollister is the Oregon State Bar's deputy general counsel. In her role, she regularly provides prospective ethics guidance to lawyers and serves as in-house counsel for the Bar.

Prior to working for the Oregon State Bar, Ms. Hollister served as deputy general counsel to Governor Ted Kulongoski, and worked at Perkins Coie LLP in Portland. She clerked for U.S. District Court Judge Robert H. Whaley.

Ms. Hollister earned her B.A. in Political Science from Reed College and her J.D. from the University of Washington School of Law.

Ms. Hollister currently serves on the Oregon Women Lawyers Board of Directors and as the Chair of the MBA Professionalism Committee.



Anna Johnson:

Anna brings years of experience as a customer service representative in commercial property and casualty. She works to find the right market for a client's insurance needs and follows the process through from quoting to policy placement.

Anna believes that client service is important from little details that increase client understanding of their policy to research to resolve an insurance issue. She responds to requests for certificates of insurance and other service with an effort to provide same day service. She monitors renewals so that insurance policies continue to match client property and liability needs. Anna has experience with all aspects of Public Entities. She also has experience with bonds and bonding companies.

Anna is a Certified Insurance Service Representative and is completing requirements for the designation of Certified School Risk Manager .



Brittany Smith:

Brittany lives in Portland, Oregon but works with people and organizations all across the country. She began her career in the non-profit sector as a community manager and mental health advocate. She has worked for many non-profits including Children First for Oregon, DiversityRx, The National Federation of Families for Children's Mental Health, and the Children's Mental Health Network. While working in the non-profit sector Brittany discovered

a passion for social media and social change and began providing social media training and technical assistance to system of care communities, government agencies, and other non-profits at the Children's Mental Health Network. To focus more on social media she started Build Social, LLC in August of 2012 and is enjoying the adventure of owning a small business.

Health Care Reform / Health Insurance Reform What do you need to know about Cover Oregon?

Marvin Revoal
Pacific Benefits Planner Insuran

Affordable Care Act

Health Care Reform



Solo and Small Firm Practitioners
Continuing Legal Education

Presented by:
Marvin Révoal, Senior Principal
PBP Insurance

November 15, 2013

PACIFIC BENEFIT PLANNERS

Information Sources

Information is updated frequently.

www.pbpinsurance.com

<http://www.uschamber.com/health-reform>

www.oregon.gov/DCBS

www.coveroregon.com

<http://www.irs.gov/uac/Small-Business-Health-Care-Tax-Credit-for-Small-Employers>

Contact Information for Marvin Revoal:

503-223-3638

mrevoal@pbpinsurance.com

Notes

Affordable Care Act (ACA)

Mandates insurance coverage for each individual
Creates universal changes to health care coverage
Creates an exchange

- Access to Coverage
 - Cover Oregon: An online market for individuals to buy health coverage
 - SHOP: An exchange that small employers may use to provide health insurance options to their employees
 - Guaranteed issue
 - No pre-existing condition periods
 - New employees waiting period within 90 days
 - Preventative services
- Essential Health Benefits: A set of benefits a plan must provide to be a Qualified Health Plan
 - Ambulatory patient services
 - Emergency services
 - Hospitalization
 - Maternity and newborn care
 - Mental health and substance use disorder services
 - Rehabilitative and habilitative services and devices
 - Prescription drugs
 - Laboratory services
 - Preventative and wellness services and chronic disease management
 - Pediatric services including oral and vision care
- Standardized Levels of Coverage
 - Benchmark Plan: A plan selected by a state that defines a standard set of benefits that may be sold in the state
 - Qualified Health Plan: Plans that are approved to be sold in the Exchange
 - Exchange: Four levels of coverage called metal plans
 - Bronze – 60%
 - Silver – 70%
 - Gold – 80%
 - Platinum – 90%
- Maximum Cost Sharing Standards
 - No lifetime limits
 - No greater than \$6350 for individual and \$12,500 for family to be indexed annually; does not apply to cost sharing for out-of-network services
 - \$2000 annual deductible for individual; \$4000 for family (Bronze plan is \$5000 to reach an actuarial level of coverage)
- Rating Reforms
 - Standard underwriting factors – geographical location, age, tobacco use
 - Standard requirements for plans for all insurance companies
- Catastrophic Plans
 - For individuals under age 30 or not eligible for affordable coverage or due to hardship

- Financial Assistance with Premium costs
 - Cover Oregon online premium and financial assistance calculator
 - CoverOregon – Browse a Plan on home page
 - Tax credits or subsidies based on modified adjusted gross income
 - Federal tax return, line 22 on form 1040A or line 38 on form 1040
 - Based on Federal Poverty level

Amount of penalty: The annual penalty for lacking essential coverage will be the greater of a flat amount per individual or a percentage of taxable income. After 2016, the flat dollar amount is indexed to inflation. The penalties are phased in.

- In 2014, the annual penalty will be \$95 per adult and \$47.50 per child, up to a family maximum of \$285 or 1 percent of family income, whichever is greater.
- In 2015, the penalty will be \$325 per adult and \$162.50 per child, up to a family maximum of \$975 or 2 percent of family income, whichever is greater.
- In 2016, the penalty will be \$695 per adult and \$347.50 per child, up to a family maximum of \$2,085 or 2.5 percent of family income, whichever is greater.

Please note: For 2014, the open enrollment period in Oregon extends through March 31, 2014.

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HOW AND WHEN WILL HEALTH CARE REFORM IMPACT YOUR BUSINESS?

	Universal changes to health care coverage	Opportunities and requirements that affect your health care strategy	
		SMALL BUSINESS	LARGE BUSINESS
2010	<ul style="list-style-type: none"> ✓ Choice of primary care provider and access to ob-gyns ✓ Emergency services ✓ Lifetime and annual dollar limits ✓ Pre-existing conditions for under age 19 ✓ Preventive services ✓ No rescissions 	<ul style="list-style-type: none"> ✓ Dependent coverage to age 26 ✓ Early Retiree Reinsurance Program ✓ Nondiscrimination ✓ Tax credit up to 35% (24 or fewer full-time or full-time-equivalent employees) 	<ul style="list-style-type: none"> ✓ Dependent coverage to age 26 ✓ Early Retiree Reinsurance Program ✓ Nondiscrimination
2011	<ul style="list-style-type: none"> ✓ Medical benefit ratio 	<ul style="list-style-type: none"> ✓ Over-the-counter drug reimbursements 	<ul style="list-style-type: none"> ✓ Over-the-counter drug reimbursements
2012	<ul style="list-style-type: none"> ✓ Summary of Benefits and Coverage ✓ Women's preventive services 	<ul style="list-style-type: none"> ✓ PCORI fee ✓ Summary of Benefits and Coverage 	<ul style="list-style-type: none"> ✓ PCORI fee ✓ Summary of Benefits and Coverage
2013		<ul style="list-style-type: none"> ○ FSA contribution limits ○ Notices to employees about exchanges (on hold until the Department of Labor issues regulations) 	<ul style="list-style-type: none"> ○ W-2 reporting of benefits ○ FSA contribution limits ○ Notices to employees about exchanges (on hold until the Department of Labor issues regulations)
2014	<ul style="list-style-type: none"> ○ Exchanges go into effect (open enrollment starts October 2013) ○ Essential health benefits ○ Guaranteed availability for adults ○ Community rating by class for small groups and individuals 	<ul style="list-style-type: none"> ○ Exchanges go into effect (open enrollment starts October 2013) ○ Tax credit up to 50% (24 or fewer full-time or full-time-equivalent employees) ○ Community rating by class for small groups and individuals ○ Wellness program rewards ○ Health insurer fee ○ Reinsurance program contribution 	<ul style="list-style-type: none"> ○ Employer shared responsibility ○ Wellness program rewards ○ Health insurer fee ○ Reinsurance program contribution
2016			<ul style="list-style-type: none"> ○ SHOP expands to businesses with up to 100 employees (if states haven't already done so)
2017			<ul style="list-style-type: none"> ○ States may expand SHOP to businesses with 100+ employees
2018		<ul style="list-style-type: none"> ○ Tax on high-cost ("Cadillac") insurance plans 	<ul style="list-style-type: none"> ○ Tax on high-cost ("Cadillac") insurance plans

SMALL BUSINESS CHECKLIST

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What you need to know

You understand that offering your employees access to quality health care can give you a competitive edge — enabling you to hire more talented staff while keeping your current employees healthier and more productive at work and at home. But the high costs of health care can be a real challenge for small business owners.

The ACA:

- offers new opportunities through the Small Business Health Options Program (SHOP), including small business tax credits to employers with 24 or fewer full-time-equivalent employees
- enables smaller employers to be part of a single risk pool with other participating small businesses
- ensures your employees in nongrandfathered commercial plans (with some exceptions, such as retiree and dental-only plans) have access to preventive services with no cost sharing — encouraging them to get care before they need costly and invasive treatment

- makes coverage for adult dependents available until they turn 26 — when dependent coverage is offered in commercial plans (with some exceptions, such as retiree and dental-only plans)
- allows for no pre-existing condition exclusions for children — or, starting in 2014, for adults

What to consider

As a small business with 1 to 50 full-time-equivalent employees, your first step is to decide how best to invest in the health of your employees. Under the ACA, you have several options to consider:

- ✓ continue purchasing group coverage directly from an insurer
- ✓ make coverage available to your employees through the SHOP
- ✓ offer neither group coverage nor access to the SHOP — sending your employees to the exchange in your state

What to do

The actions you need to take depend on your business size and how you plan to prioritize health care as a business strategy in the coming years.

- ✓ Understand the pros and cons of each coverage option.
- ✓ Get familiar with the SHOP, including available plan tiers and cost sharing.
- ✓ Decide what you plan to do well in advance of your first renewal on or after January 1, 2014:
 - If you have a nongrandfathered plan, you'll be offered the metal tier plan closest to your current plan. Decide whether you'd like that plan, or select a different metal tier plan.
 - If you have a grandfathered plan and have the option to keep that plan (it's likely that not all insurers will allow grandfathered plans, and if they do, they may not allow them in all states), decide whether you'll keep your grandfathered plan or choose a metal tier plan.

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SMALL BUSINESS CHECKLIST

- If you have a grandfathered plan and can't keep that plan, you may be moved into the metal tier plan that most closely resembles your grandfathered plan. Decide whether you'll keep that metal tier plan or choose a different metal tier plan.
- ✓ If you have 24 or fewer full-time-equivalent employees, evaluate whether you're eligible for the tax credit. You can carry any eligible health care tax credit back one year.
- ✓ If you're a larger small business with part-time workers — or a subsidiary of a larger organization — you'll need to determine whether you're subject to ACA's employer shared responsibility regulations. Use the calculator on the right to see if this provision applies to your business.
- ✓ Make sure you're limiting annual employee paycheck contributions to flexible spending accounts (FSAs) to \$2,500.
- ✓ Depending on when future Department of Labor regulations become effective — no earlier than summer 2013 — provide written notice about health insurance exchanges for current employees, and going forward for new employees.

- ✓ Review your current wellness program to make sure you're maximizing employee rewards. In 2014, the maximum reward for health-contingent wellness programs will increase to 30% of the cost of coverage (the Department of Health and Human Services is proposing up to 50% for programs that prevent or reduce tobacco use).
- ✓ Get ready for a possible requirement to report the cost of employees' health benefit coverage on 2013 W-2 forms distributed in January 2014 (employers who filed fewer than 250 W-2 forms for the preceding calendar year are exempt from this requirement until the IRS issues further guidance).

Get more support and recommendations

- [Small business section on HealthCare.gov](#)
- [U.S. Small Business Administration's health care site](#)
- [Kaiser Family Foundation fact sheet on health care reform and small business*](#)
- [Kaiser Family Foundation — Health Care Reform Resources for Employers](#)

EMPLOYER SHARED RESPONSIBILITY CALCULATOR

To determine if you meet the threshold of 50 full-time-equivalent workers for any calendar year, you'll average your number of employees across the months in the year:

1. Write down the number of full-time employees who average at least 30 work hours a week or 130 work hours in a calendar month.
2. Calculate the number of full-time equivalents by adding total monthly hours of your part-time employees divided by 120.
3. Add these two numbers together to get your total number of full-time-equivalent employees for the month.

0	full-time employees	+	0	total monthly hours for part-time employees
			120	
				full-time-equivalent employees for the month = 0

4. Repeat this calculation for every calendar month in the 12-month period.
5. Add all your calendar month totals together. Divide this number by 12 to determine your average monthly full-time-equivalent employee count.

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC			
0	+	0	+	0	+	0	+	0	+	0	+	0	+	0
12														
												average monthly full-time-equivalent employee count = 0		

* The Kaiser Family Foundation is a nonprofit, private organization not affiliated with Kaiser Permanente.

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SMALL BUSINESS HEALTH CARE TAX CREDIT

Provision timeline:
2010 2014Groups affected:


At a glance

Under the ACA, businesses with 24 or fewer full-time-equivalent employees may qualify for a small business tax credit of up to 35 percent (25 percent for tax-exempt groups) to help them afford the cost of health care premiums. In 2014, the tax credit goes up to 50 percent (35 percent for tax-exempt groups) and is available to qualified small businesses that participate in the Small Business Health Options Program (SHOP). Small employers can claim the credit through 2013 and for two additional years beginning in 2014.

The maximum credit will be available to employers with 10 or fewer full-time-equivalent employees and average annual wages below \$25,000. Businesses that receive state health care tax credits may also qualify for the federal tax credit. Dental and vision care also qualify for the credit.

What you need to know

SMALL BUSINESSES

The ACA doesn't require small businesses to offer health insurance. Businesses may qualify for the small business tax credit if they:

- have 24 or fewer full-time-equivalent employees for the taxable year (for example, two half-time employees equal one full-time employee for purposes of the credit)
- pay average annual wages below \$50,000
- contribute 50% or more toward employee health insurance premiums

LARGE BUSINESSES

Large businesses aren't eligible for this tax credit.

Learn more

- HealthCare.gov
- Internal Revenue Service
- [Calculator for California small businesses](#)

CALCULATING YOUR TAX CREDIT

To determine how many full-time-equivalent workers you have:

1. Take the number of full-time employees who work at least 40 hours a week.

0 full-time employees

2. Calculate the number of full-time-equivalent employees by dividing the total annual hours of your part-time employees by 2,080.

0
total annual hours for
part-time employees
2,080

3. Add these two numbers together to get your total number of full-time-equivalent employees.

0

You can also calculate your eligibility using the [IRS Small Business Health Care Credit Estimator](#).

Retirement Plans & Disability Protection

Are you ready for this?

Alan Bacharach
Wealth Strategies, Guardian Life

Oregon Bar, Solo& Small Firm Practianers Section

Steps Towards Assuring Lifetime Income

15 November 2013

- I. Opening video (from LBS website)
- II. X20
 - a. Inflation
 - b. Professional progression
 - c. 30
- III. Saving Fantasy!
Dr. & Dr. Failure
- IV. It's Never Going to Happen—stories
- V. Offer within one year of passing the bar
- VI. Types of Disability Coverage
 - a. Income
 1. Individual
 2. Group
 3. Hybrid
 - b. Overhead Expense
 - c. RPP
 - d. Reducing term
 - e. Buy-sell
- VII. Key Points
 - a. Non-can Guaranteed Renewable
 - b. Own Occ
 - c. Increase Options
 - d. CAT
 - e. Retirement
- VIII. Retirement Costs
Fees, hidden fees, no load
- IX. Highest Tax, Tax Rates, Cap. Gains
- X. ROTH
- XI. SEP, SIMPLE, IRA

Property & Casualty Insurance
Have you properly insured your employees and
business?

