Lawyers
In
Transition

A resource guide for employees from the

Indianapolis Bar Association

Standing Committee on Professionalism

PROFESSIONAL LIABILITY INSURANCE

I. Is there a requirement that lawyers carry professional liability insurance?

-The answer is no; there is no requirement under Indiana law that a lawyer carry professional liability insurance.

II. Should you carry insurance?

-While this is obviously a personal decision, malpractice insurance is affordable and readily available in Indiana. Legal malpractice cases are on the rise and the exposure faced by practitioners today makes it extremely risky to practice "naked."

III. What is covered?

- Most policies' coverage language is similar to the following:

Subject to the terms, conditions, exclusions and limitations of this policy, we will pay on your behalf all sums which you become legally obligated to pay as damages because of any claim or claims first made against you. The claim must first be made and reported to us during the policy period and must arise from any act, error or omission to which this policy applies. Our obligation to pay damages on your behalf is limited to the limit of liability that remains after we deduct the deductible amount shown in the Declarations, provided all of the following are true. a) The claim must arise out of the rendering of or the failure to render professional services. b) The claim must be caused by an insured under this policy or by any person for whose acts, errors or omissions you are legally liable. c) The act, error or omission must have first occurred on or after the applicable Retroactive Date(s). d) You had no knowledge of facts which could have reasonably been expected to result in the claim, or any knowledge of the claim, prior to the effective date of this policy. e) There is no other insurance policy which provides coverage for the claim.

-Claims made policies are the most common and provide coverage for claims made during the policy coverage period regardless of when the alleged acts occurred.
-Tail coverage. You should acquire "Tail" coverage or an Extended Reporting Period (ERP) Endorsement if your firm stops buying insurance for any reason such as firm dissolution or retirement. An ERP allows for the reporting of claims in the future to cover claims arising out of legal services you provided in the past.

IV. Where do I get Insurance?

-There are a number of insurance brokers locally who can assist you in selecting the policy that best meets your needs and budget.

-Ritman & Associates 1-888-374-8626
-Pearl Insurance 1-800-322-2488

ETHICAL ISSUES FOR DEPARTING LAWYERS

There is no single blueprint that will cover every situation but here are the pertinent questions you should consider when faced with this situation. When in doubt, the Comments to the Indiana Rules of Professional Conduct [RPC] cover just about any situation that may arise.

PLANNING AHEAD

READ ANY AND ALL applicable documents <u>before</u> taking action with regard to a departure. <u>Some situations may merit obtaining independent counsel to advise you.</u>

1. Is there an employment agreement that covers the rights and obligations for a departing lawyer? [Firm guidelines? A handbook?]
2. Are you subject to a partnership agreement?
3. Have you reviewed any applicable retention agreements for each client to assess whether or not you have continuing obligations to the client to consider?
4. Are there any issues about allocation of fees?

    a. Any fees due for refund? What about unearned retainers?

    b. Are your billings current to reflect any accrued fees?

    c. ARE FUNDS HELD IN TRUST PROPERLY DETAILED AND DISTRIBUTED?

5. Are client files and property properly safeguarded and detailed as to what goes where?
6. Is every file up to date so as to provide continuous competent advancement of the case? RPC 1.1 Competence and RPC 1.3 Diligence
7. If you are leaving government service, review the especially applicable Rules of Professional Conduct that apply to you. RPC 1.11
8. If you are leaving a position as in house counsel, be aware of those ethical obligations unique to you. RPC 1.13
9. Have you considered the following ethical duties to your clients and your firm?

    a. Disclosing a pending departure in a timely fashion to clients for whose active matters you are currently responsible or play a principal role in the current delivery of legal services. RPC 1.4 Communication

    b. Ensuring that the matters to be transferred with the lawyer to a new firm do not create conflicts of interest in the new firm and can be competently managed there. RPC. 1.7, RPC 1.8, RPC 1.9, and RPC 1.10

    c. Protecting client files and property and ensuring that, to the extent reasonably practicable, no client matters are adversely affected as a result of a withdrawal.

d. Maintaining confidentiality and avoiding conflicts of interest in any new affiliation respecting client matters remaining in the client's former firm. RPC 1.9 and RPC 1.10

e. Proper termination of representation when required. RPC 1.16

f. Avoid conduct involving dishonesty, fraud, deceit, or misrepresentation in connection with any planned withdrawal. RPC 8.4

DON'T FORGET, IT IS THE CLIENT THAT CHOOSES THE LAWYER, NOT THE OTHER WAY AROUND.

WHAT COMES NEXT?

1. What may you do to solicit clients? RPC 7.3 --Recommendation or Solicitation of Professional Employment permits communications as detailed in the rules with present and prior clients. However, acting in conflict with the duties imposed by partnership and/or employment agreements may raise additional ethical concerns. The following are good general guidelines:

    a. A notice of departure should be limited to current clients with active matters;

    b. You should not urge the client to sever a relationship with the firm, but may indicate your willingness and ability to continue to work on the matter;

    c. You should be very clear that the client has the ultimate right to decide who will complete or continue the matters; and

    d. You should never disparage your current firm/employer.

2. Once you are no longer bound by terms of employment, partnership, or other restraints from your prior position, your ability to contact present and former clients will generally broaden.
3. Publicity and advertising rules may be new to you, but generally apply to any form of solicitation of non-lawyers who are neither former nor current clients. RPC 7.2
4. Don't forget to update your information for the Roll of Attorneys- you have the express obligation to provide your current address and contact information to the Clerk of the Supreme Court. http://www.in.gov/judiciary/cofc/docs/addresschange.pdf
5. If you are going into solo practice from a larger setting, you will also want to update your registration to designate another attorney who could be appointed in the event you are unavailable to practice.
6. It may be a good idea for solo practitioners to include a provision in a retention agreement informing the client of what would happen in the event you are unable to work for a period of time, since you cannot simply call in another lawyer in a pinch without the client's express permission. RPC 1.6

WHAT TO DO WHEN YOU DON'T KNOW WHAT TO DO?

