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CALENDAR OF EVENTS FOR JANUARY

Friday, January 8
AVAILABILITY OF LEGAL SERVICES
Monthly Roundtable
Noon @ Boulder County Legal
Services

Tuesday, January 12
EMPLOYMENT
Recent Developments in FLSA Case
Law and Regulation
Presenter: Brandt Milstein
and Peter Munger
Noon @ Dickens Tavern Longmont
\$25 CLE, \$15 New/Young Lawyer,
\$13 Lunch

Thursday, January 14
INTELLECTUAL PROPERTY
PTO Insider Practice and Method
Tips for the Patent Practitioner
Presenter: A Representative
from the Denver USPTO
Noon @ Lathrop Gage
(4845 Pearl E Circle #201)
\$25 CLE, \$15 New/Young Lawyer,
brown bag lunch

Thursday, January 14
COLORADO BAR ASSOCIATION
PRESIDENT VISIT
Presenter: Loren Brown
Noon @ The Cork
\$30 lunch and CLE, \$20 New/Young
Lawyer

Tuesday, January 19
BUSINESS
Doing Business in Cuba - New Opportuni-
ties under Recent U.S. Regulatory Changes
Presenter: Harlan Abrahams
Noon - 1:30 @ Hutchison Black and Cook
\$40 for 1.5 CLE with Cuban lunch in-
cluded, \$30 New/Young Lawyer


Tuesday, January 19
ELDER
Advance Care Planning that Works
Presenters: Rick Romeo and Kim Mooney
Noon @ Caplan and Earnest
\$25 CLE, \$15 New/Young Lawyer,
brown bag lunch

Wednesday, January 20
FAMILY
Case Law Update
Tim Mehrtens
Noon @ Justice Center
Training Room East
\$25 CLE, \$15 New/Young Lawyer,
brown bag lunch


Thursday, January 21
BANKRUPTCY
Monthly Roundtable
Noon @ Agave

Wednesday, January 27
TAX, ESTATE PLANNING AND PROBATE
Taxation of Trusts and Estates
Presenter: Christopher Denham, CPA
Noon @ Dietze and Davis
\$25 CLE, \$15 New/Young Lawyer,
brown bag lunch

Thursday, January 28
NATURAL RESOURCES/
ENVIRONMENTAL
The Clean Power Plan Rule
Presenter: Peter Zalzal
Noon @ Bryan Cave
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Wednesday, January 6, 2016
How to Handle a DORA or Legal Complaints
Presenters: Cathy Rodriguez, Program Director
of Mental Health Boards and Occupational
Therapy Program, DORA &
Chip Mortimer, Deputy Regulation Counsel,
Office of Attorney Regulation

BIDC meetings will be held at the
Millennium Harvest House
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11:30am - 1:15pm Networking:
11:30am to Noon
Lunch and Speaker: Noon - 1:15pm

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CLE credit 2 General and 1.2 Ethics

HELPING CLIENTS WITH DIFFICULT STUDENT LOANS (IN FOUR EASY STEPS)

By DOUGLAS TRIGGS

Yes, student loans are a nationwide crisis. 1.2 trillion dollars are owed for student loans, and it's increasing. More is owed in student loans than on credit cards. Matter of fact, student loan debt is second only to home mortgage debt. Get the picture?

The average former student owes \$28,000 in student loans. However, owing \$200,000 or \$300,000 is not unusual for those with recent professional or graduate degrees.

What is unusual about student loans is that they can almost never be discharged in bankruptcy. Taxes are easier to discharge in bankruptcy than student loans. That means your client is pretty much stuck with his or her student loans. That's the student loan crisis on an individual level.

So imagine one of your clients with problem student loans. I'm talking overwhelming loans, or defaulted loans resulting in collection activity or garnishment. How do you counsel that client? I'll lay out the four easy steps below and then show you why step four is the best option.

