

T H E P R I M E R U S

Paradigm

A new model for lawyers and law firms

WINTER 2010

**The Primerus Concept Endures:
Growth in the U.S. and Beyond in 2010**

2009 Primerus Community Service Awards

As Much Changes, Much Stays the Same

Complete Membership Directory

President's Podium

John C. Buchanan



As much changes, much stays the same

When we formed Primerus in 1992, we set out with the goal of bringing together good people who also happen to be good lawyers. Some of my colleagues and I were saddened as we witnessed all of the great values that should be the foundation of the legal profession being tarnished, and we wanted to do something to reverse this trend. To begin that effort, at the first Primerus Annual Conference in 1994, we officially adopted the Six Pillars: Integrity, Excellent Work

With that attention, comes the opportunity to set an example for our peers in the legal world and the business world at large.

We knew at the outset that changing the legal profession would not come through persuasive speeches or catchy ads, but rather through each Primerus member setting a positive example through his or her actions. This is a tremendous responsibility every one of us must live up to. The way we conduct our lives, personally *and* profes-

calling on Primerus attorneys to serve as their trusted advisors because they know the principles on which we stand.

To me, it's indisputable that the values represented in the Six Pillars represent the best formula for success in any business or profession. We have the right answer. Does any one of us want to do business with someone who isn't guided by such values? They are the formula for success as a person, first and foremost, and also as an

... at the first Primerus Annual Conference in 1994, we officially adopted the Six Pillars: Integrity, Excellent Work Product, Reasonable Fees, Continuing Legal Education, Civility and Community Service.

Product, Reasonable Fees, Continuing Legal Education, Civility and Community Service.

Years later, after all the growth Primerus has experienced, after the addition of practice groups, subspecialty groups, client advisory boards, convocations and conferences, and after our continuing growth beyond the borders of the United States, the Six Pillars still stand firm as the bedrock of our organization. We have never wavered from them, and we never will. Primerus attorneys are united in our commitment to them, and clients immediately know what we are all about simply by considering the Six Pillars.

Our tremendous growth over the years, and particularly in 2009, has only drawn more attention to these fundamental tenets on which we base our firms' work and our individual professional lives as attorneys.

sionally, speaks volumes about who we are. Clients and fellow attorneys notice the small things we do each day. They respect the ethical decisions we make. They appreciate the extra attention we give to legal craftsmanship and prompt communication. They see our commitment to charging a fair price for the best work we have to offer. They reap the benefits of our attorneys spending many hours on continuing legal education. They witness us treat one another with respect. And they admire our heart for serving people in our local and global community.

The good news is that because of our stalwart commitment to the Six Pillars, we are steadily making a positive difference in the legal world. We are bringing to fruition the idealistic goal of uplifting the profession. Others are emulating us as we follow the Six Pillars. More and more clients are

attorney or businessperson.

As we move forward in 2010 with what I hope will be another year of growth for Primerus, I urge each of us to take the time to point out to clients why we do what we do. Show them the Six Pillars and explain how they serve as a roadmap for the decisions you make – and it's likely they will see the need for the same values in their profession.

Finally, let's remember as we begin a new year with all of its promise, that even with all of the changes in the legal landscape and the economy in general, some things never change. The Six Pillars remain a foundation for success in the future, far beyond 2010.

A handwritten signature in black ink, appearing to read 'John C. Buchanan'. The signature is stylized and written over a light background.



Every lawyer in Primerus shares a commitment to a set of common values known as the Six Pillars:

- Integrity
- Excellent Work Product
- Reasonable Fees
- Continuing Legal Education
- Civility
- Community Service

For a full description of these values, please visit www.primerus.com.

In this issue

The theme of this issue of *The Primerus Paradigm* is the Six Pillars. Throughout, you will read various reflections about what these fundamental values mean to Primerus and to the legal industry at large. We are pleased to feature an article by Primerus client Mark J. Thompson, Senior Vice President of Claims Management at American Specialty Insurance & Risk Services, Inc.

The Primerus Paradigm is now mailed to thousands of Primerus clients and partners, in addition to our entire membership. If you would like further information about anything you read in this publication, please contact Chad Sluss at 800.968.2211.



About our cover

In 2010, Primerus will focus not only on growing within the U.S., but also on expanding internationally and reaching beyond borders to serve members and clients. The Six Pillars and the Primerus concept resonate around the world in an increasingly global legal market.

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Page 4

The Primerus Concept Endures: Focusing on Growth in the U.S. and Beyond in 2010

Page 8

Primerus Community Service Awards

Page 29

Primerus Membership Directory

Page 10

Perspective from In-House Counsel: What the Six Pillars Mean to Me

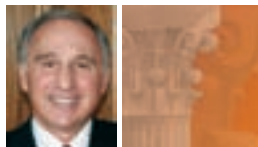
By Mark J. Thompson



Page 12

Living Out the Six Pillars

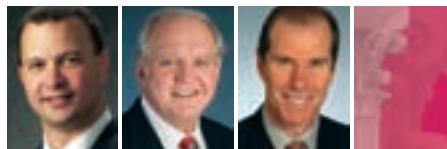
By Paul G. Perantinides



Page 14

Primerus Continuing Legal Education Requirements Set the Standard of Excellence

By Stuart D. Colburn, Walter A. Lesnevich and Brian L. Davidoff



Page 16

Practicing the Pillars of Primerus

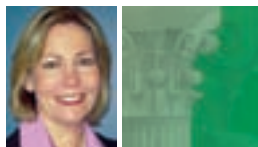
By Molly L. Fletcher



Page 18

Primerus: A Matchmaker For Good Clients and Good Lawyers

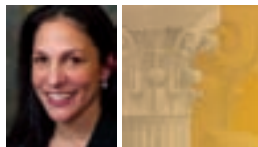
By Ruth E. Martin



Page 20

Quality of Life: Flexibility is Key to Balancing a Busy Family Life with a Thriving Law Practice

By Eileen H. Libutti



Page 22

Lawyers in Society: Taking Guidance from the Six Pillars of Primerus

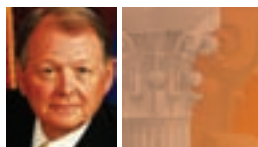
By Brant C. Hadaway



Page 24

Primerus Accreditation Board: Ensuring Primerus Quality

By Richard Fogg



Page 26

Civility – Professionals, Don't Leave Your Office Without It

By Terrel Broussard





The Primerus Concept Endures: Focusing on Growth in the U.S. and Beyond in 2010

At the end of 2009, Primerus closed the books on its most successful year of growth in history, adding 46 new firms and bringing the total number of member firms to 138 with more than 1,700 attorneys. Among the new firms are one firm in England and one in Canada, extending reach in the international market and ensuring that clients can find a Primerus attorney in more than 100 cities in the United States and beyond.

“In addition to our membership growth, Primerus also experienced tremendous growth in multiple dimensions, with adding new member services and specialty groups, developing relationships with corporate clients, and expanding our international influence,” said Primerus President John C. Buchanan. “The year of 2009 was a great one for Primerus, and we look forward of more to come in 2010.”

Buchanan emphasized that this growth and success occurred during a time of global economic struggle, serving as proof of two things:

- The Primerus brand of high quality legal services for reasonable fees is just what today’s clients are seeking – *value*.
- The Six Pillars still represent the best formula for success. They hold the answers to many of the problems in the legal profession and will guide Primerus into 2010 and beyond.

So as Primerus moves into 2010, how can members best maximize the Primerus concept to the benefit not only of themselves, but more importantly, their clients? And what does 2010 hold for Primerus?

Celebrating the Concept

In 2009, legal industry trends showed buyers of legal services demanding more value for their money than ever before. Surveys of corporate general counsel revealed they faced more pressure to reduce outside legal costs and looked to law firms to help them find value – in more ways than simply reduced fees.

Never could the Primerus concept have resonated more, according to Buchanan.

“Given the economic challenges of recent years, it has never been more important for clients to develop trusted relationships with law firms that offer significant value through high quality legal services at reasonable fees,” he said. “Because of an unwavering commitment to the Six Pillars, we have been able to

ships with people based on trust. And we all know that relationships are the essence of success in this profession and to bringing quality business through the door.”

Reaching Out

David Villadolid, partner at Burch & Cracchiolo in Phoenix, Arizona, attended the Primerus Annual Conference for the first time October 22-25, 2009, in West Virginia and continued to develop those relationships. His firm joined Primerus in April 2009.

Villadolid instantly felt like part of the Primerus family at the conference. “I felt that Primerus reflects the culture of our firm. We just fit very well within the Six Pillars. They reflect the values we have always had,” Villadolid said. “It’s a good fit for us. Primerus attorneys are good

right now in these economic times. Cutting costs is on everyone’s mind,” he said. “Isn’t it great that I’m a member of a group that allows me to work together with top attorneys at reasonable fees?”

Looking Ahead to 2010

Villadolid said that now he and his partner, Joel Heriford, who has attended two Primerus Annual Conferences, are working to get even more attorneys within their firm actively involved in Primerus.

That’s exactly what Buchanan is hoping more firms will do in 2010, a year in which Primerus will focus on outreach, both within its membership as well as to corporate clients.

Within its membership, Primerus has accomplished much with the creation of not only the three major practice groups –

“Because of an unwavering commitment to the Six Pillars we have been able to attract and retain more and more of the world’s best small to mid-sized firms.”

attract and retain more and more of the world’s best small to mid-sized firms.”

Such growth, undergirded by a commitment to following the strictest admission guidelines, provides law firm clients the assurance that Primerus has a quality attorney for them wherever they need one, Buchanan said. It also creates added opportunities for Primerus members to become familiar with their fellow members personally and professionally so they are able to refer clients to one another with confidence.

“The attorneys who get deeply involved in Primerus are the ones who are best able to realize all the benefits we offer,” Buchanan said. “Primerus creates opportunities for its members – opportunities to develop deep relation-

people and they’re good attorneys. They care about their clients, and they care about their work. It just really makes it easy to work with them and to refer work back and forth.”

At the conference, Villadolid learned an important lesson about the Primerus alliance from Primerus member Bob Brown of Donato, Minx, Brown & Pool in Houston, Texas. “He makes Primerus a part of all of his presentations. When you talk about yourself, you’re boasting, but when you talk about being part of a group like Primerus, that’s a great message. You’re still promoting yourself and your own firm.”

Villadolid said he is especially pleased to be involved with Primerus’ Business | Corporate | International (BCI) practice group as it builds and grows for the future. “Primerus has special resonance

Business | Corporate | International (BCI), Primerus Defense Institute (PDI) and Plaintiff | Consumer (PC) – but also several subspecialty groups including Bankruptcy, Commercial law, Insurance Coverage and Bad Faith, Intellectual Property, Labor & Employment, Product Liability, Real Estate, Transportation and Workers’ Compensation. Primerus has developed client advisory boards (CABs) for many of the groups as well. The CABs provide guidance and assistance to Primerus with program development for the various conferences, seminars and webinars held each year.

That outreach work will continue with reaching out to member firms at multiple layers beyond simply the key contact to

The Primerus Concept Endures: Focusing on Growth in the U.S. and Beyond in 2010

other partners and shareholders within the firm, Buchanan said.

“Everyone is part of the Primerus family, and we hope that each attorney takes full advantage of everything Primerus has to offer,” Buchanan said. “Active participation helps members to reap the rewards of the alliance, as well as allows all Primerus members to better serve clients.”

Spanning the Globe

Another of Primerus’s major initiatives in 2010 will focus on international growth. In addition to the 135 Primerus member

our members for law firms overseas,” Roland said. “And our European colleagues have clients with legal needs in the United States. Primerus is the perfect partner to help them find high quality law firms here to meet those needs. We are safe harbor for their clients in the United States.”

Primerus’ new Full Service International arm will be home for its new international members. Keith Hearn, managing partner of Ford & Warren in Leeds, England, serves as chairman of Full Service International Europe. His firm joined Primerus in October 2008.

