

# the YOUNG LAWYER

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## THIS MONTH

*Networking Tips from a Legal Recruiter*  
By Susanna Brennan

*Building a Quality Website*  
By John A. Fischer

## How to Be a Zealous Advocate without Zealotry

### TIPS FROM A JUDGE ON PROPERLY CRITICIZING JUDICIAL DECISIONS

By *The Honorable Walter C. Kurtz*

**A**BA Model Rule of Professional Conduct 8.2(a) prohibits a lawyer from “mak[ing] a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.” This rule is consistent with the longstanding premise that attorneys are officers of the court and, therefore, are charged with maintaining the integrity of the system. Making false and reckless allegations about a judge undermines the rule of law and can lead to ethical and professional problems for any lawyer, young or seasoned.

Below are some considerations for a lawyer to bear in mind before criticizing any court’s decision, whether in the course of representing a client or simply commenting generally about developments in the law.

Criticism of a judicial decision should be based on facts that are reasonably verifiable. Rumor, insinuation, and exaggeration of the type that is common in much general public and political discourse will open the door for ethical and professional trouble for a lawyer. For example, a lawyer should not assert or imply that a judge is “corrupt,” “bought off,” or otherwise influenced by improper motives unless the lawyer has evidence for this assertion, in which case the judge should be reported to the appropriate disciplinary authorities for misconduct. If the lawyer is unwilling to carry an allegation that far, then it is probably not appropriate to make it in the first place.

Similarly, a lawyer must also be careful with allegations that a judge was “distracted,” “confused,” or otherwise not paying attention in rendering a decision. While not as serious as charges against the fundamental honesty or integrity of the

judge, these assertions nonetheless go to the judge’s character and qualifications and so must be made with extreme caution.

There is never an occasion for defamatory statements in describing the conduct or rulings of the trial judge or the appel-

late courts. Criticism or displeasure with a prior ruling is no excuse for bad manners. Also, even when a decision might be worthy of strong criticism, it is usually best to maintain a level of emotional detachment in describing it. Emotionalism is usually inconsistent with professionalism, and zealous advocacy should not degenerate into mere zealotry.

**A dressing down in open court because of the lawyer’s misconduct is also not unheard of.**

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It must be remembered, though, that legitimate criticism strengthens the rule of law and is often necessary to prop-

erly represent the interests of a client. Most judges do not have a problem with criticism of their decisions. The responsibilities of advocacy require a lawyer to make nonfrivolous arguments for the extension, modification, or reversal of existing law. Judges

expect lawyers to “push” and expand the law, and this necessarily involves showing where prior decisions are inadequate or even just wrong. The lawyer crosses the line of inappropriate comment when he or she personalizes or exaggerates the argument. Every lawyer knows an anecdote about another lawyer who crossed the line into impertinence because this is when the lawyer runs the risk of being sanctioned by a court or disciplined by the state bar. A dressing down in open court

because of the lawyer’s misconduct is also not unheard of.

Remember, too, that appellate judges may take offense when an attorney on appeal falls into invective and baseless criticism of the judge below. This is often a distraction to the appellate court, and it can undermine the advocate’s credibility. If the trial judge’s decision was truly appalling, present the facts and the law in such a manner as to clearly demonstrate how the judge erred. This will do far more to persuade the appellate court than hyperbole from counsel.

No judge worth his or her salt begrudges the questioning of a prior ruling, and a “thick skin” is a necessary component to the character of a judge. My advice, after 29 years on the trial bench, is to not be shy, but instead to temper your questioning of prior rulings or cases with a bit of tact.

*The Honorable Walter C. Kurtz served as a Circuit Judge for Davidson County, Tennessee, from 1982 to 2008, and is currently a Senior Judge for the State of Tennessee. Prior to joining the bench, he was the Metropolitan Public Defender for Nashville and Davidson County and Director of Legal Services of Nashville. He has taught at both Vanderbilt University Law School and the University of Tennessee College of Law.*

## The End of Consumer Class Actions?

By *Erin E. Rhinehart*

**O**n April 27, 2011, the United States Supreme Court decided *AT&T Mobility LLC v. Concepcion*, No. 09-893, 563 U.S. \_\_\_\_ (2011), which found that collective arbitration waivers in consumer contracts are not unconscionable. The Court’s decision is likely to alter considerably the landscape of consumer class actions.

