Vol. 50, No. 4, February 2006

YOUNG LAWYERS DIVISION NEWSLETTER • ILLINOIS STATE BAR ASSOCIATION

YOUNG LAWYERS DIVISION UPCOMING EVENTS

Upcoming Law Ed events and seminars for lawyers.

To register, call 217/525/1760

FEBRUARY

20—Advanced Workers' Compensation
Hawthorn Suites, Bloomington
5.25 Hours Based on a 60-Minute MCLE Credit Hour.*

24—View from the Bench: Uses and Abuses of Civil Practice in Employment Law Cases
ISBA Regional Office, Chicago

24—Legal Issues in Education Law
Chicago Athletic Association, Chicago
5.25 Hours Based on a 60-Minute MCLE Credit Hour.*

MARCH

4—Traffic Law Update
DoubleTree Hotel, Oak Brook
5.75 Hours Based on a 60-Minute MCLE Credit Hour.*

10—Update on Legal Developments for the General Practitioner
The Chateau, Bloomington

24—Traffic Law Update
Hawthorn Suites, Bloomington
5.75 Hours Based on a 60-Minute MCLE Credit Hour.*

31—How to Represent a Troubled Business
Hawthorn Suites, Bloomington

APRIL

5—Joint ISBA/DCBA YLD Lunch with a Judge in DuPage County
Judicial Center in Wheaton, 3rd Floor
Noon to 1 p.m.
For further details, e-mail Dion Davi at Dion.Davi@dupageco.org

*For specific details, please check the rule in the state you are reporting to.

CALENDAR

The second half of smart—How to temper your intelligence and become a more effective deal lawyer

By Fred Tannenbaum; Partner, Gould & Ratner; Chicago

Way back in law school, we learned many necessary and useful pieces of information to mold our analytical way of thinking and ultimately pass the Bar examination. Little were we warned that our academic instruction would be only a starting point and not an ending point in our evolution as successful lawyers. We were also told from time immemorial that being the smartest person in the room and commanding the power of our substantive breadth of intellect would sway all but the most immovable of mountains. In the real world, after 20 years of deal making across the U.S. in many of the most complex and nuanced transactions, in multi-million- and billion-dollar transactions, confronting some of the best and brightest adversaries, and helping clients buy and sell businesses in over 60 industries, I have finally realized that being a "smart" lawyer requires much more than just having a good mind and grasp of the law. Clients expect you to be smart and know the law. Rather, the most successful deal lawyers understand that being "smart" actually requires mastery of two components. Obviously, one component requires you to have basic intelligence and know the law as well as the many ways the law can be applied. Perhaps the more important aspect of being a smart deal lawyer, however, is to know how and when to temper your vast substantive breadth of knowledge with practical intelligence. The lawyer who combines both substantive and practical intelligence is the truly "smart" lawyer. Having raw intelligence without the second aspect of practical intelligence is analogous to a nation having a Defense Department without a State Department or a person having a brain but not a heart. They are both vital and inextricably linked and one cannot survive without the other.

Following are humbly offered, in no particular order, some ideas for combining your vast body of knowledge and gift for conveying that intelligence with practical restraints to make negotiations and client relations smoother and more effective. I believe that the blend of your native intelligence with knowledge and experience, together with the temperance described below in applying those skills, create an indomitable combination.

1. Perspective

"The deal is not about pension plans. It is about curtains." Many of us sometimes lose sight of the big picture in transactions. We focus on our "comfort zone," the milieu and technical way-station in which we lawyers feel most comfortable. Too often, a discussion over an important, but nonetheless secondary, issue can overwhelm the entire transaction and divert attention, focus, and emotions from what is truly important. This is the metaphor I use to remind myself to evaluate whether we have lost sight of the forest through the trees in negotiating any provision too thoroughly and missing its true significance in the context of the

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IN THIS ISSUE

The Editors' Spot

By Debra Liss and David Dwyer

Welcome to the fourth issue of the YLD newsletter for 2005 - 2006. Here is a brief update on a few things happening over the next several months with the YLD. In February, the Young Lawyers Division and friends will be volunteering at the Chicago Food Depository. In April, the YLD will hold its meeting in St. Louis, where coincidentally, YLD members will also be taking in a game and watching the St. Louis Cardinals.

