

Monthly Webinar Series Courtesy of Gassman, Crotty & Denicolo, P.A.

NEGOTIATION AND DESIGN OF EMPLOYMENT AGREEMENTS

Tuesday, March 28, 2017
12:30 p.m. to 1:00 p.m.

Presented by:

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Upcoming Webinar Series Calendar for Business Law and Strategies For Business Owners and Professionals

- SERIES 2 4/25/17-Negotiating Leases and Related Relationships
- SERIES 3 5/23/17-Designing and Enforcing Non-Competition Covenants in Florida
- SERIES 4 6/20/17-Coordinating Business Conduct, Contractor Relationships and Insurances with Chuck Wasson
- SERIES 5 7/25/17-Creditor Protection Planning for the Professional Practice or Operating Business
- SERIES 6 8/15/17-The Art and Science of Negotiating Agreements with David Finkel and Steve Maxwell
- SERIES 7 9/26/17-Negotiating the Purchase and Sale of a Business with John McDonald of Hyde Park Capital
- SERIES 8 10/31/17-Choice of Entity and Multiple Entity Structures
- SERIES 9 11/21/17-Uses and Abuses of Independent Contractor Arrangements
- SERIES 10 12/19/17-Income Tax Strategies and Compliance Aspects of Business Planning

***Free 30-Minute Webinars Courtesy of Gassman, Crotty & Denicolo, P.A.
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BLOOMBERG BNA's 2017 ESTATE PLANNING WEBINAR SERIES

TOPIC	SPEAKER	DATE
Fixing It When It's Broken	Bruce Stone	April 5, 2017
Planning With LLCs And Limited Partnerships – Interesting Uses	Steven B. Gorin Kenneth J. Crotty	May 3, 2017
Income Tax Planning With Business And Investment Entities – Little Known Opportunities For Estate Planning And Corporate Advisors	Prof. David Herzig	May 10, 2017
What Non-Elder Law Specialists Need to Know About Protecting Assets and Medicaid Planning	Letha McDowell	June 7, 2017
IRA Planning Opportunities And Pitfalls	Edwin Morrow Christopher J. Denicolo	July 12, 2017

BLOOMBERG BNA's 2017 ESTATE PLANNING WEBINAR SERIES

TOPIC	SPEAKER	DATE
Business Succession Planning Techniques: Passing the Business on Fairly to Family and/or Employees Using Income Tax and Investment Smart Methods.	Jerome Hesch Joy Spence	July 19, 2017
Sophisticated Asset Protection Trust, Offshore LLC And Related Planning	Jonathan Gopman	August 9, 2017
TO BE ANNOUNCED	---	September 6, 2017
A Comprehensive Checklist For Succession Planning	Turney Berry Clary Redd	September 13, 2017
The Most Common Challenges We See From The IRS, And How To Avoid Them	John Porter	October 4, 2017
Essential Non-Tax Planning Considerations For Sophisticated Estate Plan	Martin Shenkman	November 1, 2017
Tax Planning for Marriage and Divorce	Carlyn McCaffrey Nicole Pearl Jerome Hesch	November 8, 2017
Planning To Reduce Medicare And Self-Employment Taxes In Business, Investment, And Trust Structuring – 6 Structures That Can Be Used.	David Kirk	December 13, 2017

SAVE THE DATE
FREE UPCOMING WEBINARS SPONSORED BY
MAUI MASTERMIND



April 26, 2017 (1:00 p.m. ET) – Uses and Abuses of Independent Contractor Agreements

Guest Speaker – Alan S. Gassman, Esquire

Discussion will include coverage of IRS criteria for worker classification, Worker's Compensation and unemployment tax implications, limiting liability for the actions of a Contractor, and many other considerations.

June 27, 2017 (1:00 p.m. ET) – Negotiating Leases for Your Business and Related Relationships

Guest Speaker – Alan S. Gassman, Esquire

We will review a typical real estate and building lease agreement that has recently been negotiated to show what changes have been recommended for each party, with actual sample language concerning various lease aspects. This will include limited guarantees, damage clauses, insurance coordination, and fifteen common issues that arise in lease situations.

For more information email: agassman@gassmanpa.com

3 things you want to get out of this webinar:

Item	Why is this important?	Next steps forward.
1.		
2.		
3.		

The diagram consists of five hot air balloons arranged horizontally, connected by a single line. Each balloon has a label box on its side. The labels, from left to right, are: "Personal Life", "The Professional Lawyer/Entrepreneur", "Clientele/Customers", "The Team", and "Structures, Processes, and Knowledge Base".

No balloon can rise above the level of the others.

Employees – Getting The Right Team In Place

**Get the Right People
On the Bus.**



**Get the Wrong People
Off the Bus.**

When we began this research project, we expected to find that the first step in taking a company from good to great would be to set a new direction, a new vision and strategy for the company, and then to get people committed and aligned behind that new direction.

We found something quite the opposite.

“The good to great leaders began the transformation by first getting the right people on the bus (and the wrong people off the bus) and then figured out where to drive it.”

“Good to Great”, © 2001, by Jim Collins

Making Your Firm a Great Workplace

Have you ever been to a business or resort that provided exemplary services and made these look easy and enjoyable for the team serving you? We all know that it takes a lot more than just hiring qualified people and giving them policy and procedure manuals to put together a great team that can make everything look easy.

The Gallup organization surveyed over 80,000 successful managers. Some of their conclusions make great sense, and others might surprise you.

Here is our summary of their report:

The team at the Gallup organization, and in particular Gary Buckingham of Gallup, Inc., have put together a fantastic book called *12: The Elements of Great Managing* by Rodd Wagner, Ph.D. and James K. Harter based upon comprehensive surveys of what it takes to create, have, and maintain a great workplace.

Their first discovery was that, “there are no great companies, there are only great workgroups,” and that “there appear to be 12 characteristics that will consistently describe great workgroups.”

While many of these are well-known and based on common sense or intuition, a few of them may come as a surprise.

Item 1: Knowing What is Expected. Confusion over expectations and desired outcomes can be extremely frustrating and cause loss of effectiveness and morale.

Do your team members know exactly what is expected, or is that a nebulous situation?

Making Your Firm a Great Workplace

Item 2: Lack of Frustration by Having All of the Necessary Workplace Tools Needed to Do the Job Right.

Confusing or poorly working computer systems, forms that are inappropriate, and other systems that get in the way as opposed to help can be the downfall of what might otherwise be an effective and positive team member.

Item 3: Doing What the Person Does Best.

“Frank Sinatra never moved pianos.”

Dan Sullivan, Strategic Coach -

Everyone has an innate instinct as to what he or she does best, but in our law firm we test talents using Omnia Profile and Kolbe a personality testing and are very mindful as to what the team member can do best, and what they can develop to be better at.

If the team member is not in a job that allows them to be their very best, then it may be time to change the job or the person.

Remember the recurrent theme from the book *Outliers* by Malcolm Gladwell – once you find somebody who is a good fit for what they do, and they do it for 10,000 hours they can be at the genius level and lead the world.

That only takes 5 years if everything is properly situated.

Item 4: Praise and Recognition are Completely Essential in a Great Workplace. A study of more than 80,000 managers found that there is a significant difference between “don’t complain if the team member does a good job” versus giving consistent and well directed praise.

Making Your Firm a Great Workplace

Item 5: My Immediate Supervisor or Boss Cares About Me.

