



Dictum

The newsletter of the NJSBA Young Lawyers Division

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Chair's Column

by Brandon D. Minde

The Young Lawyers Division is off to another great year. Once again, the YLD Tailgate Party at Far Hills Races proved to be a hot ticket. Everyone had a great time. Marisa Trofimov deserves a special thanks for helping to organize the event.

The YLD also got a chance to showcase our goods at the NJSBA's Open House Section and Committee Fair. It was great to meet so many new lawyers, and I hope you all live up to the commitment you made to join and get involved with the YLD.

Many YLD members also took advantage of and enjoyed the networking opportunities that were afforded at the Young Professionals Multi-Group Mixer.

Additionally, we have been busy solidifying our role as the NJSBA's community service arm. We put on another successful Wills for Heroes event, hosted by the Bergen County PBA. A special thanks to Christina Vassiliou Harvey for making this another successful Wills for Heroes event. Don't worry if you missed it, Christina is

committed to running more Wills for Heroes events throughout the year.

The YLD will also be volunteering at a community food bank in the weeks ahead.

Finally, in the wake of Hurricane Irene, the YLD and NJSBA have set up a hotline to assist the disaster victims. Attorney volunteers assist with insurance-related claims and landlord-tenant matters. Guidance is given over the phone, or cases can be taken on a *pro bono* basis. If you are interested in volunteering, please contact Blake Laurence. ■

Upcoming YLD Events

JAN. TBD

Community Service Event
Hillside Food Bank

FEB. 25, 2012

Poconos Ski Trip
Blue Mountain
Family-friendly event offering ski trails for beginners through experts, as well as over 20 tubing trails. Equipment rentals and instructions are available.

MARCH 6, 2012

YLD Executive Committee Meeting
6 p.m.
New Jersey Lawyer Center, New Brunswick
Contact Michael Schewe, at mschewe@chewelawllc.com, Dana Van Leuven at dvl@ckclaw.com, or Joe Bahgat at joe@blawllc.com for details.

MARCH TBD

NJ Devils Game
Prudential Center

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EDITOR'S COLUMN

Looking Back

by Jaime Ackerman

Three years of law school; two months of cramming for the bar; one envelope—large or small—that seemingly will dictate the fate of your world once opened.

Bar results were posted recently. I don't like to think about how many years ago I took the bar, but this time of year, it seems like only a few short months ago when all of us law clerks got a frantic email from a fellow clerk who knew someone working in the post office in Freehold, and they *swore* envelopes from the Bar Examiners were being delivered at that very moment. I couldn't bring myself to go home during lunch to check the mailbox. If I passed, I didn't want to celebrate in front of the people who didn't, and if I didn't pass, well, I couldn't bring myself to think about that.

Later that night, my boyfriend and I raced to get the mail. There were two envelopes, both large, from the Bar Examiners. Large envelopes? Was that

good or bad? About a week before this, we had both passed in New York, where big envelopes meant bad news because they contained all the forms necessary to re-apply to take the test again. We tore into the envelopes, only knowing that they held the same fate, and were thrilled to learn that in New Jersey the larger size meant delivery of good news.

Once that initial shock and elation of passing fades, it's replaced by the knowledge that you've only learned law in theory. Now you need to translate that into practice.

I clerked for a year before finding my first law firm job, which meant that I was relatively conversant with a rule book and had written up more verbal threshold motions that I could count. The medical terminology was still elusive, and I spent far too much time looking up mysterious-sounding terms like "lumbar radiculopathy" and "cervical stenosis" in online medical dictionaries.

I still remember the panic that set in the first time someone asked me to *prepare* a summary judgment motion. I'd had my hands on hundreds of them as a clerk, but writing one? That was a totally different matter. My first motion was a masterpiece that took half a month to assemble, stood

almost a full ream of paper thick and contained exhibits A through Q. (Yeah, you read that right.)

Even though it has been quite a few years since that first motion, I can still tell you the name of the client, which judge the case was before, the outcome, and which partner ultimately argued the motion. I've come a long way since then. I'm very lucky to have worked for two people who really went out of their way to take me under their wings, who took the time to teach me and to help me grow as a young attorney. Not everyone is lucky enough to find a mentor on day one of their job, or to have been able to work alongside them for almost seven years. For that, I'm extremely grateful.

If I hadn't had that experience, I would have still found a way to learn, grow and develop. Like most people, I'd read the relevant articles, texts and cases; attended the continuing legal education programs and went to court to watch others. But it wouldn't have been the same, and neither would I. ■

Jaime Ackerman is the editor of *Dictum*, and an associate with the law firm of *Zucker, Goldberg & Ackerman, LLC*.



Protecting Yourself as a Young Lawyer

by Jennifer M. Russoniello

As a new associate, I find that one of my biggest challenges is learning how to negotiate my relationship with clients. The American Bar Association's (ABA's) Model Rules of Professional Conduct provide that:

[A] lawyer shall abide by a client's decisions concerning the objectives of representation and,...shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by the client's decision whether to settle a matter.

