

LEGAL MANAGEMENT

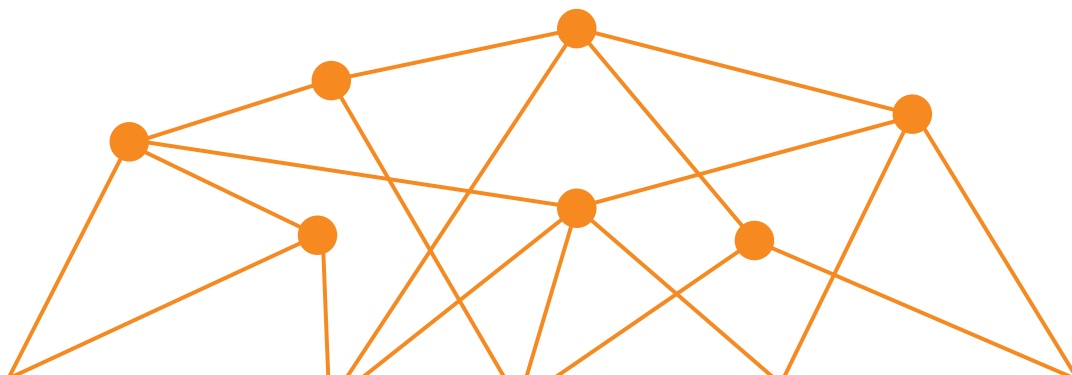
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IS EXTERNAL FUNDING THE FUTURE OF LITIGATION?

Find out what external lawsuit funding deals typically involve, what factors attorneys should consider — and why the practice is gaining popularity.





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If we are not faster and more efficient, we negatively affect clients' supply chain — something they will seek to avoid.”

The Benefits of “Supplaw” Chain Management

My brother, 14 months my junior, and I have always been fairly opposite in nature. Although we both attended Penn State, I pursued a degree in Spanish and international business and he pursued a degree in mechanical engineering. After college, I went on to get my law degree in the Pacific Northwest so that I could change the world; he went to the Southeast to get his MBA so that he could rule the world.

He ended up in supply chain management, and it took me about five years to wrap my head around what it is he actually does for work. Life has come full circle — my experiences and observations regarding the legal industry have led me to where I am now: reevaluating what it is that my brother does, because I am pretty sure my firm can benefit from it.

The Association for Supply Chain Management (APICS) defines supply chain management (SCM) as “the design, planning, execution, control, and monitoring of supply chain activities with the objective of creating net value, building a competitive infrastructure, leveraging worldwide logistics, synchronizing supply with demand and measuring performance globally.” Hmm ... yes, my firm could certainly benefit from some of that, as could the entire legal industry.

Up until recently, if law firms had the words “supply chain management” floating around their offices, it was because the attorneys were advising clients in supply chain relationships and disputes. But it is time we consider the mechanism for our own businesses. The industry has slowly adopted legal project management over the last eight years. However, most firms that deploy it are implementing it for the chain's execution, control and monitoring links and often have a hard time adapting the supply of the services within the confines of the chain if demand changes. SCM is all about optimizing operations.

SUPPLAW AND DEMAND

While SCM is an important concept for the legal industry, it's also very much outside our comfort zone because it focuses on two concepts with which we are unfamiliar — speed and efficiency. This is exactly why we need it. After all, isn't this what our clients are demanding? By using the concepts of SCM, we can create a system to get our product — legal services — to our clients more quickly, in turn allowing us to service more clients. SCM is about developing a competitive advantage without having to lower your prices. A more efficient operational model also makes you a more reliable service provider in the eyes of your client.

Most people associate SCM with the manufacturing industry, but let's think about how we can apply it to the legal industry. Supply chain management focuses on inputs, logistics, finished products and the optimization of the process from start to finish.

In legal, our inputs are the capital investment in the equipment and software that allow our employees to do their work, as well as the labor expended on developing relationships and retrieving and manipulating information. Our logistics are heavily technology-based — we are constantly upgrading servers and installing new software to improve the pace and efficiency of communication. In legal, our finished product is not always a physical one, but it is usually something that moves affairs forward. The real end-product is a satisfied client. The ultimate optimization goals for the legal industry are stronger relationships, more clients and improved information flow.

One thing is clear when thinking about applying this concept to law firms — it would require firms to look at their complete business strategy. This operational model cannot be set up in a vacuum because it requires all moving parts to be aligned with the overall business strategy. It's also important to remember that we are a “supplier” of legal services in the supply chain of many of our clients. If we are not faster and more efficient, we negatively affect their supply chain — something they will seek to avoid.

If nothing else, it is a concept worth exploring. According to a survey by Deloitte from 2014, 79 percent of companies with high-performing supply chains achieve revenue growth greater than average within their industry. Conversely, only 8 percent of businesses with less capable supply chains report above-average growth.

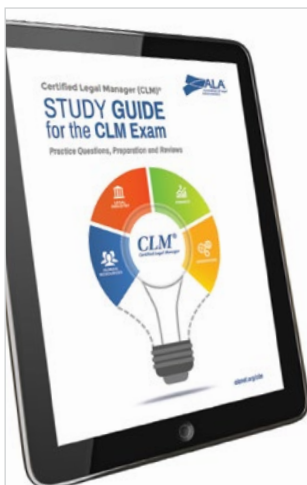
That is enough to convince me to engage my brother in some dialogue about the consulting work he does when I see him in a few months for a family vacation to celebrate our parents' 50th wedding anniversary. I am finally going to cash in all that brain capital I built up with him by giving him free legal advice. I look forward to brainstorming with him about “supplaw” chain management. ■



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JAMES BLICK
Director, TheJudge Group

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If the last few years have been an educational period for firms in terms of testing concepts, 2018 may see the mainstream application of litigation finance and insurance to alternative fee strategies.”

Litigation Finance in 2018: Shifting Sands and Opportunities

This year could be an important one for the litigation finance industry. Although the market has now achieved general acceptance and is arguably approaching maturity, 2018 is likely to bring new challenges for funders as well as increased competition, both from within and outside the industry.

Much of the focus of the litigation finance industry in recent years has been on encouraging usage by larger corporations. Litigation finance has its origins in the distressed litigation space. However, funders were quick to recognize the limitations of this market — the largest claims are often brought by big businesses for which capital and liquidity are not an issue.

To tap into the blue-chip market, funders have had to reinvent themselves, finding new buzz-phrases (“turning legal departments into profit centers”); new structures (portfolio financing, claim monetization); and ways to repackage their offerings as simply another form of corporate finance. The fact that funders have had some success in this regard speaks not necessarily to the suitability of litigation finance to corporate litigation but rather to a gap that exists in the legal services market.

LITIGATION FINANCE VS. ALTERNATIVE FEE ARRANGEMENTS

Challenging traditional law firm fee structures, clients increasingly eschew hourly rates in favor of value-based legal services. In a litigation context, this means a fee structure where the law firm’s remuneration is tied in some way to its success in litigating the case. But this presents a problem. Many law firms are simply not set up to take significant contingent fee risk. Alternative fee structures often mean little more than a lightly discounted hourly rate, or some limited fee cap. This may fall short of what corporate clients are looking for.

