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A Few Good Paralegals:

How Reserve Paralegal Specialists are Supporting the Air Force Mission

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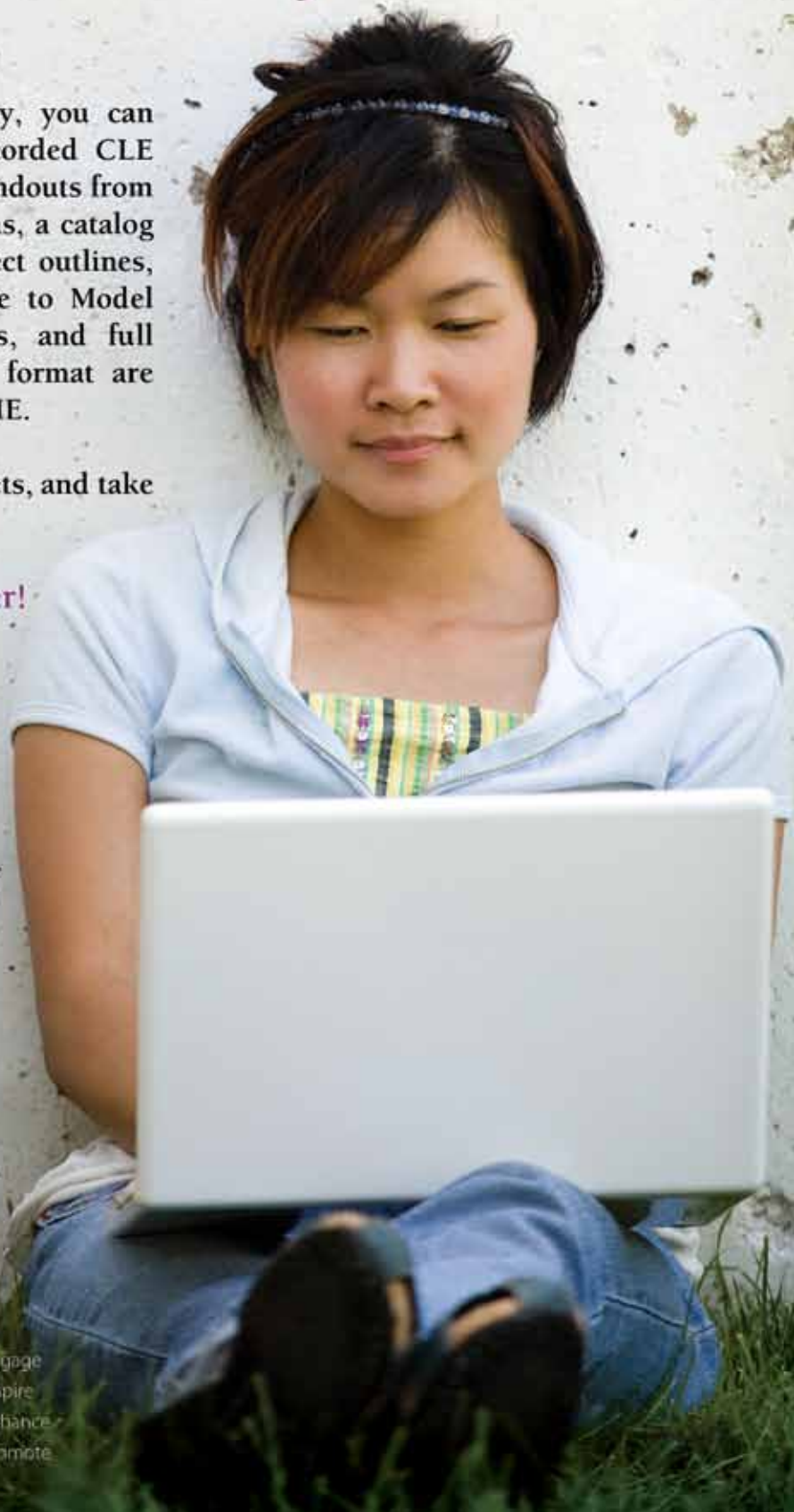

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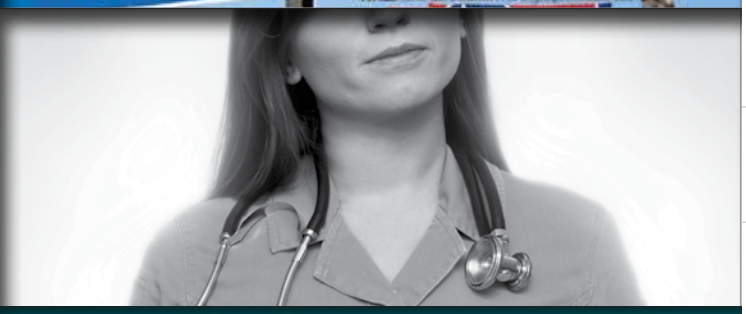

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What Does Our Future Look Like?

By Carl H. Morrison, II, PP-SC, AACP
NALS President/Board of Directors 2015-2017

Do you remember the "Magic 8 Ball" toy as a kid? A plastic sphere resembling an oversized black-and-white 8 ball, containing a 20-sided die with a variety of answers, floating in a blue-dyed liquid, to which you would ask yes or no questions. How many times did you sit down with the device to ask it serious questions about your future, only to get responses like, "Better not tell you now" or "Reply hazy, ask again later?" If you were to ask it today "What does the future of NALS look like?" what do you think its response would be?

As you have read in my last three articles over this past year, several different themes have been explored: Education. Determination. Change. Reinvention. These themes applied not only to me during the course of the past twelve months but, more importantly, to our association and its future. As I complete my service to the association as President, I would like to sum up my articles with my final installment: the discussion of our future.

EDUCATION

I started my quarterly *@Law* articles with the topic of education. For those who know me, you know very well that education is a passion of mine. Our association is built on the very ideals that have made it great for so many years and Eula Mae inspired us to always "study and learn." When it comes to the future and education, what does that look like? The association just recently implemented twenty-one (21) different Specialty Certificates, giving members and nonmembers alike more opportunities to demonstrate to their peers and employers their dedication to "never stop learning." But our future has never been brighter! Our future is a blank piece of paper and we have the power to write the best and brightest future possible. Have you ever attended a national conference and were torn between attending two sessions being conducted at the same time? How about watching video recordings of that session you missed on your iPad or mobile device in the comfort of your office or home, long after the conference has ended?

What about attending a one-day conference specifically geared toward individuals with fewer than five years' experience, providing training and education necessary to succeed in the legal profession? Your ideas, creativity, and expertise are what make our association great and without your talents our future is bleak. Let us work together for our future members to provide them with educational opportunities they need.

DETERMINATION

Many times in our lives, we are faced with challenges that make us question our talents, our skills, and our ability to move forward—challenges that make us question our future and what it holds for us, personally as well as professionally. If you remember from the Fall 2015 issue of *@Law*, I conveyed to the reader ten simple words: "Do not give up; the beginning is always the hardest." Life is in a constant state of flux, always changing, never remaining the same. These changes that present themselves always bring about challenges. Challenges provide us opportunities to rise to a higher level, to succeed in the face of courage, will, and, most importantly, determination. Determination is key to an individual's (or more importantly, our association's) successful future. Our future is written on the determined dreams, goals, and actions of each and every member of our association. Remember, whatever you can dream and conceive can be done.

CHANGE

As most members know, I am not one who is unknown to change, especially this past year. After moving halfway across the country, starting a new job, and meeting new people, I have experienced all forms of change. In all honesty these changes have been extremely exciting and rewarding. I did not let change drive me to the brink of disaster. I drove this change to be successful. As I previously mentioned, life never remains the same. The one thing that remains constant is change. Change is a lifelong process and it is with education and determination that we, as members, must look to the future with open eyes and understand that what we dream today and implement tomorrow will look different over the course of time. Progress is impossible without change.

REINVENTION

As was discussed in the Winter 2015 *@Law* issue, reinvention is not one singular event; it is a lifelong process; we are always moving forward, embracing the challenges ahead. It is our responsibility as members of this association to embrace the risks associated with reinvention. Our association must not allow the fear of risk to restrict us from allowing change to occur. Reinvention also requires creativity. New ideas that we create have the power to change something so much that it appears to be something brand new.

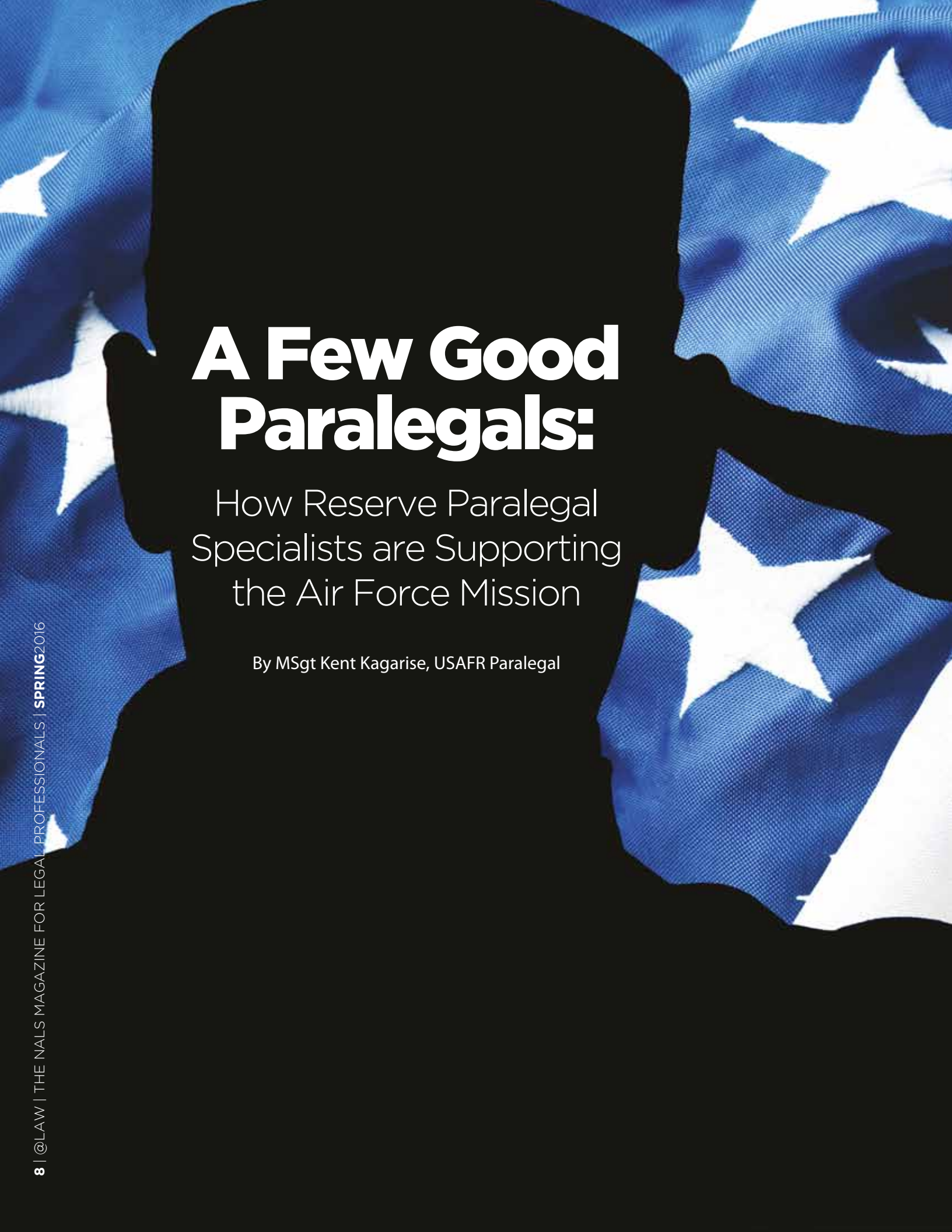
There is no time like the present and we, as leaders and members of this association, must have a sense of urgency on this road to reinvention. We must not hesitate. Our future requires our continual reinvention of products, services, and benefits to the member and nonmember alike. We must be courageous, marching forward into the future, adopting a new way of thinking and refusing to live in fear and doubt. Our future association requires us to reinvent and transform our current association into what we want it to be—successful.