Primerus offers firms tremendous benefits in an increasingly global market, Hearn said. “We have to reach out and be world-wise, because we have to be able to provide more and different services to

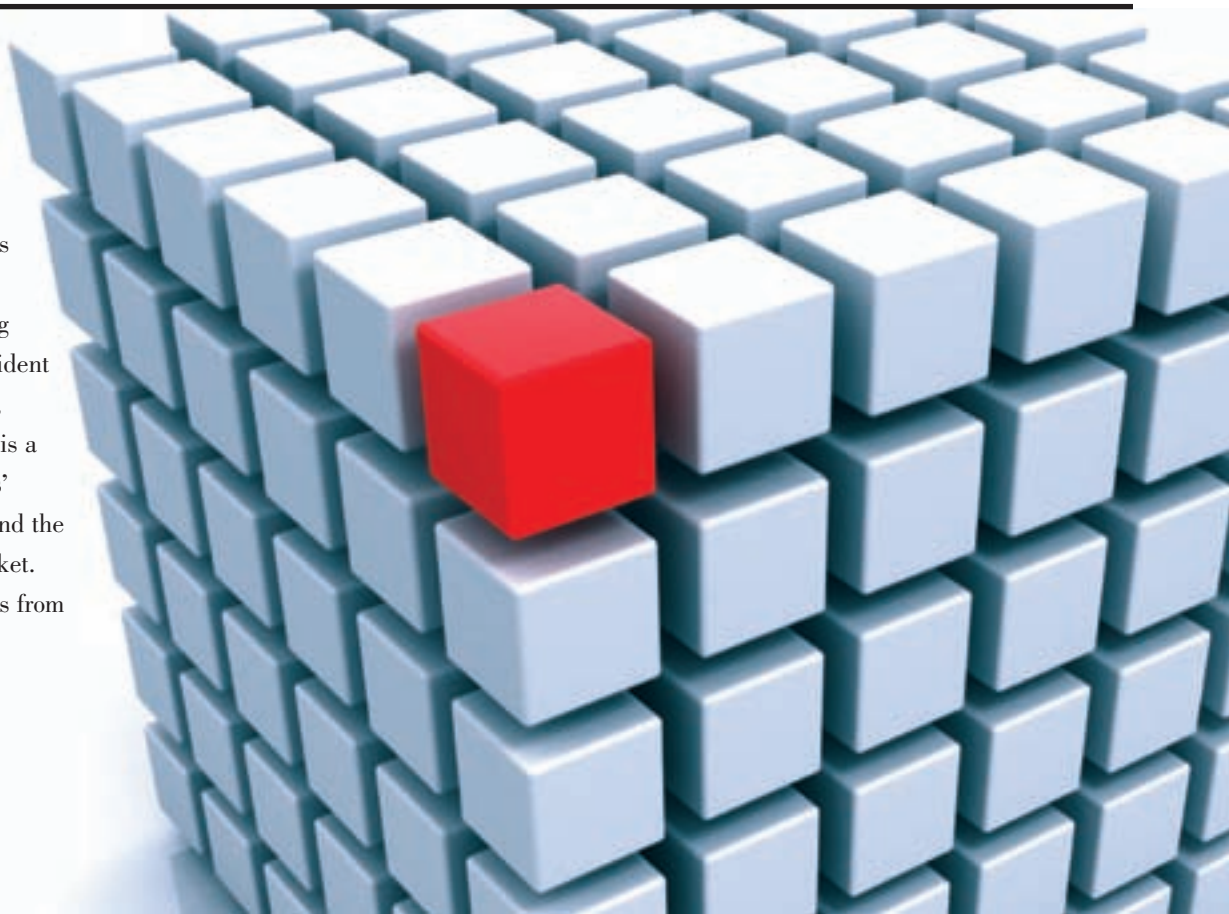


“We have to reach out and be world-wise, because we have to be able to provide more and different services to our clients.”

firms in the United States, Primerus currently has two in Canada and one in England.

The goal in 2010 is to begin to establish Primerus as the leading international law network in Europe. According to Primerus Senior Vice President of Membership Development, Scott Roland, this expansion is a natural extension of Primerus’ growth in the United States and the increasingly global legal market.

“We routinely see requests from





our clients,” he said. “And – underrated but real – we need to have the ability to provide services even where the client does not want them because the firm needs to have the right ‘look and feel’ to win clients.”

Hearn said Primerus has benefited his firm not only with referrals of work, but also with improved staff morale in terms of vision, perspective and self-respect. “People are proud to be members,” he said. “How do you put a price on that?”

He also praised the Primerus conferences, calling them invaluable. “My senior team and myself come away with a lot of added knowledge and new thought-provoking ideas, especially in the field of marketing because we see the same problems but different perspectives and analysis of solutions from our U.S. colleagues,” Hearn said.

The Primerus collegiality also offers

the benefit of “being able to talk to other lawyers who are friends and not a threat,” Hearn said. “As soon as I met Rob Brown (of Boylan Brown in Rochester, NY) he was so obviously genuine, clever and world-wise, and he introduced us to others. We thought, ‘These are the right people. They are down-to-earth, honest about the challenges we face and incredibly supportive.’”

Whether in the United States or abroad, Primerus continues its commitment to creating an alliance of the best lawyers in every location where clients need them.

“We work diligently every day to find high quality lawyers so that we can provide one-stop shopping to users of legal services,” Buchanan said. “Even the big law firms cannot compete with that.”



Ways to get further involved in Primerus

- Attend convocations and conferences. Invite clients.
- Volunteer for committees.
- Write articles for *The Primerus Paradigm*.
- Accommodate your fellow members’ requests for cooperation.
- Help fellow members like you would expect them to help you.
- Explain Primerus to your clients.
- Ask your clients where they need legal services and try to meet those needs with another Primerus firm.
- Put the Primerus logo on your website and stationery.
- Meet with fellow Primerus lawyers when you’re traveling.
- Offer conference space to other Primerus members when they’re in town.

Primerus Community Service Award Winners

Inspired by two teen-age burn survivors, one Primerus law firm developed a statewide school science safety program.

Another celebrated its 25th anniversary by donating 25 books to the libraries in each of the three South Carolina cities where the firm has offices.

And another Primerus firm is continuing to support one of the most unique scholarship foundations in the country.

These are just a few of the efforts of

In 2006, the firm represented two burn survivors – 16-year-old female honor students who were seriously injured, sustaining second- and third-degree burns to their face, neck, hands, legs and torso during a chemistry lab demonstration performed by their teacher. The fire and resulting horrific injuries sustained by these young women could have been avoided if their teacher had followed some very basic safety precautions.



Paul Perantinides and Chris Nolan accept the 2009 Primerus Community Service Award at the Annual Conference in October.

center, teacher preparation institution and community college in Ohio.

The Ohio Science Safety Project will also include workshops and training programs designed to help educators meet the increasingly complex challenges of teaching science by making participants aware of professional standards and ethical issues.

The firm stated in its application, “The project was funded by our firm in

We’re proud to highlight this year’s top award-winning firm of Perantinides & Nolan and the other two finalist firms of Christian & Small and Collins & Lacy.

the 2009 Primerus Community Service Award finalists. Every year, Primerus names three finalists for the award at the Annual Conference. We’re proud to highlight this year’s top award-winning firm of Perantinides & Nolan in Akron, Ohio, and the other two finalist firms of Christian & Small in Birmingham, Alabama, and Collins & Lacy in Columbia, South Carolina.

Perantinides & Nolan

Perantinides & Nolan took 2009’s top community service honor in part because of the firm’s work this year developing a statewide school science safety program called the Ohio Science Safety Project.

Tragically, the firm discovered that lab safety is assumed and sometimes ignored. So Perantinides & Nolan was compelled to contribute to educating and informing Ohio’s teachers about the importance of classroom science safety.

This year, the firm worked with nationally recognized safety expert Jack Gerlovich and a team of distinguished advisory board volunteers to develop a program to address this educational need. The firm contributed more than \$136,000 to underwrite the Ohio Science Safety Project. The end result of the collaboration was the development of the Ohio Total Science Safety System CD-ROM. A total of 1,700 of the interactive CD-ROMs will be distributed to every public middle school, high school, regional education

dedication to the two young honor students and their families, whose courage in facing adversity did not spoil their dreams. The project became a reality because these two young women had a purpose in life beyond themselves. It is our collective hope and wish that in some small measure the development of these tools and training programs will help science education professionals identify and address safety issues in academic science laboratories and related settings.”

Christian & Small

For the second year in a row, Christian & Small was named a finalist for its community service efforts including its commitment to the J. Craig & Page T. Smith Scholarship



Foundation. The foundation provides scholarships to underprivileged students, addressing not only their financial needs, but also providing a support network to make certain the at-risk scholars stay in school. What makes the foundation so unique is that it awards scholarships based not only on scholastic scores, but also on a strong commitment to service and family.


One of the firm's partners, Ahrian Davis Tyler, has played a tremendous role in the success of the foundation. Because of its success, the foundation has now relocated from the law firm's offices to a prominent new space in the building's lobby and has several full-time staff members working there.

Collins & Lacy

This year, Collins & Lacy celebrated its 25th anniversary and to celebrate, the firm donated 25 books to the libraries in each of the cities where the firm has

offices. The firm worked with library staff members to select books relating to a variety of legal topics, as well as to the history of South Carolina. The Richland County Library in Columbia, Greenville County Library in Greenville and Chapin Memorial Library in Myrtle Beach were the recipients of the book donations.

In 2008, the firm also identified three key events for firm sponsorship – the WACH Fox 57 Toys for Tots Holiday Toy Drive, South Carolina NAMI Walks (supporting the National Alliance for Mental Illness) and the Babcock Center's Hole-In-One Tournament. (The Babcock Center is a private non-profit organization that provides residential and day support to over 800 individuals with mental retardation, autism, brain and spinal cord injuries and related lifelong disabilities.)

Please join us in congratulating these firms for exemplifying the Community Service pillar to all Primerus members. 



If your firm would like to apply for the 2010 Primerus Community Service Award, please contact Primerus Director of Services Chad Sluss at 800.968.2211. Finalists are honored at the Primerus Annual Conference, and the winning firm is awarded a full page ad in their state's bar journal, a press release announcing their accomplishment and a plaque to be proudly displayed in their office.

Best Practices

Perspective from In-House Counsel: What the Six Pillars Mean to Me

By Mark J. Thompson



Mark J. Thompson
Senior Vice President, Claims Management
American Specialty Insurance & Risk Services, Inc.

Mark Thompson has more than 20 years of experience in personal injury law and litigation claims management. Mark is a graduate of Indiana University and the Indiana University School of Law. As Senior Vice President, Claims Management, Mark is American Specialty's senior claims officer and is responsible for the overall handling of claims.

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About five years ago, an outside attorney I work with told me about an organization he belongs to that might be able to help us with our legal needs across the country. Since that conversation when I first learned about Primerus and the Six Pillars, I have had the pleasure of getting to know several more Primerus attorneys, and our company currently has more than 20 Primerus firms on our list of approved counsel. Without exception, I have been impressed with Primerus attorneys and the values they uphold, and I attribute that, in large part, to the Six Pillars.

At American Specialty Insurance & Risk Services, we specialize in insurance and risk services for the sports and entertainment industries. We insure professional sports teams and sanctioning organizations, as well as many amateur sports organizations across the country. Because we are a managing general agency with authority from an insurance carrier, we must be very mindful of the relationships we have with our clients – and the counsel we hire plays a large role in developing and maintaining positive relationships with those clients. That's why knowing that Primerus' member attorneys are committed to the values of the Six Pillars is invaluable to me. I need to know that my clients are in good hands, and I know that with Primerus.

