ILLINOIS STATE BAR ASSOCIATION

JUNE 2017 VOL 38 NO. 4

The Bottom Line

The newsletter of the Illinois State Bar Association's Section on Law Office Management & Economics

Systems, processes, and checklists all critically important to a successful law office

BY KERRY M. LAVELLE

I know, by the title of this article, you may be predisposed to believe that this article is based on how we, as lawyers, may attempt to look at successful manufacturing companies and apply their ways of doing business to our law offices. Nothing could be further from the truth.

For a law office to be successful and grow, certain infrastructure needs to be put in place to make certain parts of the infrastructure somewhat interchangeable

Continued on next page

Issues to consider when moving or opening a new law office

BY AMBER MIKULA

Most solo practitioners or small firms decide to move their law office or open a new law office in a different location. When relocating your office, there are several issues to consider.

These issues include compliance with municipal requirements, developing or updating your marketing information, informing your client of your new contact information, and registering the changes with the appropriate licensing bodies or government agencies.

Prior to moving to a new location, you should check with the municipality to determine the process and information

Continued on page 4

Systems, processes, and checklists all critically important to a successful law office
1

Issues to consider when moving or opening a new law office
1

Mentoring attorneys in a small law firm
5

Solo practice tips to remember
7

Balancing litigation and transactional work
9

When can I destroy my records?
10

Upcoming CLE programs
10

If you're getting this newsletter by postal mail and would prefer electronic delivery, just send an e-mail to Ann Boucher at aboucher@isba.org

Systems, processes, and checklists all critically important

CONTINUED FROM PAGE 1

so that the loss of one or two people does not derail the upward trajectory of the law firm. Please do not misunderstand: good people still count for a large portion of a law firm's success, possibly the most important part. But systems and processes need to be put in place to minimize mistakes, malpractice, and to maximize efficiencies which, in turn, reduce legal fees for clients. Again, having top quality people helps make the systems run efficiently and optimally, but there still needs to be a understandable recognizable flow or "process" for all of your legal work.

For small law firms that only have between one and three attorneys, the "process" might start out as a comprehensive set of checklists. A law firm should never outgrow checklists, but they are the simplest way for a small law firm to begin building systems and processes to instantly help the law firm, and also lay the foundation for growing your law firm.

After being a longtime advocate of checklists, I read, and I encourage you to read *The Checklist Manifesto, How to Get Things Right* by Atul Gawande. In Gawande's New York Times bestseller, he explains how the airline industry has always been checklist driven.

For example, mechanics go through various levels of checklists every time to prepare a plane for flight. After a certain amount of air miles and hours in flight, a different set of checklists apply. Similarly, pilots go through a set of checklists before preparing to fly. Then, while in air, or when approaching problems, pilots rely on a separate set of checklists. By and large, the airline industry is incredibly safe and, according to the author Gawande, it is in large part due to their reliance on checklists.

Gawande then advocated such a checklist system for hospitals in order to minimize errors in patient care and surgery. To no one's surprise, with the creation of multiple levels of checklists for ordinary patient care, pre-surgery care, pre-surgery preparation, surgery and post-surgery follow up, patient care improved, mistakes dramatically dropped, post-surgical patient health improved and it unequivocally improved patient care. Reliance on checklists also dramatically reduced malpractice actions against the doctors and hospitals.

The natural extension to the legal field is that lawyers must use checklists as much as possible. For example, why not have a definitive checklist for a residential real estate closing? A commercial real estate closing? An asset purchase agreement? Stock purchase agreement? Commercial lease review? Also, what about state law litigation? How could you train someone on the continuum of the life span of a lawsuit? Something as simple as the timing of filing a complaint, and the responsive limitations on filing motions to dismiss, answers, affirmative defenses, etc. What are all of the discovery tools used for the lawsuit? How can you make sure none are missed? What comes first? Request to admit? Request to produce documents? Depositions? How do you handle experts?

Imagine having a compelling and detailed checklist, or litigation handbook, specific to your firm's "process" encompassing the local rules where every new attorney and attorney thereafter would need to understand in the process for litigation.

Take note, each one of these subsets of litigation can have their own checklists. For example, there may be a certain process to make a determination whether or not to file a motion to dismiss (under what specific rule?) or motion for a bill of particulars. What is the strategy behind the difference? Is there a difference in your checklist when you are the plaintiff? Or the defendant? Certainly, strategy differs. As you can see, there is empirical evidence that demonstrates that checklists minimize mistakes and, as a result, minimizes malpractice actions. However, checklists are also great teaching tools, and make for far more thorough lawyering.

