Professionalism Boot Camp

November 30, 2018

11:30 a.m. – 6:30 p.m.

Quinnipiac University School of Law

North Haven, CT

CT Bar Institute, Inc.

CT: 5.0 CLE Credits (3.0 General; 2.0 Ethics)

Lawyers' Principles of Professionalism

As a lawyer I must strive to make our system of justice work fairly and efficiently. In order to carry out that responsibility, not only will I comply with the letter and spirit of the disciplinary standards applicable to all lawyers, but I will also conduct myself in accordance with the following Principles of Professionalism when dealing with my client, opposing parties, their counsel, the courts and the general public.

Civility and courtesy are the hallmarks of professionalism and should not be equated with weakness;

I will endeavor to be courteous and civil, both in oral and in written communications;

I will not knowingly make statements of fact or of law that are untrue;

I will agree to reasonable requests for extensions of time or for waiver of procedural formalities when the legitimate interests of my client will not be adversely affected;

I will refrain from causing unreasonable delays;

I will endeavor to consult with opposing counsel before scheduling depositions and meetings and before rescheduling hearings, and I will cooperate with opposing counsel when scheduling changes are requested;

When scheduled hearings or depositions have to be canceled, I will notify opposing counsel, and if appropriate, the court (or other tribunal) as early as possible;

Before dates for hearings or trials are set, or if that is not feasible, immediately after such dates have been set, I will attempt to verify the availability of key participants and witnesses so that I can promptly notify the court (or other tribunal) and opposing counsel of any likely problem in that regard;

I will refrain from utilizing litigation or any other course of conduct to harass the opposing party;

I will refrain from engaging in excessive and abusive discovery, and I will comply with all reasonable discovery requests;

In depositions and other proceedings, and in negotiations, I will conduct myself with dignity, avoid making groundless objections and refrain from engaging I acts of rudeness or disrespect;

I will not serve motions and pleadings on the other party or counsel at such time or in such manner as will unfairly limit the other party's opportunity to respond;

In business transactions I will not quarrel over matters of form or style, but will concentrate on matters of substance and content;

I will be a vigorous and zealous advocate on behalf of my client, while recognizing, as an officer of the court, that excessive zeal may be detrimental to my client's interests as well as to the proper functioning of our system of justice;

While I must consider my client's decision concerning the objectives of the representation, I nevertheless will counsel my client that a willingness to initiate or engage in settlement discussions is consistent with zealous and effective representation;

Where consistent with my client's interests, I will communicate with opposing counsel in an effort to avoid litigation and to resolve litigation that has actually commenced;

I will withdraw voluntarily claims or defense when it becomes apparent that they do not have merit or are superfluous;

I will not file frivolous motions;

I will make every effort to agree with other counsel, as early as possible, on a voluntary exchange of information and on a plan for discovery;

I will attempt to resolve, by agreement, my objections to matters contained in my opponent's pleadings and discovery requests;

In civil matters, I will stipulate to facts as to which there is no genuine dispute;

I will endeavor to be punctual in attending court hearings, conferences, meetings and depositions;

I will at all times be candid with the court and its personnel;

I will remember that, in addition to commitment to my client's cause, my responsibilities as a lawyer include a devotion to the public good;

I will endeavor to keep myself current in the areas in which I practice and when necessary, will associate with, or refer my client to, counsel knowledgeable in another field of practice;

I will be mindful of the fact that, as a member of a self-regulating profession, it is incumbent on me to report violations by fellow lawyers as required by the Rules of Professional Conduct;

I will be mindful of the need to protect the image of the legal profession in the eyes of the public and will be so guided when considering methods and content of advertising;

I will be mindful that the law is a learned profession and that among its desirable goals are devotion to public service, improvement of administration of justice, and the contribution of uncompensated time and civic influence on behalf of those persons who cannot afford adequate legal assistance;

I will endeavor to ensure that all persons, regardless of race, age, gender, disability, national origin, religion, sexual orientation, color, or creed receive fair and equal treatment under the law, and will always conduct myself in such a way as to promote equality and justice for all.

It is understood that nothing in these Principles shall be deemed to supersede, supplement or in any way amend the Rules of Professional Conduct, alter existing standards of conduct against which lawyer conduct might be judged or become a basis for the imposition of civil liability of any kind.

--Adopted by the Connecticut Bar Association House of Delegates on June 6, 1994

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Professionalism Boot Camp

Friday, November 30, 2018

Program Agenda

11:30 a.m. – 11:55 a.m.	Registration and Boxed Lunch
11:55 a.m. – 12:00 p.m.	Welcome Remarks Speaker: **Hon. Kenneth L. Shluger**, New London Judicial District Superior Court
12:00 p.m. – 1:00 p.m.	Plenary Session **Avoiding a Grievance – Top 10 Pitfalls** Speakers: **Michael P. Bowler**, Statewide Bar Counsel, State of CT Judicial Branch **Patricia King**, Geraghty & Bonnano LLC
1:05 p.m. – 2:05 p.m.	Concurrent Session 1A **Creating the Small, 21st Century Law Office** Speakers: **Christopher P. Kriesen**, Kalon Law Firm LLC **Sergei Lemberg**, Lemberg Law LLC Concurrent Session 1B **Surviving Technology in a Large Firm Practice** Speakers: **Michael Chase**, Shipman & Goodwin LLC **Joseph F. Ficocello**, Shipman & Goodwin LLC **Stephanie M. Gomes-Ganhão**, Shipman & Goodwin LLC
2:10 p.m. – 3:10 p.m.	Concurrent Session 2A **Adapting Your Practice to Avoid Risk** Speakers: **Ronald J. Houde, Jr.**, Kalon Law Firm LLC **John Kronholm**, Kronholm Insurance Services Concurrent Session 2B **Working with Partners and Paralegals – Navigating and Mastering the Maze of the Big Firm** Speakers: **Benjamin W. Cheney**, Wiggin and Dana LLP **Laura Ann P. Keller**, Wiggin and Dana LLP
3:10 p.m. – 3:25 p.m.	Break
3:25 p.m. – 4:25 p.m.	Concurrent Session 3A **Screening New Clients, Billing, and Fee Agreements** Speakers: **Robert W. Cassot**, Morrison Mahoney LLP **Frank F. Coulom, Jr.**, Robinson+Cole LLP

	Concurrent Session 3B **Networking and Rainmaking** Speakers: **Matthew S. Necci**, Halloran Sage **Vincent Provenzano**, Mancini Provenzano & Futtner LLC
4:30 p.m. – 5:30 p.m.	Plenary Session **Ethical Dos and Don’ts of Social Media** Speakers: **Mark A. Dubois**, Geraghty & Bonnano LLC **Meghan Freed**, Freed Marcroft LLC
5:30 p.m. – 6:30 p.m.	**Reception and Networking**

Faculty Biographies

Judge Kenneth Shluger
Kenneth Shluger was appointed a judge of the Superior Court in 2004. Since that time, he has had assignments in Criminal, Civil but most frequently in the Family Court, currently sitting Family in the New London Judicial District. Prior to his appointment, he had a general trial practice in Hartford and Glastonbury. He is a graduate of the University of Connecticut and the University of Connecticut School of Law.

Judge Shluger continues to be active in the Connecticut Bar Association and the Hartford County Bar Association chairing numerous committees and task forces including CBA Standing Committee on Professionalism and the HCBA Bench Bar Committee. He has been an adjunct professor at Eastern Connecticut State University and has served on the boards of several civic organizations. He frequently speaks to civic organizations, in schools and in conjunction with bar association activities and currently is coaching a Middle School for a statewide Mock Trial competition through Civics First.

Robert W. Cassot
Robert Cassot is a partner at Morrison Mahoney LLP. Robert has been practicing law since 1996. He has represented clients on a broad range of issues including legal malpractice, intentional torts, premises liability, sex abuse claims, wrongful death and toxic torts. He has also litigated complicated indemnification issues and other complex matters involving multiple parties. His clients have included attorneys, insurance agencies, real estate agencies, retailers and shopping malls, trucking companies and private schools. Prior to attending law school, Robert served four years as a field artillery officer in the United States Army. Subsequent to his military service, he worked for four years as a sales representative in the pharmaceutical industry.

Michael Chase
Michael Chase is a member of Shipman & Goodwin's Government Investigations and White Collar Criminal Defense group. He represents organizations and individuals in government investigations, internal investigations and both criminal and civil litigation.

Michael assists clients in complex litigation and investigations across a variety of industries, including financial services, higher education, health care, environmental and insurance. He also regularly represents clients in significant trial matters, negotiations and matters before administrative agencies.

Most recently, Michael has focused his practice on assisting health care providers, construction contractors and other government contractors operating in complex regulatory environments in matters being investigated under the federal and state false claims acts.

Benjamin W. Cheney
Ben is an Associate in Wiggin and Dana's Litigation Department, where he is an integral part of the firm's Medical Malpractice Defense Practice Group. He handles all aspects of civil litigation, focusing primarily on the representation of hospitals, physicians, and health care providers in complex cases alleging professional negligence, including wrongful death and a wide array of other claims of catastrophic injuries. He has successfully argued many dispositive motions, including several that presented issues of first impression in Connecticut.

Before joining Wiggin and Dana, Ben enjoyed a first career as a custom woodworker in Glastonbury, Connecticut. After seven years of creating reproduction architectural millwork to preserve historic homes throughout New England, he hung up his tool belt and went to law school.

Ben received his J.D. with honors from the University of Connecticut School of Law, where he was Lead Articles Editor at the Connecticut Law Review and received the Connecticut Judges Association award for his commitment to public service and academic excellence. After law school, Ben clerked with the Honorable Bethany J. Alvord in the Connecticut Appellate Court. He earned a B.A. in Sociology and Anthropology from Lewis and Clark College in 2002. Ben serves as Vice Chair of the Board of Project Youth Court, a New Haven-based 501(c)(3). He also is an active member of the New Haven County Bar Association.

Frank F. Coulom, Jr.
Frank Coulom has over 30 years of experience in litigation, and he has tried numerous cases to verdict, final judgment, or final arbitration decision. He represents clients in a range of industries, from healthcare to construction to manufacturing. He is a member of the Business Litigation Group at Robinson & Cole LLP.

Litigation
Frank has broad experience extricating clients from expensive and complicated commercial litigation. His practice includes insurance and reinsurance, employment, and complex civil litigation. His employment litigation experience includes trying matters dealing with prevailing wage, disability, age and gender discrimination, sexual harassment, retaliatory discharge, breach of employee contract, wrongful termination, fidelity claims, and Employee Retirement Income Security Act (ERISA) pension litigation. He has also argued before the Second Circuit on labor and employment issues. Frank's civil litigation practice has a particular emphasis on civil rights and commercial contract disputes. During his career, he has been involved in leading cases in numerous additional areas, such as business torts and intellectual property issues.

Frank has achieved positive results for clients, such as successfully defending property damage claims arising out of the Sept. 11, 2001 terrorist attacks. He has obtained numerous favorable verdicts for his clients, including for a business owner who was accused of sexual harassment. He secured the dismissal of $96 million in claims against the State of Connecticut in a class action brought by state employees.

General Counsel
Frank has served as legal counsel to Robinson & Cole LLP for over two decades. He also regularly represents lawyers in matters of legal ethics and professional negligence, and frequently lectures on legal ethics and professional responsibility.
From 2006 to 2018, Frank has been selected for inclusion in the Connecticut/New England *Super Lawyers*® list. He has been listed in *The Best Lawyers in America*© in the area of Commercial Litigation since 2016.

Mark A. Dubois
Mark Dubois is counsel with the New London firm of Geraghty & Bonnano. He was Connecticut's first Chief Disciplinary Counsel from 2003 until 2011. In that position he established an office that investigated and prosecuted attorney misconduct and the unauthorized practice of law. He is co-author of *Connecticut Legal Ethics and Malpractice*, the only book devoted to the topic of attorney ethics in Connecticut. He is a contributor to the *Connecticut Law Tribune* where he co-authors the *Ethics Matters* column.

Attorney Dubois represents individuals accused of ethical misconduct and malpractice. He also serves as an expert witness on matters of ethics and malpractice. He has taught ethics and legal practice at UConn Law School and has taught ethics at Quinnipiac University School of Law where he was Distinguished Practitioner in Residence in 2011 and at Yale Law School. He has lectured in Connecticut and nationally on attorney ethics and has given or participated in over 100 presentations and symposia on attorney ethics and malpractice.

Attorney Dubois was board certified in civil trial advocacy by the National Board of Legal Specialty Certification for over 20 years. He is former president of the Connecticut Bar Association. In addition to being a past officer of the Bar Association, he is a member of the Professional Discipline, Unauthorized Practice,

Lawyer Wellness and Mentoring committees. He is a member of the board of Lawyers Concerned for Lawyers. He is a member of the New Britain, New London, and American Bar Associations as well as the Association of Professional Responsibility Lawyers and the American Board of Trial Advocacy. He was the recipient of the Quintin Johnstone Service to the Profession Award in 2012 and the American Board of Trial Advocacy, Connecticut Chapter, Annual Award in 2007.

Joseph F. Ficocello
As the Chief Information Officer of Shipman & Goodwin LLP, Joe Ficocello is responsible for technology service delivery, enterprise operations, information security, project management, collaboration, client IT engagement, and cloud solution development.

Joe has 18 years of experience in the legal technology field, specializing in law firm IT within positions of senior management & executive leadership. Previously, Joe served as the Chief Information Officer for Constangy, Brooks, Smith & Prophete LLP, where he lead IT service delivery, practice technology, information security, and project management for their 31 offices. Joe formerly spent over 7 years at Akin, Gump, Strauss, Hauer & Feld LLP, where he served as an IT Director responsible for the firm's Trial Services & E-discovery groups, and lead various teams in their global practice technology initiatives.

Joe has provided technology consultation on three of the largest cases in U.S. history, to include the largest indirect copyright infringement case in U.S. history (2008; *Graham v. USI MidAtlantic*), the $1.67 billion largest intellectual property jury verdict in U.S. history (2009; *Centocor and New York University v. Abbott*), and the largest insider trading case in U.S. history (2010; *The United States of America v. Raj Rajaratnam*).

Joe is peer reviewed and considered a subject-matter expert (SME) in the fields of management and law firm information technology, along with the associated domains of practice support and project management. He has been published in LexisNexis training materials, Law.com, Law Firm IT Professionals, and via a dozen other outlets. He is also a frequent speaker at various national conferences. Joe's work also appears in the textbook Trial Advocacy: Planning, Analysis and Strategy (Clark, Aspen Publishers, 2nd Edition, 2008).

Joe received a Master of Science in Management from The Catholic University of America, a Master Certificate in IT Service Management with concentrations in project management, information security, and ITIL from Villanova University, his Six Sigma Yellow Belt from the University of Notre Dame, and his undergraduate degree from The College of the Holy Cross.

Meghan Freed
Meghan Freed focuses her practice on family law. She is particularly experienced with alternative dispute resolution, including arbitration and mediation, is a graduate of Harvard Law School's Program on Negotiation, and has supplemented her formal legal education with advanced training in mediation.

Meghan has been widely recognized for her leadership in the legal community. In 2013, Meghan was named a *Hartford Business Journal* 40 Under Forty winner, and a *Connecticut Law Tribune* New Leader of the Law. She was included on the New England *Super Lawyers®* *Rising Star* list in 2013 for general litigation, in 2014 for her estate planning work, and again in 2015 - 2017 for her family law work. In 2014 the Connecticut Women's Education and Legal Fund (CWEALF) named her one of *40 Women for the Next 40 Years*.

Meghan is also particularly proud of her practice within the LGBT community. Her name appears in the Connecticut Supreme Court's groundbreaking decision on marriage equality, *Kerrigan v. Commissioner of Public Health*, for which she co-authored an *amicus curiae* brief on behalf of the Human Rights Campaign. Meghan has appeared on WNPR's *Colin McEnroe Show* speaking about the state of divorce – same sex or otherwise, WNPR's *Where We Live*, discussing the impact of the United States Supreme Court's decisions in

the same sex marriage cases, *United States v. Windsor* and *Hollingsworth v. Perry*, and on Lite 100.5 FM WRCH discussing the impact of divorce on clients' emotional health. She is a founding executive board member of the Connecticut Bar Association's LGBT Section. In 2015 she was named one of the National LGBT Bar Association's Best LGBT Lawyers Under 40.

Meghan attended Mount Holyoke College. In 2004, she received her law degree *cum laude* from the Western New England College School of Law. While there, she received the highest distinction conferred by the Law School, the Norman Prance Award.

Meghan loves Hartford, writing, traveling, skiing, yoga, and the beach and the woods.

Stephanie M. Gomes-Ganhão
Stephanie Gomes-Ganhão is an associate in Shipman & Goodwin's Health Law Practice Group and advises health care providers with respect to corporate and regulatory matters. She also regularly assists clients with establishing compliance programs for early detection of data privacy concerns and guides clients through the data breach investigation and notification process when a breach has occurred. In addition, Stephanie is a member of the firm's data privacy and protection team.

Prior to joining the firm, Stephanie served as a law clerk to the Honorable Dennis G. Eveleigh, Associate Justice of the Connecticut Supreme Court. While attending law school, Stephanie served as a legal intern for the Honorable Janet C. Hall, U.S. District Court for the District of Connecticut.

Stephanie is also fluent in Portuguese.

Ronald J. Houde, Jr.
Attorney Houde is a trial and appellate lawyer practicing in the areas of municipal liability, Connecticut tribal law, premises liability, insurance coverage, personal and commercial auto, and uninsured and underinsured motorist coverage. He practices in state, federal, and Connecticut tribal courts. He is member of the founding team at Kalon Law Firm in Hartford, Connecticut.

At Kalon, Attorney Houde serves as the firm's Diversity and Inclusion Officer. Outside of Kalon, Attorney Houde is active in state, local, and affinity bar associations. He is also a pro bono attorney for the Connecticut Institute for Refugees and Immigrants. In 2018, the Connecticut Law Tribune recognized him as a "New Leader in the Law" and Super Lawyers recognized him as a "Rising Star".

Prior to joining Kalon, Attorney Houde was an associate at an insurance defense firm in Hartford. He also served as a clerk to the Honorable Judges of the Hartford Superior Court.

Laura Ann P. Keller
Laura Ann is an Associate in Wiggin and Dana's Litigation Department and a member of the Medical Malpractice Defense Practice Group. She frequently represents hospitals and health care providers in cases alleging professional negligence.

Laura Ann also focuses on maritime litigation, specifically cases involving marine insurance coverage disputes, with an emphasis on yacht and liability coverages.

Laura Ann has extensive experience taking and defending fact and expert depositions, drafting and arguing motions, and preparing cases for mediation and/or trial. She recently second-chaired a jury trial that produced a defense verdict for one of the firm's health care clients.

Before joining the firm, Laura Ann was a Judicial Intern for federal Magistrate Judge William I. Garfinkel and a legal intern in the U. S. Attorney's Office for the District of Connecticut.

Laura Ann received her J.D. with honors from the University of Connecticut School of Law, where she won both the Alva P. Loiselle Moot Court Competition and the William R. Davis Mock Trial Tournament. She also received the National Association of Women Lawyers Award, served as a Symposium Editor for the Connecticut Law Review, and was President of the Mock Trial Society. She received her undergraduate degree from Boston College, where she was a member of the varsity sailing team.

Laura Ann currently sits on the Board of the Foundation of the New Haven County Bar. Laura Ann is proficient in Spanish.

Patricia King

Patricia King graduated from the University of Massachusetts in 1973 and the University of Connecticut Schools of Law and Social Work in 1982. Since 1983, she has worked as a Juvenile Court Advocate, an Assistant State's Attorney in the Judicial District of Waterbury, an Assistant Corporation Counsel for the City of New Haven. She worked in two New Haven firms as a private practitioner for approximately seven years, handling primarily civil matters, including the Colonial Realty litigation, then as a partner in Moscowitz & King, LLC, focusing on criminal defense. She was one of the three attorneys initially hired to staff the Office of the Chief Disciplinary Counsel at its inception in 2004. She was Chief Disciplinary Counsel between July 2012 and February 2015. After retiring from the Office of the Chief Disciplinary Counsel's Office, she joined Geraghty & Bonnano where her work will focus on legal ethics, attorney misconduct and legal malpractice.

Pat has been active in her home in New Haven, having served for 9 years on the City Plan Commission, and has been chair of the New Haven Board of Zoning Appeals since 2013. She is fluent in Spanish. She has been an adjunct professor at the Quinnipiac University School of Law since 1997, where she has taught legal skills, Introduction to Representing Clients, and Lawyers Professional Responsibility. She is actively involved in the law schools International Human Rights Law Society and has accompanied the group on its annual service trip to Nicaragua in 2012 and 2014.

Christopher P. Kriesen

Attorney Christopher P. Kriesen is the founder and principal of the Kalon Law Firm, LLC. He formed the firm in 2017 to fulfill his vision of a better way to practice law, serve clients, and promote social good through entrepreneurship. He leads the firm and serves as the ethics officer.

Attorney Kriesen has tried cases in State and Federal Court, has argued appeals before Connecticut's Appellate and Supreme Courts, and has helped prepare amicus briefs on issues raising cases of first impression before the Supreme Court.

He is a trained mediator (Harvard Law School, Advanced Mediation Workshop, Program on Negotiation and the Quinnipiac School of Law Center on Dispute Resolution). He serves as an Attorney Trial Referee, Fact Finder, and Arbitrator in the Hartford Superior Court.

He has taught advocacy to students at the University of Connecticut School of Law. He is an active presenter at legal seminars for other lawyers and a mentor to law students and young lawyers.

He established the Kalon Fellowship, the Kalon Human Rights Clinic, Salons, Workshops, the Cicero Advocacy Project, and the Kalon ADR Center (which, as of September 1, 2018, donates 10% of its revenue to

fund a scholarship for a graduate of the Hartford Youth Scholars Steppingstone Academy to help with their continuing education) making Kalon unique among peer firms in promoting social good.

He lives in West Hartford with his wife and his daughter attends Brandeis University.

KRONHOLM INSURANCE SERVICES

a division of Brown & Brown of Connecticut, Inc.
55 Capital Blvd. Suite 102
Rocky Hill, CT 06067
Direct: 860-665-8463 Fax: 860-633-6699
jkronholm@bbhartford.com

John C. Kronholm

Experience

9/2016–Present Brown & Brown of CT, Inc. Rocky Hill, CT
Senior Vice President

- Responsible for marketing, sales and service of the Lawyers Professional Liability, and Court Bond divisions.

2002–2016 Kronholm Insurance Services Glastonbury, CT
President & Owner

1991–2001 Kronholm & Keeler, Inc. Glastonbury, CT
Vice President

1985–1988 Drexel Burnham Lambert New York, NY
Assistant Corporate Investment Manager

Education

1989–1991 University of Southern California Los Angeles, CA

- Masters in Business Administration, Finance.

1983-1987 New York University New York, NY
Bachelors of Science, Management.

Credentials

Licensed for Property and Casualty, Life and Health

Chartered Property Casualty Underwriter (CPCU)
Eight of Ten Parts Completed

Sergei Lemberg
Sergei Lemberg, Esq, the firm's founding attorney, arrived to the United States as a refugee from the former Soviet Union in 1989 at the age of 15. He attended Brooks School in N.Andover, Massachusetts, on scholarship, then continued on to college at Brandeis University where he obtained a B.A. in Economics with a minor in Business in 1997. He attended law school at the University of Pennsylvania, obtaining his law degree in 2001. After several years working at large firms in Boston, New York and Connecticut, Mr. Lemberg started Lemberg Law.

