Maine State Bar Association

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Turning the Page: Challenges for the Year Ahead

Greetings! By way of a brief introduction as your new President, I practice commercial litigation, intellectual property, and privacy law at a mid-sized firm with offices in Lewiston and Portland. Depending on how you look at it, I was introduced to the legal profession either in *2006*, when I started at Brann & Isaacson following a one-year clerkship with the U.S. District Court for the District of Maine; or in approximately *1986*, when, as a six-year-old, I would "help" my father at the office after dinner by busily decorating a yellow legal pad with every single sticker, stamp, or colored highlighter I could scrounge up. While I busily "worked" until bedtime neared, Dad would dictate correspondence for the paralegals and assistants at C.W. & H.M. Hayes Law Offices to send out the next day (no doubt after scratching their heads as to where all their office supplies had vanished).

Although I eventually learned that there is slightly more to a successful legal career than scribbling vigorously on a notepad (although I do retain a slew of colored highlighters in my desk drawer), I remain acutely appreciative of the example that was silently instilled in me during those evening visits to my father's firm – the lesson that the practice of law is not a 9-5 job, nor is it always done within the confines of an office or a courthouse. Indeed, the first draft of this article was written on a laptop balanced on my kitchen countertop while my own daughter busily worked away at feeding herself (and the dog) a steady stream of Cheerios. We are referred to as attorneys *and counselors* at law for a reason, and our profession has always been known for its deep roots within the community and willingness to provide advice to our neighbors and fellow citizens, often at the expense of our own limited free or family time. Whether it is by joining the local Rotary or Kiwanis, serving on a nonprofit board, handling *pro bono* cases, or teaching an adult ed or community college class – Maine has a sterling and storied tradition of lawyers who do much, often with little support and sometimes little reward.

As we turn the calendar page to a new year, it is plain to see that there are numerous challenges facing Maine's hardworking practitioners. The widening gap between the number of indigent criminal defendants and the number of attorneys willing or able to provide critically needed legal representation at rates set well below market. The graying of Maine's bar, and the concomitant importance of attracting younger attorneys to our beloved state, particularly in rural regions outside of the Portland metropolitan area – regions like the sparsely-populated county where I grew up, which is home to fewer and fewer lawyers, many of whom are nearing retirement age and considering closing their practices altogether for lack of an obvious successor to service the area's ongoing legal needs. Increasing threats to the rule of law and democratic government reverberating around the nation, which, though we may like to imagine otherwise, we are not immune to the effects of even in our sensible state. And, as we look to the future, ensuring that the face of the profession reflects the changing face of Maine as it laudably becomes more diverse, equitable, and inclusive.

The Maine State Bar Association exists to support our profession in whatever ways it feasibly can, both as a provider of tools and resources to assist in the day-to-day practice of law and as a champion for the interests of the bar in the halls of Augusta and elsewhere. It is fortunate to have a talented, dynamic staff



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committed to its membership, along with an active Board of Governors representing regional areas and interest groups around the state. But since ultimately the MSBA is designed as an outlet for the expression of the wants and needs of its many members, it can succeed in its mission only if it has a vocal constituency that is not shy about expressing their feedback and fresh ideas.

So I would urge each of you to attend your county bar meetings, and make sure you know who your regional representative or section leader is. Once you do, be certain to let them hear directly from you as to what we're doing well and what we could improve upon. For my part, I look forward to meeting those of you I haven't yet met at our upcoming bar conferences and continuing legal education events throughout the year. I have 365 days to serve as your President, and I intend to make every single one count. Consider my door (or at least phone and email) open to you during 2023. I'll gladly pull out one of my many colored highlighters to take notes on our discussion.



Get to Know Your MSBA President

Why do you belong to the MSBA? **One of the best aspects of the practice of law in Maine is the heightened sense of cordiality and community among the bar. Belonging to a membership association designed to foster and support that community was a natural choice for me.**

What made you decide to serve on the board? **Growing up, I was taught by example that community service was an inextricable part of any profession, but especially the practice of law. My great-great-grandfather, great-grandfather, and grandfather all took a turn as President of the MSBA; but all of my family members have served on local, school, or nonprofit boards. I came to the MSBA board after participating in a few other statewide boards, and those experiences have been an invaluable opportunity not only to give back to my community, but also to meet other professional leaders and learn from their example.**

What's the best thing about being an attorney? **Untangling knotty problems for those who otherwise might be unable to do so.**

What's the most challenging aspect of being an attorney? **Having to deal with results that seem, at times, fundamentally unfair – to explain to your client that sometimes, despite your best efforts, you are unable to secure a just result.**

If you weren't an attorney, what would you be? **I expect I would teach history, either at the high school or college level. But, if I wasn't an attorney AND had more writing talent, I'd try to make my living as a published author.**

Do you have a motto? **"Whatsoever thy hand findeth to do, do it with thy might," - Ecclesiastes 9:10. Or, put differently: "I don't care if you're a ditchdigger, but be the best damn ditchdigger you can be," – the late Helen Dillen Stitham**

Favorite book: **I would wager that no one who doesn't love reading on a fundamental level ends up practicing law, and I am no exception. I could not possibly pick a favorite book, but one of my favorite hobbies right now is amassing a library of all of my childhood favorites for my one-year old daughter who can't, as a technical matter, read yet – but I'm sure she appreciates my efforts all the same.**

Favorite vacation spot: **A sandy beach on a lake in Piscataquis County. That's the way life should be.**



ANGELA P. ARMSTRONG is the Maine State Bar Association's executive director. She can be reached at aarmstrong@mainebar.org.

Your Bar Leadership

The staff and leadership of the Maine State Bar Association are off and running to ensure we provide you top-level service and benefits to get your year started off right! January is a busy time of year at MSBA HQ, as we are deep into planning the Winter Bar Conference, bringing new leadership up to speed on their duties, working to fill the 2023 CLE calendar, and preparing for the next round of judicial evaluations. It is also that time of year when I have the honor of introducing you to the Association's new leadership.

MSBA Board of Governors

We are pleased to welcome Stacy Stitham as our 2023 President. Stacy has served on the Board of Governors since 2019 when she was elected as the District 5 (Androscoggin) Governor. After serving a full term as Governor, she ran for and was elected as Vice President in 2021. Stacy is a partner at Brann & Isaacson in Lewiston where she represents business clients in civil and commercial litigation in the areas of patent, trademark, trade dress, copyright, and corporate law. Stacy also advises clients on trademark and copyright issues, including strategies for identifying and protecting intellectual property as well as dealing with claims of infringement, and on compliance issues, including data privacy and security. Stacy is a 5th generation attorney, whose family practiced law at a northern Maine firm for more than a century, and whose grandfather, great-grandfather, and great-great grandfather all served in turn as President of the Maine State Bar Association.

We are also happy to welcome five new Governors to the Board this year:

- Christopher Harmon represents District 3 (Cumberland). Chris is an attorney at Garmey Law in Portland.
- Michael Malloy represents District 5 (Androscoggin). Michael owns The Malloy Firm located in Auburn.
- Bry Martin represents District 7 (Somerset/ Piscataquis). Bry has his own practice, the Law Office of Bry Martin LLC, in Dover Foxcroft.
- Neil Prendergast represents District 11 (Aroostook). Neil is the managing partner of NJP Law LLC in Fort Kent.
- Rebecca Talbert is the In-House Counsel representative. Rebecca serves as general counsel at Woodard & Curran in Portland.

Please reach out to the leaders of the Board of Governors or your District Governor if you have any ideas for or concerns about the MSBA. They are here to serve you!

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I'd like to thank Past President Kelly McDonald, as he leaves the Board, for his leadership and many years of service to the MSBA. Kelly joined the Board in 2015 and served as President in 2021 during the pandemic. Also leaving the Board are Jim Haddow, Tonya Johnson, Bill Saufley, and Jack Tebbetts. These individuals served many years on the Board and we will deeply miss their leadership, knowledge, and counsel.

MSBA Staff

The MSBA staff is dedicated to providing you with member services and benefits that support your successful law practice. Please don't hesitate to reach out to any one of our staff members for assistance—we are here to serve and ensure you get the most out of your MSBA membership.

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I am honored to serve as the Executive Director of the Maine State Bar Association, and to have the opportunity to continue to work with MSBA leadership, staff and members. Thank you for your continued confidence in allowing to serve in this capacity. I look forward to reconnecting with many of you in 2023 now that we are back to holding in-person events and meetings. I hope to see you soon!

And, as always, please contact me by phone at (207) 622-7523 or by email (aarmstrong@mainebar.org) with any ideas or concerns about the Maine State Bar Association. Thank you!





DAN WARREN has been practicing at Jones and Warren since Oct. 1983. He does not represent banks or insurance companies or corporations. Just people. He may be reached at jonesandwarren@gmail.com.



JULIA SHERIDAN serves as Bar Counsel to the Board of Overseers of the Bar. She has been a criminal prosecutor and has practiced with a firm. She may be reached at jsheridan@mebaroverseers.org.

Fee Arbitration: Why It Works

Dan: I have represented Maine lawyers in fee disputes with clients since 1984 when I was elected to the Maine House of Representatives from Scarborough and was involved on the Judiciary Committee with legislation dealing with fee disputes. Just a few years earlier, in 1978, the Supreme Judicial Court had put into effect the Maine Bar Rules which included Rule 9, establishing a mechanism for binding arbitration of attorney-client fee disputes.[1] To this day, Maine is one of only about a dozen states who have such a mandatory fee arbitration program. Even more rare, ours is completely independent of the state's bar organization, the Maine State Bar Association. In the intervening years, I was approached for help by lawyers on matters. I made lifelong friends...In this unique environment, my experience as both a legislator and new lawyer taught me a deep respect for fee arbitration.

Why do I respect the process? And do I believe it is still effective — as intended in Maine's 1978 adoption? Mandatory fee arbitration allows clients to settle fee issues promptly and can relieve financial burdens for clients. For attorneys, the process can also filter publicity over fees. In Maine, 45 fee arbitration disputes were filed in 2019.[2] In other states, these matters are resolved in court — adding potential financial and structural disadvantages for clients and tarnishing the integrity of the profession for attorneys. There is substantial variance in how often and to what extent fee arbitration (mandatory or otherwise) is utilized across states. It is important, however, to the high standards of professionalism that we hold ourselves to as attorneys that we have a fair program for Maine residents to help level the imbalance of power inherent in the attorney-client relationship, regarding fees.

In recent years, we have experienced unexpected and substantial issues unique to the ongoing Coronavirus pandemic. In 2020 there were 30 Fee Arbitration Petitions filed and in 2021 there were 20 filed. I have seen a noticeable increase in lawyers seeking advice on the process. In coming years, I think it will be important to consider how the fee arbitration process in Maine has been impacted by COVID-19. Why might that be the case?

