

Chatbots and the creation of a lawyer-client relationship

By *Graham K. Staton*

Introduction

Chatbots go by many names: digital assistants, conversational interfaces or intelligent virtual assistants. Regardless of the official title, the underlying concept is the same: a human interacting with a machine using natural language to achieve a result. You have undoubtedly interacted with a chatbot.

Apple's Siri, Amazon's Alexa and CleverBot are commonly used in people's daily lives. You are likely to interact with a chatbot on any website where you make a purchase or need basic customer support. Now, with the technology so widely available, chatbots are becoming a common feature on law firm websites.

What implications does use of a chatbot have for your law firm? Does using a chatbot on your firm's website create a liability? Can a chatbot unintentionally create a lawyer-client relationship? Is your firm seeing enough value from this tool to outweigh the potential liability?

The Rules of Professional Conduct

Pennsylvania Rule of Professional Conduct 1.18 establishes an attorney's obligations to a prospective client:

- A person who consults with a lawyer about the possibility of forming a lawyer-client relationship with respect to a matter is a "prospective client." R.P.C. 1.18(a).
- Even when no lawyer-client relationship ensues, a lawyer

who has learned information from a prospective client shall not use or reveal information which may be significantly harmful to that person. R.P.C. 1.18(b).

- Further, a lawyer who has learned information about a prospective client is prohibited from representing a client whose interests are materially adverse. R.P.C. 1.18(c).

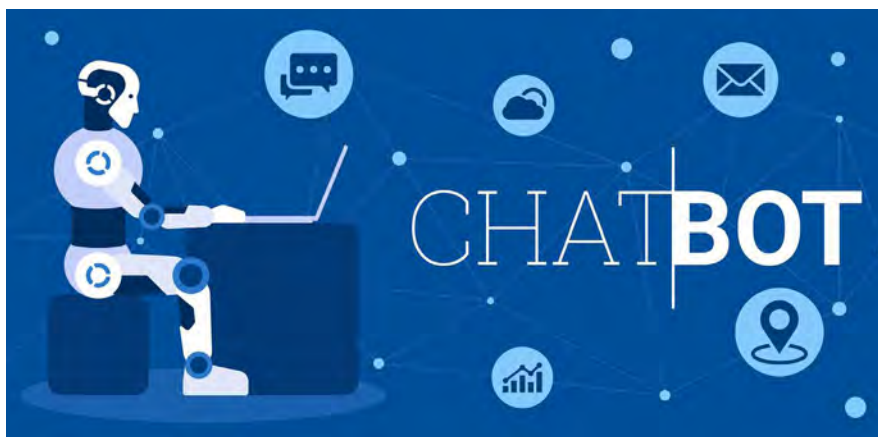
In other words, the prospective client is the proponent of the lawyer-client relationship, which thereby imposes obligations on the lawyer. Having a chatbot on the firm's website creates an opportunity for prospective clients

to disclose information wholesale with no gatekeeper and thereby imposes upon an attorney the obligation to safeguard that information and prohibit him or her from representation of adverse clients. In real life, an attorney—or better—well-trained staff, can serve as a gatekeeper and prevent a prospective client from revealing information when appropriate. With a chatbot, a prospective client can impose upon a lawyer, with the lawyer having little or no control over the situation.

Lawyer-client relationship absent a contract

In Pennsylvania, a lawyer-client relationship may be formed even without an express contract. This is known as an implied relationship. An implied relationship will be found if:

Continued on page 2



AT ISSUE

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Chatbots

Continued from page 1

(1) the purported client sought advice or assistance from the attorney; (2) the advice sought was within the attorney's professional competence; (3) the attorney expressly or impliedly agreed to render such assistance; and (4) it is reasonable for the putative client to believe the attorney was representing him. See *Cost v. Cost*, 677 A.2d 1250, 1254 (Pa. Super. 1996); see also *Atkinson v. Haug*, 622 A.2d 983, 986 (Pa. Super. 1993).

It is reasonable to be concerned that a chatbot on the firm's website may create an implied relationship. The first two elements would be easily met. The purported client is most likely on the firm's website in order to seek assistance from an attorney. It is probable that the advice sought is within the firm's professional competence, as that information is likely on the site and readily apparent to the putative client. As to the third factor, does a chatbot imply an agreement to render assistance? From the putative client's perspective, it very well may. Where a putative client sees an opening message of "Let's get your case started today!," they may believe the attorney has agreed to render assistance. Even when the opening message is as banal as, "How may I be of service today?," there is a chance that a less-than-savvy putative client may believe the attorney has agreed to render assistance. Keep in mind the kind of clientele that will be attempting to find their attorney online.

Additionally, the avatar used may mislead a putative client. Many firms have used pictures of a real person as the avatar for the chatbot. One firm went so far as to use a picture of the managing attorney as the chatbot avatar. This could reasonably lead a

putative client to believe that they are in fact speaking with that attorney.

Of course, a disclaimer is a great place to start. However, that may not be sufficient to dissuade a putative client's belief that an attorney has agreed to render assistance if there are other factors such as a misleading opening message or a picture of the managing attorney connected to the message.

So far, case law outlining what is reasonable for a putative client to believe in these circumstances has not developed. However, it is likely to become an issue eventually and no one wants their firm to be the example. Allowing for an unsupervised line of communication may imply an agreement to render assistance. Unlike an email, the putative client receives a response in real time. Unlike a phone call with your secretary, the client is dictating what, and how much, information they will give to you, rather than being guided by your trained staff who could limit their disclosures.

For example, Ascend, a chatbot powered by Wix (a cloud-based web development platform) is a readily available tool for the many customers who use Wix to build their website. Ascend has a function which allows a potential client to submit documents via the chatbot interface. Imagine an overzealous putative client submitting his entire case file. You may have implied an agreement to render assistance by accepting the putative client's documents, replete with confidential identifying information, through your website. At the very least, the scenario would create the obligation to protect the information contained in the submitted documents as if the individual were a prospective client under Rule 1.18. This appears a quick and easy

Continued on page 3

Chatbots

Continued from page 2

way to conflict yourself out of a lot of work and complicate your conflict checks moving forward.

Conclusion

In sum, it is important to undertake an earnest cost-benefit analysis as to whether or not a chatbot is appropriate for your firm's website. At first glance, it may feel like a nice way to appear technologically savvy, but what benefit is a chatbot actually providing your clients and potential clients? In light of the potential liabilities indicated above, it may not be conducive to an efficient law firm.

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Surviving your first few years of legal practice

By Alicia S. Luke

I remember the feeling vividly: overwhelmed, helpless and, frankly, a bit dejected. Like many first-year associates, I found myself in the midst of an abrupt transition. The sense of accomplishment that follows earning a law degree and passing the bar exam was a distant memory. Instead, I sat at my desk in October 2011 feeling frustrated as I pondered what to write down on my timesheet about the 1.2 hours of time it had taken me to figure out whether responses to document requests needed a client's signed verification.

The first few years of legal practice are difficult. Even in an ideal situation, new associates struggle to balance the demands of billable hours with life outside of the office, learn the personalities of their colleagues and, crucially, gain some level of comfort with their new job title of "attorney." For many attorneys, only time and experience help reinstall a sense of competence and confidence. But because that feedback is not particularly helpful, I offer these five tips to help you survive those first few years of practice.