1. The Indiana State Bar Association Legal Ethics Committee has a telephone advice panel that is a great quick resource. You can find all counties there, but obviously can rely on the individuals listed regardless of your location.

    a. For Marion County: John Conlon 317-262-6581; Ted Waggoner 574-223-4292; Seth Lahn 812-855-0905 and Stephen B. Cohen 317-236-7000.
    b. For Hamilton, Hendricks, and Hancock County: Raeanna Moore 812-535-4155, Jack VanStone 812-426-2811.
    c. For Madison County: Patrick Olmstead 317-822-4400; Vicki Wright 317-238-6267.
    d. For Johnson County: Jon Pactor 317-636-0686; Jack VanStone 812-426-2811.

2. The ISBA also has links to prior Ethics Committee opinions that may be searched by topic. http://www.inbar.org/PublicInformation/ISBALegalEthicsOpinions/tabid/81/Default.aspx
3. Look it up! The ABA/BNA Lawyers Manual on Professional Conduct will reassure you that your problem is not unique, and that there is good guidance already developed.

1. EMPLOYEE PROPERTY and OTHER ISSUES

When you leave a job, you need to determine what you may rightfully take with you. Knowing what to ask your employer before you leave will help you come to an amicable agreement as to what you may take.

Q: What requires the client's consent before removing or photocopying the property?

A: Client files or other client property, whether the original file or duplicates, must be transferred or removed only at the client's instruction. *See* MODEL RULES OF PROF'L CONDUCT R. 1.15, 1.16(d); ABA Comm. on Ethics and Professional Responsibility, Formal Op. 99-414 (1999).

Q: What property requires notification to the firm prior to its removal?

A: The safest course is to discuss with your firm anything you would like to take with you and ensure there is no dispute over its ownership. Unless the property is indisputably your personal property, such as family photos or other personal articles, the wisest course is to notify the firm of anything you are removing or copying. Such a course avoids potential ethical violations, proprietary disputes, and breaches of fiduciary duty. *See, e.g.*, *Bopp v. Brames*, 713 N.E.2d 866, 871 (Ind. Ct. App. 1999) (noting that an associate owes the partnership a fiduciary duty as an agent of the firm). Some examples of what you may consider discussing with your firm are:

- Blackberry
  - If the phone itself belongs to the firm, inquire whether you may keep the SIM card and accompanying phone number to avoid the loss of your professional contacts.
  - If you are unable to keep the SIM card, discuss whether you may otherwise record the contact information in your phone's address book. The firm may be unwilling to allow you to take any client contact information, but you may be able to keep a record of other professional or personal contact information.
- Documents that you created
  - Briefs and motions are generally accessible online at the court's website. However, avoid using the firm's resources (including PACER or other online resources for which the firm pays a fee to access records) to retrieve or duplicate them.
  - Research memoranda, pleadings, and forms: Discuss with your employer whether you may take specific documents. Request specific documents rather than asking for every document you drafted during your employment, as the firm is likely to view any work product as firm property.

    - Presentations, seminar materials, continuing legal education materials, and software applications: If these are not publicly available, ask your employer if you may take a copy of your research for your personal use (not for financial or competitive advantage).
- <u>Blog posts</u>
    - If you created a blog for the firm, inquire whether you may claim ownership.
    - If the firm funded the blog, ask your employer whether you may link to your posts after you leave.
- <u>Case law/Research</u>
    - Ask your employer if you may remove any general research you compiled for your personal use.
- <u>Bar association dues and professional publications</u>
    - If your firm pays your bar association dues, discuss with the firm whether it will continue to do so while you job search.
    - If your firm pays for your subscriptions to any bar journal periodicals or other professional publications, ask whether the firm will continue to fund that subscription. Additionally, ensure that it is permissible for you to keep any copies you have already received.
- <u>Access to online legal research websites</u>
    - Discuss whether your employer will allow you to access LexisNexis, Westlaw, or other online legal research services purchased by the firm while you search for alternative employment.

Q: What are some guidelines for determining what I may take with me when I leave?

A: The most important consideration when leaving a job is that the client's interests always come before your interests or the interests of the firm. You must also remember your fiduciary duties to your former firm. Also consider these reminders:

- To maintain your professional reputation and to avoid potential litigation with your former firm, avoid surreptitiously copying or removing any firm property or client material. Even if you believe you are entitled to take something with you, discuss the matter with your employer. Your professional reputation is the most valuable asset you take with you when you leave.
- Specifically, avoid the temptation to take electronic materials without first seeking and receiving permission. For example, avoid forwarding materials to a personal email address or downloading onto a USB drive. Most IT personnel can readily trace such activity, and even innocent transactions look suspicious if you haven't sought permission beforehand.
- Do not remove or copy client lists without explicit firm permission.
- Even if a document is publicly available, it may still be protected by copyright or other intellectual property concerns.
- Be reasonable and fair in all of your discussions with your employer.

- Some firms require employees to sign intellectual property agreements that stipulate that your work product belongs to the firm. Partnership agreements may also address similar concerns.

Resources

1. **American Bar Association's Website: www.abanet.org**
    a. **ABA's Formal Opinion 99-414: Ethical Obligations When a Lawyer Changes Firms**
2. **ABA / BNA Lawyers' Manual on Professional Conduct, 91:701**
3. **GEOFFREY C. HAZARD, JR. & W. WILLIAM HODES, THE LAW OF LAWYERING (3rd ed. 2009).**

EMPLOYEE BENEFIT and RELATED ISSUES

When you leave a job, you need to make decisions about your health insurance, health flexible spending account, 401(k) plan and life and disability insurance.

1. **Health Insurance**

- Ask your employer whether your health insurance ends on your last day of work or at the end of the month.
- COBRA Coverage
  - -- If your employer has more than 20 employees, then you are probably entitled to keep your health coverage for up to 18 months without a medical exam.
  - -- To buy COBRA coverage, you will probably have to pay 102% of the employer's total premium cost.
  - -- The employer or the health plan administrator must give you notice of your right to elect COBRA coverage within 44 days of your departure.
  - -- You must elect COBRA coverage within 60 days of this COBRA notice,
  - -- You must pay your first COBRA premiums within 45 days of electing COBRA.

