

## A LAW CLERK'S TIPS FOR CRISPER LEGAL WRITING

By Max Slater

"GOOD WRITING IS JUST  
 CLEAR THINKING MADE VISIBLE."  
 – Karl Ochi

Karl Ochi was my high school civics teacher, and his advice on writing is the best I've ever received. The key to good writing isn't rhetorical flourishes or freight-train-length sentences: It's clarity.

As a law clerk for Judge Christine Ward on the Allegheny County Court of Common Pleas, I spend much of my time reading briefs, motions, and other legal papers. And although I have seen many exemplary briefs that read like novels, I also encounter a host of legal filings plagued by recurring problems – burying the lede, too much legalese, too many citations to irrelevant cases. These problems don't just make for clunky writing; they also detract from



the strength of the argument. With this in mind, below are five tips to make your legal writing clearer, crisper, and stronger.

### 1. Don't Bury the Lede.

The first question I always ask when I first read a brief or motion is: What is the party or lawyer asking for? Identify at the outset what you want the court

to do. Do you want an injunction? A declaratory judgment? Money damages? Ask for it, preferably on page one.

A good way to start an introductory paragraph for a brief would be to first identify what type of case you have, and then ask for what relief you want the court to grant. Something along the lines of: "In this [tort/contract/employment] action, [plaintiff/defendant] seeks [compensatory damages/a preliminary injunction/a declaratory judgment, etc.]."

Framing your case this way cues the court into what type of case this is and what the parties want. Too often, lawyers start briefs by diving right into the facts without addressing what the case is about or what the litigants are seeking. Without these threshold cues,

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## MESSAGE FROM THE CHAIR:

### YES, IT'S WORTH IT.



Michaelene E. Weimer

When I ran for and won the Chair-Elect position for the Young Lawyers Division in 2014, my resume was fairly similar to many who had come before me. At the time, my office was across the street from the Bar Association Headquarters and I worked as a litigator in a medium-to-large sized firm. It was less than three months into my Chair-Elect term when I (unexpectedly) landed my 'someday' dream job and the opportunity to help manage international litigation for a multi-national Pittsburgh-based company.

In addition to the challenges of leaving the law firm that taught me how to be a lawyer and saying goodbye to colleagues that I liked and respected, I faced the unexpected challenge of becoming Chair of the YLD while practicing as an in-house counsel 21 miles north of Downtown Pittsburgh. I'm now over a year into my new career and six months into my Chair term. At this point, it is almost weekly that I am asked "is it worth it?" I'll admit that there are some difficul-

ties, not the least of which is arranging my schedule in order to attend noon lunch meetings, but without hesitation, my answer is yes, and my top 5 reasons are as follows:

5) Camaraderie – In October 2014, I went from working with 10 other young attorneys who practiced in the same areas as me to 0. Having the opportunity to sit and laugh, complain, or just talk to someone at the same point in their career makes it easier.

4) Public Service – Whether it's drafting wills for local police and EMS personnel, raising money for The Allegheny County Bar Foundation's Attorneys Against Hunger Campaign, or teaching young children the basics of our legal system through the utilization of fairy tales, the YLD offers young lawyers a unique opportunity to give back to the community in which they live and practice.

3) Soft Skills – The YLD taught me how to develop and utilize my 'non-lawyer' skills. In 2013, I moderated a panel discussion at Duquesne Law School regarding how to land a legal career. In 2014, I utilized many of the tips that the YLD panelists offered the law students when I interviewed for my current position. Additionally, picking one of our 5 committees, attending the monthly meeting and volunteering to chair a project provides excellent experience in project delegation, management, and budgeting. I personally believe that, unlike business school, law school doesn't afford students enough training and experience with these types of soft-skills. This belief is what led to the development of my Chair

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# BAR LEADERSHIP INITIATIVE CLASS