1. Clarify Expectations at the Outset of an Assignment

At the first meeting when you receive a new assignment, clarify the assigning attorney's expectations with regard to the timeline and the deliverable. Are you expected to prepare a formal memo? A less formal email? Does the assigning attorney just want you to compile the key relevant cases? There is no "right" answer, but you and the assigning attorney should be on the same page. Knowing the expected timeline allows you to budget your time and prioritize. For example, researching case law to respond to a pending motion for sum-



mary judgment is likely more time-sensitive than analyzing another party's discovery responses. It is important to clarify expectations before you start digging into the work.

With respect to the timeline, set realistic expectations and work hard to meet the due date. That said, unexpected emergencies can arise. It is vitally important to maintain clear communication if an unplanned interruption results in your need to request additional time beyond what was originally discussed. Do not wait for the "Where are we on this?" email from the assigning attorney, which will inevitably leave a pit in your stomach, to ask for additional time. If something unexpected comes up, mention it early.

2. No One Expects You to Know All the Answers. But . . .

Fortunately, although painstaking, I figured out whether responses to document requests require a client's executed

Continued on page 4

Surviving Your First Few Years

Continued from page 3

verification. Sometimes the question is more complicated, or the answer more elusive. No one expects you to know all the answers all the time. You will, however, be fairly expected to have tried to find the answer on your own and to report back with a meaningful explanation of where you looked and what you found, along with a proposed solution if you truly did not find anything responsive. The old adage “there are no dumb questions” does not apply if you have made little effort to understand the issues.

For example, do not just respond that you “could not find any cases on point” when conducting a research assignment. Maybe Pennsylvania state courts have never addressed the issue. However, did you look into whether federal courts in Pennsylvania have any relevant decisions? Did you research what other states have done? Do the cases contain a slightly different but analogous argument that could support your position?

On a related note, if you discover an issue unprompted, propose a solution. Do not just say: “We do not have recent financial records, and that may be a problem for our case.” Instead, say: “We do not have recent financial records, and I think they might be helpful. Should I prepare supplemental document requests to send to opposing counsel?” That response sounds much more impressive, and colleagues will notice your insight and forward-thinking initiative.

3. When you make a mistake, inform the supervising attorney promptly

I heard this advice during a CLE given by a former colleague and dear friend during my first year of practice. It is one of the best pieces of advice I have ever received, and it applies as much to seasoned lawyers as to new ones: when you make a mistake – and you will make a mistake – *do something about it*. The mistake will not get better over time if you ignore it or attempt to cover it up, and it will definitely not go away on its own.

As a new attorney, you should promptly report the mistake to the supervising attorney. Do not attempt to fix it yourself. I once inadvertently disclosed documents during discovery. My heart skipped a beat as I checked to confirm that I had, in fact, made a big mistake. After a few minutes of panic, I notified the supervising attorney, and within an hour we had drafted and issued a claw-back letter. Did I feel horrible? Absolutely. Did I worry that my mistake made me look careless? Definitely. However, taking prompt action was the best way to show that I recognized my mistake, had concern about fixing it, and wanted

to protect the client’s interests.

A final word on this subject: when you make a mistake, do not make an excuse or pass blame. Apologize, move on, and learn from it. Dwelling on it serves no constructive purpose.

4. Read it one more time

It does not matter what “it” is. “It” could be an internal memo to another attorney at the firm, a letter to opposing counsel or an email to the client outlining strategy. Read. It. One. More. Time. Inevitably, you will find a typo, fix a grammatical error or refine the wording to make “it” more readable. The pressure to get assignments completed in a time-efficient manner is real, but the benefits of taking extra time to clean up a submission far outweigh the detriments of rushing to submit something earlier but sloppier. While you perform that final review of a draft email, remember not to type in the recipient’s address until right before you hit “send.” Draft the email, review what you wrote until you are satisfied it reads appropriately and insert the addressee’s email address last.

5. Protect your reputation

Your reputation is one of the few things you can control when you start practicing law. Treat it with care. You will not like all of your adversaries. You will not agree with all judges’ decisions. You will wish some of your colleagues worked elsewhere. Notwithstanding all of that, be a professional. Eye-rolls and quick, snarky email replies are tiresome, at best. At worst, reports of this behavior will circulate and detract from any favorable impression someone may have of your legal work. Along the same lines, treat *everyone*, including internal and external administrative staff, with respect at every interaction. Do this not only because it is the right thing to do, but because you will quickly learn that those individuals are invaluable when you need assistance.



Alicia Luke is an attorney at Fox Rothschild LLP, a national law firm with 950 attorneys. A member of the firm’s Litigation Department, she represents municipal and educational-entity clients in both litigated and non-litigated matters, including contract preparation and negotiation, tax assessment appeals, courtroom litigation, and alternative dispute resolution. Alicia earned her law degree from Temple University James E. Beasley School of Law (magna cum laude) and has been named to Thomson Reuters’ Super Lawyers - Rising Stars list for general litigation in Pennsylvania in each of the last five years. Prior to law school, she spent four years handling insurance claims for a national insurance company.

Leaning In: When attorneys listen to their support staff, everyone wins

By *Kaleigh Boyer*

Before attending law school, I worked as a paralegal for 10 years in a number of firms — large and small, public and private — performing many different roles, and I gained experience in numerous fields of the law. I am presently in the unique position of transitioning from a paralegal to a lawyer, and with every day that passes, I inevitably begin to identify more as a “lawyer” and less as “staff.” However, I cannot help but notice how differently I am treated now that I have been stripped of my “paralegal” title and wear my new hat of “law clerk” or “legal extern.”

In my experience, it is true that many firms and government agencies have their own unique cultures and environments, yet a common theme I’ve always noticed is the unspoken dichotomy that exists between staff and lawyers — particularly, the amount of deference given to individuals simply because of his or her title or status. In a typical scenario, an attorney in a law firm and a paralegal can make an identical — and valid — argument or suggestion about a certain issue, yet the paralegal’s argument is typically ignored or dismissed entirely while the attorney is saluted for his or her brilliance. Why do most legal offices discount the opinions of half of their employees?

When I recently started my 2L legal externship at a government agency, I was pleasantly surprised about how differently I was treated from my previous positions when I was considered “support staff.” By comparison, I recall my first days at many firms as a paralegal where I was considered another number walking through the revolving paralegal door: I was not important enough for management to spell my name correctly in welcome emails; other staff members were reticent to help train and answer questions; and speaking up in meetings was frowned upon because I needed to “stay in my lane.” Now, as a law student and a budding lawyer, my input is always invited, staff members are much more welcoming, and my suggestions — the same suggestions I would have made as a paralegal — are embraced as helpful and excellent additions to the conversation. Why does my educational status, and thus my title within an office, have such a drastic effect on the way I am treated by others? Why were my ideas as a paralegal somehow inferior to the same idea suggested by a legal extern or practicing lawyer? It is curious how the possession of a law degree invariably determines the strength of an idea.



I am not suggesting that paralegals are qualified to weigh in on matters of constitutional interpretation or discussions about the Rule Against Perpetuities. However, the day-to-day operations of a legal office are not always filled with such lofty dissections of the law. Instead, they are filled with routine matters and issues that often require a matchmaking of common sense and creative thinking. Legal staff can often offer valuable insight and bring their real world experiences to the table. The person scurrying around the office making copies of medical records may have simply chosen to not spend the money on higher education. The power of his or her ideas are not diminished because they do not have a law degree. As Ralph Waldo Emerson said, “Common sense is genius in its working clothes.”

