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ILLINOIS STATE BAR ASSOCIATION

YLD News

The newsletter of the Illinois State Bar Association's Young Lawyers Division

The inside scoop on dep prep to get you through your first deposition

By Karoline Carstens

A deposition can be one of the most daunting events that new lawyers face. While most of us get the hang of basic deposition skills after a few tries, that doesn't lessen the anxiety caused by that first deposition. After practicing asbestos litigation at Simmons Hanly Conroy, formerly the Simmons Firm, for the past six years, I can promise that depositions do get easier with experience.

My practice is focused on asbestos litigation, representing victims of mesothelioma, a rare and deadly form of cancer. I take depositions of my clients, their family members, coworkers and corporate representatives on a regular basis. As an added pressure, many of my clients are seriously ill and it's not uncommon for them to pass away before their trial date. As a result, making sure their depositions go as smoothly as possible is even more important because it could serve as the testimony for a jury if the case should go to trial.

Over the years, I've developed a few guidelines to help me as I'm preparing for my own depositions. Take them into consideration as you work to prepare your first deposition and beyond.

Preparation is key to success:

- You must understand the purpose of your deposition. When getting ready for a deposition, I always make a list of topics to be addressed. While you may feel more secure typing out each question and reading from a script, that

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Is law school worth the investment?

By Marie K. Sarantakis

Law students are inundated with the pessimistic narrative that job prospects are dismal, law school debt is insurmountable, and the demand for new attorneys is waning. The message is being heard loud and clear as law school applications are at a 30-year low. Over the past three years alone, administered LSAT exams have plummeted 34% and law school enrollments have dropped a staggering 24%.

In years past going to law school was thought to mean guaranteed steady employment. Comparatively, this is no longer the case. But that is not just for law. An education no longer assures work in any field. What makes things seem worse for law students, than those pursuing a Bachelor's degree, is that they incur a higher level of debt. An undergraduate student completing their Bachelor's degree accumulates approximately $29,400 worth of loans at the end of their studies, whereas a law student graduating with a juris doctor degree at a private law school ends up owing around $125,000. Many students, and parents alike, are no longer justifying assuming the additional debt in an unstable prospective job market.

When is law school not worth the cost?

Some students who are fresh out of college

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INSIDE

***(Notice to librarians:** The following issues were published in Volume 58 of this newsletter during the fiscal year ending June 30, 2014: August, No. 1; October, No. 2; December, No. 3; February, No. 4; April, No. 5; June, No. 6).*

From the Chair

By Christopher Niro

Greetings to the 2014-2015 Bar Year! Before we get fully started I want to thank my very good friend Jean Kenol for his outstanding leadership during his term that recently concluded. The YLD accomplished great things during Jean's year as Chair and I can only hope to continue in his very successful footsteps.

As we begin this new bar year, the YLD, its members, and the legal community at large faces adversities both new and ages old: Are we as an association relevant to today's new lawyers? How can we recruit and retain new members? Can we bring back former members into the association? Etc. I mention these questions not to discourage you but instead to inspire you to act. Our theme for this year can be summed up in three words; evaluate, strategize, and act.

Evaluate: This year we are going to embark on a systematic review of how (and whether) the YLD is fulfilling its mission to serve as a resource for young lawyers practicing in Illinois to develop, enhance, and foster a balanced professional life. Nothing that the YLD does or has done is sacred or beyond reproach. A very wise senior attorney once told me "there is a reason we lawyers describe ourselves as engaged in the practice of law." We constantly learn, adapt, change, and take chances as the facts, or situation, dictates. I believe that our association should be guided by the same principles.

Strategize: the next logical step after evaluating our current and past practices is to make a comprehensive multi-year strategic plan. Your involvement will be crucial to determining the future of the YLD. Last year, President Paula Holderman created a special task force on new lawyers. That task force generated a report that the YLD is currently evaluating and making plans to implement various aspects of the task force report.

Act: it has been said that "a vision without action is a daydream." We will not be a council or division of daydreamers. We intend to implement aspects of our strategic plan this bar year so we can continue to better fulfill our mission of being a resource for young lawyers.

We need your involvement and your efforts during this year. We host several events throughout the year and will be making every effort to continue our years of successful fundraising for the Children's Assistance Fund. We are all responsible for the success of our association and I know that our division will take a great leap forward this bar year. ■

YLD News

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Is law school worth the investment?