Comment [1] to Rule 1.2: Scope of Representation and Allocation of Authority Between Client and Lawyer, provides that "paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations."

These rules clearly mandate that we, as lawyers, inform our clients of the status of their cases, and that they are the ones to make the decisions regarding their case, regarding objective. Our role is to determine the best way to pursue that objective. This, of course, makes sense, as our clients are the ones who will need to live with the outcomes of these cases. But what do we do, as lawyers, when we feel our clients

may not fully understand what they are asking for, or the steps we must take to fight for that objective?

For example, how do we protect ourselves when a client has been informed repeatedly that he or she needs to provide financial documentation in order to file a motion for support or avoid the dismissal of pleadings? It is a very difficult situation when you are faced with a deficiency letter from an adversary again requesting documents your client told you they would provide. Upon receipt of the letter, you, of course, send a copy to your client, call your client, perhaps email or write a letter to your client, but the question that remains is whether or not this is enough.

Further, what do you do when you have a client who you feel does not understand a certification you have provided them with but signs the certification? Is it inappropriate to file the certification?

For example, you may have a client seeking custody of a child. If this request is contested, in most cases the court will order that a custody evaluation take place in order to obtain guidance on the issue. So, you send your client a certification and discuss with them that procedurally you feel it would be best to suggest to the court that custody evaluation take place. Your client then asks you what the evaluation will entail and how long the process will take. You explain this to them with the preface that there are no guarantees in this situation, and that you do not know what the evaluator will say in his or her report. Of course, you give them the option to take out such a request. What do you do if you feel your client is wavering on this issue, but signs the certification anyway?

Unfortunately, there are no hard and fast rules for protecting yourself in these situations. However, from speaking to more

experienced attorneys, I have developed some guidelines for protecting myself, and for ensuring that I am meeting ethical obligations.

First, I document my phone calls with clients in memo form. In these memos, I detail our discussion, and especially note the questions my client has regarding the issue at hand. I find this is important, because sometimes clients have incorrect ideas about litigation that if documented can help you remember the areas you need to focus on in future conversations. For example, if a female client tells you she believes mothers always get custody, you need to explain the reality, and perhaps remember that in future conversations you may again want to address this. Your clients will talk to other people about their litigation, and sometimes the misinformation they receive can damage their perspective of the case. It is necessary to protect yourself by dissuading them of these notions and documenting these conversations.

Second, it is important to follow up a conversation with a letter that will essentially put into writing what you have verbally told them. This is necessary because it may clear up any miscommunication or misunderstanding in your conversation. In response to a letter, a client may call with more questions, or to inform you that they want to change their objectives within the litigation. These letters are also important because they are proof of your advising clients of what their options are and the possible outcomes that may result from the litigation.

Finally, never guarantee your clients anything. It is tempting when you really feel something will go their way to tell them that you absolutely believe in the success of their case, but you must always inform them of the chance you take when putting an issue before the court. It is always

important to tell your clients all of the options and outcomes they may face.

This, to me, does not mean that I do not zealously advocate for my client, but it does mean that I keep my client aware of the possible downside to the litigation, or what may happen if they lose. Each client provides you with information from their

own perspective. I believe that it is necessary, in our role as lawyers, to look at their side and the opposing party's side and recognize that both are telling you about events clouded by their own view of the situation. The truth is most likely somewhere in the middle, which is why it is important to always advise your clients that things

may not go their way, and document that advice, while at the same time fighting to advance their position. ■

Jennifer M. Russoniello is a graduate of Rutgers Law School-Newark, and is working as an associate at the law firm of Haber Silver & Simpson.



The Modern-Day Mobile Lawyer's Manifesto

Or How I Learned to Stop Worrying and Love Being Paperless (Part Two)

by Michael J. P. Schewe

In the first part of this article, which appeared in the October 2011 edition of *YLD Dictum*, we covered the most essential component when contemplating converting your office from paper-more to paperless: practice management software. This article assumes you already have some form of an electronic paper management system in place, which you are using to reduce and organize your traditional paper files. In this second part, we discuss other tools and strategies to keep paper from bogging down your practice.

Fax to Email, Email to Fax

What on earth is a stand-alone fax, and why would I want one? First off, fax machines (by their very nature) run out of paper. Even the most diligent law office will run into trouble when that first 100-page fax comes in, and nothing is worse than the (seemingly unavoidable) facsimile errors. My personal favorite is: "Fax did not send because of unidentified error." Thanks for

all the help!

Enter fax-to-email software. Software and web-based applications now exist that allow you to send faxes and receive faxes via email. Sound awesome? It is. Forget the Saturday commute to the office to send that urgent fax, or the trip to the office on your treasured 'work-from-home' day for the sole purpose of picking up an important fax sent by a person who doesn't know what email is. (I know, right there with you, but just accept it).

