



# BRIDGE THE GAP

Your Learning Link From Law School to Law Practice

A program of the Rhode Island Bar Association



## PREFACE

This volume is intended as an aid to the practice of law in Rhode Island. It was prepared by the authors as a supplement to a seminar lecture and provides a starting point for independent research by an attorney.

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Rhode Island Bar Association  
41 Sharpe Drive  
Cranston, RI 02920

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MCLE REQUIREMENTS

## Bridge the Gap/ MCLE – *IN A NUTSHELL*

### Requirement 1: Rhode Island BRIDGE THE GAP

**TIMETABLE:** All Attorneys admitted on or after January 1, 2011 must accrue and report completion or exemption of the one day Rhode Island Bridge the Gap course. The course will be taken in person (or online if out of state) within the first full MCLE year (July 1- June 30) after admission. Report completion or exemption via the Rhode Island Supreme Court Portal at [www.courts.ri.gov](http://www.courts.ri.gov). If you are exempt from Rhode Island Bridge the Gap because at the date of your admission to the Rhode Island Bar you were in good standing in another jurisdiction for at least three years, you prove exemption by uploading a certificate of good standing from the other jurisdiction to the Bridge the Gap section of the attorney portal.

### Requirement 2: MCLE

**Compliance Year:** July 1- June 30 (commencing the **second** July 1<sup>st</sup> after admission) Note: up to ten credits accrued between July 1 – June 30<sup>th</sup> of the previous MCLE year may be filed as carryover.

**Credits Needed:** 10 credits, inclusive of at least 2 Ethics Credits

**When Do I File?** No later than June 30<sup>th</sup> of each year via the RI Supreme Court Attorney Portal at [www.courts.ri.gov](http://www.courts.ri.gov). Hit the “submit” button at the bottom of the Appendix G form page to file your credits when you have completed the **10 credits including two ethics**. Retain original certificates for your file for three years. Reported excess credits up to ten maximum will be carried forward for one year only.

### How To Get Credit?

As a participant in an in-person seminar, a live interactive webinar, or up to three credit limit per year via interactive on-line on-demand seminar.

As a teacher of approved CLE (6 credit limit per year).

As a participant in approved In-house programs at your firm (5 credit limit per year).

As an author of a published article (submit Appendix E application for up to 5 credit limit per year).

### Where Do I Get Credit?

By selecting a live (in person), live webinar or on-demand web course from an accredited RI MCLE Sponsor (the sponsors advertise their approval)

or

by submitting your own individual application for accreditation (Appendix D) for taking a program offered by an unaccredited sponsor.



### **What If I Live Out of State?**

You may take courses anywhere from RI MCLE approved sponsors, or make an individual application for accreditation (Appendix D) for a program taken from a non-accredited sponsor.

or

If you have met the MCLE requirement in the state where you practice, you may file proof of MCLE good standing and declare “**reciprocal compliance**” of **ten credits inclusive of two ethics maximum** in Rhode Island on Appendix G.

### **What if I Am “Active” But Do Not Practice or Handle Any Legal Work or Cases in RI?**

You may so certify via the attorney portal and in a letter to the Supreme Court Clerk, 250 Benefit St. Providence, RI 02903 and request a waiver of the MCLE requirement each year. **NOTE:** Even if your circumstances remain the same, a letter **must** be submitted each year by June 30 to avoid a late filing fee.

### **Can I Verify that the Program is Approved?**

Yes, call the MCLE Commission at 401-222-4942 or view the approved sponsor and course lists via the RI Supreme Court Attorney Portal.

### **Are There Any Application or Filing Fees?**

**No** – If you file by June 30.

**No** – If you request individual approval of a non-approved program and file on time.

**Yes** – If you file after June 30 (\$50), after September 30 (\$100), after January 1 (\$150). If you need to make up work (\$100-\$200). If you become removed and are reinstated. (additional \$75).

**Read the MCLE Rules and Regulations (Article IV, Rule 3) and access forms on the Court’s website: [www.courts.ri.gov](http://www.courts.ri.gov) click *Attorney Resources*.**

**IMPORTANT: ATTORNEYS OUT OF COMPLIANCE AFTER 180 DAYS WILL BE REMOVED FROM THE MASTER ROLL WITHOUT FURTHER NOTICE**

**Holly Hitchcock, M. Ed.**

Executive Director

RI MCLE Commission

24 Weybosset Street

Providence, RI 02903 ~ 401-222-4942

# SECTION ONE

The Rhode Island Bar Association



## How the Rhode Island Bar Association Helps You

The Rhode Island Bar Association is a unified bar association. Attorneys must belong to the Rhode Island Bar Association to practice law in Rhode Island. As a result, every bar member has a role in Association representation and activities. You may ask, “What does the Bar Association do for me?” The answer is the Rhode Island Bar Association provides programs and services that support and enhance the practice of law in Rhode Island. Participation in Bar Association programs, attendance at meetings, and working with committees fosters respect among lawyers, inspires public confidence and improves the delivery of legal services. We are working hard to be creative and responsive to your needs. This is a difficult and time-consuming job, but it is well worth it.

### Rhode Island Bar Association Registration

Rhode Island Bar Association registration begins once a candidate passes the Rhode Island Bar Examination and is officially sworn in. After the swearing-in, the Rhode Island Supreme Court forwards the names and addresses of all attorneys to the Bar Association.

When the Bar Association receives this list, our Member Services Coordinator will send each attorney New Member materials. Included with these materials is a **blue registration statement** which new members must complete and return to the Bar Association to ensure registration. Please note that your Attorney Identification number must be included on the form, as this is essential to insure a valid registration. **Attorney Identification numbers are issued by the Rhode Island Supreme Court** after you have paid your Supreme Court registration fee. You cannot register with the Rhode Island Bar Association until you are registered with the Supreme Court.

The Attorney Identification (ID) number you receive from the Court will also be your **username** for access to the Members’ Only area of the Bar Association website. With it, you may register for seminars and access the free, Bar membership benefit Casemaker, your 24/7, online law library.

Once the Bar Association receives your registration statement, your name, postal and email addresses (business and residential) are entered into the Bar’s database, and you will be sent your Bar Card noting your Attorney ID and your date of admission. From this point on, you will receive electronic and print communications such as CLE seminar brochures, news alerts, and the *Rhode Island Bar Journal*. Should your address or other contact information change, please notify the Rhode Island Bar Association immediately in writing. {We would note that Bar members can make these contact information changes themselves online at the Bar’s

website.] Upon request, you may also have any business address changes noted, at no charge, in the Lawyers On The Move section of the *Rhode Island Bar Journal*.

## **Membership Dues**

### **Membership Dues**

Newly sworn-in members are not responsible for Bar Association member dues for the first year of membership. You will receive your first dues invoice at the beginning of September for the next calendar year. For example if you were sworn-in during May or October 2015, you will receive your first dues invoice in September 2016 and an updated membership card once your dues are paid. Payment in full is due 60 days from September 1<sup>st</sup>. Currently dues are \$140 for membership of less than five years. This is a separate fee from the Supreme Court.

If you will not be practicing law in Rhode Island, you may request a change to inactive status. If you choose to be inactive with the Rhode Island Bar Association, you will not be allowed to practice law in the Rhode Island courts. Dues for inactive members, regardless of number of years in practice, are: 1) inactive in-state \$140 and 2) inactive out-of-state \$140. Inactive status with the Rhode Island Supreme Court will reduce the Supreme Court registration fee. Please contact the Court for more information. (401-222-3272)

If you elect to change your status to inactive, please submit your request in writing to the Rhode Island Bar Association. The change will be made as soon as your request is received. You must contact the Supreme Court separately to change your status. You must be either active or inactive with both the Bar and the Court.

## **Continuing Legal Education**

The Rhode Island Supreme Court mandates that lawyers attend ten hours of continuing legal education (CLE) programming each year. Two hours of that programming must be in ethics and professionalism. The Rhode Island Bar Association is the primary CLE program provider in the state, offering comprehensive, substantive and practical live seminars throughout the year, the new lawyers' Practical Skills series and a program of on-line video-taped seminars offered on the Bar's website. ([www.ribar.com](http://www.ribar.com)) This amounts to over 80 seminars per year including the over 40 sessions offered during the Bar Association's Annual Meeting in June. In addition to our many law specific seminars, each year, we also offer a two-hour ethics program, free-of-charge, on five different dates at locations throughout the state.

## **Casemaker On-line Legal Research**

The Rhode Island Bar Association is proud to offer our members the Casemaker Online Law Library. This free, exclusive Bar membership benefit is an easily searchable, continually-updated database of state and federal case law, statutes and regulations. As a Rhode Island Bar Association member, your use of Casemaker is unlimited, 24 hours a day, 7 days a week, at [www.ribar.com](http://www.ribar.com). Please see page 16 for more information on how to access and use Casemaker.

## **Public Service**

Many individuals in need of legal assistance often do not know where to turn for help, and many new, and even experienced, attorneys do not always have enough clients to support their practice. The Rhode Island Bar Association's Lawyer Referral Service (LRS) connects those seeking legal advice with participating attorneys. Lawyers participating in LRS agree to provide an initial consultation of up to one-half hour free of charge. There is no obligation on either side to go beyond the initial consultation.

Providing public interest legal services without a fee, or at substantially reduced fee, is considered a basic professional responsibility of all practicing lawyers. The Rhode Island Bar Association offers many opportunities for attorneys to participate in pro bono and reduced fee legal services for the less fortunate including our senior citizens. The Bar Association's Volunteer Lawyer Program (VLP) assists interested attorneys in providing these legal services by offering free training programs and materials; free malpractice insurance for most cases accepted through VLP; reimbursement for litigation and other out-of-pocket expenses; and access to mentor attorneys.

Other rewarding pro bono opportunities exist within the Rhode Island Bar Association's US Armed Forces Legal Services Project and Legal Information & Referral Service for the Elderly. For more information about public service opportunities, please contact the Bar Association's Public Service Director Susan Fontaine email: [sfontaine@ribar.com](mailto:sfontaine@ribar.com)

## **Rhode Island Bar Association Committees**

Sharing insights and information with other attorneys and judges about particular areas of the law or law-related interests, allows lawyers to improve their skills and grow both personally and professionally. The Rhode Island Bar Association hosts a wide range of Committees providing opportunities for members to learn and grow in a collegial atmosphere of mutual trust and respect. Information about Bar committees is available on our website.

## **New Attorney Assistance**

The Rhode Island Bar Association is committed to helping new Bar members. Through the Communications Director, the Bar regularly makes connections between new members seeking professional guidance and more seasoned attorneys who share their experience and wisdom. Additionally, the Bar's New Lawyers Committee regularly sponsors programming specifically designed to help new members in their professional and personal lives.

## **Client Reimbursement Program**

Public confidence in the integrity of the state's lawyers is essential to the practice of law. Providing financial underwriting for member integrity supports public trust in the legal profession. The Client Reimbursement Fund is financed by a mandatory assessment of \$25.00 per bar member per year which is part of your dues. While some might criticize the fund's

existence by saying it indicates that lawyers may be untrustworthy, the opposite is true. The public is more convinced of the profession's honesty when the bar itself is confident of its members' integrity and is prepared to underwrite it. By voluntarily recognizing a professional debt of honor where there is no conceivable liability on the part of individual lawyers, other than the lawyer who is directly involved, the Association works to dispel any public misapprehensions about the profession. The Fund was entirely inspired by the profession and a measure of integrity that brings honor to our profession.

### **Fee Arbitration Program**

Disputes concerning legal fees can tarnish the legal profession and leave all parties unsatisfied. The Rhode Island Bar Association Fee Arbitration Program mediates lawyer and client disagreements that may not warrant disciplinary action, but, through their resolution, improve the administration of justice and client communications. For many years, the Association's Fee Arbitration program has successfully resolved lawyer and client fee disputes in a fair and impartial manner.

### **Law Related Education Programs**

Public support for the law and the legal profession is enhanced by education. Law related education (LRE) provides students and adults with an exposure to aspects of the law and attorney activity. The Rhode Island Bar Association's Speakers Bureau provides adult groups and organizations with volunteer lawyers for free-of-charge speaking engagements. The Association's Lawyers in the Classroom and Rhode Island Law Day programs, the latter produced and delivered in conjunction with the Rhode Island Judiciary, connects volunteer attorneys and judges to serve as resources to classroom teachers and students throughout the state.

### **Media Relations**

Public perceptions of attorneys and the legal profession are formed, in part, through news media reporting. The Rhode Island Bar Association supports and enhances the image and reputation of attorneys and the legal profession through active engagement with state, local and, sometimes, national news media. Bar efforts include, but are not limited to: producing and placing news stories about Bar member and Bar Association accomplishments and public service efforts; providing news media reporters with relevant information from knowledgeable attorneys; and developing and producing Ask a Lawyer, free, public service programming in partnership with regional television stations

### **Rhode Island Bar Journal**

The *Rhode Island Bar Journal* is the Rhode Island Bar Association's official magazine for Rhode Island attorneys, judges and others interested in Rhode Island law. The *Bar Journal* publishes scholarly discourses, commentary on the law and Bar activities, and articles on the administration of justice. It is a topical, thought-provoking magazine that addressing issues of interest to significant segments of the Bar. The *Bar Journal* is sent to all Bar members as well as

to all Rhode Island judges and news media editors.. Bar members are encouraged to submit articles for publication consideration. Please see information concerning articles on page 4 of every *Bar Journal* and on the Bar Journal tab on the Bar's website.

**Rhode Island Bar Association Website – [www.ribar.com](http://www.ribar.com)**

Our web site serves as a resource for Association members, as well as the general public. You will find the latest in Bar and law practice news and Bar member services and programs, including, but not limited to: CLE programming, membership discounts and opportunities to join one of the many practice and court related Rhode Island Bar committees. There are links directing you to the Bar Association bylaws, dues information, the Court's Attorney Portal and other legal resources. Directions to the Rhode Island Law Center are also available.

In addition, we have listed information about local and specialty Bar Associations in Rhode Island and provide links to the following

- Governance & Bylaws
- Rhode Island Bar Journal
- Rhode Island Bar Association Staff
- Membership Benefits
- County Bar Associations
- Other Legal Associations
- Roger Williams University School of Law
- Rhode Island State Courts

and more...

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### MEMBER LOGIN

Your Bar ID #

Password

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**Welcome to the Rhode Island Bar Association web site**, a valuable resource for Bar members and the public. [For Attorneys](#) highlights our many programs including: CLE, Lawyer Referral Service, Bar Committees and member benefits. [Members Only](#), provides a wealth of services including CASEMAKER, the 24/7, online, law library and OAR, our attorney-to-attorney information resource center. [Attorney Directory](#) includes all registered members' contact information. [For the Public](#) contains valuable information to help choose a lawyer and find guidance on a range of legal issues, as well as law related education programs. [Rhode Island Bar Foundation](#) provides information about Interest on Lawyers Trust Accounts (IOLTA) and the Bar's Law School Scholarship Program.

### LATEST NEWS



**DEC 7 BAR'S CLE DIRECTOR RETIRING**

After twenty-six years, Nancy Healey, CLE Director, will be retiring at the end of this month. Nancy was the Bar's first CLE Director. During her tenure, the program grew from 16 seminars a year to over 60 and the Annual Meeting, which began with four p... [More](#)

**DEC 1 UPCOMING CLE SEMINARS**

There are only a few opportunities left to attend a 2015 Bar CLE seminar. Why not pick up a credit or two and get a head start on your June 2016 reporting deadline by choosing one of these informative seminars? ... [More](#)

**DEC 1 US DISTRICT COURT OF RI ANNOUNCES NEW HISTORICAL WEBSITE**

The US District Court of Rhode Island announced the creation of a new website dedicated to court history and education. ... [More](#)

**NOV 13 CASEMAKER'S SUITE OF PREMIUM SERVICES FREE TO BAR MEMBERS**

The Rhode Island Bar Association is proud to offer Casemaker's suite of premium services at no additional cost to our members.... [More](#)

#### ABOUT SSL CERTIFICATES

Rhode Island Bar Association 41 Sharpe Dr., Cranston, RI 02920

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Tel: 401-421-5740

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### Welcome to the Rhode Island Bar Association Members Only area.

This section gives you easy access to a wide range of information and online transactions available only to Rhode Island Bar Association members.

The Rhode Island Bar Association is particularly proud to offer the Casemaker Online Law Library. This free, exclusive, Bar Association service is an easily searchable, continually updated database of state and federal case law, court rules, ethics opinions, statutes and regulations. As a Rhode Island Bar Association member, your use of Casemaker is unlimited, 24 hours a day, seven days a week. Casemaker access for the Bar members also provides the ability to search the law libraries of federal materials and the extensive libraries of all 50 states. Please click on the link below to enter Casemaker.

### New Casemaker Personalized Search and Notation Password Protection

Casemaker, a free Bar membership benefit, was recently upgraded to include a whole host of great new features including one that allows you to save and personalize your searches, make notes on documents, and create and organize research materials on the site. However, to protect your work product, you must create a new password within this new version of Casemaker in addition to your Bar website name and password which you use to access the Bar's MEMBERS ONLY section and Casemaker. This new access code prevents any unauthorized use of your personalized notations. You may use Casemaker without creating a personalized password, but you will not be able to access the personalized features of the website. **To bypass the feature, you will need to click CANCEL when prompted to create the new Casemaker password.** Your new Casemaker password must have: at least 8 characters with at least one capital letter; at least one lower case letter; at least one number; and a special character (i.e., @\$%^&+=). If a pop-up message prompting you to create a password does not appear when you first enter Casemaker, choose "Personal Login" from the left-side navigation menu to create your personal password. **If you choose to create a Casemaker password, please remember that password is valid within Casemaker website only and does not alter the need for you to enter your Rhode Island Bar website login.**

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Click to enter



# User Guide

This user guide to Casemaker is designed to familiarize you with its different pages and provide instruction on how to use its various search capabilities, browsing features, organizing components and tools.

For more assistance in using Casemaker, live customer support is available Monday through Friday, 8

a.m. to 8 p.m. Eastern:

**Call: 1-877-659-0801** or

**Email: [Support@casemakerlegal.com](mailto:Support@casemakerlegal.com)**

**Need more help? Sign-up for a training webinar by clicking on “webinar” in the “help” tab.**

Casemaker supports the following browsers:

**IE 8+, Firefox F3+, Safari4+, Chrome 10.**

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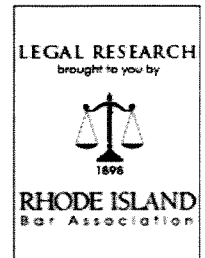
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## Available mobile application

My Accounts 9890540

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The Rhode Island Bar Association is proud to offer Casemaker's suite of premium services at no additional cost to our members.

Now, Rhode Island Bar Association members have access to not only Casemaker's broad and comprehensive libraries which cover all 50 states and Federal level materials - but members also have access to a suite of tools that make research faster and easier.

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## CaseCheck+<sup>®</sup>

A negative citator system that lets you know instantly if the case you're reading is still good law. CaseCheck+ returns treatments instantly as you research. Link to negative treatments and quickly review the citation history for both state and federal cases.

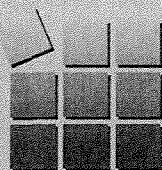
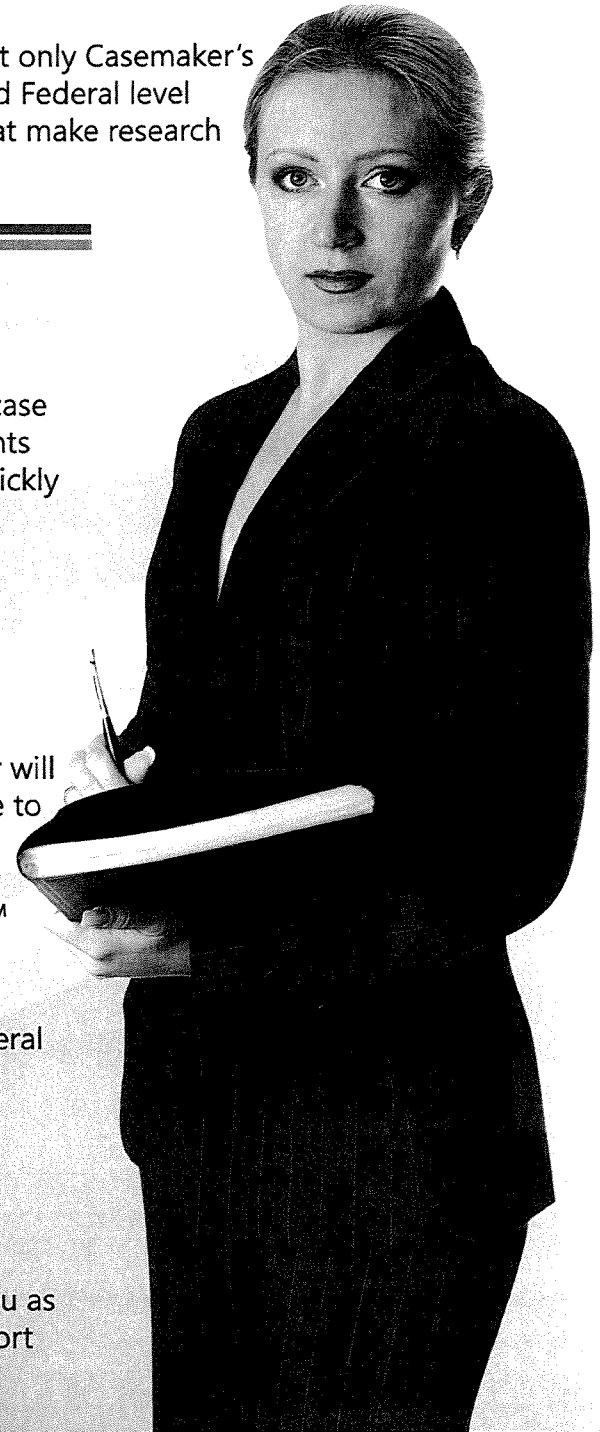
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## RHODE ISLAND BAR ASSOCIATION COMMITTEES

Service on a Rhode Island Bar Association Committee is one of the most important functions members may fulfill. Bar practice-area Committees help bring members together in collegial and educational forums and serve to improve and develop the ongoing relationship between the Bar and the Courts. Other Bar Committees are more subject or activity focused, providing and enhancing membership benefits and offering valuable information to the Bar at large.

Click the options below to access the following:

- [Bar Committee Chairpersons](#)
- [Executive Committee](#)
- [House of Delegates](#)

Click the button below to go to the Members Only area and join a Committee. Please note: you must be logged in as a member to sign up for committees online.

### [CLICK HERE TO JOIN A BAR COMMITTEE](#)

### [RI BAR ASSOCIATION COMMITTEES 2014 - 2015](#)

As noted, Bar members may sign-up for Bar Committees online or, if preferred, may access the Bar Committee Application Form below and complete and return it via fax: 401.421.2703 or in person or by postal mail: Rhode Island Bar Association, 115 Cedar Street, Providence, RI 02903.

- [Bar Committee Application Form](#)

- [Animal Law Committee](#)
- [Annual Meeting Planning](#)
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Your Bar is pleased to announce a new and valuable Bar Association member benefit. A voluntary, free, list serve is now available for all actively practicing Rhode Island attorney members. This Bar-wide list serve gives you immediate, 24/7, open-door access to the knowledge and experience of hundreds of Rhode Island lawyers, whether you are a solo or in a firm. If you have a question about matters relating to your practice of law, you can post the question on the List Serve, and it will be emailed to all list serve members. Any attorney who wishes to provide advice or guidance can, and hopefully will, quickly respond. For example, do you have a question about how to handle a tax or other appeal? Draft a particular document? Post your question and the appropriate list serve members will respond. Do you need an immediate recommendation for a computer expert? Post a request and other attorneys will let you know about consultants they have worked with. Having trouble locating a statute or a case on a particular matter? Post the question and you will likely get fast help.

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- [Bar List Serve Sign-Up](#)

**PLEASE NOTE: Attachments are prohibited as a courtesy to members who are concerned about viruses, large file size, low bandwidth connections, and so on. Avoiding attachments reduces the risk of propagating computer viruses and reduces the chance of inadvertent copyright infringement. As an alternative to attachments, refer to other useful online materials by providing a link to or the URL of those resources. Or you may send the attachment directly to the person who posted a request, if the person agrees.**



All you need to do to access to this free member benefit is agree to the Bar list serve rules, which you can access by clicking [here](#), and email the contact at the bottom of the rules. Please remember you should always preserve client confidentiality and never mention a client by name or identify a matter with such specificity that the client would become obvious. The more lawyers who join and participate in the list serve, the more valuable it will be, so all Bar members are encouraged to seriously consider joining. If, at any time, you want to stop participating in the list serve, you will be able to unsubscribe with a single click.



### ABOUT SSL CERTIFICATES

Address: Rhode Island Bar Association, 15 Cedar Street, Providence, RI 02903

[info@ribar.com](mailto:info@ribar.com)

Tel: 401-421-5740

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## Welcome to the Rhode Island Bar Association's

### Online Attorney Resources

#### Terms of Agreement

Your Rhode Island Bar Association developed the unique, Online Attorney Information Resource Center (Center), available only to Bar members exclusively through the MEMBERS ONLY section of the Bar's web site, to help Bar members receive timely and direct volunteer Bar member assistance with practice-related questions.

This Center provides Bar members with the names, contact information and Bar admission date of volunteer attorneys willing to answer questions concerning particular practice areas based on the volunteer's professional knowledge and experience. As the Rhode Island Bar Association does not and cannot certify attorney expertise in a given practice area, the Bar does not verify any information or advice provided by the Center's volunteers.

Questions channeled through the Center's volunteers may range from inquiries concerning specific court procedures and expectations to current and future opportunities within practice areas. However, the Center is NOT a forum for Bar members to engage other Bar members as unofficial co-counsel in an on-going case.

As everyone's time is a limited and precious commodity, all Bar members who contact volunteers must formulate their questions concisely prior to contact and ensure the initial contact takes no longer than 3 to 5 minutes unless mutually-agreed upon by both parties.

There are two options offered below. The first is for Bar members who are willing to volunteer as information resources. The second is for Bar members who have questions about a particular area of the law and want to view the available resources. However, before proceeding, all Bar members must read and acknowledge the information above, and agree to abide by these terms.

#### 1. VOLUNTEER AS AN INFORMATION RESOURCE

If you would like to volunteer to serve as an information resource for your colleagues, please click [here](#).

#### 2. VIEW THE NAMES AND CONTACT INFORMATION OF INFORMATION RESOURCE VOLUNTEERS

If you are seeking the answer to a question concerning a particular practice area afforded by a volunteer colleague, please click [here](#).

#### QUICK LINKS

Committee Meeting Calendar  
CLE Calendar  
Pro Bono Case Of The Month  
Lawyers Helping Lawyers  
Career Center  
RI Supreme Court Attorney Portal  
SOLACE Program Information  
Bar List Serve Sign-Up



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## Information Resource Center Volunteers & Law Practice Areas

Bar members may contact any of the volunteers below for information on the areas of legal practice, as long as both parties abide by the Center's Terms of Agreement.

Please remember the Center is NOT a forum for Bar members to engage other Bar members as unofficial co-counsel in an on-going case.

- Administrative Law
- Civil Practice in RI District Court- Collections Law & Evictions
- Civil Practice in RI Superior Court- Plaintiff's Personal Injury Practice
- Commercial Real Estate Transactions
- Creditors' and Debtors' Rights
- Criminal Law Practice
- Domestic/Family Law Practice
- Federal Court Practice
- Organizing a Rhode Island Business
- Probate and Estate Planning
- Residential Real Estate Closings
- Workers' Compensation Practice

### QUICK LINKS

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- [Lawyers Helping Lawyers](#)
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**SOLACE Program Signup**

SOLACE, an acronym for Support of Lawyers, All Concern Encouraged, is a new Rhode Island Bar Association program, allowing Bar members to reach out, in a meaningful and compassionate way, to their colleagues. SOLACE communications are through voluntary participation in an email-based network through which Bar members may ask for help or volunteer to assist others with medical or other matters.

Issues addressed through SOLACE may range from a need for information about, and assistance with, major medical problems, to recovery from an office fire, and from the need for temporary professional space, to help for an out-of-state family member.

The program is quite simple, but the effects are significant. Bar members notify the Bar Association when they need help, or learn of another Bar member with a need, or if they have something to share or donate. Requests for, or offers of, help are screened and then directed through the SOLACE volunteer email network where members may then respond. On a related note, members using SOLACE may request, and be assured of, anonymity for any requests for, or offers of, help.

[Clicking the link here](#) adds your name and email address to the Bar's SOLACE network. As our network grows, there will be increased opportunities to help and be helped by your fellow Bar members.

By joining the SOLACE email list, you will be kept informed of what Rhode Island Bar Association members are doing for each other in times of need. These communications provide a reminder that if you have a need, help is only an email away.



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Rhode Island Bar Association 115 Cedar Street Providence, RI 02903

[info@ribar.com](mailto:info@ribar.com)

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**RHODE ISLAND BAR FOUNDATION  
INTEREST ON LAWYERS' TRUST ACCOUNTS  
(IOLTA)**

**INTRODUCTION**

Created by the Rhode Island Supreme Court in 1985, the Rhode Island Interest on Lawyers' Trust Accounts (IOLTA) program generates interest that helps fund civil legal services for the poor, legal education for the public and improvements in the administration of justice.

On December 11, 2008, the Supreme Court approved a request (petition), filed by the Rhode Island Bar Foundation and Rhode Island Bar Association, to convert Rhode Island's IOLTA program from opt-out to mandatory. Mandatory IOLTA requires that all lawyers who hold client funds establish IOLTA accounts for the deposit of those funds that cannot earn net interest for the client.

There are now 47 jurisdictions that have adopted mandatory IOLTA and 32 that have adopted rate comparability in their rule. Rate comparability requires attorneys to place their IOLTA funds in a financial institution that pays those accounts the highest interest rate generally available at that institution to other customers when IOLTA accounts meet the same minimum balance or other account qualifications, if any.

IOLTA Directors, in states that have already implemented comparability, report nearly all financial institutions have cooperated because they do not want law firms to move their trust accounts elsewhere.

\*\*\*\*\*

Currently IOLTA programs are operating in 50 states, the District of Columbia, and the U.S. Virgin Islands. IOLTA programs are methods of raising money for charitable purposes, with most of the money going to organizations that provide civil legal services to indigent persons. States and other jurisdictions in the United States have been developing IOLTA programs since 1981, when Congress changed the banking laws to allow some checking accounts to bear interest.

In 1984, the Rhode Island Supreme Court adopted the "IOLTA rule" to permit lawyers and law firms to deposit clients' funds in interest-bearing accounts. Rhode Island Rules of Professional Conduct - **Rule 1.15 Safekeeping Property has been amended to require attorneys to participate in the IOLTA Program. (Exhibit A)** The interest on these pooled client trust accounts is paid to the Rhode Island Bar Foundation. The Rhode Island Bar Foundation is a tax-exempt not-for-profit organization that administers the IOLTA program. The Foundation uses the interest generated by IOLTA accounts to make charitable contributions to not-for-profit agencies that provide legal services to the poor.

Lawyers often hold funds in trust or escrow for their clients. When the funds the lawyer holds for a particular client are substantial in amount or will be held for a long period of time, clients are entitled to the interest on these funds.

Lawyers often hold client funds that are so small in amount and/or will be held for such a short period of time that the administrative costs of establishing and maintaining the account for an individual client would exceed the interest earned.

Historically, lawyers have combined these nominal and/or short-term funds in a pooled client trust account. Prior to the implementation of the IOLTA program, these funds were deposited in non-interest bearing accounts. These trust funds earned no interest because it is unethical for attorneys to derive any financial benefit from funds that belong to their clients. Now, by virtue of IOLTA, attorneys who handle nominal or short-term client funds can place these funds in a single, pooled, interest-bearing trust account. Under the IOLTA rule, these pooled client trust accounts ("IOLTA accounts") must earn interest and the interest must be paid to the Rhode Island Bar Foundation.

Most banks treat IOLTA accounts as Negotiable Order of Withdrawal ("NOW") or other Business Interest Checking accounts. Banking regulations hold that attorneys can set up the accounts as NOW accounts even though the attorney-depositor may be a for-profit corporation, because the interest goes to a not-for-profit charitable entity. Financial institutions have no obligation to monitor lawyer compliance with the IOLTA program.

## **WHAT IS AN IOLTA ACCOUNT?**

An IOLTA account is a corporate/business checking account (such as a NOW account) for pooled client funds that pays all interest earned to the Rhode Island Bar Foundation, a tax-exempt, not-for-profit organization.

An IOLTA account is operationally different because:

- ▶ The taxpayer identification number (TIN) on the account is the Rhode Island Bar Foundation's, not that of the attorney or law firm; and
- ▶ The bank collects the interest earned on the IOLTA account and sends it, along with a remittance report, to the Rhode Island Bar Foundation.

Funds which are qualified for deposit by attorneys are those which are nominal in amount or which will be held for such a short term that sufficient interest income will not be generated to justify the expense of administering a segregated account. Qualified funds include monies received from any client or beneficial owner which are too small in amount or are expected to be held for too short a period of time to generate net economic benefit for the client or beneficial owner.

## **HOW WILL ATTORNEYS ESTABLISH IOLTA ACCOUNTS?**

All attorneys licensed to practice in Rhode Island will receive information about the IOLTA program and their duty to establish IOLTA accounts. It is not necessary for each attorney in a law firm to establish his or her own IOLTA account. Attorneys can establish IOLTA accounts at financial institutions either by converting an existing unsegregated, non-interest-bearing client escrow account to an interest-bearing IOLTA account or opening a new interest-bearing IOLTA account for this purpose using the enrollment form provided by the Rhode Island Bar Foundation. (Notice and Certification of Compliance Form attached) (**Exhibit B**)

## **HOW SHOULD IOLTA ACCOUNTS BE REGISTERED?**

Use the attorney or law firm's name on the account. The account name and checks may be designated as "Client Trust Account or "Client Escrow Account." Please note that the IOLTA account and the checks printed for the account CANNOT identify the Rhode Island Bar Foundation as designee, trustee or owner. The term "IOLTA" need not be placed on checks or deposit slips.

## **MAY IOLTA ACCOUNTS BE ASSESSED SERVICE CHARGES?**

Financial institutions are permitted to impose reasonable service charges for administration of IOLTA accounts but such service charges must be offset against IOLTA interest earnings, not the principal maintained in IOLTA accounts. The Board wishes to note that institutions may choose to waive service charges and many have done so in the interest of public service.

## **WHAT ABOUT NON-ROUTINE CHARGES OR FEES?**

Fees for services such as stop payments, certified checks, insufficient funds, and wire transfers should not be assessed against IOLTA interest nor deducted from the principal of the IOLTA account. Instead, such charges should be brought to the attention of the attorney for payment or by agreement with the attorney, charged to the attorney's business account.

## **HOW SHOULD THE FOUNDATION BE NOTIFIED OF AN ACCOUNT OPENING?**

The Rhode Island Bar Foundation wishes to have in its records a confirmation that an attorney or law firm has opened an account with a given financial institution. A copy of the enrollment form used to open an IOLTA account should be mailed by the financial institution and/or attorney to the Rhode Island Bar Foundation for its records.

## **TO WHOM IS IOLTA INTEREST PAID?**

Interest on IOLTA accounts, net any service or other charges or fees, should be remitted to the Rhode Island Bar Foundation, 115 Cedar Street, Providence, Rhode Island, 02903. The Foundation is a non-profit corporation and qualifies as a charitable organization under Section 501 (c)(3) of the Internal Revenue Code.

The Internal Revenue Service has concluded that the IOLTA Fund is the beneficial owner of the interest accrued and that as a non-profit organization under section 501 (c)(3) of the Internal Revenue Code, there is no tax liability to the Fund. Therefore, it is not necessary that either Forms W-9 or 1099 be used in connection with IOLTA accounts. If your institution's system requires the entry of a TIN, please use the TIN assigned to the Rhode Island Bar Foundation (05-6009376), not the TIN of the attorney or firm which established the account nor that of a client. If your system cannot suppress issuance of Form 1099's, then please send the forms issued to the Rhode Island Bar Foundation, not to the participating attorney or law firm.

\* \* \* \* \*

For more information about the IOLTA program, contact

Ginny Caldwell, Program Director  
Rhode Island Bar Foundation  
41 Sharpe Drive, Cranston RI 02920  
Phone: 401-421-6541  
Fax: 401-421-2703  
Email: [gcaldwell@ribar.com](mailto:gcaldwell@ribar.com).

Information is also available on the  
RI Bar Association website: [www.ribar.com](http://www.ribar.com)

## Rhode Island Rules of Professional Conduct

### Rule 1.15 Safekeeping Property

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation.

(b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third persons, shall promptly render a full accounting regarding such property.

(e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The Lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

(f) A lawyer or law firm shall, deposit clients' funds, which are nominal in amount or to be held for a short period of time, in one or more interest bearing trust accounts in accordance with the following provisions. For purposes of this rule, such accounts are referred to as Interest on Lawyers' Trust Accounts (IOLTA).

(1) Earning from such IOLTA accounts shall not be available to a lawyer or law firm.

(2) Whether clients' funds are nominal in amount or to be held for a short period of time shall be determined solely by each attorney or law firm.

(3) Notification to clients whose funds are deposited in IOLTA accounts shall not be necessary.

(4) Such IOLTA accounts may be established with any financial institution authorized by federal or state law to do business in Rhode Island, the deposits in which are insured by insurance entities regulated by the United States and/or the State of Rhode Island or any agency or instrumentality thereof. Funds deposited in such accounts shall be available for withdrawal immediately upon demand.

(5) The rate of interest payable on any IOLTA account shall not be less than the highest interest rate or dividend available from the financial institution to its non-IOLTA customers when the IOLTA account meets the same minimum balance or other eligibility qualifications. Lawyers or law firms making such deposits shall direct the depository institution:

(i) To remit interest or dividends on such deposits, net of any service or fees, at least quarterly, to the Rhode Island Bar Foundation (the "Foundation").

(ii) To transmit to the Foundation and the depositor with each remittance statements showing the name of the depositor, the amount remitted, and the rate(s) at which the interest was computed.

(g) Interest paid to the Foundation shall be used for any of the following purposes: providing legal services to the poor of Rhode Island; improving the delivery of legal services; promoting knowledge and awareness of the law; improving the administration of justice; and for the reasonable costs of administration of IOLTA accounts under this Rule.

(h) Nothing in this Rule shall preclude a lawyer or law firm from depositing any funds of a client other than those funds described in paragraph (f) of this Rule in an interest bearing account and accounting for the interest to such client.



**Notice and Certification of Compliance**

(Exhibit B)

**Rhode Island Bar Foundation Interest on Lawyers' Trust Accounts Program**

**Complete Part I or Part II and sign at the bottom.**

**PART I – For Financial Institution - The undersigned is establishing an IOLTA account in compliance with Rhode Island Rules of Professional Conduct, Rule 1.15, regulating lawyers. To TO OPEN A NEW IOLTA ACCOUNT OR TO CONVERT AN EXISTING ACCOUNT TO IOLTA, COMPLETE AND BRING TO YOUR FINANCIAL INSTITUTION AND SEND A COPY TO THE BAR FOUNDATION.**

- The depositor's IOLTA account is to be established and governed by Rhode Island Supreme Court Rule 1.15. This means that interest will be accrued and paid in the same manner and at the same interest rate(s) applied to accounts with the same minimum balances or other requirements.
- Depositor (check one):
  - Convert my existing lawyer's trust account.
  - Please open a lawyer's trust account for me.