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choose to continue going to school simply to delay adulthood. These are the students who are grossly overwhelmed by the level of financial commitment and personal responsibility that pursing a law degree entails. They are the classmates who try to float on by, end up incurring the greatest amount of debt, and then graduate without the skills requisite to practice law in the real world. Unless you have the passion and dedication to become an attorney, law school may not be for you. Law school is simply not suited for the perpetual student with mediocre grades. In the current market, it is best intended for those who are willing to invest the time and effort of trying to be at the top of their field and choose to remain focused on the end game of practicing law.

Should you be worried?

You should be aware of the market, but there is no need to be overly concerned about putting off or quitting law school so long as you plan on being a competent, driven, and hard-working attorney. Even in a depressed economy, people will be employed, but the competition gets tougher. You may have to work harder to prove your worth to your employer and clients, but the higher the quality of your work, the less you have to fear. If you have a passion for the law, you should continue to pursue your ambition of becoming an attorney. The need for lawyers has not decreased at a rate consistent with the decline of applicants. Naturally supply and demand will result in the availability of more work in the years ahead.

During a recession, the need for lawyers does not go away; rather the type of work adapts with the current demands. For example, while real estate sales decline, bankruptcy and foreclosures are on the rise. As an attorney today, you may have to be more flexible and open to the possibility of temporarily working in a field of law that you did not initially consider to be your forte or passion. It may even mean sometimes working part-time, until you find steady work and benefits.

What if I can't find a job?

So what about the worst-case scenario? What if you graduate from law school with a great deal of debt and can't find employment or are laid off? Your juris doctor degree is still innately valuable in a variety of fields. There is no rule that says one is pigeonholed into strictly practicing law. The intrinsic worth of your degree makes you a more valuable employee on the job market. Whether it is in the field of law or elsewhere, a law degree will provide you with the distinction and added value to the gamut of prospective employers. Don't expect a law degree to land you any job, only you can do that, but a law degree will open many new doors. ■

Ace your case: An overview of the rules governing mandatory arbitrations

By Amy Kelly

A bright, young lawyer takes on a tough case against a big corporation and nets a multi-million dollar verdict at trial. Riveting movie plot? Yes. Reality? No. Most young lawyers don't get the chance to be lead counsel until they have years of experience under their belt. Yet there may be a smaller case floating around your firm, perhaps for a family member or neighbor, that you'll get the chance to take the lead on. Or you may be one of the lucky young lawyers who does get to handle their own cases right after admission to the bar. In many counties in Illinois, cases that seek monetary damages less than $50,000 are subject to mandatory arbitration. Supreme Court Rules 86-95 govern mandatory arbitration and it's important to familiarize yourself with these rules so you can get the best result for your client.

The mandatory arbitration system was introduced as a way to resolve cases in a timely and cost-efficient manner. All parties are expected to participate in the hearing "in good faith and in a meaningful manner." Arbitration hearings are scheduled according to circuit rules but all parties must be given not less than 60 days' notice in writing of the date, time and place of the hearing. It's important to make sure that the clerk's office has your correct contact information to ensure that you receive notification. The arbitration panel that will hear your case consists of three lawyers and is chaired by a lawyer with at least three years experience in trial practice or by a retired judge. The parties can stipulate to having less than three arbitrators if necessary.

The rules of evidence apply to arbitration hearings, except as provided by Rule 90. Rule 90(c) allows a party to offer documents into evidence without foundation, so long as at least 30 days' written notice of the intention to offer the documents in evidence is given to every other party. The most common types of documents submitted in a Rule 90(c) packet are medical bills, medical records, repair bills, wage loss verification forms, photographs and witness statements. A cover sheet should accompany these documents that details the amount of damages sought and whether bills are paid or unpaid, and the pages should be numbered so documents can be easily referenced during the hearing. You may subpoena the author or maker of a document submitted in your opponent's Rule 90(c) packet so that you may cross-examine them at the arbitration, but make sure to designate in the subpoena that the appearance is set before an arbitration panel. Supreme Court Rule 237 and Section 2-1102 of the Code of Civil Procedure also apply, meaning you can compel the appearance of other parties at the arbitration and call those parties as adverse witnesses as part of your case. The chairperson will make rulings on objections to evidence or "on other issues which arise during the hearing." However, issues that arise prior to the hearing must be resolved by the court. For example, if there is a discovery dispute and certain orders are not complied with, it is best to bring a motion before the arbitration. Likewise, any motions to continue the arbitration must be heard by the court. Court reporters and interpreters are usually not provided, so be sure to schedule them in advance of the arbitration if needed.