Personally, I have been using MaxEmail [www.maxemail.com/], but just Google "Internet fax to email" and have a field day. There are other programs out there, I assure you. I pay approximately \$84 per year for this service, and it is worth every penny. Just calculate the costs of having a dedicated 'fax line' and paper/ink service for your printer/stand-alone, then argue with me.

Printing Postage on Envelopes

As lawyers, we send constant tangible correspondence (less if you can convince your adversary or client to accept email correspondence). This means you will also need to weigh and send actual letters in envelopes. Although this is clearly a paperless attorney's nightmare, you want your envelopes to look professional. If you cannot afford the \$300 to \$800 for expensive, engraved letterhead, you will be overjoyed if your postage-printing software also allows you to upload custom images. Personally, I use www.Stamps.com. This allows me to send letters with the *exact* postage, using their complementary scale (saving me money), and allows me to include my firm name (expected) and logo (unexpected) on envelopes. This gives me envelopes with a professional look while

creating a consistent brand with my firm letterhead.

There are plenty of postage meter options for attorneys (you probably receive the Pitney-Bowes offers in the mail at least once a year), but for smaller firms (meaning those sending under 1,000 letters per month), the costs probably outweigh the benefits. Stamps.com Pro only costs about \$17 per month, which I feel is fair and worthwhile.

Another added benefit with Stamps.com is that you can print U.S. Postal Service postage onto your own stamps from your office. Even better, for a small fee you can create custom stamps with your logo on them.

Simplifying Certified Mail

I process a lot of expungements. If you never have, they involve certified mailing materials at least twice to between six to 12 different entities (pray you don't need to amend the papers, or else add another bunch of lovely certified). Regardless, all law offices use certified mail to one degree or another. This typically would require you (or your staff) to hike on down to the local post office, stand in line (inevitably), and then fill out the dreaded green cards. Personally, having used the green card method for most of my life, I *still* do not understand where the darn thing is supposed to be stuck to the actual envelope, how the sticker should hang over the edge, and I certainly hate waiting in the 40-minute line just to be told that I did it wrong.

And so I bring you Simple Certified Mail [www.simplecertifiedmail.com/]. You can, quite literally, print certified mail postage (even with the option of green card return, for those of you who cannot kick the habit) *from your office printer*. Cut out the post

office completely because, lo and behold, you can drop a simple certified mailing *into any mailbox*. I believe there are other authorized dealers of certified mail, so check them out. To reiterate, this is not one large advertisement. I am just exposing some time-/paper-saving tips.

OCR (Optical Character Recognition)

I suppose our previous discussions are meaningless without first dealing with the issue of OCR. Optical character recognition is a fancy way of saying “the way the computer can recognize words,” and by “recognize” I mean that it allows you to “control C” (copy) and “control V” (paste) words from a document.

There is no paperless life without some way to convert your paper to, most likely, PDF (portable document format). I am only beginning to understand the wonders of PDF, but what I do know is that we should have had an entire course on how to use Adobe and/ or its equivalents in law school. I am, of course, here referring to Adobe Acrobat, which most (if not all) of us have been using in either its free or purchased incarnation. There are other OCR tools out there, and some of them are free, I just do not know how many of them have the same functionality that Adobe possesses.

Aside from the next section, here are some of the features I use consistently:

- Convert (maybe a Word Doc) to Adobe PDF;
- Combine in Adobe [when you are putting together discovery exhibits or your scanner just cannot seem to find page 11 even after the fifth scan];
- Insert Header or Footer (very effective for discovery when combined with Combine in Adobe);
- Comment and Markup (collaboration tool);
- Metadata Scrubbing (we’ll get back to

this);

- Read Out Loud (so you can still catch up on your reading while, well, not reading);
- Form Creation (intakes forms); and
- Bookmarking (a deposition transcript’s best friend).

With regard, briefly, to the metadata problem, by now we all know that sending a Microsoft Word or WordPerfect document to an adversary is a huge risk. Besides the obvious concern that opposing counsel could alter the document in his or her word processor, nowadays savvy information technology staffers of your opponent have contrived various ways to dissect our documents for changes. This is the so-called ‘metadata’ problem. By way of example, imagine your demand for settlement originally stated \$40,000, but you decided to up it to \$200,000. I assume this is information you *do not* want your adversary to know.

Creating a PDF of your Microsoft Word or WordPerfect documents eliminates about 90 percent of this concern. And, even after converting it to PDF, Adobe allows you to scan your document for remaining metadata and decide what you want to keep and what you would prefer to delete (my policy is to err on the side of delete). While this is still not 100 percent effective, it is over 99 percent effective and, most importantly, it will probably keep your client from suing you for malpractice should the other side receive information they should not have.