Because of his background, Mr. Lemberg founded the firm to help people who cannot afford to hire lawyers — regular consumers who are wronged by corporations. Mr. Lemberg has earned a reputation as a tough and tireless advocate with a passion for helping regular people fight for the compensation they deserve. He stands up to insurance companies, car makers, insurance companies, debt collection agencies, robocallers, and Big Business. He has been recognized as the "most active consumer attorney" four of the last seven years. He started the firm in a one-room office 12 years ago and turned it into a leading consumer practice with more than 30 employees.

Mr. Lemberg has been interviewed about consumer law issues by many media outlets, including the New York Times, AOL, the Wall Street Journal, FOX News, ABC News, MSN, the International Business Times, the Los Angeles Times, Newsweek, and Consumer Reports, among others. In early 2018, the firm garnered national attention for filing the first-in-the-nation lawsuit against the manufacturer of a self-driving car.

He frequently speaks at industry events, including those held by PACE (Professional Association for Customer Engagement). He presented at the National Conference on Consumer Finance (Class Actions and Litigation), which was held in January 2015 in New York.

Mr. Lemberg has been lead counsel in a number of consumer class actions. Most recently, the firm was certified as class counsel in *LaVigne* v. *First Community* Bancshares, Inc., et al, No. 1:2015 cv 00934 in the District of New Mexico and has received preliminary approval of class settlement in *Ward v. Flagship Credit Acceptance* Case 2:17-cv-02069-MMB in the Eastern District of Pennsylvania. Mr. Lemberg served as co-lead counsel in a Telephone Consumer Protection Act (TCPA) multi-district litigation entitled, *In Re: Convergent Telephone Consumer Protection Act Litigation*, No. 13-md-02478 (D. Conn., November 10, 2016) (ECF No. 268), in U.S. District Court, District of Connecticut ($5.5 million class settlement). He has been certified as class counsel in both contested proceedings and in settlement, including *Munday v. Navy Federal Credit Union*, No. 15-cv-01629 (C.D. Cal., July 14, 2017) (ECF No. 60) (final approval of class settlement of $2.75MM in TCPA action); *Duchene v. Westlake Servs., LLC*, No. 13-01577, 2016 WL 6916734 (W.D. Pa. July 14, 2016) (final approval of class settlement of $10MM common fund in TCPA action); *Brown v. Rita's Water Ice Franchise Co. LLC*, No. 15-3509, 2017 WL 1021025 (E.D. Pa. Mar. 16, 2017) (final approval of class settlement of $3MM common fund in TCPA action); *Vinas v. Credit Bureau of Napa County Inc.*, No. 14-cv-3270 (D. Md. February 22, 2017) (ECF No. 112) (order granting final approval of Fair Debt Collection Practices Act ("FDCPA") class action settlement); *Oberther v. Midland Credit Management*, No. 14-cv-30014 (D. Mass. July 13, 2016) (ECF No. 90) (FDCPA class action); *Seekamp v. It's Huge, Inc.*, No. 09-00018, 2012 WL 860364 (N.D.N.Y. Mar. 13, 2012) (certifying automobile fraud class action); *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015 (9th Cir. 2012) (FDCPA class action); *Butto v. Collecto, Inc*., 290 F.R.D. 372 (E.D.N.Y. 2013) (certifying FDCPA class action); *In re Chemtura,* Bankr., S.D.N.Y. 09-11233 (representing a class of almost 1,000 former Chemtura employees).

Mr. Lemberg is an experienced appellate advocate, having argued in the First, Second, Third, Fourth, Fifth, Seventh and Ninth Circuit Courts of Appeal as well as in the Massachusetts Supreme Court. His most recent appellate victories include: Evon v. Law Offices of Sidney Mickell, 688 F.3d 1015 (9th Cir. 2012); Waite v. Clark Cty. Collection Serv., LLC, 606 F. App'x 864 (9th Cir. 2015); Scott v. Westlake Servs. LLC, 740 F.3d 1124 (7th Cir. 2014); Pollard v. Law Office of Mandy L. Spaulding, 766 F.3d 98 (1st Cir. 2014); Armata v. Target Corp., 480 Mass. 14, 99 N.E.3d 788 (2018); Manuel v. NRA Grp. LLC, 722 F. App'x 141 (3d Cir. 2018).

Mr. Lemberg co-authored the definitive compilation of form complaints in Connecticut, Connecticut Civil Complaints for Business Litigation, contributing form complaints for the Lemon Law and Auto Fraud sections. He is a former Chair of the Consumer Law Section of the Connecticut Bar Association, holding that position from 2014 to 2015.

Outside of law, Mr. Lemberg is a proud father of two boys. He loves the Red Sox, coaching soccer, gardening and pickling vegetables.

Matthew S. Necci

Matthew S. Necci has three principles when it comes to clients – be honest, be deliberate, and be of service. With this foundation, Matt partners with clients to identify goals, consider possible resolutions, and ultimately find the path that best positions them moving forward.

Matt's clients range from closely held businesses and municipalities to Fortune 500 companies. He is an experienced litigator, and serves as the Chair of Halloran Sage's Workers' Compensation Practice Group. Matt also has considerable appellate experience representing clients before the Compensation Review Board of the Connecticut Workers' Compensation Commission, the Appellate Court of Connecticut, and the Supreme Court of Connecticut. He also functions as an outside general counsel for business clients, collaborating to resolve legal issues and to implement strategies that let them engage the world on their terms.

Outside of the office, Matt believes service to others is paramount to the success of an engaged and vibrant community. He is a member of the Board of Directors for Special Olympics Connecticut, the Hartford Hospital Corporators, and a former board member for Leadership Greater Hartford and March of Dimes Connecticut. He is also a passionate advocate for the State of Connecticut's capital region, and serves on the Board of Corporators for the iQuilt Plan, a culture-based urban design plan for Downtown Hartford that seeks to create a more walkable, sustainable, and welcoming downtown.

Matt has been identified by his peers as a leader in the community and the legal profession. He has been recognized as a "Rising Star" in the 2013 - 2018 editions of *Super Lawyers®* in the areas of Workers Compensation; State, Local and Municipal Law; and General Litigation. He was also chosen as a member of the 2014 class for the *Connecticut Law Tribune's* New Leaders in the Law. In 2016, Matthew was named one of *Hartford Business Journal's* "40 Under Forty," an award that recognizes outstanding young professionals in the Greater Hartford area who are excelling as emerging leaders.

Vincent Provenzano

Where the industry standard is to practice in one area of law, Vincent Provenzano has proven that having the ability to effectively practice in multiple areas of law allows an attorney to create a relationship with the client that often extends beyond that one transaction or file. Providing a range of services including criminal defense, divorce, child custody, personal injury, and real estate, to name a few, Vincent Provenzano prides himself on having the ability to help his clients navigate through any of life's challenges.

Mr. Provenzano graduated from Central Connecticut State University with a Bachelor of Science and obtained his Juris Doctorate from Quinnipiac University School of law. In law school, he served on the mock trial team as well as the tax clinic where he provided free legal representation to low-income clients in a variety of tax matters.

Mr. Provenzano worked his formative years at law Offices of Michael J. Auger, where he learned that being a lawyer was not simply about providing a service but creating lasting relationships with your client. Mr. Provenzano worked with Attorney Auger for three years before Attorney Auger tragically passed away. Armed with the tools given to him by his mentor, he opened the law Offices of Vincent Provenzano and worked out of his car for nearly a year before establishing an office in East Hartford, where he was corporate counsel OEM America while maintaining his general practice firm. In 2013 Mr. Provenzano partnered with Attorney Matthew Mancini and Attorney Carolyn Futtner and although they each have their own distinct areas of practice, they share one common goal; To provide affordable and effective legal presentation while fostering lasting relationships with their clients. Over the past five years MPF law has grown from a firm with a single office and no staff to now having two fully staffed offices.

ConnecticutLawTribune

New 'Paperless' Firm Using Technology for Work/Life Balance

A team of emigrants from an established downtown Hartford firm is blending technology and creative design to launch a decidedly "outside the box" startup.

By Michael Marciano | November 17, 2017

Left to right: Ronald Houde Jr., Demetra Turi and Christopher Kriesen make up three-fifths of the new Kalon Law Firm in Hartford, which opened June 1.

A team of emigrants from an established downtown Hartford firm is blending technology and creative design to launch a decidedly "outside the box" startup.

Christopher Kriesen, a career civil litigator and insurance defense specialist hailing from the Hartford Square North firm Gordon Muir & Foley, is the driving force behind The Kalon Law Firm, a two-lawyer operation that launched June 1 at the historic Colt Armory building, just a few blocks south from his old firm.

Kriesen and colleague Ronald Houde Jr. departed Gordon Muir in search of an alternative approach that focused on cutting overhead costs, flexible hours and making time for pro bono advocacy. Trading a corporate office environment for a space that looks more like an upscale apartment, Kalon has settled in at a building that famously housed an artists community, musical recording acts, cake makers and a ground-floor brew pub.

Taking its name from the classical Greek word for ideal beauty, Kalon is anything but average for the Insurance City.

"No one has style like us," Kriesen said in an interview at the sparsely adorned loft space, with Houde, office administrator Demetra A. Turi and law clerk Chelsea Sousa in attendance. Hardwood floors, Oriental rugs and modern furniture with espresso accents are surrounded by window panes that reach to the ceiling. Before seeing any of this, a visitor may be greeted by an affectionate rescue puppy named Cooper.

The firm's five employees, which include law clerk Shehrezad Haroon, stay connected via laptops and cellphones, and Kriesen says the firm is "100-percent paperless." Work is performed on laptops at a built-in countertop that looks out over Hartford's South Meadows.

Kriesen said that, in addition to all communications, every document used by Kalon employees is accessible through the Google-powered G Suite cloud system. The firm's technology infrastructure is organized by Turi, who manages both the office and a collection of interconnected apps.

The array of cutting-edge digital helpers includes Slack, an enhanced mobile texting app that arranges and sorts group text conversations in a more user-friendly format than built-in phone texting apps. Content is archived and easily searchable, allowing users to keep up on multiple conversations simultaneously.

For voice calls and messages, meanwhile, the firm is using Grasshopper, a virtual receptionist that electronically manages the directory and routes messages and connections. Virtual accounting software Cleo keeps track of the books. Basically, all of the software takes care of small but important jobs that used to keep Turi, a 27-year veteran legal assistant in a traditional setting, working nights and weekends to keep up with paperwork and making appointments for attorneys.

Perhaps most impressive is the G Suite add-on, BlueJeans for Google Hangouts, which transforms Google Mail's instant-messaging platform into live videoconferencing software. "We're more connected than Seal Team Six," Kriesen quipped.

Kriesen, who is the husband of Hartford Superior Court Judge Nina Elgo, said Kalon has abandoned the idea of the coveted corner office and replaced that concept with a flat hierarchy in which attorneys have no quotas for billable hours, but can earn greater percentages based on the amount of business they bring in.

Kalon law clerks, including third-year University of Connecticut law student Sousa, are focused on pro bono cases for asylum seekers, victims of human trafficking and other immigrants. Sousa said the work is rewarding and she wants to continue providing services after she completes her studies. Kalon's insurance defense practice serves as the moneymaker that allows the firm to take on pro bono cases.

The new firm's team members agreed they are happy to give up an impressive office building in return for greater freedom, including a 10-day trip to Spain for Houde, just five months into Kalon's existence. "At a traditional firm, associates are the first to come in and the last to leave," he said. "What if, in the future, you want to have children and a family?"

Kriesen said the philosophy boils down to three main areas: autonomy for employees, mastery of core competencies and serving a purpose. "I might not make as much money if everyone decides to focus on lifestyle, but I don't care," he said.

But while all agreed the personal freedoms permitted by the Kalon model are a healthy blessing, the Kalon vision also comes with a measure of ambition.

"This firm is totally scalable," Kriesen said. "We could add 10 attorneys tomorrow—or a hundred."

ConnecticutLawTribune

These Attorneys Left Big Law to Launch Pioneering Law Firm in Connecticut

Daniel Jo and Prerna Rao tell the Connecticut Law Tribune about their hopes and aspirations for their new firm Rao & Jo after their departure from Big Law.

By Robert Storace | July 19, 2018

Daniel Jo and Prerna Rao of Rao & Jo in Trumbull. Courtesy photo

Friends and successful attorneys at large law firms, Daniel Jo and Prerna Rao were chatting one day in April about their families, life and work when they came up with an idea to start their own law firm.

It was something both had previously bandied about and that Rao had even given a shot. After working five years for Stamford-based Pickel Law Firm (https://www.pickellaw.com/), Rao had opened her own practice in September

2017. Jo, meanwhile, had worked for several large New York and Connecticut law firms since 2003. Both born outside of the U.S.—Rao in India and Jo in South Korea—they became what is believed to be the first 100 percent Asian-American multipartner firm in the state when they joined forces to open Rao & Jo (https://raojo.com/) on June 1 in Trumbull.

Jo brings to the new practice an elite educational background involving Ivy League schools, having attended Dartmouth and Cornell. He said many attorneys harbor dreams of starting their own law firms. "They definitely think about it," he said. "It's that idea of being an entrepreneur. Having your own firm as a partner, there is an allure to that."

Rao and Jo spoke Wednesday to the Connecticut Law Tribune about their reasons for wanting to leave the world of Big Law and its high-profile cases to transition to working as advocacy attorneys.

For Jo, entrepreneurship has its advantages, including the privilege of working on cases the attorneys are passionate about handling. Jo said he enjoyed his time with powerhouse firms, such as corporate giant Fried, Frank, Harris, Shriver & Jacobson in New York and noted Connecticut-based trial law firm Silver Golub & Teitell (https://www.sgtlaw.com/). But he said being his own boss allows him to take on cases he wants to tackle.

"Very well-established firms, they have practice areas and they become experts in those practice areas," Jo said. "To the extent you have interests outside of those practice area, having your own firm gives you the ability to pursue those."

Rao & Jo's website notes several times that its principals are not just attorneys, but also "advocates." That means, Rao said, a total commitment to clients. "To us, advocacy is when someone walks in through the door, we need to try to

figure out what their priorities are and what they are looking for," he said. "We will find out what they want to accomplish and fight for the solution to fit their needs, whether it's full-court press litigation or finding creative approaches."

Both attorneys said they wanted to join the profession at an early age. Growing up in northern New Jersey, Jo always wanted to be a civil rights attorney. He read biographies of U.S. Supreme Court justices in high school, and also began to listen to oral arguments and follow big cases. His legal heroes were U.S. Supreme Court Justices Thurgood Marshall and William Brennan Jr.

"They were justices whose heart and mind were in sync with mine and everything I believed in, with civil rights being one of those things," Jo said.

For Rao, her parents were her inspiration. "My parents live in Fairfield County and are both small-business owners. I bore witness to everything they went through, as business owners, growing up. I saw their struggles in achieving the American dream," she said. "I always wanted to be a lawyer to help people like my parents. I know, firsthand, how valuable a good lawyer can be."

A bulk of Rao & Jo's clients own small- or medium-sized businesses.

The firm's primary focus is commercial litigation and business advisory matters. Its commercial litigation cases, Rao said, can range from construction litigation to breach of contract to commercial lease disputes. With regard to business advisory matters, she said, "We provide on-call attorney services to small and midsized businesses, whether it's contract review or negotiating terms of agreements that they need."

Jo and Rao represent clients of all backgrounds, but work closely with the state's Asian-American community. Jo speaks fluent Korean, while Rao is fluent in Hindi and speaks Mandarin and Spanish.

"We are uniquely positioned to represent and help out individuals and small and midsize business owners in the Asian-American community," Jo said. "One issue for some in the community is the language barrier. Some clients like the ability to speak to an attorney directly in their language."

Christopher Kriessen. founder and principal of Hartford-based The Kalon Law Firm (https://kalonlawfirm.com/), got to know Jo through his wife's involvement with the Connecticut Asian Pacific American Bar Association. Jo is past president and board member of the association, while Rao is president-elect. Kriessen is married to Connecticut Appellate Court Judge Nina Elgo.

"Both the Korean and Indian communities are business-minded and so, Daniel and Prerna, through their languages, can have an opportunity to meet the needs of people in the those communities, maybe a little easier than someone who does not speak those languages," Kriessen said Thursday.

Jo graduated from Cornell University Law School in 2003. He is married and lives with his wife and two children in Westport. Rao graduated cum laude from Quinnipiac University Law School in 2012. She lives with her husband and one child in Newtown, where she also serves on that's community's Zoning Board of Appeals.

Professionalism Boot Camp: An Idea Whose Time Has Come

Most law degree curricula now include robust clinical programs, internships, trial practice courses and similar programs designed to expose the law student to the realities of the legal profession he or she will soon enter.

By **Connecticut Editorial Board** September 06, 2018 at 04:53 PM

Law schools are often criticized for spending too much time and effort teaching their students the law and not nearly enough teaching them the practice of law, with the result that new admittees to the bar are woefully ill-prepared to undertake their new duties as officers of the court and practicing attorneys.

That censure appears far less justified today than it was in the past, for most law degree curricula now include robust clinical programs, internships, trial practice courses and similar programs designed to expose the law student to the realities of the legal profession he or she will soon enter. But the primary focus of the law school must remain, of course, on legal doctrine, and there is a limit to how much of the available time can be carved out and devoted to the practical programs. Accordingly, the law school graduate necessarily comes to her new profession with much to learn.

The law firm, legal aid office or state agency employing the new admittee will typically have in place a training program of varying formality to help the rookie lawyer with the steep learning curve she will be confronting. Bar groups will also focus on this problem with the CLE programs they offer. Indeed, the Young Lawyer

Section of the Connecticut Bar Association has for many years presented its highly regarded and very successful "Nuts and Bolts" program, designed to teach new lawyers the fundamentals of various areas of private practice. Now there will be a program applying that same concept to the professionalism issues the first-year lawyer will be facing, with the hope of filling a void in law school and post-admission training.

This November, the CBA's Standing Committee on Professionalism and CLE will present its first "Professionalism Boot Camp" for new and relatively new lawyers, which is designed to help them "master the skills needed to practice more professionally and ethically." The half-day format will start with a plenary session presented by the Statewide Bar Counsel or a former chief disciplinary counsel, with the objective of teaching the attendees how to avoid a grievance, a topic of paramount importance to them, of course. That will be followed by breakout sessions on the use of technology in the practice; insurance requirements; the structure, organization and operation of large law firms; client intake and billing; networking and rainmaking; and the unseen perils of social media.

All the topics will be presented from the perspective of the ethical and professional framework in which the lawyer must operate, with the objective of inculcating in the nascent attorney a regard for maintaining the highest level of professionalism and civility from the very start of her career. In the process, the new recruits will learn the unwritten rules of the practice, which cannot be found in the Practice Book or anywhere else, but which are so necessary to a successful and rewarding career.

The mission of the CBA Standing Committee on Professionalism and CLE is to enhance the level of professionalism among lawyers and judges and to promote their commitment to the CBA's Lawyer's Principles of Professionalism. The professionalism boot camp it has conceived will constitute a giant step toward

meeting that objective, with obvious benefit to both those lawyers and our profession. Kudos to the Committee.

Your Honor, You Are Stupid, You Suck, and Please Decide for Me

Many of you are lawyers; many of you hire lawyers. Lawyers are nice people—stay with me. One thing I love most about lawyers is that they work hard to be good at what they do (it's not an easy way to make a living). But put them in a suit, hand them a briefcase, and say, "Go represent this guy," and they change personalities. It's like somebody performed a lobotomy and out with the frontal lobe went common sense. They start writing stuff like, "The Appellee brazenly claims . . . ." "Incredibly, the Appellee contends . . . ." "It is lame, circular reasoning for the Appellee to argue . . . ." "With amazing chutzpah and inexcusable gall, the Appellee suggests . . . ." Ironically, the lawyer who wrote those sentences was "the nicest litigator I've ever had a case against," according to opposing counsel. "Only when we got in front of the judge or wrote something for the judge to read, did he act like this." Put them in a suit, hand them a briefcase, and say, "Go represent this guy," and lawyers . . . .

As I have noted before, underneath the lawyerlike bluff and bluster dwells a pretty nice person, a volunteer, a coach, a good neighbor who gives back to the community, back to the profession. But tell me why anyone not suffering from temporary insanity would write in a brief:

> **This is a story of a legal system run amuck, a Kafkaesque demonstration of tyranny given free rein.**

What does that have to do with the subject matter of the case: bolts of cloth in a warehouse? And why would any sane person write the following about the owner of that warehouse?

> **Importer's conduct in negotiating the 'purchase' of these alleged liens was based on the syllogism employed by many Middle Eastern terrorists with a penchant for seizing airliners and their passengers to secure the righting of what they perceive to be wrongs.**

The next example has kept me awake at night, trying to picture it. But nothing comes to mind.

> **The Defendant's actions can only be described as economic sodomy.**

Would anyone smart enough to pass a state bar exam ever write this stuff because they thought it was effective? Of course not. They write it because they are grandstanding for a client, who is paying the bill. Many clients love to see their lawyers use a brief to punch the other guy in the face, the harder the better. But if we determined fees according to results, lawyers would never write this way, because writing this way loses cases.

One of our better-known lawyers, Abraham Lincoln, told a crowd in 1842:

> When the conduct of men is designed to be influenced, *persuasion,* **kind, unassuming persuasion**, should ever be adopted. It is an old and a true maxim, that a "drop of honey catches more flies than a gallon of gall."

Remember, this was a guy who was not afraid to stand up for what was right. He just thought it more effective not to scream while he was standing.

Judges warn us frequently, but we can't seem to help ourselves. The Sixth Circuit Court of Appeals in Ohio recently emphasized:

> . . . the near-certainty that overstatement will only push the reader away (especially when, as here, the hyperbole begins on page one of the brief).

Do lawyers somehow forget that their words will be read by judges who are about to decide whether their client will prevail? In an unpublished opinion out of Illinois, the court reminded all lawyers:

> Repeated use of exclamation points at the end of sentences is wholly unnecessary . . . . More troubling is that plaintiff's arguments are also riddled with vituperative language leveled against the trial judge, . . . such as that "**the court systematically eviscerated plaintiff's case**" or that "**the judge created absurdity and injustice.**" . . . [P]laintiff was similarly highly disrespectful in his briefs to the trial court, as well. Such pre-planned advocacy by an attorney never arouses sympathy for his client.

That is as close as judges will ever come to admitting that such language might sway them from the true path of impartiality. (A little secret: judges are human; they respond viscerally, the same as the rest of us. Don't ever forget that.) As another court encouraged:

> An advocate can present the cause, protect the record for subsequent review and

> preserve professional integrity by **patient firmness** no less effectively than by belligerence or theatrics.

Why do lawyers, or *anyone*—representatives in congress—need to be told this? A final hint from the courts on how to do it right:

> Even where the record supports an extreme modifier, the better practice is usually to **lay out the facts** and let the court reach its own conclusions.

When I was teaching a writing program for the judges of the Ninth Circuit, they told me two sure-fire ways to tell that a lawyer has no case:

1. she asks for more pages to continue rambling;
2. he gets shrill, haughty, cute, and feigns disgust.

If you are a lawyer, don't write this stuff. If you are not a lawyer, don't write this stuff. If you hire lawyers, don't let them write it. If you hire lawyers, remember that in court, before a decision-making judge, your lawyer becomes *you*. You don't want that judge not to like you because she doesn't like how your lawyer waxes hyperbolic and disrespectful in a brief. For which you paid money. A lot of money.