This issue is germane to all legal practitioners and should not continue to be brushed off as a benign subconscious bias. Alongside the power struggle of lawyer versus staff also lays the inequality between men and women in the workplace. A large majority but not all of legal support personnel are female.

Gender inequality in the workplace is no stranger to law review articles or policy debates, yet hiring practices, starting salaries, and growth/promotions within organizations all reflect disparate treatment between men and women. Employers and organizations are aware of the disparate treatment between men and women leaders, yet few organizations have acknowledged this issue exists within their walls, and even fewer have made attempts to bridge the gap or rectify the

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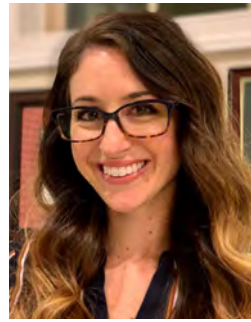
Leaning In

Continued from page 5

discrepancy. The implicit benefits given to men over women and lawyers over paralegals are undeniably vested solely in the title one bears. The power of occupational titles permeates all career industries and will have a lasting effect on organizational hierarchies.

Going forward, as I grow into my new attorney hat, I will be respectful of the deference given to my ideas simply because of my occupational status; however, I hope to always remember the shoes I once filled as “support staff” and be

mindful of the fact that a good idea is a good idea regardless of where it came from.



Kaleigh Boyer is a second-year law student at Widener University Commonwealth Law School in Harrisburg. Kaleigh was selected by her legal methods professor to be an academic success fellow and mentors first-year students in their legal writing course. In addition to fulltime law school, she recently graduated with her master's degree in public administration from Penn State's School of Public Affairs.

Incentivize law students' pro bono service: Explain the practical benefits

By Christopher J. Merken

Pro bono legal representation is a crucial part of the American judicial system. The American Bar Association's Model Rule of Professional Conduct 6.1 specifically calls on lawyers to serve:

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year.

Lawyers do not have to wait to enter practice to provide pro bono legal services. All nine Pennsylvania law schools offer some form of pro bono legal experience to students, and many incentivize students with awards for pro bono service. The University of Pennsylvania School of Law requires all students to complete at least 70 hours of pro bono work to graduate and offers tiered pro bono services awards to graduating students; Villanova University Charles Widger School of Law offers the Dorothy Day Award for Pro Bono Service to students who complete at least 60 hours of pro bono service before graduation; Penn State Law offers the Pro Bono Advocate Award to students who complete 60 hours of pro bono service, and so on.



Recognition and a tassel at graduation may incentivize some students but, in 2017, only 14 Villanova Law graduates received the Dorothy Day Award, a mere 8.97% of the 156 graduates. In fairness, this award does not include hours dedicated to externships with public interest organizations or clinical work on behalf of indigent clients. But the low number illustrates a larger problem. What incentives motivate law students to participate in pro bono service opportunities?

One approach is to mandate pro bono service. UPenn Law began its mandatory pro bono requirement in 1989 and is one of at least 39 law schools nationwide with a pro bono requirement. This mandatory pro bono approach reflects one side of a national debate about requiring practicing lawyers to provide pro bono services; after all, the ABA model rule is aspirational, not mandatory. Some advocates point to the overwhelming need for legal services while opponents argue “forced labor” is inconsistent with the various requirements and privileges in the practice of law.

I do not believe mandating law students to complete pro bono hours is effective. Many students resent mandato-

Continued on page 7

Incentivize law students' pro bono service

Continued from page 6

ry additions to the law school curriculum. Mandating pro bono service may lead to subpar effort and a “check the box” mentality benefitting nobody. Further, mandating pro bono hours would require a Herculean effort on the part of law school administrations. Each school would have to hire pro bono coordinators to facilitate opportunities, track participation, meet with students and carry out all tasks related to implementation and execution of a pro bono requirement. Resentful students plus increased cost to law schools does not seem like the best way to increase pro bono engagement.

A much better way is, perhaps, a more cynical approach. Demonstrate to law students why pro bono benefits them. The ABA suggests this approach on the pro bono section of their website. It explains:

Pro bono programs help students develop professionalism and an understanding of a lawyer's responsibility to the community. Participation facilitates student involvement in the community and increases the availability of legal services to needy populations. *Students also benefit by increasing their knowledge and marketability, gaining practical experience, developing skills, enhancing their reputations* and exploring alternative career opportunities.

The final part of this statement is crucial. You, the law student, benefit by increasing your knowledge and making yourself more marketable. You gain practical experience your classmates simply will not, whether conducting client intake interviews or drafting estate planning documents under an attorney's supervision. You become more marketable, with practical skills developed through hands-on experience.

This “what's in it for me” approach is cynical, but I believe it may be effective. Law students go to law school to become lawyers. By showing students how pro bono service is a tool to develop their skills and gain practical experience, which in turn will help them get jobs, pro bono advocates can remove the aspiration and inject the practical. One way to accomplish this is by having practitioners come to law schools and talk to 1L students. Pro bono partners at law firms can speak persuasively of the value of pro bono service and how it prepares good law students to be good associates.

Naturally, I would prefer every law student feel the innate sense of duty and service. At Villanova, Dean Mark Alexan-

der addresses 1L students during orientation. He explains the university's motto: *Unitas, Veritas, Caritas*. Unity, Truth, Love for All. Dean Alexander's call to service, a reminder we must use our legal education to help others, is powerful ... at least it was for me when I heard it in August 2017. But for those students who are not as moved as I was, a stark, practical explanation of the real-life benefits of pro bono service may be the key to engagement.



Christopher J. Merken is a third-year law student at Villanova University Charles Widger School of Law and president of the Villanova Law Pro Bono Society. His opinions are his own.



Volunteers Needed for Mock Trial

One of the largest in the nation, the PBA/YLD Mock Trial Competition gives more than 300 high school student teams from across the state the opportunity to act as lawyers and witnesses in simulated civil and criminal trials before actual judges and panels of juries. Lawyers volunteer to assist students as team advisors, scorekeepers and regional coordinators. Each year, the winning team goes on to represent Pennsylvania in the national competition.

If you would like to volunteer during the Mock Trial Program as a scoring judge during the local and state final trials or be an attorney advisor to a team, please contact Maria Engles, maria.engles@pabar.org.

Fiduciary access to digital assets or planning for your digital afterlife

By Sipi Gupta

What happens to your Facebook account when you die? What electronic media did you use today? All of the different online accounts that you use are your digital assets, and they challenge traditional estate planning approaches. The Revised Uniform Access to Digital Assets Act (RUFADAA), revising the Uniform Access to Digital Assets Act and developed by the Uniform Law Commission, establishes rules and regulations surrounding digital account ownership.

According to a recent McAfee survey, the average individual has over \$35,000 worth of assets stored on his or her devices. Such assets include personal memories (photos, videos, and the like), personal records (like health, financial, and estate planning information), entertainment files (music, tv shows, e-books, video games, apps) and personal communications. Fifty-five percent of those surveyed are storing digital assets on their devices that would be impossible to recreate, redownload, or repurchase.

Under present law, it's not entirely clear who can access and manage your online property if you become incapacitated or die. Meanwhile, Terms of Service Agreements (TOSAs)—*i.e.*, those agreements you quickly scroll through to click “I agree” in order to set up or update your online account—tend to limit access to only the individual account holder. RUFADAA spells out certain powers given to a fiduciary to manage digital assets in the event of the death or incapacity of a digital asset owner.