But first, some background

There are two kinds of student loans: private and federal. Private student loans comprise 10% of total student loans; federal student loans are the other 90%.

A private student loan is just like a credit card debt (except that it can seldom be discharged in bankruptcy). A private student loan is simply an unsecured loan from a private company with a set repayment schedule. Similar to other debts, default on a private student loan brings collection letters, phone calls, court suits, wage garnishments. It's basic contract law; standard stuff.

Federal student loans are entirely different. Note the plural "loans"--there are more than twenty different kinds of

federal student loans. And federal loan repayment plans? Eleven of those, one being the new REPAYE plan. Federal loans are creatures of federal statute and regulations.

Here's what's important about private versus federal student loans. Private student loans have very few options when default threatens. Federal student loans have many more options to encourage successful repayment and cure defaults. Thankfully, 90% of outstanding student loans are federal loans. Sadly, half the student loan clients I see have problems with their difficult-to-work-with private student loans.

Your clients

Where do you see clients with student loan problems? I suggest you see them in every legal context: divorce, bankruptcy, tax work, personal injury, social security, real estate, even criminal.

How can you help these clients? Start here: *differentiate private vs. federal student loans.*

Does your client have problem private student loans? Then it's contract law, state courts suits, and collection on judgments—all material you came to know and love on the Bar Exam. Explain those to your client. Then encourage your client to contact the lender directly for help (possible, but

unlikely), and to check out bankruptcy (as I've described below). Memorize step four below as your client's last option. And that, in a nutshell, is my advice for private student loans.

Does your client have problem federal student loans? Now you should reflect on the twenty types of federal student loans and the eleven different repayment plans. Which loans fit with which payment plans? Which payment plans best fit your client's personal and financial situation? Understandably, this is a complete mystery to most attorneys. So let me suggest four steps that you can use to help your clients in this situation.

Four steps for clients with federal student loans

First, your client can research. Be aware that most everything relating to federal student loans is specified in detail on various web sites. The most useful is the federal site, *www.studentaid.ed.gov*. Have your client read the section "manage my loans." The good news is that almost everything is laid out clearly and in great detail. The bad news is the same: the information is so extensive that even attorneys' eyes glaze over when reading this website. However, this information is

(continued on the next page)



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Jim Christoph, JD

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DIFFICULT STUDENTS LOANS *(continued from page 3)*

available, comprehensive, up-to-date, and free.

Second, your client can phone. Your client should call his or her federal loan servicer and ask for help. The servicer's representative is supposed to lay out all available options. I'm making a guess here, but I expect callers get less than complete information every time, and some sort of problem resolution only half the time. At a minimum, however, this phone conversation helps educate the client on some of the available options, and the call is free.

Third, your client can explore bankruptcy. Have your client talk with a bankruptcy attorney. It's possible for student loan debts to be discharged in bankruptcy, but the legal bar ("undue hardship") is high. It also takes additional attorney work and a special hearing for this, which is an extra cost to the client. But simply filing for bankruptcy can discharge other debts (thus freeing up money to pay the student loans), and the bankruptcy automatic stay can temporarily stop student loan collection efforts. The initial appointment for most bankruptcy attorneys is free.

And fourth, your client should contact a student loan attorney. That's a great idea! We're a relatively new specialty, and there are only a few dedicated student loan attorneys in

Colorado. We are to student loans what insurance brokers are to health insurance—that is, we're familiar with the options and can explain them in everyday language tailored to the client's situation. However, we're not free.

Why you (and your client) should care Let me provide a few examples where specialized knowledge can make a real difference.

Monthly loan payment. The size of your client's monthly loan payment can be based on 1) your client's income only, or 2) the total family income (if the client is married). It takes some strategizing, but it is usually possible to utilize the first option even if your client is married. That can make a tremendous difference in the size of the monthly loan payment.

