



## Message from the chair: Participate in Mentoring Activities

BY MATTHEW J. LIGHT, OFFICE OF THE INDIANA ATTORNEY GENERAL

New attorneys and law students are frequently encouraged to seek out and connect with mentors. Substantial benefits can be derived from a healthy mentor-mentee relationship. Many believe that with changes in the legal profession, having a mentor is more important now than it ever has been for the successful development of a legal career.

The Indiana State Bar Association provides several programs and opportunities to promote mentoring activities and connections. The three most prominent examples are Mentor Match, Leadership Development Academy, and membership and participation in the Young Lawyers Section.

**Mentor Match** is the ISBA's flagship mentoring program. It provides a customized and guided year-long mentoring curriculum and is available to any licensed attorney in the state. The program was developed by the ISBA Professional Legal Education, Admission and Development Section (PLEADS), and part of its mission statement provides the following:

"...the mentoring relationship should foster the development of the new lawyer's practical skills and increase his or her knowledge of legal customs; contribute to a sense of integrity in the legal profession; promote collegial relationships among legal professionals and involvement in the organized bar; improve legal ability

and professional judgment; and encourage the use of best practices and highest ideals in the practice of law. Mentoring works on several different levels to foster the development of a new lawyer's career while creating a sense of pride and purpose in the mentor."

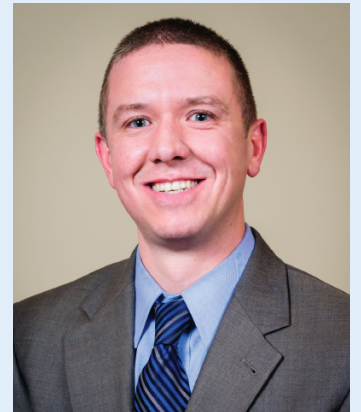
The Mentor Match worksheets cover topics including client trust funds and IOLTA accounts, civility in legal practice, court rules, pro bono activities, career paths and advancement tracks, substance abuse and mental health issues, time management, student loan debt management, client communications, client development, case evaluation, negotiations, and many other important skills and issues. The program is

free, and both the mentor and mentee receive CLE credits for successful completion. Program materials are available at [www.inbar.org/?page=mentor\\_match](http://www.inbar.org/?page=mentor_match).

I am pleased to be assisting with the development of an in-house mentoring program at the Office of Attorney General that is modeled heavily off of the ISBA Mentor Match program. Other large law firms and law offices have developed and implemented in-house programs using the materials and principles from Mentor Match.

Justice Steven David, this year's PLEADS chair, has challenged the bar association and YLS to help

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## Detox on the Go: Easy Ways to Spring Clean from the Inside Out

BY JENNIFER MALINS, M.A., CERTIFIED INTEGRATIVE NUTRITION COACH

Whether my clients are busy attorneys who work twelve-hour days, real estate professionals who spend more time in their car than at a desk, or work-from-home entrepreneurs trying to juggle children and a business, they all *want* to take time to be healthy, but feel they don't have enough time. The good news is that regardless of how busy you are, you can easily incorporate a cleansing routine into your lifestyle to help you release toxins on a regular basis. When you cleanse internally, energy and mental clarity increase, and unnecessary weight starts to shed. The longer days,

warmer weather, and fresh air of spring make it the perfect time to start developing healthy habits. Listed below are some simple tips to help the body release impurities built up over the long, dark months of winter.

**Drink.** Increase your water intake. When clients work with me, one of the first things many of them do is the "gallon challenge." They buy a 32-oz BPA-free bottle, fill it up with purified water, and consume four of them throughout the day. You don't need to buy expensive bottled water. A basic water filter, such as a pitcher that has a carbon filter, is a great start. Drinking pure, unadulterated water will

increase your energy levels, help you flush out toxins, and hydrate your cells. Drinking tea or coffee does not count! In fact, caffeinated beverages cause dehydration. Slowly wean yourself off of caffeine and replace it with herbal tea. Dandelion tea is an excellent coffee replacement because it tastes quite a bit like coffee, but without the caffeine. It also has a cleansing effect on the body. For an additional detox kick, drink warm water with lemon, apple cider vinegar, and a dash of cayenne pepper first thing in the morning.

