

Solo Small Firm Section



Winter/Spring 2010 **Newsletter**

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Co-Chairs' Corner

We hope you had a great holiday season and are ready to launch the New Year with us. We had a very productive fall season in which we sponsored excellent programs that were well attended. This winter newsletter includes a summary of our fall programs for those who were unable to attend as well as a calendar of upcoming programs and events.

You are encouraged to join us for brown bag lunches, seminars, CLE programs, steering committee meetings. Also, please join your fellow bar members for drop-in lunch held on the 2nd Friday of every month.

Our steering committee meetings are open, and we welcome your input and participation at the meetings. If you are unable to attend a steering committee meeting in person, you may participate by conference telephone by calling the BBA.

Contact co-chairs, Ellen Kief ekief@kiefllaw.com or Lori Yarvis lyarvis@sab-law.com with your ideas, suggestions and comments.



Lori Yarvis
Schlesinger and
Buchbinder, LLP



Ellen S. Kief
Law Office of
Ellen S. Kief

Upcoming Programs & Events

An Update on the Massachusetts Data Breach Laws

January 20, 2010 - 12:30-1:30

The State of Massachusetts recently enacted one of the strictest statutory schemes protecting the personal data of Massachusetts residents. The personal data breach regulations, 201 CMR 17, promulgated by the Office of Consumer Affairs and Business Regulation under MGL Chapter 93H, apply to most businesses, including law firms. The compliance date for the regulations is now March 1, 2010. In this program, Diane Lawton and Jason Egan, General Counsel and Deputy General Counsel, respectively, of the Office of Consumer Affairs and Business Regulation, will speak about implementation of the regulations in the context of solo and small law firm practice. Jeffrey Woolf of the Office of Bar Counsel, Board of Bar Overseers, will then provide some guidelines regarding encryption, storage and disposal of protected personal information.

Steering Committee Meeting

February 12, 2010 - 11:30 - 12:00

Open for all members to attend.

Drop - in Lunch

February 12, 2010 - 12:00-1:30

Steering Committee Meeting

March 3, 2010 - 2:30-3:00

CLE: A Law Practice Management Toolkit for Solo and Small Firm Practitioners

March 3, 2010 - 3:00-6:00PM

Growing a law practice requires practitioners to build a solid infrastructure. This includes adopting practices and procedures that will protect the firm, contribute to its growth and maintain its viability. This program will provide tools to help practitioners both get started on the right footing and continue to maintain a healthy and thriving law practice, even in a challenging market. The panelists will discuss the ethics issues involved in managing a law practice, provide practical advice and insight into managing the attorney client relationship and offer technology solutions to help practitioners institutionalize sound practices. The panelists will focus specifically on the following topics: Introduction to client management; the ethics and practicalities of fee agreements; managing the client relationship to prevent malpractice claims; simple steps to prevent the most common BBO complaints; and solo and small firm technology basics. The panelists will include: Rodney S. Dowell, Esq., Law Office Management Assistance Program; Alan J. Klevan, Esq., Klevan & Klevan; James Bolan, Esq. of Brecher, Wyner, Simons, Fox & Bolan, LLP, Susan Cohen, Esq., Peabody & Arnold, LLP and John Marshall, Esq., Office of Bar Counsel.

Drop in Lunch

March 12, 2010 - 12:00-1:30

Steering Committee Meeting

March 17, 2010 3:30-4:00

Open for all members to attend.

CLE: A Debate on the Billable Hour

March 17, 2010 4:00-6:00

Alan Schlesinger, Esq. of Schlesinger and Buchbinder, LLP and Jay Shepherd, Esq. of the Shepherd Law Group will face off in a lively debate on the future of the billable hour, with Alan arguing for maintaining the billable hour and Jay arguing for alternative billing such as flat fee arrangements. A wine and cheese reception will follow the debate.

Drop in Lunch

April 9, 2010 - 12:00-1:30

Steering Committee Meeting

April 21, 2010 12:00-12:30

Open for all members to attend.

