



A Publication of the Law Practice Management and Legal Administrators Section of the State Bar of Michigan

From the Chair

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By Patrick T. Barone

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2022 was a time of rebirth. Through the leadership of our past section chair Ian Lyngklip and with the support of the newly composed section leadership, we were collectively able to bring our section back from dead. After meeting all the requirements set forth by the Michigan State Bar early in the year, we began having regular meetings. This culminated in our October Annual Meeting, which was a great success, albeit sparsely attended. One of our goals is to increase this year’s attendance, so please mark your calendar for October 20, 2023, and save the date.

2023 portends to be a year of growth and expansion. Indeed, as stated, growth is the main goal of our section this year. This is not growth for growth’s sake. Our intention is to obtain growth by bringing greater value to our membership. This is in keeping with the 2023 vision of our Section, which is to become the preeminent resource for information that will help lawyers work toward achieving best business practices with increasing levels of personal and professional satisfaction by improving the value of their professional services in a highly ethical, fiscally sound, and economically rewarding way.

There are three parts toward achieving this vision (1) The LPM/LA Section is hosting a three-part series of free zoom seminars and a one-day annual meeting and seminar, (2) providing a semi-annual newsletter packed with useful and compelling content written by thought leaders in business, accounting, and law; and (3) providing a vibrant listserv where lawyers and law firm administrators can ask questions, share ideas, and provide examples of their successes and failures.

This is all in keeping with our purpose, as stated in Section 1.3a of our bylaws, which provides that our section shall “serve its members and the members of the State Bar of Michigan, through publications, programs and advocacy directed to improving the lawyer’s economic condition and the management of the lawyer’s practice, in the belief that such efforts will enable the lawyer to render legal service more efficiently to the client and thereby serve the public interest.”

STATE BAR OF MICHIGAN
LAW PRACTICE MANAGEMENT
AND LEGAL ADMINISTRATORS
SECTION COUNCIL
2022-2023



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In fulfillment of this vision and purpose, you are currently reading the second of the semi-annual newsletters, and as you will see, we have provided an amazing assortment of excellent articles from several practice management leaders. Each article approaches “best practices” from a different viewpoint, and all of us can find at least one thing of value in each of these superlative articles. If you agree that we have provided sufficient value in these pages to justify the small membership fee, then please, share this newsletter with a colleague. Tell them why you think they should read it and encourage them to join our section.

The newsletter also offers our membership the opportunity to submit articles and if accepted, become a published author. Our newsletter editor, Barry Brickner, is accepting newsletter manuscripts on virtually any practice management topic. If you believe you have something to offer relative to any aspect of financial management, human resource management, systems management, including the procurement and management of a computer systems and programs, document management, legal research, file management, facilities management, including by way of example, space planning and design, office renovation, purchasing, telecommunications, email, messenger services, and law practice management, including lawyer recruiting, lawyer training and development, legal assistant supervision, practice development, marketing public relations, advertising, work product quality control, and professional standards, then write something up and send it in. Let’s learn from each other!

Similarly, our Chair Elect, Michelle M. Kreger, has assembled an amazingly diverse set of three free one-hour zoom seminars, and is busy putting together the agenda and speakers for our annual meeting in October. Our first workshop of the zoom series was held on February 16th, our speaker Benjamin Muth offered a variety of practice management tips. This goes to the heart of this Sections purpose, and this session was packed with great information.

Next up on March 16th our speakers will give step-by-step instructions for how to market your practice on social media. There are many ways to spend marketing dollars on the internet, and social media can be both a huge waste of time and money. But when harnessed efficiently and effectively, social media can help you establish a brand identity and help your practice stand out to those businesses and individuals in need of your legal services. All of this becomes increasingly challenging in times of economic hardship and that is why this seminar is so timely.

The final seminar of Michelle’s trilogy is on the topic of succession planning. This important topic was covered in our 2022 annual meeting last October by Alecia Chandler, the MSB’s Professional Responsibility Programs Director. Ms. Chandler will be returning in April to give us an update on where the Michigan State Bar stands on this issue. Suffice to say, succession planning is now a requirement and without it you won’t be able to renew your bar membership. Join us in April to learn what steps you need to take before November to stay in compliance with our rules of professional responsibility.

This brings us to our listserv. Yes, we all already receive too many emails. Nevertheless, we all welcome emails that portend to help make us better lawyers and better practice managers. And while you may not have a whole article to submit to Barry on any of these topics, surely you at least have a few paragraphs, or even a

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sentence or two. Send it in and start a conversation. Help us make the Law Practice Management listserv the one where members find the most value of all. We can not do this without your help.

Finally, we also encourage you to consider joining our leadership. We are currently seeking to fill the position of treasure recently vacated and will have additional leadership opportunities for 2024. Your listserv postings and newsletter articles will help us get to know you and may lead to your being nominated. This section is a great way to become better

known among your peers, to develop your reputation and gain referrals.

2023 is sure to be a difficult year economically. In times like these this section is most needed and most relevant. Let us work together to meet these economic challenges head-on. Let us commit to becoming better law practice managers for our clients, our staffs, our associates and partners, our loved ones, and ourselves. And let us commit to becoming more active in our Section in fulfillment of our vision. We look forward to hearing from you and serving you in the year ahead.

Mandatory Succession Planning is Coming!

By Alecia Chandler

On June 15, 2022, the Michigan Supreme Court adopted [ADM File No. 2020-15](#) amending the State Bar Rules and Michigan Court Rules, which will require every private practice attorney to designate an Interim Administrator and provide the name and contact information for a Person with Knowledge about their practice.

