

Smart First Steps When Going Solo

By Kevin Taccino and Kristen Hamilton

Starting your own law firm can be the best experience in the world; it can also feel like the most daunting task you will ever undertake. Having just started our own firm, we offer the following guidance to consider before diving into your own practice.

Know the demographics of your location. If you are in a rural area, a business focused in corporate law may not be the best match. If you are in an area saturated with law firms, it may take longer for you to make your mark. Either way, you should be aware of the people and other businesses that are in your service area and identify a need that your firm can fulfill.

Purchase only the necessities at first. Everyone wants the big mahogany desk and law books lining the walls. That environment conveys a sense of professionalism to any client who walks in your office. However, unless you have a trust fund, these items are likely not going to be easily purchased right away. You need to establish a realistic budget for startup costs and ongoing monthly expenses and stick to it. Overspending can cause your firm to hit a money crunch soon after inception. Remember that when you own your own firm, your paycheck is what is left after paying all the bills, overspending will hit home quickly. Do not hesitate to shop around for all purchases. Inexpensive does not necessarily equal cheap. If you do not need something immediately, you may want to consider purchasing it down the road. There are plenty of ways to reduce

overhead and still make a great impression with the office.

Figure out who will be managing the Interest on Lawyers Trust Accounts (IOLTA) and general funds early. Your books need to be accurate from the beginning and remain that way at all costs. The last thing you need five months into the business is a withdrawal you cannot find or a deposit you missed. This is a worry that most new attorneys have and with good reason as IOLTA mismanagement could lead to an inquiry and sanctions by the state's disciplinary board.

Maintain good bar association relations. Our county has an excellent bar association that has been extremely supportive of our new venture. We hope your bar association will be equally supportive. Make sure to keep any connections that you already have in your bar associations, and continue to make new ones. In most bar associations, word of mouth is very influential; the more lawyers with whom you have solid relationships, the more referrals you are likely to receive. Further, when you encounter an unexpected snag in a case, you may be able to call on these contacts for advice. It is often very helpful to have another lawyer's perspective on a matter, particularly as a newer attorney.

Hire people you can trust. When you start your own firm, you will be interviewing people for positions in your office. Your staff is the first impression that potential clients have of your firm, so if your staff is not reliable, professional, and trustworthy, you could lose business. Before you enter into

a partnership, make sure you trust the potential partners and believe that the partnership can endure the ups and downs of owning your own business.

Review your state's ethical rules and opinions for a lawyer leaving a law firm. If you are leaving a legal job to start your own practice, you and/or your law firm may be required to contact clients prior to leaving the firm. The client chooses the attorney, not vice versa. If you would like certain clients to join you at your new law firm, you need to give them adequate time and opportunity to make a choice between firms. The best way to ensure that you do not run afoul of any obligations to your client or current law firm is to contact all of your clients in writing soon after you inform your firm that you are leaving.

If you are considering starting your own law firm, be ready to make many important decisions in a very short timeframe. At first, it may seem that something new rears its ugly head every day. However, if you research your service area, establish good ties in the community, and maintain a realistic budget, your firm will stand a greater chance of success. And make sure that IOLTA account is spot-on.

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READY RESOURCES

- *The 101 Practice Series: Solo and Small Firms* www.abanet.org/yld/101practiceseries/solosandsmallfirms.shtml
 - *Flying Solo: A Survival Guide for the Solo and Small Firm Lawyer*, Fourth Ed. 2005. PC # 5110527. Law Practice Management Section.
- To order online, visit www.ababooks.org.

Less Is More in the World of Trial Animations

By Elan E. Weinreb

Computer-generated animations are powerful tactical weapons in the arsenal of the modern trial attorney. Recent hardware and software developments in animation provide enhanced details, effects, and perspectives that can help you build a stronger case. The Web site Animation Magazine (www.animationmagazine.net) is only one of many sources of information concerning these developments.



