YOURABA

June 2007
e-news for members

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Can a Lawyer Accept Referral Fees or Commissions from Non-Lawyers?

A lawyer has a number of estate planning clients who could benefit from financial planning advice. He is considering establishing a relationship with a financial planner who would pay him a referral fee for each client he refers to him. Can the lawyer accept the referral fee?

Most opinions on this topic analyze this question under the terms of Rules 1.7 *Conflicts of Interest: Current Clients*, 1.8 *Conflict of Interest: Current Clients: Specific Rules* and 5.4 *Professional Independence of a Lawyer*. Subpart (a) of Rule 1.8 *Conflict of Interest: Current Clients: Specific Rules* states:

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

> **(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;**
>
> **(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and**

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> **(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.**

A corresponding Comment to subpart (a) states:

> [3] The risk to a client is greatest when the client expects the lawyer to represent the client in the transaction itself or when the lawyer's financial interest otherwise poses a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's financial interest in the transaction. Here the lawyer's role requires that the lawyer must comply, not only with the requirements of paragraph (a), but also with the requirements of Rule 1.7. Under that Rule, the lawyer must disclose the risks associated with the lawyer's dual role as both legal adviser and participant in the transaction, such as the risk that the lawyer will structure the transaction or give legal advice in a way that favors the lawyer's interests at the expense of the client. Moreover, the lawyer must obtain the client's informed consent. In some cases, the lawyer's interest may be such that Rule 1.7 will preclude the lawyer from seeking the client's consent to the transaction.

See Also the 2002 amendment to Rule 7.2 *Advertising* of the ABA Model Rules. This amendment focused on referral agreements between lawyers or other nonlawyer professionals. The ABA Standing Committee's Report and Recommendation the ABA House of Delegates regarding this amendment is available here.

There have been several older ABA ethics opinions issued on this topic. These include ABA Informal Opinion 1482 (1982) (Insert link), which briefly addressed *inter alia* the following question:

I. May a lawyer in the firm receive a commission from XYZ, Inc. (Where XYZ, Inc. is a client of the lawyer) in return for referring or recommending the services of XYZ, Inc. to an inventor client?
The Opinion stated:

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> One of the hallmarks of the legal profession is the obligation of a lawyer to exercise professional judgment solely on behalf of his client. The ability of a lawyer to obtain a commission from one client for referring another client to the first client could well work to impair the free judgment of the lawyer in deciding whether the services of the first client are needed by the second client.
>
> However, a lawyer will not violate any Disciplinary Rule of the Model Code in recommending the services of one client to another client so long as the second client consents after the lawyer has made full disclosure of the financial relationship of the lawyer with the first client. DR 5-107(A)(2). See also ABA Formal Opinion 196 (1939), Formal Opinion 304 (1962) and Formal Opinion 331 (1972).

A brief history of ABA opinions on this topic is available on the additional resources page which is available here.

State Bar Opinions

State and local bar association ethics opinions are divided on this issue. This division of opinion has caused at least one state bar ethics committee to be unable to reach a consensus on the issue. See, New Hampshire Bar Ethics Committee Opinions 1998-99/10 and 1994-95/2.

Some state bar opinions state that lawyers can accept a commission in exchange for a referral to a non-lawyer professional provided that they scrupulously adhere to the protections as outlined under Rules 1.7 and 1.8(a). See, e.g., Joint Formal Opinion of the Philadelphia and Pennsylvania Bar Associations Opinion 2000-100 (2000), *25 which states:

> The Rules permit a lawyer to accept a referral fee from a service provider, provided that the lawyer is scrupulous in determining under the particular circumstances that payment of the referral fee will not impact the lawyer- client relationship or the lawyer's

> exercise of independent professional judgment and the client consents after full disclosure and consultation. [FN3]

While the opinion states that under certain circumstances such a practice is permissible, it also makes the following observation:

> As a preliminary matter, frequently the preferred practice for a lawyer who is offered a referral fee will be for the lawyer, rather than accepting the referral fee, to negotiate a reduction in the fee that the client will pay the service provider. In other situations, such as if the service provider is willing to pay a referral fee but not to reduce the service provider's charge to the client, the preferred practice for a lawyer offered a referral fee may be for the lawyer to accept the referral fee and then to remit that fee to the client, either directly or as a credit against the lawyer's fee. In the latter case, the lawyer's bill should clearly show the lawyer's fee before the credit, the amount and source of the credit, and the lawyer's fee after the credit. [FN4]

See Also Michigan State Bar Comm. On Professional and Judicial Ethics Informal Opinion RI-317 (2000), Florida Bar Opinion 02-08 (2004), Arizona Opinion 05-01 (2005).

Other opinions also state that referral fees from non lawyers can be appropriate, although their endorsement of the practice is sometimes less than enthusiastic. See, e.g. Georgia Opinion 03-3, (2004) (While it may be possible to structure a solicitation agreement to comply with ethical requirements, it would be both ethically and legally perilous to attempt to do so.) See Also Utah Bar Association 99-07 (1999):

> …the Committee believes it will be very difficult for a lawyer to maintain independence while taking a percentage of an investment broker's services due to a client referral. Nevertheless, the Committee concludes the spirit and specific language of Rules 1.7 and 1.8 require that individual lawyers involved in this type of situation be permitted to consider all of the facts and reach a determination whether a conflict of interest exists. As long as such a determination meets the

> specific requirements of Rules 1.7 and 1.8 and is objectively reasonable in view of concerns expressed in this Opinion, there will be no ethical violation.

See Also Wisconsin Opinion E-00-04 (2001).

Several state bar opinions have found that the acceptance of such referral fees is *per se* improper. See, e.g. Maine Board of Board of Overseers of the Bar Opinion 184 (2004) in which the Maine Professional Ethics Commission found that an arrangement between a lawyer and an investment advisory firm whereby the lawyer would act as an agent of the firm and would receive a portion of their investment management fees for so long as the client kept its assets with the firm to be both an unreasonable fee and a violation of the Maine version of ABA Model Rule 1.8:

> **Not Fair or Reasonable to the Client**
>
> Of most direct bearing on this question is Maine Bar Rule 3.4(f)(2)(i), which provides, in pertinent part, as follows:
>
> A lawyer shall not knowingly acquire a property or pecuniary interest adverse to the client …, unless:
>
> (A) The transaction and terms in which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed to the client in manner and terms which should have reasonably been understood by the client.
>
> The Commission finds that the referral fee at issue here is inherently unfair and unreasonable to the client.[1] The singular purpose and design of this arrangement is to influence the lawyer to make recommendations to the lawyer's client for the benefit of an investment advisor who is paying the lawyer to do so, in stark contrast to the lawyer's being motivated by the best interests of the client. This arrangement is so adverse to the fiduciary relationship that is the foundation of the lawyer's responsibility to the client, that the Commission finds it to be fundamentally and objectively

unfair and unreasonable to the client, and therefore in violation of the Bar Rule.[2]

Excessive fee
Maine Bar Rule 3.3(a) provides that a lawyer shall not enter into an agreement for, charge or collect an illegal or excessive fee. The Rule defines a fee as excessive "when, after a review of the facts, a lawyer of ordinary prudence would be left with the definite and firm conviction that the fee is in excess of a reasonable fee." Factors to be considered as guides in determining the reasonableness of a fee include, among others, the time and labor involved, the skill requisite to perform the service, the fee customarily charged in the locality for similar services, and the responsibility assumed by the attorney.

