

# Inter Alia

*Among Other Things*

Spring 2007

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## Dear Board of Commissioners:

We, the Young Lawyers Section Executive Council, have observed and admired you, the Board of Commissioners, for some time now. We are extremely impressed with your dedication to the State Bar and to the public in general. Furthermore, we note that each of you possesses an esteemed reputation and extraordinary skill in the courtroom. Each of us can only hope to mirror what you have achieved through your years of practice, as we strive to become the future leaders of the Bar. How, then, can our council hope to challenge such an esteemed group of leaders, whom we strive to pattern our careers after? In what forum could the Young Lawyers Section Executive Council match, or even exceed, the greatness of the Board of Commissioners?

In the bowling alley, of course. Despite your legal prowess, it has come to the attention of our council that the Board of Commissioners may be severely lacking in bowling skill. As such, we, the Young Lawyers Section Executive Council, challenge you, the Board of Commissioners, to an afternoon of bowling immediately following your June 15, 2007 meeting. The bowling challenge will take place at 4 p.m. at the Royal Scot Golf and Bowl in Lansing. Come and prove us wrong, if you can.

The Young Lawyers Section will cover the cost of the bowling, shoe rental, and bowling shirts; however, each member of the losing team will be required to donate \$10 to Access to Justice, our designated charity. Please e-mail your RSVP, along with your unisex shirt size, to Susan McMann at [smcmann@mail.michbar.org](mailto:smcmann@mail.michbar.org).

We look forward to seeing you there.

Very truly yours,

*The Young Lawyers Section  
Executive Council*

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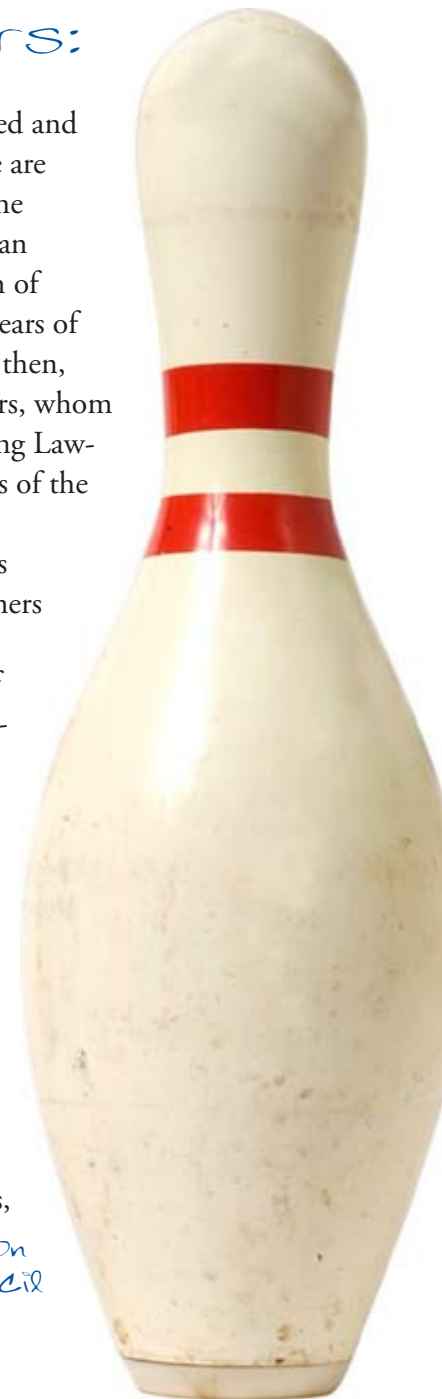
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## Alternative Careers in Law

By Stephanie Lewin

Unless you were hiding under a rock the last couple of weeks, you could not have missed the news about the U.S. attorney dismissals. Even *Saturday Night Live* had a skit about Attorneygate, so it must be news. The question is, What are these attorneys doing now? Are they still practicing law, or have they decided to forgo the practice of law entirely? Where should an attorney begin his or her career transition search?

Three of the former U.S. attorneys publicly announced new employers. Carol Lam is the senior vice president and legal counsel for Qualcomm; Paul Charlton is a partner with the law firm Gallagher & Kennedy, P.A.; and John McKay is a visiting professor of law at Seattle University School of Law. All three went in different directions from the government (in-house, law firm, and academia), yet all three chose to continue practicing law. It would not be a surprise if some of the other former U.S. attorneys choose not to practice law.

In the past few years, we have witnessed the highest documented levels of associate attrition, at 19 percent for both men and women (Malaika Costello-Dougherty, "We're Outta Here," *California Lawyer*, February 2007). According to Costello-Dougherty, within five years of entering a firm, more than three-quarters of associates leave, and female associates were almost twice as likely to leave as their male counterparts seeking a work-balance lifestyle.