In *AT&T Mobility*, Mr. and Mrs. Concepcion entered into a cellular telephone agreement with AT&T. The agreement provided that all disputes would be resolved by arbitration; however, classwide arbitration was prohibited. The Conceptions sued AT&T Mobility in the United States District Court for the Southern District of Cali-

fornia, consolidated with other suits as a putative class action, alleging that AT&T Mobility engaged in false advertising and fraud by charging sales tax on phones it advertised as free. AT&T Mobility moved to compel arbitration, which the District Court denied. The Ninth Circuit affirmed and found that the

Discover Bank rule, a California common law rule based on a 2005 decision by the Supreme Court of California that classified most collective arbitration waivers in consumer contracts as unconscionable, was applicable and not preempted by the Federal Arbitration Act (FAA).

AT&T Mobility appealed

the Ninth Circuit’s decision to the Supreme Court. The Court accepted the appeal and, in a 5-4 decision, reversed the Ninth Circuit’s decision. The majority stated that, “[w]hen state law prohibits outright the arbitration of a particular type of claim, the analysis is straightforward: The conflicting rule is displaced by the FAA.” The majority reiterated that the purpose of the FAA is to “ensure that private arbitration agreements are enforced according to their terms” and that there is a “national policy favoring arbitration” and a “liberal fed-

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# The Value of Incorporating Pro Bono into Your Practice

By Leor Barak

CAREER  
DEVELOPMENT  
INITIATIVE  
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TOPIC



**P**ro bono representation is an integral component of practicing law. It is a long-standing tradition in the legal profession, and nearly every bar association in the United States stresses the importance of doing pro bono work. Aside from the ethical imperative, there are numerous reasons to include pro bono work in your practice, including its practical benefits to your career. Three important benefits are skill development, marketing and client development, and enjoyment and fulfillment.

## Skill development

Pro bono work develops tangible skills—whether you are a firm associate, solo practitioner, or in-house lawyer—that may not otherwise be developed at the

beginning of your career.

**Client management.** Managing clients is extremely important as a lawyer, and not all young lawyers will have the opportunity to work directly with clients early in their practices. Especially for solo practitioners, one's short-term success is dependent on the immediate development of client-management skills. A pro bono case gives a newer attorney the opportunity to build these skills through defining the work's scope, setting client expectations, setting appropriate methods and times for communication, facilitating and organizing client meetings, and providing clients with follow-up information.

**Case management.** This includes client management plus the ability to interact with op-

posing counsel, prioritize action steps, account for and manage time, be resourceful, and organize meetings with clients, attorneys, and experts. Pro bono work accelerates the pace at which a new attorney learns these skills. A pro bono matter can take a new attorney from a team's junior associate to the sole, lead counsel overnight.

**Litigation skills.** Young lawyers may lack a more experienced attorney's confidence in courtroom matters. In the pro bono realm, litigating is much more accessible. Commonly, law firms take on a pro bono litigation matter so that an associate can gain litigation skills. Even transactional attorneys can benefit from expanding their legal practice experience to include litigation through pro bono work. At some point, it will come in handy, directly or indirectly.

**Substantive law practice development.** Taking on a pro bono matter can enable a lawyer to jump into a new practice area by helping the lawyer develop substantive skills and cultivate professional contacts in new practice areas. A new attorney will likely find that colleagues will gladly lend their expertise on a pro bono matter.

## Marketing and client development

Pro bono work often introduces attorneys to people who will

play important roles in their careers. A new lawyer may do pro bono work for a nonprofit, only later to be retained by an influential board member on an unrelated matter. In general, interacting with community organizations and the people they serve expands a lawyer's professional network and career horizons.

**Fun and reward.** Too often, new attorneys lose sight of the importance of work-life balance. One way to gain perspective on work and life is to make professional opportunities fun and interesting. Pro bono matters can fill that niche by reminding lawyers what is fun about their jobs. Finding ways to make work enjoyable leads to career fulfillment, lasting relationships, and a smoother path to success.

Taking on pro bono matters enriches a lawyer's breadth of knowledge and experience. It also provides tangible skills and benefits that will positively influence an entire career. To the left are resources you can use to find pro bono matters, and to the right are considerations in picking the right one for you. Join the ranks of the many attorneys across the country who make pro bono work a regular part of their practices.