*Members of the 2015-2016 BLI Class. Front Row; Sara Linkosky, Jeff Greene, Michael Imornone. Second Row: Erica Wilson, Bob Stasa, Max Slater, Amanda Thomas, Abby Steidl, Andria Krupa, Andrew Rothery, Shayna Petrella, Nicole Daller and Elena Nola.*

Every year the ACBA Young Lawyers Division hosts a Bar Leadership Initiative Class. Recently admitted attorneys and other young lawyers apply to be a member of the class, and if admitted, work together to become leaders within the Young Lawyers Division. BLI participates in the Children in Shelter Holiday Party, as well as the Stepping Out and Very Important Papers Programs; however, the highlight of the year is the group-selected class project.

As its project, the 2014-2015 BLI class created a Fitness for Lawyers Initiative, which focused on three aspects of health for young lawyers: physical, mental, and nutritional. In January and March, the class conducted two lunch-and-learn programs, the first on nutrition, presented by Rita Singer from Red Dietitians, and the second on stress management, presented by Ken Hagreen of Lawyers Concerned for Lawyers.

In the Spring, the class started a weekly running group for both sea-

soned runners and desk-to-5k participants, and created a YLD team for the second annual Allegheny County Project Prom 5k. Our YLD Chair Michaelene Weimer and BLI class members Jacob Kratt and Lori Azzara took the top titles in their divisions. In addition, the class organized a free yoga session at Bench Bar, an activity they hope to offer in years to come.

Finally, the class created a handbook which provided tips and resources for maintaining a healthy lifestyle, including ways to increase physical activity, tips on managing and decreasing stress, a healthy downtown lunch guide, and

recipes for quick, healthy dinners and packed lunches.

The 2015-2016 BLI class, Matthew Allen, Nicole Daller, Jeffrey Greene, Michael Imbornone, Andria Krupa, Sara Linkosky, Elena Nola, Shayna Petrella, Kira Riviera, Andrew Rothery, Max Slater, Robert Stasa, Abagale Steidl, Amanda Thomas and Erica Wilson, has chosen "Lawyers for Literacy" as its project theme. The class plans to collect new and used books from the legal community and the region at large to donate to Reading is Fundamental (RIF) Pittsburgh, which benefits the Pittsburgh Public Schools. The class kicked off the project with a Books for Beer happy hour on January 14, which raised more than \$1700 in donations and corporate sponsorships and collected over 100 books for RIF. The class plans organize two more book drives. Finally, this spring, the BLI class will be going to local schools and libraries to read to underprivileged youth.

For more information on how to apply for next year's BLI class, visit the YLD's website. ■

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*Click here!*

## WE WANT TO HEAR FROM YOU!

Interested in writing an article for the next issue of *Point of Law*?

Please submit article ideas to [acbayld@gmail.com](mailto:acbayld@gmail.com).

If you have any questions or comments about *Point of Law*, please contact YLD Communications Committee Co-Chairs

Brandon McCullough ([bmccullough@psmn.com](mailto:bmccullough@psmn.com))

or Lou Kroeck ([lkroeck@ambylaw.com](mailto:lkroeck@ambylaw.com)).



# UPCOMING YLD EVENTS:

## FEBRUARY:

- February 12 – Last day to complete YLD Member Survey
- February 18 – Esquires & Espresso: YLD Speed Networking Event (Koppers Building, 4th Floor)
- February 23 – YLD Book Club Meeting (McGuire Woods, LLP) “I Am Malala”
- February 25 – YLD Annual Meeting
- February 25 – YLD Happy Hour (Howl at the Moon)
- February 28 – Strike Out Hunger Event (Pines Plaza Lanes on Perry Highway)
- February 29 – End date for “Lawyers for Literacy” Fundraiser and Book Drive

## MARCH:

- March 2 – Bridge the Gap CLE for new lawyers
- March 12 – Red Tie Gala (Circuit Center, Southside 6 p.m. - 11 p.m.)
- March 19 – Fairytale Mock Trial (Shaler North Hills Library)