  These election and payment deadlines are very rigid, and if not met, you will forfeit your right to COBRA coverage.

  - -- COBRA coverage will also be offered to your spouse and dependents if they were covered by your employer's health plan on your last day of work.
  - -- If you or a family member needs health care right away, ask your employer to provide the COBRA election form and premium information asap, and elect COBRA and pay the premiums asap.
  - -- If you don't need health care right away, you should still elect COBRA within the 60 days unless you have other coverage. You don't have to pay the premiums just because you elect COBRA. If you don't pay the premiums when due, you lose your COBRA coverage, but there is no other consequence.
  - -- If you have a break in your health coverage of 63 days or more (e.g., because you don't take COBRA), then preexisting health conditions may not be covered in your next health plan for up to 12 months.

-- There are good resources on the U.S. Department of Labor's website about COBRA and how to protect your health and retirement benefits after a job loss. Go to www.dol.gov/esba.

2. **Health Flexible Spending Account in Cafeteria or Section 125 Plan**

- If you have money left in your health flexible spending account (also called a health reimbursement account) in your employer's Section 125 plan (also called a cafeteria plan or flexible benefits plan), ask your employer how long you have to incur charges to use up that money, so that it will not be forfeited.
- If you need more time to incur covered charges, ask your employer how much you have to pay in order to buy more time.

3. **401(k) Plan**

- You may withdraw your account from your 401(k) plan after you leave your job.
- Your employer may not, however, require you to take your money out unless you have a small account.
- You may either have the account paid to you and pay taxes on it (plus a 10% penalty if you are less than 55), or you can roll the money over to an IRA, and take the money out of the IRA as you need it.
- If you roll the money over to an IRA, you will not have to pay income taxes on the money until you withdraw it from the IRA.
- If you have a 401(k) loan outstanding when you leave your job, the balance may become due in full. If you do not pay the loan off, the balance of the loan will become taxable income to you.

4. **Life and Disability Benefits**

- If you have group life insurance or group disability insurance, you may have the right to convert the group insurance policy to an individual policy without any medical examination.
- Generally this right only lasts a short time after you leave your job. Thirty days is typical.
- Ask your employer about your conversion rights and for a copy of the Certificate of Coverage for your life and disability insurance.

STARTING YOUR OWN LAW PRACTICE:

CHECKLIST FOR BASIC OFFICE SET-UP

This is, by no means, an exhaustive list of things you need to do in order to start your own law practice. This is merely a checklist to provoke thought on the various issues you may encounter in setting up your firm.

I. BUSINESS

- Determine if you will start the firm alone or with others. (If you are starting a firm with others, there are numerous other considerations, including roles of the partners, financial contributions and disbursements, basic structure, etc).
- Decide on the name of your Firm (see ethical rules re guidance).
- Determine the type of business structure/entity you want to your Firm to be.
- Organize your entity with the Secretary of State.
- File your constituent documents with the Board of Law Examiners.
- Create a business plan.

II. FINANCE/ACCOUNTING/BUDGET

- Project your overhead & expenses (then round up).
- Do not forget to include your own retirement.
- Project your gross receipts & cash flow.
    - Determine your fees/rates in order to make a profit.
    - Determine how many hours you will need to work/bill (plan on spending a substantial part of your time performing non-legal work, especially at first).
- Determine your “safety net” line of credit, savings account, personal and/or business loans, credit cards, etc. It is a good idea to plan that you will not make any money for at least 6 months (12 to be safe). You should plan to have a safety net large enough to cover 6 months of your firm’s budget in addition to your personal expenses.
- Do not forget about quarterly taxes!
- Develop accounting procedures (including involving a CPA).
- Develop a relationship with a bank and set up separate accounts for operating trust/IOLTA (and a credit card machine, if applicable).
- Develop a plan and strategy for billing & collections.
    - Determine which software you will use both for billing clients and maintaining the firm’s finances.
    - Determine how frequently you want to bill clients (monthly, weekly, bi-weekly).
    - Create a great client fee agreement.
    - Develop a system to “stay on top of” your A/R.

III. MARKETING

- Develop your personal database. First and foremost, update your list of contacts. Be sure that everyone you know is on your list and that you have current contact information for each contact. (Categorize people on your database so you can separate the master list at a later time.)
- Consider meeting with a marketing agency to assist you with developing a brand/logo etc. This does not have to be expensive!

- Determine your potential client base/How you will get clients.
    - Let others know you want referrals from friends, family, professional contacts and other lawyers.
    - Determine what advertising you will do, if any (i.e., print ads, web-based marketing, radio/TV, etc).
    - Consider joining local and state bar associations.
    - Consider participating in your local/state bar association's referral-based program.
    - Consider accepting reduced-fee cases through local agencies.
    - Get involved with legal and non-legal organizations—the bigger your base of "contacts," the more potential clients you create.
    - Consider writing articles or developing a newsletter or blog for your particular area of "expertise."
    - Offer to speak at local CLEs.
- Create or have a web designer develop your website. It does not have to be extravagant at first, but, at a minimum, it should include all of your contact information: address (including directions/maps), email address, phone and fax numbers; your areas of practice and your biography.
- Consider spending some of your advertising budget on optimizing your website. Speak with legal website specialists about SEO & SEM.
- Announce your new firm. (This doesn't have to be extravagant—it can be as simple as a mass email to all of your contacts. If you have more of a budget, consider a more formal mailer or host an "open house.")
- Get business cards. (Again, this does not have to be a huge expense. There are several online deals offering simple business cards. If you go to the expense of creating a "brand," use your brand throughout all of your print-marketing, including business cards. Otherwise, only the important information on standard white cards is necessary. Carry them with you at all times and provide them to close friends and family for distribution.)

IV. OFFICE SPACE/LOCATION

- Determine your office arrangement. (Will you rent space, buy space, work out of your home; participate in a "virtual office;" or have an office share arrangement. [Depending on what you decide, numerous other issues are raised.])
- Location is an important consideration. Consider the following: your commute; accessibility to your clients; visibility to the general public; signage options; safety concerns; accommodations for the elderly and disabled; proximity to the courts, other businesses, other lawyers who may send your referrals, restaurants, your bank, etc.
- Determine what other expenses will follow with the office (i.e., janitorial, property taxes, utilities, etc).
- Determine the size of your office. Consider square footage needs, the number of offices, space for storage and files, expansion considerations, etc.
- Consider the parking situation at your office (for yourself, your employees and your clients).

