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ILLINOIS STATE BAR ASSOCIATION

GENERAL PRACTICE SOLO & SMALL FIRM

The newsletter of the ISBA's Section on General Practice, Solo & Small Firm Section

Going in a different direction

By Matthew Maloney

For many years the General Practice, Solo and Small Firm Section Council has been at the forefront of continuing legal education programs. No matter how the group was constituted, substantive and relevant programs were produced on an annual basis. Our current group wants to continue that tradition but we would like to go in a different direction. We cannot make the relevant decisions without a good deal of input from the ISBA membership.

Two topic areas are dominating our discussions. Where should we hold our CLE programs and what should be the focus of those programs? Mandatory CLE is a reality. An attorney/friend (not to be named) told me today that his idea of being "forced" to participate was to sign up for what he needed and planning to spend the day reading a book or working on crossword puzzles. Lawyers like this fit into the minority. Several weeks ago I spent the better part of two days talking to lawyers from different practice and geographic backgrounds. My questions to them were very direct—what type of programs do you want and where do you want them held? I was pleasantly surprised by the similarities of response. Almost everyone from downstate wanted programs to be held closer to where they live rather than in Chicago, Bloomington or Collinsville. A good number of the lawyers from Lake, Kane, DuPage and Will counties wanted programs to be held anywhere but in downtown Chicago. People preferred similar locations. Rockford and DeKalb were consistent picks as were Galesburg and Peoria. Many of the true "downstaters" talked about Decatur, Effingham, Vandalia and Mount Vernon. All of these locations have the facilities to conduct any reasonably sized program. When you consider the number of Illinois lawyers who are licensed in Iowa and Missouri (and those lawyers vice-versa) the Quad Cities and Quincy emerged as preferential venues.

Topic area selection held a much broader range of comments although the biggest focus turned on the same themes. People who truly want to stay current with substantive law do so on their own. They do this by reading the advance sheets and attending programs that fit their practice niche. Everyone, however, needs something that you can't find in books. A great number of people that I spoke with talked about "hands on" topics such as office management, coping with client and staff problems, methods of running their businesses and a host of other things that deal with the day-to-day things that no one likes to talk about. We all know that law school offers little or nothing on practice management areas.

If you would like to help us craft the course and future of mandatory CLE, please contact me or any one of the section council members. All of your ideas will be considered.

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IN THIS ISSUE

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Editor's Column: Computer update—To buy or not to buy? That is the question

By John T. Phipps

The conventional wisdom found in most technology magazines and in certain technology circles is to hold off buying new computers until after the first of the year. In early 2007 Microsoft is coming out with their new Windows Vista operating system to replace Windows XP. If you wait to buy a new computer you will then get the new operating system and don't have to go through either the pain (real or imagined) or expense of upgrading your XP or earlier system to the newest Windows system.

On its face this appears to be good advice, given the stability and other problems with Windows XP and the time and cost involved in upgrading Windows XP to the newest Windows incarnation. Any time you take an old computer and try to make it run new applications, you run into problems and often have to make multiple calls to tech support to walk you through it. The other side of the coin is there are always bugs built in to any new Microsoft system innovation but these tend to be compounded upgrades and not as many with new clean installations. Unfortunately, the projections are that the new system cost will be higher.

The opposite wisdom seems to be that if you have a good operating system in your office that is working and Windows XP is sufficient for your needs, there is no immediate need to upgrade to a new Windows system. This then might be a good time to take advantage of the savings from year-end low prices and upgrade and replace the computers you need to upgrade and continue to work with your system under Windows XP or other configuration. If you need to replace several computers, this could be a good time because you may save several hundred, if not several thousand, dollars in upgrading your computers. Windows XP works well for most law office applications and you can have the benefit of the new faster, more efficient computers. This also permits you to avoid the upgrade to the newest Microsoft Windows innovation until they get some of the normal bugs out of that system. It is really a close question because buying now appears to offer a significant savings which may be worth more benefit for a law office than the upgrades to the newest Windows system on new computers.

If you look at the ads for computers the prices are ridiculously low at this time. You can walk away with a very good computer for very little cash. The sale prices seem to be 25 percent to 33 percent lower than the normal prices. There is no doubt that computer manufacturers are trying to reach their year-end quota by generating large volumes of sales at rock-bottom prices so they can unload their current inventories before new software comes out. A lot of buyers are waiting for Vista so low prices are being used to create a demand for new machines.