**Move.** Incorporate movement throughout the day. We often

get caught up in black or white thinking when it comes to exercise. If we can't work out for at least 30 minutes at a time, we might think it's not even worth doing. Many experts have come to the conclusion that a few minutes here or there throughout the day can be just as beneficial. While working up a good sweat is a wonderful way to detox, doing short bursts of exercise throughout the day is far better than being sedentary all day. Until recent history, the human body was accustomed to being outdoors most of the day while engaging in manual labor. An easy way to incorporate movement into a sedentary-based job is

change how you spend your time at the office. You can do toe raises or squats while on phone calls, buy a special desk that allows you to stand up while working instead of sitting, sit on a yoga ball instead of a chair, take the stairs instead of the elevator, bike to and from work, and take short walks during breaks. You can also try exercising first thing in the morning to ensure it gets done. I used to swim at 6:00 a.m. every morning. This resulted in a jolt of energy that lasted the entire day. If you are not a morning person when it comes to exercise, then take your workout clothes with you to work, change, and work out

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## MESSAGE FROM THE CHAIR

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locate "60 mentors in 60 days." Since the inception of the program, despite the strong interest from mentees, we have never had more available mentors who are ready and willing to be matched with a mentee than mentees who have made a request to be matched. In connection with May's admission ceremony for new attorneys, Justice David and ISBA are encouraging eligible mentors to step up to the plate and volunteer to be a mentor.

ISBA's **Leadership Development Academy** provides a unique and richly rewarding opportunity to be mentored by some of the state's leading attorneys, state Supreme Court Justices, current and past bar association presidents, and many others. The fourth LDA class completed their

leadership training program this month and applications for next year's class will be accepted soon. More information about LDA is available at [www.inbar.org/?page=lda\\_2015](http://www.inbar.org/?page=lda_2015).

The **Young Lawyers Section** itself is a forum for mentoring. By connecting young lawyers with those who have been in practice for up to ten years, newer lawyers can build formal or informal relationships with attorneys who can provide guidance and tips on everything from navigating courthouse protocols to dealing with difficult ethical issues.

Participation in YLS also facilitates connections with thousands of other lawyers in the ISBA, many of whom were active in YLS in their earlier years. These former YLS members are strong supporters of the YLS mission, programs, and members and frequently lend a hand to provide assistance

or guidance to a younger lawyer in need of a word of wisdom or a more sustained mentoring relationship.

Additionally, many YLS functions and events provide opportunities to make connections with judges and lawyers who can serve as mentors. More than 100 judges from throughout the state attended the annual YLS Judicial Reception last month in Indianapolis. Each year I hear from young lawyers who attended and made connections with local judges and other experienced attorneys who volunteer their time to serve as a mentor for the young lawyer. For information about other YLS events and projects, you can contact me or any of our Council members using the contact information provided on the back page of this newsletter.

The YLS is a strong supporter of all of the above mentoring efforts.

Hundreds of young attorneys have participated in these programs as mentees, and many of them have been so appreciative of the impact that they later served as mentors.

If you have not already done so, please consider getting more involved in professional mentoring opportunities like Mentor Match. The value for both mentors and mentees is hard to measure but surely significant. 🌟



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## DETOX

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right after leaving the office. If you make it all the way home without working out, you greatly increase the chance that it won't happen. Regardless of how you approach it, remember that the goal is to incorporate some movement each day.

**Eat.** Consume a pound of vegetables per day. Vegetables, especially green vegetables, have a detoxifying effect on the body. They are high in fiber, vitamins, minerals, and other nutrients. An easy way to increase your veggie intake is by incorporating a handful of kale or spinach into a morning smoothie, eating a hearty salad for lunch, and consuming steamed vegetables with dinner. Think of vegetables as the main course and meat as the side dish. Other great ways to increase your vegetable intake include making vegetable soup

and green juices. Try to buy seasonal, organic vegetables from the local farmers' market.

**Breathe.** Deep breathing through the stomach rather than the upper register of the chest can be incredibly detoxifying. In the mornings, I open the window, even if it's just a crack, as I engage in deep breathing while I meditate. Focusing on the breath allows you to breathe more fully, deeply, and regularly while calming your mind at the same time. Check your breathing throughout the day. An easy way to do this is to take inventory of your breathing pattern prior to switching to a new activity. If you have just responded to a stressful e-mail, your breathing may be shallow and your shoulders might be up to your ears, which is sure to result in additional stress and physical tension.

