The Florida Law Practice
LINK
For Florida Lawyers – By Florida Lawyers
A JOURNAL OF THE GENERAL PRACTICE, SOLO AND SMALL FIRM SECTION
Volume XXX, No. 2 The Florida Bar Fall 2010

Maximizing Your Valuable Time

by Linda Calvert Hanson, Assistant Dean
Center for Career Development
University of Florida Levin College of Law
careers@law.ufl.edu (352) 273-0860 www.law.ufl.edu/career

Florida is ranked third in the nation, behind only New York and California, for hosting the largest number of law schools. On any given day, almost ten thousand students are attending one of the eleven law schools in Florida. These law students are eager to learn, gain experience and a real world perspective. In today's world there are countless ways that solo or smaller firm practitioners can benefit from hiring a law student or recent graduate, part-time or on an as-needed-project basis to free up their most valuable resource - time. Even if you do not have the space for a law clerk, many projects can be done by students "virtually"; that is they can work for you from home or school and e-mail you the result of their research. Independent of more traditional in-office tasks such as document review or case organization, law students can virtually perform research on topics you lack the time to conduct. For example, they could Shepardize or check citations for you, research and draft memos or briefs, provide you with background research for your upcoming CLE presentation or talk, provide or update content on your website, research and provide content for the brochure or newsletter you always planned to create, help you to incorporate innovative technology into your practice by creating a blog, or assist you at trial.

The career development office at any of the Florida law schools will be happy to post your law clerk, project-based research assistance, summer associate, entry-level or lateral position announcement at no cost. Just provide the law school's career office with a description of your time frame and position needs and you will receive a packet of resumes from interested applicants for your review and follow up. Invest a few minutes now to list your opening and gain hours of increased productivity on the complex work only you can handle.

Reprinted with permission from Forum8 (Volume 69, No. 10, June 2010).

It Was the Worst of Times: Can Law Firms Survive The Economic Downturn?

by Jennifer A. Dietz, Esq., Member, Executive Council, General Practice and Small and Solo Firm Section of The Florida Bar

"The first step to getting the things you want out of life is this: Decide what you want."

~Ben Stein

Not long ago, the legal profession's monetarily-glamorous partners could expect close to million dollar profits and starting associates could expect a salary of $150,000, generally with larger firms. However, my Stetson University College of Law students have recently conveyed that few graduating students have any type of job in line and they attribute this to the significant economic downturn that has occurred in the United States.

Essentially, large firms are facing an economy filled with unknowns in the following practice areas: finance, transactional, and litigation. At one time, each of these areas of law seemed to blow all other areas of the

Continued on page 11

INSIDE:

Message from the Chair

Why Me? What to do when the Bar complaint hits your desk

If you practice law long enough—I have been in private practice for 38 years—no matter how diligent and prompt you are, no matter how good and consistent the results are for your clients, and no matter how nice you are to everyone you deal with, it will happen. Someone will file a grievance complaint against you with the Bar.

Unfortunately, as solo and small firm lawyers, this happens to us far more often than to our brothers and sisters who practice in larger firms. According to one local bar counsel, the greatest number of bar complaints are filed against family lawyers and criminal defense lawyers, and since many solo and small firm lawyer practices include cases in one or both of these areas, we receive a disproportionate number of bar complaints.

Over the years I have personally experienced the grievance process, inside and out. I have had people file bar complaints against me, but thankfully all were dismissed before a finding of probable cause. I have served on more than one grievance committee. I have chaired a local grievance committee. As a past member of the Florida Bar Board of Governors, I served on and co-chaired the Bar's Disciplinary Review Committee, and worked closely with Bar counsel in many cases. Part of my practice has been, and still is, representing fellow lawyers who have been the unhappy recipients of that dreaded letter from Bar counsel, advising you to: 1) Respond in writing to the allegations within __ days, and 2) Advise all the other lawyers you practice with that you have received a bar complaint.

Not one of us asks for a complaint, or wants one. Some complaints are deserved, but in my experience, many are not. Fortunately, the Bar employs what could be described as a filtering process to try to determine whether or not a complaint is justified, and needs further attention or some level of discipline. If the accused lawyer has acted reasonably and ethically, and can demonstrate this in his or her response to the initial letter, the complaint can be disposed of at staff counsel level approximately 80% of the time.

What can you, the falsely accused lawyer, do to end this nasty and emotionally taxing event at the earliest possible date? It is natural to be angry, to be indignant, to be hurt, and to want to lash out at someone out of raw emotion - but do not do anything stupid, like tearing up the complaint, ignoring the complaint, or calling up the complainant and threatening or giving him or her a piece of your mind. This will only make things worse for you, and could lead to a new complaint or worse. If you have to vent, do it to someone who is sympathetic, and on your side - your partner, a lawyer friend, or your spouse. Take a deep breath—this is not the end of the world—and life is not always fair. The way you respond will often determine whether the case ends with your response, or goes further into the grievance process. Remember, you are a lawyer, and as such, you are a trained problem solver for others. Approach this as a problem to be solved and use your skills to do so.

Here are a few suggestions:

1. The initial letter will contain two items, which require timely action by you. The first is your written response to the complainant, and the second is a disclosure form requiring you to notify other lawyers in your firm, or your prior firm if the complaint involves a prior job with another firm, or your certification that you are and were a solo. Calendar yourself to do these two things on time, and have someone else—your partner, a staff person, or your spouse—make sure you follow through, and do so within the stated time period.

2. Read and understand the complaint, and tailor your response to what is alleged. It is acceptable to add necessary additional facts in your response, but be sure that your response meets the allegation made head on and is not a response to something else.