One reason, I think, is that the Coronavirus has made the typical lawyer-client relationship different and less personal. Think about the importance of personal contact to your practice. The successful legal practice thrives on it. We all learn from watching each other in court and in negotiations. Mediations resolve successfully when all parties are in the room, together. With clients, as well, there is no substitute for a face-to-face conversation. Coronavirus times are filled with computer screens and Zoom meetings, phone calls and emails seeking to replace dialogue between human beings. This communication stresses your clients out as much as it does you. In my view, there is no satisfactory replacement for personal contact. There is just no way to substitute this important tool in building the all-important bond between lawyer and client.

Another, related, reason for fee disputes is that many clients suffered economically during 2020 and 2021, because of COVID-19. Disposable incomes were less for both clients and attorneys. For whatever reason, I got more phone calls from lawyer friends, and their referrals, in 2020 and 2021 than I had in the previous 10 years. When advising colleagues during these phone calls, I tend to outline the process used in fee arbitration matters—and more importantly—ways to conduct your

practice, pre-dispute, to help you be a good, productive, and successful participant in the fee arbitration process.

The Maine Bar Rules provide a method by which a client can seek binding arbitration from the Fee Arbitration Commission if the client has fee dispute with a Maine lawyer.[3] This is as it should be. There are several ways this process can be initiated. Rule 7 sets out the procedure. Here is the text of the Rule's part d, which establishes these:

> (d) Procedures.
>
> **(1)** *Initiation of Proceedings*. Proceedings before the Fee Arbitration Commission shall be initiated upon receipt of a petition regarding legal fees and/or costs paid to or charged by an attorney providing legal services in Maine. The petitioner shall:
>
> > **(A)** set forth the petitioner›s full name and current address and the attorney with whom the petitioner has a dispute;
> >
> > **(B)** agree to be bound by the decision of a Fee Arbitration Panel;
> >
> > **(C)** represent that the petitioner has made a good faith effort to resolve the dispute with the attorney involved before filing the petition; and
> >
> > **(D)** state whether the dispute is the present subject of legal action and certify that the matter has not been finally adjudicated by a court or administrative agency. If the dispute is currently the subject of other judicial or administrative proceedings, such proceedings shall be identified in the petition.
>
> **(2)** *Pending Action.* If there is a pending action or proceeding before a Maine court or agency involving the disputed fees, then such matter shall, upon motion of the petitioner, be stayed by that tribunal until such dispute is resolved pursuant to this rule, and the award hereunder shall be determinative of the action so stayed.

There are two most common ways to initiate this fee arbitration process. The first I'll speak of is generally a horrible choice — when a lawyer who wishes to sue a client for fees owed sends a written notice to the client, notes they have a fee dispute, announces that they wish to sue the client in court, and tells them they have the right to request a fee arbitration hearing with the Maine Board of Overseers of the Bar Fee Arbitration Commission. The second way is for the client to request fee arbitration. You can imagine how poorly received a letter would be in the first scenario. In any event, there is a successful way to approach and respond to fee arbitration. It begins now. Today. On the first day of your representation with a new client.

Fee Agreements

An important rule of conduct for lawyers to be aware of, and think about, each day of their representation is Maine Rule of Professional Conduct 1.5, governing fees.[4] This Rule requires fundamentally that fees be "reasonable" and sets out various factors to be considered when making this determination, including:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skills requisite to perform the legal service properly;

(2) the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the range of fees customarily charged in the locality for similar legal services;

(4) the responsibility assumed, the amount involved and the results obtained;

(5) the time limitations imposed by the client or other by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experiences, reputation, and ability of the lawyer or lawyers performing the services;

(8) whether the fee is fixed or contingent;

(9) whether the client has given informed consent as to the fee arrangement;

(10) whether the fee agreement is in writing; and

(11) any other risks allocated by the fee agreement or potential benefits of the fee agreement, judged as of the time the fee agreement was made.

Julia: While Rule 1.5 is not found within the Fee Arbitration Rules, it is the Rule to which all attorneys are held when evaluating the reasonableness of fees. Not only does the Rule provide guidance by which to set fees, but violation of the Rule can also lead to a Grievance Complaint against the attorney. In my work as Bar Counsel, I am not involved in Fee Arbitration Proceedings. The parties are the client and the lawyer. When a fee dispute rises to the level of a Grievance Complaint, however, I do get involved.

The bad method of inviting fee arbitration Dan mentioned above, that is, suing your clients for unpaid fees, can also lead to a Grievance Complaint alleging that the fee is unreasonable. The other line of defense to such a lawsuit is an allegation

that the representation violated one or more of the remaining Rules of Professional Conduct. By far and away, the best way to avoid a Grievance Complaint is to follow the Rules of Professional Conduct, charge a reasonable fee *and* to maintain good communication with your clients about fees and their cases.

As Dan said, communication is key to a good lawyer-client relationship. Additionally, Rule 1.4[5] *requires* that lawyers maintain reasonable communications with clients. This obligation includes responding to requests for information and promptly informing clients of any decision or circumstance about which the client's informed consent is required, as well as reasonably consulting with clients about the status of their cases. Many Grievance Complaints include allegations that the attorney did not communicate adequately with the client. Just as communication is at the heart of a good attorney-client relationship, it can also prevent Grievance Complaints.

Dan: Times have changed. Things are more formal now, as is probably for the best for both parties. It is always a good idea now to have a written fee agreement in an hourly fee matter. Yes, you already know that you need a written fee agreement in contingent fee matters. Now, fact is, it is a good idea—and there is no excuse—for lacking a written fee agreement in an hourly fee matter. The fee agreement should provide answers to the following questions. What is the legal matter involved? What work will you do? What are the client's obligations (such as paying any amount up front and providing information)? What will you not do? What is your hourly rate? What type of tasks generate a bill? What are the litigation costs—photocopying charges; postage; or courier charges? What type of things may a client do, and not do? On what conditions may a lawyer withdraw? On what conditions may a client fire a lawyer?

Julia: Also, send regular bills (we recommend monthly) to your clients so that they know where they stand regarding fees. Receiving a large bill after several weeks can be overwhelming for clients and lead to dissatisfaction not only with the bill, but with the representation. And we know that can lead to a Grievance Complaint.

Dan: Start your client relationship with the belief that the client is in charge, and, among other things, they always have the right to know what you are doing, and why, and what you are charging. This includes agreeing they have the right to know how much time you are spending. They have the right to an itemized statement of your time working. Always. If you maintain this attitude day to day, you will be on a good start to fee arbitration success.

What Happens in Fee Arbitration?

Often, fee arbitration starts with a client petition to the Fee Arbitration Commission, processed by the Fee Clerk. It sometimes is general—the client feels you have overcharged, did not get a good result, and wants a refund. You need to respond both positively, and with specifics. In fact, the Fee Rules require it, or else you could later be precluded from offering evidence if there is a subsequent arbitration hearing. A commonly held belief is that the client does not want you to offer specifics; the client wants you to simply say: you were the lawyer, you did what you were hired to do, and, win or lose, you worked hard. Be better than this.

Step one is to list all the time you have spent. That is powerful. Clients often do not know what their lawyer has done for work — and sometimes, yes, candidly, don't care. An itemization of time is persuasive. It shows what you have done, when, and why.

Julia: Good point, Dan, and it demonstrates to the Fee Commission what work you performed, because ultimately, they may be deciding this dispute. You want them to decide in your favor. Remember, having a fee agreement makes their job easier. If you fail to have a written fee agreement with your client, then there is a rebuttable presumption that your fee was unreasonable. All of that, by the way, occurs outside the realm of Bar Counsel's Office; only the Fee Clerk and Commission are involved at that level. Responses and evidence should be filed with the Clerk. However, if you do end up on the wrong end of a related Grievance Complaint, an itemized bill, including time and amount incurred, will be important evidence in Bar Counsel's grievance investigation process. Itemize not only fees but expenses, as well. And don't forget to make it clear up front in your fee agreement that the client will be expected to pay expenses, such as filing fees and other expenses incidental to the case.

Is There a Formal Hearing?

Dan: Yes. There is a hearing. For the last few years, those have largely occurred through a video conferencing platform. Historically, a hearing is important to clients. They feel strongly about their day in court. What happens? Hopefully, you have submitted a multi-page submission. The client goes first. They say why they hired you, what they wanted you to do, what they hired you to do, what they thought you would do—and what you did, or didn't, do.

Then, it is your turn. You will state what problem or assignment the client presented to you on day one. You will state what you discussed with client, and what you agreed to do. State what you did, and why. State what happened, and any problems. You will end up summarizing the result obtained. The client may respond. The Fee Commission is

likely to have questions for both of you. The Commission then issues a written decision, typically within a month. Keep in mind that while these decisions *are* subject to appeal, the courts give great deference to the Fee Arbitration Commission's orders.

Conclusion

You have worked hard. Tell your story. The client is frustrated. Just as you have worked hard and value the work you do, they have paid with their hard-earned money. They deserve to understand what you did on their behalf. Explain what you did and be prepared to fully engage in the arbitration process.

Follow these guidelines, and you will succeed. It may even make you a better, more empathetic lawyer in service to future clients. And it is the right of both parties to the action. That is the system working as it should.

ENDNOTES

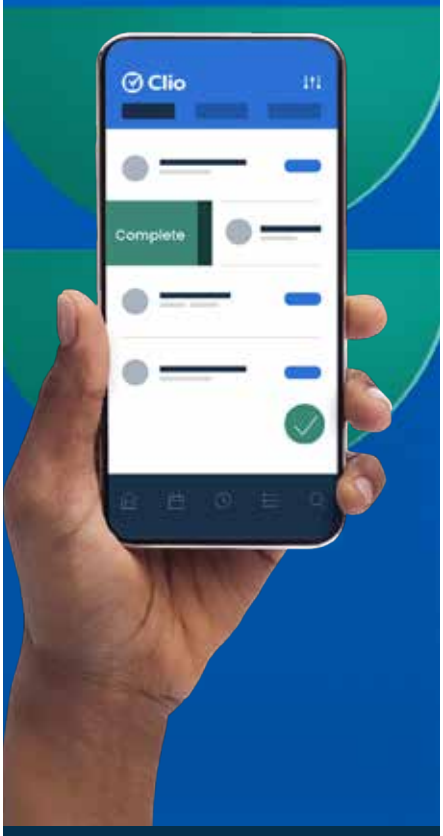
1 See 2006 ABA Survey of Fee Arbitration Programs Part II- Chart I, supra note 67.
2 BOARD OF OVERSEERS OF THE BAR 2018 ANNUAL REPORT, supra note 115, at 5.
3 M. Bar R. 7(d)(1), (2).
4 M.R. Prof. Conduct 1.5.
5 M.R. Prof. Conduct 1.4 states that:
(a) A lawyer shall:
(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
(3) keep the client reasonably informed about the status of the matter;
(4) promptly comply with reasonable requests for information; and
(5) consult with the client about any relevant limitations set forth in the Maine Rules of Professional Conduct, or other law with respect to lawyers' conduct, when the lawyer knows that the client expects assistance not permitted by the Maine Rules of Professional Conduct or other law.
(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

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Since 1998, MARK BASSINGTHWAIGHTE, ESQ. has been a Risk Manager with ALPS, an attorney's professional liability insurance carrier. In his tenure with the company, Mr. Bassingthwaighte has conducted over 1200 law firm risk management assessment visits, presented over 400 continuing legal education seminars throughout the United States, and written extensively on risk management, ethics, and technology. Mr. Bassingthwaighte is a member of the State Bar of Montana as well as the American Bar Association where he currently sits on the ABA Center for Professional Responsibility's Conference Planning Committee. He received his J.D. from Drake University Law School.