The account should be/remain in my/our firm's name. However, financial institutions should designate the account with the tax identification number of the Foundation, which will receive all interest from the account. **The RI Bar Foundation Tax Identification Number is 05-6009376.**

Attorney Name: \_\_\_\_\_

Firm Name: \_\_\_\_\_  
If you are a member of a firm of two or more, attach a listing of all lawyers and their bar numbers.

Trust Account Number (s): \_\_\_\_\_

Financial Institution, Branch & Address: \_\_\_\_\_  
\_\_\_\_\_

Attorney(s) Authorized to sign IOLTA Checks \_\_\_\_\_

\*\*\*\*\*

**PART II - I have not established an interest bearing trust account because I am exempt due to the following provisions (check one):**

**To file to be exempt from the program, complete Part II and send to the Bar Foundation**

- 1. I do not receive, maintain, or disburse client funds in Rhode Island.  
Explain: \_\_\_\_\_
- or
- 2. I am on "inactive" status or a full-time judge, government attorney, or military attorney, and have no client funds requiring an IOLTA trust account.

\*\*\*\*\*

I attest and certify that the above information is true and correct. I am aware that the original or a copy of this Certification will be provided to the Office of Disciplinary Counsel. I further attest and certify below that I will notify the Rhode Island Bar Foundation at such time in the future that I establish, join, or change an existing trust account containing nominal or short term client funds that are subject to the IOLTA rule.

NAME: \_\_\_\_\_

SIGNATURE \_\_\_\_\_ BAR NUMBER \_\_\_\_\_ DATE \_\_\_\_\_

PHONE \_\_\_\_\_ EMAIL \_\_\_\_\_

**Please return completed form to**

The Rhode Island Bar Foundation 41 Sharpe Drive Cranston, RI 02920 or Fax: (401) 421-2703  
For additional assistance, call (401) 421-6541 or email: [gcaldwell@ribar.com](mailto:gcaldwell@ribar.com)

# Rhode Island Bar Association

## PUBLIC SERVICE PROGRAMS

### 2015 Summary & Guide

The Rhode Island Bar Association endorses the availability of legal services and access to justice for our citizens. Many of the members' efforts to provide legal assistance are facilitated through membership in the Bar Association's public service programs.

- I. **Lawyer Referral Service** – legal assistance is available in almost every area of law. A free half hour consultation is available. If further services are required, fee arrangements are between the client and attorney. For the past several years, attorneys from the LRS have participated in Ask A Lawyer events at Channel 10 to provide free legal advice to the public.
  - a. **Lawyer Referral Service Reduced Fee Program** – financial eligibility begins where the Volunteer Lawyer Program eligibility ends. Extends up to 200 % of the federal poverty guideline. Attorneys on the panel agree to a maximum hourly fee of \$75.00.
  - b. **Legal Information & Referral Service for the Elderly** – provides referrals to senior citizens 60 years of age and older. **Reduced fee** (\$50.00 hourly) and **Pro Bono** assistance is available upon the client meeting financial eligibility guidelines. **Ask A Lawyer** and **Legal Clinic** programs are made available through our community outreach efforts to senior organizations on a statewide basis. This past year we have also been present at various informational fairs for seniors and have sponsored **Collection Clinics** at the Bar Association Headquarters. Volunteer attorneys handle guardianship petitions on a pro bono basis for the frail elderly through the **Volunteer Guardian Program**.
  - c. **Lawyers for the Arts** – designed to meet the legal needs of artists and arts organizations. **Reduced fee** and **Pro Bono** assistance is also available.
  
- II. **Volunteer Lawyer Program** – is designed to help low income citizens obtain legal help when they need it. The VLP provides legal assistance to those who cannot obtain legal representation either on their own or through other existing agencies. The greatest demand for help is in the area of family law, bankruptcy, collections, guardianship and housing. Other case types include employment, license registry, probate and taxation. Eligibility is based on the federal poverty guideline. The VLP does not accept criminal or fee generating matters. There is continual collaboration with human service agencies including, RI Legal Services, International Institute, Homeless Legal Clinic, and Women & Infants Hospital, Bradley Hospital as well as the Roger Williams University School of Law. Due to the ongoing economic crisis, **Collection Clinics** are sponsored and held at the Bar Association Headquarters.
  
- III. **US Armed Forces Legal Services Project** - accepts direct requests for pro bono legal assistance from military personnel. Additionally, when requested, the program has mentors available for volunteer attorneys. Many of the referrals to the Bar Association's public service area are coordinated with the military Attorney-Advisor through the Judge Advocate General's office. Income eligible active military personnel and Veterans from all branches of military service request and receive legal assistance for civil matters. The program collaborates with a variety of organizations serving the military including the Bristol Veterans Home and Veterans Administration.

# **The Benefits of Joining the Rhode Island Bar Association's Public Service Programs**

## **Good Business for Good Lawyers**

**Get More Visibility for your practice through the Lawyer Referral Service -  
As a new member of the Bar Association, you get your first six months of  
membership FREE!**

Membership in the RIBA's Lawyer Referral Service is an inexpensive way to increase a client base and visibility within the community while expanding the public's access to legal representation. Special Lawyer Referral Service projects such as the "Ask A Lawyer" collaboration with Channel 10, a variety of senior citizen center clinics, participation in the Reduced Fee Program, and Arts Panel provide unique opportunities for increasing your business while you provide an important public service to your community.

Applications and more detailed program information and qualifications may be found on our website [www.ribar.com](http://www.ribar.com) in the Members Only section. This information may also be requested by contacting Public Services Director Susan Fontaine at 401-421-7799 or email [sfontaine@ribar.com](mailto:sfontaine@ribar.com).

## **Serving those Less Fortunate**

**Your Bar Association's Pro Bono Programs offer a variety of opportunities in a  
range of practice areas, forums and levels of time commitment!**

Handling Pro Bono work through programs administered by your Bar Association means that your efforts are directed where they are needed most. You know you are helping someone who has no other place to turn because we pre-screen clients for financial eligibility. Providing critically needed service through either the **Volunteer Lawyer Program, Pro Bono Program for the Elderly or US Armed Forces Legal Services Project** brings great personal satisfaction.

You will determine when to accept a case and interview the client. Other benefits include qualifying for **FREE CLE**, gaining experience, reimbursement of various litigation costs, access to mentor attorneys and appreciation and recognition by your Bar Association.

Applications and more detailed program information and qualifications may be found on our website [www.ribar.com](http://www.ribar.com) in the Members Only section. This information may also be requested by contacting Susan Fontaine at 401-421-7799 or email [sfontaine@ribar.com](mailto:sfontaine@ribar.com).

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### Lawyer Referral Service Annual Membership Application

**Note:** All items in red are required.

First Name:   
 Middle Initial:   
 Last Name:

Firm Name:   
 Office Address:   
  
 City:   
 State/Zip:

Office Telephone:   
 Office Fax:   
 E-mail:

Foreign languages **FLUENTLY** spoken by attorney or staff:   
 Is your office handicapped accessible?   
 Do you communicate in sign language for the deaf?

Other states or Federal courts in which you have been admitted to practice:

Year of Admission to U.S. District Court for RI:

Year of Admission to RI Bar:

#### Insurance

LRS members are required to carry Professional Liability Insurance in the minimum amount of \$100,000/\$300,000.

Insurance Carrier:   
 Address of Insurance Carrier:   
 Amount of Coverage \$   
 Policy No.   
 Expiration Date:

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**STATEMENT OF STANDARDS AND PRACTICES OF THE LAWYER REFERRAL SERVICE OF THE RHODE ISLAND BAR ASSOCIATION**

**I. PURPOSE & POLICY**

1. The purposes of the Lawyer Referral Service are:
  - a. to provide a way in which any person may be referred to a lawyer who is able to render and is interested in rendering needed legal services,
  - b. to provide pertinent information which will aid the public in selection of a lawyer, and
  - c. to provide general information and assistance to the public as may be necessary.
2. The Service shall be operated for the benefit of the public and the legal profession as a whole. It shall be readily accessible and its existence should be known to the public to the greatest extent possible. It shall be a statewide service.

**II. OPERATION OF THE SERVICE**

1. The Service shall be operated by the Rhode Island Bar Association through its Executive Committee in accordance with the by-laws of the Association.
2. There shall be a Committee on Legal Services which may make recommendations to the Bar Association Executive Committee regarding the policies and administration of the Service.

**III. SERVICE TO BE PROVIDED AND GENERAL REQUIREMENTS FOR PARTICIPATION BY LAWYERS**

1. The Service shall provide panels of lawyers to whom referrals of persons requesting legal advice can be made through the Service and, if possible, shall provide information to aid persons seeking to select a lawyer themselves.
2. Lawyers shall not be required to participate in all types of panels in order to participate in any one or more of them.
3. The Rhode Island Bar Association shall encourage lawyers to participate in the Service. Only lawyers who are members of the Bar in good standing and licensed to practice in the Rhode Island Bar Association may participate and must carry malpractice insurance in the amounts established by the rules adopted by the Bar Association.
4. Each participating lawyer must agree that:
  - a. the information contained in his or her application may be furnished to persons who seek information from and/or referral through the Service.
  - b. So long as he or she continues to be registered on a panel he or she will pay to the Service all applicable fees and charges prescribed by the Service;
  - c. he or she will maintain an office in which to see clients;
  - d. he or she will abide by all rules of the Service; and
  - e. he or she will be bound by all authorized representations made with respect to fees, if any, as to persons referred to him or her through the Service.
  - f. any transaction involving the same client for which the initial referral to the participating lawyer was made, whether or not related to the initial matter of representation, is subject to all applicable fees and charges prescribed by the Service within two years of the initial referral of the client; and the participating attorney agrees to inform the Service of the retention within the two year period.

**IV. THE REFERRAL PANELS**

1. The Service shall establish such number and variety of panels as is determined will best enable the Service to make referrals in a manner which is responsive to individual client needs.
2. The Service shall attempt to establish other separate panels including, but not limited to: a no-fee-to-indigents panel and reduced fee panels.

**V. ELIGIBILITY OF PANEL LAWYERS**

1. No person who makes referrals should be a member of any referral panel.
2. In addition to the matters stated above, each lawyer registered on a panel must agree:
  - a. to carry professional liability insurance of the kind and in the minimum amount set by the rules of the Service; and
  - b. to submit any fee dispute arising with the person referred by the Service to arbitration and accept the decision of the arbitrator.
3. Any panel member shall be permitted to withdraw his or her registration from the Service, or from any of its panels, upon reasonable written notice to the Service.

**QUICK LINKS**

- Bar President's Message
- Attorney Directory
- Committee Meeting Calendar
- CLE Calendar
- Pro Bono Case Of The Month
- Lawyers Helping Lawyers
- RI Courts
- RI Supreme Court Attorney Portal



4. Panel Attorney's membership may be subject to review for deferment or suspension from the Service if the Panel Attorney fails to meet the standards of his/her obligations set forth in the Statement of Standards and Practices and/or is the subject of complaints of a repetitive nature from referred clients.

#### VI. REFERRAL SERVICE PROCEDURES

1. The Service shall establish procedures which assure that each referral is made in a fair and impartial manner to a member of an appropriate panel. Such procedures shall be designed so as to respond to all circumstances of the client, including the subject of the legal problem presented, geographical convenience of the client, language needs, and ability to pay for desired services.
2. No referral shall be made on the basis of race, sex, age, religion or national origin.
3. No referral shall be made by the referrer to himself or herself or to his or her associates and employees.
4. If possible, each client-applicant shall be interviewed by a lawyer or trained interviewer. The interview should be convenient to the client and may be conducted by telephone.
5. The interviewer shall attempt to find out whether the client-applicant has a lawyer. If so, the interview shall suggest that the client-applicant consult with that lawyer. If, however, the client-applicant states that he or she does not wish to consult with the lawyer, the client-applicant shall be referred in the usual manner.
6. The interviewer shall ascertain whether the client-applicant has a problem for referral. If so, the rules of the Service shall assure that representation is obtained. If the client-applicant does not have a legal problem, the interviewer shall direct the client-applicant to a source which can provide help.
7. The client-applicant shall be informed in writing of the Service's rules applicable in his or her case, including information about the first consultation fee, if any, to be paid by the client-applicant and the extent of legal services which will be rendered for such fee.
8. The client shall call the attorney's office to arrange the time and place of the first consultation between the client and the lawyer to whom he or she is referred. Such consultation shall be made available as soon as possible after the initial referral interview.
9. **If panel lawyer decides that another attorney should be consulted or that special services are required and does not feel qualified to render such services, he or she must send the client-applicant back to the Service for another referral.**
10. The Service shall make regular and consistent attempts to follow up in a reasonable number of cases in order to obtain information which will enable the Service to determine whether appointments have been kept, whether the referred client was satisfied with the lawyer's handling of the case, whether the fee was within the clients means, and similar information. Information obtained by such follow-up procedures shall be used to make such alterations in the operation of the Service as may appear desirable from time to time. At a minimum, the Service should keep records showing:
  - a. the number of client-applicants interviewed who are not referred to a lawyer and the reasons for non-referral or referral to other agencies;
  - b. the names of client-applicants referred to a lawyer and, in each such case:
    - i. the nature of legal question involved,
    - ii. the lawyer to whom referred,
    - iii. the date when referred, and
    - iv. whenever possible, the disposition of the case and whether the client-applicant was satisfied with the legal services rendered;
  - c. all applications for registration in the Service submitted by lawyers and the action taken thereon; and
  - d. the number of matters referred to each panel member.

#### VII. PUBLICITY

1. The Service shall develop and maintain an active publicity program using communications media best designed to inform the general public in the area served of the existence, purposes and advantages of the Service and the kinds of information and services available.
2. The form and content of all publicity regarding the Service shall be dignified and consistent with recognized principles and procedures of legal ethics and shall not be false, deceptive or misleading. All advertising shall identify the sponsor(s) of the Service.
3. No publicity about the Service shall identify a particular lawyer participating in it.
4. The Service shall make specific arrangements with legal aid programs, criminal justice agencies, hospitals, jails, courts, employers and other public and private

agencies and institutions in the area served by the Service to assure the use of Service by persons inquiring through such agencies and institutions.

**VIII. REDUCED FEE PANEL/ADDITIONAL PROVISIONS**

1. Purpose & Policy

- a. to provide a means by which any person meeting the Reduced Fee Referral Service's financial eligibility guidelines may be referred to a participating attorney;
- b. to remove economic access barriers to legal assistance through a reduced fee lawyer referral program, supplementing the work of the pro bono program in order to provide an efficient and systematic approach to the unmet need for legal assistance.

2. Fees

- a. so long as he or she continues to be registered on a panel he or she will pay to the Service all referral fees as prescribed by the Service, if any;
- b. he or she will not charge a fee in excess of seventy five dollars (\$75.00) per hour;
- c. he or she will not charge more than three hundred and seventy-five dollars (\$375.00) as an initial retainer fee, (the only exceptions are for contested family law or felony reduced-fee cases for which a retainer of (\$1,500.00) is allowed), however, in addition to the retainer fee the attorney may require a client to advance non-waivable costs and fees; and
- d. he or she agrees to report back to the service any reduced fee referral that becomes a regular fee.

- ABOUT THE BAR ASSOCIATION
- FOR ATTORNEYS
- CONTINUING LEGAL EDUCATION
- NEWS AND EVENTS
- MEMBERS ONLY AREA
- RHODE ISLAND BAR FOUNDATION
- FOR THE PUBLIC

### A FEW HOURS OF YOUR TIME...

... can make a world of difference for you, for your profession and for the community.

A few hours donated to the Rhode Island Bar Association's Volunteer Lawyer Program/Pro Bono Project can:

- Bring you great personal satisfaction.
- Provide an indigent client with badly needed professional help.
- Help you meet your pro bono commitment simply and easily.
- Increase your knowledge and experience in different areas of the law.

### How the Program Works

The Rhode Island Bar Association's Volunteer Lawyer Program/Pro Bono Project provides services to low-income clients which range from giving advice and counsel to writing a letter on behalf of a client to actual representation in court.

As a participating attorney, you are asked to accept one or two cases per year on a pro bono basis. You may specify the areas of law in which you prefer to take cases.

You will be contacted by the VLP staff and given the background information on the client and case. You then decide whether or not to take the case. If you accept, you will meet the client directly and handle the matter to its conclusion.

### How Pro Bono Involvement Can Benefit You

The Volunteer Lawyer Program/Pro Bono Project will assist you in every way possible to help you provide high-quality services to the clients you accept. The Rhode Island Bar Association recognizes the efforts of volunteer attorneys and offers a broad range of support including:

- Free CLE training programs and materials.
- Free malpractice insurance to cover most Pro Bono cases which you accept.
- Reimbursement for litigation costs and other out-of-pocket expenses with prior approval.
- Access to mentor attorneys.

### What the VLP Is

The Volunteer Lawyer Program/Pro Bono Project was created to provide legal assistance to people who cannot obtain legal representation either on their own or through other existing agencies.

It is sponsored by the Rhode Island Bar Association's Lawyer Referral Service and funded by a grant from Rhode Island Legal Services, Inc. and the Rhode Island Bar Foundation.

### The Need

Estimates indicate that there are over 100,000 people living below the federal poverty level in Rhode Island. Because of limited resources, many of these people are unable to obtain legal representation in matters crucial to their well-being. The active involvement of the private bar is critical in these cases. Volunteer attorneys contributing even a small amount of time can help to resolve difficult problems and restore peace of mind to people who could not otherwise obtain help.

### A Little of Your Time

**We need your help!** Please return the attached form and volunteer to accept one or two cases during the coming year. A little of your time can make a big difference.

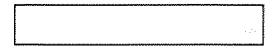
*The Volunteer Lawyer Program/Pro Bono Project is funded by Rhode Island Legal Services, Inc., and the Rhode Island Bar Foundation and is offered as a public service by the Rhode Island Bar Association.*

### QUICK LINKS

- Bar President's Message
- Attorney Directory
- Committee Meeting Calendar
- CLE Calendar
- Pro Bono Case Of The Month
- Lawyers Helping Lawyers
- RI Courts
- RI Supreme Court Attorney Portal







# Lawyers Helping Lawyers Confidential Assistance We're Here to Help

## A Rhode Island Bar Association Member Benefit

[Other New England Attorney Assistance Programs](#)

[Resources](#)

[Q&A](#)

### QUICK LINKS

- [Committee Meeting Calendar](#)
- [CLE Calendar](#)
- [Pro Bono Case Of The Month](#)
- [Lawyers Helping Lawyers](#)
- [Career Center](#)
- [RI Supreme Court Attorney Portal](#)
- [SOLACE Program Information](#)
- [Bar List Serve Sign-Up](#)



ABOUT SSL CERTIFICATES

### Confidential assistance tailored to meet your needs.

Rhode Island Bar Association members and their dependents may receive free and confidential help, information, assessment and referral for personal concerns through the Lawyers Helping Lawyers Program. Services are available through the Association's contract with Coastline Employee Assistance Program (Coastline EAP, formerly RIEAS) and through the members of the Rhode Island Bar Association's Lawyers Helping Lawyers Committee. **To discuss your concerns or those you may have about a colleague, you may call Coastline EAP, contact a Lawyers Helping Lawyers Committee member, or use both resources.**

The **Lawyers Helping Lawyers Committee** members choose this volunteer assignment because they understand the issues and want to help their peers find answers and appropriate courses of action. Committee members listen to your concerns, share their experiences, and offer advice and support.

**Coastline EAP** (visit their website at [www.coastlineeap.com](http://www.coastlineeap.com)) provide health counselors to work with you to address your concerns. The professionals at Coastline EAP provide confidential consultation for a wide range of personal concerns including (but not limited to): balancing work and family, child and eldercare, depression, anxiety, domestic violence, aging, grief, career satisfaction, alcohol and substance abuse, and problem gambling.

**Coastline EAP** is a private, non-profit consulting service contracted by the Association to assist you at no charge. They ensure confidentiality and protect your privacy. Working with Coastline EAP is easy. Simply pick up the telephone and call **401-732-9444** to arrange an appointment with a personal health care consultant. At your initial appointment, your Coastline EAP Consultant works with you to review your concerns and to develop a reasonable, and mutually agreed upon, course of action to address your issues.

Once you have decided on your action plan, your Coastline EAP Consultant helps match you with the right resources. If treatment is part of your plan, your Consultant draws on hundreds of skilled professionals and programs throughout Rhode Island and Massachusetts.

Coastline EAP Consultant services are completely free for you and your dependents. If you require the further services of private clinicians or treatment programs, your Consultant helps you choose services in accordance with your existing medical benefits. In most cases, your medical benefits will cover all or a significant portion of counseling or treatment costs. If your family member does not have medical coverage, Coastline EAP and the Rhode Island Bar Association will work to secure free services or negotiate sliding scale fees or extended payments to help eliminate or reduce financial barriers to better health.

### Your privacy is protected.

Since the Rhode Island Bar Association's confidential assistance program is self-referred, your privacy is protected. Your records are kept in locked files under the sole custody of Coastline EAP. Your express written permission is required to release any information. Coastline EAP follows all state and federal laws regarding confidentiality.

### Lawyers Helping Lawyers Committee members provide assistance and support.

Before or during your contact with a Coastline EAP Case Manager, you may choose to seek peer assistance from a member of the **Lawyers Helping Lawyers Committee**. Peer attorneys lend an ear, share their experiences, and, if necessary, advise you on re-entering legal practice or accompany you to self-help meetings. Committee member attorneys have chosen this volunteer assignment because each has an understanding of impairments and a desire to help.

Because of the sensitive nature of personal problems, attorneys in need are often reluctant to seek help. The Committee members have special knowledge to help their colleagues. The program has a proven 25-year record of helping Rhode Island lawyers - confidentially and free of charge. **We can help, but only if you contact us.**

When seeking assistance from a Committee member, your privacy and professional standing are protected by law. In 1991, the Rhode Island Supreme Court issued changes to the Rules of Professional Conduct, giving members of the Lawyers Helping Lawyers Committee immunity from suit, exception from the duty to disclose unprofessional conduct, and an obligation to confer with lawyers seeking help in confidence.

In 1995, the Supreme Court of Rhode Island authorized a disciplinary diversion program whereby some attorneys may seek treatment and avoid discipline if the attorney completes the prescribed program successfully. This program is run in conjunction with the Supreme Court Disciplinary Board.

**Here is how to receive assistance. Whatever the problem, you do not have to manage alone.**

**Don't delay in calling while you are trying to decide whether things are bad enough. There is no need to risk your license, livelihood, reputation or family. You do not have to do it alone. If you, a friend or a colleague is in trouble, seeking professional help will make a difference. Once you have made the call, you have taken the first step. We will help you take it from there.**

#### **Coastline EAP**

Main Rhode Island Office:

300 Centerville Road, Warwick and four other Rhode Island locations

web site: [www.coastlineeap.com](http://www.coastlineeap.com)

Company name login is "RIBAR"

You may telephone Coastline EAP and identify yourself as a Rhode Island Bar Association member seeking help. A Coastline EAP Case Manager will briefly discuss your concerns to determine if you are in a crisis situation and need immediate attention. If not, initial appointments are made within 24 to 48 hours at a location convenient to you.

**To speak to a Coastline EAP Case Manager telephone:**

**401-732-9444 or toll-free;**

**1-800-445-1195 or 1-800-833-0453**

**Lawyers Helping Lawyers Committee Members Protect Your Privacy  
Please contact us for strictly confidential, free, peer and professional assistance for  
your personal challenges.**

**Brian Adae Esq. (401) 831-3150**

**Neville J. Bedford Esq. (401) 348-6723**

**David M. Campanella Esq. (401) 273-0200**

**John A. Capaldi Esq. (401) 222-6147**

**Susan Leach DeBlasio, Esq. (401) 274-7200**

**Sonja L. Deyoe Esq. (401) 681-4323**

**Christy B. Durant Esq. (401) 272-5300**

**Brian D. Fogarty Esq. (401) 821-9945**

**Nicholas Trott Long Esq. (401) 351-5070 (Chairperson)**

**Genevieve M. Martin Esq.(401) 274-4400 2300**

**Joseph R. Miller Esq. (401) 454-5000**

**Henry S. Monti Esq. (401) 467-2300**

**Roger C. Ross Esq. (401) 723-1122**

**Adrienne G. Southgate Esq. (401) 680-5331**

**Judy Hoffman, LICSW, CEAP 732-9444 or 800-445-1195**

**All Contact Completely Confidential**

12/30/2015

## Lawyers Helping Lawyers

Full Name / Address	Address	Telephone	Fax Telephone
1 Brian Adae Esq.  Member of Group: <input checked="" type="checkbox"/>	Brian Adae Esq. RI Disability Law Center, Inc. 275 Westminster St - Ste. 401 Providence, RI 02903-3434	(401) 831-3150  Email: badae@ridlc.org	(401) 274-5568
2 Neville J. Bedford Esq.  Member of Group: <input checked="" type="checkbox"/>	Neville J. Bedford Esq. The Heritage Building 321 South Main St. #500 Providence, RI 02903-7108	(401) 348-6723  Email: help@401divorce.com	(401) 633-6822
3 Henry V. Boezi III, Esq.  Member of Group: <input checked="" type="checkbox"/>	Henry V. Boezi III, Esq. Law Office of Henry V. Boezi, III 67 Cedar Street - Suite 105 Providence, RI 02903	(401) 861-8080  Email: HVBoeziii@aol.com	(401) 861-8081
4 David M. Campanella Esq.  Member of Group: <input checked="" type="checkbox"/>	David M. Campanella Esq. LaPlante Sowa Goldman 272 West Exchange St. Providence, RI 02903	(401) 273-0200  Email: dcampanella@sglaw.com	(401) 273-0250
5 David M. Campanella Esq.  Member of Group: <input checked="" type="checkbox"/>	David M. Campanella Esq. LaPlante Sowa Goldman 272 West Exchange St. Providence, RI 02903	(401) 273-0200  Email: dcampanella@sglaw.com	(401) 273-0250
6 Melissa E. Darigan Esq. Ex-Officio Member of Group: <input checked="" type="checkbox"/>	Melissa E. Darigan Esq. Partridge Snow & Hahn LLP 40 Westminster St. Ste. 1100 Providence, RI 02903-2527	(401) 861-8200  Email: mcd@psh.com	(401) 861-8210

# Lawyers Helping Lawyers

	Full Name / Address	Address	Telephone	Fax Telephone
7	Susan Leach DeBlasio Esq. <input type="checkbox"/>	Susan Leach DeBlasio Esq. Adler Pollock & Sheehan P.C. 1 Citizens Plz. - 8th floor Providence, RI 02903-1345	(401) 274-7200 Email: sdeblasio@apslaw.com	(401) 351-4607
8	Sonja L Deyoe Esq. <input type="checkbox"/>	Sonja L Deyoe Esq. Law Offices of Sonja L. Deyoe 395 Smith Street Providence, RI 02908	(401) 864-5877 Email: slid@the-Straight-shooter.com	(401) 354-7464
9	Kathleen G. Di Muro Esq. <input type="checkbox"/>	Kathleen G. Di Muro Esq. Law Office of Kathleen G. Di Muro 916 Reservoir Avenue Cranston, RI 02910	(401) 944-3110 Email: KGD LAW@aol.com	(401) 944-3111
10	Valerie E. Diaz Esq. <input type="checkbox"/>	Valerie E. Diaz Esq. Chisholm, Chisholm & Kilpatrick, LTD. One Turks Head Place Ste 1100 Providence, RI 02903	(401) 331-6300 Email: vdiaz@cck-law.com	(401) 421-3185
11	Christy B. Durant Esq. <input type="checkbox"/>	Christy B. Durant Esq. Law Office of Patrick J. Quinlan 400 Smith St Providence, RI 02908	(401) 272-5300 Email: cdurantlaw@verizon.net	(401) 351-3239
12	Brian D. Fogarty Esq. <input type="checkbox"/>	Brian D. Fogarty Esq. Law Office of Devane, Fogarty & Ribezzo 1454 Main St West Warwick, RI 02893	(401) 821-9945 Email: bengalesq@att.net	(401) 821-6963

# Lawyers Helping Lawyers

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13 Nicholas Trott Long Esq. Chair Member of Group: <input checked="" type="checkbox"/>	Nicholas Trott Long Esq. 54 Taylor's Lane Little Compton, RI 02837	(401) 351-5070 Email: nicholas@ntlong.com	(888) 610-8915
14 Sarah F. Malley Esq. Member of Group: <input checked="" type="checkbox"/>	Sarah F. Malley Esq. Gorham & Gorham, Inc. 25 Danielson Pike P.O. Box 46 North Scituate, RI 02857	(401) 647-1400 Email: sarahmalley@gorhamlaw.com	(401) 647-1446
15 Genevieve M. Martin Esq. Member of Group: <input checked="" type="checkbox"/>	Genevieve M. Martin Esq. RI Dept of Attorney General 150 South Main St. Providence, RI 02903	(401) 274-4400 2300 Email: gmartin@riag.ri.gov	(401) 222-2731
16 Helen Desmond McDonald Executive Director Member of Group: <input checked="" type="checkbox"/>	Helen Desmond McDonald Rhode Island Bar Association 41 Sharpe Dr Cranston, RI 02920	(401) 421-5740 Email: hmcDonald@ribar.com	(401) 421-2703
17 Bruce W. McIntyre Esq. Liaison Member of Group: <input checked="" type="checkbox"/>	Bruce W. McIntyre Esq. 103 Umiak Ave Jamestown, RI 02835	(401) 462-0613 Email: brucecintyrelaw@gmail.com	
18 Joseph R. Miller Esq. Member of Group: <input checked="" type="checkbox"/>	Joseph R. Miller Esq. Miller & Caine, LLP 349 Hope Street Providence, RI 02906-2322	(401) 454-5000 Email: jrmiller@millercaine.com	(401) 454-1976

12/30/2015

## Lawyers Helping Lawyers

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19	Henry S. Monti Esq.  Member of Group: <input checked="" type="checkbox"/>	Henry S. Monti Esq. Gamma Law Assoc. Inc. 231 Reservoir Ave Providence, RI 02907	(401) 467-2300  Email: henry@gemmalaw.com	(401) 467-8678
20	Susan Antonio Pacheco Esq.  Member of Group: <input checked="" type="checkbox"/>	Susan Antonio Pacheco Esq. Law Offices of Susan Antonio Pacheco 197 Taunton Ave East Providence, RI 02914	(401) 435-9111  Email: susan@sapachecolaw.com	(401) 435-4549
21	Arthur M. Read, II Esq.  Member of Group: <input checked="" type="checkbox"/>	Arthur M. Read, II Esq. Del Sesto & Read, Inc. Jefferson Place 100 Jefferson Blvd., Ste 200 Warwick, RI 02888	(401) 739-2020  Email: Art@Delamlaw.com	(401) 734-9889
22	Roger C. Ross Esq.  Member of Group: <input checked="" type="checkbox"/>	Roger C. Ross Esq. 150 Main Street Pawtucket, RI 02860	(401) 723-1122  Email: ross@blaislaw.com	(401) 726-6140
23	Richard M. Sands Jr., Esq.  Member of Group: <input checked="" type="checkbox"/>	Richard M. Sands Jr., Esq. Law Offices of Richard M. Sands, Inc. 100 Centerville Rd. Ste. 2 Warwick, RI 02886	(401) 921-4905  Email: rsands@richardsands.com	(401) 921-4904
24	Louis A. Sousa Esq.  Member of Group: <input checked="" type="checkbox"/>	Louis A. Sousa Esq. Lisa & Sousa, Ltd. 5 Benefit St Providence, RI 02904-2745	(401) 274-0600  Email: lasousa@lisasousa.com	

# Lawyers Helping Lawyers

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25 Adrienne G. Southgate Esq.  Member of Group: <input checked="" type="checkbox"/>	Adrienne G. Southgate Esq. City of Providence City Solicitor's Office - Law Dept. 444 Westminster St. Ste. 220 Providence, RI 02903	(401) 680-5331  Email: asouthgate@providenceri.com	(401) 680-5520





EMPLOYEE ASSISTANCE FROM COAST TO COAST

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### WELCOME TO COASTLINE EAP



Coastline EAP has been providing employee assistance services in over 30 states since 1984. Over 180 companies in the healthcare, manufacturing, finance, retail and transportation sectors, as well as school departments and municipalities have used Coastline EAP's comprehensive clinical and consultation services. Coastline EAP helps them manage job performance, behavior problems, and critical incidents in the workplace while offering confidential, easy access for employees and family members

needing assistance for personal concerns. RI Student Assistance Services (RISAS), a division of Coastline EAP provides prevention and consultation services to students in over 20 school districts.

#### A Few Client Company Perspectives

*"Your services are a most valuable employee benefit. Your entire team has consistently demonstrated responsiveness, professionalism and insight to issues - along with availability and resources for on-site management tools. Thank You!" ~*

**Danise Rupprecht, Manager of Human Resources, VNS Home Health Services**



*"We are very happy with the support and service provided by Coastline EAP. We can always count on their guidance and wisdom to help us through difficult situations." ~* **Pam Alarie, Human Resources Director, Beacon Mutual Insurance Company**

*"The best that money can buy." ~* **Colleen Anderson, Senior Human Resources Representative, Bradley Hospital - a Lifespan Partner**

### NEWS AND ANNOUNCEMENTS

#### SAP Services Now Available to All Companies

Coastline EAP announced it now provides certified Substance Abuse Professionals (SAPs) to organizations to comply with DOT drug and alcohol testing regulations. [More...](#)

#### Crisis Response Services Now Available to All Companies

Coastline EAP announced it now offers crisis response services to any organization that experiences a workplace-based traumatic event. [More...](#)

#### New Employee Wellness Program

Coastline EAP has partnered with Workplace Options to offer comprehensive employee wellness programs for employers. [More...](#)

#### New Coastline EAP Board members

RIEAP appoints two new Board members: Lisa Bergeron and Monica Motta [More...](#)

### Features

- Our Mission
- Return on Investment
- Employee Services
- Informacion en Espanol
- Management Services
- Labor Representatives
- Trauma Response Services

### Selected Trainings

- Communication
- Positive Thinking
- Stress Management
- Balancing Work and Family
- Conflict Management
- Sexual Harassment
- Time Management

### Items of Interest

- Employee Newsletter
- Boletin de Noticias al Empleado
- Supervisor Newsletter
- Client Survey
- Company Survey
- HIPAA
- Coas line Consultants
- Coas line EAP Board Members

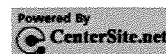
**1-800-445-1195**

**1-800-833-0453**

### Contact Us

Eileen Rafferty, CEAP  
Director, Account Services  
[erafferty@coastlineeap.com](mailto:erafferty@coastlineeap.com)

300 Centerville Rd.  
Suite 301 South  
Warwick, RI 02886  
Phone: 800-445-1195  
Fax: 401-732-3581



## SECTION TWO

### Effective Communication Skills

### **RETAINER AGREEMENT**

1. \_\_\_\_\_ agrees that you shall be paid a retainer in the amount of \$\_\_\_\_.00 against which amount you will charge your time committed to this matter at your normal hourly rate of \$\_\_\_\_.00, with staff time being billed at an hourly rate of \$\_\_\_\_.00. It is understood that such other attorneys in your office, as you may from time to time designate, shall perform work related to \_\_\_\_\_ representation in this matter and that they will likewise charge their time at their normal hourly rate.

The retainer will be applied to fees incurred for services to be rendered in connection with representation in divorce proceeding and preparation of Property Settlement Agreement.

2. \_\_\_\_\_ agrees that, should she wish to retain you to represent her with regard to other matters not referenced in the preceding paragraph, you may require an additional retainer, and you will charge additional fees.

3. \_\_\_\_\_ authorizes you to apply towards any unpaid fees in the within matter any of her funds presently in your hands or possession or subsequently coming into your hands and possession, irrespective of the source.

4. If \_\_\_\_\_ terminates you as her attorney, and the matter is concluded within a time frame (calculated on an hourly basis) that would not have consumed the agreed-upon retainer or any other fees paid in advance, then any portion of the retainer remaining after the crediting against it of any outstanding fees shall be returned to \_\_\_\_\_.

5. \_\_\_\_\_ agrees to pay for any expert and/or consulting fees within thirty (30) days of receipt of their statement for services.

6. It is understood that \_\_\_\_\_ financial obligation to your office shall be substantially current. This may require you, from time to time, to request additional funds based

upon your reasonably accurate appraisal of time already committed to this matter plus expenses incurred by you on my behalf. \_\_\_\_\_ will receive regular billing detailing the services rendered and charges incurred.

7. \_\_\_\_\_ agrees to be honest and forthright with you at all times, to make full disclosure to you of all facts known to her relevant to any issues which may arise in this matter, and to cooperate fully with you and your office on all matters which you require of \_\_\_\_\_ in your representation of \_\_\_\_\_ in this case. \_\_\_\_\_ understands that the violation of the provisions of this paragraph or any other provision of this agreement will constitute grounds for your withdrawal from \_\_\_\_\_ representation.

8. It is understood that \_\_\_\_\_ will be billed for all telephone calls to and from your office with respect to \_\_\_\_\_ case.

9. \_\_\_\_\_ agrees that your office will not prepare any Qualified Domestic Relations Orders on her behalf but will require that \_\_\_\_\_ seek independent expert assistance in the preparation thereof.

The Firm agrees to use its best efforts in representing the client in this matter and to keep \_\_\_\_\_ advised regarding the same. The client acknowledges that the Firm has given no assurance nor made any representations, warranties, or predictions regarding the final outcome of the matter. The Firm has not made any representation or guarantee that it will obtain reimbursement to the client of any legal fees or other fees, costs, and/or expenses paid by the client.

\_\_\_\_\_  
Client

\_\_\_\_\_  
Attorney

Date: \_\_\_\_\_

Date

Re:

Dear

It has been a pleasure to represent you regarding [identify the legal matter]. As this office has not heard from you since \_\_\_\_\_, and our numerous attempts to contact you by letter and telephone have been unsuccessful we are forced to withdraw from representation.

Your case is pending before the \_\_\_\_\_ Court and withdrawal is only with the court's permission. Enclosed is a copy of the motion we are filing by next \_\_\_\_\_. It is incumbent on you to obtain alternate counsel immediately so that the transition may be as smooth as possible and to insure that no deadlines are missed. If you do not, you are jeopardizing your case and a default judgment may be entered against you.

Kindly note that any additional consultation will be made if you agree to pay us for the time and expense involved in such a consultation. Your file will be released to your counsel upon receipt of your consent in writing.

If you wish to continue our representation contact this office immediately upon receipt of this letter, otherwise the motion to withdraw will be filed and an order obtained. Time is of the essence. I look forward to hearing from you and hope that we can continue representation of you in this matter.

Sincerely,

Re: Case caption  
C.A.No.

Dear Attorney:

Kindly note that due to another matter presently scheduled in \_\_\_\_\_ County on \_\_\_\_\_ at 9:00 a.m., I will not be able to be at the \_\_\_\_\_ County Court until approximately 11:30 a.m. If you wish the matter can be held until I arrive or I would ask that you continue this case to a later date. I am unavailable \_\_\_\_\_. Let me know your preference and I will confirm with the Court and advise my client accordingly.