This gap between what clients want and what law firms can offer has been successfully bridged by litigation funders. Litigation finance in its myriad permutations can be structured to create

similar client-side economics to a contingency fee, while giving the law firm the hourly fee income it craves.

End of story? Not quite. Too often, the deals struck have favored the funder — for example, where the law firm agrees to put more “skin in the game” than it ideally would like, while not necessarily receiving a commensurate share of the upside.

There are also conceptual and practical questions. The economics may be similar, but there may be a big difference in the eyes of a client between a law firm backing its own case assessment by risking its fee income on the outcome and a law firm being paid by the hour by an external funder.



Furthermore, to really compete with its rivals, a firm needs to be able to table a fee proposal quickly. The reality is that it usually takes several months for a funding deal to be negotiated; there's of course a lingering risk that the funder may ultimately decide to pass on the opportunity. A law firm may find itself hamstrung by any client acquisition strategy that relies on obtaining litigation finance before the case can begin.

HOW LITIGATION FINANCE IS COMPETING

Against this background, the litigation finance industry is also changing. Gone are the days when only a handful of funders

existed, cherry-picking potential investment opportunities at will. Today, there are countless litigation finance companies and a steady influx of new capital into the market.

And it's not just competition from other funders. Major insurance companies are now encroaching into the space. Litigation insurance can offer a similar risk hedge to litigation finance, but with pricing and economics that may be more suitable for corporate clients with good liquidity. Insurers are also targeting law firms, offering insurance as a way for firms to hedge contingent fee risk without paying the substantial returns required by funders.

Large financial institutions and hedge funds are also now turning their attention to the space. Whereas they previously played a less direct role, many are increasingly looking at opportunities to invest directly, especially where a large capital commitment is required.

All of this means that the business of financing litigation is getting more competitive. From a user's standpoint, these are positive developments, increasing the range of options and forcing funders to compete on price and process in ways they previously did not.

For law firms, this offers an opportunity. If the last few years have been an educational period for firms in terms of testing concepts and deals with different funders or insurers, 2018 may see the mainstream application of litigation finance and insurance to alternative fee strategies.

Approaching funding on a reactionary basis and selecting potential funders based upon individual relationships is rarely the best way for firms to meet their revenue and service delivery objectives. To best take advantage of the favorable market conditions, firms must take a more centralized and strategic approach, considering the full and rapidly expanding range of options available. ■

ABOUT THE AUTHOR

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Maintain a Beneficial Relationship with a Departing Attorney (Even If It's Not on Their Terms)

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The most important contribution that professional development and human resources professionals can make to the departing attorney is to provide a clear picture of the support that is available to them.”

With every attorney's exit, law firms should strive to maintain a positive professional relationship for their own business health. Anyone who leaves is a potential client or referral source, so firms should be focused on making sure that they value each departing attorney throughout their transition.

Remember that many of the attorneys who embark on a job search after working in a law firm are doing so for the first time. If the main on-ramp to your firm is interviewing law students on campus, you're often dealing with attorneys who conducted their search exclusively through an artificially predictable process with rigid rules and predictable timelines. Therefore, many do not understand how to run a typical search.

Engaging an external outplacement provider with expertise in the legal realm to serve as a dedicated career coach is only the beginning of setting an attorney up for success in their transition. If your firm has not already done so, develop a common practice for separating attorneys and start creating a custom off-boarding plan before you inform an attorney that they must pursue opportunities outside your firm.

1. OFFER SPECIFICS ABOUT HOW YOU CAN HELP

Simply encouraging the attorney to let the firm know how it can help is almost never enough guidance. The most important contribution that professional development and human resources professionals can make to the departing attorney is to provide a clear picture of the support that is available to them. No matter what prompted the attorney's departure, they may wonder exactly what support they should ask for or reasonably

expect as they plan their separation from the practice. Tell them exactly what's on the table.

2. ASSIST IN CLARIFYING THEIR MESSAGING OR CAREER PATH

An attorney who becomes a job seeker on the firm's timetable rather than their own often suffers a blow to their confidence — how can they articulate their value proposition? Collaboratively examine the relationships that the attorney has developed through consistent work pairings or mentor/mentee activities, and encourage them to pursue open dialogues about perceived technical and interpersonal strengths.

Trusted advisers can also help an attorney evaluate possible next steps. It may help an attorney to hear what supervisors would recommend as potential targets based on their perspective on the attorney's apparent gifts. Should they target another firm with a different platform, billable-hour requirement, rate structure, pace or culture? An in-house role as more of a business person or with narrower or broader responsibilities? Or should they take a nontraditional path that's partially or completely different from law?

3. SUPPORT NETWORKING

From a networking standpoint, should the attorney tap into marketing or business development resources to identify existing relationships with prospective networking or employer targets? Which associations or professional societies do the advisers recommend? Are there fellow firm attorneys — even if they don't yet know that the job seeker is leaving — who might have suggestions?

When networking, the job seeker should do as much homework as necessary to make specific requests. Suggest that the departing attorney connect with firm attorneys and administrators to pursue introductions to new second-degree connections.

Some attorneys hesitate to engage with networking assistance at the early stages of their search, holding on to promises of help until well into the interview process. They end up missing their chance to widen the opportunity pipeline by opening more doors at the application stage. Additionally, many employed job seekers steer clear of engaging firm members on their behalf, assuming that external contacts will find it

suspicious that a connection would effectively shop one of their attorneys outside their own practice. Reassure your attorneys that successful transitions are commonly jump-started by such introductions.

4. BE CLEAR ABOUT EXPECTATIONS

Come to an explicit agreement with the attorney about your expectations for billing time on client work while they are searching for a new job. Create an action plan for adjustments to staffing and workload.

Billing expectations can weigh heavily on any attorney, but they can be especially cumbersome for someone who has been told that their top priority is to find a new position — even as their workday is filled with billable work demands. Sometimes, even with a reduced-hour target, a departing attorney can be suddenly drafted for client work in all-hands situations and end up busier than ever.

To accommodate time-sensitive work going on in their departments, they spend their presumed job search time consumed by billable hours. In these circumstances, consider adjusting the timeline to make up for any ground lost to productive contributions. Otherwise, the attorney ends up feeling disappointed, even more anxious and ultimately undervalued.

As you tell a departing attorney that they should rely on you and the firm to support them in their search, give them specific, actionable guidance. When an attorney is told that they do not have a future at the firm, they are justifiably concerned about a number of things — including what exactly the firm may be willing to offer in support of their exit. Do your part to bridge the gap between an offer of help and actually delivering. ■

ABOUT THE AUTHOR

Colleen Torell, JD, is Vice President of Keystone Associates, a division of Keystone Partners. She advises managers, executives and professional individual contributors through their career transitions. As Practice Lead for Keystone Partners Legal, she offers in-depth and specialized career management solutions for attorneys and legal professionals at all levels.



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Is External Funding the Future of Litigation?

Find out what external lawsuit funding deals typically involve, what factors attorneys should consider — and why the practice is gaining popularity.



ERIN BRERETON
Owner, Chicago Journalist Media

Thirty years ago, cases being funded by an external third party in exchange for a share of the judgment or settlement wasn't really a prevalent practice in the United States.

Today, however, litigation financing is far more common — to the point Cassandra Robertson, Director of the Center for Professional Ethics and a Professor at Case Western Reserve University's School of Law, describes it as on the verge of being widespread.