## APRIL:

- April 2 – Fairytale Mock Trial (Dormont Public Library)
- April 19 – Annual ACBA Elections Open

## MEETINGS AT A GLANCE:

*All meetings held at the ACBA Headquarters  
(Koppers Building, 4th Floor)*

- YLD Council Meeting –  
1st Thursday of every month at noon
- YLD Communications Committee Meeting –  
1st Wednesday of every month at noon
- YLD Education Committee Meeting –  
2nd Wednesday of every month at noon
- YLD Public Service Committee Meeting –  
3rd Tuesday of every month at noon
- YLD Member Services Committee Meeting –  
3rd Wednesday of every month at noon
- YLD Diversity Committee Meeting –  
3rd Thursday of every month at noon

# A LAW CLERK'S TIPS FOR CRISPER LEGAL WRITING

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it's difficult for a judge (or her law clerk) to know what a lawyer wants the court to do.

## 2. Avoid Legalese Henceforward.

Every year, Matt Groening releases an edition of his *Life in Hell* comic strip entitled, “Forbidden Words.” These are usually annoying pop culture terms that Groening wants eliminated, like “epic fail” and “what-evs.”

If there were a lawyers' edition of “Forbidden Words,” here's what would top my list: (1) “at all relevant times,” (2) “fact of the matter,” (3) “hereinafter,” (4) “hereto,” (5) “hitherto,” (6) “moreover,” (7) “needless to say,” (then why are you saying it?) (8) “prior to,” (just say “before”) (9) “quite frankly,” (10) “wherefore.” Eliminating flotsam words and phrases like these will make your writing much clearer.

## 3. Headings Are a Clerk's Best Friend.

If a judge can't understand your argument, it's hard for her to rule in your favor. Writing clear headings is a great way to enable a judge or law clerk to easily comprehend what your argument is and what evidence you have to support it.

Here's a simple test to see if you've written a good brief or motion: Can a judge or law clerk understand your argument just from reading your headings? If so, you've written a good brief. If not, you haven't.

## 4. Use Oversight to Prevent Over-citing.

Few things make a judge or law clerk's eyes glaze over faster than a sentence like this:

*See, e.g., Kramer v. Kramer*, 331 Pa. Super. 20, 22, 825 A.2d 512, 515 (2004) (citing *Pride v. Prejudice*, 18 Eng. Rep. 225, 235 (Queen's Bench 1813)); *but cf. Gatsby v. Buchanan*, 25 N.E. 302 (N.Y. 1925) (quoting *O'Hara v. Butler*, 32 S.E. 201 (Ga. 1861)).

Ugh.

The only thing long citations prove is that you know how to copy and paste. The strength of your argument does not depend on how long your citations are. Or, to put it another way: It's not the size of your citation; it's what you do with it.

Citations can be a good way to buttress your case. But you need to use them judiciously. If you're citing a

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case, keep the following three rules in mind:

(1) Don't cite more cases than you need to. It's fine to say "(internal citation omitted)" if the internal citation does not inform your argument;

(2) Make sure the case you're citing is relevant to the case at hand; and

(3) Don't spend more than a couple sentences summarizing the facts of the case you're citing. Instead, focus on how it relates to your case.

## 5. Spice Up Your Language.

Just because you're writing about the law doesn't mean your writing needs to be dull. You don't need to channel your inner Justice Scalia and throw around terms like "argle-bargle" and "apple-sauce," but a little pizzazz never hurt anyone. I don't remember a judge or

law clerk ever complaining that a brief was too zesty or lively.

Using action verbs is a good way to punch up your writing. Here are a few I'm especially fond of: besiege, buttress, eclipse, etch, hoodwink, morph, pluck, plunge, rehash, and thwart. Adding a few zinger verbs will make your writing more engaging and fun to read.