E-Signatures

The paperless office conundrum: How can I upload my documents into my practice management software without printing them out, signing them, and then scanning them back in? Doesn’t that *eliminate the whole purpose of being paperless*? Yes, it does, which is why I, as often as possible,

use an electronic signature.

As mentioned above, Adobe offers an electronic signature function, which allows you to set up an account—with a password prompt—that you can then use to ‘sign’ documents electronically. Once you place your signature box and enter the password, Adobe places your actual signature with a digital stamp describing what happened (*e.g.* “Michael Schewe signed this document at 4 p.m. on 9-30-2011 and the document has not since been changed”). Personally, I think the e-signature is *more* secure. For one thing, you need to enter your password for it to be effective. The e-signature is a living and breathing organism, and *anything* that changes a document in any substantial way, after it is date-stamped, compromises the effectiveness of the signature.

Information on document changes is also embedded right *into the digital signature*. Once people accept this concept and the security of the e-signatures, they should obtain widespread use and acceptance (how many attorneys’ secretaries forge signatures or give it the old rubber stamp; clearly, the e-signature is a better protection against fraud than that).

Disclaimer: Do not email a judge’s law clerk an emergency motion with an e-signature, then come back and blame me for him or her not accepting it. Be smart; use these tips where acceptable, but do not push it. We haven’t all arrived at the 21st century at the same time, unfortunately. ■

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Can You Justify an iPad in Your Legal Practice?

by Matthew R. Streger

Since its introduction, Apple has sold over 25 million iPads worldwide, making it the fastest-selling consumer electronics device ever created. When I speak to people about using an iPad in a legal practice, they usually fall into one of two camps: those who are using an iPad, and those who dismiss the iPad as an expensive toy that has no application in their legal practice.

There is, however, another group of people I am finding more and more prevalent. As the iPad becomes more commonplace in the law, colleagues and friends have begun asking me how I use my iPad, and how I integrate it into my practice. These attorneys occupy the middle ground, wanting to purchase an iPad but needing some economic justification and improved efficiencies to make the leap. To be sure, the iPad is not for everyone, but I believe that there are places where it can dramatically improve your practice, and for a relatively small cost. The iPad is not the only tablet computer on the market, but it is by far the most widely used, so we will use it as the benchmark for purposes of this article.

Mobile Connectivity

The first place to evaluate an iPad for integration into your legal practice is in the core functions where we use computers and mobile devices most frequently: email, calendar and contact management. Virtually everyone practicing law today uses a computer for email, and most of us also manage our calendars and contacts through some kind of computer program. Many of us also carry mobile devices already, such as Blackberries, iPhones or Android phones, and each of these devices already perform all of these functions.

Where the iPad really improves on the typical mobile device is through email management. First, the larger screen certainly makes it easier to read messages, scan your inbox and file messages. If you're dealing with a large volume of emails each day, and you're not at your computer, you will find the iPad screen makes an enormous difference in how you can interact via email. But the true difference between an iPad and a telephone-sized device is in the virtual keyboard. Granted, it is not a true computer keyboard, although you can add one if you need to, but the increased screen size on an iPad allows you to type messages much more comfortably than on a handheld screen. You may not want to type long dissertations on your iPad, but if you want to carry around a device that is larger than your phone and makes emailing much easier, the iPad will improve your productivity dramatically.

Of course, the larger screen also makes calendar management much easier than on a phone-based device. So the first question is how often are you away from your primary computer, and how much email do you send and receive on a given day? If

you're on the road a lot, and find yourself tapping out email replies from strange places, then put this one in the win column for the iPad.

Research Functions

In discussing the iPad in legal practice, the next logical area to evaluate is legal research. As an Internet-connected device (more on this later), the iPad offers you the ability to quickly perform legal research no matter where you are. Westlaw Next offers a free iPad application that integrates into your existing account, if you're already a Westlaw Next subscriber. Fastcase offers free access to case law and statutes, as well as the access provided to New Jersey State Bar Association members. You can also access any of the myriad of websites available for legal research through the web browser.

I find, however, that I am often in places with limited Internet access, making online research slightly more challenging. Even so, the time it takes to access any of the online resources makes it very difficult to perform on-the-fly lookups, for example in court during oral argument. For these reasons, I have taken my most common legal reference materials and saved them as PDF documents on my iPad. For my practice, which is primarily in health law, these materials include the Rules of Court, Rules of Evidence, and numerous statutes and regulations relevant to healthcare law. Everyone's practice is different, but you certainly know which materials you reference on a daily basis. If you prepare those materials in advance, and keep them stored locally on your iPad, then when you need to look something up quickly, you will not have to access the Internet and run a

search to get them. It will take you seconds, rather than minutes, to get the critical answer.

Lastly, every iPad can act as a simple web browser. This lets you literally access (almost) anything on the Internet no matter where you are. You can run a Google search, or look something up on Wikipedia, or access the Judiciary website from virtually anyplace. As often as I look up a case on Westlaw, or pull a relevant regulation from my PDF library, I also access case information from the Judiciary or look up a relevant news article. For this capability, I do not attend a meeting without my iPad under my arm, as almost every meeting I attend requires me to access some relevant information that is not immediately at hand.