The Gallup poll study showed that the fifth most important item with reference to a good workplace relationship is that the person with supervisory or mentorship authority sincerely cares about the welfare of the team member.

Item 6: Does Someone on the Team Encourage the Employee's Development.

Good team members want to get better, that is part of the human psychological makeup for successful and positive people.

Knowing that someone is there to help make this occur is an important component.

Item 7: The Opinion of the Team Member Counts. Team members each have a unique view and ability to contribute to improve ideas, systems, and services. If they think that their opinion doesn't count, then you may be counting them out for helping you to maintain and grow your business.

Item 8: The Link Between the Team Member and the Company's Mission or Purpose. Team members at every level like to know that they are integral part of an organization that has a purpose and mission.

Everyone on the team should contribute directly to that mission in their own unique way.

Item 9: Doing Quality Work. Team members like to know that they are provided good quality work that need not be criticized or cause stress that would result from errors. "Pride in workmanship" is an important part of the work experience that each team member should have the opportunity to thrive with.

Making Your Firm a Great Workplace

Item 10: Having a Best Friend at Work (BFW). Gallup found in their 80,000 manager study that employees who report having a best friend at work achieved as follows:

43% more likely to report having received praise and recognition for their work in the last seven days.

37% more likely to report that someone at work encourages their development.

35% more likely to report co-worker commitment to quality.

28% more likely to report that in the last six months, someone at work has talked to them about their progress.

27% more likely to report that the mission of their company makes them feel their job is important.

27% more likely to report that their opinions seem to count at work.

21% more likely to report that at work, they have the opportunity to do what they do best every day.

What are you doing in your company to help make sure that good team members are properly introduced to good influence co-workers, are able to socialize and meet each other's families in simple but enjoyable "company picnic" and happy hour events? Employees don't need expensive and fancy parties and events – simple and relaxed low-key after-hours opportunities to mingle can have a significantly positive impact on all team relationships.

Item 11: Team Members Like to Discuss Their Progress. Gallup reports that great managers are always encouraging employees to know themselves and the roles that they are likely to succeed in. Gallup recommends that feedback be specific and given in the context of a positive employee/manager relationship.

Item 12: Are There Opportunities to Learn and Grow?

Good team members are always interested in learning new things and growing as team members. An appropriate atmosphere and methodology can advance this.

The Peter Principle:

Everyone rises to their level of incompetency.

In a long term organization most of the people are incompetent as a result of this.

Peter's Corollary:

In time, every post tends to be occupied by an employee who is incompetent to carry out their duties, and work is accomplished by those employees who have not yet reached their level of incompetence.

Peter, Laurence J; Hull, Raymond (1969). The Peter Principle: why things always go wrong. New York: William Morrow and Company.

HIRING CRITERIA:

Which Of The Following Are Proper Initial Hiring Criteria?:

Did they show up on time?

Were the forms completed properly?

What were they doing while completing the forms? (Ex: Talking on the phone.)

How was their performance on typing, grammar and sorting tests (if job related).

How did they answer interview questions.

Nepotism.



If the applicant passes the above, then they get an interview.

Applicant Statement

APPLICANT'S STATEMENT:

I certify that answers given herein are true and complete to the best of my knowledge.

I authorize investigation of all statements contained in this Application for Employment as may be necessary in arriving at an employment decision.

I further authorize Gassman, Crotty & Denicolo, P.A. access to reports prepared by any credit reporting bureau or agency, and direct such agencies to provide a copy of my report at the request of Gassman, Crotty & Denicolo, P.A.

This application for employment shall be considered active for a period of time not to exceed 45 days. Any applicant wishing to be considered for employment beyond this time period should inquire as to whether or not applications are being accepted at that time.

I hereby understand and acknowledge that, unless otherwise defined by applicable law, any employment relationship with this organization is of an "at will" nature, which means that the Employee may resign at any time and that the Employer may discharge Employee at any time with or without cause. It is further understood that this "at will" employment relationship may not be changed by any written document or by conduct unless such a change is specifically acknowledged in writing by an authorized executive of this organization.

In the event of employment, I understand that false or misleading information given in my application or interview(s) may result in discharge. I understand, also, that I am required to abide by all rules and regulations of the Employer.

Signature of Applicant:_____ Date:_____

Authorization for Release:

AUTHORIZATION FOR RELEASE OF INFORMATION FOR BACKGROUND INVESTIGATION

In consideration of my application for employment (including contract for services) with GASSMAN, BATES & ASSOCIATES, P.A. I authorize GASSMAN, BATES & ASSOCIATES, P.A., acting on its own or as an agent of any other company or organization and their respective agents, to conduct and report research and share with each other, information about my background including, but not limited to, information about my prior employment, education, driving record, consumer credit history, criminal record, workers compensation claims and general public records history.

Further, I understand that an investigative consumer report may be requested from various Federal, State, Local and other agencies. I understand that such an investigative report may contain information about my background, mode of living, character and personal reputation; and that I am entitled to be advised of the nature and scope of the investigation requested within a reasonable time after I ask for this information in writing.

I HEREBY AUTHORIZE, WITHOUT RESERVATION, ANY PERSONS, AGENCY OR OTHER ENTITY CONTACTED BY GASSMAN, BATES & ASSOCIATES, P.A. TO FURNISH THE ABOVE MENTIONED INFORMATION.

I understand that any investigative consumer report requested will be used strictly for employment purposes as defined under the Fair Credit Reporting Act §603(h), as a report to be used for the purpose of evaluation for employment, promotion reassignment or retention as an employee. I release GASSMAN, BATES & ASSOCIATES, P.A., their respective officers, directors, employees and agents, and all persons, agencies, and entities providing information or reports about me from any and all liability arising out of the release of any such information or reports.

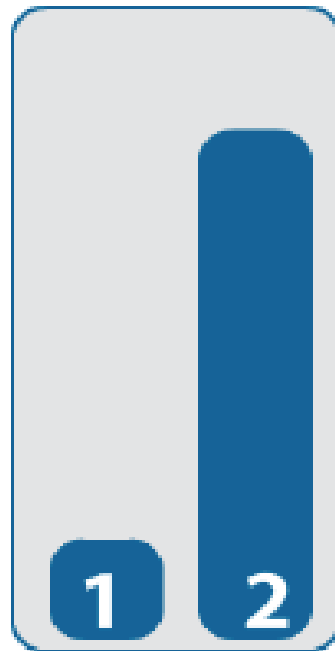
The information requested below is needed for the purpose of positive identification and to complete verification procedures (Please print clearly).

