

## From the Chair

Jeffrey M. Padwa, Providence, RI

### Get Involved and Make It Happen

My message in this edition of our newsletter is an invitation to get involved.

#### Fundraising Results

I am proud to report that our division surpassed our fundraising goals on behalf of Jean Carnahan (D-MO) and Hon. Tom Strickland (D-CO). As a group, we raised close to \$15,000 for their campaigns. The number of

new lawyers who wrote checks (over 60) is even more satisfying than the amount we raised. Thank you to everyone who contributed.

#### Seat on ATLA's Executive Committee

The NLD is essential to ATLA. We can and must make a difference in ATLA's future. ATLA created a full voting position for the NLD on its Executive Board recently and I represented the NLD at the Executive Committee Retreat in Napa Valley in October. Discussions at the Retreat involved politics and fundraising, public education, membership, the Exchange, legal affairs and ATLA governance. My report from the Retreat is on the NLD Web site and has been posted on the list server. Our division is being asked to play a more active role in ATLA in several ways.

#### Membership – NLD Sponsorship Program

Attracting more new lawyers to ATLA is a high priority. Statistics reveal that the average age of ATLA members is rising. This means that we need to do a better job in recruiting new lawyers as members. The good news is that the



Jeff Padwa

NLD is already working on several projects to increase new lawyer membership. The "NLD Sponsorship Program" targets recent law school graduates and new bar admittees who are going into plaintiffs' practice. The program offers them the opportunity to join ATLA and have their dues paid by an ATLA member from their state. We need your help in identifying these

new plaintiffs' lawyers and making them aware of ATLA. Please contact me, or Mary Penchoff at ATLA to assist with this important effort. You can reach me at [jpadwa@aol.com](mailto:jpadwa@aol.com) and at (401) 273-8330, or Mary at [mary.penchoff@atlahq.org](mailto:mary.penchoff@atlahq.org) and at (800) 424-2725, ext. 341.

#### The Exchange – Spread the Word

Spreading the Word about the Exchange is another top priority of the NLD. The Exchange is an online database of information that should be used by more new lawyers. Search the Exchange to discover valuable information such as Litigation Packets, CLE materials, members with similar matters, deposition transcripts, and more. It should be used in every products liability case, and to check out expert witnesses. We need your assistance in promoting the Exchange to new lawyers. Explain how great it is to 5 lawyers and you will earn free access. Simply e-mail their names, the city and state in which they reside and their e-mail address to [NLDContacts@atlahq.org](mailto:NLDContacts@atlahq.org).

#### Document Drive

Let's share our documents to avoid  
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## Hanging Your Shingle

Kevin A. Adamson, Atlanta, GA

Opening a new law office requires one to consider what legal services will be offered, what financial restrictions will be encountered, and where clients will come from. This article provides some basic tips on starting your own practice.

#### Choosing a Path

According to the American Bar Association there were 1,048,903, resident and active attorneys in the United States in the year 2001. The Internet Legal Research Center, Heiros Gamos ([www.hg.org](http://www.hg.org)), lists 70 primary areas of practice and 130 additional subspecialty areas of practice. With so many attorneys in practice and so many choices of specialty, it is no surprise that many attorneys start out in general practice.

However, selecting a specialty may assist in defining the necessary resources to start a law firm. The nature of the fee may be compelling, as may be geographic location or one's previous experiences. Sometimes the most desired specialty is not practical for many of the following reasons.

#### Evaluating Finances

Central to defining an area of specialty is the evaluation of one's financial status. Having the funds to start a practice may be a concern—particularly with looming student loans. Evaluating one's financial status may be viewed as a two-part analysis. The first part concerns finances before starting the practice. The second part concerns finances after the practice has begun—practically known as the attorney's fee.

In considering the resources available to start a practice, one should not stop at his or her own resources, but should explore the possibility of partnering with another interested attorney

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ney or consider the possibility of a sharing an office with another attorney. Some professionals find that copier and facsimile expenses are the most burdensome when starting a new practice. Such costs become manageable when shared amongst two or more attorneys.

Secondly, an attorney should evaluate her fee structure. The fee structure may be hourly, unit-based, contingent on recovery, or a sampling of each depending on the legal services offered. Deciding on a fee structure before determining a specialty, however, may be putting the cart before the horse.

The contingent fee often necessitates less record-keeping with respect to time spent working on a case, but requires an attorney to await an outcome before the fee is realized. Certain specialties may have ethical limitations on a contingent fee, such as criminal and divorce matters.