Pennsylvania State Senator Tom Killion has authored a version of RUFADAA, SB 320, called the Fiduciary Access to Digital Assets Act, which would allow a fiduciary in Pennsylvania to access digital property from cloud storage companies by sending a certified document proving his or her authority to manage those electronic assets. Until Pennsylvania adopts a version of RUFADAA, here are a few concrete steps to consider:

First, identify and create an inventory (hard copy or electronic) of all digital assets. Update it regularly.

Second, provide access to your digital assets to your fiduciary through the variety of online management tools that range from creating an account with multiple users to the hodgepodge of company-specific programs available to users. Here's a quick, by no means comprehensive, list:



- **Facebook** allows you to designate a legacy contact. <https://newsroom.fb.com/news/2015/02/adding-a-legacy-contact/>
- **Google** offers an inactive account manager. <https://support.google.com/accounts/answer/3036546?hl=en>
- The **Microsoft** Next of Kin process permits the release of your account data to your next of kin. https://answers.microsoft.com/en-us/outlook_com/forum/all/microsofts-next-of-kin-process-accessing-emails/c848d768-58e8-428f-b10a-4fcd1f95c8d8
- Your next of kin can request that your **Yahoo** account be closed; however, per its TOSA, Yahoo will not provide anyone with access to your account or account data. <https://help.yahoo.com/kb/account/sln2021.html?guc-counter=1>
- Similar to Yahoo, **Twitter** does not give anyone access to your account when you die; however, the deactivation of the account of a deceased or incapacitated person can be requested.
- **Instagram** can memorialize your account after you die, removing it from its public Search and Explore space. <https://help.instagram.com/contact/452224988254813>
- **LastPass** give you the ability to grant one-time access to your account to a designated user. <https://support.logmeininc.com/lastpass>

Continued on page 9

Planning for your digital afterlife

Continued from page 8

Third, your durable power of attorney should include a digital asset provision. Similarly, your will or revocable trust should specifically devise digital assets and appoint a fiduciary (such as a digital personal representative or digital trustee) to administer the digital assets.

Lastly, consult with a knowledgeable attorney to make sure you've covered all your bases in doing your digital estate planning.



Sipi Gupta is an estate planning attorney with a Philadelphia-based practice. Sipi is a graduate of Temple University's Beasley School of Law and is admitted to practice in the State of New Jersey and Commonwealth of Pennsylvania. She specializes in estate and public benefits planning for families with disabilities. She can be reached at Sipi@GuptaLawFirm.org.

Court TV: Polls show strong public support for televising the Supreme Court

By Patrick McKnight

A push for transparency

In 2009, Sen. Arlen Specter introduced several pieces of legislation to televise federal court proceedings. One of these proposals included televising open sessions of the U.S. Supreme Court. Sen. Specter explained, “[t]he Supreme Court makes pronouncements on constitutional and federal law that have direct impacts on the rights of Americans. Those rights would be substantially enhanced by televising the oral arguments of the court so that the public can see and hear the issues presented.” Ultimately, none of those proposed rules were enacted.

Over a decade after Sen. Specter's attempt, however, camera advocates continue to assert that U.S. Supreme Court proceedings should be broadcast for the benefit of the public. These supporters argue that the public deserves the same type of access to the Supreme Court as C-SPAN provides for Congressional sessions. A 2010 poll indicated 60% of the public supported televised proceedings, with 50% indicating that they would at least occasionally tune in.

Among the most outspoken of the pro-camera proponents is Bruce Peabody, professor of political science and pre-law at Farleigh Dickenson University. According to Professor Peabody, “[t]he time has come for the Supreme Court to join the other branches of federal government in accepting the greater accountability, transparency and democracy that accompanies televised proceedings.” Further, Professor Peabody suggests that, if the Supreme Court were to not implement these measures, then Congress could “employ its



constitutional powers to guarantee the public a valid means for scrutinizing the most powerful court in the world.”

On the other side of the spectrum, opponents of these measures have expressed concern that televising proceedings could threaten judicial independence. Given the current political climate, combined with justices being inextricably linked to the president that appointed them, opponents worry that the merits of an issue will become lost within the political divide of the justices deciding the case. Further, given that oral arguments in front of the Supreme Court are such a small part of the Supreme Court's ultimate decision — as the briefs submitted by the parties' and *amici* provide much

Continued on page 10

Court TV

Continued from page 9

greater context — opponents warn that a justice’s questions and comments during oral argument provide little insight as to the Supreme Court’s holding.

Judicial opinions

In 1996, now-retired Justice David Souter famously told a House Appropriations subcommittee “[t]he day you see a camera come into our courtroom, it’s going to roll over my dead body.” Further, several current and former justices have expressed their skepticism, including Justices Anthony Kennedy, Antonin Scalia, David Souter and Clarence Thomas. These objections largely center around the current news media climate, wherein a small excerpt of a larger proceeding can be portrayed in a misleading manner.

Not all justices, however, hold such a position on the matter. During her confirmation hearings, Justice Sotomayor expressed openness to the idea, stating “I have had positive experiences with cameras. When I have been asked to join experiments of using cameras in the courtroom, I have participated.” Joining Justice Sotomayor are Justices Ruth Bader Ginsburg, Elena Kagan, Samuel Alito and Brett Kavanaugh, who all seem to open to allowing cameras in the courtroom. These justices, like Professor Peabody, believe that cameras in the Supreme Court would serve to provide greater transparency to a branch of government that the general public possibly understands the least about.

Recent developments

A decade after an initial explosion of the interest, the conversation around greater public access to televised proceedings has evolved. Though originally unsuccessful, Senator Spector’s initial crusade was not all for naught. Currently,

the Second, Fourth, Ninth and D.C. Circuit Courts of Appeal currently stream oral arguments. Moreover, both the British and Canadian Supreme Courts stream their hearings live.

Not surprisingly, C-SPAN is enthusiastically in favor of cameras. During Justice Kavanaugh’s confirmation hearing in 2018, the public television network released the troubling results of a poll, which showed most citizens could not identify a single member of the Supreme Court. Nonetheless, 64% of those polled said they wanted televised proceedings, while 71% indicated live audio should be available. Notably, audio recordings of the Supreme Court’s proceedings are available online at the Supreme Court’s website and Oyez.

More recently, civil libertarians have pointed out an apparent tension with the current status quo. At a time when many citizens feel they are gradually losing their privacy rights, there is some degree of irony when the same court that has been slow to limit warrantless mass surveillance opposes video recordings of its own proceedings.

Conclusion

There are good reasons to limit the scope of video recordings of Supreme Court proceedings. Former and sitting justices raise valid concerns of the dangers of this type of transparency. Still, many of the best arguments against televising any part of Supreme Court proceedings fall flat. Some of expressed concern about preserving the “mystery” of the court. Any public mystery over the source of constitutional law is a bug, rather than a feature. Since justices have lifetime tenure, it’s unclear what they risk by opening at least some of their proceedings to greater public access. Even if oral arguments aren’t televised, video recording opinion announcements could be a good place to start.

There are many aspects of the modern information age which deserve opacity. The rule of law isn’t one of them.