Imagine reviewing a lease prepared

The Botton Line

Published at least four times per year. Annual subscription rates for ISBA members: $25.

To subscribe, visit www.isba.org or call 217-525-1760.

OFFICE
ILLINOIS BAR CENTER
424 S. SECOND STREET
SPRINGFIELD, IL 62701
PHONES: 217-525-1760 OR 800-252-8908
WWW.ISBA.ORG

EDITOR
Jeffrey M. Simon

MANAGING EDITOR / PRODUCTION
Katie Underwood
kunderwood@isba.org

Postmaster: Please send address changes to the Illinois State Bar Association, 424 S. 2nd St., Springfield, IL 62701-1779.

by the landlord, on behalf of your client, the tenant. The lease may be completely silent on tenant friendly and necessary clauses such as use of common area, a non-disturbance agreement, the allocation of insurance requirements, and how to calculate the "lease year." However, as you are reading the lease, you would have to rely on your memory to catch all the subtle nuances that need to be addressed for the benefit of the tenant. However, if you are reviewing the lease with a checklist in hand, you would be able to simply identify all the clauses that are missing from the lease that you would want incorporated into the lease for the benefit of your client, the tenant.

Checklists help catch those clauses and sections of documents that are completely missing that would benefit your client. The same goes for equipment leasing arrangements, product line purchases, asset purchase agreements, and all other documents that are reoccurring in your office.

Attorneys should not consider themselves a jazz musician that just improvises on every document and in every case. Attorneys are strategists, technicians, and critical thinkers. You should not be held to the standard of memorizing what every legal document needs to contain. Checklists take the memorization factor out of document drafting, complex litigation, and leaves the critical and strategy thinking to the attorneys.

In a growing law office, checklists give birth to systems or processes. In the current vernacular, "systems" tend to subtly mean computer systems and servers. What I am referencing is a "process" which is a horizontal workflow for legal services. A process needs to start somewhere in your law office, and conclude with a client or court deliverable. How does that work in your law office? Is it internally published? Could everybody recite it clearly?

Any process for any practice group needs to be well established, and everyone involved in that practice group needs to understand how the system works, including all of the administrative assistants. Great personal injury firms have a system in place for evaluating cases, rejecting cases (with polite non-representation letters), obtaining medical records, interviewing witnesses, experts, and taking the case to trial. They would all be better off if these systems and processes were put in writing and built around sub checklists. Very experienced personal injury trial attorneys have their system locked in place (in their heads) and the administrative assistant and associate attorneys know it. However, the learning curve improves dramatically, and the mistakes for malpractice drop dramatically, once that process is documented.

There is simply not a practice area in law that would *not* benefit from a well-established process in your office. The easiest practice area to process in a law office is estate planning. A client calls for an appointment. You either send out a questionnaire for the client to fill out prior to the first meeting, or you fill it out with the client during the first meeting. You talk through the various estate planning options, and in many standard estate plans, the path for documenting the client's estate plan can be established in the first meeting. More complicated estate plans may take additional time.

Once the type of estate plan is established, the client will leave the office, you may, depending on your process, memorialize the agreement of what documents need to be prepared in a letter to the client which may or may not include an estimate of fees. Next, the documents are prepared under some established timeline; the documents are sent to the client, with a cover letter that gives a timeframe for receiving comments on the documents. If changes need to be made to the documents, they are, and a meeting is scheduled for the clients to come in to execute their documents. At that meeting, any trust funding issues are handled, and there is an understanding among the attorneys and clients on the post execution trust funding for the clients. All of these steps are laid out linearly in a horizontal timeline to be completed within your firm's processed timeline. Of course, items may get delayed because clients delay on their response on document review. However, under no circumstances should you change your process by delaying the delivery of the documents, or making changes pursuant to the client's requests. This is only one example of a process that should and could be documented in your law office for estate planning. Other practice groups can benefit similarly.