After the hearing has concluded, the arbitration panel will make an award that disposes of all claims for relief. The award is signed by the arbitrators and a dissenting vote, if there is one, may be noted. The award will be filed with clerk of the court and notice of the award will be sent to all parties. The arbitration award is not binding; any party may file a written notice of rejection of the award, along with a fee, within 30 days after the filing of an award. Rule 95 provides a form Notice of Rejection of Award. Each party does not need to file a separate rejection. As long as one party rejects the award, all issues of the case will proceed to trial. If none of the parties reject the award, judgment will be entered consistent with the award.

A party that fails to appear at the hearing may be barred from rejecting the arbitration award. The arbitration panel may also make a finding that a party has failed to participate in the hearing in good faith and in a meaningful manner, which may result in sanctions that include debarring that party from rejecting the award pursuant to Rule 91. A motion to bar rejection, or other sanction, should also be brought before the court.

In many ways, arbitration hearings are a dress rehearsal for trial and a great way for young lawyers to gain experience. Knowing these rules will help you prepare your case and hopefully lead to one of many victories in your legal career. The Supreme Court Rules can be found at <http://www.state.il.us/court/supremecourt/rules/> and most counties also have resources available online or at the clerk's office. ■

Challenges facing cognitively impaired

By Stephanie Tang

Introduction of the Issue

According to data gathered by the American Bar Association (ABA), the percentage of lawyers ages 45 and older increased from 38% in 1991 to 62% in 2005, with the median age of American lawyers increasing from 29 to 49 years old between 1980 and 2005. As the elderly population increases, the number of lawyers suffering from cognitive impairments and subjecting themselves to potential malpractice claims increases as well. Impaired lawyers have the same obligations as other lawyers with regard to professional conduct responsibilities. Therefore, even if a lawyer suffers from diminished capacity, he still has the responsibility of providing clients with competent and diligent representation.

In Illinois, the rule that concerns a lawyer's mental capacity is Rule 1.16, which expressly prohibits a lawyer from undertaking or continuing to represent a client if the lawyer's mental impairment materially impairs the ability to represent the client. However, oftentimes a cognitively impaired lawyer is either unaware of, or in denial of, the extent to which an impairment affects his ability to represent clients. In that instance, the members of the lawyer's firm, when applicable, have an obligation to take steps to help ensure the lawyer's compliance with the rules. If the firm fails to take action, it risks exposing itself to legal malpractice claims brought by dissatisfied clients.

This article will first address ethical guidelines presented by the ABA Model Rules and Illinois Rules of Professional Conduct, then go through the structure and standards of a legal malpractice claim, and finally, discuss approaches taken by other states to reduce exposure to malpractice risk.

Ethical Concerns Facing Cognitively Impaired Elderly

Both the ABA Model Rules and Illinois Rules of Professional Conduct provide guidance to lawyers and firms to prevent malpractice liability. In 2003, the ABA issued Formal Opinion 03-429, focusing on the obligations of mentally impaired lawyers as they related to the Model Rules of Professional Conduct. In doing so, the ABA separated these obligations into three categories: (1) obligations of partners or supervisors in a law firm to prevent lawyers who may be impaired from violating the Model Rules, (2) duties of lawyers to inform a professional authority upon determining another lawyer from his firm has failed to represent a client in the manner required by the Model Rules, (3) obligations of lawyers in the firm when an impaired lawyer leaves the firm.

Obligations of Law Firms to Take Steps to Prevent Impaired Lawyers in the Firm from Violating the Rules of Professional Conduct

Rule 5.1 of both sets of rules requires partners and lawyers in the firm with comparable managerial authority or direct supervisory authority over another lawyer to make "reasonable efforts" in order to ensure lawyers comply with and meet the requirements of the rules. This means that if a partner or supervising lawyer knows one of the firm's lawyers is impaired, it may warrant careful observation to address the potential risk of violations.