OUR FUTURE

When it comes to the future of our beloved association, I can tell you most assuredly I am neither a soothsayer nor a wizard. I do not own a Magic 8 Ball and I do not consult tarot cards or palmists. And I have not contacted the Long Island Medium to commune with Eula Mae. As I sit here today, I do not have the answer to what the future of NALS looks like. What I do know is this: we are an association made up of amazing members with exceptional talents. If we were to capture and bottle the sheer energy, passion, determination, and creativity of each and every member, we could produce over 1.21 gigawatts of raw energy, enough to fuel a flux capacitor to send us into the future. But, alas, we cannot. So we reside in the here and now, providing relevant and trending educational opportunities to our members. We must face the challenges of change and reinvention with courage, will, and determination, and write our future with the determined dreams, goals, and actions of each and every member of our association. Our ultimate goal is to be and remain the most successful legal professional association. And I, for one, am glad I live in the present so that I can work hard for the future member.

Me (holding a Magic 8 Ball): "What does the future of NALS look like?"

(Shakes the ball and flips it over) Answer: "Better not tell you now."



A Few Good Paralegals:

How Reserve Paralegal Specialists are Supporting the Air Force Mission

By MSgt Kent Kagarise, USAFR Paralegal

For readers whose only exposure to the term JAG has been from watching episodes of the popular '90s show or enjoying a Navy attorney played by Tom Cruise asking Marine Col. Nathan Jessup (played by Jack Nicholson) for "the truth," then you may not know that behind every military attorney is an equally skilled and hard-working paralegal specialist providing critical support to their attorney counterparts in a wide array of mission areas.

If the United States Air Force Judge Advocate General (JAG) Corps was a private law firm, it would rank as one of the largest in the world with more than 2,000 paralegals that team with attorneys and a strong civilian support staff to provide legal services to some of the most "high-flying" clients on earth.

What is an Air Force Reserve Paralegal Specialist?

Air Force Reserve paralegal specialists work under the supervision of a JAG and perform many of the research and paraprofessional functions that are not required by law to be done by attorneys, as well as much of the one-on-one communication with clients.

Paralegal specialists plan, organize, and direct legal services personnel in the areas of military justice, claims, civil law, and court reporting activities. While being the face of a legal office, they interview clients to determine eligibility for legal assistance and summarize the clients' needs to the attorney in order to provide timely legal answers. In addition to providing administrative and litigation support, paralegal specialists perform duties by assisting clients on civil law, claims, and military justice matters.

The JAG Corps Air Reserve Component is made up of three programs: Category A (Traditional Reservists), Category B (Individual Mobilization Augmentees), and Air National Guardsmen. Airmen participating in Category A and Air National Guardsmen dedicate one weekend per month and two weeks per year of duty established by their wing leadership. Category B (IMA) Reservists dedicate a minimum of 12 days and 2 weeks per year, but serve Monday through Friday alongside active duty component members while attached to active component offices. The Category B program affords the member the ability to set up days of service in a manner that is tailored to their civilian schedule. In addition, a member can volunteer for active-duty tours allowing them to attain full-time pay, benefits, and points toward their retirement.

Senior Master Sergeant Penny Thornton oversees the paralegal accessions and assignments for the entire JAG Corps reserve. She describes the various programs as providing flexibility to fit the multiple components of a member's life cycle. "The various paralegal Reserve programs are designed to accommodate working people and provide active-duty members a means to continue their Air Force careers as their personal life stages transition," Thornton described. "For example, a single person may be interested in dedicating one weekend a month to his or her military service, whereas, parents with young kids may be more interested in taking time away from the work week to serve alongside members at an active component wing so as to not give up soccer games and life-cycle benchmarks. The goal of the Reserve is to serve the needs of the Air Force and provide flexibility, allowing members to achieve the work, family, and service balance that we all desire. Our leadership at the United States Air Force JAG Corps is committed to supporting members in making that happen. The agility in our programs allows our ARC members to obtain a diversity of experience, enhancing the strength of our program by allowing our ARC members to actively contribute to ARC and active duty operational missions

in a way that accommodates their family and civilian work commitments and preparing them to meet surge requirements if called upon."

The United States Air Force JAG Corps Air Reserve Component provides operationally-trained and combat-ready paralegals to support the Air Force mission to "Fly, Fight, and Win." In 2014, Reservists served over 34,000 total days in support of active component JAG Corps members including both steady state and war efforts, as well as individual training days at bases. The Reserve Corps alone completed thousands of legal reviews including contract actions; over 6,800 civil law opinions; 3,600 discharge, demotion, and separation reviews; and over 5,000 military justice actions and proceedings. In addition, JAG Corps ARC members served over 3,900 legal assistance clients, including 8,500 notaries and wills.

Serving in the reserve component of the JAG Corps provides a unique way to expand experiences as well as dedicate time, energy, and service to our country.

Technical Sergeant Wayne Freeland *(pictured above)*, 56th Fighter Wing paralegal, decided to join the Air Force after an active-shooter targeted the casino where he was a card dealer in 2002. Aside from being a father, Freeland did not feel he was living up to his potential. "A guy laying brick can point to a building and tell people he built that—I knew I wanted something to show for my life," Freeland said. After 13 years he has accomplished many milestones. Some of his most important work was on a deployment where he interacted with 2,000 witnesses while prosecuting war crimes. "I learned of the horrible things humans do to each other in a war torn region," Freeland said. "It taught me to be thorough in my work and brought me satisfaction to see justice served." In addition to being an individual mobilization augmentee (Category B), Freeland is a member of a fraternity, Society for Veteran's Legal Issues, executive editor for the Law Journal for Social Justice, and attends law school at Arizona State University's Sandra Day O'Connor College of Law. TSgt Freeland will graduate from law school in 2016 and said his experience as an Air Force paralegal will add to his future law practice. "I'm used to the grueling hours attorneys work—I'm used to attention to detail, critical thinking, and multi-tasking," Freeland said. "Those are important qualities for an attorney to have—my experience in the Air Force brings me confidence and the ability to think quickly."

To become a paralegal specialist, members must meet Air Force Reserve Component entry requirements, be interviewed by the unit staff judge advocate and law office superintendent, and may then be recommended for acceptance as a paralegal specialist. After completion of nine weeks of Air Force basic military training at Lackland Air Force Base in San Antonio, Texas, the Airmen will continue their paralegal specialist training for 35 days at Maxwell Air Force Base, Montgomery, Alabama. Upon returning to their unit of duty, many paralegals put their newly acquired skills in action by partaking in the Air Force Reserve Component's seasoning training program which allows them to receive on-the-job training while partnering with active-duty legal officers. As an Air Force paralegal, members are eligible for 10 college credit hours toward an associate paralegal degree from the Community College of the Air Force. These credits are respected by many civilian colleges and more credits can be earned with continued training.

For more information about how to join the United States Air Force Reserve, please contact Senior Master Sergeant Penny Thornton at (478) 327-0469 or email at penny.thornton@us.af.mil.

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Master Sergeant Kent Kagarise is a paralegal specialist assigned to the 442nd Fighter Wing at Whiteman Air Force Base, Missouri. He is a veteran of Desert Storm, aided with Hurricane Katrina relief, and was recognized as the Air Force Reserve Command's 2013 Paralegal of the Year. He has served for more than 26 years in the United States military, having begun his career in the US Army in 1989. He lives in Kansas City, Missouri, with his wife and five children.

Captain Rodney Glassman contributed to this article; he is Of Counsel at Ryley Carlock & Applewhite, Phoenix's fifth largest law firm, where he advises business and community leaders in the areas of philanthropy, external affairs, and government relations. Previously, Rodney served as the appointed Town Manager of Cave Creek, Arizona, and as an elected City Councilman for Arizona's second largest city, Tucson, Arizona. He is currently assigned to the 56th Fighter Wing at Luke Air Force Base and lives in Phoenix with his wife and two young daughters.

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When You Die, Will Your Digital Assets Go to Hell?

By Sharon D. Nelson, Esq. and John W. Simek

Facebook only arrived on the scene in 2004. It seems to many, especially the young, as though it has been here forever, but it has not. Our children simply do not remember a nondigital life. So much has changed in the last two decades that we find ourselves trekking on unmarked paths in a new frontier. We now—and forevermore—will live in a digital world. Those who are disconnected have become dinosaurs, dying out slowly over time. Change is forced upon us.

Most people have no understanding of the digital property they own and even less understanding of what may happen to those assets if they die or become incapacitated.

The Definition of Digital Assets

Wouldn't it be nice if we had a standard definition? Dream on. Even if we did, technology would continue to morph and our definition would be outdated.

We cannot even seem to agree on whether to call it "digital assets" or "digital property"—for the moment, the terms seem to be used interchangeably.

Digital property is everywhere and what it constitutes is broad—email, texts, social media posts, blogs, online accounts (including real life value of some assets in virtual worlds such as Second Life), videos, passwords and IDs to access sites, data you may have on shopping, financial, and other sites, electronic documents (think of your old tax returns as an example), online backups, photo collections, airline miles, hotel rewards, books, movie scripts, etc. To the dismay of many, it does not include your iTunes music collection, e-book reader books, or movies you downloaded because you purchase only a license—you do not own the music, books, or movies. The licenses typically expire when you die—and sometimes much sooner.

If you think "pish, posh, what can these things be worth?" bear in mind that 10 domain names have sold for $7-$35 million in the last 11 years. And that is only one kind of digital property! Consider how many millions are now held as digital currency in Bitcoin wallets. Good luck in discovering those if someone is trying to hide them.

It is beyond the scope of this article to tell you how each site or online provider will handle your data in the event of your death or incapacity. You actually have to read the Terms of Service (ToS) for each site to see whether an executor may have access to the data, may memorialize your site, may remove it, or whether your site will terminate automatically after a given period of inactivity, etc. Even where an executor may be allowed some power with relation to digital property, a court order may be required under the ToS which can make managing the assets a costly and lengthy process.

Recently, online providers have begun developing online tools to allow you to express your wishes (think of it as a digital will) and they generally take priority over the ToS. Google's Inactive Account Manager is a good example. By completing the required form, you have control over what happens to your account. Facebook will memorialize your account but immediate family can request removal of the site. The user can also define a Legacy Contact to manage a memorialized site and authorize the Contact to download what you have shared on Facebook.

Microsoft has a Next of Kin process for email accounts—if you provide an official death certificate, or proof of incapacitation, and proof that you are the next of kin or executor, you can delete and close accounts or have their contents shipped to you on DVD. Twitter will delete an account only after receiving proof of a user's death. Basically, an online search for "What happens to my (insert name) account when I die?" will give you links to online help.

Estate Planning and the Challenges of Digital Assets

Estate lawyers have only begun to think about planning for the disposition of a client's personal and business digital property in the last few years. We still lecture to lawyer audiences who remain fundamentally clueless about how to handle digital assets.

Digital property is often hidden from view. A client's loved ones may have no idea what property exists or where to find it. The best advice we can give clients is to keep a detailed list of their digital property with access information—username, password, PIN, security question and answer, and who has access or at least how to access an "asset vault" of all of the required login data. This digital inventory will be useful to clients who can then prepare a digital property memorandum for their estate attorneys.

Leonard Bernstein, the famous composer, died with his autobiography (*Blue Ink*), in a password-protected file so secure that more than a decade later it still has not been accessed.

Many of us opt out of paper financial statements but, without them, executors may not know of assets—or we may not know of bills that need to be paid. We recommend keeping data in an encrypted electronic file for security and identity theft reasons, but making sure that someone you trust has the credentials necessary to get to that document, which must be continually updated. A password-protected Word document or Excel spreadsheet is a fairly simple and common solution. A password will encrypt the contents, but make sure you use a strong password.

We continue to hear stories of a husband or wife who handles paying all the bills but does not share the online banking credentials with their spouse. Depending on the laws of your state, they may not be given access to the online account and may need a court order to get access to the actual bank account. We have seen an instance in Virginia where the wife, who was the executrix, had to close the account and open a new one just to get control of the new account online. In the meantime, bills went unpaid and interest charges accrued while she sought legal help.

Those Pesky Terms of Service: What Happens to the Account of a Deceased User?