Practice groups are not the only part of the law office that can benefit from a process and checklist. You should use practice management checklists for your office. For example, human resources checklists, financial checklists for bank reconciliations and trust accounting, internal processes and procedures for opening files, closing files, disengaging with clients, mail, phone etiquette, time keeping, and other similar areas. Clearly creating a checklist in the processes takes time, but it is an *investment* in your law office to grow the future generations of lawyers and administrative assistants in your office. Each category of employee should have a manual articulating his or her job throughout the day, the week, and the month. Most importantly, your billing and office manager needs to document a handbook for his or her work relating to the financial aspects of the firm. If you are engaged in the creation of the bills, banking, incoming checks, and bill paying, you need to create checklists and processes so that one day you can hand that task off (or a portion of it) to a competent assistant that will then benefit from your experience. Hopefully your experience will be memorialized in the checklists and processes articulated herein.

In conclusion, there is no question that your law office, and all of us being dedicated to the profession of law, can advance client services with checklists and processes. Please take the time to invest in your law practice by creating these important structural documents for the betterment of your practice, client service, and our profession. ■

Kerry M. Lavelle started out as a solo practitioner, is the founding partner of Lavelle Law, Ltd., a 26-attorney law firm serving the Chicagoland area. He is the author of THE BUSINESS GUIDE TO LAW: *CREATING AND OPERATING A SUCCESSFUL LAW FIRM*. It can be found on the ABA website at: <http://bit.ly/1J1p0Aa>.

Issues to consider when moving or opening a new law office

CONTINUED FROM PAGE 1

needed to obtain a new business license or registration. Each municipality has different requirements. Some municipalities merely require a registration form, including the business name, address and information, while other municipalities require inspections and approvals from their building department, fire department, and other departments. All of these inspections can take time, especially if there are any violations found.

These violations will have to be rectified, prior to obtaining the business license, so it is important to submit the business license application as soon as possible. Lastly, you need to update any business liability insurance policy to cover the new office.

Once you find a new office, you need to update your marketing information. It is imperative that your clients be able to contact you and that new clients find you, so this information should be updated as quickly as possible. This marketing information includes updating your website, business cards and letter head. While you update the location and contact information, it is a good opportunity to update your overall website with more detailed information on your practice areas, client testimonials, and new relevant cases or statutes that affect your clients. Besides notifying clients, a notice of address change must be filed for any current cases, so that the court clerk's offices and opposing counsels can forward any new motions, orders, or documents for your cases.

In addition to updating the marketing information, you should directly notify your clients of your new contact information. For current clients, it is good practice to call them and let them know about the change. This contact allows you to ensure your clients that you will still be available for them and that there will be no interruption in your service of their cases. You can send a letter to former clients, so they have the new contact information, in case they need additional services. As a final step, you can send your clients an email, to verify that they have the new contact information.

After you obtain your new contact information, you must notify any relevant licensing authorities and government agencies. The Illinois ARDC requires that any changes in addresses be reported to them, within 30 days of the change. Most attorneys are, also, notary publics, and a change in address must be reported to the Secretary of State. If you relocate to a county that is different from the county, in which, you were appointed, you have to resign your commission and submit the resignation to the Secretary of State. After this resignation, you can then complete an application for a notary public in the new county. It is important to update the address change with any bar associations, chambers of commerce and your professional liability insurance company. You, also, need to change the information for any attorney code that you have with the appropriate circuit court clerks.

Moving to a new office can be a time consuming process. In order to make the process more efficient, it is important to plan ahead and be fully informed as to the necessary steps that you need to take. Obtaining the relevant municipality information on getting a business license, updating your marketing information, contacting your clients and notifying the appropriate licensing authorities and government agencies are some of the necessary steps that you will have to take when you move your office or open a new office. ■

Amber Mikula of Law Offices of Amber L. Mikula, located in Bolingbrook, Illinois is the author of this article. She concentrates her practice in the areas of family law and real estate.

Mentoring attorneys in a small law firm

BY JEREMY S. KARLIN, BARASH & EVERETT LLC

I get that in a busy small law firm, you have barely enough time in the day to do your own work, return phone calls and emails, and extinguish the daily fires that always seem to sprout up like you're in California during the dry season. Isn't that why you hired that associate in the first place: to take some of the work off your shoulders and increase revenue? You made the effort to weed through the resumes and writing samples. You called the references and, after interviewing some very promising prospects, you settled on your first choice and hired him/her. Well then, why are you still working so hard and your associate isn't making you any money at all?