**Fast.** You don't need to starve yourself to fast successfully.

There are numerous ways to fast, some of which are intense and others that are light. In addition to increasing your veggie and water intake, deep breathing, and exercising, try cutting out caffeine, red meat, alcohol, dairy, sugar, and all processed foods for 3-7 days. In our society, these foods are consumed in abundance. They can wreak havoc on your hormones, resulting in weight gain, fatigue, insomnia, mental fog-giness and other symptoms. Keep your meals simple. For example, you can easily make a morning smoothie with nut butters for protein. Adding hemp seeds and chia seeds for additional protein also boosts your intake of Omega 3s, which decrease inflammation. For an anti-oxidant energy boost, add raw cacao. If going sugar-free, try Stevia for a natural, sugar-free way to sweeten your smoothie. Be sure to add your greens! Salads are easy to make the night before to take for lunch.

For protein, add some baked salmon from the previous night's dinner to your salad. Sunflower seeds, almonds, hemp seeds, pumpkin seeds, and hardboiled eggs from pasture-raised chickens are also good protein sources. In the evening, eat a meal of lean, organic protein with steamed or sautéed vegetables. You can get local, pasture-raised meat from places like Tyner Pond Farm (<http://www.tynerpondfarm.com>). For clean seafood, try Vital Choice Seafood ([www.vitalchoice.com](http://www.vitalchoice.com)). These are all just examples. If this is too overwhelming, try cutting out one of these items, such as dairy, for three days. Dairy is mucus-forming, which exacerbates the congestion that springtime often brings with it.

*Jennifer Malins is a Certified Integrative Nutrition Coach, Licensed HeartMath® Coach, and author of the book, Soul Destination: 8 Paths to Balance,*

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# 20 Professionalism Tips for Millennial Attorneys

BY MICHELLE SILVERTHORN, ILLINOIS SUPREME COURT COMMISSION ON PROFESSIONALISM

In my job, I often get asked what “professionalism” means. The word is lengthy and so is the range of what it connotes. Professionalism as it relates to lawyers means being a competent, effective, respectful advocate for your client and the justice system. As we explain in our Professional Responsibility Education Guide, professionalism “calls us to be mindful of the lawyer’s roles as officer of the legal system, advocate, counselor, negotiator, and problem solver.” That involves respect, civility, proficiency and a recognition that the life of a lawyer is a life of continuous learning.

However as I travel the city and the state, I meet many young attorneys who want more specific, day-to-day professionalism advice. Their requests often boil down to this single question: how should I act in the workplace as a new lawyer not accustomed to the norms of the legal profession? In my years as a practicing lawyer and professional, I have learned many tips and tricks about how to succeed in this profession. I’ve also learned that when you need advice for an advice column, the best people to ask are your friends. So here, from myself and others, are 20 tips on how to be a professional young professional in today’s workplace:

**1. Remember that you are the newest person on the team.** Millennials are well-known for their team-oriented approach to projects. This may not be an approach with which older attorneys are familiar. While you may be eager to speak and contribute, remember that for many older Xers and Boomers, deference is the first sign of respect.

**2. Listen first.** Attorneys talk for a living. Therefore your most important job as

a new attorney is to listen to what senior attorneys are telling you. Being a good listener demonstrates respect to those speaking to you, a crucial skill as you move forward in your career. To quote the Greek philosopher, Epictetus: “We have two ears and one mouth so that we can listen twice as much as we speak.”

**3. Incorporate feedback into your work.** Many people, of all ages, respond to criticism defensively. However, for new attorneys, it is essential that you accept criticism and use it positively to create a changed work product or behavioral style. Doing so shows senior lawyers maturity, growth and respect. At the same time . . .

**4. Project confidence, not arrogance.** Companies want to hire people who can offer their own opinions, who demonstrate enthusiasm, and who take pride and ownership in their work. That said, there is a fine line between a confident new lawyer and an arrogant one – walk it carefully.

**5. Triple spell- and grammar-check everything.** There is no excuse for poor spelling and grammar. Print out and proofread your work before submitting it.

**6. Be aware of your professional dress.** Err on the side of conservatism when it comes to your professional dress, especially in your early days at the job. Older attorneys, in particular, may have certain unspoken expectations as to office wear. Learn what those expectations are. And as the saying goes, “Don’t dress for the job you have; dress for the job you want.” If you want to be a partner, start dressing like one.

**7. Limit your personal screen time.** The hours you work and bill belong to your firm and your client. Do not spend those hours on

personal blogs, social media accounts, shopping websites, etc. And remember, your company is well within its rights to track any personal use you make of company-provided devices.