An “**Interim Administrator**” is another attorney or law firm designated to assist in managing or winding up a law firm or solo practice if an attorney becomes unavailable to practice due to death, disability, disappearance, discipline, or other reasons.

When a private practice attorney renews their licensed after September 2023, each will be required to designate an Interim Administrator. This may be another lawyer or a law firm with more than one attorney. The designated Interim Administrator will then confirm or reject the designation. If the private practice attorney cannot, or chooses not to, name an Interim Administrator the attorney must pay an annual fee of \$60, and the State Bar Interim Administrator Program will assign an attorney upon the affected attorney’s inability to practice law.

An Interim Administrator’s duty is first to ensure that the clients of the firm are protected and that the firm is appropriately managed during a term of temporary disability

or wind up the firm when necessary. The duties and responsibilities are set forth in the [order](#) and will be incorporated in MCR 9.307.

A “**Person with Knowledge**” is any person who knows where the actual and virtual keys to the office are located. For example, location of stored files, software used in the office, and other key information that is required to manage or windup the office.

Why is succession planning so important?

Lawyers are not invincible, and a good succession plan can protect clients, the law firm and its assets, and the integrity of the judicial system. Protecting clients includes returning files; locating successor counsel, or with court approval, substituting into the cases; managing cases while the attorney is temporarily disabled; and returning files. However, this is only part of the protections provided by a comprehensive succession plan.

If the affected lawyer is only temporarily unable to practice law due to health issues or emergencies, the Interim Administrator will assist in firm management until the lawyer is able to return to the practice of law. This can be invaluable to the affected attorneys mental and physical health, knowing that someone else can ensure that when the lawyer becomes

Mandatory Succession ...

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available there is still a law practice and clients to serve. There are so many stories of lawyers who lost their livelihood due to a temporary illness and improper management of their law practice during their unavailability.

A plan will also assist the family in a time of need. Often family members are dealing with the personal aspects of the affected attorney and do not have the time or mental fortitude to also attempt to manage a law firm. Moreover, they often do not have the requisite experience to take the needed steps in a timely manner. Having a third-party whose sole responsibility is to focus on managing the law firm can alleviate a great amount of stress from family members.

When would an Interim Administrator act? In the event of a member's death, disciplinary suspension or disbarment, disappearance, imprisonment, abandonment of the practice, temporary or permanent disability, or resignation. And yes, I have seen all of these scenarios in my career. Lawyers disappear and abandon practices, not often, but it happens.

Is designating an Interim Administrator enough?

Technically yes. To avoid paying the fee to the State Bar of Michigan, lawyers are only required to designate an Interim Administrator who accepts the designation.

In reality, no, it is not enough. Just like drafting a comprehensive Trust to ensure protection of your assets, a comprehensive succession plan should be created to protect your interest in your firm. Moreover, ensuring good business practices will allow the Interim Administrator to more effectively assist in the time of need.

The State Bar of Michigan published the [EZ Practice Management Resource Center: Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death \(michbar.org\)](#) which provides guides and checklists for both creating a succession plan and winding up a law firm. This resource is currently being amended to include several new forms, so keep checking!

Moreover, the order allows for the lawyer and the Interim Administrator to set their own terms of engagement, so developing a written outline of duties, Interim Administrator compensation, and compensation to the firm for legal work provided by the affected attorney prior to inability to practice is recommended. You may also consider advising the Interim Administrator of office systems, introduce them to staff, and inform family of the designation.

Even before putting a comprehensive succession plan in place, simple steps include always using written fee agreements, ensuring you have an up to date [Record Retention Plan](#) and office procedures, keeping calendars up to date, documenting files regularly, sending regular complete billings and ensure that time entries are kept concurrently with services provided, returning client original documents whenever positive, and updating your personal estate plan to align it with the firm succession plan.

If you have questions, please email iap@michbar.org.

I want to personally thank The Law Practice Management and Legal Administrator Section of the State Bar of Michigan for being my test subjects and allowing me to present for the first time on this important topic. During the presentation, the members present provided me with excellent feedback that will be incorporated into our educational materials. Their assistance, thoughtful comments, difficult questions, and realistic approach to the management of practices, provided me with invaluable information to utilize in moving forward.

-- ALECIA CHANDLER, Professional Responsibility Programs Director, State Bar of Michigan

Mission Statement

The Law Practice Management and Legal Administrator Section of the State Bar of Michigan provides education, information, and analysis about issues of concern through meetings, seminars, its website, public service programs, and publication of a newsletter. Membership in the Section is open to all members of the State Bar of Michigan and all affiliate members who are actively involved in the performance or teaching of administrative or managerial duties with a private law firm, corporate legal department, government, judicial or legal agency, educational institution, or other organization devoted primarily to the practice or teaching of law, and meet educational/experience requirements.

Helpful Tips for Hiring a Paralegal

By Laura Goderis, JD, Eastern Michigan University

Over the past 20 years of teaching paralegal courses at Eastern Michigan University, I have seen changes in what being a 'paralegal' means to students. New graduate expectations are high, sometimes too high, regarding the work they will do. New graduates crave being part of the action, an integral part of the trial team. Answering telephones and taking messages is no longer enough to entice new hires into a law firm.

Expectations is the key first step with a new hire. What are the employer's expectations of the work assignments versus the expectations of the new hire? Over the years, I have found that mature/worldly students (second degree earners/reentering the work force) have more tangible expectations regarding the progression of work from simple to complicated. Less experienced students believe that they should be writing briefs for the US Supreme Court on their first day of the job. If the expectations of the employer/employee are not conducive to each other, both parties are wasting their time and the interview should be a short one.

