

The Nitty-Gritty of Starting Your Own Law Firm

BY JOHN ARRASTIA JR.



John Arrastia Jr.

Starting your own law firm is both a daunting and exhilarating experience. For most lawyers, we dream of being our own boss and exerting more control over our lives. At the same time, most of us may be well-trained in the law but feel ill-prepared for opening and running a small business. There is no good reason to feel overwhelmed by the prospect of starting and running a new law practice. Fortunately, by applying those same tools lawyers use everyday—research, information, and preparation—just about any lawyer can start and maintain his or her own law practice. The most intimidating issues for any lawyer thinking about starting his or her own firm have to do with money: how to manage the expenses and how to get new clients (and bring in income).

Shouldn't I Wait Until the Economy Improves to Start My Practice?

Despite the economic downturn, this may be one of the best times to start a new law practice. First, consumers of legal services are looking for bargains, and that includes hiring solo practitioners and small firms that can offer quality representation at a lower cost than a larger firm. Second, the economy has seen a surge in certain practice areas, such as consumer law, employment, foreclosure, business disputes, and landlord-tenant disputes. Third, the cost of office space, staff, and equipment is significantly less now than it was just a year ago. Look for ways to offer services tailored to the needs in this economy, and it can greatly benefit your practice.

The First Reality Check: Creating a Budget

The income from your practice will be the legal fees collected minus your expenses, so managing

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Challenging Public Education Funding in Illinois: A New Approach

BY KENYA N. MCCARTER



Kenya N. McCarter

Illinois has one the worst public education systems in the United States.¹ This seems unlikely considering Illinois has the fifth largest population and personal income in the country. Despite Illinois's vast personal wealth, it ranks dead last in the size of the gap in per-pupil education spending between its wealthiest and most impoverished school districts.² Even more tragic is the fact that of the 15 poorest school districts, more than 80 percent of the students are minorities.³ Illinois has created a system

of school funding that provides an inadequate education to the poor simply because they are poor. Nevertheless, the Illinois Supreme Court has stated that equality does not equate to efficiency.⁴ Although equality is not efficiency, civil rights advocates can still attack public school financing by advocating for efficiency in spending and appropriation of taxes.

Supreme Court Decisions Shaping Public School Financing

In a series of public education decisions, the United States Supreme Court has ultimately placed the only means to address inadequacies in school financing and de facto⁵ segregation into the hands of the state legislatures. The United States Supreme Court's education litigation began in 1954 with *Brown v. Board of Education*. In *Brown*, the Court overturned the *Plessy v. Ferguson*⁶ doctrine of "separate but equal" because it denied equal protection to minority students.⁷ Twenty years later, in *Rodriguez v. City of San Antonio*, the Supreme Court ruled that education was not a "fundamental right under the United States Constitution."⁸ Where wealth

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CHAIRS' COLUMN

The Committee's Call to Action

BY JENNIFER BORUM BECHET, TIMOTHY L. BERTSCHY, AND RAYMOND B. KIM



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The Minority Trial Lawyer Committee is calling you to action. In an effort to provide members with the greatest value in this time of budget cuts and belt-tightening, the committee is

undertaking several initiatives to broaden the scope of member benefits. One of the most exciting activities will be improving the committee website (www.abanet.org/litigation/committees/minority/) to provide new features, regular updates, more content, and greater interactivity. Among the changes we will be implementing in the coming months are a regularly updated News & Developments web page, a new section dedicated to articles featuring original content and selected articles from past issues of the newsletter, and an "Ask a Mentor" web page inspired by the popular "Ask a Mentor" column found in our newsletter, which will allow members to post questions about career development issues and view answers from the committee's "virtual mentors." Through the efforts of editor-in-chief Anna Torres and the rest of the editorial board, committee members already enjoy a truly outstanding newsletter. With improvements to the website, we hope to provide a first-class online resource as well, and one that you will bookmark on your browser and turn to again and again.

Thanks to the hard work of the Committee's website editor, Denise Zamore, we are already underway with some of these

efforts. However, we are looking for additional volunteers to join the website editorial board to help make these plans a reality. For those of you seeking to get involved in the work of the Minority Trial Lawyer Committee, please contact any of the cochairs to learn more about this fun and rewarding opportunity.

We encourage you to join us at this year's ABA Annual Meeting taking place from July 30–August 2 in Chicago. The committee will be hosting a breakfast meeting on August 1 at 7:00 a.m. in the Fairmont Hotel. Sharon Jones, a nationally recognized diversity consultant and the president and founder of Jones Diversity Group, LLC, will lead a robust discussion on "Assessing and Addressing the Economic Downturn's Impact on Diversity within Your Law Firm or Department." The breakfast meeting will be a wonderful opportunity to hear Ms. Jones's insights on this timely and important issue.

We also hope that you will make plans to attend an informal committee dinner that will be taking place following the welcome reception in Chicago, at a location to be announced. A recent survey of committee members conducted by the ABA revealed that networking opportunities were one of the most important benefits of membership. This past April in Atlanta, committee members had an enjoyable and memorable "inaugural" dinner at Kevin Rathbun's Steakhouse, and the committee dinner in Chicago will provide a great opportunity to reconnect with (or, for those new to the committee or who have not yet attended committee functions, meet) fellow members from across the country. Please look for an email with more details about the dinner, as well as RSVP information, shortly.

Finally, the Minority Trial Lawyer Committee would like to hear from you about your thoughts for track program

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How to Anticipate (and Avoid) Mediation Impasse

BY MERRI A. BALDWIN AND JOHN HELLER

Increasingly, it seems, parties are proceeding to mediation, only to discover once they get there that the other side is unreasonable, unyielding, won't act in good faith—take your pick. Partly this may be because courts are putting pressure on litigants to mediate earlier in the course of a lawsuit, before they are truly ready. Another reason may be that lawyers are staking out unreasonable positions at mediation, knowing that settlement is unlikely, but hoping to soften up their adversaries for the next round. A third scenario is that counsel are not effectively managing their clients' expectations in advance of mediation—and can't make up for this shortcoming by trying to do it in real time. Regardless of the cause, failed mediations in most cases represent a missed opportunity to save clients' money and everyone's time. This article addresses some possible ways to prevent mediation stalemate.

Identify Discovery Upfront and Get It Done First

One common obstacle to resolution at mediation is a lawyer's plaint that until more discovery is done, he or she cannot effectively evaluate the case. Accordingly, the claim goes, it is too early to put more than a nuisance settlement amount on the table—or a demand that is effectively 100 percent of the plaintiff's possible damages. The flip side is the lawyer who declines to reveal helpful information—even though it would make the other side more pliable—because he or she doesn't want to provide free discovery. In either case, the exchange of information that is so critical to effective evaluation of a case has been blocked, and the process of resolution impeded.