With best wishes, I am

Sincerely yours,

## **Clients' Statement of Rights & Responsibilities\***

### **Notification to Clients of Their Rights and Responsibilities**

#### **Preamble**

Good communication is essential to effective attorney-client relationship. A lawyer should ensure that a new or prospective client has a full understanding of the nature of the attorney-client relationship, including what the lawyer can reasonably expect from the client. If the client does not have such an understanding, the lawyer shall take reasonable steps to educate the client about the relationship.

The Client's Statements of Rights and Responsibilities set out below is designed to provide an outline of the lawyer's expectations of the client and the client's expectations of the lawyer. The lawyer may use the Client's Statement of Rights and Responsibilities to inform a new or prospective client of those expectations. The Client's Statement of Rights and Responsibilities is not, however, the exclusive method by which a lawyer might so inform the client.

The Client's Statement of Rights and Responsibilities shall not be used as a basis for litigation or for sanctions or penalties. The Client's Statement of Rights and Responsibilities does not supersede or detract from the Rules of Professional Conduct, nor does the Client's Statement of Rights and Responsibilities alter existing standards of conduct against which lawyer negligence may be determined.

#### **Application**

When a lawyer has not regularly represented a client, the lawyer shall provide the prospective client with a statement of the client's rights and responsibilities. The lawyer

*\*For purposes of compliance with the Rhode Island Supreme Court Rules of Professional Conduct, Rule 1.4 as amended.*

shall give this information to the client prior to the signing of a written retainer agreement and shall obtain a signed acknowledgement of its receipt. The rights set forth in this statement are intended to be consistent with the standards mandated by the Rules of Professional Conduct. This statement does not supersede the obligations imposed by the Rules of Professional Conduct, and is intended as an explanation to the client of their rights under the Rules and their responsibilities in the attorney-client relationship. The text of the rules remains authoritative.

### **Client's Statement of Rights and Responsibilities**

In an attorney/client relationship, each party has certain rights. A right that both parties have is to be treated at all times with courtesy and respect. This statement first explains your rights as a client when you hire an attorney, and immediately afterwards what your attorney has the right to expect of you. This statement is intended to promote better communication and prevent misunderstandings between you and your attorney.

#### **As the client in a legal matter, you have the right to expect that:**

1. Your attorney will handle your legal matter competently.
  - *When hiring an attorney, you have the right to ask questions about the attorney's education, training, and experience and expect that your attorney will remain current with recent developments in the law that relate to your matter.*
2. Your attorney will charge you a reasonable fee and explain how it will be computed and when payments are expected from you.
  - *If you are not a regular client, your attorney will give you a written statement before, or as soon as the work begins indicating the basis or rate of the fee you will be charged.*



- *If you are asked to pay a retainer, your attorney will explain how it will be spent and, if you ask, will provide you with a periodic written statement detailing how it has been spent.*
  - *If your attorney is working on a contingent-fee basis, your attorney will put in writing, in advance, what the attorney's percentage will be, whether you will be billed for costs and expenses, and whether deductions will be taken from your settlement prior to calculating the fee.*
3. Your attorney will work diligently for you and pursue the lawful means necessary to present or defend your case.
  4. Your attorney will strive to resolve your legal matter promptly and will inform you if for any reason it cannot be resolved in a timely fashion.
  5. Your attorney will respond to reasonable questions about the progress of your legal matter and will explain office policies to you to ensure satisfactory communication with you, including:
    - *How to reach your attorney.*
    - *When and how your telephone calls will be returned.*
    - *How to obtain copies of paper/documents from your legal file.*
  6. Your attorney will exercise independent, professional judgment on your behalf free from any conflict of interest.
  7. Most of your communications with your attorney are confidential. Your attorney will explain to you when the statements you make or secrets you reveal about your case cannot be kept confidential.
  8. You have the right to make final decisions regarding your legal matter.
    - *Your attorney will discuss the negotiation process with you and will agree to a settlement offer only if you have approved it.*

9. Your attorney will explain to you, in advance, any major expenses anticipated in your legal matter.
10. Your attorney will tell you if other lawyers will be involved in your representation and how the cost to you for their involvement will be calculated.
11. When your fee is not a single, set amount, your attorney will give you periodic billings detailing your fees, costs, and expenses.
12. If legal fees will be applied against a settlement, your attorney will provide you with a final statement after the matter is concluded detailing what costs and expenses are being applied against your settlement and the amount you will receive.

**As your legal advisor, your attorney has the right to expect that:**

1. You will make a full and honest disclosure of all of the facts - good and bad - that relate to your legal matter and you will inform your attorney about any new facts or circumstances that may affect your case as they arise.
2. You will adhere to your fee agreement with your attorney, pay your bills for all work that has been performed, and pay for all costs advanced for you. If you have any questions about your bill, you will discuss them with your attorney.
3. You will seek your attorney's advice before discussing any information relating to your legal matter with others.
4. You will tell your attorney if you have any concerns or reservations about the advice you are being given.
5. You will be on time for all court hearings and appointments with your attorney or let your attorney know in advance if you cannot be on time.
6. If you cannot reach your attorney when you telephone the office, you will leave your name and telephone number and a brief message.

7. You will complete the tasks requested by your attorney in a timely fashion or let your attorney know when you cannot.
8. You will discuss your expectations about what you want to accomplish in your legal matter with your attorney. When your expectations are not being met, you will talk to your attorney about it.

You have the right to change attorneys if you are dissatisfied with the representation you are receiving. However, in certain circumstances, you will need the court's permission. It is also important for you to know that your attorney may decide to stop representing you. This may be due to your not meeting your obligations to your attorney or for some other reason. This too may require court permission.

This Client's Statement of Rights and Responsibilities is based on the Rhode Island Rules of Professional Conduct for attorneys. If you have any questions about this statement of your rights and obligations, you should contact the Rhode Island Bar Association at 115 Cedar Street, Providence, Rhode Island 028903 telephone: (401) 421-5740.

Date

Re: [legal matter]

Dear

It has been a pleasure to have assisted you with legal matters with regards to \_\_\_\_\_ . This missive confirms that you have retained new counsel and are terminating this firm's legal services on your behalf.

It is important that you note all deadlines that apply to this matter including but not limited to: [list known deadlines].

An invoice for our services and disbursements or other charges paid or incurred on your behalf will be sent to you under separate cover. Kindly remit payment in accordance with your retainer agreement.

This office has no further obligation to advise you in this matter and fully understand that you have retained alternate counsel to do so. In order to facilitate transfer of your file and documents pertaining to this matter to your new counsel, you will need to provide an authorization to release the same. Any discussion of your legal matter with your new attorney will be invoiced for additional time and expense involved.

Thank you for the opportunity to assist. With best wishes, I am,

Sincerely,

Re:

Dear \_\_\_\_\_,

It was a pleasure to meet with you for an initial consultation regarding dissolution of your relationship. A retainer agreement was forwarded to you and not returned.

We will not open a file on this matter and will take no legal action on your behalf. We wish you well in your endeavors. In the future should you require legal services, we are available for assistance.

With best wishes, I am,

Sincerely,

Re: E-mail

Dear

As we have discussed, the use of e-mail to communicate in legal matters is fraught with insecurities. The risks of third party involvement in sending e-mail messages through the Internet exist and although encryption may be useful it is not guaranteed. Also, there is the possibility that messages can be intercepted or misdirected. In the event that happens your information contained therein is compromised.

There is some opinion of a reasonable expectation of privacy when sending messages by e-mail, even when those messages are not encrypted. However, even though these risks are similar to those of other communication methods, they still can be harmful.

Knowing this and after discussing these communication risks, you confirmed that you are comfortable using unencrypted e-mail and consent its use in your case.

If you have any further concerns with this kindly let me know.

Sincerely,

# SECTION THREE

## Real World Ethics

## **Common Complaints and How to Avoid Them**

### **Introduction:**

Each year the Office of Disciplinary Counsel is contacted by thousands of individuals who call to either register a complaint against an attorney or inquire about an attorneys' conduct. Considering that there are only approximately six thousand (6000) practicing attorneys in this state, the chances of a dissatisfied client calling this office about you are relatively high. However, there are a number of practical steps that can be taken in the representation of a client that can minimize your chances of being the recipient of a complaint. These steps are either required by the Rules of Professional Conduct, basic tenets of professionalism, simple common sense, or a combination of all three.

### **I. Initial Client Interview**

While we encourage all lawyers to render pro bono legal services, and we all try to provide legal services to those in need, it is important to remember that we do **not** have to represent every potential client that walks in the door. Indeed, the decision on whether to represent that client should only be made after careful consideration. There are certain early warning signs of clients to avoid.

#### **A. The Difficult Client**

A common lament heard from lawyers who receive a complaint is "I knew they were going to be trouble from the beginning." However the lawyers forged ahead with the representation anyways, much to their regret. Questions to ask in the initial client interview include, but are not limited to, the following:

1. Have they ever been represented by an attorney before? If the answer is no, this may be a good opportunity to explain your function as an attorney.
2. If they have been represented by an attorney before, were they satisfied? The answer may be a good indication of their feelings toward attorneys.
3. What are their expectations of what you can do for them? Clients who begin with unrealistic expectations generally do not become more reasonable over time.

#### **B. Should You Take the Case**

Questions to ask yourself include whether you are competent to handle the client's case, and whether a potential conflict of interest exists (see Rules 1.1 and 1.7-1.11 of Rules of



Professional Conduct). It is essential to have an adequate conflict screening mechanism in place. A conflicts check must be done prior to accepting the client's case.

### C. Declining the Case

- i. The importance of a letter of non-representation
- ii. Referring the client to other counsel

## II. Setting and Collecting the Fee

It is very important to establish a fee agreement with the client at the outset of the attorney client relationship. The Supreme Court Rules of Professional Conduct require a written fee agreement in certain circumstances.

- a. Reasonableness of the fee (Rule 1.5)
- b. Periodic billing
- c. Clearly explaining the contingent fee agreement, and the distinction between fees, costs and expenses
- d. Nonrefundable fee arrangements
- e. Fee arbitration through the Bar Association

## III. Diligence (Rule 1.3)

- a. The importance of the pocket calendar
- b. Office "tickler" systems
- c. Perceived delay vs. actual delay
- d. Malpractice—What do you do when you miss a statute of limitations or cause your clients' case to be lost for other reasons of neglect.
- e.

## IV. Communication With the Client (Rule 1.4)

- a. The necessity of returning phone calls
- b. CC: means client copy, not file copy (copy your client on all correspondence, pleadings, etc.)
- c. Advising clients as to when you are available
- d.

## V. Fiduciary Duties Regarding Funds (Rule 1.5)

The most serious ethical lapse committed by attorneys, and the one most likely to cause an unexpected career change, is mishandling of client funds. It is absolutely imperative to establish proper safeguards to protect your clients' property. Important issues to address include:

- a. Establishing the proper bank accounts
- b. Instructions to assistants regarding deposits into accounts
- c. Authority to sign checks
- d. Disbursements—to whom and when—the disbursal sheet
- e. “Borrowing” of client funds
- f. “Parking” income in the client account
- g. Third party interests in client funds—the medical lien

## **VI. Termination of the Representation (Rule 1.16)**

One of the most common questions asked of this office by attorneys regards their obligations when they wish to withdraw from the representation, or they have been fired by the client. Major issues are:

- a. Returning unearned portion of retainer fee
- b. Delivery of file
- c. Is court permission required
- d. “Noisy withdrawal—Harming the clients’ interests

## **VII. Marketing (Rules 7.1—7.5)**

In an increasingly competitive market, lawyers are turning more and more to advertising as a means of generating new clients. While advertising is permissible, there are filing requirements that must be complied with. Direct in person solicitation for pecuniary gain remains a violation of the Disciplinary Rules.

## **VIII. Miscellaneous (*But Important*) Issues**

- a. The duty to report misconduct (Rule 8.3)
- b. Criminal conduct [Rule 8.4(b)]
- c. Dishonesty [Rule 8.4(c)]

**RULES OF PROCEDURE OF THE DISCIPLINARY BOARD  
OF THE SUPREME COURT OF RHODE ISLAND**

Approved as Amended 1995  
December, 1995

**SECTION I. SCREENING OF COMPLAINTS**

**SEC. 1.1 Purpose**

In order to provide for the screening of complaints and results of investigation as authorized by Article III, Rule 6(a) of the Supreme Court, the Board Chair shall appoint and designate one or more screening panels as required.

**SEC. 1.2 Appointment of Screening Panels**

(a) Each Screening Panel shall consist of two (2) attorney members and one (1) non-attorney member of the Board.

(b) The Board Chair shall designate the members of each Panel and appoint the most senior Panel member to serve as its chair.

**SEC. 1.3 Procedure**

(a) The Screening Panel shall review the recommendations for disposition submitted by Counsel.

(b) The Screening Panel may:

(1) Dismiss the complaint.

(2) Dismiss the complaint with an admonition.

(3) Recommend the issuance of a letter of reprimand pursuant to Section 2 of these rules.

(4) Order further proceedings in accordance with Article III, Rule 6(b) of the Supreme Court Rules and Section 3 of these rules.

(5) Delay disposition for a period not to exceed thirty six (36) months on condition that a respondent-attorney undergo a physical and/or psychiatric examination by an examiner to be approved by the Board or Disciplinary Counsel.

(6) May attach conditions to a dismissal with admonition or a recommendation of a letter of reprimand. Such conditions may include psychiatric or substance abuse counseling, case monitoring, periodic testing and evaluation, restitution, public service, or other appropriate condition.

In the event that a respondent-attorney rejects those conditions, or, having accepted the conditions, fails to comply with said condition, the Screening Panel may withdraw its conditional dismissal or letter of reprimand and made such other disposition as shall be in accord with these rules.

(c) For disposition of a complaint, the decision of the screening panel shall be unanimous.

(d) In the event the screening panel cannot reach a unanimous decision for disposition, the matter shall be referred to the full Board for disposition.

- (e) Counsel shall have the right to appeal to the Full Board any adverse decision of the Screening Panel.
- (f) No member of the Screening Panel shall sit as a member of the Hearing Panel on the same matter.
- (g) The members of the Screening Panel may participate with the Full Board in reviewing the findings and recommendations of the Hearing Panel on those matters on which the member sat as a member of the Screening Panel.
- (h) In the event one or more members of the Screening Panel recuses himself/herself because of a conflict of interest, that matter shall be referred by the Panel Chair to the Board Chair for assignment to a different Screening Panel.
- (i) If the Screening Panel determines there is probable cause to believe the respondent-attorney is guilty of misconduct, further proceedings shall be brought in accordance with Article III, Rule 6(b) of the Supreme Court Rules and Section 3 of these rules. The screening panel may designate appropriate matters for hearing by a single attorney Board member or a retired judge in accordance with.

## **SECTION 2. LETTERS OF REPRIMAND**

### **SEC. 2.1 Purpose**

In accordance with Article III, Rule 4(d)(6), the Board may issue letters of reprimand to Respondent-attorneys who have been found to have violated the Rules of Professional Conduct.

### **SEC. 2.2 Screening**

(a) A Screening Panel of the Board may by unanimous vote recommend to the Full Board that the Board consider issuance of a letter of reprimand. (b) The Screening Panel Chair shall transmit to the Board a letter delineating the rule(s) Respondent-attorney is alleged to have violated and a summary of the conduct that forms the basis for such allegation(s).

### **SEC. 2.3 Board Action**

(a) Upon receipt of the Panel letter [SEC. 2.2(b)], the Board Chair shall place the Panel's recommendation to issue a letter of reprimand on the agenda for the next meeting of the Disciplinary Board.

(b) After review of the Screening Panel's recommendation, the Board shall vote to dismiss the complaint, dismiss the complaint with admonition, accept the recommendation of the Screening Panel to issue a letter of reprimand or to authorize a petition for formal disciplinary action in accordance with Section 3 of these rules.

(c) If a majority of the Board members present vote to support the recommendation of the Screening Panel to issue a letter of reprimand, the Board Chair shall schedule an informal hearing before the Full Board and the Board Chair shall cause a copy of the letter to be served on the Respondent-attorney by certified mail, return receipt requested, at least fifteen (15) days before the scheduled date of hearing. Said letter shall set forth the date, time and place of the informal show cause hearing and shall advise the attorney of his/her right to be heard prior to the Board's rendering its decision.

(d) Procedure

(1) Disciplinary Counsel shall set forth the evidence available to support a finding by the Board that Respondent-attorney has violated the rule(s) as alleged in the Panel letter.

(2) Respondent-attorney shall have an opportunity to respond to the charges and/or speak in mitigation; Respondent-attorney shall be placed under oath.

(3) No other witnesses shall be called.

(4) In the Board's discretion, hearsay evidence may be admitted and considered.

(5) At the conclusion of the presentation by Counsel and Respondent-attorney, or if the Respondent-attorney declines to participate in the informal show cause hearing, the Board shall take a vote to dismiss the complaint, dismiss the complaint with admonition, to issue the letter of reprimand, or to authorize formal disciplinary action in accordance with Section 3 of these rules. The Board may attach reasonable conditions to its dismissal of the complaint with admonition or issuance of a letter of reprimand. Such conditions may include psychiatric or substance abuse counseling, case monitoring, periodic testing and evaluation, restitution, public service, or other appropriate condition.

(6) The Board Chair shall cause notice of the Board's decision to be served on Counsel and Respondent-attorney within twenty (20) days of the hearing.

(7) A copy of the letter of reprimand shall be entered in the file and a notation thereof shall be made in Respondent-attorney's disciplinary record.

#### **SEC. 2.4           Appeal**

(a) A Respondent-attorney aggrieved by issuance of a letter of reprimand may demand a hearing pursuant to Article III, Rule 6(b).

(b) Any such hearing shall be conducted by a retired judge or justice pursuant to Article III, Rule 4(c).

### **SECTION 3. FORMAL PROCEEDINGS**

#### **SEC. 3.1           Construction**

These rules are promulgated for the purpose of assisting Disciplinary Counsel, the Respondent-attorney and the Board to develop the facts relating to, and to reach a just and proper determination of, grievances formally brought to the attention of the Board.

#### **SEC. 3.2           Procedure to Apply**

Formal proceedings before the Board are civil administrative proceedings. The proceedings shall conform generally to these rules and to such other rules of procedure as may be adopted by the Board, as authorized by Article III Rule 4(c)(4) of the Supreme Court Rules.

#### **SEC. 3.3           Timely Filing Required**

(a) Pleadings or other documents in formal proceedings required or permitted to be filed with the Board under these rules must be received for filing at the place designated by the Board within the time limits, if any, for such filing. The date of receipt by the Board, and not the date of deposit in the mails is determinative.

(b) The Board hereby designates the Office of the Clerk of the Supreme Court as the place for filing all documents addressed to the Board.

#### **SEC. 3.4           Representation of Respondent**

(a) Appearance pro se. When an Respondent-attorney appears in his/her behalf in a formal proceeding,

he/she shall file with the Board, with proof of service of a copy on Disciplinary Counsel, an address at which any notice or other written communication required to be served on him/her may be sent.

(b) Representation of Respondent-attorney by counsel. When a Respondent-attorney is represented or is to be represented before the Board by counsel in a formal proceeding, counsel shall file with the Board, with proof of service a copy upon Disciplinary Counsel, a written notice of such appearance, which shall state his/her name, address, and telephone number, the name and address of the Respondent on whose behalf he/she appears, and the caption and file number of the subject proceeding. Any additional notice or other written communication required to be served on or furnished to a Respondent may be sent to the counsel of record of such Respondent at the stated address of the counsel in lieu of transmission to the Respondent. In any proceeding where counsel has filed a notice of appearance pursuant to this subsection, any notice or other written communication required to be served upon or furnished to the Respondent shall also be served upon or furnished to his/her counsel (or one of such counsel of the Respondent is represented by more than one counsel) in the same manner as prescribed for the Respondent, notwithstanding the fact that such communication may be furnished directly to the Respondent

### **SEC. 3.5 Format of Pleadings and Documents**

(a) Typewritten. Pleadings or other documents filed in formal proceedings, if not printed, shall be typewritten on paper of letter size, 8 1/2 inches by 11 inches long. The impression shall be on only one side of the paper and shall be double spaced except that quotations in excess of a few lines shall be single spaced and indented. Mimeographed, Photostatted or otherwise reproduced copies will be accepted as typewritten provided all copies are clearly legible.

(b) Binding. Pleadings and other documents, other than correspondence, shall be bound by staples, or otherwise, which shall be placed at the top of the pages, not at the side.

(c) Identification. Pleadings or other documents filed in a formal proceeding shall set forth:

(1) The caption and docket number of the proceeding.

(2) A brief descriptive title of the pleading or document.

(d) Copies. Except as otherwise provided by these rules in the case of brief or other documents requested by the Board, at the time pleadings, or other documents, other than correspondence are filed in a formal proceeding, there shall be furnished to the Board an original and ten (10) conformed copies of such papers, including all exhibits, if any.

### **SEC. 3.6 Execution**

(a) Signature. Except as may be otherwise ordered or requested by the Board, the original of each pleading or other document shall be signed in ink by the party in interest, or by his/her or its counsel, and shall show the post office address and telephone number of such party or counsel. All copies filed shall be fully conformed thereto.

(b) Effect. The signature of the personal subscribing any document filed in the formal proceeding constitutes a certificate by such individual that he/she has read the document being subscribed and filed, and knows the contents thereof that if executed in any representative capacity, the document has been subscribed and executed in the capacity specified upon the document with full power and authority to do so; that the contents are true as stated, except as to letters and things, if any, stated on information and belief, and that as to those matters and things he/she believes them to be true.

### **SEC. 3.7 Continuances**

(a) Avoidance of delay. All formal proceedings under these rules shall be as expeditious as possible and all time limits shall be mandatory and not discretionary. No more than two (2) continuances will be

granted to either party.

(b) Continuances. The Chairperson, the Vice-Chairperson, and an Acting Chairperson of the Board may grant extension of time in a formal proceeding which extension is not inconsistent with Article III Rule 6 of the Supreme Court.

**SEC. 3.8 Service by the Board**

Orders, notices and other documents originating with the Board, including all forms of Board action, petitions and similar process, and other documents designated by the Board for this purpose, shall be signed by the Chairperson or Vice-Chairperson and served by the Board by mail, except when service by another method shall be specifically required by these rules, by mailing a copy thereof to the person to be served, addressed to the person or persons designated in the initial pleading or submittal at his/hers or its address of record.

**SEC. 3.9 Service to Participant**

All pleadings, briefs and other documents, filed in formal proceedings when filed or tendered to the Board for filing, shall be served upon all participants in the proceeding. Such service shall be made by delivering in person or by mailing, properly addressed, with postage prepaid.

**SEC. 3.10 Effect of Service Upon Counsel**

When any participant has appeared by counsel, service upon such counsel shall be deemed service upon the participant as provided in Section 3.4(b) of these rules (relating to representation by counsel) and separate service upon the party may be omitted as provided in such subsection.

**SEC. 3.11 Date of Service**

The date of service shall be the day when the document served is deposited in the United States Mail, or is delivered in person, as the case may be; except as to pleadings or other documents required or permitted to be filed with the Board as provided in Section 3.3 of these rules. A postmark shall be determinative of the day of deposit in the United States Mail.

**SEC. 3.12 Proof of Service**

There shall accompany and be attached to the original of each pleading or other document filed with the Board, when service is required to be made by the parties, a certificate of service substantially in the form prescribed by Section 3.13 of these rules (relating to certificate of service). All other copies filed shall be fully conformed thereto.

**SEC. 3.13 Certificate of Service**

I hereby certify that I have this day served by (indicate method of service) the foregoing document upon all parties of record in this proceeding.

Dated this \_\_\_\_\_ Day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Signature

**SEC. 3.14 Amendment of Pleadings**

An amendment of any petition for discipline or other pleading may be made only on leave granted by the Chairperson, the Vice-Chairperson, or Acting Chairperson of the Board.

**SEC. 3.15 Grounds for Institution of Formal Proceedings**

Disciplinary Counsel shall institute formal disciplinary proceedings by filing with the Board a petition under Section 3.16 of these rules (relating to petition for discipline) in either of the following cases:

(a) Pursuant to a referral by the Supreme Court following the conviction of the Respondent of a crime.

(b) Pursuant to a determination to institute formal proceedings made under Article III, Rule 6 of the

Supreme Court Rules.

**SEC. 3.16            Petition for Discipline**  
BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF RHODE ISLAND

In the Matter of \_\_\_\_\_: DSC No. \_\_\_\_\_

(b) Contents. Formal disciplinary proceedings before the Board shall be instituted by Disciplinary Counsel filing a petition with the Board setting forth specific charges of alleged misconduct. (Article III, Rule 6(b) of the Supreme Court Rules)

(c) The petition shall also set forth the specific section of the Code of Professional Responsibility, and the Disciplinary Rules and/or Rules of Professional Conduct regulating the practice of law alleged to have been violated by the Respondent-attorney.

**SEC. 3.17            Service of Petition on Respondent**

A copy of the petition shall be served upon the Respondent, together with a notice from the Board setting a time for answer. (Article III, Rule 6(b) of the Supreme Court Rules) This service shall be made by Disciplinary Counsel.

**SEC. 3.18            Answer (Article III Rule 6(b) of the Supreme Court Rules)**

(a) The Respondent-attorney shall, within twenty (20) days after service of the petition upon him/her, file his/her answer with the Board and serve a copy thereof upon Disciplinary Counsel.

(b) Contents of Answer. All answers shall be in writing, and drawn so as to advise fully and completely the participants and the Board as to the nature of the defense. They shall admit or deny specifically, and in reasonable detail, each material allegation of the petition and state clearly and concisely the facts and matter of law relied upon.

(c) Request to be heard in mitigation. The Respondent-attorney may include in his answer a request that a hearing be held on the issue of mitigation.

(d) In the event that the Respondent-attorney fails to file an answer, the charges shall be deemed ADMITTED.

**SEC. 3.19            No Other Pleadings**

Pleadings shall be limited to a petition for discipline and answer thereto.

**SEC. 3.20            Assignment for Hearing (Article III, Rule 6(b) of the Supreme Court Rules)**

If there are any issues of fact raised by the pleadings, or of the Respondent-attorney requests the opportunity to be heard in mitigation, the matter shall be assigned for hearing by the Board. Disciplinary Counsel shall serve notice upon the Respondent-attorney, or his/her counsel of record, indicating the date, time and place of the hearing. Such notice shall be served upon the Respondent-attorney, or his/her counsel, at least fifteen (15) days in advance of the hearing date, and shall advise the Respondent-attorney that he/she is entitled to be represented by counsel, to summon and cross-examine witnesses, and to present evidence in his/her own behalf.

**SEC. 3.21            Confidentiality of Proceedings**

Proceedings before the Board shall be governed by Article III Rule 21 of the Supreme Court Rules (relating to confidentiality).

**SEC. 3.22            Conferences to Expedite Proceedings**



In order to provide opportunity for the submission and consideration of facts or arguments, or consideration of means by which the conduct of the hearing may be facilitated and the disposition of the proceeding expedited, conferences between the participants for such purposes may be held at any time prior to or during hearings as time, the nature of the proceeding, and the public interest may permit.

**SEC. 3.23           Appearances**

The Board shall cause to be entered upon the record all appearances, with a notation in whose behalf each appearance is made.

**SEC. 3.24           Order of Procedure**

In the proceedings upon a petition for discipline, Disciplinary Counsel shall have the burden of proof shall initiate the presentation of evidence and may present rebuttal evidence.

**SEC. 3.25           Presentation by the Parties**

(a) General Rule. Respondent-attorney and Disciplinary Counsel shall have the right of presentation of evidence, cross-examination, objection, motion and argument. The taking of evidence and subsequent proceedings shall proceed with all reasonable diligence and with the least practicable delay.

(b) Objections. When objections to the admission or exclusion of evidence or other procedural objections are made, the grounds relied upon shall be stated briefly, if so requested by the Board, and may be stated briefly if no such request is made. Formal exceptions are unnecessary and shall not be taken to procedural rulings.

**SEC. 3.26           Limiting Number of Witnesses**

The Board may limit appropriately the number of witnesses who may be heard upon any issue, to eliminate unduly repetitious or cumulative evidence without prejudice to the substantive rights of any party.

**SEC. 3.27           Additional Evidence**

At the hearing, the Board may, if deemed advisable, and subject to the appropriate order to protect the substantive rights of any party, authorize any participant to file specific documentary evidence as a part of the record within a fixed time, expiring not less than ten (10) days before the date fixed for filing the and serving briefs.

**SEC. 3.28           Transcript**

Hearings shall be reported by a reporter designated by the Board. A transcript of such report shall be a part of the record and the sole official transcript of the proceedings. Such transcript shall include a verbatim report of the hearings and nothing shall be omitted therefrom. After closing of the record, there shall not be received in evidence or considered as part of the record any document submitted after the close of testimony except as provided in Section 3.27 of these rules (relating to additional evidence) or changes in the transcript as provided in Section 3.29 of these rules (relating to transcript corrections).

**SEC. 3.29           Transcript Corrections**

Corrections in the official transcript may be made only to make it conform to the evidence presented at the hearing. No corrections or physical changes shall be made in or upon the official transcript of the hearing, except as provided in this section. Transcript corrections agreed to by all parties may be incorporated into the record, if and when approved by the Board, at any time during the hearing, or after the close of the hearing, as may be permitted by the Board, but not less than ten (10) days in advance of the time fixed for filing briefs. The Board may call for the submission of proposed corrections and may make disposition thereof at appropriate times during the course of a proceeding.

**SEC. 3.30           Copies of Transcripts**

The Board will cause to be made a stenographic record of all hearings and such copies of the transcript thereof as it requires for its own purposes. A Respondent-attorney desiring a copy of such transcript may obtain it from Disciplinary Counsel without charge. Any witness may obtain from the official reporter at

his/her own expense a copy of the transcript, or any part thereof relating to his/her own testimony.

**SEC. 3.31 Oral Examination**

Witnesses shall be examined orally unless the testimony is taken by deposition authorized by the Board, as provided by Article m, Rule 11 of the Supreme Court (relating to depositions) or the facts are stipulated in the manner provided by Section 3.33 of these rules (relating to presentation and effect of stipulations). Witnesses before the Board shall be examined under oath or affirmation.

**SEC. 3.32 Fees of Witnesses**

Witnesses subpoenaed by Disciplinary Counsel shall be paid the same fees and mileage as are paid for like services in the court of this State. Witnesses subpoenaed at the instance of a Respondent shall be paid the same fees by the Respondent at whose instance the witness is subpoenaed.

**SEC. 3.33 Presentation and Effect of Stipulations**

Independently of the order or rulings issued as provided by Section 3.22 of these rules (relating to conferences to expedite hearings) the participants may stipulate as to any relevant matter of fact or the authenticity of any relevant documents. Such stipulations may be received in evidence at a hearing, and when so received, shall be binding on the participants with respect to the matters therein stipulated.

**SEC. 3.34 Admissibility of Evidence**

(a) General Rule. In any proceeding under this section, the admissibility of evidence shall be governed by the Rhode Island Rules of Evidence.

(b) Pleadings. The petition for discipline and answer thereto, and similar formal documents upon which a hearing is fixed shall, without further action, be considered as parts of the record, that in no event shall pleadings, or any part thereof be considered as evidence of any fact other than that of the filing thereof unless offered and received in evidence in accordance with these rules.

**SEC. 3.35 Reception and Ruling on Evidence**

The Board shall rule on the admissibility of all evidence. The number of witnesses to be heard on any issue may be limited appropriately as provided in Section 3.26 of these rules (relating to limiting number of witnesses).

**SEC. 3.36 Copies to Participants**

Except as otherwise provided in these rules, when exhibits of a documentary character are offered in evidence, copies shall be furnished to the participants present at the hearing, and one copy, in addition to the original, shall be furnished for the use of the Board.

**SEC. 3.37 Oral Argument**

At the close of the taking of the testimony in each proceeding, the Board may hear oral argument on the issues in the proceeding.

**SEC. 3.38 Time for Filing of Briefs**

Unless otherwise directed by the Board, briefs shall be filed with the Board and served pursuant to Section 3.9 of these rules (relating to service by a participant) at such time as may be fixed by the Board.

**SEC. 3.39 Content and Form of Briefs**

(a) Briefs shall contain:

(1) A concise statement of the questions presented.

(2) Proposed findings and conclusions, with specific references to the evidence relied upon for such findings and conclusions.

(3) Argument in support or participant's position.

(b) Exhibits. Exhibits need not be reproduced in the brief but may, if desired, be reproduced in an

appendix to the brief.

**SEC. 3.40 Filing and Service of Briefs**

Briefs not filed and served on or before the dates fixed theretofore shall not be accepted for filing, except by special permission of the Board. Except where filing of a different number is permitted or directed by the Board, an original and ten (10) copies of each brief shall be furnished for the use of the Board.

**SEC. 3.41 Reopening of Record on Application of Party**

(a) Petition to Reopen. At any time after the conclusion of a hearing in a proceeding, any participant in the proceeding may file with the Board a petition to reopen the proceeding for the purpose of taking additional evidence. Such petition shall set forth clearly the facts claimed to constitute grounds requiring reopening of the proceedings, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing. (b) Responses. Within ten (10) days following the service of such petition, any other participant may file with the Board, his answer thereto, and in default thereof shall be deemed to have waived any objection to the granting of such petition. (c) Action on Petition. As soon as practicable after the filing of responses to such petition or default thereof, as the case may be, the Board will grant or deny such petition. There shall be no right of oral hearing of such petition unless the Board shall so direct.

**SEC. 3.42 Reopening by Board Action**

At any time prior to the issuance by the Board of its decision in a proceeding, the Board, after notice to the participants, may without motion reopen the proceeding for the reception of further evidence, if the Board has reason to believe that conditions of fact of law have so changes as to require, of that the public interest requires, the reopening of such proceeding.

**SEC. 3.43 Filing of Report**

The Board shall submit a report to the Supreme Court within sixty (60) days after the conclusion of the hearing and submission of briefs, if any, containing its findings and recommendations together with a record of the proceedings before it. (Article III, Rule 6(b) of the Supreme Court Rules)

**SEC. 3.44 Service of Report**

The Board shall serve copies of the report upon the Respondent-attorney and Disciplinary Counsel.

## SECTION FOUR

### Starting Your Own Practice

**From the Ground Up**  
Starting a Firm as a New or Young Attorney

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From the Ground Up

- The Decision
- The Structure
- Marketing
- Managing Your Practice

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**Part I: The Decision**

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### Why?

- New to the job market
- Looking for a change
- Desire to be your own boss
- Desire to practice a different or novel type of law
- Looking for a challenge

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### Self-Assessment

- Tolerance for risk
- The ability to multi-task
- The ability to wear many hats
- On your own or with a partner?

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### Part II: The Structure

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## Research

- How to Start and Build a Law Practice, 5<sup>th</sup> Ed., Jay Foonberg
- Flying Solo: A Survival Guide for the Solo and Small Firm Lawyer, 4th Ed., K. William Gibson
- Establishing a Law Firm in Rhode Island, 2009, RI Bar Association

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## The Law Library

- It can be your greatest resource, and it's free
  - Legal forms
  - Research resources (Lexis/Westlaw/print)
- Books
- Treatises
- Case law
- CLE materials

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## Develop Other Resources

- Attend CLE presentations
- Talk to colleagues
- Reach out to attorneys you respect
- Reach out to attorneys in your chosen practice areas
- Reach out to attorneys who have given CLE presentations

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### Develop a Business Plan

- Executive and Company Summary
- Marketing Plan
- Financial Plan
- Operating & Management
- Strategy & Implementation

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### Cash & Capital

- Sources of Income
- Lines of Credit
- Personal Savings

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### Protect Yourself

- Malpractice Insurance
  - Don't leave home without it
- Incorporation?
  - Which entity is best for you?
  - Consult with a CPA.
- Banking
  - IOLTA and operating accounts
- Are you working with a partner?
  - Negotiate and draft a partnership or shareholder agreement.

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### Find a Place to Practice

- Keep overhead as low as possible
- Office space
  - Do you want to share?
  - Ethical concerns
- Finding a space
  - Negotiating a lease
- Phones
- Computers/Smartphones

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Reassess everything!

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### PART III: Marketing

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### The Basics

- Announcements
- Letterhead and Business Cards
- Website and Social Media

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### Networking

- Friends and family
- Colleagues
- Networking groups
- Other attorneys
- Developing and maintaining relationships

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### Advertising

- Television
- Telephone book
- Internet
  - Pay-per click
  - E-newsletters

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## PART IV: Managing Your Practice

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- ### Organization
- Office
    - Policies and Procedures
    - Checklists
  - Files
    - File Procedures
    - Paper, Paperless and Less Paper
  - Day
    - Calendars and Tasks
    - Managing phone calls and emails

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- ### Billing and Representation
- Contingency
  - Hourly
  - Flat fees
  - Hybrid fees
  - Engagement letters
  - Disengagement letters
  - Non-representation letters

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### Employees

- Associates
- Paralegals
- Assistants
- Office managers
- Law clerks and interns

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### Outside Professionals

- Accountant
- Bookkeeper
- Insurance Agent
- IT Support
- Payroll Company

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### Crisis Management

- Malpractice Insurance
- Disability Insurance & Planning
- Succession Planning
- Partnership Agreement
- Buy/Sell Agreements

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### Know Your Limits

- Volume of cases
- Types of cases
- Don't be afraid to say no
- Always maintain your work-life balance

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## BASIC BUSINESS PLAN OUTLINE

- I. Executive Summary:** this is a summary of your business plan. It introduces both your company and your request for financing, if applicable. It is advisable to prepare the executive summary should be written after you have completed your business plan. At a minimum, it should include your business name, address, and contact information, a description of your management team, a summary of any financial request, if applicable, a brief description of your company and its products and/or services, your marketing plan, and an explanation of why your company will be successful.
- II. Company Summary:** in this section you will describe your business and explain why you are starting this business. You will also explain why your company is and/or will be a success, and what your role is in the industry. Describe the location of your business, your facility and your property. Explain what legal form you have chosen for your business and give a brief description of the owners of the company.
- III. Marketing Plan/Analysis:** in this section you will describe your target market and the different types of customers within your target market. Provide details such as demographics, buying habits, etc., and explain how your company will meet the needs of its customers. Also, explain how you will reach your target market and how will you attract customers.
- IV. Operations & Management:** in this section you will describe how your business will be run, including who will be responsible for what. Describe each member of your management team and provide an assessment of their management capabilities. Outline their responsibilities, experience, education, ownership percentage, salaries, etc. Describe your current and future employees and their salaries/benefits. Also, provide a list of your business resources, such as your accountant, lawyer, banker, etc.
- V. Strategy and Implementation:** in this section you will describe how you plan to implement your business plan. Describe the vision of your business (where do you see your company in the next 5-10 years). Describe how you plan to maintain or achieve your objectives. Your objectives should be specific, measurable and time specific.
- VI. Financial Plan:** in this section you will describe in detail your financial proposal. Be specific with regard to the amount of money you are requesting, the uses for the funds, proposed repayment terms, sources of repayment for the loan (cash flow), collateral, etc.