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## HOW TO PICK THE RIGHT PRO BONO MATTER

Consider the following when making a commitment to a pro bono matter:

- **Time.** Is the time commitment realistic? A pro bono matter requires utmost professionalism just like any other client relationship.
- **Expertise.** Is the matter within the lawyer's practice areas? If not, is the attorney capable of ethical, competent representation?
- **Pro bono broker.** Nonprofit legal service organizations and bar associations often vet and refer nonprofit matters. If applicable, consider how much support or intervention they can provide.
- **Client flexibility.** Does the client understand the schedule and a legal action's pace? Is the matter urgent? Is the client placing unrealistic expectations on the lawyer?

## WHERE TO FIND PRO BONO OPPORTUNITIES

- ABA Standing Committee on Pro Bono & Public Service and the Center for Pro Bono  
[www.americanbar.org/groups/probono\\_public\\_service.html](http://www.americanbar.org/groups/probono_public_service.html)
- Celebrate Pro Bono 2011  
[www.celebrateprobono.org](http://www.celebrateprobono.org)
- Bar associations (local, state, federal)
- State bar websites
- Legal Aid and Defenders organizations
- Transactional pro bono programs
- University law school clinics
- Courts (e.g., federal bankruptcy court)
- Colleagues
- Friends and family

## Consumer Class Actions

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eral policy favoring arbitration agreements, notwithstanding any state substantive or procedural policies to the contrary." Against this backdrop, the majority held that, "[b]ecause it stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress, California's

Discover Bank rule is preempted by the FAA."

Because most consumer agreements include arbitration clauses, the Court's decision is likely to have broad consequences. For example, many lawyers may be advising their corporate clients to revise their consumer agreements to include provisions precluding class arbitration. Class litigation is preferable because most

consumer claims are based on little (if not nominal) individual damages. It may be the only way that a plaintiffs' lawyer will accept the case. Preventing such collective arbitration may limit a company's litigation risk. On the other hand, this decision is also likely to reinvigorate the efforts of certain members of Congress to pass the Arbitration Fairness Act, which would ban mandatory binding arbitration

clauses in consumer, employment, and franchise contracts. Awaiting such congressional activity, state legislatures may also consider various methods of highlighting for consumers these anticlass arbitration provisions.

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## NEXT STEPS

- *Implications of AT&T Mobility v. Concepcion: Has the Supreme Court Sounded the Death Knell for Some Class Actions?* (Audio CD-ROM). 2011. PC # CET11AMCCDR. ABA Center for CLE, Section of Litigation, and Section of Public Utility, Communications and Transportation Law. Order online at [www.ababooks.org](http://www.ababooks.org).

# Feel Better, Better Your Career

## HEALTH AND WELLNESS FOR THE YOUNG LAWYER

By Desiree Moore

As a young lawyer, you are subjected to myriad daily pressures and demands. In the face of these, it is easy to compromise fundamental aspects of your life outside of work, including health and wellness. This is especially true early in a legal career, where the focus is on developing a good reputation and a respectable practice. While hard work and dedication are admirable—and indeed required of legal professionals—maintaining good health is essential, too. Without it, being a top practitioner, or even meeting minimum expectations in your practice, will be difficult, if not impossible.

This article identifies ten easy ways to optimize health and, in turn, your legal career.

**1. Eat breakfast.** As a busy professional, it is tempting to skip meals, in particular breakfast. But Dr. Peter Borten, a licensed acupuncturist and frequent writer and commentator on issues of nutrition, health, and wellness, explains why this practice is not recommended: “When you skip breakfast, you are asking your body to go a long time without food, and it responds to this by slowing down your rate of metabolism.” Consider a high-fiber, low-sugar breakfast (such as a bowl of oatmeal with a handful of walnuts and a touch of honey,

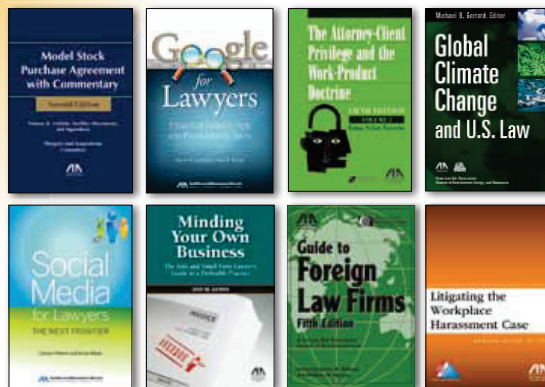
plus a hard-boiled egg) while you catch up on daily legal news or review your weekly calendar. If a sit-down breakfast is not possible, pack a piece of fruit, some raw nuts, low-fat string cheese, or an egg to snack on during your daily commute.