Anna Johnson
Pacific Benefits Planner Insuran

Property & Casulaty

For

Legal Services/Law Offices

Solo and Small Firm Practitioners
Continuing Legal Education



Presented by:
Anna Johnson, CISR
PBP Insurance

November 15, 2013

PACIFIC BENEFIT PLANNERS

Information Sources

Information is updated frequently.

www.pbpinsurance.com

www.iii.org

www.BusinessInsurance.com

www.thehartford.com/workerscomp/avma.html

Contact Information for Anna Johnson:

541-341-3478

ajohnson@pbpinsurance.com

Notes

LAW OFFICES

Category: Service Businesses

SIC CODE: 8111 Legal Services

NAICS CODE: 541110 Offices of Lawyers

Suggested ISO General Liability Code: 65821

Suggested Workers Compensation Code: 8820

Description of operations: Lawyers and attorneys are legal professionals, entrusted by a client for advice in handling legal matters, drafting contracts and other legal documents, and representing him or her in a legal action. Lawyers and attorneys are held to a high degree of professional knowledge and skill. They must pass the state bar exam in the state in which they wish to be licensed and employed. Many businesses employ lawyers as staff attorneys in various capacities. These may include the drafting or approval of contracts, product descriptions, and similar materials. Staff attorneys may also be involved in negotiations with unions or government regulators, or may function as lobbyists.

Property exposure is generally limited to that of an office, although there may be some incidental storage or an area for meetings. Hazards arise from the storage of reference materials and customers' records, which significantly adds to a fire load. Fire sources include electrical wiring, wear, and overheating of equipment.

Crime exposure comes from employee dishonesty, which can be serious as lawyers and their staff possess unique access to customers' property and personal information, including bank accounts. Methods and procedures must be in place to prevent employees from gaining access to and taking customers' property. Potential for theft, directly or by means of identity theft, is great. Hazards increase without proper background checks, along with monitoring procedures and securing of all records to prevent unauthorized access.

Inland marine exposures are accounts receivable, computers, and valuable papers and records. The law library in most law offices is extensive and best insured by use of the valuable papers and records coverage. The library should be inventoried, with that information stored off site. Wills, deeds and other customers' papers are typically originals and are difficult to recreate. A morale hazard may be indicated if the insured does not keep valuable papers and disks in fireproof file cabinets to protect them from smoke, water and fire. Power failure and power surges are potentially severe hazards. Duplicates should be kept off site to allow for restoration.

Premises liability exposure is often minimal since most operations are conducted on premises and most of the client contact is electronic or by mail. If clients visit the premises, they must be kept in waiting areas and designated conference areas so they cannot view or overhear conversations regarding other clients' confidential information. To prevent slips, trips, and falls, all areas accessible to clients must be well maintained with floor covering in good condition. Procedures must be in place in case mediations or conferences become emotional or violent. Off-premises exposures arise from meetings at the customer's home or business premises, as well as from court appearances.

Professional liability exposure is extensive. Risk factors to review include the services the applicant provides, the firm's credentials and experience, and the ratio of professional versus clerical employees. Failure to conduct thorough background checks to verify credentials and education poses a significant risk. Hazards increase if clerical workers are allowed to carry out tasks that only the professionals should handle, or if error checking procedures are ignored, or are inadequate. Very serious losses may result from failure to document decisions and actions or to secure client approval.

Automobile exposure is generally limited to hired and non-owned. If vehicles are provided to employees, there should be clear procedures in place regarding personal use by employees and their family members. The age, training, experience, and records of each driver, as well as age, condition, and maintenance of the vehicles, are all important items to consider.

Workers compensation exposure is generally limited to that of an office. Computer-related concerns include eyestrain, neck strain, carpal tunnel syndrome, and similar cumulative trauma injuries that can be addressed through ergonomically designed workstations. Some firms have significant off-site work for client visits, court appearances and similar activities.

Minimum recommended coverage.

Business Personal Property, Employee Dishonesty, Accounts Receivable, Computers, Valuable Papers and Records, General Liability, Employee Benefits Liability, Professional Liability, Umbrella Liability, Hired and Nonownership Auto Liability, Workers Compensation

Other coverages to consider:

Building, Equipment Breakdown, Business Income with Extra Expense, Computer Fraud, Forgery, Employment-related Practices Liability, Business Auto Liability and Physical Damage

RE: Policy Number:
Named Insured:
Agent:



HOME BUSINESS QUESTIONNAIRE

1. Is any business conducted on the residence premises, including in the home, on the property, in any other structure or at another location away from the residence? (e.g., home office, farming, day care, commercial operation, Amway, Mary Kay, Tupperware) Yes No
If yes, please describe in detail, including the name of the business. _____
-
2. What percentage of the home, property and/or other structure is used for business purposes? _____ %
Have there been any modifications to the heating, plumbing or electrical systems to accommodate the business? Yes No
If yes, please describe. _____
3. Do clients/customers come on the residence premises? Yes No
If yes, how many and how often per week? _____
4. Are there any part or full time employees of the home business other than resident relatives? Yes No
If yes, please list how many. _____
5. Are there any signs advertising the business on the residence premises? Yes No
If yes, please describe. _____
6. Please list and describe, including an estimated total value, of any equipment or supplies kept on the residence premises required or used for the business.

7. What is the gross annual income of the home business? \$ _____
8. Does the owner(s) of the home business have all of the required governmental permits, certificates and/or licenses required to legally operate the home business? Yes No

Law Offices

PROPERTY

BUSINESS PERSONAL PROPERTY

Describe the business personal property.

Are detailed records kept of all inventory, machinery, fixtures or equipment including purchase date and price? ___ Yes ___ No

IMPROVEMENTS AND BETTERMENTS

Is the applicant a tenant? ___ Yes ___ No

If yes, answer the following.

Describe all I & B added by the applicant or for which the applicant is paying that cannot be removed.

What is the term of the applicant's lease?

What is the applicant's lease renewal option term?

BUSINESS INCOME

What expenses would continue during any business suspension?

\$ _____ preceding 12 months \$ _____ current year

How many days would the applicant need in order to resume operations? _____

Would the applicant's net income equal pre-loss levels as soon as the operations resumed? ___ Yes ___ No

If no, how many days would be needed before the income would return to the pre-loss level?

___ 30 ___ 60 ___ 90 ___ 120 ___ 150 ___ 180
___ 210 ___ 240 ___ 270 ___ 310 ___ 340 ___ 370

Describe all pieces of equipment or type of operation that would cause a suspension of operations until it was replaced, repaired or resumed.

INLAND MARINE

ACCOUNTS RECEIVABLE

What is the average monthly amount of receivables over the last 12 months? _____

What is the maximum monthly amount of receivables during the last 12 months? _____

What is the estimated cost to re-create all accounts receivable records? \$ _____

Describe the present disaster plan for reconstruction/recreation of accounts receivables.

Where are accounts receivables records stored?

What percentage of the records is duplicated and stored separately? _____%

How long are duplicates kept? _____

Where and in what type of receptacles are the duplicate records stored?

COMPUTERS

Premises # _____ Building # _____

Provide values for the following owned and leased items at this location:

	ACV	RCV
Owned computer hardware	\$ _____	\$ _____
Leased computer hardware	\$ _____	\$ _____
Owned and leased hardware in transit	\$ _____	\$ _____
Proprietary software	\$ _____	\$ _____
Purchased software	\$ _____	\$ _____
Software-related books, forms, documents	\$ _____	\$ _____
Software in transit	\$ _____	\$ _____
Fax machinery	\$ _____	\$ _____

Telephone systems \$ _____ \$ _____
Photocopiers \$ _____ \$ _____
Other \$ _____ \$ _____

Will the applicant significantly change its computer set-up if a loss occurs? ___ Yes ___ No

Describe planned modifications and cost.

VALUABLE PAPERS

Can valuable papers be replaced? ___ Yes ___ No

What percentage will need to be replaced? _____%

What is the estimated cost to re-create? \$ _____

Describe the present disaster plan for reconstruction/re-creation of valuable papers.

Where are valuable papers stored?

What percentage is duplicated and stored separately? _____%

How long are duplicates kept? _____

Describe the location and receptacle where the duplicate valuable papers are stored.

CRIME – EMPLOYEE DISHONESTY

EMPLOYEES

Does the applicant employ any person who has committed a theft or dishonest act? ___ Yes ___ No

Note: *These employees are excluded from coverage and should not be included for rating purposes.*

Are all potential employees screened prior to employment? ___ Yes ___ No

Are references required and verified? ___ Yes ___ No

Does applicant contract with another firm to lease employees? ___ Yes ___ No

Does applicant lease employees without using an outside agency? ___ Yes ___ No

Does applicant use volunteers? ___ Yes ___ No

Note: *Temporary leased employees who are substituting for regular employees are covered; others, including volunteers, are excluded and should not be included for rating purposes.*

MANAGEMENT CONTROLS

Does a person outside of the applicant's accounts payable unit verify the accuracy of all monthly paid invoices? ___ Yes ___ No

Are invoices stamped "paid" at the time checks are issued to prevent duplicate checks from being issued to fictitious persons? ___ Yes ___ No

Are auditor-suggested improvements in internal controls implemented? ___ Yes ___ No

Is there adequate separation of duties between employees who:

Receive money and keep books? ___ Yes ___ No

Disperse money and keep books? ___ Yes ___ No

Reconcile bank accounts and deposit or withdraw? ___ Yes ___ No

LIABILITY – GENERAL LIABILITY

ON PREMISES EXPOSURES

Describe the applicant's on-premises operations.

Are large panes of glass, both inside and outside, properly marked or etched to prevent accidental contact?

Yes No

PARKING LOTS AND SIDEWALKS

Does the applicant own or rent any parking facilities? Yes No

Have arrangements been made for snow and ice removal from the parking lot and walkway?

Yes No

OFF-PREMISES

Do applicant employees interact regularly with customers off-premises? Yes No

Describe the procedure for training, monitoring and supervising all such off-premises employees.

CONTRACTUAL EXPOSURES

Does the applicant lease the premises? Yes No

If yes, answer the following:

Is there a written waiver-of-rights provision for damages to property? Yes No

Is there a written waiver of subrogation? Yes No

Is there a written hold harmless agreement? Yes No

Are maintenance responsibilities delineated clearly in the contract? Yes No

Indicate under which of the following agreements the applicant has assumed liability of others:

Lease agreements for real estate

Lease agreements for signs, refrigerators, etc.

Sidetrack agreements

Contracts for electric power, steam, etc.

Easement agreements

Elevator maintenance

Other contracts such as construction, installation, compliance certificates, etc.

Is the applicant's insurance policy required to be primary under any of the indicated contracts? Yes No

PERSONAL AND ADVERTISING INJURY EXPOSURES

Does the applicant advertise its products, goods or services? Yes No

If yes, what media are used and what is that medium's percentage of the overall advertising budget?

% Television

% Direct mail

% Radio

% Signs

% Newspaper

% Yellow Pages

% Magazine

% Internet

% Other

Does the applicant have a web page? Yes No

Does the applicant use an advertising firm and/or outside web designer? Yes No

Describe steps taken to protect the confidentiality of clients and client's customers.

LIQUOR

How many parties are held annually where alcohol is served? _____

Are parties held at locations other than the applicant's office? Yes No

Describe locations, other than restaurants or clubs with liquor licenses, where parties might be held.

Are caterers hired who have training in determining intoxication? Yes No

Are caterers required to carry liquor liability coverage? Yes No

OTHER PROFESSIONAL SERVICES

Is there any exposure for professional services performed by the applicant's own personnel or through the use of subcontractors (i.e., accounting, notary public, data processing, etc.)?
 Yes No

LIABILITY – EMPLOYEE BENEFITS

Does the applicant provide benefits to employees? Yes No

If yes, describe the benefits offered.

Health Life Disability Stock purchase

Pension 401(k) Other

Are the benefits available to all employees? Yes No

If no, who qualifies and how are the qualifications published?

Who administers the benefit programs?

If an outside firm provides services, provide a copy of the contract.

What is the employee turnover rate? _____

Is there an established procedure for termination of an employee that includes an explanation of the benefits along with signed documentation? Yes No

LIABILITY – Employment Practices

EMPLOYEE INFORMATION

Provide total number of employees:

Full time Seasonal Leased
 Part time Temporary

What are the percentages of employees who are ___% Exempt ___% Non-exempt?

What are the percentages of employees who are ___% Union ___% Non-union?

For each of the past five years, provide the number of employees who have been hired, the number of employees who have been terminated and the turnover rate.

Year	# Hired	# Terminated	Turnover rate %
------	---------	--------------	-----------------

HUMAN RESOURCE DUTIES

Does the applicant maintain a human resources or personnel department? Yes No

If no, how are the job duties associated with the human resources department handled?

Are all human resource job duties handled in a central location? Yes No

If no, describe how the duties are disbursed and where they are handled.

Does the applicant have a written policy regarding hiring, termination and disciplinary procedures? Yes to all No

NEW HIRE PROCEDURES

Are applications required of all people applying and new hires? Yes No

Are references routinely asked for all people applying and new hires? Yes No

Are references checked? Yes No

Are past employers checked? Yes No

Is education verified? Yes No

Do new hires receive orientation and training upon hire? Yes No

Does the applicant have an employee handbook? Yes No

If yes, answer the following:

Is the handbook routinely distributed to all new employees at time of hire? ___ Yes ___ No

Are updates distributed to all employees on periodic basis? ___ Yes ___ No

COMPLAINT PROCEDURES

Does the applicant have a procedure in place for the handling of sexual harassment complaints? ___ Yes ___ No

If yes, attach copy of procedure.

Does the applicant provide training on this issue? ___ Yes ___ No

If yes, provide details.

Does the applicant have a procedure in place for the handling of discrimination complaints? ___ Yes ___ No

If yes, attach a copy of the procedure.

Does the applicant provide training on this issue? ___ Yes ___ No

PROMOTIONS AND EVALUATIONS

Is any testing or screening given to employees prior to promotion? ___ Yes ___ No

Are all employees reviewed and evaluated on a periodic basis? ___ Yes ___ No

If yes, answer the following:

What is frequency of review? _____

Is the review/evaluation procedure formal and in writing? ___ Yes ___ No

Are employees informed of the results? ___ Yes ___ No

Does the applicant have a formal procedure for terminations? ___ Yes ___ No

If yes, attach copy.

TERMINATION PROCEDURES

Are all terminations reviewed by or with legal counsel prior to implementation? ___ Yes ___ No

Are layoffs, consolidations or mergers probable in the next three years? ___ Yes ___ No

When layoffs or terminations occur due to downsizing, mergers and consolidations, is job-training, retraining or placement assistance provided to all impacted employees? ___ Yes ___ No

If only offered to certain employees, explain criteria.

DOCUMENTATION

Attach the documentation procedure used for each employee. Please be sure that reference is given to what information is retained, the length of time it is retained, and the persons who have access to the information.

Attach the documentation procedure used for discrimination and harassment complaints. Include information on the items retained, length of time retained, and the persons who have access to the information.

Has the applicant ever had any claim, grievance charge or hearing through any of the following agencies or acts?

Civil Rights Act ___ Yes ___ No

Americans with Disabilities Act ___ Yes ___ No

National Labor Relations Board ___ Yes ___ No

Equal Employment Opportunity Commission ___ Yes ___ No

Age Discrimination Employment Act ___ Yes ___ No

Any other federal, state or local agency relating to employment ___ Yes ___ No

Any other federal, state or local regulation or legislation relating to employment ___ Yes ___ No

AUTOMOBILE – HIRED AND NONOWNERSHIP

HIRED/BORROWED AUTO

Is the applicant required to provide the primary coverage for any hired or borrowed vehicles?
___ Yes ___ No

If yes, answer the following:

Will the applicant be hiring or borrowing the same vehicle for more than six months? ___ Yes ___ No

Is the owner of the vehicle an employee of the applicant? ___ Yes ___ No

Is an employee hiring the vehicle in his or her own name in order to perform the applicant's business?
___ Yes ___ No

List the states where the applicant may hire or borrow vehicles, and provide the estimated annual cost (put "if any" if unknown).

State Cost

State Cost

State Cost

Is hired auto physical damage required? ___ Yes ___ No

NON-OWNED

What is the total number of employees at all locations? _____

If the applicant is a partnership, what is the total number of active and inactive partners? _____

What percentage of employees regularly use their own vehicles in the applicants' business? ___%

Does the applicant want to provide Employees as Insureds coverage? ___ Yes ___ No

WORKERS COMPENSATION

OPERATIONS

List all states where the applicant anticipates working during the next twelve (12) months.