The Interplay Between the Duty to Maintain Client Confidences and Courthouse Security

A man attempted to rape a county employee inside of a courthouse bathroom. A criminal defendant who was scheduled to appear in court to enter a guilty plea on drug and weapon charges started a gun battle with a sheriff's deputies outside of the courthouse. A person who was upset over the possibility of having his parental rights terminated shot and killed a state employee who was the main witness in the termination case. This incident also happened just outside of the courthouse.

Stories such as these are not one-offs. They are shared to underscore the reality that courthouse security throughout the US is more than a hypothetical concern. Now, suppose the lawyers who represented these individuals were aware that their clients may be a threat to someone. Would they have an ethical obligation to disclose what they know, or must they remain quiet? If disclosure is necessary, to whom do they disclose?

To answer these questions, we need to turn to the ABA Model Rules of Professional Conduct (MRPC). Consider MRPC 1.6(b)(1) from which we learn that a lawyer may, but is not obligated to, reveal information relating to the representation of a client if the lawyer reasonably believes doing so is necessary to prevent reasonably certain death or substantial bodily harm. And be aware that when adopting this rule, some states went a bit further and altered the language found in MRPC 1.6(b)(1) in various ways to make disclosure mandatory. Regardless, the interesting question is this. What does the term "reasonably believes" mean in this context?

The consensus seems to be that if a lawyer is thinking about making a permissive or mandatory disclosure under this rule, there needs to be something more than a generalized discomfort about the client. A feeling that the client might do something because the client is prone to violence or experiencing an unease over a possibility that violence might eventually erupt isn't enough. The lawyer's concern must be specific and, if not imminent, reasonably certain to come to pass in the future if action isn't taken to prevent it. Stated another way, a disclosure can't be based upon a speculation about what a client might do.

One could also argue that MRPC 3.3(b) would be in play, at least in some circumstances, because this rule requires a lawyer to disclose information that is otherwise protected by MRPC 1.6 if the lawyer knows that a person intends to engage in criminal conduct related to an adjudicative proceeding and any effort to dissuade the client from doing so has failed. I suspect most of us think of this obligation more in the context of preventing false evidence from being offered to the court, but there is no language in the rule or the associated commentary that would so limit its application. A criminal defendant's intent to shoot a key witness is unquestionably criminal conduct related to an adjudicative proceeding as I see it. Also note that while MRPC 3.3(b) is limited to adjudicative proceedings, MRPC 1.6(b)(1) is not.

If a lawyer eventually reaches the point of having a reasonable belief that a disclosure is necessary to prevent reasonably certain death or substantial bodily harm, should the lawyer inform the client in advance of making any permissive or required disclosure? If time permits and an opportunity presents itself, a lawyer should strongly consider doing so. Not only would this be the judicious thing to do, but an argument could be made that MRPC 1.4 Communication and MRPC 3.3(b) might make it mandatory. Think about a lawyer's duties to keep a client reasonably informed and allowing a client to make informed decisions under Rule 1.4 coupled with the



duty to take reasonable remedial measures under Rule 3.3(b). After all, there's a possibility the client could be talked down from the ledge, so to speak.

Thus, and again only if there is time and an opportunity, a lawyer should consider sharing with the client the specific concern which has necessitated a decision to disclose if the client is unwilling to change course and thereby alleviate the concern. In addition, the ramifications of the decision to disclose, meaning that withdrawal from representation may need to occur, should be shared as well. The reason is that disclosure is going to negatively impact the attorney-client relationship, if not result in the client firing the lawyer and that outcome has consequences. Of course, if the client has already put a plan in motion and/or the lawyer has a legitimate concern about his or her own personal safety if the client were to be told, there would be no time or opportunity to have this conversation.

Once a decision to disclose is made, what can be disclosed and to whom should it be made? From the commentary to MRPC 1.6 we learn that when disclosure becomes necessary, the information that can be shared should be limited to only what is necessary to enable the affected persons and/or the appropriate authorities to prevent the client from successfully committing the crime. Stop there because it's important to recognize that the fallout to the client needs to be minimized as much as possible. For example, steps should be taken to prevent opposing counsel from having an opportunity to, if you will, weaponize the disclosure.

A decision as to whether to disclose is often going to be a difficult one to make. For example, who's to say a client won't change his mind and reasonable minds can disagree as to whether any given set of circumstances would necessitate a permissive or mandatory disclosure. Here's the rub, however. There are always going to be clients out there who are bad people who will do bad things. That's just the way it is. Should you ever find yourself representing one of these folks, don't minimize the risk they might truly represent. There may come a time where an ability the keep your local courthouse and associated grounds secure depends upon it.

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Maine-based psychologist AMY WOOD, Psy.D. helps attorneys be happier and more productive through coaching, training, and consulting. She is currently writing a book called Lawyer Like an Athlete, to be published by the American Bar Association in 2023, and frequently offers CLE opportunities through the MSBA. To learn about upcoming events, visit www.mainebar.org. For more information about Dr. Wood, go to www.amywoodpsyd.com



How to Defy Disruption and Improve Your Focus

There are plenty of jobs people can do without having to worry too much about being distracted. If your work is placing modest demands on you, your full attention may not always be required and so you can put it elsewhere. But being an attorney asks more from the human brain than most careers, so you must master the art of placing your full attention on what's important and keeping it there.

The suggestions below will help you develop the mental muscle necessary to resist the perpetual onslaught of distractions coming at you and stay on top of your job. Because bottom line is you can't research meticulously, craft bullet-proof legal arguments, think on your feet in the courtroom, or meet other tough tasks of lawyering if you're just partially concentrating.

Get a firm grip on your technology use: The first step to improved focus is acknowledging that your digital devices are designed to be addictive and thus you are probably using them in ways that are compromising your attention. Then you must examine your relationship with technology, eliminate what is not helpful, and in a highly discerning manner decide what you can take from it to make your life and work more satisfying and productive. By exercising limits with technology, using what serves you and letting the rest fall away, you will find yourself feeling less intruded on and in a better position to eliminate other, more internal distractions.

Face reality: Sigmund Freud was a bit eccentric, but one thing he got undeniably right is that human beings go to impressive lengths to avoid truths they do not want to accept. And while it is easier in the short-run to pretend your troubled marriage is fine, or to ignore scary symptoms rather than go to the doctor, there is a long-term cost to keeping painful realities at bay. The longer you avoid inconvenient truths, the more wherewithal you must put into repressing and denying what is happening, and the less inner resources you have for making the most of the moment you're in. You can be considerably less distracted by acknowledging any realities–relationship, health, financial problems and the like—you're pushing out of your awareness and then bringing them to the surface where you can responsibly address them.

Practice sensible multitasking: Have you ever tried to look interested in a Zoom meeting while checking your email? Have you ever attempted to eavesdrop on a nearby conversation while speaking to a dinner companion? Most of us get from ample life experience that it's not feasible to give our full attention to two activities each requiring it. We know quite well that we pick up only fractured pieces and don't integrate the whole of anything when we dilute our attention like that, but we prefer to buy into the myth that we can do everything at once. The smartest attorneys know that stretching attention too thin to finish things faster ultimately wastes time due to all the mistakes and missed details you have to follow up on later. Multitasking absolutely can be effective but only when you do it sensibly by blending two low-focus activities, such as returning texts while standing in line at the grocery store or listening to an audio book while cleaning your workspace.



Deal with your baggage: Another consumer of your attention that you may not be cognizant of is unresolved business from your past. It could be childhood trauma you haven't sufficiently worked through, an apology you haven't made, forgiveness you haven't given, or something vital you haven't explored. Whatever it is, I promise you that it is diluting your focus on what's in front of you now. Once you start to deal with it–whether that means calling a friend, booking an appointment with a therapist, or writing a letter–doing so will let you put down whatever is haunting you so that you can operate from a more present place more often.

Get rid of clutter: A major source of distraction in our high-consumption culture is stuff. Actual tangible stuff and the stuff of information that never stops coming and keeps piling up. And all that stuff takes up a lot of room and can be quite distracting. So, if you want a clear head, make sure to clear out the items that are taking too much space in your life. You likely have clothes in your closet you don't wear, contraptions in your kitchen you don't need, books and professional journals you are never going to read, and objects you are keeping out of sheer obligation. By removing obstacles to your success, rather than secrets to your success, you will feel less constricted and maneuver beyond what is cramping your style.

Take care of petty annoyances: It's part of adulthood to carry around problems—ranging from where should I shop for my mother's birthday gift to should I stay in this relationship/job or leave?—as we process them and figure out answers. But it's the smaller things nagging at us, like pesky errands, little loose ends, minor chores, that add up and weigh us down. And while there are some solutions we can't rush, we can pretty quickly reduce inner noise by ticking off those seemingly weightless "to do" list items. Simple acts like returning a library book, sending a thank you note, or unsubscribing from an email list you don't want to be on can easily join together to free up your attention span.

Drop commitments no longer serving you: Another potential area of meaningless distraction is anything you've agreed to do that you are no longer into. Perhaps you joined a certain professional committee out of passion and now you've lost interest. Or maybe you used to look forward to having lunch with a college friend once every month but now once every month seems like too much. In a continuously changing culture, with new ideas constantly making their way into your consciousness, you are bound to outgrow things. And any guilt you feel about that is just preventing you from going forward with whatever more appealing pursuit is calling you. The more you eliminate the commitments you've moved beyond, the more tuned in you will be with what matters most to you today.