Integrity

To me, integrity is the most important pillar. I must have outside counsel who will be above reproach and who will earn respect from my clients. Because our work on litigation is always a tripartite relationship including the client, outside counsel, and our company as the representative of the insurance company, the client has much to say about the way litigation is handled. I want to ensure that an outside attorney is going to be honest in his or her evaluation of a case. Whether it's bad or good news, I need to know they're going to give me the straight news, not hold back or take me down the primrose path and then tell me the bad news. That kind of honesty and straightforward advice requires deep integrity.

Excellent Work Product

Excellent work product in the legal world is the vehicle by which attorneys strive to achieve the desired results for their clients. It means taking pride of authorship in every product, whether it's an oral argument or a written brief. Excellent work product is the quality writing or well-reasoned argument that gives the client the best chance of winning the case or of being settled on a reasonable basis.

Reasonable Fees

Reasonable fees are always important, and they are particularly important in our business because we write many policies on a self-insured retention basis (meaning that even though we are paying legal bills



out of this office, it eventually gets charged back to our client). Unlike an insurance carrier that may have significant resources, many times those we insure have much more limited resources.

Reasonable fees encompass not only an hourly rate, but also the amount of time spent. Unfortunately, we all have hired attorneys who charge a “cheap” hourly rate but end up costing us more in the long run. The Primerus attorneys I have worked with charge fees that are very reasonable for the work they do, and they don’t spend unnecessary time on a matter. They also don’t do anything questionable without consulting me first. Because their rates are fair, their billing is appropriate.

Continuing Legal Education

We like to know that our attorneys are on the cutting edge of expertise in their particular field. Knowing that Primerus requires its attorneys to spend focused time on continuing legal education provides us that assurance.

Civility

As an attorney I feel the practice of law is a calling. It is not about us as lawyers, it’s about our clients.


If an attorney has uncivil, negative relationships with judges or fellow lawyers, their effectiveness is compromised. I never like it when a lawyer tells me they have had numerous run-ins with another lawyer or that they don’t like each other. That makes it personal and unprofessional, and that makes my case harder than it needs to be. So if I hear bad things about a lawyer and his or her professionalism, I drop them from our list of approved counsel.

I have never been exposed to a Primerus lawyer who has stood out negatively to me. They truly are good people who happen to be lawyers.

Community Service

If you’re going to be a good lawyer, you must be willing to give yourself to your community, whether it’s doing pro bono work for people who cannot afford good lawyers or committing yourself to work

for a cause you believe in. When you have an attorney who does those things, he or she is more well rounded and more in tune with the community, and therefore potential jury pools. Lawyers who are committed to community service are not only the kinds of lawyers I want to work with, they are also the kinds of people I want to be around.

In closing, over the years I have been part of many different groups in the legal profession. Many times, when you enter into a relationship, you hear a lot of things that in the end, turn out to not be true. That has not been the case with Primerus. I have not had a single regret in continuing to do business with Primerus. It’s everything they said it would be, and that’s hard to find these days. They not only talk the talk, they walk the walk. Because of that, it makes it very easy for me to maintain my relationship with Primerus. 

Living Out the Six Pillars

By Paul G. Perantinides



Paul G. Perantinides
Partner

Paul G. Perantinides is a preeminent trial lawyer dedicated to representing the rights of injured individuals and their families who have been harmed by medical malpractice, wrongful death, and personal injuries and defective products. He is listed in The Best Lawyers In America 1995 – 2010 and is a member of the American Board of Trial Advocates, Trial Lawyers for Public Justice, and Million Dollar Advocates Forum.

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As attorneys in our community, we believe that we should be leaders and examples to our fellow citizens and clients. In that regard, the Six Pillars of our organization provide the necessary blueprint for our leadership. We are goodwill ambassadors for our profession in times when our collective reputation is constantly challenged. It is an absolute privilege to be asked to help clients solve their problems by utilizing integrity, excellence in our work product and reasonable fees.

Integrity

We have learned that a strong dose of ethics is as reliable as a compass. Trust is the single most important factor in both personal and professional relationships. We hold ourselves to the same standards that we require of others. We try not to become a firm of success, but rather, a firm of values. We are flexible with our time but never with our values. We always try to choose work that is in harmony with our values. We take care of our reputation as it is our most valuable asset.

We do not trade our integrity for money, power, fame or personal gain. It is said that wisdom, compassion and courage are three recognized moral qualities of a man. When we understand the nature and use of these moral qualities, we will then understand how to put our personal conduct and character in order.

Excellent Work Product

In our firm, it is unacceptable to give anything but our best to each and every endeavor we undertake. In that regard,

we are always satisfied and encouraged that we have given our best in the quality of our work product and service to our clients. With this as a priority, and constantly striving for and achieving excellence in our work product, the natural result is providing our clients with the best possible legal representation. So long as the work product is excellent, we believe that the commensurate remuneration will follow, if not in the matter at hand, at some point down the road. The knowledge gained in providing an excellent work product is a resource that can never be taken away. Our business paradigm is to provide excellent representation no matter how large or small the matter may be, and no matter how much time and effort are required. This business model has served us well for 40 years!

Reasonable Fees

We believe that we have an absolute obligation to use our expertise and skills as the basis for providing an excellent work product at charges that are deemed to be reasonable by any working person's standard. We believe that everyone is entitled to competent, thorough and ethical legal representation at reasonable fees. Even in our community of Akron, Ohio, we often times hear complaints of excessive fees and/or rejection of legal services because of the difficulty clients have in paying what they believe to be excessive retainers. It is often too easy and very convenient to feel entitled because of either our perceived station in life or because of our own self-professed stature. Our firm's philosophy encompasses the strong belief that our expertise and work ethic leads to high

quality legal services, at a very reasonable cost. We perform our tasks effectively and efficiently by defining the critical and problematic issues and focus our problem-solving skills and energy on those tasks. In other words, we can do a lot more work in less time.

The economic downturn has certainly caused a great deal of hardship across the board, however, we have been very fortunate. In the past 12 months, we have voluntarily reduced our attorney fees substantially. Our fee reductions have benefitted our clients in ways that are totally unimaginable.

Doing “our best” is unacceptable if we are not doing what is necessary. Doing what is necessary to serve our client’s best interest includes the responsibility we have to charge our client fees that are reasonable. We have learned that if we focus on doing a good job, the compensation will come. We have learned that making a living is not the same as making a life. We make a living by what we earn and a life by what we give. We constantly strive to give our clients more than they expect and to do so with passion for our work and for our clients.

Continuing Education

There is no elevator to success, we have to take the stairs. It’s okay to enjoy success, but we should never believe that we have reached a point where the importance of learning is no longer necessary. We understand that knowledge is vast and learning is an endless endeavor. Our firm subscribes to being good listeners; our clients educate us constantly. We don’t have all the answers

and we consider our clients to be resources, even in the most complicated of matters. We strive not only to educate, but also to be educated. Our continuing education is always a work in progress. Other lawyers have made us better when we are willing to keep an open mind.

Our experience should always allow us not to engage in the spasm of instant judgment. A good education, without a good heart, is no education at all. We know that one cool judgment is worth a thousand hasty counsels. The thing to be supplied is light, not heat.

Civility


We have learned that kind words and good deeds are eternal. When we are firm, we are polite. We look for the good, we search for the truth, and we always hope for the best and stay eternally optimistic. A professional fundraiser once told me that people live up to what is expected of them and down to what is suspected of them. In our relationships with others, we remember that diplomacy is almost always preferable to candor. We try to live our personal and professional lives as if we were someone’s only role model. We should always be stronger than our difficulties, braver than our fears and more noble than our temptations. It is never too late to set aside our prejudice. It’s always easy to retaliate when someone is rude, discourteous, or unprofessional. These instances should never become personal battles between adversaries but rather should serve as a reminder of the importance of always being professional and civil. It’s easy to be nice

when things go smoothly, but far more difficult to rise to the task of being pleasant when our patience, our ability, or our position are being tested.

We should all earn our success based on service to others, not at the expense of others. It is acceptable if we celebrate our victories in a dignified fashion while at the same time analyze our defeats critically. We should win without bragging and lose without excuses.

Community Service

We acknowledge that the gifts of time, talent and treasure are very personal and unique to each of us. Nonetheless, we cannot bask in the comforts we enjoy with a belief that we are so entitled or deserving. We have an obligation to turn our success into significance every time the opportunity presents itself. We do that not because we are striving for an award or because the community is taking notice, but rather because it is our duty and obligation. My immigrant parents raised my brother and me with the belief that for every good deed we do, we will be blessed tenfold! What a great investment! We’ve learned that we have never regretted being too generous, but often regretted not being generous enough. There are no unimportant acts of kindness. We pray for tasks that call forth our faith, our courage, our perseverance and our spirit of sacrifice.

We should always be speakers of words of wisdom and doers of good deeds. The secret to success is a constancy of community service and purpose. We should always strive to have hearts of justice. 

Best Practices

Primerus Continuing Legal Education Requirements Set the Standard of Excellence

We asked three Primerus members to each reflect on the importance and caliber of continuing legal education for the three practice groups – Primerus Defense Institute, Plaintiff | Consumer and Business | Corporate | International.



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Business | Corporate | International


Primerus Defense Institute

A Primerus law firm is ultimately judged by its lawyers and their work product. Primerus is much more than a “Good Housekeeping Seal of Approval” as the Wall Street Journal has written. Primerus lawyers commit themselves to the Six Pillars, which stand not independently but instead are inextricably intertwined. The Primerus Defense Institute (PDI) proudly showcases our commitment to the Six Pillars with its continuing education program.

PDI Convocations and seminars afford Primerus lawyers and their clients the opportunity to engage in the highest form of legal education: a robust review of current law and ethics as it applies to our clients and their legal needs. An informed client is a satisfied client. Informed lawyers passionate about their practice of the law represent their clients in a dependable and expert manner. Informed clients and counsel reduce the need for expensive legal services (including unnecessary legal research and training for less experienced lawyers).

The PDI Group consists of lawyers who are experts in their fields of practice and geographical region. A PDI lawyer can and often does refer clients with particular legal needs to another PDI firm with expertise in a region or practice area. Clients and lawyers often meet these highly-trained legal experts at the PDI Convocation or seminars.

But education need not be boring. Primerus lawyers and their clients previously met in desirable locales such as Scottsdale, Arizona and Boca Raton, Florida. Participants enjoy the camaraderie while golfing, fishing and enjoying other recreational activities. The 2010 Primerus Defense Institute Convocation will be held at the Boulders Resort in Carefree, Arizona, on April 22-25, 2010.

Our community of lawyers is enriched by educational programs committed to devotion to the law and our clients’ needs. Should you have questions or wish to participate in our Convocation or seminars, please contact Ruth Martin, Primerus PDI Coordinator, 616.454.9939. 

Stuart Colburn is a shareholder who opened the Austin office of Downs•Stanford, P.C. He has extensive experience in all phases of dispute resolution before the Texas Department of Insurance, Division of Workers’ Compensation and in district courts across the state. He is extremely active in the education of both adjusters and employers and is certified by the Texas Department of Insurance as a continuing education provider.

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Plaintiff | Consumer Group


By definition, continuing legal education (CLE) for members of the Primerus Plaintiff Consumer Group must not cover introductory or even mid-level subjects. In order to be a member of Primerus, you must be Martindale Hubbell AV-level, experienced, well-known and respected. Our CLE programs have to start with that assumption.

That fact works well with the other requirement; our CLE cannot be state specific. The need to have CLE that advances the knowledge and experience of well-traveled and well-worn trial lawyers leads to the opportunity to present different programs.

What engages people who have heard so many verdicts from juries? The best I have ever been at was at the annual meeting at La Quinta Resort (Palm Springs, CA) in October 2006. We not only heard about spinal injuries from an orthopedic surgeon, but he also brought a cadaver head and spinal cord! We were able to examine and touch it. I have never done a herniated disc or fusion case since then without knowing much more about it than my opponent and impressing him with my story of having put my finger in the vertebrae socket. That's Primerus CLE!