Experience is a misnomer; ability/willingness to learn is a more accurate requirement for a new hire. Requiring experience removes new graduates, and inexperienced paralegals from the interview list, resulting in employers removing outstanding paralegals from the hiring pool. In fact, experience does not make the top three of what to look for when you hire a paralegal. Ability to multitask, being organized, paying attention to detail, and being patient are just a few of the characteristics that top experience. Experience is a

learned skill. Multitasking, organization, being detail oriented are existing skills to be honed.

Skills to hone should be a priority on the list of employment requirements. While you might be able to teach organization via a quick trip to the Container Store, teaching someone how to multitask is near impossible. However, the signs for a multitasker are simple to spot: parents, employed full-time & attending school part-time, restaurant servers, coaches, etc. all have multi-tasking abilities.

Skills to learn run the gambit. Knowing basic computer skills (email, Word, Excel, PowerPoint) are required skills. New hires should also have experience with Lexis or Westlaw. While those research tools are not identical, there is a lot overlapping in the skills to use them and anyone who has experience with one, can learn the other in short order.

Writing and editing skills are also necessary skills, but many students fail miserably in those areas. Over the past 20 years, the students I have taught have shown a loss in basic writing skills. Punctuation, grammar, and spelling have all been negatively impacted by texting and informal emailing. Multiple writing examples should be reviewed and editing skills need to be tested.

Face-to-face communication skills is also a dying skill. Those who have grown-up with texting as a standard form of communication have difficulty talking and holding eye contact and showing compassion to others. The reliance on emojis to express feelings has obliterated the ability to read nonverbal communications and respond accordingly.

Paralegals also need to be comfortable asking questions, identifying mistakes, being proactive and having the ability to herd attorney(s) and keep them on task. A perfect paralegal will have psychic and mystical powers and a raucous sense of humor. They are going to need it. While being facetious, those psychic and mystical powers come in handy in anticipating what the case and/or the attorney needs.

While the certificate/degree is important, being a successful paralegal requires a much broader skill set than most paralegals and employers understand. Best wishes on your search!



Use Email Rules and Filters to Tame Your Inbox

By Scott Bassett (with help from ChatGBT)

We use email to communicate with clients, opposing counsel, co-counsel, courts, family, and friends. We also use email to participate in email discussion groups, also known as listservs, devoted to legal and other subjects of interest to us. The downside of using email for all these purposes is that our inboxes are flooded with dozens or hundreds of messages daily and it is far too easy to miss important emails. Missing an email from discussion group colleague is unfortunate. Missing an email from the court in one of your cases could be disastrous.

Fortunately, every email service and email app has the ability to create rules (also called filters) to help sort, highlight, forward, delete, or route to a separate folder the mail coming into your inbox. Email rules and filters are a great way to manage your inbox and keep it organized.

Unfortunately, every email service or app has its own way to create rules or filters. Detailing the steps for creating rules and filters on every email service and app in a newsletter article would be impossible. The most widely used services/apps are Gmail, Outlook, and Apple Mail. I am primarily a Gmail user, so I will start there. In my view, Outlook is bloated and buggy, but it is widely used by lawyers, so it has to be included here. Surveys show that lawyers love their iPhones. Apple's mobile devices are in the minority worldwide compared with Android, but a majority of lawyers in the United States carry an iPhone.

Creating step-by-step instructions can be tricky, particularly for a product I do not use regularly. So I asked for help. Late in 2022, a new type of chat bot received a lot of attention. It is called ChatGBT. ChatGBT is a part of a family of "large language" artificial intelligence models. It has many capabilities, but particularly excels at creating detailed instructions for using software. Here is what ChatGBT responded when I asked it "how to create email rules and filters."

Here is a step-by-step guide on how to create filters and rules in three popular email clients: Gmail, Outlook, and Apple Mail.

Gmail

- Go to your Gmail inbox and click on the gear icon in the top right corner.
- Select "Settings" from the dropdown menu.

- On the top menu, click on the "Filters and Blocked Addresses" tab.
- Click on the "Create a new filter" button.
- In the "From" field, enter the email address or domain that you want to filter. You can also use other criteria, such as subject or keyword, to narrow down the emails that you want to filter.
- Click on "Create filter" to continue.
- On the next screen, you'll have the option to choose what you want to do with the emails that meet the filter criteria. You can mark them as read, delete them, label them, or perform any other action.
- Click on "Create filter" to save your filter.

Outlook

- Go to your Outlook inbox and click on the "Home" tab.
- Click on the "Rules" button and select "Manage Rules & Alerts" from the dropdown menu.
- In the "Rules and Alerts" window, click on the "New Rule" button.
- Follow the steps in the "Rule Wizard" to create your rule. You'll have the option to choose the criteria for your rule, such as sender, recipient, subject, or keyword.
- Click on the "Next" button to continue.
- On the next screen, you will have the option to choose what you want to do with the emails that meet the rule criteria. You can move them to a specific folder, flag them, or perform any other action.
- Click on "Finish" to save your rule.

Apple Mail

- Go to your Apple Mail inbox and click on the "Window" menu.
- Select "Rules" from the dropdown menu.
- Click on the "Add Rule" button.

Email Filters ...

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- In the “Description” field, enter a name for your rule.
- In the “If” section, choose the criteria for your rule, such as sender, recipient, subject, or keyword.
- In the “Perform the following actions” section, choose what you want to do with the emails that meet the rule criteria. You can move them to a specific folder, mark them as read, or perform any other action.
- Click on “OK” to save your rule.

By creating filters and rules, you can automatically sort your emails and keep your inbox organized. This can save you time and help you stay on top of your messages. Just be sure to review your filters and rules regularly to ensure that they are still relevant and working as intended.

