

BAR BULLETIN

MARYLAND STATE BAR ASSOCIATION NEWSLETTER

NOVEMBER 15, 2017

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MD Bar Leaders Convene for 58th Annual Bar Presidents Conference Concurrent Young Lawyers Summit Turns 10

By Patrick Tandy

Local and specialty bar association leaders from across Maryland joined MSBA President Sara H. Arthur and Association leadership for three days of networking, practice tips, and camaraderie at the 58th Annual Conference of Bar Presidents and 10th Annual Young Lawyers Summit, held October 26-28, 2017, at the Hyatt Regency Chesapeake Bay in Cambridge, Maryland.

"For 58 years, the MSBA has hosted this Conference to provide an opportunity for all Maryland bar associations to meet and discuss issues relevant to the day," said Arthur during her welcoming remarks.

Conference highlights included a breakout session on "The Art of Having a Difficult Conversation," featuring a panel that included Bar Association of Baltimore City Past President

Judge Michael Reed, MSBA Young Lawyers Section Immediate Past Chair E. Regine Francois, and MSBA Past President John P. Kudel, moderated by LGBT Bar Association of Maryland Past President Mala Malhotra-Ortiz. Meanwhile, panelists Sierra B. Mitchell, President, Calvert County Bar Association, Bar Association of Frederick County Lorraine Prete, and Anne Arundel County Bar Association President-Elect Stacey B. Rice joined moderator Thomas M. Weschler of the MSBA Local and Specialty Bar Liaison Committee in speaking to member engagement with "More Than a Welcome Letter".

Special guests included certified association executive and EOS implementer Bill Sheridan who, together with MSBA Executive Director Victor Velazquez, led a strategic frameworks discussion, and author and life coach Tom Morrison, who presented on the

proliferation of the Uber business model across industries, including the legal profession.

On Saturday morning, the organizing Local and Specialty Bar Liaison Committee presented its annual Best Public and Best Bar Project Awards. This year's recipients included:

- The Harford County Bar Association, Best Small Bar Association Project Award, for its Law Day with the Public Event
- The J. Franklyn Bourne Bar Association, Best Service to the Bar Project Award, for its 40th Anniversary Life and Legacy Reception
- The Anne Arundel County Bar Association, Best Service to the Public Project Award, for its Project to Help Combat Childhood Hunger

Attendees also enjoyed time-honored staples like former Maryland Delegate Timothy F. Maloney's entertaining legislative update and

the Friday-evening costume dinner and dance.

The concurrently held Young Lawyers Summit featured sessions on, among other things, leveraging MSBA involvement toward furthering one's professional development (presented by Saul Ewing Arnstein & Lehr, LLP Partner Michelle Lipkowitz and Alicia Wilson, VP for Community Affairs and Legal Advisor for the Sagamore Development Company) as well as a wellness session led by Mark J. Muf-foletto and Chris Flohr.

"All of the bar associations – local and specialty and the MSBA – play an important role," noted Arthur, "and by working together, particularly on certain issues, we can effectuate change."

Conference sponsors included Minnesota Lawyers Mutual and the Maryland Bar Foundation.



Velazquez Reaffirms MSBA Support for IOLTA

MSBA Executive Director Victor Velazquez (right) reaffirmed the Association's commitment to the funding and provision of civil legal services to vulnerable populations during a meeting of the American Bar Association's Commission on Interest on Lawyers's Trust Accounts (IOLTA) held October 14, 2017, at Bar Headquarters in Baltimore.

MSBA Hosts ABA's 2017 Mid-Atlantic Bar Conference

MSBA hosted the American Bar Association's 2017 Mid-Atlantic Bar Conference October 5-7 at National Harbor, Maryland. Bar leaders from New York, Pennsylvania, Delaware, New Jersey, and the District of Columbia (as well as ABA Division of Bar Services Director Pamela Robinson) joined President Sara H. Arthur and other members of MSBA's leadership for a host of roundtable discussions, as well as a social outing that included a trip to Baltimore for a tour of the Sagamore Spirit Distillery, followed by dinner at Nick's Fish House. "The Mid-Atlantic Conference gave leadership from the participating state bar associations the opportunity to meet and share issues and innovations," says Arthur. "It also gave the MSBA the opportunity to showcase Maryland."





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Charity Anastasio, Esq., MSBA Law Office Management Assistance, Baltimore, MD

ENTITY CHOICE

Seth C. Polansky, Esq., The Law Offices of Seth Polansky, Silver Springs, MD

WHAT TO LOOK FOR IN A MALPRACTICE POLICY

Kay Kenny, Minnesota Lawyers Mutual

CONFIDENTIALITY PROTECTION PROTOCOLS

Chris Flohr, Esq. Blackford and Flohr, Severna Park, MD

PRACTICAL IOLTA ADVICE

Raymond A. Hein, Esq., Deputy Bar Counsel, Attorney Grievance Commission of Maryland, Annapolis, MD

Tiffany Devonshire, Esq., Maryland Legal Services Corporation, Baltimore, MD

SOLO/SMALL STRESSERS: HOW TO SPOT AND SURVIVE

Lisa Caplan, LCSW-C, MSBA Lawyer Assistance Program, Baltimore, MD

EMPLOYMENT LAW HIGHLIGHTS THAT HELP SOLOS

Melissa Menkel McGuire, Esq., Law Office of Melissa Menkel McGuire, Baltimore, MD

CONFLICTS CHECKS

Chris Flohr, Esq. Blackford and Flohr, Severna Park, MD

HOW TO WRITE COMPELLING ONLINE CONTENT

Conrad Saam, Mockingbird Marketing, Seattle, Washington

WHAT NOW? TIE IT ALL TOGETHER!

Various speakers from earlier in the day.

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MVLS Honors Maryland Attorneys During “Celebrate Pro Bono” Volunteer Reception



Left to Right Top Row: Samantha Stephenson, Hogan Lovells; Justin Wilkes, Center for Urban Families; Thomas Mayfield, Center for Urban Families; Natalie T. Collins, The Law Office of Natalie T. Collins; Andrea Trento, Hogan Lovells; Deborah Devan, Attorney at Law; William H. Buschur, Attorney at Law; Chief Judge Mary Ellen Barbera, Maryland Court of Appeals; Gary M. Brooks, Law Offices of Gary M. Brooks, LLC

Left to Right Bottom Row: James Tansey, Hogan Lovells; Bonnie A. Sullivan, Maryland Volunteer Lawyers Service; Nina Seay, Hogan Lovells, Hogan Lovells; Thomas Mulinazzi, Mulinazzi Law Office; Sandra Holt, Mulinazzi Law Office; Kim Sorensen, Mulinazzi Law Office; Shannon Kowitz, Mulinazzi Law Office

“Celebrate Pro Bono” Award Recipients

Volunteer of the Year:

Deborah Devan, Attorney at Law

Law Firm of the Year:

Mulinazzi Law Office

Partnership of the Year:

The Hogan Lovells Firm

Young Lawyer of the Year:

William Buschur, Attorney at Law

20 Year Volunteer Award:

Erika Slater, The Law Offices of Erika F. Slater, LLC

10 Year Volunteer Award:

- Christina Alfonsi, Law Office of Christina M. Alfonsi
- Gary Brooks, Law Offices of Gary M. Brooks, LLC
- Natalie Collins, The Law Office of Natalie T. Collins
- James C. Olson, Attorney and Counselor at Law
- Steven Wilder, WGK Law

November

18 Join the **Bar Association of Baltimore City and the Circuit Court for Baltimore City** for their *Baltimore City National Adoption Day Celebration*. This event not only celebrates the children whose adoptions are finalized that day, but is part of the national effort to raise awareness of more than 100,000 children in foster care waiting to find permanent, loving families. This event is held at the Circuit Court for Baltimore City's Ceremonial Courtroom 400, Clarence Mitchell, Jr. Courthouse from 10:00 a.m. - 12:00 p.m. The adoption ceremony lasts from approximately 11:00 a.m. - 12:00 p.m. Then the fun begins when the 200+ attendees come to Kaplan Court (2nd floor) to enjoy activities, including face painting, temporary tattoos, balloon art, gifts for the children, and a dessert reception. Contact info@baltimorebar.org for additional information.

19 Join **MSBA's Young Lawyers Section & Public Awareness Committee** at *Our Daily Bread* to serve breakfast and lunch to the hungry of Baltimore City. If you are interested in participating,

please contact Myriem Seabron at myriem.seabron@gmail.com. *Space is limited, so please secure your volunteer space early.*

21 The **Bar Association of Baltimore City** hosts their *23rd Annual Past Presidents' Luncheon* from 11:30 a.m. - 1:30 p.m. at The Grand Baltimore, 225 North Charles St., Baltimore, MD 21201. Contact info@baltimorebar.org for additional information.

29 Join the **Women's Bar Association of Maryland** for their *33rd Annual Rita C. Davidson Award Dinner Program*, honoring their 2017 Award Recipient - The Honorable Shirley M. Watts, First Female African American Member of the Court of Appeals of Maryland. Reception will begin at 6:00 p.m. with dinner program at 7 p.m. at The Hotel at Arundel Preserve, 7795 Arundel Mills Boulevard, Hanover, MD. Visit www.wba-md.org/fileupload/RCD%20Registration%20and%20Sponsorship%20Form%20FINAL.pdf for ticket and sponsorship information, or contact Marla Twigg at mlt.wba@gmail.com.

30 **MSBA's State and Local Government Section** invites you to their networking event: *Public*

Information- Striking the Balance from 5:00 p.m. - 7:00 p.m. at the George Howard Building, 3430 Courthouse Drive, Ellicott City, MD 21401. The event will explore the use of Maryland's Public Information Act today and where it may be headed. It will give Section members the opportunity to discuss issues involving access to public information, the abuse of that right, and ways to improve access and limit abuses with those who administer the Act. Speakers include Lisa Kershner, Public Access Ombudsman and Karen Federman Henry, Counsel to the Public Information Act Compliance Board. Register online at www.msba.org/eventpayment.aspx?eventid=13967 or contact Theresa Michael at tmichael@msba.org.