"It used to be third-party financing in the U.S., as well as England, was totally forbidden in lawsuits," Robertson says. "Very slowly in England and Australia, you started to see some inroads being made, and in the U.S., it started to really pick up speed about 20 years ago [when] more states started saying, 'This is not unethical.'"

Investor interest has since helped fuel the practice's popularity.

"The market, as a whole, has had some good years, but there's a sense of it getting harder and harder to find areas where somebody can have a return above the market average,"

"By having a finance company or bank be the one to front the money, more attorneys who might not have the resources on hand, but have specialized expertise, can take contingent cases [without] the [financial] risks they've been taking on for decades."

Robertson says. "It's my understanding that for companies that have gotten into litigation financing, the returns have been very, very good."

FEELING THE FINANCIAL EFFECTS

For plaintiffs, obtaining external funding can mean the difference between walking away from a case or being able to afford to move forward.

Attorneys, too, who — due to the increased popularity of contingent fee arrangements in recent years have had to essentially fund cases until completion — may benefit from litigation financing becoming more readily available.

"It used to be a lawyer would front the money and take 30 percent of the recovery," Robertson says. "By having a finance company or bank be the one to front the money, more attorneys who might not have the resources on hand, but have specialized expertise, can take contingent cases [without] the [financial] risks they've been taking on for decades."

HOW LITIGATION FINANCING WORKS

Funding providers, according to Robertson, range from companies that focus on smaller claims, such as a personal injury lawsuit, to ones that specialize in large, complex cases.

Not surprisingly, because lenders may get nothing if the case isn't won or settled, they frequently vet matters thoroughly before agreeing to invest to try to control the amount of risk they take on.

"The growth of legal technology and the ability to analyze many claims at once enabled financial companies to predict a little bit better where they're likely to see success," Robertson says. "They evaluate cases enough to know they've got these 100 in a portfolio, and they're pretty sure 80 or so are likely to be successful on their merits and are against a defendant who is very likely to pay the judgment."

Often, lenders — such as litigation finance firm Lake Whillans, which customarily invests between \$2 million and

\$10 million in commercial claim cases with damages in excess of \$20 million — arrange the funding agreement with the individual or company involved in a lawsuit.

"Law firms reach out on the behalf of clients saying a client needs money, clients reach out to us directly," says Lake Whillans Managing Director Lee Drucker. "We most typically are transacting with the client themselves, but we could also transact with the law firm on a portfolio of cases."

For the most part, once an agreement has been reached, financiers' involvement in the case is fairly minimal, according to Bill Patterson, who has worked on litigation finance-funded cases as an in-house counsel and in his current role as Partner



“With litigation financing, the plaintiff is now funded to go to trial if necessary. It gives you the ability to pursue more complicated cases.”

and Vice Chair of the intellectual property group at Swanson, Martin & Bell LLP, a litigation firm with offices in Illinois, Missouri and Indiana.

“Once the ink is dry, it’s really just periodical updates about major events,” Patterson says. “They’ll offer to be a sounding board if you ever want them to be, but the attitude of the litigation finance company usually is that part of the due diligence process is to put lawyers in place they really trust, so they stay out of it.”

ADDITIONAL CONSIDERATIONS

While litigation financing can mean cases with merit are able to move forward, lawyers need to carefully navigate any state and court-related ethical rules surrounding the use of third-party funders, according to Francine Griesing, Managing Member of the Philadelphia-headquartered Griesing Law, LLC.

It’s first important to confirm if your state has a champerty law prohibiting agreements with third parties who sign on to pursue a suit and share in the financial outcome.

A number of courts in the United States have clarified their approach to champerty since litigation financing began being used more frequently in the United States. This, according to Drucker, makes it “less murky that what they’re doing is pretty much squarely within the framework of most states.”

“Law firms should figure out what types of cases work for a litigation financing company and make sure those are the types of cases that fit with your firm’s profile.”

Not all, however, have sanctioned the practice.

“States in which there was a law against champerty had to look at whether [litigation financing] violated the law,”

Griesing says. “To my knowledge, there still are a few [states] that [have laws against it].”

In addition to addressing other concerns — including whether the court requires you to disclose a third-party funder is being used and confirming attorney-client privilege can be maintained — Griesing suggests lawyers may want to document that they’ve discussed any associated risks and jurisdictional requirements with clients in writing.

She also recommends attorneys remain cognizant of the responsibilities involved in Rule 5.4 of the *ABA Model Rules of Professional Conduct*. For example, they must make sure an agreement doesn’t state that, unless there’s no merit to proceeding, if the client decides not to continue with the case, he’d have to repay expenses the funder incurred.

Attorneys have to be able to recommend what’s in the client’s best interest and execute the client’s wishes, Robertson says — even when that might contradict a third-party funder’s interests.

“Part of the risk is that a client might decide, after you put in a ton of resources, that they want to drop the case; they have to be allowed to do that,” she says. “The provider can’t force the client to continue with the claim. That’s a risk a lawyer on a contingent fee takes and a similar risk a company takes.”

Ensuring clients understand what they stand to make — and spend — is also key.

In some instances, a lender may provide money for other case-related costs, such as medical expenses, according to Robert Marcovitch, a Partner at national trial firm Weinberg Wheeler Hudgins Gunn & Dial who recently worked on a case involving such an arrangement.

If a plaintiff is responsible, however, for paying all medical costs back to the financier — potentially involving a higher amount than the typical negotiated rate an insurance provider would offer — the arrangement could end up being a costlier proposition than the plaintiff initially imagined.

"States in which there was a law against champerty had to look at whether [litigation financing] violated the law. To my knowledge, there still are a few [states] that [have laws against it]."



"For serious injury cases, medical expenses can be in the hundreds of thousands, if not more. If there's no other way to get health care or the type the plaintiff needs, then maybe it's the only thing they can do," Marcovitch says. "But let's say the lawyer gets 60 percent of the medical expenses recovered. If it's not a high-dollar case, [it may not be] worth it."

SECURING OUTSIDE FUNDING

Law firms hoping to obtain litigation financing for a portfolio of work or pair individual clients with funding sources should look for lenders that tend to work within corresponding areas, according to Patterson.

"A litigation financing company that doesn't do a lot of intellectual property work isn't going to be good friends with a law firm that's focused on intellectual property law," he says. "Law firms should figure out what types of cases work for a litigation financing company and make sure those are the types of cases that fit with your firm's profile."

Investors may not be interested in some cases, simply because they're outside of their purview or because they believe they involve too much risk. A case involving a party that's alleging breach of an oral contract, for example, can tend to be a fairly speculative scenario to base a case on, according to Drucker.

Even if a lawsuit is in line with what a company tends to fund, different matters can involve different investment qualifications. Generally, Lake Whillans looks for cases with strong documented evidence that demonstrates a narrative, according to Drucker.

"That's what we're ultimately going to be seeking to guide our underwriting," he says. "The level of risk, potential duration,

damages-to-investment ratio — all those factors lead to us valuing the return required to justify our investment."

A GROWING TREND

More and more U.S. states are permitting litigation financing — at last count, only 18 didn't clearly allow it, according to Robertson; the rest did.