Note: Footnote 4 of the Maine Bar Opinion gives a detailed summary of several state bar opinions that have been issued on this topic. See Also the analysis of state bar opinions on this topic that appears in the Utah State Bar Opinion 99-07 (1999), and at page 51:409 of the *ABA/BNA Lawyers' Manual on Professional Conduct*.

See Also Maryland Opinion 2004-11 (2004), New York County Bar Opinion 733 (2004), Texas Opinion 536 (2001) West Virginia Opinion 2006-1 (2006), See Also Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio Opinion 2000-1 (2/11/00), which states:

> In conclusion, this Board advises that it is ethically improper for a lawyer to accept a fee from a financial services group for referring clients in need of financial services. The referral fee agreement involves an improper business relationship with clients and non-lawyers under DR 3-103(A) and DR 5-104(A). The referral fee agreement creates a financial interest that will affect or reasonably may affect the professional judgment of a lawyer under DR 5- 101(A)(1) and DR 5-107(A)(1) and (2). Full disclosure and consent do not resolve the conflict. While DR 5-101(A)(1), DR 5-104 (A), and DR 5- 107(A)(1) and (2) provide a full disclosure and consent exception, DR 3- 103(A) does

> not. Because of the joint application of these rules, the full disclosure and consent exception does not apply.

See Also Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio Opinion 2003-1 (2003)

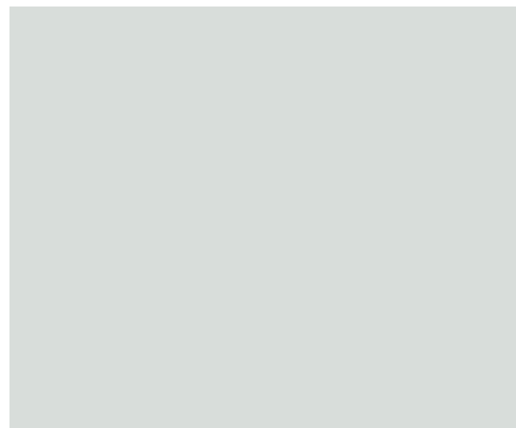
Maryland Opinion 00-34 (2000) addressed the question of whether a lawyer who also had an accounting practice could accept a referral fee from a stockbroker when the lawyer made the referral in his capacity as an accountant. The opinion stated that if the referral was made by the lawyer in his capacity as an accountant, the legal ethics rules would not apply, and the lawyer/accountant would be governed by the ethics rules that were in effect for accountants. However, if the referral was made in the lawyer/accountant's capacity as lawyer, acceptance of a referral fee would be improper:

> The Committee concludes that the arrangement you propose ... would violate Rule 5.4. Disclosure alone does not prevent this arrangement from violating Rule 1.7(b). Rule 1.7(b) provides that regardless of disclosure, the lawyer must reasonably believe that his representation of a client will not conflict with his own interests. Entering into the proposed arrangement would give an attorney a financial incentive to refer a client to the stockbroker regardless of the individual client's needs. Such an arrangement both compromises the attorney's independence and would materially limit an attorney's ability to represent his or her clients. The Comment to Rule 1.7 recognizes this when it states A lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed interest.

In view of the disparity of opinions on this topic, lawyers should carefully check their local rules of professional conduct and ethics opinions before agreeing to accept a referral fee or a commission from a non-lawyer.

For further resources on legal ethics issues as they relate to a lawyer's acceptance of referral fees, See the state bar ethics opinions and related materials that are listed on the additional resources page and

on the following pages: ABA Informal Op. 1482, ABA opinions on referral fees from nonlawyers, and state bar opinions on referral fees/ commissions from non-lawyers



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Q&A with Laurel Bellows, Chair, House of Delegates

YourABA *recently spoke with ABA House of Delegates Chair Laurel Bellows to learn her thoughts about the House, which is the policy-making body of the association, and her role as its leader.*

Laurel Bellows

How does the House of Delegates fit into the governing structure of the ABA?

The House of Delegates is the principal place where the association makes policy and sets the goals for the association. It is where representatives of all the constituent parts of the ABA, state and local bars and affiliated organizations come together to debate and consider professional and public policy matters in order to develop and express an association point of view. The House considers issues that are brought there because constituent groups or individual association members have sought House consideration and action. The House also elects ABA officers and members of the Board of Governors. The Board of Governors oversees management of the association, and can act for the House of Delegates between regularly scheduled House meetings. The officers carry out association policy and the association's staff implements the programs and activities approved by the House of Delegates and the Board of Governors.

What is the significance of the House of Delegates to ABA members?

Because the ABA House of Delegates is the policy-making body of the association, it is the center for dialogue and debate among ABA members and delegates representing organizations with varying perspectives from every area of legal practice and every jurisdiction in the country. The House provides an opportunity for lawyers from

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across the United States with varying points of view to air their thoughts and opinions regarding the policies of the association. Association members who are not delegates also have the right to submit proposals for association policy and speak on behalf of those proposals when the House convenes.

Policies approved by the House impact the entire association. These policies become the basis for determining association priorities, and the foundation upon which the association lobbies Congress, writes letters to federal agencies and partners with other bar associations.

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Who belongs to the House?

The House is comprised of about 550 members representing all aspects of the legal profession. The House brings together members from state and local bar associations across the United States, and beyond, with delegates coming from the 50 states, and from the Virgin Islands, Guam and the Commonwealth of the Northern Mariana Islands.

In addition, members represent the various sections and divisions of the ABA, including judges as well as lawyers in fields of practice and study from solo firms to large litigation firms, to those practicing labor and employment to intellectual property law and other disciplines. The attorney general of the United States is an ex officio member of the association, as is the director of the Administrative Office of the U.S. Courts.

How did you become Chair of the House?

My name was submitted to the ABA House of Delegates by its Nominating Committee. Candidates for Chair of the House, like candidates for other ABA offices, have two opportunities to present to the committee their credentials and goals in seeking office. The House as a whole elects the officers, including the Chair.