There is no correct answer as to whether or not buying now is right for you and your office. It is one of those options that as year end approaches, all law offices need to evaluate because there are ample opportunities to save considerable money on new computers. You need to decide what's best for you and your office.

P.S. I am waiting it out because all of my computers are reasonably current and we are using the updated Windows XP version that has been working well.

About the Co-Editor: John T. Phipps is engaged in the general practice of law in Champaign, IL as John T. Phipps Law Offices, P.C. His primary emphasis is in the areas of family law, general civil litigation, real estate, criminal law, probate and business law. He is a past chair of the ISBA General Practice, Solo and Small Firm Section Council, Co-Editor of the Section's newsletter and a past member of the ISBA Assembly. He currently chairs the ISBA Special Committee on Electronic Research Services for Members.

Filing of general appearance does not waive jurisdictional objection

By H. Allen Yow

In the recent decision of *KSAC Corporation v. Recycle Free, Inc.*, 364 Ill.App.3d 593, 846 N.E.2d 1021, 301 Ill.Dec. 418 (2d Dist. 2006), the appellate court held that based on 735 ILCS 5/2-301, the defendant's filing of a general appearance did not wave its jurisdictional objection. By way of background, on March 18, 2005, KSAC Corporation filed a two-count complaint against Recycle Free, Inc. in the circuit court of Lake County. On May 4, 2005, the defendant filed an appearance and a jury demand. On June 28, 2005, the defendant moved for an extension of time to file a motion to dismiss the suit, based on a lack of personal jurisdiction. This motion was granted and on July 13, 2005, the defendant moved to dismiss, asserting that it was a California corporation conduction business only in that state and that there was no basis for the trial court to exercise personal jurisdiction. Prior to filing its motion to dismiss, however, the defendant responded to a request to admit facts served by the plaintiff. In response to the motion to dismiss, the plaintiff argued that the defendant had waived the issue of personal jurisdiction by filing its appearance and jury demand and by responding to plaintiff's discovery request. The trial court granted the motion to dismiss.

On appeal, the appellate court examined the history of Section 2-301 of the Code of Civil Procedure. Specifically, prior to 2000, Section 2-301(a) provided in part that, "prior to filing any other pleading or motion, a special appearance may be made…for the purpose of objecting to the jurisdiction of the court over the person of the defendant. ...every appearance, prior to judgment, not in compliance with the foregoing is a general appearance." Prior to 2000, a general appearance waived all objections to personal jurisdiction and subjected a party to the authority of the court. *Pinnacle Arabians, Inc. v. Schmidt*, 274 Ill. App.3d 504, 654 N.E.2d 262, 210 Ill. Dec. 963 (1995).

Effective January 1, 2000, Section 2-301 was amended and currently provides, in pertinent part:

> (a) Prior to the filing of any other pleading or motion other than a motion for an extension of time to answer or otherwise appear, a party may object to the court's jurisdiction over the party's person, either on the ground that the party is not amenable to process of a court of this State or on the ground of insufficiency of process or insufficiency of service of process, by filing a motion to dismiss the entire proceeding or any cause of action involved in the proceeding or by filing a motion to quash service of process. Such a motion may be made singly or included with others in a combined motion, but the parts of a combined motion must be identified in the manner described in Section 2-619.
>
> (a-5) If the objecting party files a responsive pleading or a motion (other than a motion for an extension of time to answer or otherwise appear) prior to the filing of a motion in compliance with subsection (a), that party waives all objections to the court's jurisdiction over the party's person." 735 ILCS 5/2-301(a), (a-5) (West 2004).

The appellate court noted that the current version of Section 2-301 differs from the pre-2000 version in four significant ways. First, the current version no longer requires or even provides for the filing of a special appearance to preserve a jurisdictional objection. Second, the current version no longer specifies that other appearances are "general appearances". Third, Section 2-301 now allows the defendant to combine a motion challenging jurisdiction with other motions seeking relief on different grounds. Finally, Section 2-301 now contains an explicit waiver provision that is narrower than the prior rule that waiver occurred if a party made a general appearance. The

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statute now provides for waiver of an objection based on personal jurisdiction only if the party files a responsive pleading or a motion (other than one seeking an extension of time to answer or otherwise appear) before filing a motion asserting the jurisdictional objection.