This rule points to a firm's utmost obligation to protect client interests. The ABA recommends a firm take affirmative action to engage in such protection. To start, the firm should consider directly speaking to the impaired lawyer concerning the nature of his impairment. Upon doing so, the firm can elect to pursue several options. First, the firm could urge (or demand) a lawyer seek assistance to help with the impairment to prevent future violations. Second, depending on the severity of the impairment, a firm may limit the scope of the lawyer's employment through limiting direct client interaction or relaxing tight deadlines that may exacerbate the lawyer's impairment. By adopting these procedures to assure compliance with the other rules, the firm can help shield itself from liability.

Obligations When an Impaired Lawyer in a Firm has Violated the Model Rules

Rule 8.3 of both the Illinois and the Model Rules governs requirements for reporting professional misconduct. Specifically, Rule 8.3(a) of the Illinois Rules of Professional Conduct mandates a lawyer who knows another lawyer has committed a violation of Rule 8.4(b) and 8.4(c) to the appropriate professional authority. The policy rationale behind this rule is derived from the requirement that as a self-regulating profession, lawyers must initiate disciplinary investigations when they know another member of the profession has violated the rules.

The approach taken by the Illinois legislature appears to be more stringent than that of the ABA. Under the ABA's version of Rule 8.3, a lawyer need only report a violation of the rules if it "raises a substantial question as to the violator's honesty, trustworthiness, or fitness." Therefore, if a mental impairment that led to the violation has ended, the lawyer need not report it. However, without that added consideration, it seems the Illinois Supreme Court intended to require reports regardless of termination of the impairment. Furthermore, under Rule 5.1(c)(2) of both sets of rules, partners and lawyers in the firm with comparable managerial authority or direct supervisory authority still may have an obligation to mitigate adverse consequences of the violation.

Obligations After the Impaired Lawyer is No Longer Employed With the Firm

A firm's responsibility to a client does not end when an impaired lawyer stops employment with the firm. Upon a lawyer's departure from a firm, the firm's clients are then faced with the choice as to whether to stay with the firm or the lawyer. Rule 1.4(b) of both sets of rules provides, "A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." This means that when advising clients, a firm needs to be cautious not to make statements beyond those that have a reasonable factual foundation. This obligation does not extend, however, to former clients who have already chosen to stick with the impaired lawyer. Engaging in these precautions may help protect an impaired lawyer's firm from liability under a legal malpractice claim, but it does not help the impaired lawyer himself.

lawyers and their co-workers

Challenges Facing Plaintiffs in Legal Malpractice Claims

Plaintiffs face several barriers when bringing legal malpractice claims against lawyers with diminished mental abilities. The burden is on the plaintiff to plead and prove the following elements: (1) the defendant attorney

owed the client a duty of due care arising from the attorney-client relationship, (2) the defendant breached that duty; and (3) as a proximate result, the client suffered actual injury. *Tri-G, Inc. v. Burke, Bosselman & Weaver*, 856 N.E.2d 389, 394 (2006). This Memo will discuss these elements in turn.

Breach of Duty and Proximate Cause

Courts often employ the "but-for" test when assessing a cognitively impaired lawyer's negligence through breach of duty. This means the plaintiff must demonstrate that but for the attorney's negligence, he would have enjoyed a more favorable outcome to his case. *Sterling Radio Stations, Inc. v. Weinstine*, 765 N.E.2d 56, 63 (Ill. App. Ct. 2002). Even if a plaintiff can establish a lawyer was negligent under this first standard, the plaintiff can only recover if he also proves the attorney's negligence (in this case, due to a cognitive impairment) proximately caused his or her damages. *Tri-G*, 856 N.E.2d 389, 395 (Ill. 2006). Because of the highly speculative nature of this inquiry, it is hard for a plaintiff to prove an alternative winning resolution to his case.

Moreover, if the Illinois court follows the lead of courts in other jurisdictions, a plaintiff may not be able to enter evidence of an alleged negligent lawyer's medical records showing cognitive impairment. *Beck v. Law Offices of Terry*, 284 S.W.3d 416, 444-45 (Tex. App. 2009) (upholding exclusion of evidence of attorney's mental impairment as unfairly prejudicial and confusing where there was no direct evidence to support plaintiff's claim that defendant attorney's negligence was caused by his impairment). This adds another hurdle for plaintiffs bringing action against cognitively impaired lawyers.