As clients create their digital property, they click and consent to the provider's Terms of Services (ToS). Few people read the ToS or know that they have agreed to policies which will apply upon their incapacity or death. Some companies state that allowing anyone else to access your account violates the ToS, further complicating planning for digital property. So you leave a list of passwords to your spouse and he/she violates the ToS by logging in as you. It entirely defeats the purpose.

A handful of states have begun to address the challenges of digital property when the owner becomes incapacitated or dies. One of the most comprehensive laws was enacted in Oklahoma, though it considers only accounts of a deceased person, not those of the incapacitated. It narrowly defines the sites to which the law applies and does not explicitly override the ToS agreed to when the account or site was opened.

Loved ones have been forced into courtrooms to get access to digital property. When Yahoo! refused to permit access to the family of Lance Corporal Jason Ellsworth, a soldier killed in Iraq, they fought back and got a state probate judge to order the email turned over. In another family, Karen Williams found comfort after her son died in a motorcycle crash when she read his Facebook wall. But when Facebook learned of his death, his page was immediately shuttered until she got a judge to reopen it.

It is not only the ToS you need to worry about. Most providers will argue that the federal Stored Communications Act prohibits turning over users' content. The 1986 Act, while moldy and outdated technologically, remains the law and experts are not sure that state laws could withstand a challenge in light of this law.

A New Dawn

We may be getting closer, albeit slowly, to a solution. On July 16, 2014, the Uniform Fiduciary Access to Digital Assets Act (UFADAA) was approved by the Uniform Law Commission. The Act attempted to balance the need for fiduciaries to get control of digital property without violating privacy promises made by online companies to users or customers and without violating federal privacy laws. Achieving that balance was clearly tough. UFADAA was introduced in 27 states in 2015 and passed in none of them. Only Delaware, in 2014, passed a modified version of UFADAA.

Seeing the writing on the wall, the Commission came up with a Revised UFADAA (RUFADAA), which was approved on July 15, 2015. Seeking to compromise with online providers who opposed the original bill, the new RUFADAA expressly permits the online tools discussed above, making them separate from the ToS and legally enforceable. The online tools would supersede contrary directions in a will, trust, or Power of Attorney. If no online tool was used, the will, trust, or Power of Attorney would control. If there is no direction online or in a legal document, the ToS would control.

A core provision of RUFADAA allows a fiduciary "the outside of the envelope"—a catalog of communications, but permits the fiduciary access to content only with the consent of the decedent—which could be via an online tool, will, trust, or Power of Attorney. Basically, RUFADAA is an overlay statute designed to work with each state's laws. Most experts expect that RUFADAA will be introduced in many state legislatures in early 2016.

A fly in the ointment is the Privacy Expectation Afterlife and Choices Act (PEAC), which Virginia passed in 2015 and which was preferred by many online providers to the original UFADAA. PEAC requires that a personal representative of a decedent get a court order after showing that access to digital assets is in the best interest of the estate. The court can then order that a log of communications (again, the "outside of the envelope") be provided to the representative. Disclosure of content requires the consent of the decedent. This seems to the authors a slow, expensive, and cumbersome process. We much prefer RUFADAA.

The State of Estate Planning

As they say in the movies, "it's complicated." We are in a legal limbo at the moment. It appears to the authors that the new online tools are gaining a lot of traction. It may be wise to advise clients to use them, reminding them that, if RUFADAA is passed, those online tools would override other legal documents. Some attorneys prefer to try to address the issue of digital property via a will, trust, or Power of Attorney. Court orders in guardianship or conservator cases that include express authority regarding digital property may be appropriate. Agents under powers of attorney can be granted express authority to act for the principal regarding digital assets, to the extent permitted by law and terms of service. Information gathered in an initial meeting intake form should certainly be expanded to include digital property. Consideration should be given to providing a similar grant to agents under medical directives to ensure online medical records are accessible.

Both wills and trust agreements can include language that grants the Personal Representative or Trustee authority to access, maintain, change, or dispose of digital property. As noted earlier, it is not clear whether these planning efforts will be legally effective, but it is far better to attempt to plan for digital property than to ignore it. One thing we would not do—do not notify online providers about a client's death without researching your current state law and the ToS or online tools of the provider. In some cases, notification has meant instant deletion of an account. Unsettling? Yes.

Similar to writings often referenced in a will or trust, a digital memorandum could identify the specific property and then, for each item, provide access information (username, password, PIN) and instructions (delete, preserve, memorialize, distribute to designated beneficiary, sell, or dispose). This type of access is particularly difficult since you need to balance access to the information and the security of the information that is stored; hence, another reason we advocate an encrypted electronic file that contains the appropriate access information for all digital assets.

While one can be most diligent in creating a comprehensive list of digital property, that is not enough. The list must be kept current as passwords change and additional accounts are created. Careful consideration must be given to where the list is kept, who knows about it, and who is to have access. There are commercial websites that will retain the information but we question their security—it seems everyone is vulnerable to being breached. Another option is for lawyers to hold the digital property list or digital memorandum in escrow with written terms from the client for the lawyer's release of the list.

Final Words

We have watched attorneys argue endlessly about how to proceed—today—in light of likely legal changes. Because the answer will vary from state to state, our best advice is to make sure you attend CLEs on this topic that are focused on your state and, for heaven's sake, watch legal publications for any indication that your state law is going to change. Whatever you do, now and for all time, digital assets must be part of your estate planning process with your clients.

@LAW

Authors Nelson and Simek are the President and Vice President, respectively, of Sensei Enterprises, Inc., a digital forensics, information security, and information technology firm based in Fairfax, Virginia. In their first look at this topic in 2013, they lectured with Deborah Matthews, an estate planning and trust and estate administration attorney, who has her own firm, the Law Office of Deborah G. Matthews in Alexandria, Virginia. *The authors gratefully acknowledge her contributions to their early understanding of this topic.*

A short trip from Nashville and a long journey into America's history...

Join NALS on October 6-8, 2016, in historic Murfreesboro, Tennessee, to celebrate the 65th Annual Education Conference & National Forum. With more continuing legal education than any other conference dedicated to legal professionals, you have the opportunity to directly impact your career.

October 6-8, 2016
Embassy Suites Nashville SE - Murfreesboro

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Schedule at a Glance

NALS 65th Annual Education Conference & National Forum • October 6-8, 2016 • Embassy Suites Nashville SE - Murfreesboro

Wednesday, October 5, 2016

3:00 p.m. – 5:00 p.m.
All-Committee Committee Meetings

5:00 p.m. – 7:00 p.m.
Registration Open

5:30 p.m. – 7:30 p.m.
Wine and Cheese Welcome Reception
(Included In Registration)

Thursday, October 6, 2016

7:30 a.m. – 4:00 p.m.
Registration Open

7:30 a.m. – 11:30 a.m.
Coffee Break

8:30 a.m. – 10:00 a.m.
Welcome & Opening Keynote

10:30 a.m. – 11:30 a.m.
Essential Estate Planning & Administration Tools for Today's Legal Professional

10:30 a.m. – 11:30 a.m.
Should I Transfer My House to My Kids?

10:30 a.m. – 11:30 a.m.
Are You Scared? You Should Be! (Cybercrime)

11:30 a.m. – 1:00 p.m.
Exhibitor Luncheon *(Included In Registration)*

1:00 p.m. – 2:00 p.m.
Understanding the Federal Courts

1:00 p.m. – 2:00 p.m.
Useful Tips for Preparing Fiduciary Tax Returns

1:00 p.m. – 2:00 p.m.
The "Big Data" Challenge

2:30 p.m. – 3:30 p.m.
Immigration Law

2:30 p.m. – 3:30 p.m.
The Art of the Deal

2:30 p.m. – 3:30 p.m.
Legal Project Management - What Makes Legal so Special?"

4:00 p.m. – 5:00 p.m.
Privacy, Posts, and Practices: Social Media and the Law of the Workplace In 2016

4:00 p.m. – 5:00 p.m.
Winding Down the Practice: A Staff Member's Guide to Preparing for Retirement, Disability, or Death of a Lawyer

4:00 p.m. – 5:00 p.m.
Technology Topic TBD

6:00 p.m. – 11:00 p.m.
Free Evening

Friday, October 7, 2016

7:30 a.m. – 4:00 p.m.
Registration Open

7:30 a.m. – 10:30 a.m.
Coffee Break

8:30 a.m. – 9:30 a.m.
"America's Game"– Football and the Law

8:30 a.m. – 9:30 a.m.
CLE Topic TBD

8:30 a.m. – 9:30 a.m.
CLE Topic TBD

9:45 a.m. – 10:45 a.m.
Legal Ethics for the Paraprofessional—What You Don't Know Can Hurt You

9:45 a.m. – 10:45 a.m.
Entertainment Law Part I: Protecting Creative Works

9:45 a.m. – 10:45 a.m.
Evolution of eDiscovery

11:00 a.m. – 12:00 p.m.
Legal Research 101—The Basics

11:00 a.m. – 12:00 p.m.
Entertainment Law Part II: Copyright Infringement Litigation

11:00 a.m. – 12:00 p.m.
A Few Things Everyone Should Know About Employment Law

12:00 p.m. – 1:30 p.m.
Networking Lunch

1:30 p.m. – 2:30 p.m.
The Ten Worst Errors in English and the Ten Indications of Superior English

1:30 p.m. – 2:30 p.m.
How to be a Research Superstar with Lexis Advance

1:30 p.m. – 2:30 p.m.
The Changing Law of Unmanned Systems (Drones)

2:45 p.m. – 3:45 p.m.
Legal Research 101–Using Secondary Sources and Finding Tools to Locate Case Law

2:45 p.m. – 3:45 p.m.
Ethical Dilemma Exploration

2:45 p.m. – 3:45 p.m.
Opportunities for Paralegals in Franchising

4:00 p.m. – 5:30 p.m.
Door Prize & NALS Foundation Sweepstakes Drawings

700 p.m. - 10:00 p.m.
NALS Foundation Event *(Ticketed Event)*

Saturday, October 8, 2016

8:00 a.m. – 2:30 p.m.
Registration Open

8:00 a.m. – 10:30 a.m.
Coffee Break

9:00 a.m. –10:00 a.m.
Legal Research 101—Online Research Using Online Sources

9:00 a.m. –10:00 a.m.
CLE Topic TBD

9:00 a.m. –10:00 a.m.
CLE Topic TBD

10:15 a.m. –11:15 a.m.
Shut the Front Door! (Criminal Law)

10:15 a.m. –11:15 a.m.
CLE Topic TBD

10:15 a.m. –11:15 a.m.
Tips/Pitfalls in Handling Clients

11:15 a.m. – 12:45 p.m.
Recognition Luncheon
(Included In Registration)

12:45 p.m. –1:45 p.m.
CLE Topic TBD

12:45 p.m. –1:45 p.m.
CLE Topic TBD

12:45 p.m. –1:45 p.m.
Professional Development Topic TBD

2:00 p.m. –3:00 p.m.
CLE Topic TBD

2:00 p.m. –3:00 p.m.
CLE Topic TBD

2:00 p.m. –3:00 p.m.
Professional Development Topic TBD

3:15 p.m. – 4:45 p.m.
NALS Open Forum

7:00 p.m. – 11:00 p.m.
Nashville Nights & Lights Tour
(Ticketed Event)

NALS
65th Annual Education Conference & National Forum
NASHVILLE/MURFREESBORO, TENNESSEE

Hotel, Travel, & Events

NALS 65th Annual Education Conference & National Forum • October 6-8, 2016 • Embassy Suites Nashville SE - Murfreesboro

Hotel Information

Embassy Suites Nashville SE - Murfreesboro
1200 Conference Center Blvd
Murfreesboro, Tennessee 37129
phone: (615) 890-4464

$119 Room Rate

For reservations call 1-800-EMBASSY or 615-890-4464 and ask for the NALS group rate (Group Code NAL). Available dates for the NALS rate are October 4-9, 2016, based on availability. Make your reservations now!

The CUT OFF DATE for the NALS Rate is September 13, 2016, or whenever the block is full.