What does this mean for you as a litigator? First, figure out what information you and your client (or your client's insurer) need in order to evaluate the other side's claims and your client's risks. Do your best to get that discovery done before the mediation. If it's not possible

to obtain all the information you need through formal discovery, consider an informal exchange with opposing counsel.

This same advice applies to the information you need to build your own case. A preliminary analysis by an expert—either on damages or other issues critical to the case—can be very effective at a mediation. The extra cost, even at an early stage, may be well worth it. Figure out sooner rather than later what type of assistance would be useful in your case and get that in place. Where an insurer will be making the decision, make contact early on with the monitoring counsel or whomever will be running that piece of the show. Better to find out what their needs are when you are in a position to try and meet them.

Second, if it is clear that information in your possession could be useful in moderating your opposing counsel's views of his or her case, get that information to counsel ahead of time. Resolve discovery disputes that are delaying your production of the information. If the other side has not served requests to which this information would be responsive, consider providing it in an informal manner, either in a letter to the other side prior to the mediation or as part of your mediation brief.

Use Opposing Counsel Constructively

Many lawyers are adherents of the “Aha!” school of mediation preparation. They don't want to reveal anything about their client's settlement position until very late in the day at the mediation itself. Sometimes, this means a lapse of many hours before an offer is even put on the table, or a complete refusal to negotiate at all. Others treat mediation like going to the dentist. They do not bother to even broach the idea of mediation or settlement with opposing counsel (usually for fear of appearing “weak”), and act like mediation is someone else's bad idea. These are two sides of the same coin. If you want to maximize your client's settlement possibilities, consider a different approach.

First, try raising the notion of mediation as a generic option early in the case. Statements along the lines of “I am always open to mediation” take some of the sting out of later making a suggestion that the parties consider doing just that. Of course, given the requirement in most courts for early discussion of ADR options, you have the built-in opportunity to convey a general willingness to consider mediation without having to work too hard.

Second, consider discussing settlement with opposing counsel in advance of a mediation. From the outset of the case, it can be useful to start sounding them about what they think the strongest parts of their case are, tell them what you think works in your favor, and exchange ideas about the risks of going forward. Doing so can help you get an idea of whether you share any perspectives on the case, what misperceptions may exist on the other side, and what areas you may need to emphasize in your mediation brief. In rare instances, discussing settlement issues ahead of time with opposing counsel may demonstrate that mediation at this time may not be a good idea. Even in that case, it is better to know that up front.

Working Creatively with the Mediator

The mediator has an interest in getting this case settled—although many lawyers harbor suspicion that some mediators are willing to let mediations drag on *ad infinitum*. (We will save that discussion for a later time.) Effective use of a mediator is an important ingredient in reaching a resolution.

One technique is to consider in advance how to best enlist the skills and tools of the mediator given the circumstances of your particular case. Is opposing counsel a hard-to-handle blowhard? Is your client (or the opposing party) emotionally vulnerable and in need of a sympathetic ear? Are there underlying issues that could influence the other party but are sensitive enough that you don't want to include them in your brief?

One method a lot of mediators appreciate is when counsel sends a confidential letter to the mediator in advance or talks to them on the phone about the case. The mediator is not a judge—the rules about *ex parte* communications do not apply. Of course, any side letter ideally would be additional to a brief shared with the other side; most mediators regard confidential briefs as tying their hands before they've even started.

Another important tool is to use the mediator to help frame the negotiating context and push the process along. If parties are falling prey to the “baby step” slowdown, where insufficient movement is being made towards a number that can resolve the case, the mediator (at your suggestion or not) may propose a framework whereby the parties will agree to negotiate within a narrowed range of figures.

The ultimate weapon in this regard is the mediator's proposal where the mediator, having heard both sides' stories, and having worked with both sides in trying to negotiate a compromise, proposes a settlement number that the mediator thinks is fair or appropriate. Each side is given a certain amount of time in which to respond confidentially to the mediator. If both sides accept, the deal is done. If any party rejects the proposal, all the mediator tells the parties is that there is no deal. Because the mediator keeps the parties' responses confidential, a party that was willing to settle for the proposed number does not suffer any tactical disadvantage.

A good mediator will know when and how to employ devices, such as framing and mediator's proposals. But every effective advocate should be familiar with them, explain them to clients, and take a proactive approach to recommending them when the mediation process appears to bog down.

Getting Your Client Ready

Sometimes the problem is not on the other side. Sometimes the major impediment to an effective mediation is sitting right there in the breakout room with you—your client. If this happens, the sad fact is that you have only yourself to blame in most cases. Adequate mediation preparation

means working with your client to get the client ready to consider settlement in a meaningful way.

A critical component is providing the client with the information he or she needs to evaluate the risks of going forward. Partly this will require a realistic assessment by you of the factual and legal issues in the case, and possible outcomes if the case proceeds. With an experienced client, you may want to focus on certain key issues that the client may not be as familiar with, such as an unusual legal issue or procedural development in the case. With a less sophisticated client, you may need to provide more comprehensive (and basic) information: What happens if we don't settle, what could happen before trial, what will trial preparation look like, and

Advance preparation can help ease the uncomfortable transition from zealous advocate to peace dove that many lawyers perceive is necessary in connection with mediation.

what to expect at trial itself. The client also needs to appreciate the burdens of litigation: depositions, costs of experts, answering interrogatories, or having private information about their company or self disclosed. With an institutional client, you should make sure that your education efforts are directed at the right person. Careful preparation goes nowhere if the employee who has been working so closely with you up to this point is suddenly replaced by the CFO for the mediation. Where an excess carrier is involved, consider how to prepare them in advance so that they may be willing to put some money in now to prevent larger outlays later.

Too often, lawyers believe that it is the mediator's job to talk sense into their client and provide the sobering news about the client's chances of prevailing. That is too late: Clients' expectations

are generally formed early on, based on what they hear from their own counsel—an impression that is difficult to dislodge in the course of the mediation. Manage a client's expectations before the mediation. You can make clear that lawyers are trained to wear two hats; the fact that you're providing a balanced assessment in the confidential attorney-client context does not mean that you'll be anything less than rigorous in your advocacy of the case before the court or to opposing counsel.

Hopefully, all of the information you provide as preparation for the mediation will not come as a surprise. It is a good idea to begin laying the framework for this discussion from the minute you first take the case. Advance preparation can also help ease the uncomfortable transition from zealous advocate to peace dove that many lawyers perceive is necessary in connection with mediation. If you have been up front with the client from the beginning about risks and meaningful goals, you should not need to shift your approach as you prepare for mediation.