**8. Know your audience.** This applies to both office etiquette and work product. A senior partner often wants important highlights quickly, while a more junior associate might want more details in your report. Always understand the needs of the person to whom you are reporting, and anticipate any future needs down the road.

**9. Respond to communications promptly, respectfully and in the same medium you received them.** In other words, do not email in response to a voicemail, and unless text messaging is specifically initiated by your partner or client, do not use text messages as your communication medium.

**10. Learn to navigate the organization’s culture.** Every office, company and law firm has an organizational culture. You will benefit greatly from spending your first months listening, observing and learning those cultural norms so you can modulate your behavior accordingly.

**11. Create to-do lists to maximize efficiency.** You will have multiple demands on your limited time. To-do lists will allow you to schedule responsibilities and handle various commitments effectively.

**12. Make sure you manage expectations.** Do not over-commit yourself. You will end up producing sub-standard work product for attorneys who expect superior work product. Better to under-promise and over-deliver than do the opposite.

**13. If you don’t know, ask.** While asking too many questions is one of the major criticisms of the Millennial generation, it is also essential that you understand the scope of your assignment before tackling it. Get as much information as you can at the very beginning of an assignment and check-in with the assigning attorney when necessary.

**14. Treat all staff with respect and courtesy.** Everyone in your office deserves the same respect and courtesy you would like them to show to you.

**15. Always follow the ethical path.** There are many ethical rules that apply to lawyers, some of which are common sense, others of which are not. Learn and apply these ethical rules to your daily practice.

**16. Engage in your legal community.** The legal community is very welcoming to new lawyers. Take advantage of the many bar associations, alumni groups and community organizations outside of your school and immerse yourself in your greater legal community.

**17. Manage your finances.** Much of the advice you receive in law school

focuses on student debt, but remember, your student debt is just one part of your larger financial plan. Learn about savings, retirement funds, investment portfolios, mortgages, and, if applicable, childcare costs and college tuition plans. All of these, and more, will play a crucial role in your lifetime financial picture.

**18. Keep track of your accomplishments.** You are your single best advocate. Throughout your career, keep track of memoranda, projects, reviews, recommendations, and anything that demonstrates how you have positively developed as a professional.

**19. Challenge yourself.** Do not be content with doing a passable job. Be creative and innovative. Learn about your company or firm and always be willing to offer new ideas and tackle new projects.

**20. Find a mentor.** I’ve said it before so I will repeat it here. Find a mentor, someone who can offer you career advice, sponsor your success and stay a friend and guide throughout your career. It will take some time to find your match, but the pay-off is worth it.

So there you have it. Our 20 tips for young attorneys on being a professional in the workplace.

*Michelle Silverthorn serves as the Diversity & Education Director at the Illinois Supreme Court Commission on Professionalism.*



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## The Mindful Attorney

BY MARIAN FRICK RIGSBEE, ORION COUNSELING LLC

One of the first questions I ask clients who come to see me is, "How can I be of the best help to you?" The most common response is a request to have help managing stress. You have heard the conventional wisdom of how to manage stress, from exercising frequently to connecting with others. Yet as a practicing attorney, chances are you rarely find the time to do so on a consistent basis. It is generally accepted that attorneys have high stress levels. Stress can be described as the physical, emotional, and psychological response to life's changes and demands. Stress can be destructive, resulting in lack of sleep, irritability, forgetfulness, interpersonal problems, health problems, substance abuse, and even suicide. There is a growing body of literature examining exactly how and why attorneys may experience greater levels of stress than the general population, but some hypotheses include the adversarial nature of the profession, common characteristics of attorneys (i.e. highly ambitious, competitive), an intense workload, and student loans.

Common perceptions on how to manage stress miss at least one very important component, that of living in the moment, or mindfulness. Mindfulness can be described very simply as *being present in the moment in a nonjudgmental way*. In spite of making headlines in almost every major news outlet from *TIME* to the *Wall Street Journal*, it is not just a passing phase for yogis or trendsetters. There exists robust research demonstrating that practicing mindfulness consistently is efficacious in combating and managing stress, chronic pain, depression, anxiety, and illness. The mechanisms by which mindfulness works are complex, but suffice it to say that mindfulness anchors the mind to the present so that one is not fearing the future, agonizing over the past, or mentally running through a to-do list. This fosters a sense of calm, stillness, and insight in an otherwise chaotic world. The relevant literature indicates that lawyers who practice mindfulness experience less stress than that of peers who do not practice it. Attorney-led organizations are cropping up across the country with the goal of teaching mindfulness techniques in the profession.