EMPLOYEES

Are any of the applicant's employees considered exempt from workers compensation statutes in the jurisdiction in which they work? ___ Yes ___ No

Do any employees telecommute or in other ways work out of their homes? ___ Yes ___ No

If yes, describe the employee job functions and safety procedures for them.

MANAGEMENT

Does the applicant obtain work permits as required by local, state or federal statutes? ___ Yes ___ No

Is there an organizational policy concerning the number of key employees who travel together? ___ Yes ___ No

If yes, attach a copy.

If the applicant employs subcontractors, how is timely receipt of certificates of insurance monitored for those subcontractors?

Is all of the machinery and equipment properly guarded and secured? ___ Yes ___ No

Are employees trained prior to operating any machinery and equipment? ___ Yes ___ No

Are employees trained in the proper cleaning techniques for machinery and equipment? ___ Yes ___ No

Are first aid kits provided? ___ Yes ___ No

Is at least one employee (on duty) trained in administering first aid? ___ Yes ___ No

Are employees instructed in how to handle unruly customers? ___ Yes ___ No

Are all work stations ergonomically designed to prevent repetitive motion injuries? ___ Yes ___ No

Malpractice claims: What not to do

J. Randolph Evans and Shari L. Klevens,
McKenna Long & Aldridge's Daily Report, June 18, 2013

LEGAL MALPRACTICE claims are bad enough. Unfortunately, many attorneys respond in a way that causes them to become nightmares.

A straightforward claim that might have been resolved early instead becomes an expensive and complex claim with significant exposure and high defense costs.

To avoid this possibility, here are the five common mistakes made after receipt of a legal malpractice claim.

Don't assume a claim means a lawsuit

Contrary to public perception, the filing and prosecution of a legal malpractice lawsuit is not easy. The mere assertion of a legal malpractice claim requires little. It is the difference between a claim and a lawsuit that is important.

Data confirm that most legal malpractice claims are meritless. Sometimes, clients threaten a claim in order to avoid paying a bill, or because the client is unhappy with an outcome. Neither scenario necessarily supports a viable legal malpractice lawsuit.

Moreover, even with claims involving an actual attorney mistake, the mistake alone is insufficient to support a legal malpractice lawsuit. Instead, the mistake must proximately cause damage. Even then there might be financial or other pressures that will prevent a claim from actually filing suit.

For example, there are the fixed costs associated with a lawsuit, including filing fees. In some states, legal malpractice claims also require expert testimony including an affidavit from an expert prior to filing.

Putting aside the out-of-pocket expenses, there are other issues associated with filing a legal malpractice action. For example, clients who sue their attorneys waive all the protections of attorney-client privilege. This typically means that everything the client has told the attorney can be disclosed. Moreover, there is the time that clients must spend on the litigation itself.

These factors mean that a claim is not necessarily followed by a lawsuit – even if the claim is based on an actual mistake.

Before a client can bring a claim, the client must decide that claim is worth the risks and hire counsel to file suit. Then the client and the client's legal malpractice attorney must decide that the return on investment is worth the money and time necessary to pursue the lawsuit.

Continued...

Don't admit legal malpractice

The duty to keep clients informed includes self-reporting when mistakes happen. However, there is a fine line between the duty to report facts material to the representation of a client and admitting legal malpractice that would virtually assure that a lawsuit follows.

Attorneys who fail to timely report mistakes face significant risks. These can include tolling of the statute of limitation, exposure to a conflict of interest (based on the conflict between the client's interests and the attorney's interests), and bar grievances. In addition, failure to report an error increases the likelihood that a malpractice claim will become a legal malpractice lawsuit.

One of the factors motivating plaintiffs' legal malpractice attorneys to file a lawsuit is the concealment of a mistake from the client. In those circumstances, juries do not react well. On the other hand, not all mistakes equal legal malpractice. In addition, there are some serious consequences for admitting malpractice when legal malpractice has not yet occurred.

Obviously, such admissions can make defending the lawsuit on the issue of liability very difficult. Less obvious, however, is that an admission can constitute a violation of the "no admissions" clause of the typical legal malpractice insurance policy, negating insurance coverage.

Thus, the best approach is to follow the rule of Joe Friday – "just the facts" – which is a good practice regardless of the risk of legal malpractice claim.

In practice, if there is an adverse development in a representation, the best and safest approach is to timely report it to the client. If the adverse development arises out of the attorney's action (or inaction), then the report should include that fact as well.

The important thing is to stop short of concluding or conceding that the mistake and the adverse development constitutes legal malpractice. There are many reported cases where attorneys have admitted to legal malpractice, but where no legal malpractice actually existed.

Don't ignore the problem

While some attorneys overreact to potential claims, there are others who simply choose to ignore the problem in the hope that the issue will go away. This strategy rarely works.

If a client is convinced that an attorney has committed legal malpractice, the client is unlikely to let it go. Emotions take over, which is why legal malpractice claims are till filed, even where so many are without merit.

A better approach is to engage, by providing the client with a copy of the file and by responding to any client inquiries. If there are issues to be addressed, then address the. It is equally important that attorneys ensure that all appropriate notices are provided to the attorney's legal malpractice insurance company.

Continued...

Don't sue to get ahead

In many instances, potential legal malpractice claims include an unpaid fee or expense component. Some attorneys see this as an opportunity to "get ahead of the curve," by filing their own lawsuit against the client first to recover the unpaid fees, so that the attorney can dictate the beginning of the lawsuit.

However, that approach makes a potential legal malpractice claim into a reality, with the resulting initial out-of-pocket expenses associated with the filing.

Certainly, there may be reasons unique to a particular situation that would justify the pre-emptive filing of a lawsuit against a client. However, those circumstances are very rare and inapplicable to most attorneys.

Unless the client's claim is little more than an excuse to avoid paying fees, and the attorney has concluded that the likelihood of success far outweighs the risk, attorneys should not start the litigation.

Don't make settlement offers without insurer consent

Some claims merit early settlement attempts. Attorneys should not ignore those opportunities, especially if the amount required to settle is small compared with the costs and exposure of the claim.

The typical legal malpractice policy prohibits an attorney from making a settlement offer with the insurance company's consent. It is critically important that any efforts to settle be coordinated with the insurance company. The risks of failing to do so are significant.

Most notably, settlement offers without the insurer's consent can jeopardize coverage for the entire claim, even if the proposed settlement is within the law practice's deductible. Attempts to settle without involving the insurer are just too risky.

Because not every claim becomes a lawsuit, the key for an attorney receiving a claim is to avoid making these mistakes, as they do little more than increase the likelihood of a claim.

Randolph Evans and Shari L. Klevens are the authors of Georgia Legal Malpractice Law, published by Daily Report Books. J. Randolph Evans is a partner in McKenna Long & Aldridge's Atlanta office, where he is the chairman of the financial institutions practice. Shari L. Klevens is a partner in McKenna Long & Aldridge's Washington office and is the practice group leader of the firm's law firm defense practice.

Can you spell “litigious”? Not everyone can, but that doesn’t stop them from filing lawsuits—even against the attorneys who represent them in cases involving anything from a neighborhood dispute to criminally negligent homicide. Even as they engage in the practice of their particular specialty, lawyers must prepare to defend themselves against suits filed by disgruntled clients—and others.

According to CNA Insurance, a leading U.S. writer of lawyers professional liability insurance, about 2%-3% of practicing lawyers in the country are likely to face an allegation of professional malpractice in any given year. What’s more, the insurer notes, law firms of all sizes are vulnerable to claims, no matter where they are located or what kind of law they practice.

To protect themselves in the event that they’re sued, more than 150,000 lawyers in 49 states turn to CNA,

which for more than 50 years has been delivering lawyers professional liability coverage along with a comprehensive suite of risk management services. From small-town sole practitioners to large specialty firms, CNA provides insurance tailored to specific needs and manages a book of business worth more than \$300 million in premium. The insurer also offers business owners and workers compensation coverage to the law firms it insures.

As CNA’s vice president of underwriting for lawyers professional liability, Michael Furlong, JD, is eminently qualified to comment on key trends in the legal environment and their impact on claims. He joined CNA in 2010, and his background encompasses more than 20 years’ experience in the professional liability field.

“One significant change I’ve observed over the years is that there’s a greater willingness on the part of clients to pursue claims against their attorneys for unsatisfactory outcomes,” Furlong remarks. “We’re also seeing an increasing tendency for one law firm to sue another, as well as more claims

being brought against law firms by non-clients.”

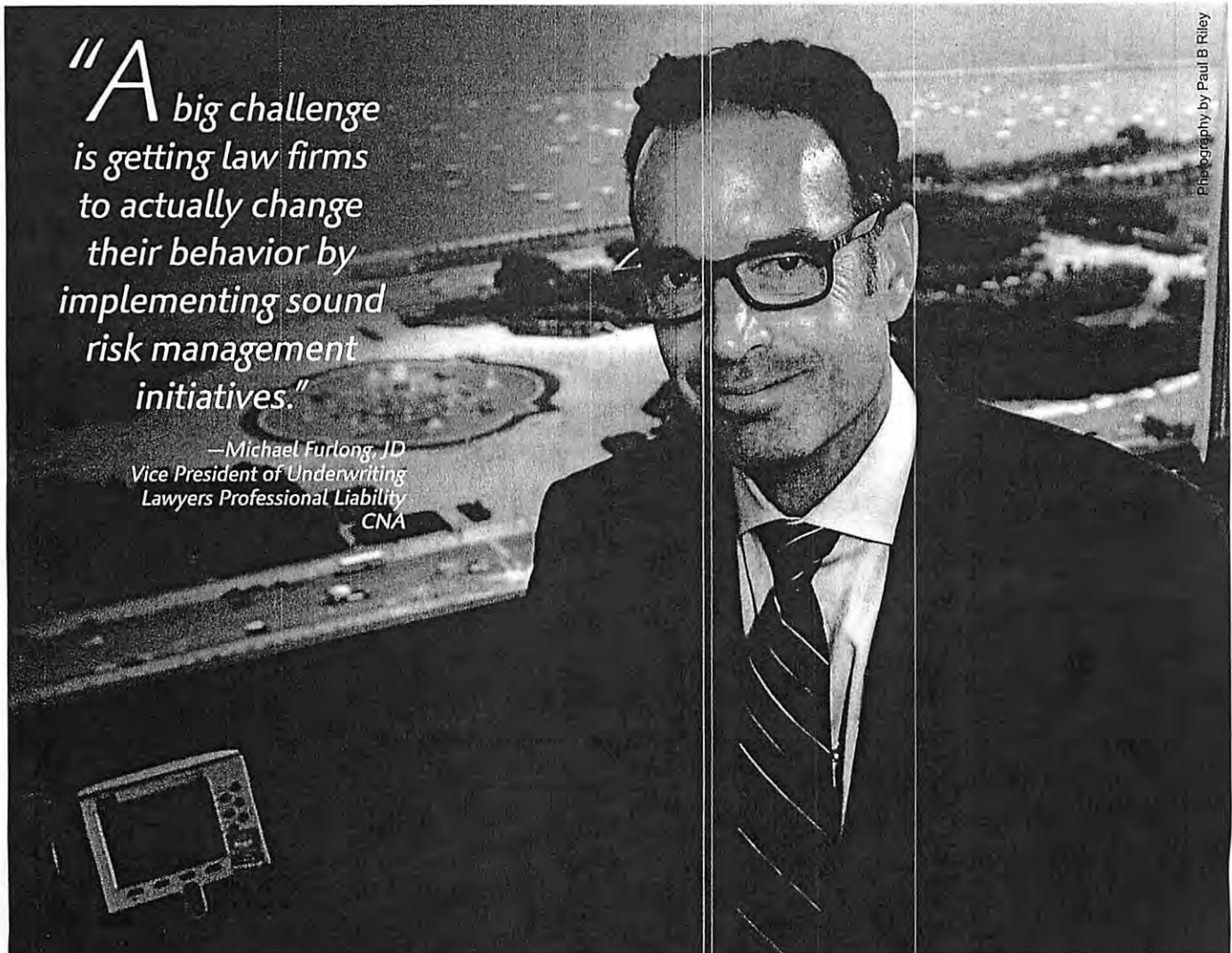
These trends, he points out, underscore the need for law firms to develop and implement strong risk management measures to forestall claims and suits. “The importance of careful client selection is paramount, and clear client communication and documentation are absolutely critical to the successful practice of law,” Furlong asserts.

Each year, he notes, the American Bar Association conducts a study of claims against lawyers by area of practice. “Generally the top five practice areas are pretty consistent in terms of the frequency of claims,” he says. “Our results at CNA are similar to those of the ABA study.

“The number one practice area for claims, especially during the economic downturn, has been real estate law,” Furlong says. “The collapse of the residential real estate market triggered an influx of claims in 2007 and 2008. First we saw claims related to errors in titles, and shortly thereafter came a deluge of claims based on the steep decline in property values.” As the

“A big challenge is getting law firms to actually change their behavior by implementing sound risk management initiatives.”

*—Michael Furlong, JD
Vice President of Underwriting
Lawyers Professional Liability
CNA*



Photography by Paul B Riley



CNA's Chicago-based Lawyers Engagement Agreement team includes (from left): Patrick Ginty, Risk Control Director; Kimberly Mozdzierz, Underwriting Consulting Director; Theresa Garthwaite, JD, Risk Control Representative; Michael Barrett, JD, Risk Control Director; and Michael Furlong.

crisis spread to the commercial side, he comments, clients who experienced similar adverse outcomes began to sue their lawyers.

Ranking second highest in terms of claims is plaintiff work; also consistently in the top five are collections and bankruptcy, family law, and estates, trusts, and probate.

With regard to severity, Furlong says, "We've seen a big uptick in claims related to commercial transactions among both our large firms and our smaller firms. Again this trend has been driven by the economic downturn. Many claims allege errors in the drafting of contracts; another cause of severity is conflict of interest claims. We're also seeing an increase in claims against defense firms."

Risk awareness

When it comes to preventing claims, a critical factor for every law firm is awareness of the risks it faces

and their potential impact. Because lawyers are highly educated professionals, it's tempting to assume that they have a high level of risk awareness—but Furlong says that's not necessarily the case.

"It's all over the board," he says. "In general, younger lawyers may be less educated about their professional liability exposures and the challenges they represent. Law schools are doing a better job in this regard, but for the most part younger lawyers must develop this awareness through their practice. As an insurer, we try to raise awareness of the exposures that law firms face, and overall I think our industry is making a strong effort on this front," Furlong remarks.

"Risk awareness is absolutely critical," he continues, "and it's promoted and emphasized in programs of continuing legal education. A bigger challenge is getting law firms to actually change their behavior by implementing sound risk management initiatives.

"For example, we emphasize the importance of engagement letters and of making sure that a documented agreement is in place with regard to the firm's representation of the client," Furlong says. "In our application we ask specifically: 'Do you use engagement letters?' In over 97% of the applications we receive, the lawyers say yes. But when we have a claim and we ask the defense lawyers who represent our insureds to obtain a copy of the engagement letter, they tell us there is no letter.

"This shows that there's a clear misunderstanding of what an engagement letter is and why it's so important," he comments. "That's a big challenge for us: not only to continue to drive awareness of the exposures law firms face but also to urge them to implement measures, like engagement letters, that can mitigate risk."

CNA recently launched a new Engagement Agreement Initiative to help reduce legal malpractice

The Lawyers' Professional Liability team includes (seated from left): Patrick Ginty; Gerald Grenon, Claim Manager; Michael Furlong; Charnett Brown, Claim Director; and Douglas Henderson, Claim Manager. Back row (from left): Joseph Wolf, Assistant Vice President, Professional Services; Theresa Garthwaite; Michael Barrett; and Kimberly Mozdzier.



claims filed against lawyers and law firms. CNA has developed 11 sample templates based on the American Bar Association Model Rules of Professional Conduct. The agreements include illustrative language that attorneys can use in their own engagement agreements.