I think ChatGBT did a nice job of concisely stating the steps to create email rules or filters for Gmail, Outlook, and Apple Mail. For now, ChatGBT is free to use. If you are curious, go to <https://chat.openai.com> to create an account and get started, but do not get so wrapped up in playing with ChatGBT that you forget to create your email rules or filters.

Embracing the Digital Age

By Michael B. Stewart

In the movie *Moneyball*, Oakland Athletics general manager Billy Beane (played by Brad Pitt), uttered the axiom, “Adapt or die.”

As with many axioms, there is a truth - the world is changing. In our profession, attorneys are no longer getting the “pass” they once did. The traditional view that lawyers are different because we are licensed to practice law and that work should simply be directed our way just because of our expertise is slipping away. Instead, increasingly we are being perceived as a provider of legal services in the same way as any other service provider. Our profession is being subjected to a wide range of competitive pressures ranging from non-attorney professionals to self-help websites. Moreover, the measure of success is no longer as subjective as it once was. Instead, clients ask how an attorney has assisted with maintaining or even growing an organization’s enterprise value.

Yet, there is a basic foundational principle that the axiom above does not capture, and which never changes -- the importance of developing meaningful relationships. Thus, while technology and mechanisms of communication continue to change, they also provide the ability for attorneys to differentiate themselves from the competition and to share their legal expertise in ways that were simply not possible when I started practicing law more than 30 years ago.

Taking my own organization as an example, several years ago, we made strategic decisions that are allowing us to successfully pivot in ways that are strongly enhancing professional satisfaction.

First, even before there was even a hint of the pandemic, we decided to embrace technology rather than being left in its dust. We saw the need for our professionals to be able to work remotely and took steps to make that an option, including beginning the process of eliminating physical files over 15 years ago. We also transitioned to Internet based telephony in its infancy. Thus, when March 2020 hit, we simply turned out the lights, and continued serving our clients undeterred. The ability to see a problem and work with it rather than fighting against it meant that our clients and professionals could both stay informed.

We also decided to organize and make readily available our tremendous stockpile of information. We consolidated more than 25 years of relationships that had been stored in a variety of firm data silos and made it much easier to share relevant information of value to the individuals associated with those relationships. My partner, Doug LaLone, took the lead on developing the firm’s IP Snapshot®, which provides a clear and actionable report of a client’s intellectual property portfolio.

Embracing ...

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We also became much more cognizant of new relationships that we develop not only through traditional communication channels, but also through inquiries made on our website and social media platforms such as LinkedIn®. With the help of Salesforce®, we can now track and assess traffic on our website, thus allowing us to pinpoint and respond to inquiries in a timely and accurate manner.

Second, updating your relationships makes no sense if you do not have anything to share that will be valuable to your recipient. Thus, we have worked hard to enhance our deliverables and to show that we are subject matter experts. We started with re-imagining our website, <https://FishStewIp.com>, making it more user-friendly. Additionally, we publish a weekly newsletter, Fish Tank®, providing a pop-culture view of creativity. <https://fishstew-ip.com/fish-tank>. We really enjoy writing the newsletters, as they are both fun and interesting to attorneys as well as the general public, covering stories like Winnie the Pooh falling into the public domain, strumming through guitar patents, or asking if free speech protection applies to shoes? Firm mascot Finny® the Fish even has his own Instagram page, providing a bridge to the general public. <https://www.instagram.com/followfinny/>. We send Finny plush toys all over the world and recipients respond by sharing pictures of Finny exploring. We have also prepared a wide range of white papers, called Tacklebox Insights, www.tackleboxinsights.com, providing practical advice and guidance to facilitate better business decisions, for example, recommendations on how to extract enterprise value from organizational creativity or how to do a preliminary patentability search using free online tools. We continue to add to this knowledge base regularly. Our white papers are available for download on our website by anyone who is interested and we also send them out proactively when appropriate.

Yet, promoting meaningful content is not enough. The reality is that our most substantial marketplace differentiator is the vast expertise of our colleagues. For example, my partner Max Goss produces the very successful podcast, “The Litigation War Room,” <https://www.thelitigation-warroom.com/>, where he interviews the nation’s leading courtroom lawyers who share stories and insights that are helpful to all litigators even if a specific podcast focuses on the guest’s particular specialty. The podcast search website Listen Notes ranks “The Litigation War Room” in the top 10% of podcasts globally.

Third, having consolidated our data and promoting awareness, we are now becoming more intentional with engagement to promote the development of long-term meaningful relationships. We are using well-known and tested approaches that have proven beneficial to non-attorney professionals, but are still atypical in the legal profession. An unexpected outcome of developing these initially outwardly facing approaches is that we are simplifying and streamlining many internal processes, resulting in enhanced precision and greater professional satisfaction within our own organization.

Yet, we still have a long way to go. In talking with compatriots in our profession, top law firms who are more focused on the consumer market are using tools such as search engine optimization, abbreviated SEO. Ultimately, there is no single approach that is going to work for every organization. We all have our own uniqueness.

The reality is that how we communicate with one another is quickly evolving. While traditional opportunities to engage in person still exist, today more knowledge transfer and education take place digitally than ever before. The amazing thing about this new way of exchanging information is that it actually opens more opportunities for engagement. Highlighting what we know and what we do in the legal profession allows us to emphasize our expertise and experience, which are qualities that the non-attorney professionals to self-help websites cannot match.

Adapt or die. Consider the benefit of creating and feeding an updated communication system and then using it to develop relationships. You might find that change is for the better, and it might not be as difficult as you feared. Moreover, you might find yourself able to do more readily what you already love doing.