A CONVERSATION WITH: KRYSTAL D. WILLIAMS

The Maine Bar Journal recently asked attorney Krystal D. Williams, the foundation manager of Providentia Group, about her life and experience practicing law in Maine.

What led you to come to Maine to begin or further your career?
I completed an Appalachian Trail thru-hike in 2011 and fell in love with Maine. When I had the opportunity to press the "restart" button on my life a few years later, I just knew that I needed to be in Maine.

Describe your proudest career moment, or a moment that helped define who you are as a BIPOC lawyer.
Starting my own law firm in 2020 was a defining moment. Like so many, George Floyd's murder changed how I thought about race in the U.S. I've always had a strong community development perspective, and I recognized that I had a unique opportunity to integrate my personal and professional goals.

If you weren't an attorney, what would you be?
I would be – and still am – a corporate strategist!

What motivated you to become an attorney?
I spent over a decade at a Fortune 100 company in a series of strategic assignments to help the company grow globally. Whether it was intellectual property ownership in the hybrid or electric engine space, tax recognition in cross-border asset transfers, or union contracts in a manufacturing facility, in each of my assignments I had to understand the business implications of the legal framework in which the company operated. Even though I partnered closely with in-house counsel in my projects, I felt that I needed to better understand "the Law" so that I could be a more effective businessperson.

What book, website, or other resource would you recommend to MSBA members interested in BIPOC issues and why?
Honestly, there is so much nuance within just the Black community (let alone all the communities reflected in the term "BIPOC") that it is near impossible to identify just one resource. But, I like a challenge! I would recommend The Sum of Us by Heather McGhee; it is one of the most comprehensive and digestible books about the origins and implications of systemic racism.

How would you say law school prepared you to deal with the issues of race and anti-racism issues in your career, if at all?
I attended Maine Law from 2014-2017; there was no formal focus on issues of race and anti-racism at the time. Thankfully, Maine Law's continued evolution includes a more intentional focus on issues of race.

What might someone be surprised to know about you?
My go-to karaoke song is "Two Princes" by the Spin Doctors. What a great song!

How does your MSBA membership keep you connected to the legal community?
I love the Maine Bar Journal because it helps me be more aware of colleagues' accomplishments and it keeps me plugged into what is happening in Maine's legal landscape.

What is anti-racism, and how would you encourage an attorney to engage in anti-racism?
Anti-racism is an ideological system that recognizes and seeks to undo the racialized caste system upon which this country was founded, a system intentionally designed to preference White, wealthy men (and, comparatively, those near them, such as White women and White men with fewer economic means).

Attorneys can engage in anti-racism in a few ways – this is not an exhaustive list, but more of a starting point. First, seek to know more about U.S. legal history. Read through tribal treaties, scan the municipal Black Codes, and review other state and federal legislation in effect through the 1950s and 1960s. The legal profession played a central role in codifying racism in the U.S. We attorneys will not truly take up the



mantle to create a new future until we fully understand and appreciate the role our profession played in creating and enforcing the disparities that currently exist.

Also, attorneys, particularly law firm partners, should actively seek to support and provide key assignments to BIPOC attorneys moving through their law firm's ranks. The legal profession is one of the oldest professions – and it is also one of the least diverse. As we come to terms with the role our profession had in codifying racism in our institutions, it makes the diversity imperative even more urgent.

Finally, engage in and implement strategies/actions learned through implicit bias training. Anti-racism is an area where head knowledge must be balanced with concrete actions. It is simply not enough to know about our history and the implications of the same, we do have to take individual and collective action to do things differently.

What advice do you have for a new BIPOC lawyer considering a career in Maine?
Build relationships! Maine can be a great place to build a career, and it all starts with building relationships. Thankfully, there is no shortage of great coffee spots in which to meet.

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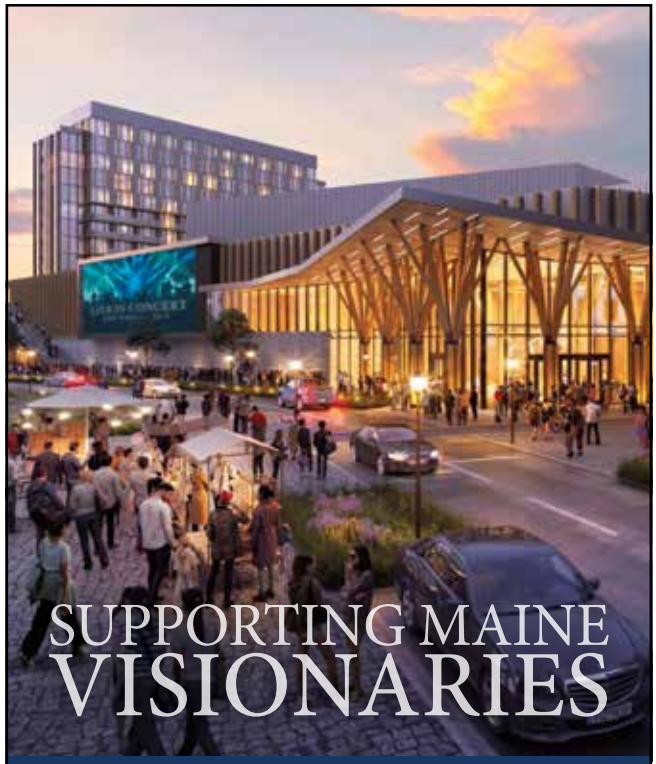
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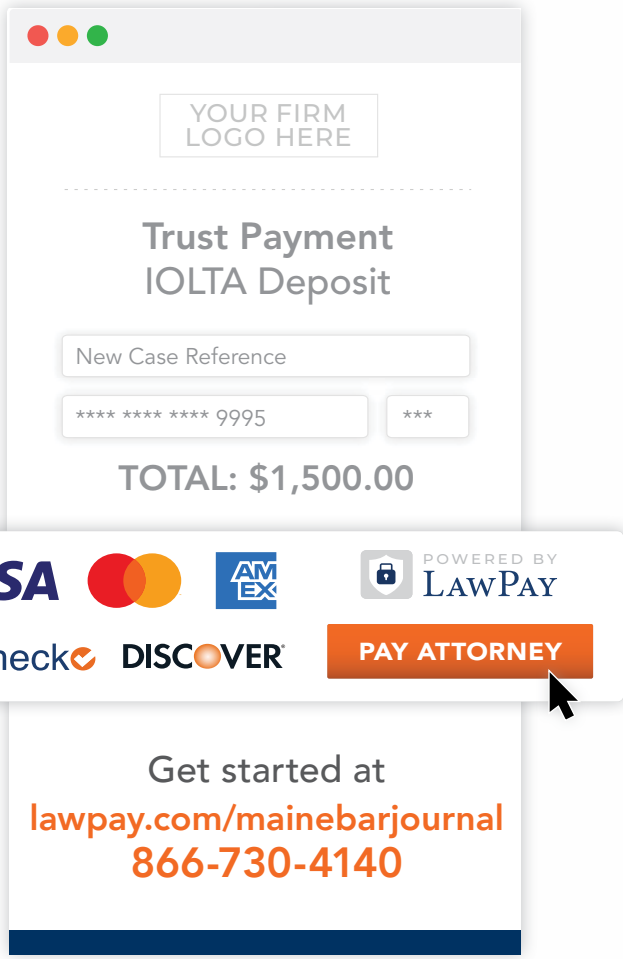
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KRISTIN MURRAY-JAMES, Esq., is executive director of the Maine Assistance Program for Lawyers and Judges. She may be reached at maineassistanceprogram@gmail.com.

We Can Choose to Be Kind.

My father always told us, "If you don't have something nice to say, don't say anything at all."

This motto could have been an attempt to have some quiet in a house with six children or perhaps instilling this value in all of us at a young age just made him a great dad. Attending twelve years of Catholic school, we were indoctrinated into some ideas and values I have chosen to leave far behind me, although a few have stuck. One of them is the verse, Love thy neighbor as thyself. It always seemed more a sensible guide than religious dogma to me. Respect for others, equality for all, helping one another, and simply being kind are how I practice this bit of biblical advice from the nuns at St. Aiden's. The word practice is essential here. Some days are just easier than others, especially these last few years.

I wholeheartedly believe most of us strive to be kind to one another. As the new director of MAP, I have been on the proverbial "road show," introducing myself and talking about MAP's mission to as many of you as possible. I often begin these talks by describing Maine as having a reputation for kind, generous, supportive, and helpful people. These traits describe the microcosm of the Maine bar as well. Even in our often-adversarial relationships, civility and benevolence can be a touchstone. I've watched interactions between attorneys for over a decade. I've seen thoughtful, respectful conversations and outcomes that neither side is thrilled with. Still, a resolution can be reached with justice and compromise as the goal and with a professional and tolerant debate. When discussions remain focused and cordial, we not only get the job done, but we can also enjoy our interactions.

The research bears this out. Studies show acts of kindness improve physical and psychological health. The simple act of helping a friend in need can benefit not only the friend but our health and wellness too. Kind people have a higher sense of meaning and purpose in life and have higher self-esteem and a sense of self-efficacy. They also experience less depression and anxiety and better physical health.

What's not to like about that? We can choose to be kinder in this new year, and everyone wins.





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The Maine Justice Foundation is committed to fairness, believing that access to justice is a basic human right, one that should be extended to all people. The Foundation provides funding to programs around the state of Maine that help those most in need of civil legal aid – the neediest of Maine residents.



MICHELLE DRAEGER is the Executive Director of the Maine Justice Foundation as of May 2020. A native of Maine, much of Michelle's career has been spent in public service including Pine Tree Legal Assistance, the U.S. Securities and Exchange Commission in Washington DC and Boston, and serving as an Assistant United States Attorney for the District of Maine. She can be reached at mdraeger@justicemaine.org.



LINSEY MACDOUGALL joined the Maine Justice Foundation as Development and Programs Manager in March 2022. Prior to joining the foundation Linsey has spent her career working in marketing, sales, corporate partnerships and special events in the commercial arts and entertainment, sports, tourism, and hospitality industries. She can be reached at lmacdougall@justicemaine.org.



JUDY WOODBURY is the new President of the Maine Justice Foundation.

The Maine Justice Foundation: Celebrating 40 Years Past, Present and Future

Mission and History

In 1983, leaders of the Maine State Bar Association and the University of Maine School of Law created the Maine Bar Foundation. The Foundation's founders recognized that many low-income Mainers involved in civil matters like disputes with landlords or serious child custody issues could not afford legal representation. The complexity of legal proceedings had tipped the scale in favor of those who could afford to hire a lawyer. Without assistance, Maine residents needing legal help would be forced to navigate the legal system on their own, often putting their families, homes, and livelihoods in jeopardy. After 32 years of operation, the organization was rebranded in 2015 as today's Maine Justice Foundation.