Actual Injury

There is no presumption of actual injury in a legal malpractice case; a plaintiff must actually plead and prove she has suffered injuries stemming from the defendant lawyer's alleged malpractice. Courts have found a successful legal malpractice claim places a plaintiff at the same position that she would have occupied but for the attorney's negligence. *See, e.g., Sterling Radio Stations, Inc. v. Weinstine*, 765 N.E.2d 56, 62. This means a plaintiff cannot be in a better position through bringing suit against the attorney than if the underlying action had been successfully prosecuted. *Id.* This again is a high standard for a plaintiff to prove given the difficulty of determining what position a plaintiff would be in if he won his underlying case. Although these challenges to plaintiffs exist, lawyers are well-advised to avoid situations which can lead to such claims.

Recommendations from Other Jurisdictions

When considering individual solutions, the ABA and other legal researchers have suggested approaching the problem of aging lawyers on two tiers: 1) at the private firm level and 2) on the state bar level. First, the ABA recommends law firms should anticipate an increase in their own lawyers suffering from diminished capacity. Firms should take affirmative steps in order to reduce their risk of exposure to malpractice problems. They may want to reach out to lawyer assistances programs in the states for help with monitoring their lawyers. They also may want to familiarize the members of their firms with potential warning signs of cognitive impairment including behavioral changes, frequent memory lapses, speech irregularities, and disorganized thought processes. By investing in this awareness education, law firms can help protect themselves through detailed reporting procedures for members who may witness these signals in colleagues.

State bar associations and other organizations have started taking steps to help cognitively impaired lawyers as well. In Florida, the bar news tracked the work of University of Florida College of Law, which is promoting awareness of their students concerning how to deal with older attorneys who display signs of cognitive impairments. Further, the Florida bar has established working groups to specifically address aging lawyers. In New York, the New York State Bar Association publishes a "Planning Ahead" guide with checklists and guidelines for designation of successor attorneys. The ABA chimed in with some guidance as well with the Joint Committee on Aging Lawyers issuing a report with recommendations for each jurisdiction. These recommendations included providing encouragement and support for senior lawyers and taking steps to identify lawyers with age-related impairments.

Conclusion

The problem of aging lawyers dealing with cognitive decline and ultimately exposing themselves and their firms to malpractice liability is a daunting one. However, by promoting awareness of the problem through understanding the ethical concerns, learning the structure of legal malpractice claims, and looking to other jurisdictions for guidance, attorneys can feel better equipped to face it. ■

Tips for lawyers looking to network and market themselves

By David Neiman

The managing partner at your firm tells you and your colleagues that you need to do more marketing, to get out there and network. But what does this actually mean? This phrase is unclear, and figuring out how to do it is even more difficult. This article is intended to help young attorneys navigate these murky waters.

1. Developing Relationships

Lawyers, regardless of practice area, prosper through their relationships. This holds true whether you have been practicing for 1 year or 50 years. Clients work with attorneys they are comfortable with and trust; attorney's refer work to other attorneys they trust; partners give work to associates they trust; and law firm's hire associates they trust. Trust is earned by the quality of these relationships, and is the foundation that will form the basis of an attorney becoming successful in the business—as opposed to the practice—of law. But how do you develop these types of relationships?

2. Make Sure People Know What You Do, And Learn What They Do

Whether you realize it or not, you already have a network of people, including family, friends, neighbors, the barista down the street, etc., who could be great referral source for you; however, it's impossible to sell yourself and your services if no one knows what you do. You should make an effort to incorporate what you do for a living into your daily conversations. Keep those within your circle aware of what it is you actually do and your success, and hopefully they will think of you when their co-worker, friend or family member needs a lawyer.

Also, don't forget to learn about other people around you. In order to do this, you need to ask questions and listen to what people say. A wise man once said that "we have two ears and one mouth, so we should listen more than we say." So ask questions and pay attention to the answers.

3. Do What You Like To Do!

There is no "right" way to network. The key to effective networking is doing whatever it is that you like to do. Find a charity or cause that you are passionate about, or join a book club, recreational sports team, or any other social group that you have an interest in. Participation in these groups is geared towards networking. I guarantee that you will find like-minded people who maintain common beliefs and views providing you with an easy group of people to network with. And again, make sure others in the group/activity know who you are and what you do. Your goal is to become the "lawyer" for the group.