V. OFFICE ADMIN

- Determine what equipment you require (i.e., phones, computers, server, fax machine, copy machine, postage machine, credit card machine, cell phone/PDA, etc.). Many companies have lease arrangements to minimize up-front costs.
- Determine what furniture you will need (i.e., desk, client chairs, conference room table/chairs, lobby chairs, refrigerator, etc).
- Determine your IT needs. Consider hiring an IT professional to set-up your computers, network, internet (high speed internet/wireless/DSL), email accounts, virus protection and/or firewall, backup system, and to assist with software a/o basic computer needs.
- Determine your staffing needs. If you do not have a budget (or the work for the additional help), consider at what point you will want/need staff. If you do plan to start out with staff, there are numerous issues that arise as a result such as benefits, employee manuals, etc).
- Determine your software/word processing needs.
- Establish UPS and Fed Ex accounts.
- Create a list of basic office supplies (paper, pens, staples, envelopes, file folders, etc) and determine the most cost-effective way of obtaining and maintaining supplies. Consider getting on a vendor list for discounted supplies that are frequently offered.
- Determine your legal research needs: law library, books, online (Casemaker, Westlaw, Lexis, etc).
- Develop Back-Up Plans:
    - For your computer system in the event of a power outage or technical problems;
    - For your important business documents (such as scanning and/or making hard copies and keeping duplicates in a fireproof safe and/or an offsite location, safety deposit box, etc); and,
    - For your firm in the event of you are unexpectedly out of the office (due to illness, accident, etc).
- Consider becoming a notary public (or have someone in your office become one).
- Create a system for opening, numbering, organizing and closing client files.
- Create a system for knowing your courts. Learn what methods of filing are acceptable, what judges and other judicial officers are in which courts and when, and what each court's rules are (both the published and "unpublished" rules/preferences).

VI. LIABILITY/INSURANCE

- Obtain professional liability insurance (malpractice insurance)
- Consider your options for health insurance.
- Obtain property/casualty insurance, if applicable.
- Obtain general liability insurance.
- Consider obtaining life insurance and/or disability insurance (including short-term/maternity leave).
- If you have employees, consider benefit plans for them as well as worker's comp.
- Consider your options pertaining to business interruption.

VII. PRACTICE MANAGEMENT

- Be sure your licenses and bar dues, etc. are current.
- Notify the bar associations of your new contact information.
- If you have been practicing prior to starting your own firm, take all appropriate measures to notify courts, clients and opposing counsel of your new info, including filing all appropriate notices with the court on active cases.
- Get involved in your local and state bar associations, including the sections relating to your practice areas as well as the
- Sign up for the state listserv pertaining to your practice areas.
- Develop a network of attorneys that you trust and can consult.
- Create a forms file for your practice group(s) or purchase software or forms books.
- Create a form bank for client documents (intake forms, initial consult forms, general info for clients including opening letters, client evaluation forms, etc).
- Develop a calendaring and docketing system, which is often called a “tickler system” (and a backup system).
- Develop a good conflicts-checking system.
- Develop a case management system (either create your own or consider case management software).
- Make a plan to manage your time! Devote time to your clients every day, to the administration of your practice, as well as to yourself (downtime, social time, family time, workout time, etc).

FINANCIAL GUIDANCE RESOURCES FOR ATTORNEYS

Going Solo:

"How Much Money Do You Need To Start a Law Firm?" Erik Mazzone, American Bar Association, Law Practice Management Section, www.abanet.org/lpm/resources/finance.html

"The Dynamics of Billing, Profits and Compensation," Edward Poll, American Bar Association, Law Practice Management Section, www.abanet.org/lpm/resources/finance.html

"How To Start and Build a Law Practice," Fifth Edition, Jay G. Foonberg, American Bar Association, Law Practice Management Section, www.abanet.org/abastore/index.cfm?fm=Product.AddToCart&pid=5110508

Free and Low Cost Law Firm Resources:

www.law.seattleu.edu/Library/Online_Resources/Research_Guides/Solo_and_Small_Firm_Practice_Resources/Merrill_Brown.xml

Free and Low Cost CLE:

See the ABA's Economic Recovery Resources webpage, http://new.abanet.org/economicrecovery/cle.aspx

Financial Professionals:

For some pros and cons, see Successful Career Strategies, Inc.'s website, www.scslawcareers.com

Home Mortgage Relief:

The Home Affordable Modification Program, launched in 2008, commits the U.S. Department of Treasury to partner with financial institutions to reduce homeowner monthly mortgage payments. For further information, see http://www.ustreas.gov/press/releases/reports/modification_program_guidelines.pdf

The Mortgage Debt Relief Act of 2007 generally allows taxpayers to exclude income from the discharge of debt on their principal residence. For additional information, see http://www.irs.gov/individuals/article/0,,id=179414,00.html

Credit Card Relief:

In some cases, non-business bad debt cancellation can also be excluded from income. see http://www.irs.gov/individuals/article/0,,id=179414,00.html and IRS Publication 4681.

Retirement Fund (IRA and 401K) Withdrawals:

IRS rules and plan requirements differ. Employer-sponsored 401K plans may not permit withdrawals at all. And the IRS imposes a 10% penalty on withdrawals unless the money is used to pay medical expenses exceeding 7.5% of gross income. Borrowing from the 401K is sometimes possible.

Rules are more lenient for withdrawals from IRAs. The 10% penalty does not apply to certain withdrawals. For example, the penalty is not imposed if you are unemployed, have received unemployment benefits for at least 12 weeks, and use the money to buy health insurance. Other exceptions exist for certain college expenses and first time home buyers.