In deciding the case before it, the appellate court discussed its earlier opinion in *Larochelle v. Allamian*, 361 Ill.App.3d 217, 836 N.E.2d 176, 296 Ill.Dec. 791 (2d Dist. 2005), wherein the court stated that, "[a] party does not waive its objection to the court's jurisdiction over the party's person so long as the party objects to the court's jurisdiction before the party files a motion or other responsive pleading." *Larochelle*, 361 Ill.App.3d at 220, 836 N.E.2d 176, 296 Ill.Dec. 761. The court in *Larochelle* went on to write that, "[s]ince Section 2-301 no longer requires the filing of a special appearance…we cannot conclude that the filing of a general appearance waives the issue of personal jurisdiction." *Larochelle*, 361 Ill.App.3d at 220, 836 N.E.2d 176, 296 Ill.Dec. 761.

In examining the case before it, the appellate court noted that Recycle Free, Inc. not only filed a written appearance and a jury demand, but it also participated in discovery. Neither action, however, resulted in waiver according to the court. The court noted that a pleading consists of a party's formal allegations of his claims or defenses and a motion is an application to the court for a ruling or an order in a pending case. The court wrote that, "[n]either filing a jury demand nor responding to a discovery request fits the description of either a pleading or a motion." Consequently, the court held that the defendant's actions did not result in a waiver of its objection to personal jurisdiction.

Although the *KSAC Corporation* decision clarifies that a general appearance will not waive the jurisdictional issue, practitioners would be wise to file their motions to dismiss based on lack of personal jurisdiction prior to participating in any discovery.

About the Author: H. Allen Yow is a shareholder in the law firm of Rammelkamp Bradney, P.C., which has offices in Jacksonville, Springfield and Winchester. Mr. Yow concentrates his practice in general litigation, family law and municipal law. He is a member of the General Practice, Solo and Small Firm Section Council.

Practice Tip: Know your client before you meet—Intake forms fill need

By Lisa Olivero

When my father began his general law practice more than 50 years ago, our society was different. We generally knew each other and there was a greater sense of community. The lawyer often knew the potential client or at least had some information about him before the initial interview. Our society has changed since those years, even in a small town. People have become very mobile. They move and change jobs frequently. There are more and more divorces. There is a lot of anonymity even in a small town. In addition, as society changed, the practice of law became more complex. Eventually, lawyers began to specialize to keep up with the changes.

It became apparent that lawyers frequently first obtained information about the client only during the initial consultation, which usually lasted at least 30 minutes. This meant that the lawyer had already devoted time with the client, obtaining the information and perhaps providing advice. As the consultation continued, the attorney might learn that there could be a conflict of interest or that this was the type of case that the lawyer did not want to handle or that was outside his or her usual area of practice. Just a few such clients each week can take away valuable time from your practice. Society changed, the law became more complex, and now lawyers need to change.

Over time, I have created a short form that we now present to potential clients when they appear for their initial consultation and before we meet with them. The form contains short questions for the potential client to answer to provide us with important facts about the client and his or her case before we decide whether we want to even meet with him or her. The questions are short and simple, and it usually takes only a few minutes for the client to complete the form. In addition, the form also asks how the client learned about the office. This information allows me to track whether or not the advertising medium that I have chosen is working.

I have found this initial intake information is very helpful and insightful for determining not only potential conflicts of interest that were not apparent when they initially scheduled the appointment, but also for weeding out the cases that I want to avoid, including situations where the client appears to be lawyer shopping. If the answers provide information that would indicate a possible conflict of interest, or that this is not the type of case that I desire to handle, I am able to limit my consultation to only a few minutes. I then explain this to the client without having wasted their time or mine.

I believe that it is important for attorneys to have this information before the first consultation, and I have shared this form with other attorneys. My staff logs the information that is provided into a directory that is a simple alphabetical listing of the clients by last name, and this enables us to cross-check for potential conflicts of interest and for other purposes.

Also, I believe it is important to

advise the potential client in writing that you intend to charge a fee for the advice that you are providing at the initial consultation, regardless of whether they retain you. This disclosure appears on the form, and the client is requested to affirm that he or she understands that they will be charged a fee for the initial consultation. Most clients agree to the consultation fee, but some just leave because they only wanted a free consultation. Because my firm handles many family law and other general matters, I often spend 30 to 45 minutes explaining the law and the procedures involved regardless of whether I am retained so it is fair and proper to charge for this advice.