Mindfulness has its roots in ancient meditation and Buddhist practices, but need not be complex or require adherence to any religion or particular set of beliefs. John Kabat-Zinn, PhD, is the founder of Mindfulness-Based Stress Reduction (MBSR) at the University of Massachusetts Medical School and is often credited with bringing the practice of mindfulness into popular culture. I distinctly use the word "practice" as opposed to "task," "activity," or "exercise," to demonstrate the nature of mindfulness; one that requires purpose, patience, and consistent practice. How does one begin to practice mindfulness?

I'd like to walk you through one mindfulness practice in particular which clients often report returning to in moments of stress, confusion, chaos, and especially in moments of calm to savor the moment. I refer to it simply as The Five Senses. First, find a place in which you will not be interrupted. You may sit or stand, but get comfortable. During the next minute or so, focus on your five senses only. Touch, taste, smell, sight, sound. When other thoughts interrupt as

they naturally will ("Did I send that email? I must book that flight to Tucson..."), imagine yourself picking the thought up with your hand and gently setting it aside. With each thought or interruption, simply pick it up and gently set it aside. Breathe gently and naturally. Now that you are acknowledging that your thoughts may come and go and that is OK, begin by connecting with your sense of touch. Run your hands along the chair you are sitting in, notice where your body meets the floor, any wind or gust of air that brushes your hand or face. Is there any pain in your body? If so, acknowledge it without judgment. If there is no pain, acknowledge this as well. Buddhist monk Thich Nhat Hanh calls this "being grateful for the non-toothache." Identify any tastes in your mouth. Perhaps you just drank coffee and have the faint taste of vanilla in your mouth. Maybe you are chewing mint gum. Next, notice any smells, from the cologne or perfume you may be wearing, to any scents in the air. Perhaps you smell nothing. Now, slowly look around at your surroundings. How many colors can you see? How many hues of

each color? What different textures can you identify? What shadows or movement can you detect? Now, listen closely. What can you hear? Perhaps you can hear the whirling of a fan, the sound of your stomach growling, the rustling of leaves. After you have explored each sense thoroughly, slowly bring your awareness back to the present moment.

If you are still reading, then there is a good chance you may have completed your first mindfulness practice. Although I always encourage all healthy lifestyle habits, practicing a few moments of mindfulness daily may bring you closer to health and balance...one moment at a time.

*Marian Frick Rigsbee, LCSW, is a mental health and addictions therapist in downtown Indy whose specialties include addictions and mood disorders. In particular Marian works with recovering professionals in healthcare and law.*



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## Editor's Perspective: Adapting to an Intergenerational Practice

BY CHARLES DAUGHERTY, MCNEELY STEPHENSON

In addition to practicing law, I have the pleasure of teaching one contract drafting course at Indiana University Robert H. McKinney School of Law. As several of my students graduate in May and begin to prepare for the bar exam, they face an ever-increasing generationally diverse law practice. For whatever reason, it seems that in recent times experienced attorneys have taken more time than their predecessors to exit the practice. Less attorney turnover equates to fewer openings for new lawyers. When new lawyers do enter the practice, they are having trouble seeing eye to eye with the older generation. On the other side of the fence, the older generation of attorneys often asks: What is going on with these new lawyers and why don't they see eye to eye with me? The fourth session of the ISBA's Leadership Development Academy ("LDA") picked up on that theme. As a new group of law school graduates works to prepare for the bar exam and enter the practice of law, it is important for those young lawyers to be mindful of the generational differences they face as new lawyers.

The LDA held its fourth session at Muscatatuck

Urban Training Center on April 16 and 17. Numerous headliners spoke to LDA Class 4 about leadership and diversity, including, among others, Justice Robert Rucker, Brigadier General Wayne Black, and Floyd County Veterans Court Judge Maria Granger. The final speaker for the event, Charlotte Westerhaus-Renfrow, discussed embracing generational differences and implementing solutions in the legal workplace. Charlotte is a Senior Lecturer and Diversity, Inclusion, and Leadership Trainer for the Kelley School of Business at Indiana University-Purdue University, Indianapolis. What follows is not an attempt to recreate Charlotte's discussion, but is an attempt to highlight a few of the concepts she presented and their importance for young attorneys.