See http://www.irs.gov/retirement/article/0,,id=162416,00.html

TIPS ON AVOIDING TRAPS FOR THE SOLO PRACTITIONER

1. Become familiar with attorneys who are solo practitioners or who work for small firms. This is especially useful with respect to attorneys outside your practice area, as those attorneys can become an excellent referral source. Attorneys within your area can be especially helpful regarding developments in the law and other “tricks of the trade,” like how to effectively screen your clients, handle retainers, and collect your accounts receivable. Several organizations have solo/small firm practice groups, including:
   - *Indianapolis Bar Association, Solo/Small Firm Practice Section* – Kenan Farrell, Chair -- (317) 808-0000, kfarrell@klflegal.com
   - Indiana State Bar Association, Solo/Small Firm Practice Section – Jeff. B. Jackson, Chair -- jeff@thomassonlaw.com or see the Section’s website at: http://www.inbar.org/ISBALinks/Sections/SectionsPublic/GeneralPracticeSoloSmallFirm/tabid/271/Default.aspx
   - American Bar Association’s Solo and Small Firm Practice Division - http://www.abanet.org/genpractice/join/

2. Become a subject matter expert about the areas of law in which you are passionate, then share the “wealth” of that expertise by speaking at seminars or getting the word out to attorneys who could use your expertise or serve as referral sources to you.

3. Think carefully about the legal and ethical implications of advertising. Consider your target client group and where that group is most likely to look for an attorney. Are your target clients more likely to learn about you through a social networking website or to find you through an ad? Learn the ethical rules regarding advertising in your jurisdiction, and consider carefully how you wish to describe your expertise, practice experience, and practice areas in your advertisements.

4. Consider signing up with the local bar association attorney referral service. Additional information on the IBA Lawyer Referral Service follows on page 37.

5. Fulfill your ethical responsibility to make a plan for making sure your clients are served in the event you become unable to serve them.

6. Take business cards with you everywhere you go.

7. Invest in client development by making long-term investments of time and assistance to local and community organizations.

LEGAL RESEARCH RESOURCES

Libraries

If you live, work, or can get Downtown, you are in luck. There are three legal libraries open to the public or to members of the Indianapolis bar. Not only do they house legal reporters, annotated codes, encyclopedias, and secondary resources such as Federal Practice & Procedure, they provide quiet places to work.

Two of the libraries also have a limited number of public terminals where you can access Westlaw without charge and, at the Supreme Court Library, HeinOnLine and a limited version of Lexis. These terminals, available on a first-come, first-serve basis, provide full access to Westlaw's national and state databases but are limited in other ways. (Attorneys needing to save materials should bring a flash drive.) Librarians may limit patron time on these terminals when others are waiting.

The libraries are:

- **Ruth Lilly Law Library**, Indiana University School of Law-Indianapolis, Inlow Hall, 530 West New York Street. The 475,000-volume research library is open to the public and even has a study room reserved for bar members. It has one public Westlaw terminal in its reference room, which may be accessed at no charge with assistance from a librarian, who will enter the password. (It is not connected to a printer.) The library is open seven days a week except on listed holidays. Visit http://indylaw.indiana.edu/library/ for information about the collection, specific hours, holidays, and evening entrance hour, or 274-4028.
- **Supreme Court Library**, Room 316, State House, 200 West Washington Street. This 70,000-volume library serves Indiana's appellate courts but is open to the public from 8:30 a.m. to 4:30 p.m. weekdays except on state holidays. It offers two public research terminals with free access to Westlaw, HeinOnline (which offers a more complete database of law reviews and journals), and some Lexis access. (The terminals are connected to a printer, and printing is free.) It also has an extensive collection of state judicial materials, including some judge bench books. Visit http://www.in.gov/judiciary/library/ or call 232-2557.
- **U.S. District Court Library**, Room 445, 46 East Ohio Street. This comprehensive library for the federal court judges and staff is open to members of the bar from 8:30 a.m. to 4:30 p.m. on weekdays except on federal holidays. Call 229-3925 for more information.

Low-Cost Electronic Research Alternatives to Westlaw and Lexis

A surprising amount of case law and legal articles are available for free through Google or other Internet search engines. Nearly all courts maintain a website where their opinions are posted. (For federal sites, visit http://www.uscourts.gov/; for state sites, visit http://www.in.gov/judiciary/courts/) Moreover, numerous decisions have been posted to the Web by general research sites such as FindLaw and PublicResource or searchable educational sites such Cornell University Law School's Supreme Court Collection, at http://www.law.cornell.edu/supct/.

Lexis also offers a free, searchable database of all Supreme Court decisions and all other federal and state decisions published in the last ten years at its LexisOne website, http://www.lexisnexis.com/webcenters/lexisone/freecaselaw. Setting up an account is free. The drawback is that only Lexis pagination is included. Users can pay for the traditional Lexis version of the case, with hyperlinks and reporter pagination ($9 per case as of 8/25/10), or, in addition or alternatively, pay a fee to cite check the case ($15 per case for Shepard's citations; $4.25 per case for auto cite as of 8/25/10).

More extensive research requires access to a searchable, proprietary database, keyed to case reporters or secondary materials and showing the pagination needed for citation. The alternatives to Westlaw and Lexis vary in their cost, the quality of their search engines, their ability to provide comprehensive cite-checking, and access to secondary sources. Additionally, while these services may claim to have access to federal decisions, the depth of coverage may vary. Most databases included case law dating from at least 1950 forward, although some are much more extensive. Users should consult the listed websites, or contact a provider representative if the information is not listed there, to inquire about the scope of their collections. Here are some of the services:

1. **Casemaker**. This legal research service is free to members of the Indiana State Bar. It offers searchable access of reported state and federal decisions dating back to various years, statutes, administrative decisions, rules, and more. Cases are hyperlinked and some cite checking is available. Although Casemaker is only available through a bar membership, non bar members can learn about it at http://www.casemaker.us/

2. **VersusLaw**. Provides flat rate, unlimited access to state and federal decisions dating back to various years, as listed on its website. Professional subscription includes access to federal statutes, regulations, and more. ($479.40 a year, as of 8/25/10). http://www.versuslaw.com/

3. **Fastcase.** Provides flat rate, unlimited access to all Supreme Court and circuit decisions, and various other federal court and all state decisions dating back to various years, statutes, regulations, and administrative materials. ($995 a year, as of 8/25/10). https://www.fastcase.com/