3. Review your file and gather supporting evidence and documents, as you would do in any other case for a client. It is golden to have a clear and timely engagement letter, email, time sheet, office note, document or transcript, which you can send with your response which refutes or explains, before you even knew there was going to be a complaint, the exact allegation now being made. As lawyers, we are impressed by documentation, and this is true for Bar counsel also. Your goal is to make it easy for Bar counsel to close the file based on your response.

4. Take the time to structure and draft your written response so it is neither angry nor emotional, even if you are. This is important, and can save you unbelievable anguish and time if done right the first time. A good way for you to begin your response letter, and thus set the right tone, is "Thank you for giving me the opportunity to respond to this complaint....". You then tell the real story, the rest of the story, or go on to refute, point by point, fact by fact, with documentation, each allegation. Take the time to make your response organized, simple, well documented, and easy to read.

5. You probably know an experienced lawyer in your area who is familiar with the defense of grievance matters. It would be my recommendation that you seek his or her advice, either on a paid, retained basis or as a favor, before actually sending in your response. Even a brief, friendly review by an experienced lawyer can be very helpful, whether you have to pay for it or not. Many of us have

and will help a fellow lawyer out as a favor if approached in the right way, and if it does not require a great deal of time.

6. Have someone else, other than yourself, read your proposed response, and tell you honestly and candidly how it comes across, and make suggestions for changes or improvements. This can be your partner, your spouse, or a trusted attorney friend - any of these will be more than glad to help you. Listen to their comments, and consider making changes they might suggest. Two heads are better than one, and that applies here. It is your ox which is being gored, and you will benefit from another more objective opinion.

7. Get your written response and signed disclosure form out on time. The Bar accepts responses by email, fax, courier or U.S. mail. Whichever way it is sent, be sure you have a receipt showing that it was timely filed.

8. In a majority of the cases, following these steps will achieve the desired result, and you will receive a copy of the Bar counsel's letter to the complainant finding no reason for further action. And, that will be the end of it. Do not expect this letter to come back to you immediately. If you don't hear within 60 days, you may want to call or email assigned Bar counsel handling the matter for a status.

9. If the complaint is not resolved in your favor at Bar counsel level, do not try to represent yourself. Find and retain a lawyer in your area who does defense of bar grievance work. It is worth the money, and you will be happy you did.

So what does all this have to do with the GPSSF section? One reason for bar complaints against solo and small firm lawyers is that we have less of a safety net than our big firm colleagues. We do not have support staff or partners who check up on each other. Today, many solos, especially younger solos, practice by themselves without regular, full time support staff, and often with minimum technological backup.

The GPSSF is all about serving our members. GPSSF offers CLE programs specifically targeted to help solos, old or new, with the practice management issues unique to our practices. GPSSF is also about networking, and our members help each other out. We maintain a modern, user friendly, free website with useful and relevant information, and opportunities for our members. We publish this newsletter that you are now reading.

If you are reading this, you are probably already a GPSSF member - please send this to a friend, and encourage them to join GPSSF. We can learn from each other, would welcome them, and it will make us all better lawyers.

Kirk Kirkconnell *serves as chair of the Florida Bar General Practice, Solo, and Small Firm Section (GPSSFS), He is a board certified criminal defense specialist who has practiced in the Orlando area for over 38 years. He can be reached at kirkconnellk@criminaldefenselaw.com, or 407-644-7600, and would welcome your comments or questions.*

Take a Close Look at Your Debt: Is it Consumer Debt or Not and Why Does it Matter?

by Camille Iurillo and Gina M. Pellegrino

As some of you may be aware, one of the many purposes of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") is to make it more difficult for individuals to file for protection under Chapter 7 of the Bankruptcy Code. BAPCPA established a median income test to be considered. If the individual's yearly income is above the median, then, generally speaking, the individual does not qualify to file a Chapter 7. However, this median income test only applies if the individual filing bankruptcy has primarily consumer debt. Therefore, the imperative question is: does the individual seeking to file bankruptcy have primarily consumer debt or primarily non-consumer or business debt?

One of the many issues to be considered in this analysis is whether a loan originally obtained for a business purpose is deemed a consumer debt for bankruptcy purposes if the loan is used for a different purpose than was originally intended. For example, suppose the principals of a company obtain a business loan for a business purpose; thereafter, one of the principals of the company, who personally guaranteed the business loan, uses the money for a down payment on his personal residence. If that principal of the company later decides to file personal bankruptcy, is the debt, originally obtained as a business loan, deemed a consumer debt or business debt?

Section 101(8) of the Bankruptcy Code provides that "consumer debt" means "debt incurred by an individual primarily for a personal, family, or household purpose." 11 U.S.C. § 101(8).

According to the applicable case law, in determining whether a debt is primarily consumer debt or business debt, courts generally evaluate the circumstances under which the debt was originally incurred.

For instance, in In re Bertolami, 235 B.R. 493, 497-8 (Bankr. S.D. Fla. 1999), the debtors initially obtained a loan for their homestead property; however, by the time the debtors filed bankruptcy they no longer considered the property to be their homestead and were using the property for a business purpose. The Court in Bertolami determined the debt to be a consumer debt, as defined in section 101(8) of the Bankruptcy Code, reasoning that if the debtors executed the note and mortgage with the intention of making it their homestead property, even though the debtors no longer reside at the property and use it as an investment property, that does not change the fact that the debt was originally incurred by the debtors for a personal or household purpose.