What issues are debated in the House?

There is a prescribed procedure for filing written recommendations with the ABA Committee on Rules and Calendar. Over the past year,

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the House took positions on the following matters: presidential signing statements, services for children of deployed service members and coercion of lawyers to drop unpopular clients by threatening a boycott by other clients.

At our Annual Meeting, we will be considering recommendations involving: mandatory aged-based retirement policies for lawyers, support services for young people who age out of foster care and proposed rule of law principles to preserve the rule of law in times of catastrophe to help ensure that justice will continue to be dispensed despite the damage and disruption caused by catastrophic events.

Most recommendations that are discussed in the House are brought by an ABA member group, such as a division or section, forum or committee, or by a state, local or specialty bar association. But recommendations can be brought by any association member who chooses to do so, and he or she may personally attend a meeting of the House to formally propose the policy.

There is some argument that the ABA, and the policy recommendations it adopts, demonstrate a political bent. Would you care to comment?

When I hear people voice that view, I suggest a visit to the House of Delegates when it is in session. After someone observes a meeting of the House, it is much harder to hold that view. Having observed our process and focused on the diverse geographical and political background of the delegates that comprise our House, it is difficult to believe that policy is adopted with a political bias. The House—like the ABA—has a diverse membership that takes a non-partisan approach to proposed recommendations. In fact, I would encourage all ABA members to sit in on the debate of the House. It's an amazing experience to see members from around the country, from so many different working environments and with so many different experiences, come together to address the key legal issues of the day.

The House provides the opportunity for all members to weigh in and to make their views known in a process that is the essence of democracy in action.

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What happens to policies once they are adopted by the House?

Once the House adopts a policy, the ABA works to disseminate that policy as widely as possible. Our implementation strategy depends to a great extent on what the policy concerns. In some cases, the policy becomes the basis for testimony before a Congressional committee or government agency. It may provide the foundation for an amicus curiae brief or it may allow us to work in partnership with state and local bar associations. Increasingly, we also work with bar associations of other countries with whom we share hopes and goals. The mission of the new Resolution and Impact Review Committee of the House of Delegates is to review the dissemination, use, implementation and impact of passed resolutions.

You are serving a two-year term, with the Midyear Meeting in Miami having been your first time chairing the House. What most impressed you about the House and presiding over debate?

Seated with a view of the entire House, I was overwhelmed by the passion of ABA members, the thoughtfulness of their analysis and consideration and the importance of the decisions the House makes. The House is the forum where members can weigh in on hot issues—issues that have an impact on each of us every day—not just lawyers, but every American and even beyond to citizens of other nations. I was thrilled with the privilege of working with the country's most articulate spokespeople.

What advice do you have for a young lawyer who would like to assume a significant leadership role with the ABA?

I would encourage any lawyer to get involved—join a section or a division, offer your participation on committees, and work through the state or local bar association or specialty bar to contribute your energy and expertise. There are so many opportunities within the ABA to make a difference and have an impact, and your contributions can help make our profession stronger, our legal system better and our communities and nation better serve everyone. The ABA motto, "Defending Liberty, Pursuing Justice," reflects all of us working together to offer the best that lawyers can contribute and achieve the best that our nation and our communities need.

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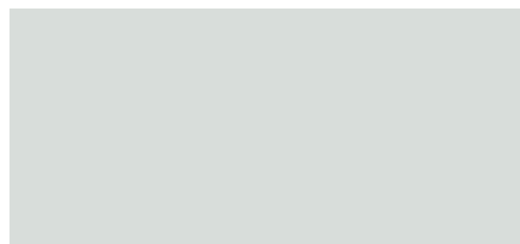

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Are you going to San Francisco?

Take advantage of practical CLEs, sessions on critical issues and opportunities to network at the ABA's Annual Meeting

Learn about "Elder Law 2007—Changes in the Law and Expanding an Elder Law Practice," "Scientific Evidence in the Courts: What's on the Horizon?" and "Who Owns Your Genes: How Gene Patents are Trampling Individuals Rights." These are just three of the practical continuing legal education programs that the ABA will present at its Annual Meeting in San Francisco August 9 to14.

In addition to offering the opportunity to secure mandatory CLE hours through hundreds of educational programs, the Annual Meeting provides the chance for networking as more than 9,000 lawyers are expected to attend the many events and sessions.

Other highlights of the conference include the 17th annual Margaret Brent Women Lawyers of Achievement Awards Luncheon. Presented by the ABA Commission on Women in the Profession, the Margaret Brent Awards this year will go to:

• **Roxana C. Bacon**, executive director, Western Progress, and first president of the State Bar of Arizona, whose work includes seeking a more just society by advancing an agenda rooted in opportunity, equity, freedom, independence

• **Marsha S. Berzon**, circuit judge, U.S. Court of Appeals for the ninth Circuit in San Francisco

• **Angela M. Bradstreet**, managing partner, Carroll, Burdick & McDonough LLP

• **Marva Jones Brooks**, partner, Arnall Golden Gregory LLP, who is also the first woman and the first African American City Attorney for Atlanta

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• **Judge Irma S. Raker**, Court of Appeals of Maryland.

The Brent Awards luncheon will take place on August 12.

On August 13 and 14, the ABA's policymaking body, the House of Delegates, will deliberate on such issues as support for youth transitioning out of the foster care system, preserving the rule of law in uncertain times, accessibility of legal Web sites for persons with disabilities, civics learning and insurance parity for alcohol or other drug abuse.

Learn more about the 2007 ABA Annual Meeting in San Francisco at www.abanet.org/annual/2007.

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Bullying in law firms: hard to define, easy to spot

In a profession that prides itself on upholding the laws that govern society, rules can fly out the window when lawyers become bullies.

It is not uncommon for one or more of a firm's senior lawyers to verbally, physically or psychological abuse subordinate lawyers and support staff, said Lisa G. Lerman, a law professor at Catholic University of American Columbus School of Law and moderator of a recent program on "Law Firm Bullies" at the 33rd National Conference on Professional Responsibility, in Chicago.

Some lawyers scream, hurling insults. Others hurl objects. "Staplers are a favorite," said Lerman.

Wm. Marty Martin, Ph.D., associate professor in the College of Management, Department of Commerce at DePaul University, compared lawyers with medical doctors, citing instances of surgeons in the midst of surgery who splash nurses with blood or who berate other members of the health care team in front of patients or family members.

When bullying appears in a law firm, especially if the bully is a highly productive partner, there can be organizational hurdles to taking action.