In another recent article, one author lists several friends and acquaintances that opted to stop practicing law and go into other fields, including journalism, academia, business, and full-time parenting (Julie Hilden, "Why are Women – and Generation X and Y Attorneys Generally – Leaving Large Law Firms," Findlaw.com, March 7, 2007). When choosing a different career path, how does one begin to seek out options?

For those beginning to consider transitioning careers, a book may be the best place to start. Below is a list of books about career changes for lawyers:

- *Running from the Law: Why Good Lawyers Are Getting Out of the Legal Profession* by Deborah Aaron
- *What Can You Do With a Law Degree? A Lawyer's Guide to Career Alternatives Inside, Outside & Around the Law* by Deborah Aaron
- *The Lawyer's Career Change Handbook: More Than 300 Things You Can Do with a Law Degree* by Hindi Greenburg
- *Nonlegal Careers for Lawyers* by Gary A. Munneke
- *America's Greatest Places to Work with a Law Degree and How to Make the Most of Any Job, No Matter Where It Is* by Kimm Walton

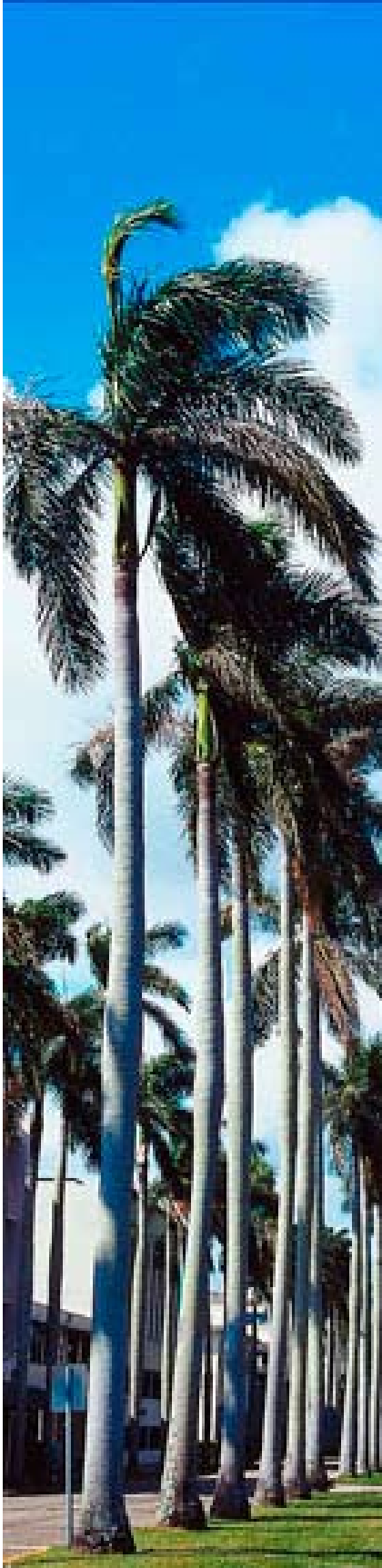
If a book is not enough and you prefer more personal interaction, a career counselor who specializes in counseling attorneys is another option. The website, DecisionBooks.com, lists counselors by state (<http://www.decisionbooks.com/counselors.shtml>). Unfortunately, there are no counselors listed in Michigan. Perhaps there is a career in law that you have not considered? The same website provides a virtual career counselor, which lists careers based on one of seven lawyer types.

One of the career consultants listed is the Johnson O'Connor Research Foundation. The Foundation consists of nonprofit aptitude testing centers located throughout the United States, including one location in Chicago. The Foundation specializes in testing individuals for their natural strengths to direct them to careers utilizing these abilities. You may also want to consider different career tests to determine an appropriate career match.

Also, consider the career services office at your law school alma mater. The office should have multiple resources to assist you in your career search, including aptitude testing and advice. Ultimately, if you are thinking about switching careers, you have several options, and you are certainly not alone.



## YLS Delegates Attend ABA Mid-Year Meeting in Miami



In February, young lawyers from Michigan attended the ABA Mid-year Meeting in Miami, Florida. On Friday, February 9, the delegates were required to attend various CLE programs and seminars, such as a program sponsored by the ABA/YLD entitled “Anatomy of a Trial Series: Opening Statements/Direct Examination.” Several delegates attended the Bar Leadership Academy, where bar leaders were given tips on how to effectively manage and run their respective young lawyer organizations. Other CLE programs covered areas such as IP issues for startup companies and small businesses, drafting a proper retainer agreement, and ethical considerations for public sector attorneys.