Conclusion

Of course, there is only so much you can do. Sometimes, you will arrive at mediation only to find that the other side has so dug in its heels that no progress is possible. In those instances, always be ready to walk away—with your litigation plan intact—and be ready to move forward. The pendulum may swing back your way, and you may get the case settled eventually, if not today, then several weeks or months from now and hopefully, for a much better settlement for your client than if the other side had just been reasonable from the outset. ■

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From Northern District to Southern Style: Chicago JIOP Participant Turned New Orleans Native

By ANN FENTON



Ann Fenton

It's no secret that these are difficult times for recent law graduates. The almost daily updates from the legal blogosphere detailing big firm firings and first-year associ-

ate start-date deferments are enough to make any law student wish he or she were entering a more stable profession. Yet, many of us are still invested (both emotionally and financially) in pursuing the path of the law. I am in the fortunate position of starting my legal career at a mid-size firm in New Orleans doing exactly what I am most interested in—defense litigation—due in no small part to my participation in the Section of Litigation's Judicial Internship Opportunity Program (JIOP).

When Who You Know Isn't a List of Who's Who

As more soon-to-be lawyers compete for fewer job openings, the problems that minority lawyers and law students must normally face may become even more challenging. A major hurdle is getting that first summer job. Every law student knows the importance of the work completed during the summer after the first and second years of law school. These are often the first law-related jobs law students have held, and they are vital additions to any law student résumé. In the legal world, networking is key. However, for minority lawyers who are often bereft of legal connections from family and friends, that hurdle can seem insurmountable.

As the first in my family to graduate from college, let alone receive an advanced degree, I simply did not have the slew of professional connections that are often essential in finding the summer jobs that lead to full-time employment. My family is full of construction

workers and military veterans, myself included. We don't get annual holiday cards from friends in the attorney general's office or the multi-national law firm downtown. Of course, I was very much a typical law student in many ways: driven, pedantic, neurotic. (Yes, my outlines were tabbed and color-coded.) I knew I wanted to litigate, and I wanted to do it in federal court.

Attending a regional law school in Chicago made my situation even more uncertain. The first problem was geography. Recognized as one of the most competitive legal markets in the country, Chicago law students from

Writing my first 129b)(6) claim dismissal for lack of jurisdiction produced that heady combination of smugness and judicial reverence known only to lawyers.

traditionally regional schools (such as Loyola and DePaul) must vie for jobs with students at many of the nation's top law schools. Second, I was far from being certain that I actually wanted to practice law in Chicago when I graduated from law school. So, not only did I need a job that would get my résumé a second glance, but I also needed a job that would give me noteworthy legal experience that would carry weight in my city of choice: New Orleans. In short, I needed a job that could multitask as well as I could. However, without having those personal and professional connections to the legal world (which I didn't), or the cachet of being in the top 10 percent of my class (which I wasn't), I was unsure how to go about getting my foot in the courtroom door.

Northern Exposure

Shortly after forming the first lesbian, gay, bisexual, and transgender (LGBT) law student-specific group at Loyola, the school's career services office contacted me about an ABA program specifically set up to assist minority law students in getting that much-needed competitive edge. JIOP matches minority law students with state and federal judges through a rigorous application and interview process. Successful applicants are offered a modest stipend from the ABA, and more importantly, the opportunity to spend 12 weeks working as a judicial intern.

One personal statement and two interviews later and I was the new summer intern for Judge Lefkow with the district court for the Northern District of Illinois. The first day of my internship was both exhilarating and terrifying. After a brief (but warm) welcome, I was quickly ushered into the office shared by the judge's two full-time law clerks—both Northwestern graduates—and was handed a case file. "Here," said Jeremy as he thrust a near-bursting red accordion file in my general direction, "take a look at this case and write me a draft of the decision." If the rest of the office was any indication—boxes of files, stacks of Lexis printouts, and half-empty coffee cups on every available surface—that initial case file was going to be the first of many that I would take from Jeremy during the course of the summer.

Over the next 12 weeks, I drafted almost as many opinions—some requiring the work of only a day or two, a few that I labored over for close to a month, and one that took almost all summer to write. The last was written and rewritten several times after many meetings with the full-time clerks, and it was finally signed and entered by the judge—memorably, the final memorandum and order made headline news in the *Chicago Tribune*.

When not otherwise engaged in research and writing, I took the opportunity to sit in the courtroom. From civil motions to criminal sentencing, the judge made her rulings with compassion and fairness. This was no stage for grand posturing or thundering pronouncements. It was, plainly and honestly, a court of law: Taking up her mantle of judicial responsibility, the judge, in the spirit of Marbury, simply determined what the law was and proceeded to apply it to every case or controversy before her. With echoes of Justice Marshall to inspire (and a year of civil procedure under my belt), I, too, endeavored to do the law justice.

Civil Procedure to Civil Law

As unlikely as it may seem, what you learn in civil procedure actually matters. Failure to properly allege the basis for federal jurisdiction in a complaint is fatal. Rest assured that this comes as a surprise to associates at many top echelon firms, as well as to first-year law students. (Just ask the attorneys of record at said firm why their complaints were dismissed.) Although I already had an affinity for the federal rules, thanks to an enthusiastic professor, my JIOP experience gave me the chance to put theory into practice. Writing my first 12(b)(6) claim dismissal for lack of jurisdiction produced that heady combination of smugness and judicial reverence known only to lawyers.

I spent 12 challenging weeks of wading through poorly pled, and sometimes even more poorly written complaints. At the end, my dog-eared, stained, and generally abused federal rulebook told the tale. I also found that I knew a thing or two about jurisdiction and procedure, not to mention legal writing. It soon became apparent that other people, most importantly hiring partners at law firms, seemed to agree. After all, my résumé practically screamed “federal court!”—a particularly colorful feather in any law student’s cap. It seemed I finally had reason for optimism as that proverbial door inched open—just enough, as it turns out—to get my (sensibly heeled and stocking-clad) foot inside.

Newly spangled résumé in hand, I daringly applied for summer associate positions at every major litigation firm in New Orleans. And while my résumé alone may have piqued some interest, especially for those firms with a primarily federal court practice, the writing samples I was able to produce from my JIOP experience were almost worth their weight in summer associate salaries of years past. The hiring partners I interviewed with consistently remarked upon the quality of my writing and my demonstrated grasp of civil procedure—skills sharpened to an impressive edge as a judicial intern.

Five interviews and two offer letters later would see me a full-fledged summer associate in New Orleans. As the

only civil law jurisdiction in the United States, my intimate acquaintance (and new love affair) with civil procedure proved to be a boon to myself and what would end up being my chosen firm.

Civil law is code-based law, and grappling with the federal rules gave me a familiar starting point with which to explore the dizzying array of code books that are the foundation of Louisiana jurisprudence. Not only that, but my JIOP experience gave me regular access to the physical reporters and statute books—something that ended up being unexpectedly helpful when I realized that flipping through the annotated code books was often the most efficient way to get on-point answers.

