THE OBJECTION

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IN THIS ISSUE:

Editor-In-Chief
Jennifer Daugherty
jdaugherty@larsonking.com

Managing Editor
Anthony T. Smith
asmith@murnane.com

the Objection *is distributed electronically to all members of the MDLA.* **the Objection** *accepts submissions on all topics of interest to new attorneys. Please contact the editorial staff for submission information.*

In Limine: From the Editors

Anthony T. Smith
Murnane Brandt

Welcome back! Although the Winter 2007 issue of *the Objection* cannot offer any relief from the bitter cold that has swept over the state for the past week, it does contain well-written articles on a variety of topics by some of our finest up-and-coming attorneys. Hot cocoa for the mind, if you will.

Chad Hintz marks his second contribution to *the Objection* with a well-written article regarding the notice requirements of our professional liability policies. Rylee Retzer has authored a helpful overview of Minnesota's Open Meeting Law for those of us with cases involving government agencies. Finally, Amy Amundson closes this issue with some helpful nuts-and-bolts suggestions regarding how to survive and thrive as new attorneys. Without the hard work of our authors, *the Objection* would not exist. We thank Chad, Rylee, and Amy for their contributions to this issue.

See you again in six months. Hopefully it'll be warmer by then.

News and Notes from the MDLA New Defense Lawyers Committee

Lacee Anderson
The Esquire Group™

Happy New Year from the MDLA New Lawyers Section Chairs! Amy Amundson and I took over as co-chairs of the New Lawyers Section last August, and the New Lawyers Section has been very active over the past year.

We kicked off the year with the Annual Trial Techniques Seminar in Duluth in August. In between great presentations, networking events, and the family picnic. There was also plenty of fun to be had at Grandma's and Fitgers, where a few brave souls even attempted renditions of their favorite songs at karaoke.

This past fall saw the Brown Bag CLE series continue with the November 2006 presentation entitled "Now That I've Passed the Bar Exam, What Can I Do To Benefit My Community?" This CLE featured speakers from the Minnesota ACLU, Chrysalis Housing Discrimination Law Project, Immigrant Law Center of

Minnesota, SMRLS, MSBA Pro Bono Development, and the Volunteer Lawyers Network, who discussed how new lawyers can better their communities through various pro bono opportunities. It was a great presentation with lots of positive feedback from attendees.

For the third year in a row, members of the MDLA New Defense Lawyers Committee will kick off the MDLA Annual Mid-Winter Conference at Arrowwood Resort in Alexandria with the Mid-Winter Warm Up on Friday, February 9, 2007 from 3:00-5:00. We look forward to this event serving as the kickoff for the Mid-Winter Conference and strongly encourage our members to attend.

If you have any questions regarding MDLA New Lawyers membership or events, please contact Amy Amundson (aamundson@riderlaw.com) or myself (laceea@esquiregroup.com), or get in touch with Deb Oberlander at director@mdla.org.

We would like to again thank Jennifer Daugherty and Tony Smith for their continuing efforts in publishing *the Objection*. We encourage all new lawyers to get involved in the New Lawyers section. It is a rewarding experience and provides a great opportunity to form friendships with your colleagues.

Preserving Coverage Through an Understanding of the Notice Requirements of Your Claims-Made Professional Liability Insurance Policy

Chad J. Hintz
Burke & Thomas, P.L.L.P.

A typical lawyer's professional liability insurance policy covers "claims" arising out of the rendering or failure to render professional legal services to others.[i] These policies are almost exclusively written on a "claims-made" basis, which defines an insured's reporting requirements under the policy. Claims-made policies are issued under the belief that claims, or incidents that would reasonably support a claim (i.e. "potential claims"), known to the insured will be covered by the policy in place when the insured becomes aware of the claim or facts that could reasonably support a claim. As discussed herein, failure to understand or follow the reporting requirements of a claims-made policy can result in an insurer's ability to properly deny its defense and indemnity obligations for an otherwise covered claim.

The Notice Requirement Under a "Claims Made" Policy, Generally.

A typical "claims-made" provision reads similar to the following:

> CLAIMS MADE COVERAGE
>
> (1) This policy affords coverage for claims first reported to

> the insurer during the policy period if the act, error or omission occurred during the policy period. (hereinafter "Current Acts")
>
> (2) This policy also covers claims resulting from any act, error or omission which occurred prior to the policy period and on or after the prior acts retroactive date if the insured had no knowledge of facts which could reasonably support a claim at the effective date of this policy. (hereinafter "Prior Acts")

Under either the Current Acts or Prior Acts language, the policy further requires the insured to give the insurer written notice of the claim or potential cause of action.