Website with business plan resources and information:

[www.sba.gov](http://www.sba.gov)

[www.bplans.com](http://www.bplans.com)

[www.entrepreneur.com](http://www.entrepreneur.com)

[www.homebiztools.com](http://www.homebiztools.com)

[www.businessknowhow.com](http://www.businessknowhow.com)

[www.nolo.com](http://www.nolo.com)

XXXXXX XX, 2012

XXXX  
XXXX  
XXXX

Dear XXXX:

This letter confirms our office's representation of you regarding your recent \_\_\_\_\_, and the injuries you sustained. The purpose of this agreement is to set forth the terms upon which our law firm agree to represent you, in order to establish and maintain a mutual understanding of the goals and respective responsibilities of you as a client of our office.

#### **Scope of Service**

You have retained our firm to investigate and make a claim in connection with the injuries you sustained as a result of your \_\_\_\_\_.

#### **Client Cooperation**

In order to effectively advocate your interest, you have an affirmative obligation to cooperate with our law firm throughout the course of this matter. You must cooperate with us and make yourself available to provide and all necessary information to pursue this matter. You must apprise us of any change of telephone number, address, or other information that may be used to contact you. Your failure to cooperate with the firm is grounds for withdrawal from this matter

In return, we will keep you advised of the status of this matter and to consult with you, as appropriate. Copies of significant documents and information will be provided to you for your file. In the event that we are out of the office or otherwise unavailable, please leave an appropriate voice mail message or send an e-mail communication. If your message is urgent, please make such indication in your message.

The client hereby acknowledges that all communications are protected by the attorney client privilege. Nonetheless, in our modern society, no form of communication is completely secure from interception by third parties. For instance, conversation on mobile phones and e-mail communications may not be secure from interception by unauthorized parties. Communication through work e-mail is highly discouraged. We will not communicate about your case through any form of social media.

#### **Legal Fees, Costs, and Disbursements**

As compensation for our services, our firm will be compensated in accordance with the attached fee agreement, which is incorporated by reference.

**Assignment of Firm Personnel**

Attorney XXXXXXXXXXXX will be responsible for handling of this matter on behalf of our firm. If necessary, we reserve the right to draw upon the talent and experience of others to assist in handling research, investigative, and administrative tasks. We reserve the right to associate with other law firms or refer this matter to other counsel, should that become necessary and is in the best interest of the client.

**Termination of Representation**

You have the right to terminate our representation at any time, subject to payment of any outstanding legal costs and disbursements for work done as of the time of termination and subject to an appropriate attorney’s lien for services rendered. Conversely, the firm reserves the right to withdraw from representation, subject to the ethical restrictions imposed upon use according to the Rules of Professional Responsibility. If we chooses to withdraw its representation, notice will be sent to your last known address.

*The attorney’s right to withdraw is also applicable in the event that we concludes at any time that there is not sufficient likelihood of recovery to justify further time and effort.*

**Binding Agreement**

This agreement, which incorporates the attached fee agreement, represents the entire agreement between you and our law firm. By signing below, you acknowledge that this agreement has been carefully reviewed and its content understood and you agree to be bound by all of the terms and conditions. Furthermore, you acknowledge that our firm has made no representation to you regarding the outcome of this action for which we have been retained.

If this agreement reflects your understanding of our relationship, please sign below and the attached fee agreement. You will receive a conformed copy of this agreement for your records.

Thank you for retaining XXXXXXXXXXXX to represent you in this matter.

Very truly yours,  
XXXXXXXXXXXX

I have read, reviewed, and understood the above terms of engagement of our office.

Name: \_\_\_\_\_  
Client

Date: \_\_\_\_\_

Name: \_\_\_\_\_  
Attorney

Date: \_\_\_\_\_



**Fee Agreement**

I, XXXXXXXXXXXXXXXXXX, hereby retain our law firm to make an investigation of and represent me in my claim for injuries sustained as a result of a \_\_\_\_\_.

I agree that the attorney fee for services rendered shall be **one-third of any gross settlement or judgment** that enters on my behalf should this matter settle prior to filing a lawsuit. No settlement of this claim will be made without my express authorization. I acknowledge that the attorney has explained to me the right to engage any attorney of my choice.

I understand that unless otherwise agreed all out-of-pocket costs that are advanced by my attorney and will also be deducted from any gross settlement or judgment. These expenses include, but are not limited to, filing fees, investigators, expert witness fees, depositions, court costs, travel and other out-of-pocket expenses.

I understand that in the event that our investigation concludes at any time that there is not sufficient likelihood of recovery to justify further time and effort, we shall have the right to withdraw from employment, which shall terminate their right to compensation for professional services, except for outstanding costs and disbursements.

We acknowledge that if no recovery has been made upon the final conclusion of my claim, LLC will not be entitled to any compensation for professional services rendered, and we will have no obligation beyond reimbursement of costs.

Additionally, I acknowledge that if representation is terminated our law firm has the right to place an attorney's fees lien for legal services rendered.

I further understand that there are risks associated with a lawsuit, should this case enter suit. If unsuccessful after a trial, the defendant may file a motion with the court asking for its costs and expenses associated with bringing the suit.

To the extent this case has been referred or transferred from another law firm, that law firm may be entitled to a referral fee and reimbursement for costs in accordance with the rules of professional responsibility. Any referral fee or attorney lien is paid solely out of the attorney's fee and does not reduce the settlement proceeds. Any costs incurred by other firms are still considered to be costs of the case.

I also acknowledge that I have been given a Statement of Client's Rights and Responsibilities.

Name: \_\_\_\_\_ Date: \_\_\_\_\_  
Client

Name: \_\_\_\_\_ Date: \_\_\_\_\_  
Attorney

## SECTION FIVE

### The Important Things to Know About Social Media

## SAMPLE REQUESTS FOR PRODUCTION: SOCIAL MEDIA INFORMATION

- All electronic or other communications, correspondence, memos, messages, e-mail, notes, reports, or other written or electronic or social networking communications concerning *[relevant event]* or that pertain to plaintiff and/or plaintiff's activities during the period *[date]* to *[date]*.<sup>1</sup>
- All electronic or other communications, including all postings to any and all social networking services, concerning *[relevant event]* or that pertain to plaintiff and plaintiff's activities during the period *[date]* to *[date]*.<sup>2</sup>
- An electronic copy of Plaintiff's complete Facebook history, including any and all profile information, postings, pictures, and data available pursuant to Facebook's "Download Your Own Information" feature.<sup>3</sup>
- An electronic copy of any social media sites [used by Plaintiff] including but not limited to all updates, changes, or modifications of Plaintiff's profile, any photographs or videos posted by Plaintiff or anyone on Plaintiff's behalf, all status updates, messages, wall comments, causes joined, groups joined, quizzes taken, activity streams, blog entries, details, blurbs, comments, and applications for the period from **[date]** to the present. Please provide an electronic copy of this information, or a hard copy to the extent an electronic copy is not available.<sup>4</sup>
- An electronic copy of documents and media reflecting all online accounts, profiles, postings, messages (including forwards, replies, tweets, retweets, wall posts and comments, status updates, and blog entries or comments), video, pictures, and other online or digital communications that (1) relate to the allegations in dispute; (2) reflect, demonstrate, refer to, or relate to any mental status or injury relating to the dispute or otherwise; or (3) reflect or relate to events of sufficient significance to produce a significant emotional response or mental state.<sup>5</sup>
- All social networking communications between Plaintiff and any current or former employees [of defendant], or which in any way refer [or] pertain to her employment [with defendant] or this lawsuit.<sup>6</sup>

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<sup>1</sup> Monique C.M. Leahy, *Pretrial Involving Facebook, MySpace, LinkedIn, Twitter, and Other Social Networking Tools*, 121 AM. JUR. PROOF OF FACTS 3d 1 (Last updated February 2013).

<sup>2</sup> *Id.*

<sup>3</sup> *Holter v. Wells Fargo & Co.*, 281 F.R.D. 340, 343 (D. Minn. 2011)

<sup>4</sup> *Id.*

<sup>5</sup> Christopher E. Parker, Travis B. Swearingen, "Tweet" Me Your Status: Social Media in Discovery and at Trial, Fed. Law., January/February 2012, at 34, 36

<sup>6</sup> *Mailhoit v. Home Depot U.S.A., Inc.*, 285 F.R.D. 566, 569 (C.D. Cal. 2012).

## REQUESTS FOR PRODUCTION IN THE FACEBOOK ERA – CASELAW

- **Request for Production appropriate means of discovery.**
  - Mackelprang v. Fid. Nat. Title Agency of Nevada, Inc., 2:06-CV-00788-JCM, 2007 WL 119149 (D. Nev. Jan. 9, 2007) (“The proper method for obtaining such information . . . is to serve upon Plaintiff properly limited requests for production of relevant email communications. Nothing in this Order prevents Defendants from serving such discovery requests on Plaintiff to produce her Myspace.com private messages that contain information regarding her sexual harassment allegations in this lawsuit or which discuss her alleged emotional distress and the cause(s) thereof.”)
- **Relevance as a necessary predicate for discovery.**
  - Tompkins v. Detroit Metro. Airport, 278 F.R.D. 387, 388-89 (E.D. Mich. 2012) (defendant’s request for plaintiff to sign authorizations to access plaintiff’s Facebook account denied where plaintiff’s public Facebook page did not tend to show that information on her private Facebook page would be relevant to disputing her claim of disability; plaintiff’s claims were not inconsistent with public photographs of her holding a small dog and standing up at a party).
- **Relevance as a limitation on the scope of discovery.**
  - Mailhoit v. Home Depot U.S.A., Inc., 285 F.R.D. 566, 569 (C.D. Cal. 2012) (defendant, plaintiff’s former employer, moved to compel production of plaintiff’s information from social networking sites; motion granted in part with respect to information specifically related to plaintiff’s former employment or the instant lawsuit).
  - E.E.O.C. v. Simply Storage Mgmt., LLC, 270 F.R.D. 430, 432 (S.D. Ind. 2010) (in emotional distress case, court generally limited discovery of social media information to content relating to emotional and mental states or events that may trigger such states). See also Robinson v. Jones Lang LaSalle Americas, Inc., 3:12-CV-00127-PK, 2012 WL 3763545 (D. Or. Aug. 29, 2012).
- **Methods of discovery.**
  - FACEBOOK’S “DOWNLOAD YOUR INFORMATION” BUTTON. In re White Tail Oilfield Services, L.L.C., CIV.A. 11-0009, 2012 WL 4857777 (E.D. La. Oct. 11, 2012) (court ordered defendant to produce information from his Facebook page following a Rule 34 Request for Production; plaintiff’s request explicitly instructed defendant on the use of Facebook’s “Download Your Information” button).
- **Analogous Requests for Production**
  - TEXT MESSAGES.
    - Mintz v. Mark Bartelstein & Associates, Inc., CV 12-02554 SVW SSX, 2012 WL 3553351 (C.D. Cal. Aug. 14, 2012) (“[D]ocuments reflecting the content of Plaintiff’s text messages are within his “control” because he has “the legal right to obtain [these] documents on demand” from AT & T. Because Plaintiff is the “originator” of his text messages, he may request copies of these messages from AT & T consistent with the [Stored Communications Act].”).
    - Flagg v. City of Detroit, 252 F.R.D. 346, 367 (E.D.Mich.2008) (“[T]he archived text messages under consideration here fit comfortably within the scope of the materials that a party may request under Rule 34 . . . the Court readily concludes that [a defendant] has ‘control’ over the text messages preserved by [a third party service provider] pursuant to its contractual relationship with the [defendant].”) (emphasis added).
  - EMAILS. Bower v. Bower, CIV.A. 10-10405-NG, 2011 WL 1326643 (D. Mass. Apr. 5, 2011) (“[I]f [the defendant] authorized the disclosure of her emails, Yahoo! and Google would comply with her request. There also is case law support for a party to proceed by way of a Rule 34 document request to require an opposing party to obtain its own emails from an electronic service provider . . . The parties do not seem to dispute that *this court could order [plaintiff] to consent to the production of the emails since they are under her control* although maintained by the service provider.”) (emphasis added).

## REQUESTS FOR PRODUCTION IN THE FACEBOOK ERA – FURTHER READING

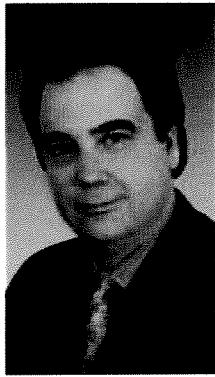
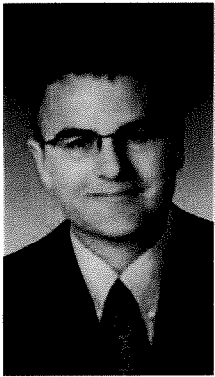
- Christie Strange, “SOS for SNS: How to Navigate the Sea of Social Media Discovery,” 54 No. 9 DRI FOR DEF. 25 (September 2012) (reviewing recent case law and providing guidance to litigators)
  - **Limitations on the scope of discovery.** “Despite the ease and pace at which people exchange information online, courts hesitate to grant unfettered access to all of a plaintiff’s social networking account information without first establishing the necessary factual predicate. Simply stated, filing a lawsuit does not authorize an online fishing expedition into all areas of a plaintiff’s social networking account merely because you hope to secure potentially relevant information.”
- Christopher B. Hopkins & Tracy T. Segal, Discovery of Facebook Content in Florida Cases, Trial Advoc. Q., Spring 2012 (reviewing recent case law in Florida, listing common objections to discovery requests regarding social networking sites, and recommending language for Requests for Production)
  - **Reference to methods of discovery.** “To overcome objections that downloading or printing Facebook content is cumbersome, include in your discovery request a reference to Facebook’s (simple) instructions for downloading all account content.”
  - **Common objections.** “Plaintiffs generally object to social media discovery on the basis of relevance, privilege, and the Stored Communications Act.”
    - **Relevance.** “Courts across the county have generally found that Facebook and other social media website postings are relevant to actions where a party’s physical condition is at issue. Social media accounts have also been found relevant to jurisdictional issues.”
    - **Privilege.** “Objections based on privacy, confidentiality or privilege are another common line of attack on social media discovery, but these objections have been uniformly rejected by courts addressing the issue. Long-standing principles governing the right to privacy support this conclusion.”
    - **Stored Communications Act (SCA).** “[T]he SCA is not an impediment to discovery from an individual plaintiff. The SCA does not apply to individuals, only to internet service providers and services which store electronic communications. An individual producing his account information to opposing counsel or printouts of his a social medial account does not implicate the SCA.”
- Steven S. Gensler, Special Rules for Social Media Discovery?, 65 Ark. L. Rev. 7, 26-28, 38 (2012) (discussing the appropriate recipient of a discovery request as the individual user of a social networking site because of her undisputed control over the content of her page)
  - **Request for Production appropriate means of discovery.** “[I]f you want to take discovery of a party’s social-media content, the proper process is to serve a Rule 34 request on that party asking the party to produce the responsive materials. The user then must take reasonable steps to obtain whatever information exists--in whatever format it now exists--from the social-media service.”
  - **Analogous Requests for Production.** “An interesting parallel exists in the caselaw governing medical-records releases. Most courts that have addressed the issue have held that they do not have any power under Rule 34 to compel a party to sign a release so that the requesting party may obtain direct access of the records from the medical provider.”

# PROVIDENCE BUSINESS NEWS

March 1, 2010

## Privacy Rights Being Tested in Digital Age

Guest Column: Brian J. Lamoureux and William E. O Gara



You're a city employee. It's 7 p.m. on a Friday. You were supposed to be home for dinner hours ago. Your spouse sends you an angry text message on your city-issued cell phone expressing frustration that you've missed dinner – again. You fire back with an equally angry and hurtful text message.

It turns out that this is one of many e-communication exchanges between you and others that you have sent on a city-issued cell phone. Under an informal policy, you paid all of the overage charges, and no one looked at the contents of your text messages.

After a while, however, your supervisor got tired of being a bill collector, and obtained the contents of your texts to determine whether they were work-related. Your supervisor was not pleased to see messages he felt were inappropriate. The supervisor brings this to your attention. You feel violated and humiliated for having your personal, dirty laundry now public. You sue the city for violating your constitutional rights. Do you win?

The United States Supreme Court is poised to issue a decision this spring in a California case on similar facts. The case, *City of Ontario v. Quon*, highlights the

tension between an individual's right to privacy and a municipality's right to access information on city-owned property such as cell phones.

The decision may have a far-reaching and profound effect on employee privacy rights in the Digital Age. With the explosion of texting, instant messaging, Facebook, Twitter and related "instamedia," something will have to give. The Supreme Court may struggle with balancing an employee's reasonable expectation of privacy and an employer's right to control the property it owns.

While *Quon* will be decided in the context of public employment, it is expected that this decision will reverberate throughout the public and private sectors.

It may also be a matter of time before the Supreme Court grapples with a dispute relating to an employee's use of Facebook or other social-media sites, such as Twitter and MySpace. Have you ever "unfriended" someone on Facebook? Even worse, has anyone ever "unfriended" you? Facebooking has become so popular that even the venerable Oxford Dictionary named "unfriend" as its Word of The Year for 2009.

Facebook – along with its friending, unfriending, status updating, and commenting [has](#) created some potential legal problems for employers.

While Facebook can be an extraordinarily powerful and

*(cont'd next page)*

productive tool in certain businesses, it can pose a challenge for employers. How many times have you seen an employee lament on Facebook about how “boring” or “lame” his or her job or supervisors are? These types of expression, while not directly aimed at the organization, imply that the organization is not a good place to work.

Facebook can also be used to harass co-workers or to foster a hostile work environment.

Clearly, it is impossible for employers to try and prohibit or micromanage all online interactions among their employees.

What if an employee posts a derogatory or sexual joke on a Facebook page, knowing that co-workers would see it? If such comments would be utterly inappropriate during a work meeting, should they be treated any differently if they are communicated via Facebook?

There is no easy answer. Employers should consider adopting a written policy explaining what forms of social media are appropriate to use in the workplace and which should not be used.

In addition, employers need to exercise caution regarding how they obtain electronic information in the

workplace, particularly as the lines between “work” and “home” continue to blur due to technology. Various federal statutes prohibit access to password-protected information, and employers must understand where the line is between legitimate company interests and employee privacy. For example, are employers free to scroll through e-mails on an employee’s Blackberry, where the company paid for the Blackberry, but if the employee pays the monthly bill?

Quon and the explosion of Facebook underscore how rapidly instant communications and the use of social media in the workplace are becoming hot topics for employers and employees. Courts frequently find themselves in a position of playing “constitutional catch-up” to determine how much protection individuals should receive when communicating in the Digital Age.

Given this rapidly evolving (and dangerous) landscape, all employers are well-advised to consider how their current policies (or lack of any policies) might expose them to liability in the Digital Age.

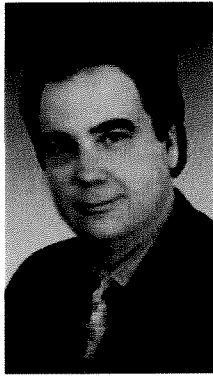
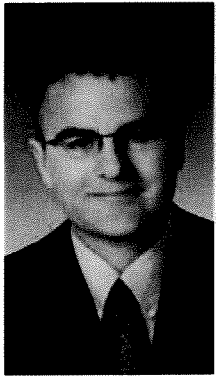
*Brian J. Lamoureux is senior counsel at Pannone Lopes Devereaux & West LLC in Providence. He and firm partner William E. O’Gara advise employers on employment-related issues.*

# PROVIDENCE BUSINESS NEWS

March 22, 2010

## Digital Age hiring process filled with danger

Guest Column: Brian J. Lamoureux and William E. O'Gara



In these tough economic times, when one-third of states are experiencing double-digit unemployment and competition for scarce jobs is heightened, a

word to the wise for job hunters and those employees seeking to change jobs: Think twice before you post information and pictures on the Internet.

The days are long gone when a print advertisement served as the single platform of announcing a job opening and candidates could shield their identities and inner self until the face-to-face interview day arrived.

For employers: Be prepared for potential lawsuits if you made a hiring decision based on what you found online.

Today, the hiring process can be much different and dangerous or both the employers and candidates. Mintel International Group Ltd., reports that nearly all Fortune 500 companies use online recruiting as their primary source for hiring. This means that just as candidates are going online to search for jobs, employers are tempted to screen candidates by searching social-media sites to learn about applicants' lifestyles and just about everything else that might be found on Facebook, LinkedIn, MySpace, Twitter and blog postings.

Remember that picture of you at the party on the business end of a beer-filled funnel? Or how about that shirtless picture of you at a Patriots game? Harmless at the time, perhaps. But now that those photos may be publicly viewable for your future boss to see, not so harmless.

Interestingly, very few people post pictures of themselves volunteering, feeding the hungry or doing good deeds. It seems that pictures showing the poorest judgment tend to make their way onto Facebook and MySpace. Go figure.

With the explosion of social-networking sites such as Facebook, LinkedIn, MySpace and Twitter, there is a treasure trove of information available to employers when screening candidates. Whether we like it or not, employers have the legitimate right to consider most, but not all, of what they can publicly see about an applicant in making their hiring decisions. But if they go down that road, there are risks.

While employers may consider an applicant's poor judgment or character during the hiring process, pictures and postings may also reveal an applicant's protected status (such as race, gender, age or sexual orientation). Remember, pictures are worth a million words in the Digital Age.

The irony here is that employers may unwittingly or passively stumble onto information that would subject

*(cont d next page)*



them to civil liability if they had asked candidates directly about their race, disabilities or sexual orientation, for example. The mere act of googling for information about a candidate carries the risk of obtaining knowledge that might not otherwise have surfaced. If an employer does not hire the candidate, the burden will be on the employer to explain that the discovery was not “used” in the employer’s decision.

There is another problem with using social-media sites to screen applicants: If an employer only considers candidates who have social-media accounts on Facebook or LinkedIn, for example, employers may face liability under so-called “disparate impact” or “disparate treatment” theories.

The race, age, gender and education levels of the general working population are distinctly different from those who are Facebook, LinkedIn and other social-networking users. By focusing solely or heavily on hiring only candidates with a Facebook or LinkedIn account, for example, employers might unwittingly exclude members of a protected class from consideration, possibly resulting in discrimination litigation or claims by the Equal Employment Opportunity Commission.

So, what should employers do? At a minimum, employers should have a written policy about what social media, if any, the employer will consult during the hiring process – and then follow that process.

For example, the safest (but perhaps not practical) route might be to avoid using online searching during the screening process. Another alternative would be to ensure that the decision-makers in the hiring process did not conduct any online searching themselves, but instead considered information that other employees provided to them (without protected information).

There are ways to use social media in the hiring process; employers just need to be careful and thoughtful before doing so.

And for all those job-seekers: Think carefully before you have that bachelor (or bachelorette) party picture taken in the first place; and think twice before posting it online or sharing it electronically with your “friends.” In the Digital Age, Shakespeare might have said: “All the world’s a stage online; and we are all merely players.” •

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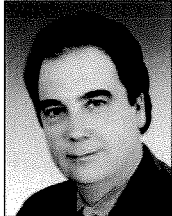
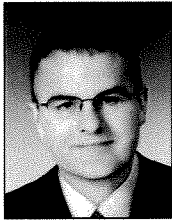
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# PROVIDENCE BUSINESS NEWS

YOUR LOCAL SOURCE FOR BUSINESS NEWS IN SOUTHERN NEW ENGLAND

## Texting in the workplace? Dangers abound

Texting and other e-communications in the workplace pose serious privacy and safety concerns to



GUEST COLUMN

**Brian J. Lamoureux and William E. O'Gara**

employers and employees alike. On the one hand, electronic communications by employees can implicate privacy and other rights, thus possibly subjecting employers to liability. On the other hand, an employee's mere act of texting or writing e-mail, regardless of its content, while operating a motor vehicle

poses a serious physical risk to the employee and others. Again, this activity exposes employers to potential liability.

The U.S. Supreme Court just issued its long-anticipated decision in *City of Ontario v. Quon*, a case involving a police department's right to review its employee's text messages with his mistress. The employee claimed that even though the police department issued the pager and had a policy declaring that such messages were not private, he had a reasonable expectation of privacy in those messages.

While the court assumed that the employee had a reasonable expectation of privacy, the court held that the police department's review of the messages was not an

invasion of the employee's privacy because its review was limited in scope and was done for a "legitimate work-related purpose."

The decision confirms that a government employer may review the contents of an employee's digital communications in which (a) the device used to send the communications is issued by the employer, (b) the employer gave advance notice that the employer can review such communications, (c) the review is conducted for a legitimate business reason and (d) the government uses care not to review messages sent or received while the employee was off-duty. On this last point, however, the court held that government employers do not have to use the "least intrusive" review available. Rather, the touchstone for this review appears to be what is reasonable under the circumstances.

What is most telling about the court's decision in *Quon* is what the court did not say. The Court expressly declined the opportunity to resolve the many unsettled issues relating to privacy and e-communications. It did not declare that its rule in *Quon* would or would not apply in the context of private employers.

The court chose to "proceed with care" and take cover in the uncertainty of this area of law given the relative infancy of e-communications in the workplace, noting that "it is uncertain how workplace norms, and the law's treatment of

them, will evolve." This judicial placeholder is a strong signal to the business community that while *Quon* should serve as a caution flag to employers who are considering monitoring their employees' e-communications, it will not be the court's final pronouncement on the issue.

So, what should private sector employers do? First, they should assume that courts will certainly look to the principles set forth in *Quon* for guidance when deciding privacy claims made by a private-

**Employers should communicate to their employees that they are expected to comply with all laws.**

sector employee against an employer. Second, employers must create and institute clear, written policies regarding their review of e-communications sent or received by employees during working hours and on employer-issued devices. Third, if employers decide to search an employee's e-communications, they must ensure that they

have a legitimate business reason for doing so before conducting a reasonable search.

Fortunately, the texting-while-driving issue is more straightforward. Currently, Rhode Island and Massachusetts generally prohibit drivers from composing, reading or sending text messages (including e-mail) while operating a motor vehicle on any public street or public highway. "Text messages" include traditional short-message-service text messages, e-mails, instant messages, and, in Massachusetts, Internet searching. While

the public policy behind such laws is obvious and commendable, employers must understand that employees who break these laws while on company time, while doing company business, while driving the company car, or while using a company-issued mobile device, may expose employers to substantial liability if the employee causes an accident.

So what should employers do? First, employers should communicate to their employees that they are expected to comply with all laws while on company time and using company property, such as a car or company-issued mobile device. Employees should be informed that their safety is paramount, and that they must resist any temptation to e-communicate while driving. Second, employers should amend their employee handbooks to alert their employees to these new texting-while-driving laws, and emphasize that failing to comply with these laws constitutes grounds for discipline and termination.

These steps are critical, because employers may be held liable for their employees' negligence while on company time, in a company vehicle, or while doing company business. The explosion of mobile communications – and now laws restricting their use – adds another layer of complexity and exposure for employers to keep in mind as they formulate their personnel policies. ■

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# PROVIDENCE BUSINESS NEWS

YOUR LOCAL SOURCE FOR BUSINESS NEWS IN SOUTHERN NEW ENGLAND

## Email privacy not a guarantee in workplace

One of your employees is not happy with you. She believes you discriminated against her in the latest round of promotions. Seeking vindication, she uses your company's laptop and server to access her Gmail account to send what she believes to be confidential and privileged emails to a lawyer she wants to hire to sue you.

The emails detail her complaints as well as her lawyer's thoughts about the weaknesses in her case. Unbeknownst to the employee, the Internet browser she uses to access her Gmail account automatically stores or "caches" an image of the Gmail screens into temporary memory on your company's server. She quits and files a discrimination complaint.

As part of the process of dealing with the lawsuit, your IT department retrieves all of the employee's electronic files, including the "screenshots" of the inbox of her Gmail account which reveals the communications between her and her lawyer. You turn these images over to your lawyer, who uses them to poke holes in the employee's case during her deposition. The employee claims that you cannot use those emails because they were unlawfully obtained and violate the attorney-client privilege between her and her lawyer.

Who wins? Unfortunately,

there is no clear answer. A recent decision by a California appellate court has created a clear split of legal authority on the issue. That decision squarely conflicts with a landmark decision issued by the New Jersey Supreme Court last year. In the New Jersey case, a woman used her personal, Web-based Yahoo account to communicate with her attorney on a company computer and through a company server. The employer sought to use those emails to defend against the woman's discrimination claims. The New Jersey court sided with the woman, and determined that the employer improperly obtained the emails. The court noted that the employer's written policy was too vague and unclear because it did not explicitly state that the company could and would access private, Web-based emails. The court also was troubled that the company's policy contradicted itself by suggesting that the company's computers could be used for "occasional[ly]" sending personal emails.

The California court reached a different result, albeit in different factual setting. In that case, the employee not only used a company computer to send emails to her

attorney, she used her company-based email account to do so. At first blush, this difference from the New Jersey case may explain why the California court reached a different result than the New Jersey court. However, the California court went a step further, noting that the employee's use of a company computer was "akin to consulting her attorney in one of [the company's] conference rooms, in a loud voice, with the door open, yet unreasonably

**The New Jersey court ... determined that the employer improperly obtained the emails.**

expecting that the conversation" would be privileged. This language suggests that the California court is warning all employees – regardless of whether they use Web-based or company-based emails – that they should not expect any privacy in emails sent through a company computer or server. Given the widespread ability for employees to communicate privately after-hours using their own computers and free email services, it is likely that courts will find the California court's reasoning more persuasive in future cases where a company has a clear email policy.

What should employers take away from this unsettled legal landscape?

Among other things, employers need to have a written and clear policy that:

n Addresses the use of com-

pany computers for personal reasons, including sending or receiving personal emails through Web-based and other private email providers;

n Explains that the company will monitor its computers for compliance and inspect all files and messages on its computer system;

n Makes clear that employees may (or may not) have a right of privacy in emails sent or received on company computers. Employers need to give careful thought about how much leeway and privacy, if any, they want to give their employees when it comes to using a company's computer system.

Employers also need to keep in mind that a written policy is only effective if it is actually followed, enforced, and updated as necessary. Unfortunately, many employers are reluctant to spend the minimal time and resources necessary to craft a solid email and computer policy (or to revise one that's woefully outdated).

Failing to have an effective policy puts employers at a significant disadvantage in all types of litigation because relevant and helpful evidence might get excluded in court. n

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## SECTION SIX

### Legal Writing in the Real World

# Legal Writing in the Real World

Speaker: Thomas Dickinson

## TEN RULES FOR WRITTEN LEGAL ADVOCACY

1. Cite cases for their holdings, not their language.

Only the court's holding carries the effect of stare decisis.

Easiest way to debunk opponent's authorities is to show that case result conflicts with language cited by opponent.

Describe/explain controlling authorities.

2. Always be well grounded in accurate recitation of facts.

Your credibility with judge is based on . . . your credibility!

Candor is minimal standard under Rules of Prof. Resp. 3.3.

3. Always be well grounded in accurate statement of law.

See above.

4. Change places with your audience.

Goal is to assist the reader, not obfuscate.

If you had to decide case, what would you want to know?

5. Don't show off.

I.e., don't use words like "obfuscate," when you could use a word like "confuse."

6. Be concise.

Sympathize with the volume of material that confronts your reader – get to the point quickly and efficiently.

The text message and tweet are here to stay.

7. Edit, cut and revise.

Put your work aside for a few hours or a day and return to it with fresh eyes.

Streamline sentences, reorganize, etc.

Know what happens to your edits if you filing or serving electronically!

8. Remember outlines and paragraphs?

Well organized writing reflects well thought out advocacy.

9. Provide copies of pertinent authorities.

Trial court judges may not have immediate access to cases or statutes – provide key authorities, highlighted where appropriate.

10. Read.

Not just casebooks and statutes.

Read widely (literature, poetry, etc.)

---

Suggested sources on writing:

W. Strunk & E.B. White, The Elements of Style (any edition).

A. Scalia & B. Garner, Making Your Case (2008).

Blogs: [www.mariebuckley.com](http://www.mariebuckley.com) (A Lawyer's Guide to Writing)

<http://www.lawprose.org/blog/> (Bryan Garner's writing blog)

## Typographical Errors and Client Protection<sup>1</sup>

Typographical errors can be funny, as some of the examples below will show. Yet, we've all experienced that sinking feeling in the pit of our stomach when we realize that we sent a document to a client or submitted a document to a court with a typographical error on page 2. This article strives to raise your awareness of the importance of proofreading and to provide some tips to increase your proofreading skills in order to better serve your clients and yourself.

In addition to being an embarrassment, typographical errors erode the writer's credibility.<sup>2</sup> Typographical errors can also harm the client. In a recent case, a federal district court observed:

[P]laintiff's response... [is] so riddled with typographical mistakes, grammatical errors, and faulty punctuation that the court had difficulty following plaintiff's arguments. For example... the court has never seen such creative spellings of the words technologist (spelled, alternately, "tecnologist" and "technolgoist") and occasionally (spelled "occassinaly"), and has never heard of the words "accomopdation," "tranprot," "studnet," and "internshp."<sup>3</sup>

Not only do courts view typographical errors as unprofessional, and clients and opposing counsel as indicating incompetence, they can also cause direct monetary harm. Courts have slashed fee awards in half because of substantial grammatical and typographical errors in briefs.<sup>4</sup>

While to err is human, you can act to reduce typos. Proofreading is an important step in the writing process. It requires a different kind of attention than necessary to prepare documents, since the focus instead must be on individual words, not the ideas conveyed.

Spell-checkers built into many software programs provide some respite to the hard work of proofreading. The federal district court referenced above "strongly recommend[ed] (and that's one "c" and two "m"s) that in the future, plaintiff's counsel proofread and spell-check all documents submitted to this and any other court."<sup>5</sup> In fact, the spell-check and auto-correct features built into Word and other programs do catch many common mistakes.

While technology provides great assistance, it can also create problems. Texas federal district judge Sam Sparks published an "ode to the spell-checker" this emphasizes the humor that reliance on technology can create:

Eye have a spelling chequer, It came with my pea sea. It plainly marques four my revue Miss Steaks eye kin knot sea. Eye strike a key and type a word and weight four it two say Weather Eye am wrong oar write It shows me strait a weigh. As soon as a mist ache is maid, It nose bee fore two long, and Eye can put the error rite -- Its rare lea ever wrong. Eye have run this poem threw it I am shore your pleased two no, Its letter perfect awl the weigh. My spell chequer tolled me sew.<sup>6</sup>

So, don't rely solely on spell-check. While it is always helpful to have another person proofread your work, proofreading often falls to the writer. For example, software cannot distinguish between homonyms, which can lead to some of the most common errors. Human labor is still necessary. Below are some strategies to maximize your proofreading prowess:

**Give yourself a break.** It is difficult to move from the creation process to the proofreading process. Ideally, you should put any work away for two days before proofreading it. However, even if you can only set the work aside for thirty minutes, you will be a more effective proofreader.

**Read it backwards.** No, we don't mean like spinning a Beatles' album to find secret messages! Instead, read the last sentence first, the penultimate sentence next, and so on to allow you to focus on each sentence without getting distracted by substance.

**Read it out of order.** This is another way to avoid getting caught up in the substance and is especially helpful on a large document. Instead of starting at page one and proofreading to page 50, start near the end, then work the front. Or, when proofreading an appellate brief, start with the statement of facts, then proof the conclusion, then the second argument, and so on.

**Create white space.** Sometimes words just blur. To fight this, use two pieces of blank white paper to hide all the text except for one or two lines.

**Read it aloud.** Sometimes our eyes deceive us. We don't catch the missing word, or we miss the double word. Reading the work aloud can help you focus on what is on the page and, just as importantly, what is not on the page.

**Watch for the common typos.** This chart identifies common typographical errors (including those spell-check and autocorrect miss).

<b>Typo or Mistake</b>	<b>Correction</b>
©	(c) – unless you mean the copyright symbol
casual	causal
doe snot	does not <sup>7</sup>
forebear	forbear
fore	for
form	from
heresy	hearsay
libel	liable
loose	lose
no	know
off	of
parole	parol
rational	rationale
rise	risk
statue	statute
tot he	to the <sup>*</sup>
tortuous	tortious
trail	trial
Untied States	United States
write	writ

---

1. By Assistant Professor Karen Sneddon and Professor David Hricik, both of Mercer University School of Law in Macon, Georgia. Mercer's legal writing program is ranked number one in the country by U.S. News.
2. For an analysis of experiments that assess the impact of spelling errors on the reader's perception of the author's writing ability, see Michael J. Costello et al., *Effects of Spelling Errors on the Perception of Writers*, *Journal of General Psychology* (2002), available at <http://www.encyclopedia.com/doc/1G1-86431655.html>.



- 
3. *Chen v. Galen Hosp. Ill., Inc.*, 1999 WL 104723, at \*1 (N.D. Ill. Feb. 23, 1999). *See also Thompson v. Nicholson*, 2007 WL 956928, at \*3 (Vet. App. Mar. 13, 2007) (emphasizing that poor grammar also "does not reflect well on the practitioner's professionalism").
  4. *See Devore v. City of Philadelphia*, 2004 WL 414085, at \*3 (E.D. Pa. Feb. 20, 2004).
  5. *Chen*, 1999 WL 104723 at \*1.
  6. Reprinted in Jerry Buchmeyer, *Ode to the Spell Checker*, 64 Tex. B.J. 69 (June 2001).
  7. Thankfully, Word 2007 will catch this particular typographical error.
  8. Thankfully, Word 2007 will catch this one, too

## SECTION SEVEN

### Making the Most of Library Resources

*Making the Most of Library Resources*

*Legal Research  
Using the  
Internet, Databases  
And  
Print Materials*

*Revised By*

*Colleen M. Hanna, Law Librarian*

Rhode Island State Law Library  
Frank Licht Judicial Complex  
250 Benefit St.  
Providence RI 02903  
401-222-3275  
Fax 401-222-3865  
Web Site <http://www.courts.ri.gov>

Hours: Mon – Fri. 9-5  
Saturday: 9-3

Check calendar on  
web site for summer and  
holiday hours

The mission of the library is to serve the bench and the bar and that means you! I know what many of you are thinking. Who needs the library when we have Google, Casemaker and the Internet? By the end of today's session, I will change your minds and make you aware of the resources and services you have at your doorstep. I would also like to highlight the value of law librarians and give you tips that will save you time and money, make your practice more profitable and in the long run allow you to better serve your clients.

We like to think of the library as the gateway to justice. In the future, many of you may be solo practitioners or work for small firms. A client who uses a small solo practitioner can be assured that their attorney will have access to the same authoritative and most current legal materials as their opponent who may use the more high powered attorneys from a large downtown or national law firm. The library provides everyone who comes through the door with professional reference service as well as a variety of legal resources, both in print and electronic format. If you are looking for something on the hidden web, something that is not indexed by Google or Yahoo or not available in full text, we can find it for you. We can lead you to free websites, ones that are superior in design, ease of use, innovation and content. If you prefer print resources, we can start you off with a legal encyclopedia, or an ALR Annotation on the topic you are researching. We can equip you with an analytical treatise that will provide you with background information as well as zeroing in on an obscure issue or specific fact pattern. For electronic databases, we have the best available, from Westlaw and Lexis to Hein Online, Massachusetts CLE publications and RIA Checkpoint.