4. **LoisLaw**. This research service offers flat-rate unlimited access to federal and state decisions, administrative decisions, statutes, and regulations. Subscriptions are available by the day, week, month, or year. (Basic annual subscription was $1,512 as of 8/25/10). http://www.loislaw.com/

5. **The Law.net**. Provides annual subscriptions only for flat rate, unlimited access to federal and state decisions dating back to various years, statutes, and regulations. ($575 a year as of 8/25/10). http://www.thelaw.net/

6. **NationalLawLibrary**. Provides flat rate, unlimited access to Supreme Court and federal circuit decisions, state decisions generally dating back fifty years, court rules and state codes. Offers various subscription plans. (Monthly subscription all 50 states and federal decisions was $86 as of 8/25/10.) http://www.itislaw.com/

Some helpful articles comparing low-cost legal research alternatives:

Kendall F. Svengalis, *Legal Information Buyer's Guide and Reference Manual 147-52* (2005), at http://www.law.cornell.edu/background/elaw/readings/sven3_full.rtf

Cleveland Marshall College of Law, *Free/Cost Effective Research on the Web and Alternatives to Lexis & Westlaw*, at http://www.law.csuohio.edu/lawlibrary/resources/lawpubs/documents/Free.ppt

Four Legal Research Companies Offer Mid-Priced Options, Wis. L.J. (2008), at http://www.wislawjournal.com/article.cfm/2008/09/08/Four-legal-research-companies-offer-midpriced-options

Mary Rumsey, *UPDATE: A Guide to Fee-Based U. S. Legal Research Databases*, (2006), at http://www.nyulawglobal.org/globalex/US_Fee-Based_Legal_Databases1.htm

TEMPORARY & PERMANENT JOB SEARCH RESOURCES

This is a list of resources for those seeking temporary and permanent legal employment. The IBA does not endorse these entities but hopes that job seekers will find the list helpful. The IBA also recommends that job seekers contact their law school career services offices for additional support.

ABA Economic Recovery Resources for Lawyers

- new.abanet.org/economicrecovery/default.aspx

Job Search Engines – General and Legal

- Law Crossing – www.lawcrossing.com
- FindLaw – www.jobs.findlaw.com
- HG.org Legal Directories – www.hg.org
- Law Jobs – www.lawjobs.com
- Monster – www.monster.com
- CareerBuilder – www.careerbuilder.com
- Kelly Law Registry – www.kellylawregistry.com
- Assigned Counsel Inc. – www.assignedcounsel.com
- Career Link – www.indianajobs.com
- LexisNexis Careers – http://www.lexisnexis.com/careers/default.aspx
- Attorney Jobs – www.attorneyjobs.com

Legal Temp Firms

- The Clutch Group – http://www.clutchgroup.com/
- Coleman/Nourian – www.colemanlegal.com
- Compliance, Inc. – http://compliancestaffing.com/
- Hire Counsel – http://www.hirecounsel.com/
- JuriStaff – http://www.juristaff.com/
- Legal Placements – http://www.legalplacements.com/
- Net Temps – http://www.net-temps.com/
- Pittleman & Associates – http://www.pittlemanassociates.com/
- Robert Half Legal – http://www.roberthalflegal.com/
- Special Counsel – http://www.specialcounsel.com/
- Update Legal – http://www.updatelegal.com/

Government Employment Resources

- Federal Law Clerk Information System - https://lawclerks.ao.uscourts.gov
- Federal Government Employment – www.usajobs.gov
- U.S. Courts Job Vacancies – http://www.uscourts.gov/careers/howtoapply.cfm
- Indiana Attorney General's Office – http://www.in.gov/attorneygeneral/

- Indiana State Personnel Department – http://www.in.gov/spd/2334.htm
- City of Indianapolis Human Resources - http://www.indy.gov/eGov/City/Controller/HR/Employment/Pages/opportunities.aspx
- Indiana Prosecuting Attorneys Council – http://www.in.gov/ipac/careers.html

Information on Reciprocity and Practice in Other States

- Most important, see the jurisdictional laws, rules, and regulations of the individual jurisdiction in which you wish to practice.
- IBA Model Rule of Professional Conduct 5.5
- Article: Reciprocity Laws Among the States (Law Crossing) http://www.lawcrossing.com/article/1084/Reciprocity-Laws-Among-the-States/
- ABA Chart IX: Reciprocity, Comity, and Attorneys Exam (2005): http://www.abanet.org/legaled/publications/compguide2005/chart9.pdf

ABA Model Rules of Professional Conduct[1]

Rule 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice Of Law

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

> (1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or
>
> (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

> (1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;
>
> (2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;
>
> (3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or
>
> (4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

> (1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or
>
> (2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

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[1] This provision is the ABA's Model Rule of Professional Conduct relating to the unauthorized practice of law. This is a model rule only, and the IBA provides a copy of this provision as a general resource and as a reminder to attorneys seeking and performing work in other jurisdictions to consult each relevant jurisdiction's own professional conduct rules regarding practice in that jurisdiction.

Interviewing and Job Search Techniques in a Difficult Job Market

The current economic climate has affected our legal community on the local level, not only making it more difficult for recent law school graduates to find jobs, but also causing layoffs of experienced lawyers from long established firms. In an effort to assist more experienced lawyers who unexpectedly find themselves facing the prospect of finding new employment, the Professionalism Committee of the Indianapolis Bar Association offers the following tips for displaced professionals now searching for a new job. Of course, many books and websites provide assistance to those looking for legal positions. Without endorsing any particular source, we have assembled a few websites identified below that provide this kind of information. In addition to these resources, we offer a few more insights to assist local practitioners with the challenge of finding a new position in these difficult economic circumstances:

1 If you get a letter rejecting your request for an interview from the managing partner or office administrator of a local law firm because they have no positions to be filled, call them up and invite them to lunch so that you can ask what they would most like to hear from a successful job applicant if there were any positions that needed to be filled, and whether they can direct you to other firms that might be interested in hearing from you. People who fill these positions at various firms often talk to each other, and might be impressed by the extra personal initiative and keep you in mind when positions later become available.