As put forth by the Eighth Circuit Court of Appeals, the rationale behind the claims-made policy is as follows:

> Notice in a "claims-made" policy provides the insurer with knowledge that after a certain date the insurer is no longer liable under the policy, and accordingly allows the insurer to more accurately fix its reserves for future liabilities and compute premiums with greater certainty. Such a policy reduces the potential exposure of the insurer, thus reducing the policy cost to the insured.

Federal Deposit Insurance Corp. v. St. Paul Fire & Marine Insurance Co., 933 F.2d 155, 158 (8th Cir. 1993); *see also Winthrop & Weinstine, P.A. v. Travelers Casualty & Surety Co.*, 993 F.Supp. 1248, 1255 (D. Minn. 1998) ("As to the claims-made policy, the obvious benefit to the underwriter is that there is no open-ended 'tail' after the expiration of the policy.").

Because the notice requirement in a claims-made policy defines the scope of coverage, any coverage afforded under a claims-made policy after the policy terminates resulting from a delay in notice beyond the current policy period would alter a basic term of the insurance contract. Thus, if the insured fails to give notice of either a Current Act or Prior Act during the current policy period once the insured becomes aware of this information, future policies issued by the carrier will not cover the claim or potential claim. Put another way, if the insured does not give notice of the claim within the contractually required time period, there is "simply no coverage under the policy." *Federal Deposit Insurance Corp.*, 933 F.2d at 158 (emphasis added).

Reporting Current Acts.

The Current Acts language of a claims-made policy is straightforward: it defines an insured's obligation to report claims or potential claims that occur during the

current policy period if the insured has knowledge of those matters during this period. For example, when a lawyer fails to bring a claim on behalf of a client within the statute of limitations in Year 1 and the client serves the lawyer with a lawsuit in Year 1 as a result of that failure, the attorney will satisfy the reporting requirements of this "Current Act" if he or she notifies the insurer of the claim during the policy period covering Year 1. Summarized, if a lawyer makes a mistake and becomes aware of that mistake (or is sued because of that mistake) immediately, the Current Acts provision requires the insured attorney to report the matter to the carrier at that time to preserve insurance coverage.

Reporting Prior Acts.

The primary difference between the "Current Acts" and "Prior Acts" language is the date on which the insured attorney becomes aware of the claim or potential claim relative to the policy period in question. Unlike Current Acts, the "Prior Acts" provision addresses situations where the facts giving rise to the claim occur a number of years in the past but, because the insured attorney did not know of the mistake at the time it occurred, the matter was not reported to the insurer until some time in the future under a new claims-made policy.

Returning to the prior example, assume again that the lawyer fails to bring a claim on behalf of a client within the statute of limitations in Year 1. This time, as often happens, neither the client nor the lawyer realize this error until Year 3, at which time the client serves the lawyer with a malpractice lawsuit. The Current Acts language will not apply because the claim was not reported during the Year 1 policy period, the date the facts giving rise to the cause of action occurred. However, the Prior Acts language will apply so long as the insured did not have knowledge of facts that could support a claim at the start of the Year 3 policy period; that is, the attorney had no knowledge of facts in either Year 1 or Year 2 that would tell the lawyer he or she failed to timely serve the lawsuit within the applicable statute of limitations.[ii]

The determination of whether an insured had prior knowledge of a claim or potential claim rests on an interpretation of a set of facts known to the insured at the inception date of the current policy. Minnesota, like the overwhelming majority of other jurisdictions, uses an objective standard to make this determination, not an insured's subjective state of mind. *National Union Ins. Co. of Pitt. v. Holmes & Graven*, 23 F.Supp.2d 1057, 1066 n.7 (D. Minn. 1998) (holding that use of the "reasonably foresee" language "clearly mandate[s] an objective inquiry"); *see also, Ehrgood v. Coregis Ins. Co.*, 59 F.Supp.2d 438 (M.D. Pa. 1998); *Coregis Ins. Co. v. Wheeler*, 24 F.Supp.2d 475 (E.D. Pa. 1998); *Selko v. Home Ins. Co.*, 139 F.3d 146 (3d Cir. 1998); *Smith v. Neumann*, 289 Ill.App.3d 1056, 225 Ill.Dec. 168, 682 N.E.2d 1245 (1997); *Coregis Ins. Co. v. McCollum*, 961 F.Supp. 1572 (M.D. Fla. 1997); *Mt. Airy Ins. Co. v. Thomas*, 954 F.Supp. 1073 (W.D. Pa. 1997); *Stiefel v. Illinois Union Ins. Co.*, 116 Ill.App.3d 352, 72 Ill.Dec. 141, 452 N.E.2d 73 (1983). The objective standard considers what the insured knows, but not what the insured believes. Simply stated, the