Name:	
Other Names Used (maiden, alias):	
Social Security Number:	Date of Birth:
Race:	
Driver's License Number:	
Present Address:	
City/State/Zip:	From (mo/yr): _____ to _____
Present Phone:	
Cell Phone:	
Prior Address #1:	
City/State/Zip:	From (mo/yr): _____ to _____
Prior Address #2:	
City/State/Zip:	From (mo/yr): _____ to _____
Signature:	Date:

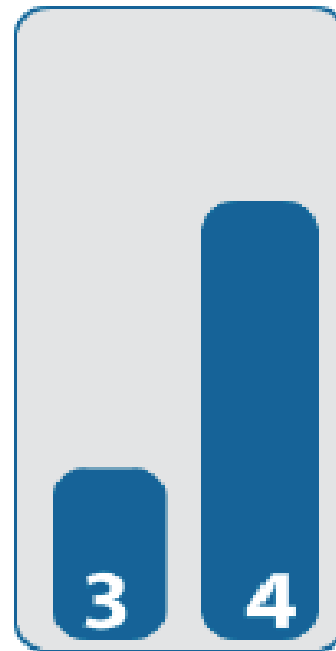
Client Name: Gassman, Bates & Associates, P.A.
 Client Number: [REDACTED]
 Participant Name: [REDACTED]
 Position: Mailroom
 Profile Number: [REDACTED]
 Report Date: December 11, 2013

Omnia Profile: **SELECTION**

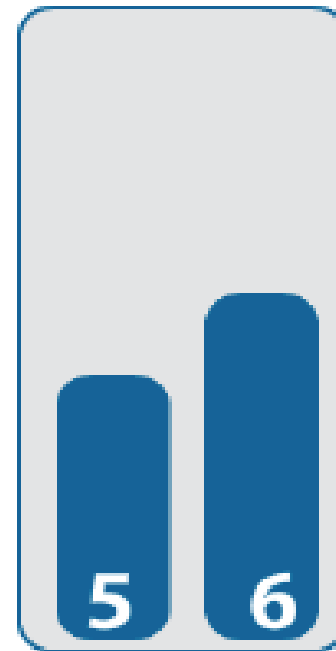
ENERGY:	Optimal
PERSPECTIVE:	Elevated
INTENSITY:	Optimal
COMPATIBILITY:	Recommend
Job:	Strong
Cultural:	Strong



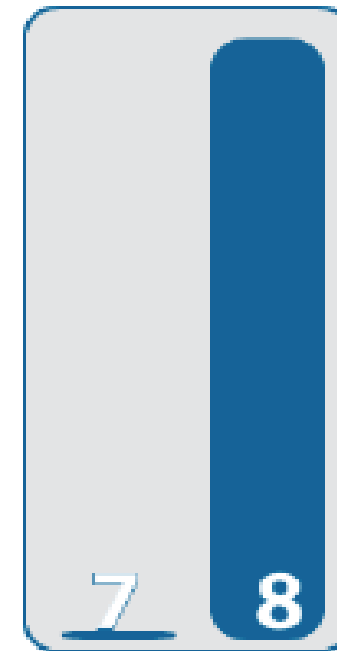
1: Assertive, competitive
 2: Cautious, helpful



3: Sociable, empathetic
 4: Analytical, objective



5: Fast-paced, multi-tasking
 6: Patient, methodical



7: Independent, decisive
 8: Structured, detailed

ANALYST COMMENTS WRITTEN FOR: [REDACTED]

[REDACTED] Omnia Profile is similar to the criteria for the mailroom position. Her compatibility rating is 7.8 out of 10, so she is recommended. She shows the strong task focus noted in the target candidate. Probably even more so than [REDACTED] and [REDACTED] [REDACTED] is apt to concentrate on her work. She additionally appears strongly analytical and logical, and she likely interfaces well with numbers, data, information and technology. [REDACTED]'s commitment to quality and respect for protocol seems extremely high; more so than [REDACTED] and most people we evaluate. [REDACTED] holds herself to a high standard when it comes to precision and compliance. Sometimes, she could set her sights too high and experience perfectionism; it might be hard for her to let go of work or to accept critical feedback. She may be tough on herself if she makes errors, as she probably views her job performance as a direct reflection of herself. She should reliably apply advice and follow instructions, though, and she is likely to mind the details very closely as she handles administrative duties.

Further, [REDACTED] can probably modify her tempo as needed to match the demands of the day. Similar to [REDACTED], she shows a little more persistence than urgency, but picking up her pace a bit or adjusting to accommodate changes and new priorities does seem within her comfort zone. [REDACTED] is likely to tolerate repetition and routine well too, and she can likely see long processes through. Her commitment to the team looks very strong; like the target, [REDACTED] and [REDACTED] [REDACTED] appears content to stay behind the scenes and eager to do her part to help the organization achieve goals. She ought to pitch in as needed and follow management's lead loyally. She might struggle to take initiative, though, because of the lofty standards to which she holds herself. Give her very attentive, supportive oversight.

Client Name: [REDACTED] Gassman, Bates & Associates, P.A.

Client Number: [REDACTED]

Participant Name: [REDACTED] erndon

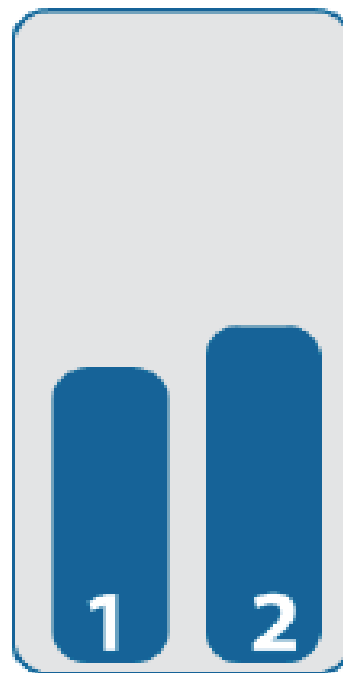
Position: Mailroom

Profile Number: S892849AG

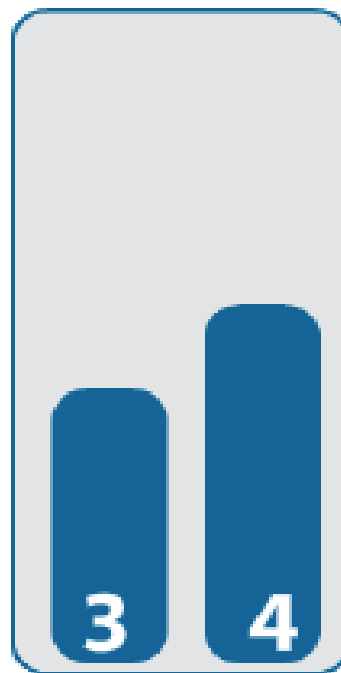
Report Date: December 18, 2013

Omnia Profile: **SELECTION**

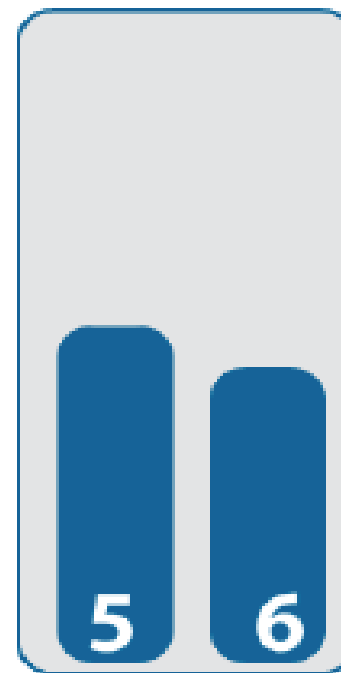
ENERGY:	Optimal
PERSPECTIVE:	Optimal
INTENSITY:	Low
COMPATIBILITY:	Conditional
Job:	Moderate
Cultural:	Moderate