CNA offers its insured lawyers a comprehensive suite of risk control services that includes seminars, webinars, articles, and risk alerts; risk control guides and practice aids; a Risk Analyzer to analyze professional liability risk; a newsletter, and podcasts. A Lawyers' Toolkit titled "A Guide to Managing the Attorney-Client Relationship" contains sample engagement agreements, letters, and conflict of interest waivers. Insureds also have access to a risk control hotline staffed by lawyers who specialize in legal ethics and law practice management.

"We're closely connected with bar associations, and we work with them to put on webinars and seminars and to produce information for their members," Furlong explains. "Those relationships are a key component of our operation." He adds that CNA has nine state bar endorsements for its insurance programs.

CNA provides lawyers professional liability insurance for firms that range in size from small-town sole practitioners to major firms with offices in multiple locations, and coverage is available for virtually every area of

practice. Each insured is assigned a dedicated agent who in most cases has decision-making authority.

The insurer's program for firms with 35 or more attorneys is provided in partnership with an exclusive national network of licensed property and casualty agents who specialize in lawyers professional liability insurance.

The Small Lawyers Program (Program Law) for firms with one to 34 attorneys is provided through a network of 18 managing general underwriters that CNA designates as state administrators. "They have solicitation and underwriting authority on behalf of CNA, and they have a statewide exclusive for smaller law firms," Furlong explains. "The state administrators are experts in lawyers professional liability. They're well connected with their state bar associations, and they maintain a strong local presence." At their discretion, the MGUs can accept sub-produced business from retail agents and brokers.

"The two distribution models we use are best in class and work very well for our insureds and our company," Furlong asserts. "These partners are a vital component of our success in lawyers professional liability."

Earlier this year, CNA announced the consolidation of its Program Law and Large Law Firm underwriting units into a unified department to serve law firms of all sizes.

"These units were basically two separate businesses within CNA's professional liability division," Furlong says. "We decided to consolidate the units in order to maximize our capabilities. We're bringing our underwriting, claims, actuarial, and risk control teams together to better serve all of our insured law firms. We'll still have dedicated teams to serve the smaller firms in our Program Law segment, and we'll continue to have a dedicated underwriting team in New York that is focused on our large law firm clients.

"A big opportunity for us in the consolidation is to strengthen our service to mid-sized law firms," Furlong adds. "We believe these insureds will benefit from the mix of resources our combined unit can provide."

In the challenging market for lawyers professional liability, Furlong is confident of CNA's ability to maintain its leadership position in a competitive environment. "With our underwriting expertise, responsive products, focus on risk control, and strong relationships with the bar, we believe we are well positioned to meet the needs of both current and future insureds," he declares. ■

For more information:

CNA Insurance
Lawyers Professional Liability
 Web site: www.lawyersinsurance.com

Owner's Guide to Bookkeeping & Accounting

What you need to know.

Barbara Fisher
Fisher Business Management

Owners Guide to Bookkeeping and Accounting

What You Need to Know

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www.fisherbusiness.net

503-598-3974

Barb Fisher

Who We Are

- Consulting Firm based in Portland
- Work at Client Locations and Remotely
- Driver, “What would the business be like if the back office just WORKED?”
- 8 Employees
- Winner of Fast Growth Award in 2012

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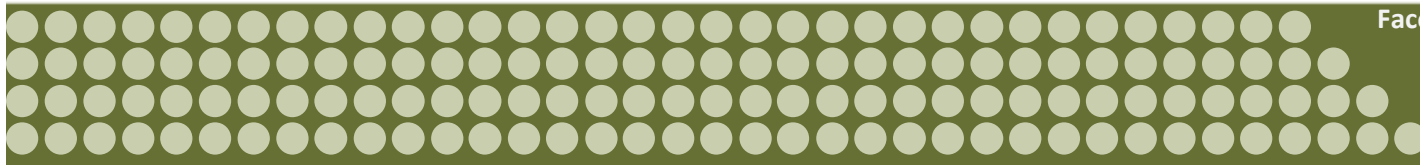
Barb Fisher

Accounting Jobs

- CFO (Chief Financial Officer)
- Controller
- Bookkeeper
- Clerk

Clerk

- Work: Data entry
- Goal: Finish entering all information
- Cost: Lowest in Accounting
- Management Use: In box is entered



Bookkeeper

- Work: Responsible for data entry, and ensuring accuracy
- Goal: Everything balances (every penny is accounted for)
- Cost: About double the “clerk”
- Management Use: See bank and vendor balances, runs reports

Controller

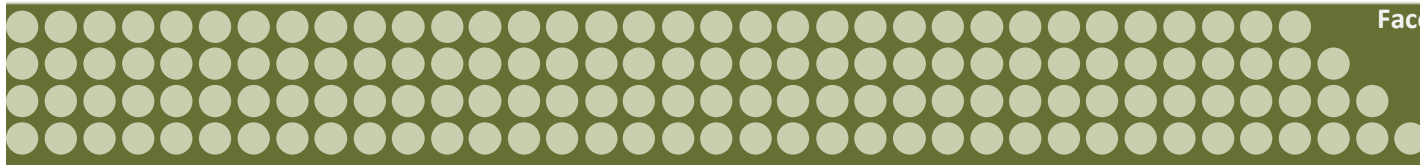
- Work: Reconcile, management of daily activities via accounting
- Goal: Ability to drive decisions in the business using accounting
- Cost: About double the “bookkeeper”
- Management Use: Driving the business in today’s environment

CFO (Chief Financial Officer)

- Note: at all sizes here, this is you or a consultant.
- Work: Forward projection of the business
- Goal: Answering the question: What's Next? Where will we be in 6 months or 6 years?
- Cost: Consulting, often on a retainer per month for a session
 - Employees: About double the Controller (for a \$1M business)
- Management Use: Planning, Strategy

What You Need to Know

- Proper Expectations for Each Role
- Flow of work, and manage to the flow
 - Monthly business flow for accounting, sorted by date
- Where to get help
 - Accounting / Tax
 - Bookkeeping / Business Consulting
- Key Dates
 - January 31 (1099s and w2s)
 - Which filings, renewals, and payments have critical dates



What Violet Needs to Know



Violet, Solo Practitioner.

- Expectations:
 - She is likely managing to cash flow (not accounting)
 - At this size, goals of bookkeeping is compliance and tax
 - Financial goals are small in scale: outsourcing, additional personal benefits, knowing when to hire, vacation
- Vendors need 1099s by 1/31 (if they got \$600 or more)
 - You need w9s for all of these vendors
- Save money to pay taxes, assuming she takes draws
- Keep all receipts, a bookkeeper can help you get caught up
- Taxes are due 4/15. Get in line with your CPA.

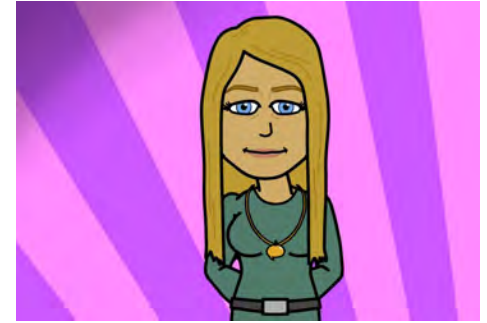
Questions I Have for Violet...



Violet, Solo Practitioner.

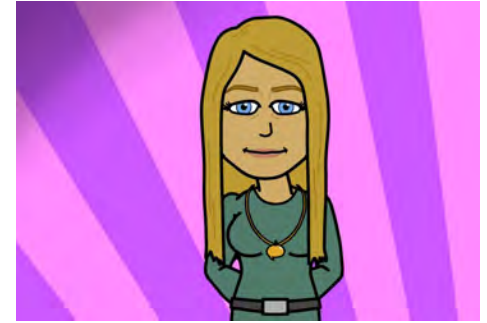
- How does she pay herself?
- Is she current on taxes?
- Is her business growing as the economy expands?
 - Should she be deliberate about marketing?
- Is she caught up on trust accounting?
- Are her books fairly caught up?
- Does she know how to run reports to sort out profitable clients?
- Is she happy with the way the office is running? Is it getting in the way?

What Melissa Needs to Know



- Expectations:
 - She is likely managing to cash flow (not accounting)
 - Goal of bookkeeping is compliance and tax. Growth can catch her by surprise
 - Financial goals are small in scale: outsourcing, additional personal benefits, knowing when to hire, vacation
- Vendors need 1099s by 1/31 (if they got \$600 or more)
 - You need w9s for all of these vendors
- Save money to pay taxes, assuming she takes draws
- Keep all receipts, a bookkeeper can help you get caught up if you're behind
- Taxes are due 4/15. Get in line with your CPA.

Questions I Have for Melissa...



- How does she pay herself? Her one staff person?
- Is she current on taxes?
- Is her business growing as the economy expands?
 - Should she be deliberate about marketing?
- Is she caught up on trust accounting?
- Are her books fairly caught up?
- Does she know how to run reports to sort out profitable clients?
- Is she happy with the way the office is running? Is it getting in the way?

What Kathy Needs to Know

- Expectations:
 - She is receiving reports from her Office Manager to help her financially manage
 - Goal of bookkeeping is consistent reports for managers
 - Financial goals include stability, cash on hand needs to stay at a certain level
 - Business should be fiscally independent
- Vendors need 1099s by 1/31 (if they got \$600 or more)
 - You need w9s for all of these vendors
- Owners need to be paid as employees and investors
- Getting behind on bookkeeping can create extensive stress.
Get help when you need it (quickly!)
- Meet with your CPA annually to receive a consulting session.



Questions I Have for Kathy...



- Is the business profitable? Do you have a way to sort profitable employees or profitable clients?
- Do you have a working relationship with your CPA?
- Is her business growing?
 - How does the partnership work? Does it work well for everyone?
- Do you do an owners meeting regularly
- How do books get reconciled? Do you have backup?
- Does she know how to run reports or poke around in accounting to check work?
- Is she happy with the way the office is running? Is it getting in the way?

Questions

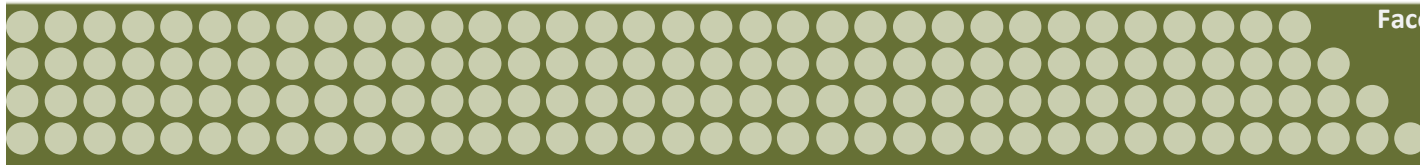
- I'm open to discussing any issues you have heard today.
- What specific financial issues are getting in your way?
- Please state your question by letting us know which example business setup you are

Trust Accounting
How would a bookkeeper do it?

Barbara Fisher
Fisher Business Management

Trust Accounting

- How would a bookkeeper do it?



Who Is Fisher Business Management

- Consulting Firm based in Portland
- Work at Client Locations and Remotely
- Driver, “What would the business be like if the back office just WORKED?”
- 8 Employees
- Winner of Fast Growth Award in 2012



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Twitter.com/fisher_business

www.fisherbusiness.net

503-598-3974

Barb Fisher

Language Ground Rules

- For the Bar: Trust Accounting
- For GAAP: Unearned Income
- Note: If you are talking to an accounting-type of person, you are accounting for unearned income.

Follow the Money

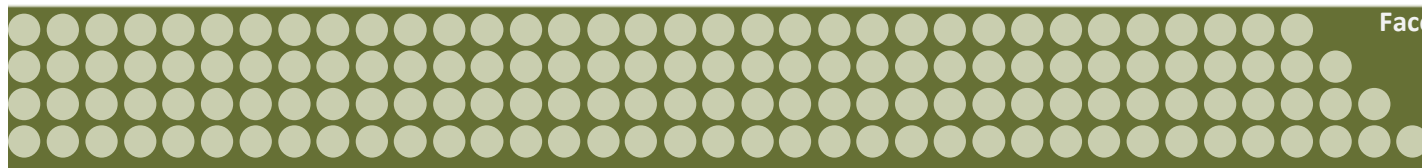
- We all know that you take money, do work, earn the money.
- What follows is STEP. BY. STEP. Instructions.
 - You can take these home and use them line by line
- Details are coming. Ready?

Pay-then-Proceed (in Quickbooks)

- Receive retainer against a liability account “client retainer”
Name Customer / Job as a subaccount to “client retainer”
- Deposit check
- Create Estimate for work expected (list transactional items, etc.)
- Do work.
- When complete (and retainer is earned): create invoice for client
Build invoice to bill against an estimate
- Use Client Retainer item to pay invoice (so net -0-)
- Move money when invoice is complete
- Reconcile the bank account and QB Account monthly

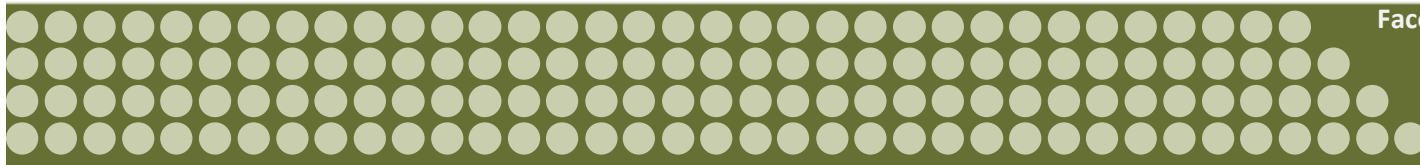
Settlement Style (in Quickbooks)

- When client signs, create a liability account “client retainer”
Name Customer / Job as a subaccount to “client retainer”
- Create job-costed bills as expenses occur (job cost to customer / job)
- Do work. Receive Settlement. Deposit check as Client Retainer Liability.
- Use trust account to pay job-costed bills
- Divide settlement as agreed to attorney, using invoice.
- Zero-out invoice using a negative-value Client Retainer Liability
- Move money to operating account when invoice is complete
- Pay client their portion, as agreed
- Reconcile the bank account and QB Account monthly



Questions?

- Where does this break down within your business?



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Personnel Management

How do I get what I need without doing it myself?

Barbara Fisher
Fisher Business Management

Personnel Management

- How do I get it done without doing it myself?



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Who We Are

Consulting Firm based in Portland

Work at Client Locations and Remotely

Driver, "What would the business be like if the back office just WORKED?"

8 Employees

Winner of Fast Growth Award in 2012



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Employee vs. Contractor

- Employee
 - Payroll
 - Timecards
 - Benefits
 - Gets trained
 - Receives direction and deadlines
 - “My staff”
 - Receives space and equipment
- Contractor
 - Sends a bill
 - Has contracts and bids jobs
 - Controls when things get done
 - Controls their own quality
 - Manages own time and product
 - Has other customers (prospects)
 - Has their own space and equipment
 - Not licensed



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Four Key Elements from Oregon

1. Free from direction and control,
2. Customarily engaged in an “independently established business,”
3. Licensed as a Business,
4. Responsible for any other licenses or certificates necessary to provide the service.



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What You Need to Know

- How to hire vendors and employees
 - Clear contracts or job descriptions
- How to delegate
 - Communication, trust, clear expectations and deadlines
- Where to get help
 - Training, support,
- What is your time and effort worth?
 - Could you fill your time with billable activities?
 - Can you trust another person to do that work?



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What Violet Needs to Know



- Expectations:
 - She is doing all of her own administrative support and bookkeeping
 - When she finds big cases, she uses other vendors
- She has time to do this work, as she is not billable 20 hours per week
- Suggestions for growth
 - Choose marketing activities that cost time (not money)
 - Networking, 1-to-1 meetings
 - Track how she spends time
 - Schedule an office day per week to do invoicing, pay bills, continue follow-ups, finish proposals or other general administrative work



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Questions I Have for Violet...



