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LawBiz® TIPS – Week of January 31, 2012

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Most lawyers I know are procrastinators ... not a pejorative ... just a statement of fact. It comes with the territory of being a lawyer, I think. We are faced with so many deadlines that, coupled with the human proclivity to put things off to the last minute, we always seem to face a ticking clock and bump up against deadlines. But, we seem to always meet those deadlines, filing the briefs on time, etc. Today, I finished studying for and taking an exam to renew a professional license. It weighed on me for some time, but I put it off to do other things ("more important" because I still had time to spare). But, now I have no more time to spare. And, once again, I beat the clock, not by much, but as long as I beat it, I'm fine.

What do you do in your professional life, in your personal life, that causes you stress? Is there some way you can rearrange your priorities so that you can march down the road, one task at a time, toward the completion of your goal? Wouldn't that be so much better, and not so hard to do? The answer is clearly "yes." But, then, we might remove ourselves from the stereotypical lawyer personality profile! What a concept!

And, don't forget, we have a deadline approaching. Take advantage of the pre-publication offer for the Secrets of the Business of Law, 2nd ed..... **A 50% reduction in the price** will soon disappear and will not appear again. Secrets is ONLY \$24.50. **Order now!** You'll be glad you did. And call me if I can help you unveil these Secrets.

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## Are Attorney's Fees an Endangered Species?

The Fee Must Be Reasonable

The fundamental principle of charging for legal services, enshrined in Rule of Professional Conduct 1.5, is that the fee must be reasonable. Ancillary to this is the provision that lawyer and client should document the basics of the fee in their engagement agreement. However, is this enough to assure what the attorney's fees will be? Or, is this becoming a gray



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area?

### The American Rule

In the United States, we follow what is referred to as the American Rule, which states that a person pays for their own attorney's fees regardless of the outcome of the lawsuit. This is very different from the practice followed in England, which requires the losing party to pay for the prevailing party's attorney's fees in addition to their own. However, the American rule does not apply when case law, a contract, or a statute (referred to as fee shifting statutes) each allows a successful litigant to obtain attorney's fees and other expenses from the losing party. Often consumer protection laws and malpractice statutes allow the winning litigant to make such a recovery from a defendant, an award that can also be at the court's discretion.

### Excessive Attorney Fee Awards?

Increasingly, state legislatures are attacking attorney fee awards under the guise of reigning in "excessive" plaintiff litigation. A recent example comes from Wisconsin, where a lawyer who had promoted himself as the "king of lemon law" won a judgment for \$12,500 against an auto dealership for unauthorized repairs and received an attorney's fees award of \$150,000. The Republican-controlled legislature was so incensed that they adopted a 2011 law signed by the governor limiting attorney's fees at three times the judgment. With such limitations, lawyers will be less likely to tackle consumer lawsuits, the obvious intent of the statute.

### Statutes Limiting Damage Awards

Other states have sought to limit damage awards (such as Texas, which instituted comprehensive tort reform well over a decade ago), but have not directly attacked attorney's fees. Is the action in Wisconsin an indication of what some states might do? The State Bar of Wisconsin vigorously opposed the new law, pointing out on its [website](#): "The new limits imposed by the bill may impact as many as 280 statutes and administrative rules, including many that are frequently brought by Wisconsin businesses against those who have violated the law. These statutes also are frequently used to successfully defend against frivolous claims brought against an innocent party by someone who has actually violated the law." <sup>\*</sup> It goes to show that "abusive" attorney's fees can be a matter of whose ox is being gored - and pointing out the business advantages may not be enough to prevent similar actions elsewhere.

We are pleased to announce the launch of our new  
**LawBiz® store at [lawbizstore.com](http://lawbizstore.com).**

**TODAY ONLY! 25% New Year Discount:**  
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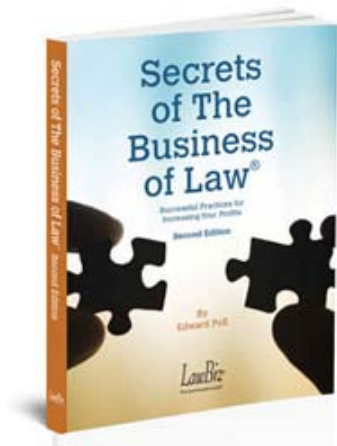
Also:

### What Clients Are Saying:

"Ed Poll created and presented your three-day workshop "Starting, Operating, Growing and Profiting from the Practice of Law" for our Law School, the Continuing Legal Education Committee and the Washington Law School Foundation. Ed's professional management skills and presentation talents provided our alumni and students with an outstanding program. The evaluations, both oral and written, were excellent and demonstrated that his audience agreed. One evaluator was particularly appreciative of the thought-provoking and interesting new concepts. Another said, "I have a much better understanding of what I'm to do -- I'm energized. Thank you!" Ed had a major impact on the future of our attendees; this is a unique quality and we are most appreciative of his efforts to create such an interesting and informative program. I enjoyed working with him and look forward to doing so again."

**John F. Rapp**  
**Director, CLE**  
**University of Washington**

"Ed Poll's efforts resulted in the success of our Mid Year CLE Program event. During the planning stages of this Mid Year Program, the Section's leadership indicated that if 75 lawyers attended the program, it would be considered a success. With our program attendance at



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over 100 attendees, the leadership clearly is very pleased with our efforts and want to continue bringing programs to the solo and small firm practitioner. We look forward to this challenge of making the Mid Year Program a regular event."

**Lee S. Kolczun, Chair  
Sole Practitioners and  
Small Firms Committee  
American Bar Association**

Ed Poll, LawBiz® Management

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