In addition to situations where plaintiffs are in desperate need of funds, businesses are now turning to litigation financing because of the operational benefits it can provide, such as allowing a company to show consistent expenses year over year, according to Patterson.

"We see a lot [of cases] actually now with companies that are very concerned about freeing up cash flow," he says. "That concern was always there; the solution wasn't 10 years ago."

Some attorneys may initially fear litigation financing will result in a loss of control over how a case is managed. However, the practice can, Patterson says, take case strategy in a vastly positive direction.

"In a situation like a trade secrets case, classically, the approach a defendant takes is to try to run [the plaintiff] down so they're desperate to settle because they're running out of money," he says. "With litigation financing, the plaintiff is now funded to go to trial if necessary. It gives you the ability to pursue more complicated cases." ■

ABOUT THE AUTHOR

Erin Brereton is a freelance writer, editor and marketing consultant who has written about the legal industry, attorneys, business and other topics for 20 years.



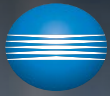
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KYLIE ORA LOBELL
Freelance Writer

It's no secret that the legal industry is crazy competitive. The unemployment rate is currently at a 17-year low, coming in at 4.1 percent in March 2018 for the sixth month in a row. On the other hand, the number of jobs that need to be filled is at nearly an eight-year high.

So even if your firm boasts high profits and has great employees who provide results for its clients, the key to a firm's longevity depends on your ability to attract top talent who can be developed to eventually lead the firm. Offering an attractive position, salary and benefits are perennial employee attractors. However, there's one area you might not consider that can make a huge impact on prospective employee's first impression of you — your brand.

According to CareerBuilder and Personified's Employment Brand Study, companies that have a strong employment brand receive 3.5 times more applications than businesses in the same industry.

"Employment branding that properly represents your firm is critical," says Allison Frazier, Communications Director at Sodoma Law. "It should bring and attract quality candidates and those candidates should bring and increase consult and retention rates."

"Employment branding that properly represents your firm is critical. It should bring and attract quality candidates and those candidates should bring and increase consult and retention rates."



You've got step one covered. You have built a thriving law firm that stands out from its competitors. You have a well-known name. Now it's time to focus on your brand.

IT'S IN THE DETAILS

An employment brand is what people believe it looks like to be an employee at your law firm. It's what applicants and current and past workers think about when your law firm is mentioned, and includes things like the employee value proposition, the office environment, the company culture and the benefits. If the employment brand is positive and appealing, you're going to appeal to the best candidates.

"When individuals are the cream of the crop in any field, they have many choices as to where they will work," says Angat Saini, Principal Lawyer and Founder of Accord Law. "If your firm has a great employee reputation, you'll get a lot more applicants, and if the branding is really strong, they'll likely be some of the best in your city applying."

First, look at what is significant to your firm, whether it's your benefits and perks, your work culture, your values, or all four aspects of branding. "So many firms operate 'business as usual' without identifying these very important elements," says Frazier. "And, while your leadership may believe these elements meet or exceed expectations of the employees, steps must be taken internally to ensure that all employees have sufficient 'buy-in' to the same elements in order for there to be healthy growth and support of the brand overall."

Next, analyze what message your law firm puts out. Are you known for your diverse workplace? Do you put an emphasis on community service? Do you fight for the rights of immigrants? Determine what your firm stands for and is attempting to achieve day in and day out.

When Jesse Harrison, Chief Executive Officer (CEO) of Employee Justice Legal Team, founded his firm, he stressed that his team would be representing workers, many of whom were harassed, treated unfairly and wrongfully terminated.

Collectively, he says he and his employees bring these workers justice. "All of our employees contribute to that purpose in one way or another, and we make that clear in every hiring situation. With strong branding, you will get the strongest candidates for your positions."

"If your firm has a great employee reputation, you'll get a lot more applicants, and if the branding is really strong, they'll likely be some of the best in your city applying."

MESSAGING MATTERS

You need a well-defined and consistent message that highlights your purpose across all platforms and in every situation. According to John Meredith, Chief Operating Officer (COO) of Chamberlain Hrdlicka, having this message and repeating it will build recognition. "[It] reinforces a firm's core principles and supports employee retention. If a

"If a firm is well-known for delivering on certain principles, it helps attorneys build their individual practices and develop strong teams, leading to long-term success."

firm is well-known for delivering on certain principles, it helps attorneys build their individual practices and develop strong teams, leading to long-term success."

When figuring out your message and elements like company culture and benefits, you need to speak to your employees to find out what they like and dislike about the firm, according to Saini. The latter is crucial, because if employees are badmouthing the firm online or off, it can easily take a toll on the firm's reputation.

Make sure you ask employees how you can improve the work environment and their experiences on the job. "Even if you're not able to accommodate every request, just the fact that you take the time to listen and show you're putting the effort in will go a long way in their minds," says Saini.

You may not be able to change everything, but you should at least put into practice what you promise applicants. "Don't forget that the reason you are bringing many of these quality candidates through the door is because of your brand," says Nicole Sodoma, Managing Principal of Sodoma Law. "It's so easy to paint a dreamy picture of work culture and then fail to follow through. This isn't just bad for employee retention rates. It's bad for reputation and for the brand that's been built."

Remember to deliver the coherent messaging and support it on social media and marketing materials, and into training and

onboarding sessions, says Meredith. Combined with quality work and a consistent company culture, you are only going to see stellar results: employees will stay longer, be happier, and are going to work harder to achieve your firm's goals.

If you already have a strong employment brand already, there's always room for improvement. Decide what your big picture purpose is, how you will communicate your unique message and what culture and benefits you provide to employees. Be clear, be consistent and tweak when necessary to attract and retain the best talent out there.

After all, according to Frazier: "Strong employment branding is paramount for longevity in a successful organization." ■

ABOUT THE AUTHOR

Kylie Ora Lobell is a freelance writer living in Los Angeles. She covers legal issues, blogs about content marketing, and reports on Jewish topics. She's been published in *Tablet Magazine*, *NewsCred*, *The Jewish Journal of Los Angeles* and *CMO.com*.



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ALBERT J. MARCELLA JR., PHD, CISA, CISM
*Founder and President
 Business Automation Consultants*

Rise of the Drones: The Invasion Has Begun

There is hardly any other single technology currently developing as fast as drone technology. This increase in drone usage also means more opportunities for organizations to misuse the technology and related controls.

“

You must be prepared to advise your clients on the risks, controls, legal implications/impact, registration requirements, etc., related to commercial drone usage.”

These flying robots are quickly becoming a go-to technology for a variety of industries and for a multitude of applications. Once largely relegated to military operations, drones are becoming more accessible for commercial and recreational use, creating potential implications for the legal industry. As such, this column aims to provide a better understanding of commercial drones and prepare legal professionals for advising current and prospective clients to identify and mitigate risks associated with this emerging business platform.

Small unmanned aircraft systems (sUAS), or drones, that are used for commercial — that is, not hobby or military — purposes are closely regulated by the Federal Aviation Administration (FAA). The commercial uses for drones as an organizational competitive tool are just starting to be discovered; new tactical uses emerge daily. Do you have clients currently engaged in these activities or considering moving into any of the business activities for which drone technology might be useful? If so, you must be prepared to advise your clients on the risks, controls, legal implications/impact, registration requirements, etc., related to commercial drone usage.