- Is her business growing?
 - Can she pinpoint the source of leads?
 - Is she staying in touch with people to assist word-of-mouth?
- Which elements of her business does she like the most?
 - Dislike the most?
 - Not do, even though she knows she should?
- What keeps her up at night?
- Does she have a coach to help her with being an entrepreneur?



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Barb Fisher

What Melissa Needs to Know



- Expectations
 - Her part-time admin is an employee
 - Her admin does some work on her own, and some by direct instruction
 - Her employee receives no benefits or paid time off
- She is billable 20-30 hours per week, on average
- She does marketing that includes some time and some money
- Suggestions for growth:
 - Have admin do some work that is billable to jobs
 - Have admin help with marketing activities
 - client notes, follow up, confirmations, thank you notes
 - Develop a system to mark “unsold opportunities”, and stay in touch



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Questions I Have for Melissa...



- How does she pay her staff person?
 - What are their strengths and weaknesses
 - These are often related to Melissa's ability to delegate!
- How does she find business? Is her business growing?
 - Can we cultivate more sources?
 - We like to see 3 channels of lead sources
 - Referral partners, past clients, google, networking groups, lead referral companies, etc.
- Does she have a 1-3 year plan for her business?
 - Where does she want this to go, and does she have a plan to do it?



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What Kathy Needs to Know



- Expectations:
 - Every employee has a job description and goals
 - Employee handbook is in place
 - Every employee knows how to log billable time, and might be accountable to have a certain number of billable hours per week
- She is billable 10-20 hours per week
- Marketing systems are assigned. Her time is not spent marketing.
 - There is a marketing budget



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Questions I Have for Kathy...



- How are decisions made?
- Do you have an owners meeting regularly?
- How does she find business? Is her business growing?
 - Can we cultivate more sources?
 - We like to see 3 channels of lead sources
 - Referral partners, past clients, google, networking groups, lead referral companies, etc.
- Does she have a 1-3 year plan for her business?
 - Where does she want this to go, and does she have a plan to do it?
- Is she happy with the way the office is running? Could it be better?
- Are folks happy here?



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Questions

- I'm open to discussing any issues you have heard today.
- What specific office management issues are getting in your way?
- Please state your question by letting us know which example business setup you are



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Branding

What is Branding and Does it Really Matter?

Ian Henderson

Hendersonian Design

WHAT IS BRANDING AND DOES IT REALLY MATTER?

Presented by Ian Henderson

Owner/Designer at Hendersonian Design, DBA



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WHAT IS “BRANDING”?

The intangible sum of a product's attributes: its name, packaging, and price, its history, its reputation, and the way it's advertised.

— David Ogilvy, *"The Father of Advertising"*, primary.co.uk/viewpoints
(2009)

A name, sign, or symbol used to identify items or services of the seller(s) and to differentiate them from goods of competitors.

— *Dictionary of Business and Management*
(Oxford University Press, 2006)

Your firm's **BRAND** = your firm's **PERSONALITY**

- Your character (be sure it's authentic)
- Your voice and tone
- How you interact with people
- How you look
- How you present yourself

How you **visually** present yourself is called **Visual Branding**

- Our focus today



VISUAL BRANDING

- Logo
- Colors
- Graphics
- Shapes
- Lines
- Images
- Style
- Unique design elements, brand marks

VISUAL BRANDING

The key to successful visual branding is authenticity and consistency across all channels of communication

- Builds confidence in your clients and prospects
 - You always show up as the same person
 - Establishes a persona
 - Eliminates confusion or doubt
- Familiarity
- Comfort
 - Client knows you
 - Knows what to expect
- Trust
- Credibility

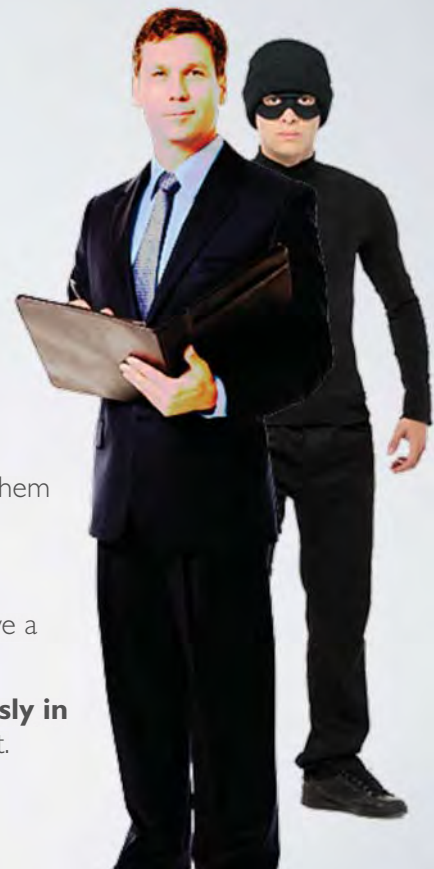


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How important is this?

Scenario:

- Email from your bank
- Has the logo
- Has a seemingly business like message
- But something isn't quite right
- Maybe the grammar isn't right
- Maybe the font looks different than usual
- Maybe the colors are not quite the same as you remember them
- Perhaps the quality of the graphics are not the same as usual
- These differences are subtle, but they make you stop and have a second look and try to determine if this is a scam
- This is extreme, but **similar things happen subconsciously in the minds of your clients** if your graphics are inconsistent.



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BUSINESS CARD vs WEBSITE vs EMAIL

- What happens when clients and prospects receive a business card and then go to the firm's website and notice that they are different?
 - The name is the same but on the business card it may be set in **Times**, yet on the website it's set in **Arial**
 - The fonts look very different
 - Only your name is the same
- Then they decide to email the firm and when they receive a reply, they notice that the signature line also looks different.
 - Same name, but now set in **Verdana**, for example
- What impression does that leave in their minds about that firm?

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RESULT:

- That firm is sending a subliminal message
 - Not consistent
 - Not professional
 - Not reliable
 - They have multiple personalities
- Drives a wedge between the firm and the prospective client



EXAMPLES OF BRANDING

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Coming soon to a city near you...

For 33 years, you've trusted me with your maintenance supplies. Now trust me with your flooring.

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We're Flooring the Nation

- Over 33 years of experience in serving your business
- Award-winning product line
- National coverage
- Local service
- Green Focus

The CriterionBrock Story

Over 33 years of experience in serving your business in over 30 states across the country. We are focused on the one thing that makes us different from the rest. We are focused on providing you with the best value, best performance, and best service. We are focused on providing you with the best value, best performance, and best service. We are focused on providing you with the best value, best performance, and best service.

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National Value • Local Service • Green Focus

CriterionBrock
flooring the nation

We're Connecting the Dots

The CB Promise

- People:** Commitment to help you solve your flooring problems.
- Product:** Best-in-class products to meet the needs of all of your projects.
- Price:** Best-in-class pricing to ensure you get the most value for your investment.
- Program:** Other than flooring, we ensure you get the most value for your investment.

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Keep Flooring Simple

Let our family of decision tools make your buying experience simple.

- See # with the CB Preferred Product Catalog
- Touch # with the CB Preferred Product Collection Sample Boards
- Experience # with the CB Preferred online assistant

Best Tools > Best Decision > Best Value

Simple!

SEE TOUCH

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flooring the nation

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Marketing Director

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Best Tools > Best Decision > Best Value

Simple!

SEE TOUCH

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Preferred Product Catalog
2013

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Carpet 2012
CriterionBrock
Preferred Product Collection

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Eco Choice (3) Alpine	Defiant (3) Verizon	Schwarzer (3) Vero Beach
Eco Choice (3) Walnut	Defiant (3) The Frame	Schwarzer (3) South Beach
Eco Smart (3) Rocky Road	Teaser (3) Buckingham	Eco Functional (3) Pecan Pie
Eco Smart (3) Etern	Teaser (3) Laser	Eco Functional (3) Sugar Express

Vinyl
CriterionBrock
Preferred Product Collection

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VINYL PLANK

Connections (2) Rainbow	Natural Personality (4) Honey Fine
Vin Gogh (2) Antique East	Natural Personality (4) Medium Walnut

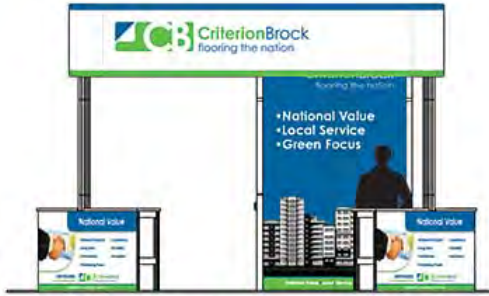
SIMPLY YOUR BUYING DECISION with CB's Preferred Product Collection. These are your "best value" multifamily flooring choices, the highest performance and most widely used products across our nationwide branch operations.

Your CB Account Executive can answer any questions you might have about specific products, tell the rest of the value of CB's Preferred Products start working for you today!

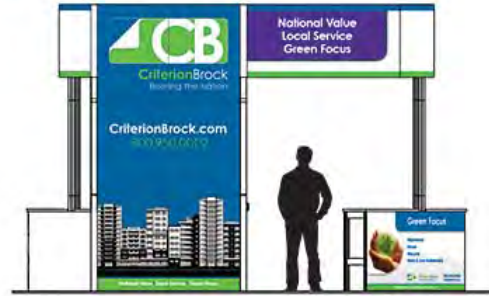
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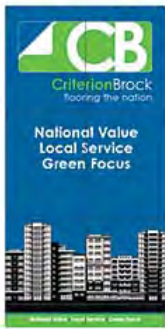
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From isometric looking N.



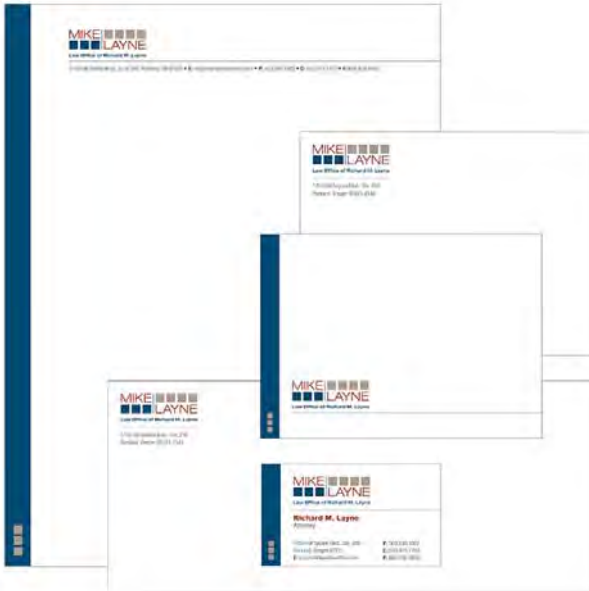
View from Fitted Court



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THREE STAGES OF PRACTICE

General Considerations

- Imperative to establish your firm's brand **right from the start**
 - Makes your presence known
 - Communicates who you are
 - Reinforces your credibility
- Must maintain that presence consistently
- Doesn't have to break the bank, but consider it an **investment in the success and longevity of your firm**

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VIOLET, PC

Profile

- Solo attorney working from a virtual office.
- She has been in practice for the past three years.
- She personally performs all aspects of running her own firm.
- Created her own logo and slogan
- Created her own website
- Prints own letterhead
- Ordered her business cards from online provider

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VIOLET, PC

Considerations

- How well does Violet's logo represent the essence of her firm?
- What kind of considerations went into creating the logo?
- How well has the logo and branding been applied across all her communication tools?
- Is she consistent in application, font, color, etc.?
- Do all communication pieces look like they belong together, including her business card, letterhead, email signature, and her website?

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VIOLET, PC

Recommendations

- Get a logo designed by a professional or recent graduate
- **Two types of logos**
 - Wordmark = approx. \$500
 - Symbol = approx. \$1000
- **Stationery set** = approx. \$600 (before printing)
 - Business card, Letterhead, Envelope
- Save on printing by using online print services like **GotPrint.net**
 - 1000 full color one sided business cards = \$27 (shipping included)
- Email signature
 - Get a jpeg of the logo in smaller size and use it in your signature line

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VIOLET, PC - Recommendations (cont'd)

Website

- Avoid website templates that lock you in
- **Recommend:**
 - Hosting with HostGator = \$70/yr
 - Beware of GoDaddy -- nickel and dime you to death
 - Domain name registration = approx. \$10/yr

• WordPress software

- FREE download
- Easy to create websites
- Easy to edit content
- Easy to expand when needed
- Tons of tutorials and support
- Can create a blog attached to website if you want
 - **Always** attach the blog to your domain name, good for SEO



VIOLET, PC - Recommendations (cont'd)

Website (cont'd)

- WordPress runs on **templates or themes**
 - Avoid the free themes, you get what you pay for
 - Good WordPress themes = approx. \$35, one time fee
 - **MySiteMyWay.com** — good professional looking, easy to use interface, have plenty of themes to choose from with a range of color schemes and custom color capabilities

- **ThemeForest.com** — hundreds of choices, but buyer beware, watch for ratings

Email Accounts

- Take advantage of **free unlimited company email** accounts under same domain name. Don't dilute your brand by using Gmail or Yahoo.
 - Anyone can sign up for one of these freebie accounts
 - You need to be **distinct and recognizable, and reinforce your credibility**



VIOLET, PC

Total investment:

STARTUP LEVEL

approximately \$1200 – \$1750

(before printing costs)



MELISSA, LLC

Profile

- Solo attorney working from a commercial office with other professionals.
- She hires one staff member on a part-time basis to help with daily tasks.
- Contracted with a local designer (recent graduate) to create her logo and graphics
- Prints her letterhead and business cards at a local print shop
- Used a simple template to create and set up the firm's website



MELISSA, LLC

Recommendations

- As you scale up, ensure that your logo and graphics are consistent across the board
- Make sure the sign on the door is created using your logo and branding
 - You want to reassure clients and prospects that they have found the right place, it's familiar
- As you expand your marketing materials (brochures, fliers, business cards, etc.), you should have the **same designer** create them for you to ensure consistency
- **Design fees:**
 - Additional Business Cards = approx. \$50
 - Brochures = approx. \$1000
 - Fliers = approx. \$400

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MELISSA, LLC

Recommendations (Cont'd)

Website

- If you're stuck in a website template that is difficult to work with, convert the site over to WordPress
- Do it yourself = time and effort
 - Hire WordPress specialist = starts at approx. \$1000 – \$2000+
 - Have original logo designer in the approval process to ensure logo and branding applied properly

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MELISSA, LLC

Recommendations

Total investment:

If upgrading from Startup level
= approx. \$2400 – \$4400 (before printing costs)

If creating all this from scratch
= approx. \$3500 – \$6500



KATHY, LLP

Profile

- A partner with one other attorney
- The firm employs an associate and three other staff members
- The firm owns the office building which generates a steady flow of income
- Contracted with a national company to create their
 - Logo
 - Slogans
 - Business Cards
 - Brochures
 - Website, and maintain their blog on their website



KATHY, LLP

Recommendations

- The bigger the firm, the **more vigilant** you have to be to ensure that your logo and graphics are consistently applied to all materials
 - **Hire a design firm** to handle all this
 - Let them worry about the details
 - You're busy enough, without having to figure out how to create all the pieces to the puzzle
- **Custom website**
 - WordPress is the easiest CMS to work with, update
 - Site completely **unique** to your firm
 - approx. \$5000 - \$10,000

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KATHY, LLP

Total investment:

If upgrading from intermediate level
 = approx. \$6000 – \$10,000 (before printing costs)

If creating all this from scratch
 = approx. \$9000 – \$12,000

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RECAP

- **Need to establish your visual identity right from the start**
 - Express your essence, who you are
 - How you are different from other firms
 - Font and color choices, etc.
 - Apply to all printed materials, email, and website, etc.
- **Need to maintain the brand and be consistent**
 - Always show up as the same person
- Provide your prospects and clients with a sense of security and reliability
- Reinforce your credibility
- Don't confuse your audience
- As you expand, apply your branding consistently
- **Budget for this investment**
 - Invest in the success of your firm
 - Just like you invested in your education

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QUESTIONS?