Every two months the YLD publishes its newsletter with the goal of providing information that applies to lawyers as they begin and expand their legal careers. To that end, the YLD newsletter provides articles about the common issues that arise when starting a new practice, finding a first job and changing law firms. You may notice that each newsletter tries to provide one article on a substantive area of law. The newsletter also attempts to provide overall guidance from more seasoned professionals. We are always looking for new articles about these issues and if you would like to submit an article please contact one of the editors. Also, if you are interested in learning about an area of law or have a question you want answered, please contact us so we can help get the information to you. ■

Tax incentives for historic residences

By David Dwyer

Significant real estate tax incentives are available for owners of historic buildings in Illinois. The tax assessments for owners of historic buildings that are residential and owner-occupied can be frozen for eight years. Codified under the Illinois Administrative Code (Ch. VI, § 4150), the purpose of the incentive is to encourage restoration and rehabilitation of historic homes by freezing the assessed valuation for eight years.

In order to obtain the incentive, several qualifications must be met.

First, the end use of the property after rehabilitation must be as an owner-occupied residence. This definition includes a single-family, owner-occupied residence, a condominium, a cooperative or an owner-occupied residence up to six units.

Second, the property must be a historic building by: (1) being listed either on the National Register of Historic Places, the Illinois Register of Historic Places or designated by an approved county or municipal landmark ordinance or by (2) being located within a historic district and determined to be historically significant.

Third, a Certificate of Rehabilitation Application must be submitted at the time the rehabilitation project is completed. The application, which is available from the Illinois Historic Preservation Agency, must include: (1) the address, (2) the costs associated with the rehabilitation, (3) a statement from the local assessor stating the fair cash value for the year rehabilitation begins, (4) the owner's assurance that no Certificate of Rehabilitation has been approved for the same building within four years, (5) the name and address of the local assessment officer, (6) the description of original condition, (7) the description of the completed building including plans and specifications, (8) the date of construction commencement and (9) photographs of the building prior to rehabilitation, after rehabilitation and if possible photographs of original condition of the building. A final decision is reached within 45 days unless an extension is granted.

Finally, the completed work must meet the requirements under the Standards for the Rehabilitation of Historic Structures and the cost of rehabilitation must be 25 percent or greater of the value of the building before the construction.

The tax savings from this incentive can be considerable. Consider a hypothetical. A commercial building has been listed on the Illinois Register of Historic Places. The building has suffered from a soft rental market and is now a deteriorating building in need of substantial improvements. Because of these factors, the local assessor has valued the property at $1 million. Now the owner of this building has decided to convert the building into a condominium and expects to spend $4 million to create 25 residential condominium units. At the end of the conversion, the condominiums are sold for an average of $250,000 for a total of $6,250,000. If the project qualified under the incentive, the assessment would be frozen at $1 million for eight years. Thus, instead of being taxed on a $6,250,000 building, the building will be taxed based upon a value of $1 million. ■

The new MCLE rules: An overview

By Michele M. Jochner

After several years of discussion and debate, the Illinois Supreme Court, on September 29, 2005, adopted new and amended rules requiring all active practitioners licensed in Illinois to comply with a "Minimum Continuing Legal Education" (MCLE) requirement. The new MCLE rules are found in Part C of the Supreme Court Rules on Admission and Discipline of Attorneys (SCR 790 through 797), and the full text of these rules is available online at <http://www.state.il.us/court/SupremeCourt/Rules/Amend/2005/MRAmend092905.htm>.

The preamble to Part C of the new rules sets forth the court's rationale for establishing these new MCLE requirements. The MCLE rules "are intended to assure that those attorneys licensed to practice law in Illinois remain current regarding the requisite knowledge and skills necessary to fulfill the professional responsibilities and obligations of their respective practices and thereby improve the standards of the profession in general."

The following is a brief outline discussing the application and content of the new and amended Supreme Court rules.