New attorneys are the greatest and riskiest long term investment a small law firm will make. Just like mutual fund managers who monitor daily the performance of a portfolio, senior attorneys must pay close attention to new attorneys to ensure the greatest return. The first couple years of an attorney's career are tough enough-and while you turned out all right, and without any help, it is a terrible argument for treating your associates like pledges in a fraternity. The purpose of this article is to give ten suggestions on how best to mentor new attorneys in a small law firm setting and making the process more than simply introducing them around the courthouse and answering every question with "have you looked at the statute?"

1. Meet regularly with the associate

When starting out, you should plan to meet once a month. After the first year, so long as there are no problems, once every two months make sense. This should not be a meeting that you have when you both realize that you have time, or when there's trouble. Make sure that you both set it on your schedule and block out sufficient time to meet. Otherwise, the meeting won't happen.

2. Establish attainable goals

Well before you hire an attorney, you should develop a multi-year set of expectations for him or her. Of course, this could start with billable hours or cash receivables. More than the financial expectations, you should set other goals and requirements that will help them succeed in meeting these goals and avoiding trouble. For example, this would include requiring the associate to respond to client communications within one business day. The client should receive a copy of any correspondence that the attorney sends or receives. Sample fee agreements and engagement and closing letters should be discussed. Proper and complete instruction on the firm calendar system is a must so that deadlines are kept and files aren't neglected.

3. Develop a daily strategy on how to get there

The above list of expectations would overwhelm anyone, especially your novice attorney. The best way to implement these goals is to break them down into daily strategies. If you do have a billable hour requirement, figure out how many hours that would be during the day. Suggest a daily time for the associate to meet with his or her assigned staff to address the mail, phone calls and other communications of the day. Your expectations will be easier to meet if you both can create a systemic approach to handle the work.

4. Don't make it like a trip to the principal's office

Don't focus on weaknesses and problems alone. It is important to "accentuate the positives." When I meet with my mentees, I start off every meeting by asking them what is working well for them and what they enjoy working on. The mentorship process is not just about assuring the associate meets your expectations. It's also about whether the law firm is meeting your new hire's needs as well. Regularly, I ask what type of work they are not doing that they would like to see more of on their desk. Do they have the resources they need? You're there to support them and figure out what works best for him or her.

5. Take extra time with billing.

Where I see most young attorneys struggle, and what they certainly don't teach in law school, is how to effectively bill clients. Appropriate billing practices is another skill to learn just like trial advocacy, persuasive writing and efficient research. Too often, new attorneys don't write down all the time it takes to handle a project because in their mind it took too long. New attorneys forget to write down billable work or don't provide enough detail so the client understands the bill. Associates should be encouraged to write down all the time, even if the task took forever, or even if it is not on a type of matter that is not hourly billed work. Partners may have to edit the bill accordingly, but it does show that partner that the attorney is working.

6. Show the associate the books

In most of the small firms in which I have worked, there is often a reluctance to open the firm's financials to associates. I think this is a bad practice. If we use the financial information as a means by which to evaluate an associate's performance, then the associate should be able to see that information. Further, we are training our associates to be future partners or managers. Revealing the overhead costs of law practice and showing how they fit into that, breaks the natural tendency of an associate to think they work for a law firm and starts the process of buying into the notion that they are the firm.

7. Involve the staff

None of us can do what we do without our staff members that make it happen. Your associate is no different. Invite your associate's staff members to the initial meetings so they will fully understand what

is expected of the associate and to help implement the daily goals and systems.

8. Don't make assumptions that your associate knows what to do

Further, don't assume they are motivated by the same things you are.

9. Be a human

Long ago, you too were a terrified young associate, eager to do your job well and with no earthly clue how to do it. Also, we have seen co-workers struggle with the difficulties of law practice and the potential traps along the way. So not only should you mentor your associate on how to be financially successful, but also on how to set a good work/life balance, how to recognize mental illness and how best to deal with stress and anxiety. All these personal things come with us when we walk in the door every day so we should create an environment where such talk is possible.

10. Set a good example

Most of this article really is a re-hash of the best practices for an attorney and instilling these in the daily mindset of your associate. In addition to talking about these strategies with your new hire, you will need to model these practices as well. ■

Solo practice tips to remember

BY LETISHA LUECKING ORLET

1. Your Practice is a Business

You must always remember that your practice is a business. This is a business that needs to make money to support you, your family, and your employees. You must put in the time and effort to properly market and grow your business. You want your business to be successful. Developing a business plan will put you on the road to success. Your business plan will contain a roadmap to success and help keep you focused on your goals. Your business plan should also identify your monthly expenses as well as your competition and marketing plan. This is very much a living document that you should consult frequently to keep yourself on the path to success.