This past October during the Primerus Annual Conference at the Greenbrier Resort in West Virginia, our group heard from a lawyer/doctor about "What to look for when investigating medical records." We then heard from an expert on "Impeaching the credibility of medical records" and from a forensic document examiner. This was all very useful information.

Do not miss our Winter Conference at The Westin in Key West, Florida, February 25-28, 2010. Eric Oliver lectures for the

American Association for Justice and other large groups frequently on the psychology of juries. Come to this program, and you will have two full days of not only Eric's lectures, but also interactive discussions, drinks and dinner with your colleagues. Eric will actually review your presented case in advance and discuss his ideas for it with you and the group. Now that's high-level CLE! 

Walter Lesnevich has more than 30 years of experience as a personal injury and criminal defense attorney. He has tried many cases in these areas: professional malpractice, wrongful death, automobile accidents and injuries, medical malpractice, drug and medical device litigation, products liability, homicide and criminal defense.

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Business | Corporate | International

As practicing attorneys, we are all required by our state bar associations to meet certain minimum legal education requirements. Mandated not only by our state bar associations but more importantly by our own practice standards, we devote significant effort to keep abreast of legal developments in our areas of practice. We spend many hours each year reading advance sheets, legal periodicals and other practice aids to keep us at the forefront of practice.

Legal education forms the foundation of what we do in rendering excellent service to our clients. Now it has become a centerpiece of the Business | Corporate | International practice groups and marketing efforts. The BCI has over the last two years formed several practice groups: Bankruptcy, Labor & Employment, Intellectual Property and Real Estate. A Commercial Practice Group also is currently getting off the ground.

To be member of each of these groups, the attorneys need to meet certain minimum standards. For the Bankruptcy Group, for example, the standards are below. Other groups have adopted variations of these standards:

1. Minimum of 10 years of practice in bankruptcy;
 2. Attorney spends at least 800 hours a year in the practice area, i.e. about half their practice, in the given area;
 3. Attorney obtains eight hours a year of CLE in the specific practice area;
 4. Membership in certain organizations (depending on the area of practice);
 5. Published books or articles in the area of practice; and/or regularly speaks on topics in the area of practice.
- (Items 1, 2, and 3 are mandatory and 4 and 5 preferable.)

The purpose of these requirements is not only to ensure that the attorney participants are learned in the area of law so as to provide a resource for other Primerus attorneys, but also to serve as a legitimate marketing tool. With the newest foray of Primerus into the Association of Corporate Counsel, the specialty groups can be proudly and legitimately marketed to house counsel as a truly national association of experts in their area of law. 

Brian Davidoff has specialized in corporate reorganization, restructuring and bankruptcy law for more than 20 years. He also has a substantial practice advising companies on the various aspects of their growth, financing, contractual relationships and operations.

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Best Practices

Practicing the Pillars of Primerus

By Molly L. Fletcher



Molly L. Fletcher
Associate

Molly Fletcher is an Associate in the San Diego office of Neil, Dymott, Frank, McFall & Trexler APLC. She concentrates her practice on professional liability and civil litigation.

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In law school, there were classes that emphasized the importance of being a lawyer in today's society. There were discussions of a lawyer's role in building democratic institutions, promoting equal access to justice and maintaining public order. But were we educated on how to be a lawyer? Not just any kind of lawyer, but the right kind of lawyer? Does zealous advocacy of a client's interests mean a "win at all costs" mentality? Why would a lawyer be obligated to provide legal services to those who cannot afford my fees? Is civility, much like chivalry, a casualty of the modern age? Does it have to be?

Lawyers obtain a legal education as an academic foundation in law school. But where does a young lawyer obtain a set of professional values that will serve as a foundation for their legal career? Often times the early training and exposure at initial jobs and law firms shapes the rudimentary values and ethics which will become the code for young attorneys. In the same way that law school takes an unshaped mind and trains it to apply reasoning and analysis within a legal framework, young attorneys who are provided strong, practical and ethical guidelines, like the Six Pillars of Primerus, can similarly use these standards as a framework within which to practice. When emphasized, these pillars can represent

a standard of conduct that each member commits themselves to throughout their legal practice: Civility, Integrity, Community Service, Continuing Legal Education, Excellent Work Product and Reasonable Fees.

The virtues of civility cannot be overemphasized. All too often there are war stories of personality conflicts and all out battles between opposing counsels. It can be easy for lawyers to blame a lack of civility on the adversarial nature of the litigation process. But blaming the process will not win you any sympathy points with the community as a whole (legal and otherwise) or the bench. Our job as lawyers is to resolve disputes. The manner in which we go about resolving these disputes contributes greatly to their fair, efficient and just resolution. Uncivil, abrasive, abusive or hostile conduct inevitably impedes the fundamental goal of all lawyers, which is to resolve disputes rationally, peacefully and efficiently. Civility generally promotes peaceful and stable relationships with your clients, judges, support staff and other attorneys. All lawyers uphold the virtue of practicing with civility as it demands respect, common courtesy and decency inside and outside of the court room. A practice that will ensure civility does not succumb to the inherent adversarial nature of the litigation process.

As a professional group, lawyers are in a unique position to be able to protect human rights and maintain a just society. As lawyers, we are responsible for




ensuring that our legal institutions administer justice fairly and with integrity. Practicing with integrity does not inhibit vigorous advocacy of a client's interests. Lawyers should reject a "win at all costs" mentality as it can all too often lead to unethical behavior. I remember my first appearance in court and the simple lesson of integrity I learned that day. As I was standing up to make my appearance before the Court, a more seasoned attorney to my left whispered in my ear, "Remember, all you have is your credibility...Don't lose it!" This advice encapsulates the essence of why it is so important to practice with integrity. Half-truths or misleading representations can result in a loss of credibility with the Court. When credibility is lost, suspicion and mistrust take its place, which will harm both your reputation and practice. Therefore, practicing with integrity assures that you will never lose your credibility with the Court.

There is an ancient truth which most certainly applies today: to whom much

is given, much is required. Ideally, every individual should have equal access to the benefits of the legal system. Many attorneys have embraced the goal of universal access to justice as one of their core values and have implemented this goal in numerous pro bono efforts. Our profession requires us to provide more than just a service for a fee. It demands our services for all citizens as part of our responsibility as custodians of the legal system.

Another way we thrive professionally is a strict adherence to excellence in our work product. Handling a case and a client with thoroughness and intelligence enhances individual as well as collective faith in our profession. Primerus members also understand the modern practice of the law is a professional service that requires clients to pay for our representation. Charging a client a reasonable fee for the lawyer's representation does not mean that lawyers should not make a living. However, charging an excessive amount for legal services is contrary to public service as it would deter citizens from utilizing the legal system. Additionally, it

is of the utmost importance to the public that attorneys maintain their professional competence through ongoing professional education. The law changes quickly, and it is a lawyer's responsibility to augment their knowledge of the law accordingly.

The conduct and manner in which every lawyer practices the law has a corresponding ripple effect on the entire legal profession. As custodians of the justice system, we are charged with the responsibility of resolving our societal problems in a civilized, rational, peaceful and professional manner. Unfortunately, some have not taken these responsibilities seriously. Public opinion polls provide evidence that dissatisfaction with the legal system is widespread and that the public generally holds lawyers in low regard. Our public image is being eroded by those who do not practice with integrity and civility, who do not contribute to the community, who charge unreasonable fees, and who do not produce quality work or keep up with their continuing legal education. This has led to a pervasive public mistrust of lawyers. This mentality contributes to the decline of the legal profession into a discourteous, hostile and uncivil environment. It is the responsibility of not just new lawyers, but all lawyers, to take this phenomenon seriously. By committing ourselves to the values contained in the Six Pillars of Primerus, we can lead by our example of not just how to be a lawyer, but how to be the right kind of lawyer. 

Primerus: A Matchmaker For Good Clients and Good Lawyers

By Ruth E. Martin



Ruth E. Martin
Senior Vice President of Services & General Counsel

Ruth Martin is Senior Vice President of Services & General Counsel for Primerus. She practiced law in Ohio for 15 years, is licensed to practice law in Michigan, and worked as a law firm consultant for LexisNexis before joining the Primerus staff in 2003. Ruth resides with her family in Grand Rapids, Michigan.

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Relationships make life meaningful and fulfilling. Our success as professionals, and the satisfaction that we derive from our work, depends to a great extent on the relationships we build with partners, co-workers, clients, judges, juries and even opposing counsel.

Primerus is, essentially, in the “relationship business.” Our mantra is “to help good lawyers find good clients and good clients find good lawyers.” One of my roles at Primerus is to help facilitate this process, playing “matchmaker” between good clients and good lawyers.

Primerus helps its member law firms develop important business relationships by hosting high quality networking and educational opportunities for both Primerus attorneys and corporate clients, such as our annual Primerus Defense Institute (PDI) Convocation, our annual PDI Transportation Seminar, as well as one-day seminars and hour-long webinars on important developments in the law and other “hot” legal topics. Additionally, we host annual conferences and mid-year gatherings for attorneys in each of Primerus’ practice groups – primarily for the purpose of sharing best practices and developing and renewing relationships within the Primerus alliance.

Strong relationships lead to meaningful collaboration. For the past several years, we have experienced corporate clients and Primerus attorneys coming together and building strong bonds that translate into mutually-beneficial business relationships through the PDI. Several of those clients have impressed upon us how much they

value the opportunity to meet face-to-face with quality lawyers in a no pressure situation. They look forward to an invitation to future PDI conferences, knowing full well the tremendous benefit of meeting attorneys who can provide outstanding legal representation for their company at a reasonable price.


Increasingly, small groups of Primerus attorneys are visiting clients located in a particular city or region. Over lunch or dinner, a Primerus member introduces his or her valued client to a team of attorneys from offices in several states. It’s a wonderful way to showcase what a valuable resource the Primerus alliance can be for corporate clients who need seasoned attorneys to handle various types of matters, provide specialized advice, or represent them at the courthouse in more than 100 cities where we now have Primerus firms. It’s the “one-stop shop” concept. And Primerus attorneys are comfortable introducing their clients to other Primerus members because of the trust that develops from knowing that we accept only the “best of the best” into our family of law firms.

Clients and our members also build relationships through various client advisory boards. The PDI has a client advisory board, as do several other Primerus specialty groups, such as; Transportation, Labor & Employment, Intellectual Property, Product Liability, and Insurance Coverage & Bad Faith. These boards provide valuable advice to the Primerus attorneys who serve on the executive committees for the various specialty groups. The advice takes the

form of programming and initiatives that would benefit corporate clients like themselves. Client advisory board volunteers also are invited to participate in the continuing legal education seminars and conferences that they help Primerus members plan. We are currently seeking nominations for individuals who would like to serve on one of the existing client advisory boards or on one of the client advisory boards we are forming for the following specialty groups; Bankruptcy, Real Estate, Workers Compensation, Commercial Law, and Liquidation of Corporate Debt. Please contact me if you have questions about any of the Primerus client advisory boards or if you would like to nominate someone (including yourself) to serve on a particular advisory board.

Primerus prides itself on helping busy corporate executives and in-house legal departments find high quality legal service providers in multiple jurisdictions – without the time and guesswork that is typically involved in such a search. Corporate clients repeatedly tell us that they can trust the Primerus alliance because of our strict guidelines for admission and retention. We start by considering only law firms that are AV-rated by Martindale-Hubbell Peer Review. Then we conduct an extensive screening process, which includes candid assessments from judges, current and former clients, local attorneys, bar associations and malpractice insurance carriers. All of this information is thoroughly reviewed by an independent accreditation board before firms are approved for membership. And once firms

become Primerus law firms, they are audited annually by our accreditation board to ensure continued compliance with our high membership standards. The bottom line is that because we go to great lengths to ensure that all Primerus firms provide a great value for clients, clients look with confidence to Primerus as a trusted resource for all of their outside legal counsel needs. Even if we currently do not have a Primerus firm in a particular jurisdiction which can take care of a client's unique need, we will go out of our way to help the client find a law firm that has been recommended either by a Primerus attorney or another corporate client who routinely hires Primerus attorneys and expects outstanding service from their outside counsel. Just contact me, and I will put you in touch with law firms or attorneys who can efficiently and effectively handle all of your legal matters.