Charlotte's presentation tracked four generations who are currently practicing law: (1) The Silent Generation—born from 1925 to 1945; (2) The Baby Boomers—born from 1946 to 1964; (3) Generation X—born from 1965 to 1980; and (4) The Millennials—born from 1981 to 1994. With each generation spanning 15 to 20 years, Charlotte, and other experts on this topic, highlight the

most relevant experiences of each generation and draw certain general conclusions regarding characteristics of each. For instance, the Silent Generation grew up during the Great Depression and World War II and as children were expected to be "seen, but not heard." The Baby Boomers experienced the Vietnam War, the assassination of several leading public figures, and the civil rights, women's, and environmental movements. Generation X experienced the scare of AIDS, the beginning of the computer world, and the end of the Cold War. Millennials have been influenced by the rise of the Internet, the Columbine shootings, and the rise of terrorism. As a result of these influences, the individuals who comprise these generations exhibit different characteristics at work. For instance, the Silent Generation values loyalty to employers and expects the same in return. They believe that promotions should be based on tenure rather than production. The Baby Boomers, on the other hand, expect loyalty from co-workers rather than employers and believe that work ethic is based on the number of hours worked. Not surprisingly, the billable

hour is rooted in the Baby Boomer generation. In contrast, Generation X wants a causal work environment, they want to work smarter rather than harder, and they invest loyalty in individual mentors rather than firms. And finally, Millennials search for positions that provide personal fulfillment and individuals who will help them achieve their goals. Millennials want to work to live, rather than live to work. While I would note that each individual generation member is a product of individual circumstances and not all members exhibit all of the typical characteristics of a class, undeniably certain historical events have shaped our value systems.

Getting back to my students, whether for good or bad, the reality of today's legal practice is that more experienced attorneys are continuing to practice for longer periods than in the past. Given this landscape, young lawyers should be conscious of the concepts Charlotte raised. After providing some of the general characteristics of the four practicing generations, Charlotte turned her attention to the true lesson for LDA Class 4—we must each be mindful of our generational

values and tendencies and the values of the other generations, with whom we work. If you are a Millennial associate working for a Baby Boomer junior partner and a Silent Generation senior partner, you should be aware that the junior partner may expect you to work long hours because that is his or her generational value and that the senior partner may be very disappointed if you leave the firm after two years because you and your senior partner view loyalty in different ways. Being conscious of these generational differences may allow young attorneys to better adapt to an intergenerational practice. On behalf of the YLS Publications Committee, I would like to thank our members and readers and encourage each of you to study more of the characteristics of a diverse intergenerational practice and adopt techniques to assist with bridging the gap created by diverse value systems.

## Saving a Claim After Dismissal: Indiana Journey's Account Statute

BY COLIN E. FLORA

If you have never heard the phrase "Journey's Account Statute,"<sup>1</sup> you are not alone. Although an extremely important arrow in a litigator's quiver, it is well described as a "little-known friend."<sup>2</sup> A recent Court of Appeals decision serves as a fine summary of the statute and the implicit requirements that have been added through caselaw.<sup>3</sup> Before we jump into a discussion of the case we should probably answer the question lingering in many

minds: What is the Journey's Account Statute?

The phrasing does not lend itself to a ready understanding of its function and purpose. Like most every procedural rule with an odd name, the Journey's Account Statute finds its roots in common law.

At common law, suits frequently failed of a decision on their merits on account of some matter of form. In such cases, the plaintiff

was permitted, within a reasonable time, to sue out a new writ, and such renewal suit was deemed a continuation of the first. The time which was reasonable for such purpose was computed theoretically with reference to the number of days required for plaintiff to journey to the place where the court was held, and hence the name "Journey's Account."

This ancient remedy is not now recognized in this

country, but, in lieu thereof, statutes have been passed in nearly all of the states, providing for a renewal of actions which have failed on account of some matter not involving the merits. These statutes do not contemplate a renewal or continuance of the former suit as at common law under Journey's Account, but that a new and distinct suit shall be commenced, which shall be treated as a continuation of such former suit.<sup>4</sup>

Thus, the purpose of the modern statute "is to provide for continuation when a plaintiff fails to obtain a decision on the merits for some reason other than his own neglect and the statute of limitations expires while his suit is pending."<sup>5</sup> To serve his purpose, a party that has filed a timely case but had the case dismissed prior to an adjudication of the merits may look to this statute to save the case. If the Journey's Account Statute applies, then



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## SAVING A CLAIM (continued from page 4)

a new case may be brought by the later of three years from dismissal or the last day of the statute of limitations.<sup>6</sup> Because this purpose is in alignment with the general policy that cases be decided on the merits, it is liberally interpreted in favor of the plaintiff.