Remaining loan time. A 10-year repayment plan is the normal repayment plan (it's called the "standard" plan). Can it be increased to 20 or more years (with a corresponding drop in monthly payment amount)? Answer: yes, if you make the proper application. Sometimes a lower monthly payment is needed simply for the client's current financial survival.

Best repayment plan. As I mentioned, there are 11 different repayment plans for federal student loans. That includes the new REPAYE plan. This new plan allows for lower monthly payments, but requires that the total family income be used to determine the size of the monthly payments. That fits for some individuals and for some families, but it definitely doesn't fit

for other families. Which of these eleven payment plans is best? Choosing the wrong payment plan can be unnecessarily costly.

Loan forgiveness. Depending on the circumstances, federal student loans can be totally forgiven after 10 years, 20 years, 25 years--or never. There are proactive steps your client can (and should) take to qualify for faster loan forgiveness.

The bottom line

Private loans. If your client has private student loan issues, then your client's options are extremely limited. Sometimes it's possible to negotiate settlement of the debt, or get an agreement for lower payments for a limited period of time.

Federal loans. If your client has federal student loan issues, then your client has more options. I've outlined the four steps that you should suggest to your client.

Questions. If you have questions about student loans, I would be glad to discuss them with you. My direct line is 303-551-0647. (Potential clients should call my office at 303-499-1336 for information and a phone or office appointment.)

Douglas Triggs is an attorney in Boulder helping Colorado residents with student loan problems. You can read more about his practice at ColoradoStudentLoanAttorney.com.

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Elizabeth Francis has joined Caplan and Earnest's growing litigation practice as an associate. She specializes in employment-related litigation, representing a variety of clients including health care providers, school districts, individuals and corporations involving claims including protected class discrimination, harassment, retaliation and breaches of employment agreements.

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PRESIDENTS PAGE

BY CRAIG SMALL



2016 is upon us and I am already feeling like it is going to be a great year! Do you feel it too?

I am energized and revitalized after a wonderful holiday season with friends and family and a healthy dose of quiet time out of the office and away from clients' troubles. I was able to use that time to think about the lessons learnt (yeah, that's right, I just used the British English alternative form of the past tense and past participle of the verb learn) this past year and how I can be a better attorney, better businessman (not always the same thing), a better employer and better person. There is always room for improvement and if you ask my wife she would tell you there is plenty of room in this guy (two thumbs pointing to the author) to improve!

So, along these lines, I would like to dust off that antiquated notion of New Year's Resolutions and see if I can come up with a few 2016 Resolutions. I figure, even if I only practice them for a few months, those few months may be better than the month-to-date comparison from last year and, who knows, maybe a Resolution will stick like delicious sticky rice on my ribs and become a better way of being. One can only hope, so here are a few of my 2016 New Year's Resolutions

1. Eat better, exercise more. Ok, this is an obligatory resolution. Let's move on.

2. Delegate More Office Tasks To An Employee. We are all busy every day so the only way to work harder is to work smarter. One of the greatest decisions I made in my practice in 2015 was to hire an employee to handle all back office tasks. I fought the decision for a long time with concerns over financing, but finally hired an employee and I now kick myself for not having done it sooner. Not only has my office assistant completely tamed my back office, she has streamlined my processes and done so with a smile and great attitude. Now I need to feel more comfortable delegating more tasks to her and focusing on the heavy lifting.

3. Cultivate Personal Relationships With My Fellow Attorneys. As I get older it seems like it become harder

and harder to make new friends because of the increased responsibilities in my life. This Resolution kills two birds: creating new professional and personal relationships. I like this one so much I started it a little early. I am sheepish to confess this, but I actually approached another attorney and flat out told him I want to be his friend. We both run busy practices and have orbiting each other professionally for quite some time and I realized that he is a good guy, a good attorney and I wanted to cultivate this professional relationship into a friendship.