In some cases, particularly those that require complex evidentiary foundations and realistic animations of past events or conditions, litigators should take advantage of these bells and whistles to the utmost. However, in others, particularly those involving animations that visually clarify testimony, it may be best to forgo the icing in favor of the cake. By keeping animations simple and straightforward, one can avoid adverse evidentiary decisions, ensure that jury members experience persuasive, demonstrative evidence, and protect trial rulings from reversal on appeal. A state criminal case involving Shaken Baby Syndrome (SBS) and a federal products liability case illustrate this "less is more" concept.

In the criminal case, *State v.*

Sayles, 662 N.W.2d 1 (Iowa 2003), the Iowa Supreme Court upheld a lower court's admission—albeit with a limiting instruction—of an animation depicting the mechanics of SBS. Brandon Sayles, the defendant and father of two-month-old baby Adaym Sayles, was charged with child endangerment causing serious injury after Adaym was brought to a hospital suffering from seizures, difficulty breathing, and other symptoms. A physician, Dr. Karen Gerdes, who examined Adaym at the hospital, determined that the infant had been shaken intentionally, resulting in blindness and other permanent injuries.

Prior to trial, the State moved *in limine* to introduce animated slides prepared by the National Center on Shaken Baby Syndrome as explanatory supplements to Dr. Gerdes' testimony. The State's motion, over the defendant's unfair prejudice objection, was granted, and the jury, which convicted Brandon Sayles, witnessed the slides at trial.

On appeal, the Iowa Supreme Court affirmed the slides' admissibility and observed that the trial court properly considered "the nature of the demonstration portrayed in the slide. *The animation was not overly dramatic. It was clinical in nature and the computer-generated infant showed no facial expression and emitted no sound during the shaking.*" *Id.* at 11 (emphasis added). Tailored precisely to achieve its litigation objective—the visual elucidation of Dr. Gerdes' testimony—the State's animation successfully withstood an unfair prejudice challenge.

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Volunteering Made Easy with the National Pro Bono Opportunities Guide

By Mark O'Brien

Lawyers seeking opportunities for meaningful pro bono work in their communities have a powerful, new resource at their fingertips—the National Pro Bono Opportunities Guide (www.probono.net/oppsguide.cfm).

The New York City-based nonprofit organization Pro Bono Net and the American Bar Association Center for Pro Bono partnered to develop this guide, which provides listings of more than 1,100 programs that need

state and local bar associations as well as community-based nonprofits can add or update information to ensure the list is current and accurate. The guide leverages the technology and network of regional content partners that Pro Bono Net has developed to create a series of innovative pro bono and legal-aid support Web sites, now used by more than 45,000 members, in some thirty U.S. states and Canadian provinces. Pro Bono Net works to increase access to justice through

This guide provides listings of more than 1,100 programs that need volunteer lawyers.

volunteer lawyers. The nationwide guide covers all fifty states and includes detailed information on nonprofit legal organizations that provide pro bono opportunities for lawyers, law students, and other legal professionals. Users of the guide can search for a service project in a specific substantive area of law or for one that serves a specific population, such as children, seniors, or immigrants. They can also e-mail an opportunity to a friend and suggest updates to the guide.

Because the list is interactive,

innovative uses of technology and increased volunteer lawyer participation. For more information on Pro Bono Net and opportunities to serve your community, visit www.probono.net.

Mark O'Brien is the executive director of Pro Bono Net in New York City and can be contacted at mobrien@probono.net.

READY RESOURCES

- Visit the American Bar Association Standing Committee on Public Service and the Center for Pro Bono at www.abanet.org/legalservices/probono.

How to Get Experience When You Can't Get Hired

By Tiffany C. Davison

You have just passed the bar exam. All you need now is your first job, but you have no job offers. What do you do now? How do you get experience? Do what many other attorneys have done: work for free. Here are a few suggestions to get you started.