The Maine Justice Foundation, a 501(c)(3), is the state's leading funder of civil legal aid for poor and vulnerable Mainers and has a 39-year track record as an effective, trusted steward of funds for access to justice. The mission of the Foundation is "to facilitate the due administration of justice by necessary and proper means, including without limitation, by promoting the provision of legal services to the poor, supporting legal education and scholarship and engaging in activities aimed at enhancing the legal profession's ability to serve the public throughout the State of Maine." The Maine Justice Foundation is committed to fairness, believing that access to justice is a basic human right, one that should be extended to all people. The Foundation provides funding to programs around the state of Maine that help those most in need of civil legal aid – the neediest of Maine residents.

Maine Justice Foundation Programs and Initiatives

Interest on Lawyer's Trust Accounts (IOLTA)

In the mid-eighties, the Maine Supreme Judicial Court created Maine's Interest on Lawyers' Trust Accounts (IOLTA) program and entrusted the Maine Justice Foundation with its operation.[1]

IOLTA is a unique and innovative way to increase access to justice for individuals and families living in poverty and to improve the justice system. Without taxing the public, and at no cost to lawyers or their clients, interest from lawyers' trust accounts is pooled to provide civil legal aid to the poor and support improvements to the justice system. IOLTA is a critical ongoing source of funding for civil legal aid. Each year, grants from IOLTA are made to six civil legal service providers to provide access to justice to Maine's most vulnerable citizens. These organizations are Pine Tree Legal Assistance, Volunteer Lawyers Project, Immigrant Legal

Advocacy Project, Legal Services for the Elderly, Maine Equal Justice, and the Cumberland Legal Aid Clinic. Since IOLTA's inception in Maine, tens of millions of dollars in grants to the civil legal service providers have been made to ensure access to justice for countless Mainers.

ESO Endowment Fund

The ESO Endowment Fund was established in 2011 by an anonymous donor who dedicated it to providing support for people in need of civil legal assistance in Washington and Hancock Counties. The ESO grant supports applicants and programs dedicated to the provision of legal aid in Maine, offer legal services not currently available in these counties, and are collaboratively addressing unmet needs of underserved populations. Since inception of the fund through the end of 2023, MJF will have granted over $1.1 million from the ESO Endowment. In 2022, The Maine Justice Foundation awarded over $109,000 in grants to three organizations currently addressing the needs of underserved populations in Hancock and Washington Counties including the Immigrant Legal Advocacy Project, Maine Volunteer Lawyers Project, and Legal Services for the Elderly with plans for similar grants in 2023.

Frank M. Coffin Family Law Fellowship

The Frank M. Coffin Family Law Fellowship provides legal representation in family law matters to clients who have qualified for pro bono assistance through the Volunteer Lawyers Project. Named after Frank M. Coffin, Senior Judge on the First Circuit Court of Appeals, the project supports attorneys based in the Portland, Maine offices of Pine Tree Legal Assistance. Coffin Fellowship attorneys work for and are based at Pine Tree Legal Assistance's Portland office for two years. To date, the Coffin Fellows have worked on a remarkable 1,956 cases on behalf of low-income individuals in Cumberland County who had no other legal aid resources available to them. The Fellowship was launched in 1998 with the generous support of several Portland area law firms. There are currently twenty participating firms in the program including Berman & Simmons, P.A.; Bernstein, Shur, Sawyer & Nelson, P.A.; Cloutier, Conley & Duffett P.A.; Curtis Thaxter LLC; Drummond Woodsum; Eaton Peabody; Gideon Asen LLC; Irwin & Morris; Jensen Baird Gardner & Henry; Marcus Clegg; McCloskey, Mina, Cunniff & Frawley LLC; Murray Plumb & Murray; Norman, Hanson & DeTroy, LLC; Perkins Thompson, P.A.; Pierce Atwood LLP; Preti, Flaherty, Beliveau & Pachios, LLP; Roach Ruprecht Sanchez & Bischoff, PC; Robinson, Kriger & McCallum; Thompson, Bowie & Hatch LLC; and Verrill. Over the lifetime of the Coffin Fellowship, the member law firms have contributed over $2.5 million to underwrite the Fellowship. In 2022, the Maine Justice Foundation announced the selection of University of Maine Law School Juris Doctor Candidate, Ashley E. Kuntz, as the 27th Coffin Fellow beginning in September 2023.

Campaign for Justice

Established in 2004, the Campaign for Justice is a collaborative fundraising effort among members of the Maine Bar in support of civil legal aid in Maine. Today the Campaign helps fund six provider organizations in our state: Cumberland Legal Aid Clinic, Immigrant Legal Advocacy Project, Legal Services for the Elderly, Maine Equal Justice, Pine Tree Legal Assistance, and the Volunteer Lawyers Project. The Campaign for Justice assists adults and children in Maine who do not have access to justice in civil legal matters by raising support for legal aid providers. Those who benefit from the Campaign for Justice's support of legal aid live at or below the poverty level. The Campaign for Justice utilizes a strong volunteer network to bring awareness to justice issues and raises over $600,000 each year for people in all sixteen counties of our state. Since 2004, the Foundation has raised several million dollars for the Campaign for Justice and the six legal service providers.

Racial Justice Fund

In 2020, the Maine Justice Foundation started the Racial Justice Fund because of events which forced us to confront an America in which a fundamental, systemic racism remains embedded. The Racial Justice Fund supports education and advocacy aimed at achieving racial justice, equity and eliminating racism. With generous donations from twenty-three corporate founders (such as AARP Maine, Androscoggin Bank, RM Davis, Gorham Savings Bank, Hannaford, Cross Insurance, Bangor Savings Bank, CMP, Northern Light Health, Harvard Pilgrim, and several others seen here: https://

justicemaine.org/grants-and-programs/racial-justice-fund/, the Foundation launched the Racial Justice Fund with plans for the fund to make a material difference in statewide efforts to achieve equity and equal justice for all.

The Racial Justice Fund is guided by an Advisory Committee which outlines the programmatic scope of the Fund's work, issues a request for proposals and reviews, and recommends grants from the fund. The Foundation will make grants to address systemic racism by implementing racially equitable programs, processes, education, and systems at every level of Maine society, including the legal system, healthcare, the environment, outdoor equity, education, the workplace, food insecurity, the courts and housing. To date, the fund has grown to over $785,000 and over the last two years the Foundation has granted $80,000 to organizations across Maine working for racial equity. The organizations supported to date include the Greater Portland Immigrant Welcome Center, Immigrant Legal Advocacy Project, In Her Presence, Indigo Arts Alliance, Ladder to the Moon Network, Maine Inside Out, Mindbridge, Healthy Acadia – Downeast Diversity, League of Women Voters of Maine Education Fund, Sunlight Media Collective, and The Third Place.

LGBTQ Justice Fund

The LGBTQ fund was founded in 2016 to provide funding for nonprofit organizations that address the civil legal aid needs of low-income and vulnerable LGBTQ Mainers. The movement for full equality for LGBTQ people has seen incredible progress in a brief time. However, there are still many threats to the laws that protect LGBTQ people. Not only do they face discrimination in employment and housing, but they also find that current laws do not address their specific needs and concerns. Annual grants are made from the fund to organizations committed to supporting access to justice for LGBTQ Mainers.

Access to Justice Tax Credit

To encourage lawyers to provide services to underserved areas of our state, the Legislature enacted the Access to Justice Tax Credit Program in 2022. 36 M.R.S. Section 5219-ZZ provides that the Maine Supreme Court, or its designee, shall certify up to five qualified attorneys annually for participation in the Access to Justice Tax Credit program to receive a $6,000 tax credit. To be eligible for the $6,000 tax credit each year of the program, the recipient attorney must commit to practicing law in an underserved area for at least five years, remain rostered by the Maine Commission on Indigent Legal Services to accept court appointments to represent clients in an underserved area and agrees to perform *pro bono* legal services in an underserved area. The Court has designated the Maine Justice Foundation to administer the program and established a Standing Committee to assist and advise the Foundation in the process. The Standing Committee includes representatives of the Maine Justice Foundation, the Maine State Bar Association, and the Maine Trial Lawyers Association. In 2022, after receiving applications from eligible applicants statewide representing seven different counties, the Maine Justice Foundation authorized the first five lawyers who practice in underserved areas through random selection. In 2023 and through 2027, the Foundation will continue to administer this program by certifying those attorneys who have maintained their eligibility as well as certifying up to five new lawyers who meet the application criteria each year.

Looking Forward to 2023

Entering 2023, the Maine Justice Foundation is welcoming several new members to the Board of Directors and a new Board President.

Judy Woodbury – Board of Directors President

Judy retired from Pierce Atwood's Commercial Real Estate Group where her practice focused on commercial and residential acquisitions, development, sales, and financing throughout Maine and Northern New England. Pursuant to gubernatorial appointment, Judy was a public member on the Board of Licensure for Professional Land Surveyors. She served on the Boards of Directors of Friends of Casco Bay and Big Brothers/Big Sisters of Southern Maine, on the Governance Committee for the Campaign for Justice, and as inaugural Chair of the Peter DeTroy Award Committee. Judy's education includes a JD from the University of Maine School of Law and a BA with highest distinction from the University of Maine.

The mission of the Foundation is "to facilitate the due administration of justice by necessary and proper means, including without limitation, by promoting the provision of legal services to the poor, supporting legal education and scholarship and engaging in activities aimed at enhancing the legal profession's ability to serve the public throughout the State of Maine."

Judy has served on the Maine Justice Foundation Board since 2014. She has been co-chair of the Development Committee and served on the Governance Committee. Her vision for the Foundation's future includes increasing visibility of the Foundation among attorneys and the non-legal community across Maine. The work of the legal aid providers and grantees of the Foundation through the Racial Justice and LGBTQ Funds may be perceived by the public as supporting lawyers, but in fact the reach is much broader, including, but not limited to children, the elderly, economically disadvantaged, members of these protected classes and immigrants. When individual stories are told, such as in the podcasts created by Downeast Diversity, funded by a grant from the Racial Justice Fund, the reach of the Foundation becomes clear. (https://www.downeastdiversity.com) Judy says, "when we reach someone on that level, they are more likely to understand they are supporting the *people* of Maine when we ask for a donation."

In retirement Judy, her husband Doug, and rescue dog Lucee have enjoyed traveling through the US and Canada in their 19-foot camper van. They spent more than a month in Alaska this past summer.

Anne McGuire – New Board Member
Anne McGuire is a graduate of Fordham University and earned her law degree at Georgetown University. She is a senior attorney with a strong public policy and political background; having advised all three branches of the United States government. She has represented multiple industries including clean energy, disaster management and financial services and has led the overall strategy for high level fundraising campaigns. Anne is currently the Assistant City Manager for the city of Portland and will be joining the Maine Justice Foundations Development Committee.