Document Management

The last major thing we do as attorneys is push paper, often electronically. Depending on how much paper you push, the iPad may be a proverbial game-changer in your practice. The iPad will not edit Microsoft Office files without additional software, and most of us at least need to deal with Word documents on a regular basis. There are several additional, fairly inexpensive programs that will allow you to read and edit Word, Excel and PowerPoint documents with some limitations, such as the inability to track changes in a document.

It is unlikely that the iPad will be your primary device for creating complex documents, spreadsheets and presentations. It is much more likely that it will be used to review documents, and perhaps make some minor changes away from your primary computer. If you don't want to lug around a laptop everywhere you go, this is a quick and easy way to read and edit legal documents.

You will need another program to manage PDF documents. There are several suit-

able candidates, any of which will allow you to read, annotate and coordinate PDFs. This can be invaluable in several different areas. It can help you manage large amounts of evidentiary documents, or contracts you are drafting, or even serve as your reference library, as noted earlier. You can even electronically sign PDFs if necessary, theoretically allowing you to go completely paperless.

There is the small matter of how the documents get from your computer to your iPad and back again. There are several 'cloud-based' options of varying costs, security and capabilities, but any of them will allow you move your documents back and forth with ease.

Internet Access

As I noted earlier, many of these functions require you to be connected to the Internet. Every iPad has WiFi capability, allowing you to access any wireless network. This presents two problems: availability and security. There are more and more WiFi hot spots around, but there will not always be wireless access when you need it most. For example, all of the courtrooms in New Jersey Superior Court have free WiFi, but none of the courtrooms in the Office of Administrative Law have access. Then there is the issue of security, because many 'free public WiFi' hot spots are actually individuals with nefarious intent.

You can also use the cellular data network to get online with your iPad. For an additional cost, you can get your iPad with built-in cellular access, which, of course, requires a monthly access charge as well. This is usually slower than WiFi, and certainly more expensive, but is also much more secure, and is available wherever you can get cellular service.

A nice compromise is found in many modern cell phones. Most smartphones will double as a WiFi hot spot if properly

configured, and can get your iPad on the Internet. The advantage to this method is that your smartphone can feed Internet service to any device, including your laptop, if needed. You can save the money on the cellular access in the iPad and have more versatility in the long run.

Other Functions

Depending on your practice needs, there are many other functions an iPad can perform. The iPad 2 has dual cameras, so you can easily video-conference from your device. You can use your iPad as a remote control for PowerPoint presentations, letting you see your notes and next slide but freeing you from being stuck behind a podium. Your iPad can also act as an e-book reader when you're bored, or you can add some games to it to entertain your kids (or yourself) during downtime.

Can you do all of this with a laptop? Absolutely, and you can do much more as well. So, why do you need an iPad in addition to your laptop? The answer depends on your practice, but it often relates to carrying a lighter and smaller device, which is always with you. For all the benefits a laptop provides, they are larger, heavier, slower to boot up, and often not there when you need them. Your iPad is small and light enough to carry with you into every meeting, and is instantly ready for whatever task you need to perform.

In the end, your decision will be based on your individual legal practice—how you practice law, where you find yourself, and your economics. But as costs decrease and features improve, you may find yourself looking at the iPad less as an expensive toy and more as a productivity tool that can change your practice for the better. ■

Matthew R. Streger is an associate at Kern Augustine Conroy & Schoppmann, PC, in Bridgewater, and focuses his practice on healthcare litigation.



A Primer on the Construction Board of Appeals

by Matthew Sontz

The New Jersey State Uniform Construction Code Act¹ applies to construction projects in New Jersey. That statute is implemented by regulations promulgated by the New Jersey Department of Community Affairs (DCA) titled “Regulations for the New Jersey Uniform Construction Code” (UCC).² Enforcement of the UCC is implemented locally by New Jersey’s municipalities. Each municipality has a construction official, as well as individual subcode officials for each of the major subcodes (i.e., building, electrical, plumbing, and fire protection). It is not uncommon for one official to wear multiple hats.

Any construction project that requires permits will also be subject to inspections by the officials. If an official finds a violation of the UCC and/or any subcodes, he or she will issue a violation and possibly a stop-work order. A client who has received a violation or stop-work order has the right to appeal. Appeals of such violations go before the applicable construction board of appeals, which can be a municipal, multi-municipal, or county body. An attorney or client can locate the appropriate board of appeals by contacting the official who issued the violation, the local building department or the county construction board of appeals, which should have a record of each municipal or multi-municipal board of appeals within the county.