One of the advantages of having ties with an organization like Primerus, whether you are a Primerus attorney, an in-house lawyer or corporate executive serving on one of our many client advisory boards, or a client who prefers to hire Primerus attorneys is that we all share a common belief in the same high ideals upon which Primerus was established – the Six Pillars. This is the perfect foundation for excellent business relationships. Through Primerus, strong business relationships often turn into great friendships. And the best part is that when you make business personal, good things happen. 

Primerus Exhibits at ACC Annual Meeting

Primerus was an exhibitor at the 2009 Annual Meeting of the Association of Corporate Counsel (ACC), October 18-21, in Boston, MA. The ACC is the largest and most prestigious organization of in-house corporate counsel in the world, with over 24,000 members located in 80 countries. The ACC's Annual Meeting is the organization's largest networking and educational event. Relatively few law firms and law firm alliances are given the opportunity to exhibit at the ACC Annual Meeting.

And the winner is...

We are pleased to announce that **Norman Wain, VP, Corporate Legal Affairs – Assistant General Counsel with The Finish Line, Inc.,** was the winner of the drawing for a \$500 Visa gift card held by Primerus following the 2009 ACC Annual Meeting. ***Congratulations, Mr. Wain!***

Quality of Life: Flexibility is Key to Balancing with a Thriving Law Practice

By Eileen H. Libutti



Eileen H. Libutti
Managing Partner

Eileen Libutti is the managing partner of Lewis Johs Avallone Aviles, LLP's New York City office. In addition to her administrative responsibilities, her practice includes the representation of physicians, other health care providers and hospitals for claims of malpractice from inception through trial. She also represents corporate entities and handles cases involving claims of general negligence.

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How do you balance a busy family life with a thriving law practice? There are no easy answers, but above all else, be flexible. As the managing partner of an aggressive group of litigators in New York City, and the mother of 4-year-old twins, I can say that I'm not sure there is such a thing as work/life balance. Sleep deprivation, yes. Emergency room visits and working on my laptop at 5 a.m. to meet a deadline, sure. The perfect balance all of the time? I don't think so.

On the afternoon that I agreed to write this article about work/life balance, I received a call from our beloved sitter. My daughter's ballet class was getting out at 5 p.m. My son's gym session ended at the same time. Slight scheduling glitch. They're at opposite ends of Tribeca, and I had issues at work that needed attention before the next morning. Unable to catch a cab, I ran 1.1 miles wearing very fashionable high-heeled pumps with briefcase in hand. My son was still elated to see me. His instructor – not so much. At 11 p.m. I logged back on to my computer and finished my work day.

My opinions about work/life balance have changed over the course of the last 20 years, and I expect they will continue to do so. In my twenties and thirties, work was my life. Of course I would squeeze in dinners, workouts and parties, if possible, but work was pretty much first and foremost. Nights were available for work, client dinners or networking events. Work was my *raison d'être*. Although to others it

might sound limited, sad or pathetic, at the time it was quite rewarding. My firm's success and my own little victories, whether it was bringing in a new client or a favorable verdict at trial, were fulfilling. There's a lesson there for all employers. Letting your associates own their victories, whether it is a motion they've won or an article they've written, giving them autonomy on the one hand, and as much support as possible on the other, will lead to happy, fulfilled and motivated attorneys.

As Albert Einstein once said, "Life is like riding a bicycle. To keep your balance you must keep moving." That's so true on every front. That is how I look at work/life balance. While at the office, or in Court, keep it moving. Stay focused. Get as much covered and as much accomplished as possible. Make decisions and go with them – sound decisions, well thought out decisions, reasoned decisions. Trust your judgment, and then go. If you're doing the right thing honestly, expeditiously and efficiently, things tend to work out. Get things done. They may not get done in the perfect fairy tale way you had envisioned, but if you keep it moving, it seems to work out well at work, and well at home.

Protecting your private time? Not really happening. Not if you want true balance. It is better to stay plugged in and hear your iPhone ringing or your Blackberry buzzing than to disengage and wonder if you are missing something. Just like my world at work will have to wait a minute if my son is being carted off to the emergency room, I can slip out in

a Busy Family Life



the middle of my daughter's ballet class or a vacation day to handle an office snag or a client in need. Flexibility is the key. A flexible firm gets an array of benefits from appreciative attorneys. Loyalty. Hard work. Commitment. A flexible attorney is going to benefit as well.


At a "Flex-Time Lawyers" meeting hosted by Deborah Epstein Henry in New York, I met a professor from Yale University whose words always resonated with me. She said, "If you want your firm to be flexible with you, you need to be flexible with them." If you're planning

on working part-time, if at all possible, you should have full-time childcare coverage. The idea seemed impossible to me at the time, but her reasoning was sound. Brilliant, actually. There will be times when your sick child won't allow for your ordinary Monday, Wednesday, Friday schedule. You expect your firm to be flexible and understand. Likewise, there may be times when a temperamental Judge, client or adversary won't allow for your ordinary Monday, Wednesday, Friday schedule either. Just as you expect your firm to be flexible, shouldn't you be?

Have some fun. Find the joy. In your day-to-day work, be steady. In your run

to the preschool, don't panic. Enjoy the ride. The end result, whatever that may be, may not come. If you like what you do, great. If not, find ways to derive satisfaction and fulfillment. The kids, your spouse or partner, whatever it is that you do when you're not wearing your work hat, do the best you can. Things aren't always easy. Develop a sense of humor. Schedule things that you love to do, and squeeze them in. Not everything, not all the time, but sometimes.

We do the best we can to move it forward. It may not be "perfect." The homemade cookies may be from a mix, the bed may get made as your getting in it. Just use the time that you have to really focus and get it done. If you have 20 minutes for the gym, grab it; stay plugged in and maybe you can stretch it to 40 minutes. Work hard. Be efficient. If you're up at 5 a.m. make good use of your time by grocery shopping or returning some e-mails. As they used to say in my Bar review class, hit it and move on. Don't look back, do your best and move.

My last bit of advice might seem obvious but potentially the hardest to obtain. A good nanny, a spouse or a partner, and a Nana or Grandma who are willing to roll up their sleeves, is critical. Nobody can stand on the sideline if work/life balance is the goal. By the way, I haven't had time for one of those "Flex-Time Lawyers" meetings since the twins, nor have I played golf. Balance is balance, something has to give. 

Best Practices

Lawyers in Society: Taking Guidance from the Six Pillars of Primerus

By Brant C. Hadaway



Brant C. Hadaway
Partner

Brant C. Hadaway is a partner whose practice concentrates on domestic and international commercial litigation and arbitration. He also has broad experience in maritime law and in deceptive trade practices litigation.

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Those of us who practice in civil litigation have more than likely had this very uncivil experience: You sit across the table from a very aggressive and frankly, rude, opposing attorney, either at a hearing or a deposition. He uses tactics that are more geared toward intimidation and obfuscation than advocacy and illumination. He interrupts you and the judge; he mischaracterizes your argument; he misrepresents the meaning of authority; he at least implicitly accuses you of bad faith or of having some sort of ulterior motive. You feel your blood pressure rising to the point that you are about to lose your temper.

You try to gauge the judge's reaction to your opponent, or the effect he is having on a witness and, as best you can, calculate your response.

It is in moments like these – and I have experienced plenty of them – that I think about why I became a lawyer, and whether as a lawyer I am doing any good. The law is my second career. Why, I ask myself in such moments, did I abandon my previous career and get myself into a situation where I have to deal with people like this rude and infuriating opposing attorney?

At least most of us became lawyers for what we believed were the best of reasons. My decision to become a lawyer was strongly influenced by my experiences living abroad, which gave me a newfound respect for the institutions of our great country and the many roles that lawyers have played in building those institutions.

Among those institutions, I came to regard the rule of law as our most precious. It is the fabric that binds our society, a gift passed down from the country's Founders, refined and even disputed over successive generations, but always intact. Having seen first-hand the effect that arbitrary rule can have on a society (in post-communist Central Europe), I believe that the rule of law is something which we should never take for granted.

Of course, lawyers play a fundamental role in preserving that heritage, both inside and outside the courtroom. Thus, practicing law is more than a career. It brings with it the obligations of stewardship, not only of our clients' interests but of our nation's heritage.

That is what drew me to the legal profession, anyway. But when I am sitting across from that rude and aggressive opponent, and my thoughts turn to the myriad ways in which I would like to inflict pain and anguish upon him, notions of "stewardship" and "helping to preserve our social fabric" seem almost comically high-minded.



In such moments, it is easy to understand the public's cynicism toward the legal profession. Indeed, why should anybody respect us if we can't respect ourselves? What have we done, lately, to show the public the sort of honor, dignity and integrity that goes into our work? How are laypersons to know that we care about the impact our work can and does have on their lives? More ominously, how are we to stop what appears to be an ever-worsening race to the bottom?

We are all members of bar associations which claim the role of defending the integrity of our profession. But whether due to insularity, the slow turning of the wheels of bureaucracy, or an unwillingness to risk stepping on the wrong toes, our state bars often seem ill-suited for the task. Yes, they have to compete with sensational media stories that, by their nature, propagate the worst stereotypes of the profession.

The courts also have a responsibility to preserve the dignity and integrity of the profession. But judges have enough on their hands without being constantly called upon to force lawyers to play nice. Understandably, judges also have to keep in mind the fact that an appellate court might second-guess any disciplinary action without the benefit of actually

having witnessed the conduct in question. The result is that trial courts feel constrained to tolerate all but the most outrageous behavior from the lawyers who practice before them.

None of these weaknesses, however, can exonerate the rest of us from taking responsibility for public perception of the legal profession. But what can we do?

When I first heard of Primerus, I wondered how it might distinguish itself from other law firm networks. It was not until later that I read the Six Pillars, and I realized that Primerus was offering something that was desperately needed: a return to fundamental principles for conducting the practice of law.

One might regard it as a sad commentary that Primerus is founded upon principles that we should all take for granted in our profession. After all, who could argue with the notion of providing *excellent work product for reasonable fees*? Who would dare say that we should not conduct ourselves with *integrity* and *civility*? And who among us does not believe in furthering their *legal education* and in *service to their community*?

Perhaps all attorneys aspire to fulfill these principles, and I am sure that most fulfill at least some of them. But many attorneys might fail to recognize how these principles are all interconnected with

one another. For example, an attorney who charges exorbitant fees cannot characterize himself as having *integrity*, no matter how well he conducts himself before a court. The principle of *integrity* also cannot be met unless one turns out *excellent work product* and continues to further one's *legal education*. And turning out *excellent work product* serves not only the client; it also invokes a degree of *civility* that slipshod work product does not.

The principles of *civility* and *integrity* are also informed by one's commitment to *serve the community*. By engaging in community service – whether in the form of pro bono representation or teaching school children about the law and Constitution – we remind the public that our profession is more than just a business; we show that our work is, indeed, an integral part of the fabric that binds all of us.

Just as importantly, in serving the community we remind ourselves of what drew us towards becoming lawyers in the first place. And if we can remind ourselves often enough, we can hardly fail to meet *all* Six Pillars. In doing so, we can live up to the expectations which the public rightly sets for us and our profession. P

Primerus Accreditation Board: Ensuring Primerus Quality

By Richard Fogg



Richard Fogg
Principal

Richard Fogg has served as chairman of the Primerus Accreditation Board since its formation in 2003. Previously, he served as chairman of the Primerus Credential Committee for many years. With 44 years of experience in the law, he is the principal of Fogg Law Firm, specializing in the areas of trials in probate and estate litigation, personal injury, condemnation, and real estate/business law.