And if you really want your lawyers to be effective on your behalf, insist they get WordRake to make their briefs to irascible, overworked judges more clear and concise. WordRake was the first editing software created for the legal profession six years ago. It gives your lawyers an advantage, and they can try it for free for seven days by clicking here.

About the Author

New York Times bestselling author Gary Kinder has taught over 1,000 writing programs to law firms, corporations, universities, and government agencies. In 2012, Gary and his team of engineers created WordRake, the only software in the world that edits for clarity and brevity, giving professionals more confidence when writing to clients and colleagues. Backed by nine U.S. patents, WordRake was recently hailed as "Disruptive Innovation" by Harvard Law School. And LexisNexis® Pacific has chosen the WordRake editing software to include in its new Lexis® Draft Pro.

Avoid Bad Habits and Prevent Risk As Billable Year Comes to a Close

By Shari Klevens and Alanna Clair

As the billable year comes to an end, many law firms and attorneys are focused on collecting fees and making plans for the next year. However, there is no reason why bad habits in law practice management have to stay in place until the next calendar year. Indeed, even small improvements made during the last quarter of the year can help attorneys make significant strides toward reducing the likelihood or risk of a claim in 2019.

Some of the most glaring risk prevention tools are relatively simple to employ, and, in their absence, can create headaches for lawyers. Below are five areas in which attorneys can try to improve at any time of year.

Use a Docketing System Missing a deadline or failing to attend to client interests or demands are easy targets for malpractice plaintiffs, even where no injury or damage results. The rules of professional conduct attempt to ensure that attorneys safeguard the interests of their clients and not neglect matters entrusted to them. Yet even the most careful or experienced attorneys may inadvertently fail to comply with a deadline, particularly if a systematic approach is not applied. By adopting a concrete system for docketing, attorneys are much more likely to prevent time-related errors. It also means that attorneys do not only have to keep deadlines in their memories.

The market is full of companies and programs that can help attorneys and firms track litigation and client deadlines. Effective docket control systems should help, not hinder, the practice of law. If a docket control system is not helping an attorney track and manage deadlines, there may be a better system out there. A docketing system can be user-friendly, accurate, and reliable.

Shari Klevens, left, and Alanna Clair

However, it is critical that attorneys actually use a docketing system, once in place. If documents or deadlines are not being fed to the docketing system, there can still be a significant risk of missing a deadline.

Getting Control of Emails Another attorney bad habit is the use of an email inbox as a task list. If an email inbox is unlimited in size (or nearly unlimited), a busy attorney can inadvertently miss a deadline or an important communication because of delays in processing or reading emails. Leaving emails unattended to in an inbox, with the goal of "getting to them later," can create unnecessary risk.

Handling and foldering messages appropriately can be of great assistance in this regard. Some firms will limit the number of emails that can be kept in an inbox, thereby encouraging lawyers to process emails in a more timely fashion.

Use Engagement Letters Engagement letters are important because they set out the parameters of the attorney-client relationship. Being clear in engagement letters can be of great assistance down the road if there is a dispute over what exactly the

lawyer was hired to do. Thus, it can be helpful, if appropriate, to update existing engagement letters or prepare new ones for additional matters. Attorneys who "never" send out engagement letters can try to break that bad habit.

The consistent use of engagement letters can help reduce malpractice claims or limit their scope. For example, the engagement letter can clearly identify the client, the scope of representation, the duration of the representation, and the fees to be charged for the firm's services. Having these terms in writing may prove helpful down the line.

> **The market is full of companies and programs that can help attorneys and firms track litigation and client deadlines. Effective docket control systems should help, not hinder, the practice of law.**

When individual attorneys use a general engagement letter, such an approach can suggest that the attorney undertakes to advise the client on any possible legal issue that arises, far beyond the actual intended scope of the representation. This can create additional unnecessary risk.

Ensure that Insurance Coverage is Up-To-Date Legal malpractice insurance is a necessity of the modern law practice. Although few states actually require an attorney to carry legal malpractice experience (or to disclose to the bar or their clients if they do not carry insurance), legal malpractice insurance is a benefit to all attorneys, even those who do not anticipate receiving claims.

Attorneys can be candid about what they need for insurance coverage in their practice. Being honest in a self-assessment about what practice areas the attorney engages in or what additional terms would be of benefit to the attorney is a plus. Carriers offer many different packages and coverages that can be of interest to attorneys. Some carriers even offer benefits for a firm's good risk management practices.

It is helpful to review an existing professional liability policy before a claim is made to identify any potential gaps and to fully consider whether the policy provides everything the attorney needs. Renewals should be fully reviewed and analyzed to make sure that there are no unnecessary holes in the coverage.

Protect Mobile Devices The use of modern technology creates challenges for lawyers, who have a professional duty to maintain client confidences and secrets. Every attorney is essentially carrying a full computer (and access to their firm's files) through the smart phone in their pocket.

To ensure that secrets are kept safe while using mobile devices, most law firms require the use of a passcode on the physical phone. In that way, if a phone is left on an airplane or in the back of a taxi, the finder is not automatically permitted into the firm's files and network.

Some firms use programs that allow them to "remote wipe" data from their devices in the event the devices are lost or stolen. Others use programs that ensure that smartphone data is encrypted, or consider employing features such as GPS tracking and secure file sharing. What works best may vary by firm or by client. ■

Shari L. Klevens *is a partner at Dentons and serves on the firm's U.S. board of directors. She represents and advises lawyers and insurers on complex claims, is co-chairwoman of Dentons' global insurance sector team, and is co-author of "California Legal Malpractice Law" (2014).* ***Alanna C. Clair*** *is a partner at the firm and focuses on professional liability defense. Klevens and Clair are co-authors of "The Lawyer's Handbook: Ethics Compliance and Claim Avoidance."*

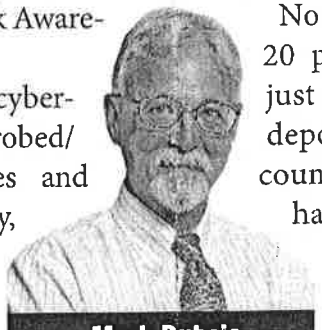
ETHICS MATTERS

Did You Know It's Cyberattack Awareness Month?

By Mark Dubois

Apparently October is Cyberattack Awareness Month. Who knew?

All I know is that every day is cyberattack day, because every day we are probed/attacked/offered malware/sent viruses and worms/socially engineered and in many, many ways explored for vulnerabilities which can lead to data breach, ransom demands and compromised confidentiality.


Mark Dubois

There's a neat flyer that explains how to be aware of some of the standard attacks available here.

Managing partners should blow this up and paste it on the walls of every office, every cubicle and next to every computer. Here are a few hints from my own experience repping lawyers who have taken the bait and had bad things happen.

No one from Singapore, the Netherlands, Michigan or anywhere else wants you to pursue a debt, write a purchase and sale agreement, or otherwise represent anyone in "your jurisdiction." It just never happens. You're not that famous, important, well thought of or possessed of a high enough profile that people from all over the country or the world are trying to get you to rep them.

No one is going to give you a piece of business where the defendant/counterparty immediately confesses the debt or sends the deposit and mails you a check for the full sum by return mail.

> **No one from Singapore, the Netherlands, Michigan or anywhere else wants you to pursue a debt, write a purchase and sale agreement, or otherwise represent anyone in "your jurisdiction." It just never happens. You're not that famous,**

No client is ever going to let you take 20 percent of a recovery on a file you just opened simply for the huge work of depositing the check into your IOLTA account and wiring them the rest. It never happens.

None of your friends or colleagues are going to email you unexpected letters as attachments and ask you to get back to them. If they do (one actually did that to me the other day), you should open it only after calling and confirming that they were the sender. P.S., don't email them back to confirm that it's them; you will get a spoofing email saying "of course it's me." It's not.

None of your friends just saw something cool in the paper and thought you'd be interested in the link.

If you use an outside vendor for paralegal work, you'd better make sure they are as paranoid about security as you are. I've seen more than one closing deposit or mortgage funding diverted because the outside para was hacked and spurious wiring instructions were sent to the sender seconds before they hit send.

Don't think you can lay missing funds off on the bank that accepted your deposit of a bogus check. If you deposit it, it's your responsibility. Ask your pals who do banking work. The banks never pay.

Make sure you have robust and comprehensive cyber risk insurance. That is unless you want to assume the risk of loss yourself. It may be costly, but we lawyers are targeted because we handle large sums of money and are famously porous when it comes to security.

If you are hacked, consider your obligations under both the Rules of Professional Conduct and any other regulatory regime that may apply. The ABA just issued an ethics opinion on that.

Read the opinion. It's enough to make you get cyber risk coverage.

I just saw where Missouri issued an ethics opinion saying that a scammer who establishes an attorney-client relationship with you is entitled to Rule 1.6 confidentiality anyway. I think that's naïve. (Actually, I think it's what comes out of the rear end of a horse, but I'm not allowed to say that here.)

I like the approach Colorado has taken that the rules don't apply to "clients" who only try to establish a relationship to steal from you. They're not clients. They're crooks. Can you imagine on of these "Nigerian Princes" actually filing a grievance because you sent the counterfeit check to the Secret Service instead of depositing it and wiping out your IOLTA account and probably your liquid net worth? Really?

The old adage about us being a profession and not a business causes some of us to forget that the business aspect of lawyering can be as important, if not more, than the professional stuff. It's a war, and we're the weak country being invaded through every wire, wireless connection, computer, phone or other device we're using. Happy October! ■

Former Connecticut Chief Disciplinary Counsel Mark Dubois is with Geraghty & Bonnano in New London.

DOCKET NO.: X07-HHD-CV-15-6075511-S	:	SUPERIOR COURT
	:	
	:	JUDICIAL DISTRICT OF
MEAGAN CORONA	:	HARTFORD
	:	
v.	:	COMPLEX LITIGATION
	:	
DAY KIMBALL HEALTHCARE, INC.	:	SEPTEMBER 20, 2018

Memorandum of Decision

For the courts to guarantee the triumph of the law over the loud, there must be civility in court proceedings. Vital to this victory is the lawyer—the official our Rules of Professional Conduct hail as both "an officer of the legal system" and "a public citizen having special responsibility for the quality of justice."

The court must take up the matter before it today because judges have a critical role in seeing that lawyers uphold these special responsibilities. Indeed, for matters relating to courtroom conduct, judges have primary jurisdiction over lawyers who do not meet their obligations as officers of the court.[1] So it is this court's unpleasant duty to take up the question of the conduct of one of these public officers as she faces the potential for a seventh sanction from this court: Attorney Madonna Sacco.

As it is sometimes with others, it may be the case with Attorney Sacco that a single comment can sum up a career. The comment at issue here— made by Attorney

[1] Practice Book § 2-45.

Decision mailed on 9/20/18 to:
Madonna Sacco, Esq.
Eugene A. Cooney, Esq.
Statewide Grievance Committee

Office of Chief Disciplinary Counsel
Reporter of Judicial Decisions
Counsel of record notified by SCRAM notice
AHICO.

 341.00

Sacco after some thirty years of practice— is as revealing as it is unacceptable. In the midst of a dispute during a deposition given before the court, a forgotten lapel microphone picked up Attorney Sacco explaining her courtroom strategy to an associate: "Fuck him," she said—referring either to opposing counsel or the court itself— "I am going to give him such a fucking hard time."

Attorney Sacco hasn't denied she said these words and the flash drive provided to the court confirmed she did say them. Instead, through her lawyer, she claimed this is just ordinary lawyer talk, reflecting what many professionals think or say when no third party is listening. Opposing counsel in this litigation, Attorney Angelo Ziotas, did not agree. He moved for sanctions for the conduct this declaration announced and he and his co-counsel disputed on the record the claim that this reflected the mores or the mouths of members of the Connecticut bar. To protect not merely the parties but the system itself, this court separately and on its own authority ordered Attorney Sacco to show cause why she shouldn't be sanctioned for her deposition conduct.

This doesn't mean this opinion is about punishing members of the bar for their private use of this mindlessly overused profanity. But when wicked words betoken wicked deeds they are a matter for action. Here, those words reflect what Attorney Sacco was doing and would continue to do: willfully disrupt a proceeding in court.

Indeed, they reflect what Attorney Sacco appears to have done and has been sanctioned for six times for over a nearly 20-year period.

The record of the court's proceedings confirms that Attorney Sacco meant what Attorney Sacco said. This court's involvement began with the ring of a telephone at a time when Attorney Sacco and her history were entirely unknown to this court. To its surprise, a particularly contentious dispute had erupted during a deposition over not very much and the parties called the court. The parties were so split and insistent during the conference call that instead of resolving the dispute on the telephone the court ordered the parties to come to court and argue the matter.

They did so on October 31, 2017. And it didn't go well. After having shown up late for the hearing, Attorney Sacco repeatedly interrupted the court and disputed petty things like whose copy of the deposition transcript the court should read. Attorney Sacco rigidly insisted that it was perfectly proper for an expert witness at a deposition to refuse to consider hypothetical questions. She bluntly insisted that the court had no authority to decide whether a witness had fairly answered a question. Then she set to squabbling in front of the court over the facial expressions of her opposing counsel. Not long after she lectured the court on what she perceived as wrong about its use of the word "nonsense" to describe the expert physician's refusal to recognize the difference between a factual and a hypothetical question, belligerently

interrupting the court and earning her first warning from the court to correct her behavior. Finally silent, Sacco turned to physical antics, with her hands on her hips striking a defiant pose, head down shaking her head at length displaying disgusted disagreement while the court spoke. This earned her a second admonition to stop and "stand there like a professional." Instead of complying and apologizing, she snapped "I am a professional from beginning to end."

Undercutting this assertion, Attorney Sacco then misrepresented the deposition record to the court, stating that the witness had not refused a hypothetical but merely had resisted assumptions because an opinion could not be derived from "that fact alone." As the court tried to get her to find this assertion in the transcript, Attorney Sacco turned on the court, accusing it of not being "interested in hearing my response." After a lengthy attempt to bicker with the court and divert it away from the topic, it was revealed that the transcript showed Attorney Sacco had made up the testimony she relied on.

And so the hearing went. Attorney Sacco bizarrely maintained that a hypothetical can't be asked unless it relies on the actual facts of the case. She continued to interrupt the court and when the court said it disagreed and tried to explain she interrupted and peremptorily said "then rule your honor." The court gave a third warning that it disapproved of the attitude Attorney Sacco displayed.

Nonetheless, Attorney Sacco went on to declare "we're not here to rule as the court has done" and that "the court cannot determine whether or not an answer is adequate or not based upon the transcript and based upon the court's lack of knowledge of the case."

When the court said the rest of the deposition would be in court she said "I don't even understand that" and went on to lash out at the court for insulting her, including when the court admonished her that her behavior reflected a misunderstanding of her professional duties. In a fourth admonition, she was warned to stop interrupting the court and the deposition ended with a fifth admonition that the court might have to take other action if her behavior continued.

On November 29, 2017, in the wake of this unhappy introduction, plaintiffs' counsel resumed in court the expert deposition of Attorney Sacco's then client, the defendant Dr. Erika J. Kesselman. Rather than wipe the slate clean, Attorney Sacco renewed her complaints from the last time and refused to sit down; she lectured opposing counsel on the position of his microphone and demanded to sit in the witness box next to the witness while refusing to accept the court's ruling that she could not, bickering and sniping at the court instead.

Instructed to follow the rules and confine non-privilege objections to merely "objection to form," Attorney Sacco interrupted virtually every exchange with

objections that made clear that many—if not most—were baseless, especially since some of her objections were stated either before a question was asked or even when opposing counsel made a statement rather than asked a question. The court had to warn Attorney Sacco to at least hold her objections until a question was asked.

Attorney Sacco asserted a privilege objection to the yes or no question of whether the witness had ever heard of the phrase "standard of care" before. When the privilege objection was overruled, Sacco refused to accept the court's ruling, demanding the transcript be read back, interrupting the court, and rudely disputing its right to rule on the privilege objection in the manner set out in Practice Book § 5-5.

Carrying on her refusal to cooperate, Attorney Sacco refused to sit down when asked to do so and even when ultimately she was ordered to do so. Despite the court's repeated orders, Attorney Sacco remained standing and insisted that since counsel asking the question was standing she could stand too. She continued to berate and argue with the court over the issue even after being given her sixth admonition and being specifically threatened with a finding of contempt.

To the extent the deposition was allowed to have any substance, it revolved around Kesselman's stubborn refusal to answer simple hypothetical questions, to say when last she read a medical treatise, to recognize the phrase "standard of care" and the like. Having listened to this hedgehog refusal to engage in even the most ordinary

exchange of questions and answers, the court infers this didn't reflect the attitude of the witness alone but her coaching by her counsel. Kesselman gave every appearance of being extremely uncomfortable and greatly distressed while giving her non answers and engaged in a revealing exchange that the court repeatedly had warned Attorney Sacco against. An objection to form with the added hint of "what records?" from Attorney Sacco yielded a parrot like response that "it would depend on the records" from the witness. Attorney Sacco was warned for at least the seventh time in consequence.

As the deposition limped along, the court responded to Attorney Sacco's opposing counsel's claim of obstruction by noting that the court did not expect counsel merely to keep asking the unanswered questions indefinitely. The court explained that the rules allowed him to seek other remedies, including the sanction of negative inferences. Attorney Sacco then snapped that she was intimately familiar with the rules and asserted that the court had no such power. The deposition proved a waste of the court and the parties' time. It ended with opposing counsel's decision to resolve the matter with a motion for sanctions. The motion filed led the court, after more buffeting, to where it is today.

The plaintiffs' motion for sanctions was filed. It included the tape catching the Attorney Sacco statements from the lapel microphone. With at least the virtue of

consistency, Attorney Sacco then struck back with unreasonable belligerence, without any basis in the rules, moving to strike the entire motion from the docket and demanding that the court refer Attorney Ziotas to the grievance committee while simultaneously demanding the court's recusal—a motion this court referred to the district's administrative judge.

After a full hearing and briefing, Judge David Sheridan denied Attorney Sacco's motion directed against the court. After this, Attorney Sacco was discharged by her client, substitute counsel withdrew the motion against Attorney Ziotas, and this court ordered Attorney Sacco, who ultimately appeared with her own lawyer, to show cause why she should not be sanctioned for her conduct before the court.

At the hearing on the motion, Attorney Sacco's lawyer claimed the court couldn't consider Attorney Sacco's remark because it did not appear on the official transcript and was attorney work product. But this is wrong on both counts. First, the remark is important because this is an attorney revealing an intention to disrupt a court proceeding. It wouldn't matter where she announced the plan. The plan is the wrong, not the place. Attorney Sacco is not being scrutinized for using improper language on the record.

Second, the work product doctrine doesn't bar the court from considering the remark. As the Supreme Court held in 2003 in *Harp v. King*, work product is only

protected when an adequate effort is made to keep it confidential.[2] An attorney must at least be expected to be aware when a live microphone is attached to her in court. The microphones can be muted and a reasonable attorney would take some safeguards to prevent inadvertent disclosure of work product by muting the microphone when conferring with an associate. Attorney Sacco claims thirty years of intimate knowledge of the courtroom and medical malpractice depositions. She can hardly claim ignorance.

And while it might be an expression of strategy to say, "I am going to give him [the court or counsel] such a fucking hard time," it is hardly the kind of strategy this court should protect. As the district of New Jersey said in 1994 in *Ward v. Maritz, Inc.* unethical conduct is not protected by the work product rule.[3]

Attorney Sacco's counsel also insists there is no reason to believe she did anything consistent with this statement and therefore she shouldn't be punished for it. Indeed counsel tried to suggest that every statement Attorney Sacco made must be viewed in isolation. But this assumes rather too much. This point might be well taken if counsel or the court's concern was in fact punishing Attorney Sacco for each isolated remark. Indeed, the court said so on the record at the hearing. But this ignores the essence of the problem: Attorney Sacco's conduct was part of a totality the effect of which was to

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[2] 266 Conn. 747, 768-69.
[3] 156 F.R.D. 592, 594.

frustrate by petty objections, interruptions, and inappropriate behavior, a lawyer who is trying to question a witness. And plaintiff's brief amply illustrates how it kept the lawyer away from reasonable answers to reasonable questions. Second, her profane pronouncement is consistent with how Attorney Sacco handled the proceedings before, during, and after the remark. Third, punishment is being considered here for the conduct, not the remark—which itself is only affirmation that her disruptions were intentional. Fourth, the conduct is consistent, as we will see, with twenty years of sanctions by this court.

Courts, including this one, are justifiably reluctant to sanction lawyers and seek alternatives whenever possible. The courts' reluctance to sanction attorneys makes the six sanctions against Attorney Madonna Sacco that we know of stand out all the more.

Attorney Sacco was first sanctioned by this court 21 years ago in *Hagbourne v. Campell*. It was for the same deposition conduct at issue here: "prolix objections and improper interruptions." The court ordered Attorney Sacco to pay attorney's fees to the plaintiff attributable to the time wasted at the deposition because of the improper objections and frequent interruptions.[4]

Attorney Sacco was next sanctioned in 2000 in *Babcock v. Bridgeport Hospital, Inc.* Again, the sanction was for misconduct in a deposition, including suggesting

[4] Superior Court, judicial district of Waterbury, Docket No. CV 96 0132593 (December 12, 1997, *Vertefeuille, J.*) (21 Conn. L. Rptr. 121).

answers to a client with the court holding she "improperly obstructed the deposition, imposed expense and delay, and warrant[ed] the imposition of sanctions."[5]

Attorney Sacco was sanctioned again in 2003 for deposition misconduct in *Viscount v. Berger*. Once again, Attorney Sacco was found to have injected inappropriate objections into the process and to have used improper speaking objections that disrupted the proceedings. She was required to pay for the proceedings.[6]

Undeterred, Attorney Sacco continued the offending deposition conduct in 2007 in *Shannehan v. Aranow*. There, she was found to have improperly and repeatedly disrupted the deposition with speaking objections and impermissible witness instructions. The court found her behavior toward opposing counsel was "inappropriate, undignified, and degrading to the process." The court ordered her client to pay for the renewed deposition.[7]

Two years later in 2009, she was still doing the same thing. In that year, Attorney Sacco's behavior was catalogued and considered in a thoughtful opinion by Judge Robert Shapiro. Judge Shapiro found that Attorney Sacco's obstructive

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[5] Superior Court, complex litigation docket at Waterbury, Docket No.X01 CV 98 0150693 (November 15, 2000, *Hodgson, J.*).
[6] Superior Court, judicial district of Ansonia-Milford, Docket No. CV 01 0074852.(December 1, 2003, *Robinson,J.*).
[7] Superior Court, complex litigation docket at Waterbury, Docket No. X06 CV 03 0183642 (May 18, 2007, *Stevens, J.*).

deposition conduct was "intentional, and not inadvertent" and that the "absence of significant sanctions would prejudice the plaintiffs . . . ."[8] The court imposed financial sanctions and warned that they may not be enough in the future, discussing possible disqualification and noting that "[i]ncurring sanctions awards should not become a cost of doing business."[9]

Finally, in 2014, the court despaired of deterring Attorney Sacco's misconduct merely by financial sanctions. It took up the matter of harsher measures after Attorney Sacco was presented to the Superior Court for her deposition misconduct by the state's chief disciplinary counsel. The court required Attorney Sacco to submit to a one-year period of monitoring by another attorney. Attorney Sacco was required to provide the attorney with a copy of all deposition transcripts or videotaped depositions in which she had participated commencing with the court's order. The monitoring attorney was to review the transcripts and/or video recordings of depositions, decide whether they contained abuses and inform the court of any misconduct.[10] At the time of the deposition dispute in this case, Attorney Sacco had been free of a monitor for around two years.