Emily Anne Arvizu – New Board Member
Emily Arvizu is a graduate of Boston College and earned her law degree at the University of Maine. While at the University of Maine, Emily was a student attorney with the Refugee and Human Rights Clinic, Chair of the Multicultural Law Society and was the 2020 Immigration Law Fellow. She was the recipient of the Immigration Law Award and the Faculty Award for Community Service for the class of 2020. Emily is currently an Associate Attorney with Perkins Thompson, PA in the firm's litigation practice group and will be joining the Maine Justice Foundation's Grants, Programs and Policy Committee. Emily says "having spent most of my time at Maine Law involved with the Refugee and Human Rights Clinic (RHRC), I am looking forward to joining the Maine Justice Foundation Board to further support the crucial work of the Cumberland Legal Aid Clinic and similar organizations. Access to justice is foundational to a properly functioning justice system and I look forward to bringing my experience as a former grant writer, educator, and immigrant-advocate to this Board."

Joanne Lewis – New Board Member
Joanne Lewis is a graduate of New York University and earned her law degree at the Benjamin Cardozo School of Law. She also earned her MFA in creative writing from the University of Tampa. Joanne began her career as a prosecutor and then was a sole practitioner (The Law Office of Joanne T. Lewis, P.A.) in Fort Lauderdale, Florida until 2017 when she again became an Assistant State Attorney for the State Attorney's Office, Seventeenth Judicial Circuit also in Fort Lauderdale, Florida. In 2021 Joanne became an Assistant District Attorney in Bangor, Maine where she oversees the domestic violence unit. Joanne says, "As an Assistant District Attorney, I see too often how vulnerable and low-income Mainers do not have sufficient access to social services or are hesitant to seek assistance for various reasons. My interest in the Maine Justice Foundation Board arose based on my desire to help communities know that every person matters, and all Mainers must have equal access to justice initiatives and legal aid services. To me, being on the Maine Justice Foundation Board means I can be part of the solution." Joanne will join the Maine Justice Foundation's Grants, Programs and Policy Committee.

Adam Swanson – New Board Member
Adam is an Aroostook County native who received his MBA from Bryant University and earned his law degree at the University of Maine. Adam returned to Presque Isle after completing his education to found Swanson Law, P.A., where he is the principal attorney. Adam focuses on criminal defense and civil litigation. Swanson says, "I have always rooted for the underdog. It is an honor to be part of the Maine Justice Foundation's effort to level the playing field for those in need." Adam will join the Maine Justice Foundation's Development Committee.

Reginald Parson – New Board Member
Reginald Parson is a graduate of Marian University and earned his master's degree in public administration at the University of Wisconsin and his law degree at the University of Maine. Reggie completed legal internships at the American Civil Liberties Union of Maine, the Maine Regulatory Training and Ethics Center and with the City of Portland Municipal Government. He was also a student attorney at the Cumberland Legal Aid Juvenile Justice Clinic. While not a practicing member of the Maine Bar, following the completion of his legal education, Reggie began his service in the Maine State Legislature by working for two former Speakers of the House in the Maine House of Representatives as a Senior

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Legislative Aide and Policy Analyst. He is currently working for the House Majority Office as a Legislative Aide. Reggie says "I am excited to join the Maine Justice Foundation Board for its commitment to justice. I love how the Maine Justice Foundation constantly strives to provide justice by providing legal resources to those without the privilege of connections or financial resources to defend themselves in legal proceedings. Fairness is part of my core as an individual and leader. I really look forward to collaborating with my colleagues on the Board to ensure we continue to meet our commitment to justice for Mainers." Reggie will join the Maine Justice Foundation's Finance & Investments Committee and is a current member of the Foundation's Racial Justice Fund Advisory Committee.

As we move into 2023 celebrating our 40th year, the Maine Justice Foundation is looking forward to another exciting year continuing to grow and improve the existing programs as well as exploring new opportunities. The dedicated foundation staff continues to work to raise funds for and execute the existing foundation programs while improving internal controls, tools, and efficiencies. Today, our goals remain consistent: the Maine Justice Foundation is committed to helping those in need of civil legal aid in Maine and growing to meet the evolving social justice needs of the people of Maine.

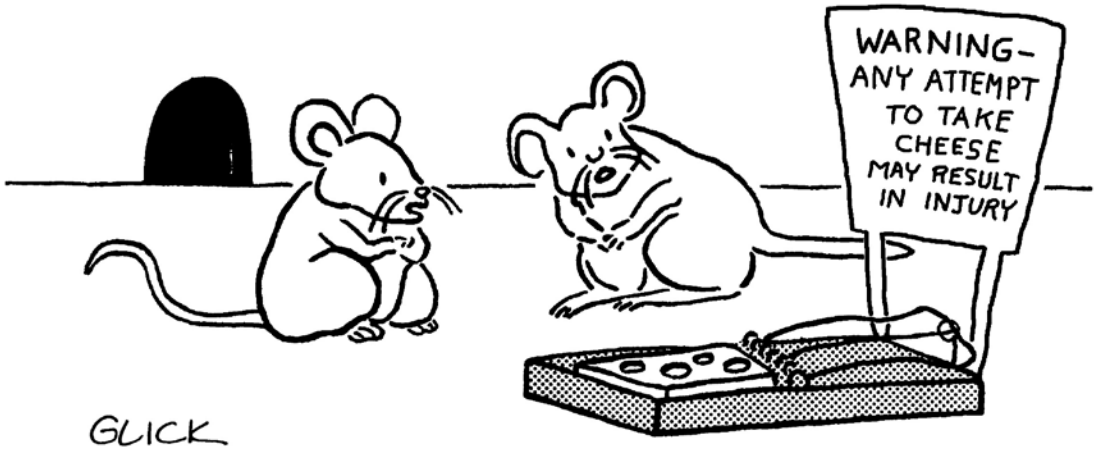
ENDNOTES

1 Maine Rules of Professional Conduct: Rule 1.15. Safekeeping Property, Client Trust Accounts, Interest on Trust Accounts http://mebaroverseers.org/regulation/bar_rules.html?id=88209
Maine Bar Rule 6. Maintenance of Trust Accounts in Approved Institutions: IOLTA http://mebaroverseers.org/regulation/bar_rules.html?id=638764



JEST IS FOR ALL

By Arnie Glick



"They are now required to put up that warning ever since some personal injury lawyer got a jury to find in favor of the mouse."





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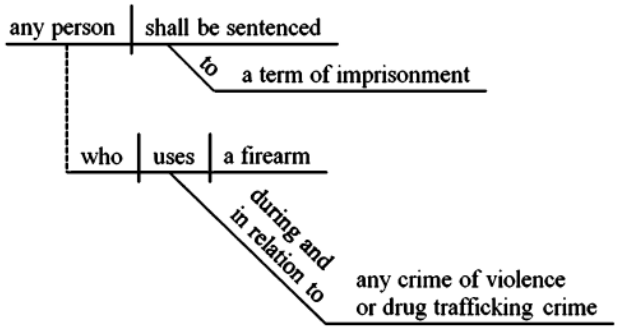
LEGAL WRITING ILLUSTRATED
The Persuasive Power of Pictures

My mother was a good, old-fashioned, English teacher. Not only did she expect her students to use proper grammar, she wanted them to recognize the relationships among the words in a sentence. Of course, for her, that meant teaching them to diagram, which she did enthusiastically. She knew the students would be able to understand the grammar and syntax of a sentence once they visualized it as a picture made of words connected meaningfully in a pattern. I am sure she never dreamed that a future United States Supreme Court justice would share her appreciation for sentence diagramming and include a diagram in a federal court opinion.

Sentence Diagramming as a Visual Aid in Judicial Opinions

In *United States v. Rentz,*[1] Judge Neil Gorsuch used a sentence diagram to interpret a United States statute.[2] In *Renz*, the defendant had used a firearm only once "during and in relation to" two separate volent crimes.[3] Because the defendant had hit two different people with a single shot, the Tenth Circuit had to decide whether the Government needed to prove a separate act of using a firearm for each charge or whether a single act could give rise to multiple charges.[4]

The statute provided that "any person who, during and in relation to any crime of violence . . . uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime . . . be sentenced to a term of imprisonment of not less than 5 years."[5] In parsing the "bramble of prepositional phrases" he encountered in this statute,[6] Judge Gorsuch began by focusing on the three relevant verbs, "uses," "carries," and "possesses," concluding that each charge must involve an independent act of "using, carrying, or possessing a firearm."[7] Conceding that a court's job "is to discern the statute's meaning, not grade its grammar," he included the following diagram in his opinion to justify his conclusion that each charge required both a distinct act of using a firearm and a resulting crime of violence.[8]



According to Judge Gorsuch, this reading of the statute "flows from plain old grade school grammar."[9]

Judge Gorsuch in not the only judge who has used sentence diagrams in deciding cases,[10] especially when interpreting statutes and regulations. Over 150 years ago, an Ohio judge used a sentence diagram to show that the phrase "whether called as a witness" modified each of the three indirect objects



in a statute.[11] More recently, the California Court of Appeals included a diagram to show that the state constitution imposed various limitations on the governor's authority to negotiate compacts.[12] In 2017, the Texas Court of Appeals used a diagram as "a visual explanation" to establish the ambiguity of a medical malpractice statute.[13]

Although courts frequently turn to dictionaries to understand the definitions of individual words and phrases, fewer tools exist for interpreting syntactic meaning. Courts most often use sentence diagrams to determine a provision's clarity or ambiguity and then include the diagrams in their opinions to explain those determinations. As one Missouri judge concluded in a bankruptcy case, if the court accepted the party's strained interpretation of the statute, not only were the efforts of the judge's past English teachers, who had required "diagramming and parsing of sentences ad infinitum," wasted, "but their earthly remains would take on gyroscopic manifestations."[14]

Although sentence diagrams can be helpful in deciphering statutes, they will never supplant interpretive canons like the "plain meaning rule" or other traditional methods of determining a legislature's intent.[15] Diagramming is also not as helpful in resolving contract disputes, where the most important consideration is the shared understanding of the parties, not the grammatical construction of the contract.[16]

Nevertheless, in addition to helping judges decipher statutes, sentence diagrams can help to improve the communicative value of judicial opinions. Not only are judges called upon to answer questions and resolve disputes, they must also show their work.[17] By using sentence diagrams as a visual aid, judges can make their opinions more accessible and the rationales for their decisions more understandable.