The DCA has issued “Rules Governing Construction Boards of Appeals,” which can be found at N.J.S.A. 5:23A-1.1, *et. seq.*³ The rules govern all aspects of the boards of appeals, and should be reviewed prior to any appearance.

The rules provide for the number of

board members and, more importantly, the qualifications of the board members.⁴ An attorney should make sure the board at which he or she is appearing is properly constituted. This is generally done through a discovery request to the board’s secretary or board’s counsel, if it has one, requesting sufficient information to permit the attorney to protect the client from impermissible conflict situations.⁵

An attorney should also make sure that the board member with the relevant subcode qualifications is present for the hearing. That is, if the client has been cited for violating the electrical subcode, then the attorney should make sure the board’s member who is qualified as an electrical subcode official is present at the hearing. Interestingly, if a quorum of board members or if a required board member is not present, the case shall not be heard and the appeal shall be deemed to be denied.⁶ The attorney should be prepared to seek an adjournment in such an instance, as opposed to missing the opportunity to present at the board of appeals.

The rules provide for the hearing procedures.⁷ The attorney and client may present testimony and examine and cross-examine witnesses consistent with reasonable rules of procedure and due process. A representative of the municipality that issued the violation presents first, followed by the appellant. Board members are permitted to question witnesses following questioning by the parties. Board members are also permitted to visit the construction site that is the subject of the appeal.

The attorney should confirm with the board’s secretary in advance whether the

proceeding will be recorded. If not, then the attorney may want to make arrangements for a court reporter to be present at the hearing.

The rules provide for how the board should make its decision and what that decision should contain.⁸ The board’s decision is generally due within 10 days. Interestingly, if the board fails to hear an appeal and render a decision within the regulations’ time periods then the appeal shall be deemed denied. The attorney should diligently monitor the board’s progress on a decision, and be prepared to petition the board and the adversary for an extension of time, to avoid the default result of denial. The attorney should also work to ensure that the board’s decision complies with the rules, because those decisions will be the basis of any further appeal. ■

Endnotes

1. N.J.S.A. 52:27D-124, *et. seq.*
2. Remember that in the construction context the UCC means the Uniform Construction Code and not the Uniform Commercial Code. N.J.A.C. 5:23-1.1, *et. seq.*
3. The rules are scheduled to expire on Oct. 26, 2011, but the DCA extended them until Oct. 26, 2013.
4. N.J.A.C. 5:23A-1.3.
5. N.J.A.C. 5:23A-1.5(d).
6. N.J.A.C. 5:23A-2.2(d).
7. N.J.A.C. 5:23A-2.2.
8. N.J.A.C. 5:23A-2.3.

Matthew H. Sontz is an associate editor of *Dictum* and an associate at Norris, McLaughlin & Marcus, P.A., in Bridgewater.



Deal Me In

Why So Many Young Lawyers Play Poker

by Angie Gambone

I have been playing a lot of poker lately, and I started to notice an intriguing pattern: There are a lot of young attorneys sitting at the tables with me. This got me thinking: What is it about this popular card game that attracts so many of my colleagues? Then it hit me: The skills necessary to be a good poker player mirror the skills necessary to be a good lawyer. Let's take a look.

Play the Players

They say in poker that one should play the players, not the cards. No matter how bad your cards may be, you can still come out with the win if you can convince all of your opponents to fold their hands to you. Just like in poker, as a lawyer you cannot control the 'hand' you are dealt. Clients bring with them a unique set of facts that you must interweave with the controlling case law. Sometimes as soon as you meet with a client, you may think: "There's no way I can win this."

However, you need not immediately lose hope, if you instead re-think your strategy. In poker, you play a strong hand much differently than you play a weaker hand. The same is true in the practice of

law. A weak set of facts doesn't necessarily mean an automatic loss. If you can convince the other players (such as your adversary or the judge) that your case isn't as much of a 'loser' as it might initially seem, you may be surprised at how the tables can turn. You play the players and don't let them play you.

Bluffing

To bluff in poker is to take the ultimate risk and hope it pays off. You know you have a losing hand, but you put on a show to make your opponents believe you are on top. If you are successful, your opponents fold and you win the pot.

Bluffing is a very useful skill in the practice of law, particularly for younger attorneys. In a field dominated by aggressive, skilled practitioners, young attorneys can sometimes feel intimidated and out of their league. This may cause them to hang back, to not take risks, even to fold. However, bluffing takes confidence, which is a crucial skill for a young attorney. What this skill enables you to do is to appear unafraid and steadfast in your representation of your client. Mastering the appearance of confidence will cause your opponents to respect you and take you seriously. This makes it that much easier to play the game without the 'perfect' set of cards.'

Reading Your Opponents

To succeed in poker, players must learn how to read their opponents. You are looking for 'tells,' or subtle clues that are unique to an individual opponent, which let you know how good his or her hand is. For example, the man next to you might hold his breath when he gets good cards, or he may fidget or tap his foot when he is bluff-

ing. Being able to accurately read people requires a lot of time spent with the same individuals, because you are looking for patterns in their behavior.