Another way to add character to your writing is to use a figure of speech. This can be kind of tricky, because you want to avoid clichés like the plague (so to speak). You probably want to steer clear of overused stock phrases like "second bite at the apple" and "bald accusations." But feel free to claim, for example that a party who committed financial fraud was "cooking the books," or that another lawyer's reading of the

law is an "interpretive train wreck," or that a case that should not be cited as precedent is "due for formal burial." Good writing is just clear thinking made visible. And good legal writing is just good writing that happens to be about the law. ■



*Max Slater is a law clerk to Judge Christine Ward on the Allegheny County Court of Common Pleas. He earned his J.D. from the University*

*of Pittsburgh School of Law in 2014, and his B.A. in Government from Wesleyan University. During law school, Max served as the Notes Editor for the Pittsburgh Tax Review and as a Senior Editor for JURIST Legal News & Research.*

## MESSAGE FROM THE CHAIR

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Project "Mind your Manners: How to Get (and Keep) a Legal Career." Look for more information on the program this upcoming spring.

2) Professional Network – When I practiced with a firm, the YLD allowed me to meet other young attorneys who worked at firms all over the city and who clerked for the judges that I appeared before. Having these contacts made it easier to call and request a discovery extension from opposing counsel or to find out about a specific judge's chamber rules. Now that I'm in-house, I have non-attorney colleagues who knock on my door and

ask for family law, tax, real estate, and other personal attorney recommendations. Knowing which of my bar association colleagues specialize in each of these areas makes me comfortable passing along a recommendation to my co-workers.

1) Fun – The YLD has been good for my career, but it's also been a lot of fun! I've gone to baseball games, participated in scavenger hunts, made myself feel old by making pop-culture references to high school students, had a glass or two of wine, and made friends. Being a legal practitioner isn't the easiest career path and we should

embrace those aspects that make it a little bit brighter.

So it doesn't matter if you work for a firm, for the government, at a company, work outside of downtown limits, or right across the street from Koppers. The Bar Association and the Young Lawyers Division are 'worth it'.

That being said, I'd love to see you bowling to Strike Out Hunger this spring or Stepping Out into a local high school and teaching some soon-to-be adults about the legal implications of adulthood. The important thing is that I want to see you! ■

Visit the YLD's website for more information on YLD events, programs and more: [www.acba.org/Young-Lawyers-Division](http://www.acba.org/Young-Lawyers-Division)

# ARE YOU LEGALLY PERMITTED TO DRINK IN AN UBER?

By Louis Kroeck



If you have ever wondered if you are permitted to drink in an Uber, you are not alone. This question has left many passengers and drivers stumped as the answer is unclear in most jurisdictions. In locations throughout the U.S. riders are permitted to drink in

commercial vehicles that are purchased for hire. These regulations often vary by state and some states even allow all passengers to carry open containers regardless of who is driving. Although it is entirely permissible to drink in a taxi or limousine in many locations, the driver always has the option to refuse patrons service if they feel that drinking would be inappropriate.

Ten states generally allow passengers to consume, or at least possess, an open container in automobiles regardless of who is driving. These states include Alaska, Arkansas, Connecticut, Delaware, Missouri, Mississippi, Rhode Island, Tennessee, Virginia and West Virginia. The majority of states, including Pennsylvania, prohibit passengers from possessing open containers in or-

der to comply with the Transportation Equity Act for the 21st Century "TEA-21." Most states choose to comply with TEA-21 because compliance allows the states to receive federal highway funding.<sup>1</sup>

Uber circumvents state laws regulating taxi drivers and other similar commercial carriers under the theory that traditional ride shares, such as carpools, don't qualify for the strict regulations that typically give taxi drivers monopolies in their requisite markets. This has caused a drastic decline in the value associated with the taxi medallions that give taxi drivers the right to operate.<sup>2</sup> Additionally, this distinction could put Uber beyond the protection of the Pennsylvania open container

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## AVOIDING DISCIPLINARY COMPLAINTS: THE PROPER HANDLING OF ENTRUSTED FUNDS

By Robert Stasa

Throughout law school and in the early years as an attorney we are often warned of behaving ethically or facing the Disciplinary system. For many of us, the fear is there, we know to avoid conflicts of interest and behave in the courtroom, but we really do not know of many of the mistakes that attorneys actually make to end up in front of the Disciplinary Board. The mishandling of entrusted funds is one of the quickest ways to get there. This article will give you a crash course to hopefully avoid any IOLTA trouble.