Finally, after a summer spent struggling for legal clarity through a miasma of civil code and Sazeracs, I was in possession of something once thought to be unattainable—an offer. Not just any job offer, however—it was both one that I wanted and with a firm that I would feel privileged to join as a first-year associate. Now I just have to pass the bar. ■

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Chairs’ Column

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proposals for the 2010 Section Annual Conference, which will take place April 21–23, 2010, in New York City. The Section of Litigation will be considering committee proposals through August 21, 2009, and we welcome your ideas about possible tracks (i.e., related programs in a particular area of practice) and panelists.

It is often said that the best way to find opportunities is to create them yourself, and for those of you who wish to participate actively in ABA conferences, here’s your chance. Once again, get in touch with any of the committee cochairs for more information.

In the words of the great artist Pablo Picasso, “Action is the foundational key to all success.” By providing greater opportunities for participation, the Minority Trial Lawyer Committee

seeks to harness our members’ talents and energy to help improve the work of the committee and its responsiveness to members’ needs. To those of you who have heeded the committee’s call to action in the past, we thank you for your invaluable contributions to the committee. To those of you who will be doing so now, we look forward to working with you. In the meantime, we are pleased to present you with the latest issue of *Minority Trial Lawyer*. ■

Starting Your Own Law Firm

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expenses are an important part of your financial success. The first thing to do is sit down and make a list of everything you can possibly need for your firm: computer, printer, office furniture, phone, business cards, office supplies, insurance, software, and other business development costs. Then research what it costs by searching online or making phone calls.

Your shopping list will serve as the backbone of your budget. Take each item on the list and then break it down with as much detail as possible. The category of business development, for example, might be broken down to eight monthly meetings over coffee at \$7 a meeting; two local voluntary bar association luncheons at \$35 a meeting; and a weekly lunch with an existing contact at \$50. Whatever it is, write everything down.

Once you have created this list, add it up to get a monthly total. Be sure you are sitting down and have a paper bag handy for when you start hyperventilating, because the total will be much more than you think. Now the budget process really begins: You must decide where to trim costs to get the best value. For example, instead of using lunches as a business development tool, you may want to meet over coffee or drinks after work. Then shop for the best deals on your purchases. Much of the process is deciding what you need rather than what you want. Remember that it is easier to upgrade later when you can than to downgrade because you must. The purpose of this exercise is to force you to make choices as to what you *need* to start your practice.

Managing the Big Expenses

The two largest operating expenses for any law firm are office space and payroll. While the current economic situation has created significant issues, it has also created significant bargains for a new business.

Picking the Right Place

In deciding on your office space, again it is important to determine your needs first. For example, a criminal

law or an immigration attorney may require a space suitable for meeting new and prospective clients on a frequent basis. On the other hand, a corporate lawyer may meet with clients far less frequently because of the nature of the practice or because he or she can arrange for meetings at a client's office. Your need to meet clients or have them waiting in the reception area will determine your needs for space. Do not get more today than you can reasonably expect to need in the near future. If the ability to grow is a concern, make sure that your landlord can accommodate your need for more office space down the road.

When evaluating office space, give yourself the opportunity to locate yourself where you may expand your network of clients.

Once you have decided roughly how much space you need, you will need to decide where your office will be located. Be as practical as possible in making your decision. Lawyers that tend to go to court frequently may want to have their office located near the courthouse. Immigration lawyers may want to locate their office close to an immigrant community. Other lawyers may not feel tied to an area and may want their office close to home.

Nowadays, there are many options with respect to space that are designed to meet every need and budget. There are three general options when selecting your office space: having your own office, a space-sharing arrangement, or an executive suite. The first option, your own office, offers the greatest control and independence, but it is also the most costly. Leasing your own office space requires a deposit and possibly a personal guarantee, furniture, and necessary equipment, such as copiers. It is true that there may be significant tax advantages in many instances; however, given the current

credit squeeze, opening a solo office may be prohibitively expensive.

The space-sharing arrangement is a tried and true method for lawyers just starting out with their own practice. The advantages are that you can move right into an existing law office and negotiate some sort of arrangement for use of the phones, copiers, and other firm resources. The most obvious downfall of this arrangement is finding an office where you would be compatible with the lawyers with whom you share space. You may have to give up preferences with respect to the way the office is decorated, employee decorum in the office, or priority for use of a conference room. But, if you are fortunate enough to find a compatible space-sharing arrangement, it can also be an excellent source of referral or cocounsel work. In many instances, overflow work, conflict issues, or smaller (yet profitable) matters are referred to another lawyer within a space-sharing arrangement.

The third option, executive office suites, is a very attractive alternative for many lawyers. An executive office suite is typically a large office with support staff, a reception area, conference rooms, and common areas. The individual tenants of the executive office suite each have their own private individual offices, which a client may never see. Many executive suites charge for the conference room, staff, copiers, and other amenities as they are used so that a tenant is not charged unless the services are actually used.

The one thing to look for in any office is the ability to interact or network with other lawyers, possible referral sources, and potential clients. When considering potential office space, think about whether or not you are in a building or a neighborhood where these types of individuals congregate. Is it the sort of location where you might see colleagues and possible referral sources? When evaluating office space, give yourself the opportunity to locate yourself where you may expand your network of contacts.

Picking the Right People

Staffing is usually dependent entirely on your practice area and budget. Once again, it is much easier to add staff as needed than it is to eliminate staff

positions that are not being utilized. A good rule of thumb is not to hire a staff member until you can fully occupy the time he or she will spend there. In other words, do not hire a full-time person when you only have three hours of work a day to delegate. Consider hiring part-time staff or outsourcing certain tasks, such as bookkeeping, on a piecemeal basis. Also, think carefully about the skill levels you need and the costs you can afford. As you need more staff, determine what you need and who can do the job effectively. For example, there is no need to hire a paralegal to do a file clerk's duties.

How Do I Get Clients?

Every lawyer who is thinking about starting his or her own law firm invariably asks "How do I get clients?" There is a fear that business development is some sort of mystical hocus pocus or that one has to be born under the lucky rainmaking star to have success. There is no secret to developing new business. It is a process, plain and simple, and you have to dedicate time and effort to see results.

There are two general types of potential clients: prospects that are referred to you and prospects that come directly to you. Unless you commit to advertising your practice directly to consumers, which is most frequent in practice areas like immigration, criminal law, family, and personal injury, referrals are the major source of new clients. But in any practice, referrals are always welcome, so it is important to develop a referral network.

Developing referrals is based on building relationships. Before you start to doubt your abilities and groan that you are not a "people person," put aside the stereotypes and look at the realities. You will probably find that you can do it once you prepare a business development plan.

Remember that the relationships that may help you get clients are not necessarily relationships with other lawyers. Look to colleagues and friends outside of the law. For example, you may have a friend from high school or college who is finishing medical school. Your friend (or his or her classmates) may need help reviewing an employment agreement or assisting in forming a practice. Your

college friend that went into human resources may need help with an employment issue at his or her company. In other words, think expansively and identify friends, relatives, associates, and acquaintances that come in contact with potential clients for your practice. Keep a list of these people and update it often.