objective determination requires an analysis of (1) what the insured knew as of the first effective date of the current policy and (2) how a reasonable lawyer would construe that information.

The theoretical basis for use of the objective standard flows directly from the purpose of the claims-made policy. As previously noted, a primary purpose of these policies is to avoid the acceptance of a known risk or at least to adjust policy language or premiums to reflect that risk. And the method used in claims-made policies to accomplish this purpose is to decline covering claims or potential causes of action that a lawyer has reason to know about prior to the inception date of the most current policy. If court's used a subjective standard to determine whether the lawyer knew of facts that could reasonably result in a claim, the attorney would be permitted to determine unilaterally whether the risk was material and, accordingly, whether it should be reported. It has been stated:

> [A] subjective standard would defeat the ability of an insurance company to assess risk prior to issuing insurance. Clearly, the assessment of a risk is a critical function which affects the determination of whether to issue coverage at all and, if so, at what premium. As a matter of public policy, courts cannot allow the insured to perform this risk analysis function instead of the insurer.

Mt. Airy Ins. Co., 954 F.Supp. at 1079.

In recognition of the purpose of the claims-made provision, claims-made policies are issued to insured's based upon representations made by insured's in the policy application, or if renewing a policy, in abbreviated renewal forms. Both of these documents generally ask the following question:

> Is any firm member aware of any incident that could reasonably result in a claim being made against the applicant . . . or present firm members . . .?

In addition, applications often provide language similar to the following:

> The applicant hereby certifies all known claims and all known incidents which might become a claim have been reported to the present or previous insurance carriers and the applicant has no knowledge of any threatened litigation or existing fact or situation which could result in a claim being filed against the applicant.
>
> Failure by the applicant to report any known claim, or any known facts which may result in a claim, to current or previous insurers may result in the declination of coverage for these matters by current or previous insurers.

Indeed, professional liability policies incorporate the representations made in the application process as part of the policy itself.

With these concepts in mind, an insured should always report claims or facts known to the insured that could reasonably result in a claim to the carrier during the policy period that the lawyer first learns of this information. A failure to do so will result in the ability of the carrier to deny an obligation to defend or indemnify an otherwise covered claim for late notice.

Avoiding Misconceptions in the Reporting Requirements.

As simple as the concept seems – report both claims and facts that could reasonably result in a claim to your carrier immediately – insurers are able to deny coverage in more cases than one could imagine based upon late notice of the claim. Some common misunderstandings that result in a failure to timely report are as follows:

- Lack of knowledge as to the reporting requirements of the claims-made professional liability policy.

  Often lawyers will take the time to secure professional liability coverage, but then fail to read the policy and understand its contents. In firms with more than one attorney, often a single lawyer is charged with the task of obtaining malpractice insurance. Although that task is performed, the other lawyers in the firm never get their hands on the policy and, if they do not deal with claims-made policies or insurance law in their practice, these lawyers often lack the knowledge as to what needs to be done in the event of a mistake that could result in a potential claim.

  To remedy this issue, firms should hold an annual meeting to discuss their policy. At this time, all lawyers should be asked whether they possess knowledge of facts that could reasonably support a claim. If any member of the firm possesses such knowledge, the firm should notify the carrier before renewing it's policy. That way, should a potential claim come to fruition in the future, the carrier would have prior notice of the claim and would not be able to deny coverage based upon the notice requirements of the claims-made policy.

- Failure to report the potential claim for fear of increased premiums.

  Admittedly, formulas insurer's use to calculate policy premiums from year to year are mysterious, at best. What remains a constant, however, is that the cost of defending a malpractice claim in district court can very easily reach the tens of thousands of dollars, notwithstanding indemnification. From a financial standpoint, any perceived increase in premiums can be offset by the cost of defending a single claim on a lawyer or law firm's own nickel. Lawyers and firms purchase malpractice

coverage to protect their financial interests in the event of a claim, so preserve this coverage by reporting the claim or facts that could lead to a potential claim to the carrier immediately.