In charging an hourly fee, one must establish an hourly rate. Most states require an attorney charging an hourly rate to keep records to the tenth of an hour. The advantage to an hourly fee structure is the immediate realization of capital.

Many resources are available for litigation financing. The ATLA Web site ([www.atla.org](http://www.atla.org)) lists many independent organizations providing case finances for attorneys starting their own practice.

### **Staffing Needs**

Time is money. The time spent doing work that is not billable may be more costly than a legal assistant. Non-traditional staffing may be the key to unlocking the door to a successful practice. Often law students are willing to work for minimal wages in order to obtain the practical experience your law practice has to offer.

Likewise, family and out-of-work friends are easily approachable for assistance and could assist in secretarial tasks. This becomes a significant factor when a legal secretary is beyond the current budget.

### **Consider All Available Resources**

Law does not exist in a vacuum. Many legal issues an attorney is presented with have been handled before by a fellow member of the bar. The legal arena is a unique industry, in that attorneys are overwhelmingly helpful to each other. ATLA is renowned for

its members helping one another. Technological advances have removed former barriers to peer assistance.

Hundreds, if not thousands, of years of experience are contained in the ATLA online database (<http://exchange.atla.org>). Substantial discounts are available to new lawyers for obtaining pattern discovery, depositions transcripts, pleadings and entire litigation packets. Learn how to effectively and efficiently utilize the Internet to avoid re-inventing the wheel. The New Lawyers Division website ([www.atla.org/newlawyer.htm](http://www.atla.org/newlawyer.htm)) lists testimonials from some of ATLA's most experienced trial lawyers about using the ATLA online database in deciding whether or not to take a client.

An invaluable resource to the legal field is the e-mail list server. A list server is much like a bulletin board, but utilizes an e-mail address. A person in need of assistance simply sends an e-mail message to the "list," and every member of the particular forum receives the request. Should a member of the forum have an response to the inquiry, his or her reply is also sent to the entire list. Much may be learned simply by browsing inquiries posted by other forum members. ATLA maintains many specialized members-only list server forums, including one for new lawyers.

### **Networking and Getting Clients**

A successful attorney is not made by the cases she takes, but the ones she doesn't. A new lawyer oath should be, "I will not take a bad case no matter how big of a retainer the potential client offers me." It is difficult to refuse a case when the copier rental fee is due, and a potential client comes through the office offering a five thousand dollar retainer.

Becoming involved in the community will create name recognition. A law firm is like any other business. Word of mouth and reputation are fundamental to building a thriving practice. Conventions and bar association meetings are excellent resources for networking opportunities. ATLA holds a winter and summer convention with substantial discounts to new lawyers and first-time attendees.

Hanging one's shingle requires attention to practice area, available resources, and building the business through recognition and reputation. The right preparation and devotion should ensure a prosperous and fulfilling future. Good luck.

## **Build Your Courtroom Confidence**

**March 15-20, 2003, in Knoxville, TN**

If you've tried only a few cases to verdict or want to gain added confidence in the courtroom, ATLA has a program designed just for you.

ATLA's own National College of Advocacy is offering its highly acclaimed Trial Advocacy College: Essentials of Civil Litigation, March 15-20, 2003, at the University of Tennessee Knoxville College of Law in Knoxville, Tennessee. The law school is cosponsoring this very special program.

By the time you leave Knoxville you will know how to . . .

- Assess who should be on—or off—your jury
- Create a strong opening statement and deliver it
- Analyze the strengths and weaknesses of your courtroom presentation
- Develop your direct and cross-examination skills
- Develop a winning closing argument

The focus will be on mastering specific trial skills and techniques during workshops led by experienced trial lawyers. Trial consultants will analyze your presentation skills and help you discover your full potential as a trial lawyer. You will be videotaped while presenting each component of a trial from voir dire to closing.

Isn't it better to learn from the experience of the best mentors ATLA has to offer?

Here's what some colleagues had to say after their "Essentials" experience.

"The confidence builder I needed to know that I do have it in me to do this job well—I did not believe before the week started."

*Lisa Richford  
Williamstown, NJ*

"I honestly cannot pick my favorite topic. Each topic was extremely beneficial and very practical. So many times, seminars are too theory oriented and not practical. This was just the opposite."