In addition, in In re Boitnott, 4 B.R. 122, 124 (Bankr. W.D. Va. 1980), the debtors had two vehicles titled in the debtors' personal names, which were financed with a lender who had valid liens on the vehicles. The vehicles were obtained by the debtors for personal use. Thereafter, the notes with respect to the two vehicles were consolidated with several other notes of the debtors' corporation, creating one consolidated note and endorsed by the debtors. The debtors, in their bankruptcy case, were seeking redemption of the vehicles and the lender moved to dismiss stating that the debt was business debt, as a result of the consolidation. The Court in Boitnott held that despite the consolidation, the debt remained consumer debt because it was incurred originally as consumer debt and did not transform into non-consumer or business debt as a result of the consolidation.

As such, with respect to our hypothetical scenario above, it is arguable that the debt, originally incurred by the principals of the company as a business loan, would be deemed non-consumer or business debt in the principal's personal bankruptcy case because when the debt was originally incurred it was not incurred for a personal, family, or household purpose; therefore, it is not deemed consumer debt under section 101(8) of the Bankruptcy Code. Even though the business loan was used by the principal for a purpose other than its original intended purpose, it is arguable that it remained a non-consumer or business debt because the circumstances under which the debt was originally incurred did not change.

This is just one of the many issues that should be considered in determining whether an individual qualifies for a Chapter 7 bankruptcy. However, all of the issues to be considered are beyond the scope of this article.

*Iurillo & Associates, P.A., located in downtown St. Petersburg, is comprised of **Camille J. Iurillo, Shareholder**, **Gina M. Pellegrino, Associate**, and **Sabrina C. Beavens, Associate**. The primary areas of practice of Iurillo & Associates, P.A. are Commercial and Bankruptcy Litigation, Debtors' and Creditors' Rights, and Foreclosures / Workouts.*

The Florida Law Practice LINK is prepared and published by The Florida Bar General Practice, Solo & Small Firm Section.

Kirk Kirkconnell, Orlando ..... *Chair*
Frank Maloney, Macclenny ..... *Chair-elect*
Linda Calvert Hanson, Gainesville ..... *Secretary*
Kevin D. Johnson, Tampa..... *Treasurer*
Monica Elliott, Ft. Lauderdale..... *Editor*
Ricky Libbert, Tallahassee ..... *Section Administrator*
Colleen Bellia, Tallahassee..... *Layout*

LexisNexis® Tips: Online Video Complements Law Firms' Search Marketing Strategy

No attorney can expect their firm's online video to get 170 million views like Susan Boyle's performance on "Britain's Got Talent," but there are ways to ensure a law firm's video complements the overall marketing strategy, says Debra Regan, vice president of the internet marketing agency at LexisNexis. Debra offers several suggestions about the importance of online video in helping to grow a lawyer's practice:

1. When considering online video compared to TV advertising, think about the web as a "lean-forward" medium. Visitors searching your site can click away any time they wish. The goal is to immediately engage and keep visitors there beyond a minute. Of the U.S. Internet audience, almost 78 percent have viewed online video, watching 235 minutes on average, says comScore Networks, Inc., *Video Matrix Service, May 2008*.
2. Think in a trio – three key messages delivered in the first 30 seconds of the video. That's the maximum number viewers will remember.
3. Be energetic and passionate about your services and commitment to client service. Video offers an opportunity for lawyers to be personable and approachable. If you make a mistake, chalk it up to a natural error that could be more appealing to potential clients than if you filmed a too-perfect performance. Natural and relaxed are the way to be.
4. If you have a camcorder at home, practice with it. Become comfortable looking into the camera and be sure your eyes are not darting around the room during filming. If no video cam is available, practice speaking into a mirror.
5. Complete the video with an actionable invitation. Visitors should be invited to reach you by phone or email for further information. The end production should be no longer than two minutes with the first 45 seconds the most critical to engage viewers.
6. Incorporate video on your firm's web site and distribute to relevant channels. Upload on social media sites and legal directories, like Lawyers.com[sm]. Video can increase your exposure on the search engines. Google incorporates video in its universal search results, especially videos from youtube.com.
7. When engaging in Pay-Per-Click campaigns, key words drive success. When shooting a video, optimize it with mention of top keywords early and often i.e. "I am a personal injury lawyer in Houston, Texas." At the same time, add these key words to the video file name and title "Personal Injury Lawyer in Houston Video."
8. Expect to track and measure pre- and post-publish statistics for your website. Be sure to delineate the web page on which the video is uploaded to measure such statistics as page views, downloads, call tracking with a dedicated number, or other metric.
9. Cross-promote your video on other pages of your web site. Add linking and sharing functionality so people can forward to a friend, bookmark on or post on other sites like Facebook and Twitter. Add your video to youtube.com and other video distribution sites to help generate traffic to your own web site.
10. Measure, measure, measure! The average viewing time for a LexisNexis- produced law-firm video is 41 seconds according to captured data in October 2008. You'll want to know number of viewers; pass-along rate; what percent of the video was viewed; are leads being generated by video? Other metrics can be added later.

Debra Regan (debra.regan@lexisnexis.com) is vice president of the internet marketing agency at LexisNexis, part of the Lawyers.Com and Martindale-Hubbell networks since 1999. For more than 10 years, LexisNexis has delivered a full suite of online marketing services to lawyers as a trusted brand. The in-house agency is staffed with search marketing, pay-per-click, video and web design experts along with a full team of web developers with key industry certifications. For more information, visit www.lexisnexis.com/lmc.