DECEMBER

2 Register now for *Starting Your Law Practice - The Way to Firm Success*. This seminar for new and aspiring law office owners will run from 8:00 a.m. - 4:00 p.m. at the Charles E. Ecker Business Training Center, 6751 Columbia Gateway Drive, Columbia, MD 21046. Register online at www.msba.org/event-

payment.aspx?eventid=13838 and contact Charity Anastasio, canastasio@msba.org for additional information.

4 **Maryland Legal Services Corporation** invites you to their Awards Reception *Celebrating 35 Years of Access to Justice* from 6:00 - 8:00 p.m. at the Lord Baltimore Hotel, 20 West Baltimore Street, Baltimore, MD 21201. Tickets available online at www.mlsc.org/ticket-purchases-contribution-opportunities-2017. Contact Tiffany Devonshire, tdevonshire@mlsc.org, for additional information.

6 Celebrate the holidays with the **Anne Arundel Bar Association** their *Holiday Party* at Libations, 8541 Veterans Hwy, Millersville, MD, from 5:00 - 7:00 p.m. The event will feature free hors d'oeuvres and a cash bar. We hope you can stop by and meet the association's officers and members of the Board of Trustees. No registration is required. The party is FREE, but we ask that you bring a new, unwrapped toy for the AABA's Toys for Tots collection. Contact Fran Czajka, info@aabar.org, for additional information.

See Dateline Page 16

MSBA Ethics Hotline

NOVEMBER

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RAUL M. BHAT
Montgomery County
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PATRICIA M. WEAVER
Montgomery County
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Members should address their written ethics inquiries to Patricia Weaver, Chair, Ethics Committee, 4800 Hampden Lane, Suite 700, Bethesda, MD 20814, or call (301) 951-9360, or e-mail tweaver@paleyrothman.com. Opinions of the Ethics Committee are available online at www.msba.org. Please consult the Rules and MSBA Ethics Opinion Website before calling.

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Annual Agriculture and Environmental Law Conference Marks 3rd Year

By Sarah Everhart

The Agriculture and Environmental Law Conference, hosted by the Agriculture Law Education Initiative (ALEI), is back for its third year. To register online visit <https://go.umd.edu/ALEIconf>. The conference will continue to educate attendees about the complex intersection of agriculture and environmental regulation. Gerald O'Mara, an Eastern Shore farmer who attended last year's conference remarked "it is important for farmers to be educated on legal issues so they are prepared. ALEI does a great job teaching farmers about legal matters and I found the conference was well worth my time."

A highlight of the conference, which features federal and state policymakers, is a panel discussion on the

future of conservation programs and the 2018 Farm Bill. The conference is geared toward farmers, agricultural and environmental attorneys, regulators, agriculture professionals, environmental associations, and elected officials. The ALEI team hopes to evoke a lively discussion and advance the dialogue about the effects of natural resource protection laws on Maryland's farmers.

One conference presentation will center on the legalities of administering antibiotics to livestock in Maryland following the newly enacted federal Veterinary Feed Directive (VFD) and the 2017 Keeping Antibiotics Effective Act passed by the Maryland General Assembly last session. The panel will feature State Veterinarian Michael Radebaugh, and Colby Ferguson, Maryland Farm Bureau Government Rela-

tions Director. Radebaugh will give producers insight in how to properly comply with the laws, while Ferguson will discuss his personal experience as a livestock producer, as well as his experience with the legislative process as a farmer advocate. The panel will also include Elizabeth (Betsy) Nicholas, Executive Director of Waterkeepers Chesapeake, who will discuss the reasons Fair Farms Maryland supported the passage of state legislation further regulating antibiotic use on the farm. Farmers affected by the federal and state antibiotic laws will not want to miss this discussion.

Other topics at the conference include legal resources for improving soil health; hot issues in agriculture and environmental law; recent legal developments in organic farming; and how to prepare for a Maryland

Department of Agriculture nutrient management plan audit.

The conference will be held Friday, November 17th, 2017 from 8 am – 3 pm at the Doubletree Hotel Annapolis, 210 Holiday Ct, Annapolis, MD 21401. This event has sold out the past two years; those interested in attending are encouraged to register online at <https://go.umd.edu/ALEIconf>. Nutrient Management Continuing Learning Education Credits and Delaware Continuing Legal Education Credits are available for those attending. Registration closes on November 10, 2017. For more information, please contact Sarah Everhart at (410) 706-7377 or severhart@law.umaryland.edu.

The Agriculture Law Education Initiative (ALEI) is a collaboration of the University of Maryland Francis

King Carey School of Law at the University of Maryland, Baltimore (UMB); the College of Agriculture & Natural Resources at the University of Maryland, College Park (UMCP); and the School of Agricultural and Natural Sciences at the University of Maryland Eastern Shore. ALEI is an initiative of the University of Maryland: MPowering the State, a strategic alliance between UMB and UMCP created in 2012 to significantly expand research, business development, and student opportunities at both universities.

Sarah Everhart is a senior legal specialist with Agriculture Law Education Initiative and the University of Maryland Francis King Carey School of Law.



Maryland Legal Services Corporation Announces 2017 Legal Services Awards

By Sarah Everhart

— Legal services awards will be presented by the Maryland Legal Services Corporation (MLSC) to 10 recipients at an annual awards reception on Monday, December 4, 2017 from 6:00 to 8:00 p.m. at the Lord Baltimore Hotel when MLSC will be celebrating its 35th anniversary.

The **Robert M. Bell Medal for Access to Justice**, named for the former chief judge of the Maryland Court of Appeals, was created in 2004 to honor members of the bench or bar who have displayed an extraordinary commitment to furthering access to justice for low-income Marylanders. MLSC will present this highest honor for only the fourth time since the award was established to **Michael A. Millemann**, professor of law at the University of Maryland Francis King Carey School of Law, for his decades of active involvement

with access to justice initiatives as a public interest lawyer, former chief of the civil division of the Office of Attorney General, clinical law educator and a member of the first MLSC board.

Delegate Kathleen M. Dumais, a member of the Maryland House of Delegates and attorney at Ethridge, Quinn, Kemp, McAuliffe, Rowan & Hartinger, will receive the **Arthur W. Machen, Jr. Award** for her significant contribution to the legal services delivery system for low-income Marylanders as vice-chair of the House Judiciary Committee and through her family law practice. This award is given annually to a private attorney who has demonstrated extraordinary commitment to increasing access to justice and improving civil legal services to low-income Marylanders.

The **Benjamin L. Cardin Distinguished Service Award** rec-

ognizes an outstanding public interest attorney whose career has been dedicated to providing, promoting, or managing civil legal services to low-income Marylanders. The 2017 honoree is **Sally Dworak-Fisher**, staff attorney at the Public Justice Center.

The recipient of the **Rising Star Award** is **Margaret K. Henn**, director of the Home Preservation Project at the Pro Bono Resource Center. This award is presented to an attorney who has practiced law for 10 years or less and has significantly contributed to expanding access to justice by serving the civil legal needs of low-income Marylanders or advancing the delivery of civil legal services.

This year's **William L. Marbury Outstanding Advocate Award**, for a nonattorney who has demonstrated outstanding service representing the civil legal needs of low-income

Marylanders or by expanding access to justice, will be presented to two recipients, **Herbert N. Berkow**, volunteer mediator in the Consumer Protection Division of the Office of Attorney General and **Sandra A. Brown**, executive director of Mid-Shore Pro Bono.

Saul Ewing Arnstein Lehr LLP has been named as this year's recipient of the **Herbert S. Garten Public Citizen Award** for its increased commitment to access to justice through a firmwide pro bono project and a partnership with many MLSC-funded organizations. The Garten Award honors an entity or organization not regularly engaged in the delivery of legal services to low-income Marylanders but has demonstrated an extraordinary commitment to increase access to justice.

MLSC will also present **Awards of Special Recognition** to **Delegate Benjamin S. Barnes**, **Senator Guy**

J. Guzzone and **Senator Bobby A. Zirkin** for their leadership in the Maryland General Assembly to help stabilize and enhance funding for MLSC.

MLSC annually solicits nominations for its legal services awards throughout Maryland's legal community, including bar associations, legal services programs and other interested persons and organizations. MLSC was established by the Maryland General Assembly in 1982 to receive and distribute funds to nonprofit organizations that provide civil legal assistance to low-income persons. From its inception, MLSC has made grants totaling \$270 million to help provide services in 3 million legal matters for Maryland's families in areas of family, housing, consumer, employment, health care and other civil legal matters.

Immigration and Employment Law Seminar



The MSBA Labor and Employment Law Section hosted an “Immigration and Employment Law Seminar & Networking Happy Hour” on October 5, 2017, at the University of Baltimore School of Law. Section Chair Keith Zimmerman praised the program’s speakers, who, from rights to responsibilities on the parts of both employees and employers, “presented from a variety of legal standpoints on one of the hottest topics in our national discourse.”



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**MARYLAND
PARTNERS FOR
JUSTICE
CONFERENCE**

SAVE THE DATE!

WHEN: Thursday, April 26, 2018 8:15 AM - 3:30 PM

WHERE: Baltimore Convention Center | 1 West Pratt
St., Baltimore, MD 21201

Our **20th annual Conference** will take place on Thursday, April 26, 2018 from 8:15 AM to 3:30 PM at the Baltimore Convention Center. With an expected number of over 250 attendees, the structure of the day includes about 16 panel discussions (several running concurrently during three 75-minute time slots where attendees choose which panels they'd like to attend). We start the day with a morning plenary and a luncheon keynote address by powerful guest speakers with a passion for justice.