Marketing and Client Relations in Recessionary Times

April 21, 2010 12:30-1:30

This program will help you learn how to plan for the long term, and the inevitable economic recovery, by laying the groundwork now! Howard Goldstein, Esq. of Rosenberg, Freedman and Goldstein, will discuss networking and client relations skills, social media and internet marketing, and structuring your practice in a way that will maximize client retention and referrals from existing clients.

Drop in Lunch

May 7, 2010 12:00-1:30

Steering Committee Meeting

May 27, 2010 2:30-3:00

Open for all members to attend.

CLE: Solo Small Firm Practice: Pricing, Billing and Collecting

May 27, 2010 3:00-6:00

Pricing, billing and collecting can cause problems and headaches for solo small firm practitioners in particular, lawyers starting out, and even the most seasoned attorneys. Solo practitioner, B. J. Krintzman, Esq., will discuss how to successfully manage these practice issues, and how to turn these potential headaches into genuine and effective marketing opportunities.

You will also hear from an accountant about how to manage your book keeping and from a BBO member on what attorneys must and must not do in order to avoid potential practice problems.

June 2010 End of Year Reception

-details to be announced on the BBA website Solo Small Firm Section

Fall 2009 Program and Activity Highlights

September 30, 2009 Program: “WEB 2.0 How Social Networking is Transforming the Legal Practice”:

Robert J. Ambrogi, Esq., www.legaline.com, James Bolan, Esq. of Brecher, Wyner, Simons, Fox & Bolan, LLP, www.legalpro.com and Tyson Goodridge, www.newmediarevealed.com, spoke on what exactly is Web 2.0, what is the value of using Web 2.0 content in your legal practice, collecting and introducing Web 2.0 content in evidence, the future of online networking and the ethical considerations in using Web 2.0 platforms.

October 21, 2009 Brown Bag: “Choosing an Entity/Business Model for your Solo/ Small Firm Practice”:

Paul Costantino, of the accounting firm Costantino Richards Rizzo, LLP, walked program participants through the choice of entity analysis, the business models and the practicalities to consider such as budgeting and devising a business plan when hanging out a shingle or tweaking an existing law practice. The program included a sample business plan with financial templates on CD as well as suggestions on where to obtain forms of agreements such as partnership, operating and shareholder agreements.

October 29, 2009 Program: “Immigration Visa’s and Tax Considerations For Businesses in the US, Canada, and Globally”:

Sponsored by: Solo & Small Firm Section, New Lawyers Section, Immigration Section, Tax Section, International Law Section, and Foreign Lawyers Committee

Are you Doing Business or Working in the U.S, Canada or Globally? Immigration Visa’s and Tax Considerations You Should Know About.

The continuous flow of goods, services and people between the U.S., Canada and globally requires an understanding of how the government agencies deal with immigration. The panel discussion focused on the following topics:

- how the NAFTA is interpreted by U.S. and Canadian officials in terms of work permit issuance,
- the definition of a business visitor, and entry requirements for eligible citizens of the U.S. and Canada seeking to enter either country to work,
- the impact of increased border enforcement and expanded data sharing capabilities on the flow of people between the U.S, Canada, and globally,
- alternative U.S. immigration law categories,
- re-entry permits and maintaining lawful permanent resident status,
- review the immigrant (permanent resident) categories based on family and business sponsorship,
- and provisions of Tax Treaties between Canada, United States and global tax considerations.

Panelists:

Ellen S. Kief, Law Office of Ellen S. Kief

Richard L. Iandoli, Iandoli & Desai, P.C

Joel S. Guberman, Guberman, Garson, Bush

Philippe Tremblay, Fragomen, Del Rey, Bernsen and Loewy, LLP

Tonya S. James, Vacovec, Mayotte & Singer, LLP

November 18, 2009 Brown Bag : “Tax Issues for Solos/Small Firms”:

Robert M. Finkel, Esq. and Diana C. Espanola, Esq. of Morse, Barnes-Brown & Pendleton, P.C. focused on tax issues affecting legal practitioners in their day to day law practice management, such as issues relating to employees and temporary worker classification, deductibility of expenses, use of a home office, required recordkeeping, Schedule C filing, estimated tax payments, use taxes and other practical aspects of running a law firm from a tax law perspective.