- The lawyer shares a friendship with the client and believes the client would not sue.

  True, lawyers often represent people they consider friends. However, when the lawyer makes a mistake that results in adverse financial consequences for that friend, money can and sometimes does change the nature of the friendship. In this circumstance attorneys would be well served to immediately report the matter to the insurer. If a bond with the client is strong, no claim will result and the carrier will not incur expenses defending the litigation. If money does, in fact, change the nature of the relationship, by reporting the lawyer will have preserved a right to a defense and indemnification with the carrier should the friend decide to bring suit at a point in the future.

- The lawyer knows he or she made a mistake, but believes since the client had a very weak claim in the first instance, any malpractice cause of action is equally weak and without merit.

  This line of thought simply misconstrues the reporting language of the policy. Indeed, the claims-made provision does not require the reporting of only matters that have legal merit; put another way, the legitimacy of the malpractice claim is of no consequence as it relates to the reporting requirements. Rather, if an attorney becomes aware of facts that could lead to a claim (either good or bad), the lawyer has an obligation under the professional liability policy to report those facts to the carrier. If the attorney satisfies this insurance contract requirement, the carrier will hire counsel to defend against the claim, strong or weak.

Although the language in each professional liability policy differs, the concept of notice always remains constant. Thus, attorneys should take the time to read their policies and the reporting requirements in those policies and notify their insurers immediately in the event of a claim or potential cause of action. By understanding the notice requirements of your claims-made professional liability insurance policy, attorneys will be better suited to preserve the insurance coverage for which they paid a healthy premium.

Footnotes

[i] "Claim" is often defined in the policy to mean "a demand or suit received by the insured for money or service" as well as any "incident which could reasonably support such a demand or any communication or notice to the insured of a potential claim."

[ii] Generally, the Prior Acts provision is subject to a "Retroactive Date," which defines how far back in time the insurer will look to cover a Prior Act.

Behind Closed Doors: Governmental Clients and the Minnesota Open Meeting Law

Rylee Retzer
League of Minnesota Cities

For those of you with non-governmental clients, think about how easy it is to meet with those clients to discuss defense strategy and litigation. Maybe they stop by your office, you close the door, and you talk shop. And when you emerge from that office meeting, you are probably confident that no one is going to question your decision to close that office door. What you and your client discussed is *your* business, and it is not going anywhere. Those of us with governmental clients might be a little envious at times. What we discuss with our clients is *public* business, and it is not as easy to close that office door. The Minnesota open meeting law imposes on public bodies certain requirements before they may close meetings to the public. While a free and open government is certainly a tenet of our democracy, the open meeting law adds a sophisticated dimension to representation of governmental clients.

Open Meeting Law: The (Very) Basics

The open meeting law is found in Chapter 13D of the Minnesota Statutes. The underlying policy of the law is to ensure that the public be fully informed of the decision-making of public bodies, and provide the public an opportunity to express its views. *St. Cloud Newspapers, Inc. v. Dist. 742 Community Schools,* 332 N.W.2d 1 (Minn. 1983). Language found in Minn. Stat. §13.01, subd. 1 (2002) clearly indicates the presumption of openness in public meetings: "[a]ll meetings, including executive sessions, must be open to the public." The open meeting law applies to public bodies, including but not limited to state agencies, boards, commissions and departments; governing bodies of school districts; counties, cities, towns, and unorganized territories; and other public bodies, including committees, boards, departments, and commissions of public bodies. *Id.* The law also applies to governing bodies of local public pension plans. *Id.*

Though the open meeting law does not define the term "meeting," the Minnesota Supreme Court has held that for purposes of the open meeting law, meetings are gatherings of at least a quorum or more members of a governing body or quorum of committee, subcommittee, board, department, or commission thereof, at which members discuss, decide or receive information as a group on issues relating to official business of that governing body. *Moberg v. Indep. Sch. Dist. No 281*, 510, 518 (Minn. 1983). Therefore, when counsel's client is the governing body or board of a public entity, the open meeting law applies to attorney-client meetings. It appears as though counsel may be able to discuss a legal matter with less than the quorum of the public body. However, counsel should try to avoid serial

meetings with members of less than a quorum as it may appear to be a means to circumvent open meeting law requirements.