"Nobody wants to drive away a productive member of the firm, the person with the business," said Stafford Henry, a psychiatrist and medical director of the Behavior Health Multidisciplinary Program at Rush Medical Center in Chicago. But he cautioned that it is also important to consider associates, who are "the future of the firm."

To handle bullying, panelists agreed that managers need to document disruptive behavior, confront it, set expectations for improvement and spell out consequences if the behavior persists. But they also agreed

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that details on how those steps are carried out may vary with the cause of the behavior, and that discerning the cause may require the services of a mental health professional. Interventions can be tricky and behavior modification can require psychotherapy.

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Sometimes the problem stems from a narcissistic personality, involving haughtiness and projecting blame for failure on others. Other times a problem may result from an attempt to preserve the bully's status quo, where the bully makes excuses for his own shortcomings or elevates her own sense of self-worth through intimidation and unwarranted unprofessional behavior toward others.

Peter Bulmer, managing partner of the Chicago law firm of Jackson Lewis, LLP, represents management in employment disputes. He compared bullying to obscenity—hard to define but easy to spot. He professed not to know what bullying is, in a legal sense. The law doesn't say much about it, he said.

Henry noted movement toward legislative prohibitions that would change the landscape dramatically. Bills are pending in Connecticut, Hawaii, Kansas, Massachusetts, Missouri, Montana, New York, Oklahoma, Oregon, Washington and Utah. There even is a proposal to build the concept of anti-bullying into the ethics code for lawyers in New South Wales, Australia.

Absent legislative approaches, the "fix" can become a question of what culture a law firm has, what culture it wants, and how the firm can get there without violating partnership agreements. "There's always a lawful way," Henry said.

Managers need to step back, and evaluate the pros and cons of an offender in order to assess the effect on the organization, suggested Henry. "Is this someone you want to keep, or do you want to move them out? That decision will govern your steps," he said.

Contractual issues in partnership agreements can tie the hands of law firm management. But such agreements also can permit disincentives that can affect behavior, options like cutting compensation or ejecting a person from the firm.

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Martin said there is one more piece to the puzzle. "You can't just look at the legal piece and the ethical piece—you need to look at the organizational piece as well—the effect on others and the impact on business." He suggested standardized surveys in which partners and associates can comment on each other anonymously as one way to take that look.

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Bulmer agreed that surveys can be useful. In his firm, once a year all staff evaluates "everybody above them in the food chain." Most people take it seriously as a helpful tool for reform, and it produces results, he said. The firm conducts a formal top down review process twice a year.

Others suggested anonymous associate surveys can be abused as tools against unpopular partners.

In smaller firms with no anonymity, surveys might not work, but firms can create an environment that teaches people how to give and receive criticism, and how to bring behavioral concerns to the attention of someone in a position to address it, said Martin.

In considering the role of risk management structures in addressing bully behavior, Bulmer suggested every law firm has such a structure in place, but said they need something more. Risk management is designed for legal liabilities, and bully behaviors often don't cross the legal line. He urged multiple low-risk routes to bring concerns to firm leaders who are positioned to address them—tools like ombudsmen, for example.

In the end, panelists agreed with Bulmer's reiterated view: "It's about the culture of the firm."

To view a pdf of the Oregon State Senate bill on bullying in the workplace click here.

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Ethics training for paralegals: a winning situation for clients

"At the end of the day, ethics training for paralegals means that clients are better served," says Bill Weston.

Weston, chair of the ABA Standing Committee on Paralegals and chair of the Professionalism and Professional Responsibility Committee for the General Practice, Solo and Small Firm Division, spoke in anticipation of an Annual Meeting session on ethics training on utilizing paralegals.

Paralegals are professionals qualified by education, training or work experience who are employed or retained by a lawyer, law office, corporation, governmental agency or other entity who performs specifically delegated substantive legal work for which a lawyer is directly responsible.

Weston, who serves as dean of legal studies for a national for-profit university, along with his roles at the ABA, points out that attorneys, including solo practitioners, have a great use for paralegals. "Paralegals can complete forms, do research, interview clients and draft memos," Weston explains. He adds that in specialty practices, such as intellectual property, paralegals can appear in court under certain circumstances.

"Use of paralegals allows lawyers to maximize the productivity of their offices. They present another way for the client to feel taken care of. A common complaint among clients is that they never hear from their lawyers, and that's where paralegals can come into the picture. Paralegals can give updates to clients, ask clients to send in needed documents and assist them in completing forms.

"While doing these routine, but necessary tasks, they can gather information for the lawyer," Weston adds.

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More importantly, he says, paralegals are giving the lawyer another touch point with the client, a factor that can help in client retention.

Like lawyers, paralegals are required to continue their education. But unlike lawyers, their continued education can be a mix of training provided by their supervising lawyers and CLE. Because CLE courses for paralegals can be authorized by one or more paralegal associations and because different lawyers fulfill their training obligations in various ways, there is real inadequacy in ongoing training on ethics for paralegals, Weston says.

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He notes that ethical situations are rarely instances of black and white, right or wrong. "You might be a paralegal whose lawyer is out of town. You get a call from a client you've worked with who says he just received a letter from the IRS and asks what the letter means. You tell the client you will check with your lawyer and then you try to reach her, but she is not responding to e-mail or voicemail. The client calls back the next day and you can hear the distress in his voice. He pleads with you to tell him what to do. As a paralegal, it is wrong for you to answer the question without consulting with your lawyer."

It is up to lawyers to make sure their paralegals understand this issue as lawyers have fiduciary responsibility for anything the paralegal says as long as the paralegal is in the office. Even if the paralegal tells the client that he or she is acting independently, the lawyer is responsible.

Weston points to the fact that the profession has grown over the past 30 years to where paralegals are valuable members of the legal services team.

Weston hopes that the paralegal job expands throughout the legal profession. "We want to create a climate where legal services are available to more and more people and where clients feel as though they are being well served.

"After all," says Weston, "that's why we're all here—because of the clients."

"Ethical Responsibility in Utilizing Paralegals," Saturday, Aug. 11, from 10 a.m. to noon, at the Palace Hotel, San Francisco.

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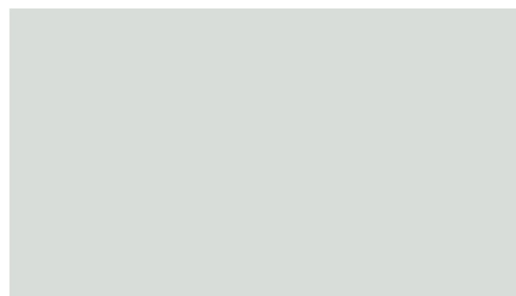

Status Update!

Dues waiver for active deployed military lawyers

The ABA is providing a waiver on dues for active deployed military lawyers. Learn more by contacting the ABA Service Center.