Exhibit/Sponsorship Opportunities

Vendors, your target market awaits! In October 2016, NALS will welcome 200+ members of the legal support profession to Murfreesboro/Nashville for the association's 65th Annual Education Conference & National Forum. Attendees will utilize the exhibit program at this annual event to look for new products and services to take back to their law offices. This is your opportunity to place your products and services in front of the decision makers with purchasing power. Sponsorship pricing ranges from $100-2,500.

To view the Exhibitor/Sponsor Prospectus, please visit:
www.nals.org/event/NALS16

Ticketed Events

NALS Foundation Country Music Lip Sync Battle

Friday, October 7, 2016 | 7:00 p.m. - 11:00 p.m. | $50 per person

Lip sync battles have become a huge viral sensation thanks to popular segments on "The Tonight Show" and the "Lip Sync Battle" on SPIKE. Now the NALS Foundation is taking it to the next level with its very own Country Music Lip Sync Battle, hosted by the NALS Foundation Trustees! Not only do we encourage attendees to dress the part of their favorite country music icon, we also encourage attendees to come prepared to sing their hearts out in hysterically epic performances. The mic is off, the battle is on! Are you up for the challenge? Price includes dinner and a *very* entertaining show where YOU are the star!

Nashville Nights & Lights Tour

Saturday, October 8, 2016 | 6:00 p.m. - 11:00 p.m. | $49 per person

Experience a night to remember in Music City! Start the night off right by feasting on a down-home, tasty dinner at Jack's BBQ—a locally owned eatery—and experience a drive-by tour of Nashville's major attractions including the Parthenon, the Ryman Auditorium, the Country Music Hall of Fame and Museum, Riverfront Park, Bicentennial Park (including a breathtaking view of the Tennessee State Capitol building), Music Row, Schermerhorn Symphony Center, and much more. After your city tour and dinner, set off to enjoy some time at your leisure in the downtown area, where you can listen to all kinds of live music and visit the world famous honky-tonk bars. Live it up without worry, as a professional Gray Line driver will be on stand-by to give you a safe ride home at the end of the night. Price includes driver/guide, BBQ dinner at Jack's BBQ (1 entrée, 2 sides, and 1 beverage), city tour of Nashville, and time on your own downtown.

Travel Discounts

Jarmon Transportation

A discounted rate on ground transportation has been arranged with Jarmon Transportation, the official airport ground transportation shuttle service for Nashville International Airport. Rates will be $40 per person one-way and $60 per person round-trip. A reservation link for online booking is available at www.nals.org/jarmon.

Delta Airlines

Delta Airlines will provide NALS Conference attendees a 5%—10% discount off airfare for the NALS 65th Annual Education Conference & National Forum in Murfreesboro, Tennessee. The valid travel dates for this discount are October 2-11, 2016. Reservations are available via www.delta.com or by calling the Delta Meeting Network Reservations at 800-328-1111. Please note that a direct ticketing charge will apply for booking by phone. When booking online, select Meeting Event Code (NMJYM) and enter the meeting code in the box provided on the Search Flight page. Note: To receive discount, a minimum of 10 total passengers must fly with Delta Airlines using the Ticket Designator Code.

Car Rental Discounts

NALS has partnerships with AVIS Rent-A-Car and Hertz Car Rental to provide discounts to NALS members looking to rent a car. Please visit the Member Discounts/Resources page of the NALS website for more details.

NALS 65th Annual Education Conference & National Forum

NALS 65th Annual Education Conference & National Forum • October 6-8, 2016 • Embassy Suites Nashville SE - Murfreesboro

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(Includes Thursday, Friday, and Saturday luncheons, Wine & Cheese Welcome Reception, three days of CLE, and access to NALS Exhibit Hall)

Early Bird *(postmarked before July 1, 2016)*

- ○ NALS Member $349
- ○ Nonmember $449
- ○ Student $299

Regular

- ○ NALS Member $369
- ○ Nonmember $469
- ○ Student $319

Other

- ○ One-Day Registration (CLE only) $199

Please select one:

- ○ Thursday, October 6, 2016
- ○ Friday, October 7, 2016
- ○ Saturday, October 8, 2016

Ticketed Events

- ○ NALS Foundation Event $50
- ○ Nashville Nights & Lights Tour $49

Guest Registration

Guest Name _____

Guest Email Address _____

Guest Ticketed Events

- ○ Wine & Cheese Welcome Reception $40
- ○ NALS Foundation Event $50
- ○ Recognition Luncheon $50
- ○ Nashville Nights & Lights Tour $49

NOTE: Guests may register for ticketed events, however, should they wish to attend CLE sessions or any other conference-related event not listed above, they will need to register as an attendee.

Payment Information

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Refunds will be given (less a $50 processing fee) for cancellations received no later than **August 1, 2016.** No refunds will be granted for requests postmarked after that date. Refunds will not be given for no-shows. Substitutions will gladly be accepted prior to the conference! Only one (1) substitution is permitted per original registrant. Must be substituted for the original conference; no transfers to a future conference will be allowed.

DIETARY OR PHYSICAL RESTRICTIONS

Please notify NALS Meetings Manager of any dietary or physical restrictions that require special arrangements.

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ARE YOU READY FOR MEDICARE?

By Kathy Johnston, CAP, CP, PLS

Nothing says "Hey, Baby Boomer, you are almost 65" quite like that thick packet of materials from the Social Security Administration containing your very own red, white, and blue Medicare card! Not only that, but it has an effective date three months off—on August 1—the first of the month of that mystical 65th birthday. Instant flashback to age 15, when anybody 65 (in my oh-so-grown-up-mind) not only had one foot in the grave, it was the whole lower leg! It was 1965, and Medicare had just been signed into law as a way to provide health coverage for those over 65. At that time, many health care providers would not accept Medicare assignments. But I was only 15 and could not begin to visualize 20, much less 65!

Seriously, though, because I was already "retired" and drawing Social Security benefits, the task of applying for Medicare had automatically been accomplished. Delete all those calendar reminders for the "window" to sign up for Medicare benefits; that task was done. However, somewhere along the line I must have missed the memo advising that every single health benefits company in the world (or at least all licensed to do business in Idaho) also knew I was turning 65 and would be flooding the mailbox with literature and solicitations to "pick me, pick me" for Medicare Part D, Medigap, Medicare Advantage, or anything slightly related thereto. All of a sudden the reality of Medicare is not only smacking me in the face, but I was wondering how all these previously unheard of companies knew I am turning 65. That is a story for a conspiracy theorist to tackle.

That "suck it up, Buttercup" moment had arrived. For at least 45 years I had been paying into the system, and the time had come for me to reap the benefits of those efforts. All those vague terms from TV ads and newspapers regarding Medicare Parts A & B, Medicare Part D, and all related "parts" are there in black and white applying to me. Decisions needed to be made in a timely manner and before August 1 on which path to follow. My parents were both gone, so there was no current experience in helping them through the ins and outs of all the changes occurring over recent years.

Fortunately, a copy of the "Medicare and You" manual was among all those mailings. This 150-plus page tome (in large print, as apparently when one turns 65 one automatically needs large print) basically explains all the definitions and what insurance companies are available in your state of residence to provide coverage. Additionally, on the back cover of the book is the telephone number for the State Health Insurance Assistance Program (SHIP). This is a group of trained personnel available to consult and provide guidance—based on health care needs—in choosing which plan fits one's current situation.

Since I detest footnotes (if it is important, it should be in the main text), I will explain here that "Medicare and You" is published annually by the U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS). It contains a section devoted to special information regarding the recipient's state of residence. And, drum roll, it can be downloaded free at Medicare.gov.

Needless to say, having worked for attorneys for over 40 years—although the advice from the state program was a wonderful guideline—the sharpened pencil test still seemed necessary. At the risk of revealing the plot of this story, my GP proved to be the best outside resource for what I needed … who knew? All those working years of "mining the resources" to find the truth actually applied to my real life as well.

Educating oneself on transitioning into the Medicare era of life is a journey in itself. The first step is realizing that all those terms you have heard and flippantly used have more depth than appear on the surface. Why does the manual refer to "Original Medicare" as opposed to "Medicare Advantage" and what is the whole relationship of Medicare Part D, much less Medigap coverage with regard to either Original Medicare or Medicare Advantage? My mind was not wrapping around all of this very well, so it seemed that perhaps others may be having some of these same issues. With a little help from the "Medicare and You" manual, along with a few of my own experiences during the first several months of my relationship with Medicare, here are some basics to be thinking about in advance of that fateful day you need to make decisions. These are general applications and do not apply completely for those with special circumstances, union benefits, federal employee benefits, Tricare, etc., or those who have not paid into the system but are required to have Medicare by reason of turning 65 years of age.

"Original Medicare" and "Medicare Advantage": "Original Medicare" is just what it says; it is the plan managed by the federal government and is the default coverage provided unless one chooses to be covered by a "Medicare Advantage" plan.

With Original Medicare, there are generally co-pays for all services provided. The premium for Part B coverage (see definitions below) is deducted from one's Social Security check and is set annually. For 2015 and 2016 the base payment is approximately $105 (each month) unless a substantial income pushes one above the base threshold. It is important to note that prescription drugs are not covered; that is where obtaining Medicare Plan D coverage comes into play (at an additional cost).

Medicare Advantage can basically be categorized as similar to what may be used when covered by an employee plan (an HMO or PPO, for example) and may cover prescription drugs, depending on the plan chosen. This must be obtained from a Medicare-approved provider, and the covered party may elect to have the premiums deducted from their Social Security payment. This is in lieu of Original Medicare coverage, not in addition to. However, if one chooses Medicare Advantage, any supplemental plans (Medigap) cannot be obtained. If one has Medicare Advantage and enrolls in a Part D plan, they will be disenrolled from the Medicare Advantage Plan and returned to Original Medicare unless their Medicare Advantage does not cover prescriptions.

If one is still working at age 65 and receives health insurance coverage through employment, of course, this takes care of the decision-making dilemma during the term of employment. One will, however, need to be aware of the window of opportunity to enroll for Medicare once one is no longer covered by this private insurance.

Those Pesky Parts: One could call these the "A,B,Cs" of Medicare.

"Part A" is hospital insurance and automatically provided if one has paid into the system through employment. There will be deductibles and co-insurance.

"Part B" is medical insurance and generally has a monthly premium (e.g., the approximate $105 noted previously). The manual notes that having only Part B does not meet the requirements to be adequately insured. As with Part A, the insured pays deductibles and co-insurance.

"Part C" is basically the Medicare Advantage plan, encompassing Parts A and B. Many of these plans include prescription drug coverage as well (referred to as MA-PDs). If one's plan does include prescription drug coverage and one also subscribes to a Part D policy, the insured will be disenrolled from the Medicare Advantage plan and returned to Original Medicare. One covered under Plan C cannot legally be sold Medigap coverage.

"Part D" is the prescription drug coverage plan. It is available for those on Original Medicare and those on a Medicare Advantage plan that does not include prescription drug coverage. It is important to note that one must live in the service area of the Medicare drug plan that one wants to join.

Medigap or Medicare Supplemental Insurance: This is just what the name implies—this closes the gap, e.g., supplements, the payments made by Original Medicare for medical bills. As previously noted, if Medicare Advantage is chosen, they will be disenrolled from that plan (and returned to Original Medicare) if they subsequently purchase a Medigap/ Medicare Supplement policy. Be cautious of insurance agents/ companies who claim otherwise (again, it is illegal for them to sell it to you), and report them to your Better Business Bureau, your state insurance compliance officer, and to Medicare. See "Medicare and You" for more information.

And guess what—there are "A, B, Cs" under these plans as well. However, these are related to levels of coverage under the policy chosen. All Medigap policies are standardized and must follow state and federal regulations enacted to protect the consumer. Currently, there are several levels of plans available: A, B, C, D, F, G, K, L, M, and N (yes, there are levels that are no longer available). "Medicare and You" provides a chart comparing the amounts of coverage for various scenarios (e.g., deductible and co-insurance limits for Medicare Parts A and B), including foreign travel emergency.

How do I decide? Even before getting advice through your state version of SHIP, familiarize yourself with the basic terms and list your medical needs and prescriptions. That is just the starting point. Know what you can reasonably afford and the limits of your financial risk tolerance. Can you reasonably afford to pay the co-insurance/deductibles for a low-premium, high-deductible plan? Can you afford to bypass Part D coverage if you have Original Medicare? Do you need Medigap coverage based on your current health circumstances? Basically, this is a decision similar to

one you may have had to make for your personal health care coverage prior to Medicare. It will be individual to you.