SAVE THE DATE

Solo and Small Firm Conference

April 1-2, 2011

Hyatt Regency Bonaventure • Weston, Florida (Ft. Lauderdale)

General Practice
Solo & Small Firm Section
of The Florida Bar

The Florida Bar
651 East Jefferson Street
Tallahassee, FL 32399
850-561-5631
floridabar.org

Section Administrator
Ricky Libbert
850-561-5631
rlibbert@flabar.org

Section Website
www.gpssf.org

ADVERTISING AND SPONSORSHIP CHART

General Practice, Solo & Small Firm

Organized in 1971-72, the General Practice Solo and Small Law Firm Section of the Florida Bar brings together solos, small-firm lawyers, and general practitioners to enhance the quality of practice for the solo and small firm lawyer as well as the lawyer who has interests beyond the bounds of a single professional specialty. Currently this section has more than 2,500 members and it is still growing.

Our Annual Conference

Our annual conference has become a "can't miss" event. Each spring, solo and small firm practitioners from throughout Florida spend two days networking with each other, learning from the best law practice management gurus, being exposed to cutting-edge technology, and sharing good times. This is your best opportunity to introduce your products or services to Florida solo and small firm lawyers, judges, general practitioners and other professionals. It comes only once a year.

In addition to sponsoring our Annual Conference, you can get even more coverage in our quarterly news letter or on our website. Decide for yourself which of the amazing advertising opportunities works best for you.

OPPORTUNITY	BENEFITS	DETAILS	DURATION	RATES
SPONSORSHIP	Features exposure at our yearly Conference including: • Recognition on written SSFC materials • Sponsor ribbon • Thank you recognition in the Link • Introduction and recognition by the Chair at the breakfast, break, lunch or reception you are sponsoring	Sponsor Continental Breakfast	1 time	$750
		Sponsor Break	1 time	$500
		Sponsor Lunch or Reception	1 time	$1500
EXHIBITOR	Features exposure at our yearly Conference including: • Recognition on written SSFC materials • Sponsor ribbon • Thank you recognition in the Link • Introduction and recognition by the Chair at the breakfast, break, lunch or reception you are sponsoring	An exhibit table in a convenient location to showcase your company. Also provided are: a. Chairs b. Waste basket c. Free access to Internet and electricity	1 time	$750
WEBSITE	Features text and logo of a sponsor conveniently located at the top of the home page on our website linking the logo to the sponsor's website	Shared with no more than 10 rotating each load of page. Shows text and logo. Text max of 120 characters with spaces	3 months 6 months 1 year	$250 $450 $600
LINK	Features a black & white ad in our regular newsletter, the Link	1 1/3-page ad in Link	1 issue 4 issues	$125 $370
WEBSITE + 1/3 PAGE AD IN LINK	Features convenient website listing on top of home page on our website plus a b/w ad in our regular newsletter, the Link	1 1/3-page ad in Link plus 3 months of web feature listing	Ad / Web 1 ad / 3 months	$280 (save $95)
		4 1/3-page ads in Link plus 1 year of web feature listing	4 ads / 1 year	$640 (save $335)

SPONSORSHIP PACKAGE 1 (Sponsor or Exhibit plus Link)	Features b/w ad in our regular newsletter, the Link plus exposure at our yearly Conference including: • Recognition on written SSFC materials • Sponsor ribbon • Thank you recognition in the Link • Introduction and recognition by the Chair at the breakfast, break, lunch or reception you are sponsoring	Sponsor Lunch or Reception plus 1 year 1/3-page ad in Link	<u>Sponsor/Ad</u> 1 time / 1 year	$1,650 (save $220)
		Exhibitor or Sponsor Breakfast plus 1 year 1/3-page ad in Link	1 time / 1 year	$1,020 (save $100)
		Sponsor Break plus 1 year 1/3-page ad in Link	1 time / 1 year	$800 (save $70)
SPONSORSHIP PACKAGE 2 (Sponsor plus Exhibit plus Link)	Features b/w ad in our regular newsletter, the Link plus exposure at our yearly Conference including: • Recognition on written SSFC materials • Sponsor ribbon • Thank you recognition in the Link • Introduction and recognition by the Chair at the breakfast, break, lunch or reception you are sponsoring	Sponsor Lunch or Reception, plus Exhibitor plus 1 year 1/3-page ad in Link	<u>Sponsor/Ad</u> 1 time / 1 year	$2,320 (save $300)
		Sponsor Breakfast, plus Exhibitor plus 1 year 1/3-page ad in Link	1 time / 1 year	$1,670 (save $200)
		Sponsor Break, plus Exhibitor plus 1 year 1/3-page ad in Link	1 time / 1 year	$1,520 (save $100)
SPONSORSHIP PACKAGE 3 (Sponsor or Exhibit plus Website)	Convenient website listing on top of home page on our website plus exposure at our yearly Conference including: • Recognition on written SSFC materials • Sponsor ribbon • Thank you recognition in the Link • Introduction and recognition by the Chair at the breakfast, break, lunch or reception you are sponsoring	Sponsor Lunch or Reception, plus 1 year of web feature listing	<u>Sponsor/Web</u> 1 time / 1 year	$1,850 (save $250)
		Exhibitor or Sponsor Breakfast, plus 1 year web feature listing	1 time / 1 year	$1,200 (save $150)
		Sponsor Break, plus 1 year web feature listing	1 time / 1 year	$1,000 (save $100)
SPONSORSHIP PACKAGE 4 (Sponsor plus Exhibit plus Website)	Convenient website listing on top of home page on our website plus exposure at our yearly Conference including: • Recognition on written SSFC materials • Sponsor ribbon • Thank you recognition in the Link • Introduction and recognition by the Chair at the breakfast, break, lunch or reception you are sponsoring	Sponsor Lunch or Reception, plus Exhibitor plus 1 year website listing	<u>Sponsor/Web</u> 1 time / 1 year	$2,500 (save $350)
		Sponsor Breakfast, plus Exhibitor plus 1 year website listing	1 time / 1 year	$1,850 (save $250)
		Sponsor Break, plus Exhibitor plus 1 year website listing	1 time / 1 year	$1,750 (save $100)
JUMBO PACKAGE (Sponsor plus Exhibit plus Web plus Link)	Features convenient website listing on top of home page on our website, plus a b/w ad in our regular newsletter, the Link and exposure at our yearly Conference including: • Recognition on written SSFC materials • Sponsor ribbon • Thank you recognition in the Link • Introduction and recognition by the Chair at the breakfast, break, lunch or reception you are sponsoring	Sponsor Lunch or Reception, plus Exhibitor, plus 1 year website listing, plus 1 year 1/3-page ad in Link	<u>Sponsor / Web / Link</u> 1 time / 1 year / 1 year	$2,820 (save $400)
		Sponsor Breakfast, plus Exhibitor, plus 1 year website listing, plus 1 year 1/3 page ad in Link	1 time / 1 year / 1 year	$2,200 (save $270)
		Sponsor Break, plus Exhibitor, plus 1 year website listing, plus 1 year 1/3 page ad in Link	1 time / 1 year / 1 year	$2,070 (save $150)
<u>Conference Tote Bags opportunity:</u> For additional $100 sponsors can add to their sponsorship a tote bag which will include a company name on the bag and company promotion materials in the bag.				

