

# the YOUNG LAWYER

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## THIS MONTH

*Surviving a Bad Employment Situation*  
By David M. Wilkins

*The Power of Open-Ended Questions*  
By Rick Buccheri

## A Long Race to Retirement

By Gregory V. Kanarian

In a Dilbert cartoon, the boss is asked, "Why aren't you signed up for the 401(k)?" His response: "I'd never be able to run that far."

What the boss didn't understand was that 401(k) is the section of the Internal Revenue Code that establishes employer-sponsored retirement accounts, and it's a race worth joining.

Most likely your firm offers a 401(k) plan or similar retirement plan for its employees. As a young lawyer, you have the opportunity to start building your retirement nest egg. Here is some helpful advice to get you started.

### Contributions

Step one is to determine how much you can afford to save. After student loan payments, you may come to the conclusion that you can't afford to save at all. But, consider this: many employers offer a "company match" (read: free money). This means your employer will match your contribution subject to a ceiling

and vesting schedule. For example, if you contribute 4 percent of your salary, your company may add another 4 percent to your account. That's a 100 percent return on your investment (ROI). With that type of ROI, you can't afford not to contribute!

If that doesn't convince you to save, then this might: any money you contribute (up to \$16,500 currently) reduces your taxable income.

Solo practitioners can set up a 401(k) to enjoy these same benefits; but, they risk losing the advantages if they hire more employees, especially those paid much less or those who decide not to contribute. Another popular option for self-employed individuals is the Simplified Employee Pension, or SEP. This plan only accepts contributions from the employer, which are discretionary, making it ideal for those with unpredictable earnings. Both types of retirement plans can be opened at brokerage firms, with less administration required for a SEP.

### Investment

Next, you'll need to determine how to invest your money. The 401(k) plan will offer several investment options in the form of mutual funds. The goal is to select the right mix of funds to provide both diversification and the appropriate risk level.

Diversification helps smooth out the bumps in the market and ensures that all of your eggs aren't in one basket. But, don't be fooled: if your plan offers ten funds and you put 10 percent in each fund, that's not diversification. A good asset allocation includes large-cap stocks, small-cap stocks, international stocks, emerging market stocks, bonds, and maybe even commodities. Your plan should offer some sample allocations to help determine how much to invest in each. A starting point is to invest your age in bonds, so a 30-year-old would have 30 percent in bonds and 70 percent in stocks.

An easy way to achieve diversification is to select an "age-based" fund. These funds provide diversification among stocks and bonds and will automatically invest more conservatively as you near retirement. In the words of Ron Popeil, you just "set it and forget it!"



If you decide to create your own mix of funds, consider the fund's past performance and its expense ratio. Actively managed funds incur higher fees because they employ investment professionals who attempt to beat a benchmark, such as the S&P 500. But, they also risk underperforming the index when their stock picks don't pan out. On the other hand, you can choose a low-fee index fund that will track the returns of an index such as the S&P 500 but will never outperform it.

### Returns

To set expectations, according to Ibbotson Associates, the average annual return for large-cap stocks from 1926 to 2010 is 9.9 percent and 5.5 percent for government bonds. Assuming an

average annual return of 7 percent, you'll double your initial investment every ten years.

Annually, you should review your investment selections and contribution rate. You may want to adjust your allocation based on the performance and volatility of your investments. The more you can stash away in your early earning years, the more you'll benefit from compound interest, or as Einstein called it "the 8th wonder of the world."

As Dilbert's boss recognized, the race to retirement can be long—slow and steady wins the race.

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## Bringing Out the Rainmaker in You

By Andrea Henc Evans

Securing your first legal job may seem like the biggest hurdle you will have to face for a while. Yet, from the start of your legal career, you must learn to balance being the most effective advocate for your current clients with developing ways to attract new clients and retain current clients. Partners of law firms are evaluating

their associates based on their lawyering skills and the amount of money the associates bring in to the firm. At many firms, it is not acceptable to be the "worker bee" attorney anymore. Sure you can do the work. You were hired because you were able to distinguish yourself from other candidates. But now that you have the job, how do you

compare to your fellow associates?

A rainmaker is an attorney who can do both the "worker bee" attorney's job and cultivate clients. Especially in this ailing economy, if you were in the partner's shoes and had to choose between working with a "worker bee" attorney and a "rainmaking" attorney, who

would you choose?

Here are some tips to help bring out the rainmaker in you. You need to earn **Respect**, pay **Attention**, be **Intelligent**, **Network**, earn **Money**, be **Available**, **Keep in touch**, and be **Efficient** and **Realistic**.