QUESTIONS ABOUT THE CONFERENCE? CONTACT KIAH PIERRE:
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VOLUNTEER ATTORNEY SPOTLIGHT:

"...anyone doing pro bono work will find the experience incredibly rewarding both for their role in bridging the gap between the low-income community and costly legal system and their continued growth as an effective and zealous advocate."

- Jose Martin Blanco, Esq.

Pro Bono Resource Center of Maryland would like to take a moment to recognize our volunteer attorneys. Many attorneys become involved in pro bono after taking a training with PBRC. Some have been providing legal services to those in need for years; others are new to the pro bono field. Look to PBRC for additional training and information to help connect with low-income clients and disadvantaged communities throughout the state.

This month we are highlighting pro bono attorney, Jose Martin Blanco, Law Offices of Jose Blanco, P.C., Silver Spring MD

JOSE'S BACKGROUND:

"I graduated University of Maryland School of Law in May, 2008 and passed the bar Summer 2008. I opened my own practice in 2012. I've done a lot of pro bono work with different pro bono organizations, including: Catholic Charities, KIND, CAIR, Adelante and the Latin American Youth Center in Silver Spring and Riverdale."

WHY DO YOU DO PRO BONO?

"If you're considering pro bono work for the first time, it is an opportunity to grow. Doing your part to aid the low-income community is the duty of every lawyer but can also offer the opportunity to give you hands-on experience in areas you wouldn't otherwise explore with resources through the pro bono network that make your inexperience a challenge, not an impediment, to adequate representation. In the end, I trust that anyone doing pro bono work will find the experience incredibly rewarding both for their role in bridging the gap between the low-income community and costly legal system and their continued growth as an effective and zealous advocate."

HOW DID YOU GET INVOLVED WITH PRO BONO RESOURCE CENTER OF MARYLAND?

"Cate Hulme, (Unaccompanied Children Pro Bono Project) who has proven extremely active in the community in helping young attorneys find mentors to assist them in the representation of unaccompanied minors, asked me to lead a roundtable discussion on how to handle SIJS cases in Prince George's County and thereafter mentor attorneys who had questions or wished to observe me in Court."

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They Are Not Like Us: Representing the Rich and Famous

By David N. Pessin

Does a wealth preservation attorney representing some of the richest and most famous people in the world – professional athletes – differ from those representing so-called “regular people”?

Some lawyers will say “Well, you’re still just doing wills, trusts, LLCs, maybe a prenup or two. Isn’t it all just the same for everybody who has a few bucks to protect?”

In some ways, yes. The core issues are frequently the same: making sure that the right people inherit in the right ways and are named to handle financial and personal matters in the event of death or incapacity; minimizing estate and income taxes; protecting wealth from erosive elements such as probate and the truly devastating factors such as divorce, business failures and judgment creditors.

But in many ways, representing professional athletes is nothing like anyone could imagine. Here’s why:

- Everything is amplified to the Nth degree. These days, professional sports compensation numbers are astronomical. How about this NBA client? Great guy and solid citizen, 30 years old. Above average player, but not a star or household name. He signed a four year, fully guaranteed deal worth in excess of eighty million dollars. \$80,000,000! (“Even I can’t get my head wrapped around this,” says the player/client. “It’s funny money to me.”)
 - How long would a dentist have to work to make that?
 - And it’s not just the money. He is a prime target.
 - A target for every family member who has wants or needs. (Try getting this client to give you a total of “give away” money at gift tax return time.)
 - A target for every “friend” with a foolproof business idea. (For the record, most sports

bars fail, as do clothing and high end shoe stores, not to mention recording studios and record labels.)

- A target for everybody with a telephone camera. Did your client ever hire a driver, cook, cleaning lady or nanny needing to use a written employment agreement with non-disclosure and liquidated damages clauses so that the selfie – or worse – doesn’t show up on TMZ? Bet not.
 - The spotlight shines brightly. Financial, marital and other legal problems? You are unlikely to need to advise “regular” clients to have a “statement” ready because by the time that he gets home, the satellite trucks will be parked out front. Maneuvering amidst that clangor makes the lawyer’s job harder. Much harder.
 - And while we’re at it, most non-celebrity clients don’t have “handlers.” It’s one thing to vet ideas with the financial advisor and CPA. It is quite another to battle through the circle of an agent, publicist, “personal assistant,” high school coach, and lifelong buddy to ascertain what your client really thinks, needs and wants.
 - The earnings curve is inverted. Most high earners have reasonably predictable (and upward) earnings curves and wealth accumulation rates. Shifting wealth in order to leverage income and estate tax savings is based on predictability. These clients work for a long time and long-range, sometimes multi-generational, planning is the goal.
- On the other hand, it’s almost impossible to accomplish this planning when most or all of the wealth is accumulated over three to ten years prior to age 35 typically followed by “retirement.” How can we talk about aggressive gifting strategies when we can’t accurately compute the post-career asset “burn rate”?

“Retirement” for most of us is a place in Florida, exploring hobbies, doing charitable work and minding the grandchildren – endeavors that in retirement we would at last have time for. For a pro athlete, too often without a plan made well in advance, what we have is an able bodied person under 40 with no skills, vision, guidance or support. That’s sometimes when the trouble really starts.

We counselors have to not only predict the finances, but also guess at human nature.

- Background and lifestyle disconnect. Maybe not all, but lots of people with substantial wealth come from backgrounds of wealth and education. Maybe not all, but lots of professional athletes, do not have that same background, or the necessary tools, education and family experience. Many (but definitely, and thankfully, not all) are from shattered families and hard environments. The vigilant ones, with dedicated and trusted family members and advisors, build a foundation of knowledge and prudence.

Sadly, others are part of the depressing statistics about the many pro athletes who made millions and have nothing left.

That’s another big difference. Most of the “regular” clients keep, protect and grow what they make.

All but the most dedicated and disciplined professional athletes – those who not only engage, but also listen to, competent advisors – don’t.

David N. Pessin is the Co-Founding Member of Pessin Katz Law, P.A. (PK Law) and has been practicing law for over 36 years. He is one of the few attorneys in the area who regularly plans for and advises professional athletes and broadcasters in personal and business matters and has established a solid reputation as a valuable resource for American and international athletes and broadcasters.

The Fine Print Finesse

By O.T. Walker

Picture it - any town USA, any era: a talented kid with the voice of an angel has crooned himself from lead soloist of a church choir right into the office of a "star maker." At that moment, seemingly the only thing separating this talented kid from another night performing in

some sketchy hole in the wall, in an even sketchier part of town, and becoming the next big thing is the piece of paper on the desk between he and the individual sure to make him the brightest in the business. Down to his last few pennies and absolutely over trying to compete with social media's latest viewing algorithm, he decides to sign the contract. What does he really have to lose?

The short answer? Everything.

Throughout music history, the desire to finally "make it" has been the most alluring flame to many a recording artist's mothy heart. You see, creative people fancy themselves as being all about the art, and honing their craft; and, until they realize that passion alone can-

not fill the 'fridge, they usually are!

A sweet talking manager and the wrong management contract can leave even the most talented artist penniless. Words like "perpetual" and "automatic renewal" can bind an artist to an agreement they never had any intention of signing.

Most recently, a client of mine asked me to glimpse over a contract with a management company that wanted 25 percent commission earned in perpetuity for revenue received from any entertainment contract my client entered into, whether or not the manager orchestrated the deal, without defining "entertainment" and oh yeah - for a term of five years! Per the contract, the term "entertainment" not only included my client's capacity as a singer and musician, but any deals that were to come about related to his work in any possible field. That's right, according to this contract, "entertainment" included anything from singing gigs to the sale of a cookbook (my client happens to

be quite the chef). The fine print of the contract also left the manager's ability to spend on "developing the artist" without any checks or balances. So, per the contract, the manager could trot all over the globe and rack up plenty of luxury tabs all in the name of developing my client as an artist. Needless to say, if you are very quiet, you can probably hear the ghost of that horrific contract haunting some other artist - certainly not my client.

As an entertainment attorney, it is our jobs to find the finesse in these contracts. A word like "perpetuity" doesn't belong in most marriage vows, so why should your client expect to see it in an artist management contract? The scope of your client's contract and the type of entertainment he or she provides should be clearly defined. Also, any option to renew contract terms should be performance based. For example, set the term of a contract for one year and upon meeting certain metrics, leave the contract open to

renew for an additional year WITH THE MUTUAL AGREEMENT OF THE PARTIES. Another tip, make sure your client is reviewing their manager's expenses and has the ability to sign and deposit their own checks. Also, know your client. Last freebie: many of our clients have plenty of, hmmm...vices... and many of those vices are prime pickings for viral media. Make sure that your client is protected with the appropriate non-disclosures and confidentiality clauses. No one wants to be the subject matter of a tell-all book or cable biopic. Well, at least not without cutting a very big check!

O.T. Walker is licensed to practice law in Maryland and New York. She is the owner of The Walker Collective - A Law Firm for Creatives. She can be reached at info@otwalker.com or (888) 653-0833.



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Minding Your O's and P's: Visas for Athletes and Entertainers

By Linda Rahal

When is "work" a bad four-letter word? When you are coming to the United States as a visitor, and asked by the immigration officer at the port-of-entry the purpose of your trip, you answer work! If you are lucky, the immigration officer will admit you into the United States with a warning that you need a work visa the next time, and if not-so-nice, he will put you on a plane back home.

So, what constitutes work for U.S. immigration purposes? Work is when you perform services in the United States and receive compensation; it doesn't matter what type of compensation or where it comes from. If you are an athlete or entertainer coming to the United States to compete or perform, but are paid from outside of the U.S., it is still considered work, and warrants a work visa. For example, athletes can come into the United States as a visitor, to race or compete for prize money only. But, if an athlete is also getting paid by a sponsor or team, regardless from where, then it is considered work and requires a work visa – even if it is only for one day!