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Guiding employers in the #MeToo era

By Ashley M. LeBrun

It was the tweet heard around the world in 2017: “If you’ve been sexually harassed or assaulted write ‘me too’ as a reply to this tweet.” Other than interacting with Alyssa Milano’s now-famous tweet in response to the breaking news of the Harvey Weinstein allegations, what else has the world been doing in response to what has been dubbed the #MeToo movement? Obviously, the #MeToo movement has called attention to conduct that should have never occurred in the in the first instance and, most certainly, never in the workplace. The #MeToo movement, however, has shone a brighter light on unacceptable and outrageous conduct and the responsibility of everyone to do more to prevent and remedy it.

The #MeToo movement was actually founded by Turana Burke in 2006 to help girls and young women of color who had been victims of sexual violence. In January 2016, Pennsylvania Governor Tom Wolf launched the “It’s On Us”

campaign, a campaign to combat sexual assault on college and university campuses across Pennsylvania. With roots in the national counterpart of the same name, the campaign operates to ensure everyone takes responsibility to end sexual assault. It also seeks to motivate the community at large, including businesses and organizations, to take affirmative steps to end and prevent sexual assault. Grassroots efforts encourage dialogue about ending sexual assault. While this is important, many have found that change comes through formal channels as well, especially through laws.

Since 1955, Pennsylvania has had some sort of law, aiming to ensure employment practices are fair. The Pennsylvania Human Relations Act (PHRA) — formerly the Pennsylvania Fair Employment Practice Act — prohibits, among other things, discrimination and harassment on the basis of sex, gender and other protected traits. The PHRA provides ways for individuals, who have been the subject of discrim-

ination or harassment, to seek relief under the law against their employer or former employer.

Over the course of the last four years, many bills have circulated in the Pennsylvania Legislature. As it comes to passing legislation that directly impacts private businesses with respect to anti-harassment efforts, however, none of these bills have passed. Examples of bill proposals that have yet to pass include: (1) requiring businesses to maintain a specific policy on anti-harassment, including specific content, and to maintain records related to these policies; (2)

requiring businesses to implement interactive training regarding sexual harassment, to be given to employees every two years, (3) extending the statute of limitations under the PHRA from 180 days to two full years and extending the right to a demand a trial by jury under PHRA cases; (4) permitting a plaintiff to recover punitive damages under the PHRA if they can demonstrate the defen-

dant engaged in unlawful discrimination with malice or reckless indifference to their rights; (5) requiring an award of attorneys’ fees and costs unless there are special circumstances under the PHRA; (6) prohibiting nondisclosure provisions in settlement agreements, resolving sexual harassment claims; requiring businesses post fair practices notices in the workplace outlining examples harassment; and (7) expanding the PHRA to interns, volunteers and domestic and agricultural workers.

Currently, Delaware and New York require employers to provide interactive anti-harassment training and post detailed notices about sexual harassment. New Jersey is alongside Pennsylvania in not having either of these statutory requirements. That does not mean, however, that employers in Pennsylvania should not be establishing anti-harassment policies and implementing them through interactive training. Indeed, the legal response to the #MeToo movement has, in

Continued on page 12



Guiding employers in the #MeToo era

Continued from page 11

part, consisted of states relying upon the Faragher-Ellerth defense to guide them in what should be required of employers.

The Faragher-Ellerth defense comes from federal case law, which provides employers an affirmative defense in some sexual harassment cases if the employer can demonstrate they exercised reasonable care to prevent and eradicate sexual harassment and the plaintiff unreasonably failed to take advantage of those implemented safeguards. See *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998); *Burlington Indus. Inc. v. Ellerth*, 524 U.S. 742 (1998). Courts have interpreted this standard to mean that employers should have well-disseminated and effective policies against harassment. These policies should also provide for internal complaint procedures for victims or witnesses of harassment. In order to be well-disseminated, employers should be training their employees and make the training interactive to ensure employees understand.

Understanding what the law requires is one thing, but actually providing guidance to employers on how to prevent and remedy sexual harassment in the #MeToo era — i.e., what to write in a handbook or how to present training — is another.

Here are the guideposts for conversations with Pennsylvania employers:

- Make sure employers are relying upon counsel (versus solely an HR consulting or payroll company);
- Provide them with a comprehensive policy that prohibits harassment and provides for an internal complaint procedure;
- Ensure notices are posted in the workplace;
- Provide interactive training to their employees and separate additional training for supervisors and managers; and
- Ensure any complaints are promptly and thoroughly investigated, either through counsel or with the guidance of counsel throughout the process.

While none of these are required by statute or regulation in Pennsylvania, these are five helpful ways that employers can work to get ahead of harassment in the workplace and ensure that their employees feel and are safe.

New York provides resources, model policies, training modules and internal complaint forms that attorneys can easily rely upon to start drafting effective policies for Pennsylvania employers. Importantly, a well-drafted policy is ineffective left undistributed. Anti-harassment policies should be distributed upon hire or any revisions, and employers should

always require a separate acknowledgment form for anti-harassment policies. Investigations should be well-documented and unbiased, as an employer cannot already have the result predetermined in their mind before they conduct the investigation.

It is critical for attorneys to still ensure their clients are preventing and remedying sexual harassment in the workplace despite a lack of statutory or regulatory requirements in Pennsylvania since the publicity of the #MeToo movement. Thanks to neighboring states, the tools to ensure a safer workplace are available.



Ashley LeBrun is an associate working with Archer & Greiner's labor and employment, commercial litigation and trade secrets groups. She regularly counsels employers and represents them in litigation in Pennsylvania and New Jersey. Ashley has defended employers at the city, state, and federal levels. She is also the secretary of the Princeton Bar Association.

PBA YLD Seeks 2020-2021 Nominations

The PBA Young Lawyers Division is accepting nominations from YLD members interested in being candidates for the division's 2020-2021 chair-elect, secretary, treasurer and ABA representative positions. The terms for those elected will begin at the conclusion of the 2020 Annual Meeting, May 6-7, 2020, at the Philadelphia 201 Hotel, Philadelphia.

- To be nominated by the Nominating Committee under Article IV, Section 2, of the bylaws, please submit your qualifications and a brief biographical sketch by March 8, 2020 to Alaina Koltash at akoltash@gmail.com.
- To be nominated by petition under Article IV, Section 4 of the bylaws, please send your materials with a petition signed by at least 15 members of the YLD by April 7, 2020 to akoltash@gmail.com.

Send a copy of all materials to Maria Engles, YLD Coordinator at maria.engles@pabar.org.

The YLD bylaws can be found here: <https://www.pabar.org/pdf/yldbylaws.pdf>.

If you have questions about the election process, please contact Alaina Koltash at 814-573-4012.

New Jersey attorney review explained

By Jayne M. Snyder

For any young lawyer or more seasoned practitioner operating near the state border, it is helpful to have a general understanding of tangential practice areas that may be encountered in the course of representing or counseling a client. One such area is the purchase and sale of residential real estate in New Jersey, which will likely be encountered by many practitioners in the course of estate administration, marital dissolution or navigating other real estate or business ventures on behalf of Pennsylvanian clients. Knowing the general customs and unique nuances of residential real estate in New Jersey is helpful in understanding overlapping legal issues and guiding clients to appropriate counsel when needed.