Once you have identified where to start, you need just two things to network successfully: patience and commitment. You will need patience because business development does not yield immediate results in every instance. Expecting that each lunch will result in a new case is unrealistic. Second, you have to commit to developing your business. Develop specific goals on how to build your network.

Ask questions to potential clients and listen to them. If a person feels that you care about their issues, it will go a long way to developing a relationship.

For example, it can be that your business development activity will include at least two coffee meetings, one lunch, and four emails each week. You will need to make sure that you consistently dedicate the time to your network, so budget that time every week.

Targeting the development of your network just takes a little bit of thought. First, think about the people that come into contact with the potential clients you want. For example, if your practice is corporate law, then an accountant may be the sort of individual that comes into contact with the small business owners you want as clients. A workers compensation attorney may be contacted by people that are injured due to another party's negligence, which may lead you to a contact for your personal injury practice. Or your friends at larger firms may be contacted by potential clients with smaller matters that they decline but that would still be profitable

for your small firm. Last, do not forget your existing clients as a referral source. There is almost always some synergy between your practice area and another business or legal practice area. Look for these and make it a priority to develop these relationships.

Now that you have identified the network you have and how you want the network to develop, it is time to cultivate these relationships. Start with your closest contacts and let them know that you have started your own firm. Just be yourself and share the news of your firm as you would with any friend. Then either in that conversation or the next, let them know that you would appreciate any referrals. That is all you need to say to start. Then later you may mention that you are looking to meet people in the areas you have already identified. It can be as simple as "Joe, I would like to meet some accountants that service small businesses. I want to see if I can offer legal services to the accountant's clients. Can you suggest anyone?" You will probably be surprised at how much people will want to help you develop and grow your practice.

Once you have moved outside of your core contacts, it is easy to feel intimidated with new people. It is almost a phobia that we will be demeaning ourselves by marketing or, on a personal level, selling ourselves. In reality, almost all businesspeople realize that discussing your practice and the services you offer is a normal, acceptable, and expected part of your business. You don't have to necessarily try to sell your practice as much as letting people know who you are, what you do, and what services you offer. Above all else, you must provide a sense that you are a capable attorney who will provide good, solid representation. One of the best ways to create that sense is to ask questions to potential clients and listen to them. If a person feels that you care about his or her issues, it will go a long way to developing that relationship. Above all, be yourself and be sincere. The easiest way to do that is to view each business development opportunity as a chance to learn about someone else. Not only is this easier for most of us, but it will also create a more comfortable environment.

An important issue to consider in developing your network is whether you are permitted to pay a referral fee to the referral source. Check the rules regulating your state's bar to determine the specifics as to any limitations on referral fees. Some referring lawyers do not even want a referral fee—they just want to ensure that their clients are well taken care of, that you will not “poach” other matters from that client, and that you will refer other matters to them as they arise. If you plan on paying a referral fee, let your contacts know that it is available and under what circumstances.

Now that you have started to develop a network, make sure that you go back and do it again. Do not just visit a contact once. Make a plan to follow up in a month or whenever it is appropriate. Follow up with issues that were discussed when you met. For example, if you talked about the rise in employment issues

related to layoffs, send your contact an article on the subject that seems interesting. The point is to let your budding contact know that you care and are interested even before the first case is sent. Give that contact a good reason to think about you positively. The old adage “out of sight, out of mind” could not be more true. The more personal you are with your contacts and the more you make an effort to follow up with them, the more significant the relationships will be.

Putting It All Together

In starting your new firm, just follow a few simple steps to manage your expenses and get new clients. First, be honest with yourself when you decide what you need to start your own firm. Try to remain flexible so that you can grow, but make sure to start out with something manageable. Second, make a plan to meet new people and touch

base with old contacts. Wisely select and identify the types of people you want to meet. Third, implement your business-development strategy and make a committed, repeated, and consistent effort to meet as many of those people as possible. Remember, when you meet new contacts, be yourself and sincerely approach any meeting as a chance to learn about someone new. If you avoid trying to sell yourself, you will be surprised at how well you can market your new firm and turn contacts into clients. ■

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Public Education Funding

Continued from page 1

was involved, the Equal Protection Clause did not require absolute equality or precisely equal advantages.⁹ Soon after, in *Board of Education of Oklahoma City v. Dowell*,¹⁰ the Court ruled that school districts can stop busing students when they become resegregated because of private housing choices and when all practical steps have been taken to eliminate segregation. Finally, in 2007, in *Parents Involved in Community Schools v. Seattle School District No. 1*, the Supreme Court ruled that school districts could not use race as a non-individualized factor to integrate school districts.¹¹ Combined, these four decisions have established the broad federal court limitations of advocates seeking to challenge public education and effectively make public finance litigation a state matter.

Illinois Court Decisions Shaping Public School Funding

Illinois itself has provided more specific constitutional guarantees related to education. Section 1, Article 10 of the

Illinois Constitution states that “The state shall provide for an efficient system of high quality public educational institution and services [and] the state has the primary responsibility for financing the system of public education.”¹² The Illinois Supreme Court has granted certiorari in two unsuccessful challenges alleging the current system of educational funding was inefficient under Section I, Article 10.

The first challenge occurred in *Committee for Educational Rights v. Edgar*.¹³ In *Committee*, the plaintiff alleged that the public school financing system in Illinois failed to provide an adequate education to preschool children. The Illinois Supreme Court rejected the plaintiff's argument, stating that “while education is certainly a vitally important governmental function, it is not a fundamental individual right for equal protection purposes, and thus the appropriate standard of review is the rational basis test.”¹⁴ The court stated that the Illinois General Assembly had struck a balance between the competing concerns of equality and control and, thus, the court could not find that the legislature's decision on how to

finance public schools lacked a rational basis.¹⁵ The court ruled that “disparities in educational funding resulting from differences in local property wealth do not offend the efficiency requirement of Section I.”¹⁶ The court also stated that the question of quality of education was a political question and it would violate the separation of powers doctrine if the court attempted to define what constituted “quality education.”¹⁷

In 1999, the high court returned to the public school financing system challenge in *Lewis E. v. Spagnolo*.¹⁸ In *Lewis*, a group of schoolchildren brought a class action alleging that the Illinois Constitution Article I, Section I granted them a right to a “minimally adequate education.”¹⁹ The plaintiffs argued that their schools had a virtual lack of education and that the court could determine if students were receiving the “rudimental elements” of education, such as certified teachers, basic instructional materials, and a reasonably safe school building.²⁰ The Illinois Supreme Court rejected this argument, stating that the Court in *Committee* had decided the broad issue of “whether the quality of education

is capable of, or properly subject to, measurement by the courts.”²¹ The Court found the plaintiff’s attempt to distinguish “high quality” from “minimally adequate” was nothing more than semantics.²² The Court stated that all of the rudimentary elements of education named by the plaintiffs could already be addressed in the Illinois School Code and thus, the plaintiff’s remedy, if any, rested upon enforcing the already existing code.²³

While the Illinois Supreme Court’s decisions in these cases have foreclosed challenging the inequality caused by the inadequacy of education funding, there still remain avenues for civil rights advocates to challenge the inefficiency of the education funding process.