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"Gaining Returns in the Workplace" topic of Career Counsel Podcast

"Think like an investor in your job," recommends career counselor Kathy Morris in a new ABA-CLE Career Counsel Podcast, "Gaining Returns in the Workplace." Morris is founder of *Under Advisement, Ltd.*, a service that helps lawyers in their job searches and in managing their careers.

Tip number one from Morris is that it's important to think both in the short run and long term about your career. Short thinking may include the assignments you want and the people with whom you want to interact in the next month or even six months. As to long-term planning, Morris said that, "careers can't be mapped out in a linear fashion, they evolve." But, she advised, it's important to look ahead and try to understand where you want to be, whether it's a lead of a team, a partner in a law firm or working in a supervisory role in a nonprofit.

The second tip that Morris offered was to "invest in others." Think about your boss and also consider your coworkers. Communicate with colleagues and close the loop to "let people know what you've accomplished in the time that was projected." She also recommends being an "honest, forthright and straight-shooting coworker."

Diversify your involvements in the workplace, just as you would your investments, recommends Morris. Volunteer. Keep in mind the old adage that no job is too small. "You'll find success and enjoy being the kind of coworker others can count on."

The podcast along with other best practices and tips that will help you distinguish yourself in the workplace can be found at the ABA-CLE Career Counsel, www.abanet.org/careercounsel/.

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At the same time that the number of Fair Labor Standards Act wage cases has skyrocketed in recent years, the number of EEOC claims has steadily declined, said Joseph Tilson, founding partner of Meckler Bulger & Tilson, in Chicago, during a recent CLE program.

Tilson, who moderated the course, "Procedural and Practical Issues in Litigating FLSA Collective Actions," asked, "What makes litigating wage and hour cases unique?" and "Would you rather see such cases handled at the federal or state level?"

Rex Burch of Bruckner Burch PLLC, Houston noted that the Class Action Fairness Act has forced lawyers on many cases into federal court whether they want to be there or not. Burch and his fellow panelist Ellen C. Kearns, counsel in the Labor and Employment Group at Foley & Lardner LLP, addressed the upside and downside for employees in federal versus state courts.

Burch pointed out that some states have better standards in class certification than Federal Rule [of Civil Procedure] 23, and that state courts understand their own laws and standards better than the federal government does. Kearns noted that state juries are "much more generous to plaintiffs in class action" so employers prefer federal court.

In addition to Burch and Kearns, experts addressing FLSA claims during the teleconference and webcast included Lisa (Lee) Schreter, partner at Littler & Mendelson in Atlanta and Nelson Thomas, partner at Dolin, Thomas & Solomon LLP in Rochester, NY.

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Kearns, who wrote a paper, "Arbitration Agreements and Class and Collective Actions under the Fair Labor Standards Act," addressed the question of opt-in and opt-out procedures applying to arbitration of class or collective actions in the context of *Long John Silver's*

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Restaurants Inc. v. Cole. In that case, "the arbitrator had allowed the plaintiff-employees to represent an opt-out class of current and former employees with FLSA claims." The employer argued in federal court to overturn the arbitrator's decision because, in the employer's interpretation, an opt-in class was required. In that case, the federal court would not overturn the arbitrator's decision. Kearns' paper was provided as a handout.

Panelists also addressed the use of binding arbitration in FLSA cases. Burch and Thomas, who focus on representing employees, both said that arbitration can provide positive results. "I am seeing a lot of pluses for plaintiffs in arbitration," said Thomas.

Regarding communications in class actions, Schreter offered recommendations on the timing of employers communicating with individuals, noting that under FLSA, once a notice has gone out to the class, a court is going to look more closely at communications for any hint of intimidation.

Tilson called on Burch to answer the question, "In a class certification, when should a notice motion be filed?" In response, Burch pointed out that sometimes the notice of motion to conditionally certify can be filed prior to the lawsuit. The courts seem to apply different standards to the class certification depending on how far into the case it is, he added.

Schreter and Burch commented on the differences relative to discovery with respect to individual class members in misclassification cases where job descriptions in different parts of the country and company size come into play. Prior to taking questions from the audience, the panelists also addressed the use of experts in such class action FLSA suits, motions for summary judgment and how FLSA cases differed from discrimination cases. To view a portion of the materials released in connection with this program, go to www.abanet.org/cle. The full set of program materials may be accessed via the ABA Web store.

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An ABA legislative priority

House passes bill aiding public service lawyers

On May 15, the U.S. House of Representatives overwhelmingly passed a bill that would help new law school graduates who wish to take positions as state or local prosecutors, or as federal, state or local public defenders but might be deterred because of relatively low salaries and high student loan payments. Under the program, lawyers who join the criminal justice system are eligible for forgiveness of a portion of their student loans when they commit to complete at least three years of qualifying public service.

ABA President Karen J. Mathis, noting the monthly loan repayment of $800 to $1,100 that many lawyers face with a median starting salary of $42,000 for public service lawyers, wrote, "Under the current system, lawyers often are forced to leave such public service for higher paying positions in law firms or other venues, meaning that the lawyers who do remain are stretched thin and must assume considerable case loads. In addition to such strain on the individual lawyer and family, this threatens the administration of justice and the very fundamentals of our nation."

The Senate Judiciary Committee passed its version of the bill on April 10. It is now awaiting full Senate action.

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Organizational conflicts of interest: practical considerations in the face of developing law

With more corporate consolidations taking place, the instances of overlapping businesses with government contracts increases. As a result the Government Accountability Office and Court of Federal Claims more and more often must look for conflicts of interest, according to Mark D. Colley, partner with the Washington D.C. firm of Arnold & Porter LLP and moderator of a recent continuing legal education program. The program—Organizational Conflicts of Interest: Practical Considerations in the Face of Developing Law—was sponsored by the Section of Public Contract Law, the Government and Public Sector Lawyers Division, and the Center for Continuing Legal Education.

Panelists included Kathy A. Brown, associate general counsel, Acquisition and Logistics, Department of Defense Office of General Counsel; Joseph J. Kelley, counsel for Integrated Defense Systems, Raytheon Co.; and Glenn G. Wolcott, deputy assistant general counsel, Government Accountability Office.

Colley noted that the easiest conflict of interest to address involves ensuring that contractors do not have special access or information. More troublesome, he pointed out, is seeking to prevent favoritism to a contractor through "impaired objectivity" or existing relationships with government personnel. Identifying and mitigating conflict of interest is more difficult in those situations.

Wolcott expressed his view that the environment of government contracting has changed with the shrinking industrial base, resulting in large companies now doing a broad range of tasks. The GAO, he said, has not "made any conscious decision to increase scrutiny." Instead it is reacting to the environment.