We would love to have your support for this event. Please contact Ricky Libbert, GPSSF Section Administrator, at 850-561-5631 or rlibbert@flabar.org.

NEW RULE 2.420 Seminar: Redacting Confidential Information

Presented by: Honorable Judith Kreeger, 11th Judicial Circuit, Miami
Paul Regensdorf, Esq. Stearns, Weaver et al, Ft. Lauderdale

Sponsored by: The Florida Bar Law Office Management Assistance Service (LOMAS); Florida Lawyers Mutual Insurance Company; General Practice, Solo & Small Firm Section, The Florida Bar

CLE Credit: 2.0 General CLER Credits

Cost: Free

Available: Florida Bar Website (www.flabar.org)

The seminar is a complimentary CLE offering lawyers information regarding the recent changes to Rule 2.420 of the Judicial Rules of Administration, which became effective on October 1, 2010. The Amendments impose new duties and obligations and corresponding potential liabilities on all attorneys whose practice areas involve the filing of documents with a Circuit Court Clerk. These attorneys must now know what information in court documents must be kept confidential, what information should be made confidential and what information can be made freely available to the public. The Amendments also require attorneys to know the procedures to keep information, believed in good faith to be confidential from disclosure to the public as well as to provide notice to affected non-parties of filed documents containing confidential information. *Failure to comply with these new duties will create potential liability for the uninformed or non-compliant attorney.*

Amendments to Court Rule Create Potential Liability

by Nancy Stuparich

The Florida Supreme Court recently adopted amendments to Rule 2.420 of the Florida Rules of Judicial Administration and Rule 9.040 of the Florida Rules of Appellate Procedure regarding public access to judicial records (the "Amendments"). (See SC06-2136 and SC072050) The Amendments became effective on October 1, 2010 and impose new duties and obligations and corresponding potential liabilities on all attorneys whose practice areas involve filing documents with a Circuit Court Clerk. These attorneys must now know what information in court documents must be kept confidential, what information should be made confidential and what information can be made freely available to the public. The Amendments also require attorneys to know the procedures to keep information, believed in good faith to be confidential, from disclosure to the public as well as to provide notice to affected non-parties of filed documents containing confidential information. Failure to comply with these new duties will create potential liability for the uninformed or non-compliant attorney.

A. Confidential Information. The Amendments require filing a new document called a "Notice of Confidential Information within Court Filing" at the time a document is filed with the Clerk of the Circuit Court, if the document contains confidential information as defined by Subdivision (d)(1)(A) or (B) of the Rule. Subdivision (d)(1)(A) concerns information regarding administration of the court system. Unless disclosure is otherwise required by court order, 19 specific types of information identified in Subdivision (d)(1)(B) must remain confidential:

(1) Chapter 39 records relating to dependency matters, termination of parental rights, guardians ad litem, child abuse, neglect, and abandonment. § 39.0132(3), Fla. Stat.

(2) Adoption records. § 63.162, Fla. Stat.

(3) Social Security, bank account, charge, debit, and credit card numbers in court records. § 119.0714(1) (i)–(j), (2)(a)-(e), Fla. Stat. (Unless redaction is requested pursuant to 119.0714(2), this information is exempt only as of January 1, 2011.)

(4) HIV test results and patient identity within those test results. § 381.004(3)(e), Fla. Stat.

(5) Sexually transmitted disease test results and identity within the test results when provided by the Department of Health or the department's authorized representative. § 384.29, Fla. Stat.

(6) Birth and death certificates, including court issued delayed birth certificates and fetal death certificates. §§ 382.008(6), 382.025(1)(a), Fla. Stat.

(7) Identifying information in a petition by a minor for waiver of parental notice when seeking to terminate pregnancy. § 390.01116, Fla. Stat.

(8) Identifying information in clinical mental health records under the Baker Act. § 394.4615(7), Fla. Stat.

(9) Records of substance abuse service providers, which pertain to the identity, diagnosis, and prognosis of and service provision to individuals who have received services from substance abuse service providers. § 397.501(7), Fla. Stat.

(10) Identifying information in clinical records of detained criminal defendants found incompetent to proceed or acquitted by reason of insanity. § 916.107(8), Fla. Stat.

(11) Estate inventories and accountings. § 733.604(1), Fla. Stat.

(12) The victim's address in a domestic violence action on petitioner's request. § 741.30(3)(b), Fla. Stat.