Visual Legal Writing

Brain research has shown that pictures, including photographs, diagrams, and charts, are more quickly and accurately processed than words.[18] No matter how artfully a scene may be described in words, a verbal description can never create as sharp a mental image for a reader as a picture.[19] Words alone, for example, could never capture the shocking sight of George Floyd, struggling for breath as Officer Derek Chauvin pressed his knee on Floyd's neck for nine and a half minutes, or the horrifying and unforgettable image of the World Trade Center towers collapsing. Furthermore, pictures are more powerfully persuasive than words; visual representation is associated with greater perception, comprehension, and retention of information.[20]

Extensive studies of reader behavior conducted by the *New York Times* confirmed that even their most erudite readers looked at the pictures in the newspaper before reading the articles, heavily shaping their perceptions of the articles when they read them.[21] The pictures had already gone a long way toward persuading readers of the truth and propriety of the articles' content.[22]

Given the power of visual rhetorical devices to explain and persuade, judges and lawyers would be well advised to incorporate more pictures, diagrams, charts, and graphs in their writing.

When to Use Visual Rhetorical Devices

Because the goal of rhetoric is to construct knowledge and aid in comprehension, visual rhetorical devices should only be included if they are highly effective at communicating the analysis. They must be more than decorative and entertaining. Unless they connect directly to the message of the communication, they are potentially misleading and should be eliminated.[23]

Visual rhetorical devices can enhance a work by organizing data in a chart or graph, providing examples, and including material in a manner that enhances more rapid communication of the information through symbolic imagery or spatial arrangement of the information.[24] In legal briefs, for example, lawyers can evoke a persuasive narrative through the artful use of photographs. Nobel Prize-winning behavioral economist Daniel Khneman has identified the predisposition of people to project stories upon visual images appearing in sequence.[25] Even the use of a single, powerful visual image can make the story presented in a brief's statement of the case come alive.

Research has shown that words alone are not as effective in telling a story as a combination of words and pictures.[26] Our brains use different channels to process information, with the verbal channel processing textual information and the visual channel processing images. [27] Relying on text exclusively can put too much stress on the verbal channel, hindering the reader's ability to remember the material presented.[28] By including visuals with the text, both the verbal and the visual channel are engaged, leading to improved comprehension and retention.[29]

When integrated thoughtfully into the text in a brief, visual rhetorical devices can be both helpful and persuasive. Instead of including volumes of attachments at the end of a brief, the key information can be presented in a chart, graph, or picture that is embedded in the text, where it is the most helpful.[30] Alternatively, a visual that clutters the page, disguises or obfuscates information, or befuddles comprehension should not be included.[31]

Ethical Considerations

Professionalism requires attorneys to scrutinize each visual rhetorical device to ensure that it is not inadvertently ambiguous or misleading.[32] Because it is so powerful, visual legal rhetoric can mislead and confuse the audience.

Visual media are ethically neutral. As photographer Richard Avedon stated, "There is no such thing as inaccuracy in a photograph. All photographs are accurate. None of them is the truth."[33] Although photos and other meticulously prepared visual media may not lie, they can be manipulated to distort reality and mislead the viewer.

Visual narrative devices work rapidly—almost immediately—to communicate ideas and attain the audience's adherence to the meaning and truth of the ideas communicated.[34] With their great power to persuade, visual rhetorical devices must be subject to intense ethical scrutiny. When used to construct knowledge and enhance understanding of the meaning and message of the communication, they are a proper form of legal rhetoric. To use them to mislead or prejudice the audience's reception or understanding of the communication would be unethical and thoroughly unprofessional.

Before a visual rhetorical device is included, it should be carefully analyzed to determine both its potential efficacy and persuasiveness and whether its use meets all ethical and professional standards. If use of the visual seems justified after scrutiny, the attorney should include it. If it does not hold up under scrutiny, it should be eliminated. Pictures or graphics that merely decorate a brief, without aiding the reader's perception or understanding of the message are not only superfluous, but potentially distracting or misleading.[35]

The View from the Bench

In the past decade, as the dominant medium for reading has shifted from print to electronic screens, many people, including judges, no longer read, analyze, and experience text in traditional ways.[36] Many people have become impatient readers; instead of reading deeply, they tend to browse, scan, or look for key words, especially when faced with long, uninterrupted blocks of text.[37]

Many judges, including United States Supreme Court justices, are now using iPads and laptops to read briefs.[38] In light of this development, judges are increasingly reporting a desire to see more pictures, maps, and diagrams in briefs to help them understand cases coming before them.[39] Thus, images, pictures, charts, graphs, and maps should no longer be presented in an appendix; they should be placed alongside text in the body of the brief.[40]

Few rules govern the use of images in appellate briefs. The only guidance provided in the Federal Rules of Civil Procedure deals with the quality of the copy.[41] Many briefs include images taken from the record, but flow charts and timelines presented for the first time on appeal are not prohibited if they do not introduce any new matters.[42] In one case, a Third

Circuit judge even thanked an attorney during oral argument for including a chart summarizing the procedural history of the case in her brief.[43] Furthermore, because neither the Federal Rules of Appellate Procedure nor any circuit local rules explicitly count images when determining whether a brief exceeds type-volume limits, "a picture truly can be worth a thousand words."[44]

The Persuasive Power of a Picture

Visual imagery is not only faster than words; sometimes it can be more persuasive. Even a reference to a picture may be enough to persuade an audience if the imagined picture is powerful enough.

Such was the case when my 90-year-old mother was being evaluated by a doctor before she would be allowed to return to her apartment after a hospital stay. A storyteller by nature, my mom had repeated a couple of her better stories a few times to members of the medical staff. Believing this repetition to be a symptom of dementia, the doctor decided to test her mental competence by asking her to answer some simple questions and complete a series of verbal tasks. Impatient to end this tedious assessment, my mom reached for the most persuasive weapon in her arsenal. When the doctor asked her to state a declarative sentence, this wily, retired, English teacher responded, "I want to go home. Would you like me to diagram that?" Her strategy worked. The doctor immediately ended the assessment and pronounced her mentally fit. Even though she never actually diagrammed the sentence, he must have imagined it and knew only a woman with a sound mind would even think of diagramming a sentence at a time like that. As in court, the persuasive power of a picture—even an imagined one—ruled the day.

ENDNOTES

1 777 F.3d 1105 (10th Cir. 2015) (en banc).
2 *Id.* at 1109 (interpreting 18 U.S.C. 924 § (1)(A) (2012).
3 *Id.* at 1107.
4 *Id.*
5 18 U.S.C. § 924(c)(1)(A).
6 *Renz,* 777 F.3d at 1106.
7 *Id.* at 1109.
8 *Id.* at 1110-11.
9 *Id.* at 1110.
10 James Durling, *Diagramming Interpretation*, 35 Yale J. on Reg. 325, 327 (2018).
11 *Id.* at 331.
12 *Id.*
13 *Id.* (quoting *D.A. v. Texas Health Presbyterian Hosp. of Denton*, 514 S.W.3d 431, 437 & n. 6 (Tex. App. 2017)).
14 *Id.* (quoting *In re Albertson*, 68 B.R. 1017, 1020 (Bankr. W.D. Mo. 1987).
15 *Id.* at 334.
16 *Id. at 335-36.*
17 *Id.* at 339.
18 William S. Bailey, "*Show the Brief': Lawyers can be Better Communicators by Bringing Visuals to their Briefs*, https://www.abajournal.com/web/article/show-the-brief-lawyers-ca...87&sfmc_l=1527&sfmc_jb=31004&sfmc_mid=100027443&sfmc_u=17810502.
19 *Id.*
20 Michael D. Murray, *The Sharpest Tool in the Toolbox: Visual Legal Rhetoric*, 68 J. Legal Educ. 64, 65 (2018).
21 Bailey, *Show the Brief*, *supra* n. 18.
22 Murray, *The Sharpest Tool in the Toolbox*, *supra* n. 20, at 65.
23 *Id.* at 66.
24 *Id.*
25 Philip N. Meyer, *Picture This*, ABA Journal 27, 27 (February 2016).
26 Bailey, *Show the Brief*, *supra* n. 18.
27 Emily Hamm Huseth & Michael F. Rafferty, *A Picture Can Save a Thousand Words*, 61 DRI for Def. 22 (Feb. 2019).
28 *Id.*
29 *Id.*
30 Bailey, *Show the Brief*, *supra* n. 18.
31 Murray, *The Sharpest tool in the Toolbox*, *supra* n. 20, at 66.
32 *Id.*
33 Michael D. Murray, *The Ethics of Visual Legal Rhetoric*, 13 Legal Comm. & Rhetoric: JAWLD 107, 111 (2016) (quoting Richard Avedon, who was quoted in Susana Martinez-conde & Stephen L. Macknik, "5 Illusions Reveal How Portraits Can Lie," Scientific American (July 12, 2014), https//www.scientificamerican.com/article/5-illusions-reveal-how-portraits-can-lie/).
34 *Id.* at 122.
35 Murray, *The Sharpest Tool in the Toolbox*, *supra* n. 20, at 67.
36 Huseth & Rafferty, "A Picture Can Save a Thousand Words," *supra* n. 27, at 22.
37 *Id.*
38 *Id.*
39 *Id.*
40 *Id.*
41 "Photographs, illustrations, and tables may be reproduced by any method that results in a good copy of the original; a glossy finish is acceptable if the original is glossy." Fed. R. Civ. P. 32(a)(1)(C) (2018).
42 Huseth & Rafferty, *A Picture Can Save a Thousand Words*, *supra* n. 27, at 22.
43 *Id.*
44 *Id.*



PAUL MCDONALD is a shareholder and the general counsel of Bernstein Shur Sawyer & Nelson. In addition to his commercial and business litigation practice, Paul represents lawyers in ethics, risk management, and malpractice matters. He can be reached at pmcdonald@bernsteinshur.com.

Termination of the Attorney-Client Relationship Part One: Mandatory and Permissive Withdrawal

This is part one of a two-part discussion dealing with the ethical issues and recommend practices surrounding termination of and withdrawal from an attorney-client relationship prior to conclusion of the matter. Part One will address the circumstances where the withdrawal is ethically mandated and those situations that permit, but not require, withdrawal. Part Two will address motions to withdraw.

Rule of Professional Conduct 1.16, entitled "Declining or Terminating Representation,"[1] addresses when a lawyer must, or may, withdraw from a representation and the lawyer's obligations upon termination of the engagement. In addition to Rule 1.16, withdrawal from representation also implicates a lawyer's duties of confidentiality and loyalty, among others.