Mine your resources: talk to family and friends about their experiences, talk to your primary health provider, determine if you are comfortable with a plan that limits where you seek care, and verify if your preferred health care sources accept Medicare assignment or if you will potentially need to find alternative sources.

It Really Is Okay to Stumble Along the Way: Remember, this is a new journey in your walk through life. One may be fortunate enough to have recently assisted a family member or friend through this experience, and it is equally important that one seeks some level of outside advice in this process. It is much easier to take a step back and view another's needs than it is to step back and objectively view one's own. Think of it as "proofreading"—somebody else will be able to see certain things you may not think of.

My little journey has had a few bumps, but nothing serious. Yes, two days before the August 1 "day of destiny" I finally decided that—after all the calculations and pencil sharpening—my initial choice to go with Original Medicare, a specific Part D plan, and a specific Medigap policy was indeed the best for me. Fortunately, I could sign up online and be covered as of August 1. Yay! I remembered to cancel my current health insurance (which eventually took forever to accomplish); for some reason "the man" could not comprehend my age and that Medicare coverage was taking over. And actually there was a reprieve on time to pay the Original Medicare premium by deduction from my Social Security benefits. My August Social Security payment would not be deposited to my account until September 24, thus that would be when the August premium would be deducted—finally, a tiny bit of vindication for having to wait so long for my first Social Security check a year earlier.

Somehow I missed the memo that, when making that first Medicare wellness appointment, I needed to advise the purpose when I made the appointment. I needed all my prescriptions filled and blood work done; little did I know that was not a part of the Medicare wellness appointment. My awesome primary provider did know all of this information and was able to detail what was going to be occurring in the Medicare wellness exam (and made sure the current visit would be covered by Medicare and the Medigap supplement). He took care of advising his staff my next appointment would be the Medicare wellness exam. That exam consisted of an EKG, specific blood draws, and an unending list of questions more suited to an 85-year-old. He had a wealth of information, as well as the hands on experience with Medicare patients, as to what kind of Medigap and Part D insurance I needed (luckily, it was what I had chosen). Who knew I could use him as a resource?!?

Trust the medical billing experts where you are being treated and mine the resources! They are usually experienced and know all the twists and turns the patient needs to take to ensure coverage. If you need to go to a specialist, discuss with that provider's staff what needs to be done to ensure your visit will be covered by Medicare and, subsequently, your Medigap policy. Recently, I needed a referral from my primary care physician to a dental group specializing in sleep apnea and TMJ. I had not discussed this with my physician in the previous two visits, so the specialist's staff advised me to make an appointment to discuss this with my primary care physician so he could provide a qualifying continuation of treatment referral. It was only a couple of hours out of my day and soon I should be receiving a custom dental appliance covered by Medicare to take the place of my CPAP machine!

Looking back, my journey may have been smoother (but much less interesting and with no story to tell) had I treated it like it was a part of my former employment: mining the resources and pretending I was gathering the information for a client. It is a part of living and learning, well worth the ups and downs. Yes, it is something that must be experienced each year during the "window" to review and potentially change coverage. Fortunately, if one is satisfied with their coverage and no changes are needed, one can breathe easy with knowledge that no action is required to continue current coverage.

For more detailed information, search Medicare.gov and peruse the information. It is never too early to prepare for this important life event on behalf of yourself or a loved one.

@LAW

Kathy Johnston, CAP, CP, PLS is retired after over 40 years of actively "herding cats" (working for attorneys) in White Sulphur Springs, Montana, and Boise, Idaho. She is currently on the NALS Editorial Board, a position she loves (editing in pj's). She also works part time for the Idaho Volunteer Lawyers Program, with a few hours weekly spent on tasks for the Idaho State Bar Admissions Department. She admits to missing the "highs" of the litigation rush, while loving the flexibility of having extra time to read and enjoy hobbies. Kathy has been a NALS member (first in Montana and currently in Boise, Idaho) for over 35 years.

TEN Tips to keep you in Good Standing with your Trust Account and so much more . . .

By Bianca Moreiras

When I was getting ready to write this article, I actually downloaded the podcast from the Florida bar called "Maintaining a Trustworthy Trust Account." Not only did it affirm what I already knew, but it refreshed my memory about key information for writing this article. I suggest you take the time to search your local or state bar association's website and take an online ethics seminar.

Whether you are employed by a sole practitioner or a small, medium, or large law firm, a complete understanding of your fiduciary responsibility regarding the trust account is of utmost importance. These funds and/or property are to be kept separate and apart from the normal operating account(s) of the firm.

Here are the top ten items and issues that are taken for granted, forgotten, or overlooked regarding the IOLTA Trust Account:

- Provide proper training and ongoing training to existing and new employees
- Proper set-up of account through a qualified financial institution
- Proper record keeping including policies and procedures
- Audit internal controls
- Written confirmation of funds accepted, held, and disbursed
- Retention of client ledgers and matter files
- Three-way bank reconciliation
- Proper application and understanding of retainers
- E-filing and ACH transactions and online banking
- When to disburse funds

Your trust account should clearly state the name of the firm and should clearly say "IOLTA Trust Account" or "Trust Account" on the front of the check (i.e. Jones & Associates, P.A. Trust Account). Calling this account anything other than a trust account is not correct (i.e., escrow account or advance account).

When ordering checks, be sure to select a unique color so as not to confuse the trust checks with other accounts. Order the checks numbered and do not rely on the computer system to number your checks for you. If you are setting up your trust account for the first time, check your bar association's website for forms to assist you. In Florida, a W-9 form is provided with the bar's tax identification number, so please check the bar association in your state. A common mistake is using the firm's FEIN number and not the bar's FEIN number. Also, transactions should not transpire without the written authorization of

the principal signer on the account; there will be no banking fees charged to the trust account and no automatic transfers or online transfers. Only authorized wire transfers can be made when authorized by the signer on the account.

Lastly, definitely no credit cards or ATM cards access should be associated with the trust account and all interest paid will be directed to the state's bar association.

It is important that proper training of all personnel handling the firm's trust account is in place and ongoing training takes place every time a new associate, partner, or staff member is employed. No matter who might be assigned to work with the trust account (i.e., bookkeeper, administrator, paralegal), one attorney should be responsible for the safekeeping and handling of all clients' funds and property. This is usually an owner of the firm. This does not mean that this attorney will physically perform the work; however, he or she should be the first to receive (unopened) the firm's IOLTA account bank statement. A careful review of the trust account bank statement is the first step in taking the necessary precautions to safeguarding the clients' funds.

If there are at least two individuals working at a firm, you can establish safeguards. For example, the same person who makes the deposits should not reconcile the bank account. In this same vein, the person who writes the checks should not sign the checks. Also, the person who posts to the journal should not post to the client/matter ledger. In the case of a sole practitioner working alone, this is impossible; however, an outside accounting service can be used to perform bank reconciliations.

It is a requirement for all firms of two or more attorneys to have written procedures in place regarding the trust account. These written procedures are to be distributed to all attorneys in the firm. In addition to the actual "must do" items which I will address, one of the issues to address is who can be a signer on the account. Although the rules read "anyone designated by the firm" can be a signer, it is recommended that only the owners of the firm sign on the account. Record keeping procedures should be clearly stated and include the six rules, which is an easy way to remember what is necessary to have good record keeping.

The six rules are:

1. **Journal:** Journal all cash receipts, deposits, and disbursements. This is a chronological recording of all transactions for the trust account.

2. **Ledger:** A separate ledger should be kept for each client and matter for all cash receipts, deposits, and disbursements. This is a chronological record of all transactions for each client and each matter.

3. **Monthly Bank Statements**: A monthly accounting by the bank of all cash receipts, deposits, and disbursements.

4. **Monthly Bank Reconciliation:** The function performed to balance the account verifying all cash receipts, deposits, and disbursements.

5. **Monthly Comparisons**: Three-way balancing = journal, ledger, and bank reconciliation should match.

6. **Retention of documentation**: All documentation should be held for six years whether digital or paper. Six years is defined as six years from the last transaction, NOT when the file was opened.

It is important to perform this bank reconciliation monthly. Once the three-way bank reconciliation is completed, it should be reviewed by the responsible attorney. The trust account is viewed as a short-term account for client funds to be held. Each month the reconciliation should be reviewed carefully and questioned if funds have been sitting in the trust account for several months. The client should be contacted to ensure their contact information is current—knowing this information will prevent losing track of them. For example, you provided real estate services to your client (the seller) who will no longer be living at that property. At the closing, obtain their forwarding address in the case of excess funds or a refund, etc. How will you provide the return of the funds if you cannot locate this client? While reviewing the three-way bank reconciliation, identify each client who has a remaining balance and request the entire ledger from inception of that matter so you can verify if the funds should be returned to the client or what other action might be required. This should be reviewed each month and action should be taken each month, if required.

Original bank statements must be kept together with all deposit documentation, cash receipts made, and original cancelled check or digital checks including the image of the front and back of each check. The above should be attached and kept with the monthly three-way bank reconciliation. All documentation shall be kept for the required six years.

Providing a receipt to the client for all deposits made to the trust account is often overlooked. You may believe that the client's cancelled check will be sufficient; however, it is clear in the rules that a receipt shall be provided to the client for all trust deposits.

Another issue that often comes up is whether an attorney/firm can disburse on funds immediately. Like the six rules to help you remember what is needed to have good record keeping, there are six exceptions at the discretion of the attorney/firm to pay on immediate funds. Let me remind you that this does not mean the funds are cleared or will clear—it only means, at the attorneys' discretion, the rules state you can disburse under these circumstances.

The six expectations are:

1. Cashier's check or certified check

2. Loan proceeds from a financial lender or bank

3. Bank check (money order or credit union official check drawn on a bank in your state)

4. Federal or state government check

5. Another attorney or licensed real estate broker account

6. Checks issued by an insurance company licensed with your state—(NOT A DRAFT). A check is a demand to pay; a draft is a request to pay which is based on the timing of the insurance company.

While we are on the subject of disbursement of funds, let's clarify "retainers," "advanced fees," and "advance costs," and the proper way to handle them when it comes to trust accounting. Before I address this, did you know that if you do not have a written agreement of representation with your client regarding your advanced fees or retainer, a client may request a refund? Many firms use the word "retainer" in their agreements for services. A retainer is payment for the right to hire the attorney/firm in the future. The amount of the retainer is considered earned when received and may not be deposited in the trust account. Depositing this money in the trust account to be taken at a later time could be seen as avoiding taxes. A "flat fee" is treated the same way as a "retainer" as stated above. "Advanced fees" and "advanced costs" are refundable to the client if not used and must be kept in the trust account. Example: A client paid $7,500 which made up a combination of retainer ($2,500), advanced fees ($4,500) and advanced costs ($500). This payment was made in one check. The check should be deposited in the trust and, immediately upon the check clearing, $2,500 should be moved to the operating account. The balance of $5,000 will remain in the trust account and is fully refundable at the request of the client. I suggest you take a good look at your written agreements to ensure you are in full compliance with the rules and regulations of trust accounting.

Let's look at internal controls. Although you may say to yourself "everyone knows this," you would be surprised at how simple mistakes can create complex issues.

- Always run a criminal background check on all employees. You must let the employee know you are going to run this criminal background check. You can make a job offer pending this process or run the check after advisement and prior to the job offer.
- Be sure your business insurance has significant coverage for fraud and theft to cover your trust account.
- Have two signers on your trust account for checks over $10,000. Although the bank will not acknowledge this even if it is clearly stated on your check, it is more of an internal safeguard and deterrent.
- Never sign a blank check.
- When signing checks, have the client ledger available indicating the check number and balance remaining in the trust account for that client.
- Never move money from one client matter to another client matter to cover a shortage in that client's account.
- Store all checks under lock and key.
- Store all bank reconciliations under lock and key.
- Preprint on trust checks "void after 90 days."
- Do not write checks to "cash."
- Signature stamps are not suggested.
- Large sums of cash are subject to reporting.
- Do not use your trust account for E-filing or ACH transactions.
- Cross-train all employees and separate duties/functions of the trust account.