First, you should stop and read Rule of Professional Conduct 1.15 (available on the Disciplinary Board's website at <http://www.padisciplinaryboard.org>). Because most of you moved on without

reading Rule 1.15, I will try to cover the most important parts, but please know that this article just hits some highlights and does not cover everything required under the Rules.

IOLTA problems essentially all stem from (1) conversion, (2) commingling, and (3) improper bookkeeping.

(1) Conversion (taking money that is not yours to take): This hopefully goes without saying, but no matter how much money you have in your IOLTA account, never ever "borrow" any of it – even for a day. Think of your IOLTA account as an envelope of cash you are holding for a client (for legitimate reasons). While you are holding this envelope, you order some pizza for lunch from a cash only joint and realize

you have no cash. I would hope that they thought of secretly "borrowing" a few dollars from your client's envelope of cash does not even cross your mind. This is the way you should think about your IOLTA account. Even though you have control over the account it is simply not your money to take. "Borrowing" funds from your IOLTA account, even for one minute, means that you have stolen money and violated the trust of your client. Hopefully you are all thinking "duh" at this point (bonus points if you realized that the cash in the envelope would have to go into your IOLTA account).

(2) Commingling: It is also a violation to put in some of your own money

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# ARE YOU LEGALLY PERMITTED TO DRINK IN AN UBER?

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exception and other similar exceptions as they were likely intended to protect commercial carriers that already face strict regulatory scrutiny.

In Pennsylvania, riders are permitted to have an open container, in any “vehicle designed, maintained or used primarily for the lawful transportation of persons for compensation..... [including] buses, taxis and limousines.”<sup>3</sup> The Pennsylvania open container exception creates two unique problems for Uber drivers who may choose to allow passengers to drink in their vehicles.

First of all, many Uber vehicles are not always used, “primarily for the lawful transportation of persons for compensation.” Many Uber drivers work on a part-time basis and use their vehicles primarily for other purposes such as personal transportation or for other work-related uses. However, there are most likely some Uber drivers who primarily use their vehicles for Uber rides.

Secondly, it is not clear that the Pennsylvania open container exception was meant to apply to companies such as Uber. The exception specifically names buses, taxis and limousines but did not likely contemplate services such

as Uber. Uber currently operates in Pennsylvania at the will of the Public Utility Commission (the “PUC”) under a two year temporary license that was only issued after a lengthy legal battle.

The Pennsylvania PUC’s main concerns with the continued availability of Uber are standards of driver integrity, vehicle safety and insurance protections.<sup>4</sup> It could be argued that the questionable long-term legality of Uber services in Pennsylvania and the mixed use of Uber vehicles could exclude Uber drivers from the protection of the Pennsylvania open container law exception.

In the Uber code of conduct Uber states, “unless explicitly allowed by law - open containers of alcohol are not permitted in drivers’ vehicles.”<sup>5</sup> While the Pennsylvania exception does not explicitly allow Uber drivers to carry passengers with open containers, it does not explicitly prohibit such conduct either. Until Uber updates their code of conduct, or the Pennsylvania legislature updates the open container exception, Uber drivers should exercise discretion. At the same time, Uber could be exposing themselves to liability for failing

to give their drivers better guidance on such an ubiquitous issue. ■

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1 - *Stim, Rich*. “Can a Passenger Drink Alcohol” <http://dui.drivinglaws.org/resources/can-a-passenger-drink-alcohol.htm> *Nolo:Driving Laws*

2 - *Sidel, Robin* (2015). “Uber’s Rise Presses Taxi Lenders”. *Wall Street Journal*. Retrieved 30 October 2015.