As in Pennsylvania, the New Jersey Associations of Realtors (NJAR) has a standard form of contract that is used throughout the state of New Jersey by real estate agents and brokers negotiating transactions between buyers and sellers of real property. The NJAR contract may only be used where there is a one-to-four family residential property or a vacant single-family lot. If a different type of property is being transferred, it is necessary to consult with an attorney to prepare a bespoke contract the terms of which are negotiated by the parties prior to signing. The NJAR contract includes basic provisions concerning inspection and mortgage contingencies and contains blank terms, which the agents and brokers fill in to reflect the specific terms of the transaction such as party names, property address and tax lot and block designation and price information.

Unlike the standard form of contract in Pennsylvania, the NJAR contract also includes numerous disclosures and advisory explanations about the benefits of hiring an attorney to navigate the transaction and the risks involved if an attorney is not used during the home buying or selling process. The entire first page of the NJAR contract is a notice to the buyer and seller, highlighting the legal issues involved and requires the signatures of the buyer, seller, listing agent and selling agent to acknowledge disclosure and receipt of said information. At the top of the second page of the NJAR contract is a centered, capitalized and bold statement reading, “THIS IS A LEGALLY BINDING CONTRACT THAT WILL BECOME FINAL WITHIN THREE BUSINESS DAYS. DURING THIS PERIOD YOU MAY CHOOSE TO CONSULT AN ATTORNEY WHO CAN REVIEW AND CANCEL THE CONTRACT.”



This provision introduces the concept of “attorney review” that exists in New Jersey and refers to a later, more detailed provision in the NJAR contract that explains that either party may have the NJAR contract reviewed by an attorney during three business days after it is fully signed by the buyer and seller. The three-day attorney review period is used by attorney to modify the NJAR contract to better reflect the terms of the parties’ agreement or to cancel the NJAR contract altogether for any reason or no reason whatsoever. It is common practice for attorneys representing both buyers and sellers to modify the NJAR contract pursuant to attorney review because the NJAR contract contains some stringent provisions that are not favorable to either party and also does not address certain considerations that might be involved with different types of property. Additionally, for a seller fielding competing offers or a buyer experiencing a change-of-heart or buyer’s remorse, the NJAR contract may be cancelled during the attorney review period by an attorney with no liability for either party. If an attorney does not disapprove of or cancel the NJAR contract during this initial three-day period, the NJAR contract prepared by the real estate agents or brokers becomes binding as written.

The term “attorney review” refers to both this initial three-day period after the NJAR contract is signed by both parties and the entire period of time it takes the buyer’s attorney and the seller’s attorney to negotiate the rider or addendum that modifies the terms of the NJAR contract. Once this rider or addendum is executed by both parties, attorney review is deemed concluded and the contract—including the rider or

Continued on page 14

New Jersey attorney review

Continued from page 13

addendum and the NJAR contract — is complete and binding. Variations exist in the manner of disapproving the NJAR contract and type of rider that is subsequently negotiated, but typically the buyer's attorney will "start" attorney review by sending a "review letter" or "disapproval letter" to the seller's attorney stating that the NJAR contract is disapproved in its present form but will be acceptable pending certain modifications and additions. These revisions may be set forth in the body of the review letter or as an attached rider to the disapproval letter. The opposing attorney will then review and respond to the new proposed terms and may provide additional comments.

In practice, the method of negotiating these subsequent terms varies and may be in the form of a series of letters exchanged between attorneys setting forth the proposed and accepted terms; changes to proposed terms marked up by hand on the first letter with initials, cross-outs or handwritten changes; or by updating and exchanging a shared Word document of a single rider using the track changes or redline features to show where modifications are proposed or accepted. The more traditional method is to exchange a series of letters that, together with the NJAR contract, comprise the complete agreement between the parties. The modern practice and preferred method is to negotiate a single rider to the NJAR Contract by updating the provisions of the Word document. Negotiating a single rider by exchanging Word documents is the preferred method and modern practice because of the simplicity of explaining to a client that the signed rider, with the NJAR contract, is the complete agreement between the parties. Having the NJAR contract with a single, superseding, signed rider is preferable to explaining to a client, mortgage or title company the accepted or rejected terms referenced across multiple competing letters where there are often various circular references to other provisions and other illegible handwritten changes or questionable cross-outs and insertions.

In most transactional settings, contract terms are negotiated by the parties and written agreements are prepared by attorneys prior to either party signing the agreement. Attorney review in New Jersey creates a somewhat backwards process, in that it forces clients (both buyers and sellers) to sign a contract

first and then have an attorney review and negotiate its terms second. Functionally, the buyer's signature on the NJAR contract after the specific deal points are filled in by a real estate agent or broker operates as the buyer's offer to the seller, which offer is accepted when the seller countersigns the agreement. As a result, the NJAR contract is more like a term sheet or letter of intent executed between the parties, to record the basic deal points, and is understood by both parties to be subject to further negotiation by legal counsel. If, however the NJAR contract is not formally "disapproved" by an attorney by notifying the opposing party prior to the conclusion of the three-day attorney review period, the NJAR contract becomes binding.

The practice of attorney review in New Jersey is the product of a compromise that was reached between lawyers and real estate brokers in connection with a lawsuit in which real estate brokers were cited with the unauthorized practice of law. See *N.J. Star Bar Ass'n v. N.J. Ass'n of Realtor Bds.*, 93 N.J. 470 (1983). Additionally, it should be noted that stylistic differences in the practice of residential real estate exist throughout the state of New Jersey, and, while the substantive law is not different, customs vary depending on geographic region. See, e.g., *Client Security Fund v. Security Title & Guaranty Co.*, 249 N.J. Super. 113 (Ch. Div. 1991). While there is a continual debate within the state as to where "North Jersey" and "South Jersey" begin and end (and whether there is a "Central Jersey" at all), all would agree that there are a wide range of common practices and variations in customs around the state of New Jersey. For any client having a matter involving residential real estate in New Jersey, it is wise to consult an experienced attorney familiar with the NJAR contract and unique features of the residential real estate practice in New Jersey.



Jayne M. Snyder is an associate attorney at Wells, Jaworski, & Liebman LLP, a commercial law firm with its principal office located in Paramus, NJ. The firm's principal practice areas include land use, real estate; business, corporate and commercial transactions; and tax, trusts and estate planning. When she is not working, Jayne enjoys serving as a court appointed special advocate with the CASA program in Hudson County, NJ and participating as a pupil in the Justice Morris Pashman American Inn of Court in Bergen County, NJ.

Accepting humility and building self-confidence: Lessons learned as a green transactional attorney

By Kevin M. Levy

Growing up, my only interaction with the legal industry was through television shows such as "Law & Order" or "Boston Legal" (I wasn't watching too much TV when "Suits" got popular), or on the silver screen with movies like "A Few Good Men" and "My Cousin Vinny." The legal genre of entertainment focuses on the flashy litigation: impassioned jury trials, heated cross-examinations, dramatic admissions and buried evidence.



Did you know that there's such a thing as a commercial condominium? Your local shopping center is probably in one of them.

Traversing the opening months of a transactional real estate practice could be compared to walking a tightrope while lifting weights: it is a perilous balancing of humility and a growing self-confidence in work product. That inexperience is somewhat compounded by lack of transactional legal education across most law schools.

It should be unsurprising, then, that the first several months as a practicing transactional attorney proved to be a bit of a culture shock. At Saul Ewing Arnstein & Lehr, I'm privileged to be a part of a strong real estate practice where experience levels range from just over four months of legal practice to partners with over 40 years of developing an encyclopedic knowledge bank of skill. Being part of that practice is inspiring: working on weighty transactions with significant repercussions on the Philadelphia metropolitan area and assisting colleagues throughout the rest of our office footprint on complex and interesting legal issues. On the other hand, collaborating on such projects and being relied on exposes a rift between the results of a law school education versus the work that goes on in a corporate legal setting.