First, volunteer to work for an experienced attorney. Submit a copy of your résumé to a solo practitioner or small firm you know needs help, just as you would to a potential employer. Offer to do research, write routine motions, and file court documents. Suggest anything that might get your foot in the door and get you the experience you need.

Perhaps now you are thinking that this sounds great in theory, but in reality you cannot afford to work for free. But remember that you are building your career, so you need to be creative. Ask if the solo attorney or firm will pay for your transporta-

tion costs, even if only in part; if you can come up with enough money, you may be in business. Treat your work as a job, and always be conscientious because the person you work for may become a reference or may be willing to hire you permanently.

Next, seek out pro bono work. There are plenty of organizations looking for people to volunteer no matter what level of legal experience they have. Visit your local bar association Web site for ideas, and do your research first; some of these organizations may be willing to provide you with training and malpractice insurance. Not only will you be helping people and gaining legal experience, you likely will make valuable business contacts in the process.

Lastly, take advantage of every opportunity. Most of us have family members or friends that have legal questions. For some reason, nonlawyers some-

times assume that all lawyers are equipped to handle anything from traffic cases to felonies. While that is not true, do not be afraid to handle a relatively simple issue in any area of law. For example, consider taking a traffic case involving a speeding ticket or a driver without insurance. Take the legal experience when and where you can get it—as long as you are not in over your head. Each opportunity you pursue helps build your résumé and increases your chances of getting hired.

Tiffany C. Davison, an assistant state's attorney in the Kankakee County State's Attorney's Office (Traffic Division) in Illinois, can be contacted at tiffany_davison@yahoo.com.

READY RESOURCES

- *A Lawyer's Guide to Networking*. 2006. PC # CEV06LGNB. Career Resource Center, Center for CLE, and Young Lawyers Division.
- *Objection Overruled: Overcoming Obstacles in the Lawyer Job Search* (Manual). 2000. PC # V00000B. Career Resource Center.

To order online, visit www.ababooks.org.

Less Is More

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In contrast to the animation involved in *Sayles*, the animation in the products liability case *Friend et al. v. Time Mfg. Co.*, 2006 U.S. Dist. LEXIS 52790 (D. Ariz. July 28, 2006), which was ultimately settled out of court, did not withstand attack. In this case, the plaintiff Armando Friend, a cable technician, suffered severe electrical shock injuries after coming into contact with power lines. At the time of his accident, he was on a lift manufactured by defendant Time Manufacturing. He sued Time on a defective design theory, claiming that if Time's lift had functioned properly, he would not have been injured.

The defendants sought to introduce at trial an animation to depict the accident scene. In response, the plaintiffs moved *in limine* to exclude presentation of

the animation on grounds of unfair prejudice. The *Friend* court partially granted the motion and excluded portions of the animation because it went beyond its stated purpose—accident scene depiction. Specifically, the court held that an animated character representing Friend in the animation created a “potentially false impression that [Friend] . . . failed to take any evasive action [and] did not even realize he was about to hit the wires while attempting to ‘sight the line,’ i.e., viewing a cable connection from the pole to a nearby house.” *Id.* at 22. The *Friend* court therefore permitted the defendants to show their computer animation only if all portions containing the Friend character were excised, resulting in more cake with less icing—an animation that fairly represented the scene of the accident and only that scene.

Sayles and *Friend* both demonstrate the principle that

“less is more” in the world of trial animations. They teach that by keeping animations simple and straightforward, you can increase the potential for admissibility of persuasive material and the likelihood that jury members will fully comprehend witness testimony. Furthermore, in situations involving the animation of an adversary, this principle can be used to bolster an evidentiary counterattack. By scrutinizing your adversary's animation as carefully as your own for prejudicial enhancements—such as high-contrast colors or motion depiction inconsistent with the laws of physics—like the plaintiffs in *Friend*, you may be able to successfully challenge the admissibility of such an animation and increase your chances of winning the case.