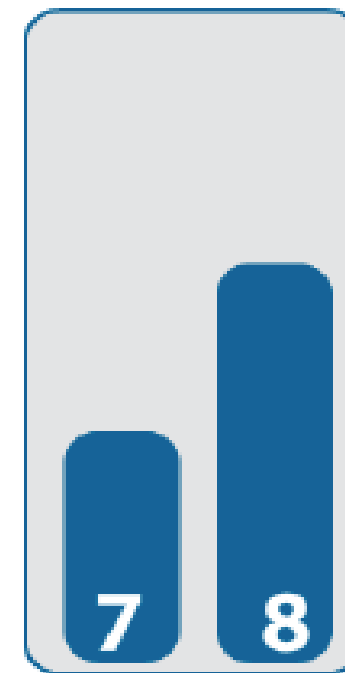
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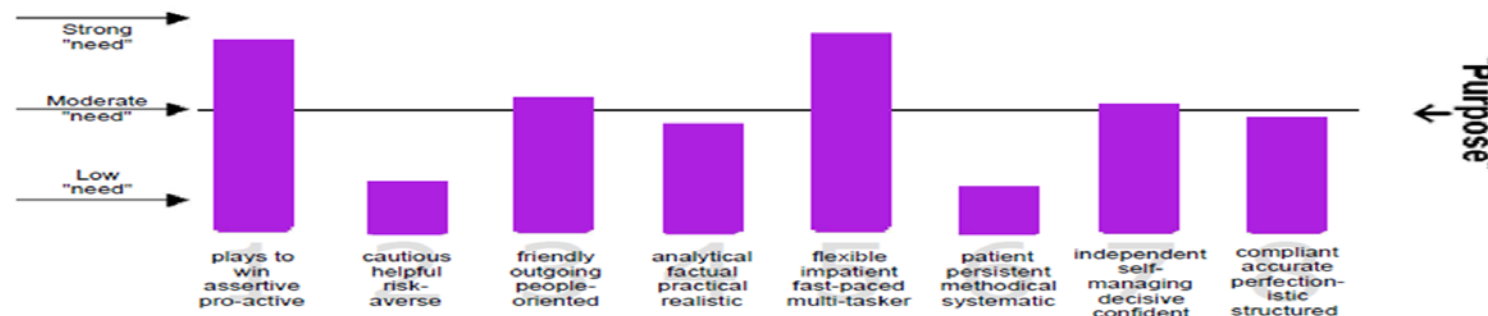
7: Independent, decisive
8: Structured, detailed

ANALYST COMMENTS WRITTEN FOR: [REDACTED]

Comparison of [REDACTED] Omnia Profile results to your specified criteria for the mailroom position reveals a similarity of 7.0 out of 10. On this basis, she is conditionally recommended. [REDACTED] has described herself in a neutral, noncommittal fashion, as a little of everything. Her preferences for work behaviors and motivators are muted, not well defined. This is not uncommon to see in recent graduates. [REDACTED] might not yet have a clear idea of what would motivate her in a work environment, and may need to spend some time in your firm in order to start getting a clearer picture of what inspires her. Initially, set flexible, short-term goals with her, as you may need to update and modify her objectives once her needs come more clearly into focus. At present, [REDACTED]'s clearest need is for structure in the form of specific guidelines and ongoing feedback from her manager. Let her know precisely what is expected and discuss her work confidentially and diplomatically. Despite her desire for constructive commentary, she may sometimes feel demoralized by criticism.

[REDACTED] shows measures of the supportive qualities you seek. She seems fairly detail oriented like [REDACTED] and your target candidate. She also seems comfortable working on solitary tasks. She should be thorough when copying, faxing, scanning, filing and processing mail. She seems willing to follow through and adhere to procedures. [REDACTED] also appears able to relate to clients in a helpful, personable way, and should endeavor to answer their questions fully or accurately direct them to the proper party. She seems comfortable assisting others and working as part of a team, though she can also be proactive when handling her day-to-day work. She appears moderately flexible and can likely handle a few different tasks at once, but she shows some tolerance for routine and repetition as well.

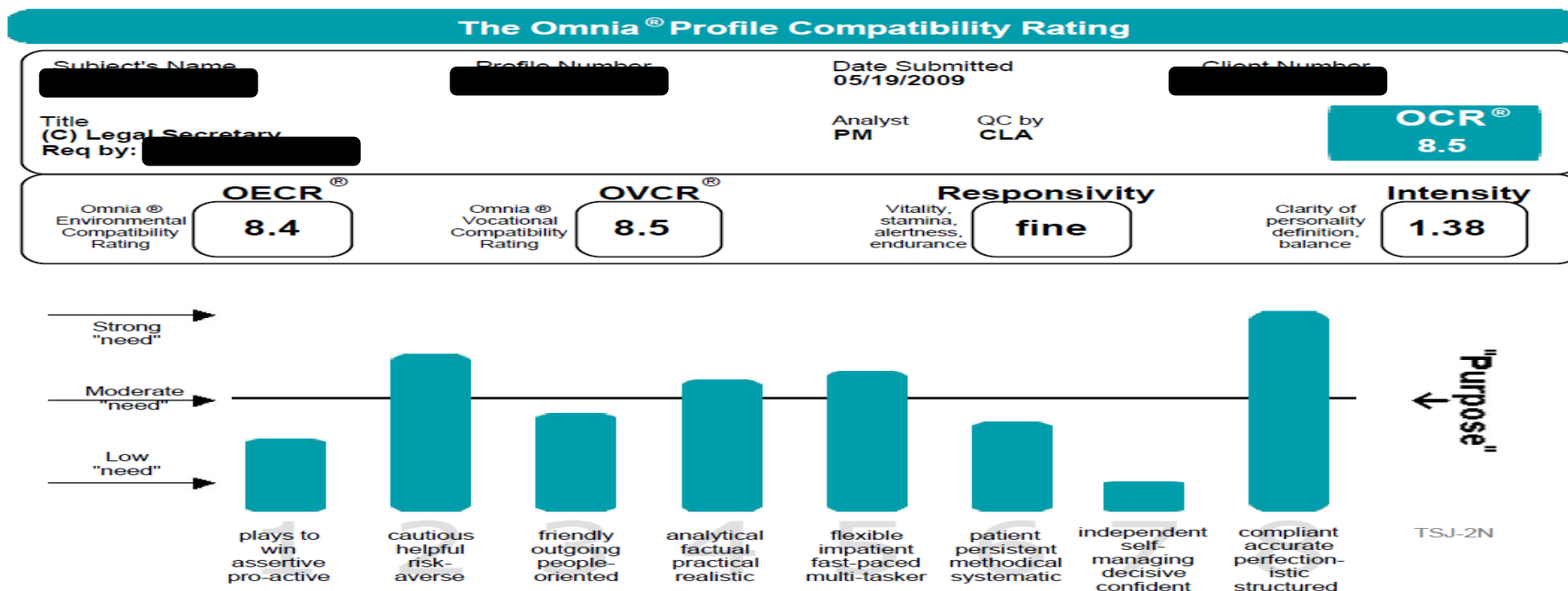
The Omnia® Profile Compatibility Rating				
Subject's Name [REDACTED]	Profile Number [REDACTED]	Date Submitted 08-25-2005	Client Number [REDACTED]	
Title (C) Legal Secretary [REDACTED]		Analyst KLM	QC by JK	OCR® 6
Omnia® Environmental Compatibility Rating OECR® 6.2	Omnia® Vocational Compatibility Rating OVCR® 5.8	Responsivity Vitality, stamina, alertness, endurance fine		Intensity Clarity of personality definition, balance 1.43



Analyst Comments

[REDACTED] Omnia Profile shows her to be dissimilar to your needs in this legal secretary position. [REDACTED] appears far too independent, people oriented, competitive and assertive to be satisfied transcribing dictation, preparing documents, working with numbers, and handling other administrative duties. She might look forward to the client interaction you indicate, but you tell us this is only 10% of the job. Spending the other 90% on data-intensive, solitary clerical responsibilities would likely frustrate [REDACTED]. While the work is new, she may show some interest, but once her tasks start to feel routine and predictable, we think she will grow restless. She might focus more on clearing her to-do list quickly than on making sure things are done correctly. She could show irritation if she is required to do things according to specific procedures instead of being allowed to accomplish tasks her own way. [REDACTED] seems quite take charge and ambitious. She may try to challenge Alan's authority, though we think he would quickly squelch this since he appears more aggressive than [REDACTED]. Still, the two might not work comfortably together because they are perhaps too similar. Ideally, you need someone in this position who will agreeably take on detail-oriented assignments and handle the details that Alan delegates. [REDACTED] might prefer to be the one handing off the details instead of the one finishing them.