## **HISTORY OF THE LIBRARY**

The Rhode Island State Law Library was organized as a subscription library in 1827 by several members of the RI Bar. In 1935, when the present courthouse was built, the library came to occupy the valuable real estate on the 8<sup>th</sup> floor. The State Law Library was foreseen by its founders as a “finely designed, soundly constructed and perfectly equipped” component of the Providence County Courthouse, an outstanding example of new-Georgian architecture. The building reflects the area’s fascinating history and architectural heritage. In fact, the land on which the current courthouse stands was included in the original group of “house lots” deeded by Roger Williams to the first “proprietors” of Providence. As envisioned by Providence County Court Commission, the Courthouse was intended not as a place of splendor, but rather one of “quiet dignity.” As pointed out in the dedicatory exercises of the “*Providence County Courthouse*” in 1933, such a setting “cannot fail to inspire counsel and impress litigants, thereby increasing their respect for the law.” In the last few years, the ravages of time and well intentioned, but misguided improvement projects had threatened the integrity of the library. Thanks to a grant from the Champlin Foundation, the library was able to undergo a major renovation which has restored the library to its former brilliance.

Besides the main library located at what is now the Frank Licht Judicial Complex, there are four county libraries as well, one in Garrahy, Kent, Newport and Washington County courthouses. They are much smaller than the main library, but all have public access Lexis and Westlaw as well as a core collection of print materials. Many titles are always up to date – The Rhode Island General Laws, the RI Digest and Reporters and various other treatises specific to the courts in which they are housed. The Garrahy library, for example, has a collection of family law and workers compensation titles.

Many of the other databases to which the library subscribes are available via license agreements are IP address authenticated and are available throughout the court network and in all the libraries. Other databases are password protected and require physical sign on to access the material. What we pride ourselves in is our service. We would ask that you take another look at

law librarians and observe what they can bring to the table. They are information specialists – they know how to find, evaluate and access information. They provide a high level of research and guide the legal community in the most cost-effective and efficient use of resources in an age of continuing changes.

## **VALUE OF LAW LIBRARIANS**

Law librarians are information managers, resource evaluators, access facilitators, expert researchers, teachers, and trainers. Law librarians possess the knowledge and skills to realize the full value of information in a changing work environment. Law librarians can bring value to organizations by reducing research time and information costs, thus saving money and resources.

### **As information evaluators, law librarians add value to your organization as they**

- Identify, select, and acquire the best information sources cost-effectively
- Offer professional advice on how effectively to obtain and use information and technology
- Stay abreast of cutting-edge information resources and technology, and share the knowledge with others
- Eliminate repetition in research and development, by spreading information across the organization

### **As information managers, law librarians add value to your organization as they**

- Make information resources accessible and user-friendly for users of both print and electronic media
- Organize internal records and data for easy access and preservation
- Sort through data, disseminate timely and relevant information to researchers
- Gather and structure information for speakers, presenters and others in the public eye

### **As expert researchers, law librarians add value to your organization as they**

- Conduct research and retrieve information quickly and cost-effectively
- Gather scientific and marketing data for development of new products and services
- Collect, maintain, and deliver information to achieve a competitive edge
- Guide researchers with search strategies and information sources, saving time and reducing frustration
- Investigate, recommend, and manage new technologies to enhance productivity

### **As teachers and trainers, law librarians add value to your organization as they**

- Teach others how to choose and use information resources and technology for maximal benefits
- Teach and train others to conduct online and print research effectively
- Train and develop efficient researchers, saving time and money.

## **PRINT MATERIALS AT THE RHODE ISLAND STATE LAW LIBRARY**

The library has nearly 75,000 volumes in print format and considers its treatise collection to be its greatest strength. Not only does the library have up-to-date editions with current supplementation, it also has a strong historical collection.

As primary source material become available through a number of sources, the library emphasizes and concentrates on secondary materials that will help the litigator and practicing attorney find the right primary sources. They range from legal encyclopedias, from books to subject specific litigation materials. An authoritative treatise can help you researching a new area of law, find a narrow aspect of law or provide an overview of a topic.

You can view our holdings anytime, anywhere by accessing the HELIN catalog. HELIN is a consortium of research libraries in New England, but most are RI based and include, Providence College, Roger Williams University and Salve Regina. HELIN contains the materials owned by all these libraries, but by using the filter buttons on the left side of the screen, you can limit the search to just our library. If you have a library card and see something you need at another HELIN library, you can request it and pick it up at the library of your choice. If you do not find what you want in the catalog, do not hesitate to call us. We can usually obtain it from libraries outside the state through interlibrary loan (ILL) program.

Treatises are not meant to be read online. They should be handled, flipped to read the Index or Table of Contents, perused for context and historical application and a book does that better and with more flexibility than an online version.

With the use of the internet and its importance in our lives reaching critical mass, it is my contention to advocate for and support the use of books in legal education and research. In order to translate the avalanche of information so easily at your fingertips to knowledge and eventually wisdom, it serves as a complement to electronic research.

Below is an annotated list of some of our most helpful print resources

### **Rhode Island Materials**

- Rhode Island General Laws, their various re-enactments dating from 1798, the pocket supplementation from the past 40 years allows the researcher to see the law as it looked at a specific date and year.
- Rhode Island Public Laws, dating from the Colonial Records until today
- Rhode Island Court Decisions, including the RI Reports, RI Rescripts ( Superior Court, RI District Court Decisions ( 6<sup>th</sup> Division), U.S. District Court Decisions for the District of Rhode Island, RI Education Decisions, Attorney General Opinions
- Rhode Island Continuing Legal Education materials from the RI Bar Association, NBI and others
- RI Jury Instructions ( Civil)

## **General and Litigation**

- Am Jur 2<sup>nd</sup> , Am Jur Proof of Facts, Am Jur Trials, Am Jur Pleading and Practice Forms, Causes of Action
- “AOA” - Art of Advocacy Series – from Preparation for Trial to Appeals – includes one volume works on Discovery, Cross Examination of Expert Witnesses
- Bender’s Forms of Discovery
- James Publishing treatises such as on Discovery, Age Discrimination, Trial Tactics

## **Evidence**

- Wigmore on Evidence, Jones on Evidence, McCormick on Evidence
- Scientific Evidence
- Questioned Documents

## **Family Law**

- Adoption Law and Practice
- Division of Assets in Matrimony
- Family Law and Practice
- Antenuptial and Prenuptial Agreements

## **Personal Injury**

- Products Liability
- Damages in Tort Actions
- What It’s Worth
- Aviation Law
- Automobile Law and Practice
- Slip and Fall
- Privacy Law

## **Federal Practice**

- Moore’s Federal Practice
- Federal Practice and Procedure
- Motions in Federal Court

## **Bankruptcy**

- Collier on Bankruptcy
- Debtor-Creditor Law
- Bankruptcy Practice Guide



## **COMPUTERS AND LEGAL RESEARCH**

In the year 2000, only 40-50% of the households in America had computers and computing had become an important part of our culture and our work life. The World Wide Web had arrived and search engines were becoming more sophisticated. The breadth and depth of coverage by Westlaw and Lexis was growing exponentially, they were expanding their databases to include not only primary law, but public information and treatises. Competing services such as Versus Law, LoisLaw and CASEMAKER began to offer low cost alternatives to WL and Lexis. Web pages were the theme of the day and everyone, including state legislatures and courts, law firms and public service organizations were putting up web sites on the internet. With legal information largely public information, these public sites and law portals offered no cost alternatives to the value added, editorially enhanced commercial sites

Can you imagine a world without Google? It was only formally incorporated on September 7, 1998. The word Google is an adaptation of the word googol which refers to the number one followed by 100 zeros. According to the Google Web site, "There isn't a googol of anything in the universe. Not stars, not dust particles, not atoms." The name reflects Google's mission to organize the limitless amount of information on the Web. They are certainly on their way.

The situation now in 2014 almost defies comparison with 1988. Smart phones with dozens of applications, 4G networks, the Cloud, Kindles, and tablets have changed the landscape. Portable devices enable the reader to wirelessly download books, blogs, pictures, cases and statutes. Take it on the plane, to the beach and your books are never overdue!

These devices are complemented by the WEB 2.0 applications which allows for creativity, information sharing, and, most notably, collaboration among users. Web based communities such as Facebook, LinkedIn, YouTube, interactive wikis, Twitter as well as blogs and RSS feeds all provide a networking platform for self-promotion, advertising, multimedia interaction and information sharing. Lawyers can network for referrals, research defendants

and potential jury members, market their law firms, and research potential legal hires and current associates.

According to LAWYERLIST, a law practice blog, here are some professional uses of Facebook. These principles could be applied to any social media community, be it LinkedIn, Justia or others

1. Facebook can bring you referrals and clients by helping you to reconnect with old classmates, colleagues, and friends through direct contact both formal (messages) and informal (wall posts), events, and interest groups.
2. Facebook can help you strengthen relationships with colleagues, both those at your firm or organization, and others.
3. Facebook Pages are great marketing tools. Pages allow you to post videos, photos, notes, blogs, and other interactive and community-building applications. Once you have created a page, you can promote it through the site's Social Ads, although you should make sure to stay within the ethical rules for client solicitation in doing so. For more information about how lawyers can market themselves and their businesses on the site, read [3 Things All Lawyers & Attorneys Should Do to Market More Effectively on Facebook](#) and [10 Things All Businesses Should Do to Market More Effectively on Facebook](#).
4. Facebook is often used by jury consultants to evaluate potential jurors before and during trial. This internet vetting can disclose juror's associations, interests or past statements that may make a lawyer want to strike them from the jury pool or prioritize keeping them on the case, and can provide a lawyer with insights into specific jurors which may be beneficial in crafting effective closing arguments. See [Social Networking Sites Help Vet Jurors](#).
5. Facebook can be an effective tool for investigating defendants, witnesses, and prosecutors. Evidence revealed from profile searches has been used to prove that a defendant had no remorse after committing a crime, to prove a defendant's motive, as evidence of the crime itself or of an individual's participation in a crime, and to show the extent of plaintiffs' injuries after an accident. See [MySpace and Facebook Becoming Evidence in Court](#).
6. Through Facebook you can research potential job applicants' public statements, photos and questionable social activity. A search of the site may also reveal statements by current employees regarding your firm or their workload. However, since the site may also reveal otherwise unknown protected information (race, religion, political affiliation) about job applicants or employees, be careful not to take adverse action based on that information.

What's next for the web? Web 3.0, often referred to as the semantic web will again transform the way the Web is used, and lead to new possibilities in artificial intelligence. While 2.0 is about social networking and mass collaboration with the blurring of lines between content creator and user, Web 3.0 is based on "intelligent" web applications using:

- Natural language processing

- Machine-based learning and reasoning
- Intelligent applications

## **INTERNET RESOURCES**

It is safe to say that computer assisted legal research is here to stay. However, it is not the only answer. A complementary use of books and e-resources will help you serve your clients. Please keep in mind the pros and cons of these various mediums when performing research.

The fact that anyone and everyone can publish on the internet necessitates users have a critical eye. The information on the internet is not reviewed or “filtered”. There are no editors for content, nor selection committees for collection development. To ensure that internet resources are creditable and reliable, evaluation of internet sources is imperative. Consider the following criteria when using internet sources.

### **I. AUTHORITY**

Is there an author?

Is the author qualified?

Is he/she associated with a recognized institution or organization?

Who is sponsoring the page?

Is the sponsor reliable?

If the page has neither an author nor a sponsor, can you determine its origin?

### **II ACCURACY**

Is the information reliable and error free?

Is there an editor or someone who checks or verifies the information?

Why is this information posted on the internet? Is the author supplying real, reliable information or is he or she trying to sell an idea, an opinion or a product?

Anyone can publish on the web. There are currently no standards to check for accuracy of information. No government organization or professional association oversees the content of web sites. Unlike traditional print resources, they are usually not attributable to editors or fact checkers. Information you get on the web may be simply incorrect or may be intentionally misleading due to a web site owner’s agenda of bias with regard to a particular legal issue.

### **III OBJECTIVITY**

Is the information biased or designed to sway opinion?

Is the material presented selectively or in an unbalanced manner? Is only one side of an issue presented?

Is there advertising on the page?

Often the web is used as a soapbox. Different organizations use web pages for advocacy and for business and marketing purposes. Often the goals of the sponsor or authors are not clearly stated. Again information may be intentionally misleading because of an agenda or bias about a certain legal issue. Try to find web sites that are clearly sponsored by and updated by known, reputable, unbiased organizations.

#### **IV CURRENCY**

Is the page dated?

How current are the links?

Be aware that if a date is provided, is it

- The date the information was first written?
- The date it was placed on the web?
- Or the date it was last revised?

Some information is timeless, like the classic or century old court opinions.

Others have a limited useful life that can become outdated. For example, statutes or legislation posted on one point in time and not updated with appropriate amendments can be downright dangerous. Links that do not work or are dead ends are very frustrating and often lead to questioning the validity of an entire site.

#### **V. EASE OF USE**

Is the information easy to find and efficient to use?

Is it user friendly?

Is it organized logically and allow for the efficient location of information?

Does it have a working Table of Contents?

Is the page well designed with the consistent navigation buttons?

Are links accurately described and are they relevant and valuable?

### **RESEARCH USING ELECTRONIC RESOURCES**

The results you obtain when you perform any electronic search largely depends upon the search engine used. What really differentiates a successful search engine is the way each determines the rank or order or the query results. In determining this rank or relevancy, a set of rules or algorithms are used to rank each page. Just exactly how specific search engine's algorithms work are closely guarded secrets in the computer world and they are what separates the mega search engines like Google and Yahoo from their counterparts.

### ***Boolean Logic to Create the Best Search Strategies***

The search engines we discussed have various search methods that work best with their engines. Most of them employ a form of Boolean Logic, which is a good foundation to have in order to strategize your query and employ the best search methods. Full text searching, the most common type of search, implies that all words in the text can be searched: simply type in a word or several words, and the search engine returns a list of the items that contain those words. These words can appear anywhere in the document or the web page. To refine your search and to make it more exact, you can employ Boolean searching which utilizes a number of connectors to help you find a case directly on point. Again, because these web sites are individually operated, the terms and connectors may vary depending upon the search engine employed.

#### **Common Terms and Connectors**

Symbol	Example	Result
+ or & or and	Physician & malpractice	Retrieves cases with words physician and malpractice anywhere within the case
Or / space	Physician or doctor or surgeon	Retrieves cases with words physician or doctor and malpractice
“quotation marks”	“Standard of care”	Retrieves cases with the exact phrase
Near	Standard near care	Retrieves cases with the word standard within usually 10-25 words of care
% / - not	Polices not fire and emergency	Retrieves cases with the word police and emergency, but will eliminate those with the word fire
* or ! or ?	Constitution*	Retrieves all forms of the word constitution i.e. constitutional.

Usually the site being searched will have a TIPS link near the search box to alert the user to the different search operators that are used. Always keep in mind that the

#### *“And Connector”*

- will narrow your search and decrease your number of hits
- Fewer records will be retrieved

#### *“OR” connector*

- will widen your search and increase your number of hits
- is most commonly used to search for synonymous terms or concepts
- retrieves all the unique records containing one term, the other, or both

#### *“NOT” connector*

- NOT logic excludes records from your search results. Be careful when you use NOT: the term you **do** want may be present in an important way in documents that also contain the word you wish to avoid.

#### *QUOTATION MARKS*

- will limit your search to only that exact phrase.

#### *TRUNCATION*

- Use ! or ? to find all forms of a word

#### *NEAR OR WITHIN*

- A few Internet search engines make use of the *proximity operator* NEAR. A proximity operator determines the closeness of terms within the text of a source document. NEAR is a more restrictive AND.

#### *USE OF PARENTHESES*

- Remember your algebra! Parentheses force the order of processing. If you surround the OR words with parentheses, the search engine will process the two related terms first. Next, the search engine will combine this result with the last part of the search that involves the second concept. Using this method, we are assured that the semantically-related OR terms are kept together as a logical unit.

One of the most common mistakes users new to searching make is that they try to narrow their search so much that only the “perfect case” will be retrieved. Instead, you should aim for the system to return about 5-20 cases, so that you can analyze the cases returned, and make a judgment as to the topic being researched and perhaps find background on the topic. You can then use that information to search for additional cases cited by the cases you have found. In this way, you will not miss the “perfect case” because you have performed too narrow a search function.

Remember, especially if you are using free internet sites for case research, there will be no editorial material available. There will be no headnotes or summaries as you will find in the National Reporter System. The words you use to search must be words the judge would use in writing his opinion.

For example, the terms “statue of limitations” and “limitation of action” may be used interchangeably for the same legal concept. Because free internet sites do not have editors that pull cases together by topic and assign headnotes, unless both terms are entered with an “or connector”, important cases could be missed. In the same vein, a judge may use the phrase “lemon law” or “consumer warranty of motor vehicles” to address the same principle. These differences must be anticipated when creating a search strategy.

## **ADVANCED SEARCH STRATEGIES**

Here are some advanced strategies that can assist you in using these thinking “search engines” to make them even more useful.

- **Search Terminology**

Choose terms that most meet your needs. If it is TMJ you are interested in, type it in alone or combine it with another term. (TMJ and neuralgia) or you could try more scientific term (Temporo-Mandibular Joint).

- **“And / Or Queries”**

Two words together (TMJ neuralgia) automatically defaults to an “and” connector. It is not necessary to type the word “and.” To broaden your search or to request alternate terms, use the word “or” between your search terms. For example, (TMJ or neuralgia). The order of the words will influence your search as well. (TMJ neuralgia) will bring up more hits with TMJ while the search (neuralgia TMJ) will bring up more hits about neuralgia.

- **Stop Words and other Tricks**

Certain common words such as “a, the, an, of, where and how” are automatically excluded. If you want one of these words to appear, as in the phrase “statute of limitation”, put the phrase in quotes or use the +1 (space between the plus and the one) to retrieve (statute +1 of limitations).

If you want to exclude a term use the minus sign (evidence-hearsay). Google and many other search engines will find variations of your word or check it against a thesaurus. Typing the search term diet will also retrieve dietary or may even search for the word food as well before returning results. Example (dietary supplement will also search diet supplement and food supplement).

- **Advanced Strategies**

To employ many of the strategies above, just go to Advance Search screen on Google. In addition to the above, you can limit your search

*By language or country.* Click on the language tools box to designate language to search pages from a specific country

*By date – limit date ranges to 3 months, 6 months, a year or anytime.* (Search +1 and seizure date: 30) will retrieve only results about search and seizure within the last three months.

*By domain.* Remember it was mentioned earlier that Rhode Island did not have a search engines. If you wish to employ this feature to just find Rhode Island cases since 1999, just type in the domain. [www.courts.ri.gov](http://www.courts.ri.gov) and type in year search terms. There before you are just the reporter cases from Rhode Island cases mounted on the court website that have in that term in them.

*By a certain number range.* If you are looking for jury verdicts between \$5,000 and \$50,000 in Massachusetts, try typing in “jury verdict” Massachusetts \$5,000..\$50,000, the two dots (#..#)will return a number range.



## FREE LEGAL WEBSITES

Legal information is, by and large, public information and, because of this, does not require copyright permission to upload to the internet. In the 1990's as technology advanced and internet access became a way of life, government and educational institutions were the first to see the new technology as a means of gaining some control of the vast amounts of information available. Portals, meta-sites and meta-tags were developed to help confine, manage, organize and access this information. Portals are gateways to a world of information, usually on a specific topic. They are a database of links to other resources. Below is a list of some of the best free web site and annotations regarding what material they can provide.

### *LEGAL PORTALS AND FREE CASE LAW*

FINDLAW	<a href="http://FINDLAW.com">http://FINDLAW.com</a>	Contains two separate sites, one for the public and one for legal professionals A comprehensive and user-friendly website providing legal research materials on the internet <ul style="list-style-type: none"><li>• Search Supreme Court Cases from 1893</li><li>• Search Circuit Court material circa 1995-</li></ul>
Google	<a href="http://scholar.google.com/">http://scholar.google.com/</a>	Use the power of the Google search engine to find <ul style="list-style-type: none"><li>• US state appellate and Supreme Court cases since 1950</li><li>• US federal, district, appellate, tax and bankruptcy court since 1923</li><li>• US Supreme Court cases since 1791</li><li>• Influential or international cases cited in other opinions or articles</li><li>• Note Disclaimer – provided for</li></ul>

		informational purposes only.
Cornell Law School Legal Information Institute	<a href="http://www.law.cornell.edu">www.law.cornell.edu</a>	<p>Premier authoritative law site</p> <ul style="list-style-type: none"> <li>• Search US Supreme Court Cases 1990-</li> <li>• Constitution, U.S. Code</li> <li>• Uniform Laws</li> <li>• Topical statutory tables</li> <li>• Practice Libraries</li> </ul>
Law Library Research Exchange LLRX.com	<a href="http://www.llrx.com">http://www.llrx.com</a>	<ul style="list-style-type: none"> <li>• One of the top 10 legal sites of the last ten years</li> <li>• Innovative webzine for legal professionals</li> </ul>

**FINDLAW** . FINDLAW began in 1995 as a list of Internet resources or a workshop of the Northern California law librarians

The screenshot shows the FindLaw website for legal professionals, viewed in a Windows Internet Explorer browser. The page features a navigation menu with categories like 'CASES & CODES', 'PRACTICE MANAGEMENT', 'JOB'S & CAREERS', 'LEGAL NEWS', 'BLOGS', and 'SERVICE PROVIDERS'. A search bar is prominently displayed. The main content area is divided into several sections: 'Top 5 Ways to Avoid Attorney Burnout' with a sub-headline 'How do you know if you're burned out? Exhaustion, detachment, boredom, chronic irritability, and paranoia are some common signs of attorney burnout. Sound familiar? Better read more.'; 'Research the Law' with a search form for cases and experts; 'Find an Expert' listing various legal services; 'Legal Forms' and 'Purchase Forms' sections; 'News Headlines' with recent headlines; and 'FindLaw Career Center' with a dropdown menu for 'Attorney' and 'Corporate Counsel'. The page also includes a 'Latest Blog Posts' section and a 'Need a Registered Agent?' advertisement. The browser's taskbar at the bottom shows the Start button, several open applications like 'springtraining2012.doc' and 'Microsoft Office Word Help', and the system tray with the time '9:34 PM'.

**GOOGLE SCHOLAR** entered the legal research market in 2009. Currently, they have state appellate and Supreme Court cases since 1950, federal cases since 1923 and US Supreme Ct. cases since 1791. The whole day could be spent outlining all of Google’s innovations. Here are a few. You can share documents, read 25 days worth of news from thousands of papers, research patents or create an alert that will monitor as well as notify you of cases or companies of interest to your clients.



**CORNELL LAW SCHOOL – LEGAL INFORMATION INSTITUTE (LII)** was the pioneer of legal publishing on the Internet. In 1992 Cornell began experimenting using hypertext to publish legal opinions online. It became the leading site for distribution of U.S. Supreme Court opinions. Largely considered to be *the* most *authoritative* legal website, it has received any number of accolades. To highlight its preeminence, many government agencies point to the U.S. Code and the Constitution at Cornell from their own web sites.

LI: Federal Law Collection - Windows Internet Explorer

http://www.law.cornell.edu/federal/

File Edit View Favorites Tools Help

Search google scholar Facebook LinkedIn Amazon YouTube 55 Providence, RI News Fun Games Celebrity Options

LI: Federal Law Collection Page Tools


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LI / Legal Information Institute

home search find a lawyer donate

## Law by source: Federal

main page about opinions search



### contents & context

This LI collection of U.S. Federal legal materials combines documents held on the LI's own servers (the U.S. Code, Supreme Court decisions, searchable index of U.S. Court of Appeals decisions, and the Code of Federal Regulations) with material available from other Internet-accessible sites.

#### Executive Branch

- White House
- Office of Management and Budget

#### Departments and Agencies

- Code of Federal Regulations
- Federal Register
- Department of Commerce
  - Patent and Trademark Office
- Department of Justice
  - Immigration and Naturalization Service
- Department of Labor
- Department of Education
- State Department
- Treasury Department
  - Internal Revenue Service
- Copyright Office
- Social Security Administration
- Others: LSU's List of Federal Agencies | Federal Web Locator

#### Judicial Branch

- Supreme Court Decisions and Related Material
- Federal Court of Appeals Decisions
- Decisions of Other Federal Courts
- Administrative Office of the U.S. Courts
- Federal Judicial Center
- Sentencing Commission
- Other (LSU's Federal Government Agencies Directory)

#### Legislative Branch

### ways to access material

- Key LI collections
  - U.S. Code
  - C.F.R. - Code of Federal Regulations
  - Supreme Court decisions
  - LI searchable index of U.S. Court of Appeals decisions
- via the LI Law about pages (Federal and state law by topic)

http://www.law.cornell.edu/

Start EA | springtraining2012.doc - ... | Microsoft Office Word Help | LI: Federal Law Colle... | Search Desktop | Internet | 100% | 9:39 PM

*RHODE ISLAND GOVERNMENT INTERNET RESOURCES*

RI Judiciary	<a href="http://www.courts.ri.gov">http://www.courts.ri.gov</a>	<ul style="list-style-type: none"> <li>• Search Supreme, Superior and Traffic Tribunal Appeals Decisions</li> <li>• RI Court Connect / Criminal Information</li> <li>• Law Library Databases and resources</li> </ul>
RI Secretary of State	<a href="http://sos.ri.gov">http://sos.ri.gov</a>	<ul style="list-style-type: none"> <li>• Rhode Island Rules and Regulations</li> <li>• State Library / Municipal Laws and Fire Districts</li> <li>• Probate Forms</li> </ul>
RI General Assembly	<a href="http://www.rilin.state.ri.us">http://www.rilin.state.ri.us</a>	<ul style="list-style-type: none"> <li>• Track introduced and passed legislation</li> <li>• RI General Laws</li> <li>• RI Public Laws</li> </ul>
RI State Agencies	<a href="http://www.info.ri.gov/browse.php?choice=show_az&amp;letter=C">http://www.info.ri.gov/browse.php?choice=show_az&amp;letter=C</a>	<ul style="list-style-type: none"> <li>• A-Z list of RI state departments, agencies and quasi government organizations</li> </ul>
RI Cities and Towns	<a href="http://www.courts.ri.gov/Courts/SupremeCourt/StateLawLibrary/Pages/CityAndTownOrdinances.aspx">http://www.courts.ri.gov/Courts/SupremeCourt/StateLawLibrary/Pages/CityAndTownOrdinances.aspx</a>	<ul style="list-style-type: none"> <li>• Links to city and town ordinances</li> </ul>
RI Public Information	<a href="http://www.publicrecordsources.com">www.publicrecordsources.com</a>	<ul style="list-style-type: none"> <li>• Drill down for state of choice</li> <li>• Marriage and divorce licenses</li> <li>• Criminal histories</li> <li>• Voter Registration Records</li> <li>• Tax Assessor Records for a number of cities and towns</li> </ul>

**The RI Judiciary Website**  
**Criminal Information Search**  
**Supreme Court Opinions and Superior Court Decisions**

The screenshot shows the Rhode Island Judiciary website. At the top, there is a navigation bar with the following links: COURTS, AMERICAN'S WITH DISABILITIES ACT, ATTORNEY RESOURCES, INTERPRETERS, PUBLIC RESOURCES, and a search box. Below this is a banner for the Rhode Island Judiciary with the seal and the motto "Justice | Independence | Honor".

On the left side, there is a section titled "A MESSAGE FROM THE CHIEF JUSTICE" featuring a portrait of the Chief Justice and a welcome message. Below this is the "MISSION" statement: "In our mission to administer justice while maintaining our independence, we are duty bound to act with unfailing honor to serve and protect the ideals of democracy for the citizens of this state."

In the center, there is a "Self-Help Center" with a grid of buttons:
 

- Court Rules - Public Comment
- Electronic Filing
- Attorney Portal
- Online Payments
- Electronic Filing Updates and Notices
- Access to Case Information
- How Do I?
- Jury Service

On the right side, there is a "Quick Links" section with various links such as Contact Information, Court Calendars, Court Holidays, and a "Follow CourtsRI on Twitter" button. Below that is a "OF CURRENT INTEREST" section with news items like "Bar Exam - July 2014 - Information Regarding Release of Results" and "District Court Veterans Program Gets \$754,000 Grant (October 27, 2014)".

**Electronic Filing**

**RI State Law Library**

**Electronic Databases**

**Link to Municipal Ordinances**

**RI General Assembly**

**RI Public Laws 1994 -**

**Bill Introduction and Bill Tracking**

**RI General Laws**

**List of Sections Affected**

▲ Joint Committee on Health Care Oversight



## State of Rhode Island General Assembly



[Home](#) / [Representatives](#) / [Senators](#) / [Member Contacts](#) / [Legislation](#) / [News](#) / [Legislative Offices](#) / [Special Reports](#)

[Advanced](#)

### Welcome to the Rhode Island General Assembly Web Site

This site has been designed to provide you with a toolbox of links to help you follow the legislative process. Link above to Legislative Information to view bill text, bill status, the general laws and our daily calendars. Numerous other links will provide you with tools necessary to navigate through our state government. For instance, link below to the comprehensive list of state government web sites to view hundreds of informative web sites.

As the leaders of the General Assembly, and through this web site, we are ready to work with you and hope your visit will find our government responsive and efficient. Please enjoy browsing through our site, and be sure to contact us with any questions you may have.

Thank you for visiting and please return often.

*Gordon D. Fox*

House Speaker

*M. Teresa Paiva Weed*

Senate President

Click [HERE](#) to link to Special Legislative Commission to Study Potential Economic Opportunities in the Development of Port Facilities in the State of Rhode Island.

Click [HERE](#) to link to Retirement Security Legislation website.

Please click [HERE](#) to view the Rhode Island Reapportionment & Redistricting Website.

- ▶ [2012 Senate Economic Summit](#)
- ▶ [Informational Briefing on Pensions](#)
- ▶ [Joint Task Force on the Education of Children and Youth in the Care of DCF](#)
- ▶ [2011 House Higher Education Commission](#)
- ▶ [2011 Proposed Substitute Bills](#)
- ▶ [Annual Reports](#)
- ▶ [House Fiscal Reports](#)
- ▶ [Senate Fiscal Reports](#)

#### Session Schedule 2012

March

Sun	Mon	Tue	Wed	Thu	Fri	Sat
27	28	29	30	1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31
1	2	3	4	5	6	7

The House meets 3:20 at 4:00 PM  
The Senate meets 3:21 at 4:00 PM

▶ [Link to Public Records Request](#)

▶ [Link to Capitol Television Schedule](#)



### State House Online Tour

Explore the Rhode Island State House with a pictorial tour.

▶ [Take the Tour](#)



**RHODE ISLAND JUDICIARY**

COURTS | AMERICANS WITH DISABILITIES ACT | ATTORNEY RESOURCES | INTERPRETERS | PUBLIC RESOURCES |

**State Law Library**

**Rhode Island City and Town Ordinances**




<a href="#">Electronic Databases</a>	<a href="#">Barrington</a>	<a href="#">Bristol</a>	<a href="#">Bumilville</a>	<a href="#">Central Falls</a>	<a href="#">Charlestown</a>
<a href="#">Frequently Asked Questions</a>	<a href="#">Coventry</a>	<a href="#">Cranston</a>	<a href="#">Cumberland</a>	<a href="#">East Greenwich</a>	<a href="#">East Providence</a>
<a href="#">Legal Links</a>	<a href="#">Exeter</a>	<a href="#">Foster</a>	<a href="#">Glocester</a>	<a href="#">Hopkinton</a>	<a href="#">Jamestown</a>
<a href="#">Public Access Westlaw</a>	<a href="#">Johnston</a>	<a href="#">Lincoln</a>	<a href="#">Little Compton</a>	<a href="#">Middletown</a>	<a href="#">Narragansett</a>
<a href="#">Rhode Island City and Town Ordinances</a>	<a href="#">New Shoreham</a>	<a href="#">Newport</a>	<a href="#">North Kingstown</a>	<a href="#">North Providence</a>	<a href="#">North Smithfield</a>
<a href="#">Rhode Island General Laws</a>	<a href="#">Pawtucket</a>	<a href="#">Portsmouth</a>	<a href="#">Providence</a>	<a href="#">Richmond</a>	<a href="#">Scituate</a>
<a href="#">Search the Catalog</a>	<a href="#">Smithfield</a>	<a href="#">South Kingstown</a>	<a href="#">Tiverton</a>	<a href="#">Warren</a>	<a href="#">Warwick</a>
	<a href="#">West Greenwich</a>	<a href="#">West Warwick</a>	<a href="#">Westerly</a>	<a href="#">Woonsocket</a>	

Internet 100%

**Link to RI City and Town Ordinances at the  
RI State Law Library website**

**PROPRIETARY DATABASES AVAILABLE AT THE  
RHODE ISLAND STATE LAW LIBRARY**

	<p>BNA libraries include <b>Criminal Law Reporter</b></p> <p><b>Password restricted.</b> Request sign on at library desk</p>
	<p>Library catalog shared with other research institutions on the state, including Brown, URI, Providence College and Bryant</p> <p>Check holdings at any member institution and request materials needed</p>
	<p>Award winning database that provides a vast collection of historical and current legal periodicals, many of which are not available on Westlaw or Lexis. Recently expanded to include links to caselaw powered by Fastcase.</p>
<p style="text-align: center;"><b>LAWYERS' WEEKLY</b></p>	<p>Provides up-to-the-minute coverage of court decisions, legislation, litigation trends and practice management</p> <p>Includes: <i>Rhode Island Lawyers Weekly</i> <i>Massachusetts Lawyers Weekly</i> <b>Password restricted.</b></p>

	<p>Search the Lexis database of cases, statutes, law reviews, ALR and Am Jur 2<sup>nd</sup>. Shepardize a case or statute to determine its current status.</p> <p>Available in the main library, as well as the Garrahy Newport, Washington and Kent County Libraries.</p>
	<p>Growing collection of legal and law related literature. Will include LLMC's filmed collection of over 90,000 volumes. .</p> <p>Presently limited to U.S. Federal Documents, including legislative, executive and judicial information</p>
	<p>Massachusetts Continuing Legal Education Materials</p> <p>Includes continuing legal education materials from Massachusetts, Rhode Island and other New England states</p>
<p>NOLO</p>	<p>Law for the layman</p> <p>Large variety of legal topics, including bankruptcy, family law, employment topics and many others</p> <p>Large selection of forms and survey of state laws</p> <p>Small business and Legal Library</p>

<p><b><i>RIA Checkpoint</i></b></p>	<p>Comprehensive federal, state and international tax database for tax professionals and accountants.</p> <p>Includes primary source material, editorial materials and news alerts</p>
<p><b><i>Shepard's</i></b><sup>®</sup></p>	<p><b>Shepardize</b> on Lexis to determine the current status of a case, statute or other legal authority.</p>
<p><b>Westlaw.</b></p> <p>Public Access</p>	<p>Westlaw the leading online research service</p> <ul style="list-style-type: none"> <li>• Provides the broadest collection of legal resources, news, business, and public records information.</li> <li>• Search full text of cases, statutes, law review, use West's headnotes, Am Jur 2<sup>nd</sup> and ALR</li> <li>• Include Jury Verdicts, Jury Instructions, forms and specialty libraries.</li> <li>• Keycite annotation service also available</li> </ul> <p>Available in the main library only.</p>

These proprietary databases are all available free of charge at the library to all our users. Some are accessed via IP Address, that is, they can be accessed anywhere within the court network. Some of the databases require a password and can be signed on by any of the library employees. These databases are available from any of the 10 computers in the main library as well as the county libraries. They are listed on our Electronic Resource Menu which is on the desktop of all library computers. If the computers have gone into sleep mode and ask for a sign-on, the library access code (Library 1, Research 3 which is printed on the top of each monitor) should bring up the active desktop.

## **LEXIS AND WESTLAW**

Dubbed the top tier triumvirate of legal online research, LexisNexis, Westlaw and Bloomberg Law are the Cadillac's of the industry. The library subscribes to both Lexis and Westlaw. It is difficult

to say that one service is superior to the other as everyone has their individual preferences. I find Westlaw Classic the most intuitive, easiest to use, most flexible and repeatedly retrieves accurate hits.

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With one simple search, Westlaw's [Expert Center](#) assembles information from the world's largest online and unbiased collection of expert profiles, court-filed resumes, proprietary challenge reports, Daubert Tracker reports, testimonial documents, affidavits, cases, and jury verdicts providing immediate access to the information you need in order to find and thoroughly investigate an expert.

**Significant enhancements to the West Key Number System.** West attorney-editors have reclassified over 250,000 headnotes in the completely revised Key Number System Topic LANDLORD AND TENANT (Topic 233), FORFEITURES (Topic 180), and GAMING AND LOTTERIES (Topic 188).

**NEW:** For in-depth analysis on the same-sex marriage decisions and their anticipated impact, read "Supreme Court Splits on Same-Sex Marriage - Striking DOMA, Shelving Prop. 8" by West author, Professor William W. Bassett. [2013 WL 3244866](#).

**Did you know?** American Arbitration Association Labor and Employment Arbitration Awards are available on Westlaw: [AAA-ARBAWARD](#).

**Check out these new documents:** Indiana State Police Officer acquitted of family murders following three trials sues for damages alleging frame job: [2014 WL 5430341](#), Facebook and Ferrari sued for transfer of private fan pages to automaker: [2014 WL 5292940](#), MJJ Productions, Sony and Timbaland sued for copyright infringement upon posthumous release of Michael Jackson album: [2014 WL 4916007](#), Bose sues Beats over headphone noise-cancellation patents: [2014 WL 3686860](#), Hershey takes on pot companies over copycat candy names in Washington and Colorado district courts: [2014 WL 2538832](#) and [2014 WL 2538834](#), New Balance hits designer Karl Lagerfeld with trademark suit accusing him of selling a shoe whose design it said was confusingly similar to its own: [2014 WL 2480368](#), Skadden Arps Study: Federal Courts not likely to review class action certifications: [2014 WL 1462682](#), Casino accuses World-Famous poker player of cheating them out of \$10 Million: [2014 WL 1481144](#).

[View Westlaw Directory](#)  
[Find a Database Wizard](#)  
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- For technical assistance, send an e-mail message to [west.support@thomson.com](mailto:west.support@thomson.com), or call 1-800-WESTLAW (1-800-937-8529).
- For search assistance, send an e-mail message to the [Reference Attorneys](#), or call 1-800-REF-ATTY (1-800-733-2889).
- For telephone training on using Westlaw Classic, send an e-mail message to the [Telephone Training Representatives](#) to schedule a training session, or call 1-800-328-0109.
- For schedules of free classroom training available from legally trained professionals at our Information Centers in most major cities, access <http://legalsolutions.thomsonreuters.com/law-products/product-support/training/>.

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# WestlawNext™

powered by WestSearch™

Search input field with dropdown menu set to "Rhode Island" and a "SEARCH" button with "advanced" text below it.