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ILLINOIS STATE BAR ASSOCIATION

YOUNG LAWYERS DIVISION NOMINATION FORM FOR YOUNG LAWYER OF THE YEAR

AWARDS: TWO AWARDS WILL BE PRESENTED—ONE TO A YOUNG LAWYER IN COOK COUNTY AND ONE TO A YOUNG LAWYER FROM OUTSIDE COOK COUNTY

ELIGIBILITY: NOMINEE MUST BE A MEMBER OF THE ILLINOIS STATE BAR ASSOCIATION AND UNDER THE AGE OF 36.

1) NAME: [PLEASE PRINT OR TYPE] _____

2) NAME OF LAW FIRM, COMPANY, OR ORGANIZATION: _____

3) ADDRESS:_____ **CITY:**_____ **ST:**_____ **ZIP:**_____
E-MAIL_____ **TELEPHONE** _____ **BIRTH DATE**_____

4) EMPLOYMENT HISTORY: (USE ADDITIONAL PAGES AS NEEDED) _____
_____
_____
_____

5) ATTACH A STATEMENT OF the reasons why nominee should receive this award. Please limit your response to two (2) typed pages. Describe the nominee's particular achievements in the practice of law, including outstanding litigation, advocacy, or counseling and advancements to the legal profession, along with other contributions to the advancement of the Bar of Illinois, such as public service, community service, and pro bono activities. Copies of published articles may be attached.

6) REFERENCES: (PLEASE LIST TWO, INCLUDE ADDRESS AND TELEPHONE NUMBER)
1._____
2._____

7) NAME OF NOMINATOR (IF DIFFERENT FROM NOMINEE, INCLUDE NAME, ADDRESS AND TELEPHONE NUMBER)_____
_____
DATE:_____ **SIGNATURE:**_____

ALL NOMINATIONS MUST BE SIGNED AND SUBMITTED BY APRIL 21, 2006 TO BE ELIGIBLE FOR THIS AWARD. YOU MUST BE A MEMBER IN GOOD STANDING OF THE ILLINOIS STATE BAR ASSOCIATION.

RETURN SIGNED NOMINATION FORM TO: YOUNG LAWYERS DIVISION, ILLINOIS STATE BAR ASSOCIATION, 20 S. CLARK, 9TH FL., CHICAGO, IL 60603 OR BY FAX: 312-726-9071. CONTACT JANET M. SOSIN, YLD STAFF LIAISON, 312-726-8775, 800-678-4009 OR JSOSIN@ISBA.ORG, IF YOU HAVE ANY QUESTIONS.

ISBA Law Student Division NOMINATION FORM

ILLINOIS STATE BAR ASSOCIATION

2006 Public Service Award

The Illinois State Bar Association Law Student Division's Public Service Award is awarded annually to a law student participating in activities that enhance professional responsibility and provide service to the public. The award is based on extracurricular accomplishments and service related activities during the law school career.

A finalist will be selected from each accredited law school affiliated with the ISBA Law Student Division from which qualified nominees are submitted. The final award recipient will be chosen from these finalists. Each winner will receive a commemorative plaque. The final award recipient will receive all expenses paid to the ISBA Annual Meeting including transportation and one night's lodging and will be honored at the Annual Awards Luncheon. A $250.00 donation to a non-profit organization of the winner's choice will be made by the Association in the name of the final award winner. All decisions are final.

Additional nomination forms are available from your ISBA representative, Student Bar Association or by contacting the Law Student Division, Illinois State Bar Association, 20 S. Clark, Suite 900, Chicago, Illinois 60603, 312-726-8775 or 800-678-4009. **Nominations must be submitted by April 14, 2006**. Prior applicants may apply, except for prior final award recipients.

All nominations must be signed and submitted by April 14, 2006. To be eligible for this award you must be a member in good standing of the Law Student Division of the Illinois State Bar Association.

Please attach a separate sheet of paper and describe in detail the nominee's involvement in the public service activities. Also attach a listing of name(s) of organization(s), contact person, telephone number and amount of hours per week and if credits were received. Applicants are encouraged to emphasize volunteer public service activities. Please provide supporting information.