Brown, too, said that she didn't think the department was focusing more on organizational conflicts of interest, it's "just that the conflicts

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are now more problematic."

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The contracting agency, said Wolcott, has an obligation to make a "knowing judgment" to reasonably mitigate and neutralize conflicts.

Colley asked how those conflicts of interest can be eliminated. In response, Brown stated that in some cases, businesses are trying to narrowly define their different business units as distinct profit centers although the process does not work. Brown said that organizational conflicts of interest have to be looked at from a corporate level. In some cases, she said, divestiture might be required. Another suggestion later in the program involved subcontracting as an additional means of eliminating the conflict of interest.

Further, Brown said, it's best to look upfront at the organizational conflict of interest. She outlined some of the legislative proposals to address the issue of conflicts of interest in contracting.

Kelley, too, emphasized the complexity of contracting today, "I don't believe that the rules that existed in the 1980s are good enough today." Kelley also spoke to the need to identify an organizational conflict of interest at the earliest possible time and for clearer, more consistent guidance.

While conflict of interest is important, the government also has critical needs for work products. Wolcott noted that the GAO is "pretty hard nosed" in terms of making a judgment, but once it does so, it gives a level of deference to the contracting officer.

A portion of the materials from this CLE are available online at www.abanet.org/cle/programs. You may purchase the CLE materials at the ABA Web Store.

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Finding useful information for your practice in one place saves time and reduces frustration. *The Young Lawyer*, monthly print publication for the Young Lawyers Division, compiles this type of information, and also makes it available online.

In his article, "How to Find an Expert for Your Case," William F. Horsley notes that for a fee, a location service provides the name of one or more experts who meet the criteria you specify. Some services present either a case summary or a set of the appropriate records to the expert, and in turn provide the lawyer with a report.

Horsley continues, "The 'lawyer grapevine' may be the best way to find an expert witness."

In "The Pros and Cons of Telecommuting," Kelli Carter McCloskey outlines some of the negatives to would-be telecommuters: "distractions, distractions, distractions. Also, I miss the daily social interactions with my coworkers." Further, she stresses that "working from home takes discipline, and to be able to meet deadlines and not fall behind, you have to set boundaries for yourself."

"Pros and Cons…" and "How to Find…" are just two of the articles that the Young Lawyers Division features in its June newsletter. In each issue of *The Young Lawyer*, the division compiles articles that help young (as well as, perhaps, seasoned lawyers) in their practice, and offers tips to consider in the areas ranging from new technologies—such as ones that help allow telecommuting—to career mainstays, such as mentoring.

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Tipping back the scales—Law firms in search of work-life balance

Tipping back the scales
Law firms in search of work-life balance

By Francesca Jarosz

Jarosz is a senior at Northwestern University's Medill School of Journalism in Evanston, Ill.

If only Tyresse Horne wouldn't have checked her e-mail.

Horne was at the airport waiting to board a flight to London for the weekend when she spotted a message from the law firm where she works, Shearman and Sterling in New York, saying that she was needed there that weekend. So she left the airport and went back to the office.

The incident wasn't too unusual for Horne, 39 and a sixth-year associate at the firm, who averages a 16-hour workday, plus another 15 to 20 hours on weekends. She said finding time for a life outside law poses a challenge.

"People just treat you like a machine," Horne said. "If you didn't feel like you were in a pressure cooker all the time, the work would be enjoyable."

She isn't alone in the "pressure cooker."

At large law firms, the typical lawyer bills between 2,200-2,300 hours a year, according to data from the National Association for Law Placement Foundation. Combine that with the other commitments, like pro-bono work, speaking engagements and bar involvement, and you've got a group of professionals stretched to fulfill their lawyerly callings and remain whole people, too.

"There are demands for more time than what a person can put in," said Debora de Hoyos, managing partner at Mayer, Brown, Rowe and

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Maw in Chicago and a mother of three. "Time is the scarcest resource."

Blame it on billable hours, demanding clients or the tethering force of technology. The stipulations that firms are placing on lawyers to devote more time is becoming a concern among those in the profession.

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Melanie Jester, a law clerk for the U.S. District Court of Western Oklahoma and chair of the Oklahoma Bar Association's committee on work-life balance, said the association has realized the importance of her group to a greater extent in recent months. Since the beginning of 2006, the OBA has lost one member a month to suicide.

"If you're in an environment where it's not OK to go on vacation, then how is it ever going to be OK to seek counseling?" Jester said.

Those at law firms also are recognizing the danger of such an environment.

Paula Patton, NALP's president and CEO, said absence of work-life balance is among the factors leading to attrition in law firms, a trend that NALP has surveyed since 1996. The latest data shows attrition at 19 percent in 2005, the highest figure since the foundation began the studies, and Patton said she doesn't see any signs of it declining.

Patton said losing a fifth-year associate comes at an estimated cost of $300,000 to firms. Multiplied by the number of lawyers leaving, that adds up to millions. "All of this has created a real sense of urgency," Patton said.

Now, those in the legal profession are responding to that urgency by evaluating what causes the work-life imbalance lawyers face and what can be done to change it.

A common culprit for the acceleration in law-firm time demands is increase in the billable-hour requirement, which, many say, has been gradually creeping up over the past decade.

Former ABA President Bob Hirshon launched an initiative to study the effect of billable hours on law firms during his 2001-02 term. Hirshon,

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now CEO of Tonkon Torp in Portland, Ore., said the project was inspired by the frequent complaints he heard from lawyers about billable hours increasing the pressure of the job.

"Everything was being driven by the billable hour," Hirshon said. "These (billable hour) matrices were defining whether lawyers were well-respected in firms."

According to the 2002 report issued by Hirshon's Commission on Billable Hours, time billing began in the 1960s as a way to eliminate fee schedules, track lawyer productivity and provide clients with better information about charges. Hirshon said the concept really took off in the 1980s and 90s, when computers made tracking hours easier.

There was a spike in hours when firms began raising salary levels to compete for top law talent in the dot-com era of the late 90s, experts say.

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Companies entered into an "arms race" to provide the highest pay. To compensate, they had to increase the number of hours the firm billed.

"It's this vicious cycle of salary increase and billable hour increase and what it's doing to work-life balance," said Susan Saab Fortney, a law professor at Texas Tech University in Lubbock, Texas, and lead researcher in 2005 NALP study, *In Pursuit of Attorney Work-Life Balance: Best Practices in Management*.

The stressful nature of the legal profession also presents a challenge for work-life balance.

Chunlin Leonhard, a 42-year-old partner at Sonnenschein, Nath and Rosenthal in Chicago, said even in her time off, she often finds herself thinking about her cases.