Because we practice in a small but fastly growing community, we see many clients who just want to know their rights and responsibilities. They do not always understand that the time we spend in obtaining the facts concerning their situation and then explaining the applicable law, the procedure, and their rights should be compensable. My firm charges a lower hourly rate for such a consultation, but it is still important to advise the potential client when they first come to the office and before they see the lawyer that they will be charged a fee.

Below are the questions that we have on our initial form.

If the consultation is a personal injury, workers compensation, social security, or other case that we take on a contingency basis, we use another form where we have deleted the last question indicating that there is a charge for the consultation, because we do not charge a consultation fee for these types of cases.

Having this basic information before the initial consultation will help you with your case selection and help you decide how to proceed with your case.

About the Author: Lisa graduated from the University of Illinois College of Law in 1982 and has been licensed to practice since November 1, 1982. Lisa Olivero has been employed as an Attorney in private practice with her father, John Olivero, at the Law Firm of Olivero & Olivero in Peru and Tonica, Illinois since 1982, focusing on the General Practice of Law. She is a member of the Board of Directors of the Illinois State Bank in Tonica, Oglesby, and Lostant, Illinois, a member of the the Board of Directors and the Attorney for the Lighted Way Association in LaSalle, Illinois, and is a member of the LaSalle County Bar Association, Illinois State Bar Association, Illinois Trial Lawyers Association, and the Association of Trial Lawyers of America. She is also a volunteer attorney for the Conflict Resolution of Prairie State Legal Services.

CLIENT INFORMATION SHEET

DATE_____

NAME_____
ADDRESS_____
CITY_____ STATE_____ ZIP_____
MAILING ADDRESS (if different than above) _____
_____
MARRIED/DIVORCED/SINGLE: _____
HOME PHONE:_____
WORK PHONE:_____
CELL PHONE:_____

DRIVERS LICENSE #:_____
BIRTHDATE:_____

SPOUSE'S NAME:_____
MAY WE CALL YOU AT HOME?:_____
MAY WE CALL YOU AT WORK?:_____
MAY WE CALL YOU ON CELL PHONE?:_____

EMPLOYER (For Client):_____ _____
NAME ADDRESS

EMPLOYER (For Spouse):_____ _____
NAME ADDRESS

NAME, ADDRESS AND PHONE NUMBER OF NEAREST RELATIVE NOT LIVING WITH YOU:_____
_____
_____

YOUR REASON FOR THIS APPOINTMENT_____

HOW DID YOU LEARN ABOUT OUR OFFICE OR BY WHOM WERE YOU REFERRED FOR THIS APPOINTMENT?_____
_____

HAVE YOU CONSULTED WITH ANOTHER ATTORNEY REGARDING THIS MATTER?_____
IF SO, NAME OF ATTORNEY_____

DO YOU UNDERSTAND THAT THERE WILL BE A CHARGE FOR THIS INITIAL CONSULTATION?_____
(Our Hourly Rate for Initial Consultations is $100.00 per hour)

Salary negotiations for the small firm associate

By Joseph P. Giamanco

For most of us who read this newsletter, the concept of obtaining a six-figure salary straight out of law school was nothing but a dream; yet, for those friends of ours who chose the path of the 100+ attorney law firms it was a reality. Sure, those same attorneys may work like dogs every day of the week (and weekend) and are fixated on making their billing requirements, but when their pay check is deposited in their account they manage to find a way to live with it.

The simple fact is that while we all of went to law school with idealistic dreams of practicing law most of us also were teased with the prospect of making a few dollars to pay the bills (and perhaps buy that little red sports car).