Part of running your practice as a business is remembering to bill your clients—for everything that you do! It is so easy to be busy and working at such a fast pace and forget to properly enter your time for your clients. This is okay if you do flat fee billing. However, if you are still on hourly billing, each time entry that you forget to log is money lost to your business. As you know, money lost to your business means less money for technology, marketing, employees, and, lastly, to put in your pocket.

2. Stay in Control of Your Money

The best way to know exactly what is happening with your practice is to be the one who controls the money. You should sign the checks and make the deposits. You should be the one to look at weekly reports regarding income and expenses. Checking weekly reports enables you to stay on track and course correct immediately if needed. Staying in control of your money also reduces the chances of an employee stealing from you. We want to trust our employees, but this is a story heard too many times. There is a small business and the owner lets the employee handle the money. Years down the road, the owner discovers the employee embezzled thousands or millions from the firm. As much as you want to completely trust your employees, the fact is that you cannot. You must stay on your guard when it comes to both your IOLTA and Operating Accounts.

3. Be Debt Free

Debt is not necessarily a bad thing and it is sometimes unavoidable to accomplish certain goals. However, always remember that your profit is the result of your income minus your debt. This means there is no profit from your business until you subtract your debt from your income. If you can avoid debt, you should because then you are not worried about your normal business expenses as well as paying off a loan as well.

You should know your monthly "nut" and what you can do to adjust that number if necessary. Calculate this monthly number by listing all of your expenses and debts and spreading that total across 12 months. That is your nut. This is the number that you have to cover every month in order to keep your business afloat. Remember to include your salary in that number. Keeping these expenses listed will enable you to periodically access your monthly expenses and make changes. Knowing this number gives you the freedom to make quick determinations regarding how many cases you want to take and if you are able to take a day off of work!

4. Pay Your Taxes

Part of starting out your solo practice is employing the professionals that you will need in order to run your business. Since you are running your firm as a business, you will have employed a CPA because every business needs one. Determining your tax liability during the early years of your practice may be difficult. However, working closely with your CPA will make these unknowns much easier. Mostly importantly, you should remember that just because you were paid $2,000 to defend someone on an Order of Protection matter does not mean all of that money is yours to keep. It is most definitely not all yours and Uncle Sam must be paid as well! You will establish your business as a certain type of entity and that will determine what type of tax liability you will have to both

the state and the federal governments. Again, working with a CPA will make this a manageable issue.

5. Pay Yourself

This may seem like a no-brainer, but it is not always that easy. Sometimes the first and easiest expense to cut in a tight month is your own paycheck. That is great if you are in a position to do that. But, most people are in no position to skip their own paycheck. Also, working as hard as you do, you deserve to be paid something, right?

So, avoid putting yourself in this position in the first place. Set up policies regarding payments and your retainer and stick to those policies. An older lawyer told me once to make sure you get a retainer that you believe will pay for the entire matter because that is likely all the money you will ever receive. It is so easy when first starting out to just want to help people and forget about the fact that you need to pay your own rent or mortgage. BE STRONG! Remember, taking one smaller paying client beats "helping" two non-paying clients because those two non-paying clients are not going to pay your rent or put food on your table.

6. Contribute to a Retirement Plan

This is directly related to paying yourself. Some type of plan for your retirement should be included in your business plan. It is never too early to start planning for that someday when you cannot or do not work any longer. Make it a habit to put some amount away in a retirement account each month.

7. Remember Your IOLTA is Sacred

Everyone knows this, but you cannot hear it enough. Your IOLTA account, and how you deal with it, is extremely important. You must have a separate trust account and operating account no matter how small your firm. You must treat your deposits properly remembering to differentiate between retainer, advances, settlements, real estate closings, and flat fee deposits. You must be able to provide documentation to support all of your deposits and balance your accounts monthly. Never use trust money for personal or operating expenses. This amounts to theft and the ARDC frowns upon it! See ILRPC 1.15 for additional information about handling trust accounts. Read it and know it!