On Saturday, February 10, the ABA’s Young Lawyers Division Assembly convened and discussed resolutions regarding the voting percentage required to pass action in the YLD Assembly, as well as the ABA’s House of Delegates; the admissibility of expressions of sympathy or apologies from medical providers to patients; and conflicting rights of property ownership and the right to bear arms.

The delegates who attended on behalf of the YLS were Chair J. J. Conway, Chair-Elect Robert Fergan, Vice Chair Chris Christenson, Secretary-Treasurer Danielle Anderson, ABA/YLD District Representative Carlos Escurel, ABA/YLD House of Delegates Representative Jessica Simmons, Timothy Gardner, James Low, Maureen McGinnis, Solon Phillips, Brandy Robinson, and Brent Seitz (all YLS executive council members).



(Left to right) Brent Seitz and J.J. Conway.



(Left to right) James Low, Danielle Anderson, and Maureen McGinnis.

# State Bar of Michigan Young Lawyers Executive Council Calendar of Events

## May 2007

- May 3-5      ABA Spring Conference  
Montreal, Canada
- May 9      Making the Transition Seminar  
Southfield Library (6pm-8pm) (Solon)
- May 15      50-Year Honoree Luncheon  
The Inn at St. Johns, Plymouth (12pm-2pm) (Kirkey)
- TBD      Debt Management Program  
(no date as of yet) (Brandy)

## June 2007

- June 15      YLS v. Board of Commissioners Bowling Event  
Lansing (Jamie)
- TBD      Brown Bag Shelter Lunch Program  
(no date as of yet) (Brandy)
- Late June/  
Early July      Negotiation Seminar  
(no date as of yet) (Brandy)

## August 2007

- August 9-11      ABA Annual Meeting  
San Francisco, California

## September 2007

- September 27      SBM Annual Meeting  
Amway Grand and DeVos Place, Grand Rapids

**Front row** (left to right):  
Robert Fergan, J.J. Conway,  
Danielle Mason Anderson,  
B. Chris Christenson, and  
Jeff Kirkey

**Middle row** (left to right):  
Solon M. Phillips, Brandy  
Robinson, Chiri Holt, Jes-  
sica Simmons, Veronica  
McNally, Felicia Johnson,  
and Maureen McGinnis

**Back row:** Carols Escurel,  
Sean McNally, Ryan Deel,  
Timothy Gardner, Jr., and  
James Low.

**Not pictured:** Erika Ander-  
son and Brent Seitz.



**The Young Lawyer Section Council**

# How to Select a Good Mediator

by Richard Morley Barron

The first principle is that some mediators are better than others. The second principle is that some mediators are better for a given dispute than other equally good mediators. The third principle is that the selection of a mediator should be a thoughtful and strategic decision in each case.

Many lawyers have “their” mediator who they try to “sell” to the other side. Such a regular mediator is sometimes a professional colleague and friend or a retired judge. The choice of a friend is often subtly motivated by a hope that the mediator might “tilt” slightly toward the client’s position. Sometimes a former-judge mediator is selected in the belief that such a mediator will “strong-arm” the opposition to accept one’s own position. But, while it makes good sense to use a mediator who has worked well in the past, I submit that spending a moment up front to reflect on the mediator selection considerations summarized below will enhance the likelihood of reaching a deal.

## A. Is the mediator someone you feel comfortable working with?

I consider this question to be the single most important one to ask yourself. An ideal mediator is someone that all parties feel comfortable with and do not feel is *unduly* pressuring them. He or she will relate well not only with counsel, but also with the parties. People tend not to confide problems or insecurities to someone they do not trust or to whom they do not relate well. This analysis is even more vital when it is applied to the comfort level of the other side(s) of the case.

## B. Does the mediator have a good reputation?

Asking trusted colleagues about their experiences with a given mediator, and others, is likely to give you a sense of the mediator’s reputation as an effective problem solver. There is a natural tendency to want to rule out a mediator who was unsuccessful in resolving your last case. It is appropriate, however, to analyze to what extent, if any, the failure to settle was the fault of the mediator. No ethical mediator is able to settle all of his or her cases, so it is necessary to have a sense of that mediator’s “track record.” This is much easier to do with well-established mediators.