INTENT MATTERS

First, a few definitions:

- A commercial drone comprises the actual unmanned aircraft (UA) and the associated support equipment, control station, data links, telemetry, communications and navigation equipment, etc., necessary to operate the unmanned aircraft.
- The UA is the flying portion of the system, flown by a pilot via a ground control system or flown autonomously through various systems such as an on-board computer

and communication links necessary for the UA to operate safely.

- An unmanned aircraft system (UAS) is defined by federal statute as an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft.

Intent, rather than technology, establishes the difference between a recreational radio-control aircraft and a UAS. If flown simply for enjoyment or fun, the flight is recreational. However, if the flight is purposeful and done with the intent to perform a task, it is commercial in nature. Such tasks can include aerial competition/races, selling photos or videos taken from the UAS or contract services, such as industrial equipment or factory inspection or municipal search and rescue.

WHERE THE LAW STANDS

Uncontrolled and unchecked, drones pose a significant threat and risk to organizations. Consider for a moment just a few of these issues associated with emerging drone usage. How would your client address these issues and answer these questions? Would you feel comfortable accepting the answers they provided?

“While the technology may be complex, the law seems fairly straightforward. There’s no ‘drone exception’ to negligence claims, as far as we’re aware,” states Stephen Palley, Founder of Palley Law, PLLC, in Washington, D.C., in an article for the American Bar Association’s *Law Practice Today* blog. “Whether someone is injured by a drone or injured by a negligently operated crane, common law tort remedies still apply. Criminal laws do too.”

For now, the rules and regulations guiding the use of drones are tightly focused, leaving very little room for deviation. (At the federal level — Title 14 of the Code of Federal Regulation (14 CFR) Part 107, to be precise — you’ll find the FAA is very exacting in regulating the operation of commercial drones.) Noncompliance will be costly. Advise clients to monitor all regulations that pertain to the operation of drones and ensure compliance. Eventually some regulations will be modified, but until then, know and play by the rules.

“If you are only an occasional user of drone technology in your business, the best course is to subcontract the actual operation of the drone or drones to a company in the full-time drone piloting business,” says James G. McConnell, an Attorney with Construction Law Services. “They will assure your drone use complies with FAA regulations and that the operators are properly licensed and certified to meet your operational needs.

If you need to have full-time drone operators employed by your own company, make sure they get all required training and certifications before putting your drones into service.”

HELPING YOUR CLIENTS

These tips will help you and your clients assess their preparedness for real-time commercial drone operations:


1. Has your client’s organization established a remote pilot in command (PIC) position?
2. Is your client’s organization ready to identify, collect, retain and manage the sensitive private medical information that is required to ascertain the medical flight readiness of your drone PIC and visual observer?
3. What information will the organization require of employees or third-party contractors to substantiate that they are medically fit to operate the drone?
4. Does evidence exist to substantiate that the individual responsible for drone inspection and maintenance, and determining that the drone is in a condition for safe operation, is certified to do so? And does the organization use an FAA-approved maintenance schedule for all its drones?
5. How does the organization plan to employ and satisfy mandatory see-and-avoid (SAA) — also referred to as detect-and-avoid (DAA) requirement — for its drone?
6. How will the organization demonstrate the capability to provide oversight of all third-party providers entrusted with managing, maintaining and/or operating the organization’s drone program?
7. Are data obtained via drone technology — in full compliance of the law — protected as company proprietary information and as intellectual property? ■

ABOUT THE AUTHOR

Albert J. Marcella Jr., PhD, CISA, CISM, is the Founder and President of Business Automation Consultants (BAC), LLC, with 38 years of experience in IT audit, risk management, IT security and assessing internal controls. He has authored numerous articles and 28 books on various IT-, audit- and security-related subjects.

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“

Videoconferencing adds value to our interaction and gives us the ability to conduct more business remotely without sacrificing a personal connection.”

Zoom into Videoconferencing

We really don't understand the craze for videoconferencing, as we have never had a huge demand for people to see us while talking to us. Have you ever seen us? That may give you a clue. But Bill has hired a makeover artist, and now we are all on board for face-to-face meetings — electronically.

There is no doubt that technology has caused us to withdraw from face-to-face interaction. Have you noticed what people do while standing in a crowded elevator or waiting for luggage at the airport? You barely see people's faces because they are buried in their smartphones. God forbid you actually say something to the person standing next to you. We cry foul over this societal development, and we aim to do something about it.

SOFTWARE, OF ALL THINGS, CAN HELP

So if technology has caused the problem, why can't technology help us solve it, too? That is why we have been using Zoom, a web videoconferencing solution that is easy to use and easy on your budget. With a free personal account and a quick download of the client app to your computer, smartphone or tablet, you get a full-featured web meeting application that allows you to set up instant meetings or schedule meetings for the future.

Obviously, our favorite feature is the ability to turn on our webcam and conduct a videoconference with one or multiple parties. The videoconference brings a personal element back to our meetings, regardless of whether we are interacting at the office or with a colleague who is working remotely. Moreover, when meeting with clients or prospective customers, we think videoconferencing adds value to our interaction and gives us the ability to conduct more business remotely without sacrificing a personal connection. And it really works great with expert witnesses and saves money in travel costs, travel time and out-of-pocket expenses.

IS THERE A CATCH?

In days past, if you wanted to do a quality videoconference from your computer, you had to invest in incredibly expensive equipment and software. Those days are mostly over.

With a free Zoom account and a nice HD webcam that we purchased at Best Buy for less than \$100, the quality of the videoconference is outstanding. However, the free version of the software limits the duration of your meetings to 40 minutes. (We think 40 minutes is more than enough time for an efficient meeting; you can always take a break and start another one.)

There are various subscription options for corporate use that remove the 40-minute limitation. In addition, if you want to use Zoom in a larger setting like a conference room, you might need more sophisticated equipment to be able to show a room full of people on camera. Zoom works well with these advanced conference room systems as well. So — from personal use all the way up to large corporate meetings — Zoom certainly proves itself as a scalable solution.

THE OTHER BENEFITS

Beyond just showing our smiling faces, the Zoom application is loaded with web conferencing features that are great for business. You can share your screen with the conference participants and allow for on-screen annotations. You can directly access cloud-based files from popular file-sharing sites like Dropbox and Google Docs. And you can record the video call — which is one feature we really like. So if we are conducting a training session via Zoom and want to save the session for future use, we can make that happen very easily. The recording is saved as an MP4 video file and can be uploaded to

a cloud repository or even to YouTube. (The recording feature is only available in the paid subscription packages.)

The Zoom application is still very useful for simple audio calls, particularly when there are many call participants. You get a visual representation of who is currently speaking in the app. In addition, with the text chat feature you can send a private IM to someone on the call or send a message to the entire group.

We have used several web conferencing tools over the years, and right now Zoom is our favorite for both its ease of use and its scalability from one-on-one meetings to large multiparty collaborations. So if you want to have a meeting with Bill or Phil, get ready to accept our Zoom link (you don't have to be a subscriber to respond to a meeting request) and get ready to see our noggins on the screen (you can always cover your eyes). We are all about making meetings personal again. We've got the technology to do it, and Bill has his makeover artist on retainer. ■

ABOUT THE AUTHOR

William Ramsey, Partner at Neal & Harwell, and **Phil Hampton**, Consulting President of LogicForce, are best known for *The Bill and Phil Show*.