3 - It is worth noting that California has a law that is very similar to Pennsylvania’s law on passenger alcohol consumption in commercial vehicles. See sections 23229 and 23229.1 of the California Vehicle Code.

4 - *Lyons, Kim*. (2015) “The Ride Share Saga; A Year of Uber and Lyft in Pittsburgh” <http://www.post-gazette.com/business/money/2015/02/08/The-ride-share-saga-A-year-of-Lyft-and-Uber-in-Pittsburgh/stories/201502020158> *Pittsburgh Post-Gazette*

5 - *Uber: Code of Conduct* (2015) <https://www.uber.com/safety/code-of-conduct>



*Lou Kroeck is an attorney at Anstandig, McDyer and Yurcon where he specializes in intellectual property and entertainment law. Lou is a senior*

*editor of the Point of Law Newsletter.*

## YLD ANNUAL MEETING

Come to the YLD Annual Meeting on Thursday, February 25, at noon at the Koppers Building

Conference Center, Grant Room, 9th floor, 436 Seventh Ave. Join us to hear speeches from candidates running for YLD officer positions and to hear the announcement of the YLD’s annual “Outstanding Young Lawyer Award.” We will also discuss our upcoming programming and ways for members to get more involved in YLD activities.

# AVOIDING DISCIPLINARY COMPLAINTS: THE PROPER HANDLING OF ENTRUSTED FUNDS

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to “cushion” your IOLTA account. This is commingling your funds with entrusted funds and it therefore prohibited. The only non-entrusted money that can properly be in your IOLTA account is a small amount that is used for fees and charges on the account. This is not even necessary with most banks, as they are familiar with IOLTA accounts and can charge your operating account for any fees on the IOLTA account.

It is important to know that if an overdraft occurs on your IOLTA account, the bank automatically notifies the Lawyer’s Fund for Client Security, which in turn will result in a Disciplinary Board complaint if there has been mishandling of entrusted.

(3) Record Keeping: Keeping careful records of your IOLTA account is very important. As of February 28, The Board or the Office of Disciplinary Counsel may seek an emergency temporary suspension of an attorney for simply failing to maintain or produce the records required by Rule 1.15. This means that even if you never misuse one penny, you can be disciplined for simply failing to maintain the proper records. The Rule changes that went into effect this year may seem burdensome at first, but many of them actually help *protect* the attorney if they are followed. The highlights of the amendments are as follows:

- You must maintain all transaction records provided by the financial institution. This includes periodic statements, cancelled checks, deposited items, and records of electronic transactions.

- Your written fee agreement (under Rule 1.5(b)) must be maintained as part of the records required by Rule 1.15 (meaning you have to keep it for

five years).

- You must maintain a check ledger for each Trust Account, and the check ledger must indicate the purpose of each and every check or disbursement. The ledger must also indicate the payor, the date, the purpose, and the amount of each deposit.

- Where an account is used to hold funds of more than one client (your IOLTA account), you must maintain an individual ledger for each client, showing the source, amount and nature of all funds – that is, all deposits and disbursements.

- Whatever method is used to maintain required records, it must include a backup so that the records are secure and always available.

- If your records are kept in electronic form, the backup must be made at the end of any day on which entries have been entered into the records. (Electronic options make this easy).

- Records must be readily accessible to the lawyer and available for immediate production to either the Client Security Fund or to the Office of Disciplinary Counsel.

- A regular trial balance of the *individual client trust ledgers* shall be maintained. The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of moneys received in trust for the client, and deducting the total of all moneys disbursed.

- On a monthly basis, a lawyer must conduct a reconciliation for each fiduciary account, which must show that the reconciled totals cash balance agrees with the total of the client balance listing. The reconciliation is not complete if the total cash balance does not agree

with the total of the client balance listing. All records and computations sufficient to prove compliance with this requirement must be preserved for five years.