December 11, 2009 Drop in Lunch Program: “Seven Secrets of Rainmaking: Marketing Strategy for Small Firm and Solo Attorneys”:

You’ve spent years becoming a good attorney. But to make it in a small firm or as a solo practitioner, you also need to be a good rainmaker. Fortunately, winning clients—and cultivating long-term, lucrative relationships with existing ones—doesn’t require a huge budget, paid advertisements, or even a business development team. You just need the right strategy. In this workshop with marketing and branding consultant Dorie Clark of Clark Strategic Communications/Aspen Development Strategies, participants learned how to:

- Position yourself as an expert
- Develop positive relationships with reporters
- Build a powerful reputation in the community
- Generate new clients from networking events
- Leverage new business from your existing clients
- Ensure your brand is strong enough that clients will pay almost any price to work with you

December 17, 2009 : “How to Work a Room”:

Newton based solo practitioner B. J. Krintzman, Esq. , conducted an interactive discussion sharing her networking tips and advice for making the most of networking efforts. Participants learned how to work a room including:

- how to know a networking opportunity when you see one
- how to create a networking opportunity where there doesn’t appear to be one
- the 17 things you absolutely positively must do to maximize your networking efforts

Special Programs

Walk to the Hill for Civil Legal Aid

Wednesday, January 27, 2010 - 11:00 AM

Location: Massachusetts State House - 24 Beacon Street, Boston

The BBA urges all its members to save January 27, 2010 from 11 am to 1 pm for Walk to the Hill for Civil Legal Aid, to be held at the Massachusetts State House. This is a critically important opportunity to for lawyers to advocate for civil legal aid for low-income people. Amid uncertain economic times, this event will be more important in 2010 than ever before. For more information, please go here: http://www.bostonbar.org/sc/ss/n10910/Walk_Savethedate_final.pdf

Drop - In Meet & Greet Luncheons

Second Friday of every month 12:00- 1:30 pm

The Solo & Small Firm Section welcomes all BBA Sections to join our monthly Meet & Greet Luncheons every second Friday from 12:00 pm - 1:30 pm. This is an opportunity to meet your fellow Bar members while enjoying lunch at the BBA.

Free Trust Accounting Training

Offered through the Office of Bar Counsel, the BBA, and the MBA

On the first Thursday of each month, the Office of Bar Counsel, the BBA and the MBA are co-sponsoring a free one-hour program on trust account record keeping. The program will provide guidance for attorneys, paralegals, bookkeepers, or other law office support staff interested in receiving training on the requirements of Mass. R. Prof. C. 1.15, as revised effective July 1, 2004.

This program will provide participants with a detailed review of the records required to be maintained for IOLTA accounts and other trust accounts. Record-keeping “traps for the unwary” will be examined, including:

- How to maintain your IOLTA account check register and individual client ledgers, either manually or using accounting software, in compliance with the rules; how to complete the mandatory “three-way” reconciliation of your IOLTA account and produce the required reconciliation reports; how to document the withdrawal of an earned fee from a trust account, including required notification and accountings to clients
- What transactions are prohibited, including writing checks payable to “cash” and using checks that are not prenumbered

The program is free, but advance registration is required. To register, please call the Office of Bar Counsel at (617) 728-8750 and ask for “trust account program registration.”