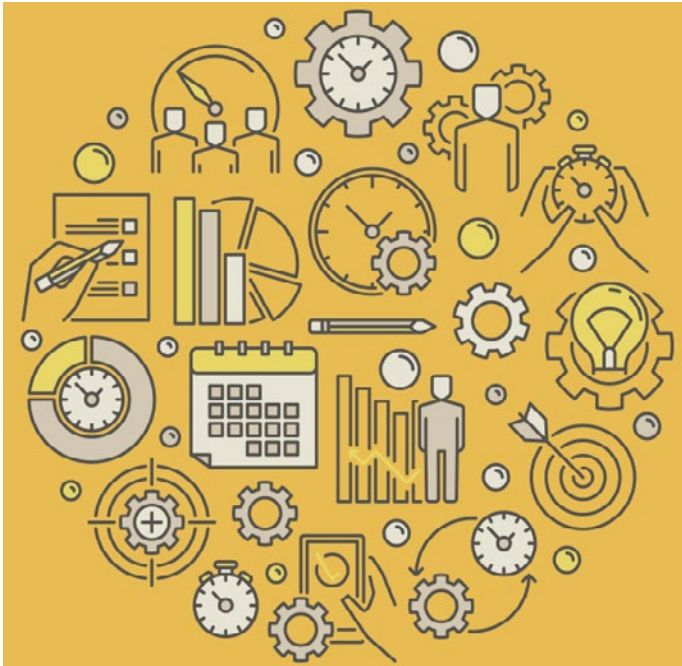


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Optimizing Your Firm for Accountable Productivity

By Isaac Kohen



Despite all the improvements that IT advancements have brought, productivity still remains an issue. According to Thomson Reuters 2018 Report on the State of the Legal Market, productivity has continued to decline in law firms as billable hours per month have decreased by 13 hours on average. This translates to roughly \$74,000 that law firms are losing each year in revenue. This is a problem because in the same report, Thomson Reuters indicates that major businesses are continuing the trend of cutting their spending on outside legal teams.

Imagine how much more time your firm could dedicate to client projects if constant administration was not taking up time — especially since many administrative tasks can be automated, which means more billable hours. While it is easy to jump to tech upgrades as the go-to solution that law firms need, tech alone does not improve much if the underlying core processes are not optimized for efficiency. By addressing areas of opportunity in both tech and process, your law firm will reap great gains in productivity.

OPTIMIZING PRODUCTIVITY THROUGH PROCESS

Before technology is implemented, it is good practice to ensure your processes are optimized for productivity. Provided below are a few tips to make that happen.

Measuring for Outcomes

Law firms require not just a specific quantifiable output of work, but a high caliber of work that results in a positive outcome, i.e., satisfied clients. To clarify, an output is a quantifiable measure, something you can count without a quality check. However, output alone does not demonstrate how an activity contributes to boosting business value or coming closer to strategic goals. Tracking outcomes is the tracking of impact that activities have on your organization over time.

Design Processes for Added Value

The main reason you want to change or optimize a process is so that the process adds even more value for your client's and your bottom line. Ensure that whatever process you are examining you are eliminating nonvalue adding activities and enhancing the activities that make your organization better at fulfilling its mission.

What often happens when managers do not optimize their processes before automating are data errors and — at worst — total process failure.

Optimize First, Then Automate

One of the problems today with many managers is that they rush to automate everything in their organization because of advances in technology. This is jumping ahead — managers should be ensuring their process can be handled by a program without the need for a human quality check each time the process happens. What often happens when managers do not optimize their processes before automating are data errors and — at worst — total process failure.

Metrics and Feedback

Throughout most of your processes you should have a mechanism for feedback and metric tracking. If these are not in place, you will have no way of measuring efficiency and productivity in your organization at the most basic level — the process level.

ENHANCING PRODUCTIVITY THROUGH SOFTWARE

Technology and software are the go-to solutions now for companies seeking to improve their productivity. You can find numerous articles online about how switching to the cloud will instantly improve everything. However, productivity means more than having office management software. You'll also need a means of merging productivity efforts with some security efforts that keep client data secure.

Productivity Analysis

Thankfully, there now is technology that allows you to do productivity analysis on any device in your network. Productivity analysis allows you to decide what applications are considered productive to your type of work. From there, you can track those applications and the time being spent on them. With this data, you'll be able to construct productivity profiles of each employee.

Cloud Business Management

Google Drive or Dropbox are two of the most popular cloud services; however, they are no replacement for a full business



suite. Running your law firm requires some way to manage case files with the utmost security. The power of these systems is not only in their accessibility but also the ability to audit access logs and control file security. And having everything you need in one place really helps to reduce administrative and nonbillable tasks. Security should be your principal consideration with any cloud management system. Without good security, you cannot protect your clients from a data breach. For law firms, one data breach can mean the end of the company.

Passive Data Collection

Data is gold and is the underlying basis for any productivity gains you may experience. The ability to see every interaction with your cloud-based system and to track time spent on specific applications you have marked as "productive" both add to what defines productivity in your firm. With data in hand, you'll be able to pass audits, create risk profiles, conduct user behavioral analysis and make data-driven decisions.

The key thing here is that any data collection should be automated and passive. It should not disrupt processes and you should not have to manually turn it on and off. By allowing passive data collection to happen, you have a system monitoring what happens in the background at all times. If there is a security breach, an IT forensics team will have what they need to help you effectively with all the data collected.

Productivity is possible now in the 21st century; however, law firms need to be smart about how they approach it. Your goal is to reduce nonbillable hours so you can spend more time doing the tasks that make your firm successful. ■

ABOUT THE AUTHOR



Isaac Kohen is the Founder and Chief Executive Officer of Teramind, an employee monitoring and insider threat prevention platform that detects, records and prevents malicious user behavior in addition to helping teams to drive productivity and efficiency.