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Since its inception, Primerus has developed and maintained its excellent reputation because of one primary reason – it seeks out, accepts and retains only the best firms for membership. Clients coming to Primerus law firms for legal services know without a doubt they are getting one of the highest quality law firms available today. The Primerus Accreditation Board plays a critical role in the ongoing process of accepting new firms for membership, as well as evaluating all member firms annually for retention.

Over the years, we have received member questions about how the Accreditation Board works, and we are always thrilled to share the story of what has been proven to be a highly effective and impartial process that assures our firms meet the highest level of quality. There is no greater honor than to receive reflections from a long-time present member and past director of this organization, Joel Collins Jr. of Collins & Lacy. I share them with you with his permission. Joel wrote this in a November 17, 2009, letter to Primerus President John C. (Jack) Buchanan: “While there are other law firm networks, there is none which so loftily defines itself and holds its members to such worthy standards. Primerus was just what our profession needed. And the best is yet to come.”

What happens when a firm wants to join Primerus?

Only law firms with the maximum AV-rating from Martindale-Hubbell (which

represents about 5 percent of all law firms in the United States) are invited to consider membership in Primerus. First a law firm submits a basic application requesting to be considered for membership. If the firm meets membership standards and there is an open license in its jurisdiction, Primerus then conducts a more extensive investigation of the firm, gathering information about the firm’s policies and practices relating to the Six Pillars, as well as references including clients, lawyers and judges. The firm also must sign a release of information request to be submitted to the firm’s malpractice insurance carrier. Once reference questionnaires have been returned to Primerus and the insurance company has completed the malpractice history, Primerus conducts an internal review and notes any concerns with the firm. Primerus sends a letter or email to all current member firms with the name of the applicant requesting information they may have about the prospective member. Primerus also investigates every lawyer within the applicant firm through the firm’s State Bar Association to determine if there have been any grievances filed or disciplinary actions rendered.

At this point, the firm’s membership application is forwarded to me, as chairman of the Accreditation Board. Any decision about a firm’s membership falls to this independent Board, comprised of me, Fletcher Handley of The Handley Law Center, and Al Ferris of Dispute Resolution. If the investigation indicates an irregularity in the application, (e.g.



claims experience, bar complaints, aberrant peer evaluations, licensing issues or member objections, just to name a few) the board makes an initial decision to obtain additional information either by interview, remand to Primerus with records requests, and in rare cases, a hearing. At a telephonic hearing en banc to the board, Primerus presents the vitae of the applicant, and an appropriate opposing party is able to present objections or reservations. Following the hearing, the board, as the final arbiter, makes a decision based on the record before it, which is then delivered to the Primerus organization. All proceedings from the hearing are kept confidential.

Why does it work this way?

The Accreditation Board is designed to be an independent body, in the same way the U.S. Supreme Court functions in the federal government. In Primerus, the Board of Directors functions as the legislative branch making policy, the management/staff serves as the executive branch carrying out the policy, and the Accreditation Board is the judicial

branch. We function as an independent body with final authority on the application of the rules of admission of firms in Primerus and retention of membership. This removes any politics and personal preferences from the process of attracting and retaining members, resulting in a high quality standard that's applied universally to all members.

What are exclusive territories and how do they affect membership?


In order to maintain a certain level of exclusivity in a given market, Primerus currently requires that each member firm be licensed in one of three practice groups: Business | Corporate | International, Primerus Defense Institute and Plaintiff | Consumer. Primerus has divided the United States into geographic territories after a careful study of the legal markets in each state. As Primerus has grown and built its reputation, the Primerus license has become a highly valuable and important asset for member firms.

Not only must a firm meet the Primerus standards of quality for membership, but it also must fit within the parameters of the open license in its designated territory.

Currently, Primerus has members in more than 100 cities, reflecting the commitment to finding high quality law firms in the areas where clients need them. It is Primerus' policy to promote the member within the territory based on the practice group license issued to it.

What is the Accreditation Board's role once a firm is admitted for membership?

Every year in July, Primerus audits every member firm to determine whether it is qualified to retain membership. Firms must complete a form indicating any change in its status which could reflect a lack of continued commitment to the Six Pillars. The Accreditation Board reviews every audit and further investigates all irregular audits.

One of the greatest assets of Primerus is the quality of its members. The process the Accreditation Board follows plays a critical role in ensuring that every Primerus member is, and remains, a top-quality Six Pillar law firm. 

Civility – Professionals, Don't Leave Your Office Without It

By Terrel Broussard



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Lawyers are not detached from the world; rather lawyers are a product of their environments. We bring to the profession life experiences and training in the law that is honed by personal attributes that are offered as a service to society. The American Bar Association Model Rules of Professional Conduct capture the complicated fiber of our profession in its Preamble: *“A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.”*¹ The responsibility for the quality of justice, therefore, is placed in the context of the adversarial system and the various functions imposed on the lawyer by the profession. On one hand, when serving as advocates lawyers are required to, “zealously assert the client’s position under the rules of the adversary system of justice.”² On the other hand, our adversarial system of justice is a result-oriented system that rewards victors and punishes losers. “Creative and aggressive” structuring of transactions for the benefit of clients is considered excellence by some. However, while aggressiveness and creativity are model attributes for lawyers, these same qualities may disserve clients and the legal profession when left unchecked.³ The economic and financial pressure of the marketplace may nudge lawyers to evade regulatory requirements enacted to protect investors. All of these pressures constrict the moral fiber of lawyers and result in a loss in civility and professionalism. The purpose of this article is to

suggest that civility is not a weakness. It is a fundamental requirement imposed upon lawyers as justification for the power that lawyers are granted in our society.

What is Civility? It Is Being a Professional.

Are civility and professionalism the same? Some assert that the cause of the lack of civility and professionalism among lawyers is the absence of a clear definition of the concept of professionalism. The definition of civility is not illusive. A non-lawyer and the “father” of our country, George Washington, provided a clear definition of civility. As a teenager, George Washington copied out by hand, *110 Rules of Civility & Decent Behavior In Company and Conversation*. The rules are based on a set of concepts developed by French Jesuits in 1595. Civility, as defined in Rule No. 1, simply states, *“Every action done in company ought to be with some sign of respect to those that are present.”* In other words, *“Treat everyone with respect.”* Amazingly, such a laconic definition eludes some in the legal profession. If this standard of conduct was good enough for a sixteen-year-old who sought personal development, certainly it should be good enough for those who are the vanguard of our system of justice. Note that Washington copied these rules and adopted them as his own. He acquired the skill of civility and decent behavior by studying. We should do the same. Civility is an expertise acquired as part of our profession.

Some claim that the definition of professionalism is illusive.⁴ One of the more succinct definitions of profession-

alism was developed as the result of the Conference Chief Justices (CCJ). In January 1999, the CCJ, disturbed about the swell in the public's negative perception of lawyer professionalism, adopted the National Action Plan on Lawyer Conduct and Professionalism.⁵ The National Action Plan defined professionalism as follows:

Professionalism is a much broader concept than legal ethics. ...professionalism includes not only civility among members of the bench and bar, but also competence, integrity, respect for the rule of law, participation in pro bono and community service, and conduct by members of the legal profession that exceeds minimum ethical requirements. Ethics rules are what a lawyer must obey. Principles of professionalism are what a lawyer should live by in conducting his or her affairs. Unlike disciplinary rules that can be implemented and enforced, professionalism is a personal characteristic. The bench and the bar can create an environment in which professionalism can flourish, and these recommendations are intended to assist in that endeavor. But it is the responsibility of individual judges and lawyers to demonstrate this characteristic in the performance of their professional and personal activities.⁶

The CCJ placed the responsibility for acquiring and developing civility and good behavior on the individual lawyers and judges. Self-respect, respect for others, and respect for the law are part of

the gene pool of professionalism. Self-respect drives the decision not to engage in disrespectful discovery practices. Respect for others, including clients, requires lawyers to exercise judgment with due regard for the meaning of legal norms. In many of the Enron transactions, for instance, an attitude of professionalism may have required lawyers to refuse to issue opinion letters where the transactions violated substantive legal and accounting standards.⁷ Professionalism and civility, therefore, are skills that are acquired in the same way as one attains proficiency in substantive or procedural law.

The Adversarial System: The System Made Me Do It?

We often blame our incivility on the adversarial nature of our judicial system. The goal of our adversary system is to obtain the truth. Sometimes the quest for the truth is bitter and laborious. When this intense quest produces intangible or even mediocre results, the use of the adversarial system may become an end in and of itself. When this occurs, truth is supplanted by advocacy and the outcome is all that matters. "Just win, baby," was the mantra for a successful Oakland Raiders NFL Football team of a past era. This mantra describes the attitude of advocates or negotiators whose goal is simply to win at all cost. The attitude of winning at all cost is the mother of uncivil and unprofessional conduct.

In an adversary system, the rights of the individual are protected. Those rights are often protected against society. When individual rights clash with society, or

when society forces the surrender of individual rights, the individual is given the dignity of fighting for his or her rights. In this way the adversarial system has intrinsic value because rights are not curtailed without justification. However, because it is the result that is the primary concern of the judicial system the system becomes an end *per se*. The United States of America is the land of the free and the home of the "Bottom Line." While we claim to cherish the individual rights on which our system is based, we seem to cherish even more the result – the judgment, who won and who lost. "*To the victors belong the spoils*" could be the motto for our adversary system of justice. This result-oriented system necessarily places advocacy, rather than civility and professionalism, as the ground rules for success.

While lawyers must zealously assert the client's position under the rules of the adversary system, because of the nature of the adversary system of justice, lawyers typically respond to client pressure to think "outside the box." Many clients desire aggressive and creative lawyers who are willing to walk up to the line of legality and illegality and cross it if necessary. Lawyers must use their abilities honestly and morally.

Civility and professionalism are therefore skills, which develop from the moral and personal qualities of each member of the profession. Consequently, it becomes the duty of each member of the legal profession to hone and develop these skills. Note that the Model Rules do not state how the Rules are to be observed.

As such, The Model Rules rely on the personal qualities and moral character of each member of the profession to protect the judicial system with the skills of professionalism and civility.

Zealous Advocacy: A Skill Acquired Through the Exercise of Civility.


First, zealous advocacy does not envision illegal, immoral or unprofessional conduct. However, the pressures of the result-oriented judicial system and the demands of clients thrust lawyers closer to the edge of professionalism and civility and encourage the adoption of the mantra, “Just win baby.” In other words, the end justifies the means.⁸ Unrestrained advocacy erodes the purpose of the system itself. Yet “result-oriented” litigation is the cornerstone of our system and is responsible for breathing life into our individual rights granted by the United States Constitution.⁹ The result orientation of the law permits jurists and lawyers to improve the quality of life in society.

Conversely, zealous advocacy cannot always be assumed to be a force for positive change. Zeal is warranted so long as it does not undermine the system of justice. This system of justice was derived as a method of resolving disputes without physical violence. Zeal, aggression and creativity should not be exercised to the point that justice ends and injustice



begins. The Model Rules impose a duty to advocate substantive issues in good faith.¹⁰ “Good faith” is defined in the Uniform Commercial Code as, “honesty in fact.”¹¹ Honesty in advocacy is as much a skill as it is a character trait. If our system of justice is to survive as a means of improving the quality of life in society, and not become a mere form of verbal combat, honesty, civility and professionalism must be maintained.

Civility is Not a Weakness.

Civility is a necessary skill for lawyers. The skill is honed and developed by the rigors of our adversarial system. An effective lawyer does not have to use deception to win cases. Rather, effective lawyers most often win cases through preparation and knowledge of the facts and law. Lawyers must be creative and often aggressive. Lawyers must represent their clients with the proper level of zeal. Not to do so would be unprofessional. However, when advocacy becomes an end in and of itself, civility suffers, the profession suffers and clients are ill-served. Civility is treating everyone with respect. Lawyers must endeavor to treat each other better, least we demean our profession and ultimately disserve our clients. 