### Respect

Earning respect in your field is critical to become an effective rainmaker. To earn respect, be dedicated to your firm and your clients so that you achieve positive results. Become the "go-to" attorney in your area of the law.

Your clients and peers will grow to respect you and refer clients to you.

### Attention

Pay attention to your client's needs. If a client tells you he is not technologically savvy, do not plan to communicate primarily by e-mail. Listen to your clients. Lawyers are known for talking; but, listening and catering to your client's needs will pay off in the long run. If your client references a special occasion, such as an upcoming

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# BACK TO BASICS PRACTICE REMINDERS FOR ATTORNEYS OF ALL EXPERIENCE LEVELS

## Crash Course in Drafting Service Agreements

By Janice L. Baker

The services sector—businesses that offer knowledge or skills to provide maintenance services or improve performance—is the largest component of the U.S. gross domestic product and is the fastest growing component of the nation's economy. Accordingly, many corporate attorneys draft and negotiate service agreements, and many trial attorneys find themselves litigating conflicts relating to these same agreements. The following is a crash course in drafting effective service agreements.

The first step to drafting an effective service agreement is to understand the business transaction. This knowledge enables the attorney to prepare an agreement that accurately describes the scope of services to be provided and the agreed obligations and rights of the parties. Almost every aspect of a service contract can be negotiated. Some key legal

terms that are usually subject to considerable negotiation include warranty, indemnity, and liability provisions.

**Warranty.** The purchaser typically demands some type of protection that the services provided will be free from defects. The warranty provision should define the types of defects covered by the warranty (e.g., workmanship and material) and the duration of the warranty (i.e., when the warranty commences and ends).

The contract also should specify the warranty's conditions and limitations. The provision may describe any requirements for exercising the warranty, such as prompt notification of a claim or return of the deficient serviced product, as well as any exceptions to the warranty, such as improper use by the purchaser or normal wear and tear.

In addition, the warranty clause should delineate the

applicable corrective action for failure to meet the warranty and stipulate both the remedies and cost allocations.

Finally, the service provider may include exclusive remedy and warranty provisions, excluding the application of any other remedies and warranties (e.g., implied or statutory warranties and warranties of merchantability or fitness for a particular purpose).

**Indemnity.** Most purchasers ask for indemnities to supplement warranty coverage. A standard indemnity obligates the service provider to hold harmless the purchaser when the seller's action results in harm to a third party who makes a claim against the purchaser.

The service provider typically desires to limit such indemnity coverage only to harm caused to third parties and not encompass harm directly suffered by the purchaser, who can seek redress under the warranty. For example, the indemnity may be limited to personal injury or death and third-party physical property damage.

The service provider may confine its exposure by ensuring the indemnification provision triggers liability only to the extent

the damages are caused directly and solely by the service provider, requiring a threshold level of legal fault and/or preserving the option for the service provider to defend (or settle) the third-party claim.

**Liability.** The service provider nearly always desires to limit the type and amount of damages it could be responsible for under the contract. The limitation of liability provision should include an overall cap on the service provider's liability, as well as an express disclaimer for certain types of damages, such as consequential, indirect, incidental, and punitive damages.

The limitation of liability clause should enumerate the circumstances from which liability could arise (e.g., use or sale). It should specify any carve outs to the cap for third-party liability or claims that arise from the willful misconduct (or other legal fault level) of the service provider.

Similar to the warranty provision, the limitation of liability provision should include a restatement that the language in the contract contains the sole remedies for the purchaser and the exclusive liabilities for the service provider.



In summary, drafting an effective service agreement requires consideration of all the terms and conditions of the underlying business arrangement. Carefully drafted warranty, indemnity, and liability provisions help clarify the obligations and liabilities of the parties and minimize risks associated with disputes.

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### Rainmaker in You

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birthday or anniversary, go the extra mile and send a tasteful and professional letter or card.



### Intelligent

Remember, you have to know the law to be a great lawyer. Participate in CLEs, even if they are not required by the state where you are licensed.

Not only will CLEs keep you informed, they also offer great opportunities to meet lawyers with your same interests. Also, read quality publications and lawyer blogs to stay abreast of the latest cases, legislation, and industry news.

### Network

If there is one key, this is it. Building relationships with your peers can prove to be profitable. Network with all lawyers, and do not overlook attending events with lawyers from different practice areas.

### Money

You don't have to spend that much money to make money. Do not get caught up in spending

more money than you earn on networking events and dinners. You can have the same conversation with a potential client over coffee than over dinner at a five-star restaurant.