"It's not one of those jobs where you can just leave work and go home and be 100 percent home," Leonhard said.

And these days, technology even allows lawyers to bring the work home in the literal sense. While this can help minimize time spent in

the office, some say technology makes it harder for lawyers to stop working at all. Blackberries, the handheld devices that allow people to check e-mail anytime, have earned the nickname "crackberries" in some law firms because lawyers have a hard time putting them down.

"The expectation of total availability has gotten in the way of having any manageable life. They'll even hook you up to a computer in a hospital, post-delivery," said Deborah Rhode, professor and director of the Center for Ethics at Stanford Law School in Palo Alto, Calif., and former ABA chair on the Commission on Women in the Profession.

These demands clash with a growing sense of intolerance for spending excessive amounts of time in the office. Fortney's findings showed that 46 percent of lawyers in managerial positions would exchange part of their salary for more free time.

"We have a whole new mindset about quality of life," Patton said. "The conflict of that with the billable hour increase was the head-on collision that got things going. We haven't found a resolution for it yet."

Bruce Tulgan, founder of the New Haven, Conn.-based management consulting company Rainmaker Thinking, Inc., spent the decade from 1993 to 2003 studying the workplace in light of generational dynamics. In his the executive summary of his study, *Generational Shift: What We Saw at the Workplace Revolution*, Tulgan points out a greater desire for work-life balance among members of Generation X (born 1965-77) and Generation Y (born 1978-89), compared with those of earlier generations.

That sentiment is reflected among some of today's law students. Judith Maute, a law professor at University of Oklahoma in Norman, Okla., said she distributes note cards on the first day of class to ask students about their concerns. Maute, who left behind the 70-hour weeks she worked in a law firm for a schedule that she can control, said intense time commitment is one concern she gets from a number of students.

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Laura Rawski, 22 and a first-year law student at Notre Dame Law School in South Bend, Ind., said she wants to have four children and a legal career, with time to travel on the side. She plans to pursue her

interest in human rights and international law through work with the government or a nongovernmental organization such as Amnesty International, in part because she thinks that the time commitment would be less intense than at a large firm. Her goal to become a federal judge also is partly inspired by the hours.

"The courthouse isn't open all night," Rawski said.

In her third year of law school at University of Detroit Mercy in Detroit, Melanie Harden, 36, isn't even considering a career in a firm, and that's mostly because of the hours. She likes traveling and relaxing, and working 80 hours a week at a law firm wouldn't allow much room for those things, she said.

"At the end, when you're sitting in the rocking chair, you're not going to say, ‘I wish I'd spent more time in the office,'" Harden said.

Like Rawski and Harden, other students might eventually opt for careers outside of firms because of the more flexible schedules. Fortney said 29 percent of lawyers who leave firms go in-house, while another 16 percent go to work for the government. Her data showed that of the three categories of lawyers polled—in-house, government and private practice—government lawyers were the most satisfied, followed by in-house.

Vanessa Alvarez, president of the national in-house lawyer placement company General Counsel Consulting, said one reason many lawyers she works with make the move to the corporate sector is for a more predictable work schedule.

That was the case for Michael Turbes, 35, who figured out he wanted to work in-house after he interned at a law firm in college. Turbes, who worked at two firms before starting at Bell South, said the rhythm in working at a company is different than at a firm.

"There's not an expectation that I'm here on the weekends," Turbes said.

Overworked lawyers aren't the only ones realizing the need for better work-life balance. In the past decade, leaders at many law firms have adopted policies allowing for more flexible schedules. These "reduced-hours" programs, as they're called, allow lawyers to cut back their

work calendars, some as much as 50 percent, and be compensated accordingly. Through the programs, firms also allow lawyers to access the office network so that they can work from home.

The firm Kirkpatrick and Lockhart Nicholson Graham LLP, which launched its balanced-hours program in January 2006, caters to the schedules of lawyers who participate, said Roslyn Pitts, who facilitates the program as the firm's Pittsburgh-based director of legal recruitment and professional development.

Pitts couldn't give the number of lawyers who participate because information about participants is kept confidential, but she said the concept has caught on at KLNG.

"It was necessary to benefit our lawyers," Pitts said. "It's really improved their quality of life and, with that, we feel we improve the quality of service to our clients."

Some participating lawyers say the programs have been a success.

Allen Erenbaum, 43, an LA-based lawyer with Mayer Brown, has worked 80 percent of a full-time schedule since October 2000. His 9-year-old son, Joshua, has autism, and Erenbaum's flexible agenda allows him to work off-hours so he has time during the day to take Joshua to therapy sessions or to talk to the school district about better programming for autistic children.

"I need to ensure that I have plenty of time to deal with his needs," Erenbaum said. "Work has to kind of fit in with other commitments."

Mayer Brown has been supportive, Erenbaum said. At the firm, 67 of about 1,000 lawyers work reduced schedules, and Erenbaum has been promoted twice—first to counsel, then to partner.

This success hasn't been the case at all firms, though. Experts say that just because part-time options are offered doesn't mean lawyers feel comfortable using them.

The 2005 NALP study showed that 93 percent of managing-level lawyers who responded to the survey indicated that their firms allowed reduced-hour arrangements, but only 4 percent of lawyers actually

take advantage of them, Patton said.

In some cases there's a stigma attached to working part time in a career that tends to measure value by the number of hours billed.

Lauren Stiller Rikleen, a senior partner at Bowditch & Dewey in Framingham, Mass., surveyed lawyers at more than 100 firms for her 2006 book *Ending the Gauntlet: Removing Barriers to Women's Success in the Law*. Rikleen said some firms have policies that prohibit promoting part-timers to partner level.

Even firms that don't ban promotion of part-timers might give them lower-caliber assignments, said Joan Williams, who co-founded Project for Attorney Retention in 2000 as an initiative to improve work-life balance in the legal profession.

Other times, those on reduced hours simply get inferior treatment. In her 2001 report on a study of work-life programs in Washington, D.C., Williams writes about a couple of part-timers at one Washington firm who would signal an "L" on their foreheads when they saw each other in the firm's library. The action indicated how they said they were made to feel at the firm—like losers—because of their reduced-hour status."Many at law firms who think they've solved the problem, sadly, have not," Williams said.

Another hindrance to reduced hours is schedule creep. In some cases, experts say, reduced-hours lawyers end up working full time to get the job done. Sometimes, they aren't compensated for the extra time they put in.

Julie Rodriguez Aldort, a senior associate at Butler Rubin Saltarelli & Boyd LLP in Chicago, started part time a year ago to have more time with her 19-month-old daughter, Isabelle. She's on a schedule that's 70 percent of full time, but it doesn't always pan out according to the plan: 8:30 a.m. to 4:45 p.m., Monday through Thursday. When a lot of partners at her 33-person firm are involved in a trial, she has to compensate. Aldort said she spent several months without taking a Friday off and often takes her computer home to work after Isabelle goes to bed at 7:30 p.m.