[REDACTED] tells us she is charming and personable. She probably projects a confident image, and she seems able to build relationships capably. People with her personality type often find long-term success and happiness working in management and sales. [REDACTED] needs a job that challenges her on an individual level and rewards her for her solo accomplishments. She probably responds best to short-term, growth-oriented goals, and she needs a fairly significant amount of managerial latitude.



Analyst Comments

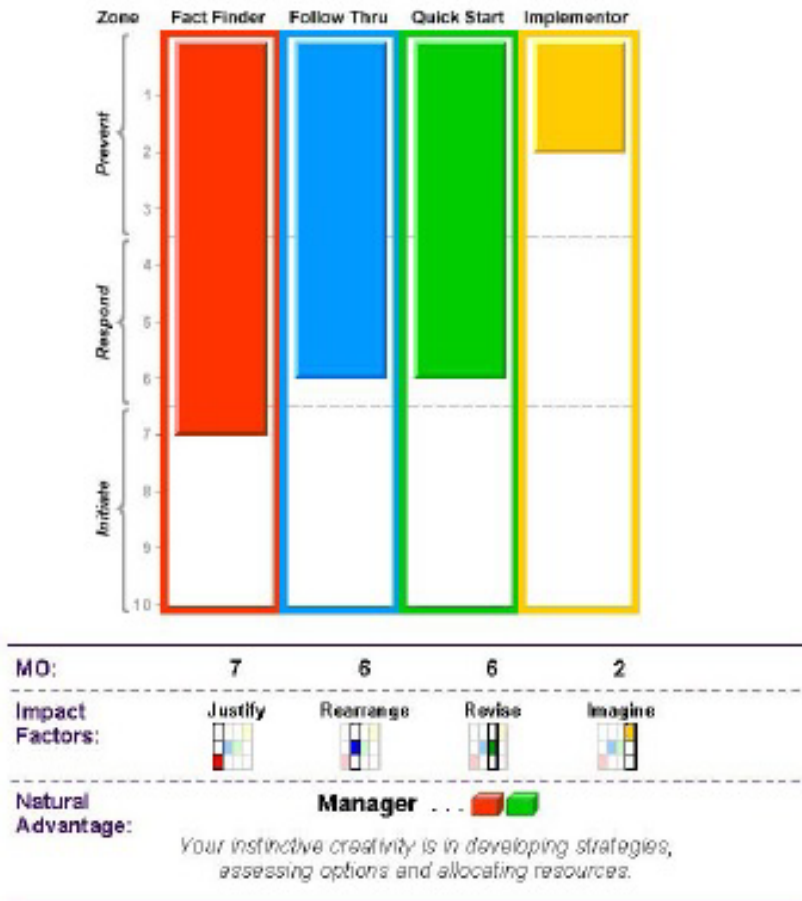
[REDACTED] Omnia Profile results score 8.5 out of 10 when compared with your needs for a legal secretary. This is the basis for a recommendation. [REDACTED] tells us she is a supportive and meticulous team player who is task focused, by the book, articulate, fast paced and service minded. She looks even more detail attentive than [REDACTED] and [REDACTED] appears to hold herself to extremely high standards for her output and could even be prone to perfectionism. Therefore, offer thorough training initially and ensure she knows when to call a task complete. [REDACTED] likely prides herself on both the quality and speed of her output. She should find Alan's brisk timetables invigorating rather than stressful. [REDACTED] can likely comfortably juggle several priorities at a time, though she is not likely to rush to the point she risks error. [REDACTED] looks similar to [REDACTED] in her desire to avoid conflict and work in the background in support of others' efforts. She should be self-sufficient within her job description once she knows what is expected of her, but she is apt to seek guidance if faced with anything out of the ordinary.

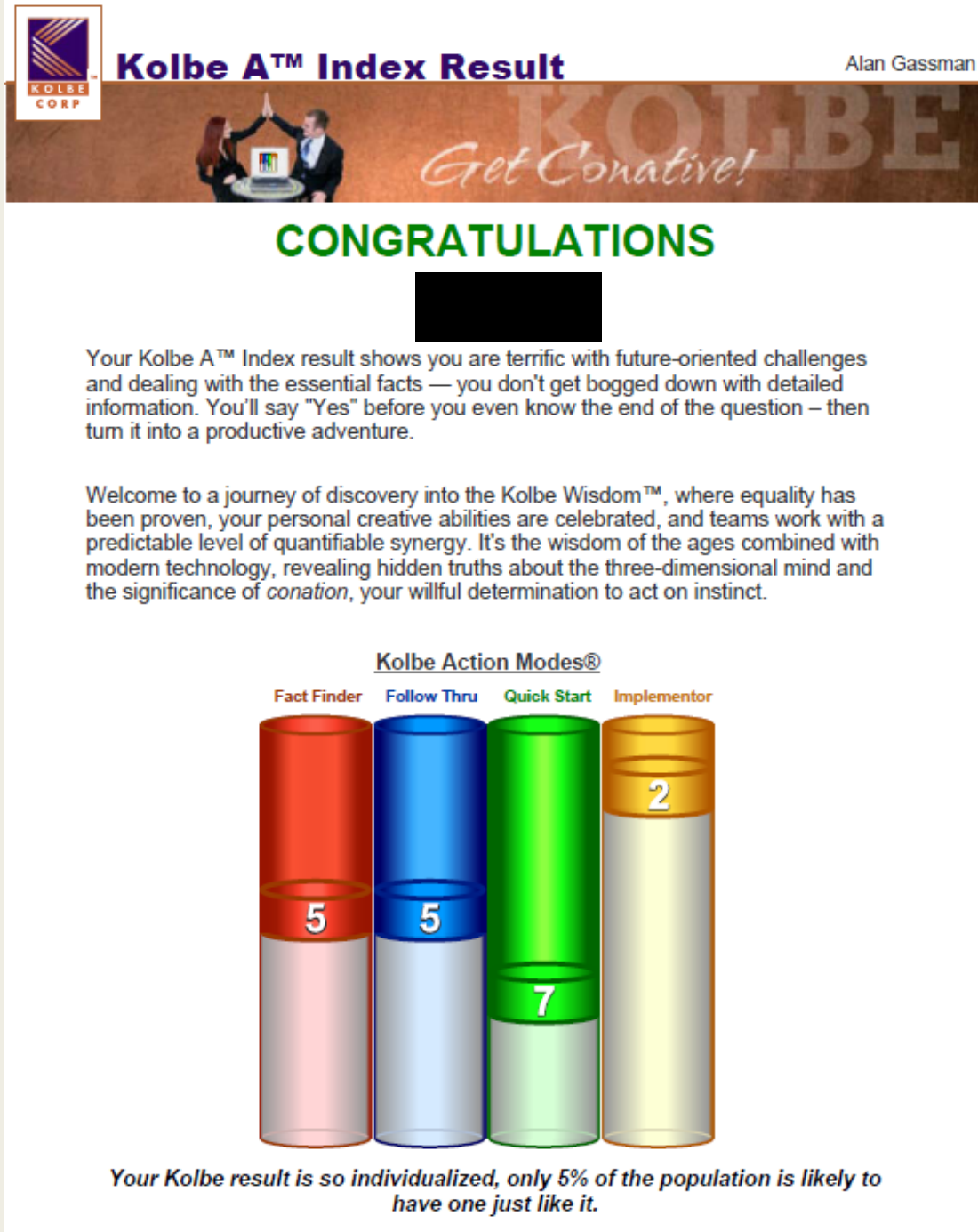
[REDACTED] may be motivated by intellectual challenges. She seems to possess fine critical thinking and objectivity. At the same time, [REDACTED] may be somewhat more people oriented than the target; she may prove adept at interacting in a cordial and helpful manner with clients. Still, [REDACTED] looks at ease spending the bulk of her time attending to solitary duties such as dictation transcription, preparation of documents, and working with numbers. She is apt to possess a keen eye for discrepancies and resolve inconsistencies conscientiously. She may benefit from input on pacing herself and being realistic in her objectives; she could sometimes expect too much of herself and get overextended in the process. Offer structure, thorough instruction and tactful feedback.