Since the open meeting law favors public access to meetings, few exceptions exist, and courts generally construe these exceptions narrowly. Minnesota Statute §13D.05 (2004) provides for these exceptions. Some exceptions are mandatory, while others are at the discretion of the public body. Meetings *must* be closed under two exceptions: 1) when certain types of data are discussed; or 2) for preliminary consideration of allegations or charges against a person who is subject to the authority of the public body. *Id.* at subd. 2.

Under the first exception, meetings must be closed only to discuss very narrow, limited types of data: active investigation data as defined in the comprehensive law enforcement data statute, Minn. Stat. §13.82 (2006); internal affairs data relating to allegations of law enforcement personnel misconduct created by a statewide agency, system, or political subdivision; data identifying alleged victims or reporters of criminal sexual conduct, domestic abuse, or maltreatment of minors or vulnerable adults; and educational, health, medical, welfare, or mental health data that are not public data under certain specific statutes set forth in the subdivision. Minn. Stat. §13D.05, subd. 2(a). Importantly, other non-public data may be discussed at an open meeting if the disclosure relates to a matter within the scope of the public body's authority and is reasonably necessary to conduct the business or agenda item before the public body. *Id.* at subd. 1. However, the public body should reasonably attempt to protect the data from disclosure. This non-public data retains its original classification, but a record of the meeting, regardless of form, is public. *Id.*

Under the second exception, one or more closed meetings may be held if necessary. However, when the public body concludes that discipline in any nature may be warranted as a result of those allegations or charges, further meetings related to those specific charges or allegations must be open. In addition, if a person who is the subject of a meeting requests that the preliminary meeting be open, the public body must honor that request. *Id.* at subd. 2(b).

Meetings generally *may* be closed at the discretion of the public body under the following exceptions: 1) performance evaluations for an individual subject to its authority; 2) discussion of negotiation for the purchase or sale or real or personal property; 3) discussion of reports or briefings related to security; and, 4) attorney-client privilege, subject to a balancing test as described in detail below. Minn. Stat. §13D.05, subd. 3. Meetings may also be closed for the discussion of labor negotiations. Minn. Stat. §13D.03 (1997).

When facing allegations of an improperly closed meeting, counsel should first look to Chapter 13D and any relevant caselaw to determine whether the circumstances fit within a prescribed exception to the open meeting law. In addition, counsel should identify whether or not the meeting was properly closed from a procedural standpoint. Exceptions to the open meeting law sometimes

outline specific statutory requirements for properly closing and conducting the meeting. *See* Minn. Stat. §13D.05, subd. 3(a) (performance of individual subject to public body's authority); Minn. Stat. §13D.05, subd. 3(c) (discussion of negotiation for the purchase and sale of property); subd. 3(d) discussion of reports or briefings related to security; Minn. Stat. §13D.03 (labor negotiations). But generally, under any of the exceptions, the public body must state on the record the specific grounds permitting a closed meeting and also describe the subject matter to be discussed. Minn. Stat. §13D.05, subd. 3.

Open Meetings and the Attorney-Client Privilege

Public bodies cannot merely assert the attorney-client privilege and close a public meeting to discuss legal matters. Minnesota courts have provided some guidance, but there is no bright-line rule for when it is appropriate to apply the attorney-client privilege exception to the open meeting law. *See Prior Lake American v. Mader*, 642 N.W.2d 729, 738 (Minn. 2004). Its application instead should be evaluated on a case-by-case basis. *Id.* at 738. Keep in mind, however, that Minnesota Supreme and appellate courts narrowly construe the privilege in favor of public access. Both courts have consistently held that while the open meeting law is compatible with the attorney-client privilege, public bodies and attorneys cannot use the privilege as a vehicle for suppressing public observation of the decision-making process. *Minneapolis Star & Tribune Co. v. Hous. & Redev. Auth.,* 251 N.W.2d 620, 625 (Minn. 1976). The exception only applies when the balancing of purposes served by the attorney-client privilege and those served by the open meeting law dictates the need for absolute confidentiality. *Id.* at 625.

Applying this arguably stringent standard, Minnesota courts have concluded that the privilege will almost never extend to a mere request for general legal advice or opinions from counsel to the public body. *Id.* at 626. Instead and notably, the courts have ruled that public bodies can typically only invoke the privilege to discuss litigation strategy related to threatened or pending litigation. *See generally HRA,* 251 N.W.2d, 620; *Prior Lake,* 642 N.W.2d, 729; *Brainerd Daily Dispatch v. Dehen*, 693 N.W.2d, 435 (Minn. App. 2005).