Michael B. Stewart is a founder of Fishman Stewart PLLC. He has bachelor's degrees in mechanical engineering and English and a master's degree in aerospace engineering. A registered patent attorney, he has been recognized by Best Lawyers, Super Lawyers, dbusiness, Leading Lawyers, IAM patent 1000, IP Stars, and as a “Leader in the Law.”

Stewart's pro bono and volunteer efforts have been recognized by the State Bar's “A Lawyer Helps.”

How and Why to Start a Podcast – A Lawyer's Perspective

By Doug Passon

I had been wanting to do a podcast for many years. I am an avid listener to other podcasts, both for entertainment and education. If I am honest, part of my motivation was this little voice inside my head I kept hearing, with some version of “if I could find a great topic of my own, I could finally prove to my bitter, overbearing high school communications teacher that I do indeed have what it takes to be a radio superstar.” But, like that high school kid I once was, I was also a little afraid, because another voice kept saying “if a tree falls in the woods, and nobody hears it, would this whole endeavor be a giant waste of time, and might I, heaven forbid, prove that teacher right?” Eventually I overcame my fear, rolled up my sleeves, and created my podcast “Set For Sentencing” (www.setforsentencing.com).

The goal was to use this podcast as a teaching tool. To reach a broad audience of lawyers, potential clients, concerned family members, and true crime buffs. I wanted to offer them something they can use themselves for the benefit of their clients.

I have been at this for almost a year now, releasing an episode every week on a new sentencing topic. My Podcast is not without its challenges, but I am so glad to be on this journey. I am already finding my audience and seeing the hard work pay off in many ways.

To that end, I wanted to share my top takeaways from my journey thus far. Perhaps after reading these, you will finally pull the trigger on that epic idea you have been championing at the bit to launch. **Or maybe like me, you just need to slake that “little voice in your head” that is motivating you to even consider such a crazy idea.**

Let's Start at the Very Beginning – What is a Podcast?

Hopefully you know this already, but a podcast is simply audio content that you can listen to on your phone or computer. You can stream them from the internet, or download to listen offline. Podcasts are free and cover every imaginable topic. There are myriad applications to find podcasts, but the biggies are Apple's iTunes and Spotify. If you need help finding and loading one, ask your kids, they will know what to do!

Podcasts have become wildly popular over the last decade. There are currently about five million podcasts with a worldwide audience of something like 150 million and growing. That means your audience is out there, looking for great content.

Why Would I Ever Consider Such a Thing?

If you are thinking about taking the podcast plunge, the first question you must ask yourself is – WHY? With the numbers cited above, the first and most obvious answer is – marketing. What I love about podcasting is that it is a way to *organically* showcase your skills, establish yourself as a thought leader, build relationships, and raise awareness around important topics to effectuate social change. These general reasons may be enough motivation, but having a more specific mission is always good.

In my case, I have been a leader in the field of sentencing advocacy for many years, particularly in the area of “sentencing mitigation videos” and crafting sentencing mitigation narratives. www.dougpassonlaw.com. Therefore, I wanted “Set For Sentencing” to be a vehicle to further my reach and to plant a flag on the top of the hill of sentencing advocacy. I saw this as an opportunity to bring on amazing guests, learn from them, and create new and lasting professional connections. Lastly, I wanted to inspire lawyers to up their sentencing game, and educate the general public about the sentencing process, warts and all. I took a bet that people would be interested, and it is paying off. So, what's your “why”?

Commitment is Key.

My biggest fear in starting “Set for Sentencing” was that I would be the guy that did seven episodes and quit, which is exactly what happens with about 90% of all podcasts. Most people say a podcast will not fully find an audience for at least 12-18 months. So if you start, you must be in it for the long haul.

Podcasts are relatively expensive to produce, which may explain their ubiquity. The true financial commitment depends on your own skill set. Since I run not only a law office, but a production studio, I can do most of the recording and editing in-house. For those of you who will not be comfortable handling the tech side of the process, there is

How and Why ... Continued from page 9

now a cottage industry of podcast production professionals that can handle every aspect of the process. You can also hire a “virtual assistant” overseas at a much cheaper cost. I saved a ton of money on graphic design work for the show by using a virtual graphic designer from India.

The real commitment is your time. Done right, podcasts require significant preparation. I spend a lot of time looking for and recruiting great guests to come on the show. Once they agree, I want to make sure I am fully prepared to have a meaningful conversation. For example, I recently had Paul Zak on the show (renowned neuroscientist), and I read two of his books prior to his appearance. If I have a legal scholar on, I will read as much of her writing as I can find. One of my favorite episodes was, [A Richer Measurement of Justice: Reading the Novel *Lolita* as a Sentencing Memo](#). Not only did I read Prof. Christina Frohock’s law review piece that inspired me to have her on the show, but I knew I could not have that discussion with her without first reading *Lolita* (brilliant novel, by the way!).

Podcasting is well worth my time because I am always learning something new, and the hard work pays off on the program. The audience gets a better product, and the guest leaves feeling validated by your preparation. I spend a fair amount of time creating an outline of discussion points and sometimes doing pre-preparation with my interview subjects. When I am done, I write detailed copy with a bullet-point list of all topics covered that week and related links.

The last commitment concerns promotion. Every week, I take care to post each episode on social media platforms (primarily LinkedIn, Facebook, and Twitter), and send out to listservs, email blasts, and anyone else I think might be interested. I try to come up with some short and punchy copy

to accompany the post. This is a key part of the process, because if you can not find an audience, what is the point? I have yet to spend a dime on marketing the podcast, though I have not ruled it out.