Kolbe A™ Index Results

Marcia Gassman





Basic Considerations For Any Contract

- Make sure that everything expected and required is covered clearly in writing.
- Keep it simple - a judge or arbitrator knowing nothing about your industry may have to interpret it.
- Read every sentence - consider where every comma should go.
- Make sure the Agreement is signed by both parties, and that both parties have copies.
- If the Employee “steals” the original, and you do not have copies, then you do not have an Agreement.
- Anyone who acts as his own lawyer has a fool for a client. F. Lee Bailey.

Basic Considerations For Any Contract

- The Term of the Agreement.
 - *The term of Employment.*
 - *Consider an Evergreen Clause.*
 - *All language needs to take into account that the Term of Agreement may be shorter or longer than the “term of actually working.”*

- Employment Agreement verses Independent Contractor Agreement.

Is a hybrid possible?

Your salary is \$200,000 a year for office work, and your company will charge us \$20,000 a year for after hours consulting and preparing special reports as an Independent Contractor (to enhance your tax planning).

- A Non-Compete should start on the last date of employment, as opposed to “upon termination of this Agreement” to avoid inadvertent calamity.

Basic Considerations For Any Contract

- Typically best for each party to be able to terminate without cause with advance notice.

What are the rights and responsibilities if this happens?

Can each party terminate for cause, and should there be an opportunity to correct any breach?

- Pension Benefits

- *Cannot be waived, except by a highly compensated Employee, who can then not re-enter the plan later.*
- *If you leave and are not vested, then you lose a portion of the account that the Employer contributed to.*
- *The Employee cannot get a bonus upon termination based directly upon lost pension account amounts - but perhaps the following would work:*

Basic Considerations For Any Contract

■ Disability Insurance.

- *Group disability insurance is usually far inferior from an individual policy.*
- *If the Employer pays for disability insurance, then the benefits are taxable.*
- *If the Employee pays, then the benefits are not taxable.*
- *How about if the Employee pays, and the Employer reimburses on the first day of the following year each year?*

■ Resolving Disputes.

- *Waiver of jury trial?*
- *Require mediation?*
- *Require arbitration.*
- *Florida law does require payment of attorneys' fees, even if the Agreement does not specify.*
- *Specify right of set-off?*

General Information

- Employment is an age old responsibility between an Employer and an Employee.
- The relationship entails many factors and responsibilities:
 - *The Employer is responsible for the acts of the Employee that are within the scope of employment.*
 - Limit the scope of employment to the services and functions necessary
 - Exclude aspects of employment that could cause undue liability to the Employer.
- EXAMPLE** - Have the Employee own her own car, and taking other employees to the bowling alley after work for drinks and bowling is not part of the job.
- Remember the Latin words “Respondeat Superior.”
- The Employer is responsible for the acts and omissions of an Employee.

General Information, Continued

- Consider an Independent Contractor relationship instead.
 - *The Employer is not responsible for the acts or omissions of an Independent Contractor, unless:*
 - A strict liability law applies; or
 - The Employer was negligent or somehow jointly responsible for the conduct that caused harm.
- Florida law has been very generous in characterizing individuals as Independent Contractors, even where they would clearly have to be treated as employees for federal income tax purposes.
- It is possible to treat an Independent Contractor as an Employee for income tax purposes, although doing so will be deemed a factor towards having the person considered to be an Employee.

General Information, Continued

- **GET IT IN WRITING** - When someone will be doing random tasks “on their own” for your benefit, at very minimum perhaps send an email to say “you are acting as an Independent Contractor, and will be solely responsible for determining how to effectuate this task, when to work on it, where to work on it, and you are solely responsible for making sure that you provide yourself with all tools and resources needed.

The fixed amount that we will pay you to accomplish the above task is \$_____. The due date is _____.

You are being treated as an Independent Contractor, and we will issue you a 1099 at the end of the year.

I assume that you have all of the proper insurances associated with your activities. Please send me a copy of your general liability policy declaration page, and your automobile liability policy, so that we can help assure that you have proper coverages before getting started with this task.”

- Florida Unemployment and Worker’s Compensation Rules.

Every state has rules which protect both Employees and Employers under the category of what is called “Worker’s Compensation.”

If an Employee is injured “on-the-job”, they cannot sue the Employer, even if the Employer was negligent in allowing them to become injured, except under very rare exceptions.

Instead, the Employee must receive compensation under their Worker’s Compensation insurance policy, and any medical treatment needed as the result of the on-the-job injury is also paid for by Worker’s Compensation.

- Make sure the Employer has Worker’s Compensation, and covers all employees.
- This is an advantage of having someone treated as an Employee verses an Independent Contractor - Independent Contractors can sue an Employer whose negligence causes them to be injured (use hold harmless and indemnity clauses with Independent Contractors for this reason).

General Information, Continued

- Worker's Compensation rates vary, based upon classification of workers and the track record of the Employer. A sharp Worker's Compensation agent may help a business to be restructured to reduce Worker's Compensation rates. This may involve "exporting" certain functions to other employees or businesses.

EXAMPLE - Counter people who also lift heavy objects to take them to the customer's car might be separated so that five of them work at the counters, and one of them does the carrying.

- Unemployment Compensation.

Most employees who have worked in a job for a certain period of time are entitled to receive Unemployment Compensation when they between jobs, if they have been terminated from their last job without "very good cause."

1. In Florida, the Employer does not have to contribute towards Unemployment Compensation of an Employee who is terminated within 90 days of starting the job.
2. Social scientists have noticed that a new Employee has an adrenaline rush and attitude which causes them to perform much better than normal for the first 60 days after taking a new position.