Lastly, let's take a look at the signs of fraud and theft. Every attorney and every firm would like to think of themselves as good decision makers and that they have hired good people. However, things happen to good people and circumstances change. Here are some telltale signs to look for:

- Change in an employee's personality
- Sudden unemployment by a family member
- Extravagant living
- Overprotective of their work and work area
- Does not take vacation
- Addictions: gambling, alcohol, drugs
- Bank statement not received or received opened
- Monthly bank reconciliation is delayed
- Employee resigns suddenly

In conclusion, it is vital that the attorney in charge review all trust account information monthly. Only an attorney has a fiduciary responsibility for the trust account. Administrators, CEOs, CFOs, bookkeepers, and other personnel cannot be blamed if something goes south with the trust account funds. Do not rely on others to ensure your trust account is meeting all rules and regulations. It is the attorney's firm, bar number, and reputation. I hope you will review your procedures that are in place and make the changes necessary to keep your firm's trust account in order.

@LAW

Bianca Moreiras has been a leader, mentor, motivator, and presenter in the legal profession for over 34 years. Her role as administrator, executive director, marketing director, coach, and consultant brings a wealth of knowledge and practical application to any firm, group, or individual.

Her philosophy is to pull up, push up, and to lead women and men to their fullest potential one person at a time. Her company Bianca Moreiras & Associates is ready and willing to "Take Your Business to the NEXT LEVEL."

Bianca has spoken on topics enriching professionals in the areas of self-improvement, time management, professional etiquette, communication, collaboration, leadership, networking, customer service, résumé writing, etc. In addition to professional speaking, she conducts webinars and has had several articles published. She has successfully coached professionals to achieve status in the business world once thought unattainable.

If you are looking to start or grow your business, Ms. Moreiras will take your business to the NEXT LEVEL. For more information email her at moreirasbianca@gmail.com or contact her anytime at 305-986-0905 or www.biancamoreiras.com.

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Darlene Howard Holt

Nakia Bradley-Lawson

Carl Morrison

Audrey Saxton

Karen McElroy

INTRODUCING THE 2016 NALS BOARD OF DIRECTORS

NALS is proud to introduce the 2016 Board of Directors who will lead NALS boldly into the future. The five member NALS 2016 Board of Directors represents the best and brightest the legal profession has to offer. They are a diverse group of leaders who are dedicated to the success of NALS and the advancement of the legal profession.

NALS' 2016 President is Darlene Howard Holt. Darlene is a firecracker with a fresh point of view who is not afraid to speak her mind and share her youthful perspective. She is a member of VALS and has been working in the legal field for just over nine years as a probation and pre-trial technician, executive administrative assistant, legal assistant, and paralegal. Darlene currently works as a Legal Assistant at the Alexandria City Attorney's Office. She always knew she would be in the legal field. When she was little, she was convinced that she would grow up to be a world-famous crime solver and that she would solve every case on Unsolved Mysteries. Darlene has served nationally on the Grassroots Level-Think Tank and the Education Products Task Force. Darlene says that she is determined and driven to do everything she puts her mind to and she has set her mind to becoming a certified Professional Paralegal. She is dedicated and studying hard to reach her goal of passing the PP exam and becoming certified. Passion, dedication, and enthusiasm radiate from Darlene and she naturally attracts others. She has a bold confidence, a can-do attitude, and a tenacity that will serve her well as NALS President.

Nakia Bradley-Lawson is NALS' 2016 Secretary. Nakia has served NALS of Oregon as Education Director for two terms, Social Media Chair, and hopes to serve as Communications Director in 2016. Nakia was awarded NALS of Portland Member of the Year in 2014. Nakia says that she was inspired to join NALS after meeting the dynamic, intelligent, and ambitious members in her local chapter. She lives by the philosophy "If you're the smartest person in the room, you're in the wrong room." She finds that she is in the right room every time it is filled with NALS members. Nakia currently works as the legal assistant to the managing partner at Gevurtz, Menashe, Larson & Howe, P.C. She is also a member of the Development Committee for Youth, Rights & Justice—a nonprofit law firm that specializes in legislation and litigation for the benefit of Oregon's foster children. Nakia helped execute the annual fundraising gala, which raised a record $100,000 plus in 2015. Nakia is a steady change agent who thinks and acts creatively and has a history of fundraising and relationship building, and NALS is excited to see how Nakia will effect change nationally.

Carl H. Morrison, II, PP-SC, AACP, is beginning his second term as a member of the NALS Board of Directors. Carl has his boots on the ground and his finger on the pulse of the ever-changing legal community he has been a part of for over 20 years. Carl is a strategist and innovative thinker and he is excited to use his second term on the NALS Board to implement bold new ideas. NALS is thrilled to have him continue leading our association as a Director. In addition to working as a litigation paralegal with Foran, Glennon, Palandech, Ponzi & Rudloff, PC in his new hometown of Las Vegas, Nevada, Carl remains an adjunct professor at Tulsa Community College, where he has taught various courses in the paralegal program since 2012. In addition to NALS, Carl is an active member of the American Bar Association, Tulsa County Bar Association Paralegal Section, Tulsa Area Paralegal Association, State Bar of Texas Paralegal Division, Phi Beta Lambda, and he is an Honorary Member of Lambda Epsilon Chi (National Paralegal Honor Society). Carl also attends and participates in NALA and NFPA events where he is bridging the gap and building relationships to broaden NALS' reach to engage, enhance, inspire, and promote NALS' certification, education, and networking opportunities.

Also continuing as a Director is Audrey M. Saxton, PP, PLS-SC. Audrey is a born leader and where she leads, others follow. She takes risks and puts herself out on a ledge for NALS and the legal profession. Passionate about the role NALS serves in the careers and education of the legal professionals of today, Audrey is hopeful about the role NALS will play in the careers and education of the legal professionals of tomorrow. In addition to serving on the NALS board, Audrey is pursuing two associates degrees in the areas of administration of justice and political science. Audrey says that she has dedicated herself to diligently and competently serving the needs of the public and that she stands as an advocate for access to justice for all citizens. Her legal career has spanned almost two decades and Audrey currently works as a Judicial Assistant with the Hon. Brenden J. Griffin at the Pima County, Arizona Superior Court in Tucson, Arizona. She is a member of NALS of Tucson & Southern Arizona where she has served in numerous leadership roles. She is excited to lead the association in becoming the industry leader in innovation and technology. Audrey can often be found giving presentations regarding the best use of technology in the legal setting and is a self-proclaimed tech junkie. Audrey played an integral role in the development of the revamped NALS website and the creation of the NALS2GO mobile application. NALS is excited to see where Audrey will lead the association as she continues to take bolder risks and continues to effectuate change.

Rounding out the 2016 Board of Directors is Karen S. McElroy, PP, PLS-SC. Karen is a visionary who loves to brainstorm solutions rather than focus on problems, and NALS is lucky to have her serving on the Board of Directors. Karen is a thinker, a dreamer, and someone who believes that if you can dream it, you can do it. She has been a member of NALS since 2002 and is currently a member of VALS. Karen has contributed to the vision and mission of NALS by serving in many leadership positions prior to her service to the Board of Directors. Karen has served on the NALS Strategic Planning Committee, NALS Think Tank, as NALS Education Director, Marketing Director, Future Leaders Development Board Liaison, WebEd Sub-Chair, Region 8 Director, on the Certifying Board, and as Education Committee Chair. Karen has been in the legal profession for over 20 years and she currently works as a paralegal in Fairfax, Virginia, with Altman, Spence, Mitchell & Brown, P.C. Karen is a chameleon and can take on any role that needs to be filled. NALS is excited to have Karen as a part of this dynamic Board of Directors.

MERGERS AND ACQUISITIONS:
AN OVERVIEW

By Laura Anthony, Esq.

As merger and acquisition ("M&A") transactions completed the most active year since the financial crisis and continue to boom this year, it is helpful to go back to basics with a broad overview of the topic. Moreover, activity has been prevalent in all market sectors, including large, mid, and small cap and across all industries, including biotech, financial services, technology, consumer goods and services, food and beverage, and healthcare, among others.

This article gives a basic overview of M&A transactions beginning with a review of the fundamentals of the transaction, followed by a broad summary of standard transaction documents, continuing with directors' responsibilities and ending with a review of dissenter and shareholder appraisal rights.

Types of Mergers and Acquisitions

A merger or acquisition transaction is the combination of two companies into one resulting in either one corporate entity or a parent-holding and subsidiary company structure. Mergers can be categorized by the competitive relationship between the parties and by the legal structure of the transaction. Related to competitive relationship there are three types of mergers: horizontal, vertical, and conglomerate. In a horizontal merger, one company acquires another that is in the identical or substantially similar industry eliminating a competitor. In a vertical merger, one company acquires a customer or supplier. A conglomerate merger covers all other transactions where there is no direct competitive or vertical relationship between the merging parties. The result is generally the creation of a conglomerate—thus the name.

From a legal structure perspective, an M&A transaction can be an asset purchase, a stock purchase, a forward merger, or a forward or reverse triangular merger. In an asset purchase, stock acquisition, forward merger, or forward triangular merger, the acquiring company remains in control. In a reverse merger or a reverse triangular merger, the target company shareholders and management gain control of the acquiring company.

In an asset purchase transaction, the acquirer can pick and choose the assets it is purchasing and, likewise, the liabilities it is assuming. An asset purchase can be complex and requires careful drafting to ensure that the desired assets are included, including all tangible and intangible rights thereto, and that only the specified liabilities are legally assumed. Third-party consents are often required to achieve the result.

In a stock acquisition, the acquiring company purchases the stock from the target company shareholders. A stock acquisition can result in a forward or reverse acquisition depending on the control of the target company shareholders at the closing of the transaction. In a stock acquisition transaction, the operations, assets, and liabilities of the target remain unchanged; it just has different ownership. Complexities arise if some of the target company shareholders refuse to participate in the transaction, leaving unfriendly minority shareholders. Oftentimes a stock acquisition is structured such that a closing is contingent upon a certain percentage participation, such as 90% or even 100%.

In a forward merger or a forward or reverse triangular merger, two companies combine into one, resulting in either one corporate entity or a parent-holding and subsidiary company structure. The shareholders of the target company receive either stock of the acquirer, cash, or a combination of both. All assets and liabilities are included in the M&A transaction. A triangular merger is one in which a new acquisition subsidiary is formed to complete the transaction and results in a parent-subsidiary structure.

As mentioned above, a reverse merger results in a change of control of the acquirer. In particular, in a reverse or reverse triangular merger, the shareholders of the target company exchange their shares for either new or existing shares of the acquiring company so that at the end of the transaction, the shareholders of the target company own a majority of the acquiring company and the target company has become a wholly owned subsidiary of the acquiring company or has merged into a newly formed acquisition subsidiary.

The specific form of the transaction should be determined considering the relevant tax, accounting, and business objectives of the overall transaction.

An Outline of the Transaction Documents

Generally the first step in an M&A deal is executing a confidentiality agreement and letter of intent ("LOI") followed by the merger agreement itself. In addition to requiring that both parties keep information confidential, a confidentiality agreement sets forth important parameters on the use of information, including allowable disclosure both internally and to third parties. Moreover, a confidentiality agreement may contain other provisions unrelated to confidentiality, such as a prohibition against solicitation of customers or employees (noncompetition) and other restrictive covenants. Standstill and exclusivity provisions may also be included, especially where the confidentiality agreement is separate from the LOI.

An LOI is generally nonbinding and spells out the broad parameters of the transaction. The LOI helps identify and resolve key issues in the negotiation process and hopefully narrows down outstanding issues prior to spending the time and money associated with conducting due diligence and drafting the transaction contracts and supporting documents. Among other key points, the LOI may set the price or price range, the parameters of due diligence, necessary pre-deal recapitalizations, confidentiality, exclusivity, and time frames for completing each step in the process. Along with an LOI, the parties' attorneys prepare a transaction checklist which includes a "to do" list along with the "who do" identification.