### Available

Be available for your clients. Always make each client feel as if he or she is your only client. If the client is constantly being sent to your voicemail, you may be replaced with a lawyer who will make time for the client.

### Keep in Touch

After attending a networking event, what do you do with those business cards? Follow up. Staying fresh on your peers' minds will get you referrals.

### Efficient

Your clients will appreciate your efficiency when they look at their bills. Do not waste your time and, most importantly, do not waste their time.

### Realistic

If a client questions your genuineness, you risk losing them. Although you can learn to be a rainmaker, your interest must be sincere. If your conversations appear scripted or forced, then your client may seek an attorney that is a more effective communicator.

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# Business Development Plans

TIME WELL SPENT

By Brian T. Sumner



Whether or not you subscribe to Malcolm Gladwell's theory that it takes 10,000 hours of work (among other things) to achieve success in a specific field, any lawyer will tell you that business development takes time and sustained effort. With the considerable demands on your time as it is, an organized and goal-oriented approach to business development will increase your probability of success by maximizing the return on the time you invest.

Although business development plans may vary according to

your level of experience, type of practice, and other factors, any plan should focus on your contacts, your practice, and activities geared toward enhancing both.

### Maximize your contacts

Think about each of your contacts strategically: who are your potential clients and referral sources; who are your repeat and one-off clients; who has referred you business regularly and less frequently; to whom do you or

could you refer business (externally and within your firm)? Write down the names of these individuals, your relationships with them, and your history with each. Keep track of these people and their notable cases and transactions, and consider how you might be able to collaborate with them.

### Evaluate your business

Examine your existing practice in similar terms: why have clients engaged you for multiple matters; what changed with clients who brought you business in the past but not recently; what clients and potential clients are undergoing internal changes that might create new business opportunities for you; what can you do to make yourself more valuable to your clients and potential clients; and what can you do to cultivate your referral sources? This requires ex-

amine your practice and sources of business with a critical eye. Evaluate your costs appropriately and, if necessary, abandon expensive activities that have a low yield. Set periodic goals business development goals to keep yourself on track. For example, commit to reconnecting with a certain number of contacts each

quarter. Stay attuned to legal developments and news involving or affecting your clients and potential clients, so your e-mails and telephone calls to them are substantive and show that you are informed and proactive. They will appreciate that you are thinking about what is important to them. Set aside an hour or so each week to reflect on your business development plan. Use this time to update it, document steps you have taken to advance your established goals, and decide what new goals you might set.

You may end up spending 10,000 hours on business development over the course of your career; but, however many hours you spend, it is up to you to ensure that precious time is well spent.

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You may end up spending 10,000 hours on business development over the course of your career.



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# YLD CALENDAR & CONFERENCES

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| OCT. 13-15   | <b>ABA YLD FALL CONFERENCE   SEATTLE, WA</b><br>Join us in Seattle this October! The Fall Conference brings together young lawyers from all practice areas, practice settings, and parts of the country for three days of learning, networking, and public service.<br><b>CONFERENCE HIGHLIGHTS INCLUDE:</b> <ul style="list-style-type: none"> <li>More than 20 educational sessions starting Thursday afternoon and ending Saturday afternoon</li> <li>Legal updates and practical tips from expert faculty covering client service, trial skills, e-discovery, social media use, ethics, and much more</li> <li>Speed Negotiation, a truly hands-on workshop designed for mastering the art of negotiation</li> <li>Valuable networking events, where you connect with colleagues and presenters</li> <li>Special sessions designed for young lawyer organizations and their bar leaders</li> <li>Meaningful public service and pro bono activities</li> <li>Friday Night Gala at Seattle's Experience Music Project (EMP)</li> </ul> |
| REGISTER TODAY AT <a href="http://AMBAR.ORG/YOUNGLAWYERS2011">AMBAR.ORG/YOUNGLAWYERS2011</a> |  |
| OCT. 14  | <b>PROJECT SALUTE: YOUNG LAWYERS SERVING VETERANS LAUNCH</b>   |
| OCT. 23-29   | <b>NATIONAL PRO BONO CELEBRATION</b>   |
| FEB. 2-4, 2012   | <b>YOUNG LAWYER EVENTS AT THE ABA MIDYEAR MEETING<br/>NEW ORLEANS, LA</b>  |

**ELECTION NOTICE.** The Division will elect the Secretary-Treasurer, Assembly Clerk, and one delegate to the ABA House of Delegates at the ABA Annual Meeting on August 4, 2012, in Chicago, IL. Eligible individuals must submit their candidacy by written notice to the Secretary-Treasurer, with a copy to the Assembly Speaker, and the Staff Director by the Division's Assembly Meeting adjournment by the end of the ABA Midyear Meeting on February 4, 2012, in New Orleans, LA. The written notice must specify a single position sought. There is no special form. It is suggested that it simply identify the candidate (by name, address, and telephone number) and say, "Please accept this letter as my written notice of candidacy for [title]." For more information, visit [www.americanbar.org/groups/young\\_lawyers/about\\_us/elections1.html](http://www.americanbar.org/groups/young_lawyers/about_us/elections1.html).