- Only a lawyer admitted to practice in this jurisdiction, or a person under the direct supervision of the lawyer, shall be an authorized signatory or authorize transfers from a trust account. (Word to the wise – Do NOT give signatory authority to anyone who would not be on the hook for an IOLTA problem)

- At all times while a lawyer holds entrusted funds, the lawyer shall also maintain another account that is not used to hold such funds. (i.e., your operating account.)

This may seem overwhelming, but once the proper system is put in place it really is not as bad as it seems. Just remember – keep careful records, do not commingle funds, and do not convert funds. ■



*Robert Stasa is a graduate of Allegheny College and the University of Pittsburgh School of Law. Mr. Stasa is an Associate in the Law Office of Craig Simpson where he practices almost exclusively in the area of attorney ethics/disciplinary law and bar admission (i.e., character and fitness determinations) matters.*



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# YLD GOLF OUTING AT PITTSBURGH NATIONAL GOLF COURSE





# CONSUMER CANCELLATION RIGHTS

By Ryan D. Very

*Originally published on the  
ryanverylaw.com blog on July 2nd, 2015*

The proliferation of electronic payment methods has, to some extent, left consumers vulnerable. Sophisticated sales organizations exploit the fact that they can quickly and easily make deductions from bank and credit card accounts, sometimes without the account-holder even realizing it. One effect of the increased popularity of electronic payment methods that has been abused with alarming frequency is that consumers reasonably assume the charges placed on their accounts, and representations concerning their responsibility for those charges, are not the product of mistake, neglect, or intentional malfeasance. Some consumers, without even knowing it, have been the victim of an unfair trade practice, and are entitled to a substantial settlement.

Let me give you an example. I recently represented a client who entered into a two-year verbal agreement with a telemarketer to make monthly credit card payments for a service that bundled and delivered periodicals. When my client tried to cancel, the company insisted that my client was obligated to eventually pay for two years' worth of periodicals (a significant sum at the rate they were charging) on the grounds that my client made a "verbal agreement" to do so. My client took the company at their word and kept paying. The company also made harassing phone calls and used coercive sales gimmicks to pressure my client into extending the agreement to five years, in an effort to make it seem like my client consented to the charges. Needless to say, my client felt trapped, and when



I heard what happened, I was deeply disturbed.

I told my client that the company had committed consumer fraud by inducing payment through a misrepresentation of law. My client, in fact, had no obligation to continue paying the company. Under Pennsylvania law there are two types of agreements that must be in a signed writing: agreements for the sale of goods that exceed \$500 and agreements for services that cannot be performed within one year.<sup>1</sup> Since my client paid over well over \$500 for something that would take over a year, my client's agreement should have been written down and signed. It wasn't, and therefore, my client had no obligation to keep paying.

Because of this, the company's representation that my client had to keep paying violated consumer protection statutes designed to prevent debt collectors and creditors from taking advantage of the fact that, generally speaking, big organizations know the law better than individual consumers.<sup>2</sup> Judges have issued opinions in which they have said that misrepresenting cancellation rights is deceptive<sup>3</sup> and that billing charges to a credit card without the consumer's consent is unfair.<sup>4</sup> Consumer advocacy organizations and, most definitely, law enforcement,

take consumer deception very seriously.

But even when consumers are aware that they have been tricked, I have found that they still sometimes hesitate to contact a lawyer. Some consumers have hesitated to reach out to me because they think that getting an attorney involved will cause a big fight. Others are under the impression that using an attorney to negotiate a settlement for fraudulent charges will damage their credit score. Some still feel guilty, as if the whole thing was their fault, and assume that an attorney wouldn't want to represent them. But a great number of consumers simply keep paying fraudulent charges because they are too busy with their own lives, e.g., working hard to pay their bills and spending time with their families, to be an effective advocate for themselves.

These concerns are not entirely without merit, but none of them are an excuse for fraud, especially because, in my experience, banks and credit card companies are willing work with attorneys to recover illegal charges from sellers.