What work visas are available to athletes and entertainers? The O and P visas are the most common. The O-1 visa is for persons of extraordinary ability in business, education, science, athletics and arts, requiring *sustained national or international acclaim*. The O-1A visa requires that the person is one of a very few at the top of his field and is used for athletes, while the O-1B requires a lesser standard of "distinction", and is used for people in the arts or the motion picture or television industry. The standard of "distinction" means having a level of recognition substantially above what is normal and can be considered prominent (leading, renowned or well-known). Unlike the O visa, the P visa is used exclusively for athletes and entertainers, and requires that the person has reached a level of "international recognition". There are several P visas that can be used for individuals or members of a group or team: P-1 for athletes or entertainers; P-2 for artists or entertainers who are members of an international exchange; and P-3 for artists or entertainers who

are members of a culturally unique program. Both the O and P have visa categories for people who are considered "essential support" to the principal applicant, such as a coach for an athlete, or backup performers for a singer. And both the O and P visas require a consultation with a labor organization that has expertise in the skill area involved for the principal applicant, and any essential support personnel. For example, actors require a consultation letter

Emmy, then the O-1B requires that the foreign national satisfy three of six requirements, which is arguably a lesser standard than the O-1A. The O-1 visa can be obtained initially for three years, and then extended in one-year increments to complete the same "event". If there is a new contract, employer, or event, then the O-1 may be obtained for a new three-year period.

In contrast, the P visa categories require that the individual has attained international recognition, which is defined as a *high level of achievement in the field evidenced by a degree of skill and recognition substantially above that ordinarily encountered, to the extent that such achievement is renowned, leading, or well known in more than one country*.

The P visa can be obtained initially for a period of up to five years, as well as extended for five-year periods. However, the duration of the P visa will likely be limited to the expiration date of the contract that pays the foreign national and/or the duration of the itinerary of events in the United States.

When would one use the O-1 versus the P-1? The P-1 standard of international recognition is easier to meet than that of extraordinary ability for the O-1, and therefore is a better option, unless the foreign national is clearly at the very top of his or her field. However, if the person is an artist, or in movies or television, then the O-1B is the right visa category. In the case of an athlete, if the person has a contract longer than three years, then the P-1 is preferred to get a longer duration of up to five years, even if the athlete qualifies for the higher standard of the O-1 visa. But, if the athlete has recognition only in his or her home country, and not international recognition, then the O-1 is the only option, as you can qualify with either national or international acclaim, whereas the P-1 requires only international acclaim. For example, an athlete coming to play as part of a sports league that is only in the United States (and no other countries) would only be eligible for an O-1 visa to play on a team of that league. Similarly, if an athlete is well known in his or her home country, having

"When is 'work' a bad four-letter word?"

from the Screen Actors Guild (SAG). Both visas also allow derivative visas for spouses and children, but do not provide work authorization for them.

The O-1A visa has the highest standard of extraordinary ability requiring *sustained national or international acclaim*. It also means that the applicant is *one of small percentage* who has reached the top of the profession. In the world of athletes and entertainers, we have used the O-1A for top individual athletes (triathletes, tennis professionals, wind surfers, CrossFit, etc.), members of professional sports teams, models, and ball room dancers. Proving extraordinary ability requires evidence of the receipt of a major, internationally recognized award (such as a Nobel Prize). For an athlete this can mean a world championship win, or for an actor or entertainer a Grammy or an Emmy. Otherwise, for an O-1A the foreign national must meet at least three of ten criteria such as lesser known awards, articles written about them or their work in major publications, among others. If an athlete is on a team, there are separate but similar requirements to demonstrate that the athlete is one of extraordinary ability. The O-1B visa used for artists and people involved in movies or television has a lesser standard of a "distinction" and we have used this for chefs, dressage equestrians, painters and other types of artists. If there is no receipt or nomination for a major prize, such as an Academy award, Grammy, or

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Podcasting: The Legal Issues Uncovered

By Linda Rahal

Podcasts have become increasingly popular and are here to stay. Many influencers, including lawyers, are using podcasts to build a platform, highlight their expertise, and expand their reach. As with any medium, sharing information on a podcast can present legal issues that, if ignored, can cause major problems for even the well-intentioned influencer. In this article, I will highlight just a few of the potential legal issues associated with podcasting and intellectual property, and give you some tips and tools to avoid infringement while using a podcast as a platform.

The main legal principles that come into play with podcasts are **copyrights**, the **right of publicity**, and **trademarks**.

Let's take a look at what these legal principles mean, how they're applied in podcasting, and what you need to know to avoid getting into trouble.

Copyrights

Broadly speaking, copyright is a form of legal protection covering "original works of authorship fixed in any tangible medium of expression." In plain English, copyright is the right to copy, publish, distribute, perform, display the protected work, or create derivative works, based on the protected work.

How does copyright apply to podcasting?

There are many creative and essential production elements to a successful podcast: intros/outros; artwork and logo; the story/interviews; etc. All of these pieces to the podcast puzzle carry a risk of infringement.

Intros and Outros: Most intros and outros typically consist of some mix of music and speech. Music, in its many forms, is copyrightable once recorded. This means that you cannot simply download Beyoncé's "Single Ladies" track and use it for your intro or outro without her per-

mission. This also means that you can't just search the internet and use music that you like (even if the artist hasn't yet reached Beyoncé's status). You must have the artist's consent for any music that you use, preferably in writing, in the form of a music license agreement.

Artwork: Like music, any artwork or photography that you use to market your podcast (like, on a blog or social media featuring your podcast, for instance) will either have to be your original work, or be licensed for use from the creator/copyright owner.

How to Avoid Copyright Infringement with Your Podcast

The easiest way to avoid infringement is to create your own original content because as the creator, you would be the copyright owner. Now, if you're anything like me and your music and graphic skills don't match your lawyering skills, you should make sure that you have



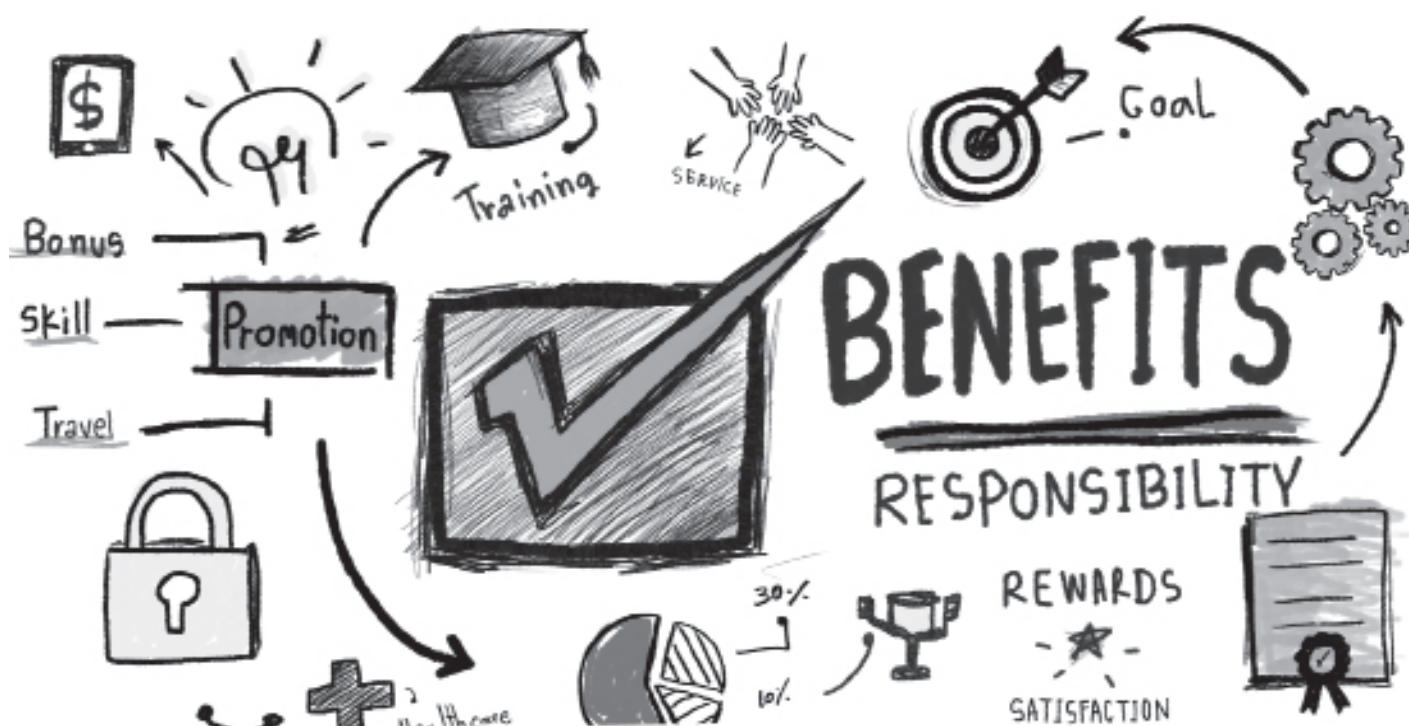
permission from the original creator to use their work. If you don't have time to reach out to Beyoncé's people, there are tons of creative commons websites where you can get royalty free music or images like: Creative Market, Pond5, and even YouTube has a royalty free music library.

If you decide to hire someone to create a logo, artwork, or music for you, be sure to have them sign a work-for-hire agreement, or a copyright transfer agreement, to ensure that you are the owner of the final work product.

