

# Senior Lawyers

The newsletter of the Illinois State Bar Association's Senior Lawyers Section

## Hello Dubai

BY PAT LESTON

There was an old lawyer  
Who went to Dubai.  
How do you think you get to Dubai?  
Of course you fly.

(Early less popular version of Burl Ives ditty)

Sure, Dubai is not at the top of everyone's bucket list. The ISBA presidents' Italian lake region tour, organized by Jim McCluskey and David Sosin, is probably

a better trip for beginning travelers. But when you are ready for a bit of a more exotic adventure, you've got to look beyond the first two pages of the Sunday Tribune travel section.

My wife Kris and I travel. And every time we hit the road, our email seems to connect us to two or three new travel websites. I made the mistake of looking

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## Book review: *The Bully Pulpit*

BY GARY T. RAFOOL

If someone today were to read the following:

"The gap between rich and poor has never been wider...legislative stalemate paralyzes the country...corporations resist federal regulations...spectacular mergers produce giant companies...the influence of money in politics deepens...bombs explode in crowded streets...small wars proliferate far from our shores...a dizzying array of inventions speeds the pace of daily life."

That person would more than likely and reasonably assume that the years 2014 and 2015 were being aptly described.

However, the above paragraph is taken from the first paragraph of the book jacket description of the 2013 book entitled "The Bully Pulpit" by Doris Kearns Goodwin. This description was also meant to summarize some United States history during the period of 1890 to 1912.

This book is available in hardcover, paperback and electronically. While it is a lengthy book (some 750 hardback pages), it is an interesting and fast read, whether one is a history buff or not.

It, in my opinion, expresses some of the good and the bad of negotiating or attempting to negotiate and compromise

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among opposing political views and positions, and some of the consequences when compromise is not or cannot be accomplished.

For those who viewed the Public Television series last fall entitled "The Roosevelts," you might recall that Doris Kearns Goodwin was one of the commentators in that series.

The book not only gives a detailed history and description of the personality of Theodore Roosevelt, but it presents a parallel biography of William Howard Taft. As an added bonus, it gives accounts

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## Hello Dubai

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at one. A six-day trip to Dubai, including a direct flight from O'Hare on Emirates Airline and a room in the world's tallest 5-star hotel for less than \$1000. They got me!

I had a few questions. What is it and where is it? Dubai is the name of the largest and most populated city in the United Arab Republic (UAR) and the name of the emirate in which it is located. There are seven emirates in the UAR. The UAR is a constitutional monarchy with an economy based on a centrally planned free market economy, originally built on oil. But really, what difference does it make? We were just passing through.

Dubai is located in on the southeast coast of the Persian Gulf and north of the Persian desert. Just think of it as a little northeast of Abu Dhabi. I'm sure more complete directions are available on your iPhone. Don't sweat the details. Emirate Airline picks you up at O'Hare and, a short 16 hours and eight full-length movies later, drops you off in Dubai.

Our Emirate Holiday package put us up at the J.W. Marriott Marquis advertised as the tallest 5-star hotel in the world. And when I say put us up, I mean up. We were on the 59th floor of this 77-floor hotel. We were shooting up to our room in the elevator when I realized it had a glass wall and we were on the outside of the building. Since heights scare the heck out of me, I spun around to face the elevator door. Unfortunately, it was a mirror. I feared I would have to spend the rest of the weekend in our room. Fortunately, we found an interior elevator the next day.

The Marriott was excellent in all regards, including the complimentary breakfast featuring western, eastern, and Asian buffet areas. So the next morning we ate a western, then an eastern, and then an Asian breakfast. We headed out exploring at the crack of 11:00 a.m. We hopped on and hopped off all three routes of the hop on/hop off bus. The first route took us to the spice souk (market), the gold souk, the old souk, and the Dubai museum. This was

pretty much old time Arabia, with the type of hawkers and patter you've seen in every bazaar in the world. Think Maxwell Street with flowing robes.

The second day's route took us past historical mosques and along pristine beaches bordering the calm waters of the Persian Gulf. Then we swung inland through some of the world's most extraordinary architectural wonders. We stopped at the Mall of the Emirates, one of the world's largest shopping centers. It was over 100 degrees outside the mall, but the kids inside put on their snowsuits, gloves and goggles to schuss down the mountain in the world's only indoor ski slope.