Nominee:
Membership Number: _____ (If not currently an ISBA Law Student Member please attach application and check for $12.00 to be eligible.)

Name: _____
Address: _____ City: _____ State: _____ Zip: _____
Telephone: _____ E-mail: _____
Name of Law School: _____ Year in Law School: _____ Day Student: _____ Evening Student: _____
Non-profit organization for donation (include name, address and contact name) _____
Nominator (if different from nominee, include name, address and telephone number)_____
Date: _____ Signature: _____

Applications not in compliance with qualifications will not be considered.

Please return completed application to:
Illinois State Bar Association, Attn: Janet M. Sosin, YLD/Law Student Division, Public Service Award,
20 S. Clark, Suite 900, Chicago, IL 60603, fax-312-726-9071.

The second half of smart

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overall transaction.

2. Proper Focus

Just as lawyers need to put the substance of the deal in proper perspective, they need to remember that the deal is about the clients and the business and not about you or the lawyer on the other side. What Professors Fischer and Ury said many years ago in a different context is still true today: Separate your and your adversary's personality from the issues. I have seen too many times lawyers trying to get 30 or 40 meaningless points from the other side just because they could or just to flatter themselves about the profound value they may have added to the transaction. Just as transactions are not about pension representations, they are not about the lawyers, as charming and engaging as we and our personalities may be. Our role is to make our clients look good, protect them as best as we can, sometimes run interference when necessary, but, in the final analysis, be a tool to facilitate as smooth a result for the person that pays our bill.

3. View of Other Side

Give every lawyer the benefit of the doubt to earn your trust or disdain. Never underestimate anyone. Never overestimate anyone either. I have been deceived into thinking that just because the lawyer representing the other side is from a smaller or unrecognized firm, or from a small town, that he or she is not capable or able to match my grand talent. Unfortunately for both me, but more importantly for my client, I learned that lesson at my peril. While brand names of firms and brand names of cities may connote experience and competence, the absence of either should not lull anyone into a full sense of security. Judge the adverse lawyer on the merits of what he or she says, not where they went to school or what brand name firm may pay his or her salary.

4. Timing on Concessions

Both Kenny Rogers and Ecclesiastes expressed keen sensitivity to timing, whether in song "you gotta know when to hold 'em and know when to fold 'em" or verse, "there is a time… ." Implementing this immutable principle, however, is easier said (or sung) than done. This short article cannot extend beyond generalities since each negotiation is different and proper timing will vary with the nuances of each deal. However, a few guiding principles transcend virtually all deals. First, try not to concede points too early or too late. Second, making concessions in the right way in the right amount at the right time helps build trust and rapport with the other side and can hopefully eliminate minute stumbling blocks to consummating a deal. Third, many highly educated lawyers actually take the view that every point is ultimately a business point and therefore defer to the client to make the concession. While technically speaking this may be correct, most clients will defer to lawyers on most of the arcane aspects of documentation where concessions are made and actually resent being swirled into a milieu where it is self-evident that the lawyer is just passing the buck.

5. Practical Realities

Perhaps an analogue of the prior point is to remember Mick Jagger's guiding principle: "You can't always get what you want." While all lawyers try their best to extract as many concessions as possible for their client, a fine line exists between being a zealous advocate and a reckless obstacle. The key is to prioritize which points are truly significant business or legal issues and which are just nice to have but not essential. If the issues fall into the latter category, then a lawyer should recognize that the only times you will obtain all of the items you requested are when either you have not asked for any, the other side is totally desperate or incompetent or your client is overpaying so much that they can dictate virtually every term. These conditions rarely occur. Just make a judgment regarding which of your points are really necessary and then move on.