## Browse

All Content Federal Materials State Materials Practice Areas Tools

- Cases
- Key Numbers
- Trial Court Orders
- Statutes & Court Rules
- Regulations
- Administrative Decisions & Guidance
- Secondary Sources
- Forms
- Briefs
- Trial Court Documents
- Expert Materials
- Jury Verdicts & Settlements
- Proposed & Enacted Legislation
- Proposed & Adopted Regulations
- Arbitration Materials
- Practical Law
- Public Records
- Dockets
- News
- Business Law Center
- Company Investigator
- Sample Agreements
- Legislative History
- Trial Transcripts & Oral Arguments
- Intellectual Property
- International Materials
- Directories

## Colleen's Research (0)

**PRACTICAL LAW**  
Thousands of practical, up-to-date resources across major practice areas.  
[VIEW PRACTICAL LAW >](#)

## Favorites

## Custom Pages

## News and Insight from REUTERS



### Week Ahead in Bankruptcy: Nov. 10, 2014

REUTERS LEGAL | Monday, November 10, 2014

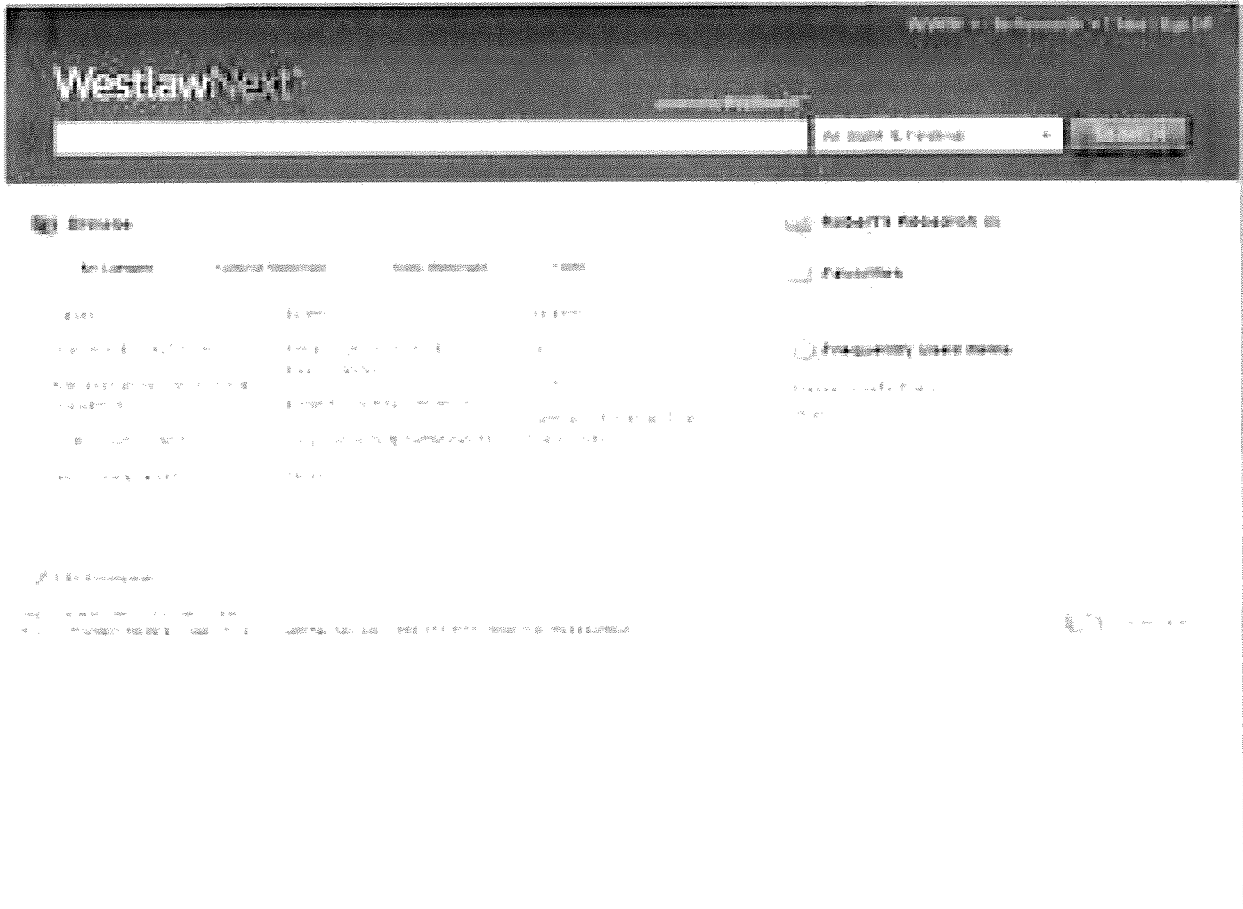
A New York bankruptcy judge will hear debate over the contentious planned auction of Hukster Inc. a bankrupt online retail project backed by Cameron and Tyler Winklevoss. Children's apparel...

# LEXIS

Lexis Advance and Shepard's are available in the main library as well as in all the county libraries. There are coin operated printers in each library. The new platforms allow for downloading to a thumb drive and/or e-mailing of materials.

Like WestlawNext, Lexis Advance also gives you numerous options for searching. Both Shepard's and KeyCite offer the ability to restrict and focus your results through using filters. One note of caution is that the LexisNexis headnotes and West's Key Numbers are not the same. Also, be aware that many of the secondary sources noted, but owned by West, will not be retrievable from Shepard's.

The screenshot displays the LexisNexis Total Research System search interface. At the top, there is a navigation bar with links for Search, Research Tasks, Get a Document, Shepard's®, Alerts, Transactional Advisor, and Counsel Selector. Below this is a search bar with a 'Quick Search' tab and a 'Recently Used Sources' tab. The search bar includes a text input field for 'Enter Search Terms' and a 'Next Step' button. Below the search bar, there are dropdown menus for 'Jurisdiction' (set to Rhode Island) and 'Practice Area' (set to Multiple: Commercial Law (UCC), Communica...). There are also checkboxes for 'Source Categories' including Treatises & Analytical Materials, Briefs, Motions, Pleadings & Verdicts, Cases, Forms, Jury Instructions, Statutes & Regulations, Law Reviews & Journals, News & Business, and Agency Materials. Below the search bar, there is a section for 'Option 2 - Look for a Source' with a 'Find A Source' button and a list of tabs for Legal, Public Records, Mass, Rhode Island, California, and Bankruptcy. At the bottom, there is a section for 'Option 1: Type in keyword, list, or phrase (e.g., law review or genfed;courts)' with a 'Find' button and a section for 'Option 2: Browse Alphabetically' with a list of letters from A to Z.



Both Lexis and Westlaw have introduced new platforms which they promise will “transform the way to do legal research.” Westlaw Next and Lexis Advance represent a move to the intelligent web as they improve and “Googlize” their search mechanisms. Database ID’s have disappeared. Relevant results are multi media and can be refined and limited. The Law Library subscribes to Westlaw Next and Lexis Advance.



## HEIN – ONLINE

An award winning database, Hein Online provides a vast collection of historical and current legal periodicals, many of which are not available on either Westlaw or Lexis as their digital periodical libraries date back only to the 1980's.

Hein digitized legal periodical retrospectively rather than just prospectively and provided content that went back to volume 1 of periodicals such as the Harvard Law Review, Columbia Law Review and hundreds of others. In addition, they provided these periodicals in PDF format, that is, original page –image format ensuring the authenticity of the original hardcopy document in an online environment.

Included in the libraries core subscription to HeinOnline are collections to

- Legal Classics,
- Law Journal Library, includes Bar Journals and 100's of law reviews
- U.S. Supreme Court Library,
- U.S. Federal Legislative History Library
- Federal Administrative Library including CFR and FR back to its inception
- Treaties and Agreements Library
- U.S. Congressional Documents,
- Foreign & International Law Resources Databases including English Reports
- World Trials, Session Laws



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Enter Publication Title to Lookup

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- Cataloging Resources
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Do you have access to Rolle's, Viner's, or Fitzherbert's Abridgments? You can with the

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The screenshot shows the HeinOnline website interface. At the top, there is a navigation menu with links for CONTENT, SUBSCRIPTIONS, SERVICES, LIBRARIAN'S CORNER, ABOUT, CONTACT, SUPPORT, BLOG, and LOGIN. A search bar is located in the top right corner. Below the navigation menu, a banner for 'HELP.HEINONLINE.ORG' is displayed, featuring the text 'Your one stop shop for HeinOnline support, training guides, FAQs, and much more.' and a 'GO NOW' button. To the right of the banner is an image of a laptop displaying the website. Below the banner, there are social media icons for Twitter and Facebook, and a 'Tweets' section showing a tweet from HeinOnline: 'Looking for help using HeinOnline? We have multiple resources available on our blog.'

# COLUMBIA LAW REVIEW..

Vol. III

JANUARY, 1903

No. 1

## MUTUALITY IN SPECIFIC PERFORMANCE.<sup>1</sup>

The doctrine of mutuality is stated as follows in Lord Justice Fry's Treatise on Specific Performance:<sup>2</sup>

"A contract to be specifically enforced by the Court must, as a general rule, be mutual,—that is to say, such that it might, at the time it was entered into, have been enforced by either of the parties against the other of them. Whenever, therefore, whether from personal incapacity to contract, or the nature of the contract, or any other cause, the contract is incapable of being enforced against one party, that party is equally incapable of enforcing it against the other, though its execution in the latter way might in itself be free from the difficulty attending its execution in the former."

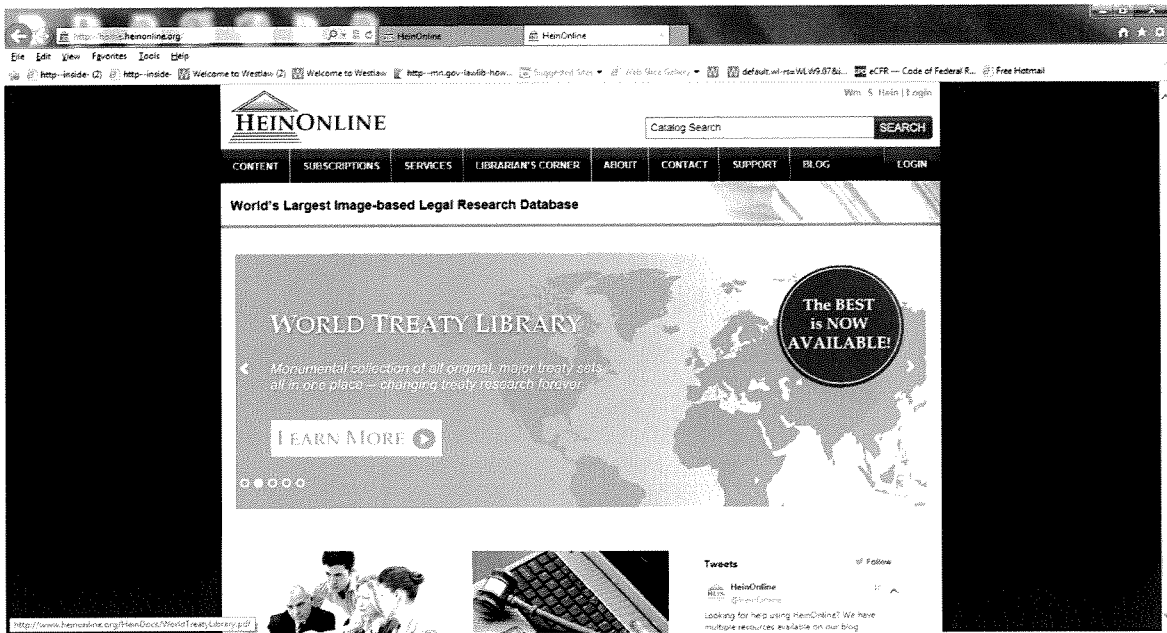
And yet the truth of the following eight propositions, each one of which is at variance with the statement just quoted, will be generally admitted:

(1) A bilateral contract between a fiduciary and his principal is often enforced in favor of the principal, although not enforceable against him.

(2) A similar contract procured by the fraud or misrepresentation of one of the parties may be enforced against him, although not by him.

<sup>1</sup> The historical development of the doctrine of mutuality is worked out with much ability by Professor Lewis in a series of essays in the *American Law Register*, 49 A. L. R., 270, 382, 445, 507, 559 and 50 A. L. R., 65, 251, 329, 523. The learned reader will find in these articles an exhaustive citation of authorities and much valuable discussion of particular cases.

<sup>2</sup> Fry, *Sp. Perf.* (3d ed.) 215. See a similar statement in Pomeroy, *Sp. Perf.* (2d ed.) 229.

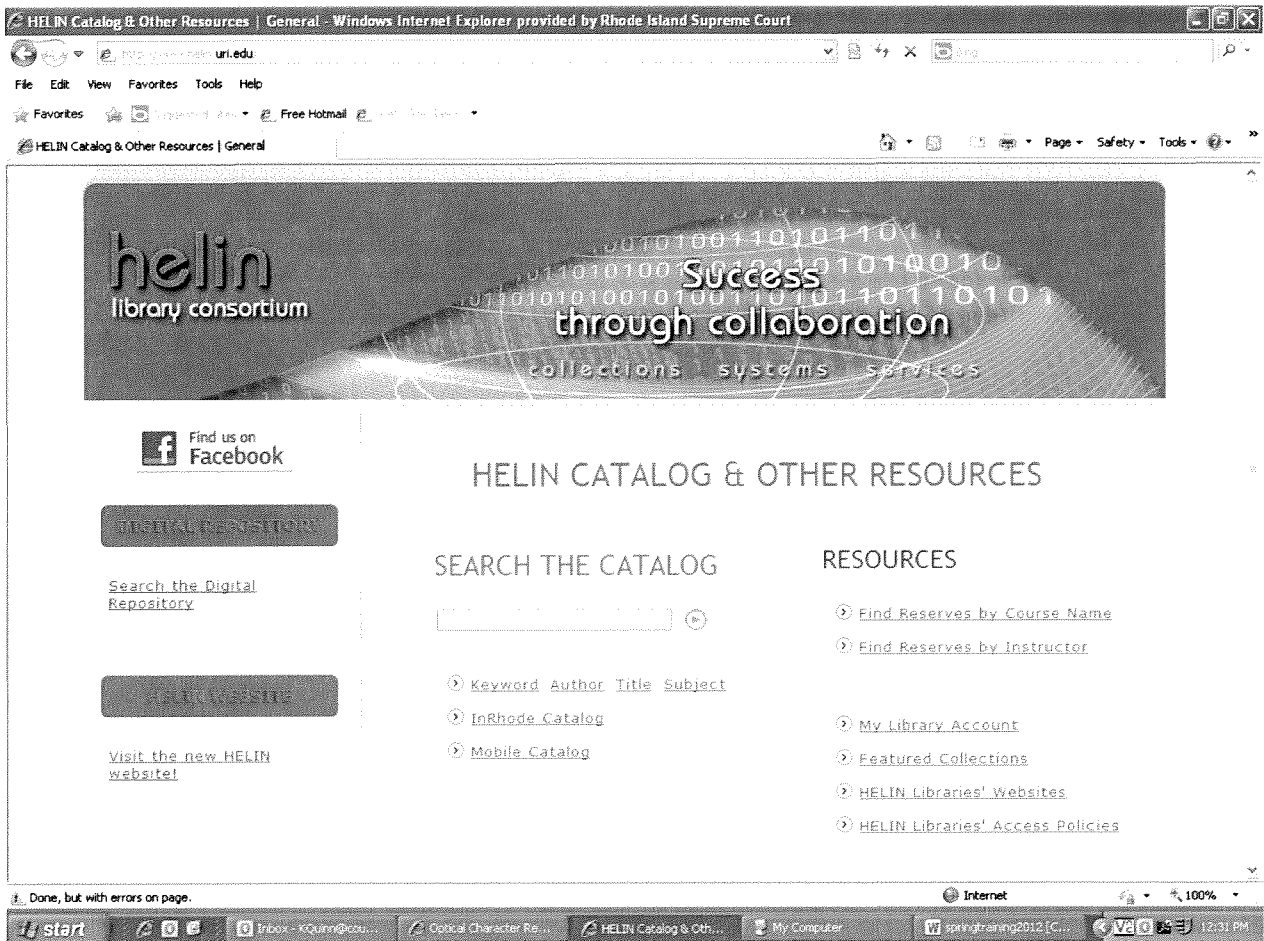


## HELIN CATALOG

The HELIN Library Consortium is composed of eight academic libraries, including Roger Williams University, PC, Salve Regina, CCRI and J&W as well as 12 hospital libraries throughout Rhode Island. The State Law Library is also a member.

Consortia allow libraries to band together and share each other's collections, to borrow from each other and to provide wider access to material for their users. This is basically what HELIN allows us to do.

Users not only have access to our materials, but those at these other research institutions. By clicking the REQUEST button, you can ask that an item we do not own be sent via the statewide delivery system and be picked up at our library. If you live in Newport and would rather pick it up at Salve, you can do that, too.



The library received a grant in 2012 to digitize some of their unique and valuable documents. In collaboration with the State Library, many of the state's historical and rare materials are now available on the internet through the Digital Repository at HELIN. A library on the John Gordon trial, the last Rhode Islander executed for murder, is included as well as the Indices to the Public Laws of RI (1758-1899)

## MASSACHUSETTS CONTINUING LEGAL EDUCATION

Massachusetts CLE provides research materials for a number of jurisdictions. They now include titles from other New England states, including Rhode Island. Topics covered for RI include probate, discovery, family law and construction law, real estate, and evidence.

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 Emerging Issues in Cyberlaw, Wiretapping Issues  
 From the *Handling Criminal Law Issues that Arise in Family Law Cases*,  
 November 13, 2013

As you can see from this brief overview, legal research need not be expensive and there is a vast array of materials at your fingertips. Use your law library and your professional law librarians to help you through the legal research maze.

**Bridge the Gap**

Make the most of library resources

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**Library Resources**

- Available in print/digital formats at the Rhode Island State Law Library



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**Google™**

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## The Law Library – Gateway to Justice



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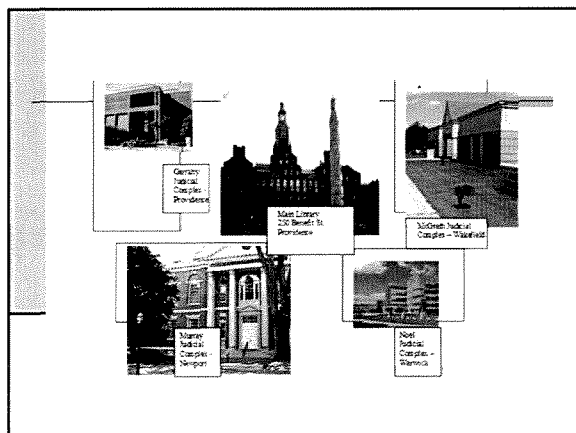
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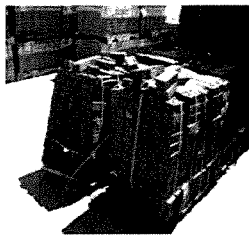
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## Library not just bricks and mortar



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### Library - a virtual resource

- Information riches in a multitude of medias
- Retrieval / Delivery of this information using a variety of devices
- Always available -- Professional and informed personnel



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### Law Library provides.....

- Professional Reference Service
- Delivery in a choice of formats -- both print and electronic, e-book and smartphone/ tablet
- Pathways to free websites that are superior in design as well as authoritative and innovative
- Print Materials that are analytical, comprehensive and current
- The best in legal proprietary databases

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### Value of Law Librarians - We take pride in our service!

- Information Evaluators
- Information Managers and Organizers
- Expert Researchers
- Teachers and Trainers

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### Print Materials - RI Specific

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- General and Public Laws dating back to 1700's
- Lower court rescripts and decisions
- Continuing Legal Materials -- often provide invaluable practical advice, forms and annotations
- Jury Instructions
- Supreme Court Briefs

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### General Print Materials

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- Legal Encyclopedias
- Complete Am Jur Library, including Trials, POF, Forms and more
- Treatises, treatises and more treatises
  - Benders Forms of Discovery
  - Moore's Federal Practice
  - Miller's Insurance Policies Annotated
  - Collier on Bankruptcy

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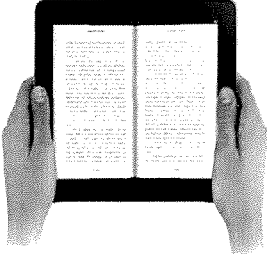
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### E-BOOKS

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### E-Books -- A personal library in the palm of your hand

- The jury is still out if this is the "future" for legal research and legal publishing
- Some of the publishers, such as Lexis and WL, have growing libraries.
- "Self publishing" entrepreneurial ventures growing
- Guardedly optimistic about the future of eBooks in law firms. The proverbial "devil is in the details" and as of today many of those details remain unresolved.

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### What are those details???

- Distribution
- Licensing
- Pricing schemes



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### Mobile Apps -- some popular ones include.....

- ABA Journal
- American Lawyer
- Legal Edge
  
- Black's Law Dictionary
- NOLO'S Plain English Dictionary / alternative free application
  
- *Case Law Research and Court Rules*
  - FASTCASE
  - CaseMaker
  - Lexis Advance
  - Lawguide
  - LawBox

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## 2014 ABA LEGAL TECHNOLOGY SURVEY REPORT

the most popular legal app is FASTCASE (37%)  
LexisAdvance 14%  
WestlawNext 34%

the most popular business app is LinkedIn  
2014 ABA Survey Drop Box 65%, LinkedIn 68%  
91% attorneys use smartphones, 69% use Apple  
25% Android

### others named

ABA Journal, LawStack, American Bar Association, Federal Rules of Civil Procedure, Legal Dictionary

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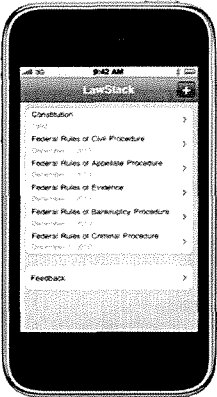
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**LawStack**

A legal library in your pocket. LawStack comes preloaded with the following:

- US Constitution
- Federal Rules of Federal Civil Procedure
- Federal Rules of Appellate Procedure
- Federal Rules of Evidence
- Federal Rules of Bankruptcy Procedure
- Federal Rules of Criminal Procedure

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**iTunes Reviews**

- "Simple, helpful, and reliable. All other app creators should take a lesson from these guys."
- "Very professional approach."
- "This is by far the best app I have. Avid user here!"
- "Thanks!"

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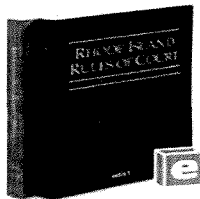
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## RI Rules of Civil Procedure



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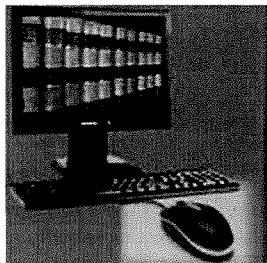
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### Databases at the RI State Law Library

- BNA's Criminal Law Rep
- MA. Cont. Legal Education Online
- HeinOnline
- RIA Checkpoint
- Lexis Advance / Shepard's
- Westlaw/Keycite



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### PREMIER DATABASES

Shepard's® Westlaw.



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### Available at all RI Law Libraries



WestlawNext™

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### Westlaw Public Access Databases

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Rhode Island Appellate Court Briefs  
WestlawPRO (all states and federal primary material)  
Regs Plus  
American Law Reports (ALR)  
Am Jur Library including forms, POF, Trials and COA  
Corpus Juris Secundum (CJS)

Federal Analytical Library  
Federal Practice and Procedure  
Restatements of the Law and Principles of the Law  
Major Litigation Treatises and Legal Forms  
Major Secondary Publications  
Journals and Law Reviews

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### Westlaw / Public Access Databases...continued

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National Jury Instructions  
Jury Verdicts  
Personal Injury Damages Analytical Library  
Personal Injury Damages Library  
WestlawPRO Tax Library

Municipal law Practitioner Core (includes McQuillin on Municipal Corps)  
Fletcher Cyclopaedia of Corporations with Forms

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WESTLAW COURT DOCS FORMS/ORDS PEOPLE SHOP EXPERT CENTER COURT CASE

Navigation: Home | Westlaw | Federal | State Government | Research/Reports | Annotations with Analytics | Rhode Island | My Tab | My Tab

Case No. 1104190096

**JVS No. 1104190096**  
CASE - DISTRICT: TOWN OF NORTH PROVIDENCE  
DATE OF FILING: August 13, 2005 DATE OF TRIAL: January 23, 2009

2009 WL 823191 (RI Super ), JVS No. 1104190096

Copyright (c) 2012 Thomson Reuters/West  
Superior Court of Rhode Island, Providence County  
CASE V. DISTRICT: TOWN OF NORTH PROVIDENCE  
PC-2005-3781  
DATE OF FILING: August 13, 2005  
DATE OF TRIAL: January 23, 2009

TOPIC:  
LIABILITY:  
General: Premises  
Specific: Fed. Public Property

SUMMARY:  
Outcome: Plaintiff verdict  
Total Verdict: \$40,000  
HGM AMOUNT: \$0  
LOW AMOUNT: \$0

EXPERT WITNESSES:

ATTORNEY:  
Plaintiff: BUDAGIAN, JAMES Providence, RI  
Defendant: BUDAGIAN, JAMES Providence, RI

LOC: Daniel A. Pappalardo  
RANGE AMOUNT: \$1 - \$9,999

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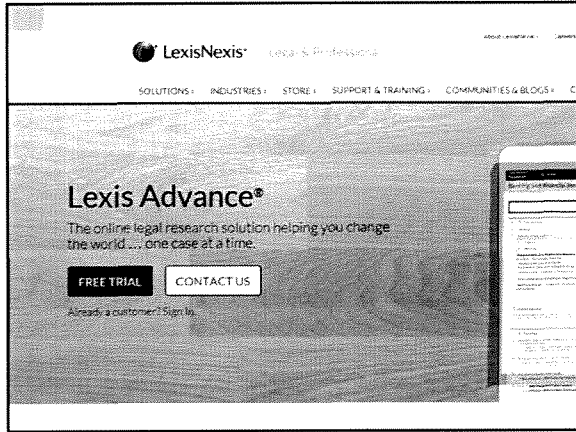
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## HEIN-ONLINE

- The world's largest image based legal research database
- Award Winning
- Named as one of the top 100 companies that matter most in the digital industry

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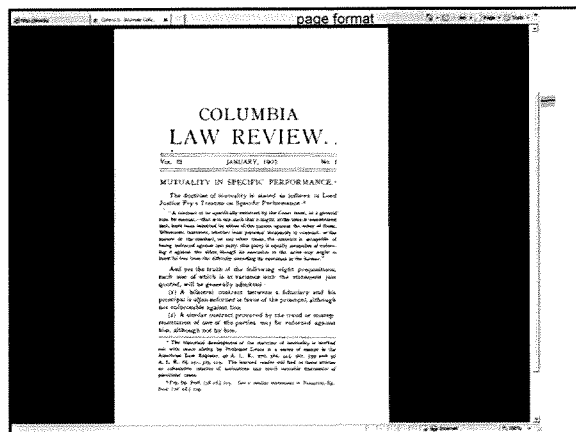
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PRINT BOOK

**A Practical Guide to Divorce in Rhode Island**

A respected divorce practice aid for Rhode Island lawyers

Product Number: 228049800  
Publication Date: 5/22/2012  
Edition: 1st Edition 2008 - with 2012 Supplement  
Copyright: © 2008 MCLE, Inc.  
Update service: Supplemental updates  
Format: Print Book Add to Cart Add to Favorites

Book: [View table of contents](#)

**Features...**

- Twenty-four focused chapters, covering a spectrum of divorce topics
- Edited and authored by Rhode Island's most experienced practitioners
- Full of commentary—straight from the court
- Hundreds of case citations primary law authorities

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<p>LIBRARY 1517 TOWNE DR, SUITE 300, WYOMING, WY 83001 406.338.1120 www.helin.org</p>	<p><b>FINA</b> FINA (Financial Law Reports) Financial journals. Focuses on all areas of finance. 1730.000.000</p> <p><b>NOLO</b> Nolo's "Practical" legal guides provide step-by-step instructions on how to solve common legal problems. 1730.000.000</p> <p><b>CCP</b> CCP (Commonwealth Court Practice) 1730.000.000</p> <p><b>LOU</b> LOU (Louisiana Law Reports) 1730.000.000</p> <p><b>LOI</b> LOI (Louisiana Insurance Law Reports) 1730.000.000</p>	<p><b>helin</b> Library Consortium 1730.000.000</p> <p><b>LexisNexis</b> LexisNexis 1730.000.000</p> <p><b>Westlaw</b> Westlaw 1730.000.000</p> <p><b>LibLaw</b> LibLaw 1730.000.000</p> <p><b>ABA</b> ABA 1730.000.000</p>
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## HELIN CATALOG

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through collaboration  
collections system

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Search the Catalog

View the Helin Website

HELIN CATALOG & OTHER RESOURCES

SEARCH THE CATALOG

- Advanced Search
- Database Catalog
- Media Catalog

RESOURCES

- Open Access by Source Data
- Open Access by Database
- Malibu Access
- Lawrence University
- Helin Library Website
- Helin Library Website

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Search: limited liability helin ONLINE

Advanced Keyword Search

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Results 1 - 25 of 116 for limited liability

Sorted by Relevance Title Date

**Search Found In:**  
File Type: BOOKS  
Location: All State Law Courts  
Format: All  
Collection: All

**1** Drafting limited liability company operating agreements... [Book] [1730]

**2** Limited liability entities and partnerships: principles and forms... [Book] [1731]

**3** Limited liability company: small business start-up kit... [Book] [1732]

**4** Kick in the Buckle: Eviction Insurance Co., Limited Department Stores, Inc. and the State of Limited Liability the Limited Liability Partnerships in Texas... [Article]

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Web 2.0 -- It's all about  
Communication and Collaboration



Web 2.0

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Web 2.0 Tools

- RSS Feeds
- Blogs and Blawgs
- Wikis
- Podcasts
- Facebook
- Utube
- Twitter

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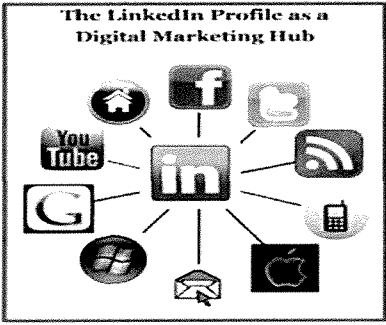
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The LinkedIn Profile as a  
Digital Marketing Hub



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### Evaluation of Internet Resources

- If using free internet sites and even proprietary sites, always remember to check for
  - Authority
  - Accuracy
  - Objectivity
  - Currency
  - Ease of Use

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### Use the Best Search Strategy

- Know your Terms and Connectors
- Think "Boolean"
  - And will narrow your search
  - Or will widen your search
- Remember – Free sites contain no editorial enhancements
  - Statute of Limitation / Limitation of action
  - Lemon Law / Consumer Warranty

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### Algorithms / the secret to good searching



- An effective, well thought out search will make the best cases rise to the top

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**FREE LEGAL WEB SITES**

- FINDLAW
- GOOGLE
- Cornell Law School / Legal Information Institute LII

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The screenshot shows the FindLaw website interface. It features a search bar at the top with the text "Search for a Case". Below the search bar are several navigation and resource links, including "Find an Expert", "Browse Research Materials", "New Headlines", "Browse Free Links", "Latest Blog Posts", and "FindLaw Career Center". The page is organized into columns with various legal topics and search filters.

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The screenshot shows the Rhode Island Legislative Services website. It displays sections for "Primary Materials", "Legislature", "Federal Court Opinions", "State Court Opinions", and "Ordinances". There are links to various legal resources, including the Rhode Island Constitution, State Legislation, and court opinions from the Rhode Island Supreme Court. A "Search Jobs" button is visible in the bottom right corner.

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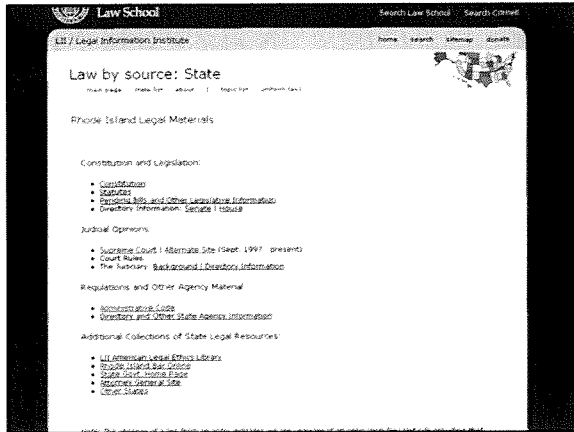
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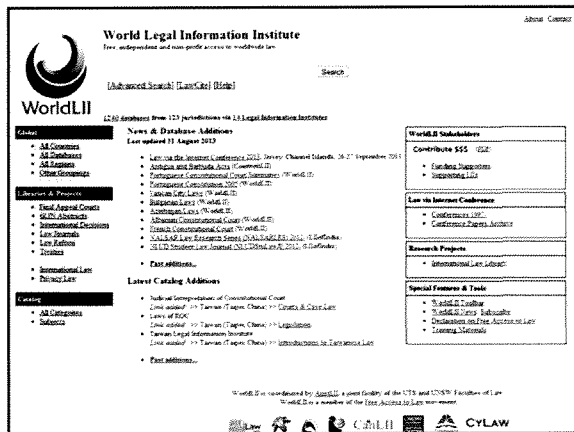
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## Google / more than just searching

- Google Images
- Google Alert
- Google Scholar
- Google Reader
- Google Dashboard
- Google Groups
- Google Docs
- Gmail
- Google Glass

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Blog Search  
Find blogs on your favorite topics

Finance Search  
Search the full text of US Patents

Finance  
Business info, news and interactive charts

Alerts  
Get email updates on the topics of your choice

**Office**

Drive  
Create, share and keep all your stuff in one place

Getmail  
Fast, searchable email with less spam

Translate  
Instantly translate text, web pages, and files between over 100 languages

Google Wallet  
Make your phone your wallet

Google+  
Join the amazing network for the web

Hangouts  
Create meeting chats and discussion groups

Circle  
Meet new people and stay in touch with friends

Custom Search  
Create a customized search experience for your community

Google Shopping  
Search for stuff to buy

Scholar  
Search scholarly papers

Trends  
Explore past and present search trends

Calendar  
Organize your schedule and share events with friends

Sites  
Create websites and create group websites

Voice  
One number for all your phones, work, personal and cheap calling

Google Cloud Print  
Print anywhere from any device

Blogger  
Share your life online with a blog. It's quick, easy and free

Hangouts  
Communicate that come code. Anytime, anywhere, on the

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Google  
scholar

Articles | include patents | Legal documents

Federal courts | Rhode Island courts | Select courts

Stand on the shoulders of giants

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## CASEMAKER

- Coverage added all the time
- Can rank results by date or relevancy
- Caseknowledge links to articles
- (ABA / ALI-ABA) materials relevant to your search
- CASEcheck / citator service

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The screenshot shows the FormsGuru.com website. At the top, there is a search bar with the text "Search Legal Forms" and a "Home" button. Below the search bar, there is a section titled "Large Collection of Free Forms" with a brief description. A navigation menu includes "All Legal Forms", "Business Letters", "Personal Letters", and "Category Info". The main content area is titled "Top 50 Forms" and lists various legal forms such as "Accident Claims Release", "Affidavit of Sale", "Assignment Form", "Assignment of Debt of Trust", "Assignment of Lease Form", "Bill of Sale", "Blank Notarization Form", "Contract Agreement", "Contract for Sale of Goods", "Employment Agreement Form", "General Release", "Letter of Release of Attorney", "Lease Renewal Agreement", "Medical Release", "Notice of Attorney", "Power of Attorney", "Power of Attorney - Court of Superior Court Powers", "Power of Attorney - State of Superior Court Powers", "Power of Attorney - Trustee & Beneficiary", "Power of Attorney - Health Care", "Power of Attorney - Special Terms", "Promissory Note", "Promissory Note - Simple", "Promissory Note - Installment", "Proposed Joint Ownership", "Proxy Form", "Quitclaim Deed", "Release Form - General", "Release Form - Other", "Release of Driver", "Release of Liability", and "Release of Claim".

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## Rhode Island Web Sites

- Judiciary [www.courts.ri.gov](http://www.courts.ri.gov)  
 General Assembly [www.rilin.state.ri.us](http://www.rilin.state.ri.us)  
 Secretary of State [www.sos.ri.gov](http://www.sos.ri.gov)  
 Municipal Ordinances [www.courts.ri.gov](http://www.courts.ri.gov)

A-Z list of state agencies [www.ri.gov/guide/](http://www.ri.gov/guide/)

RI Public Information  
[www.publicrecordsources.com](http://www.publicrecordsources.com)

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## SECTION EIGHT

Some Very Useful Resources  
For the Stressed-Out Lawyer

Work-Life Balance:  
Why It Is Important for You  
Gary L. Bakkel

WHAT IS IT?

**Work-Life Balance.** Meaningful, daily achievement and enjoyment in each of the four life quadrants: work, family, friends and self.<sup>2</sup>

WHAT'S THE PROBLEM?

Everyone seems to recognize that when your work life and your personal life are out of balance, bad things happen. The significance of the issue may be indicated by the fact that Wikipedia, the free on-line encyclopedia, has a full article on work-life balance and the detrimental effects for those of us that don't get it right.<sup>3</sup> Even the Mayo Clinic has an article on its website that offers suggestions for getting the work-life balance right.<sup>4</sup> Interestingly, the Mayo Clinic also has a webpage "Learn How to Say No"<sup>5</sup> and "Time Management: Tips to reduce stress and improve productivity".<sup>6</sup>

So, why all the concern? If we choose to work hard at the expense of our personal life, so what? All the experts link an unbalanced work-life emphasis to increased stress. And increased stress is directly linked to poor health and general unhappiness.

Work-life balance is most often described in the negative, i.e. the absence of a healthy balance. The Wikipedia article states that the term was first used in 1986 to help explain the unhealthy life choices that many people were making. The article explains that more and more people were choosing work related chores and goals and neglecting other important area of their lives such as family, friends, and hobbies. It quotes a book by, Madeleine Bunting, *Willing Slaves - How the Overwork Culture is Ruling our Lives*, in support of the fact that in the 20 years from 1977 to 1997 American workers increased their average working hours from 43.6 hours to 47.1 hours per week, not including commuting time. Americans are experiencing burnout due to overwork and increased stress in nearly all occupations from blue collar workers to upper management. The statistics that we will get to in a minute show that lawyers are not immune. In fact, we are suffering most.

<sup>1</sup> Gary Bakke is a 95% retired lawyer and one of the founders of Bakke Norman, S.C. He now operates a law office management website: [www.bakkeconsulting.com](http://www.bakkeconsulting.com) and is a consultant to Lorman Education Services, an international provider of adult continuing education, including CLE. He has chaired both the family law section and the office management section of the State Bar and served as State Bar President in 2000-2001.

<sup>2</sup> <http://www.worklifebalance.com/worklifebalancedefined.html>

3 [http://en.wikipedia.org/wiki/Work-life\\_balance](http://en.wikipedia.org/wiki/Work-life_balance)

4 <http://www.mayoclinic.com/health/work-life-balance/WL00056>

5 <http://www.mayoclinic.com/health/stress-relief/SR00039>

6 <http://www.mayoclinic.com/health/time-management/WL00048>

# The stress-free law practice

By Jim Calloway

Many of you saw the headline of this column and thought one of two things: "That is absolutely impossible" or "Yes, I want that."