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503.719.7165

Marketing
How you can use Social Media

Brittany Smith
Build Social



How You Can Use Social Media

What's your small step going to be?

What is Social Media?



licensed under Attribution-NonCommercial-ShareAlike 2.0 Germany | Ludwig Gatzke | <http://flickr.com/photos/stabilo-boss/>

- Any online platform or channel for publishing and disseminating user-generated content.

What comes up when you think of social media?



“Moral panic is a common reaction to new forms of communication.”¹

1. <http://onlinelibrary.wiley.com/doi/10.1111/j.1083-6101.2009.01474.x/full>

Take it seriously!



- 72% of online adults are social networking site users.¹
- The most significant growth among social media users has been among adults 50 years and older.²
- For every hour online, Americans spend 16 minutes on social media.³
- 51% of Facebook users, 64% of Twitter users are more likely to buy from the brands they follow.⁴

1. <http://www.pewinternet.org/Reports/2013/social-networking-sites.aspx>

2. <http://pewinternet.org/Reports/2011/Why-Americans-Use-Social-Media>

3. <http://www.experian.com/blogs/marketing-forward/2013/04/18/for-every-hour-online-americans-spend-16-minutes-on-social-networks/>

4. http://www.mediabistro.com/alltwitter/small-business-social-media_b14294

What prevents you from using social media?



- Lack of time
- Knowledge and skills
- Finding content
- Knowing where to start
 - Which platforms to use
- Privacy issues



Strategy



The four-step approach to the groundswell

P

People

Assess your customers' social activities

O

Objectives

Decide what you want to accomplish

S

Strategy

Plan for how relationships with customers will change

T

Technology

Decide which social technologies to use

My Strategy



- P = small business owners, C level executives, decision makers in non-profits
 - 35-65 years old
 - Equally male and female
 - Primarily women and minorities
- O = provide information that helps people use social media strategically on a daily basis, demonstrate how to correctly use social media
- S = set up a content management and social media management machine
- T = LinkedIn, Facebook, Twitter, blog

Content Management Machine



Which Platform?



- Women
- adults 18-29
- 75% of online adults
- B2C



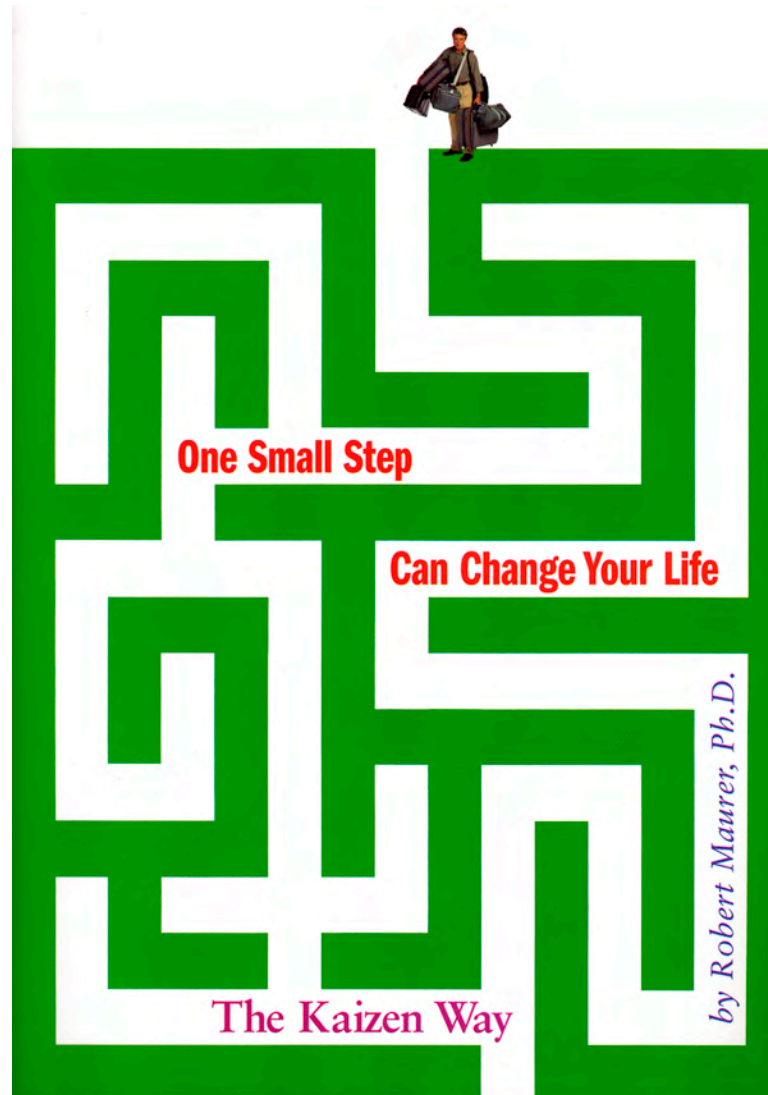
- Men
- adults 35-55
- B2B



- Adults 18-29
- African-Americans
- urban residents
- B2B

1. <http://www.pewinternet.org/Reports/2013/Social-media-users.aspx>
2. <https://www.quantcast.com/linkedin.com>

Take One Small Step



Questions?



503-477-9221

brittany@buildsocialconsulting.com

www.buildsocialconsulting.com



@ebkcd2



facebook.com/buildsocialconsulting



linkedin.com/company/build-social-llc



Build Social's Guide to Social Media Best Practices

When using social media, the best way to get a return on investment for your efforts is to focus on engagement. Don't simply post information and messages about your organization, be sure to post content, resources, and information that your target audience will find useful and interesting.

Think about ways that you can help your audience solve problems and obstacles they face on a day-to-day basis, and that are relevant to the product or service you are offering. Posts that give your target audience inside information that helps them solve problems will keep users coming back for more.

To have a successful presence on social media always keep in mind the best practices outlined below such as: peak days of the week and times to post, how long posts should be, and how to increase engagement by asking questions and giving instructions.

“Think about ways to focus on engagement.”

General Best Practices

If you keep the below best practices for Facebook, LinkedIn and Twitter in mind as you manage the social media presence for your organization, you will get a higher return on investment. However, there are general best practices for how to manage your presence on social media. Here are my five favorite:

- 1. Be authentic.** Connection is the primary reason people join and use social networks, so be your authentic self in order to encourage connection.¹ When people spend time on social networks they release the “cuddle hormone” oxytocin because these platforms facilitate a sense of trust. How can you create trust on social media?²
- 2. Have clear goals.** Write down your goals for your organization’s social media presence in an intentional strategy. Make sure these goals complement and overlap with your overall organizational goals. You will be able to measure return on investment based upon these goals.
- 3. Have social media policies and guidelines that include a crisis plan.** An organization without an internal policy and external guidelines for users is like a ship without a life boat. A social media policy and/or guidelines are important for legal reasons as well as to orient both staff and users’ expectations for how they will be able to use social media within your organization.
- 4. Listen - and respond within 24 hours.** Take what people say about you on social media seriously! Don’t see negative comments as an inconvenience, build them into your quality control or continuous quality improvement efforts. When people ask questions, post comments or engage with your organization in any way on social media be sure to respond within 24-48 hours to either problem solve, thank them, or answer a question.
- 5. Learn, learn, and learn some more.** Social media is a constantly changing environment and you can’t assume that you know it all. I have found that the best way to stay on top of the changes and trends within social media is to use social media in your personal life. Another good idea is to befriend a young person who can tell you what the coolest app or platform is at any give moment.

“Help your audience solve problems they face on a daily basis.”

Best Practices for:

The Facebook logo, consisting of the word "facebook" in white lowercase letters on a blue rectangular background.

Facebook Best Practices

- Post around 5 times a week.
- Post between 1-4pm. Wednesday at 3pm is the best time to post. Posts made after 8pm and before 8am will often have lower rates of engagement. Avoid posting on the weekends (depending on your industry).³
- Make posts about 200 characters or less.
- Whenever a fan posts to the page, thank them and, if appropriate, like the post. Also, if appropriate, share the post on the page's timeline, or Highlight it.
- In posts: ⁴
 - Ask questions to generate comments. To keep the conversation going, contribute comments of your own.
 - Post videos to generate shares.
 - Post simple status updates to generate likes.
 - Post photos to generate comments.
 - Including links in posts is a good way to get a mix of likes, shares, and comments.
- Post status updates that give commands and ask people to take an action such as:
 - Asking them to comment.
 - Asking them to post.
 - Asking them to like.
 - Asking them to share.
- To really draw attention to an important post, Pin it. Pinned posts tend to have higher engagement rates than regular posts, with pinned photo posts performing best.⁵
- Before posting:
 - Check for correct grammar and complete sentences.

- Check for typos.
- Tag appropriate people and companies in photos and status updates.
- Check for inclusivity and appropriateness. Is there anyone who might be offended or take the post in the wrong way, in particular if there's humor involved?
- Check for relevance to your target audience - will it solve a problem for them, will they find it interesting or entertaining, etc.?
 - Would your audience have a higher likelihood of reading and engaging with this information on a different social media platform such as Facebook or LinkedIn?

**“Give your followers
up to date, inside
information.”**



Best Practices for:



LinkedIn Best Practices

- Post to your Profile and/or Company Page around 5 times a week.
- Because LinkedIn is a social media platform for professionals, only make posts during business hours. Try and post between noon and early evening.
- Try and keep posts around 140 characters.
 - Add extra information that would put you over 140 characters into the “Add more details...” box.
- Post status updates that give commands and ask people to take an action such as:
 - Asking them to like.
 - Asking them to comment.
 - Asking them to follow your Company Page or invite their network to follow your company.
- If you have a LinkedIn Group:
 - Send new members a message encouraging them to introduce themselves to the group.
 - Ask questions in posts to facilitate discussion.
 - To keep the dialogue going, post comments yourself.
- In general, before posting:
 - Check for correct grammar and complete sentences.
 - Check for typos.
 - Check for inclusivity and appropriateness. Is there anyone who might be offended or take the post in the wrong way, in particular if there's humor involved?
 - Check for relevance to your target audience - will it solve a problem for them, will they find it interesting or entertaining, etc.?
 - Would your audience have a higher likelihood of reading and engaging with this information on a different social media platform such as Facebook or Twitter?



Best Practices for:

The Twitter logo is displayed in its characteristic blue, lowercase, rounded font with a white outline and a soft drop shadow.

Twitter Best Practices

- Because the average tweet lasts 2.8 hours, post around 2-3 times per day.
- Twitter allows posts that are 140 characters or less. Make your tweets around 120 characters, including hashtags, mentions, urls, and pictures. This allows someone that wants to retweet your tweet, and mention you in their tweet enough characters to do so.
- Respond to retweets, direct messages and mentions with 24 hours. Say a simple thank you or post a new tweet to keep the conversation going - always focus on developing a relationship.
- Use correct grammar and write in complete sentences in all tweets.
- Post tweets that give commands and ask people to take an action such as:
 - Asking them to retweet your tweet.
 - Asking them to follow you.
 - Asking them to mention you.
- Before posting:
 - Check for correct grammar and complete sentences.
 - Check for typos.
 - If you've mentioned someone in your tweet double check to make sure you're mentioning the correct person.
 - Consider inserting a hashtag, if appropriate.
 - Check for inclusivity and appropriateness. Is there anyone who might be offended or take the tweet in the wrong way, in particular if there's humor involved?
 - Check for relevance to your target audience - will it solve a problem for them, will they find it interesting or entertaining, etc.?
 - Would your audience have a higher likelihood of reading and engaging with this information on a different social media platform such as Facebook or LinkedIn?



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2. <http://www.fastcompany.com/1767125/digital-oxytocin-how-trust-keeps-facebook-twitter-humming>
3. <http://blog.bitly.com/post/22663850994/time-is-on-your-side>
4. <http://www.wildfireapp.com/company/press-releases/56>
5. [Ibid](#)

For more information and resources visit www.buildsocialconsulting.com
or contact Brittany Smith at brittany@buildsocialconsulting.com



The Ethics of Social Media: Traps for the Unwary

Amber Hollister
Oregon State Bar



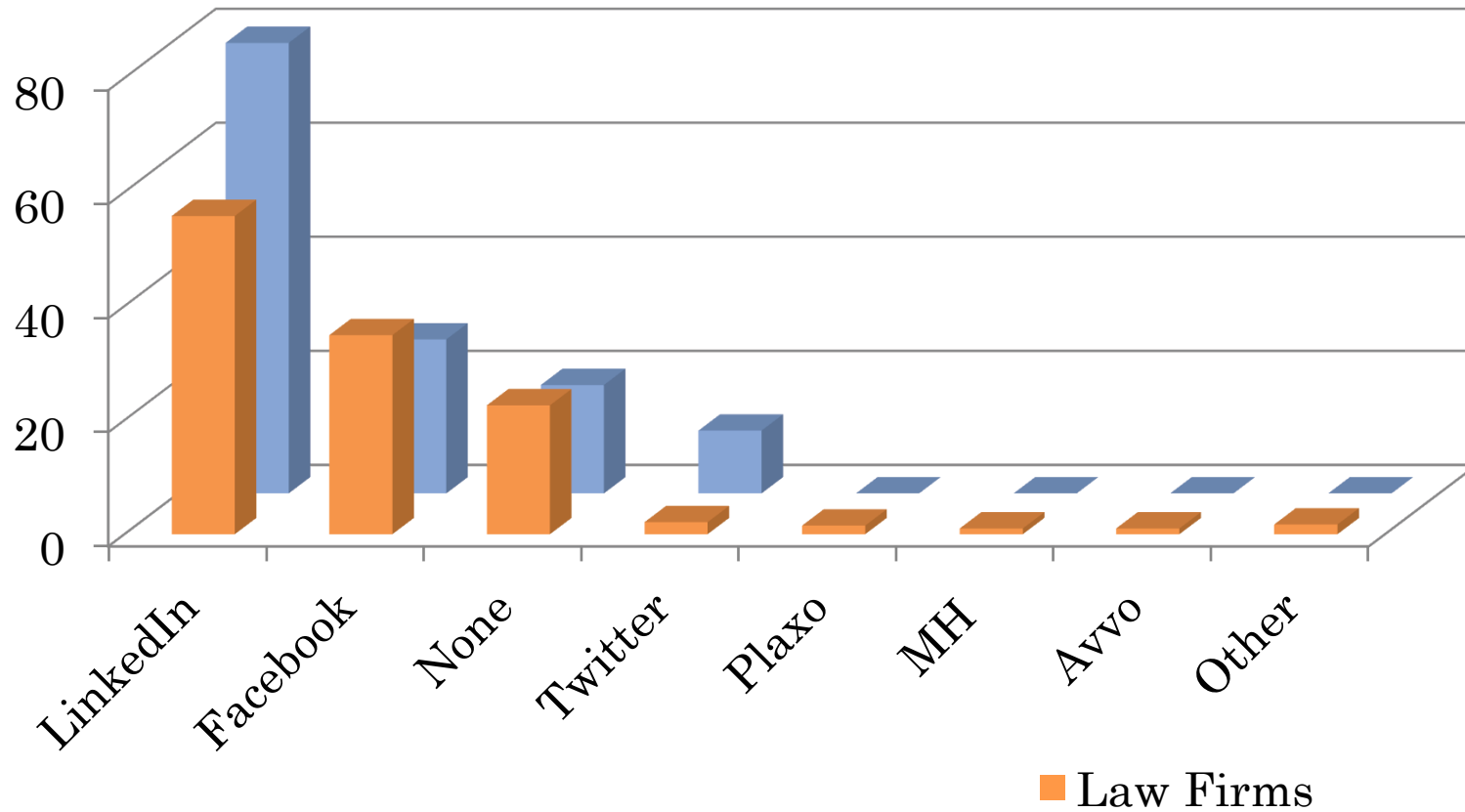
THE ETHICS OF SOCIAL MEDIA: TRAPS FOR THE UNWARY