4. Be A Connector

When opportunities arise, think whether others within their network would be a good fit to be called upon to fulfill a particular role. While it's easy to selfishly think: "this doesn't help me," a potential opportunity can certainly help someone else that you know. I promise, selflessly helping others will greatly help you in the future.

5. Get Involved In Bar Associations

While almost all lawyers are a member of a local, state, or national bar association, very few actually take advantage of the many valuable opportunities presented by bar involvement. Becoming actively involved in or a leader of a bar association allows lawyers to develop their networking skills and build worthwhile professional relationships.

To make the most of these great opportunities, young lawyers need to actually show up to events! Once there, take the initiative to introduce yourself and get involved. Offering your time and services will introduce you to many attorneys similarly looking to expand their professional network. Judging a mock trial, writing articles, planning and attending CLE programs, and/or getting involved with other members in public service projects are all good examples of "getting involved."

Take a look at your particular practice before deciding what bar association to become involved with. If you work at a small firm exclusively representing local and statewide clients, get involved with your city, county, or state bar association. If you work at a larger firm with a regional or national presence, it may be better for you to participate in a national bar association where you can network with attorneys from other cities and states. This will make you an asset when your out-of-town friend's national client is looking for a local attorney in your area. It also gives you the ability to refer your client to a qualified attorney in another area where you and/or your firm doesn't have a presence.

6. Follow-Up!

Appropriate follow-up is dependent on the initial meeting. If you meet someone at the gym playing basketball, don't take him or her out of his or her (and your) comfort zone to push the relationship forward. Take advantage of the common interest that you have while trying to market yourself and what you do. This creates a stress free environment where you can have fun and market yourself (and your services) at the same time.

If you meet someone at a professional networking event, then a phone call or e-mail offering another meeting over breakfast, lunch, coffee or drinks after work is appropriate. This follow-up meeting will allow you to learn more about this individual on a personal and professional level. These subsequent meetings keep you on the person's radar, show you actually listened and cared about what they had to say, and that you're interested in helping their business as well.

Consistent and continuous follow-up is necessary to solidify the relationship. Trust is earned over time, not over a couple meetings.

7. Be Patient

Building a successful network takes time no matter how many people you meet or how you meet them. Like all other relationships, creating a professional network is a natural process that must be developed organically.

At the end of the day, networking should be fun. Although you will have to put some work into developing a strong professional network, young lawyers should relax and enjoy the friendships that they develop as a result of their efforts. ■

'Be yourself' is lousy advice

By Tania Richard

"Just be yourself" is the go-to advice for someone who is nervous about a new interaction. In intimate relationships that is useful advice. In a job interview it doesn't serve you to be yourself. It's best to be a version of yourself that fits the situation.

Recently I was coaching a client who is in transition. He had a big interview the following day. Toward the end of our session as we reviewed his strategy my client said, "I'll just be myself," to help calm his nerves. "Actually, you don't necessarily want to be yourself," I objected. He looked at me quizzically.

My client is a big personality accustomed to being in the driver's seat. He has strong opinions, is a natural leader and can talk at length about many subjects. Sounds good, right?

What if the hiring manager is less expressive, quiet, and keeps things short and sweet? It's my client's job to take cues from the interviewer's behavior and adjust based on what he observes. He needs to talk less, listen more, dial back his energy and move over to the passenger's seat. Those adjustments will produce a successful interview.

In the workplace it doesn't serve you to be yourself. Although co-workers can feel like a family, ultimately they are not. Professionalism is the key. It's not about suppressing who you are it's about pinpointing what qualities you possess and fitting them into a larger whole.

In client relations it doesn't serve you to be yourself. All the information you need is based on what you gather from your client. The client is the most important person in the interaction.

- Match the volume of your client's voice
- Sit in a similar position as your client
- Read your client's non-verbal cues and adjust your behavior accordingly

We all play roles in life: mostly unconsciously. The ability to know when to play a role and what role to play is a skill that enhances any interview and work relationship.

The next time you are in an interview or a workplace interaction "Don't be yourself." Be the best version of yourself that the circumstances require. ■

ISBA unveils exciting new Member Directory!