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[8]Superior Court, complex litigation docket at Hartford, Docket No. X04 CV 5015994 (July 10, 2008, *Shapiro, J.*).

[9] *Id.*

[10] *Chief Disciplinary Counsel v. Sacco*, Superior Court, judicial district of Fairfield, Docket No. CV 14 6045132 (September 22, 2014, *Bellis, J.*).

After 20 years of failed efforts, the court must consider for the sake of the profession it supervises what to do given Attorney Sacco's latest misconduct. After six prior sanctions and at least eight warnings in this case it is not as if alternatives haven't been tried and incremental sanctions imposed. The court finds by clear and convincing evidence that Attorney Madonna Sacco has engaged in serious misconduct. And there is ample authority to deter further misconduct by more substantial methods.

For discovery abuse, Practice Book § 13-14 empowers the court to "make such order as the ends of justice require," including costs and fees and other relief. General Statutes § 51-84 says that courts may fine attorneys, suspend them or discipline them for good cause. Practice Book § 1-25 similarly gives courts broad powers to impose sanctions for "[w]illful or repeated failure to comply with rules or orders of the court . . . ." Practice Book § 2-44 grants the courts authority to suspend or disbar attorneys "for just cause." Finally, as the Supreme Court recognized in 2001 in *Millbrook Owners Assn., Inc. v. Hamilton Standard,* courts have "the inherent power to provide for the imposition of reasonable sanctions, to compel the observance of its rules."[11]

So the court's job is to craft a sanction reasonable to fit the circumstances. Plainly, neither the five monetary sanctions, nor court monitoring, nor Judge

[11] 257 Conn. 1, 9-10.

Shapiro's threat of disqualification has had any appreciable deterrent effect on this attorney's misconduct. It would appear only an interruption of the misconduct that has permeated Attorney Sacco's practice and the prospect that continued misconduct might end that practice may be sufficient to deter future misdeeds.

As the court in *Millbrook* held, it isn't fair to punish attorneys who don't know what they have done wrong and haven't been given fair warning by court order to stop.[12] Here, Attorney Sacco has known of her own misconduct for over 20 years. She has fought with opposing counsel, interrupted their questions, peppered depositions with objections designed primarily to disrupt them, raised frivolous claims about testimony and now she has done the same thing in front of the court. She was warned about this same pattern of misconduct some eight times in these proceedings. She has been found in the past and has declared openly and obscenely in this case that her violations are intentional attempts to disrupt the orderly course of justice in depositions. There can hardly be a clearer case of a party who knows what not to do but has done it anyway even after being repeatedly and distinctly ordered not to do it.

On August 20, 2018, this court granted Attorney Sacco an almost five-hour hearing on the motion for sanctions and the court's own show-cause order entered on July 25, 2018. The parties extensively briefed the matter. They had copies of the

[12] 257 Conn. at 17-18.

transcripts at issue. Attorney Sacco was represented at this lengthy hearing by able and experienced counsel. Her lawyer was repeatedly invited to put on whatever evidence his client desired but Attorney Sacco declined to testify. Attorney Sacco has had due warning and due process.

While this means sanctions may be imposed, they must be proportional. As the Supreme Court held in 2018 in *Ridgaway* v. *Mount Vernon Fire Insurance Co.*, judges must consider five factors in gauging the appropriate sanction:

- The nature of the conduct.
- The frequency of the conduct.
- Whether the attorney knew she faced potential sanctions.
- The availability of lesser sanctions.
- The party's participation or knowledge.[13]

Here, all five factors favor a significant sanction. The conduct here was insulting to the parties and the court. It detracted from the dignity of judicial proceedings and was the kind of behavior that tends to undermine respect for the litigation process, especially for the party who was its victim here but even for the

[13] 328 Conn. 60, 73.

defendant doctor who was likely suborned into participating in it. Above all, it threatened to pervert the course of justice by preventing a party from receiving reasonable responses to reasonable deposition questions.

The frequency of the conduct at issue weighs heavily here. A long-practicing attorney sanctioned six times over twenty years and warned at least eight times in these proceedings has persisted in the same conduct— and even announced in a profane boast that the conduct was intentional and would continue.

This attorney certainly knew what was coming. At any point in the proceedings when told to cease her misconduct she could have simply stopped. Indeed, she did not stop when repeatedly ordered to and did not stop when specifically threatened by the court with contempt and sanctions. In fact, it was the proceedings themselves that had to be stopped because Attorney Sacco's knowledge of potential sanctions did nothing to deter her and allow the deposition to proceed.

Repeated monetary sanctions have been tried. Court ordered monitoring of Attorney Sacco's practice has been imposed. And having been discharged from representing the defendant in this case, the court cannot sanction Attorney Sacco by merely disqualifying her from this case. This leaves the court only some more substantial sanction to choose.

And a more substantial sanction is especially justified by the fact that Attorney Sacco so clearly knew what was wrong. Having been told by the courts repeatedly to stop the wrongdoing, instead of heeding them her ultimate response was indecent defiance: "Fuck him. I am going to give him such a fucking hard time."

With lesser sanctions failing and disqualification unavailable, the only sanction proportional under *Ridgaway* is suspension from practice. As the Appellate Court recognized in 2016 in *Disciplinary Counsel v. Williams*, suspension is one of those sanctions the court has the inherent power to impose.[14]

To be proportionate and —the court can hope—effective, the suspension must be long enough to bite but not so long as to bury the attorney's practice. In multi-year litigation like this one a few weeks absence is unlikely to be noticed by either lawyer or clients. Instead, the suspension must be long enough to present the future prospect of exclusion from the legal profession while allowing Attorney Sacco a chance, at long last, reform. Given that her behavior has persisted for twenty years, the practice will not likely go away with a short suspension.

Therefore, the court will impose upon Attorney Sacco a 120-day suspension from the practice of law together with the costs she has forced on the parties to these

[14] 166 Conn. App. 557, 570.

proceedings. The court will consider reducing the suspension to 90-days upon application and satisfactory evidence that Attorney Sacco has received at least 20 hours of suitable counseling through sources recommended by the Connecticut Bar Association or a qualified physician. The purpose of this part of the ruling is to recognize that a change in litigation philosophy is likely the only way to prevent future problems. If it fails to take hold—a very real possibility given the length and depth of the problem—the courts will face this moment again and Attorney Sacco may face far harsher consequences. She is being offered an opportunity to prevent this.

The suspension will begin within twenty-one days from the date of this order or the date which it takes final effect following any appeal, whichever is later. During the twenty-one day grace period Attorney Sacco will inform her firm and clients in writing that the court has suspended her from the practice of law for misconduct and make such arrangements as may be necessary to minimize any prejudice to her clients. Once the suspension is in effect, she may not participate in performing any legal work for any client and must limit her non-legal activities regarding clients to matters that might strictly be necessary to safeguard their interests. Other than such activities—to guard against evasion of her suspension from practice— she may have no contact with clients or potential clients. Attorney Sacco must also make the parties financially whole. The parties are granted thirty days to file any claim for fees or expenses they

claim were incurred as a consequence of Attorney Sacco's misconduct. The court will then schedule a hearing on whether the claims are reasonable.

The plaintiffs also seek sanctions against the defendant doctor whose deposition answers were plainly evasive and —the court hopes—the product of bad legal advice. The court invites her with the advice of new counsel to ask opposing counsel to reconvene at her sole expense the twice aborted deposition that is the center of this dispute. If Kesselman fairly answers questions at the reconvened deposition, no further sanction will be considered beyond paying the legal fees and other expenses associated with the renewed deposition. If she complies, the court will not allow her prior evasions to be used for impeachment at trial. If she chooses not to submit to further deposition within thirty days of this order, the court will upon motion from plaintiffs' counsel craft an appropriate alternative sanction, including a likely holding that some part of the plaintiffs' case will be deemed established.

The court is aware of the frustration that plaintiff's counsel will doubtless feel about giving the witness another chance. Kesselman must have known the game she was playing and clients can't typically hide behind their lawyers when they themselves violate the rules. But there is a significant possibility here that the defendant's failings have been in large part because of our failings—those of the legal profession, a public institution whose credibility is at stake here. Besides, *Ridgaway* suggests it is

appropriate for a court in setting a sanction to decide if a matter is mostly the lawyer or mostly the client's fault—and here the court infers that the matter is mostly the lawyer's fault.[15] Punishing this defendant witness without another chance is also likely unfair here given that she now swears that Attorney Sacco never told her she had been disclosed as an expert and her expert disclosure has been withdrawn. This likely colored her response to some of the questions posed and may even eliminate the need for some of them to be asked again.

Attorney Madonna Sacco is suspended from the practice of law for 120 days under the terms listed above. The plaintiffs' motion for sanctions against the defendant Kesselman is denied without prejudice to its renewal on the terms described in this memorandum.

BY THE COURT

Moukawsher, J.

[15] 320 Conn. at 75.

The Top Ten Ethical Pitfalls and how to Avoid Them

Attorney Patricia King
Geraghty & Bonnano, LLC

Attorney Michael P. Bowler
Statewide Bar Counsel

1. Financial Matters

- Trust Accounts, IOLTA
- Safeguarding
- Commingling
- Reconciling
- Record Keeping
- Overdrafts
- Audits

2. Fees and Fee Agreements

- Rule 1.5.
- When Do You Need a Fee Agreement and When Do You Need a Signed Fee Agreement?
- Scope, Fees, Costs
- Reasonable and Unreasonable Fees
- Sharing Fees

3. Communications

- Clients
- Counsel
- Parties
- The Court
- Others
- Misrepresentations

4. Electronic Communications and Social Media

- STOP(!!) and Think Before You Text and Tweet!
- Emojis and Emoticons
- Rule 8.2(a) and Free Speech

5. Diligence

- Timeliness
- Thoroughness
- Procrastination
- Malpractice

6. Competency

- Know What You Know and Know What You Don't Know
- Just Say No!
- Technology Knowledge is a Must!

7. Conflicts

- What Forms an Attorney Client Relationship?
- Conflicts Checks in Your Office
- Concurrent and Former Clients
- Duties of Confidentiality and Loyalty
- Waivers and Unwaivable Conflicts
- Declining Representation

8. Civility

- Read the Preamble to the ROPC
- Advocacy vs. Obnoxiousness
- Extends to Clients, Opposing Counsel, Opposing Clients, Third Parties, and the Court

9. Confidences

- Rule 1.6
- Interplay with Attorney/Client Privilege
- Appropriate Circumstances to Disclose Confidential Information

10. Personal Conduct

- You are an Officer of the Court 24/7/365.
- Criminal Conduct and its Professional Consequences

PROFESSIONALISM BOOT CAMP

THE SMALL, 21ST CENTURY LAW FIRM

By

Sergei Lemberg
Lemberg Law
slemberg@lemberglaw.com

Christopher P. Kriesen
The Kalon Law Firm, LLC
ckriesen@kalonlawfirm.com

PART ONE

By: Sergei Lemberg, Esq. (Lemberg Law LLC 203-653-2250 x5500)

Advertising in the 21st Century

Lawyers are among the most highly trained professionals in the country, yet law schools virtually never teach entrepreneurship. To be successful, attorneys should know how to launch their own firms or bring an entrepreneurial attitude to firms they join. What's one crucial skill needed to build and sustain a successful practice? Advertising!

How to Build a Website

Websites can seem daunting, but they all have three main pieces: domain name, web server, and website builder. The domain name will likely be your firm's name, and you buy your domain name via a domain name registrar. Your web server hosts your website. You don't actually own your own server; instead, you rent space from a hosting company, like Amazon Web Services or Media Temple. Law firms often use WordPress as a content management system and use a WordPress template to build their websites. If you prefer, you can also hire a web development team to custom build your website to your specifications.

If you're just getting started and want to DIY, a monthly service like SquareSpace can provide you with a domain name, hosting, and a template. You can also hand the responsibility off to a service like Martindale-Hubbell, which hosts and produces law firm websites.

You'll need content for your website. You should plan to have at least four pages on your site: home page, practice areas, about us, and contact.

Resources:

- DIY: https://www.squarespace.com/
- Outsource to Martindale-Hubbell: https://www.martindale.com/marketyourfirm/attorney-websites/
- Explore WordPress: https://wordpress.org/
- Hire freelancers to build your website via Upwork: https://www.upwork.com/
- 6 Steps to Building Your First Small Firm Website: https://practice.findlaw.com/law-marketing/6-steps-to-building-your-first-small-law-firm-website.html
- ABA article on launching a website: https://www.americanbar.org/groups/departments_offices/legal_technology_resources/resources/charts_fyis/websitefyi/
- Best practices for website design and development: https://www.forbes.com/sites/denispinsky/2018/02/12/website-design-standards/#283b8776f54f

Social Media for Lawyers

All law firms should be active on social media. Social media is a way to draw people in and connect with them – potentially leading to word-of-mouth referrals. Not only is social media free-ish advertising, but you can also assert your expertise and burnish your reputation.

In the context of law firms, social media is more than Facebook, Twitter, Instagram, LinkedIn, and YouTube. You should have accounts on all of those channels, but also consider reputation-building vehicles. Claim your firm's listing on Better Business Bureau, Super Lawyers, Yelp, and Avvo. Claim your business listing on Google and Bing.

Resources:

- Hootsuite allows you to promote the same post across multiple social media channels: https://hootsuite.com
- SproutSocial is a social media management tool similar to Hootsuite: https://sproutsocial.com/small-business/
- Hire a freelance social media manager via Upwork: https://www.upwork.com/
- Social media best practices: https://moz.com/beginners-guide-to-social-media/best-practices
- Social media guide for law firms: https://cubesocial.com/social-media-for-law-firms/
- The ABA's social media resource list for bar services has links that are also useful for law firms: https://www.americanbar.org/groups/bar_services/resources/resourcepages/socialmedia/
- Claim your law firm on Google: https://www.google.com/business/
- Add your firm to Bing: https://www.bingplaces.com/
- Develop your profile on Avvo: https://www.avvo.com/
- Claim your law firm on Yelp: https://biz.yelp.com/support/claiming

Search Engine Optimization for Lawyers

Search engine optimization can mean the difference between generating hundreds (or thousands) of leads a month and being invisible on the web. SEO gives you an advantage over the competition by making your website appear on the coveted first pages of Google or Bing.

SEO is both an art and a science. Invest in professional help. Google doesn't divulge all of the factors that go into search engine ranking, but SEO experts agree that these elements are important:

Easily indexed pages: Text, tagged images, and tagged videos that are visible to search engine bots.
Keywords: These are words and phrase that people type into search engines. You want to use these keywords and keyword phrases in your web copy. Use unique keywords on each web page.
Authoritative content: Search engines reward good content that's valuable to visitors. Visitors do, too, by sharing it on social media.

Backlinks: When you have good content, authoritative sites will link to it. This “link juice” can boost your search engine rankings.

Title tags and meta descriptions: These often show up in search results – particularly when they include keywords. They also can be written to appeal to people who will click on them and visit your site.

Resources:

- Beginners Guide to SEO: https://moz.com/beginners-guide-to-seo
- Hire a freelancer for SEO via Upwork: https://www.upwork.com/
- Forbes article on SEO for lawyers: https://www.forbes.com/sites/forbesagencycouncil/2017/04/19/seo-for-lawyers-grow-your-firm-with-search-engine-optimization/#7ebc18e4f9c8
- SEO tips for attorneys: https://www.disruptiveadvertising.com/business/seo-tips-for-attorneys/

Pay-per-Click Advertising for Lawyers

Pay-per-click advertising can drive highly targeted traffic to your website. Text or display ads for your practice appear on search engine results pages and/or on other websites. When a visitor clicks on your ad, they go to the destination you select – your website or a landing page. You get to choose your daily budget, the amount you’re willing to pay for a click, the keywords for which you want to ads to appear, geographic area, and other criteria.

The good news is that PPC can be extremely effective in driving traffic to your site. The bad news is that PPC is very expensive, both in terms of advertising costs and in terms of developing effective strategies. DIY PPC isn’t for the faint of heart.

Resources:

- Google Ads: https://ads.google.com/home/
- Bing Ads: https://bingads.microsoft.com/
- Hire a freelancer for PPC via Upwork: https://www.upwork.com/
- Questions to ask a PPC expert before hiring them: https://searchengineland.com/30-questions-to-ask-that-so-called-ppc-expert-before-hiring-him-her-289889
- Search Engine Land’s introductory guide to PPC: https://searchengineland.com/guide/ppc

- Tips for using PPC to get clients: https://www.wordstream.com/blog/ws/2015/06/29/law-firm-marketing

TV Advertising for Lawyers

Television advertising is a great mechanism for your brand development – and it can draw in clients. The trick is to know who your target audience is and advertise on the cable stations that appeal to that target audience.

In addition to choosing the right advertising venues, it's important to understand the various elements of television production. Making an effective commercial involves coming up with the right concept, planning shots, hiring a production company, and having a script with a compelling call to action.

Keep in mind that television viewership is at an all-time low and that TiVo and some DVRs enable commercial-skipping, so consider augmenting your TV ad buys with digital campaigns. Think about advertising on podcasts, on YouTube channels, and on other digital media.

Resources:

- Guide to TV Ads: https://blog.hubspot.com/marketing/tv-ad-business
- Info about the TV commercial production process: https://www.farmoremarketing.com/blog/what-does-the-tv-commercial-production-process-look-like
- Gauging local and national TV advertising costs: https://fitsmallbusiness.com/tv-advertising/
- Rationale behind multiscreen advertising: https://www.comcastspotlight.com/ad-solutions
- Podcast advertising: https://www.forbes.com/sites/forbesagencycouncil/2018/08/01/a-survival-guide-for-podcast-advertising/#6beedc904f70
- Overview of YouTube advertising: https://www.youtube.com/yt/advertise/

Direct Mail for Lawyers

Direct mail – old and boring, but effective – can be a powerful weapon in your arsenal. You can use mail pieces to target consumers or businesses. While we all tend to toss so-called junk mail in the recycling bin, there are ways to increase the chances that your

advertisement will resonate with your intended audience. Here are the basic steps to take when designing your direct mail campaign.

Get a list. You'll need a mailing list, which you can rent from (reputable) list brokers. Think carefully about your target demographics - do you want a list of physicians, consumers ages 35-54, smokers, those in foreclosure, or some other audience? It pays to do a test mailing with a small list to ensure that you're on the right track with demographics.

Get a mailing house. These are the folks who will print and ship your mail pieces. They will provide you with specifications for your mailer and take care of the details. Typically, you are required to pay the cost of postage prior to the mail drop.

Decide on your format. Postcards or letters? Postcards have the advantage of being seen highly visible. Letters have the advantage of containing more and more detailed information.

Design a compelling mailer. Elements to consider include visual appeal, short paragraphs, san serif fonts, accessible vocabulary, an attention-grabbing headline, and a strong call to action. The envelope should have enticing text and graphics that make recipients want to open it immediately.

Test, test, test. A/B testing is when you use two slightly different versions of the same mail piece to determine which gets the best results. In the beginning, do a series of tests to hone in on the best combination of elements. Test each component – from the headline to the envelope copy to the ink color – to see which is the top performer. An increased response rate of one or two percentage points is significant, so you want to continually optimize your mailer.

Resources:

- Building your direct mail marketing campaign: http://www.experian.com/small-business/direct-mail-marketing.jsp
- Considerations for compiling a direct mail mailing list: https://www.themailshark.com/resources/guides/how-to-get-direct-mail-list/
- How to work with a mailing list broker: https://www.entrepreneur.com/article/287359
- Google "direct mail printing and mailing services" to find local and national mailing houses

- Direct mail best practices: https://www.lucidpress.com/blog/5-best-practices-highly-effective-direct-mail-marketing-campaigns
- Direct mail marketing trends: https://www.postalytics.com/blog/direct-mail-marketing-trends-for-2018/

Advertising and Ethics Rules

While diving into advertising ethics rules for lawyers is beyond the scope of this presentation, the importance of complying with rules can't be overstated. At the same time, there's no need to avoid advertising because you fear running afoul of ethics rules. Simply read the rules carefully and then make sure to color within the lines.

Resources:

- ABA's Center for Professional Responsibility lists the latest developments in attorney advertising ethics: https://www.americanbar.org/groups/professional_responsibility/resources/professionalism/professionalism_ethics_in_lawyer_advertising/
- ABA Model Rules of Professional Conduct: https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/
- News coverage of the ABA's 2018 advertising-related updates to the model rules: https://www.law.com/americanlawyer/2018/08/09/ethics-update-on-lawyer-ads-move-aba-rules-toward-clarity/
- Google "state bar of [state name] advertising rules" to find state-specific advertising guidance

PART TWO

By: Christopher P. Kriesen (The Kalon Law Firm Ckriesen@kalonlawfirm.com)

A Step by Step Process

1. Begin with Yourself

If you are going to build a law practice, you need to know who you are, because as a lawyer, you are your brand, your product, and your means of execution.

Take a personality test (Myers-Briggs or the Enneagram) - many sites online offer them for free - to get a handle on what type of person you are: introvert/extrovert; thinker/feeler; perfectionist; boss; achiever.

Learn your passions. Conflict? Problem solving? Details?

Where is your skillset? Look at what you've done in various roles (jobs, volunteering, side gigs) and find what you really did in those roles - therein lies your skillset.

Once you know your passions, skills, and your type, you can start to find your practice areas.

2. Select a Name

Most lawyers simply go with their names - The Law Offices of Your Name, Your Name Law Group, or Your Name and Her Name, PC - which is fine, since you are your brand, so why not make your law firm name your brand?

But, when it comes to branding, you want a stable brand. Law firms run into branding trouble when one lawyer leaves and/or another becomes a partner, so Your Name and Her Name becomes Your Name, Her name, and His Name and you are changing letterhead, signs, and webpages.

A trade name solves that problem, but it's hard to find one that meets the recommendations of marketing: strong sound, three syllables or less, not taken, and no negative connotations.

3. Decide Upon Your Legal Services

Being a general practitioner is dangerous, because you don't know what you don't know. Safer to select a few practice areas and become highly skilled.

4. Segment Your Market

Figure out who your market will be. This is based in part on your practice area, but you can segment that market further by deciding which people/companies who need those services will be your clients. For example, if you are in divorce, are you seeking high net worth clients?

5. What Value do You Add to these Clients

Every client arrives with a problem. You are there to solve it and solve it better than your competitors. Why you, and not them? Because you add value (bring a better solution) than the others.

6. Develop a Lean Business Model

Get what you need, but don't get what you don't need. You'd be surprised how technology allows lawyers to practice better and for less. Even more surprising is how few lawyers take advantage of technology and stick with more expensive, less effective approaches.

7. Create an Operations Manual

A great organization is based on great practices. A person can establish those practices, but the firm should never be dependant on that person. Instead, codify those practices in an operations manual.

8. Create Your Brand

Think of Nike, Amazon, or Apple, and you think of certain things: the kind of product/service, a logo, and an x-factor (what makes them better than the rest). When someone says the name of your firm, or mentions your name, the same should happen.

9. Publish a Webpage

Remember brochures?

Your webpage is your masthead, your brand builder, and your client recruiter.

10. Build a Network of Allies, Relationships, and Acquaintances

Lawyers practice in a community. Even your adversaries are a part of that community. You can help by sharing what you know, referring cases to others who practice in an area you do not, and supporting the efforts of others. Everything will come back to you.

11. Stand Out to Your Client Base and Peers

Many practice areas are overpopulated with lawyers. Once, the way to stand out was by being listed first in the phonebook or by having the biggest add. Now, it's by social media, leadership roles, and rating sites.