I am fairly certain that a completely stress-free law practice is not possible, any more than stress-free life is possible. But certainly there are practice areas for lawyers that lead to more stress than others.

And not all stress is bad for you. Good trial lawyers get excited and amped up for a big trial just like athletes do for a big game. The "fight or flight" adrenaline rush was critical for our ancestors to survive and still comes in handy today.

But chronic stress is a chronic problem for many lawyers. It seems to be inherent in the practice of law.

We set up shops that invite people to bring in their problems — and not the easy or simple ones. We take on their worst problems, often dealing with their most important and emotional issues: freedom, health, financial security or family relationships. A typical client is often unhappy about having the problem and likewise unhappy about having to pay a lawyer to take care of the problem.

Lawyers are trained to focus on logic and set aside emotion — good for dispassionate examination of a challenging problem, but probably not the best method for dealing with personal stress.

The results of such chronic stress are as tragic as they are predictable. Death by suicide among lawyers is six times the suicide rate of the general population, making it the third-leading cause of death among attorneys after cancer and cardiac conditions.

A quality-of-life survey conducted by the North Carolina Bar Association reported that almost 26 percent of the bar's members exhibited symptoms of clinical depression. A Johns Hopkins University study found that among over 100 occupations studied, lawyers were three times more likely to suffer from clinical depression than any other profession.

Alcohol and drug dependency rates among lawyers are around double the rate of the general population.

Just reading the data is depressing. But it also rings true with our anecdotal experiences. Most lawyers who have been in practice for a length of time have known an at-

torney lost to suicide. Most attorneys sometimes have bad days and professional situations that are miserable and occasionally seem unbearable. Almost every lawyer has had a conversation or phone call that included more anger than seems reasonable for the situation.

Recognizing the potential problem is, as the cliché goes, half the battle. To learn about coping with stress, I talked with licensed professional counselor Rebecca R. Williams, who coordinates Lawyers Helping Lawyers services for the Oklahoma Bar Association.

Although I was focused on the long-term effect of stress on a veteran lawyer, she reminded me that new attorneys are also particularly vulnerable as they step onto the playing field, often without mentoring or support, and with the unrealistic belief they should have all the answers.

Can stress become a lifestyle or work culture? It absolutely can, according to Williams.

In many pockets of the legal profession, excessive work hours and intense caseloads are the norm. The risk of appearing weak or incapable lessens the likelihood of someone reaching out for help or support and increases the chances of a particular stress phase turning into an anxiety disorder, depression or substance abuse problem.

Williams urges attorneys to be aware of the following symptoms:

- isolation from colleagues, friends or family
- feelings of being overwhelmed
- feelings of inadequacy
- not adhering to set work hours
- losing sight of a realistic caseload
- difficulty turning down work
- letting your work schedule derail your plans for physical activity
- difficulty organizing and concentrating
- resistance to asking for help or support
- avoiding certain clients or files
- increased alcohol substance use
- increase in time spent on non-productive, non-billable tasks such as Internet surfing or an unhealthy relationship

To cope with stress, Williams recommends lawyers:

- keep something to look forward to every week that involves being around other people
- attend monthly LHL discussion groups, if only to have a sandwich and listen

- hire someone temporarily to help organize their space and files
- incorporate 15-minute activity breaks during the work day to walk around the parking lot or run up a flight of stairs
- promote and encourage laughter
- meditate daily or simply slow down their breathing and focus on one thing or concept only, for several minutes, several times a day
- take a few deep breaths when feeling stressed and think about all of the good things about their practice and life
- schedule fun and recreation on their calendar weekly
- participate in frequent new experiences with their partner, friends or colleagues
- talk about their feelings regularly with someone they trust
- schedule a quitting time. Sometimes long work days are required, but we all have to acknowledge we are not as effective and sharp in our 10th working hour of the day as in our first.

Also, personal consultation is as important as professional consultation, so identify mentors and others for your personal support.

Remember there are some potential clients too challenging for you to represent. Sometimes there is just a personality conflict. Everyone is entitled to a lawyer, but not everyone is entitled to you.

Finally, don't take on too much at one time. Every lawyer has had to deal with the temptation of taking on a new client when they are already overloaded. Deep inside we can sometimes hear a voice of insecurity that if we turn away this new client, we may soon not have enough work to do. But you do a disservice to yourself, your family and your potential new client if you take on more than you can comfortably handle.

One part of a life skill that many lawyers must exercise more often is saying "no" gracefully and firmly. It is better to do a few volunteer and community activities well than to give half attention to many.

Being a lawyer is an honor. This is a great profession. Not everyone gets to help people with their most important problems. But to take care of your clients, you must take the time to take care of yourself first.

Lawyers are often very self-sacrificing. Maybe now is the time for you to dial back on the self-sacrifice and focus on having a long and healthy law practice. |

*Jim Calloway is the director of the Oklahoma Bar Association Management Assistance Program. He publishes the weblog Jim Calloway's Law Practice Tips at jimcalloway.typepad.com. He can be contacted at jimc@okbar.org.*



# GPSolo

Volume 18, Number 5

July/August 2001

## The Dangerous Link Between Chronic Office Chaos, Stress, Depression, and Substance Abuse

By Nancy Byerly Jones

Have you ever found yourself screaming, "This isn't a law practice, it's hell with fluorescent lighting!"? You may not realize how great an impact office stress can have on your overall well being. It is exactly this kind of stress that can cause a lawyer to sink into depression or start down the path of substance abuse.

Impaired or addicted lawyers usually turn to medical and mental health professionals for help. They can also get support through their bar association's lawyer assistance program (LAP). To ensure the most secure foundation for recovery, however, it is also important to address the negative and costly influence on our lives of chronic chaos, disorganization, low morale, and similar problems in our offices. Too often, this important factor in our emotional welfare is overlooked, and, unfortunately, there are too few community or bar-sponsored resources for this type of help. This omission leaves us vulnerable to backsliding, short-lived success stories, and increased odds of repeating a vicious cycle.

Are your work habits and office environment putting you at risk? A few key questions to ask yourself include:

- Is your office in a state of constant chaos, disorganization, or high stress?
- Do you find yourself with the same stresses on your plate and the same problems within your office year after year?
- Are you setting goals for yourself and office that never seem to be achieved?
- Do you dread the start of yet another day at the office?
- Are you in control of your work, or is your work in control of you?

If you answered yes to even one of these questions, then your personal health and quality of life are likely to be negatively affected sooner or later. The extent of the negative impact depends on factors such as:

- How long the problems have existed.
- How often office morale is low and interoffice tensions are high.
- The frequency and severity of client complaints.
- How far (and long) we can stick our heads in the sand in an effort to avoid the truth.

If ignored for too long, chronic problems at the office can play a big part in setting the stage for battles with depression, substance abuse, and other stress-related problems. Traditional sources of help tend to focus on medical and psychological

needs only, often overlooking chronic office stress as a factor to address. Medication, therapy, and support groups do have admirable success records. However, these success stories may only be temporary if chronic and stressful office issues are not factored in when creating and applying a comprehensive and realistic recovery plan.

Below you will find a few tools and suggestions for identifying and correcting office matters that may be adding stress to your life. Treat this information as a "starter kit" to help you focus your attention on an often overlooked area that can dramatically affect the likelihood that a lawyer will sink into depression or turn to substance abuse as an escape.

### **A Look in the Mirror**

The following situations offer a small sampling of office patterns that, if ignored, can lead to chronic and crippling stress:

- Chronic, office-wide chaos.
- Unclear mission; no written long-term goals.
- Weak or haphazard internal leadership.
- Unclear and inconsistently enforced policies and procedures.
- Little, if any, true teamwork, cross-selling of services, or support of one another.
- Lack of loyalty to the firm and a distrust of partners or other coworkers.
- Poor communication and people skills.
- Criticism voiced publicly and frequently; compliments or appreciation rarely, if ever, offered.
- Low office morale.
- High employee turnover.
- Chronic procrastination.
- Poor planning and prioritizing, resulting in last-minute panics.
- Lack of time-management skills.
- File mismanagement and disorganization.
- Repeated failure to meet deadlines promised to clients.
- Frequent client complaints, many of which are of the same type (e.g., unreturned phone calls, not being kept informed about the status of their cases).

There is good news and bad news about this incomplete list of potential time bombs within our offices. The bad news is that these types of problems are all too common within many offices. The good news, however, is that there is a great deal that we can do to fix these problems and thus decrease work-related stress. All it takes is your willingness to get started, rather than waiting for someone else to "just fix it."

Let's be honest. We all have days when we grumble to ourselves,

- "Can I trade this job for whatever is behind Door #1?"
- "Nice perfume, but must you marinate in it?"

- "Daily panic and chaos...this is what I get for surviving law school?!"
- "Our office is the world's largest natural source of sarcasm!"
- "Is there a sign outside my door that reads 'Endless Interruptions Appreciated & Welcome'?"
- "Have I thanked you lately for your whining, chronic complaining, and negative attitude?"
- "If our cash flow was as big as your ego, we would be enormously rich!"
- "Thank you for being such a jerk; it helps make me look nicer!"

It is indeed a good thing our thoughts can't be heard by our supervisors, peers, and employees. When these types of thoughts recur on a daily basis, however, you run the risk of losing your sense of humor, and the risk of becoming overwhelmingly stressed increases. Couple chronic office stress with other health problems or tension on the home front and the odds for addiction or mental health problems increase astronomically. And yet, when faced with substance abuse problems or depression head-on, many lawyers fail to consider what role the "state of the office" may have played in getting them to that point. It makes sense that a lot of our stress-related problems could be eliminated or greatly reduced if only we took a proactive stance toward the state of our firms and offices before it's too late.

#### **What to Do**

The tips offered below suggest a few ways to get the ball rolling toward a healthier, stronger, and friendlier office, which also translates into happier and better-served clients. These tips are for those folks so fed up with the chronic stress at their offices that they are willing to roll up their sleeves, seek out whatever resources are needed, and do their part in improving their work environments. This necessarily includes a commitment to work on improving personal work habits and attitudes. In other words, the tips are for those who are ready to sever (once and for all) the frightening link between chronic office problems and excessive office-induced stress, depression, and/or substance abuse.

Finally, you should be aware that others in your office may refuse to help address the real issues. They prefer the risks associated with chronic office stress, and just won't cooperate in your efforts to turn things around. If that is the case, and you feel you've tried your best and given proposed changes a fair time frame within which to take root, then it's time to consider other workplace options. The bottom line in this situation presents a stark choice-Are you willing to accept and live with your current office environment as it is, or should you summon the courage to replant yourself and your skills in a different office with a different group of people?

Tips for a healthy office include:

1. Decide what kind of firm and reputation you want to build and in which direction you want your "ship" to be heading.

2. Take a hard, honest, and thorough look at the strengths and weaknesses of your entire office-its "crew," the equipment, space, design, systems, policies, procedures, clients, marketing, and so on.<sup>1</sup>
3. Make a master list of all the changes needed and then prioritize them.
4. Create and follow a simple, annual action plan.<sup>2</sup>
5. Decide what steps need to be taken by whom and by when.
6. Make sure all employees understand the firm's philosophy, mission, and goals. Of course, make sure all your partners are in agreement first!
7. Monitor your action plan regularly. Hold everyone (including yourself) accountable to do their parts. If there are no consequences for noncompliance, there's no need to create a plan in the first place.
8. Obtain employee input on ways to improve efficiency, systems, and technology.
9. Voice criticisms privately.
10. Praise deserving employees openly.<sup>3</sup>
11. Ensure that the right person with the right background, training, and people skills is managing the day-to-day administration of your office. Don't give this person too many hats to wear or he or she will be stretched too thin to give his or her full attention to the administrative duties.
12. Provide sufficient training for all employees. Offer a variety of teaching styles (classroom, individual one-on-one training, training manuals) to accommodate your employees' diverse learning styles.
13. Make sure all employees understand that a good attitude is just as important as their skills and that a consistently poor attitude may cost them their jobs. Adopt a zero-tolerance level for employees who are chronic troublemakers or poor team players, no matter how great their skills. The other employees they scare off over time and the energies required to put up with their bad attitudes far outweigh the value of their skills.
14. Lead by setting a good example and offering support.
15. Treat, value, and respect your employees as you would your best client.<sup>4</sup>
16. Give clear instructions and avoid last-minute planning whenever possible.
17. Review your interviewing and hiring system and techniques; take steps to avoid future "bad" hires.
18. Update your systems and procedures-avoid the dangerous pitfall of "We've always done it this way so why change now?" Beware, however, of making rules or policies that you are unwilling to consistently and fairly enforce.
19. Take risk management seriously. Malpractice-proof your firm through up-to-date risk management systems, and ensure that all employees understand the risks and how to avoid them through attentive, thoughtful, and timely client servicing.
20. Settle all unresolved conflicts with your partners and any others in your office (you need to demonstrate healthy conflict-resolution practices so that other employees will follow your example).
21. Read *The Lawyer's Guide to Balancing Life and Work*, by George W. Kaufman.<sup>5</sup>
22. Avoid becoming a "threshold" practice that takes any and every case that crosses your office door's threshold.
23. Develop a simple and realistic marketing plan no matter how small your firm

24. Practice smart client selections in line with your marketing goals.
25. Stop procrastinating.<sup>6</sup>
26. Make a budget, stick to it, and hold others accountable to do the same.
27. Don't make promises you can't or won't keep.
28. Read and reread *Who Moved My Cheese? An Amazing Way to Deal With Change in Your Work and in Your Life*, by Spencer Johnson and Kenneth Blanchard.<sup>7</sup>
29. Hang on to your sense of humor!

Remember, it's easy to point out others' faults, but it takes courage to take an honest and thorough look at ourselves, our work habits, and our offices. It also takes a lot of character to make the really tough decisions, even if they prove unpopular, in order to create a less-stressful work environment.

#### **Attitudes Worth Catching**

- "I'm so lucky to have work worth doing and to love my work."
- "I look forward to coming to the office each day."
- "Anyone here would help me out in a pinch if needed."
- "We're a diverse bunch of folks, but together we make a great team."

I have actually heard many lawyers and their support staff make these types of statements. In fact, I have been most fortunate to have witnessed hundreds of success stories by courageous individuals, law firms, and legal departments. Each one has motivated and inspired me personally and professionally.

Likewise, each of those success stories involves lawyers and staff members who were stressed out, exhausted, and fed up with their work being in control of them instead of the other way around. In many cases, the lawyers had to face the reality that they were working in the wrong office or with the wrong mixture of personalities for them. However, with healthy doses of patience, determination, and resourcefulness, they all eventually carved out paths that led them to the right position and place. This, in turn, had tremendously positive effects on their personal lives.

You can do the same if you are truly tired of the chaos, stress, and in-house fighting that poorly managed offices generate. You don't have to cut through tons of red tape, and you don't need a doctor's prescription to get going. The only thing needed is your commitment and determination to take the ball in your hands and keep it moving in the right direction. You-no one else-are in charge of when you pick up the ball and run with it.

There is no doubt that unchecked chronic office stress is an often overlooked factor in depression, substance abuse, and other impairments. Just as there are many excellent programs and resources for these types of problems, there are many self-help tools to assist us in turning things around in our offices-if we really want to do so. Experienced legal management consultants can assist in the process, as can practice management advisors provided by a few proactive and

very caring state bar associations for their members.<sup>8</sup>

The bottom-line question is this: Are you willing to accept the same work-related stresses in your life year after year and accept the fallout from them? Or are you willing to take the necessary steps to look for and create healthier and better working environments for yourself and for your employees? The answers may not always be easy to face, but the ultimate choice is indeed yours, thank goodness.

### **Stress Management Self-Audit Chart**

#### **Notes**

1. Easy Self-Audits for the Busy Law Office, Nancy Byerly Jones, published by the American Bar Association, 1999, 1-800-285-2221.
2. *Id.* at 7-8, 303 (discussion of and sample form for simplified strategic planning).
3. See *1001 Ways to Reward Employees*, Bob Nelson, 1994, Workman Publishing (available in most book stores along with his newer book, *1001 Ways to Energize Employees*).
4. Read *The Man Who Listens to Horses*, Monty Roberts, 1997, Random House Press (Trust me-this is a must-read for people managers as well as horse lovers and trainers!).
5. *The Lawyer's Guide to Balancing Life and Work*, George W. Kaufman, 1999, ABA Law Practice Management Section. To order, call 800/285-2221.
6. Read *It's About Time! The 6 Styles of Procrastination and How to Overcome Them*, Dr. Linda Sapadin with Jack Maguire, Viking Press, 1996.
7. *Who Moved My Cheese? An Amazing Way to Deal With Change in Your Work and in Your Life*, Spencer Johnson and Kenneth H. Blanchard, 1998, Putnam Publishing Group.
8. See a listing of the bar associations that staff practice management advisors and the Practice Management Advisor Planning Guide online at [www.abanet.org/lpm/bparticle12282\\_front.shtml](http://www.abanet.org/lpm/bparticle12282_front.shtml).

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AMERICAN BAR ASSOCIATION  
COMMISSION ON LAWYER ASSISTANCE PROGRAMS

INFORMATIONAL REPORT TO THE HOUSE OF DELEGATES

The Commission on Lawyer Assistance Programs (CoLAP) has jurisdiction over matters relating to lawyer assistance programs as they provide professional assistance to lawyers, judges and law students who have alcoholism, substance abuse, addiction and mental health issues. The Commission (1) supports and seeks to improve existing services, including diversity outreach, and, as appropriate, assist in the development of new lawyer assistance programs, (2) provides educational and training opportunities for lawyer assistance program staff and volunteers, the legal profession, the judiciary, law students, legal educators and the public, (3) disseminates information to and creates and fosters platforms for communications among lawyer assistance program staff and volunteers, and (4) develops and advances policies that better enable lawyers and judges to obtain assistance and return to good health, protect the integrity of the legal profession and the judiciary and protect the public.

As the organized bar's sole national entity dedicated to lawyer assistance, the Commission approaches its mission through several avenues. It produces an annual conference, provides extensive outreach, provides regional training and technical assistance, advances publications, addresses the needs of specific populations and advances policies designed to protect the public while helping lawyers in need of assistance.

In order to view the full spectrum of lawyer assistance programs, the Commission conducts periodic comprehensive surveys of programs. The most current comprehensive survey, published in 2013, covers staffing, funding and the range of services provided by the states.

Each fall, the Commission sponsors the National Conference for Lawyer Assistance Programs. The conference brings together staff and volunteer leaders of state and local lawyer assistance programs, bar leaders, treatment professionals and others, who gather to learn about new developments in the areas of stress, addiction, mental health, treatment and recovery. The conference provides the opportunity for representatives from law schools, the judiciary, the organized bar, bar admissions authorities and the disciplinary community to learn more about lawyer assistance, to form effective relationships with their state lawyer assistance programs and to understand how to champion the need for a focus on these issues. The 2013 Conference is set for October 8 to 11, in San Diego. The 2014 Conference will be held in Nashville.

In addition to the national conference, the Commission is active in providing and contributing programming both within and outside the ABA. Its Education Committee works to harness the resources of the lawyer assistance community around the country to provide workshops, appear on panels and otherwise explore educational opportunities. In 2012, the Commission presented a program at the Annual Meeting of the Council of

Chief Justices of State Courts of Appeal. In July 2013, the Commission produced a webinar CLE on aging and cognitive impairment of lawyers. The generous financial support of the TIPS Fellows made the program available without charge.

The Commission provides regional training programs for those involved in state and local lawyer assistance programs, often in conjunction with its business meetings throughout the year. Regional trainings have been hosted in Tennessee, Texas Idaho and California in 2013.

In order to better inform the legal community of the resources available for assistance, CoLAP launched a speakers' bureau in the fall of 2012. The bureau lists over scores of speakers under 23 categories. The bureau was instituted as a method of broadening the message in a cost-benefit manner, where bar associations and other groups can identify speakers close to their meetings, reducing travel expenses.

CoLAP also has an active communications platform. In the fall of 2012, the Commission replaced a quarterly newsletter with the use of social media in order to bring more information to people on a more timely basis. The Commission's website and listservs continue to serve as the cornerstones of CoLAP's communications, but these are now supplemented through a blog (the CoLAP Café), a Facebook site and a twitter account (@abacolap).

The Commission understands that different populations within the legal profession have different needs and, therefore, maintains committees on law students, senior lawyers, the judiciary, and diversity. These allow for programs and educational initiatives to be focused so that they can create the greatest impact. For example, Law School Committee has conducted a survey of lawyer assistance programs to assess their involvement in law schools. The Senior Lawyers Committee has issued a working paper on cognitive impairment and cognitive decline, designed to help the legal profession better understand issues involved with aging.

Finally, the Commission is addressing policy issues. These include rules that enable diversion for judges charged with misconduct, aspects of confidentiality and immunity for those working with lawyers, judges and law students in need of assistance, and encouragement of bar entities to facilitate 12-step programs at their conferences. These policy examinations may lead to resolutions before the House of Delegates after the issues are fully assessed.

Respectfully Submitted,

Hon. Sarah L. Krauss, Chair  
August 2013



## National Resources

### National Resources

The American Bar Association Commission on Lawyer Assistance Programs (CoLAP) is pleased to direct you to other related sites of interest on the Internet. Many of these sites will also direct you to additional resources, and we hope you find these starting points useful. As with any resource, please use your own judgment when selecting your individual supports and information.

### Suicide Prevention

- National Suicide Prevention Lifeline 1-800-273-TALK (8255), National, Toll-Free, 24 Hours

### Chemical Dependency and Self-Help Sites

- Addiction Recovery Resources for Professionals
- Alcoholics Anonymous (AA) 212-870-3400
- American Medical Association
- Center for Substance Abuse Treatment (SAMHSA)
- Cocaine Anonymous (CA) 310-559-5833
- Crystal Meth Anonymous (CMA) 213-488-4455
- Dual Recovery Anonymous
- International Lawyers in A.A. (ILAA)
- JoinTogether (ILAA)
- Marijuana Anonymous (MA)
- Narcotics Anonymous (NA)
- National Clearinghouse for Alcohol and Drug Information (SAMHSA)
- National Institute on Drug Abuse (NIDA)
- Nicotine Anonymous (NA) 415-750-0328
- Treatment Improvement Exchange (CSAT)

### Compulsive Gambling

- Debtors Anonymous (DA) 781-453-2743
- Gamblers Anonymous (GA) 213-386-8789

### Eating Disorders

- Anorexia Nervosa & Associated (Eating) Disorders (ANAD) 630-577-1330
- Overeaters Anonymous 505-891-2664

### Family Support

- Adult Children of Alcoholics (ACOA) 562-595-7831
- Al-Anon/Alateen 888-4AL-anon
- Nar-Anon Family Groups
- Co Dependents Anonymous (CODA) 888-444-2359
- Co Dependents of Sex Addicts 763-537-6904

### Mental Health Sites

- American Psychological Association
- American Psychiatric Association
- American Psychiatric Publishing

- Anxiety Disorders Association of America (ADAA)
- Archives of the Journal of General Psychiatry (AMA)
- Children and Adults with Attention Deficit/Hyperactivity Disorder (CHADD)
- Depression and Bipolar Support Alliance (DBSA)
- Lawyers with Depression
- National Alliance on Mental Illness (NAMI)
- National Institute of Mental Health (NIMH)
- National Mental Health Association (NMHA)

### **Sexual Addiction and Compulsivity**

- Sex Addicts Anonymous (SAA) 800-477-8191
- Sex & Love Addicts Anonymous (SLAA)
- Sexaholics Anonymous (SA) 615-370-6062

## Depression Information

<http://www.nimh.nih.gov/health/publications/depression/complete-index.shtml>

<http://www.mayoclinic.com/health/depression/DS00175/DSECTION=causes>

[http://www.dbsalliance.org/site/PageServer?pagename=about\\_MDOverview](http://www.dbsalliance.org/site/PageServer?pagename=about_MDOverview)

[www.rieashelp.org](http://www.rieashelp.org) log-in: Rhode Island Bar Association

<http://www.lawyerswithdepression.com/>

**Ethical Responsibilities for an Impaired Partner** : <http://www.mncourts.gov/lprb/03bbarts/bb1003.html>

Schiltz, Patrick J., *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 Vanderbilt L. Rev. 871 (1999)

## WHAT ABOUT LAWYERS?

My personal theory is that this is a particularly difficult malady to treat because for the vast majority of lawyers, those that started practice in the mid 80s and after, this is their norm, the way it has always been. Younger lawyers don't have a different model to look back to. They have not competing frame of reference.

Most lawyers are subjected to significant stress in their day-to-day practice. Some of us thrive on it. Some of us hate it and some of us are injured by it. Too much stress causes depression. In this paper I will discuss the statistics regarding the toll that stress is taking on lawyers (Get the Facts) and I will review some of the sources of that stress (Get a Clue). Then I will review some suggestions for handling stress, both our personal reaction to stress (Get a Grip) and some lifestyle ideas that may help (Get a Life). The last section shows that there is help available for those who have not been successful on their own (Get Help).

Hopefully we can all learn to constructively handle stress and can turn to the appropriate resources in times of need.

### **Get the Facts.**

#### **Stress is taking a devastating toll on lawyers.**

Consider the statistics:

If you Google "lawyer stress" you will get 755,000 hits.

A 1990 study at Johns Hopkins University found that of 104 occupations studied, lawyers were the most likely to suffer depression. 7 Lawyers suffered from depression at a rate 3.6 times higher than non lawyers who shared the same socio-demographic traits.

A research study of 801 lawyers in the State of Washington found that 19% suffered from depression.

Left untreated, depression can be fatal. According to the National Institute of Mental Health, 15% of people with clinical depression commit suicide.

A quality-of-life survey by the North Carolina Bar Association in 1991 revealed that almost 26% of respondents exhibited symptoms of clinical depression, and almost 12% said they contemplated suicide at least once a month.

7 Eaton, Mandel, and Garrison, "Occupations and the Prevalence of Major Depressive Disorder,"  
32 J. Occupational Med. 1083-1132 (1990).

Washington and Arizona showed that most lawyers suffering from depression also have suicidal thoughts.

One study found that lawyers have a much greater risk of acting on their suicidal thoughts and succeeding in doing so. Suicide ranks among the leading causes of premature death among lawyers.

The 1992 Annual Report of the National Institute of Occupational Safety and Health reported that male lawyers are twice as likely as the general population to commit suicide.

Caution: Although these statistics are from reliable sources, they obviously use different definitions or different population bases and comparison of the statistics can produce inaccurate numbers. If 19% of all lawyers are depressed and if 15% of depressed people commit suicide, that calculates to a suicide rate of 3 per 100. That would result in over 500 suicides for Wisconsin's 20,000+ lawyers over their lifetime. We don't have lifetime statistics but intuitively, that seems much too high. It probably exaggerates the problem. But, the fact remains that regardless of the precise numbers; depression and suicide are major issues for the legal profession.

An article in the Autumn 1999 issue of Notre Dame Magazine, *Those Unhappy, Unhealthy Lawyers*, 8 makes the following points:

Lawyers are among the most unhealthy and unhappy of all professionals.

Lawyers suffer from depression, anxiety, hostility, paranoia, social alienation and isolation, obsessive-compulsiveness, and interpersonal sensitivity at alarming rates.

Lawyers also suffer from alcoholism and use illegal drugs at rates far higher than non lawyers. One group of researchers found that the rate of alcoholism among lawyers is double the rate of alcoholism among adults generally, while another group of researchers estimated that 26 percent of lawyers had used cocaine at least once, twice the rate of the general population.

One out of three lawyers suffers from alcoholism, drug abuse or clinical depression. Not surprisingly, a preliminary study indicates that lawyers commit suicide and think about committing suicide more often than non lawyers.

The divorce rate among lawyers appears to be higher than the divorce rate among other professionals and that difference is particularly pronounced among women.

People who are this unhealthy, people who suffer from depression, anxiety, alcoholism, drug abuse, divorce, and suicide to this extent are almost by definition unhappy. It should not be surprising, then, that lawyers, as a group, are indeed unhappier than other professionals, nor should it be surprising that the source of their unhappiness seems to be the one thing that they have in common: their work as lawyers.

#### **Get a Clue;**

**The first step to effectively managing stress is to understand its source.**

Why are lawyers so unhealthy and unhappy? To state the obvious, the one thing we have in common is the legal profession. Why do so many lawyers hate what the practice of law has become? Lawyers give many reasons.<sup>10</sup>

The commercialization of the legal profession. Practicing law has become less of a profession and more of a business.

The increased pressure to attract and retain clients in a ferociously competitive marketplace.

Having to work in an adversarial environment.

Not having control over their lives and being at the mercy of judges and clients.

A lack of civility among lawyers.

A lack of collegiality and loyalty among their partners.

Our poor public image.

The hours. Almost all lawyers complain about the long hours they have to work. Thirty years ago, most partners billed between 1,200 and 1,400 hours per year and most associates between 1,400 and 1,600 hours. Today, over half of the associates and almost a quarter of the partners in private practice bill at least 2,000 hours per year. In the biggest and most prestigious law firms, almost everyone bills close to 2,000 hours, and many bill 2,500 hours or more. Given these numbers, there better be something deeply fulfilling about the work to counteract the stress. And, research demonstrates that increasing the level of financial compensation does not increase the degree of happiness.<sup>11</sup>

<sup>9</sup> With apologies to Sean Carter, from whom I have stolen three of these titles: Get a Clue; Get a Grip; Get a Life. <http://www.lawhumorist.com/stressmessstaff.htm>

<sup>10</sup> Notre Dame Magazine. Op. cit.

<sup>11</sup> Diener, E. Lucas, R., Scollon, C.N. (2006). Beyond the Hedonic Treadmill: Revisiting that Adaptation Theory of Will-Being. *American Psychologist*, 61, 305-314.

Another view is offered by Psychologist Lynn Johnson<sup>12</sup> who asks, "Why are lawyers more prone than anyone else to this dangerous disease?" He points to two personality traits many lawyers have: perfectionism and pessimism. He says that it's no secret that the legal profession attracts perfectionists and rewards perfectionism. Perfectionism drives us to excel in college, in law school, and on the job. But perfectionism has a dark side; it can produce "a chronic feeling that nothing is good enough." Perfectionists are driven by an intense need to avoid failure. According to Johnson, perfectionism raises levels of the stress hormone, cortisol, and chronically high levels of cortisol lead to various health problems, including depression. And when we make the inevitable mistake, perfectionism magnifies the failure.<sup>13</sup> Perfectionists are more vulnerable to depression and anxiety, harder to treat with either therapy or drugs, and much more likely to commit suicide when things go very wrong.

Johnson goes on to say that the prevalence of pessimism among lawyers is less intuitive than the prevalence of perfectionism but is nevertheless a significant factor. The same Johns Hopkins study referenced earlier shows that in all graduate-school programs in all professional fields except one, optimists outperform pessimists. The one exception: law school.<sup>14</sup> Pessimism helps us excel: it makes us skeptical of what our clients, our witnesses, opposing counsel, and judges tell us. It helps us anticipate the worst, and thus prepare for it. But pessimism is bad for our health: it leads to stress and disillusionment, which make us vulnerable to depression.

#### **Get a Grip.**

**You can't always control the circumstances at work, but you can get a grip on your reaction.**

Jay Foonberg<sup>15</sup> lists twenty "cures" and avoidance techniques to help you with your life and practice (with two extra as a bonus).

12 Lynn Johnson, Stress Management, Utah State Bar J., Jan./Feb.2003.[http://utahbar.org/barjournal2000/html/january\\_february\\_2003\\_0.html](http://utahbar.org/barjournal2000/html/january_february_2003_0.html)

13 Blatt, Sidney J., Ph.D. "The Destructiveness of Perfectionism: Implications for the Treatment of Depression," American Psychologist, Vol. 49, No. 12, pp.1003-1020 (1997)

14 Richard G. Uday, That Frayed Rope, Utah State Bar J., Aug./Sept. 2003.

15 Jay Foonberg is the only person to have given CLE presentations in every U.S. state and on every continent. He is also the only person to have been honored with awards for lifetime law achievements from 4 ABA groups: Harrison Tweed Award for Continuing Legal Education, Sam Smith Medal from the Law Practice Management Section, Don Rikli Award from General Practice, Solo & Small Firms Section, and Lifetime achievement and 2 platinum keys from Law Students Division. His 4 decades of teaching CLE include teaching the first Law Practice Management Classes at UNLV Boyd School of Law. His books have earned \$2,000,000 for the ABA and include the all time best seller (every year since 1977) How To Start & Build A Law Practice, 5th edition and How to Get and Keep Good Clients ,3rd edition." For more information, visit <http://www.foonberglaw.com/>

1. Recognize that drugs and alcohol are not a solution, but will make the problem worse.
2. Take care of your body. Exercise at least three times per week. You can't help anyone if you are dead and you are a liability if you are sick.
3. Fire the stress causing clients. You can probably lose 90% of your aggravation and only lose 2% of your income. They typically are poor-payers, which adds to the stress.
4. Insist on cash up-front to avoid the anxiety and stress over getting paid.
5. Fire incompetent staff.
6. Make time for family and work on your relationships with family members. Clients come and clients go, but family is forever.
7. Work on relationships with the people in your office. You need them to earn your income and to reduce your stress.
8. Don't obsess over technology.
9. Schedule nothing for Friday if you have an option. Leave open the possibility of a three day weekend and surprise your spouse or others.
10. Let macho, scorched-earth lawyers play their stupid game. They are committing suicide. Let them.
11. Don't let arrogant judges stress you. Respond only to the words they use, not to their tone of voice. Don't let their delays in rendering decisions stress you.
12. Organize your use of time so you can leave the office at 5:00 or 5:30 if you wish. Be a compulsive list maker. List making is the critical tool for being in control of how you spend your time
13. Carve out 2 hour blocks of time three times per week to do "heavy" tasks or to think about matters which require deep thought. Allow no interruptions for any reasons during these time blocks.
14. Learn how to "turn off" before you get home.
15. Learn what to neglect. Don't feel guilty when you neglect things you can't do.



16. Learn to say "no." You can't be all things to all people. Unkept promises are a constant source of stress.

17. Have an exit plan. Some day you will either want to stop what you are doing or you will have to stop what you are doing.

18. Get a pet. Even a goldfish in a bowl on your desk can relieve stress.

19. Turn off your instant e-mail notifier. Check your e-mails only at specific times.

20. When clients demand instant answers to their questions, protect yourself and the client by saying something like, "I have two answers, the instant answer and the right answer. They may or may not be the same. I am 90% certain that the instant answer is probably correct."

21. Explain to clients that you are always available to them for bonafide emergencies but that you value your time with your family on weekends and evenings.

22. Bitter pills are best swallowed as quickly as possible. Do what you have to do and move on without stressing over things that can't be changed or avoided.

While not all stress can be avoided, we as lawyers can be better people, live longer, and maintain a satisfying practice by avoiding unnecessary stress. Good luck and best wishes for a saner, less stressful life and practice in 2008!

#### **Get a Life.**

**Finding a passion outside of your job can be the greatest antidote to stress.**

Researchers have found two attributes of life that make people happy: 1) the nature of the work they do, and 2) the quality of their lives outside of work.

Note that happiness is related to the nature of the work we do, not the amount of time we work.<sup>16</sup> The nature of the work that we find rewarding will be individual for each of us.

Hopefully the nature of our work will help us feel valuable, necessary, ethical, and successful. We all would like to leave the world a little better than we found it. The important point here is to distinguish the nature of our work from the amount of work we choose to do. Certainly long hours are less destructive if we love what we do, but even if we are fortunate enough to be working our passion, a personal life is still important.

<sup>16</sup> Lyubomirsky, S. The How of Happiness: A scientific approach to getting the life you want. The Penguin Press, New York, 2008.

Long hours at the office don't translate into more satisfaction with the nature of the work. Every hour that we spend at our desks is an hour that we do not spend doing many of the things that provide joy and meaning for our lives. An hour at the office is one less hour with our spouses, playing with our children, relaxing with our friends, visiting our parents, going to movies, reading books, volunteering, or playing softball, collecting stamps, traveling the world, getting involved in a political campaign, going to church or working out at a health club.

Even when we do go home, we take work with us. And, how many of us work either at home or at the office on Saturday or Sunday, not just occasionally but routinely. Long hours do produce more revenue. Is it worth it? We work too much.

In my professional life I have been a partner with lawyers at the two opposite ends of the work spectrum. Both lawyers were highly successful and widely admired in the community and among other lawyers. One was at the office EVERY Saturday and Sunday. His saving grace was that he walked about two miles each way to get there and home again. But his life was his work. He had a beautiful house on the golf course and rarely took time to play golf. The other partner was an avid outdoorsman. He never missed an opportunity to hunt or to go fishing. Over the last 30 years he has basically been out of the office for the months of October and November to hunt. His tenacious insistence on preserving a personal life did not ruin his professional life and it may have even enhanced it.

The most important point of this entire exercise is to focus on some ideas to enhance the quality of our lives outside of work. The number of interesting and rewarding activities is endless. When we try to come up with a list we run afoul of our canon of construction, inclusio unius, exclusio alterius. That does not apply here. The list does not imply the exclusion of items not listed. Consider these activities.

Parenting. Being a parent certainly refocuses our self-important self image. Humbling, exciting, rewarding, important and almost every other positive adjective one can think of, and some negative too. Take time out to be a real, active parent. Your kids will be around long after your clients and associates have faded into the distance.

Outdoors. Hunting, fishing, hiking, camping, and all those activities that take us outside tend to bring life back to a more basic, more real level. There is nothing like cold wet feet or hot coffee by a campfire to push office worries to the back burner.

Aerobic exercise. Running, cross country skiing, snow shoeing, biking and swimming all promote both physical and emotional health and do wonders to relieve the stress of a hard week at the office.

Church. Lay leadership, youth mentoring, Sunday School teaching, group outings, Bible study and all of the other activities that promote a spiritual connection to the world can promote inner peace and contentment. Even the overtly non-religious can benefit from quiet meditation.

Coaching, teaching and mentoring. Sharing our skills and experience with others is extremely rewarding. There are lawyers coaching youth hockey, basketball, baseball, softball, soccer, skiing, tennis... the list is long. The satisfaction is enormous.

Relaxing. Have you seen a hammock lately? Where did they all go? Take a nap. Read a book. Listen to the birds, crickets and frogs. Chill out.

Self Study/self improvement. Learning is fun. Even more so if it is not for CLE credit. Take a course. Learn something new. Did you miss the classics? Wish you knew calculus? Curious about the new developments in physics? Art history sound like fun? There is no reason to limit yourself to photography or basket weaving. The experts say that if we challenge and stretch our minds we will stay alert much farther into old age. The opportunities for real learning are expanding rapidly and many of them are free or nearly so.

Gardening. Gardeners seem to have a special perspective on the world. It must be the nurturing oneness with nature, or is it the unending battle with weeds, that promotes peace and understanding.

Cooking. Throughout school and our early professional careers we put a premium on speed, including fast food. All too often great food was something we made reservations for. The rhythm and routine of cooking can bring a real time perspective to the day. Part chemistry, part art and part magic, a great meal is distinct pleasure, even if there is only one or two to enjoy it. A meal lovingly cooked begs to be enjoyed at a leisurely pace. You pick the wine and music.