2 Be prepared to retrofit yourself. As lawyers, we often pigeonhole ourselves because we like the sense of professional identification that comes with an area of expertise (i.e., I am a probate lawyer), but the reality is that most lawyers with a few years of experience behind them have a wider range of experience. Be prepared to move from an area of comfort to an area in which you have not been involved recently but which you can still understand and master.

3 Don’t be afraid to accept a project-type position. So-called “contract” work may seem unglamorous, but it can put you in an environment that leads to a permanent position. If a firm has no permanent positions available, it might still welcome the opportunity to have an experienced lawyer work on a particularly pressing matter.

4 Take advantage of your local connections. Experienced lawyers have valuable relationships with the legal community and the local community in general. If you have connections within our community that a local law firm may lack, then you bring something to the table for that firm.

5 A job search is just another form of the full time marketing you do as a lawyer. We are told that we are always marketing, and that we should keep our business cards “at the ready.” The same is true for a job search; your resume and contact information should be ready to be emailed at any moment that a lead develops.

6 Maintain your connections to your prior firm. Meet colleagues for lunch and keep up with what is going on so that you are ready to be put back into the lineup when the economy improves.

7 Explore opportunities with the federal and local courts to do pro bono work, or even assist fellow lawyers with projects for – yes, that’s right—no compensation. There is always a brief that could benefit from a little more editing and research. Even if you are not getting paid, it’s important to keep your hand in the game to keep your skills sharp.

8 Volunteer more. It may sound trite, but networking is important. Many of us sit on committees but find ourselves too busy to make a real contribution. Now may be the time to roll up your sleeves and become more truly involved. The extra effort may well catch someone’s attention.

9 Even if you are not presently working as a lawyer, act like one anyway. Put on a suit, go downtown, keep reading advance sheets. Project an image of a lawyer who takes pride and interest in our profession, and is ready to tackle whatever comes next.

10 As a corollary to No. 9, above, don’t be a sad sack. Although a local man recently found a white collar job by walking around monument circle wearing a sandwich board, it probably is not useful to portray yourself as a helpless victim of the economy. The situation is not hopeless. The economy will improve.

There are a variety of internet resources providing advice on writing resumes, cover letters and interviewing. The IBA does not endorse any particular service and only provides the following listing of resources that may provide sample resumes, templates for resumes, tips for writing cover letters, etc.

www.bestsampleresume.com/attorney-resumes
www.attorneyresume.com
www.freeresumeexamples.net
www.careerperfect.com

TAKING CARE OF YOURSELF

If you find that this transition time is overwhelming and you are having difficulty coping, many support services are available to you. The Judges and Lawyers Assistance Program (JLAP) is available to provide assistance to judges, attorneys, and law students who experience physical or mental disabilities that result from disease, chemical dependency, mental health problems, or age, which may impair these individuals' ability to practice in a competent and professional manner. JLAP may be reached at (317) 833-0370 or toll free at (866) 428-JLAP (5527). Please visit http://www.in.gov/judiciary/ijlap/ for more information.

The following support services are also available through JLAP to help you through this difficult time:

Substance Abuse Issues Support Group

When: First Wednesday of Every Month

Where: Call for Location - 866-428-5527

Purpose: To provide a safe and confidential place for lawyers, judges and law students to discuss concerns regarding their own substance use. The purpose of the group is to share in problem solving, provide support, and reduce isolation. This is a peer support group and is not intended to replace treatment or structured 12-step work but to provide another alternative to supplement such programs. Topics will be determined by the group.

Career Transition Group

When: Every second Thursday of every month

Where: Indianapolis Metro Area

Purpose: To provide a confidential setting for lawyers, judges and law students to explore alternative career paths both within and outside the traditional practice of law. This is a confidential peer support group where members of the legal community can brainstorm and share experiences and ideas about new career options with each other.

Mental Health Support Group

When: Third Wednesday of every month

Where: Call for Location - 866-428-5527

Purpose: To provide a safe and confidential place for lawyers to talk about depression and other mental health issues, to receive support and to reduce isolation.

Other Support Resources

Adult & Child Mental Health – (317) 635-3306

Gallahue Mental Health Center - (317) 355-5009

Hamilton Center, Inc. – (317) 937-3700

Indiana Behavioral Health Choices – (317) 726-2121

Mental Health Association - (317) 685-8497

St. Francis Health Center - (317) 783-8383

St. Vincent Stress Center – (317) 338-4600

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Sections, Divisions & Committees
Adds value to IBA membership by providing a wide range of networking, education and social opportunities

The following sections, divisions and committees are available for IBA members to join and network with other attorneys sharing the same interest or practice area. As a member of these groups you will receive advance notice of the events sponsored by the group in the form of an email and a cream-colored self mailer distinctly marked as an IBA program. As a general member of the IBA, you will receive notice of section events and activities in the *Indiana Lawyer* and the *IBA Ebulletin*.

Sections

• **Alternative Dispute Resolution Section –** provides information related to dispute resolution such as arbitration, mediation, summary and other methods
2010 Chair: Jill Goldenberg -- (317) 573-8888 jgoldenberg@cgglawfirm.com

• **Appellate Practice Section** -- an educational and diverse forum to discuss current appellate issues, interact with local appellate attorneys and judges, and, when appropriate, be the voice of the local appellate bar
2010 Chair: Kathy Osborn -- (317) 237-0300 kathy.osborn@bakerd.com

• **Business Law Section –** provides frequent continuing legal education and updates for attorneys with practices pertaining to the area of business law
2010 Chair: Gregory Morical -- (317) 706-1080 greg.morical@md-sleep.com

• **Commercial & Bankruptcy Law Section –** offers frequent continuing legal education opportunities and updates of interest to attorneys with practices focused in the areas of commercial and bankruptcy law
2010 Chair: Molly Miller -- (317) 636-1062 mollym@bobbrothersch13.com

• **Criminal Justice Section –** provides activities and information to lawyers whose work relates to criminal law, including prosecution and defense
2010 Chair: Jennifer M. Lukemeyer -- (317) 632-4463 jlukemeyer@vzphmlaw.com