12. Talk to and Survey Your Clients

Begin every case by finding out exactly what your client wants. You'd be surprised - they do not always want the outcome you are ready to deliver. At the end of the case, have a closing call and follow that with a survey. You want feedback on how you are doing.

13. Track Metrics and Adjust to the Market (Pivot)

Keep track of what kinds of cases you have coming in, where they come from, and the revenue they generate. At least each year look at the numbers - you will see trends in your cases, sources, and revenue. Pivot to focus your efforts on where you are making an impact. Expand.

14. Add Staff and Lawyers with Care

Law practice is based on relationships. A talented, but terrible person will do a lot of harm. Screen for talent, but decide to hire based on personality.

15. Give Back and Pay it Forward

A great life practice. "And, in the end, the love you take is equal to the love you make."

16. Focus on Intrinsic Motivators

Daniel Pink wrote an excellent book on workplace motivators, "Drive." The happiest employees are not the best paid or holders of the most prestigious titles. They are the ones who have purpose, autonomy, and mastery.

17. Have a One, Two, Five, and Ten Year Vision

Think ahead, but not too far ahead. The world changes faster than we can plan. The further out your plans, the more abstract they should be. But have plans, backed by goals. The successful have lives built on goals and steps to achieve them.

18. Review and Adjust Your Success Model Every Year

Go through the above each year. Retest each conclusion, adjust, and grow.

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Professionalism Boot Camp CLE (EPC181130)

Breakout 1B: Surviving Technology in a Large Law Firm Practice

November 30, 2018

www.shipmangoodwin.com

Greenwich Hartford New Haven New York Stamford Washington, DC

Welcome to our session!

- Meet the Presenters
- Technology at a Large Law Firm: How is it Different?
  - General technologies
  - Practice support, litigation support, e-discovery
  - Client tools
  - Business development
  - Support channels
  - Operations
  - Knowledge management
- How do I Assess Our Technology?
- Critical Areas of Investment
- Technology & Client Development
- Survival Tips!

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TECHNOLOGY AT A LARGE LAW FIRM: HOW IS IT DIFFERENT?

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Technology at a Large Law Firm: How is it Different?

- General technologies
- Practice support, litigation support, e-discovery
- Client tools
- Business development
- Support channels
- Operations
- Knowledge management

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General Technologies

- 3 critical product lines: email, document management, billing
- Many of the same tools of any business
  - The law firm spin = plugins, regulations, legalities, jurisdictions
- What's the cloud? Isn't it dangerous?
  - It's all dangerous…
  - Licensing
  - Microsoft Office 365

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Practice Support, Litigation Support, E-discovery

- Support at scale/size
- Use cases for litigation support
- In-house or vendor – how do you decide?
  - Hybrid model
- Billable client value

Panel Question: when do you ask for help?

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Client Tools

- Clients want law firms to utilize technology to make them more efficient
  - Balancing cost/investment
- Types of client tools:
  - Virtual data rooms
  - Extranets
  - Billing/invoicing
  - Electronic document signing
  - Storage & retention

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Business Development

- Tools
  - Client relationship management (CRM)
  - Proposal management
  - Signature scraping
  - Blogs
  - Document repositories
- Evaluate ROI in cycles

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Support Channels

- Levels of IT support:
  - Tier 1: Basic Help Desk
  - Tier 2: Escalations
  - Tier 3: Engineers & senior staff
- Ticketing
- Enterprise monitoring
- Committees
  - Technology, E-discovery, Innovation
- MSP's

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Operations

- Software licensing is one of the largest expenses
- Functioning in a data center
  - When do you move to one?
  - Costs
  - Performance pro/con
- Internal vs. external operations team
- This is a living environment

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Knowledge Management

- Forms
- Templates
- Clause tools
- Data repositories
- Intranet driven tools
- Research & information services providers

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HOW DO I ASSESS OUR TECHNOLOGY?

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IT DOMAIN SCORECARD – A TOOL TO UNDERSTAND YOUR IT ENVIRONMENT

DOMAIN	CURRENT COVERAGE	NOTE
SECURITY		
ENTERPRISE OPERATIONS		
ENTERPRISE APPLICATIONS		
VIRTUALIZATION		
STORAGE		
NETWORKING		
DISASTER RECOVERY		
BACKUPS		
APPLICATION ADMINISTRATION		
DOCUMENT MANAGEMENT		
DATABASES		
SYSTEMS		
UNIFIED COMMUNICATIONS		
BUSINESS SYSTEMS		
PROJECT MANAGEMENT		
TRAINING		

CRITICAL AREAS OF INVESTMENT

Critical Areas of Investment

- Attorney education & ability
- Security & security awareness training
- Document management
- New business intake and conflict tools or procedures
- Mobile solutions
- Matter management
- Cost and legacy reduction (i.e. long term file box storage)

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TECHNOLOGY & CLIENT DEVELOPMENT

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Technology & Client Development

- What do your clients expect?
- How will you be competitive in the marketplace?
- What differentiates your Firm from another?
- What tools do you need to keep your existing business?
- What tools do you need to earn the business you want?

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Technology & Client Development

- Pricing
- Legal Project Management tools
- Dashboarding
- Repositories
- Points of collaboration; “3 W’s”:
  - Webinars
  - Whitepapers (articles, reviews, blogs…)
  - Work

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Technology & Client Development

- Social media tools & prowess
  - Should you be on social platforms?
    - Only if it makes sense for your Firm and clients you wish to reach
    - Security
- Video
  - The fastest growing medium
  - Types of content
  - Distribution platforms
- Audio
  - Podcasting

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SURVIVAL TIPS

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Survival Tips

- Collaboration
  - Internally and with third parties
  - Client Expectations
- Security
  - Transmission of information
- Tech Assistance
  - Know when to ask for help

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Stephanie Gomes-Ganhão

(860) 251-5239
sgomesganhao@goodwin.com
http://www.shipmangoodwin.com/sgomes-ganhao

Stephanie Gomes-Ganhão is an associate in the firm's Health Law Practice Group and advises health care providers with respect to corporate and regulatory matters. She also regularly assists clients with establishing compliance programs for early detection of data privacy concerns and guides clients through the data breach investigation and notification process when a breach has occurred. In addition, Stephanie is a member of the firm's data privacy and protection team.

Prior to joining the firm, Stephanie served as a law clerk to the Honorable Dennis G. Eveleigh, Associate Justice of the Connecticut Supreme Court. While attending law school, Stephanie served as a legal intern for the Honorable Janet C. Hall, U.S. District Court for the District of Connecticut.

Stephanie is also fluent in Portuguese.

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Michael Chase

(860) 251-5194
mchase@goodwin.com
http://www.shipmangoodwin.com/mchase

Michael Chase is a member of the firm's Government Investigations and White Collar Criminal Defense group. He represents organizations and individuals in government investigations, internal investigations and both criminal and civil litigation. Michael assists clients in complex litigation and investigations across a variety of industries, including financial services, higher education, health care, environmental and insurance. He also regularly represents clients in significant trial matters, negotiations and matters before administrative agencies.

Most recently, Michael has focused his practice on assisting health care providers, construction contractors and other government contractors operating in complex regulatory environments in matters being investigated under the federal and state false claims acts.

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Joe Ficocello

(860) 251-5704
jficocello@goodwin.com
http://www.shipmangoodwin.com/jficocello

As the Chief Information Officer, Joe Ficocello is responsible for technology service delivery, enterprise operations, information security, project management, collaboration, client IT engagement, and cloud solution development.

Joe has 18 years of experience in the legal technology field, specializing in law firm IT within positions of senior management & executive leadership. Previously, Joe served as the Chief Information Officer for Constangy, Brooks, Smith & Prophete LLP, where he lead IT service delivery, practice technology, information security, and project management for their 31 offices. Joe formerly spent over 7 years at Akin, Gump, Strauss, Hauer & Feld LLP, where he served as an IT Director responsible for the firm's Trial Services & E-discovery groups, and lead various teams in their global practice technology initiatives.

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SHIFTING LANDSCAPES:
Adapting Your Firm to Emerging Threats

CNA

Presentation for
CBA Professional Boot Camp
November 30, 2018

KRONHOLM
INSURANCE SERVICES

SHIFTING LANDSCAPES:
Adapting Your Firm to Emerging Threats

John Kronholm, MBA
Kronholm Insurance Services
A division of Brown & Brown of CT
(860) 665-8463
Jkronholm@bbhartford.com

Ron Houde, Esquire
The Kalon Law Firm, LLC
(860) 249-0979 x701
rhoude@kalonlawfirm.com.com

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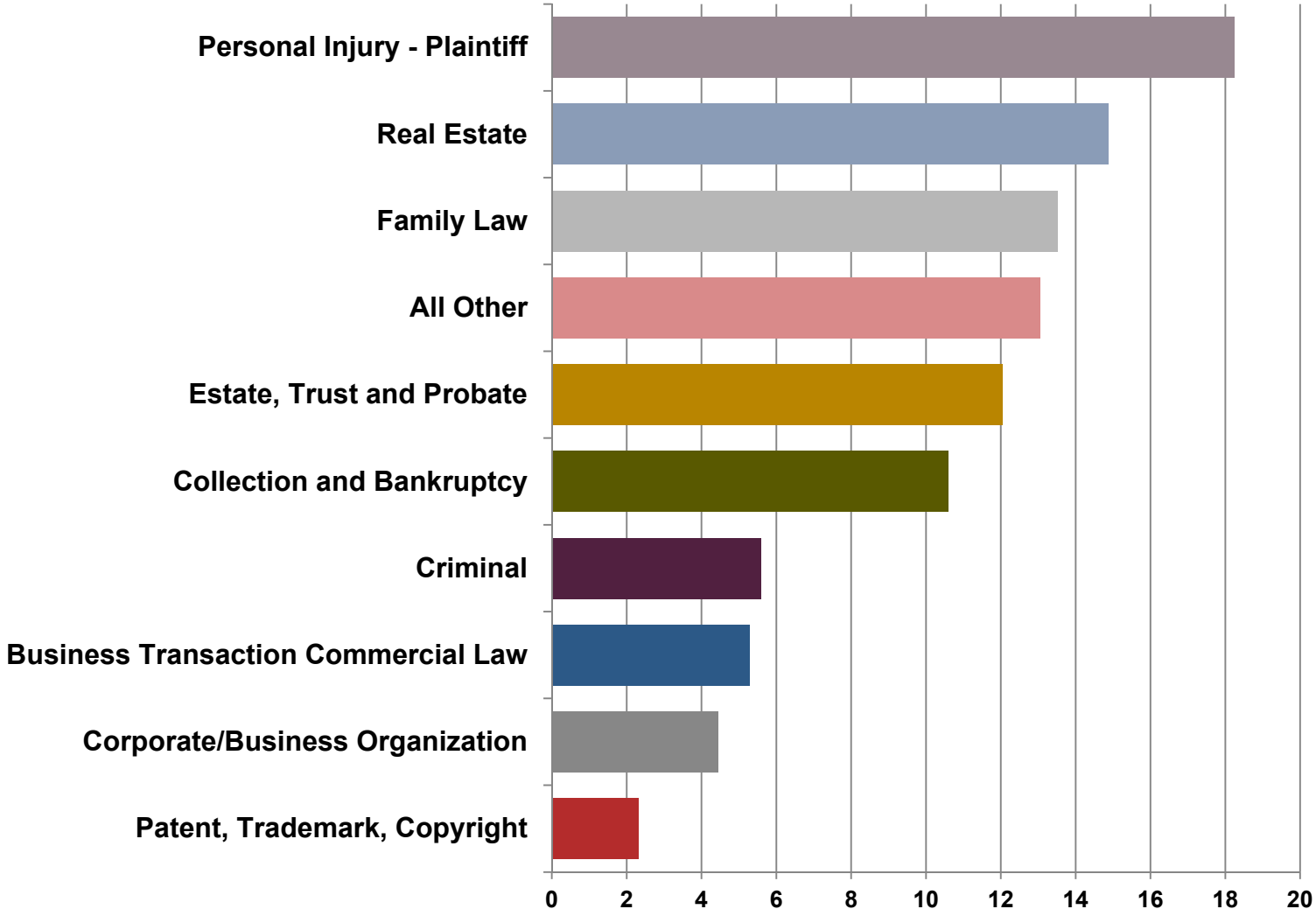
Case Study:

A Day in the Life of Lydia the Lawyer

General Background

- Lydia opened her practice as a solo practitioner five years ago.
- She has been licensed to practice for ten years.
- Her practice includes various areas of practice – Plaintiff's Personal Injury, Wills, Trusts and Estates and Residential Real Estate.
- She expanded her practice and currently employs a part-time associate, office manager and paralegal.

ABA Profile of Legal Malpractice Claims 2016 (2012-2015 Claims)



Daily Coffee Stop

8:00 A.M.

- Every morning on her way to work, Lydia stops at her favorite coffee shop for a daily dose of caffeine.
- While in the coffee shop, someone steals her laptop from her car.
- Lydia calls the police immediately, but the thief has disappeared with her laptop.

Responding to a Lost or Stolen Laptop

Initial Reaction: @#$%$!!! I need to get a new laptop but everything is okay since it is password protected.

Reality Check: A password to access the laptop does not necessarily prevent access to information.

Rules of Professional Conduct:

1.1 Competence

1.3 Diligence

1.4 Communications

1.6 Confidentiality of Information

Risk Control:

Lost/Stolen Laptop

- Preemptive Steps
  - Encrypt Files on the Laptop.
  - Backup Laptop Files Weekly.
  - Know Your State Data Breach Notification Requirements.
    - http://www.ncsl.org/research/telecommunications-and-information-technology/security-breach-notification-laws.aspx
- Real Time Steps
  - Contact the Cyber Insurance Provider.
  - Determine Files that are on the Laptop.
  - Notify Clients of Incident, if applicable.

Risk Control:

Ethical Obligations

- RULE 1.6 – Confidentiality
  - Comment 18
- RULE 1.1 – Competence
  - Comment 8

Common Law Duties

- Restatement (3rd) of the Law Governing Lawyers (2000)

"New" Wiring Instructions

10:00 A.M.

- The paralegal receives new wiring instructions in connection with a residential real estate closing.
- The email explains that the sender switched the wiring instructions with another closing scheduled the same day.
- The paralegal contacts bank with the new wiring instructions.

Responding to Fraudulent Wiring

Initial Reaction: This isn't our fault. The sender must resolve this issue.

Reality Check: Your clients will look to you to explain where their money has gone.

Rules: 1.4 Communications

5.3 Responsibilities Regarding Non-Lawyer Assistance

Risk Control:

Responding to Fraudulent Wiring

- Preemptive Steps
  - Alert All Staff and Clients to the Email Scam.
  - Use Alert on Email Correspondence.
  - Call Sender to Confirm Initial Wiring Instructions.
  - Follow Up With the Sender if “New” Instructions are Provided.
- Real Time Steps
  - Call the Bank to Stop the Wire Transfer.
  - Call the F.B.I.
  - Inform Clients and Sellers’ Counsel.

CASE EXAMPLE : *Bile v. RREMC, LLC*, 2016 WL 4487864

Experience and E-Discovery

12:00 P.M.

- Lydia is contacted by a former personal injury client and he requested that she represent his company in a retaliatory discharge matter.
- Lydia is not experienced in employment law but agrees to the representation.
- The client requests the use of e-discovery in responding to discovery requests to save money.
- The paralegal accidentally sends an electronic file with all e-mails extracted from the search.

Responding to Experience and E-Discovery

Initial Reaction: This could happen to anyone. No harm. No foul.

Reality Check: Unintended disclosure of e-mails that include attorney-client communications may waive the privilege.

Rules:1.1 Competence

1.6 Confidentiality of Information

5.3 Responsibilities Regarding Non-Lawyer Assistance

Risk Control:

Responding to Experience and E-Discovery

- Preemptive Steps
  - When Venturing Into a New Area of Practice, Consider Involving a Mentor or Co-Counsel.
  - Counsel Staff that Errors Must be Addressed A.S.A.P.
- Real Time Steps
  - Reach Out to Opposing Counsel and Request Deletion of this Email.
  - Notify the Client of the Unintended Disclosure of Attorney-Client Communications and Attempts to Resolve the Matter.

REAL LIFE EXAMPLE:
http://www.law.com/sites/almstaff/2017/07/26/lawyers-inadvertent-e-discovery-failures-led-to-wells-fargo-data-breach/

"New Client" Email

2:00 P.M.

- Lydia receives an unsolicited email from a prospective new client seeking representation.
- A new client seeks representation in settling of a personal injury matter. The new client has been attempting to negotiate a settlement *pro se*.
- Lydia sends an engagement agreement to the new client, which is signed and returned via mail.
- A few weeks later, the new client sends an email indicating that the defendant has agreed to settlement upon being informed that the new client was represented by Lydia.
- The settlement check is in the mail to Lydia.

Responding to Unsolicited Email Scam

Initial Reaction: This sounds like a slam dunk case for the plaintiff.

Reality Check: Scammers are becoming more and more sophisticated in running this scam.

Rules: 1.3 Diligence

1.4 Communications

1.15 Safekeeping Property

Risk Control:

Responding to Unsolicited Email Scam

- Preemptive Steps
  - Educate All Legal and Non-Legal Staff Regarding Unsolicited Email/Check Scams.
- Real Time Steps
  - The Settlement Check is Deposited.
  - No Funds Should Be Released to the Client Unless and Until Check Clears.

Wi-Fi Issues

4:00 P.M.

- A Part-time Associate Works from a Bakery Using the Free Wi-Fi.
- The Part-time Associate Reviews Medical and Financial Records Related to Lydia's Client Representations.
- The Part-time Associate Does Not Notice the Name Change of the Wi-Fi Connection Offered at the Bakery.

Responding to Public Wi-Fi Cyber Exposure

Initial Reaction: Everyone uses free Wi-Fi at coffee shops, restaurants, hotels and such, so it must be safe.

Reality Check: Users should be aware of Wi-Fi spoofing and check the privacy settings for any public Wi-Fi or use their own hotspot to avoid a breach.

Rules of Professional Conduct:

1.1 Competence

5.1 Responsibilities of a Partner or Supervisory Attorney

Risk Control:

Responding to Public Wi-Fi Cyber Exposure

- Preemptive Steps
  - Educate All Legal and Non-Legal Staff About the Use of Free Public Wi-Fi.
- Real Time Steps
  - Check the Type of Wi-Fi Offered.
  - Check for Encryption.
  - Use a Private Hot Spot.

Professional v. Personal Laptop

6:00 P.M.

- Lydia is working on a case at home using her personal laptop.
- Lydia's teenage son jumps on the computer to check his NCAA bracket and school email.
- He opens a link and downloads Ransomware on to Lydia's personal laptop.

Responding to Ransomware

Initial Reaction: @#$*&! Lydia's son is grounded for all eternity.

Reality Check: Lydia's laptop has been taken over by hackers demanding that she pay $500 in bitcoins.

Rule of Professional Conduct:

1.6 Confidentiality of Information

Risk Control:

Responding to Ransomware

- Preemptive Steps
  - If Possible, Maintain the Professional Laptop Solely for Professional Use.
  - Educate Legal and Non-Legal Staff on the Ransomware Threat.
  - Back Up the System on a Separate Network.
- Real Time Steps
  - Report Ransomware to the Cyber Liability Insurance Provider.
  - Inform Clients of the Breach, if applicable.

ABA Ethics Opinion – Securing Communication of Protected Client Information

1. Understand the Nature of the Threat.
2. Understand How Client Confidential Information is Transmitted and Where It Is Stored.
3. Understand and Use Reasonable Electronic Security Measures.
4. Determine How Electronic Communications About Client Matters Should Be Protected.
5. Label Client Confidential Information.
6. Train Lawyers and Nonlawyer Assistants in Technology and Information Security.
7. Conduct Due Diligence on Vendors Providing Communication Technology.

Risk Control Resources

- *Wills, Trusts and Estates Practice: Minimizing Exposure to Claims from Third-Party Beneficiaries*
- *Safe and Secure: Cyber Security Practices for Law Firms*
- *Risk Alert: Phishing Attacks Use Bar Complaints and HIPAA Audits as Bait*
- *Lawyers' Toolkit 3.0: A Guide to Managing the Attorney-Client Relationship*
- *Creating a Document Retention and Destruction Policy*
- *The Conflicts Conundrum: Avoiding and Managing Conflicts of Interest*
- *Client Intake Procedures: Avoiding Problematic Clients*

Risk Control Hotline: 1-866-262-0034

Rule 1.1. Competence.

Connecticut Rules - Practice Book

Connecticut Rules of Professional Conduct

CLIENT LAWYER RELATIONSHIPS

As amended through January 1, 2018

Rule 1.1. Competence

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

Cite as Conn. R. Prof'l. Cond. 1.1

History. P.B. 1978-1997, Rule 1.1.

Note:

COMMENTARY:

Legal Knowledge and Skill.Indetermining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

In an emergency, a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill-considered action under emergency conditions can jeopardize the client's interest.

A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. See also Rule 6.2.

Thoroughness and Preparation. Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See Rule 1.2(c).

Retaining or Contracting with Other Lawyers. Before a lawyer retains or contracts with other lawyers outside the lawyer's own firm to provide or assist in the provision of legal services to a client, the lawyer should ordinarily obtain informed consent from the client and must reasonably believe that the other lawyers' services will contribute to the

competent and ethical representation of the client. See also Rules 1.2 (allocation of authority), 1.4 (communication with client), 1.5(b) (scope of representation, basis or rate of fee and expenses), 1.5(e) (fee sharing), 1.6 (confidentiality), and 5.5(a) (unauthorized practice of law). Client consent may not be necessary when a nonfirm lawyer is hired to perform a discrete and limited task and the task does not require the disclosure of information protected by Rule 1.6. The reasonableness of the decision to retain or contract with other lawyers outside the lawyer's own firm will depend upon the circumstances, including the education, experience and reputation of the non-firm lawyers; the nature of the services assigned to the nonfirm lawyers; and the legal protections, professional conduct rules, and ethical environments of the jurisdictions in which the services will be performed, particularly relating to confidential information.

When lawyers from more than one law firm are providing legal services to the client on a particular matter, the lawyers should consult with each other and the client about the scope of their respective representations and the allocation of responsibility among them. See Rule 1.2. When making allocations of responsibility in a matter pending before a tribunal, lawyers and parties may have additional obligations that are a matter of law beyond the scope of these Rules.

Maintaining Competence. To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

Connecticut Rules - Practice Book

Connecticut Rules of Professional Conduct

LAW FIRMS AND ASSOCIATIONS

As amended through January 1, 2018

Rule 5.2. Responsibilities of a Subordinate Lawyer

A lawyer is bound by the Rules of Professional Conduct notwithstanding that that lawyer acted at the direction of another person.

Cite as Conn. R. Prof'l. Cond. 5.2

History. P.B. 1978-1997, Rule 5.2. Amended June 26, 2006, to take effect Jan. 1, 2007.

Note:

COMMENTARY: Although a lawyer is not relieved of responsibility for a violation by the fact that the lawyer acted at the direction of a supervisor, that fact may be relevant in determining whether a lawyer had the knowledge required to render conduct a violation of the Rules. For example, if a subordinate filed a frivolous pleading at the direction of a supervisor, the subordinate would not be guilty of a professional violation unless the subordinate knew of the document's frivolous character.

When lawyers in a supervisor-subordinate relationship encounter a matter involving professional judgment as to ethical duty, the supervisor may assume responsibility for making the judgment. Otherwise a consistent course of action or position could not be taken. If the question can reasonably be answered only one way, the duty of both lawyers is clear and they are equally responsible for fulfilling it. However, if the question is reasonably arguable, someone has to decide upon the course of action. That authority ordinarily reposes in the supervisor, and a subordinate may be guided accordingly. For example, if a question arises whether the interests of two clients conflict under Rule 1.7, the supervisor's reasonable resolution of the question should protect the subordinate professionally if the resolution is subsequently challenged.