**2. Caffeine in moderation.** With the advent of caffeinated beverages in colossal sizes, we are desensitized to the notion that caffeine is a stimulant (i.e., a drug). While coffee and caffeinated teas have some healthful properties, the benefits are minimal. According to Borten, “the energy boost we get from caffeinated beverages is not because they are chock full of vitamins and minerals. Rather, this energy is drawn from our own reserves; immoderate caffeine use thus depletes us over time. It can also contribute to anxiety and degrade our sleep.” To help limit your daily caffeine intake, consider switching to or incorporating herbal teas such as chamomile or peppermint into your diet.

**3. Be mindful of your daily nutrition.** Most law firms and government offices are located in financial districts where nutritious lunch options are limited. Eating healthfully throughout the day can be a challenge. In the evening, you may arrive home late after a long day at the office and opt for



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a bowl of cereal or take-out rather than a nutritious meal.

With minimal extra effort you could be enjoying a satisfying meal that will support your health instead of harm it. “The benefits of establishing good nutrition in early adulthood are exponentially higher than if we don’t start until later in life, when our health has already begun to decline,” says Borten. “In order to thrive, we must find ways to eat good fat (almonds, walnuts, avocado, coconut, olives/olive oil, flax seeds/flax seed oil, etc.) and good proteins (nonfat Greek yogurt, smoked salmon or lox and other oily fish, lean meat, low-fat cheese, hard-boiled eggs or egg whites, beans, whey protein, etc.) throughout the day.” An easy way to eat better throughout the work week is to prepare healthful foods in bulk on the weekend so you will have them on hand for lunches and dinners.

**4. Maintain good posture.** Sitting in a chair at a table or desk for eight or more hours a day is not conducive to good posture. Poor posture can have a long-term, negative impact. According to Borten, “the main

detriments of poor posture are that it restricts our breathing and squashes our organs. Then there are the shoulder, back, hip, neck, jaw, arm, hand, and other structural problems it can lead to.” To combat poor posture, Borten says to “optimize your seating, desk positioning, and ergonomics. Hang up reminder notes in your workspace. The body simply functions better when it is held in an open and aligned fashion.”

**5. Eat meals in an enjoyable way.** Busy professionals tend to eat mindlessly. How many times have you scarfed down a sandwich in the middle of the day while hunched over your keyboard? In the evenings, it is tempting to park yourself in front of the television and eat without much regard for what you are putting in your mouth. However, as Borten advises, “the best practice is to eat in a slow, deliberate, seated, relaxed, and enjoyable way, without doing anything else at the same time (e.g., reading, typing, walking, driving, watching television). When you dine this way, you are reaping mental and physical benefits, and you are less likely to overeat.”

**6. Get exercise.** As a practitioner, it becomes increasingly difficult to find time in the day to workout. The long- and short-term benefits of a regular workout regimen, however, are undeniable. “The human body is very responsive to physical activity or a lack thereof,” says Borten. “Exercise that mobilizes every part of the body in every possible way is the best way to keep in good shape. Exercise that focuses on building core strength and controlling energy flow is also a valuable tool for promoting long life.” Affirmatively plan to workout every day. Then, when you invariably have to skip days due to work or social commitments, you are still managing a workout several times a week.