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Face Your Demons

HELP YOURSELF GET BACK ON TRACK

By Frank Harrison Reynolds

Over the years, I have represented attorneys facing discipline problems ranging from various client grievances to drunk-driving arrests. All attorneys are human beings with needs, wants, and sometimes problems. But it is a privilege to be able practice law, and you have a professional obligation to make sure your clients are properly represented. Therefore, you must be able to recognize problems that may interfere with your ability to fulfill this obligation. The key is to identify and do something about those problems *before* they hurt you or your client. If the problem has already occurred, take immediate steps to face it squarely and honestly and to fix it.

Be honest with yourself. Take a step back and evaluate yourself: Are you missing deadlines? Are you feeling overwhelmed? Are you drinking more than before? If you have problems with alcohol or other substances, seek help immediately. Find programs in your area that can help you through your state bar or through the ABA Commission on Lawyer Assistance Programs directory (www.abanet.org/legalservices/colap/lapdirectory.html). Do not

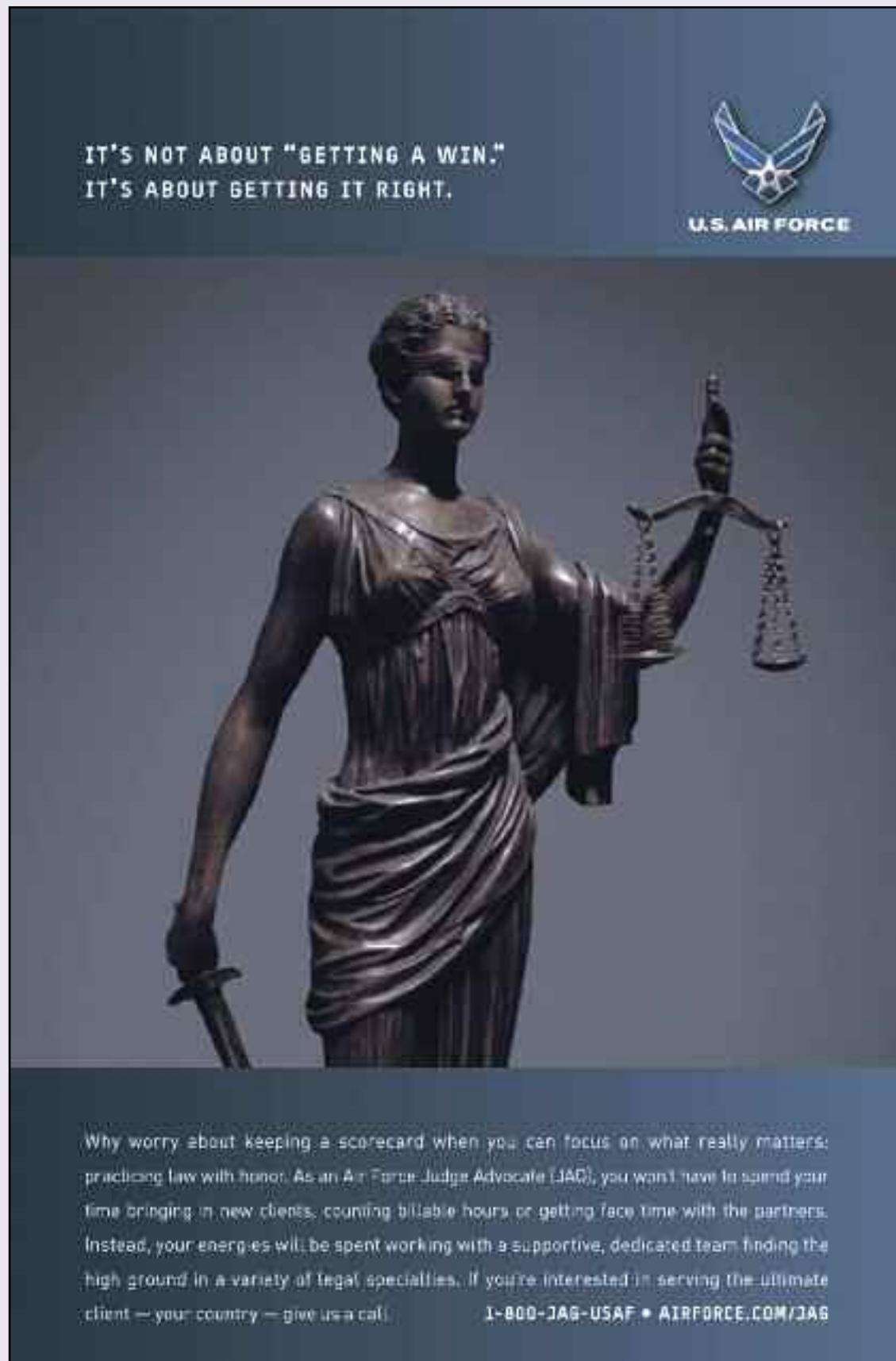
wait until it is too late and you are required to post a bond.