Connecticut Rules - Practice Book

Connecticut Rules of Professional Conduct

LAW FIRMS AND ASSOCIATIONS

As amended through January 1, 2018

Rule 5.3. Responsibilities regarding Non-lawyer Assistance

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(1) A partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(2) A lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(3) A lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(A) The lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(B) The lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Cite as Conn. R. Prof'l. Cond. 5.3

History. P.B. 1978-1997, Rule 5.3. Amended June 26, 2006, to take effect Jan. 1, 2007.

Note:

COMMENTARY: Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

Subdivision (1) requires lawyers with managerial authority within a law firm to make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that nonlawyers in the firm and nonlawyers outside the firm who work on firm matters act in a way compatible with the professional obligations of the lawyer. See Commentary to Rule 1.1 and first paragraph of Commentary to Rule 5.1. Subdivision (2) applies to lawyers who have supervisory authority over such nonlawyers within or outside the firm. Subdivision (3) specifies the circumstances in which a lawyer is responsible for the conduct of such nonlawyers within or outside the firm that would be a violation of

the Rules of Professional Conduct if engaged in by a lawyer.

Nonlawyers Outside the Firm. A lawyer may use non lawyers outside the firm to assist the lawyer in rendering legal services to the client. Examples include the retention of an investigative or paraprofessional service, hiring a document management company to create and maintain a database for complex litigation, sending client documents to a third party for printing or scanning, and using an Internet-based service to store client information. When using such services outside the firm, a lawyer must make reasonable efforts to ensure that the services are provided in a manner that is compatible with the lawyer's professional obligations. The extent of this obligation will depend upon the circumstances, including the education, experience and reputation of the nonlawyer; the nature of the services involved; the terms of any arrangements concerning the protection of client information; and the legal and ethical environments of the jurisdictions in which the services will be performed, particularly with regard to confidentiality. See also Rules 1.1 (competence), 1.2 (allocation of authority), 1.4 (communication with client), 1.6 (confidentiality), 5.4(a) (professional independence of the lawyer), and 5.5(a) (unauthorized practice of law). When retaining or directing a nonlawyer outside the firm, a lawyer should communicate directions appropriate under the circumstances to give reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer. Where the client directs the selection of a particular nonlawyer service provider outside the firm, the lawyer may need to consult with the client to determine how the outsourcing arrangement should be structured and who will be responsible for monitoring the performance of the nonlawyer services. Unless the client expressly agrees that the client will be responsible for monitoring the nonlawyer's services, the lawyer will be responsible for monitoring the nonlawyer's services.

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247 Conn. 48 (Conn. 1998)

717 A.2d 724

BEVERLY HILLS CONCEPTS, INC. et al.

v.

SCHATZ AND SCHATZ, RIBICOFF AND KOTKIN et al.

No. 15730.

Supreme Court of Connecticut.

September 15, 1998

Argued June 4, 1998.

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[Copyrighted Material Omitted]

Page 726

[Copyrighted Material Omitted]

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Mark R. Kravitz, New Haven, with whom were Daniel J. Klau and William J. Doyle, for appellants-appellees (defendants).

Jeffrey J. Tinley, Waterbury, with whom, on the brief, were Steven D. Ecker, New Haven and Paula A. Platano, Cheshire, for appellee-appellant (named plaintiff).

Before NORCOTT, KATZ, PALMER, PETERS and EDWARD Y. O'CONNELL, JJ.

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KATZ, Associate Justice.

The principal issue in this appeal is the proper method for calculating damages for the destruction of a nascent business. We conclude that: (1) unestablished enterprises must be permitted to recover damages for legal malpractice and that a flexible approach in determining those damages generally is appropriate; (2) lost profits for a reasonable period of time may serve as an appropriate measure of damages under certain circumstances; and (3) the plaintiff bears the burden of proving lost profits to a reasonable certainty. As applied to the facts of this case, however, we conclude that the plaintiff has not sustained its burden of proof regarding damages.

This appeal arises from a malpractice action brought by Beverly Hills Concepts, Inc. (plaintiff) [1] against the named defendant, the law firm, Schatz and Schatz, Ribicoff and Kotkin (Schatz & Schatz), and the individual defendants, attorneys Stanford Goldman, Ira Dansky and Jane Seidl. In its complaint, dated November 2, 1989, the plaintiff alleged legal malpractice (first count), breach of contract (second count), intentional misrepresentation (third and fifth counts), negligent misrepresentation (fourth count), breach of fiduciary duty (sixth count), breach of the covenant of good faith and fair dealing (seventh count), and violation of the Connecticut Unfair Trade Practices Act (CUTPA), General Statutes § 42-110a et seq. (eighth count). [2] On January 27,

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1997, following a trial to the court, Hon. Robert J. Hale, judge trial referee, rendered judgment for the plaintiff on the first, second, fourth, sixth and seventh counts, and for the defendants on the third, fifth and eighth counts. The trial court awarded the plaintiff damages in the amount of $15,931,289.

On February 6, 1997, the defendants filed a motion to reargue and/or open or set aside the judgment, for a new trial, and/or for judgment, which the trial court denied. The defendants also filed, on June 17, 1997, a motion for articulation, which the trial court, likewise, denied.

The defendants appealed the judgment to the Appellate Court. The plaintiff filed a cross appeal, [3] challenging the trial court's rejection of the CUTPA claim. We transferred the appeal and the cross appeal to this court pursuant to Practice Book (Rev.1998) § 65-1, formerly § 4023, and General Statutes § 51-199(c). [4]

[717 A.2d 728] The trier of fact reasonably could have found the following facts. Charles Remington, Wayne Steidle, and Jeannie Leitao, incorporated the plaintiff as a Massachusetts corporation in April, 1987. They sold fitness equipment with a distinctive color scheme and logo, as well as a plan for operating a fitness club for women. The plaintiff's system included everything an owner would need to run a club, including equipment, training, sales and marketing support, and advertising and promotional materials. The plaintiff incorporated in Connecticut on August 17, 1987, and opened a corporate headquarters in Rocky Hill. From its Rocky Hill headquarters, the plaintiff

licensed purchasers to use its

Page 52

concept, and sold distributorships to investors who gained the exclusive right to sell the plaintiff's products and to sublicense its name within a regional territory.

In October, 1987, prompted by a legal problem regarding the plaintiff's trademark in California, Leitao contacted the law firm of Schatz & Schatz. On October 28, 1987, the plaintiff met with Goldman, a partner at Schatz & Schatz, and Seidl, an associate in the firm. Leitao advised them that she recently had filed a trademark application for the name "Beverly Hills Concepts" in Washington, D.C. Goldman assumed incorrectly that this meant that the plaintiff had a "federally registered trademark," which would have alleviated the need to register as a "business opportunity" pursuant to the Connecticut Business Opportunity Investment Act (act). General Statutes (Rev. to 1987) § 36-503 et seq. [5] He told Leitao that Schatz & Schatz possessed expertise in the field of franchising, and that the firm was well qualified to handle the plaintiff's legal affairs. Goldman also said that he would be involved personally in the firm's representation of the plaintiff.

In fact, beginning in late 1987, Goldman turned the plaintiff's file over to Seidl, a junior associate, and Ira Dansky, a "contract" lawyer not yet admitted to the Connecticut bar. Neither Seidl nor Dansky possessed expertise in the law of franchising and business opportunities. Schatz & Schatz billing records revealed that Goldman spent only about two hours on the plaintiff's matter between December, 1987, and June, 1988.

Before turning the plaintiff's file over to Seidl, Goldman visited the plaintiff's headquarters in Rocky Hill

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and examined its distributorship and licensing agreements and promotional materials. Despite the plaintiff's request for guidelines regarding the sale of its equipment and "system" pending its franchise registration, Schatz & Schatz failed to advise the plaintiff that it was violating the act by selling fitness club packages without first registering with the state banking commissioner. Rather, after analyzing the plaintiff's documents, Goldman told Remington that the question of whether the plaintiff was offering business opportunities within the meaning of the act was a "gray area" of the law.

Recognizing that the plaintiff would need financial statements in order to file its franchise documents, Schatz & Schatz referred the plaintiff to the accounting firm of Coopers and Lybrand (Coopers). Schatz & Schatz advised Coopers, however, only of the financial statements required under federal law. It failed to inform Coopers of the requirements of the act.

In the winter of 1987-88, Seidl began drafting the plaintiff's franchise documents. On February 8, 1988, another Schatz & Schatz associate, who had been assigned the task of researching the franchise registration requirements of fourteen states, including Connecticut, informed Seidl that the plaintiff was not exempt from the registration requirements of the act. That same day, Schatz & Schatz contacted the plaintiff's Washington, D.C., trademark attorney, who confirmed that the plaintiff's trademark application was pending, and that no federal registration had been issued. Under these circumstances, Schatz & Schatz lawyers **[717 A.2d 729]** should have realized that the plaintiff was not exempt from the filing requirements of the act. Yet no one from the defendant law firm apprised the plaintiff of that fact. [6]

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In June, 1988, Dansky terminated Schatz & Schatz's representation of the plaintiff, stating that he was concerned that the plaintiff's franchise offering documents overstated its financial position. Shortly afterwards, the plaintiff retained Martin Clayman, an attorney with the firm of Clayman, Markowitz and Tapper, to complete the plaintiff's franchise registration. Within a few weeks, Clayman and his partner, Holly Abery-Wetstone, had prepared an application for the plaintiff to register as a business opportunity in Connecticut. The plaintiff decided not to file the registration documents, however, until its trademark had been approved, an event that its Washington, D.C., attorney had estimated would occur within a few months.

On September 15, 1988, an official acting for the banking commissioner notified the plaintiff that its marketing of franchises violated the act. The plaintiff contacted Clayman and Abery-Wetstone, who began preparing a postsale registration for the plaintiff's previous sales. The plaintiff complied immediately with advice from Abery-Wetstone that it should stop advertising and selling franchises. The plaintiff filed a postsale registration application on December 7, 1988, in an effort to comply with the act. Nevertheless, on June 28, 1989, the banking commissioner issued a cease and desist order and a notice of intent to fine the plaintiff up to $10,000 for each sale made in violation of the act. The commissioner further issued a stop order invalidating the plaintiff's postsale registration. On June 26, 1991, following hearings in September and November of 1989 and May of 1990, the commissioner issued a final cease and desist order, stating that the plaintiff had violated the act repeatedly by selling unregistered business opportunities in Connecticut. This malpractice action followed.

For purposes of this appeal, the defendants do not challenge the trial court's determination that they breached the applicable professional standard of care.

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Rather, they raise claims regarding the issues of causation and damages. Specifically, the defendants argue that the trial court improperly: (1) rendered judgment against Seidl on the negligent misrepresentation and breach of fiduciary duty claims based on the same conduct underlying the judgment of malpractice; (2) concluded that the defendants' failure to advise the plaintiff of its violation of the act caused its demise; (3) awarded damages based on lost profits rather than the going concern value of the business at the date of destruction; (4) awarded the plaintiff approximately $15.9 million in lost profits calculated over a period of twelve years; and (5) included prejudgment interest in the damages award.

We agree with the defendants' first and fourth claims. Accordingly, we reverse the judgment of the trial court and render judgment for the defendants.

I

We first examine whether the trial court improperly found Seidl liable for the negligent misrepresentation and breach of fiduciary duty counts. We conclude that the trial court should not have held Seidl, a junior associate at Schatz & Schatz, liable on these counts.

The trial court did not distinguish between the defendants in finding for the plaintiff on the claims of legal malpractice, breach of contract, negligent misrepresentation, breach of fiduciary duty, and breach of the covenant of good faith and fair dealing. The defendants now argue that Seidl, a junior associate playing a lesser role in the events that gave rise to the action, should not have been found liable on the negligent misrepresentation and breach of fiduciary duty counts. We agree.

We note first that the defendants do not challenge on appeal the trial court's determination that their failure to register the plaintiff **[717 A.2d 730]** with the banking commission

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constituted legal malpractice. Seidl shares the blame for that lapse.

The trial court also reasonably could have found that Seidl had engaged in legal malpractice because, in her position as a junior associate, she failed to seek appropriate supervision. Rule 1.1 of the Rules of Professional Conduct provides that: "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." The commentary to rule 1.1 provides in part that a lawyer who lacks relevant experience may "associate or consult with, a lawyer of established competence in the field in question...." Having little experience in franchising, Seidl, therefore, could have rendered competent representation by seeking appropriate supervision. She failed to do so. She testified that she had sent both Goldman and Dansky copies of her work product. Seidl's pursuit of supervision, however, went no further. She stated that she had "assume[d] somebody was ... watching, taking care of looking at my work." The trial court reasonably concluded that this passivity departed from the applicable standard of care.

Professional negligence alone, however, does not give rise automatically to a claim for breach of fiduciary duty. Although an attorney-client relationship imposes a fiduciary duty on the attorney; see *Matza v. Matza*, 226 Conn. 166, 183-84, 627 A.2d 414 (1993); not every instance of professional negligence results in a breach of that fiduciary duty. "[A] fiduciary or confidential relationship is characterized by a unique degree of trust and confidence between the parties, one of whom has superior knowledge, skill or expertise and is under a duty to represent the interests of the other." (Internal quotation marks omitted.) *Konover Development Corp.*

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v. Zeller, 228 Conn. 206, 219, 635 A.2d 798 (1994). Professional negligence implicates a duty of care, while breach of a fiduciary duty implicates a duty of loyalty and honesty. See *Edwards v. Thorpe*, 876 F.Supp. 693, 694 (E.D.Pa.1995); *Bukoskey v. Walter W. Shuham, CPA, P.C.*, 666 F.Supp. 181, 184 (D.Alaska 1987).

Goldman, a partner in Schatz & Schatz, represented to the plaintiff that the firm possessed the necessary franchising experience to handle its legal affairs. Goldman and Dansky, who, although not admitted in Connecticut, held himself out as a partner of the firm, managed the relationship with the plaintiff. Seidl, by contrast, was a junior associate to whom Goldman and Danksy delegated research and drafting responsibilities. Because it cannot be said that Seidl represented that she had superior knowledge, skill or expertise in the field of franchising, nor that she sought the plaintiff's special trust, it was improper for the trial court to conclude that her professional negligence rose to the level of a breach of fiduciary duty.

For similar reasons, the trial court should not have held Seidl liable for negligent misrepresentation. This court has stated: "One who, in the course of his [or her] business,

profession or employment ... supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he [or she] fails to exercise reasonable care or competence in obtaining or communicating the information." (Internal quotation marks omitted.) *D'Ulisse-Cupo v. Board of Directors of Notre Dame High School,* 202 Conn. 206, 218, 520 A.2d 217 (1987). At oral argument, however, the plaintiff conceded that Seidl herself had made no false statement of fact. Her presence at a time when a senior attorney made such an inaccurate statement does not suffice to render her liable for negligent misrepresentation.

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We conclude, therefore, that the trial court improperly found Seidl liable for negligent misrepresentation and breach of a fiduciary duty. Accordingly, we reverse the trial court's conclusions holding Seidl liable on these two counts. [7]

[717 A.2d 731] II

We turn next to the defendants' claim that the trial court improperly determined that their malpractice caused the demise of the plaintiff. We review a trial court's determination of causation under the clearly erroneous standard. "[O]ur function [on appeal] is not to examine the record to see if the trier of fact could have reached a contrary conclusion." (Internal quotation marks omitted.) *Westport Taxi Service, Inc. v. Westport Transit District,* 235 Conn. 1, 14, 664 A.2d 719 (1995). Rather, "it is the function of this court to determine whether the decision of the trial court is clearly erroneous.... This involves a two part function: where the legal conclusions of the court are challenged, we must determine whether they are legally and logically correct and whether they find support in the facts set out in the memorandum of decision; where the factual basis of the court's decision is challenged we must determine whether the facts set out in the memorandum of decision are supported by the evidence or whether, in light of the evidence and the pleadings in the whole record, those facts are clearly erroneous." (Citation omitted.) *Pandolphe's Auto Parts, Inc. v. Manchester,* 181 Conn. 217, 221-22, 435 A.2d 24 (1980).

In its memorandum of decision, the trial court concluded that the defendants' malpractice had constituted a proximate cause of the plaintiff's failure. Applying the "substantial factor" test of causation, the trial court

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concluded: "The [defendants'] inept legal representation, inordinate delays in completing their work, and ... fundamental failure to recognize [the plaintiff] as a seller of business opportunities were, as claimed by the plaintiff, substantial factors in causing damage to the plaintiff and this damage, the forced closing of the business, was a natural and foreseeable consequence of the defendants' neglect and incompetence." In support of its determination, the trial court cited, inter alia, portions of the testimony of Harold Brown, the plaintiff's expert on franchising and business opportunities.

The defendants challenge the trial court's conclusion on two grounds. They claim that Brown: (1) was not qualified to state an opinion regarding whether the plaintiff would have been able to make an effective postsale registration had it been notified of its violation in a timely fashion; and (2) based his opinion on faulty assumptions. We need not, however, resolve these issues in order to decide this appeal. Even if we were to assume that the trial court properly determined that the defendants' malpractice had constituted a proximate cause of the plaintiff's failure, we conclude, for the reasons that follow, that the trial court improperly concluded that the plaintiff had established its damages to a reasonable certainty.

III

The defendants' third claim on appeal challenges the trial court's award of damages. The defendants argue that the trial court improperly: (1) concluded that the plaintiff's expert witness was qualified to render an opinion as to the value of the plaintiff; (2) awarded damages based on lost profits rather than the going concern value of the business at the date of destruction; (3) awarded the plaintiff approximately $15.9 million in lost profits calculated over a period of twelve years;

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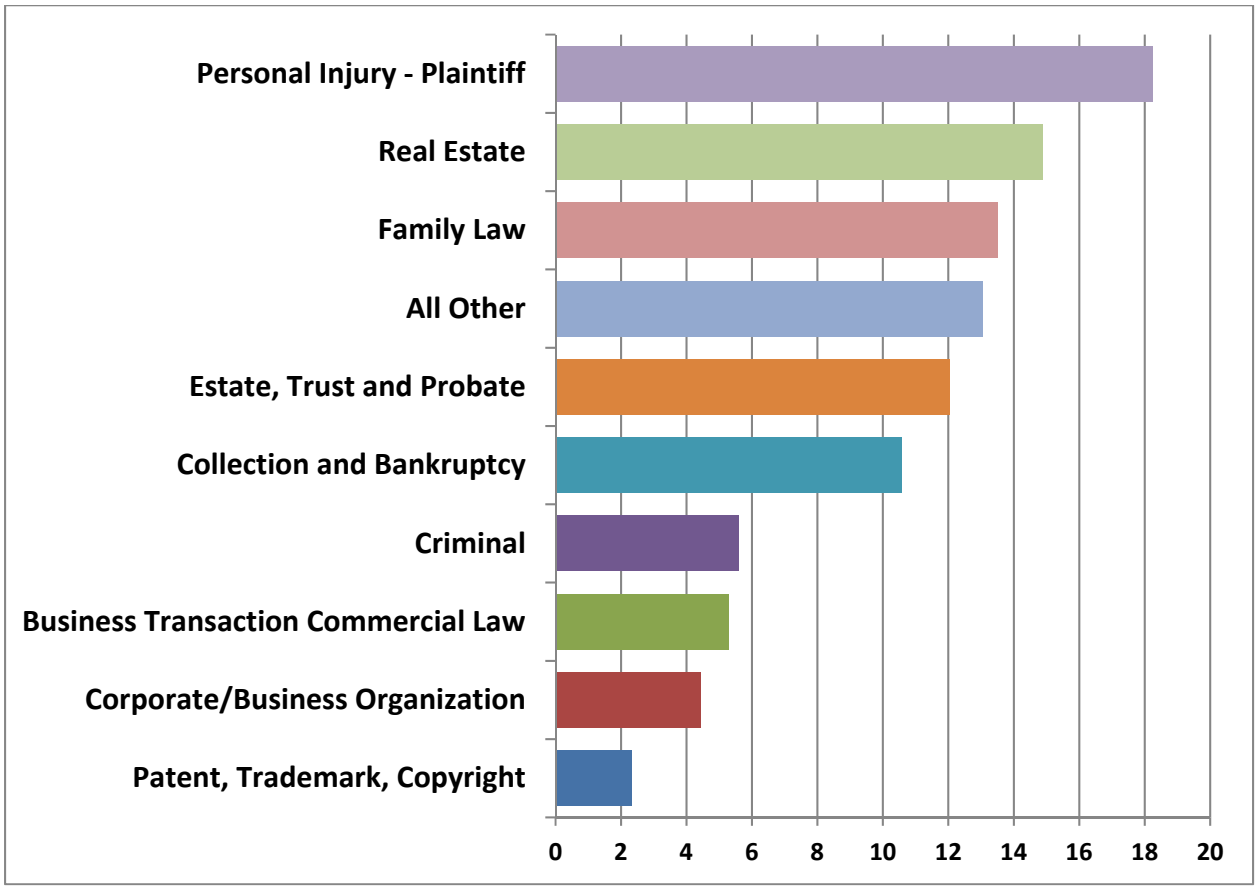
and (4) included prejudgment interest in the damages award. We conclude that: (1) the plaintiff's expert was qualified; (2) unestablished enterprises must be permitted to recover damages for legal malpractice and that a flexible approach in determining those damages generally is appropriate; (3) lost profits for a reasonable period of time may serve as an appropriate measure of damages under certain circumstances; and (4) the plaintiff bears the burden of proving lost profits to a reasonable certainty. As applied to the facts of this case, however, we conclude that the plaintiff has not sustained its burden of proof regarding damages. [8]

We begin with a brief overview of additional facts that are relevant to the correct determination of damages in this case. The plaintiff had been operating for approximately one year at the time it retained the defendants.

Breakout Session

Client Screening and billing

Legal Malpractice claims by practice area (ABA data 2012-2015)



I. Selecting the Client: Best way to prevent a claim is from the start—client selection

Red Flags

Dissatisfaction with prior counsel	Axe to grind
Difficulty in prevailing	Unreasonable expectations
Within your wheelhouse	Overly litigious

****

II. Reaching the Agreement

The contingency fee agreement

Rule 1.5 (c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by subsection (d) or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages of the recovery that shall accrue to the lawyer as a fee in the event of settlement, trial or appeal, whether and to what extent the client will be responsible for any court costs and expenses of litigation, and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

The Fee Cap Statute

52-251(c)

(e) No waiver of the percentage limitations of subsection (b) of this section shall be valid unless the contingency fee agreement (1) is in writing, (2) sets forth in full the fee schedule of subsection (b) of this section, (3) contains a conspicuous statement, printed in boldface type at least twelve points in size, in substantially the following form: "I UNDERSTAND THAT THE FEE SCHEDULE SET FORTH IN SECTION 52-251c OF THE CONNECTICUT GENERAL STATUTES LIMITS THE AMOUNT OF ATTORNEY'S FEES PAYABLE BY A CLAIMANT AND THAT THE STATUTE WAS INTENDED TO INCREASE THE PORTION OF THE JUDGMENT OR SETTLEMENT THAT WAS ACTUALLY RECEIVED BY A CLAIMANT. NOTWITHSTANDING THAT THE LEGISLATIVE INTENT IN ENACTING THAT FEE SCHEDULE WAS TO CONFER A BENEFIT ON A CLAIMANT LIKE MYSELF, I KNOWINGLY AND VOLUNTARILY WAIVE THAT FEE SCHEDULE IN THIS CLAIM OR CIVIL ACTION.", and (4) is signed and acknowledged by the claimant before a notary public or other person authorized to take acknowledgments.