**7. Limit alcohol intake.** The legal profession is a social one. Socializing with work colleagues and potential clients is important for integration into your firm and for your career going forward. Socializing, however, should not be construed as a license to drink excessively. “If you are stressed and overworking, you need all the nutrients you can get. Alcohol interferes with the absorption

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# YLD CALENDAR & CONFERENCES

SEPT. 13	 TRIAL SKILLS, TECHNIQUES, AND STRATEGIES: AN EXAMINATION OF EFFECTIVE OPENING AND CLOSING ARGUMENTS
SEPT. 13	 ELDER ABUSE: WHAT EVERY LAWYER NEEDS TO KNOW
OCT. 13-15	ABA YLD FALL CONFERENCE   SEATTLE, WA 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. CONFERENCE HIGHLIGHTS INCLUDE: <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>
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OCT. 23-29	NATIONAL PRO BONO CELEBRATION
DEC. 1	2012-2013 APPOINTMENT PROCESS OPENS


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## “Career Development Initiative” Begins Now!

By Alma Zuniga

Educating young lawyers on new career paths, providing opportunities to experience different areas of law, and encouraging good work—these are some of the goals of the new Career Development Initiative (CDI) launching this month.

CDI, the ABA Young Lawyers Division 2011-2012 member service project, promises to deliver young lawyers valuable tools to help them get ahead in their careers. CDI will feature articles, podcasts, and other resources that explore a variety of career choices. Participants will examine the potential benefits, drawbacks, and steps a young lawyer should take to enter a new area of law. Each month a

different topic will be showcased on the CDI website at [ambar.org/YLDCareerDevelopment](http://ambar.org/YLDCareerDevelopment):

- Sep.—Pro Bono
- Oct.—Path to the Judiciary
- Nov.—Building and Expanding your Law Practice
- Dec.—Becoming a Law Professor
- Jan.—Military Lawyers
- Feb.—Going Solo, Starting Your Law Practice
- Mar.—Making Partner or Going In-House
- Apr.—Joining the Government
- May—Making International Connections/Building an International Business
- June—Alternative Careers
- July—ADR
- Aug.—Transitioning from Law Student to Lawyer

Don't forget to visit the CDI website for these free career resources each month and take advantage of your ABA YLD membership!

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### Feel Better

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and/or utilization of most of them,” says Borten. “If you drink to manage stress, you could be unwittingly contributing to more stress since malnourishment is a detriment to our biological coping mechanisms.” Not only are these behaviors unhealthy, but inappropriate conduct in front of your colleagues due to overconsumption can be fatal to your career.

### 8. Get good-quality sleep.

“Americans epidemically overwork and undersleep,” says Borten. “A sufficient amount of good-quality sleep can prolong life. Insufficient sleep is associated with an increased incidence of obesity, which is a major risk factor for several conditions that shorten lives.” In addition to the long-term health risks, Borten explains that “insufficient sleep is also a major risk factor for accidents. If we are not well rested, we are running on lower than optimal resources; thus, we have a reduced capacity to deal with stress and diminished

immune function” As an attorney, good-quality sleep is critical—you simply cannot afford to work at a reduced capacity.

**9. Connect with others.** The work of a new lawyer can often be independent in nature. When possible, seek projects that involve working as a team. Get involved in your legal community through pro bono and other volunteer civic work. Outside of work, make an effort to connect with others, too. “Most of the longest-lived folks in the world have people who check in on them, who expect to see them, who share warm conversation with them, who eat with them, and who otherwise connect with them,” says Borten. “Moreover, when we put ourselves in service to our community, we see our value, we see that we matter, and we take our attention off our own problems for a while.”

**10. Learn to let go.** This lesson applies to lawyers and nonlawyers alike. Borten asserts that “all the unresolved mental and emotional

baggage we carry around directly contributes to imbalance in our bodies, and it also leads us to be negligent of our health. Everything about our past that we wish had gone differently, everything about our imagined future that we are anxious about, and everything about the present that we cannot accept—these all amount to resistance of life. And no amount of resistance changes any of it; it only degrades our experience.” Borten acknowledges that there are many techniques for letting go of this emotional baggage, and that “whatever the approach, the crux of releasing this stuff is having a willingness to feel it and a willingness to let it go. The more we let go, the more we find we are at peace.”

Desiree Moore is the president of Greenhorn Legal, LLC, an intensive training program for law students and new lawyers as they transition from academics into private practice. Ms. Moore is also an adjunct professor at Loyola University Chicago School of Law. She can be contacted at [desiree@greenhornlegal.com](mailto:desiree@greenhornlegal.com). She thanks Dr. Peter Borten for his contributions to this article.