Of course, because I handle all of the production, editing, copy, and promotion myself, the time commitment is massive. The more money you have to invest in the project, the more you can alleviate your own burden by hiring others to do the bulk of that work. Ideally, you can record an episode, and hand off the rest to a trusted person or team. They are out there.

Show Me the Money?

Many wonder whether there are opportunities to make money from a podcast. The profit comes from the clients that come to you, based on your wider reach and deeper credibility. A podcast can generate revenue through advertising dollars. However, no podcast will receive advertising dollars unless their audience grows into the tens or even hundreds of thousands. If you become as big as Joe Rogan or Brene Brown, a platform like Spotify will give you millions.

The other possible revenue generator would be if you had something else to sell besides your legal services. If you have written a book, for example, you can always plug it on the show. I do that routinely with my own publication, [The Narrative Gym For Law: Introducing the ABT Framework for Persuasive Advocacy](#), available now on Amazon for only \$8.99 (see how easy that was?).

Where Does My Podcast Get Posted?

There are a few popular podcasting platforms that require a small monthly subscription fee and serve as the central repository for your content. Perhaps the most popular site is Libsyn (www.libsyn.com). For about twenty dollars a month, you can upload your content, all descriptions, links, and graphics. The application then automatically uploads your podcast, through an “RSS Feed” to all major podcasting platforms (Apple, Spotify, Google, Amazon Music, Audible, etc.).

I also post a video version of the podcast on YouTube. I do this for two reasons. First, because my work is so focused on visual advocacy, having a video component is important. Every picture tells a story, and I want my audience to see me and the non-traditional space where I do law and film. That said, I still keep it simple, recording my guests using Zoom.

Second, most search engine optimization experts will tell you that you have a better chance of rising in the rankings



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if you have copious amounts of video content on YouTube. Interestingly, you really do not have to have a *video* to be on YouTube. The Libsyn platform actually has a function that will automatically transform your audio into a YouTube file, but with a still photo in place of a video image. This is one more way to get your voice heard in a crowded, noisy world of content.

Parting Thoughts

The lesson I have learned over the last year is that this medium can bear fruit, and relatively quickly. I am now close to forty episodes. I have already built a loyal follow-

ing in and out of the legal world and, most important, I am loving it. After six months, the ROI is real. I have seen a significant increase in business, and that is directly attributable to this organic marketing machine.

If you are thinking about taking the plunge and producing your own show, I suppose my best advice is this: Be original. Be authentic. Be creative. Be bold. Be consistent. All the rest will take care of itself.

If you have questions, feel free to email me at doug@dougpassonlaw.com. In the meantime, I would love for you to check out Set For Sentencing, [subscribe on YouTube](#), or download at any major podcast platform (www.setforsentencing.com).

Intellectual Property Has Never Been More Valuable and Every Law Firm Has It!

By Bill Honaker

What you need to know

One area of great importance, but often overlooked by law firms is Intellectual Property. The stakes are high. These hidden assets can account for more than *half* the value of your business. And being sued for infringement can put you out of business. It is confusing, misunderstood, and misinterpreted.

Intellectual property has never been more valuable. In 2017, *Forbes* stated, “Intangibles have grown from filling 20% of corporate balance sheets to 80%, due in large part to the expanding nature, and rising importance, of intangibles, as represented by intellectual capital vs. bricks-and-mortar, research and development vs. capital spending, services vs. manufacturing, and the list goes on.”¹

Ocean Tomo, LLC, a leading IP valuation company recently reported, “Between 1995 and 2015, the share of intangible asset market value increased from 68% to 84%. In July 2020... *intangible assets [are] commanding 90% of the S&P 500 market value.*”²

I speak nationally to business owners, and it's surprising how many do not even *know* that they have IP. They have no

idea how valuable it is, or that they should protect it. They also do not realize the risks they face by ignoring and unintentionally infringing upon the IP of others. A law firm is a business, it has IP, and you need to protect it.

Most businesses treat IP as an *afterthought* and lose valuable assets. Someone invents a new product, and they might think about patents. Someone develops a new logo; they might think about trademarks. Or they launch a new product or service and get invited to an expensive lawsuit, because no one checked for infringement.

There are four types of IP:

- Trademarks
- Copyrights
- Trade Secrets
- Patents

Trademarks

Every law firm has a trademark, and it can be your *most* valuable asset. The most important trademark is your firm

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name. You can also have others, such as product names, logos, slogans, shapes, music, and even colors.

In a January 2022 article, the World Trademark Reporter estimated that Apple's trademark was worth \$355 *billion*, representing about 1/3 of the company's market value.³ Other top-valued trademarks include Google, Microsoft, Facebook, Amazon, and Coca-Cola; all worth billions.

An easy way to think of trademarks is anything that identifies goods or services coming from a single source.⁴ Examples of trademarks are the business name, Nike; the Nike Swoosh logo; the Nike slogan, "Just do it"; the Coca Cola bottle shape; and the sound of the light saber from Star Wars.

Protecting Trademarks

In the United States, trademarks are established through *use*. This is called common law trademark protection. If you use a "trademark" you automatically obtain rights in the geographic area of use. Although not required, you should use a TM symbol adjacent your common law trademark to show that you consider it to be *your* trademark.

Although common law rights are automatic, you should register your trademarks. Every state has a trademark registration system.⁵ State registration is good if you only use your mark within the state, but, if you use your trademark in interstate commerce, Federal registration is best.⁶

Federal registration is important for several reasons:

- It provides a self-policing function by giving *notice* of the registration. All trademarks are listed on the USPTO website.⁷ When choosing a trademark, this is typically the first place to check for availability. If your mark is listed, most will avoid it and pick a new trademark.
- Your rights extend throughout the US.
- Your mark can become incontestable after five years, which provides valuable presumptions in litigation.
- You also can use the ® which shows it's registered with the USPTO.