The longer we practice law, the more we tend to come across the same opponents and judges. This presents an excellent opportunity to learn how to read people in order to gain an advantage in your case. For example, you may start to notice that opposing counsel gets very loud and talks over you when he knows he is losing. Or you may recognize that a particular judge shakes her head slightly when she is going to rule against you. By picking up on these tells, you can determine whether or not you need to change your strategy in order to get the best possible result.

Patience

Poker is a game of patience. A good player does not play every hand. Actually, a good player does not play many hands at all. He or she waits tolerantly until the perfect situation arises, taking into account his or her table position (where the player sits in reference to who was dealt first), his or her stack and the opponents' stacks (how many chips everyone has), the going bet (how much it costs to play a hand) and his or her cards. If the ideal situation does not present itself, he or she can end up sitting at a table for hours without actually playing. This most definitely requires patience, which is an excellent skill for a young lawyer to master as well.

In the beginning, we are all anxious and excited, yearning to play the game of law. This may lead us to jump at any opportunity that arises, even though it may not be the best case to tackle. For instance, you may accept a complex personal injury law-

suit or a high-profile divorce because you see dollar signs and bragging rights at the end. However, you may not realize the case requires a set of skills you have not yet acquired. It may be much more time-consuming than you envisioned. You may not have realized the strength and deep pockets of your adversary, and you are out-matched.

Having patience will allow you to make rational decisions after considering all of the relevant factors in a case, making you a much better lawyer. In poker, aggressive players who want to play every hand lose their chips the fastest. With patience, a young lawyer may not get to argue every case, but the cases he or she does argue will be that much sweeter.

Knowing When to Quit

I will be the first person to admit that poker is addicting. It is an exhilarating game, and when it pays, it can pay big. And like most lawyers, I like winning. However, a vital component to any successful poker player's arsenal is the ability to know when to quit. This can mean knowing when to fold a particular hand, or knowing when to walk away altogether. Sometimes in poker the end result is so alluring that players will overstay their welcome. If they are losing, they will continue to play, digging themselves deeper and deeper into a hole, and

waiting for that magical moment to turn it all around. Once a poker player hits this point of desperation, he or she forgets the skills that are required to win, and starts playing emotionally, which usually means poorly. This is called tilting. For this reason, it is vital that a poker player knows when to quit the game.

As a young lawyer, it is also extremely important to know when to quit. Although you may be trying desperately to achieve a particular result for your client, sometimes the bottom line is that your preferred outcome is unattainable. You can waste a lot of time and billable hours, and a lot of your client's money, trying for something that will never happen. When you tilt in the practice of law, you may be acting erratically and not sensibly. Thus, you need to know when to quit, and you need to tell yourself that it is OK to lose once in awhile. Mastering this skill will improve not only your legal track record, but also your quality of life.

In addition to all of the above, there are plenty of other similarities between poker and the practice of law. Of course, these parallels are of my own creation, and, to some extent, I am relying on stereotypes about lawyers. For instance, most poker players crave success and money, as do most lawyers I know. Poker is a male-dominated game and women are often overlooked or under-valued. I have seen this in

the practice of law as well. In poker, the adage is that you have to spend money to make money. Most law offices I see also operate under this pecuniary philosophy. But the biggest similarity between poker and law that I can imagine is actually quite a simple one: the love of the game.

Poker players love the game and all of its intricacies and nuances. On the same note, lawyers love the game of law and all of its nuances and distinctions. Not surprisingly then, the skills required to succeed at poker rival those needed to succeed in the law. I believe this is why, when I sit down with my chips in a room full of players, I can rest assured that I am going to find some of my legal-minded peers at my side. And then I'll take them down. ■

Endnote

1. I should mention that to bluff in poker can sometimes mean to simply lie, which is something that is never appropriate in the practice of law. Keep the untruths in the card game and out of the courtroom.

Angie Gambone is an associate editor of *Dictum* and an associate at *Trace and Jenkins, LLC*, in Woodbury, where she practices family law.



New Jersey State Bar Association Board of Trustees' Report

by Christina Vassiliou Harvey

As one of your Young Lawyers Division trustees, I want to inform you about some matters currently on the radar of the New Jersey State Bar Association Board of Trustees and recent actions taken by the board.

Increase for Filing Fees. A bill is currently pending in the Legislature to increase filing fees. (N.J. A.B. 4197 (2011)) This increase would be used to support Legal Services, establish an electronic filing system and fund the Judiciary's general operating budget. The Young Lawyers Division Executive Committee created a subcommittee to address how a filing fee increase might impact young lawyers. If you are interested in serving on this committee, please contact me as soon as possible.