Location: Boston Bar Association, 16 Beacon St., Boston MA (subject to change)

Employee or Independent Contractor? What Businesses Need to Know About Federal and Massachusetts Treatment of Workers

By: **Christopher G. Beck, Esq.**

INTRODUCTION

In Massachusetts, it is conceivable that a worker can qualify as an employee under one set of rules, and an independent contractor under another set of rules. This can create great uncertainty for businesses. Moreover, violations of the rules can lead to potential legal exposure for businesses in the following areas: (1) wage and hour; (2) minimum wage; (3) overtime; (4) unemployment insurance; (5) workers' compensation; and (6) penalties for failure to withhold taxes. In addition, business owners themselves may be held personally responsible for the failure to withhold taxes.

The penalties imposed by violations of the rules can be substantial, including treble damages and attorney's fees, as well as additional taxes, interest, and penalties. According to the Massachusetts Supreme Judicial Court, even if a worker was not harmed by being misclassified as an independent contractor, that worker is still entitled to damages from the business.

A brief discussion of the Federal and Massachusetts rules follows.

FEDERAL RULES

Under federal law, the Internal Revenue Service (IRS) will consider case law as developed over the years, which focuses on whether a business has the legal right to control what work is done and how it is to be done by its workers. In addition, the IRS will use a 20-factor test in making a determination of worker status, outlined in Revenue Ruling 87-41.

In addition to the considerations used by the IRS, a business or a worker may complete a

Form SS-8: Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding to seek a determination by the IRS of their individual circumstances.

A reclassification by the IRS of workers from independent contractors to employees may have a detrimental effect on the business, with additional taxes, interest, and penalties to follow. Moreover, it may lead to disparate treatment among businesses that are similarly situated, leading some businesses to be at a disadvantage to their competitors whose workers were not reclassified.

A potential safe harbor for a business that has traditionally treated its workers as independent contractors, but was doing so incorrectly, can be found in section 530 of the Revenue Act of 1978. Section 530 can provide businesses with relief from federal employment taxes for reclassified workers. To utilize this safe harbor, the business must meet the following criteria: (1) the business must have a reasonable basis for treating the workers as independent contractors; (2) the business must demonstrate substantive consistency (treating a particular class of workers equally) in treating its workers as independent contractors; and (3) the business must demonstrate tax reporting consistency in treating its workers as independent contractors.

MASSACHUSETTS RULES

In Massachusetts, the status of a worker can be more complicated, as each worker is potentially subject to scrutiny under four separate definitions.

1. Massachusetts Income Tax. The definition of employee under the

Massachusetts Income Tax rules is similar to the federal rules which focus on the control the business exerts over the worker.

2. Massachusetts Wage and Hour. Under the Massachusetts Wage and Hour rules, an individual performing any service will be an employee unless the business can prove the individual meets all three of the following tests:

- a. The individual is free from control in performing the work; and
- b. The service is performed outside the usual course of business; and
- c. The individual is customarily engaged in an independently established trade, occupation, profession, or business the same nature as that involved in the service performed.

3. Massachusetts Unemployment. Under the Massachusetts Unemployment rules, the following three tests must be met by the business (note that they are very similar to the Wage and Hour rules, with the exception of the second rule):

- a. The individual is free from control in performing the work; and
- b. The service is performed outside the usual course of business or is performed outside of all the places of business of the enterprise for which the service is performed; and
- c. The individual is customarily engaged in an independently established trade, occupation, profession, or business the same nature as that involved in the service performed.

4. Massachusetts Workers' Compensation. Under the Workers' Compensation rules, an employee is any individual in the service of another under any contract of hire, express or implied, oral or written, except individuals whose employment is not in the usual course of the trade, business, profession, or occupation of the business.

legal exposure for misclassifying workers, when there is doubt as to whether a worker should be classified as an employee or as an independent contractor, it is always best to consult with experienced tax and employment counsel.

Reliable sources have indicated that the IRS and Massachusetts Department of Revenue are focusing on the issue of employee misclassification. Because of the potential

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Homebuyer Tax Credit - Extend and Expand

By: Kristine Hung, Esq.