Many, if not all, letters of intent contain some sort of exclusivity provision. In deal terminology, these exclusivity provisions are referred to as "no shop" or "window shop" provisions. A "no shop" provision prevents one or both parties from entering into any discussions or negotiations with a third party that could negatively affect the potential transaction, for a specific period of time. A "window shop" provision allows for some level of third-party negotiation. For example, a "window shop" provision may allow for the consideration of unsolicited proposals.

Much different from a no shop or window shop provision is a "go shop" provision. To address a board of directors' fiduciary duty and, in some instances, to maximize dollar value for its shareholders, a potential acquirer may request that the target "go shop" for a better deal up front to avoid wasted time and expense. A "go shop" provision is more controlled than an auction and allows both target and acquiring entities to test the market prior to expending resources. A "go shop" provision is common where it is evident that the "Revlon Duties" have been triggered for the board of directors.

A standstill provision prevents a party from making business changes during the negotiation period outside of the ordinary course. Examples include prohibitions against selling off major assets, incurring extraordinary debts or liabilities, spinning off subsidiaries, hiring or firing management teams, and the like. Many companies also protect their interests in the LOI stage by requiring significant stockholders to agree to lock-ups pending a deal closure. Some lock-ups require that the stockholder agree to vote their shares in favor of the deal as well as not transfer or divest themselves of such shares.

The Merger Agreement

In a nutshell, the merger agreement sets out the financial terms of the transaction and the legal rights and obligations of the parties with respect to the transaction. It provides the buyer with a detailed description of the business being purchased and provides for rights and remedies in the event that this description proves to be materially inaccurate. The merger agreement sets forth closing procedures, preconditions to closing and post-closing obligations, and sets out representations and warranties by all parties and the rights and remedies if these representations and warranties are inaccurate.

The main components of the merger agreement and a brief description of each are as follows:

1. **Representations and warranties** – Representations and warranties generally provide the buyer and seller with a snapshot of facts as of the closing date. From the seller, the facts are generally related to the business itself, such as that the seller has title to the assets, there are no undisclosed liabilities, there is no pending litigation or adversarial situation likely to result in litigation, taxes are paid, and there are no issues with employees. From the buyer, the facts are generally related to legal capacity, authority, and ability to enter into a binding contract. Both parties represent as to the accuracy of public filings, financial statements, material contract, tax

matters, and organization and structure of the entity.

2. **Covenants** – Covenants generally govern the parties' actions for a period prior to and following closing. An example of a covenant is that a seller must continue to operate the business in the ordinary course and maintain assets pending closing. All covenants require good faith in completion.

3. **Conditions** – Conditions generally refer to pre-closing conditions such as shareholder and board of director approvals, that certain third-party consents are obtained, and that proper documents are signed. Generally, if all conditions precedent are not met, the parties can cancel the transaction.

4. **Indemnification/remedies** – Indemnification and remedies provide the rights and remedies of the parties in the event of a breach of the agreement, including a material inaccuracy in the representations and warranties or in the event of an unforeseen third-party claim related to either the agreement or the business.

5. **Deal protections** – Like the LOI, the merger agreement itself will contain deal protection terms. These deal protection terms can include no shop or window shop provisions, requirements as to business operations by the parties prior to the closing, breakup fees, voting agreements, and the like.

6. **Schedules** – Schedules generally provide the meat of what the seller is purchasing, such as a complete list of customers and contracts, all equity holders, individual creditors, and terms of the obligations. The schedules provide the details.

In the event that the parties have not previously entered into an LOI or confidentiality agreement providing for due diligence review, the merger agreement may contain due diligence provisions. Due diligence refers to the legal, business, and financial investigation of a business prior to entering into a transaction. Although the due diligence process can vary depending on the nature of a transaction (a relatively small acquisition vs. a going public reverse merger), it is arguably the most important component of a transaction (or at least equal with documentation).

Board of Directors' Fiduciary Duties in the Merger Process

State corporate law generally provides that the business and affairs of a corporation shall be managed under the direction of its board of directors. Members of the board of directors have a fiduciary relationship to the corporation, which requires that they act in the best interest of the corporation, as opposed to their own. Generally a court will not second-guess directors' decisions as long as the board has conducted an appropriate process in reaching its decisions. This is referred to as the "business judgment rule." The business judgment rule creates a rebuttable presumption that "in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company" (as quoted in multiple Delaware cases including *Smith vs. Van Gorkom*, 488 A.2d 858 (Del. 1985)).

However, in certain instances, such as in a merger and acquisition transaction, where a board may have a conflict of interest (i.e., get the most money for the corporation and its shareholders vs. getting the most for themselves via either cash or job security), the board of directors' actions face a higher level of scrutiny. This is referred to as the "enhanced scrutiny business judgment rule" and stems from *Revlon, Inc. vs. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173 (Del. 1986) and *Unocal vs. Mesa Petroleum*, 493 A.2d 946 (Del. 1985).

A third standard, referred to as the "entire fairness standard," is only triggered where there is a conflict of interest involving directors and/or shareholders, such as where directors are on both sides of the transaction. Under the entire fairness standard, the directors must establish that the entire transaction is fair to the shareholders, including both the process and dealings and price and terms.

In all matters, directors' fiduciary duties to a corporation include honesty and good faith as well as the duty of care, duty of loyalty, and a duty of disclosure. In short, the duty of care requires the directors to perform their duty with the same care a reasonable person would use, to further the best interest of the corporation, and to exercise good faith under the facts and circumstances of that particular corporation. The duty of loyalty requires that there be no conflict between duty and self-interest. The duty of disclosure requires the directors to provide complete and materially accurate information to a corporation.

As with many aspects of the law, a director's responsibilities and obligations in the face of a merger or acquisition transaction depend on the facts and circumstances. From a high level, if a transaction is not material or only marginally material to the company, the level of involvement and scrutiny facing the board of directors is reduced and only the basic business judgment rule will apply. For instance, where a company's growth strategy is acquisition-based, the board of directors may set out the strategy and parameters for potential target acquisitions but leave the completion of the acquisitions largely with the C-suite executives and officers.

Moreover, the directors' responsibilities must take into account whether they are on the buy or sell side of a transaction. When on the buy side, the considerations include getting the best price deal for the company and integration of products, services, staff, and processes. On the other hand, when on the sell side, the primary objective of maximizing the return to shareholders though social interests

and considerations (such as the loss of jobs) may also be considered in the process.

The law focuses on the process, steps, and considerations made by the board of directors, as opposed to the actual final decision. The greater the diligence and effort put into the process, the better, both for the company and its shareholders, and for the protection of the directors in the face of scrutiny. Courts will consider facts such as attendance at meetings, the number and frequency of meetings, knowledge of the subject matter, time spent deliberating, advice and counsel sought by third-party experts, requests for information from management, and requests for and review of documents and contracts.

In the performance of their obligations and fiduciary responsibilities, a board of directors may, and should, seek the advice and counsel of third parties such as attorneys, investment bankers, and valuation experts. Moreover, it is generally good practice to obtain a third-party fairness opinion on a transaction.

Dissenter and Appraisal Rights

Unless they are a party to the transaction itself, such as in the case of a share-for-share exchange agreement, shareholders of a company in a merger transaction generally have what is referred to as "dissenters" or "appraisal rights." An appraisal right is the statutory right by shareholders who dissent to a particular transaction to receive the fair value of their stock ownership. Generally such fair value may be determined in a judicial or court proceeding or by an independent valuation. Appraisal rights and valuations are the subject of extensive litigation in merger and acquisition transactions.

Although the details and appraisal rights process vary from state to state (often meaningfully), as with other state corporate law matters, Delaware is the leading statutory example and the Delaware Chancery Court is the leader in judicial precedence in this area of law. More than half of U.S. public companies and more than two-thirds of Fortune 500 companies are domiciled in Delaware.

As is consistent with all states, the Delaware General Corporation Law ("DGCL") Section 262 providing for appraisal rights requires both petitioning stockholders and the company to comply with strict procedural requirements. Section 262 of the DGCL gives any stockholder of a Delaware corporation who (i) is the record holder of shares of stock on the date of making an appraisal rights demand, (ii) continuously holds such shares through the effective date of the merger, (iii) complies with the procedures set forth in Section 262, and (iv) has neither voted in favor of nor consented in writing to the merger, to seek an appraisal by the Court of Chancery of the fair value of their shares of stock.

Generally there are four recurring valuation techniques used in an appraisal rights proceeding: (i) the discounted cash flow (DCF) analysis; (ii) a comparable company's analysis and review; (iii) a comparable transactions analysis and review; and (iv) the merger price itself. Merger price is usually reached through the reality of a transaction process, as opposed to the academic and subjective valuation processes used in litigation challenging such price.

In a recent line of cases, the Delaware court has upheld the merger price as the most reliable indicator of fair value where the merger price was reached after a fair and adequate process in an arm's-length transaction. Where there is a question as to the process resulting in the final merger price, Delaware courts generally look to the DCF analysis as the next best indicator of fair value.

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Securities attorney Laura Anthony and her experienced legal team provide ongoing corporate counsel to small and mid-size OTC and exchange traded issuers as well as private companies going public. For nearly two decades Legal & Compliance, LLC has served as the "Big Firm Alternative." The firm's focus includes, but is not limited to, going public transactions, mergers and acquisitions including both reverse mergers and forward mergers, private placements, PIPE transactions, Regulation A offerings, crowdfunding, and compliance with all aspects of the Securities Act of 1933 and Securities Exchange Act of 1934. Ms. Anthony and her firm represent both target and acquiring companies in reverse mergers and forward mergers, including assistance in negotiations and the preparation of transaction documents. Ms. Anthony is the author of SecuritiesLawBlog.com, and the producer and host of LawCast.com, the securities law network.

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Five Strategies to Become Indispensable

By E. Bradley Litchfield, Esq.

During Week 1 as a new lawyer, my legal assistant angrily burst into my office, clutching my brief that bore her furious red markings as she erupted into a tirade that my draft document was unacceptable, that I needed to redo it, and how "we" do not practice law that way.[1] I was shocked. Didn't she realize that I was a top student at a premiere law school? Didn't she know I clerked for a nationally renowned law firm? Should she be able to talk to me like that? The answers: Yes, all around. She was right, and we both knew it. Over the next few years, her skill, experience, and drill sergeant demeanor provided me still-unrivaled legal practice guidance.

Twenty-two years later, days before trial, my legal assistant presented me with four copies of carefully labeled exhibit books, a comprehensive trial notebook, her notes on key deposition transcripts, and my draft trial memorandum, complete with suggestions as to additional theories to pursue on cross examination.

So were my first and most recent experiences with two legal assistants. The first as a drill sergeant raising the bar and the second, a different kind of sergeant, brimming with field experience and capably collaborating, anticipating, and supporting the commanding officer's next engagement.

Though the two-sergeant analogy may be a bit melodramatic, it demonstrates a capable legal assistant's role in a law practice. These examples help illustrate this article's "Top 5" legal assistant roles that make that legal assistant particularly valuable in a family law case but, in reality, relate to any law practice.

#1 Know Your Lawyer—Know Yourself

Within days of starting work with a new attorney you will generally have a good feel for his or her personality, work style, and temperament. As your work relationship matures, you should strive to discern the more substantive nuances of how that attorney practices law. For example, is the attorney detail-oriented or a "don't sweat the details" person? Does the attorney efficiently or inefficiently manage time and deadlines? Does the attorney thrive on client contact, or is client contact a necessary evil for the attorney? Does the attorney have extensive experience in this practice area, or does he or she lack basic skills?

Why is this analysis even necessary? Is it a one-sided rationalization to secretly criticize the attorney? Certainly not. This analysis allows the legal assistant to compare his or her skills with those of the attorney. Of course, this means that you must first candidly assess your own strengths and weaknesses but, once armed with your self-assessment, you can compare how your skills and weaknesses complement or contradict those of your attorney. In other words, understanding each other's work styles can be used to maximize productivity.

Easier said than done? Perhaps. Your attorney's personality may make the subject of discussing each other's strengths and weaknesses a difficult conversation. Still, best practices suggest that you try to deal with the issue directly: "I would like to meet to discuss how we can be most efficient in how we work together." "Would you be willing to sit down with me to identify inefficiencies in the way we work together?" "Would you be willing to meet with me to identify ways that I can reduce your workload?" Regardless, use tact and sensitivity to avoid the attorney feeling attacked. Most lawyers welcome the opportunity to work more productively as a team.