Lawsuit Regarding Judicial Compensation. The New Jersey State Bar Association participated as *amicus curiae* in a dispute raised by the Honorable Paul DePascale, J.S.C. of Hudson County over the constitutionality of the Pension and Health Care Benefits Act, signed into law on June 28, 2011. The Honorable Linda R. Feinberg, A.J.S.C. ruled that the act violates the state constitutional provision that salaries for state judges and Supreme Court justices may not be diminished while they are in office. This decision sparked criticism from the governor. NJSBA President Susan Feeney issued a response

stating the governor's conduct was a "blatant attempt to mislead the public and influence the judicial process." She continued, "Further, his personal criticism of Mercer County Assignment Judge Linda Feinberg is unwarranted and irresponsible. Judge Feinberg has a sterling record for integrity as one of the most respected members of the New Jersey bench, as well as a long, distinguished career as a public official."

Election Procedures. Recently, the trustees formalized several new procedures to ensure NJSBA elections run smoothly and efficiently. The trustees adopted a requirement that members should not serve simultaneously on both the Nominating Committee and the Election Committee, to prevent potential conflicts of interest. In addition, all members of the Election Committee would be required to remain neutral in an election.

The board also adopted new procedures to permit candidates for NJSBA office to obtain a copy of the NJSBA membership list, as long as the candidate only uses the information for campaign purposes and destroys any copies after the election. A policy was created that members can opt-out of having their address information released. The board also agreed to explore the possibility of engaging a third-party group to conduct electronic elections.

County Prosecutor Offices. The board adopted a report of the NJSBA *Ad Hoc* Committee on the Prosecutors Study Commission making several recommendations about the organization and funding of county prosecutors' offices. A principal recommendation was that the county offices should not be consolidated under the Attorney General's Office. The report also

suggested a fee be assessed to people who are convicted of a crime, to help offset funding problems; that the New Jersey Division of Criminal Justice receive additional funding to handle criminal appeals; and that any policy or legislation regarding outside lawyers hired to handle Criminal Justice Division appeals safeguard against conflicts of interest. The *Ad Hoc* Committee made its recommendations in response to a Prosecutor Study Commission that Governor Chris Christie established earlier this year.

Amicus Curiae. The board approved the NJSBA serving as *amicus curiae* in a matter pending before the Council on Mandates in a dispute involving the Allamuchy Township Board of Education. The board of education objected to New Jersey's recently enacted anti-bullying law on the basis that implementation of the law will cost the board money it does not have. The NJSBA supported the passage of the law, and will now take the same position before the Council on Mandates, whose decision is not reviewable by a court.

Member Discounts. Check out the NJSBA website for changes to the New Jersey Institute for Continuing Legal Education. Members will see discounts as well as a mobile application for smartphones that permit customers to buy and watch continuing legal education (CLE) seminars, as well as track their CLE credits taken through the institute with their phones.

Christina Vassiliou Harvey is an associate attorney with the law firm of Lomurro, Davison, Eastman & Munoz, P.A., where she handles plaintiff's personal injury and municipal court defense matters.



ABA Fall Meeting Recap

by Blake Laurence

The American Bar Association (ABA) Young Lawyers Division (YLD) fall meeting was held from Oct. 13–15 in Seattle, Washington, and brought together almost 350 young lawyers from all practice areas, practice settings and parts of the country.

During the conference, the ABA YLD hosted a number of networking and educational sessions, reached out to local students and launched Project Salute: Young Lawyers Serving Veterans, the division's 2011–2012 public service initiative.

Conference highlights included:

- More than 25 continuing legal educa-

tion and networking sessions.

- YLD leaders discussing the value of doing *pro bono* work throughout one's career with law students during an Oct. 13 panel at Seattle University School of Law's Social Justice Week.
- As part of YLD diversity team outreach, YLD leaders met with Seattle Central Community College students on Oct. 14 to encourage them to pursue careers in the legal profession and to answer career-related questions.
- On Oct. 14, young lawyer volunteers from throughout the country kicked off Project Salute: Young Lawyers Serving Veterans, the ABA YLD's year-long public service initiative that helps U.S. veterans obtain federal benefits through education and basic *pro bono* legal services. At the clinic, volunteers informed former service members about available federal veterans' benefits and helped them complete benefit applications and forms.
- Nineteen affiliates from across the country showcased their local projects at the conference's Affiliate Showcase. The

next Affiliate Showcase is scheduled for the ABA YLD Spring Conference, May 3–5, 2012 in Nashville, TN.

The subgrant application process is now open. The Subgrant Program provides young lawyer organizations with funding for activities that benefit local communities, leaders, or members. The application deadline is March 1, 2012. To learn more, visit www.americanbar.org/groups/young_lawyers/awards_scholarships.html.

If you are a member of the ABA YLD and are interested in being a delegate at the 2012 ABA YLD Mid-Year Meeting on Feb. 4 in New Orleans, or would like more information about how to get involved in the ABA YLD, please do not hesitate to contact me at blaurence@lomurrolaw.com with any questions. ■

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