Law firms typically use the names of the founder(s) as the firm name, but the trend is moving away from this. When the founder(s) names are your trademark, issues are created when registering the name as a trademark with the

USPTO. The USPTO is reluctant to register marks that are merely surnames. However, this reluctance can be overcome if it can be shown that the mark has secondary meaning to consumers. There are also ethical considerations in naming a law firm. A good article on the ethical considerations is found in the May 2021 issue of the *Michigan Bar Journal*.⁸

An often-overlooked consideration is who *owns* the trademark(s). Unless they are assigned to an entity, there can be issues. Bands often run into this issue, and the same consequences can apply to law firms. The band *Journey* is in a dispute over its name and millions in royalties. *Journey* co-founders Neal Schon and Jonathan Cain claim the band members Ross Valory and Steve Smith are trying to take the *Journey* trademark. Who owns Journey's name is confusing because of how it was handled through the years.

When John Fogerty left *Creedence Clearwater Revival* he sued his former bandmates for using "Creedence Clearwater Revisited." They have repeatedly battled in court over the years.

Tragedy can also strike. In 1977, *Lynyrd Skynyrd* lost Ronnie Van Zant and backup vocalist Cassie Gaines, and others in a plane crash. Ten years later, several of the original band members, and Ronnie's brother, Johnnie Van Zant, began touring as *Lynyrd Skynyrd*. The widows of Ronnie Van Zant and Steve Gaines sued for damages, and won. Interestingly, the court ruled that at least two original pre-crash members must be in the band for it to continue as *Lynyrd Skynyrd*.

These same issues can affect law firms. You must plan for these possibilities. Who owns the name is one of the most important decisions you will make. Also, who owns the related trademarks, logos and symbols. *Kiss* registered their face makeup with the USPTO. They are all owned by Kiss Catalog, Ltd. Slash registered his stage name, as well as the top hat wearing skull and crossbones logo on his debut album *Slash R&FNR*. They are all owned by Dik Hayd International, (interesting corporate name).

The best approach is to follow the typical business model. All intellectual property is assigned to the business.

Trademarks are commonly owned by a single business entity, typically a corporation. The owners then determine how they control and own those rights. Decisions are made according to the rules and regulations of the business. Disputes regarding who owns the trademark are controlled by well-defined legal standards.

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Don't pick a trademark that will get you sued

You must be careful when choosing a trademark to avoid getting sued for infringement. The test for infringement is whether the marks are likely to confuse consumers. You don't want to invest resources in marketing and then have to change your name and lose valuable goodwill, and even have to pay damages for infringement.

Every mark should be investigated to be sure it is available. Experienced Trademark Counsel can conduct these investigations to give you the confidence you need to invest in your trademark.

Copyrights

Copyright protection occurs as soon as an idea is expressed in a form that can be reproduced.⁹ Copyrights are everywhere in business. Examples of copyrightable material include books, blogs, music, videos, brochures, manuals, websites, software, apps, and more.

Copyright protection attaches immediately. You do not have to register your copyright, but registration is important.

- Copyright registration is a prerequisite to filing a lawsuit for copyright infringement.¹⁰
- If timely filed, statutory damages can be elected.
- Registration before, or within five years of, publication of the work establishes *prima facie* evidence of the facts stated in the registration certificate.¹¹ Statutory damages can be very important. Damages for copyright infringement are *actual* damages, *plus* the infringer's profits that are not considered in determining actual damages *or* statutory damages.¹² By electing statutory damages, you do not have to *prove* actual damages, which can be difficult. Statutory damages are available if you register your copyright within three months of publication, or *before* the infringement. Statutory damages can range from \$750 to \$30,000, and up to \$150,000 for *willful* infringement, at the discretion of the court.¹³ The court can also award attorney fees to the prevailing party.¹⁴

Copyright Infringement ensnares many businesses.

Copyright infringement is a risk to all businesses, including law firms. Images are particularly problematic because they are ubiquitous and easy to copy and paste. Many people are not aware they are infringing. In my seminars, I often

hear people say that they believe images are free to use so long as they do not have a copyright notice. This is wrong, but still a common misconception. In every audience, there are always a few people who have received a letter from a troll demanding damages for clipping images.

Typically, the letter describes the statutory damages available, threatens litigation, and demands payment. The typical demand is between \$20,000 and \$40,000 per copied image. There are strategies to defend against these charges or to reduce damages, but the better approach is to not infringe. You need to be careful clipping images, as well as any other unlicensed uses like videos, music, articles. etc.

Even if you use licensed images or free image sites, you must be careful. I suggest you keep a *file* of licenses. Cease and desist letters typically begin with an offer to resolve the matter quickly if you have a license. Having that license can end these matters before they start. If you use images from free sites, they usually have requirements for a licensed use. These normally require *attribution* of the author and *restrictions* on commercial use.

Trade Secrets

In general, to qualify as a trade secret, the information must be commercially valuable, and because it is *secret*, be known only to a limited group of people, and subject to reasonable steps to *keep* it secret.

Every business has trade secrets. Every state has trade secret laws, and there is also Federal protection available under the Defend Trade Secrets Act (DTSA).¹⁵ Clients need to appreciate their trade secrets and understand the requirements to protect them.

Patents

Most law firms will not have inventions to patent, but having a basic understanding does not hurt. There are three types of patents. The most common is a *utility* patent¹⁶ which protects inventions like products or processes. The second most common is a *design* patent¹⁷ which protects the appearance of manufactured products. The least common are *plant* patents¹⁸ which protect asexually reproduced plants.