**Amber A. Hollister
Deputy General Counsel**



Created by Mirna Bard
www.mirnabard.com

LAWYERS USE SOCIAL MEDIA



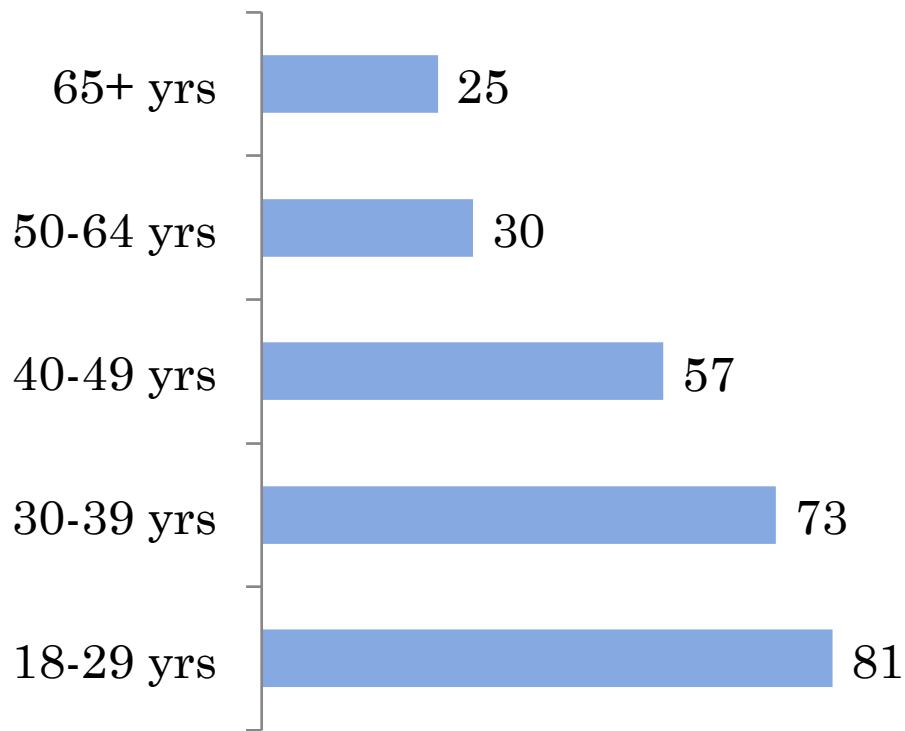
2013 ABA Legal Technology Survey Report



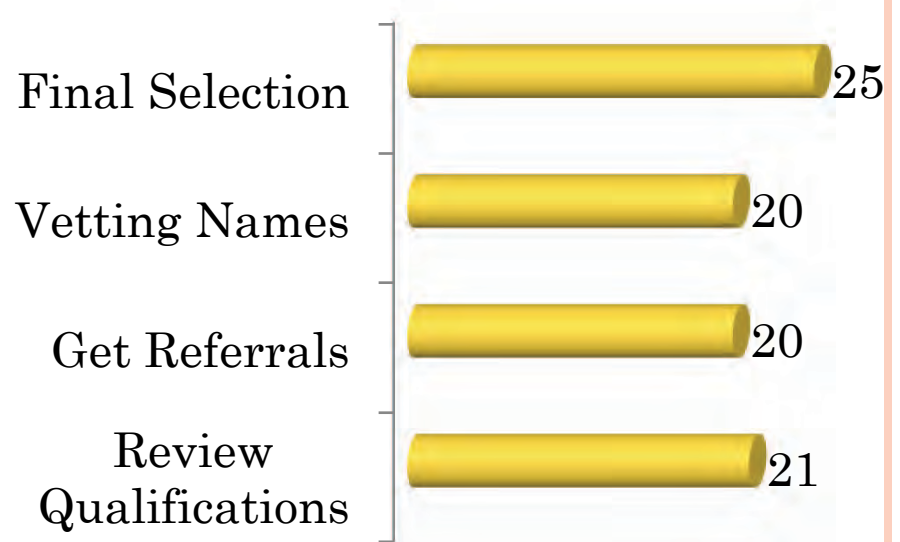
56% OF CLIENTS USE SOCIAL MEDIA TO SEARCH FOR ATTORNEYS



Ages of Clients who Used Social Media to Find Attorney



How Was Social Media Used by Client?



TRAPS FOR THE UNWARY

- Inadvertent Clients
- Disclosing Client Confidences
- Communicating with a Represented Party
- Avoiding Ex parte Communications
- Covert Investigations
- False or Misleading Communications
- False or Misleading Advertising
- Sharing Fees with Nonlawyers
- Paying for Recommendations





“HAVE WE MET BEFORE?”

Tips on avoiding inadvertent clients.

THE TRAP: INADVERTENT CLIENTS

- No agreement by lawyer required.
- No fee agreement required.
- No engagement letter required.
- *In re Weidner*, 310 Or 757 (1990)
 - Lawyer-client relationship can be created based on reasonable expectations of the putative client
 - Reasonable expectations = subjective belief + objective facts



UNINTENDED CONSEQUENCES

- Why is this a problem?
 - Surprise, you have a conflict
 - Competency Issues
 - Malpractice Concerns
 - Breaching Client Confidentiality
- How to avoid this problem?
 - Don't give legal advice online.
 - Only provide generalized legal information. Do not answer questions that are fact-specific.
 - Be cautious about allowing visitors to send you information.



DISCLAIMERS, ANYONE?

- ABA Formal Ethics Op. No. 10-457 advises:
 - “... include statements that characterize the information as general in nature and caution that it should not be understood as a substitute for personal legal advice”
 - “... warnings or statements may be written so as to avoid a misunderstanding by the website visitor that (1) a client-lawyer relationship has been created; (2) the visitor’s information will be kept confidential; (3) legal advice has been given; or (4) the lawyer will be prevented from representing an adverse party.”
 - “Limitations, conditions, or disclaimers of lawyer obligations will be effective only if reasonably understandable, properly placed, and not misleading.”





THE CAT'S OUT OF THE BAG

Tips on avoiding disclosure of client confidences.

THE TRAP: DISCLOSING CLIENT CONFIDENCES



Oregon RPC 1.6(a)

A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

Oregon RPC 1.0(f)

“Information relating to the representation of a client” denotes both information protected by the attorney-client privilege under applicable law, and other information gained in a current or former professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.



A CAUTIONARY TALE: THE ILLINOIS EXAMPLE



“#127409 (the client’s identification number) This stupid kid is taking the rap for his drug-dealing dirtbag of an older brother because “he’s no snitch.” I managed to talk the prosecutor into treatment and deferred prosecution, since we both know the older brother from prior dealings involving drugs and guns. My client is in college. Just goes to show you that higher education does not imply that you have any sense.”

“Dennis,’ the diabetic whose case I mentioned in Wednesday’s post, did drop as ordered, after his court appearance Tuesday and before allegedly going to the E.R. Guess what? It was positive for cocaine. He was standing there in court stoned, right in front of the judge, probation officer, prosecutor and defense attorney, swearing he was clean and claiming ignorance as to why his blood sugar wasn’t being managed well.”



“BUT, IT’S PUBLIC RECORD”

- How widely known?
- Embarrassing to a client? Detrimental to client if disclosed? Client secret?
- *In re A.*, 276 Or 225 (1976)
- *In re Perkins*, 2 DB Rptr 1 (1988)



“HELLO, IS ANYBODY OUT THERE?”



- OSB maintains list serves for all sections that want one
 - Estate Planning/Admin Section has 1,200 list members with an average of 12 posts per day
 - RELU Section has 1,150 list members with an average of 8 posts per day
 - Family Law Section has 1,000 list members with an average of 13 posts per day
- Other popular list serves: OWLS, OCDLA, OTLA





THE LIST SERVE “HYPOTHETICAL”

- Client (I’ll call him Bailey) works for government entity in a small town. Bailey is disabled (or so he says) and has a medical marijuana card. Employer does not know about Bailey’s disability or that he uses marijuana, sometimes before work because it eases his back pain. He does truck deliveries and sometimes the lifting is difficult because of his back. HR recently issue him a warning because he is not meeting his delivery deadlines. He also recently received a ticket for running a stop sign. He wants to know what to do, and doesn’t have much money so was referred to me through the modest means program.
- I am new to this area of law. Help!



ASKING FOR HELP

- OSB Formal Op No 2011-184 (Consulting Between Lawyers Not in the Same Firm)
- “Significant risk” of violating RPC 1.6 when posing hypos if the facts provided permit persons to identify the client
- Disclosure allowed when “impliedly authorized”
 - Beware possible waiver of attorney-client privilege
 - Does not allow broadcast to entire list serve or blog



ASKING FOR HELP

- Disclosure allowed if client consents
- Disclosure allowed when seeking legal advice regarding lawyer's obligations under the RPCs. See RPC 1.6(b)(3).
 - Does not apply to seeking ethics guidance from OSB General Counsel pursuant to RPC 8.6.





WHEN DIGGING FOR DIRT ...

How to avoid communicating with represented parties online.

THE TRAP: COMMUNICATION WITH REPRESENTED PARTIES



Oregon RPC 4.2 (Communication with Person Represented By Counsel)

In representing a client or the lawyer's own interests, a lawyer **shall not communicate** or cause another to communicate on the subject of the representation **with a person the lawyer knows to be represented by a lawyer** on that subject unless:

(a) the lawyer has the prior consent of a lawyer representing such other person;

(b) the lawyer is authorized by law or by court order to do so; or



BUT I DON'T HAVE A CLIENT ...



- Applies when lawyer representing himself
 - *In re Knappenberger*, 338 Or 341 (2005)
- Applies when lawyer is inactive
 - *In re Smith*, 318 Or 47 (1993)



“COMMUNICATE”

- Defined broadly
- Includes internet communications
 - OSB Formal Op No 2005-164 (Communication With Represented Persons Through Websites and the Internet)
 - Visiting open website OK
 - E-mail, wall post, chatting NOT OK
- Cannot communicate through another
- Clients may negotiate with each other
 - OSB Formal Op No 2005-147





“SUBJECT” OF THE REPRESENTATION

- Matters outside scope of representation OK
- Providing second opinion OK
 - OSB Formal Op No 2005-81
- Subject ≠ Matter
 - *In re Newell*, 348 Or 396 (2010)(Lawyer reprimanded for serving witness with subpoena in civil case when witness was represented in related criminal matter)
 - “Factually, each lawyer’s representation involved a common subject—whether the defendant’s books were overstated.”



“AUTHORIZED BY LAW”

- Narrowly construed. *In re Schenck*, 320 Or 94 (1994)
- *In re Newell*
 - “The ‘authorized by law’ exception does not extend so far that it permits one lawyer to unilaterally exclude a represented witness’s lawyer from the deposition.”



SOCIAL MEDIA INVESTIGATIONS



Violet represents employee in an employment discrimination case.

She just spoke with opposing counsel about scheduling a manager's deposition and is curious whether a the manager made any comments about plaintiff on Twitter.

Can you ask your secretary to follow the manager's private Twitter feed?



Violet, Solo Practitioner.





RUBBING SHOULDERS WITH THE DECISION MAKER

Avoiding ex parte communications.



THE TRAP: EXPARTE COMMUNICATIONS

RPC 3.5

A lawyer shall not:

- (a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;
- (b) communicate ex parte on the merits of a cause with such a person during the proceeding unless authorized to do so by law or court order;
- (c) communicate with a juror or prospective juror after discharge of the jury if:
 - (1) the communication is prohibited by law or court order;
 - (2) the juror has made known to the lawyer a desire not to communicate; or
 - (3) the communication involves misrepresentation, coercion, duress or harassment;
- (d) engage in conduct intended to disrupt a tribunal; or
- (e) fail to reveal promptly to the court improper conduct by a venireman or a juror, or by another toward a venireman or a juror or a member of their families, of which the lawyer has knowledge.





WHO'S THE LADY IN THE THIRD ROW?

Melissa is representing the plaintiff in an employment discrimination trial. The court has just empanelled the jury.

During a break before opening statements, can Melissa check to see if any of the jurors has a public Facebook page?

Can she “friend” a juror?

Can she comment on a juror’s page?





**“SHHHH THEY DON’T NEED
TO KNOW I’M A LAWYER”**

Covert investigations and lawyer dishonesty.

THE TRAP: LAWYER DISHONESTY IN COVERT INVESTIGATIONS



Oregon RPC 8.4(a)(3)

(a) It is professional misconduct for a lawyer to:

.....

(3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness to practice law;

.....



IS DECEPTION EVER ALLOWED?



Oregon RPC 8.4(b)

Notwithstanding paragraphs (a)(1), (3) and (4) and Rule 3.3(a)(1), **it shall not be professional misconduct** for a lawyer to **advise clients or others about or to supervise lawful covert activity in the investigation of violations of civil or criminal law or constitutional rights**, provided the lawyer's conduct is otherwise in compliance with these Rules of Professional Conduct. "Covert activity," as used in this rule, means an effort to obtain information on unlawful activity through the use of misrepresentations or other subterfuge. "Covert activity" may be commenced by a lawyer or involve a lawyer as an advisor or supervisor **only when the lawyer in good faith believes there is a reasonable possibility that unlawful activity has taken place, is taking place or will take place in the foreseeable future.**



COVERT INVESTIGATIONS & SOCIAL MEDIA



You are a prosecutor investigating a report of an assault.

When evaluating whether to bring charges, you learn from the victim that the assault was recorded on a cell phone and is available on the suspect's YouTube channel.

You know the suspect recently hired a lawyer. Can you advise law enforcement to subscribe to the suspect's YouTube channel under a false name?





ONLINE BEAUTY CONTESTS

Avoiding false advertising, paying for recommendations, and sharing fees with nonlawyers.

THE TRAP: FALSE OR MISLEADING ADVERTISING



Oregon RPC 7.1

(a) A lawyer shall not make or cause to be made any communication about the lawyer or the lawyer's firm, whether in person, in writing, electronically, by telephone or otherwise, if the communication:

(1) contains a material misrepresentation of fact or law, or omits a statement of fact or law necessary to make the communication considered as a whole not materially misleading;

.....

(11) is false or misleading in any manner not otherwise described above;

.....



DISHONEST CONDUCT ONLINE



- *In re Carpenter*, 337 Or 226 (2004)
 - Lawyer created Classmates.com account in teacher's name and posted a message purportedly written by the teacher, stating that teacher had engaged in sexual conduct with high school girls.
 - At the time of posting, Lawyer knew that there were rumors in the community about the teacher having an affair with a student and engaging in inappropriate relationships with students.
 - Based on the post, school officials conducted investigation into teacher's conduct.
 - Lawyer reprimanded for engaging in dishonest conduct that reflected adversely on lawyer's fitness to practice law.



THE TRAP: PAYING FOR CLIENT RECOMMENDATIONS



Oregon RPC 7.2(a) provides:

A lawyer may pay the cost of advertisements permitted by these rules and may hire employees or independent contractors to assist as consultants or advisors in marketing a lawyer's or law firm's services. **A lawyer shall not otherwise compensate or give anything of value to a person or organization to promote, recommend or secure employment by a client, or as a reward for having made a recommendation resulting in employment by a client, except as permitted by paragraph (c) [regarding lawyer referral services] or Rule 1.17 [regarding sale of law practice].**



THE TRAP: SHARING LEGAL FEES



Oregon RPC 5.4(a) provides:

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except ...



DEAL-OF-THE-DAY WEBSITES

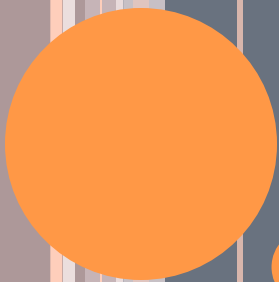


Kathy wants to distinguish herself from the crowd by offering a Groupon to potential clients.

The Groupon would give new clients \$500 of legal services (or two hours), plus a free 30 minute consultation, for the bargain price of \$250.

What issues should Kathy consider?






PRACTICAL TIPS

For the savvy lawyer.