## C. Does the mediator understand and respect the role of the attorney in mediation?

Some mediators appear to view attorneys as part of the problem rather than part of the solution. This is particularly true of many non-attorney mediators. Mediators who are also attorneys can better appreciate the proper role of the attorney in mediation and work with the attorneys throughout the mediation process. A good mediator will contact counsel before the first mediation session and discuss the dispute, the interests, the issues, and the personal relationships in the case. A good mediator will always encourage and allow a party to speak privately with the client. A good mediator will also ultimately respect counsel’s deliberate strategic decision not to disclose some item of evidence to the other side.

## D. Will the mediator act in a totally impartial manner?

All mediators have personal opinions and particular professional backgrounds. The test is whether a mediator can act in a totally impartial way, not whether he or she is philosophically neutral or has represented primarily plaintiffs or defendants. If your opponent or opponent’s counsel does not feel that the mediator is acting impartially he or she will most likely never agree to any deal presented by the mediator. Since the reality of a dispute may well require the mediator to spend more time with one side than with the other side, is important that counsel advise their clients that this is normal and not, in and of itself, a concern. This is particularly so when laughter can be heard coming from the other room. Parties who feel very strongly about the lack of any merit in the other side’s position should be counseled as to the duty of the mediator to treat that other side in a respectful and concerned manner.

## E. Will the mediator preserve confidentiality?

One of the radical advantages of mediation is the ability to keep the dispute and/or dispute resolution process confidential. If your potential mediator has a reputation for bragging about the big and reasonably identifiable cases that he or she has settled, this is a strong negative. A good media-

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How to Select ...  
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tor is extremely careful not to reveal to the other side information that is considered to be confidential. No reputable mediator would ever convey information to a judge about a party or a party's attorney in connection with mediation. In the case of an unusually sensitive matter, an out-of-town mediator may make sense.

#### F. Is the mediator a "closer"?

While not the first question, this is a key question. No lawyer wants to pay a mediator to talk about reasonableness all day unless a deal is the likely result. Not every dispute can be settled but good mediators are known for their optimism, knowledge of human psychology and tenacity. In this respect, working with a mediator you know and trust makes good sense. A really good mediator will generally ignore the first threat of a frustrated and fatigued attorney to head for his or her car. But good mediators understand that a deal that is not well thought out and freely entered into has a good chance of coming "unglued." They also appreciate that there is no deal until the deal is written down and signed. This is why they resist counsels' entreaties to get back to their office and work out the agreement tomorrow.

#### G. Can the mediator get to the real interests and needs of the parties?

The attorneys will have typically argued extensively, and unsuccessfully, over the legal issues in the case. The good mediator, however, is more interested in discovering the fundamental interests and "sticking points" of each party. This is generally the most difficult task for the mediator but it is often the key to resolution. Sometimes the parties themselves are not really clear on what their fundamental interests really are. Only patient and sensitive questioning of both attorney and client can elicit this.

#### H. Does the mediator work efficiently?

This is a quality that is difficult to ascertain given the normal slow pace of most mediations, but the best mediators have a good sense for which issues and which persons to pursue first. A good mediator gathers information before the mediation session and has ascertained that all necessary parties will be present and have adequate authority to settle. Such a mediator has at least a tentative "plan of attack" and nudges the parties and counsel back to the plan. On the other hand, a good mediator will call a break before the parties collapse at the table.

#### I. Does the mediator use a good venue?

Mediation is normally difficult and somewhat stressful, especially for clients. It is thus significant that the mediator have a comfortable setting for the mediation session with ample ability to caucus privately with each party. A good mediator offers snacks and beverages and organizes a lunch or dinner break for everyone. The comfort and informality of the mediation venue are not insignificant factors in motivating parties to keep negotiating.

#### J. Are the mediator's fees reasonable for the value received?

Certainly, retaining the least expensive mediator would be foolish. On the other hand, the most expensive mediator may be "overkill" in a given case. Factors that might justify paying a higher fee for a mediator include substantial training and experience, substantial knowledge of the subject matter of the dispute, convenient local location, and quality of the mediator's facilities and prior successful work for the other side. Some mediators charge by the day but most charge by the hour. It is wise for counsel to ascertain, before retention, how the fee will be computed, how charges are incurred, and when payments are due. It is prudent to inquire about charges for travel time. In general, a highly skilled mediator is a worthwhile investment for any serious case.

Asking yourself these questions before you select your mediator will decrease mediator problems and increase the likelihood of achieving "the deal."

*Richard Morley Barron ©*

## Are You a Writer?

If so, we want to hear from you.

Please contact our editor, B. Chris Christenson, Christenson & Fiederlein PC, at (810) 232-1112 or submit your article to him at [cchristenson@cflegal.net](mailto:cchristenson@cflegal.net)

This seminar series is designed to introduce a variety of legal topics and to help young lawyers handle practice issues that are often challenging or unfamiliar. The series consists of six telephone seminars (one each month) that last one hour each and are taught by young lawyer experts on each subject.