The most important thing to know about patent protection is that the invention *should not be disclosed* before filing an application. If it must be disclosed, it should only be disclosed pursuant to a confidentiality agreement. Additionally,

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the application should be filed as soon as possible, because patent protection goes to the *first to file*.

An important note in the United States, is that you have a one-year grace period to file an application.¹⁹ The timer starts when the invention is made available to the public, for example, by public use, being on sale, or being described in a printed publication.²⁰ Once the timer starts, you must file your US patent application within one year. There are *no exceptions*. Also important to know is that other countries may require absolute novelty, which means you do not get a one-year grace period. The safe advice is do not disclose before you file.

If you need to file in a hurry, you can file a *provisional* patent application in the United States to establish a filing date. Provisional applications are good for just one year.²¹ These applications have less stringent filing requirements, and are usually cheaper and quicker to file. They only require a detailed description and a drawing(s) of the invention without the need for claims.

US Patents are granted by the USPTO and require an attorney or agent who is registered to practice before the USPTO to represent the inventor(s) unless they file pro se. To be registered, the attorney or agent must have a technical background (such as an engineering degree) and pass a special exam. Even though an inventor can file themselves, this is a bad idea; akin to pulling your own teeth.

Examples of IP Mismanagement

- A law firm's webmaster used images clipped from the Internet on the company's website. They received a letter demanding \$40,000.00 for the improper use. Not a good day.
- An investor wanted to invest \$5 million in a company, but first he wanted to be sure the intellectual property was *well managed*. The IP included unregistered trademarks and copyrights. The investor passed on the investment. The company later closed down and never learned why they did not get the needed investment.
- The owners of a business chose a name but did not do any checking. Five years later an international company sued for trademark infringement. To avoid the lawsuit, they had to change their name, losing years of goodwill. A huge financial loss.

- The worst call a patent lawyer gets starts with, "I have a great product, I need patent protection," and ends with, "It has been selling well for more than a year!" This business has lost its right to file because the invention was sold more than a year before the patent application was filed. This happens a lot. Do not let it happen to you.

With proper advice, all these common problems could have been avoided. It is imperative that you recognize these hidden assets and understand the basics of Intellectual Property law so you can protect your IP and your business. An easy way to recognize the importance of your IP is first, to be aware of it. Then make it part of your asset protection system by holding regularly scheduled reviews of your IP to ensure that you get full value from your creativity.

Typically, law firms are valued by their anticipated billings and client lists. But like any other business, their intangible assets should also be considered. Intangible assets such as their brand(s), web site, operating procedures, and marketing materials, can add value far into the future. Existing and potential clients do not just look at legal talent, they look at the overall perception of the firm. The best way to show future attorney's, investors or a purchaser of the firm these assets is to have them registered.

Give me a call if you want to discuss these issues further. I have a system, the ReCiPe for Success™ that has worked well for clients over the last 30 years. I am happy to share. Email Bill@IPGuy.com or call at (248)318-7015.

*For more than 30 years, **Bill Honaker** has been helping businesses, ranging from Fortune 100 firms to individual entrepreneurs, to protect their patents, trademarks, and copyrights. A former Patent Office Examiner, he is a partner with Dickinson Wright, PLLC, and author of The Business Owners Guide to Intellectual Property. He's especially good at keeping clients out of court.*

Endnotes

- 1 "How Intangible Assets Are Affecting Company Value In The Stock Market", Forbes, 2017.
- 2 <https://www.oceantomo.com/intangible-asset-market-value-study/>
- 3 <https://www.worldtrademarkreview.com/article/apple-retains-most-valuable-brand-crown-tech-boom-continues-and-tiktok-soars>

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|----|---|----|-------------------|
| 4 | The statutory definition of a trademark can be found at 15 USC §1127 | 11 | 17 USC § 410 (c) |
| 5 | In Michigan, mark registration is governed by the Trademarks and Service Marks Act, 1969 P.A. 242 as amended. | 12 | 17 USC § 504 |
| 6 | Federal registration of trademarks is governed by the Trade-mark Act of 1946, as Amended, 15 U.S.C. §§1051 <i>et seq.</i> (also known as the Lanham Act) | 13 | 17 USC § 412 |
| 7 | www.uspto.gov | 14 | 17 USC § 505 |
| 8 | https://www.michbar.org/file/barjournal/article/documents/pdf4article4173.pdf | 15 | 18 USC § 1836 |
| 9 | The statutory definition of a copyright can be found at 17 USC §104 | 16 | 35 USC § 101 |
| 10 | Fourth Estate Pub. Ben. Corp. v. Wall-Street.com, LLC - 139 S. Ct. 881 (2019) | 17 | 35 USC § 117 |
| | | 18 | 35 USC § 161 |
| | | 19 | 35 USC § 102 |
| | | 20 | 35 USC §102(b)(1) |
| | | 21 | 35 USC §111(b) |

Upcoming LPMALAS Events

Mar 16, 2023, 12:00 PM - 01:00 PM: Ground Up Social Media Marketing

Apr 20, 12023, 2:00 PM - 01:00 PM: SBM Succession Planning Guidelines

Oct 20, 2023, 8:30 AM - 04:30 PM: Annual Meeting and Workshop



Don't forget to update your member record. In order to safeguard your member information, changes to your member record must be provided in one of the following ways:

- [Login to SBM Member Area](#) with your login name and password and make the changes online.
- [Complete contact information change form](#) and return by email, fax, or mail. Be sure to include your full name and P-number when submitting correspondence.
- [Name Change Request Form](#)—Supporting documentation is required