¹ABA Model Rules of Professional Conduct, Preamble, A Lawyer’s Responsibilities, ¶ 1.

²*Id.* at ¶ 2. Rule 1.3 of the Louisiana Rules of Professional Conduct (and the current corresponding version of Model Rule 1.3), however, departs from the oft-cited “zealous representation” requirement and provides just that a lawyer “shall act with reasonable diligence and promptness in representing a client.” Although the Louisiana Supreme Court did not adopt the official comments to the ABA Model Rules when it adopted the current version of Rule 1.3, said official comments to Rule 1.3 state that a lawyer should act with “commitment and dedication to the interests of the client and with zeal in advocacy on the client’s behalf.” Thus, as Professor Dane Ciolino has recognized, “while the duty of ‘zealous representation,’ *per se*, does not appear in the current Louisiana Rules of Professional Conduct, it is a phrase often used by Louisiana lawyers. (Unfortunately, some lawyers invoke the refrain of ‘zealous representation’ in an effort to justify unprofessional and uncivil conduct.)” LA. PROF. RESPONSIBILITY LAW & PRACTICE (2007).

³W. Bradley Wendel, *Professionalism as Interpretation*, 99 NW. U.L. REV. 1168-1170 (2004).

⁴Dane S. Ciolino, *Redefining Professionalism as Seeking*, 49 LOY. L. REV. 229, 231-232 (2003).

⁵National Action Plan on Lawyer Conduct and Professionalism (adopted January 21, 1999 by the Conference of Chief Justices. The definition of professionalism is concise enough to identify civility and professionalism as an acquired skill.)

⁶*Id.* at 2 (emphasis added).

⁷See generally William W. Bratton, ENRON, SARBANES-OXLEY AND ACCOUNTING: RULES VERSUS PRINCIPLES VERSUS RENTS, 48 VILL. L. REV. 1023, 1044 (2003).

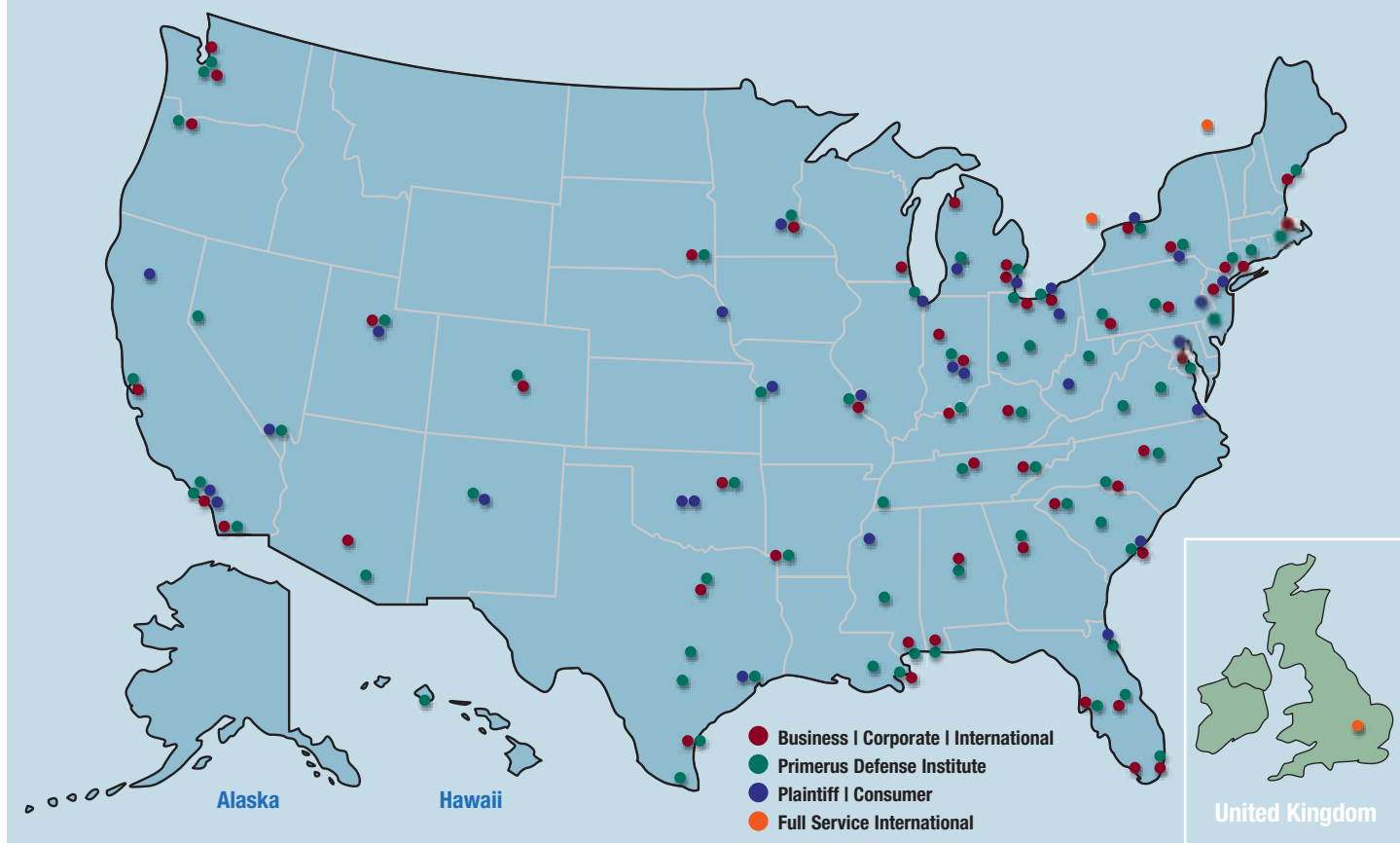
⁸See Nicolò Machiavelli, THE PRINCE (1515).

⁹*Shelley v. Kramer*, 334 U.S. 1 (1948); *Brown v. Board of Educ.*, 347 U.S. 483 (1954).

¹⁰ABA Model Rules of Professional Conduct 3.2(a) (5th ed., ABA Ctr. for Prof. Responsibility 2003).

¹¹UCC § 1-201(19).

2009 Member Listing – International Society of Primerus Law Firms



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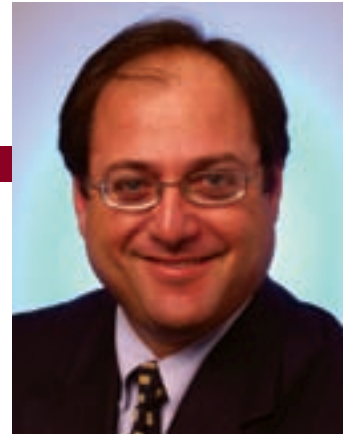
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Michael R. Weinstein
BCI Practice Group Chair



During the past year the BCI Practice Group has flourished under the capable leadership of Susan Laluk of Boylan Brown (Rochester, N.Y.) and the support of Primerus management and staff.

We made great strides in developing the specialty practice groups, with Real Estate Law and Commercial Law joining the Labor & Employment Law, Bankruptcy Law and Intellectual Property Law Specialty Groups.

Frank Melton of Rutter Hobbs & Davidoff (Los Angeles, Ca.) and Sharon Stiller (Boylan Brown) are co-chairing the Labor & Employment Law Specialty Group, which in November 2009 conducted an informative Webinar – Employment Law Update. The group hopes to schedule a series of webinars throughout 2010.

The Intellectual Property Law Specialty Group will be co-chaired by Susan Laluk and Henry Sneath of Picadio Sneath Miller & Norton (Pittsburgh, Pa.) of the Primerus Defense Institute, a further collaboration between the BCI and PDI groups.

And the Real Estate Law Specialty Group (chaired by Mark Demorest of Demorest Law Firm in Birmingham, Michigan) is up and running, with plans to exhibit in May at the annual conference of the International Council of Shopping Centers in Las Vegas. The conference draws 30,000 attendees from among its membership of shopping centers, franchisees and retail businesses.

A Commercial Law Specialty Group and a Liquidation of Corporate Debt Group are still in their infancy. Each of our specialty

practice groups needs our help and participation to be successful.

In January 2009, the BCI Winter meeting was held in Orlando, Florida, in conjunction with the Association of Merger & Acquisition Advisors (AMAA) Winter Conference, furthering our alliance with AMAA. We also exhibited at the AMAA Summer Conference in July 2009 in Chicago, and we intend to continue our collaboration with AMAA in 2010.

In September 2009, the Primerus Leadership Council Symposium brought together the Primerus leadership with client advisory board members. Under the direction of committee chair Brian Davidoff (Rutter Hobbs), we are planning a BCI Client Convocation for June 2010, likely in Chicago. This will be a tremendous educational and networking opportunity for our member firms and their regional and national clients.

In October 2009, 14 BCI members attended and worked the Primerus exhibit at the Association of Corporate Counsel (ACC) annual meeting in Boston. More than 140 in-house counsel visited our booth, talked with our members, and learned about Primerus, all towards the end of increasing the visibility of Primerus to those in a position to provide business to our member firms. Primerus has agreed to advertise in up to six issues of the *ACC Docket* in 2010. We intend to capitalize on the inertia from these efforts by exhibiting again at the ACC's next annual meeting in San Antonio in October 2010.

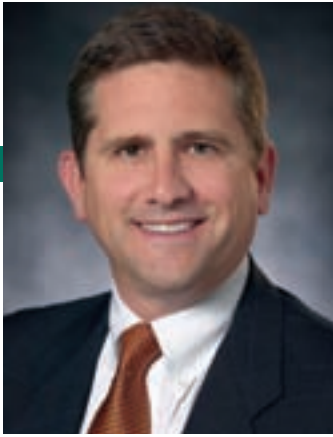
Many of you attended the National Conference at The Greenbrier in West Virginia in late October 2009, where you renewed old acquaintances and made new friends in our Primerus family. The BCI Group alone has grown to more than 51 firms located in 33 states within the U.S. We also have full service international firms in Canada (Toronto and Montreal) and the United Kingdom and, soon it is hoped, in Mexico. Primerus has made great strides towards reaching the critical mass necessary to maximize the opportunities of all our member firms.

In the upcoming year, with your help, Vice Chair Mark Demorest and I intend to nurture the development of these and other initiatives designed to enhance the value and marketability of Primerus for the benefit of our BCI firms.

A handwritten signature in blue ink that reads "Michael R. Weinstein".

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Primerus Defense Institute

Hugh McCabe
PDI Chair

Now that the holidays are over, everyone is busy back at work with their noses to the grindstone. The season of giving is over – or is it?

The Sixth Pillar is community service. For many of us during this past holiday season, community service came in the form of giving. We reached into our pocketbooks and gave what we could. Whether it's a donation, raising money for a favorite charity, or sponsoring a college scholarship, we strive to help those in our communities. It is in this tradition that I encourage our membership to consider something different for 2010 – giving the most valuable thing you have – your time.

As lawyers, we often toil away into the wee hours and end up supporting a cause financially. This year, I encourage all of us to personally reach out and work to make a difference in someone's life. Become a Big Brother, a Big Sister or a mentor to someone. Or help build a house. Form a volunteer group within your own law firm to brainstorm ideas to promote community service projects. The possibilities are endless. To really make a difference, it takes time – something we covet. To really effectuate change, you will likely need to work with someone throughout the year. Become a mentor and be there when you are really needed.

The Sixth Pillar should be a showcase for Primerus. If we hold ourselves out as leaders in the community, then leadership by example should be the rule, not the exception. With nearly 140 law firms and 2,000 attorneys, we have an unbelievable opportunity to reach out into our communities and make a difference. By demonstrating our leadership in this area, we not only have an opportunity to help people in need, but we can also be the example for other attorneys going forward. Long ago, lawyers were referred to as "counselors." We gave advice. We literally taught our clients and the community. Citizens looked to us as sage mentors and sought out our wisdom. Wouldn't it be wonderful for people to start thinking of lawyers like they used to? If we can all work toward this common goal, we may live to see the day when the number of lawyer jokes you hear at a party are actually outnumbered by those who sing our praises.