You have to size them up in 90 days, and what happens when they start faltering at day 91?

- This may be the Employer's fault for failure to use reliable psychological testing.
- Don't ignore the new Employee - make sure that the first day is a true test.
- Give them sample work or something that is a very good example of what they should be able to learn and accomplish in the first two to three days before spending significant time and energy training someone unlikely to "make it."

General Information, Continued

- Make sure that the new Employee has all of the information and tools needed to accomplish their job, so that they do not falter as the result of organizational issues.
- Minimum Written Documentation For A New Employee.
 1. Employment application.
 - a. Confirm no criminal background.
 - b. Confirm that the Employer knows, in writing, of any physical or mental issues that can appropriately be asked about.
 - c. Make sure that the Employee has reasonable accommodations for any known issues.
 - d. Have the Employee sign a 90-day Unemployment Compensation Notice.
 - e. Have Employee sign Anti-Harassment Policy (annually?).
 - f. Issue Employment Manual with receipt - Employment Manual should state that this is an “at will Employee” if the arrangement is in Florida or another state that has “at will employment.”
 - g. Term and Termination.
 - h. Duties.
 - i. Prohibitions against inconsistent conduct.
 - j. Obligation to report illegal or inappropriate conduct.

Probationary Period Acknowledgment

Employee 90 Day Letter

EMPLOYEE NAME _____
PLEASE PRINT

As you become an employee we wish to inform you that all employees are governed by a 90 day probationary period.

The Florida Unemployment Compensation Law provides that any claimant who has voluntarily left work without good cause or has been discharged by the employing unit for unsatisfactory job performance within the 90 day probationary period, shall be disqualified from receiving benefits.

Please sign below that the 90 day probationary period has been explained to you.

EMPLOYEE SIGNATURE - _____ DATE- _____

Company Policy on Sexual Harassment

GASSMAN, CROTTY & DENICOLA, P.A. will not tolerate harassment of any kind toward any of its employees. We have taken steps to protect you from harassment in the workplace.

Your cooperation is vital for your protection and well-being. Please observe the following procedures and know your rights as stated below:

1. It is against our policy for any worker, whether male or female, to harass another worker in words or actions. Each of the following is against our policy.
 - a) *Making unwelcome sexual advances or requesting sexual favors;*
 - b) *Making comments on a worker's physical appearance or body, or making comments on a worker's presumed sexual habits, preferences, desires, etc.;*
 - c) *Touching or caressing a worker without the worker's prior, express permission;*
 - d) *Displaying obscene or sexually-oriented or suggested photographs, drawings or other visual or oral material;*
 - e) *Engaging in obscene or sexually-oriented gestures, activities or comments;*
 - f) *Creating an intimidating, hostile or offensive work environment to any employee or any class or group of employees.*
2. It is against our policy for any worker to use a worker's submission to or rejection of the above conduct by another worker as a factor in any employment decision affecting the worker submitting to or rejecting the conduct.
3. We will not condone any harassment of employees. All workers, including, but not limited to, supervisors and management personnel, will be subject to severe discipline, including discharge for any harassing behavior.
4. Any employee who feels victimized by harassment should immediately report it to Alan Gassman or their appropriate supervisor. We will undertake a careful investigation, which may include interviewing other employees who have knowledge of the alleged incident or similar situations. Your complaint, along with the investigative steps and findings, will be documented as thoroughly as possible. Any appeals from this decision will be handled in accordance with our dispute resolution procedures.
5. No employee will be subject to any form of retaliation or discipline for pursuing a harassment complaint.

Computer Usage Acknowledgment:

ACKNOWLEDGMENT

THE UNDERSIGNED, an Employee of GASSMAN, CROTTY & DENICOLA, P.A., does hereby acknowledge that with respect to e-mail and Internet access in the office on the computers that I operate, that GASSMAN, CROTTY & DENICOLA, P.A. does periodically monitor the use, and may do so without notice. I understand that the computer system is for business use only, and that my activities on the computer for personal use when I am “off the clock” may be monitored. The above includes AOL Instant Messenger, MSN Messenger and any other instant messenger service. Employee agrees not to download any programs from the Internet without approval.

“Employee”

General Information, Continued

- Non-Competition covenants - statutory and case law considerations.
 - *You have to assume that they are enforceable if you are an Employee.*
 - *An Employer needs a legitimate business interest to make it enforceable.*
 - *Florida Statute Section 542.335(1)(d) can be controlling on length of time.*
 - *Only reasonableness applies with respect to geographic distance.*
 - *Distance by driving on roads verses “as the crow flies” - use the word “radius.”*
 - *Avoid the “unclean hands” defense by requiring the Employee to immediately report any situation that would constitute “unclean hands” - when the Employer has done something bad, so that it would not be equitable for the Employee to be subject to the provision.*
 - *Even outside of the radius, you can prevent the Employee from accepting the Employer’s customers, patients, or employees.*
 - *These provisions are often over-broad, such as “will not practice medicine within ten miles of any location of Employer” - what if Employer merges with a company that has 1,000 locations in the United States?*
 - *Typically, a Medical Employment Agreement would not prevent working for the VA, teaching, working for community health systems, or becoming a non-practicing physician medical director for an insurance plan, but only if the language explicitly allows this.*
 - *How about a reduced term and radius based upon the term of employment.*

Employment Agreement Language Negotiated on a Recent Agreement - Compensation

A signing bonus of Forty Thousand Dollars (\$40,000.00), payable at Ten Thousand Dollars (\$10,000.00) per Quarter, provided that such bonus shall be prorated for any quarter that is in process at the time of Employee's termination, provided that negotiations were in progress when such termination was commenced, and that such termination is for Cause by Employer or without Cause by Employee. The first payment will be made on June 1st, 2017, and then September 1st, 2017, January 1st 2018 and April 1st, 2018. For example, if Employee is terminated without Cause and his last day of work is February 15th, then his final quarterly payment would be approximately \$5000.

Employment Agreement Language Negotiated on a Recent Agreement - Compensation

(g) Employer and Employee acknowledge that termination of employment before Employee is fully vested on the pension plan of Employer will cause loss of a percentage of amounts placed in such plan for Employee. If such termination is the result of a termination without cause initiated by Employer, or the sale of Employer's practice, or termination with cause by Employee because of Employer's uncorrected breach, then Employer will pay to Employee as additional severance pay, an amount equal to the total amount contributed to such plan by Employer, increased by an assumed rate of return of four percent (4%) per year of such amounts contributed, and multiplied by the percentage that is not vested. For example, if Employer terminates employee without cause at the end of year 3 and has contributed \$40,000 at the end of year two and \$40,000 at the end of year 3, and Employee is 40% vested, then 60% of \$81,600 times 60% is \$48,960 in severance pay, and Employer would have 60% of the actual account balance of Employee as a reduction in its going forward pension contribution costs, or as an addition to all other accounts.

Employment Agreement Language Negotiated on a Recent Agreement – Facilities and Business Expenses

_____ (a)
_____ shall furnish the office space, equipment, stenographic help, supplies,
and such other facilities and services needed by the Employee as determined by _____ in
rendering services on behalf of _____. Employee shall be required to maintain an home office
and a home computer to be responsive as necessary after hours as and when applicable.