*Allen Laws  
Russellville, AR*

For more information, phone: 800-NCA-1791 or 202-965-3500, ext. 612, or log on to [www.atla.org](http://www.atla.org)

**From the Chair** (Continued from page 1) "reinventing the wheel." We are collecting expert deposition transcripts for the Exchange and building a library of documents on the NLD Web-site. Please forward your expert deposition transcripts as well as pleadings, discovery requests, deposition outlines, motions in limine, voir dire questions, and jury instructions. We need documents from all types of cases, including motor vehicle / pedestrian incidents, police chases, premises liability incidents, dog bites, etc. Our library will be freely accessible to ATLA members and will be a valuable resource to many new lawyers. Please contact myself or Mary Penchoff to contribute – it's easy and will make a big difference.

**Communication – List server and Web site**

Sign on to the NLD list server for networking, content and useful information. Our list server is active. We are seeing numerous opportunities for referrals, members are exchanging substantive information, and information from the NLD leadership is being communicated. Almost a thousand members are currently signed on to our list server. Go to the NLD Web site and register for the list server to take advantage of this benefit.

Our "new and improved" Web site should be up by the time you receive this newsletter and we will continue to update it over time. Check it out.

**Public Education - Damage Caps**

ATLA's polling results show that a clear majority of Americans oppose damage caps when the effect of the cap is explained. Part of our job is to explain damage caps to our friends, family members, neighbors, and legislators. We need to explain how damage caps would affect children and seniors and how they would affect those who are permanently injured, disabled, and killed. Americans oppose damage caps when we explain their effect!



# ATLA's NCA Seminars in 2003: Worth up to \$595, Free to New Lawyers Division Members In Practice Fewer Than 5 Years

ATLA New Lawyers Division members in practice fewer than five years who have not yet attended an ATLA National College of Advocacy (NCA) seminar or college can attend the well-regarded NCA seminars for free over the coming year. Please note: This offer applies only to NCA Seminars, not the NCA Colleges. For more information, please call the NCA at 1-800-NCA-1791.

**Litigating Catastrophically Injured Infant Cases**

February 21-22, 2003  
Atlanta, Georgia  
The Ritz-Carlton Buckhead

**Litigating Nursing Home Cases**

March 21-22, 2003  
Austin, TX  
The Omni Austin Hotel

**Psychology of Persuasion**

April 4-5, 2003  
New York, NY

**Auto Collision Cases During Jazz Fest**

May 1-3, 2003  
New Orleans, LA  
The Hotel Inter-Continental New Orleans

**Pharmaceutical Update**

March 7-8, 2003  
Dallas, TX  
The Fairmont Hotel

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## Deposition Basics

Stanley D. Helinski, Boston, MA and Fred Schultz, Bloomington, IN

A deposition is like a football match without a referee—both sides fighting for control over a single object. In the case of a deposition, the object is the record. Thus, it is important to understand the rules before strapping on your uniform and jumping in the game. The following are basic practice pointers for deposition practice.

**Preparation**

Preparation is the key to an effective deposition. If possible, it is best to speak with the witness before the deposition. This is most applicable when dealing with a treating physician deponent. If representing a patient, opposing counsel will be precluded from questioning the doctor before the deposition without prior consent, giving the patient's attorney a marked advantage.

A goal is absolutely crucial. One must approach a deposition with a specific goal in mind, as to what testimony is helpful to the case. However, hav-

ing a goal should not prevent follow-up questions where necessary.

Only the most experienced litigator may conduct an effective deposition without notes. Do not be intimidated by scorched earth attorneys flying by the seat of their pants. At a minimum, a checklist should be used to ensure you remember to address all issues. The reverse is also true. One should avoid an overly extensive outline for want of listening to testimony, and following up with questions spawned from the answer.

**Questioning**

Questions should be clear and to the point. Be sure the deponent's response actually answers the question asked. Also be certain that the deponent is unable to wiggle out of testimony because the question was too vague or ambiguous.

Forgetful witnesses are extremely  
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**Deposition**, (Continued from page 3) frustrating. If the witness does not remember, make sure she never remembers. This is known as boxing-in the witness. Ask if there are any documents in existence that could refresh the witness's memory in the area. Offer to go off the record for the witness to call someone. If the witness remembers at trial, he or she will look evasive and lose favor with the jury.

### Objections

Obstreperous conduct by opposing counsel is no stranger to the deposition setting. Knowing and understanding objections is the first step to limiting such behavior. Most court rules require that objections be reserved at the time of the deposition, except as to form or to preserve a privilege. This should be stipulated prior to the deposition.