Further, it appears that a public body cannot close a meeting to evaluate whether or not it will face litigation for a pending substantive decision that is before it. *Prior Lake* at 739. The public body's need for absolute confidentiality only arises after a substantive decision giving way to possible litigation has been made. *Id.* In addition, even if a suit is commenced or the threat of litigation is valid, it appears as though counsel should ensure that the private meeting will actually contribute to litigation strategy. *Brainerd Daily Dispatch* at 441. If the subject matter is to merely address administrative or other non-strategy related aspects of the lawsuit, counsel may need to consider holding the meeting open to the public or providing another avenue for communication with the client, such as a written opinion or recommendation.

After a public body determines that the meeting may be closed under the attorney-client exception, counsel should ensure that the public body properly closes the meeting. As previously noted, prior to closing a meeting, the open meeting law requires that the public body state the specific grounds which permit the meeting to be closed and describe the subject matter to be discussed. Minn. Stat. § 13.01, subd. 3. A mere statement asserting the attorney-client privilege to discuss pending litigation is not sufficient. *Free Press v. County of Blue Earth*, 677 N.W.2d 471 (Minn. App. 2004). Instead, the public body should describe the matter to be discussed as specifically as possible. *Id.* at 476. Of course, counsel should ensure that the statement considers any relevant privacy and confidentiality protections under state or federal law if applicable.

Closed Meeting: Now What?

Once the public body properly closes the meeting, counsel should ensure that the public body follows all prescribed legal requirements for conducting the meeting. For example, meetings closed to discuss the purchase or sale of real estate, security issues, or labor negotiations and strategy require tape recording of the meeting, public access to the recording, and retention of the tape for a certain number of years. Minn. Stat. §§13D.05, subd. 2, 3. For closed meetings that are not required to be recorded, counsel should carefully evaluate whether taping a closed meeting is in the best interests of the client, given the need for candor and caution.

In addition, while public bodies may close meetings for private discussion, any formal action, such as voting, should be taken by the public body at an open meeting. Further, it is important to instill in the public client that only the matter specifically identified for discussion on the record in the closed meeting can be discussed.

Open Meeting Law Violations and Penalties

In addition to potentially negative political effects, violations of the open meeting law carry with them civil fines and possible forfeiture of office for those public officials involved. Each member of the public body who intentionally violates the open meeting law is personally liable for a fine no greater than $300.00 per violation. Minn. Stat. §13D.06, subd. 1 (1998). The public body may not pay this fine. *Id.* If a court finds that a person intentionally violated the law in three or more separate proceedings, the person must forfeit his or her right to serve on the governing body or in any other capacity with the body for a period equal to the term of his or her office. *Id.* at subd. 3; *See also Brown v. Cannon Falls Township*, 723 N.W.2d 31 (Minn. App. 2006). However, prior to removing the official, the court must find that the third violation be separate from and unrelated to the previous violations. Minn. Stat. § 13D.06, subd. 3. The violation must also be supported by competent, relevant evidence. *Id.* Additionally, courts may award reasonable costs, disbursements and attorney fees up to $13,000 to any party who successfully brings an action under the open meeting law. *Id.* at subd.

6.

To ensure that public clients comply with the law, make sure to follow all legally-prescribed requirements and procedures prior to closing a meeting. And without a specific legal reference, think again before closing that door.

Ten Tips for Finding Your Way as a New Lawyer

Amy K. Amundson
Rider Bennett, L.L.P.

At some point in your first year of practice, new lawyers realize that law school really did not teach them much of anything about the "practice of law." The learning curve for new lawyers is steep, and each day is a challenge. If you are in your first year, you have been at this official "lawyer business" with your very own official bar number for about six months. Now the fun of practicing law really begins because you get to sign pleadings, can commit malpractice, and can put those three very important letters behind your name – "Esq." All of those exciting milestones aside, this article will discuss the top ten tips to help new lawyers find their way in the beginning stages of practicing law.

1. **Ask questions early and often.** The worst thing you can do for yourself is to not understand your project, task, or assignment. The partner/assigning attorney will appreciate it if you ask for clarification before you spend hours reinventing the wheel or barking up the wrong tree. It is important to remind yourself that there are no bad questions during your early development as a lawyer. You are a sponge - act like one!