Remember the last time you went to a professional networking event? You likely met lots of new and interesting fellow attorneys, exchanged lots of business cards… and forgot some of those names and faces by the time you made it back home.

We have the solution—and it's better than a mnemonic device.

As a member of the ISBA, your name, city and state are automatically entered into our brand new Member Directory. But with a few clicks you have the power to make it a valuable networking tool!

How it works…

First, go to www.isba.org and log into your account. From there you'll see a notice at the top of the page reminding you to activate your profile. Once you've clicked 'Activate Profile Now,' details we already have on file such as your contact information, any ISBA leadership roles you currently hold or articles you've written for the *Illinois Bar Journal* or section newsletters will appear. You can choose to make your profile more robust by adding a photo or more personal details, such as additional education history, a biography, or even links to Facebook, Twitter or LinkedIn. You can change the contact information you share, or hide it altogether.

Review your profile by clicking the "Review my Directory Profile Page" link in the upper right hand to make sure you share as much (or as little) information as you feel comfortable. And of course, you can opt out completely at any time if you'd prefer.

Once your profile is up and you're satisfied with it, you can start adding other ISBA members to your contact list. And they can start adding you to theirs. By using the filter options at the top of the page you can narrow any search to find attorneys by location, practice area, or languages spoken.

So the next time you're at a party or professional event and meet some interesting people, don't worry about forgetting their names or faces. Just take out your smartphone, pull them up in the directory, and add them to your contact list!

Any questions? Send an e-mail to Doug Knapp at dknapp@isba.org. ■

The inside scoop on dep prep to get you through your first deposition

Continued from page 1

approach will inhibit your ability to be flexible and follow up on significant details. My practice is to make an outline of the information I need to cover. I then cross items off as they are discussed and can jot down written notes in the outline on where I need to follow up. This process allows me to give my attention to the witness's testimony and then expound on what is said rather than jumping back into my prepared questions and neglecting important points that arise.

- If you are taking a controlled witness deposition, make sure you have spent enough time with your witness, explained the process and are familiar with their anticipated testimony. You don't want to be surprised at the deposition. This will also make the witness more comfortable the day of the deposition. If possible, the deposition should take place at your office, or your witness' office or home. You both will feel more comfortable on your own turf.
- Read depositions taken or defended by colleagues you respect and ask to observe a deposition or two. If a more seasoned colleague is willing, ask them to role play with you before your deposition. Suggest that they throw you some curve balls, like unfavorable responses or imitating contentious behavior so you can get some practice with unexpected difficulties. Anticipate potential issues and have a plan for dealing with them.
- Arrive at the deposition early to get comfortable and make sure everything is ready to go on time.

Know the governing rules

- Be familiar with the rules that govern your deposition. For example, if your case is filed in Illinois State Court, read through the Illinois Rules of Civil Procedure, especially Rules 201-224 on discovery and depositions. If your case is filed in Federal Court, brush up on the Federal Rules of Civil Procedure.
- Be aware that many courts have local rules and standing orders that address the deposition process. It is very important to know these rules. I often bring a copy of the standing order that governs many of my cases to depositions in the event a dispute arises. Once in a great while, a disagreement may require the immediate intervention of the Judge assigned to your case. It is beneficial to know whether your Judge is agreeable to being called during a deposition. If so, keep the phone number handy just in case.
- Whether it is proper to communicate with your witness during a deposition, breaks, and recesses also depends on the jurisdiction. Take a look at *Murray v. Nationwide Better Health*, No. 10-3262, 2012 WL 3683397 (C.D. Ill. Aug. 24, 2012) for guidance from the Central District of Illinois.