This Article outlines some of the main points of the Worker, Homeownership and Business Assistance Act of 2009, which was signed into law on November 6, 2009 (the "Extended Credit"). The Extended Credit not only extends and expands the first-time homebuyer tax credit but also provides a tax credit for current homeowners. A tax credit is a dollar for dollar deduction in what the taxpayer owes, meaning that a taxpayer who owes \$8,000 in federal income taxes and who receives an \$8,000 tax credit would owe no federal income tax. The tax credit can be claimed even if the taxpayer has little or no federal tax liability to offset. If the tax credit exceeds the federal income tax liability, the government will send the taxpayer a check for the credit amount.

First Time Homebuyer

A qualified first time homebuyer may receive a tax credit of up to \$8,000 if he/she meets the following:

1. A first time homebuyer purchases a principal residence by April 30, 2010. To qualify as a first time homebuyer, the purchaser or his/her spouse may not have owned a residence during the three years prior to the purchase. If the homebuyer has entered into a binding Purchase and Sale Agreement by April 30, 2010 then a home purchase completed by June 30, 2010 will also qualify.
2. The tax credit applies only to homes priced at \$800,000 or less.
3. The tax credit is equal to ten (10%) of the purchase price of the home up to a maximum of \$8,000.
4. A qualifying home is any home that will be used as a principal residence. This includes single family detached homes, attached homes like townhouses and condominiums, mobile homes and houseboats.
5. For homes purchased after November 6, 2009 and on or before April 30, 2010, the

income limits for a full credit are \$125,000 for single taxpayers and \$225,000 for married couples filing jointly.

6. The credit decreases for taxpayers who earn between \$125,000 and \$145,000 for single buyers and between \$225,000 and \$245,000 for home buyers filing jointly. Homebuyers earning more than the maximum qualifying income (i.e. over \$145,000 for single and over \$245,000 for couples) are not eligible for the credit.

Current Homeowner

A qualified current homeowner may receive a tax credit of up to \$6,500 if he/she meets the following:

1. A current homeowner purchases a principal residence by April 30, 2010. To qualify as a current homeowner, the purchaser must have owned and occupied a principal residence for at least five consecutive years of the eight year period ending on the date of purchase of a new home as a principal residence. If the homebuyer has entered into a binding Purchase and Sale Agreement by April 30, 2010 then a home purchase completed by June 30, 2010 will also qualify.
2. The tax credit is equal to ten (10%) of the purchase price of the home up to a maximum tax credit of \$6,500.
3. All other rules that apply to the first time homebuyer tax credit apply to the current homeowner tax credit.

Kristine Hung, Esq. practices commercial and residential real estate law at the Newton law firm Schlesinger and Buchbinder, LLP. Please visit the website at www.sab-law.com or she can be reached at khung@sab-law.com.

Claim Drafting in US Patents

By: Ken Kozik, Registered Patent Attorney

The purpose of this article is to provide practical pointers and best practices for drafting claims to produce high value patents for clients. Whether you are a patent attorney, or work with patents only peripherally, it is useful to analyze the anatomy of a well-crafted patent claim.

Claims are the parts of a patent that define the boundaries of patent protection. Patent claims are the legal basis for patent protection. They form a protective boundary line around the patent that lets others know when they are infringing on your rights. The limits of this line are defined by the words and phrasing of the claims. When writing this section, the patent drafter should consider the scope, characteristics, and structure of the claims. A claim's scope is defined as broad or narrow. In general, a broad claim contains fewer words than a narrow claim.

For example, when writing claims, the patent drafter should consider the audience. First, the drafter should write claims that describe the invention to the client's satisfaction. Second, these claims must be presented to a patent examiner in the USPTO and written in such a way as to be new, useful and non-obvious in view of the prior art. Third, the claims should be drafted in such a manner as to provide appropriate coverage of the invention in the eyes of a potential investor or licensee. Lastly, in the unlikely event the patent is the subject of litigation, the claims must be unambiguously written such that they literally read on an accused apparatus or process, i.e., each and every claim element should describe a corresponding element in the accused apparatus or process.