"Your clients don't see you as a part-time lawyer," Aldort said. "You still have to be available to your clients 100 percent of the time."

Still, Aldort said the flexibility of the system helps her justify working less when she can—and it lets her leave without guilt at 5 p.m. to make it home for dinner. Eventually, she hopes she'll be able to scale back as much as she wants.

"I assume I'll come to a point where I can make reduced hours what it should be," Aldort said.

Some work-life balance advocates share her optimism about the future success of reduced-hours arrangements.

The data indicates there might be some progress. The August 2006 American Lawyer Survey of Midlevel Associates at 175 firms showed the average score for family friendliness was 3.61 on a scale of one to five. The Washington, D.C.-based Wiley Rein and Fielding ranked highest with a score of 4.64, and 39 firms scored 4.0 or better.

Michael Nannes, managing partner at the sixth-ranking Washington, D. C.-based Dickstein Shapiro LLP, said the key to success is that firms set the tone that work-life balance is valued there.

At Dickstein Shapiro, 28 of 350 employees take advantage of the firm's scheduling options, which range from taking off more time during the summer to working four-day weeks. Five reduced-hours participants are partners, Nannes said, and four of them made partner while on the scaled-back schedule.
"If you have a conference call at work, it's bad if you miss that," Nannes said. "But if you have a car pool and 6-year-olds are standing on the street corner crying because there's no one there to pick them up, that's worse."

Fortney's study showed a correlation between the number of initiatives firms offer and the satisfaction of their employees. At firms with more than 10 initiatives, the average satisfaction rating was 3.51 on a one to five scale, compared with the 2.89 average at firms with fewer than five initiatives.

Numbers such as these will drive change, Fortney said. The more that firms realize they can't afford to lose lawyers, the more they'll make reduced hours a priority.

Client pressures also could shape firms' focus. Rikleen said as clients demand more gender diversity in firms, employers will be encouraged to attract women by gaining reputations as places that offer the chance for work-life balance.

That very reputation was what drew Leonhard to Sonnenschien in 1999. She made the switch to an 80 percent schedule a month after Sept. 11, 2001, which she said made her realize that she wanted to spend more time with her children, Lina, 5, and Anya, 8.

She's since advanced to counsel and then partner. Though she aims to be in the office strictly from 9:30 a.m. to 5 p.m. each day, Leonhard said few of her co-workers know she's even on a reduced schedule because she makes a point to get the job done. Sometimes that means bringing work home and plugging away until the wee hours.

"I'm realistic about this—we've got very tight deadlines and lots of consequences," Leonhard said. "I'm just resigned to the fact that I'm going to have to balance to the best of my ability."

Pitts of KLNG said stories like Leonhard's will help drive change within the industry by eradicating the stigma that working reduced hours means being less productive.

"It's just going to take time for the industry to learn that they can change the way they do business," Pitts said.

But some say reduced-hours programs may not be the most effective way of making that change. Tulgan of Rainmaker Thinking said the idea of framing a program as part-time discourages employees from participating.

The key, Tulgan said, is communication between managers and employees in what he calls an "ongoing transactional relationship." "You say to your partner, ‘I'm going to get this project done by Wednesday at midnight so that I can spend Thursday with my kids.' That's how real work-life balance happens," Tulgan said. "It's the idea, ‘If you do what we need, we'll give you what you need.'"

In order for the system to work, both parties have to realize that results, not hours in an office chair, are what matter, Tulgan said.

Some firms are recognizing the validity of this concept. Nannes of Dickstein Shapiro said effective work-life balance requires flexibility on the part of the firm and the lawyer. At his firm, lawyers working reduced hours can adapt their schedule to what works best for them. But they also have to realize that occasionally the firm can demand more to get the job done.

Michael Roster also endorses the results-based approach. As general counsel at Stanford University in Palo Alto, Calif., he implemented a system of working with three outside counsel on a fixed-priced basis so that billable hours were no longer part of the system.

"I was interested in outcomes, not memos," said Roster, now executive vice president and general counsel for Golden West Financial Co.

Roster said the solution to creating better work-life balance lies in returning to the retainer relationships—in which the clients pay firms a fixed annual amount—that dominated before the billable hour.

But he said major force will be needed to cause that change, and Roster and others aren't holding their breath that it will happen anytime soon.

In the meantime, some are proposing different solutions. Hirshon of Tonkon Torp LLP said work-life balance is too narrow a concept. Instead, firms need to promote "work balance," so that the work itself becomes more enjoyable. Lawyers shouldn't just focus on billing hours; instead, they should devote their working hours to activities such as building clientele through involvement in their communities and bar associations, in addition to billing clients.

"If all you have time to do is sit in your office, go home, eat, go back to your office and bill hours, that's a pretty dreary existence," Hirshon said. "If we don't allow younger people to spend time and learn about business development, they're never going to be completely successful as lawyers. They're never going to be well-rounded."

Some full-time lawyers have found their own ways to juggle careers and lives outside them.

Peter Winik, 51 and a partner at Latham & Watkins LLP in Washington, D.C., said technology can be a big part of the solution, as long as lawyers know how to switch it off. When his kids were in grade school, he made it home to have dinner with his family every night and sometimes did work from his computer later in the evening.

Winik said he also set aside time for vacations with his family. And on the occasions he traveled to the West Coast for work, he'd take the red-eye plane so that he'd have the whole weekend at home with his wife and kids.

"You just have to prioritize family as well as work," Winik said. "Sometimes the only thing that gives is sleep."

Such sacrifices are what helped de Hoyos strike the work-life balance. She said a combination of "support, stability and good luck" have helped her succeed on both family and career fronts. She's learned she has to give up personal time to make the balance work.

"There may be time to work hard and spend a lot of time with family," de Hoyos said. "There's not much time outside of that."

Horne also is making a stronger effort to find her own work-life balance these days. Two years after her failed London trip, Horne said she now makes time to attend jazz concerts and Broadway shows, sometimes returning to the office afterwards at 10 or 11 p.m. to finish up her work.

"That helps to minimize the feeling of ‘Gosh, I never get to do anything,'" Horne said. "I try not to let the firm hijack my life."

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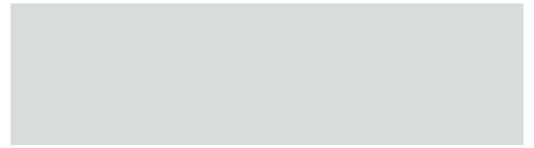

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