(13) Information identifying victims of sexual offenses, including child sexual abuse. §§ 119.071(2)(h), 119.0714(1)(h), Fla. Stat.

(14) Gestational surrogacy records. § 742.16(9), Fla. Stat.

(15) Guardianship reports and orders appointing court monitors in guardianship cases. §§ 744.1076, 744.3701, Fla. Stat.

(16) Grand jury records. Ch. 905, Fla. Stat.

(17) Information acquired by courts and law enforcement regarding family services for children. § 984.06(3)-(4), Fla. Stat.

(18) Juvenile delinquency records. §§ 985.04(1), 985.045(2), Fla. Stat.

(19) Information disclosing the identity of persons subject to tuberculosis proceedings and records of the Department of Health in suspected tuberculosis cases. §§ 392.545, 392.65, Fla. Stat.

The Amendments mandate not only the identification of the confidential information and applicable subdivision of the Rule in the Notice, but also the location of the confidential information in the filed document. In other words, the attorney must identify the specific location of the confidential information in the filed document regardless of whether it is in paragraphs 26 and 35 of Counts 3 and 4 or otherwise found in an Appendix.

Upon receipt of the Notice, the amended Rule requires the Clerk to perform a facial review of the document to determine if the confidential information identified by the attorney is indeed confidential based on the 19 types of documents listed in Subdivision (d)(1)(B). The Clerk's facial review is a supplement to and not a substitution for the attorney's compliance with the Rule's new confidentiality requirements.

Continued, next page

AMENDMENTS
from page 9

If the Clerk determines during the facial review that the filed information is not confidential based on the 19 listed documents in Subdivision (d)(1)(B), the Clerk is required to notify the attorney within 5 days and keep the information confidential for at least 10 days. During that time, the attorney must decide if in fact the information is not confidential or alternatively file a "Motion to Determine Confidentiality of Court Records." Unless that Motion is timely filed, the Clerk will release the information after 10 days. There is no provision in the amended Rule to allow the Clerk to extend this time period in the event the attorney is out-of-town or otherwise does not receive or respond to the Clerk's 5-day notification.

B. "Maybe" Confidential Information. The Amendments also provide that a "Motion to Determine Confidentiality of Court Records" should be filed if a person filing a document believes in good faith the document contains confidential information, but the information is not specifically identified in the list of confidential information found in Subdivision (d)(1)(B). Florida law contains over 1,000 statutory public record exemptions. The interplay between statutory public record exemptions and the Rules presents substantial legal issues, which were not addressed by the Supreme Court when it adopted the Amendments.

Until otherwise determined by the courts, the Amendments present an additional duty on attorneys to determine if the document does contain information that should be considered confidential although not addressed in the 19 types of identified confidential information.

C. Notice to Affected Non-Parties. Moreover, attorneys filing documents containing confidential information or a "Motion to Determine Confidentiality of Court Records" must also give notice to any affected non-party of the filings pertaining to the affected non-party. Rule 2.420(b)(5) defines an affected non-party as "any non-party identified by name in a court record that contains confidential information pertaining to that non-party."

A 2 credit hour free CLE on the new changes to Rule 2.420 and Rule 9.040 is available on The Florida Bar website at www.floridabar.org. The CLE includes detailed information regarding the new procedure to make documents confidential in non-criminal, criminal, and appellate cases as well as the new roles of judges and clerks. In addition, information regarding the evolution of the changes in the Rules and possible sanctions for noncompliance is provided. The CLE is co-sponsored by Florida Lawyers Mutual Insurance Company, The Florida Bar Law Office Management Assistance Service (LOMAS) and the General Practice Solo and Small Firm Section of The Florida Bar.

PREVENTION TIP: To avoid increased risk exposure and liability, please consider updating your document filing procedures and checklists to include usage of the new notice form; provide training to attorneys, paralegals and other support staff who are responsible for filing documents with the court Clerks; and identify a "point" person to address questions and implementation of the Amendments.

It's Not Over Yet.....

Unlike Charley, Frances, Ivan, Jeanne, Katrina and Wilma, our 2010 hurricanes have not caused pre and post hurricane disaster activity as experienced in past years. However, before the hurricane season of 2011 (June 1st – November 1st), begins it is consistent with good risk management practices to remain prepared in the event of a sudden catastrophic hurricane event. Lawyers are encouraged to take a look, if they have not already done so, at the disaster response plan entitled "Setting Up a Disaster Preparation, Protection and Recovery Program for Your Law Firm" prepared by LOMAS staff and available on the Florida Bar's website. Ask any attorney or law firm that incurred a loss of business and/or property damage after a hurricane in the past and you will find engaging in hurricane preparedness for your practice before the storm is well worth the time and effort as well as a required part of your firm's risk management.

PREVENTION TIP: Have your hurricane disaster response plan and all necessary documents and equipment available if needed during the hurricane season.

Upcoming CLEs, Sponsored Events, & Exhibits

Upon request, Florida Lawyers Mutual Insurance Company provides speakers, exhibits and will sponsor programs on risk management, ethics, professionalism, legal malpractice and professional liability insurance topics and services. No speaker fee or travel reimbursement is required. All speaker, exhibitor, and sponsorship requests are reviewed on a case-by-case basis. Upcoming CLEs, sponsored events, and exhibits:

Florida Legal Education Association (FLEA/FLSSI)
The Probate Team 2010
October 22-23, 2010
Caribe Royale, Orlando Florida
www.FLSSI.org
(FLMIC Exhibitor)

Brevard County Bar Association
Fall CLE Afternoon Series
November 12, 2010
11:00 a.m. – 5:00 p.m.
5:00 p.m. – 6:00 p.m. (reception)
Brevard Community College (Cocoa Campus)
www.brevardbar.org
(FLMIC Title Sponsor)

For more information contact us at 800-633-6458 or visit our website at www.flmic.com.