2. **Develop your relationship skills.** At this stage in your career, your "client" is the partner/assigning attorney who gave you the project. One of the pearls of wisdom I received is that you should give the completed project to your partner/assigning attorney as if you were sending it out without his/her review. It is important to take ownership of your work; do not expect the partner/assigning attorney to be your editor or proofreader. Prepare yourself for the partner's constructive criticism as you begin your practice of law. It is better to be told how to improve your skills now rather than later. You will undoubtedly develop a stronger constitution. If you are not getting constructive criticism, ask for it!

3. **If and when using a form document, proofread carefully.** In the booming technology age in which we live, lawyers are able to rely on documents that have been previously drafted. New lawyers (and some not-so-new ones, too…) tend to edit previously drafted form documents without thinking about the

specific facts and issues in their case. Do not assume the language in a form document is applicable to the case on which you are working! Make sure you review any form document you use as a template before passing it on as a finished product.

4. **Time management is key.** One of the most difficult things to do as a new lawyer is say no. It is especially difficult if it is uncertain how long any given project will take to complete. Therefore, it is important from the start to set the expectation to the partner/assigning attorney. If you have a certain number of projects in queue, make sure the partner/assigning attorney knows this and agrees they can wait for their project based on your timeframe. Another key to time management is if you get behind on something do not pretend like it is not there; rather, make the necessary effort to re-set the expectation. Ignoring it does not make it better.

5. **Enter and release your time contemporaneously.** Get into the habit early and often. As your career grows it is only going to get busier, and you are only going to have more responsibilities and more meetings and more events. If you are disciplined about entering and releasing your time entries, you definitely will save yourself time in the long run.

6. **Volunteer for pro bono work that involves Courtroom experiences.** With all of the alternative forms of resolution, the trial experience is more sought after than ever. Unfortunately, it is not usually given to the ripe new associate. Therefore, it is important that new lawyers get courtroom experience. Where can you get it? Pro bono work. From a new lawyer perspective, pro bono work can allow you to get into the courtroom right away. You begin learning how to present evidence, deal with opposing counsel, and communicate with the court. The flipside is positive as well. Plenty of people go without legal representation, and by volunteering for pro bono work, it not only benefits your legal skills but the client and community as well.

7. **Get involved in outside committees. I**t will aid in your career development, if you get involved in a group or committee. (Since you are receiving this newsletter you likely have already fulfilled this with MDLA.) As much as some people may wish that their job was only "9 to 5," that is not the legal profession. It takes time to become immersed in committees and to take on a leadership role, but this will only benefit you in the long run.

8. **Determine your weakest legal skill and improve it.** After being in the throws of associate life, it does not take long to

figure out what your strengths and weaknesses are. The best way to develop and improve is by experience so maximize opportunities in areas where you need improvement. For instance, if you weakness is public speaking, find a way to practice and develop it. Take a public speaking course or volunteer to speak at a conference or meeting. If you are a weak writer, take the time to hone your writing skills by writing articles for publication or other writing opportunities. Seek help and advice from lawyers you admire in your firm for their abilities. Challenge yourself to be better.

9. **Do not forget about your other interests.** As new lawyers, sometimes we get caught up in the pressures of the practice of law. The good news is that if you plan on doing this for a lifetime, it is definitely a marathon and not a sprint. Do no neglect your outside interests. It will benefit you and your work enjoyment if you are not 100% focused on work all day every day. Join the gym, get in a running club, play basketball, join a book club, go out with your friends, go to a movie. Do not forget to include a little bit of "me" time.

10. **Enjoy the experience as much as you can!** One of the wise partners at my firm constantly reminds the new lawyers to be sure and have more fun than the other side. There is absolute truth to this. Do not take yourself too seriously, and enjoy the privilege of being a lawyer.

It is important to remember at this stage in your career is that it is called the "practice of law" for a reason – because you are practicing. The law provides us with endless problems and questions to solve, but this is exactly one of the reasons we decided to work in the legal profession. You never thought those crazy tort exam questions could be true – but just wait – you will have a case in no time with facts more complicated than any tort exam. Remember that there is no hard science to what we do everyday, but do your best and the rest will come. The strategies, ideas and answers to legal questions the partners/assigning attorneys develop are not only because they are "wise," but also because they have been doing this longer than we have. I hope thinking about these ten tips will help you find your way as a new lawyer.