The most important step, then, is to determine whether the statute applies. By its text, it applies where: "(1) the plaintiff fails in the action from any cause except negligence in the prosecution of the action; (2) the action abates or is defeated by the death of a party; or (3) a judgment is arrested or reversed on appeal."<sup>7</sup> The second and third bases for application are sufficiently

self-explanatory. It is the first, however, that garners a great deal more litigation. In addition to needing to meet one of these three bases, a plaintiff must also meet the implicit requirement of good faith.

Let us turn now to the decision in *Munoz v. Woroszylo*. The case stems from a motor vehicle accident in Indiana involving residents of Illinois and Indiana. The Illinois driver timely filed suit in Illinois. However, the case was dismissed for an elementary error: Illinois did not have personal jurisdiction over the Indiana defendant.<sup>8</sup> As a result, the case was dismissed and the driver sought to file a new case in Indiana. The dismissal occurred after expiration of the statute of limitations, so the plaintiff invoked the

Journey's Account Statute to save his case.

Before the trial court and again on appeal, the argument turned on two issues: whether the plaintiff had been negligent in the prosecution of the Illinois case and whether he acted in good faith. Contrary to what you might think, "negligence in the prosecution" is not a mirror of Ind. Trial Rule 41(E)'s failure to prosecute. "Negligence in the prosecution" is actually more expansive and "has been held to include failure to pay filing fees[,] naming improper parties[,] and failure to exhaust administrative remedies."<sup>10</sup>

Despite the relatively expansive interpretation, our Court of Appeals has previously recognized

that "negligence in the prosecution" does not encompass situations in which "the initial suit in another jurisdiction failed for lack of personal jurisdiction."<sup>11</sup> Consequently, the plaintiff's case was not barred by his negligence in prosecution. That left only the argument of whether he had acted in bad faith.

Although the choice to file in Illinois was "ill-advised" and an "elementary mistake," poor choices in litigation are not alone bad faith. Because there was no evidence that the Illinois driver acted "with intent to abuse judicial process or create undue delay[.]" there was no basis to ascertain bad faith so as to defeat the savings function of the Journey's account statute.<sup>12</sup>

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1. Ind. Code § 34-11-8-1.
2. See Brett R. Fleitz and Charles P. Ward, *Journey's Account Statute: Litigator's Little-Known Friend*, 35 Res Gestae 60 (1991).
3. *Munoz v. Woroszylo*, ---N.E.3d---, No. 79A02-1409-CT-679, 2015 WL 1637795 (Ind. Ct. App. Apr. 13, 2015).
4. *Pennsylvania Co. v. Good*, 56 Ind. App. 562, 103 N.E. 672, 673 (1913) (citation omitted).
5. *Munoz*, slip op. at 6 ¶18, 2015 WL 1637795, at \*2 (citation and quotation marks omitted).
6. I.C. § 34-11-8-1(b).
7. I.C. § 34-11-8-1(a).
8. *Munoz*, slip op. at 9 ¶23, 2015 WL 1637795, at \*2 (citation and quotation marks omitted).
9. *Id.* at 7 ¶19, 2015 WL 1637795, at \*3 (citations omitted).
10. *Thomas v. Timko*, 428 F. Supp. 2d 855, 857 (N.D. Ind. 2006).
11. *Munoz*, slip op. at 9 ¶20, 2015 WL 1637795, at \*2 (citation omitted).
12. *Id.*, at 10 ¶25, 2015 WL 1637795, at \*4.

# ISBA - 2015 YLS Calendar of Events

For questions about a calendar item, please contact Christina Fisher at [cfisher@inbar.org](mailto:cfisher@inbar.org).

July 30-Aug. 4	ABA Annual Meeting   Chicago, IL
Aug. 20	Hanging Out A Shingle - 6 hr. CLE   Indianapolis
Sept. 12	YLS Golf Scramble
Oct. 7-9	ISBA Annual Meeting   French Lick
Oct. 15-17	YLD Fall Conference   Little Rock, AR
Oct. 23	Applied Professionalism Seminar - 6 hr. CLE   Indianapolis



## Young Lawyers Section Council 2014 - 2015

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