Mandatory Withdrawal

Subsection (a) of Rule 1.16 itemizes the situations where termination and withdrawal from an engagement are required. These include the following circumstances:

> (1) The representation will result in violation of the Rules of Professional Conduct or other law;
> (2) The lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
> (3) The lawyer is discharged.[2]

Application of these requirements is usually straightforward. With respect to subparagraph (i), sometimes a client will request that the lawyer pursue an illegal or unethical course of action. The Official Comments to Rule 1.16 make clear that mandatory withdrawal is not required if the client merely *suggests* such a course of conduct.[3] In such circumstances, the lawyer's responsibility is to explain why they cannot do so.[4] Only if the client persists, must the lawyer then withdraw.[5] Likewise, if a lawyer merely suspects that the client is using the lawyers' services in commission of a crime or a fraud, but does not actually know or a crime or fraud is not obvious, withdrawal is not required[6] (although the lawyer may properly withdraw in such circumstances).[7]

Optional Withdrawal

Rule 1.16(b) enumerates the situations in which optional withdrawal from representation is permitted.[8] If the matter involves litigation in court, an arbitration, or some other proceeding before a tribunal,[9] Rule 1.16(c) makes clear that a lawyer must comply with applicable law and rules requiring notice to or permission of a tribunal when terminating a representation."[10] Typically, this involves filing a motion to withdraw. Note that if the tribunal refuses a lawyer's application to withdraw, "a lawyer shall continue representation notwithstanding good cause for terminating the representation."[11]

Withdrawal With Material Adverse Effect on Client's Interests

Withdrawal is permitted in any case where it will not have a "material adverse effect on the interests of the client."[12] Such circumstances will be limited, since it would be a rare occurrence that the lawyer's withdrawal did not have some adverse effect on the client. What constitutes a material adverse effect on the client's interest involves a fact-driven analysis, which should be viewed from the client's perspective.[13] Absent additional grounds for withdrawal, lawyers should proceed with caution when invoking Rule 1.16(b)(1).

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Withdrawal Even With Material Adverse Effect on Client's Interests

A lawyer may also withdraw—even if the withdrawal will have a material adverse effect on the client's interests—in the following five circumstances:

> (i) The client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
> (ii) The client has used the lawyer's services to perpetrate a crime or fraud;
> (iii) The client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
> (iv) The client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled; and
> (v) The representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client.[14]

This list is not exclusive. On the contrary, the Rule goes on to provide that optional withdrawal is permissible where "other good cause for withdrawal exists."[15]

Just because a lawyer *may* withdraw in these circumstances, withdrawal still may not be appropriate or allowed. As the Restatement (Third) of the Law Governing Lawyers states, "a lawyer may not waithdraw if the harm that withdrawal would cause significantly exceeds the harm to the lawyer or others in not withdrawing."[16]

Client's Criminal or Fraudulent Behavior

Rule 1.16(b)(2) and (3) permit withdrawal based on *the client's actions* that the lawyer "reasonably believes is criminal or fraudulent" even if the lawyer does participate in or further such conduct.[17] By their terms, these subparts permit withdrawal based on the client's past, present, or intended future wrongful conduct.[18] These provisions reflect the principle that "a lawyer is not required to be associated with [criminal or fraudulent] conduct even if the lawyer does not further it."[19]

Client Actions the Lawyer Considers Repugnant or With Which the Lawyer Has a Fundamental Disagreement

Rule 1.16(b)(4) provides for optional withdrawal when "the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement."[20] This potential justification for withdrawal must be considered alongside the requirements of Rule 1.2(a), which declares that "a lawyer shall abide by a client's decisions concerning the objectives of representation."[21] Official Comment 2 to Rule 1.2 anticipates the possibility of disagreement between the lawyer and client regarding objectives, strategy, and/or tactics, and recommends that the lawyer attempt to resolve the dispute before seeking to withdraw:

> On occasion, however, a lawyer and a client may disagree about the means to be used to accomplish the client's objectives…The lawyer should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental disagreement with the client, the lawyer may withdraw from the representation. *See* Rule 1.16(b)(4). Conversely, the client may resolve the disagreement by discharging the lawyer. *See* Rule 1.16(a)(3).[22]

Courts have approved withdrawal based on the repugnance or fundamental disagreement standard in the following circumstances: when the client insisted on pursuing a cause of

Where the client's unreasonable conduct creates a significant interference with the lawyer's ability to successfully carry out the engagement, withdrawal is permitted. The type of conduct that may justify withdrawal on these grounds could include the client's obnoxious behavior toward the lawyer and their staff, failure to respond to the lawyer's calls and written communications, and failure to provide necessary information to the lawyer.

action that the lawyer believed was not well grounded in the law or facts;[23] and where the client expressed dissatisfaction the lawyer, would not cooperate with the lawyer and otherwise ignored their advice, and stated his intention of retaining a new lawyer.[24] Another possible scenario involves the client refusing to accept what the lawyer considers a reasonable settlement offer. This situation directly implicates Rule 1.2(a) as well, which provides, in pertinent part, that "Subject to the Rules with respect to Declining or Terminating Representation (Rule 1.16), a lawyer shall abide by a client's decision whether to settle a matter."[25] Again, if the lawyer and client are unable to resolve the disagreement after consultation, both Rule 1.2(a) and 1.16(b)(4) permit the lawyer to seek to withdraw.

Client Fails to Fulfill Its Obligations

A lawyer may withdraw if the client refuses to abide by the terms of an agreement relating to the representation.[26] The typical scenario giving rise to withdrawal on these grounds is the client's failure to pay the lawyer's fees or costs.[27] Another typical reason for withdrawal on these grounds is the client's failure adhere to the agreement concerning the scope and objectives of the representation.[28]

Unlike any of the other enumerated grounds for permissive withdrawal, Rule 1.16(b)(5) expressly requires that the lawyer provide the client with a "reasonable warning that the lawyer will withdraw unless the obligation is fulfilled."[29] Whether the warning is reasonable will depend upon the circumstances in each individual case.

Unreasonable Financial Burden on The Lawyer or Unreasonably Difficult Client

Optional withdrawal may be had where the engagement places an unreasonable financial burden on the lawyer or the client renders the representation unreasonably difficult.[30] In a matter that is being actively litigated, withdrawal on the grounds of unreasonable financial burden will likely require a showing of circumstances that were not anticipated, such as an unexpected unfavorable pretrial ruling, inability of the client to pay, or an unexpected change in the scope or complexity of the representation. In other words, the fact that a matter becomes less profitable than originally anticipated or the likelihood of success is diminished may not constitute sufficient grounds to withdraw.[31]

Where the client's unreasonable conduct creates a significant interference with the lawyer's ability to successfully carry out the engagement, withdrawal is permitted. The type of conduct that may justify withdrawal on these grounds could include the client's obnoxious behavior toward the lawyer and their staff,[32] failure to respond to the lawyer's calls and written communications, and failure to provide necessary information to the lawyer.[33]

In the event one (or more) of the above-described circumstances comes to pass in a matter pending before a tribunal,[34] the lawyer will most likely be required to file a motion for leave to withdraw. Such motions invoke other ethical obligations, most significantly the duty of confidentiality, that the lawyer must be careful to observe. The forthcoming Part 2 of this discussion will address these issues.

ENDNOTES

1 Me. R. Prof. Conduct 1.16.
2 *Id.* R.1.16(a).
3 *Id.* Official Comment 2.
4 *Id.* R.1.16(a).
5 *Id.*
6 *See, e.g., In re Hopkins*, 687 A.2d 938, 940 (D.C. 1996) (mandatory withdrawal not required where lawyer "suspected that her client *might* engage in wrongdoing, she feared it, she tried to persuade him to allow her to set up safeguards, but she did not know with…certainty… that her client was engaged in fraud.")(emphasis in original).
7 *See* discussion *infra.*
8 M. R. Prof. Conduct 1.16(b).
9 "Tribunal" is defined in Rule 1.0(m), and denotes a "court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal

judgment directly affecting a party's interests in a particular matter."

10 Me. R. Prof. Conduct 1.16(c).

11 *Id.*

12 *Id.* R.1.16(b)(1).

13 A typical scenario resulting in a finding of a material adverse effect on the client's interest is the client's inability to retain successor counsel. *See, e.g., In re Kiley* 459 Mass. 645, 649-50 (2011); *McDaniel v. Daiichi Sankyo, Inc.*, 343 F. Supp. 3d 427, 432-33 (D. N.J. 2018).

14 Me. R. Prof. Conduct 1.16(b)(2)-(6).

15 *Id.* R.1.16(b)(7).

16 Restatement (Third) of Law Governing Lawyers § 32(4) (2000).

17 Me. R. Prof. Conduct 1.16, Official Comment 7.

18 *Id.* R.1.16(b)(2), (3).

19 *Id.* Official Comment 7.

20 *Id.* R.1.16(b)(4).

21 *Id.* R.1.2(a).

22 *Id.* Official Comment 2.

23 *Whiting v. Lacara*, 187 F.3d 317 (2d Cir. 1999); *Banks v. Andersen Consulting, LLP*, No. 97-3110, 1998 U.S. App. LEXIS 6555, at *1, *4 (7th Cir. Mar. 27, 1998); *Jiricko v. Ill. Anesthesia, Ltd.*, Nos. 92-2613, 92-2682, 1993 U.S. App. LEXIS 22030, at *2 (7th Cir. Aug. 17, 1993).

24 *Citibank, N.A. v. Accounting Sys.*, No. 90-1145, 1990 U.S. App. LEXIS 14377, at *8 (1st Cir. Aug. 7, 1990).

25 Me. R. Prof. Conduct 1.2(a).

26 *Id.* R. 1.16(b)(5).

27 Withdrawal on these grounds often triggers the separate ground for withdrawal found in subpart (b)(6), "the representation will result in an unreasonable financial burden on the lawyer." *Id.* R. 1.16(b)(6).

28 *Id.* Official Comment 8.

29 *Id.* R. 1.16(b)(5).

30 *Id.* R. 1.16(b)(6).

31 *See, e.g., Kreigsman v. Kriegsman*, 375 A2d 1253, 1256 (NJ App. Div. 1977) ("[A lawyer's] obligations do not evaporate because the case becomes more complicated or the work more arduous or the retainer not as profitable as first contemplated.").

32 *See Whiting v. Lacara*, 187 F.3d 317 (2d Cir. 1999) (withdrawal appropriate where client threatened to sue lawyer if client's legal strategies were not followed).

33 *See Koon Chun King Kee Soy Sauce Factory Ltd. v. Kun Fung USA Trading Co*, No. 07-CV-2568, 2009 WL 605786 (E.D.N.Y. Mar. 9, 2009) (withdrawal appropriate where client cut off all communications with lawyer, ignored lawyer's requests for information, and failed to disclose whereabouts).

34 *See* n. 9 *supra*.



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