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Intellectual Property: The Wrath of Con(s)

By Seth C. Polansky

Almost a year ago now, I attend a wonderful pop culture convention that shall remain nameless. While participating in the excellent panel discussions, film screenings, and photo ops, I crystalized an idea I'd been flirting with for a while now: how to attack the problem of copyright infringement by vendors at conventions.

All it took was a walk through "Artist Alley" to reveal the magnitude of the problem. Without exaggeration or hyperbole, 70-80% of the vendors and artists were selling infringing intellectual property ("IP").

There are multiple, overlapping problems here, and I'm not sure that there's an easy way to unravel ye olde Gordian Knot. Here are the issues as I see them:

1. Artists/vendors are selling items that clearly infringe the copyrights of others.
2. Artists/vendors often do not understand how IP rights work, and more troubling; often don't

understand their exposure in selling potentially infringing items at conventions.

3. Artists often rely on selling such work to make ends meet.
4. Convention organizations, with few exceptions, turn a blind eye to their vendors' sale of infringing material.
5. IP rights holders aren't enforcing their rights - or perhaps not even paying attention to the issue at such a "small" scale.
6. Consumers (that is to say con-goers) either don't understand that what they're doing is in support of IP violations, or they don't care.

The obvious legal answer is that all conventions should stop allowing the sale of infringing items, and attendees should refuse to purchase them. But I'm not naïve enough to think that attendees or organizers are going to stop any time soon. Indeed, most conventions simply shift the risk onto the vendors and artists. In my experience, the agreements the

See *Cons* Page 17



This artist/vendor even uses the name "Avengers" in one of the prints on the left.

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By Andrea Terry

The MSBA CLE Department is launching a new partnership with the Business Learning Institute (BLI) and bringing you a new category of professional skill development seminars!

These seminars don't necessarily carry credit with surrounding mandatory CLE states, but will help you up your game in the world of work. Sessions on time management and getting things done, developing executive presence, and even understanding big data and how to use it to keep your practice growing will be covered. The first seminar, "Make it Happen! The Art and Discipline of Getting Things Done" is coming up on November 30th in Columbia. Check below in the schedule for more information. We look forward to working with BLI, and their thought leaders. Their courses are well received and well respected nationwide.

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■ **DECEMBER 15, 2017.** *Recent Developments in Estate Administration with Allan Gibber.* Columbia, MD. Registration is open.

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■ *2017 Family Practice Update*

VIDEO REPLAYS

■ **NOVEMBER 28, 2017.** *2017 Family Practice Update.* Baltimore, MD.

■ **NOVEMBER 30, 2017.** *2017 Family Practice Update.* Rockville, MD.

■ **JANUARY 9, 2018.** *Planning for People with Disabilities.* Baltimore, MD.

■ **JANUARY 11, 2018.** *Planning for People with Disabilities.* Rockville, MD.

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**NEW PUBLICATION
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**Workers' Compensation
Manual, 18th Edition**

Theodore B. Cornblatt, Esq., Robert C. Erlandson, Esq., David E. Fink, Esq., H. George Meredith, Jr., Esq., and Bernard J. Sevel, Esq.

The Workers' Compensation Manual has been the authoritative workers' compensation reference for Maryland attorneys for more than three decades. Its authors include some of the state's most respected practitioners, who bring a wealth of experience in litigating, defending, and adjudicating workers' compensation claims. This text provides clear and concise explanations of substantive law, while also emphasizing practical advice for lawyers at every stage of representation. Its content covers the Maryland Workers' Compensation Act, the Maryland Subsequent Injury Fund, the federal Longshore and Harbor Workers' Compensation Act, practice and procedure before

the Workers' Compensation Commission, and before Maryland appellate courts. The Manual doubles as an indispensable, comprehensive reference for the most useful statutes, regulations, notices, official forms, custom forms from the authors' practice, and custom tables of compensation rates.

The new *Eighteenth Edition* brings this Manual up to date with all of the most relevant developments in workers' compensation law through September 2017. The authors have expanded and updated each chapter with new substantive information, practice tips, case references, statutes, regulations, forms, and rate tables. This new material clarifies current law on issues such as: employee coverage, compensability, limitations periods, classification of disabilities, calculation of awards, vocational rehabilitation, reopening claims, acceleration of payments, settlements, and attorney's fees. In addition, you will find current information about

See Publications Page 19

MSBA LAWYER ASSISTANCE PROGRAM WELLNESS TIPSHEET

Coping with Difficult People

By Lisa Caplan

Everyone has to deal with someone in their life who is difficult. Difficult people we encounter may include clients, bosses, co-workers, family members, and people in our personal lives. It would be easy to say just remove yourself from the situation, but that is not always possible.

When dealing with difficult people, it is helpful to understand that there is a correlation between your mental and physical health and the people in your life. Studies have shown that positive, supportive relationships can be good for your mental and physical health. However, negative relationships cause a lot of stress and can be detrimental to your mental and physical health. Negative relationships cause emotional wear and tear and therefore affect your physical wellbeing. So, how do you deal with these people?

Difficult relationships are often the result of the interactions between two people. They are usually caused by a pattern of communication that fuels the conflict. You cannot change or control someone else, but you can look at how you react to that person, and your role in the relationship.

Tips to Help You Cope With Difficult People

Have a positive attitude – before you get out of bed, start off each day visualizing how you want your day to look, and how you want your interactions with other people to be. For example, if you have a meeting with a difficult client, going into that meeting with a negative attitude will produce a negative outcome. Looking ahead and changing your reactions and communication with that person can result in a positive outcome.

Be calm – Getting upset just

fuels the fire. When you remain calm, you can remain in control of your response.

Practice stress management

– Deep breathing is a very easy technique to use, but you need to practice it to be able to use it when you need it. It goes like this – inhale through your nose for 5 seconds - tying to fill yourself with air from your toes up. Hold for 5 seconds. Exhale through your mouth or nose for 5 seconds. Repeat two more times. Put a sticky note where you often feel stressed to remind yourself to breathe. For example, if talking on the phone makes you anxious, put a sticky note on your phone reminding yourself to breathe.

Don't take behavior personally – Behavior patterns begin in childhood, and good or bad, these same behaviors probably affect most of the people they have contact with.

Avoid "hot" topics – Keep

conversations neutral. Don't push someone's buttons discussing topics you know they are passionate about.

Watch out for someone who is inconsistent – Someone who is nice to you, but trashes other people, or who is short, rude, or impatient, is very likely someone you may not want to trust. This behavior is a red flag. This person can't be trusted, and their behavior towards you may change, too.

Focus on the positive – This can be helpful especially when dealing with family, and can make the time together more enjoyable.

Get support – Rely on people who have proven that they are there for you. Talk to someone who you trust and who is a good listener to help you deal with your situation. Look at the pattern of your relationships and behavior and make sure you are choosing healthy people to be in your life. Don't rely on someone who

has let you down, or causes a lot of drama and stress.

Let go – Don't wait until you are so beaten down to make a change in your life. When you can, end relationships that are no longer healthy for you. If you don't know how, ask for help. Learning to take care of yourself isn't selfish; it's how you stay healthy. If you can't end the relationship, give yourself space when dealing with a difficult person, and learn techniques to cope.

Understanding Different Personalities Types Can Help You Cope with Difficult People In Your Life.

Passive-Aggressive – This is the person who is upset and angry, but instead of expressing how they feel directly, they let you know in a passive and destructive way. For example, someone gets upset with

See Coping Page 19

Upcoming Practice Dojo Webinars



Join MSBA's Law Office Management Assistance program on the 2nd and 4th Wednesday of each month from 2-3 p.m. for our **Practice Dojo Series**. The series covers a wide array of topics, from practice management and marketing to work-life balance and technology. Speakers are ABA published authors and thought leaders who bring their passion and expertise to the MSBA. Each presentation will also be recorded and become available to members online.

DECEMBER 13

Building Better Attorney-Client Relationships
Carrie Kovacevich

JANUARY 10

Getting Over Career Humps
Becky Castro

JANUARY 24

Evernote: How to Use it to Improve Your Practice Workflows and Processes
Heidi Alexander

FEBRUARY 14

What to Look for in Malpractice Insurance
JoAnne Hathaway

For more information, contact
Charity Anastasio canastasio@msba.org

THE BUSINESS OF LAW

10 Tips for Improving the Virtual Law Firm Experience for Lawyer and Client

By Charity Anastasio

Working from home is outstanding for many. Cutting out unnecessary commuting time, working where one is comfortable, and avoiding the high overhead of full-time office rent makes this a smart choice for many solo and small firm practitioners. But there are downsides to every work setting, and the virtual law practice is no exception. If you are practicing in a virtual setting or considering changing to it, apply these tips to improve the experience for both client and lawyer.

1. Make Space for the Firm. The virtual law firm can literally consist of a laptop and a lawyer's brain. Entrepreneurial lawyers with little physical space work on their couches and beds, in coffee shops and parks—anywhere with a secure internet connection. But for some, that can leave one feeling shiftless and unfocused, and it may mean interruptions by children or pets, mail deliveries or strangers. Laptop screens can feel tiny and additional materials can end up clumsily strewn about. Create a working space at home that has a desk, comfortable chair, docking station for the laptop, two screens, and good lighting. Make it comfortable for long-term work. In an ideal setting, have a door where you can shut out interruptions completely.

2. Set Boundaries. Life is busy. Many have dependents they care for. Laundry and dishes, vacuuming and errands—there is a never-ending list of demands on our time without adding work. When the primary place of business is the home, it is essential for some of us to set boundaries of when one does what. Here's what worked for me - when I was working, I would feel like the laundry was yelling at me,

and when I did "life", I would feel like my cases were yelling at me. I decided to implement rules. At 7:30 a.m. I would clock in and until noon, only work was permitted to demand my time. Then, I would clock out, have lunch, do the dishes, or whatever life stuff I had, and clock back in at 1:00 p.m. until day end at 5:00 p.m. Sometimes I would have to push things into "overtime," but I would not entertain demands from one side when I was engaged in the other.