6. Face Saving

While most of us quickly grasp that the other side does not have a monopoly of wisdom, seldom are we as reflective about our own positions. It is theoretically possible that we are not always correct on every issue or that there may be a patina of credibility in the other side's view. Even if that is not the case, and the other side is just plain wrong on many if not all of the issues, let them win something. Everyone likes to think they added value and made a substantial contribution to their client's effort. If you can sprinkle a few concessions to your adversary, provided your munificence is relatively meaningless, everyone wins. The adversary has received satisfaction that he has performed his role. He or she also feels better about you. You never know when you may meet again. It's a nine-inning ballgame. It truly can be a win-win.

7. Proper Role

This is not a contest to see who can find the most issues. Get the deal done. Most lawyers are very smart people. Most smart people can analyze anything and find myriads of issues. You can look at a painting in the museum and find a hundred aspects to it just as you can read a contract and find a hundred ways to improve it or get an edge for your client. While a lawyer's job is to improve the contract, his role is more over-archingly to get the deal done. In most deals, the 80-20 rule applies. 80 percent of the value you bring to the client is in 20 percent or so of the items. Consistent with the rule discussed above, the remaining 80 percent of the issues can be fertile ground for concessions, capitulation or compromise. You are not paid by the number of issues you spot or the number of points you win. You are paid based on spotting the main issues and helping the client extract as much protection on those issues as possible. Use the other issues as bait for winning the main ones.

8. Risk Assessment

Risk aversion is a salient genetic predisposition of lawyers. However, no aspect of life or transactions can be devoid of risk. Some lawyers try to avoid making any decisions about any issue remotely related to risk and pass that off to the client as a "business decision." The more successful lawyers, however, recognize the pervasiveness of risk and the lawyer's role to analyze it, put it in context, try to minimize it but ultimately deal with it. The most successful approach to dealing with risk I have witnessed is to accept it, be responsible to make a recommendation to the client to address it (or handle it if the client is deferring to you) and not be rigid or dogmatic about it. The best synthesis of this statement is to weigh the magnitude of the risk times the probability of it being realized.

9. You are a Business Advisor who Happens to have a Law Degree

As a young associate, a billionaire client once thanked me for giving a fine legal answer to an issue. However, he stated, "I can get a fine legal answer from anyone. What I expect of my lawyers is an understanding of the financial, tax, accounting, sales, marketing, business at issue, manufacturing, human relations, government relations and other non-legal aspects of the particular problem." In other words, the more successful lawyers need to synthesize their knowledge of the law in the context of the issue at hand. Homogenization of the legal issues with the many other disciplines involved in any deal or business

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YLDNews

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The new MCLE rules

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To whom do the MCLE rules apply?

Supreme Court Rule 791 provides that the MCLE requirement applies to all lawyers "admitted to practice law in the State of Illinois." However, certain exemptions from the requirement are provided in Rule 791 for the following attorneys:

- attorneys on inactive or retirement status;
- attorneys on disability inactive status;
- attorneys serving in the office of justice, judge, associate judge or magistrate of any federal or state court;
- attorneys who are on active military duty;
- attorneys who, in addition to being licensed in Illinois, are members of the bar of another state which has a MCLE requirement, who are regularly engaged in the practice of law in that state, and who are in compliance with the MCLE requirements of that state;
- attorneys who, in "rare cases," are granted a temporary exemption from the MCLE requirement based upon a showing of "good cause." "Good cause" may exist in the event of illness, financial hardship, or other "extraordinary or extenuating circumstances beyond the control of the attorney."

What do the MCLE rules require?

Supreme Court Rule 794 provides the following MCLE requirements:

- 20 hours for the first two-year reporting period (which begins July 1, 2006, and ends June 30, 2008 for lawyers with last names ending A-M and begins July 1, 2007 and ends June 30, 2009 for lawyers with last names ending N-Z);
- 24 hours in the second period (ending '10 and '11); and
- 30 hours every two years after that.
- Credit hours are actual time (60-minute hours, as opposed to the 50-minute hours used in some states).

In addition, please note that Rule 794(d) also mandates what is called a "professional responsibility requirement." As part of (not in addition to) their total MCLE hours, attorneys must have four hours of training in "professionalism, diversity issues, mental illness and addiction issues, civility, or legal ethics" during each two-year period.