Know Your Lawyer—Know Yourself—Tips and Tricks

1. Do a formal analysis of your and your lawyer's strengths and weaknesses.
2. Record your conclusions in a memorandum and then jointly discuss.
3. Develop a game plan on how to best implement your conclusions.
4. Calendar meetings to discuss progress and retool where necessary.
5. Meet with other legal assistants and lawyers in your office to discuss how the review process has improved your team's productivity.
6. When discussing these issues be respectful, discreet, and open minded. Do not target anyone; make the meeting about productivity not personality.

#2 Hold Clients' Hands

Each day, legal assistants must deal with clients' emotions such as confusion, anger, frustration, and grief among other emotions. For various reasons, clients tend to share their emotions with legal assistants differently than they do with an attorney. You need to recognize and be prepared for this reality. Work to develop the art of empathetic client reassurance while rejecting the temptation to promise things that legal assistants should not promise.

Sixty percent of patients rate the quality of their medical doctor by that doctor's people skills, whereas only 11% rate the doctor's skills based upon diagnostic ability.[2] Clients are no different. Work to polish and refine your customer relations skills so client experiences with you are positive and supportive because, as your experience increases, your face time with the clients will also increase.

As a legal assistant, clients will rely on you in ways that normally would go through the attorney. Legal assistants offer a more cost-effective way to communicate important details to the attorney. Recognize and embrace this approach to client problem solving, but be careful not to exceed the proper parameters and boundaries of a legal assistant.

Hand Holding—Tips and Tricks

1. Develop a cheat sheet of client particulars such as children's names, new spouse's name, family or child events or activities, and children's schools. Small talk about these matters can make a client feel a personal connection with you. If you venture into these waters, be genuine about it.
2. Avoid pat answers like, "Attorney Clarence Darrow is in a meeting right now; please leave a message on his voicemail." Instead, address the client's concerns and provide a straightforward explanation of the attorney's situation. Candor will help defuse the problem and promote goodwill, as the client knows he or she is being treated with respect.
3. Never lie or obfuscate to cover for your attorney. Deal with clients and their problems straight up. Sometimes the only answer to the client is that the client needs to meet with the attorney. In those situations, validate the client by setting up an appointment.
4. Listen, show empathy, offer solutions when possible, and follow up on festering problems.
5. Never get personally involved in the parties' conflict. Maintaining a professional distance helps preserve your objectivity.
6. Document client conversations to better inform the attorney of the case status. Use your judgment about whether a formal memorandum or a simple email—copied to the file—will suffice.

#3 Dominate the Periphery

Some attorneys prefer to delegate preliminary "peripheral" tasks to the legal assistant. These responsibilities can include managing discovery, preparing specific motions, or handling client financial disclosure. Although initially viewed as peripheral in the case, these matters become critical to the case as it matures. Not dealing with or thinking about discovery issues early in the case creates unnecessary stress and delay down the line. Hastily assembled or poorly supervised financial disclosure or uniform support declarations damage client credibility. A legal assistant willing to tackle these routine but critical issues can immensely help the attorney and client.

To dominate in the periphery means more than assembling responsive documents. It means mastering picky discovery rules and annoying procedural steps to become a discovery expert. A legal assistant who knows the rules and also understands the issues in the case can use the discovery process to recognize the "hot documents" that will win the case, can identify missing documents, and can spot new issues or weaknesses for follow up.

Dominate the Periphery—Tips and Tricks

1. Monitor a client's information included in financial statements or support declarations. Inflated expenses or underestimated income damage client credibility. Require the client to use real rather than estimated numbers. Do the math to include all relevant income sources and properly document and support those figures.
2. Review both the client's and opposing party's document production carefully for completeness. Flag and follow up on insufficient disclosure by either party. Discuss whether a motion to compel, a supplemental request, or a candid discussion with the client is needed.
3. Preserve all discovery documents assembled by the client. Do not let original documents be marked up, highlighted, or disassembled. Strict legal and professional

duties require you to preserve this evidence.

4. Use a memorandum to the attorney to identify key documents, critical evidence, or other wild card issues. Include a physical copy of the memorandum with the discovery as weeks may pass before anyone can reimmerse himself or herself in the case.
5. Identify attorney-client privilege or attorney work product documents and strictly comply with your state's rules. The fleeting privilege against disclosure can be waived by your inattention. Meet with the lawyer to discuss how to handle privileged documents.
6. Strictly comply with court protective orders governing discovery documents. Copies of any court order should be attached to discovery files, binders, or the documents themselves within the client file. Failure to comply may bring sanctions to your firm or client.

#4 Communicate

Brash though it may sound, legal assistants need effective communication skills more than anyone else in a law office. Legal assistants communicate with the client (and his or her family), the attorney you work with, the opposing party's legal assistant, opposing attorney, court staff, your office bookkeeping department, experts, and in *pro se*/*pro per* cases, the opposing party.

Just as communication problems are the most common factor leading to divorce[3], poor communication between a legal assistant and attorney lead to poor client representation and an unhappy working relationship with your lawyer. Skillful communication takes real effort, practice, and—not surprisingly—lots of communication. Some legal assistants can brag that they can almost "read the attorney's mind," but that often follows a decade of working together; they have spoken about issues so many times, they know exactly what the attorney wants them to do. Absent spending 15 years together, you only acquire the skill of mind reading through active, consistent dialogue.

No tool enhances communication between legal assistant and attorney better than the routine, closed door, uninterrupted, sit down meeting best described as a "collaboration meeting." Hallway chats, water cooler discussions, or whispers in the elevator rarely amount to a meaningful information exchange. Effective collaboration meetings overview individual cases, prospective clients, workloads, upcoming deadlines, case problems or concerns, financial matters, nonclient matters such as vacations or continuing legal education needs, or even human resource problems in the office. The professional relationship between you and your attorney will never be optimal absent regular collaboration meetings.

Communicate—Tips and Tricks

1. Absolutely require that your attorney take time for a regular collaboration meeting. Schedule on the calendar and reschedule when necessary.
2. Have a written list of each client, prospective client, and other matters to discuss at the collaboration meeting. Update the list each week and note each party's assigned tasks. The list should include upcoming vacations and nonclient events such as lunches, CLE events, or volunteer activities.
3. Never give legal advice to clients or other parties. Meet with your lawyer to discuss what can be viewed as legal advice. Scrutinize all communications with unrepresented parties to delete anything that may be construed as legal advice.
4. Talk about upcoming deadlines candidly with your attorney and do not assume that the attorney has it handled. Offer assistance to take over aspects of the case that will allow the project to be completed prior to the deadline.
5. Identify and discuss avoidance files.[4]
6. Develop protocols for dealing with angry or distressed clients. Many online articles provide guidance tools for helping calm the emotional client. Most professionals suggest you respond with patience, empathy, and that you offer solutions to the client. Regardless of the approach you take, plan out your response in advance, remain professional, and stick to your plan.
7. Guard your tone and temper. Work to make all your relationships as a legal assistant professional, both when you are wrong, and when you are right. A gentle answer to another can deflect what might otherwise be an angry confrontation.[5] A kind word of forgiveness is the best approach when you have been wronged.[6]
8. Always treat court staff with the respect, even when the judge or they are being difficult. Court staff has the ear of the judge and know the system. You or your attorney are guaranteed to need the staff members' help in the future, so be careful not to create enemies.

#5 Quality Control

Just as a child is shocked to realize a parent is imperfect, so is an inexperienced legal assistant surprised to realize his or her attorney has flaws in the way he or she practices. The attorney may not write well, may not manage time perfectly, may overpromise, or simply may get things wrong. Practical use of this newfound knowledge can be awkward, but the pace of most legal practices demands you confront the situation without delay. Once you realize the areas where your attorney is not strong, you must establish yourself as a quality-control gatekeeper for that particular weakness. To be sure, this entire burden is not yours, but you must assume the role of a true coequal—demand quality work and attention to detail.

Attention to detail is the hallmark of

a skilled legal assistant. Never assume that the attorney will catch errors or discern problems with a document you draft. Resist the temptation to "throw something together" when you lack confidence about the resulting work product. Instead, take the time to meet with the lawyer and collaborate about what needs to be accomplished and identify resources available to create a better work product.

Most of the time the legal assistant is the last person to touch work product before it leaves the office. Take that opportunity to demand the highest standards for you or your attorney's work product. Quality control must be your habit; any other approach is insufficient.

Quality Control - Tips and Tricks

1. Be unrelentingly detail-oriented.
2. When you first start working with your attorney, meet in person to discuss topics like: (a) how much involvement your attorney wants in editing errors; whether it is correction of obvious errors only, a hard "flyspeck" edit without discussing changes with the attorney, or something in between; (b) the role each party should play in ensuring a quality work product; and (c) how do we manage deadlines to avoid last-minute filing errors.
3. Where appropriate, have the client review document drafts for errors in names, dates, or other details. Thus, the client is involved in quality control, and the person drafting the document is more likely to generate better quality product and avoid embarrassing oversights that the client is sure to point out.
4. Develop firm protocols to ensure that forms or court documents are current. Using outdated forms or incorrect standardized court documents makes your practice look sloppy.
5. Review each document carefully multiple times and remember the silly little phrase, "There is an error in this document and I need to find it." You almost always will.
6. Establish protocols to avoid using different versions of a document. Delete or archive old versions of a document or use software that eliminates version control problems.
7. Let important or complex documents sit a day or two and then pick the draft up for a fresh review. If time will not permit, get another legal assistant to review the document for errors.
8. Always print final versions of documents for a hard copy review. Reading electronic documents online encourages skimming, not careful analysis for errors.[7]
9. Find a great editing pen and use it only for quality control editing. Again, silly though it may be, the tactile feel of the pen, the paper, and marking up the written words make editing more enjoyable and interesting.
10. Take a legal writing course yearly to help you to brush up on punctuation and legal writing generally. If one is not available in your area, review the state court's appellate style guide for legal writing guidelines unique to your jurisdiction.
11. Never adopt a shortcut at the risk of work product quality.

Conclusion

A legal assistant's job is to solve problems. Skillful, empathetic communication to those with whom you work, done with a commitment to quality and professionalism will not only help you solve those problems, but will make you indispensable to those involved in the process.

@LAW

E. Bradley Litchfield (Brad) is a partner in the Eugene, Oregon, law firm of Hutchinson Cox. He graduated from the University of British Columbia Faculty of Law in 1993 and practiced law in British Columbia as a Barrister and Solicitor in B.C. until 1998. He pursued post-doctoral graduate law studies at Brigham Young University, graduating cum laude in 1999 with a master's degree in law. Following completion of post-graduate studies, he moved with his family to Eugene, Oregon, where he has practiced law since that date.

When Brad is not enjoying time with his wife and four children, playing ice hockey, plucking away at his banjo, or tending his bees, he is a litigator that dedicates a significant portion of his work to family law. Brad finds real fulfillment working with family law clients where he strives to help parents avoid the collateral damage to parents and children arising in high-conflict domestic relations matters.

Brad has served as member of the Oregon State Bar Professional Responsibility Board for three years, recently being appointed in November 2015 to serve as the committee Chair.

ENDNOTES:

1. *Excluded from this conversation is my legal assistant's skillful use of profanity to create emphasis.*
2. *http://www.beckershospitalreview.com/hospital-physician-relationships/bedside-manner-trumps-quality-care-8-stats-on-americans-physician-preference.html*
3. *http://www.yourtango.com/experts/rochelle-bilow/want-your-marriage-last?utm_source—huffingtonpost.com &utm_medium=referral&utm_campaign=pubexchange_article*
4. *Avoidance files are those files that one or both of you cannot or will not work on.*
5. *Proverbs 15:1*
6. *Quran 2:263*
7. *https://www.washingtonpost.com/local/why-digital-natives-prefer-reading-in-print-yes-you-read-that-right/2015/02/22/8596ca86-b871-11e4-9423-f3d0a1ec335c_story.html*

A **SHORT TRIP** FROM **NASHVILLE** AND A LONG JOURNEY INTO **AMERICA'S HISTORY**...

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