3. Use Virtual Meeting Tech. Go-to-Meeting, Zoom, and Skype for Business are several options for online meetings with clients and staff. In offices where some, or all, folks work virtually on a regular basis, they can have a morning roundup online to connect and plan. In meetings with clients, all these products have a share screen and edit in real-time feature, so that you can discuss the terms of contact or will clause, the client can decide it, and it can be edited on the spot.

4. Train Clients to Collaborate Virtually. I hear time and again that "certain clients" are not receptive to a client portal or virtual meeting. The only client this truly applies to are ones who do not have the requisite technology. If a grandmother can be trained to use FaceTime to talk with her grandkids, she can be trained to login to an online portal to view, download, and respond to inquiries from her lawyer. Make it a part of the client onboarding to give them a login, show them how to use it, and demonstrate what you will be doing there.

5. Hire a Virtual Receptionist. Ruby Receptionist, Abby Connect, Gabbyville, and LexReception are companies that can answer the phone the way it should be answered, all the time.

Being a true solo or a small shop can mean calls go unanswered when you are in court, which means catching fewer cases. Even when you are "in," calls can mean a zillion interruptions while drafting, researching, or other deep work. Interruptions can take, on average, 25 minutes to recover from, and contribute to errors and dissatisfaction in work. Cut the interruptions, and make sure potential clients and current clients get the attention they need, without having to hire and manage staff.

6. Take Advantage of the Flexibility. Set your own schedule. By this, I do not mean set your own 70-hour work week where you have no time for family, self-care, friends, and fun. Consider working four 10-hour days. Take vacations. Create a mix of time and work that fits you. It is one of the best benefits of being in business for yourself! Be your best boss, not the worst boss you ever had.

7. Use a P/T Office. Many part time offices have full services, like mailboxes, accepting service of process, receptionist and phone services, and a professional office setting for client appointments. It is a scalable model—you can increase or decrease the package to fit practice and client needs. Officesense, Carr Workplaces, and Regus are examples. And, avoid client meetings in busy coffee shops. Clients may think this is convenient, but we know that they have secrets and privileges that need to be protected.

8. Know When to Grow. Sweat equity is great, but it is more profitable to outsource things that are not your core skill set, and just do the things that are. There are a zillion benchmarks businesses

See *Virtual* Page 19

Top Tech Gifts in 2018

By Tanya Roberts

Technology is increasingly impacting our daily lives – and our holiday gift lists. Here are some tech gifts and stocking stuffers that might help you wrap up (get it?) your holiday shopping this year.

In past years, I've brought up gifts such as headphones, Bluetooth speakers, customizable LED bulbs and more. This year, one of the biggest growing markets is home technology – helping you streamline various tasks around the home with voice commands.

Amazon: Echo

In a blink, this line of home assistant technology has taken off in leaps and bounds in the last year. These devices are voice activated, connect to your wifi network, and can do a variety of things on request, such as set timers, initiate phone calls, play music, or search for weather forecasts. Amazon has taken care to develop products for every price point, starting at \$49.99 for the most basic model, the Echo Dot, which connects to existing speakers via Bluetooth or 3.5 mm stereo cable. The Echo (\$99) acts as a hands-free speaker, and can detect sound over larger spaces. The Echo Plus (\$149.99) can control other smart devices in the home. The Echo Spot (\$129.99) and Echo Show (\$229.99) boast small screens

so that Alexa can now show you things. The Echo Look (\$199.99) offers and hands-free camera and a style assistant service. For now, the Echo Look is only available by invitation, but is the one that has me the most interested in this technology. To take a look at everything offered in the Echo family featuring Alexa, visit Amazon.com (go.msba.org/amazonecho17)

Google Home + Wifi

Google Home is a rival to Amazon's Echo series, and promises a sleekly designed gadget that can search, play songs, help schedule your day, and activate other smart home devices (such as Chromecast) with your voice. Google Home Mini starts at \$49, Google Home is \$129, while the Google Max costs \$399, and boasts some serious quality sound capacity. Also consider boosting your home Wi-Fi with Google Wifi, a sleek, high-speed router that can be stacked to add coverage to your home for just \$129. Read more about Google Home here: go.msba.org/googlehome17.

Staying Charged

A stylish bag clip and rechargeable power bank can help charge any device on-the-go! Find your very own Leather Tassel Power Bank at Amazon: go.msba.org/amazonpwrbnk17.

A high-speed charge power bank that can be used for any device, the Anker PowerCore 10000 (\$25-30), boasts multiple charges on iPhone 6 and Galaxy S6. It includes a travel pouch, micro USB cable, and an 18 month warranty (you must supply your own iOS lightning cable!) go.msba.org/amazonanker17.

Keep multiple types of devices charged and detangle your nest of device cords with a compact multi-usb cable. Amazon offers a variety of these, some more compact and offering even more connectors. This one is high quality and offers 3 connectors including iOS, Lightning and a Micro USB, and a few of my loved ones will find these in their stockings this year: go.msba.org/amazonmini17. If you're looking for



something super compact, check out these keyring USB chargers, available in both Android (www.amazon.com/dp/B016ZCW5WC) and iOS (www.amazon.com/dp/B016ZDIOF8) options.

For Kids and Kids-At-Heart

Loaded with 21 favorites including Mario Kart, Donkey Kong Country and Star Fox, the SNES Classic Edition (\$79.99) is a plug-and-play system that will help you share classic games with the whole family on modern devices. Check out more at go.msba.org/snesgame17.

Promising a fun experience at home or on the go, the Nintendo Switch (\$299) is a personal gaming system ideal for people on the go. The controllers can use your movement to perform tasks in game, and promises an engaging and fun experience. And, parental controls, manageable by a mobile app, keep everyone safe and set healthy screen time limits. Explore the fun to be had at go.msba.org/ninswitch17.

The future is here, sort of: a micro robot that fits on the end of your finger! The Fingerlings Interactive Toys allow kids to interact with a dynamic toy that will respond to a variety of commands. This may be a hard-to-find toy this year – but at approximately \$15 each, it's an entertaining bang for your buck. Find a retailer at go.msba.org/fingerlings17.

And for those seeking an escape from technology - Encourage your loved ones to find a little time to relax and escape for a few minutes with a Buddha Board, which allows you to draw using water and a smooth calligraphy brush. Get your gift at go.msba.org/buddha17.

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MINDING...Page 10

won the national championship in that country one or more times, but has not competed or won any awards internationally, then the O-1 is the only option as the person does not have the international recognition required for the P visa.

Both the O and P visas are expedited by the U.S. Citizenship and Immigration Services, and are supposed to be granted early interview dates at the U.S. consulate abroad, as it is recognized that they are usually on tight deadlines to come into the U.S. for already scheduled performances, games, competitions or exhibits.

When trying to get visas for athletes and entertainers, think creatively! Professional gamers have obtained P-1 visas as international athletes, ball room dancers are classified as athletes for O-1A visa purposes, and chefs can obtain O-1B visas as artists. Creativity can open doors to the United States for many foreign athletes, artists and entertainers!

Linda Rahal is a shareholder with the law firm of Trow & Rahal, P.C. in Washington D.C., which focuses on business immigration law.

PODCAST...Page 11

The Right of Publicity

The right of publicity (ROP) is the right to control the commercial exploitation of a person's name, image or persona to sell products or services. Images, likeness, voice, and appearance in a video, broadcast, on the radio (podcast), or on a website are all included within a person's ROP. And guess what? You have a ROP, I have a ROP, EVERYONE has a ROP! These rights are not exclusive to celebrities.

How does the ROP apply to podcasting?

Whenever someone makes an appearance on your podcast, in order to publish their name, likeness, voice and/or feature images of them on your website, blog or social media, you will need to get their permission to do so.

How to Avoid ROP Infringement with Your Podcast

Releases, releases, releases! Before you feature anyone on your podcast and/or your website, have them sign a written release of their right of publicity in connection with their appearance on your podcast.

Trademarks

A trademark is generally a

word, phrase, symbol, or design, or a combination, that identifies and distinguishes the source of the goods or services of one party from those of others, typically a brand name or logos that appear on goods and/or services.

How do trademarks apply to podcasting?

Name: Your top priority is to make sure that your podcast name is not already associated with a registered trademark in the media space. You should conduct a trademark search to make sure that you have first rights to the mark. Also, keep in mind that in order to submit your podcast to the iTunes Podcasts store (and probably other podcast hosts), you must certify that it doesn't infringe on the trademark rights of anyone else.

Logo & Artwork: A logo is a very important asset to any brand so you definitely want to invest in a unique logo and cover artwork. Your logo and cover artwork will be featured anywhere you will be marketing and/or selling your podcast. You must be careful to choose a logo and cover artwork that is unique and also original to you.

How to Avoid Trademark Infringement with Your Podcast

Podcast Name: After you confirm that the name for your podcast is not a registered or common law trademark owned by someone else, you're good to go! To avoid people infringing on your mark, you should definitely register your name as a trademark and use the ® symbol to denote that your trademark is registered. Even if you do not register your trademark, you can and should use the ™ symbol to give notice that you are claiming the trademark.

Logo: As with copyright, creating an original logo is the easiest and safest way to avoid trademark infringement. Once you have determined that you are all clear on using your trademark name, make sure whoever you hire to create your logo and/or artwork signs a work for hire agreement or copyright transfer agreement. (*That is, if you decide not to create your own logo.*)

Nakia Gray, Esq. is the Founder of Nakia Gray Legal, P.C., a Maryland-based modern and innovative law firm uniquely designed for the digital era of entrepreneurship. Through cutting-edge legal services, courses, and other digital products, Ms. Gray counsels creative entrepreneurs on how to build, brand, and market profitable and protected brands.