In approaching this task, I encourage you not to be afraid to do something you never thought you would do. Strive to be bold. Here's one such example: A short time ago I spoke with a retired judge in our community about what he had been doing and heard a most remarkable story. With the help of the Catholic Church, he put together a group of people that visit prisoners with life sentences. The judge and his group meet and interact with both

the prisoners and separately, with their families. They try to instill a sense of meaning and purpose in these otherwise troubled lives. The irony here did not escape me. Here was a man who spent his career presiding over the process that put these men and women away for good. Yet now, he spends his time talking about such things as redemption, purpose, hope and forgiveness. Helping them and their families make sense of this process and learning from mistakes is an incredible contribution to a community.

If you decide to take the challenge of the Sixth Pillar this year, reach out and really make a difference. I will look forward to hearing your stories at the 2010 PDI Convocation, April 22-25 at the Boulders Resort in Scottsdale, Arizona. Hope to see you all there!



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Plaintiff | Consumer

Donald J. Winder

PC Practice Group Chair



It was great to see so many members of our Practice Group at the Primerus Annual Conference at The Greenbrier in October. The Plaintiff|Consumer (PC) Group discussed many of the exciting developments from 2009, and planned for our further growth in 2010.

So far this year, we have added eight members to our group, with a number of good prospects who may yet commit. Scott Roland (Primerus Senior Vice President of Membership Development) is optimistic that three more PC firms will join our Group within the next few months.

We encourage your involvement on Jim Lewis' (Shapiro, Cooper, Lewis & Appleton, Virginia Beach, VA) Recruitment Committee and ask you to recommend prospects to Scott. So if you know of a PC firm that is AV-rated and is located in one of the following markets where a Primerus PC license is still available, please contact Scott at Primerus (sroland@primerus.com / 800.968.2211). Members who recommend and assist in recruiting firms that join Primerus will

receive a 25 percent reduction in their membership dues for 12 months. The open licensed territories are Alabama, Alaska, Arizona, Arkansas, Connecticut, Delaware, Washington D.C., Georgia, Hawaii, Idaho, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Montana, New Hampshire, North Carolina, North Dakota, Oregon, Rhode Island, South Dakota, Vermont, Washington, Wisconsin and Wyoming.

In the coming months, the group will be involved in creating our own website, similar to what the Primerus Defense Institute has already done. I invite you to see that site at www.primerusdefenseinstitute.com. Primerus staff at the national office is already at work on this project. You can help by joining Steve Lane's (Lane & Lane, Chicago, IL) Website Design Committee.

We also are considering establishing a program for "Friends" of Primerus – i.e., referral sources for PC members. Often these are attorneys with niche practices such as Social Security disability or those who have developed a reputation as plaintiff's counsel in exploding gas can cases, etc.

Our outstanding mid-year meeting is set for February 25 - 28, 2010 in Key West, Florida. Walt Lesnevich (Lesnevich & Marzano-Lesnevich, Hackensack, NJ) and the Member Services Committee have been hard at work. Eric Oliver will be our featured speaker. He will provide insight on jury selection and case development each morning, with reviews in the afternoon of actual cases you would like to have round-tabled. You're encouraged to bring an associate to these interactive sessions.

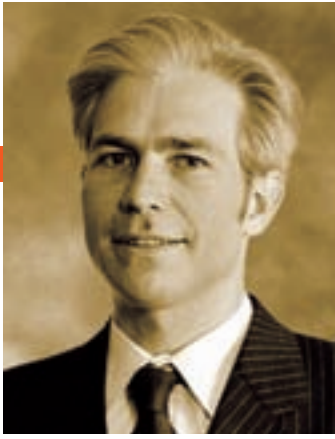
Walt would welcome your involvement on the Member Services Committee. Walt was elected vice president of our group. Congratulations, Walt!

I hope to see you all in Florida in February!

A handwritten signature in black ink that reads "Donald J. Winder". The signature is written in a cursive, slightly slanted style.

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Full Service International | Canada

Michael R. Henry
(FSI) Canada Practice Group Chair

There have been some significant legal developments for Canadian businesses and their owners. These changes apply to the various phases of business, from restructuring an insolvent business, to dealing with unfair competition and simpler taxes and finally to preserving the wealth.

Amendments to Restructuring Laws

On September 18, 2009, changes to the Bankruptcy and Insolvency Act (BIA) and the Companies' Creditors Arrangement Act (CCAA) came into effect.

The changes address a wide range of issues, like protection for the unpaid wages, vacation pay arrears and unpaid employee pension contributions. There is also clearer protection for the costs of restructuring, including interim financing.

Businesses supplying insolvent companies should bear in mind that under the CCAA, they can now be designated critical suppliers of a restructuring company and be required to continue providing their services or goods.

Under the BIA, there are clearer rules for an unpaid supplier to repossess goods delivered anytime in the 30 days prior to the appointment of a trustee in bankruptcy or receiver.

Amendments to the Competition Act

For all businesses, the pressure of unfair competition can become more intense in difficult times. It is welcome news then that Canada's Competition Act is being updated. The changes make it now a criminal offense to enter into an agreement or arrangement

to fix prices, allocate sales territories and markets, and fix production or supply.

It is now a criminal offense for parties to enter into agreements to withdraw a bid that has already been submitted. There are stronger penalties for businesses which abuse a dominant position with practices that substantially lessen or prevent competition.

Introduction of the Harmonized Sales Tax

It will soon be easier for many businesses to collect and report on taxes. On July 1, 2010, the federal value added tax of 5 percent (called the GST) will be harmonized with retail sales tax in Ontario and British Columbia.

This new harmonized value-added tax (called the HST) will apply to a broad range of goods and services. In Ontario, the HST rate will be 13 percent, and 12 percent in British Columbia (consisting of a 5 percent federal part and an 8 percent or 7 percent provincial component). Businesses will be entitled to claim input tax credits for HST which they pay.

This new tax has been politically unpopular. In Ontario, small businesses will be provided with significant subsidies for their adjustments. There will probably be other incentives or subsidies in the new year.

Offshore Trust Concerns

Successful business owners are often focused on minimizing taxes. One method has been to use offshore trusts which are subject to little or no tax. Previously, a trust would not pay Canadian tax if its trustees were resident elsewhere.

However, a recent ruling may raise alarms for some Canadian beneficiaries of offshore trusts. In *Garron M. et al v. The Queen* (2009 TCC 450), the Tax Court of Canada concluded that a trust with trustees residing outside of Canada is resident in Canada if that trust is managed and controlled from Canada. This decision will probably be appealed.

Whether businesses and their owners are at the stage of sheltering their wealth or restructuring their businesses or just dealing with the daily pressures of unfair competition or the collection of taxes, 2009 has brought important legal changes. By understanding and adapting to those changes, businesses can successfully survive a tough economy and prepare for better economic times.

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Full Service International | Europe

Keith Hearn

(FSI) Europe Practice Group Chair



I look forward to the opportunity to regularly share with you about various labor and employment issues in the UK and Europe. My first contribution is about the Transfer of Undertakings and Protection of Employment (“TUPE”), which are the UK regulations implementing the Acquired Rights Directive of the European Union.

Here is a bird’s eye view:

- in the event of the transfer of an economic entity (an undertaking)
- all the transferor’s rights and obligations *under or in connection with* the contract of employment ... and responsibility for acts done before the transfer by or on behalf of the transferor (save criminal liability)
- transfer to the transferee
- in respect of all employees assigned to the undertaking immediately before the transfer
- and including any collective bargaining rights or agreements
- such that any dismissal in connection with the transfer is automatically unfair
- unless the dismissal is for an economic, technical or organizational reason.

The essence of what is occurring is a change of employer. The rules do not apply to a share acquisition, since there is no change of employer. The courts are reluctant to pierce the corporate veil but might where the deal is clearly an anti-avoidance sham.

What is an economic entity and when is it transferred?

An economic entity is an organized grouping of labor approaching a common task, maybe with assets but not necessarily. It does not have to be a “*going concern*.” Anything you recognize as going concern is almost certainly an “*undertaking*.” The scope can be demonstrated by a common source of litigation: where sub-contractor *B* loses a contract with principal *A* in favor of a better bid by sub-contractor *C*. Although there is no deal between *B* and *C*, there may still be a relevant transfer.

The concept of “transfer” includes a change of ownership, but is not confined to that. A change in management of the grouping may suffice.

What is transferred?

Everything. The employee gets exactly the same terms, conditions and benefits after, as before. The new employer stands in the shoes of the old employer for all purposes. So, an outstanding injury claim, or a discrimination claim, transfers. Due diligence is a must!

The only formal exception relates to certain pension rights. A principle of equivalence may apply.

Major problems occur in the case of existing share incentive and bonus schemes where the final legal answer is unresolved.

Which employees are affected?

All employees assigned to the undertaking “*immediately before*” the transfer – that is a causal, not a temporal, test. A transfer might be a series of transactions over years. The

employee may not be an employee of the transferor. An employee seconded to another company may be assigned to the undertaking, and transferred.

The employee can object to being transferred. If so, they terminate their own employment without compensation.

Employment protection

You cannot dismiss or change terms and conditions in connection with the transfer even by consent. The only dismissal allowed is for, essentially, redundancy (surplus to requirements) reasons.

How do we survive?

Well, we do. As soon as the causal connection with the transfer is broken (rendering the transfer only a *sine qua non*), business life carries on as normal. There are various ways of getting there quickly. The protection is temporary, not permanent, in reality. Business life and deals go on.

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2010 Calendar of Events

February 25-28, 2010 – Plaintiff I Consumer Winter Conference

The Westin • Key West, Florida

The Plaintiff I Consumer (PC) Practice Group will hold its annual meeting with Eric Oliver, MetaSystems Inc., as the keynote speaker. Eric is a nationally renowned speaker who regularly presents at American Association for Justice (AAJ) events.

April 22-25, 2010 – Primerus Defense Institute Convocation

The Boulders Resort • Scottsdale, Arizona

The Primerus Defense Institute (PDI) will hold its annual Convocation at The Boulders Resort.

May 23-25, 2010 – International Council of Shopping Centers Spring ReCon Academy

Las Vegas, Nevada

The International Council of Shopping Centers (ICSC) is the global trade association of the shopping center industry. Its 60,000 members in the U.S., Canada and more than 80 other countries include shopping center owners, developers, managers, marketing specialists, investors, lenders, retailers and other professionals as well as academics and public officials. Primerus will be an exhibitor at the ICSC Spring ReCon Academy promoting Primerus members.

July 10-14, 2010 – American Association for Justice Annual Convention

Vancouver, British Columbia

The American Association for Justice (AAJ) is the world's largest trial bar, providing trial attorneys with information, professional support and a nationwide network that enables them to most effectively and expertly represent clients. Primerus will be an exhibitor at the AAJ Annual Convention promoting Primerus members.

October 14-16, 2010 – Primerus Annual Conference

Villagio Inn & Spa • Yountville, California

The Primerus Annual Conference provides members the opportunity to create new friendships, network with peers and learn valuable practice management tools. Please plan now to join us.

October 24-27, 2010 – Association of Corporate Counsel Annual Meeting

San Antonio, Texas

The Association of Corporate Counsel (ACC) is the world's largest organization serving the professional and business interests of attorneys who practice in the legal departments of corporations, associations and other private-sector organizations around the globe. With nearly 25,000 members employed by more than 10,000 organizations in 70 countries, ACC connects its members to each other, and to the people and resources necessary for their personal and professional growth. Primerus will be an exhibitor at the ACC Annual Meeting promoting Primerus members.



Make plans to attend the
Primerus Annual Conference
October 14-16, 2010
in Napa Valley.