****

III. The Scope of Representation

Rule 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

****

IV. Case For Discussion

Existing Family Law client—paying by the hour

Involved in a car accident and sustains injuries

Client has had three prior PI claims

Client is critical of former lawyer for "selling the case short"

CLE PRESENTATION OUTLINE

I) Who are we? how did we get here? (10 minutes)

II) What is marketing and networking in the legal world and why is it needed? (15 minutes)
   a. Attorney versus business owner or business employee
   b. Marketing to clients
   c. Marketing to the community

III) Marketing from the small firm perspective (10 minutes)

IV) Marketing from a large firm perspective (10 minutes)

V) Takeaways/Reviews (5 minutes)

VI) Questions/Answers (10 minutes)

Ethical Dos & Don'ts of Social Media

Mark Dubois – Geraghty & Bonnano

Meghan Freed – Freed Marcroft

Presenters

Mark Dubois

Geraghty & Bonnano, LLC Attorneys at Law

GeraghtyBonnano.com
www.facebook.com/gandblaw/
www.linkedin.com/in/mark-dubois-39708533/

Meghan Freed

FreedMarcroft
FAMILY LAW

FreedMarcroft.com
@FreedMarcroft
@MeghanFreed
www.linkedin.com/in/meghanfreed/

Social Media Can Be Good

What Should Guide Your Firm's Social Media Presence?

- Your firm's mission.
- Your personality (or your firm culture) and the authentic image you want to portray.
- Your practice areas ("law firm to consumer" or "law firm to business" or "law firm to law firm").
- The reality that you are on social media even if you aren't on social media.

Case Study:
Freed Marcroft's Approach to Social Media

Since we founded our firm in 2012, our team has embraced social media as one way of **sharing** our **mission** that there is a **better way** of divorcing that can transform people and families.

In order to explain our better way, we are committed to actively developing content to educate people about our philosophy, experience, and process.

Freed Marcroft LLC
Published by Laura Manasewich [?] · September 7 at 12:03 PM ·

May you never stop hoping for a better tomorrow, and never stop doing the work to achieve it. We believe in setting your sights high and working hard to tackle the obstacles life throws at us, because we believe a birghter day is always just ahead. 🌟
.
.
.
#achieveyourgoals #determineyourfuture #setyoursights #yourjourney #yourfreedom #freedmarcroft #familylaw #ctfamilylaw #ctfamilylawyers #ctdivorcelawyers

Freed Marcroft LLC is at Freed Marcroft LLC (Hartford, CT).
Published by Natasha Roggi [?] · 7 hrs · Hartford ·

Today's webinar with our own Meghan Freed and Dr. Dori Gatter and Associates is live and rolling! Head on over - we've still got LOTS of great work to do together that will help you regain control of your world through empowering your decisions.

anymeeting.com/PIID=ED56D8808...

Freed Marcroft LLC
Published by Laura Manasewich [?] · September 5 at 10:28 AM ·

Meet Attorney Seth Conant: "Working with clients through the confusion, stress and challenges of divorce and family discord provides an opportunity to empower people and facilitate a responsible and authentic path forward for them as they pursue a new, changed and positive future for themselves. It is endlessly rewarding to share with people who have reached the other side of their process to find, after navigating the darkness they are experiencing, that they have arrived in... See More

Examples of Freed Marcroft's Approach to Education

- Webinars with mental health and financial professionals on topics such as "How to Have a Difficult Conversation," "Financial Issues During Divorce," & "How the 2018 Tax Law Changes Impact Divorcing Families."
- Blog articles and videos discussing various aspects of Connecticut family law.
- In-person Divorce 101 and 201 workshops with a psychotherapist and economist.


3RD WARD
HARTF
CONNECT
Scale of fe
For North Part, see P
Tweets 4,793
Following 1,133
Followers 1,156
Likes 1,887
Lists 7
Following
Meghan Freed
@MeghanFreed Follows you
@freedmarcroft divorce lawyer and injudicious lover of laughter. political junkie. hartford by ebullient choice. shows belly to dogs.
Hartford, CT
freedmarcroft.com
Joined October 2010
Tweet to
Message
182 Followers you know
496 Photos and videos
Tweets
Tweets & replies
Media
Meghan Freed @MeghanFreed · 9h
The shift to a more positive life can only happen when a person is willing and committed to change. But how do you know what's right for you? What are some tools to help you figure it out? Thankfully, we have @drdorigatter to guide us.
Freed Marcroft @freedmarcroft
Just one hour till our webinar: Making Decisions To Empower Your Life with @drdorigatter and @MeghanFreed
Link to register and attend:
1
2
Meghan Freed @MeghanFreed · 21h
Midnight in the Garden of Buddha and @ThatLawyerDog
Who to follow · Refresh · View all
Followed by Meghan Freed and others
Dennis House @Denni...
Follow
Followed by Meghan Freed and others
Kevin M. @Rev_Beaker
Follow
Followed by Meghan Freed and others
Luke Bronin @MayorBr...
Follow
Find people you know
Trends for you · Change
#POPSUGARatKohls
Shop Kohls.com & select stores!
Promoted by Kohl's
David Wright
David Wright to likely retire at the end of the season

Freed Marcroft's Approach to Social Media

- We do not charge for of these examples, they are simply the educational tools we have chosen to express and explain our mission.

- None are "social media."

- Freed Marcroft's mission isn't only to *find* a better way but to *share* it. Social media as one way of accomplishing the "sharing" part of our mission.

It might have been Augustine of Hippo – the origins are admittedly murky – in his *Confessions* who first posed the question:

"If an article, or presentation, or web page, or educational tool falls on the internet and there's no one there to read it, does it make a noise?"

Social Media Platforms

Facebook


Freed Marcroft LLC
Meghan
Home
Create
Page
Inbox
Events
Notifications
Insights
Publishing To...
More
Settings
Help
Liked
Following
Share
Call Now
Are you stuck in the endless cycle of contemplating divorce? We are navigating the waters - your questions, hopes & fears; helping you to step boldly into a better way of life for you (and your family).
On Tuesday, November 27th Freed Marcroft will be hosting a divorce workshop at The Town and County Club in Hartford's West End. Meghan Freed will present the course of moving through a divorce with Freed Marcroft; uncovering your biggest decisions, options, approaches, and a ... See More
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@FreedMarcroft
Home
About
Services
Reviews
Posts
Photos
Locations
Videos
Email Signup
Community
TUE, NOV 27 AT 5 PM
Navigating Divorce Workshop: 101
The Town and County Club · Hartford
Robin, Victor and 4 friends
Going
Boost Your Post
"You're Inv..." is performing better than 70% of your posts. Boost it to reach more...
624 were here 0 this week
Community
See All
Jaclyn DuBois Zolnik and 633 other friends like this
Invite Friends
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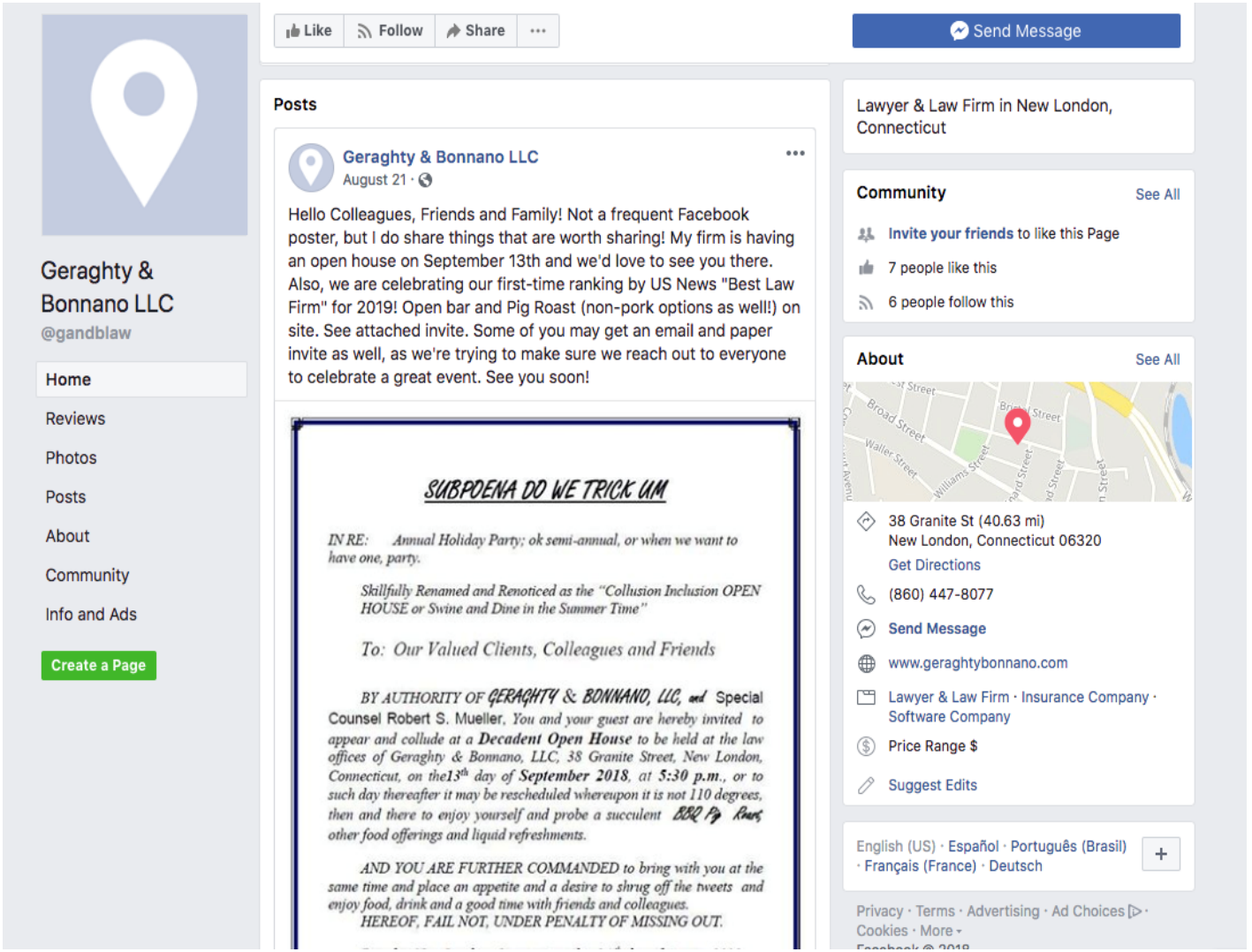
Typically replies within a few hours
Send Message
http://www.freedm...
Promote Website
Divorce &
Chat (144)

Facebook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August 21 ·
Hello Colleagues, Friends and Family! Not a frequent Facebook poster, but I do share things that are worth sharing! My firm is having an open house on September 13th and we'd love to see you there. Also, we are celebrating our first-time ranking by US News "Best Law Firm" for 2019! Open bar and Pig Roast (non-pork options as well!) on site. See attached invite. Some of you may get an email and paper invite as well, as we're trying to make sure we reach out to everyone to celebrate a great event. See you soon!
SUBPOENA DO WE TRICK UM
IN RE: Annual Holiday Party; ok semi-annual, or when we want to have one, party.
Skillfully Renamed and Renoticed as the "Collusion Inclusion OPEN HOUSE or Swine and Dine in the Summer Time"
To: Our Valued Clients, Colleagues and Friends
BY AUTHORITY OF GERAGHTY & BONNANO, LLC, and Special Counsel Robert S. Mueller, You and your guest are hereby invited to appear and collude at a Decadent Open House to be held at the law offices of Geraghty & Bonnano, LLC, 38 Granite Street, New London, Connecticut, on the13th day of September 2018, at 5:30 p.m., or to such day thereafter it may be rescheduled whereupon it is not 110 degrees, then and there to enjoy yourself and probe a succulent BBQ Pig Roast other food offerings and liquid refreshments.
AND YOU ARE FURTHER COMMANDED to bring with you at the same time and place an appetite and a desire to shrug off the tweets and enjoy food, drink and a good time with friends and colleagues.
HEREOF, FAIL NOT, UNDER PENALTY OF MISSING OUT.
Lawyer & Law Firm in New London, Connecticut
Community
See All
Invite your friends to like this Page
7 people like this
6 people follow this
About
See All
Broad Street
Waller Street
Williams Street
38 Granite St (40.63 mi)
New London, Connecticut 06320
Get Directions
(860) 447-8077
Send Message
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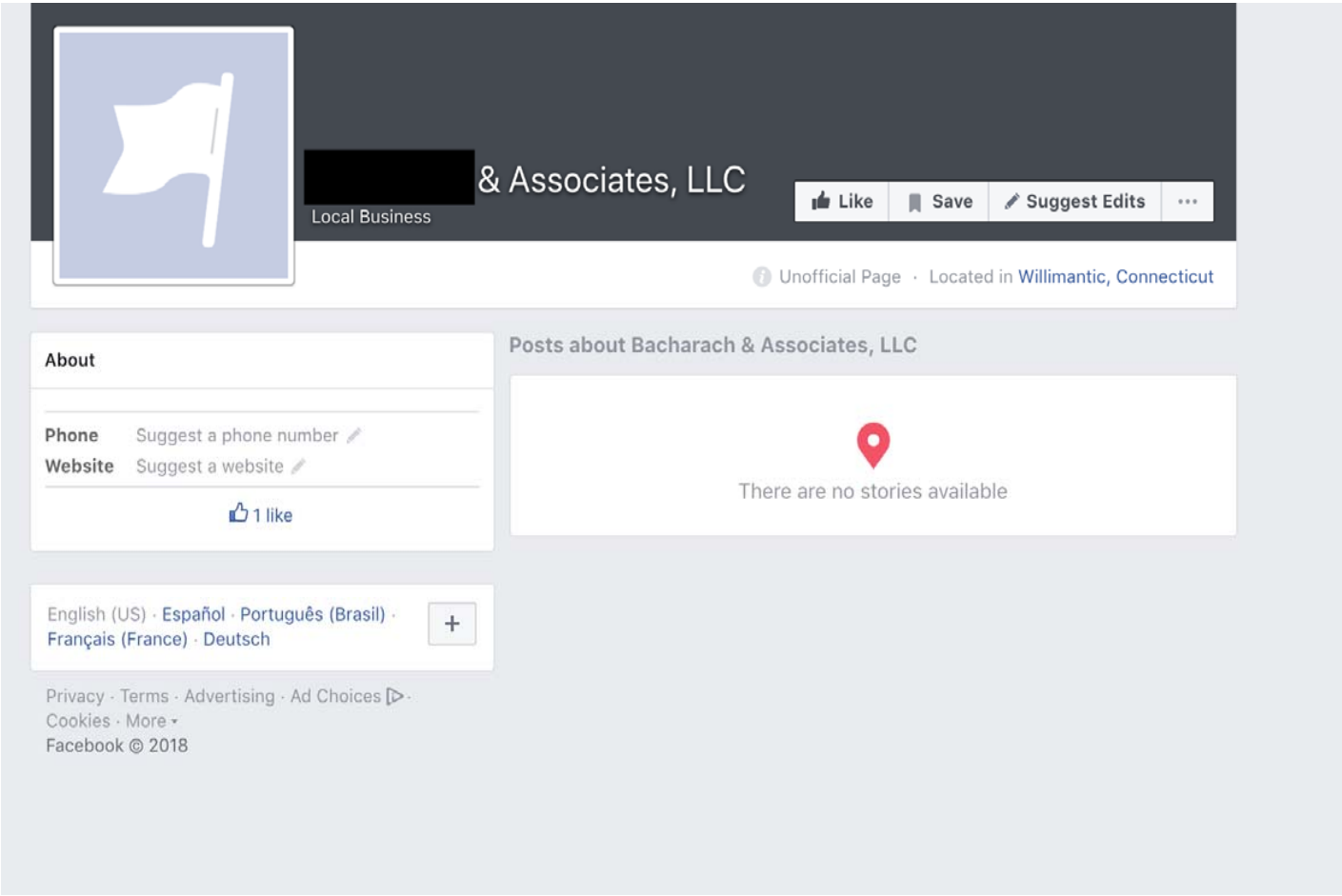
Facebook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Facebook © 2018

Where This All May Lead

If you share yourself and give generously of the insights you and your colleagues' insights, people might learn about your philosophy and want to work with you.

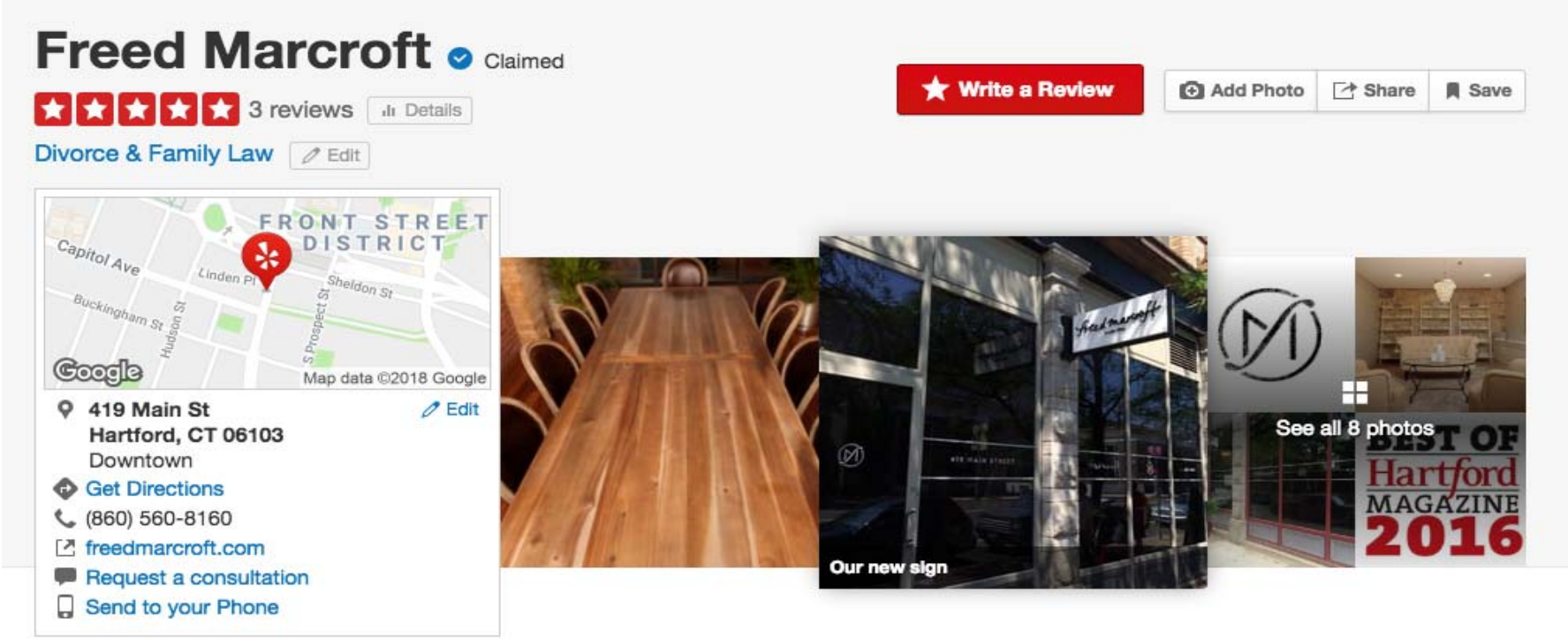
They might even pay you.

And With Those Funds You Can

- Do the work for them in the manner they deserve
- Continue your education so that you become an even better attorney
- Improve how your practice runs
- Help more people
- Better your family's life and the lives of the employees you already have and those you will need to hire to help all the people attracted to the positive change you can make for them, their families, and their businesses.

Social Media Must Be Managed

Be mindful of what people are saying about you …other people are reading it even if you aren't.



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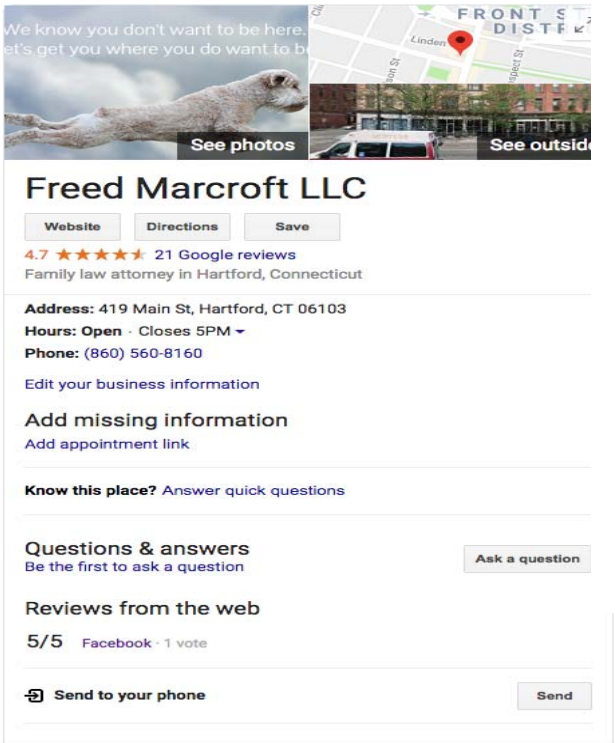
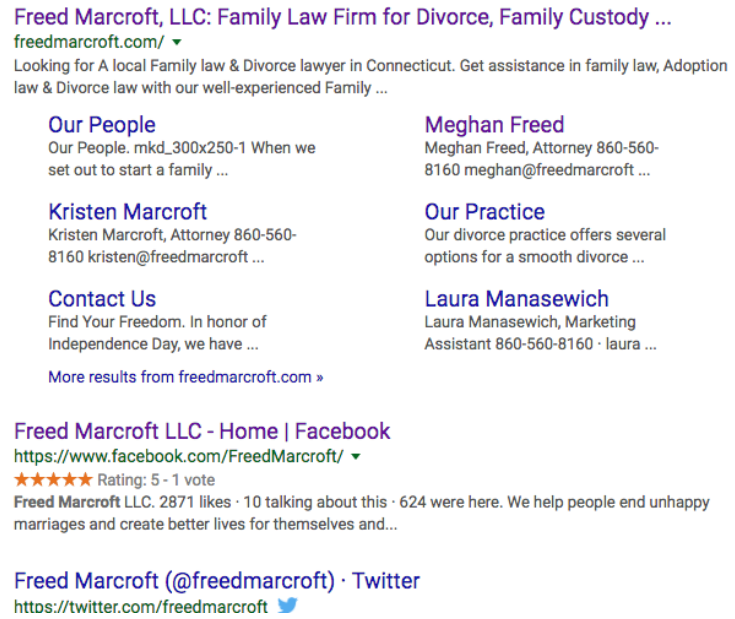
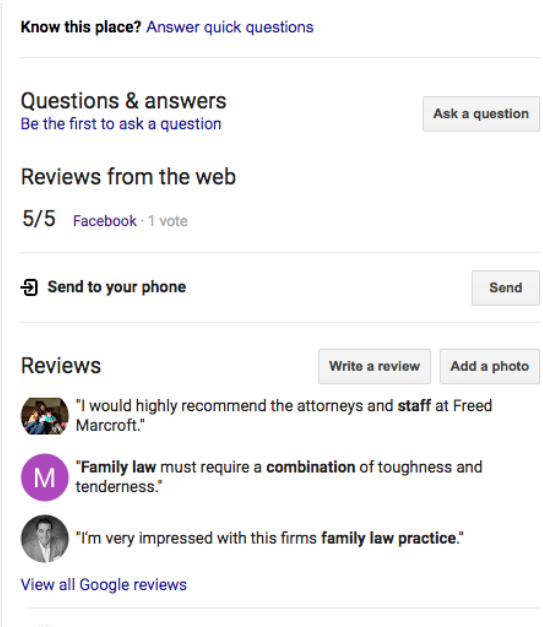






Ethics

Everything we do on social media, regardless of platform, has to be in accordance with ethics requirements.