Objections as to "form" apply to the structure of the question, rather than the information sought. Thus, unless the examiner seeks to invade a privilege recognized by the substantive law of the case, a question is presumptively proper as to the substantive information requested.

The following are descriptions of proper objections in most jurisdictions:

- (1) A "vague" or "ambiguous" question is one in which a reasonable person could have more than one responsive answer. Asking if the deponent quit her job without further qualification of the question would be vague and ambiguous if the person holds more than one job.
- (2) A question that "lacks foundation" is one in which the examiner assumes a fact that he or she has not first established. Asking where one received his or her training in immunology lacks foundation where the examiner has not first established that the deponent received training in immunology.
- (3) A question purposed on obtaining a "speculative" answer is similarly improper, and an objection asserted as "calls for speculation" is proper. Asking whether the witness would expect the traffic light to have been green when he or she drove through it, asks the witness to guess at the color of the traffic light.
- (4) A "leading" objection is proper when an examiner is questioning his or her own witness. Often on cross-examination of a deponent, the examiner will employ leading tactics. This is not proper, and should be objected to.
- (5) A question purposed on harassing

or badgering the deponent is similarly improper.

It is important to note that objections as to form are waived if not raised at the time of the deposition. When raising an objection, it is best to avoid stating a basis. This leaves you open to argue any basis when the testimony is relied on. Similarly, an examiner should request a basis for opposing counsel's objections, where appropriate.

An objection should be raised in a non-suggestive manner, however. A clever practitioner will give the witness a clue as to how he or she should respond. Returning to the traffic light example, consider the following question in light of previous testimony stating that two traffic lights were involved in the incident: "Mr. Tortfeasor, please state what you observed the color of the traffic light to have been." As the request is undefined as to exactly which light the examiner is referring to, and during what time (whether before, during or after the accident), a proper objection may be raised on the basis of vagueness and ambiguity.

**When raising an objection, it is best to avoid stating a basis.**

However, stating that the objection is raised as to, "which light," and to "what time she is referring to" will inform the witness that the answer should include this information. This is an objection that suggests an answer, and is improper. The question should be stricken and re-asked with instruction that defending counsel refrain from suggesting answers to the witness.

Most jurisdictions require a deponent to provide an answer to the question subject to whatever objection raised by opposing counsel unless the answer would reveal privileged information. The examiner should evaluate the nature of the privilege and evaluate if such a privilege is recognized in the jurisdiction.

In the case of privileged information, the witness's attorney may instruct the witness to refrain from answering the question. The examiner may then ask the witness if he or she will take the advice of his or her attorney and refuse to answer, or whether he or she is willing

to disregard the advice of the attorney and provide a response.

### Strategic

The aura created in the deposition is a strategic consideration that should be evaluated by the examiner in advance of the deposition. Some witnesses may succumb to a comfortable, conversational atmosphere. Others may react poorly to hostility (such as an expert witness) and their testimony may be frustrated by confrontation.

Many resources, such as the ATLA Exchange (<http://exchange.atla.org>) may have prior deposition testimony of the deponent available to the examiner before the deposition. Review of a deposition transcript of prior testimony will provide helpful insight into to witness' personality and demeanor. This should supply some guidance as to how to conduct the deposition.

### Use of Documents

Writings provide evidence that is difficult to dispute if authentic. A deposition is an excellent forum to establish authenticity and lay foundation for documents you intend to introduce at trial. In order for depositions to be useful later on, you must get the documents you need early in the discovery process. The types of documents requested will largely depend on the nature of the case. Discovery requests should ask for a name of a representative of the defendant who has knowledge about each of the various documents produced.

At the time of the deposition, simply showing the deponent the document and having the deponent testify that the signature is representative of his or her own, that the record was made by a person with knowledge of the defendant's business practices, that such records are normally kept by the defendant, and that there is nothing which indicates a lack of trustworthiness of the document (Evidence Rule 803 - Business Records Exception to Hearsay). With the Federal Rules of Evidence, Rule 902 (Self-Authentication) a requests may be made to opposing counsel as to authenticity. Other discovery devices—such as a Fed.R.Civ.P. 36—may be used to request admissibility of duplicates under Rule 1003, or the Federal Rules.

Deposition practice is fundamental to litigation. Knowing how to control the deposition with strategy and superior knowledge of proper deposition practice is one of many essential skills of a successful litigator.