At the outset, I note how important the fundamentals are: my work has incorporated central concepts of property, contract and corporate law at various points in commercial real estate transactions. But a law student can soar through school succeeding in all of the above classes without ever seeing a deed or articles of incorporation. After all, law school teaches students how to sue people. For the first few of months of my own practice, almost every new assignment would be followed by a quick search on Google for "What goes in an indemnification agreement?" or "What is a mezzanine loan?"

I'm fortunate to work with such experienced colleagues who have exhibited patience and a penchant for teaching. Partners have gone out of their way to include me on phone calls or client meetings where I'm not needed for the sole purpose of furthering my own education (non-billable, of course).

Every assignment, new contract and new development brings with it a slew of questions: what is boilerplate language versus what gets negotiated; what is the context behind that very bizarre contractual provision; is there state-specific law that changes our approach to a deal? An unending curiosity fuels the legal profession (with a bit of bold ambition too), but at a certain point, it also lends to a degree of imposter syndrome (described by a recent moving piece in "Teen Vogue" as a "psychological pattern when an individual feels like a failure or doubts their accomplishments, often having an internalized fear of being called out as a fraud. It's not a mental disorder, but a phenomenon of *perceived inadequacy*.").

Being a young attorney can be difficult, especially considering the transition from law school, where students are free to postulate on legal theory to the jarring realization that more senior attorneys and — *gulp* — clients are relying on

Continued on page 16

Lessons learned as a green transactional attorney

Continued from page 15

you for your legal conclusions.

Here are some of the lessons I've learned in my short time as a practicing attorney:

Ask questions

One of the worst things a young attorney can do is waste time wallowing in doubt and staring at a document without a clue how to proceed. In a firm, it's fairly certain that someone somewhere has previously looked into the issue you're researching. But even the most senior partner has their own questions or has to do their own research. As the gimmicky phrase goes, there's a reason they call it "practicing" law—we're always expected to continue learning and growing our own skillset and knowledge base. Firms should provide an infrastructure promoting a conducive environment allowing their junior attorneys to ask questions, and junior attorneys should take advantage of those opportunities (without abusing them!).

Know your limits

It's hard to know what you don't know until you're asked to do something that you are entirely ill-equipped to handle. All junior associates will be asked to pull late nights and work on issues above their paygrade, but just treading water can lead to burnout. Just as it's important to ask questions on the legal issues you don't entirely understand, it's equally important to ask for help when you're underwater. Additionally, volunteering for an assignment can show your eagerness, but all attorneys have to be realistic about their own competencies.

Find a mentor

As a junior associate, my firm assigned a partner to be my writing mentor and assigned another associate as my social/firm life mentor. These firm-designated mentors are vitally important for establishing expectations and creating a regimented educational pipeline. They can also advise on firm etiquette: there's no such thing as a stupid question, but there are some questions that don't need to be answered by the department chair.

Every new assignment, every new contract, every new concept is a challenge—a legal mountain waiting to be climbed. They can also be daunting, revealing inexperience, exposing unease and discomfort, too. But all of these experiences should be treated for what they are: an opportunity to learn.

Make a commitment to your non-billable work

For attorneys in private practice, billing is always on our minds. It determines profitability, compensation, and—eventually—partnership decisions. But attorneys are incredibly blessed with the privileges of education, status, and immense legal power. Lawyers continue a storied profession of pushing the law forward to help the needy, and pro bono service is a staple of legal life. Cynically, though, pro bono and other non-billable work is vitally important for junior attorneys for both filling time and gaining incredible experience that might not come for years. For instance, I've recently negotiated from start to finish a simple license agreement on behalf of a pro bono client and corresponded directly with the client and opposing counsel. Contributing to that pro bono matter gave me ownership in a matter that I might not otherwise have experienced.

Every lawyer owes to their clients duties of competence and diligence. Nascent attorneys are no exception—every junior associate I've worked with at my own firm and my classmates from law school are hungry for knowledge and are eager to learn more to grow stronger within their professions. We junior attorneys are inspired and can be fascinated by complex legal issues that would make our relatives groan when they ask, "How is work going"? We'll face our losses and our trying times, but we should remember that each attorney that has come before us has dealt with the same struggles. In turn, we will one day become the bridge builders for the new generation of attorneys, and it will be imperative to pass our fortunes and misfortunes forward. Until then, it will be many long nights and frustrations, but also unending gratitude.



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Planning for a digital estate

By Brandon O'Connor

We live in a digital world, where some of our most prized assets no longer exist in physical form. Although a family photo album is more likely to be stored on a shared Google Drive than at grandma's house these days, the photos are no less important. Therefore, our clients still wish to pass them onto the next generation. But how do we implement this digital asset into an enforceable estate plan? As the young and presumably tech-savvy attorney in the office, your partners may be looking to you for the answer.

What is a digital asset?

The most recently proposed definition in Pennsylvania for "digital asset" is "an electronic record in which an individual has a right or interest." SB 827, Session 2017, § 3902. This broad definition could conceivably include text messages, emails, digital music files, digital photographs and drawings, social media profiles, etc.

Access to these often password-protected digital assets after death is one of the biggest hurdles. Therefore, it is important to know what digital assets your clients consider valuable and to understand how each is stored and accessed.

What is the current state of the law?

Currently, there is no specific law regarding digital assets, only proposed legislation. On Oct. 28, 2019, the Pennsylvania Senate passed SB 827, Session 2017, titled the Revised Uniform Fiduciary Access to Digital Assets Act (the bill). The bill has been given to the House for review, revision and vote.

The bill proposes to provide the owner of a digital asset the right, during his or her lifetime, through "online tools" like the Google plan described in Section III or "in a will, trust, power of attorney or other record, [to] allow or prohibit disclosure to a fiduciary of some or all of the user's digital assets, including the content of electronic communications sent or received by the user ..." even to the extent the direction "... overrides a contrary provision in a terms-of-service agreement."

If the bill becomes law, estate planning attorneys will be able to: (i) implement an enforceable digital asset estate plan



for their clients, including granting fiduciaries access to digital assets and drafting dispositive provisions in a will or trust, and (ii) explain to clients that in the absence of a direction in their estate plan regarding digital assets that the terms-of-service with each individual digital asset provider will control access to the digital asset after their death.

How can attorneys plan without the bill?

Because the bill is not law, the testamentary transfer or non-transfer of a digital asset is currently controlled by a contract, rather than via will or intestacy. The controlling contract for a digital asset is often the terms of service one agrees to when starting a service or purchasing an electronic device.

While the vast majority of users likely do not read the lengthy terms of service (lawyers included), it can be determinative on what happens to a digital asset after death. For example, the terms of service for iCloud, the remote storage iPhones utilize to store digital assets, state:

"Unless otherwise required by law, You agree that your Account is non-transferable and that any rights to your Apple ID or Content within your Account terminate upon your death. Upon receipt of a copy of a death cer-

Continued on page 18

Planning for a digital estate

Continued from page 17

tificate your Account may be terminated and all Content within your Account deleted.”

What this means is that one cannot, by will or beneficiary designation, determine who inherits an iCloud account and its contents.