DATELINE...Page 3

7 Join the Bar Association of Baltimore City for their *Annual Holiday Party* from 6:00 p.m. – 12:00 a.m. at the Lord Baltimore Hotel, 20 West Baltimore Street, Baltimore, MD. Contact info@baltimorebar.org for additional details.

12 The Bar Association of Baltimore City YLD hosts their *Annual Holiday Party for Children Living in Shelters* from 5:30 p.m. – 12:00 a.m. at the Maryland Science Center, 601 Light St, Baltimore, MD. Contact info@baltimorebar.org for additional details.

13 Join MSBA's Law Office Management Assistance for their webinar *Practice Dojo: Building Better Attorney-Client Relationships* from 2:00 p.m. – 3:00 p.m. as Carrie Kovacevich, of Building Better Attorney-Client Relationships, explains hard-learned practical steps and methods for injecting positivity and productiveness into the attorney-client relationship. Register in advance at <https://attendee.gotowebinar.com/register/5964341892494156802> or contact Charity Anastasio, canastasio@msba.org for additional information.

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conventions require vendors to sign include a clause similar to:

"Vendor/Artist certifies that, i) it is and shall remain in compliance with all State and local laws, regulations, statutes and rules, ii) it has the legal right to sell and offer for sale the products it sells at the Convention, and iii) it shall indemnify, defend, and hold harmless the Convention and any of its officers, directors, employees, and agents from claims in any way related to Vendor/Artist's violation of any term of this Agreement."

So, what's the answer? Is there an answer? Who is the most at risk here, and how can everyone—artists, vendors, attendees, and organizers—protect themselves?

In the discussions below, I've attempted to provide some suggestions intended to help artists, vendors, and con-goers alike navigate their way through this... ridiculousness.

1. Artists/Vendors are selling items that clearly infringe the copyrights of others.

This is a statement of fact. It is indisputable.

I regularly hear uneducated arguments, often citing "fair use", but in 99.9 percent of the situations I've encountered, these arguments are utterly inappropriate.

They often go something like this:

- One-of-a-kind, original drawings and paintings of someone else's IP are okay.
- Since everyone does it, copyright holders must not care.
- If I only sell it at conventions, and not online or in stores, it is okay.
- If I'm not making a profit, it is legal to draw someone else's characters.

Each and every one of these is false. **Let me repeat that. Each and every one of these is false.**

In any event a claim of Fair Use is always a question of law and artists/vendors can potentially be dragged into costly litigation over their mistaken belief that there is some sort of legal precedent that allows them to violate someone else's IP rights.

2. Artists/vendors often do not understand how IP rights work, and more troubling, often don't understand the risk they've taken on by selling potentially infringing products at a convention.

The arguments I've listed above, and that I regularly hear from artists/vendors, are clear and

convincing evidence that most of them really don't understand what they're doing. *(At least one hopes so — though, there are those who know exactly what they're doing, and just don't care.)*

Here's a quick and dirty test anyone can perform at any time to answer questions about fan art or infringement issues:

Q. Do you own the IP in question?

A1: Yes.

Then you may do as you wish with the IP.

A2: No.

You have no right to profit from work featuring the IP, and almost no rights to create infringing work without a good argument for a fair use exception.

A3: No, but I have a license with the IP rights holder.

Then you may do as you wish with the IP, subject to the terms of the license.

3. Artists often rely on selling such work to make ends meet.

From a purely legal perspective, these artists are violating the copyright of the IP rights holder. Replication, or the creation of a derivative work, of someone else's IP is infringement.

Copyright is a powerful thing. It was intended to protect authors, but today is mostly used by corporations to protect the rights transferred to them from artists via "work for hire" contracts. Most of these artists have never read an entire contract in their lives—and don't understand that they are expressly forbidden from using the IP they created (as work for hire) for personal uses. That is to say, they don't understand that they can't sell prints of their creation at conventions without permission from the company that hired them in the first place.

Given my personal and professional experience, my discussions with clients, my discussions with artists, and many detailed reviews of illustrator's contracts, it is clear that the industry is in need of better contracts/agreements that commission a work (or employ an artist)—and artists need to actually read and understand the terms and conditions of their agreements.

Given the conspicuous absence of litigation by major corporations, indeed their conspicuous absence in weighing in at all, it stands to reason that they really should have no problem with ceding some small rights back to the artists.

Wizards of the Coast / Hasbro has taken a good first step here by allowing Magic the Gathering

(MTG) artists to reproduce their work on playmats. Prior to 2016, the vast majority of MTG art was work-for-hire, and the artists retained few or no rights. (www.gatheringmagic.com/mikelinnemann-022416-mtg-artists-gain-playmats)

4. Convention organizations, with few exceptions, turn a blind eye to their vendors' sale of infringing material.

This is also incontrovertible truth. Here's an excerpt from San Diego Comicon's vendor agreement:

"15. Copyrighted Materials Exhibitors shall not play or permit the playing or performance of, or distribution of any copyrighted material at the Event unless it has obtained all necessary rights and paid all required royalties, fees or other payments."

(www.comic-con.org/sites/default/files/forms/CCI18_ArtistsAlley_App_IA.pdf)

As you can see, they've shifted any risk from themselves onto the vendors and artists. And perhaps rightly so. Is it the job of convention organizers to enforce the law? Con organizers have many, many responsibilities — is enforcing IP law one of them?

From a legal perspective, it isn't their responsibility — assuming they've shifted the risk to the vendors and artists. Which most of them have done.

Now that said, I do believe that Con organizers have a responsibility to require vendors and artists to remove infringing products from the vendor room floor — once they've been notified that it's there.

By way of illustration, here's an excerpt from the Otakon artist alley agreement. I had the opportunity to interview some of the Otakon staff, and they actually do police the floor for obviously infringing work. While not perfect, their agreement goes a long way towards protecting IP rights, in that they regularly request artists and vendors remove infringing works.

"The artist bears all responsibility and risk for the items brought for sale at Otakorp, Inc. Any questions regarding this policy will be resolved by the Department Head of Artist Alley, in consultation with Otakorp Inc.'s lawyer when needed. If a piece of art appears to be very similar to a licensed, copyrighted, etc. piece of art, the artist may be asked to remove it from display and sale at the discretion of the Department Head. The



Above: I doubt this artist/vendor holds the appropriate licenses for Flash, Deadpool, Agent Carter... oh and Star Wars.

Below: I'd be floored if this artist had been granted a license to reproduce and sell Yoda prints. And Indiana Jones. And Xena.



Department Head's decision is final."

5. IP rights holders aren't enforcing their rights - or perhaps not even paying attention to the issue.

This is troublesome. It leads to the situation we find ourselves in today. In my experience, the combination of artists and vendors who are ignorant of IP law, and the lack of any legal repercussions or penalties, leads to flagrant and widespread IP violation.

Take the recent case of Tim Lundmark. He appeared at Minneapolis Comic Con selling unlicensed prints of many artists' work. Aldrin Aw / Buzz, who has worked on comic book titles such as X-Factor, Justice League, etc... reported him to the Con organizers, posted extensively on social media, and had the story picked up by Bleeding Cool. (www.bleedingcool.com/2016/05/08/buzz-sends-tim-lundgren-packing-at-wizard-world-minneapolis-comic-con)

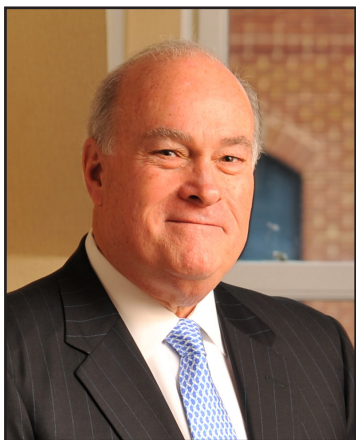
I can't even begin to imagine what it must feel like to have worked on a popular comic, not own the

work I did (most in-house artists are employees, and their art is the property of their employer), and show up at a convention to see someone selling blurry, photocopied prints of my own work — **that I, personally, am not permitted to sell.**

Unfortunately, to date no significant action has been taken by Marvel, DC, or their parent companies. Until the large corporations get involved, and make it economically risky to the Con organizers, things are unlikely to change. What it generally takes is something like the Star Trek Axanar case actually going to trial — which is to say something attached to six-figure dollar signs — before they sit up and take notice.

(The Axanar case involved a million dollar crowdfunding campaign for an unlicensed Star Trek derivative work. You can read about it here: www.hollywoodreporter.com/thr-esq/cbs-paramount-settle-lawsuit-star-trek-fan-film-966433)

6. Consumers (that is to say, con-goers) either don't under-



James P. Nolan

MSBA Past President **James P. Nolan** of Council, Baradel, Kosmerl & Nolan, P.A., has been inducted into the Anne Arundel County Chamber of Commerce Business Hall of Fame. He has also been honored at the University of Baltimore School of Law Annual Awards Banquet, as recipient of their Dean's Award.



Justin A. Redd

Justin A. Redd of Kramon & Graham has been elected to the Community Law Center's board of directors to serve an initial three-year term.

Stuart K. Skok has opened Stuart Skok Law LLC, a matrimonial and family law firm where David R. Bach, P.C. will be Of-Counsel.



Catherine M. Manofsky

Catherine M. Manofsky, principal at Kramon and Graham, has been selected by the Daily Record as one of Maryland's Leading Women.

Dennis E. Boyle has joined Whiteford, Taylor & Preston in their Washington, DC, office.

Stephanie Smith has joined Lerch, Early & Brewer as "of counsel" in its real estate practice.

James Geiser has joined Kramon & Graham's Insurance Law practice



Callie Tucker

Callie Tucker has joined Kramon & Graham's Real Estate and Transactional practices as an Associate.