One of my favorite sayings is: "Fix the problem, not the blame." Do not get into a mindset that it is always the client, the judge, the opposing counsel, or the staff person who is the problem. Learn to look honestly at yourself in the mirror and find ways to become a better person and attorney.

Get organized. Unfortunately, law students are not taught the organizational skills they need in the real world. Problems can arise when you feel overwhelmed and do not know where to start on a project or how to prioritize tasks. Once you start to put off addressing a problem, or a potential problem, the slope becomes very slippery, quickly. Then things can go from bad to worse.

The file that started in the middle of your desk that suddenly is on the corner of your desk is a warning. If it then moves to the chair and finally to a place on the window sill or the floor in a corner, it is screaming that you are heading for trouble. The same is true for the fourth telephone message from the client that you have not returned.

These are problems of organization that can lead to larger problems, such as grievances. Keep trying different methods to organize your workload until something works. For example, make a checklist every morning and do not go to the second task in the checklist until the first task is done. Pick up that file and do what you are supposed to do! Pick up your phone and dial that client's number. Most often you will find that following through with these tasks is not as painful as you fear and will actually make you feel



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IT'S ABOUT GETTING IT RIGHT.

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better.

Find a mentor. It is amazing what having a mentor can do when you have questions or are feeling the pressures of the practice. It is helpful to have a sounding board that you trust and respect to give you good, honest advice and opinions. A mentor can help you realize that you are not alone and that

the problems you are facing today have been problems for many other attorneys.

All attorneys encounter personal and professional problems. If you can be honest with yourself, confront the problems head on, and seek help when you need it, you can prevent these problems from harming yourself and your clients.

Frank Harrison Reynolds of The Reynolds Law Firm, P.C., was chair of the State Bar of Michigan Standing Committee on Character and Fitness and can be contacted at freynolds@reynoldslawfirm.com.

READY RESOURCES

■ *The 101 Practice Series: Ethics and Professional Responsibility*
www.abanet.org/yld/101practiceseries/ethicsprofessionalresponsibility.shtml



YLD CALENDAR & CONFERENCES

NOV. 15, 2007	AN OVERVIEW OF TITLE INSURANCE IN COMMERCIAL REAL ESTATE TELECONFERENCE www.abanet.org/cle/programs/t07ati1.html
NOV. 21, 2007	THE TOP ETHICS TRAPS FOR LAWYERS TELECONFERENCE The <i>ABA Journal</i> article and teleconference will cover ten key ethics issues lawyers encounter—the most common or most dangerous—ethics traps that catch practitioners, why they are so dangerous, and the best strategies for dealing with them. www.abanet.org/cle/connection.html#december
NOV. 29, 2007	INSURANCE ISSUES IN COMMERCIAL REAL ESTATE TELECONFERENCE www.abanet.org/cle/programs/t07iic1.html
DEC. 5, 2007	THE INDIAN SUMMER OF INDIAN DEFENSE CONTRACTS (PART 3) WEBCAST/TELECONFERENCE www.abanet.org/cle/programs/t07tis1.html
DEC. 13, 2007	ETHICS FOR HEALTHCARE ATTORNEYS TELECONFERENCE www.abanet.org/cle/programs/t07eh21.html
DEC. 18, 2007	INTRODUCTION TO FAMILY LIMITED PARTNERSHIPS TELECONFERENCE www.abanet.org/cle/programs/t07ifl1.html
JAN. 10, 2008	THE BASICS OF LIFE INSURANCE PLANNING TELECONFERENCE www.abanet.org/cle/programs/t08tbl1.html
FEB. 7-9, 2008	ABA YLD MIDYEAR MEETING LOS ANGELES, CA www.abanet.org/yld/midyear08/home.shtml
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The Attorney Commitment in Traumatic Brain Injury Cases