While few small firms have the ability to pay the sizable salaries of the big firms this doesn't mean that you should simply sit back and not do your research when it comes time for salary negations. Consider the following when engaging in salary negotiations in the small firm setting:

1. Know what the position entails. This may sound simple enough; however, it isn't just a matter of asking if there is a billable hour requirement. For instance, if the position requires you to travel out of or around the state on a regular basis you'll want to know how reimbursement for transportation cost will be handled. Not knowing such a fact could be costly.
2. Understand how you fit the position and can contribute to the firm. For instance, if you are joining a bankruptcy firm and don't have any experience in the field, don't expect too much in the way of negotiating power. Conversely if you have conducted a dozen jury trials and you're joining a litigation firm you should have an edge that may warrant a higher salary.
3. Consider the firms history, present circumstances, and future prospects regarding business and legal work. If a firm has been through a rough spell with either a downturn in business or cost over runs they will likely be looking to cut costs, not increase them. If the firm recently took on a new client or case that has the potential of generating a substantial amount of business they will likely be in a position where they need help fast and are more willing to pay for it.
4. Know how much you are "worth." Establishing a dollar amount in this regard is a massive challenge for most attorneys; however, you don't have to go it alone. How much an attorney is worth is generally based on their experience and where they work. Knowing what your peers in the same geographical region are making is key to determining this value. Outside of being tacky and asking others show much they get paid, consider conducting searches on the internet or consulting a salary guide from a legal staffing company such as Robert Half Legal at <www.roberthalflegal.com>. Such guides can be tailored to your firm size, years of experience and geographical region.
5. Understand the market conditions for other attorneys with your experience. If you just passed the bar exam (along with a few thousand of your closest friends) and you have no experience, don't expect to receive keys to a company car or a big signing bonus. If you have been out for a few years and managed to log a few good credentials that separate you from your peers you'll certainly have more power at the negotiating table.
6. Realize that you are being hired or employed with the intent of saving or making the firm money. While I disagree that "money is the root of all evil", I think that greed might be. Realize that even if you are the best attorney in your field the partners don't tend to be interested in spending their money when it's not necessary. If you are going to cost the firm more money than you're going to make it, don't count on sticking around for too long.
7. Know that your "institutional memory" has value. If you have been employed with a firm long enough to learn "the system" and establish a good relationship with others in your office you are inherently worth more than you're getting paid. The "cost" of hiring a new person to fill your position will almost always be more expensive than giving you a reasonable raise. Outside of spending the time and money to find a new employee to fill your shoes your employer is inevitably concerned with personality conflicts that could pop up or whether or not a new person will truly live up to their resume when it comes to bringing a new person into the mix. Avoiding such expenses that come with hiring a new employee has its own intrinsic value.
8. Consider what benefits you'll receive that aren't part of your regular salary. If your employer pays not only your salary but also provides health insurance then find out what percentage of the insurance premium you will be expected to pay. If the amount is negligible you may want to set your salary expectations a little lower. If you're part of a group plan but you have to pay a substantial portion then you'll ultimately take home less of your salary and you may need to ask for more in your salary base.
9. Know the person you are negotiating with. Does the person across the desk appreciate strong advocacy? If so they might also respect the fact that you are willing to ask for that raise and not necessarily cave upon their first offer. Some attorneys are all about the numbers, if your employer is such a person then consider showing them how you benefit the firm and make it more profitable dollar for dollar. Most importantly, do not assume that one strategy for salary negotiations will work within every situation as each employer is intrinsically different.
10. Consider "alternative" negotiating points other than money. While your firm may have financial constraints that keep it from being able to give you that extra $5,000, they may be open to considering an "alternative" form of compensation such as an extra week paid vacation. Other items they may consider paying for

as part of your overall compensation include bar association fees, ARDC costs, a cell phone or a company car. Each of these "alternative" forms of compensation, and others, provide your employer with a potential tax deduction as ordinary business expenses they might not otherwise get.

Finally keep a good attitude throughout the process. While you may get a knot in your stomach when considering the prospect of entering salary negotiations with your employer or potential employer guess what, your not alone. Salary negotiations can be difficult for not just the employee but also for the employer. If you think "win–win" during salary negotiations you are more likely to be able to walk away from the table being satisfied with your compensation package and your employer will be relieved to know they have made a good financial decision and investment in you.

While following these steps won't guarantee you'll see those "big firm" numbers offered to you it will improve your chances of being able to afford that little red sports car. Besides, one thing is for certain when it comes to salary negotiations, if you don't ask for more you certainly shouldn't expect to see any extra zeros in your paycheck.

About the Author: Joseph P. Giamanco is engaged in the practice of law at Stride, Craddock & Stride in Chicago, Illinois. He is a member of the ISBA General Practice Solo & Small Firm Section Council Member.

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