De Novo Attorney Services, Inc. has announced its certification by The Minority and Women's Business Opportunity Office (WBOO) as a Women's Business Enterprise and Minority Business Enterprise.

Emily R. Greene has joined Kramon & Graham's litigation practice as an Associate.



James Geiser



Emily R. Greene

Send your latest news and updates to Lisa Muscara for inclusion in Et Alia: lmuscara@msba.org.



CONS...Page 17

stand that what they're doing is supporting theft, or they don't care.

This, to me, is the crux of the issue. Fans attend conventions because they love the characters, shows, and art. When addressed one-on-one, the vast majority of fans are law-abiding folk who love their favorite comics, characters, and games. I suspect if you asked each individual con-goer, very few, if

any, would agree that they're happy to support what basically amounts to theft.

I submit to you that the answer here, as in so many other arenas, is education. Fans, con-goers, artists, vendors, and convention organizers alike need to understand that much of this type of work is infringing.

So how do we educate? San Diego Comic Con brought in John Wells, Deviant Art's General

Counsel, who gave an excellent talk on the subject. More conventions should take a page from this book. www.youtube.com/watch?v=xKBsTUjd910

In all honesty, I expect that nothing's going to change until someone gets made an example of. Given that Disney is now the parent company of Marvel—the "example" may come sooner rather than later. (In case you've been living under a

rock, Disney controls its brands and IP with an iron fist.)

Practical Advice for Artists and Fans?

Here's what you can do to help. If you're a fan, it is incredibly easy. All you have to do is ask one of these simple questions of the artist or vendor.

1. "Do you have a license for this print/t-shirt/tea-cozy?"
2. "Did you create that character/image/item and keep the appropriate rights?"

As a fan, you bear part of the responsibility to help fix the problem. Don't buy art or products that rip off the brands you love.

If you're an artist or convention vendor, you need to educate yourself with regard to intellectual property. After all, as an artist, your job is the creation of intellectual property; and as a convention vendor, your job is selling items that contain someone's intellectual property.

1. Ask yourself, "Do I have the right to use/paint/draw/sell this IP?" (*And be honest with yourself. It is unlikely that you've substantially altered the IP enough to satisfy any fair use requirements.*)
2. Read the contract or agreement that describes what you've agreed to by selling/attending each con-

vention. As we've seen above, it is likely you've agreed that anything you offer for sale will not infringe the IP rights of another, and that you'll indemnify and defend the convention for any suits or claims against the convention. (*Do you really want to have to pay a Comic Con to defend a lawsuit brought by Disney, Hasbro, or Warner Brothers?*)

Finally, a last word of advice for artists. If you're at a convention and you see someone selling what appear to be unauthorized copies of a work—say something to the organizers, take a picture, and bring it to social media. But most importantly, keep it civil. If it ever comes to litigation, you want to make sure you look like a rational businessperson. Not a foul-mouthed cretin. It is much more likely (at least in today's environment) that the issue will play out in the court of public opinion.

Things aren't going to change overnight, but I believe that with a concerted effort on the part of artists, fans, IP rights holders, and convention organizers, we'll get there eventually.

Seth C. Polansky, Esq. is Counsel at The Norton Law Firm, LLC and Managing Member of The Law Office of Seth C. Polansky, LLC.



Just because you've ironically put Boba Fett "hunting" Carmen San Diego and Waldo in your painting, you probably haven't satisfied any requirement(s) for a fair use exception.

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CLE...Page 13

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■ **JANUARY 18, 2018.** *Handling the Domestic Violence Case in Maryland.* Rockville, MD.
■ **JANUARY 23, 2018.** *Current Trends and Creditor Rights in Consumer Debt Collection.* Baltimore, MD.
■ **JANUARY 25, 2018.** *Current Trends and Creditor Rights in Consumer Debt Collection.* Rockville, MD.

■ **FEBRUARY 6, 2018.** *2017 Criminal Law Update.* Baltimore, MD.
■ **FEBRUARY 8, 2018.** *2017 Criminal Law Update.* Rockville, MD.
■ **FEBRUARY 13, 2018.** *Recent Developments in Estate Administration with Allan Gibber.* Baltimore, MD.
■ **FEBRUARY 15, 2018.** *Recent Developments in Estate Administration with Allan Gibber.* Rockville, MD.

■ **FEBRUARY 20, 2018.** *Make it Happen! The Art of Discipline and Getting Things Done. Presented in partnership with Business Learning Institute (BLI).* Baltimore, MD.
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COPING...Page 13

you, and instead of talking to you, walks away without saying a word and doesn't talk to you for the rest of the day or night. This person is passively resistant and negative to following through with expectations in interpersonal or occupational situations. This behavior can manifest itself as helplessness, procrastination, stubbornness, resentment, and sullenness.

Tahis is a very difficult person to deal with. The best way is to be calm and confront the behavior.

Complainers – This person is very fearful, insecure, and has no faith in themselves or others. This person can bring down the morale of an entire office. Don't try to convince them to be positive, you will only become exhausted. Instead, look at things objectively and share your optimistic point of view.

Aggressive – This is the person who may yell, be demanding, and expect people to run away from them, or react with their own anger. Don't fight or argue with this person, instead stand up to them by assertively expressing your ideas and views.

Snipers – These people are

insecure and make themselves feel better by putting others down in subtle ways and by taking potshots. They may make comments, jokes, and give disapproving looks. They are trying to gain control. The best way to deal with this person is to ask a question to clarify their comment or behavior. For example, "Are you putting me down?" Usually they will try to put it off on you and say, "I'm just kidding." Questioning this behavior will usually cut down on these kinds of attacks.

Drama – Everyone has problems and real issues in life, but this is the person who always makes an issue out of everything. At work, they often have an excuse for why they can't do what they need to. Everything, big and small, is an issue. This person will drain you of all your energy. The best way to deal with this person is to limit your time with them. Plan your interactions with them to have very clear, concise communication. Be assertive and set limits on how much drama you are willing to listen to.

Silent People – These are timid people who may ignore you, or re-

spond by saying, "I don't know." The best way to deal with this person is to ask questions that don't require a yes or no answer and then wait for a response. You may need to be assertive and ask them why they are not responding to your question.

Don't give up on dealing with difficult people. It can take getting help to learn communication techniques and new ways of coping. Remember you can't change someone else, but you do have control over yourself and your choices.

Please contact the Lawyer Assistance Program for free, confidential assistance. Jim Quinn, Lawyer Assistance Director, (443) 703-3041, jquinn@msba.org; Lisa Caplan, LCSW-C, Lawyer Assistance Counselor, (443) 703-3042, lcaplan@msba.org. Toll free (800) 492-1964.

Lisa Caplan is a Licensed Certified Social Worker at the clinical level (LCSW-C). She has over 15 years experience in her field, and extensive experience working with lawyers and judges in the areas of mental health, substance abuse and trauma.

PUBLICATIONS...Page 13

finding and using online and offline resources that are most beneficial to the Maryland workers' compensation professional.

Designed in a sturdy, 8 1/2 x 11" soft cover format, the Workers' Compensation Manual is portable enough to slip into your briefcase or bag and take to hearings. You may also purchase a CD of forms (sample agreements, petitions, instructions, letters, etc.) included in the book, conveniently ready to use or adapt to your specific case. These forms are formatted in rich text format (.rtf), compatible with Microsoft® Word or WordPerfect®. The CD also includes a handy new set of links to electronic resources for research and for printing or filing official forms electronically (CD not sold separately without prior publication purchase).

Domestic Violence Cases: Handling Them Effectively in Maryland District and Circuit Courts

The House of Ruth Maryland Domestic Violence Legal Clinic and The Maryland State Bar Association Family and Juvenile Law Section

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The NEW 2017 Edition is the first major update since the 2003 Revised Edition, and is designed to give the family law practitioner specific litigation skills and strategies in handling a domestic violence case. In addition to many significant revisions to the text, the NEW 2017 Edition includes new sections on: *Chapter 4: Address Confidentiality Program; Chapter 5: Protections from Domestic Violence Act* has been

completely re-written; *Chapter 6: Peace Order Statute*, a new separate chapter, includes new sections on appeals, penalties for failure to comply, and shielding under the Peace Order Statute; *Chapter 7: Divorce Grounds and Remedies* includes new sections on mutual consent as a ground for absolute divorce, absolute divorce remedies, and interlocutory or permanent restraining orders; and much more. Also included are new and updated sample pleadings and forms; resources with contact information; updated district and circuit court forms; bibliography; and updated caselaw and authorities.

Summary of Contents:

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use to determine if it is time to grow, like getting referrals easily, evidence you are in an untapped market, more work than you can handle, making enough to put a good percentage back into the business. But, in my experience, the biggest tell is profitability, and taking time to identify the next opportunity. Think through the next steps in your business every year, then take them.

9. Grow Appropriately. Invest in the future of your business strategically. Yes, practice management software costs money every month, but it will make you more money once it is built out. This is the cost of doing

business. However, tailor-made products can cost way more than a small shop needs. Find a balance between cost and functionality that makes sense for you. So, do not overinvest or underinvest, and always invest in the training. (Rule of thumb is that training costs equal software costs.)

10. Make Time for Connection. The most common issue I hear among all practice area true solos is loneliness. Writing and research is not a team sport. Sure, client meetings are in there too, but most lawyers who work virtually express some sense of isolation that, frankly, is not good for health or wellbeing in

most people. Even introverts need connection and companionship sometimes. If you find yourself keeping your clients longer to just chat, or just feeling alone, start a regular meet up group with lawyers or friends like you, just to talk. Make a date to check in with a mentor or colleague on the phone once a month. Get out to events and mingle. Find a nerdy game group to play with every week. Whatever your fancy, make sure you do some of it with others.



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