Reprinted by permission of the Florida Lawyers Mutual Insurance Company.

law off the charts. These areas of law seemed to be protected from economic turmoil. Now, it appears all categories of legal practice are looking for ways to survive these lean times, even the once most-profitable areas of a large firm's book of business.

Not only are law firms postponing the hiring of recent law school graduates, associate and staff layoffs are prevalent, and there has been a trend toward demoting under-performing partners. Currently, the average American lawyer working at a solo or small firm earns $60,000 to $100,000 a year. Notably, in California, 25% of all lawyers earn between $50,000 a year or less. The majority of New York attorneys in private practice, around 83%, are solo practitioners or with firms with 10 or less attorneys and earn less than most would expect. (*New York Law Journal*, Vesselin Mitev, 02-18-2010).

At this juncture in the practice of law, small and solo firms are facing the same issues as larger firms in these lean times. However, in these tumultuous times, one thing a solo practitioner or small firm does not have the luxury of doing is firing staff that is critical to the firm. Clearly, a solo practitioner can not fire himself or herself. All firms, no matter the number of attorneys, need to implement a survival plan, one which includes the knowledge of the economics of running a law practice.

One of the most prevalent means by which medium to larger-sized firms are reducing costs is to fire attorneys and legal staff. However, these may be hasty decision and knee-jerk reactions to the poor economy. Yet terminating staff and associates may actually prosper for the firm in other departments, especially if those lawyers are quick learners and eager to work hard. Also, should client demand suddenly rise, the firm is in trouble without having the necessary staff to handle the projects and litigation of the client's sudden onslaught of work. There are no tried and true answers to surviving lean economic situations. However, the following are a few suggestions for managing through an economic downturn.

<u>Actions to Stay Viable During Economic Downturns</u>

"Today, there are three kinds of people: the have's, the have-not's, and the have-not-paid-for-what-they-have's."

~Earl Wilson

1. Put an emphasis on collections. Diligently monitor overdue accounts. Clients may be facing hard times too; however, frequent communication regarding overdue accounts emphasizing the engagement agreement terms is key to receiving overdue balances. And use collection services before a legal bill becomes too old. Age is the bane of account receivables.

"If you would be wealthy, think of saving as well as getting."

~Benjamin Franklin

2. Conserve cash and control bonuses. Plan on investing in new technology and additional staffing in less lean times. During lean times, save money yet spend on absolute essentials. Defer bonuses if necessary. In firms where bonuses are d'rigeur, bonuses become something the staff feels an entitlement to at certain times of the year. If receivables are not coming into the firm, bonuses must be cut or eliminated entirely.

"Shoot for the moon, even if you miss, you'll land amongst the stars."

~Anonymous

3. Do get serious about marketing and expand the firm's marketing plan. Get your name out to the public. The marketplace is tough, with more aggressive competition, price undercutting, and more lawyers practicing out of their specialty and into yours. In your practice, schedule time for marketing; build a comprehensive plan for marketing your firm; and stay close to your referral sources and your existing clients. Instead of running up huge bills for television and print advertising, get on the phone to clients with frequent updates on their cases. Most importantly, get into the community and speak to current and potential clients. Use these speaking opportunities to tell others what you can do for them and teach them something that will make them want to use your legal services. Also, use social media to network with new and current clients. Make use of any extra time to write articles for professional associations. Create a message board on your website about noteworthy activities within the firm. Send emails regarding significant wins made by the firm.

"The mind is everything; what you think, you become."

~Buddha

4. Target your communications. Adjust your firm's marketing initiatives to address the current economic situation. Launch a teleconference series on the distress in the market, a website forum, or interactive website page addressing the issues your clients are facing. These initiatives will strengthen your position as an asset to your clients.

"Never spend your money before you have it."

~Thomas Jefferson

5. Look around your office and think about volume. Reassess your office space needs and lease terms. Consider what you need and what is affordable. If you are not locked into your current space or your lease is about to expire, try to negotiate better lease terms at your current space. Also, consider new smaller space with the provision that if you lease the new space, you should get several months rent-free as an inducement to sign with a different office space.

"The future belongs to those who prepare for it today."

~Malcolm X

6. Outsource what you can. Today, the world is filled with experienced and talented people who can do the work you need accomplished for a reasonable rate, which leaves you more time to focus on the firm administration and marketing. Outsourcing is no longer an idea of the future; it is an idea whose time has come. However, do not fire your key people who hold together the infrastructure of the firm. Solid hard-working employees will free up your time to

Continued, next page

market the virtues of the firm. Also, you could discuss employee-sharing with another practioner, or contract some of your indispensable paralegals, legal assistants, or secretaries out to others who have had to let go some of their own staff. Another new idea is to accept credit cards. The expense of a very small service charge is now almost inconsequential compared with the possibility of not getting paid at all. Accepting credit cards is basically outsourcing your financing. If a potential client has no available line of credit on any credit card and cannot convince any friend or family member to loan him or her money for attorney's fees, do you really want to become the financing agent for the potential client and bear the risk of not getting paid?

"Forget injuries, never forget kindnesses."

~Confucius

7. Be on familiar terms with your CPA and your banker. There exists a mutually beneficial relationship between your firm and your CPA and your banker. When conditions become tough, and you have maintained a solid relationship with financial institutions, you may be able to get the line of credit that you need, albeit at a higher interest rate.