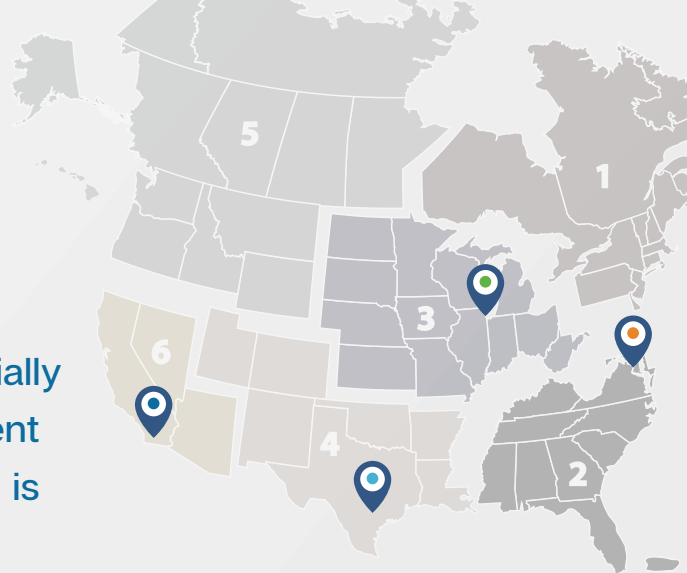
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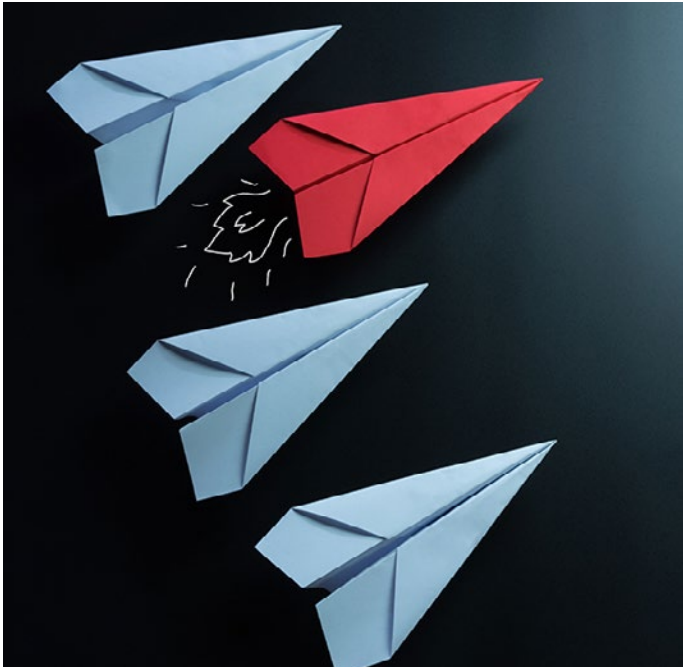


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The Benefit of Competition in Providing Health Care Benefits

By Michael R. Epperson



Remember the good old days when health care benefits were provided at a premium level for a small additional cost to the employer? Many of us have not been around long enough to enjoy that recollection!

Today, health care costs are a major line item in most law firms' budgets and these costs are growing at an alarming rate, motivating firms to work hard to find ways to reduce rates. Health care costs are also an important consideration for recruiting and hiring. New employees are scrutinizing a firm's offered health care benefits during their job decision making process.

Let's face it — most midsize law firms pay attorneys and staff within a similar range. So, many firms are trying to attract the same top talent, and those candidates take a careful look at not only salary, but also at other financial benefits of their employment such as the existence of a 401(k), bonus potential and, importantly, the cost to them of health care coverage.

To address these concerns, many firm administrators work with a benefits broker to ensure we are exercising due diligence in selecting a cost-effective health insurance provider. But even this process can be difficult.

In fact, how many of you have had the following experience: It's time for your annual health plan renewal and your trusted broker comes in and tells you that the health care cost trend is an annual increase of 8 to 10 percent. Then the broker brings you an initial quote from your current insurance provider that reflects an increase of 12 percent. This is usually accompanied by a statement about how much the insurance provider appreciates the long relationship they have had with your company and that they will barely break even with your renewal because the cost of health care just continues to increase.

Your broker then shares with you an analysis of your costs and suggests that a "fair" renewal should be more like 6 to 8 percent rather than 15. Miraculously, the broker then comes back in a week or two and tells you they have great news: "Our current insurance provider has agreed to a renewal with an increase of only 6 percent, but only if you will execute an agreement right now and not get competitive quotes from other providers." Sound familiar?

"RESETTING" OUR HEALTH CARE COSTS

I have had this same challenge, but let me share a recent experience of what can happen when you infuse competition into this process. During our firm's recent renewal process, the above scenario is just about exactly what occurred. Our organization, in the past, had several bad years of insurance claims, which had driven up our costs. However, in recent years we had experienced several good years of claims. Our goal with the 2018 renewal was to "reset" our costs.

We felt our carrier was penalizing us for the distant history of bad claims. We knew that although historically there has been one giant health care provider in North Carolina (to remain nameless in this article), other providers have become viable in recent years. As a result, we decided not to stop with the

Through two rounds of back and forth negotiations, we ended up with a renewal that represented a 13 percent reduction to our costs.

current provider's quote but instead to force competition for our health care benefits business. We sought and received several competitive quotes from providers other than our provider at the time. Through two rounds of back and forth negotiations, we ended up with a renewal that represented a 13 percent reduction to our costs — *I repeat, we ended up with a 13 percent reduction in our health care costs!*

By the way, our longstanding insurance provider who initially quoted us a 12 percent increase because they "valued our long-term relationship" gave us a final quote that reflected a 10 percent decrease in costs — a 22 percent difference from their initial quote. However, our firm won't know how that would have worked in the future, as that company is no longer our insurance company.

In this difficult marketplace of health care costs and employee scrutiny, you are wise to search beyond your current health care benefits provider and seek competitive quotes for coverage. The result can be startlingly positive! ■

ABOUT THE AUTHOR



Mike Epperson is the Chief Operating Officer of Ward and Smith, PA, and a member of the Raleigh/Durham Chapter.

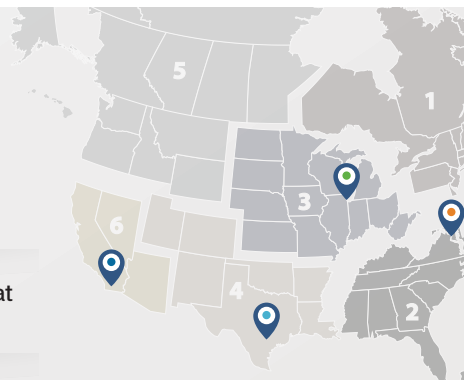


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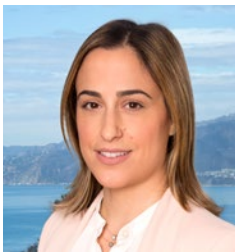
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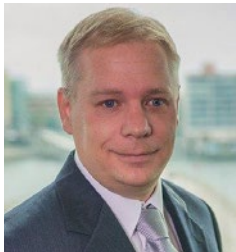
Sawsan Charif

Kenneth Beaver, member of the Capital Chapter, is now Executive Director/Chief Operating Officer at Rees Broome, PC, in Tysons Corner, Virginia.

Sawsan Charif, member of the Greater Los Angeles Chapter, is now Office Manager at Pierce Bainbridge Beck Price & Hecht LLP in Los Angeles, California.



Jennifer Javaheri



Paul Kanjorski

Jennifer Javaheri, member of the Greater Los Angeles Chapter, is now Office Operations Manager at McDermott Will & Emery, LLP, in Los Angeles, California.

Paul Kanjorski, member of the Suncoast Chapter, is now Firm Administrator at Sessums Black Caballero Ficarrotta, PA, in Tampa, Florida.









Hannah Lincecum,
SHRM-CP



Barbara Maglin

Hannah Lincecum, SHRM-CP, member of the Golden Gate Chapter, is now Human Resources Manager at Reed Smith LLP in San Francisco, California.


Barbara Maglin, member of the New Jersey Chapter, is now Billing Administrator at Townsend Tomaio & Newmark, LLC, in Morristown, New Jersey.



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BIDDING ADIEU, SAYING HELLO

By now, having been announced at the 2018 Annual Conference & Expo, the new Board of Directors and Regional Representatives have taken office. Prior to conference, Region 6 Director Shaun Morrison stepped down from her position on the Board. So, we'd like to take a moment to thank Morrison for her devoted service. She continues to be an ALA member and the Director of Administration at Allen Matkins Leck Gamble Mallory & Natsis LLP in Los Angeles, California.