• **Environmental Law Section –** provides information and education opportunities on legal and policy developments in the environmental field
2010 Chair: Jennifer Andres -- (317) 236-2279 jennifer.andres@icemiller.com

• **Estate Planning & Administration Section –** hosts continuing legal education seminars of procedural, legislative and practice developments pertaining to estate planning and administration including its annual update entitled *"What's New in Estate Planning"*
2010 Chair: Jeffrey S. Dible -- (317) 237-3811 jdible@fbtlaw.com

• **Family Law Section –** offers educational programs of interest to attorneys practicing in the general area of family law, including custody and support; activities include quarterly open section meetings
2010 Chair: Amanda Blystone -- (317) 428-4525 ablystone@bkrlaw.com

• **Government Practice Section –** offers continuing legal education seminars and updates of interest to lawyers involved with or employed by Federal, State or local government
2010 Chair: Alex Intermill -- (317) 684-5300 aintermill@boselaw.com

• **Health Care Section –** offers seminars and discussions addressing issues of concern to government, institutional and private attorneys practicing in the health care field
2010 Chair: Andrea L. Impicciche -- (317) 633-4884 aimpicciche@hallrender.com

• **Intellectual Property Section –** offers updates and continuing legal education opportunities for attorneys concentrating in the intellectual properties areas
2010 Chair: Natalie Dean -- (317) 299-3466 natalie.dean@icemiller.com

• **Labor & Employment Law Section –** sponsors continuing legal education programming and networking opportunities for attorneys focused in all aspects of employment and labor law
2010 Chair: Heather L. Wilson -- (317) 237-3800 hwilson@fbtlaw.com

• **Land Use Section –** offers programming concerned with issues of interest such as zoning, development and other land matters
2010 Chair: David Duncan -- (317) 639-5444 davidd@tabberthahn.com

• **Litigation Section –** is involved in a wide range of activities facing today's Bench and Bar, and is responsive in presenting each side of the issues as it provides legal education seminars, sponsors quarterly luncheon gatherings and an annual judicial reception
2010 Chair: Stephen J. Peters – (317) 639-4511 speters@h-mlaw.com

• **Solo/Small Firm Practice Section –** provides networking opportunities and practice development resources for solo and small firm practitioners
2010 Chair: Kenan Farrell -- (317) 808-0000 kfarrell@klflegal.com

• **Sports & Entertainment Law Section –** sponsors programming of interest for practitioners involved with the sport and entertainment law fields
2010 Chair: Mike Giannamore -- (317) 383-4211 mgiannamore@bkd.com

• **Taxation Section –** offers a wide variety of programs on federal and local tax issues
2010 Chair: Gregory J. Duncan -- (317) 968-5372 gduncan@binghammchale.com

Divisions
•**Senior Counsel Division**
Attorneys with 25 or more years of experience, who are over age 55 or are retired from the active practice of law can participate in this division, which promotes camaraderie and networking among its members.
2010 Chair: John Render -- (317) 633-4884 jrender@hallrender.com

•**Women and the Law Division**
Addresses issues of interest to female members of the bar and sponsors several programs throughout the year, including an annual reception and the Antoinette Dakin Leach Award Luncheon
2010 Chair: Rori Goldman -- (317) 488-2000 rori@hfmfm.com

• **Young Lawyers Division**
Attorney members with less than five years of practice or under the age of 36 are eligible to participate in this division which provides quarterly social gatherings and continuing legal education opportunities
2010 Chair: Ben Caughey -- (317) 236-2493 ben.caughey@icemiller.com

• **Law Student Division**
Addresses and focuses discussion on the needs of law students through programming and activities that aid in their professional development; activities include: *"What You Need to Know"* series, Bar Review, MPRE, social and networking opportunities with the bench and the bar
2010 Chair: Matthew Long – (317) 977-3998 maslong@indiana.edu

Committees
• **Grievance Committee –** works in conjunction the Indiana Disciplinary Commission to investigate client concerns
2010 Chair: M. Kent Newton – (317) 598-4529 knewton@nbbplaw.com

• **Lawyers Assistance Committee –** a member-run service committee that provides information, assistance and support for attorneys, and those who are aware of attorneys, who are struggling with possible substance abuse, mental health issues, gambling addictions and temporary disabilities (all communications are confidential under Indiana Professional Conduct Rule 31)
Contact the IBA at (317) 269-2000 iba@indybar.org

• **Paralegal Committee –** provides networking, as well as quarterly social and educational activities for paralegal members. Membership is automatic for all IBA paralegal members
2010 Chair: M. Kim Richardson -- (317) 237-0300 m.kim.richardson@bakerd.com
Sections and divisions have annual dues of $20, and there is no charge to join a committee.

For more information or to join these sections, divisions and committees of the IBA, log on to www.indybar.org, call (317) 269-2000 or email iba@indybar.org.

SENIOR COUNSEL DIVISION SAFE ASK PROGRAM

Wondering where to turn when you have a question about your law practice or a client issue? Members of the Indianapolis Bar Association's Senior Counsel Division Executive Committee want to help and have created the Safe Ask program.

The purpose of the Safe Ask program is to provide a means whereby IBA attorney members may seek guidance and information from members of the IBA's Senior Counsel Division – to assist them in providing quality and ethical legal services to their clients.

All communications will remain confidential to the extent there is not a violation of the Rule of Professional Conduct (see Rule 8.3 of the Rules of Professional Conduct). To utilize the Safe Ask program, simply telephone or e-mail a member of the SCD Executive Committee.

If e-mailing, please type IBA Safe Ask in the subject line of the e-mail:

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The Committee reserves the right to forward your Safe Ask question to another member of the SCD Executive Committee if they deem another member to be better qualified to answer your particular question. Please read the **DISCLAIMER** prior to contacting individual.

DISCLAIMER

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Users of this service are reminded of and referred to the provisions of Rule 8.3 of the Rules of Professional Conduct which provides in part that “A lawyer who knows [defined as actual knowledge in Rule 1.0 (f)] that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the inquirer’s honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.” Inquiries should therefore be framed accordingly or addressed instead to the Indiana State Bar Association Ethics Committee (See Rule 8.3 (c).).

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