FINAL THOUGHTS

- Remember: RPCs apply to what you post
 - Write only what is true
 - Don't use subterfuge to investigate a case
 - Don't write about or communicate with your clients or their legal matters on social networking sites
 - Caution client to refrain from commenting on their legal case on social media
 - Don't communicate with persons who are off-limits
 - Avoid creating inadvertent client relationships
 - NEVER give legal advice online
 - Develop a social media policy for your firm
- 

TIPS FOR NAVIGATING THE WILD FRONTIER



- DO investigate public information on internet sites generally and social media sites specifically
- DO ask for social media information in discovery
- DO understand benefits and vulnerabilities of social media
- DON'T use social networking tools for lawyer/client communications
- DO counsel your client about the potential consequences of social media use for their case



WARNING CLIENTS ABOUT SOCIAL MEDIA



- Advise clients of the risks of using social media while case pending
- There are no secrets. Despite privacy settings, information posted on line is often widely shared and may be accessed through other friends.
- Remind clients that anything they say or do on Facebook can and will be used against them in court.
- Be aware of electronic evidence and e-discovery obligations. Do not counsel your client to delete e-mails or information posted on Facebook.



QUESTIONS?



Advertising in the Internet Age

What Hath the Web Wrought?

By Amber Hollister



The Internet age is upon us. Firm websites are becoming stylized works of art. Lawyers are listed on LinkedIn, and big firms share space on Facebook. Lawyers are seeking creative opportunities to harness the power of the Web to market and sell legal services.

A Missouri lawyer recently made headlines in the *ABA Journal* when he offered his firm's estate planning services on Groupon in a bid to attract new clients. Groupon is one of many "deal-of-the-day" Internet sites, similar to LivingSocial, ideeli and Woot, which offer customers daily discounts on everything from restaurants to spa services. Typically, deal-of-the-day websites ask customers to register and then give them a limited time to purchase a deal-of-the-day online. After the purchase is made, customers may present a voucher to the participating business as payment. Deal-of-the-day services often keep a portion of the proceeds from each deal sold rather than charge the participating business a fee up front.

Although deal-of-the-day sites can be a powerful marketing tool, lawyers should proceed with care.

Paying for Online Advertising

At the outset, lawyers should recognize that Internet-based advertising is governed by the same rules as more traditional print advertising. Lawyers are generally permitted to pay third parties to communicate information about their services on the Internet as long as the communication does not misrepresent a material fact and is not otherwise materially misleading. RPC 7.1(a)(1)-(2); RPC 7.2(b); see also ABA Formal Ethics Opinion No. 10-457 (Lawyer Websites).

As consultants or advisors in marketing a lawyer's or law firm's services, a lawyer shall not otherwise compensate or give anything of value to a person or organization to promote, recommend or secure employment by a client, or as a reward for having made a recommendation resulting in employment by a client, except as permitted by paragraph (c) [regarding lawyer referral services] or Rule 1.17 [regarding sale of law practice].

RPC 7.2(a) allows lawyers to pay for the actual cost of online advertisements, but not for online recommendations or referrals. OSB Formal Opinion No. 2007-

Although deal-of-the-day sites can be a powerful marketing tool, lawyers should proceed with care.

In the context of deal-of-the-day offers, lawyers must accurately describe the proposed services in the online offer, and how they calculated the claimed discount. RPC 7.1(a)(1)-(2). They should be clear about the jurisdictional limits of their practice. See OSB Formal Op No 2005-103. They should also be careful to explain that their ability to provide the services promised depends on whether or not a conflict of interest exists under RPC 1.7 or 1.9.

Oregon RPC 7.1(d) permits a lawyer to pay others to disseminate information about the lawyer's services, to the extent permitted by RPC 7.2. RPC 7.2(a) provides:

A lawyer may pay the cost of advertisements permitted by these rules and may hire employees or independent contractors to as-

180 explains how advertising may be distinguished from recommendations or referrals: "When services are advertised, the nonlawyer does not physically assist in linking up lawyer and client once the advertising material has been disseminated. When a lawyer's services are recommended, the nonlawyer intermediary is relied upon to forge the actual attorney and client link."

Offering services on a deal-of-the-day website will violate Rule 7.2(a) if a lawyer is compensating the website as a reward for having made a recommendation resulting in employment by a client or securing the lawyer's employment by a client.

Sharing Fees With Online Advertisers

Participating in a deal-of-the day web-

site might also run afoul of the prohibitions against splitting fees with nonlawyers. Lawyers cannot pay advertisers a “share” of the legal fees that result from online advertising. RPC 5.4(a). This is because lawyers are prohibited “from giving a nonlawyer a share of a legal fee in exchange for services related to the obtaining or performance of legal work.” *In re Griffith*, 304 Or 575, 611, 748 P2d 86 (1978) (interpreting former DR 3-102, which is now RPC 5.4(a)).

Paying for online advertising based on the amount of web user interest does not automatically violate RPC 5.4(a). OSB Formal Opinion 2007-180 distinguishes between an attorney who pays a fixed fee for “hits” or “clicks” on the attorney’s advertising and an attorney who pays a fee based on work derived from an advertisement. The opinion concludes that if the attorney merely pays a fixed fee based on the number of “hits” or “clicks” on the attorney’s Internet ad, the attorney is not engaged in an improper fee-sharing arrangement with a nonattorney. The opinion, however, explains that the conclusion would be different if the fee is related to any particular work derived from the advertising or is based on actual referrals or retained clients. Such an arrangement would be a violation of RPC 7.2(a) and possibly RPC 5.4(a).

Under RPC 5.4(a), whether advertising and selling services on a deal-of-the-day site is permissible will depend to some extent on how a lawyer pays the website for its service. Some deal-of-the-day sites may require the lawyer to allow them to retain a portion of the amount collected or the fee actually earned. According to its website, LivingSocial collects a “commission fee” out of the money collected from the customer. Other deal-of-the-day sites may have different payment procedures. Regardless, offering services on a deal-of-the-day website will violate Rule 5.4(a) if the specific terms of service require the lawyer to pay a fee based on the work derived from the advertising or the number of retained clients.

According to the *ABA Journal*, the Missouri lawyer who advertised on Groupon maintains that he vetted his participation in Groupon with the Missouri Bar Association. In a sign of the times, the Missouri bar issued a statement through

Twitter, clarifying that Missouri ethics authorities have not approved Groupon wholesale. The tweet explained that “Legal Ethics Counsel does not provide advisory opinions on companies” because a “company could operate one way now and differently next week.” The tweet encouraged lawyers to contact the bar for case-by-case advice.

At least one other state bar seems poised to issue an ethics opinion concluding that participating in a deal-of-the-day website would result in illicit fee-sharing. The North Carolina Bar recently issued Draft Proposed Ethics Opinion No. 2010-4, which concludes that where a deal-of-the-day website’s fee is the percentage of each deal sold and the amount paid does not reflect the cost of advertising with the website, it constitutes impermissible fee-sharing with a nonlawyer.

Forming an Attorney-Client Relationship Online

Assuming a lawyer’s participation in a deal-of-the-day website does not amount to illicit fee-sharing or an impermissible referral fee, there are still potential pitfalls. When a customer purchases a deal-of-the-day offer, when and how might that customer become the lawyer’s client?

In Oregon, a lawyer-client relationship can be formed based on a prospective client’s subjective intention to form a lawyer-client relationship if there are objective facts upon which a reasonable person would rely as supporting the existence of a lawyer-client relationship. *In re Weidner*, 310 Or 757, 770, 801 P2d 828 (1990).

When a lawyer offers to provide legal services at a deal-of-the-day website, and a customer purchases a voucher to pay for those services, the lawyer has laid the foundation for the creation of a lawyer-client relationship. Lawyers should be mindful of the expectations they are creating in the minds of customers. Before undertaking representation, the lawyer will need to determine whether a conflict exists under RPC 1.7 or 1.9. If a conflict prevents a lawyer from providing the services promised, at a minimum, the lawyer will need to issue a refund to the customer. RPC 1.15-1(d).

Even if a lawyer-client relationship is not created, a deal-of-the-day customer “who discusses with a lawyer the possi-

bility of forming a client-lawyer relationship” before or after purchasing a deal is a prospective client who is owed certain duties of confidentiality and loyalty under RPC 1.18.

Conclusion

While the Internet beckons, lawyers should proceed with care to avoid potential ethical traps. Generally, lawyers may advertise and market their services on the Internet in the same way they would utilize print advertising. When doing so, they should ensure all communications about their services are neither false nor misleading, and that they are not sharing their legal fees with nonlawyers. Lawyers should also be cognizant of whether and when they are forming a lawyer-client relationship.

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Ethics opinions are published and updated on the bar’s website at www.osbar.org/ethics/toc.html.

Aliases, Covert Activity and Social Media Investigations

Think Before You Click

By Amber Hollister



The following hypothetical scenarios explore the contours of the new opinion.

You represent an employer in an employment discrimination case. You just spoke with opposing counsel about scheduling plaintiff's deposition and you are curious whether plaintiff has made any comments about her employer on Twitter. Can you ask your secretary to follow the plaintiff's private Twitter feed?

No. Because you know the plaintiff is represented by counsel, your request to follow the party on Twitter to gain infor-

regardless of whether the communication takes place online or off. OSB Formal Op No 2005-164. If a lawyer is prohibited by Rule 4.2 from sending a request to follow a party, the lawyer cannot direct staff to send a request on the lawyer's behalf. RPC 8.4(a)(1).

On the other hand, if the lawyer does not know the party is represented (for instance, if the plaintiff is proceeding *pro se*), then the request to follow the party would be permissible under Rule 4.2. OSB Formal Op No 2013-189. Even so, a lawyer investigating an unrepresented party's

When can a lawyer review the portions of a site that are public? When can lawyers, or their agents, request access to nonpublic information? When can lawyers use covert tactics to gain access to a social media website?

Modern litigators often Google opposing parties and witnesses before making a formal request for production. After all, approximately one out of seven people in the world has a Facebook page, and nearly four out of five active Internet users visit social networks and blogs.¹ For this reason, social media investigations have been described as "an attractive new weapon in a lawyer's arsenal of formal and informal discovery devices."²

A new ethics opinion, OSB Formal Opinion No. 2013-189, discusses how and when lawyers may search public and nonpublic information on social media websites and wrestles with some of the thorny issues that may arise during spontaneous web searches. When can a lawyer review the portions of a site that are public? When can lawyers or their agents request access to nonpublic information? And when can lawyers use covert tactics to gain access to a social media website?

mation about the subject matter of the representation would violate Rule 4.2. For the same reason, directing your secretary to follow the plaintiff's private Twitter feed is prohibited.

As the Legal Ethics Committee explained, "Accessing an adversary's public Web site is no different from reading a magazine article or purchasing a book written by that adversary." OSB Formal Op No 2005-164. But in order to gain access to a private Twitter account, it is necessary to send a request to follow the user, which amounts to communication with a represented party. Under Rule 4.2, lawyers may not communicate with represented parties about the subject matter of the representation, unless an exception applies. Rule 4.2's prohibition is the same

social media presence must be careful not to state or imply that the lawyer is disinterested in the case or give the party legal advice. RPC 4.3. Lawyers can find comfort in the fact that they will not run afoul of Rule 4.3 merely by sending a request to access a nonpublic social media website. The committee determined that a "simple request to access nonpublic information does not imply that the lawyer is 'disinterested' in the pending legal matter"; instead, "it suggests that Lawyer is interested" in the person "although for an unidentified purpose." OSB Formal Op No 2013-189. If the account holder asks for more information about the lawyer's role or the reason for the lawyer's interest, the lawyer must provide truthful information or withdraw the request.

You are representing the plaintiff in an employment discrimination trial. The court has just empanelled the jury. During a break before opening statements, can you check to see if any of the jurors has a public Facebook page?

Yes. A lawyer may view a juror's public Facebook page, as long as the lawyer does not engage in communication with the juror. Rule 3.5(b) provides that lawyers may not engage in ex parte communications with a juror during trial unless authorized to do so by law or court order.³ Simply viewing the page, however, is not considered communication. See OSB Formal Op No 2005-164.

But that does not mean a lawyer may try to "friend" a juror. As the committee concluded, "a lawyer may not send a request to a juror to access nonpublic personal information on a social networking website, nor may a lawyer ask an agent to do so." OSB Formal Op No 2013-189, fn. 2. A lawyer who is tempted to comment on the juror's Facebook page should refrain from doing so for the same reason. Ex parte communication with jurors in cyberspace is treated the same way it is on the courthouse steps.

You are a prosecutor investigating a report of an assault. When evaluating whether to bring charges, you learn from the victim that the assault was recorded on a cell phone and is available on the suspect's YouTube channel. You know the suspect recently hired a lawyer. Can you advise law enforcement to subscribe to the suspect's YouTube channel under a false name?

Probably so. Before advising law enforcement to subscribe to the suspect's YouTube channel using an alias, the prosecutor should evaluate whether the proposed course of action could potentially implicate Rules 4.2 and 8.4(a)(3).

If the suspect's YouTube channel is public, then no subscription is necessary to view the recording of the assault and subterfuge is unnecessary. Reviewing a publicly available YouTube video would not be considered communication under Rule 4.2. OSB Formal Op No 2005-164.

If the YouTube channel is private, only subscribers may see videos, and it would be necessary to send a request to subscribe to the channel. Advising law enforcement to send a request to the sus-

pect is permissible, even though the suspect is represented by counsel, when no formal criminal proceedings have been brought against the individual. This is because Rule 4.2's "authorized by law" exception applies. RPC 4.2(b). Courts have held that a prosecutor may engage in pre-indictment, pre-arrest and other investigative contacts with a suspect even though the prosecutor knows the suspect is represented by counsel. See OSB Formal Op 2005-126.

But can a prosecutor advise law enforcement to subscribe to the YouTube channel under false pretenses? Lawyers may not personally engage in subterfuge when attempting to access a nonpublic social media website. After all, lawyers are barred from engaging in any "conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness to practice law." RPC 8.4(a)(3); see also RPC 4.1(a).

But the rules carve out a narrow exception to RPC 8.4(a)(3) for lawyers providing advice about covert activity or supervising covert activity that is designed to uncover violations of civil or criminal law or constitutional rights. OSB Formal Op No 2005-173. Under Rule 8.4(b), lawyers may advise others about or supervise lawful covert activity to investigate violations of civil or criminal law or constitutional rights when the lawyer believes in good faith that there is a reasonable possibility that unlawful activity has taken place, is taking place or will take place in the foreseeable future. The lawyer's conduct must otherwise comply with the Oregon Rules of Professional Conduct. In other words, RPC 8.4(b) does not allow lawyers themselves to engage in misrepresentations.

The committee noted that in the "limited instances allowed by Oregon RPC 8.4(b)" a lawyer "may advise or supervise another's deception to access a person's nonpublic information on a social networking website." OSB Formal Op 2013-189. Under the facts provided, the prosecutor has a good faith belief that there is a reasonable possibility that unlawful criminal activity has taken place. Under RPC 8.4(b), the prosecutor may advise law enforcement to subscribe to the suspect's YouTube account using an alias. The prosecutor may not personally engage in subterfuge.

When reflecting on one's ethical responsibilities online, it may seem as though the Internet is a wild new frontier. But the committee's opinion on social media investigations confirms that the Oregon Rules of Professional Conduct will continue to be applied in the same manner to online and offline conduct.

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Endnotes

1. The Nielsen Company, *Paid Social Media Advertising: Industry Update and Best Practices (2013)*, available at <http://www.nielsen.com/us/en/reports/2013/the-paid-social-media-advertising-report-2013.html>.
2. New York City Formal Ethics Op 2010-2.
3. RPC 3.5(c) places similar prohibitions on communicating with a juror when the proceeding is concluded if (1) the communication is prohibited by law or court order; (2) the juror has made known to the lawyer a desire not to communicate; or (3) the communication involves misrepresentation, coercion, duress or harassment. See OSB Formal Op No 2013-189, fn. 2. Local rules often prohibit lawyers from contacting jurors after a trial. See OSB Formal Ethics Op 2005-143.