Under Apple’s iCloud parameters, how can we help our clients plan? One option is to suggest backing up the data stored on iCloud to a personally owned local storage device, such as a hard drive, and then make a specific gift of the item in the client’s will. Alternatively, if a client does not want anyone to have access to his iCloud, we can include a direction in his will for the executor to present the death certificate to Apple to delete the account and its contents per the terms of service.

Google, on the other hand, utilizes an “online tool” function, as mentioned in the bill. The tool is a quasi-beneficiary designation procedure for providing access to a Google account after it becomes inactive, presumably due to the death or incapacity of the account holder. This service can be accessed in Google’s account settings, under the “Data & Personalization” tab via the “Make a plan for your account” option.

The tool allows the account holder to:

- Determine how long the account should be inactive before Google implements the plan (3-18 months). Google will notify the account holder via email that his account is almost to the inactive stage. If the account holder fails to respond and the inactivity period expires, the plan proceeds;
- Send a customized autoreply message to emails and other correspondences the account receives (e.g., messages sent to your YouTube Account) after the inactivity period expires. This is an opportunity to let people know that the account holder has stopped using his Gmail or other Google service and, if desired, include a final message from the account holder;
- Choose up to 10 people who, once the inactivity period expires, will be contacted and given access to the account for three months to recover the account holder’s digital assets;
- Choose what part(s) of the account the chosen digital beneficiaries have access to, e.g., any combination of photos, YouTube account, contacts, Google drives, emails, etc.



When making these choices, the account holder should be cognizant of what they are sharing. You do not get to pick and choose within these categories what the digital beneficiaries have access to. If you grant access to your emails, it is to all your emails – good, bad and indifferent; and

- Choose whether, after the digital beneficiary’s three months of access expires or, alternatively, if no digital beneficiaries are designated upon the expiration of the inactivity period, the account holder would like the Google account terminated and all of its contents deleted.

The great thing about Google’s account plan is that it is a tool that estate planning attorneys can utilize now, even with the bill’s uncertain future. I suspect that more tech companies will provide online tools like Google’s account plan as digital estate planning becomes a more focal issue.

Conclusion

When clients contact us to create their estate plans, they are looking for comfort and certainty. Unfortunately, digital estate planning currently takes some creativity and does not involve the level of legal certainty that we wish to provide our clients. However, by understanding the extent of our clients’ digital estate and their wishes regarding its disposition, we can help them use the tools available to put a plan in place to preserve what is most important to them.



Brandon O’Connor is an associate with Sullivan Rogers & Feichtel in Mechanicsburg. His practice focuses on estate planning and administration, general and transactional business representation, civil litigation and real estate.

You got the job...Now what?

Six ways to stand out as a new associate

By Emily Gorge

Congratulations! You graduated law school, passed the bar exam and landed your first job. You walk into work, greet your colleagues, enter your new office, see the pile of files on your desk, and you wonder what you should do next? Starting out as a new associate is daunting. Law school taught you how to analyze cases and write briefs, but law school probably didn't cover how to manage your first weeks at the office. This article provides six tips I learned that kept me out of trouble in my early days as a new lawyer.

1 Find a Mentor. This is your first assignment as a new associate. To find a mentor, focus on a lawyer who specializes in an area of law that interests you. Introduce yourself, and offer to help out on projects. A mentor can help you acclimate to the firm environment, answer your questions, guide you on projects and hone your skills.

2 Ask Questions. The biggest mistake a new associate can make is not asking questions. You will not be expected to know the answers to everything in your first weeks. When you start out, there will be things you won't know how to do. Cases and projects are time-sensitive, so you should get your questions answered as soon as you can. If you fail to ask a question and something goes wrong, the lawyers in your firm will wonder why you *didn't* come and ask them for help. Asking questions shows the partners that you are responsible and take your work seriously. The only dumb question is the one that isn't asked.

3 Be Conscientious. Don't sit around your office idly waiting until a project comes your way. Be proactive and seek out work. The partners of a firm like to see a new associate who is a self-starter. Finding your own projects will introduce you to lawyers in the firm, and give you valuable experience. It will also give you a chance to explore areas of law that interest you. But, note that you should not take on more projects than you can manage. Law projects are time sensitive, and if you are buried under a pile of projects, you will not be able to meet deadlines. That will make for unhappy colleagues. Pick out no more than one or two projects at a time. If lawyers see that you are willing to help out around the firm and can manage the workload well, they will be more likely to assist you when you need it.

4 Use a Calendar. If you didn't use a planner in law school, you should start using one now. The planner should be

in a format you're comfortable using, whether electronic or in book form. When you are handling four, five, or six projects at one time, the deadlines and due dates pile up, and sneak up on you before you know it. Use the planner to mark important dates, like trials, depositions, due dates for discovery, or the expiration of a statute of limitations. There is nothing worse than having to explain to a partner that you blew a deadline on a case because you failed to keep track of due dates.

5 Use Firm Resources Responsibly. Legal search engines and programs were probably free resources for you in law school, but that is not true in law firms. Once activated, legal search engines charge by the minute. Don't be the new associate who racks up hundreds of dollars in legal search engine bills because you left the browser window open when you went out to lunch. When you start at the firm, find out which search engines are free to access and those that are not. Further, if there is a program or piece of technology that you don't know how to use, ask for help before you start pushing buttons or rearranging files. Asking questions will save you stress ... and your colleagues' work!

6 Be Social. It's very easy to give in to the urge to snuggle up in your pajamas and watch Netflix at the end of a long workday. As a new member of the firm, however, you should make an effort to socialize, both with your colleagues, and the people in the community where you live. Go out to dinner with a colleague and get to know them. Lend your legal expertise to your community by joining committees and organizations. People appreciate professionals who have a special set of skills and are willing to give time to help the community. Your community involvement may also attract business to your firm. And, don't forget about your friends and family. Make time to see them regularly. Remember, there is more to life than just your job!



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Nittany Lion Inn



Wills for Heroes



A program cosponsored by the PBA Young Lawyers Division, Wills for Heroes provides free basic estate planning documents to first responders and military veterans in Pennsylvania. Wills for Heroes provides police, fire, emergency medical personnel, other first responders and military

veterans – those on the frontlines for our personal safety – the tools they need to prepare adequately for the future.

Programs are staffed by lawyer volunteers and are conveniently offered to first responders at meeting halls and police and fire stations.

Want to bring Wills for Heroes to your county?

Click [here](#) for a list of county coordinators.

For more information, contact the YLD or one of the Pennsylvania program directors:

- Dan McKenna
- Sandra A. Romaszewski
- Lisa Shearman

Want to be a volunteer? Click [here](#).

Upcoming W4H County Events

- March 14 FOP Lodge #5 Headquarters, Philadelphia County
- March 14 Lancaster County Public Safety Training Center, Lancaster County
- March 21 Widener University Commonwealth Law School, Dauphin County
- March 28 Garrettford-Drexel Hill Fire Company, Delaware County
- April 4 TBD, Lycoming County
- April 18 Chalfont Fire Company, Bucks County
- April 25 TBD, Susquehanna County
- May 2 TBD, Lehigh County
- June 6 Pennsylvania Bar Institute, Cumberland County

Check the [YLD Wills for Heroes webpage](#) throughout the year to see events or to sign up to volunteer.

2019-2020 YLD Executive Council

Click [HERE](#) to see bios of the YLD Executive Council.



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