Her position on the Board was filled by Deborah Piker Sanders, CLM, who most recently served as Chair of the Certification Committee and oversaw the development of the new Study Guide for the CLM Exam (alanet.org/clm). In her own career, she's the Business Manager/Controller for Rehon & Roberts, APC, in San Jose, California. Please join us in welcoming her to the Board!

NOTE: A recap of the Annual Conference award recipients will be coming in the June issue of *Legal Management*.

MEMBERS MAKING NEWS

- **Doing good in the community:** The Suncoast Chapter passed along one of its notable fundraising initiatives. The chapter hosted a gift raffle in which all of the proceeds were distributed to partner charities. That means more than \$1,000 went to the Suncoast Animal League, a no-kill animal welfare agency for pets and wildlife, and the R.I.C.H. House, a community center for at-risk youth run by the Tampa Police Department.












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JUN. 20	What Makes an Effective Legal Management Leadership Team?	
JUL. 5	Operational Excellence: Legal Process Improvement Applied to Business and Administrative Functions	
JUL. 12	An Overview of eMod DOCX Filing/Viewing and Patent Center Beta Release	

Learn More: alanet.org/webinars

STRATEGIC PLAN UPDATE: ADVANCING LEGAL MANAGEMENT PROFESSIONAL DEVELOPMENT

Goal No. 4 of ALA's 2017-2020 Strategic Plan is to Advance Legal Management Professional Development. A cornerstone of ALA's professional development program is the Certified Legal Manager (CLM)[®] program. Established in 1995, the CLM certification provides legal management professionals the opportunity to demonstrate they have mastered the knowledge, skills and abilities to operate at a high level of expertise within the profession. Given the considerable changes and complexities of legal management roles, ALA is embarking on an initiative to update the CLM program and enhance awareness of the importance and value of the credential. Some of those efforts include:



Digital Certificates: This month, new and recertifying CLMs will receive a digital certificate rather than a hard copy. Digital certificates can be easily shared and they are verifiable. They can also be printed and framed, if desired.

Online Certification Module: This will allow us to automate regular reminders and other communications with CLM candidates and CLMs. It will also allow candidates and certified individuals to track the status of their applications and view their recertification dates when they view their profile online. This will provide 24/7 access to basic information.

Awareness Building: In the coming months, we will be conducting a needs and benefits survey to all CLMs to better understand and enhance the value of the certification. We also want to better define the impact of CLM certification on a legal management professional's career advancement. We also plan to develop a "CLM Preferred" outreach program to managing partners and human resource directors.

Credentialing Plan: To help those new to the industry, we will provide them with education and tools to create a credentialing plan, including a Legal Management Professional Certificate as a first step to obtaining the CLM.

Based on input from these initiatives, we will develop potential brand position statements and solicit membership input. That process began at the 2018 Annual Conference & Expo. For more information on our strategic plan progress, visit alanet.org.

REGISTRATION IS OPEN FOR FALL CONFERENCES

The 2018 Annual Conference & Expo was a success! Now, ALA is immediately switching gears to bring our members even more valuable practical knowledge for their workplaces and their overall career development. Our fall events present more intimate, specialized opportunities to learn from experts, network with peers and engage with business partners. Register today: alanet.org/events!

ENROLL IN E-LEARNING

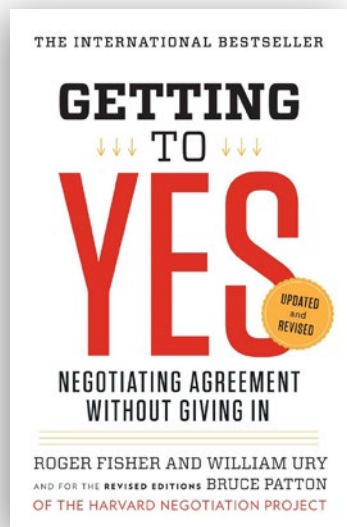
Attending a conference or becoming a CLM aren't the only ways to stay up-to-date on the latest trends and best practices in legal management. You just need an internet connection to gain new knowledge and continuing education credits from in-depth e-learning courses taught by industry experts.

Registration is open! There's still time to register for HR2: Performance Management & Compensation and FM1: Law Firm Accounting, which commence the week of May 14. Registration is also open for FM2: Financial Information & Analysis, which begins the week of July 16.

(If you've already completed HR1, successfully passing this course and an exam can earn you a Legal Management HR Specialist Certificate.)

Earn a certificate! If you pass both FM or HR courses, as well as their associated exam, you will earn a Legal Management Specialist Certificate. This demonstrates your commitment to furthering your legal industry-specific education and becoming a more informed legal manager.

If you've already taken HR1: Employee Selection & Promotion or participated in the live Finance Specialist Track at Annual Conference, now's the time to enroll in HR2 or FM2 to make headway on earning the respective certificate. Visit alanet.org/elearning for more info.



ALA'S MAY BOOK OF THE MONTH

Getting to Yes: Negotiating Agreement Without Giving In
By Roger Fisher, William Ury and Bruce Patton

Negotiation and compromise are two great tools to end conflict and reach consensus. Learn how to lead your firm through difficult discussions and achieve an environment that is supportive and efficient.

Visit alanet.org/bookstore to purchase a copy.



CALENDAR

MAY 13 MOTHER'S DAY

MAY 15 | 2 P.M. CENTRAL

PAYROLL MISTAKES THAT CAN LAND YOU IN HOT WATER! HOW TO AVOID GETTING BURNED BY COSTLY MISTAKES

Lawsuits related to employers' payroll practices are dramatically on the rise! During this fast-paced session, you will learn about the ways federal law impacts the payment of wages, what areas are the most hotly contested, and how to avoid costly mistakes. This will be a broad overview of the various areas that impact wage and hour regulations. For anyone involved in payroll with employees, this is a must-attend session.

Questions about this event? Contact psiems@alanet.org.

MAY 16 | 2 P.M. CENTRAL

HOW APPLIED IMPROV HELPS LEGAL ADMINISTRATORS BECOME INNOVATIVE THINKERS AND POSSIBILITY CREATORS

Innovation is simply creativity applied for a purpose. This highly experiential session introduces the three basic tools used by innovators: fluency (many ideas), flexibility (many perspectives) and uniqueness (new approaches). Additionally, it reveals how applied improv principles are helpful for legal management professionals. The entire program is informal, interactive and involving. Participation is completely voluntary — no one will be singled out to volunteer.

Questions about this event? Contact psiems@alanet.org.

MAY 28 MEMORIAL DAY

ALA headquarters closed.

JUNE 7 | 2 P.M. CENTRAL

TIME TO GO BACK TO SCHOOL: IMPORTANT UPDATES FOR YOUR FIRM'S HANDBOOK

The times, they are a-changing — and fast! Have you recently reviewed and revised your firm's employee handbook to ensure that all of the appropriate and up-to-date policies are in place? Come to this fast-paced and law-firm business-focused session and understand what must, should be and should not be included in your firm's handbook.

Questions about this event? Contact psiems@alanet.org.