4. Fire One Toxic Client. This one I learned (American English) from a mentor back in California. Some

(please go to the next page)

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PRESIDENTS PAGE

clients are just not worth the stress no matter how timely they pay their bills. Letting these clients go has nothing to do with the merits of their cases or who they are as client but goes directly to an emotional cost/benefit analysis. No client and no amount of money is worth a client disrespecting your time, your self-respect or self-esteem. It is just not a good fit and it is time for that client to find another attorney. Inevitably, these clients find the right attorney for their relationship style and it becomes a win-win-win for client and attorneys.

Regardless, of whether we keep our Resolutions it is important to see that the first step towards change is often the most important step. Half of the benefits of therapy are just talking your problem out loud even if the therapist does not talk back. My therapist/dog Gilly would agree with this

statement. Half the benefits of bettering yourself are merely pointing yourself in the right direction no matter how many steps you take.

Now that I have shared my 2016 New Year's Resolutions, what are your Resolutions?



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TO BE OR NOT TO BE

MARK COHEN, J.D., LL.M.

"Is", "is." "is"—the idiocy of the word haunts me. If it were abolished, human thought might begin to make sense. I don't know what anything "is"; I only know how it seems to me at this moment.

— Robert Anton Wilson,

Would you like to clarify your thinking? Construct more persuasive arguments? Improve your legal writing? You can. Just avoid using all forms of the verb *to be*.

Why eliminate *to be*? The verb creates problems because we tend to use it like an equal sign. We say, "The cat is white." But *cat* and *white* are two different things. *Cat* denotes an animal. *White* denotes a color. If we can't use *is*, we must instead say something like, "The cat has white fur" – a more accurate statement.

Professor D. David Bourland, Jr. developed this idea in the late 1940's. He published an essay on it in 1965.¹ He named this form of English *E-Prime*.

E-Prime forces us to distinguish between ourselves and others. Instead of saying, "The public is against the proposed legislation," we must say something like, "A majority of voters oppose the legislation.

E-Prime also prevents us from passing off our opinions as fact. Instead of saying, "That is a terrible decision," we must say something like, "I do not agree with the court's reasoning in that decision."

E-Prime also helps avoid broad assertions crossing boundaries between past, present and future. In *E-Prime* we can't say, "Your client is untruthful," which suggests a permanent state, but must instead say something like, "A jury convicted your client of making a false statement in 1995."

E-prime also serves as an easy way to avoid using the passive voice. Instead of writing, "Your client's claim will be considered by our claims department," you must instead write something like, "Our claims department will consider your client's claim." You've just gone from a sentence with ten words to one containing only eight words. This can be particularly useful when drafting motions or briefs subject to page limits.

Bourland referred to use of *to be* as a "Deity mode of speech," which "allows even the most ignorant to transform their opinions magically into god-like pronouncements on the na-

ture of things."

So try it out. But be mindful that there may be times when *E-Prime* interferes with a higher artistic purpose. It's probably good that Elvis sang, "You ain't nothin' but a hound dog" rather than, "You possess many of the qualities hound dogs possess."

1. Bourland, *A Linguistic Note: Writing in E-Prime*, *General Semantics Bulletin* (1965).

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Mr. Cohen served as an Air Force JAG, a Special Asst. U.S. Attorney, a prosecutor, a Boulder Municipal Judge, on the Executive Board of the Colorado Municipal League, and on the Editorial Board of *The Colorado Lawyer*. He wrote six articles published in the *American Jurisprudence Proof of Facts* series. He taught an advanced legal writing class at the University of Arkansas School of Law. His two mysteries, published by Time Warner, won high praise, and one was a *Book Sense*® top ten mystery pick. His non-legal articles have appeared in magazines such as *Inside Kung Fu*, *Camping & RV*, and *Modern Dad*. He is a member of the Institute of General Semantics.

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PRO BONO PAGE

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Thank you to the following mediators who accepted referrals in November:

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Thank you to the following for accepting special referrals in November:

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