The seminars are open to all members of the Young Lawyers Section at no charge. You can register for one or multiple seminars. Space will be limited, so register early.

To register, contact Susan McMann at the State Bar of Michigan at [smc-mann@mail.michbar.org](mailto:smc-mann@mail.michbar.org) or call (517) 346-6367. Once registered, you'll receive information on how to access the seminars. For more information, e-mail Jeff Kirkey at [jkirkey@umich.edu](mailto:jkirkey@umich.edu) or call (734) 936-3434.

From your desk, you will be able to dial into a toll free phone number, listen to the presenter, and simultaneously access the YLS website to look at seminar materials and sample documents that are being discussed. You can even get your individual questions answered during a question-and-answer period during each seminar.

Can't tune in on the scheduled dates? The seminars will be recorded and you can listen to them at your convenience loaded to the Past Seminars section of the website via Windows Media Player or as MP3 downloads.

### Hitting You When You Least Expect It: A Basic Guide to ERISA Law for Non-ERISA Lawyers

Tuesday, May 22, 2007, 2 p.m. - 3 p.m.

- Overview of the Employee Retirement Income Security Act of 1974 (ERISA)
- How to file a benefit claim
- Administrative appeals, jurisdiction, and venue
- The basics of an ERISA lawsuit
- The legal resolution of the claim
- Dos and don'ts of filing and defending an ERISA claim

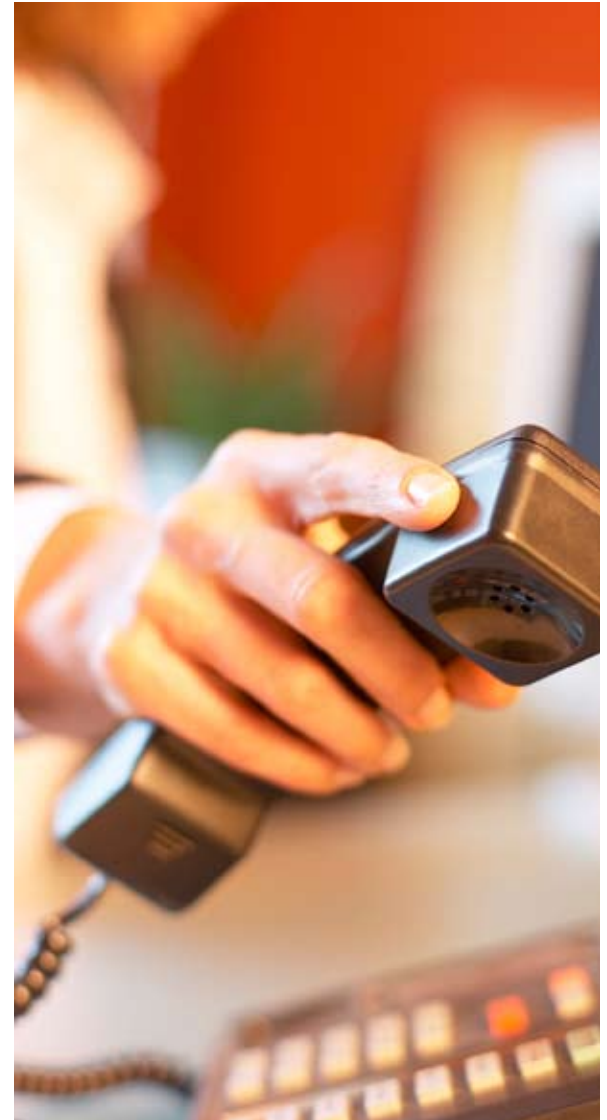
John J. Conway, Law Offices of John J. Conway, Detroit

### An Overview of Personal Protection Orders

Thursday, June 21, 2007, 2 p.m. - 3 p.m.

- MCL 600.2950, 600.2950a, 600.2950b
- Applicable court forms
- Notice and process serving
- Granting PPOs ex-parte vs. by a hearing
- Modification, extension, and termination by order

Maureen M. McGinnis, Donald E. McGinnis, Jr. PC, Troy  
B.D. Chris Christenson III, Christenson & Fiederlein PC, Flint



- Debt Collections in Michigan
- 21st Century Legal Research
- 10 Red IP Flags
- Nuts & Bolts of Appellate Practice
- Your Law Practice 2006: Maximizing Performance & Minimizing Risk
- Anatomy of Attorney Fee Agreements in Michigan
- Marketing Your Law Practice in the 21st Century