8. Threats Do Not Work

You should not use threats during the litigation of your case in order to obtain the result you are seeking. Rule 8.4(g) states "It is professional misconduct of a lawyer to present, participate in presenting, or threaten to present criminal or professional disciplinary charges to obtain an advantage in a civil matter." Do not threaten the other side with criminal action when you are trying to obtain your desired result. You could be violating ethical rules and risk being reported to the ARDC. If someone is threatening you in this fashion, do not threaten to report them for the behavior in order to obtain your desired results in the case because that, too, could be a violation of the ethical rules. ILRPC 8.4(g). It appears that some attorneys forget this and we must all remember that we are not a profession of threats. We are a profession of evidence and arguments which all rely on the law.

These are mostly tips that everyone should know and do seem like common sense. However, I believe that with the everyday rush to complete our jobs, some of these things tend to fall by the wayside. Newer lawyers may not know them at all and more seasoned attorneys may forget or become complacent. These are items that we should stay on top of everyday and keep working on. We will be better and, hopefully, more successful lawyers because of it. ■

Balancing litigation and transactional work

BY IAN HOFFENBERG

For practitioners who do both litigation and transactional work, there can be many challenges. Issues range from both technical legal issues, to more practical business of law issues. In order to maintain competence and professionalism in both areas, there are many things to consider.

Different Goals & Methods

One of the main differences between litigation and transactional work is the different goals of each in representing a client. In litigation, on many occasions, clients wish their lawyer to be an aggressive advocate (clients often use the cliché they want their lawyer to be a "bulldog", which is possibly a topic for another article). However, on the other hand, on the transactional side, clients often want to "get the deal done." Being an aggressive advocate in the courtroom versus advocating for the client in a transaction can mean utilizing legal and practical methods that are polar opposites.

The most important thing to remember is that, as lawyers, we must serve our client's needs. In the courtroom, or in the midst of litigation, sometimes that requires advocating within the confines of an adversary system. Oftentimes, in civil litigation, tension between the parties runs high.

In transactional work, while tensions can also run high, sometimes this area of law requires being non-litigious, if that is what is best for the client. In the midst of closings, when there is the possibility of tensions rising, it's important to keep the client's goals first.

For instance, on many an occasion, in a transaction, a counsel for a party on the other side can be aggressive or pedantic or confrontational, creating the possibility of causing tension to rise. The challenge becomes responding but also keeping the client's best wishes in mind. If a client wants to close, it is perhaps in the best interest of the client to not engage in a back and forth with the other side. Keeping the client's best interests in mind, it can be best to bite one's tongue, and move towards the goal of closing the transaction.

For instance, in a recent transaction, a lawyer for the other party was a challenge to work with. His pedantic and confrontational style caused tension in the deal. As this was a transaction which I knew my client very much wanted and needed to close, I kept my client's goals in mind, and focused on completing the closing.

Different Billing Types

Another challenge in practicing both litigation and transactional work is types of billings. Commercial litigation is often based upon an hourly rate. This involves requesting retainers from clients, accounts receivable, dealing with clients regarding billing on a monthly basis—all of which can pose challenges.

Transactional work, on the other hand, while frequently hourly, and subject to the same issues as above, can oftentimes be based upon a flat rate, payable at closing. If the fee is based upon a flat rate, the need to keep track of time is not necessary but is a good business and legal practice, nonetheless, as, like all fees, it is subject to the requirement or rule 1.5(a) of the Illinois Rules of Professional Conduct that a lawyer may not charge or collect an unreasonable fee. Attorneys must also be mindful, as well, of rule 1.15 of the Illinois Rules of Professional Conduct regarding the usage of retainers and the forms thereof.

As such, the billing structures for litigation and transactional work can be entirely different, which can pose a challenge.

Staffing

Another challenge in balancing litigation and transactional work can be finding staff. Oftentimes a paralegal, for instance, who has experience with and is skilled in real estate transactional matters, will not have similar experience with litigation, and vice versa. A litigation paralegal may know the details of filing and docketing a motion, or drafting a subpoena, though may not have experience in how to assist in and effectuate a real estate transaction. These skills must be trained and take some time.

Using Litigation Experience in Transactional Matters

While the previous paragraphs discuss the many challenges of doing both litigation and transactional work, though there can be many challenges, there are benefits as well. I can think of at least two such.