- ABA Model Rule 1.0
- Connecticut Rules, including Rule 1.6
- Confidentiality vs. Privilege

Conflicts

The risks in communicating – including posting opinions – via blogs, social networking and interactive legal Q and A sites (e.g., Counsel.Net; Quara.Com) sites:

- Do non-lawyer participants accurately identify themselves other than by *noms du Facebook*?
  - Communicating with an individual whose interests (or the interests of his or her company's) are adverse to the lawyer-participant.
- Does the lawyer participant announce an opinion on a legal issue that is contrary to that of her client-employer?
  - *"A concurrent conflict of interest exists if . . . there is a significant risk that the representation of … [the client] will be materially limited by . . . a personal interest of the lawyer"*

RPC 1.7(a)(2) ("Conflict of Interest: Current Clients")

Duty of Honesty

Social Media And Investigative "Pretexting" By A Subordinate

"…[I]t does not matter whether the lawyer employs an agent, such as an investigator, to engage in the ruse. As provided by Rule 8.4(a), [a] lawyer or law firm shall not . . . Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do, or do so through the acts of another. …Consequently, absent some exception to the Rules, a lawyer's investigator or other agent also may not use deception to obtain information from the user of a social networking website. *See id.* Rule 5.3(b)(1).

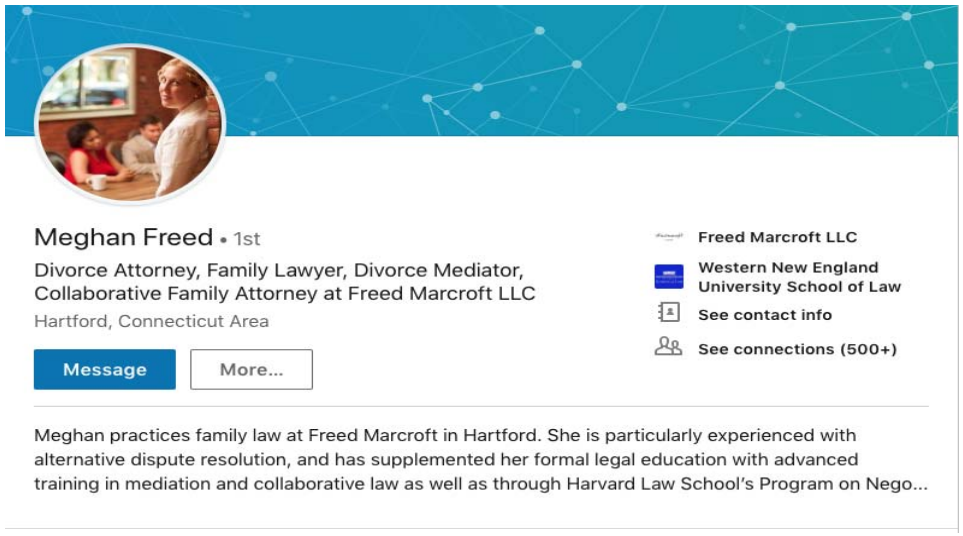
New York City Bar Association Formal Opinion 2010-2

Duty of Honesty

Social Media and Investigative "Pretexting"

"[T]he Committee believes that the proposed course of conduct contemplated by the inquirer would violate [the dishonesty and fraud prohibitions of] Rule 8.4(c) because the planned communication by the third party with the witness is deceptive. It omits a highly material fact; namely, that the third party who asks to be allowed access to the witness's pages is doing so only because he or she is intent on obtaining information and sharing it with a lawyer for use in a lawsuit to impeach the testimony of the witness. The omission would purposefully conceal that fact from the witness for the purpose

Specialties



Meghan Freed • 1st

Divorce Attorney, Family Lawyer, Divorce Mediator, Collaborative Family Attorney at Freed Marcroft LLC

Hartford, Connecticut Area

Message | More...

Freed Marcroft LLC

Western New England University School of Law

See contact info

See connections (500+)

Meghan practices family law at Freed Marcroft in Hartford. She is particularly experienced with alternative dispute resolution, and has supplemented her formal legal education with advanced training in mediation and collaborative law as well as through Harvard Law School's Program on Nego...

Skills & Endorsements

Litigation · 66

Endorsed by **Atty. Robert B. Fried and 1 other who is highly skilled at this**

Endorsed by **Robin Zaleski and 1 other mutual connection**

Mediation · 43

Endorsed by **Charles D. Jamieson and 2 others who are highly skilled at this**

Endorsed by **Robin Zaleski and 1 other mutual connection**

Appeals · 29

Endorsed by **Robin Zaleski and 1 other mutual connection**

Endorsed by **2 of Meghan's colleagues at Hartford Steam Boiler**

Show more

Experience

Attorney

Freed Marcroft LLC

Aug 2012 – Present · 6 yrs 2 mos

Hartford, Connecticut Area

Meghan Freed practices marital and family law in Hartford.

Freed Marcroft's practice is welcoming to all individuals and families – especially including same sex couples and members of the lesbian, gay, bisexual, and transgender communities.

Specialties: Under Connecticut rules, I don't have any specialties. I have experience in all the areas noted above. More information can be found at www.freedmarcroft.com.

Counsel

Hartford Steam Boiler

Apr 2007 – Aug 2012 · 5 yrs 5 mos

• Oversaw and directed litigation, including high-exposure insurance coverage, reinsurance, tort, general business, fraud and subrogation litigation, for the Company, a global specialty property insurer and reinsurer specializing in equipment breakdown coverage and engineering-based risk management.... See more

Associate

Bingham McCutchen

2006 – 2007 · 1 yr

• Represented Fortune 500 clients in complex litigation, including breach of contract, tort and securities actions such as shareholder derivative suits, PSLRA actions and state fraud claims.

• Advised and updated clients on ongoing litigation matters; conducted client interv... See more

Associate

Shipman & Goodwin

2003 – 2006 · 3 yrs

• Researched and drafted legal memoranda including appellate briefs in complex insurance, financial services and white collar defense litigations in state and federal court and in arbitrations.

Specialties

Experience

Attorney

Freed Marcroft LLC

Aug 2012 – Present · 6 yrs 4 mos

Hartford, Connecticut Area

Meghan Freed practices marital and family law in Hartford.

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Specialties: Under Connecticut rules, I don't have any specialties. I have experience in all the areas noted above. More information can be found at www.freedmarcroft.com.

Suggestions

- Review the privacy settings on all relevant social networking sites and adjust those settings to restrict exposure of your networking activity to the appropriate audience.
- Understand the difference between purely social networking activity and professional networking activity and professional networking efforts, and do not mix the two.
- Do not communicate with clients about their legal matters on any networking site.
- Do not include confidential client information in any networking post. Avoid using “hypotheticals” that describe actual client situations in which the client’s identify is likely to be inferred.

The Keyboard-to-Brain Disconnect

The risks of the hastily written e-mail message or post.

- The use of impulsive, intemperate, disparaging or sarcastic language.
- "Puffing" professional abilities or accomplishments thereby subjecting the writer to a higher standard of care.
- The unsupported accusation of wrongdoing or criminality.
- The growing litigating trend: the unguarded confession ("we just committed malpractice!") produced in discovery.

The risks of forwarded e-mail messages.

- Not reading the *entire* message or post before hitting the "forward" command; the poison nugget at the very end of the message or post.
- Mishaps in the message in advertently sent to the wrong recipient or the inadvertent sent "Reply to All."

Unauthorized Practice of Law (UPL)

RPC 5.5 (“Unauthorized Practice of Law”)

The rule does “not authorize communications advertising legal services to prospective clients in [one] jurisdiction by lawyers who are admitted to practice [only] in other jurisdictions.”

Model RPC 5.5 Comment [21]

Conflicts of Interest

THE DILEMMA

Confidentiality: Connecticut Rule 1.6

Client-Lawyer Relationship

Rule 1.6 Confidentiality of Information

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

Confidentiality

Consider privacy settings to limit access to your social network profile.

- E.g., “Who Can View My Profile?”; “Limited Profile” (Facebook)
- Conceal contacts list on LinkedIn

Confidentiality

Confidentiality duties do not require attorneys to "develop a mastery of the security features and deficiencies of each technology available" but they do "require a basic understanding of the electronics protections afforded."

Calif. State Bar Formal Opinion No. 2010-179

Confidentiality

RPC 1.6 (“Confidentiality of Information”)

- Prohibits revealing **any** “information relating to the representation of a client”
- The duty extends “not only to matters communicated in confidence by the client but also to all information relating to the representation whatever its source.”

ABA Model Rule 1.6 Comment [3]

Section 2-28A(b)

- The mandatory filing rules regarding attorney advertisements do not apply to the contents of an attorney's website(s).
- Domain names are filed quarterly via E-Services under "Attorney Advertising".
- "Attorneys need not provide the domain names for the websites that are not used primarily to advertise legal services, this includes social media used for personal purposes."

For more information see Section 2-28A(b) and the Statewide Grievance Committee's Attorney Advertisitng FAQ's: https://www.jud.ct.gov/sgc/faq_atty_adv.htm

Avoiding Pitfalls in Web-Based Communications By Lawyers: The Basics

- If licensed in Connecticut, thou shall register every quarter each domain name (including on social media sites) thou useth "primarily to offer legal services." Conn. Practice Book §2-28A(a)(3)
- Thou shall not be retained inadvertently. RPC 1.5(b) and 1.18
- Thou shall not pay others to "recommend" customers (RPC 7.2(c)) or to share fees with non-lawyers. (RPC 5.4(a))
- Thou shall think before hitting the "send" button.

Avoiding Pitfalls in Web-Based Communications By Lawyers: The Basics

- Thou shall not disclose or use, or allow the disclosure or use of, "information relating to" clients and *potential* clients. RPC 1.6, 1.18(b)
- Thou shall ensure no conflicts of interest. RPC 1.7, 1.8 and 1.9
- Thou shall not imply authorization to practice in states in which thou doesn't holdeth a license.
- Thou shall not "make a false or misleading communications" about thyself or they "services." RPC 7.1
- Thou shall give advice only on topics for which thou is "competent." RPC 1.1

Email and Text

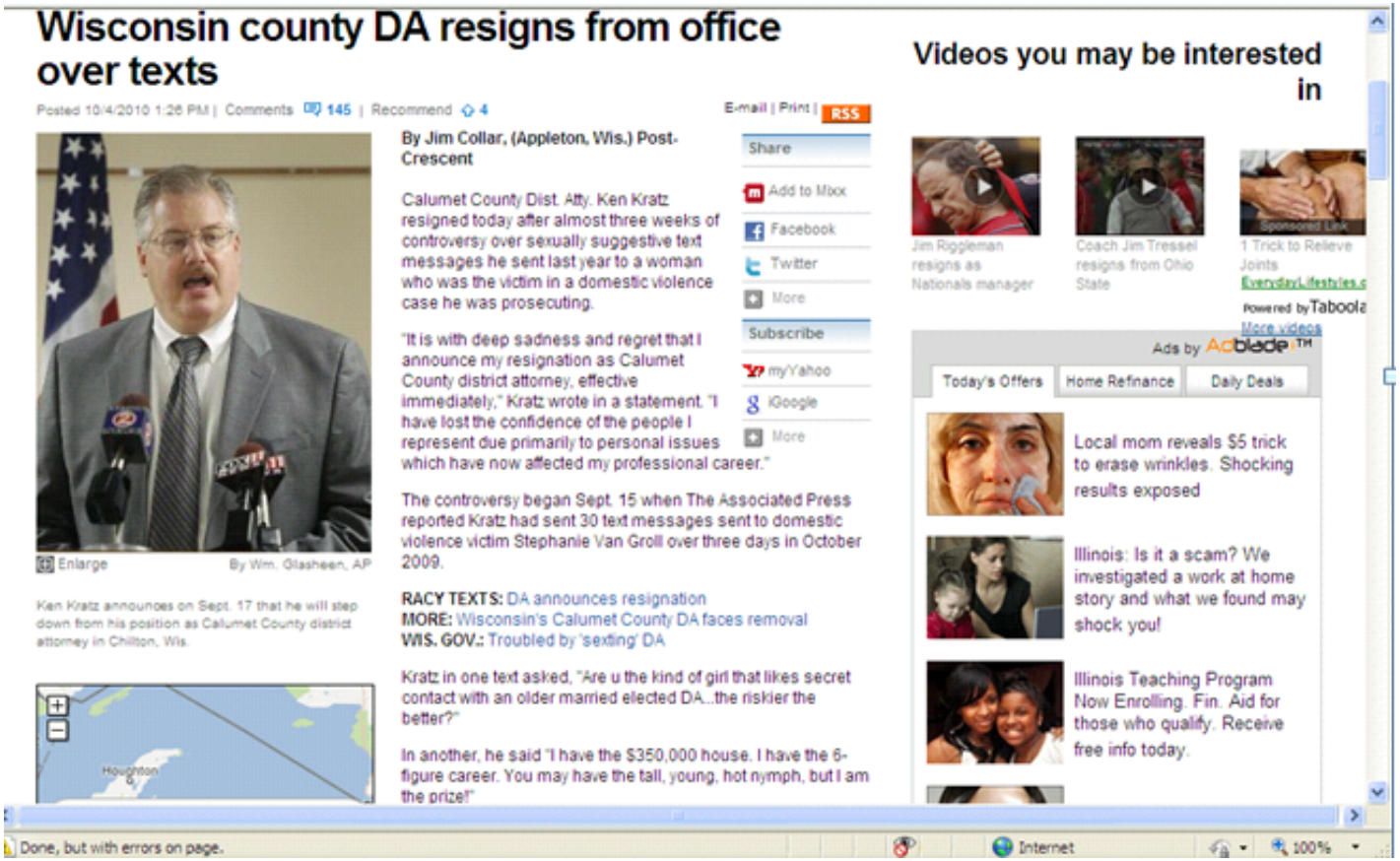
DANCE LIKE NO ONE IS AROUND

AND EMAIL AND TEXT LIKE IT IS GOING TO BE READ OUTLOUD AT A DEPOSITION

What Happens When Social Media Goes Awry

Demoted Over Blog Comments

Resigns over Text Messages



Wisconsin county DA resigns from office over texts

Posted 10/4/2010 1:26 PM | Comments 145 | Recommend 4

E-mail | Print | RSS

By Jim Collar, (Appleton, Wis.) Post-Crescent

Share
Add to Mixx
Facebook
Twitter
More
Subscribe
myYahoo
iGoogle
More

Calumet County Dist. Atty. Ken Kratz resigned today after almost three weeks of controversy over sexually suggestive text messages he sent last year to a woman who was the victim in a domestic violence case he was prosecuting.

"It is with deep sadness and regret that I announce my resignation as Calumet County district attorney, effective immediately," Kratz wrote in a statement. "I have lost the confidence of the people I represent due primarily to personal issues which have now affected my professional career."

The controversy began Sept. 15 when The Associated Press reported Kratz had sent 30 text messages sent to domestic violence victim Stephanie Van Groll over three days in October 2009.

Enlarge By Wm. Glasheen, AP

Ken Kratz announces on Sept. 17 that he will step down from his position as Calumet County district attorney in Chilton, Wis.

RACY TEXTS: DA announces resignation
MORE: Wisconsin's Calumet County DA faces removal
WIS. GOV.: Troubled by 'sexting' DA

Kratz in one text asked, "Are u the kind of girl that likes secret contact with an older married elected DA...the riskier the better?"

In another, he said "I have the $350,000 house. I have the 6-figure career. You may have the tall, young, hot nymph, but I am the prize!"

Houghton

Videos you may be interested in

Jim Riggleman resigns as Nationals manager

Coach Jim Tressel resigns from Ohio State

1 Trick to Relieve Joints

Powered by Taboola

More videos

Ads by Adblade

Today's Offers | Home Refinance | Daily Deals

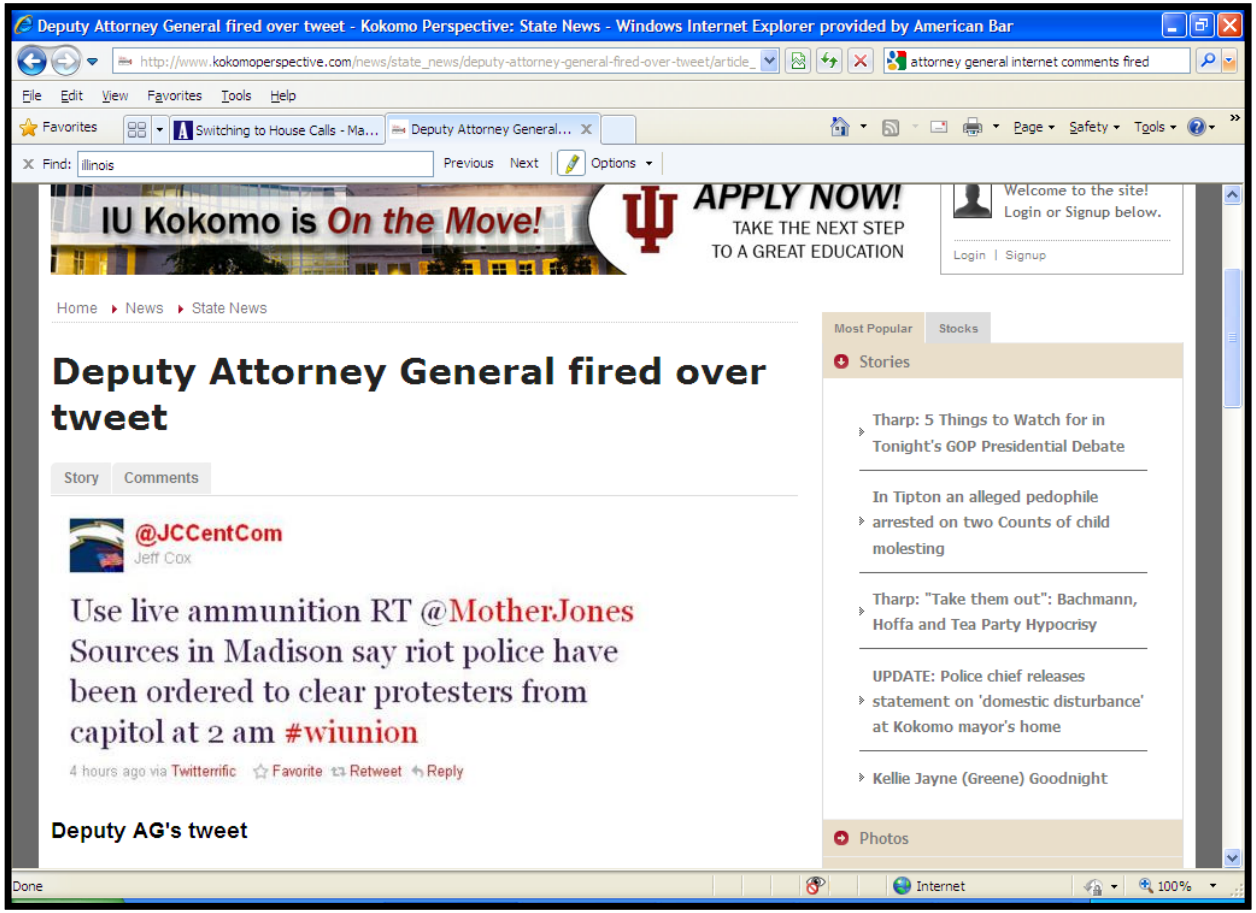
Local mom reveals $5 trick to erase wrinkles. Shocking results exposed

Illinois: Is it a scam? We investigated a work at home story and what we found may shock you!

Illinois Teaching Program Now Enrolling. Fin. Aid for those who qualify. Receive free info today.

Done, but with errors on page. Internet 100%

The Risks of Using Social Media



Blog Posts to Find Clients

"Ann Althouse, what exactly are you for?"

Thursday, February 25, 2010

Instead of dashing to the scene of an accident, lawyers in need of clients dash to blog posts about accidents.

There are computer programs that find blog posts about, say, motorcycle deaths and then drop comments that seem to be from an ordinary person sympathizing about the death and dropping a link to a website offering to help you with legal claims. I know this because I just got a comment on an old post of mine — "The mystery of Bob Dylan's motorcycle crash." It contained some key words like "very seriously injured" (in the phrase "not very seriously injured") and "ambulance" (in "no ambulance was called to the scene") and "died" (in "he would have died if" he hadn't, after the accident, changed the way he lived).

This morning I discovered the comment — already deleted —

Assault charge filed after tweet sent to journalist with epilepsy

By Ralph Ellis and Madison Park, CNN
Updated 7:04 PM ET, Mon March 20, 2017

Journalist Kurt Eichenwald sought to find the person who sent him a strobe image via Twitter.

Story highlights

Man also faces federal cyberstalking charge

Journalist says he suffered a seizure and received more flashing images

(CNN) — An additional charge has been filed against a Maryland man accused of tweeting an animated strobe image to a journalist with epilepsy, prosecutors in Texas said Monday.

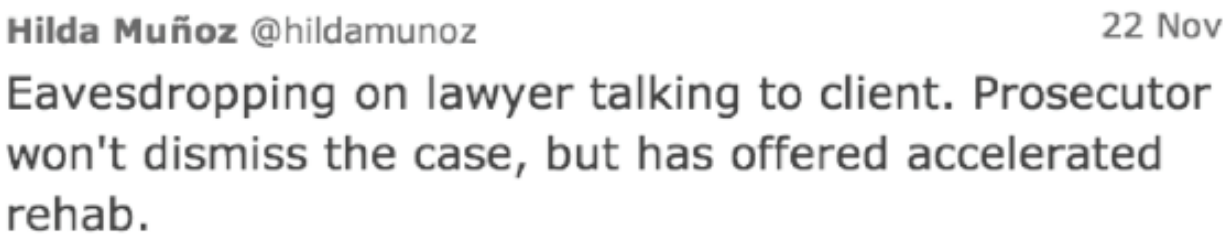
John Rayne Rivello, 29, was charged with aggravated assault with a deadly weapon, said Brittany Dunn with the Dallas County District Attorney's Office.

More from CNN


Nancy Pelosi has a major impeachment problem


Conor McGregor vs. Khabib Nurmagomedov Pre-UFC 229 Press...

The Walls Have Ears. And a Microphone.



Zillow's Richard Barton's Rules

- **If it can be free it will be free**
- If it can be rated it will be rated
- **If it can be known it will be known**
- If it can be online it will be found online

Social Media Policies

Every law office, even solo practitioners, need a social media policy.

Two things that should be understood to start – firm posts and personal posts, on any platform, should be sharply delineated.

Tips For A Social Media Policy

- Social media use should not interfere with legal work.
- Nothing is private, and everything lives forever on the internet.
- Don’t share you secrets: yours, your client’s, you firm’s.
- Respect privacy and copyrights.
- Be polite – you are representing yourself and the firm.
- Respect coworkers online and off.
- Be clear that your views are your own and not the firm’s.
- Do not use the firm logo on your personal account. You don’t represent the firm.
- Notify your supervisor if you make a public error so it can be remedied.
- Never accept friend requests from active clients.

Thank You

Questions?