For brand-new attorneys, Supreme Court Rule 793 provides special requirements. A basic skills course is required for all lawyers admitted after January 1, 2006, unless they have practiced in another jurisdiction. The basic skills course must be a 15-hour course, taken within a year of admission and including training in practice, ethics, and office management. New lawyers are exempted from other MCLE requirements during their first year, and start their first reporting period on July 1 of the next even numbered year for lawyers whose last names begin with A-M and July 1 of the next odd numbered year for lawyers whose last name begin with N-Z.

Rule 794(c) provides that CLE hours can be carried forward. Starting with programs presented January 1, 2006, attorneys who are not newly admitted can carry 10 hours into any subsequent reporting period. Newly admitted lawyers can carry 10 hours earned after completing their basic skills training into any reporting period.

In what ways can attorneys obtain CLE credit?

Supreme Court Rule 795 sets forth the criteria which eligible CLE courses and activities must meet in order for attorneys to obtain credit for attendance. The course or activity:

- must have "significant intellectual, educational or practical content";
- must deal "primarily with matters related to the practice of law";
- must be offered by "a provider having substantial, recent experience in offering CLE or demonstrated ability to organize and effectively present CLE";
- must be conducted by "an individual or group qualified by practical or academic experience";
- must have "[t]horough, high quality, readable and carefully prepared written materials"; and
- must be "conducted in a physical setting conducive to learning." Please note that the rule allows the CLE course or activity to be presented by remote or satellite television transmission, telephone or videophone conference call, videotape, film, audio tape, or over a computer network. However,
- the content and provider of the CLE course or activity must be approved by the nine-person MCLE Board; and
- the Board must find that the method of delivery of the program or activity has "interactivity" as a key component.

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The second half of smart

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is consistent with the deal being about curtains, not about a materiality qualifier on a pension representation. While the latter may be crucial, it is not always so. One of the best compliments I ever received was from a client who observed that the lawyers on the other side of a hotly contested venture capital transaction were just good lawyers, but that I was a businessman who happened to have a law degree.

10. Calculated risks and experimentation Lead to better judgment

Human nature strives for security and contentment and many lawyers are no different. However, the businesses of successful clients require them to learn new markets, new products, new sources, new employees, new techniques and new approaches, just to stay even with the competition. So often lawyers hang firm with the tried and true, not because it is the best approach, but because it is the only approach with which they are familiar. Too often lawyers will not take risks or will not concede points because they have not done so before. Oscar Wilde once observed that good judgment comes from experience and experience comes from bad judgment. A lawyer will set himself apart from his colleagues by appearing in the arena, taking those calculated risks and getting that valuable experience and from that experience, invaluable judgment and wisdom.

11. Know your Limitations and Use others as Resources

Many of us are trained to distrust the other side and not work constructively to the end of a mutually beneficial transaction for both sides. We should recognize our own natural limitations, as well as those of our firm and our clients. Those who are able to learn and rely on information from the other side accomplish several things. First, you gain the trust of the other side, since they feel you trust them and that they have made a contribution. Second, you have developed a resource. Third, the other side may reciprocate and take at face value a piece of information which you offer. Finally, the information which the other side provides may speed up and facilitate your fact gathering process. Obviously, unswerving fealty to the other side's information may be dangerous. In the words of Ronald Reagan describing his relations with the Russians: you need to "Trust but verify."

12. Speak Concisely and in English

We lawyers pride ourselves on our eloquence and believe that everyone and everything hinges on each and every word of our carefully uttered full paragraphs. The reality in most deals is that the only words people wait for or actually hear are "yes," "no" or "here's how we can resolve this." Lawyers are often tempted to display to their supposed acolytes the depths and breadths of their substantive knowledge on the most arcane topics. I am most impressed by lawyers who are confident enough in themselves that they simply tell the client that the matter can get done and how to do so instead of explaining how a certain tax code section creates a certain exception which fosters the result. The client knows you know how to make the watch. They just want to know the time. Clients also want to conserve their own time. In other words, if you cannot communicate clearly and effectively, just shut up.