First, litigation experience can be immeasurable, and can be of great benefit to assist in helping a client in the transactional context. Having the benefit of litigating an issue can create valuable lessons on how to assist and protect a future client in the transactional context. For instance, when negotiating a contract, prior litigation over a contractual issue may shed light on negotiation of certain contract language. Litigating language in a contract, for instance, can be a lesson on language (or lack thereof) to avoid when negotiating a contract. Lease negotiation in a transactional context can be enlightened and benefited by previous lease litigation or litigating an eviction. Knowing, and perhaps litigating, case law relating to contractual provisions can be very helpful.

Secondly, there is an additional benefit to being a litigator. In line with the different goals of transactional work and litigation, the tension involved in litigation between the parties can be something that helps to assist keeping things in perspective in the transactional context.

Conclusion

All in all, there can be many challenges in doing both litigation and transactional work. There can be benefits as well. The most important thing to keep in mind is to always employ the best method to protect the client. ■

Ian Hoffenberg is a lawyer in Chicago concentrating on litigation and transactional matters, including real estate, real estate litigation, commercial and corporate litigation. You are welcome to reach him at ihoffenberg@hoffenberglaw.com.

When can I destroy my records?

BY KEVIN J. STINE, GENERAL COUNSEL, FIRST CO BANCORP, INC.

The ISBA issued Advisory Opinion Number 17-02 discussing how long a lawyer is required to keep certain records.

The opinion noted that law firms incur substantial storage fees for closed client matter files. It determined that where clients have signed engagement letters allowing the law firm to destroy documents after "a reasonable amount of time," that 7 years is 'a reasonable period of time' to keep such documents. The ISBA noted that Illinois Rule 1.15(a) requires that complete records of trust account fund must be kept by a lawyer and preserved for at least 7 years after termination of representation, and that Supreme Court Rule 769 provides that all financial records relating to a lawyer's practice be maintained for a period of not less than 7 years. Accordingly, the ISBA determined that in light of these requirements, client records can be destroyed 7 years after representation has ceased.

The Opinion also noted exceptions to the general rule stated above: (1) original client records should be returned to the client, (2) "valuable documents," such as original deeds, wills, and other documents with intrinsic value, should not be destroyed; and (3) Supreme Court Rule 769 specifically provides that a lawyer must maintain records that identify the name and last known address of each client and reflect whether the representation of the client is ongoing or concluded. The Rule makes not reference regarding any time period for keeping this information. Accordingly, it appears that this information must be preserved indefinitely.

The Opinion went on to note that the rules under the State of Missouri are similar, but that 4 exceptions are noted in Missouri: (a) where a legal malpractice claim is pending, (b) where a criminal or other governmental investigation is pending, (c) where a disciplinary matter is pending, or (d) where other litigation is pending.

The Opinion also discussed whether it is necessary to give clients or former clients notice that the firm intends to destroy the file related to a particular matter. Neither Illinois Rule 1.15(a) nor Illinois Supreme Court Rule 769 require any notice to client after the minimum retention periods have ended. The Missouri Rule of Professional Conduct does not require notice to clients before a file can be destroyed. It was reasoned that if the client does not request the file within 6 years after completion or termination of the representation, the file should be deemed abandoned and may be destroyed. Finally, the Opinion went on to note that when the file is destroyed, it should be done so in a manner that protects the confidentiality of information relating to the representation.

In summary:

Records that identify the name and last known address of each client and reflect whether the representation of the client is ongoing or concluded ***and*** "valuable documents," such as original deeds, wills, and other documents with intrinsic value should not be destroyed. Furthermore, original client records should not be destroyed, but should be returned to the client.

All other client records and all attorney financial records can be destroyed 7 years after termination of the representation. No prior notice to the client is required (although, I would suggest that you include such a notice in the original engagement letter). Furthermore, if there is a pending ARDC matter, malpractice claim, or litigation or criminal investigation related to that particular matter, the file should not be destroyed. ■

Upcoming CLE programs

TO REGISTER, GO TO WWW.ISBA.ORG/CLE OR CALL THE ISBA REGISTRAR AT 800-252-8908 OR 217-525-1760.

July

Thursday, 07-06-17 - Webinar— Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

Tuesday, 07-11-17 Webinar—Word for Mac. Practice Toolbox Series. 12:00 -1:00 p.m.

Thursday, 07-13-17 - Webinar— Advanced Tips for Enhances Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

Thursday, 07-20-17 - Webinar— Fastcase Boolean (Keyword) Searches for Lawyers. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

Tuesday, 07-25-17 Webinar—Illinois E-filing and PDF. Practice Toolbox Series. 12:00 -1:00 p.m.