Objections

- Sometimes opposing counsel will ask if you agree to the usual stipulations. Always identify what those stipulations are on the record. In my area of practice, the usual stipulations include an objection by one is good for all, and all objections except as to form are preserved.
- In Illinois depositions, you must object to the form of a question at the deposition; otherwise your objection is waived. *see* Ill. R.Civ. P. 211. Take note of opposing counsel's form objections. If they have a good point, go ahead and correct your question. This will make a better record.
- The same goes for objections regarding attorney/client privilege; if you do not make the objection at the deposition, you risk waiving the privilege. This omission can have serious consequences. When in doubt, make an objection and instruct your client not to answer the question.
- Most jurisdictions, including Illinois, prohibit speaking objections. *see* Ill. R.Civ. P. 206(b)(3). You may encounter opposing counsel who uses this tactic to coach a witness or to disrupt the deposition process. No matter what happens, try to stay calm and focused on the task at hand. If necessary, verbally describe the inappropriate conduct for the record. This will usually put a stop to the behavior. You may file a sanctions motion after the deposition if the behavior continues and is truly egregious, although this is a remedy you should use very sparingly.
- If opposing counsel baselessly directs a witness to not answer a question, ask the Court Reporter to certify the question and continue on with the deposition. Again, you may file a motion on this issue after the deposition.
- Testimony comes out quickly and you don't have a lot of time to react, so it can be helpful to bring a list of common deposition objections with you.

A law school professor gave some good advice that sticks with me: your opponent may be more experienced, have attended a better law school, or work for a silk-stocking firm, but the one thing you can always do is out-prepare them. So, take the time to be fully prepared and you can rest assured you have done everything you can to set the stage for a successful deposition.

Good luck! ■

Upcoming CLE programs

To register, go to www.isba.org/cle or call the ISBA registrar at 800-252-8908 or 217-525-1760.

September

Thursday, 9/4/14- Teleseminar—Employment Agreements- Part 1. Presented by the Illinois State Bar Association. 12-1.

Friday, 9/5/14- Teleseminar—Employment Agreements- Part 2. Presented by the Illinois State Bar Association. 12-1.

Monday, 9/8/14- Webinar—Introduction to Fastcase Legal Research. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 1:00.

Tuesdays, 9/9/14- Tuesday, 1/20/15- Chicago, ISBA Regional Office—Trial Technique Institute. Presented by the Illinois State Bar Association. Tuesdays 5:15-6:45.

Tuesday, 9/9/14- Teleseminar—UCC Toolkit: Promissory Notes. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 9/10/14- Teleseminar—UCC Toolkit: Letters of Credit. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 9/10/14- Chicago, ISBA Regional Office—Foundations, Evidence & Objections: Before Trial, During Trial, On Appeal or After a Settlement. Presented by the ISBA Tort Law Section. 8:30-12:45.

Wednesday, 9/10/14- Live Webcast—Foundations, Evidence & Objections: Before Trial, During Trial, On Appeal or After a Settlement. Presented by the ISBA Tort Law Section. 8:30-12:45.

Wednesday, 9/10/14- Live Studio Webcast—Guns in the Workplace: Workers, Unions and Employers. Presented by the ISBA Labor and Employment Section. 1:30-3.

Thursday, 9/11/14- Teleseminar—UCC Toolkit: Equipment Leases. Presented by the Illinois State Bar Association 12-1.

Thursday, 9/11/14- Live Studio Webcast—Veterinary Malpractice. Presented by the ISBA Animal Law Section. 9:30-11:30.

Friday, 9/12/14- Webinar—Advanced Tips to Fastcase Legal Research. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 1:00.

Friday, 9/12/14- Chicago, ISBA Regional Office—Understanding the Challenges of Implementing the Affordable Care Act. Presented by the ISBA Health Care Section. 2-4pm.

Friday, 9/12/14- Live Webcast—Understanding the Challenges of Implementing the Affordable Care Act. Presented by the ISBA Health Care Section. 2-4pm.

Tuesday, 9/16/14- Webinar—Boolean (Keyword) Searches on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 1:00.

Tuesday, 9/16/14- Teleseminar—Restructuring Failed Real Estate Deals- Part 1. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 9/17/14- Teleseminar—Restructuring Failed Real Estate Deals- Part 2. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 9/17/14- Live Studio Webcast—Animal Valuation. Presented by the ISBA Animal Law Section. 10-11:30.

Friday, 9/19/14- Fairview Heights, Four Points Sheraton—ISBA Solo & Small Firm Practice Institute. Presented by the Illinois State Bar Association. 8:30-5:30.

Tuesday, 9/23/14- Teleseminar—Understanding and Modifying Fiduciary Duties in LLCs. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 9/24/14- Chicago, ISBA Regional Office—After *Shelby County v. Holder:* The Impact on Voting Access. Presented by the ISBA Racial and Ethnic Minorities and the Law Standing Committee. 10-noon. ■

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