Current State of Illinois Public School Funding

The Illinois public school system currently includes 800 school districts, over 4,200 schools, and spends \$17.3 billion annually.²⁴ Illinois currently contributes approximately 35 percent of the school district budget, while the federal government provides the other 65 percent of funding.²⁵ When compared with the surrounding six states, Illinois has the lowest state-based contribution to education, as opposed to Michigan and Minnesota having the highest with 60.1 percent and 69.6 percent, respectively.²⁶ From the period between 2003 and 2006, the state’s education funding decreased by 1 percent, while federal and local funding increased by 6 percent.²⁷ Ironically, Article I, Section 10 of the Illinois Constitution explicitly states, “The State has the primary responsibility for financing the system of public education.”²⁸

In a comparison of the top 25 percent of Illinois schools to the bottom 25 percent, the greatest disparities in spending were in support services and other resources.²⁹ On average, affluent schools spent 45 percent more on support services and 69 percent more on other services.³⁰ At the same time, affluent schools spent approximately 34 percent more on instruction.³¹ The irony of education spending is that residents in the lowest income areas pay approximately 3.8 percent of their income to property taxes

and 13.1 percent in total taxes, while the wealthiest residents pay approximately 1.7 percent of their income to property taxes and 5.8 percent in total taxes.³² Furthermore, in the period between 1989 and 2002, the total tax paid by the poorest 20 percent of Illinois families increased by 1.6 percent with 0.8 percent of the increase attributed to property tax increased, while the total taxes paid by the wealthiest families increased 0.1 percent with none of the increase attributed to property taxes.³³ As a result of the current system, 75 percent of Illinois schools have a budget deficit.³⁴

For minorities, education holds a special concern, because its inadequacy or nonexistence stands at the heart of decades of discrimination.

A Radical New Direction?

Illinois’s funding scheme remains open to challenge based on its inefficiency. In *Committee*, the Illinois Supreme Court defined efficient as “serving as or characteristic of an efficient cause” or “marked by ability to choose and use the most effective and least wasteful means of doing a task or accomplishing a purpose.”³⁵ Thus, a new challenge to Illinois public school financing is that the system is wasteful and not an effective means of financing public schools.

The current system of Illinois school financing is a series of complicated formulas based on property taxes, three separate grants, and three different formulas for each grant, depending on the percentage of the foundation level³⁶ a school district can meet. While this itself is a vast topic, the practical effect of the current public school funding system in Illinois is that 75 percent of Illinois schools have budget deficits,³⁷ 95 percent are unable to reach the established foundation level,³⁸ and 5 percent are able to meet or exceed the foundation level.³⁹

A simple and effective alternative to the current public school financing scheme would be to establish a uniform tax for education without altering the system of property tax. Then, based on the funds collected, the state could establish the foundation level for Illinois schools. For example, in 2003 the total amount of property taxes collected in Illinois was \$18,967,874,308.⁴⁰ Of this figure, 61 percent, or \$11,754,349,149, went to education spending. Based on a foundation level of \$5,800⁴¹ and approximately 2,100,403⁴² students, Illinois would require approximately \$12,182,337,400 to fund all students at \$5,800, or the average spent per student in successful school districts. This equates to 2.3 percent more than is actually collected in local resources or property taxes alone. By subtracting \$5,376,827,657 in state revenues that were used for education in 2003⁴³ and \$1,433,257,130 in federal revenues used for education in 2003,⁴⁴ we are left with a balance of \$6,382,096,536. This means that in 2003, after state and federal revenues were added, of the \$11,754,349,149 collected in property taxes, only \$6,382,096,536 was required to fund all students at \$5,800. The state could adjust this mandatory property tax contribution as it saw fit to compensate for state or federal aid or an increase in the education foundation level or student population.

After assessing the tax, Illinois could then redistribute the collected revenues back to school districts in block grants based on \$5,800 per student. After the basic foundation level is met, the additional property taxes used for education that exceeded \$5,800, i.e. the surplus of \$6,382,096,536, would be applied to the respective city or township that generated the surplus. Furthermore, the state could simply allow individual cities and townships to supplement the state block grants at their own discretion. Thus, consistent with *Committee* and *Lewis*, efficiency would not be dependent on or have the effect of creating equal spending in all Illinois school districts. Instead, efficiency would constitute a system of funding designed to eliminate state

school budget deficits and provide a minimum level of funding for a state school to operate with minimum budget shortfalls.

Conclusion

Education stands at the forefront of equality and social progress. For minorities, education holds a special concern, because its inadequacy or nonexistence stands at the heart of decades of discrimination. The lack of education was the driving force behind Jim Crow just as the attainment of education was the strength behind *Brown v. Board of Education*. As minority advocates in the midst of newfound education inequalities, it is our duty to combat inequality and to be innovative and creative in the manner in which we do so. Minority students in Illinois have suffered too long under a system that fails them more than anyone. By attacking the efficiency by which schools are funded, minority advocates may open a new chapter in public school finance litigation. ■

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Endnotes

1. See A+ Illinois, Illinois Has a Public School Crisis, available at www.aplusillinois.org/documents/whats_at_stake_2pger.pdf.
- 2 A+ Illinois, *supra* note 1.

3. Don Terry, “Northern Exposure: Nothing He’d Seen in the South Prepared Martin Luther King for the Streets or Marquette Park in 1966,” CHI TRIB., Jan. 15, 2006, (Magazine), at 12.

4. Committee for Educational Rights v. Edgar, 174 Ill.2d 1, 23 (1996).

5. BALLENTINE’S LAW DICTIONARY (3rd ed. 1998). De facto segregation is racial imbalance in the public schools resulting not from a qualification of color but from the concentration of persons of one race in the area of school attendance.

6. See generally, Plessy v. Ferguson, 163 U.S. 537 (1896).

7. Brown v. Board of Education, 347 U.S. 483, 495 (1954).

8. San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 35 (1973).

9. Rodriguez, 411 U.S. at 28.

10. Board of Education of Oklahoma City v. Dowell, 498 U.S. 237 (1991).

11. Parents Involved in Community Schools v. Seattle Sch. Dist. No. 1, 127 S. Ct. 2739, 2757–2758 (2007).

12. Illinois Constitution Section I, Article 10.

13. Committee for Educational Rights, 174 Ill. 2d 1 (1996).

14. Committee, 174 Ill.2d at 37.

15. Committee, 174 Ill.2d at 39.

16. Committee, 174 Ill.2d. at 23.

17. Committee, 174 Ill.2d. at 28–32.

18. Lewis E. et.al. v. Spagnolo, Superintendent of Education, et. al., 186 Ill.2d 198 (1996).

19. *Id.* at 205.