August

Thursday, 08-03-17 - Webinar— Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA

Members only. 12:00-1:00 pm.

Thursday, 08-10-17 - Webinar— Advanced Tips for Enhances Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

Thursday, 08-17-17 - Webinar— Fastcase Boolean (Keyword) Searches for Lawyers. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

September

Thursday, 09-07-17 - Webinar— Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

Thursday and Friday 09-7 & 8, 2017 – Chicago, ISBA Regional Office— ISBA Guardian Ad Litem and Child Representative Training. Presented by Family Law.

Friday, 09-08-17 – Lincoln Heritage Museum, Lincoln, IL—1st Annual Lawyer Lincoln's Legacy: Lessons for Today. 9 a.m.-4:30 p.m.

Wednesday, 09-13-17 – LIVE Webcast—Sexual Orientation Protected as Sex Discrimination Under Title VII: Hively V. Ivy Tech Community College 15-1720 7th Cir. April 4, 2017. 12-2 pm.

Thursday, 09-14-17 – LIVE Webcast— Environmental Due Diligence in the Era of President Trump: Revisiting Caveat Emptor, the Role of Government, Tort Liability and Statutory Environmental Cleanup Liability under State and Federal Law. Presented by Real Estate. 12-1 p.m.

Thursday, 09-14-17 - Webinar— Advanced Tips for Enhances Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

Friday, 09-15-17 – Fairview Heights, Four Points by Sheraton—Solo and Small Firm Practice Institute. All Day.

Wednesday, 09-20-17 – LIVE Webcast— Construction Escrow, Lien Waivers and Sworn Statements: Best Practices. Presented by Construction Law. 12-1 p.m.

Thursday, 09-21-17 - Webinar— Fastcase Boolean (Keyword) Searches for Lawyers. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm

Wednesday, 09-27-17 – LIVE Webcast Webinar—HIPAA and How It Applies To YOU. Presented by Employee Benefits. 12-1 p.m.

Thursday, 09-28-17 – LIVE Webcast— How Secure Are you? Cyber for the Illinois Practitioner. Presented by Insurance Law. 12-2:15 p.m.

October

Wednesday, 10-04-17 LIVE Webcast— Issues to Recognize and Resolve When Dealing With Clients of Diminished Capacity. Presented by Business Advice and Financial Planning. 12-2 pm.

Thursday, 10-05-17 - Webinar— Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

Friday, 10-06-17 – Holiday Inn and Suites, East Peoria—Fall 2017 Beginner & Advanced DUI and Traffic Program. Presented by Traffic Law. Time: 8:55 am – 4:30 pm.

Friday, 10-06-17 – Chicago, ISBA Regional Office—Pathways to Becoming Corporate General Counsel and the Issues You Will Face. Presented by Corporate Law. Time: 9:00 am – 12:30 pm

Monday, 10-09-17 – Chicago, ISBA Regional Office—Workers' Compensation Update – Fall 2017. Presented by Workers' Compensation. Time: 9:00 am – 4:00 pm.

Monday, 10-09-17 –Fairview Heights—Workers' Compensation Update – Fall 2017. Presented by Workers' Compensation. Time: 9:00 am – 4:00 pm.

Thursday, 10-12-17 - Webinar— Advanced Tips for Enhances Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

Monday-Friday, 10-16 to 20, 2017 – Chicago, ISBA Regional Office—40 Hour Mediation/Arbitration Training Master Series. Master Series

Thursday, 10-19-17 - Webinar— Fastcase Boolean (Keyword) Searches for Lawyers. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

Friday, 10-27-17 – Chicago, ISBA Regional Office—Solo and Small Firm Practice Institute. All Day.

November

Wednesday, 11-01-17 – ISBA Chicago Regional Office—Anatomy of a Medical Negligence Trial. Presented by Tort Law. All Day.

Thursday, 11-03-17 - Webinar— Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

Thursday, 11-09-17 - Webinar— Advanced Tips for Enhances Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

Friday, 11-10-17 – Chicago, ISBA Regional Office—Profession Under Pressure; Stress in the Legal Profession and Ways to Cope. Presented by Civil Practice and Procedure. 8:15 am-4:45 pm. ■

The Bottom Line
Illinois Bar Center
Springfield, Illinois 62701-1779
June 2017
Vol. 38 No. 4

Non-Profit Org.
U.S. POSTAGE
PAID
Springfield, Ill.
Permit No. 820