Visit [ambar.org/younglawyers](http://ambar.org/younglawyers) for additional information.

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## The Intersection of VA Benefits Law and Elder Law

By Donald Vanarelli

Representing veterans in connection with Department of Veterans Affairs (VA) claims is an emerging practice area that is becoming an increasingly important component of an elder law practice.

Attorneys who wish to represent VA claimants must be VA accredited, i.e., they must meet the standards established by the VA to ensure that claimants for VA benefits receive "qualified assistance in preparing and presenting their claims." To receive accreditation, an attorney must submit an application for ac-

creditation, complete continuing education requirements, and comply with annual reporting requirements.

According to federal law, attorneys who do not receive VA accreditation may only provide limited services to veterans, such as providing general information about VA benefits, and are prohibited from assisting claimants in the preparation, presentation, and prosecution of VA claims, regardless of whether or not the attorney charges legal fees for those services.

The VA also regulates the

fees accredited attorneys may charge. In general, an attorney cannot charge a VA claimant for assistance in filing an eligibility verification report (EVR). An attorney may charge fees only if the claimant he or she represents received an adverse decision on a VA claim for benefits and filed a notice of disagreement (NOD), or an appeal, with respect to that adverse decision.

Veterans and their families are eligible for many programs, including general health programs and monetary benefit programs through the Veteran's Benefits Administration branch of the VA. Monetary benefit programs are separated into benefits for (1)

service-connected disabilities (primarily compensation benefits") and (2) nonservice-connected disabilities (primarily pension benefits).

According to the Veteran's Claims Assistance Act of 2000, the VA has a statutory duty to assist claimants in developing the pertinent evidence comprising a claim for benefits. In reality, the VA often resists providing proper assistance to claimants, despite its statutory obligation, making legal advocacy all the more important for veterans.

For example, because the pension benefit may be available for veterans who served during a period of wartime and

whose care expenses exceed their income, understanding VA benefits is an extremely important element of an elder law practice. An understanding of VA benefits allows an attorney to provide veterans and their families with advice on complex areas of law concerning long-term care planning, including VA pension benefits and the related issue of Medicaid benefits.

**Donald D. Vanarelli, of the Law Office of Donald D. Vanarelli with offices in Westfield, New Jersey, is a Certified Elder Law Attorney (by NAELA, accredited by the ABA), an Accredited Professional Mediator, and an Accredited VA Attorney. For more information, visit [www.dvanarelli.com](http://www.dvanarelli.com).**



Please visit [ambar.org/yldservicingveterans](http://ambar.org/yldservicingveterans) for information on becoming VA accredited and how to volunteer to help veterans obtain their federal benefits.

### LAW DAY VIDEO CONTEST FOR U.S. STUDENTS GRADES 9-12

Do you know any history buffs or budding video producers? Encourage them to compete in the American Bar Association Young Lawyers Division Law Day Video Contest for a chance to win a trip to Washington, D.C., to celebrate Law Day!

**VIDEO THEME:** "No Courts, No Justice, No Freedom."

Students are asked to highlight the role of our na-

tion's courts in our constitutional democracy and to foster public understanding of the judiciary.

**VIDEO LENGTH:** 3 minutes

**ELIGIBILITY:** U.S. students in grades 9-12

**DEADLINE:** February 15, 2012.

**PRIZE:** Winners at the state and national levels will be recognized. Four national semi-finalists will re-



Law Day Video Contest

ceive airline, hotel, and partial travel expenses for the Law Day 2012 activities in Washington, D.C. The national winner will be announced at a Law Day ceremony.

**SPREAD THE WORD:** (1) Notify local schools. (2) Reach out to teachers, parents, and students you know. (3) Send press releases to local papers. (4) Share information with your Facebook friends, Twitter followers, and LinkedIn connections. (5) Find sample letters, press releases, and messages at [ambar.org/lawdayvideocontest](http://ambar.org/lawdayvideocontest).