By Matthew D. Barrett

Representing a client who has sustained a traumatic brain injury (TBI) or a similar type of catastrophic injury presents many unique and difficult challenges. The brain-injured client often requires a lifetime of care that costs hundreds of thousands or even millions of dollars. Long-term effects of a TBI include cognitive deficits and physical impairment in walking, motor skills, and coordination. To effectively represent a brain-injured client in a TBI case, the attorney must devote the necessary time, money, and emotional resources and prepare in the following ways:

Confirm that the client sustained a TBI. In many cases, people who have sustained TBIs do not have evident or outward injuries. Only a small number of TBIs are

detected by Computed Tomography (CT) scan and Magnetic Resonance Imaging (MRI). Therefore, healthcare professionals often overlook TBIs, and the patients do not receive appropriate medical care. As such, the attorney of a brain-injured client should thoroughly review all medical records and obtain a second opinion from a specialist, such as a neuropsychologist. Furthermore, the attorney should interview the client and people who spend time around the client to determine if TBI symptoms, such as fatigue, headache, memory problems, mood swings, vision problems, and sleep disturbance, are present.

Learn common medical terms and how the brain functions. TBI cases are a unique area of personal injury law, and

the science behind TBI cases is constantly changing. Learning the meaning of the common medical terms used in TBI treatment and the basics of how the brain functions not only assists the attorney with understanding the client's medical records, it also gives the practitioner the ability to effectively communicate with the client's healthcare providers and the jury if the case proceeds to trial.

Get to know all of the client's healthcare providers. A client who has sustained a TBI will encounter numerous healthcare specialists during his or her treatment, including neurosurgeons, neurologists, neuropsychologists, cognitive therapists, speech and language therapists, occupational therapists, physical therapists, social workers, neuroradiologists, and more.

Many of these professionals will be required to testify as experts during the trial. Knowing the role of each of these specialists is important in formulating a courtroom presentation that explains the breadth of pain and suffering that the client endures and will endure with a TBI.

Document symptoms. The attorney can build a much stronger TBI case if the records or witnesses document the client losing consciousness, suffering posttraumatic amnesia, and experiencing other signature symptoms immediately following the head injury. Detailed documentation of the client's condition should be ongoing throughout the litigation and can be kept in journal form. Journals can be especially helpful when the attorney chooses to use "day-in-the-life" videos during trial to demonstrate the

effects of the injury on the client.

Investigate all sources of assistance for the client. To assist the client prior to the resolution of the case or in the event that no recovery is obtained, the attorney should investigate alternative sources of financial assistance available to the client through Social Security, Medicare, Medicaid, and other governmental programs. In addition, the attorney should also search for benefits available to the client through state or local brain-injury associations that provide assistance for daily life needs. And most importantly, it is imperative that the client obtains full compensation of all asserted damages in order to pay for all the specialized care that may be required for many years to come.

Matthew D. Barrett is associate attorney with Starr Austen Myers & Miller, LLP, in Logansport, Indiana, whose practice focuses on personal injury litigation. He can be contacted at matt-barrett@comcast.net.