I acquired my client a substantial settlement without setting foot in court. If you are being charged for something and it doesn't seem fair, or

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## CONSUMER CANCELLATION RIGHTS

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if you are being harassed by a creditor, contact a lawyer who may be able to uphold your consumer rights. ■

*Disclaimer: This article should not be construed to give legal advice, create an attorney-client relationship, or guarantee a specific result.*

1 - See, e.g., 13 P.S. § 2201(a) (codifying U.C.C. § 2-201's signed writing requirement).

2 - See, e.g., 15 U.S.C. 1692e (Federal Fair Debt Collection Practices Act providing that "[a] debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt"); National Consumer Law Center, Federal Deception Law, Section 2.5 (2012); 18 Pa.C.S. § 4107 (state statute criminalizing fraudulent or deceptive business practices); 73 P.S. § 201-1, et. seq. (state Unfair Trade Practices and Consumer Protection Law prohibiting unfair or deceptive trade practices); *Commonwealth v. R&W Indus., INC, Clearinghouse No. 26,021* (Pa. Commw. Ct. 1976) (salespersons may not misrepresent the buyer's right to cancel).

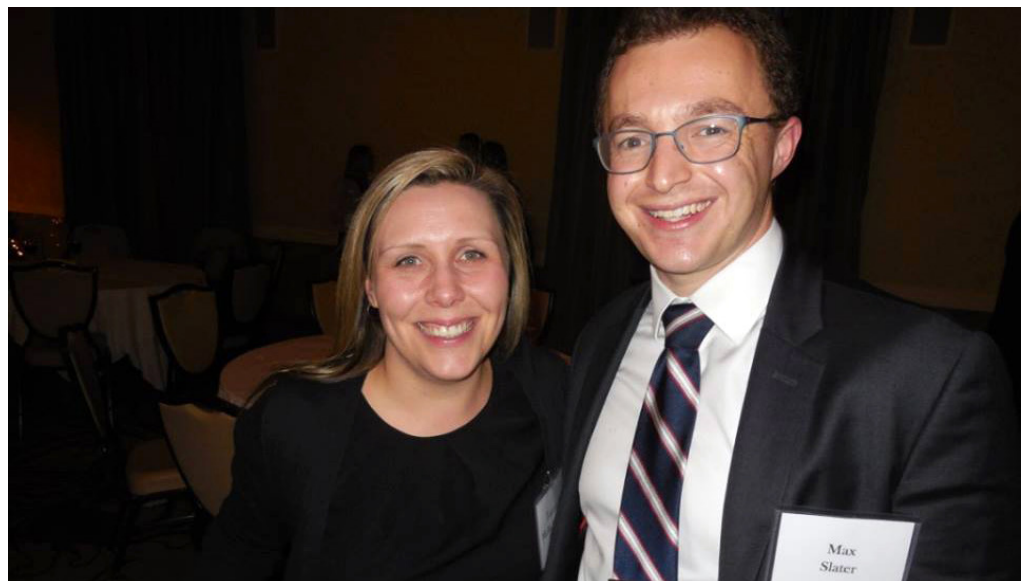
3 - *Commonwealth v. Flick*, 382 A.2d 762 (Pa. Commw. Ct. 1977) (finding against defendant seller of photo album purchase plan who, when purchasers attempted to cancel agreement to buy photo albums, lied and said that there was no right to cancel, and engaged in intimidating language toward purchaser).

4 - *Fed. Trade Comm'n v. Mercury Mktg. of Del., Inc.*, 2003 WL 23277324 (E.D. Pa. Dec. 29, 2003) (issuing preliminary injunction against company that employed telemarketers that induced business transactions by way of false and misleading statements).



*Ryan Very is a solo-practitioner specializing in civil rights, family law and criminal law.*

## JUDICIAL TRIVIA EVENT





## YLD HOLIDAY PARTY



## CHILDREN IN SHELTER HOLIDAY PARTY