20. *Id.* at 208.

21. *Id.*

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23. *Id.*

24. Peter Mulhall, “The Funding of K–12 Education in Illinois, A Marginal Grade Using Any Test,” Institute of Governmental and Public Affairs, Illinois Report, 63 (2008).

25. Mulhall, *supra* note 24 at 64.

26. Mulhall, *supra* note 24 at 63.

27. Mulhall, *supra* note 24 at 64.

28. Illinois Constitution Article I, Section 10 (emphasis added).

29. Mulhall, *supra* note 24 at 65.

30. Mulhall, *supra* note 24 at 65.

31. Mulhall, *supra* note 24 at 65.

32. Robert S. McIntyre et. al., “Who Pays? A Distributional Analysis of the Tax Systems in All 50 States,” Institute on Taxation and Economic Policy 42 (2nd ed. 2003).

33. McIntyre et. al., *supra* note 32 at 43.

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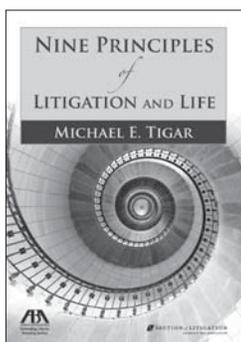
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The courage to decline a settlement offer is not based on bravado, or ego. It is a practical decision about evidence, juror sentiment, and

the power of a story. The trial lawyer makes the decision in a context. In the civil and criminal courtrooms across the country, formal and informal systems of docket control increasingly discountenance going to trial.

On the civil side of the docket, lawyers face increasing pressures to settle cases short of trial. Judges employ more case management techniques, including compulsory mediation, repeated case management conferences, and even threats of sanctions. Litigation increasingly involves complex issues on which expert testimony is necessary, which drives up case costs. Discovery battles are expensive. Repeat players, such as insurance companies, have devised formulas for settlement offers in most automobile and other ordinary tort cases. They play a take-it-or-leave-it game, and are willing to absorb an occasional jury verdict as part of their overall strategy.

I have known trial lawyers who become trial judges and soon lose their enthusiasm for having cases tried. An experienced and talented trial lawyer who became a judge speaks now of

managing a docket of 500 cases, and pressuring the parties to settle in order to relieve docket pressure.

Some of the blame for the decline in jury trials belongs with trial lawyers. Many lawyers do not investigate their cases before filing, and delay taking discovery even when the case is filed. Indeed, some lawyers file cases and then hold off serving the complaint in the hope of getting a settlement before the local rules require service to be completed. One judge to whom I spoke reported that the rule requiring service within sixty days was mostly not observed or enforced.

You cannot settle a case that you are not prepared to try. I don’t mean that every witness and document is lined up. I mean that you must have enough command of the case that you could make a decent opening statement and a sketchy though well-organized closing argument. In the typical tort case where the defendant’s insurance company is on the other side, the defendant will have had an investigator working, will have assembled relevant documents, and then put the information into an established matrix. A plaintiff who does not do an equivalent amount of work cannot make an informed decision on whether trial is a good idea.

On the criminal side of the docket, the pressure of sentencing guidelines, mandatory minimums, and the risk of a harsher sentence if the case goes to trial are significant deterrents to going to trial. However, the most significant negative factor is ineffective assistance of counsel.

In criminal courts all over the country, the spectacle of assembly-line guilty pleas and unprepared lawyers is acted out. Readers whose practice does not take them to criminal courts may be surprised at what goes on there. . . . In short, the right to effective counsel is ignored in the cases where the stakes are highest, and error rates are demonstrably high. The idea that a capital case

can be well-ried in one or two days is laughable. In the Oklahoma City bombing trial of Terry Nichols, jury selection alone took five weeks in order to get a panel that was willing to swear it could overcome the media barrage. The trial itself took nearly three months. The defense called more than 100 witnesses. The jury acquitted Nichols of murder, finding him guilty of lesser charges, and voted not to impose a death penalty. This result was achieved only because counsel had the dedication and resources to combat the government.

In non-capital cases, the situation is every bit as bleak. In April 2001 *The New York Times* published the results of a long investigation into the provision and performance of appointed counsel in New York City. It found that appointed counsel are paid at rates that actively discourage them from spending enough time on cases. The only way to make the appointed practice pay is by taking on hundreds of cases per year and spending as little time as possible on each one. The *Times*’ “poster lawyer” was one Sean Sullivan. Sullivan handles 1,600 cases per year, and earned more than \$125,000 in 2000 for his efforts. The “representation” he provides is worse than minimal. He does not confer with clients, does not return client phone calls, does not prepare needed legal motions, and contents himself with working out quick plea bargains on an assembly-line basis.

Civil and criminal lawyers need that “let’s go to trial” courage. They need it for particular clients. They need it for their own reputations, for their clients, and even for the system itself. My friend and trial colleague Ron Woods—imagine a trial team called “Tigar Woods”—used the expression “dump-truck lawyers” to refer to habitual plea bargainers. If you have a reputation as a dump-truck lawyer, the adversary will make offers knowing that eventually you will cave in and settle short of trial. If you go to trial in good cases, and

win a few because you have followed all the principles in this book, your presence in the case will bring better offers. . . . Without well-chosen trials, there is no reliable benchmark for how cases “ought” to settle. In most cases, the parties want a settlement, and most cases should be settled. Settlements happen most readily when parties are ready to try their cases effectively, and show that they are not afraid to do so. Settlements are best when they are as demonstrably fair as possible, and that demonstration is best made by comparison with actual results.

Courage to Stand Up to the Judge

You do not make a decision to confront the judge in the abstract, but in the context of the particular trial dynamic you are seeking to create and maintain. Some lawyers make a point of needling the judge. They seem to feel that their tactics will invariably create sympathy for them or their client, or distract the jurors from unpleasant facts. On the other hand, some say that no lawyer or party should ever show disrespect to the judge; they preach the gospel of “orderly trials,” ignoring the history of judges who abused their power.

The courage to confront the judge is not a matter of gratifying one’s own ego, and yet I hear lawyers boastfully say, “Well, I really told him!” In a jury trial, jurors often come into court with the idea that they must respect the judge. Judges play to this feeling, and assert their control through a variety of devices. They tell the jurors that what the lawyers say is not evidence. They repeat that the jurors must accept the law as given by the judge, disregard matter ordered stricken, not speculate what would have been the answer to an objectionable question, and so on. In a long trial, the judge may take special care that the jurors have refreshments in the jury room, and tell them kindly that he or she is making arrangements. In a high-profile case, where jurors may be escorted to and from the courthouse, they learn to depend on the judge and on court personnel for their peace of mind or even their safety. Few judges engage in ex parte communication with

jurors, although there have been cases of that. The bailiffs or marshals are more likely to engage in that sort of conduct.