13. Accommodation

Accommodating an adversary on items which may be needed by him to save face or give his client a decent deal is not a sign of weakness but rather of strength. It will build trust and build long-term relationships. Many lawyers' first impulse, especially when they have superior bargaining power, is to just say no. Instead, I recommend the lawyer find out why the other side needs something and see if it can be accommodated without disrupting your client's needs. This view is consistent with the importance of face saving, discussed above. It is also a logical outgrowth of creating win-win situations. Further, accommodation should win reciprocal good turns and facilitate the transaction.

14. Proportionality of Response

Lawyers often receive extensive markups of their drafts and often find large sections just simply crossed out. In addition to the typical ego deflation of seeing your precious work product summarily dismissed and believing that you have irretrievably lost the client's fundamental bargain as a result of the deletions, lawyers should resist the temptation to retaliate in kind or insist that every precious word be re-inserted verbatim. Understand the other side's reasons for the deletions. Find out whether there exists a fundamental misunderstanding of each side's needs or whether a rationale for the deletion makes sense. More fundamentally, do not take it personally. Remember the other lessons above, particularly that this is about the deal, not your bruised ego. Conversely, when you need to remove their language from a section, consider how you would feel. Try to be as judicious and narrow in your excising as you can. Assess whether some language and concepts may be retained and modified. Try to be as precise and sensitive as you can. Use a surgeon's scalpel in working with all but the most anathema provisions suggested by the other side, not a butcher's meat cleaver. Surgeons get paid far more than butchers. And surgeons are more respected as well.

15. Nothing is Impossible; Yes is Always an Answer

While a client request may seem impossible or not well thought out, you can tell them how to accomplish their goal and they can then realize the answer is no. "No" is always an easy answer since it does not require any risk taking and if the advice is followed, you can never be proven wrong. Any lawyer can say no. The good lawyers can point out ways for a client to accomplish his or her goal. If the lawyer cannot solve the problem, then a particularly skilled lawyer can point out to the client in an artful way the tortuous steps necessary to accomplish his goal. The client will thereby reach the same conclusion.

16. Separate Important from Meaningless Requests

As an outgrowth on the discussions regarding the proportionality of a response, prioritization and face saving, I still try to temper my normal antipathy to lawyer revisions with the practical assessment of whether the changes are for the better, substantive, purely wordsmithing, ego-driven with little substance or a desire to feel like they have added something. If you answer affirmatively to Shakespeare's question whether the proposed changes are merely "the sound and the fury of a tale told by an idiot, signifying nothing," then just make the changes, move on and get the deal done.

These lessons are much easier to espouse than to apply. We are all human, all have frailties and all have a desire to win. I frequently catch myself straying from these principles and descending back into the miasma of pettiness, insensitivity and lack of perspective. Sometimes I catch myself in time. Other times it is too late. Just as my clients expect me to keep knowing the law, however, they also expect me to keep practicing these lessons. While I will never know all of the law, I will never be able to apply all of these skills. Both are journeys worth pursuing. ■

The new MCLE rules

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- "Interactivity" may be shown by the opportunity for the viewers or listeners to ask questions of the course faculty, either in person, by telephone, or on-line; or through the availability of a qualified commentator to answer questions directly, electronically, or in writing; or through computer links to relevant cases, statutes, law review articles or other sources.

In addition, Rule 795 sets forth "nontraditional courses or activities" which may receive CLE credit:

- attendance at "in-house" seminars, courses, lectures or other CLE activity presented by law firms, corporate legal departments, governmental agencies, or similar entities;
- attendance at J.D. or graduate level law courses offered by American Bar Association (ABA) accredited law schools;
- attendance at bar association meetings at which substantive law, matters of practice, professionalism, diversity issues, mental illness and addiction issues, civility or legal ethics are discussed;
- attendance at courses or activities that cross academic lines, such as accounting-tax seminars, or medical-legal seminars;
- teaching CLE courses;
- part-time teaching of law courses at an ABA-accredited law school, or teaching a law course at a university, college or community college;
- writing law books and law review articles;
- pro bono training; and
- Capital Litigation Trial Bar training. ■

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