"Obstacles are those frightful things you see when you take your eyes off your goal."

~Anonymous

8. Fire some of your clients. Although this sounds counter-intuitive, when business softens, it is the perfect time to get rid of the clients who are costing you money. Where does 80% of your profitability lie? Apply the 80/20 rule to your client base. Strengthen your relationships with those clients who are contributing the most to your practice.

"Soon gotten, soon spent; ill gotten, ill spent."

~John Heywood

"It takes 20 years to build a reputation and five minutes to ruin it."

~Warren Buffet

9. Don't cut ethical corners-ever. As hard as these economic times are, and no matter how well-intentioned your motives may be, never dip into a client's escrow account to get through a rough spot. This causes a multitude of serious problems, including disciplinary proceedings or disbarment. Also, do not begin practicing outside of your expertise and falling back to an area of law in which you only know the very basics. Stay focused in your area of practice unless out of sheer necessity you must take on a case you normally would not. If you do, think of hiring a consulting attorney who specializes in that new-to-you area of the law. You want to decrease the chance of errors and grievances which will damage your reputation and threaten your bar license.

"The harder the conflict, the more glorious the triumph."

~ Anonymous

10. Client Screening. Careful selection of clients and declining certain matters that will be difficult or unprofitable should be an important aspect of your small firm's business plan for the next several years. The client who cannot pay an adequate retainer or who has a type of matter that your firm has not handled in several years presents even more of a red flag in bad times. Try to determine a reasonable litigation budget up front. That $5,000 fee estimate that seems enticing now may not be enough to cover the attorney's fees for later work if your client runs into financial difficulties and cannot pay his legal invoice.

"A wise man will make more opportunities than he finds."

~ Anonymous

11. Consider related practice areas. Some areas of the law go hand-in-hand, therefore attorneys should consider taking on clients with issues similar to those you may know a bit about. For instance, transactional real estate attorneys who may be idle due to the economy may be able to help clients try loan modification on defaulted mortgages until closings and contract work picks up again. If the case requires the assistance of a litigation or bankruptcy attorney, consider affiliating on an of-counsel basis with an attorney who concentrates in those areas if you are not comfortable with that type of work.

"There are no shortcuts to any place worth going."

~Anonymous

12. Offer free consultations by telephone. By listening to a potential client on the phone you are able to prescreen clients before you meet with them at your office. This is a much more efficient and time saving device. Consider charging a nominal in-office consultation fee as that may leave you with only clients who are genuinely serious about retaining you.

"Go confidently in the direction of your dreams. Live the life you have imagined."

~ Henry David Thoreau

13. **Don't stick with the hourly rate.** It is hard to say any good things about the billable hour. Hourly billing arose from an outcry in the late 1960s when the flat rate for services came under attack as price-fixing. At the same time, the ABA released a study which showed that attorneys who tracked their time can make more money than those who do not. Think about it this way: you buy most items for a known, fixed price. An invoice for billable hours is uncertain. Work toward alternative billing and client-friendly pricing such as value billing, flat-rate pricing, success fees, packaging legal services, step-by-step pricing, and bartering.

For instance, a solo patent attorney offers select discounts to long-term general practice clients and newer patent clients. She also agreed when local business owners asked her to join an established Internet-based bartering network. The network lets participants convert their goods and services into "trading dollars" that work like cash at other member businesses. With one client, the solo patent attorney exchanged some legal work for professional photographs.

Other firms have rolled out a menu of discounted flat rates for early-stage/startup companies, ranging from $500 for entity formation to $2,500 for corporate documents. Startup companies need a definite budget and reasonable costs to get venture capital funding. Other firms are packaging legal services; for in-

stance, a firm will offer $300 to review an existing business plan and $500 to create a new business plan.

Firms are also experimenting with technology to retain profit levels amid rate cuts. One specialized firm in Florida charges clients less for e-mail advice than telephone advice. The firm bills in multiples of one-tenth of an hour to read e-mails from clients. In comparison, clients are billed for the actual amount of time telephone calls take.

Some boutique firms have found a solution for cash strapped clients: low-cost software for *pro se* litigants. The software allows the firm to unbundle document preparation from the rest of legal services and create tailored complaints and other court filings for clients based on their answers to a series of questions. The bottom line is that customers can now buy legal documents to run their *pro se* case for considerably less than the usual hourly billing rate.

Update your CLE record in record time!

CLE CREDIT POSTING

Discover the convenience of online posting at

www.floridabar.org
Click "Member Profile" at top right
Click "CLE Activity Posting" link
Login and Post Credits

REMINDER: FLORIDA BAR CLE ATTENDANCE CREDITS ARE POSTED AUTOMATICALLY

Support Legal Representation for Florida's Children

Go to your local county tag office to purchase a KIDS DESERVE JUSTICE specialty license plate, an authorized Florida automobile license plate.

- Generates tax-deductible contributions to provide legal assistance to needy Florida children. The $25 donation for each plate will go to The Florida Bar Foundation, a §501(c)(3) public charity.The Foundation will grant 100% of the funds to provide legal assistance to needy children.
- Grants to local legal aid organizations to provide direct legal assistance to needy children will be the priority. Additionally, the funds can be used, for example, to train pro bono lawyers to represent needy children, or work with the courts and other groups on ways the courts and broader justice system can better serve the legal needs of children.
- $25 per year at your regular license plate renewal time. If you want the plate before your regular renewal, there's an additional one-time charge of $18 that goes to the state. Additional state and local tag agency fees may apply.

Go to The Florida Bar's Web site (www.flabar.org) for instructions, a downloadable replacement plate request form, and the location of your local tag office from the Florida Department of Highway Safety and Motor Vehicles.