Employment Agreement Language Negotiated on a Recent Agreement – Restrictive Covenants

_____ Notwithstanding the above, the above covenants will apply only in County Florida and within a 15 mile radius of any facility having radiology services where Employee is integrally involved in CEO management thereof, and Employee will not be prevented from working for medical groups or companies like hospitals, primary care groups, health plans or other entities in a role that is not involved in the management, negotiation for, consulting for, or support of any radiology physician group or similar entity. For example, Employee would not be prevented from working as an radiologist, or for a hospital in a department other than the radiology after termination of employment.

Employment Agreement Language Negotiated on a Recent Agreement – Ownership Purchase Option

1. Commencing in the ~~third~~ second year of the Term, provided Employee is in compliance with all terms and conditions contained herein, Employee shall have the option to purchase ownership in [REDACTED]. The ownership percentage will be as mutually agreed between Employee and [REDACTED], and the purchase price will be determined based on a valuation of [REDACTED] at the time of purchase. The terms and conditions of ownership will be shared with Employee in general form by written description of all major details on or before the end of the eighteenth (18th) month of employment, with full legal documents to be provided on or before the twenty-fourth (24th) month of employment, notwithstanding that Provider may change its decision and the terms thereof to the extent necessary to compensate for any material changes in the medical practice, the marketplace, or the performance of Employee's duties under this Agreement. Employer will notify Employee in writing of any change of ownership of Provider. In addition, Employee will be offered the opportunity to have ownership in one or more ambulatory surgical centers where Employee performs Employee's services in a percentage at least equal to the percentage of ownership that one or more of the senior physicians of the Provider will have in such centers based upon the same purchase price paid by such senior physicians. Any agreements shall provide that Employee will be treated equivalently to the senior physicians in the practice for compensation and work responsibility purposes after buying into the practice, with the buy-in price to not exceed the pro rata percentage purchased multiplied by the net fair market value of the physical assets and financial assets of Provider, without any value provided for goodwill, contracts, or going concern value.

Employment Agreement Language Negotiated on a Recent Agreement – Litigation

1. In case of any action or proceeding relating to the interpretation, construction or enforcement of this Agreement, or for a breach of any of the terms and conditions of this Agreement, the prevailing party in such litigation shall be entitled to recover from the non-prevailing party its reasonable attorneys' fees and costs. **EACH PARTY WAIVES THE RIGHT TO A TRIAL BY JURY AND AGREES TO ENGAGE IN MEDIATION UPON THE WRITTEN REQUEST OF THE OTHER PARTY WITHIN THIRTY (30) DAYS OF SUCH REQUEST. IF THE PARTIES CANNOT AGREE UPON A MEDIATOR AND A SCHEDULE FOR A GOOD FAITH MEDIATION WITHIN THIRTY (30) DAYS OF SUCH REQUEST, THEN THE PARTY THAT HAS MADE SUCH REQUEST MAY FILE FOR MEDIATION PURSUANT TO THE RULES OF MEDIATION UNDER THE AMERICAN ARBITRATION ASSOCIATION, AND THE PARTIES WILL EQUALLY SHARE THE COST OF AMERICAN ARBITRATION ASSOCIATION CHARGES FOR A MEDIATION IN SUCH EVENT.**

Our Standard Mediation and Arbitration Language for Employment Agreements

Mediation and Arbitration. It is the intention of the parties that no dispute under this Agreement or any other dispute between the parties related to their employment or any other relationship or occurrence including but not limited to, claims brought pursuant to any local, state, or federal law regarding discrimination in employment, except as expressly provided in this section, will be the subject of any court action or litigation in the court system. The parties recognize that the problem resolution processes of mediation and arbitration are proper to resolve most issues between the parties. It is the intention of the parties that this Agreement shall be construed and interpreted in a fair and equitable manner based upon the facts and circumstances of the parties taking into account the present intention of the parties to have a fair and equitable agreement under the terms and conditions set forth herein. Expressly excluded from mediation and arbitration are disputes relating to injunctions, writs of possession, recovery of property under a security agreement, and other equitable relief.

Our Standard Mediation and Arbitration Language for Employment Agreements, Continued

i. Mediation. If any party hereto wishes to resolve an issue arising out of or relating to this Agreement, then such party must first give notice of a request for mediation to the other party which notice shall set forth the names of not less than four (4) court approved mediators from the lists available from the Circuit Court of Citrus County or such other mediators on whom the parties may agree. The party receiving such notice shall choose one or more of such mediators within seven (7) days of receipt of such notice and a mediation conference will be scheduled as soon as feasible between the parties and their respective advisors, and the parties and their advisors will cooperate fully with respect to sharing of information and attendance at meetings in order to seek resolution. If the party receiving notice does not choose a mediator within seven (7) days of receipt of such notice, then the party who has sent such notice may choose the applicable mediator or mediators and may schedule the mediation conference. If resolution of the issues between the parties cannot be resolved in mediation within twenty (20) days of the selection of a mediator, then the matter shall be presented to formal arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association as provided below.

Our Standard Mediation and Arbitration Language for Employment Agreements, Continued

ii. Arbitration. If mediation is unsuccessful, then the parties shall resolve the issue in arbitration. The arbitration shall be conducted in accordance with the provisions of the Commercial Arbitration Rules of the American Arbitration Association, except as provided herein. The arbitration shall be conducted with a panel of three (3) arbitrators to be retained by the parties, or to be appointed by the American Arbitration Association if the parties cannot agree, provided that if the amount in dispute does not exceed \$100,000 then a single arbitrator shall be selected unless one party or the other requests three (3) arbitrators and agrees to pay in full for one of the three (3) arbitrators notwithstanding the outcome of the arbitration and the award of attorney's fees and costs that may otherwise apply. Arbitration shall take place within thirty (30) days after the completion of discovery as provided below and the decision of the arbitration panel shall be binding upon the parties for all purposes. The arbitration panel is expressly authorized to award all reasonable fees and costs, including attorney's fees, to the prevailing party against any party who has violated this Agreement. If arbitration is in relation to the Hospital Support and/or Recruitment Agreement, any such disputes herein may be handled in the same forum.

Our Standard Mediation and Arbitration Language for Employment Agreements, Continued

iii. Discovery in Arbitration. Each party will cooperate fully with respect to sharing of information in all arbitration proceedings, and will follow such discovery procedures and proceedings as are determined appropriate by the arbitrator or arbitrators who are requested to customize discovery rules to help assure speedy and efficient proceedings to avoid delay and undue expense.

EMPLOYEE NON-COMPLIANCE

Date: _____

Employee Name: _____

Date of Non-Compliance: _____

Description of Non-Compliance: _____

Employee acknowledges the above was discussed: _____

By: _____

The Termination Decision



Think of it as ripping off a Band-Aid.
You can either go slow or fast.

Slow pain goes on and on and can strangle
your business. Fast pain hurts more,
momentarily, and then it is over.



Innovative Termination Techniques

1. Terminate by letter.
2. Terminate by phone call.
3. Terminate away from the office.
4. Don't have the announcer at a football stadium fire the employee.
5. Go on a cruise and call them from the farthest port away.



Monthly Webinar Series Courtesy of Gassman, Crotty & Denicolo, P.A.

NEGOTIATION AND DESIGN OF EMPLOYMENT AGREEMENTS

Tuesday, March 28, 2017
12:30 p.m. to 1:00 p.m.

Presented by:

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