The Arts. Painting, singing, piano playing, sculpting, pottery making, photography and any activity that engages the creative side of the mind will add meaning and pleasure to life. Not an artist? Then learn to appreciate the work of others. Go to the gallery, the concert, the exhibit.

Politics. The future of our state and nation depend on good people making the effort to put our ideals into practice. Get involved. Make a difference.

Travel. The best way to see our country is to look at it from abroad. The people are welcoming, the transportation is wonderful, the food is interesting and, most of all, the different perspective on America is mind changing.

Some of the most interesting life stories I know are about lawyers living a real life. Years ago, a lawyer in Spooner, Paul Waggoner, quit the practice and took his young family on a ten month sailing trip from Superior, through the Great Lakes and the St. Lawrence Seaway, down the east coast to Florida and on to the Bahamas. After that sabbatical adventure he settled on Pine Island in western Florida where he still practices.

My partner, Tim Scott, gives more than 50 lectures every year on the Holocaust, most of them to junior high school students. He also leads a Boy Scout trip to Germany every two years and is active with youth in many other ways. Jim Drill, the super outdoorsman and hunter mentioned above, has attended every Super Bowl, 42 in a row. Clyde Wynn, a Marshfield lawyer spent many hours in his shop with his welder making whimsical metal sculptures out of scrap metal. Another partner, Bob Walter, now retired, competed in the qualifying rounds of the Senior Professional Golf Tour for two years. Several northern Wisconsin lawyers have long personal streaks of Birkebeiner races, 37 miles on cross county skis. Gerry McAdow has ridden his bicycle across the US. My partner, Tim O'Brien, is working on his stand-up comic routine. Keith Rodli teaches Buddhism to Minnesota prisoners.

These are just a few examples of unique interests of exceptional lawyers. I'm sure there are thousands of others, many in your own community. Maybe the WisLAP (lawyers assistance) committee should keep a list of unique life activities that keep lawyers sane and happy. It would be an amazing list.

#### **Get Help.**

**If stress has overwhelmed you, there is help, but you have to accept it.**

Uncontrolled, unrelenting stress will eventually result in depression for some of us. How can you distinguish depression from ordinary sadness? Here are the classic symptoms:

1. Diminished interest or pleasure in most activities.
2. Significant weight loss or weight gain without effort, or loss of appetite.
3. Difficulty sleeping, or sleeping too much.
4. Psychomotor agitation or retardation.
5. Fatigue.
6. Feelings of worthlessness or excessive or inappropriate guilt.
7. Diminished ability to think or concentrate, or indecisiveness.
8. Recurrent thoughts of death or suicide, or a suicide plan or attempt.

For some, seeking or accepting help may be difficult. There is a potential stigma to any disease that involves the brain. My own personal effort to overcome that stigma resulted in the article I wrote about my own experience in the December 2000 issue of the Wisconsin Lawyer, *Brainstorm: My Experience with Depression*.<sup>17</sup> If you are suffering, please know that you are not alone.

<sup>17</sup> Bakke, Gary L., *Brainstorm: My Experience With Depression*. Wisconsin Lawyer, vol. 73, No. 12, December 2000.

There is a website that lists about 450 famous people that have suffered from depression.<sup>18</sup> Here is a small selection. Perhaps you will recognize some of them:

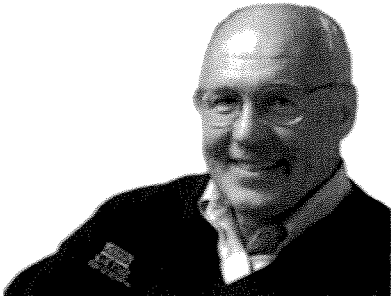
Edwin "Buzz" Aldrin, astronaut, Ludwig von Beethoven, composer, Napoleon Bonaparte, emperor, Jim Carrey, actor and comedian, Dick Cavett, broadcaster, John Cleese, actor, Rosemary Clooney, singer, Calvin Coolidge, U.S. president, Charles Darwin, explorer and scientist, Thomas Edison, inventor, Betty Ford, former First Lady, John Kenneth Galbraith, economist, Dwight Gooden, baseball player, Alexander Hamilton, politician, Stephen Hawking, physicist, Ernest Hemingway, writer, Andrew Jackson, U.S. President, Thomas Jefferson, U.S. President, John Lennon, musician, Abraham Lincoln, U.S. President, Ralph Nader, U.S. consumer rights advocate, Donny Osmond, musician, Edgar Allen Poe, writer, Cole Porter, composer, Charlie Pride, country singer, Norman Rockwell, artist, Theodore Roosevelt, U.S. President, Charles Schulz, cartoonist (Peanuts), George Stephanopoulos, political advisor, Mark Twain, author, Mike Wallace, broadcaster, Boris Yeltsin, former President, Russia.

Maybe it is possible to have a productive, good life even if stress or genetics have produced depression. Help is available.

WisLAP is the Wisconsin version of the Lawyers Assistance Program that most states have. If you don't know where to turn for yourself or for a friend, call WisLAP. All calls are confidential. (800)543-2625.

## My Experience with Depression: Brainstorm

by Gary L. Bakke



State Bar President Gary L. Bakke, U.W. 1965, shares his story in the hope that others suffering from depression will seek help. Bakke is a founding partner of Bakke Norman S.C., New Richmond.

A few years ago, life was not going well for me. Despondency grew.

I hatched a plan. Suicide is an awful burden for the survivors to carry, so I would disguise my demise as an accident. As a jogger, it was not unusual for me to go out after dark. That provided a perfect opportunity for a dark, rainy night. I would wait for a semi-truck coming down the long hill approaching town. Then I would "slip" and fall in front of the oncoming truck.

When should I do it? I needed to get ready.

Because this would all be an accident, it was not possible to leave a note, but my affairs could be in order. My will was obsolete. The will had been drafted before my wife and I adopted our two sons, so they were not mentioned. Thus, my estate, such as it is, was left to my wife and to my daughters from a former marriage. I would have to fix that before I could leave.

The need to fix my will was the knot at the end of my rope, and I knew it. Once that was untied, I could slip off the end at any time. I used that knot. Whenever I was motivated to fix my will, I would stop and remember that this piece of unfinished business was important to keep me here. It was preventing a spur-of-the-moment, irreversible decision.

A "brainstorm" is what William Styron<sup>m</sup> would have called it, but that word had been preempted to describe intellectual inspiration. "Melancholia" would have sufficed for him too, but even that word had been usurped by a bland noun used indifferently to describe an economic downturn and a rut in the ground.

"Depression." What a wimp of a word to describe the raging maelstrom inside the head of a sufferer of this deadly disease.

Ninety percent of the population will never suffer from depression. The blues maybe, or down days, but not full-blown, out-of-control, brainstorming, dangerous depression. This is written for the other 10 percent, and for those who love and care about them.

### **The Essence of Depression**

For the majority, the illness will never be fully understood. In order to understand a foreign concept, we need to relate it to something in our own existence, our own history. Sadness? Insomnia? Confusion? Anger with self? Hopelessness? All are common symptoms of depression, and all are commonly experienced emotions for even healthy people. But they are not depression, and identifying with those emotions does not lead to an understanding of depression. This lack of a truly common experience creates a huge barrier to an outsider's grasp of the essence of the illness.

Depression is a disorder of mood that is virtually indescribable to one who has not personally experienced it. It makes no rational sense to the emotionally healthy, so all attempts to explain it rationally are doomed to fail. Yet it is painfully and dangerously real.

The depressed person knows he or she is ill just as surely as does one suffering from influenza or arthritis. In fact, it is a common experience of those caught in the grip of a major depression to have an alter ego that can observe the irrational thoughts. But, because of the stigma attached to any illness of the brain, many who fully understand that they are ill attempt to deny or hide their condition. Thus, during this denial, the cauldron of organic soup simmers until it boils over.

From the outside, depression may appear to be a slowing of functions. In fact, the term "depression" implies a decrease in activity. The word and the external manifestations can be deceptive. Consider the automobile traveling 35 miles per hour down a country road on a January evening - a leisurely pace at best. Now peer inside at the driver struggling to maintain control in a raging blizzard. The snowflakes pound on the windshield like the flurry of thoughts on my window of consciousness - too fast to count or focus upon individually - and the overall mass obscuring the objective, to keep the car on the road and make it home safely. Depression is not necessarily slow or leisurely from the inside.

Confusion, failure of mental focus, lapse of memory, anxiety, obstinate determination, self-defeating behavior, panic, irrational thoughts, lack of joy, failure of speech, sleep disruption, agitation, unfocused dread, slowed responses, zero emotional energy, a blizzard of thoughts, self-loathing - all of which create an immense aching solitude, a feeling of cosmic loneliness. At this point many sufferers, like me, come face to face with Camus's fundamental question:

"There is but one truly serious philosophical problem, and that is suicide. Judging whether life is or is not worth living amounts to answering the fundamental question of philosophy." - Camus, *The Myth of Sisyphus*

From a healthy perspective, I can now say "been there and done that," but at the time I was suffering, it was impossible to put a light touch on it.

## **A Chemical Imbalance**

Is depression an indication of weak character? Bad genes? Early childhood trauma? Moral decadence? No. Depression is the result of a chemical imbalance, no more and no less so than diabetes or other metabolic disorders. In some people, maybe 10 percent of the population, stress depletes serotonin and norepinephrine, the chemicals that are essential to the normal function of the brain's neurotransmitters. If one were truly of weak character, would Zoloft or Prozac rebuild the missing character strengths? Could anti-depressant chemicals erase the effects of childhood trauma? Again, no. It is really quite simple - chemicals replace missing chemicals.

Some people who have been in the mid-summer sun for 12 hours don't sunburn. Others may experience a serious burn in a short time. What's the difference? It's the same sun. Same sun, yes, but different individuals. So it is with stress - same stress - different individuals.

## **The Downward Spiral**

When my personal downward spiral started, I consulted with a local counselor who probably saved my life. No, she didn't cure my depression (there is no "cure"), but she did care about me, and her personal caring was exceedingly important when I had concluded that no one cared. She helped me see that I was important to my children and others in my life. Her honest caring bought time for me and started my education into my own emotional makeup. Yet, I continued down the emotional vortex toward mental meltdown. My plan to solve it all was carefully considered. It was workable, and I could implement it whenever I was ready.

My knot at the end of my rope kept me on the planet but didn't accomplish much else. Relationships deteriorated. Trust was lost. Attorneys and other acquaintances started to discuss my condition with each other. Some were frightened, some angry, some confused, and many too involved in their own lives and problems to notice. But a few stayed with me. Their patience and understanding in the face of my behavior that could not be rationally understood saved me. They helped me get to a psychiatrist.

What did they see? How did they know I needed help? Totally irrational paranoia was probably the first clue for most. Later, as my condition continued to deteriorate, I left some specific clues. At one time, in a convulsion of emotional pain, I left the office saying that I did not know when or if I would be back. I now see that this was a subconscious cry for help.



I also attempted to ask for help directly. I had a hearing scheduled on a minor, post-judgment matter. A few days before the hearing, realizing that I was in emotional trouble, I asked the other attorney for an adjournment. I tried to be straight with him without saying that I was suffering a mental breakdown. I said that both my client and I were ready for the hearing and could be there, but that I personally needed some time and would he please accommodate my personal need. He wouldn't. Because of the history of my relationship with this other attorney, I thought that he would understand my request to be an urgent personal need and that, even if he didn't, I expected him to accommodate my personal need.

This weak direct call for help was absolutely all I could muster. The day that attorney dismissed my personal plea was the closest I came to sliding off the end of the rope. My reaction to it left no doubt in anyone's mind that I was in big trouble. By the time of the hearing, I had to admit my condition. I asked for a conference in chambers and told the judge and opposing counsel that I would do the best I could, but that I might have to leave before the end of the proceeding. With the help of one of my partners and my legal assistant, I made it through that day - in fact, my client was 100 percent successful at the hearing. I have little doubt that if the result had been otherwise, I would not have survived the day.

## **Epilogue**

I was lucky. I had caring friends and understanding partners, some emotional insight, and an easily controlled chemical imbalance. For me, Zoloft was the magic bullet: 100 mg per day of the missing chemicals and life is good. Without it, I start down the same awful slide.

Are things perfect now? My emotional health is better than it has ever been, but there has been damage to my personal relationships. In the process of discussing this essay with friends and family, I scratched open some old wounds, and I was reminded how much I have hurt those who were close to me. It will never be the same, but, thankfully, in many ways it is much better. To the extent that there is permanent damage, it was caused by my behavior, not by my admission that I suffered from a serious emotional illness. Denial would have gained nothing but continued pain.

My story will not be identical to anyone else's, so this is not the definitive essay on depression. We are all unique, and depression manifests itself in strange and unpredictable ways. This is my own personal story. But if you see some of yourself or an associate or loved one in some of these passages, please know that there is help.

Depression is controllable.

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1 William Stryon, author of *Sophie's Choice* and Pulitzer prize-winning *The Confessions of Nat Turner*, was a depression sufferer. His essay describing his personal experience, *Darkness Visible: A Memoir of Madness*, Vintage Books, a division of Random House, 1990, has inspired me to write this.

## Resources

For additional information about depression, consult these resources.

Burns, D.D., *Feeling Good: The New Mood Therapy*, New York: Avon Books, 1980 (considered by many to be the best "self-help" book on depression; is based on cognitive therapy practices, has lots of practical advice for coping with depression)

Jamison, K.R., *Touched With Fire: Manic-Depressive Illness and the Artistic Temperament*, New York, N.Y.: The Free Press, 1993 (an irresistible book on the interaction of manic-depressive illness and the artistic temperament)

Styron, W., *Darkness Visible: A Memoir of Madness*, New York: Random House, 1990 (a well-known author's autobiographical account of his own severe depression and his recovery; short and right to the point)

Papoulos, D. & Papoulos, J., *Overcoming Depression (rev. ed.)*, New York: Harper Collins, 1992 (a practical guide to the diagnosis and treatment of depression and manic-depression)

<http://www.allaboutdepression.com> (an excellent Web site providing the most significant information about the assessment and treatment of depression)

<http://members.aol.com/depress/index.html> (an award-winning area on the Web; site provides information in lay terms about depression and its many forms, symptoms, and treatment)

<http://www.apa.org> (site developed by the American Psychological Association; offers resources for mental health questions and provides suggestions for dealing with a variety of mental health problems)

<http://mentalhealth.miningco.com> (a guide to mental health resources on the Net)

Van Rybroek, Gregory J., *Lawyers and Stress: An Anti-Quick Fix View*, and Kozich, Dennis W., *Status of Stress in the Legal Profession*, 70 Wis. Law 30 (May 1997).

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## The Real Depression Story

The problem isn't that drugs don't work. It's that so few people get any decent treatment.

By: Peter D. Kramer

Posted: January 8, 2010 at 2:35 PM

Such bad food and so little of it. This week, we heard claims that antidepressants work only for the severest forms of mood disorder and that few depressed people receive even the most minimal care. To my mind, the undertreatment problem is the real news. As for drugs not working—that's a complicated story.



The idea that antidepressants offer scant benefit for mild or moderate disorders comes from research published in this week's *JAMA* [2]. The study in question is scrupulous but odd. The researchers, from the University of Pennsylvania and elsewhere, wanted to reexamine the much-debated [3] claim that antidepressants are little more than glorified placebos. To this end, they sought out trials in which they could examine data in detail and in particular in which they could determine whether patients were gravely afflicted.

To focus on major depression, the Penn group narrowed the field in a series of ways. They started with more than 2,000 treatment studies. Almost half were discarded because they used either no FDA-approved antidepressant or no placebo. Reasoning that it is well-established that antidepressants work for dysthymia [4]—chronic or frequently recurring minor depression—the researchers next eliminated trials in which that sort of mood disorder played a role. The exclusion is important. Of the 1,000 or so studies of depression treated with an FDA-approved drug, the Penn researchers threw out almost 600 for this reason.

Then the researchers introduced a third, quite stringent filter. They would not consider any trials that contained a “placebo washout period.” Many serious studies of psychiatric treatment begin with an interval, often two weeks, in which patients are offered a placebo. Some subjects recover, and others improve at a fast pace. These patients then do not enter the trial. The delay eliminates people who did not have much of an illness in the first place or who respond readily to investigators' attentions or the sugar pill. Reasoning that this set-up may hide placebo effects that arise in ordinary practice, the Penn group scratched off a couple of hundred more studies.

In the end, the researchers were able to apply their analysis to only six of the original 2,000-plus trials. These lucky few constitute an idiosyncratic mix: on the one hand, a multi-center NIMH trial, on the other, a study of St. John's wort and imipramine as used in general medical practice in

Germany. By chance, the trials tested only two antidepressants, Paxil and imipramine. (Parenthetically, some overviews [5] have found Paxil to be among the least effective of the antidepressants.) It is this summary of six studies of two medications that has led the press to report [6] more or less conclusively [7] that antidepressants do little for minor mood disorders.

In critiquing their own study, the researchers highlight two problems. First, few subjects included in their analysis had very mild depression, so the conclusion about drug effects at the healthy end of the spectrum is based on minimal data. Second, studies of depression are plagued by "rater inflation [8]," a problem I have discussed before [9]. In order to fill up a study quickly, researchers overstate prospective subjects' symptom levels. That means that subjects enrolled with apparently mild symptoms may not have depression at all—and they will "recover" over time, whatever the treatment. If you look at the graph in the Penn study, you see just what you'd imagine given rater inflation and the lack of a washout: In the treatment of mild cases, placebo effects are large, swamping even apparently substantial drug effects.

In other words, the selection methods more or less guaranteed the Penn study finding that drug effects are easiest to demonstrate in the sickest patients. At best, we should accept the conclusion as a piece in a mosaic, one element among many that will form our impression of what antidepressants contribute. But assuming that the research is right, antidepressants do little to end isolated episodes of mild depression. Why, then, might modestly depressed patients take these drugs?

For an answer, we might look to this month's issue of the *Archives of General Psychiatry*. A study [10] conducted at Northwestern University appears therein that, had it been published sooner, might well have been included in the Penn research. The trial uses the same outcome measure relied on in the Penn overview. It has no washout period. And it tests Paxil. The core finding is straightforward: While Paxil did moderate depression, the drug's greater effect was in changing personality. The principal outcome for subjects who responded to Paxil was a decrease in "neuroticism"—essentially, emotional vulnerability in the face of adversity. The patients with less neuroticism seemed to be protected from future bouts of depression. They also became more extraverted. In other words, Paxil was less good at ending episodes of depression than at making patients resilient via personality change. A second intervention tested, a form of psychotherapy, showed the reverse: It had more effect on depression and less on personality.

Readers who follow my writing will recognize this result as the one I predicted in 1993 in my book *Listening to Prozac* [11]. Based on my own clinical observations, I suggested that certain antidepressants might make patients less socially anxious and more assertive. At the same time, I wrote that psychotherapy remained the most important intervention for minor depression. (Later, in *Against Depression* [12], I supported vigorous treatment, often including medication, for serious bouts of depression.)

If we look only at the two recent studies, we might draw puzzling conclusions about antidepressants. They help with acute severe depression. They help with chronic minor depression. And yet they do little for acute, isolated bouts of minor mood disorder. Still, overall, they make patients resilient in a general fashion having to do with personality traits.

I don't imagine that there are drugs that work precisely in this way, which is also to say that I don't find these studies conclusive. To answer the question the Penn study poses, we would need to devise research specifically for that purpose—studies in which patient groups are stratified by level of illness and in which great care is taken to avoid rater inflation. But before this sort of study is done, the definition of depression is likely to change. The American Psychiatric Association is updating its diagnostic manual. Very likely it will make a move toward "dimensional [13]" models

of illness, in which a large number of factors will be taken into account in the course of making a diagnosis. For depression, the factors may include social anxiety and emotional fragility, so that personality traits linked to mood may enter into our concept of the disorder. Whether that change represents progress is a vexed issue—but certainly you can imagine that people who come to feel less anxious and vulnerable will also report that they are less depressed.

In the meantime, are patients with minor (but not chronic) depression prescribed antidepressants? Older surveys [14] found that they were not. In practice, all depression is undertreated. To me, the real news of the month comes in another study [15], from the University of Michigan, in the *Archives of General Psychiatry*. It found that only one in five Americans with depression has received even one adequate course of treatment in the past year. The criteria for adequate treatment are modest: 60 days of an antidepressant with four doctor or nurse visits over the year or (for talk therapy) four mental health visits lasting 30 minutes or more.

Here are some of the study's findings. The average person diagnosed with depression had severe depression. Thirty-four percent of the depressed received any medication, with 11 percent receiving adequate medication. The comparable figures for psychotherapy were higher (44 percent any; 19 percent adequate). Only 9 percent of patients got the gold standard, adequate drug treatment with adequate psychotherapy. If you look at minority groups, like blacks and non-Puerto Rican Hispanics, the numbers are cut in half; almost no one gets good care.

To me, that's the story that matters. Most depressed people don't get evaluated; most who are evaluated don't get treated; and most who are treated are treated poorly. As for whether medication helps with minor depression, that question may be less important than another one. If we were to treat all patients well—if with the mildly or moderately depressed we were to start with psychotherapy and then, if that doesn't do enough, weigh other options—in that situation, ought we to consider antidepressants? To my mind, the answer is still, "Yes—yes, of course." But we are not there, far from it.

Photo Illustration by Joe Raedle/Getty Images.

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- [6] <http://www.nytimes.com/2010/01/06/health/views/06depress.html>
- [7] <http://wellness.blogs.time.com/2010/01/06/antidepressants-do-little-for-mild-depression-study-finds/>
- [8] <http://www.ncbi.nlm.nih.gov/pubmed/10783806>
- [9] <http://www.slate.com/id/2182585/>
- [10] <http://archpsyc.ama-assn.org/cgi/content/abstract/66/12/1322>
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- [12] <http://www.amazon.com/gp/product/B000OFOUN4?ie=UTF8&tag=dblx-20&linkCode=as2&camp=1789&creative=390957&creativeASIN=B000OFOUN4>
- [13] <http://www.doublex.com/section/health-science/secret-and-made-illnesses-latest-fight-over-psychiatric-diagnosis>
- [14] <http://kramerpresentations.blogspot.com/search?updated-min=2008-01-01T00:00:00-08:00&updated-max=2009-01-01T00:00:00-08:00&max-results=1>
- [15] <http://www.ncbi.nlm.nih.gov/pubmed/20048221?dopt=Abstract>

April 17, 2005

IN THE MAGAZINE

## There's Nothing Deep About Depression

By PETER D. KRAMER

**S**hortly after the publication of my book "Listening to Prozac," 12 years ago, I became immersed in depression. Not my own. I was contented enough in the slog through midlife. But mood disorder surrounded me, in my contacts with patients and readers. To my mind, my book was never really about depression. Taking the new antidepressants, some of my patients said they found themselves more confident and decisive. I used these claims as a jumping-off point for speculation: what if future medications had the potential to modify personality traits in people who had never experienced mood disorder? If doctors were given access to such drugs, how should they prescribe them? The inquiry moved from medical ethics to social criticism: what does our culture demand of us, in the way of assertiveness?

It was the medications' extra effects -- on personality, not on the symptoms of depression -- that provoked this line of thought. For centuries, doctors have treated depressed patients, using medication and psychological strategies. Those efforts seemed uncontroversial. But authors do not determine the fate of their work. "Listening to Prozac" became a "best-selling book about depression." I found myself speaking -- sometimes about ethics, more often about mood disorders -- with many audiences, in bookstores, at gatherings of the mentally ill and their families and at professional meetings. Invariably, as soon as I had finished my remarks, a hand would shoot up. A hearty, jovial man would rise and ask -- always the same question -- "What if Prozac had been available in van Gogh's time?"

I understood what was intended, a joke about a pill that makes people blandly chipper. The New Yorker had run cartoons along these lines -- Edgar Allan Poe, on Prozac, making nice to a raven. Below the surface humor were issues I had raised in my own writing. Might a widened use of medication deprive us of insight about our condition? But with repetition, the van Gogh question came to sound strange. Facing a man in great pain, headed for self-mutilation and death, who would withhold a potentially helpful treatment?

It may be that my response was grounded less in the intent of the question than in my own experience. For 20 years, I'd spent my afternoons working with psychiatric outpatients in Providence, R.I. As I wrote more, I let my clinical hours dwindle. One result was that more of my time was filled with especially challenging cases, with patients who were not yet better. The popularity of "Listening to Prozac" meant that the most insistent new inquiries were from families with depressed members who had done poorly elsewhere. In my life as a doctor, unremitting depression became an intimate. It is poor company. Depression destroys families. It ruins careers. It ages patients prematurely.

Recent research has made the fight against depression especially compelling. Depression is associated with brain disorganization and nerve-cell atrophy. Depression appears to be progressive

-- the longer the episode, the greater the anatomical disorder. To work with depression is to combat a disease that harms patients' nerve pathways day by day.

Nor is the damage merely to mind and brain. Depression has been linked with harm to the heart, to endocrine glands, to bones. Depressives die young -- not only of suicide, but also of heart attacks and strokes. Depression is a multisystem disease, one we would consider dangerous to health even if we lacked the concept "mental illness."

As a clinician, I found the *what if* challenge ever less amusing. And so I began to ask audience members what they had in mind. Most understood van Gogh to have suffered severe depression. His illness, they thought, conferred special vision. In a short story, Poe likens "an utter depression of soul" to "the hideous dropping off of the veil." The questioners maintained this 19th-century belief, that depression reveals essence to those brave enough to face it. By this account, depression is more than a disease -- it has a sacred aspect.

Other questioners set aside that van Gogh was actually ill. They took mood disorder to be a heavy dose of the artistic temperament, so that any application of antidepressants is finally cosmetic, remolding personality into a more socially acceptable form. For them, depression was less than a disease.

These attributions stood in contrast to my own belief, that depression is neither more nor less than a disease, but disease simply and altogether.

**A**udiences seemed to be aware of the medical perspective, even to endorse it -- but not to have adopted it as a habit of mind. To underscore this inconsistency, I began to pose a test question: We say that depression is a disease. Does that mean that we want to eradicate it as we have eradicated smallpox, so that no human being need ever suffer depression again? I made it clear that mere sadness was not at issue. Take major depression, however you define it. Are you content to be rid of that condition?

Always, the response was hedged: aren't we *meant* to be depressed? Are we talking about changing human nature?

I took those protective worries as expressions of what depression is to us. Asked whether we are content to eradicate arthritis, no one says, "Well, the end-stage deformation, yes, but let's hang on to tennis elbow, housemaid's knee and the early stages of rheumatoid disease." Multiple sclerosis, acne, schizophrenia, psoriasis, bulimia, malaria -- there is no other disease we consider preserving. But eradicating depression calls out the caveats.

To this way of thinking, to oppose depression too completely is to be coarse and reductionist -- to miss the inherent tragedy of the human condition. To be depressed, even gravely, is to be in touch with what matters most in life, its finitude and brevity, its absurdity and arbitrariness. To be depressed is to occupy the role of rebel and social critic. Depression, in our culture, is what tuberculosis was 100 years ago: illness that signifies refinement.

Having raised the thought experiment, I should emphasize that in reality, the possibility of eradicating depression is not at hand. If clinicians are better at ameliorating depression than we were 10 years ago -- and I think we may be -- that is because we are more persistent in our efforts, combining treatments and (when they succeed) sticking with them until they have a marked effect. But in terms of the tools available, progress in the campaign against depression has been plodding.

Still, it is possible to envisage general medical progress that lowers the rate of depression substantially -- and then to think of a society that enjoys that result. What is lost, what gained? Which is also to ask: What stands in the way of our embracing the notion that depression is disease, nothing more?

This question has any number of answers. We idealize depression, associating it with perceptiveness, interpersonal sensitivity and other virtues. Like tuberculosis in its day, depression is a form of vulnerability that even contains a measure of erotic appeal. But the aspect of the romanticization of depression that seems to me to call for special attention is the notion that depression spawns creativity.

Objective evidence for that effect is weak. Older inquiries, the first attempts to examine the overlap of madness and genius, made positive claims for schizophrenia. Recent research has looked at mood disorders. These studies suggest that bipolar disorder may be overrepresented in the arts. (Bipolarity, or manic-depression, is another diagnosis proposed for van Gogh.) But then mania and its lesser cousin hypomania may drive productivity in many fields. One classic study hints at a link between alcoholism and literary work. But the benefits of major depression, taken as a single disease, have been hard to demonstrate. If anything, traits eroded by depression -- like energy and mental flexibility -- show up in contemporary studies of creativity.

How, then, did this link between creativity and depression arise? The belief that mental illness is a form of inspiration extends back beyond written history. Hippocrates was answering some such claim, when, around 400 B.C., he tried to define melancholy -- an excess of "black bile" -- as a disease. To Hippocrates, melancholy was a disorder of the humors that caused epileptic seizures when it affected the body and caused dejection when it affected the mind. Melancholy was blamed for hemorrhoids, ulcers, dysentery, skin rashes and diseases of the lungs.

The most influential expression of the contrasting position -- that melancholy confers special virtues -- appears in the "Problemata Physica," or "Problems," a discussion, in question-and-answer form, of scientific conundrums. It was long attributed to Aristotle, but the surviving version, from the second century B.C., is now believed to have been written by his followers. In the 30th book of the "Problems," the author asks why it is that outstanding men -- philosophers, statesmen, poets, artists, educators and heroes -- are so often melancholic. Among the ancients, the strongmen Herakles and Ajax were melancholic; more contemporaneous examples cited in the "Problems" include Socrates, Plato and the Spartan general Lysander. The answer given is that too much black bile leads to insanity, while a moderate amount creates men "superior to the rest of the world in many ways."

The Greeks, and the cultures that succeeded them, faced depression poorly armed. Treatment has always been difficult. Depression is common and spans the life cycle. When you add in (as the Greeks did) mania, schizophrenia and epilepsy, not to mention hemorrhoids, you encompass a good deal of what humankind suffers altogether. Such an impasse calls for the elaboration of myth. Over time, "melancholy" became a universal metaphor, standing in for sin and innocent suffering, self-indulgence and sacrifice, inferiority and perspicacity.

The great flowering of melancholy occurred during the Renaissance, as humanists rediscovered the "Problems." In the late 15th century, a cult of melancholy flourished in Florence and then was taken back to England by foppish aristocratic travelers who styled themselves artists and scholars and affected the melancholic attitude and dress. Most fashionable of all were "melancholic malcontents," irritable depressives given to political intrigue. One historian, Lawrence Babb, describes them as "black-suited and disheveled . . . morosely meditative. taciturn yet prone to



occasional railing."

In dozens of stage dramas from the period, the principal character is a discontented melancholic. "Hamlet" is the great example. As soon as Hamlet takes the stage, an Elizabethan audience would understand that it is watching a tragedy whose hero's characteristic flaw will be a melancholic trait, in this case, paralysis of action. By the same token, the audience would quickly accept Hamlet's spiritual superiority, his suicidal impulses, his hostility to the established order, his protracted grief, solitary wanderings, erudition, impaired reason, murderousness, role-playing, passivity, rashness, antic disposition, "dejected haviour of the visage" and truck with graveyards and visions.

"Hamlet" is arguably the seminal text of our culture, one that cements our admiration for doubt, paralysis and alienation. But seeing "Hamlet" in its social setting, in an era rife with melancholy as an affected posture, might make us wonder how much of the historical association between melancholy and its attractive attributes is artistic conceit.

In literature, the cultural effects of depression may be particularly marked. Writing, more than most callings, can coexist with a relapsing and recurring illness. Composition does not require fixed hours; poems or essays can be set aside and returned to on better days. And depression is an attractive subject. Superficially, mental pain resembles passion, strong emotion that stands in opposition to the corrupt world. Depression can have a picaresque quality -- think of the journey through the Slough of Despond in John Bunyan's "Pilgrim's Progress." Over the centuries, narrative structures were built around the descent into depression and the recovery from it. Lyric poetry, religious memoir, the novel of youthful self-development -- depression is an affliction that inspires not just art but art forms. And art colors values. Where the unacknowledged legislators of mankind are depressives, dark views of the human condition will be accorded special worth.

Through the "anxiety of influence," heroic melancholy cast its shadow far forward, onto romanticism and existentialism. At a certain point, the transformation begun in the Renaissance reaches completion. It is no longer that melancholy leads to heroism. Melancholy is heroism. The challenge is not battle but inner strife. The rumination of the depressive, however solipsistic, is deemed admirable. Repeatedly, melancholy returns to fashion.

As I spoke with audiences about mood disorders, I came to believe that part of what stood between depression and its full status as disease was the tradition of heroic melancholy. *Surely*, I would be asked when I spoke with college students, surely I saw the value in alienation. One medical philosopher asked what it would mean to prescribe Prozac to Sisyphus, condemned to roll his boulder up the hill.

That variant of the *what if* question sent me to Albert Camus's essay on Sisyphus, where I confirmed what I thought I had remembered -- that in Camus's reading, Sisyphus, the existential hero, remains upbeat despite the futility of his task. The gods intend for Sisyphus to suffer. His rebellion, his fidelity to self, rests on the refusal to be worn down. Sisyphus exemplifies resilience, in the face of full knowledge of his predicament. Camus says that joy opens our eyes to the absurd -- and to our freedom. It is not only in the downhill steps that Sisyphus triumphs over his punishment: "The struggle itself toward the heights is enough to fill a man's heart. One must imagine Sisyphus happy."

I came to suspect that it was the automatic pairing of depth and depression that made the medical philosopher propose Sisyphus as a candidate for mood enhancement. We forget that alienation can be paired with elation, that optimism is a form of awareness. I wanted to reclaim Sisyphus, to set his image on the poster for the campaign against depression.

Once we take seriously the notion that depression is a disease like any other, we will want to begin our discussion of alienation by asking diagnostic questions. Perhaps *this* sense of dislocation signals an apt response to circumstance, but *that* one points to an episode of an illness. Aware of the extent and effects of mood disorder, we may still value alienation -- and ambivalence and anomie and the other uncomfortable traits that sometimes express perspective and sometimes attach to mental illness. But we are likely to assess them warily, concerned that they may be precursors or residual symptoms of major depression.

How far does our jaundiced view reach? Surely the label "disease" does not apply to the melancholic or depressive temperament? And of course, it does not. People can be pessimistic and lethargic, brooding and cautious, without ever falling ill in any way. But still, it seemed to me in my years of immersion that depression casts a long shadow. Though I had never viewed it as pathology, even Woody Allen-style neurosis had now been stripped of some of its charm -- of any implicit claim, say, of superiority. The cachet attaching to tuberculosis diminished as science clarified the cause of the illness, and as treatment became first possible and then routine. Depression may follow the same path. As it does, we may find that heroic melancholy is no more.

In time, I came to think of the van Gogh question in a different light, merging it with the eradication question. What sort of art would be meaningful or moving in a society free of depression? Boldness and humor -- broad or sly -- might gain in status. Or not. A society that could guarantee the resilience of mind and brain might favor operatic art and literature. Freedom from depression would make the world safe for high neurotics, virtuosi of empathy, emotional bungee-jumpers. It would make the world safe for van Gogh.

Depression is not a perspective. It is a disease. Resisting that claim, we may ask: Seeing cruelty, suffering and death -- shouldn't a person be depressed? There are circumstances, like the Holocaust, in which depression might seem justified for every victim or observer. Awareness of the ubiquity of horror is the modern condition, our condition.

But then, depression is not universal, even in terrible times. Though prone to mood disorder, the great Italian writer Primo Levi was not depressed in his months at Auschwitz. I have treated a handful of patients who survived horrors arising from war or political repression. They came to depression years after enduring extreme privation. Typically, such a person will say: "I don't understand it. I went through -- " and here he will name one of the shameful events of our time. "I lived through *that*, and in all those months, I never felt *this*." *This* refers to the relentless bleakness of depression, the self as hollow shell. To see the worst things a person can see is one experience; to suffer mood disorder is another. It is depression -- and not resistance to it or recovery from it -- that diminishes the self.

Beset by great evil, a person can be wise, observant and disillusioned and yet not depressed. Resilience confers its own measure of insight. We should have no trouble admiring what we do admire -- depth, complexity, aesthetic brilliance -- and standing foursquare against depression.

*Peter D. Kramer is a clinical professor of psychiatry at Brown University and the author of "Listening to Prozac." This essay is adapted from his book "Against Depression," which Viking will publish next month.*

**SECTION NINE**  
**MCLE Requirements**

## MCLE Commission

Holly Hitchcock, Executive Director

John E. Fogarty Judicial Annex  
24 Weybosset Street 3<sup>rd</sup> floor  
Providence, RI 02903  
401-222-4942

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**RI Bridge The Gap** due June 30 of the first full fiscal (MCLE) year after you are sworn in.

- Mandatory for all new attorneys sworn in January 1, 2011 and after. Submit certification on BTG page of the attorney portal. [www.courts.ri.gov](http://www.courts.ri.gov)
- Waived for new attorneys who were admitted for three years or more in another jurisdiction. Submit certificate of good standing to BTG page of the attorney portal.

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## MCLE

- **Compliance Year:** July 1- June 30
- Begins the **second** full fiscal (MCLE) year after you are sworn in.
- **Credits Needed: 10 credits**, inclusive of at least **2 legal ethics credits**

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### BTG/MCLE calendar

MCLE year 1 (7/1-6/30)	MCLE year 2 (7/1-6/30)	MCLE year 3 (7/1-6/30)
Year you are sworn in:	RI Bridge the Gap:	Regular MCLE:
FY14	FY15	FY16
FY15	FY16	FY17

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### When Should I File?

- Every year as soon as you have **completed** 10 credits
- Use RI Supreme Court Attorney Portal by June 30 each year: available July 1, 2012. [www.courts.ri.gov](http://www.courts.ri.gov)
- Carryover credits viewable on MY MCLE ACCOUNT within the Portal

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### How To Get Credit

- At an in-person seminar, a live-webinar or up to 3 credit limit via an interactive on-line on-demand CLE seminar
- As a teacher of an approved program
- At an approved in-house program
- As an author of a published article (apply via Appendix E)

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**What If I Live Out of State?**

- You may take courses in any other state from RI MCLE approved sponsors
- Or make an individual application for approval of a program taken from a non-accredited sponsor (Appendix D –on Portal)
- If you have met the MCLE requirement in the state where you practice, you may send in verification for reciprocal compliance.

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**“Active” But Do Not Practice in RI?**

- MCLE “Waiver” has been eliminated as of October 2015.

NOTE: All attorneys listed as ACTIVE on the Rhode Island Supreme Court rolls must comply with MCLE regardless of where you live and work.

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**To Maintain Compliance**

- Read the Regulations in RI Supreme Court Rules, Article IV, Rule 3, and use the prescribed forms via the ATTORNEY PORTAL.
- Keep your own MCLE hard copy certificates for three (3) years.

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**Sanctions as of July 1, 2011**

- Late filing fees are 50.00, 100.00, 150.00
- Make-up fees are 100.00, 200.00
- After 180 days removal from the Master Roll without further notice. Plus 75.00 reinstatement fee in addition to late/ make-up fee.

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**MCLE Commission and Rules**

[www.courts.ri.gov](http://www.courts.ri.gov) (click Attorney Resources then Continuing Education)

Rhode Island Supreme Court  
John E. Fogarty Judicial Annex  
24 Weybosset Street 3<sup>rd</sup> floor  
Providence, RI 02903  
401-222-4942

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