You, the advocate, on the other hand, need to establish your control of the courtroom. You insist that the judge listen respectfully to you. You show your command of the facts and the legal principles. You are entitled to try the case you have well-prepared and to present the story you have crafted.

When the judge’s behavior gets in the way of these goals, that is the time to exercise your courage. These goals are not only permissible; it is your obligation to pursue them to the full limits of the adversary system. When the judge is considering admitting an item of evidence that you believe is inadmissible and harmful, your duty is clear. Make an objection. If there is time, file a memorandum. Protect the record at all costs and all hazards.

Courage to Confront the Jurors’ Prejudice

Voir dire is the first opportunity to confront juror attitudes. Ideally, the jurors will fill out a questionnaire with basic information and answers about employment and such things as what they read and watch. From questionnaire answers and some basic understanding of community demographics you get an initial idea about prejudices that can affect your case. You may have juror addresses, and public information about their political positions, such as what petitions for office-holders and public issues they have signed. In your jurisdiction it may be permissible to drive by jurors’ houses, discreetly, looking for car bumper stickers and yard signs and other indicators.

When voir dire begins, you will want to emphasize that truthful answers are always good even if the juror thinks somebody will be offended.

Members of the jury, this is who I am. Now it is everyone’s god-given right to be prejudiced. I have prejudices, biases, attitudes. I have just plain made up my mind about some things. Every person here will be a great juror, but maybe you have an idea about the issues in this case that would mean you would be a better juror for some other case in the courthouse.

Then a juror lobs one back at you. “Well, I think that these people that sue their employer over some workplace remarks are too thin-skinned.” And there you are, with a juror prejudice and your client an employee in a wrongful termination case.

Have courage. You don’t want to “blow the panel,” that is, pollute the whole jury pool. You need to confront this situation.

You: Thank you very much for that answer. I really appreciate your being straight with us. In this case, one of the things we will be talking about is the insulting and demeaning language used against Mrs. Wilson. The judge will tell you what the law is about that, and of course there will be evidence about what was said and who said it and why. I wonder if any jurors feel that if our law protects people against this kind of treatment, that is a good thing?

Despite good voir dire, jury selection is usually more “juror deselection.” We can use the process to eliminate, for cause or by peremptory challenge, the jurors we feel are most negative. The other side is doing the same thing from its point of view. In many if not most cases, one or more jurors who wind up being selected will have attitudes of skepticism toward our case. Issues of politics, race, or religion may lie just below the surface. Attitudes toward plaintiffs claiming injury, insurance companies, plaintiffs’ lawyers, lawyers in general. There may be community attitudes toward our client, or the kind of claim we are presenting or defending. We have all seen these in action. We are stuck with these twelve, or six, jurors. How shall we behave? . . . With courage, I say.

Michael E. Tigar is a professor at the Duke University School of Law, and Professor Emeritus of Law at Washington College of Law, American University, Washington, D.C. He has authored and coauthored twelve books, including Trial Stories (2008) and Thinking About Terrorism: The Threat to Civil Liberties in Times of National Emergency (2007).

ASK A MENTOR

Tips on Staying in Touch

Dear Ask a Mentor,

I am a third-year associate at a mid-sized southeastern law firm. I have always heard that the key to effective networking is not just exchanging business cards and a follow-up email with people I meet, but actually staying in contact. What are the most effective ways to stay in touch with people I meet at ABA meetings or elsewhere without becoming a nuisance?

L.S., San Francisco, California

Dear L.S.,

First, you should recognize that there is a big difference between being respectful and being a nuisance. We are all incredibly busy, but that does not mean that we are unwilling to forge new friendships. If you exchanged business cards with this person, then he or she likes you and is open to the idea of spending time together. Be secure in this knowledge as you pursue the relationship.

Sending a follow-up email is a great first step. This reinforces the connection you previously made, and further contact may occur naturally. I have found that I get out of the initial email what I put into it. If the email is short and generic, then usually the response is as well. I urge you to take the time to write an email specific to this person

that commits to further contact. You may simply say "I enjoyed meeting you in Boston and talking about our mutual love of tropical vacations. I wish we had more of a chance to share experiences. Would it be alright if I contact you in a month to schedule a time to talk?" If you take the time to be specific, the recipient will be better able to remember who you are, and the relationship may progress naturally from there.

Even if you made a real connection, the relationship may still need a little push to get going. My best advice is to search for ways to connect on multiple levels. Your personality will shape what works best for you, but here are some approaches you might want to consider.

Make a call. Set aside any fear of rejection, pick up the phone, and start talking. This may initially feel awkward, but what is the worst thing the other person could do? Hang up? It is far more likely that he or she will be pleased to have heard from you and will be eager to talk.

Stay in touch. Send newspaper clippings or articles of interest along with a personal note. If your contact is interested in wines, send an article reviewing the latest wine-tracking applications for his or her smartphone. If his or her company recently received an industry

award, send a congratulatory note. Depending on what you are sending and its time-sensitivity, it may make sense to send these items electronically.

Extend an invitation. If you are conducting a webcast or holding a seminar that may be of interest to your contacts, invite them to attend. If they cannot attend, offer to send a copy of the seminar materials.

Plan a meeting. Don't let distance thwart your efforts. Investigate conferences and trade shows that may be of interest to you both. If your contact travels regularly, schedule a meeting for when he or she is in town on other business, or offer to help pass the time while on a layover at your airport.

Connect virtually. Invite your contacts to join you on a social or professional networking site, such as LinkedIn. This will help you to stay in touch and to always have their current contact information.

Kristin L. C. Haugen

Kristin L.C. Haugen is a shareholder in Briggs & Morgan, P.A., in Minneapolis and a member of the firm's trade regulation section and intellectual property practice group.

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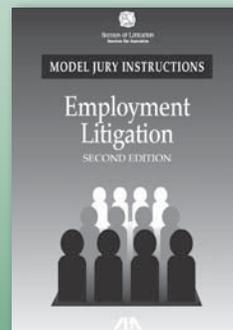
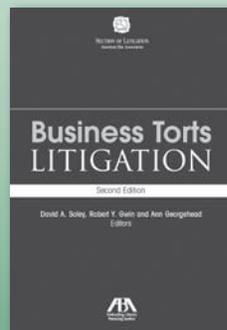
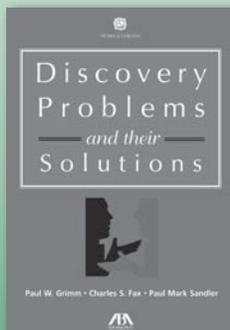
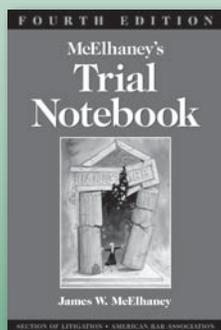
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