To satisfy the goals of a client and the US patent law requirements, one should consider the following in claims drafting, in no particular order:

1. A patent drafter should make sure there is support for the claims by tracking the language used in each of the claims back to the specific description in the patent to ensure the same terminology is used.
2. A patent drafter should check whether a

term used in one or more claims has an established meaning in the art and whether that meaning is appropriate in the particular circumstances in which it is to be used.

3. A patent drafter should avoid amendment during prosecution, if possible.
4. A patent drafter should prosecute the claims for literal, not equivalent, scope.
5. A patent drafter should know the Federal Court case law on claim construction and look at each decision as a whole, not just a stray phrase, and read all the cases cited.
6. Where there is more than one possible meaning for a term, and in the absence of other factors, the customary meaning in the art is usually more relevant than the ordinary meaning.
7. In some jurisdictions, dictionaries relevant to the art are a prime source for ascertaining the appropriate meaning of the term.
8. When listing and discussing prior art references, a patent drafter should check that the art uses a term in the same manner as in the specification and describe the art using terminology consistent with that used to describe the embodiments.
9. A patent drafter should describe multiple embodiments wherever possible.
10. A patent drafter should avoid creating prosecution history estoppel except where he/she wishes to establish a broader interpretation than might be the customary interpretation.

The above list is not exhaustive or exclusive. However, using the above as a guide can result in high quality claims in patents.

Ken Kozik is a registered patent attorney in solo practice. Ken concentrates his practice on patent prosecution, patent opinions and patent licensing. Ken currently serves on the Steering Committee of the Solo and Small Firm Section of the Boston Bar Association. Ken can be reached at kiplaw@earthlink.net.

Jump Like Jack Flash: Get to Windows Folders Faster Using QuickJump

By: Jared D. Correia, Esq.

TechHit, inventor and purveyor of “Outlook utilities that save you time”, as well as other various and sundry utilities and add-ins for use with your email, social networking websites and operating systems, has recently released its QuickJump software, which provides a method for speedier navigation through Windows folders.

Now, Why is that important? Well, think of how many folders and subfolders you have on your computer. If, rather than drilling down through lots of subfolders to get to the document you need, you could find that subfolder more immediately, by typing its name, or a form of its name, and by clicking on it first, so that it opens to reveal your document, well . . . Wouldn't that be easier? If you could do that, you've just added some typing, but have saved yourself the time it takes to search among what may be a vast number of subfolders to get to the one you need. That, in a nutshell, is what QuickJump does for you.

Once you have set up QuickJump (a download and adding directories to be searched as you wish) it is literally a three step process to get to any subfolder on your computer, as follows: (1) Hit Control + Shift + J to bring up the QuickJump menu; (2) Begin typing a folder name; (3) Click on the folder when it appears, to open it. Watch this video to get the Quick How-to.

Beyond the simplicity of its use, there are a few other potential advantages related to the use of QuickJump. Obviously, it can be a real time saver, especially if you've adopted a complicated folder tiering pattern. This is an especially useful tool for attorneys who have many matters pending and closed and likely have all those matter files and matter subfiles organized ad infinitum on their computers. But, beyond the obvious uses, one further feature that I really like is that you can create a new folder or subfolder at the QuickJump dialog box. Another is that you can utilize QuickJump out of the “File Open” and “Save As” boxes in Windows applications (Word, Ex-

cel, PowerPoint, etc.), so that you can find your documents and save your documents more easily. And, beyond the ease of use and nifty, time-saving sub features, the price is right. You're paying only \$29.95 for the download at full price.

If you end up liking QuickJump, you may like some of the other TechHit products, as well, including SimplyFile (for email categorization/folder management), EZDetach (automated email attachment removal and save) and MessageSave (email archiving).

Jared Correia is Law Practice Management Advisor at the Massachusetts Law Office Management Assistance Program (LOMAP). To learn more about LOMAP, visit the website at www.masslomap.org. To learn more about practice management, visit the blog at <http://masslomap.blogspot.com>.