The next stop was Dubai Mall, another one of the world's largest shopping centers. The aquarium in the mall was three stories high (deep) with a tunnel walkway, surrounded by 33,000 sea creatures including 8-foot tiger sharks and giant stingrays. You could ride a glass bottom boat or SCUBA dive with the sharks and then wander the mall to a Starbucks or a Victoria's Secret. Virtually every franchise or chain retailer is represented in one or both of these malls. And the name of every single business is prominently displayed in both English and Arabic, on the slim possibility you do not recognize icons such as Ronald McDonald or the doughnut from Dunkin'. The Dubai Mall also claims the world's most spectacular fountain. It appears to be an exact duplicate of the fountain outside the Las Vegas Bellagio, but without a blackjack table or cocktail waitress in sight. Dubai is now building another mall even larger than its two existing mega malls. Somebody better warn them about Amazon.

The third hop-on/hop-off leg took us back along the coast to the Palm Jumeirah. This three mile long man-made island is the home of towering apartment buildings, international hotels, and upscale restaurants. Dubai build the island in the shape of a palm tree, apparently to distinguish it from all the other three mile long manmade islands. We took a harbor

## Senior Lawyers

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cruise around the island and out to the Atlantis Palm. The Palm is a 1500 room, two-tower hotel, with a bridge between the towers creating a giant palm leaf opening. It appears to be an exact duplicate of the Palm built by Merv Griffin's company on Paradise Island in the Bahamas, but without the blackjack tables and cocktail waitresses. There seems to be a pattern here.

Evening approached. And consistent with Dubai's full swing at tourism, it was time for the traditional culture show and folk dancing dinner. We headed out to the desert to bounce and slide over the sand dunes in air-conditioned jeeps. The desert started about three steps outside of the city, so we didn't have far to drive. The first stop was a falconry exhibition: big leather gloves, soaring, swooping majestic birds attacking bait at the speed of sound on a 30-foot rope. Falcons 1, bait 0.

Then it was back to the jeeps, across more sand dunes (or maybe the same sand dunes, they are all very similar), and on to

the Bedouin style camp for more culture. We rode camels, slid down giant sand dunes in saucers, then settled onto pillows around low tables for a nice dinner of chicken and goat. Sometimes it's hard to find good goat. . . and this was no exception. We enjoyed a couple of cold beers and a few cups of wine, then settled back for the belly dancing. There was a whole lot of shakin' going on.

Finally, it was day five, our last day in Dubai. I could delay it no longer. With knees knocking, heart pounding, and sweat dripping down my brow, we stepped into the Burj Khalifa. It's 160 stories high and is the tallest building in the world. But I was hardly scared at all. I kept telling myself. After all, the observation deck was at a mere 124 stories. After carefully checking to determine that the elevator had neither glass walls nor a mirror, I entered with confidence. It was getting out that was going to be the challenge. But I made it. And it's amazing how much you can see from the 124th floor without getting within 10 feet of a window.

They served us champagne and cookies. Nice.

Dubai built the tallest building in the world specifically as a focal point around which to develop a tourist/shopping/service economy. Dubai's oil supply is expected to be exhausted about 2045. The plan appears to be working. Today, less than 5% of the emirate's revenue is derived from petroleum. Tourism is their golden goose. Expatriates make up 90% of the population. Free trade zones combined with international banking and financial centers are attracting both eastern traders and western manufacturers.

Dubai is an exotic, extraordinary mix of Arabic and western cultures. But don't take my word for it. Pop for the \$1000 and see for yourself. But try to get a hotel room on a lower floor.

Oh, by the way, I just watched *Casablanca* on TCM. Anyone up for the \$799 trip to Morocco?■

## Book review: *The Bully Pulpit*

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of the wives of Roosevelt and Taft, and their influence on these two men and their presidencies.

It also describes the so-called "Golden Age Of Journalism," and the rise of Samuel McClure, the founder of McClure's Magazine, which had on its staff some of the world's best journalists and one of the best, if not the best, monthly circulation in the country in its time.

Actually, Samuel McClure, as described by Goodwin in this book, presents a very interesting story in and of itself, particularly from his rise out of poverty in Northern Ireland to his talking and charming his way into Knox College in Galesburg, to his organizing a successful and influential national/international magazine. McClure and his writers assisted Roosevelt enormously by generating tremendous public support for his governing and reform minded agendas during his early years in politics.

Roosevelt's and Taft's paths first crossed when they both served under President Benjamin Harrison, with Roosevelt as a civil service commissioner and Taft as solicitor general. They were equally interested in civil service reform, and they and their wives became very good friends during their early years in Washington.

While Roosevelt used the press to build public support for his programs and reforms (both social and labor), as well as a means of by passing Congress, Taft attempted to work with Congress within the system itself during his administration without assistance from the press. Thus, unlike Taft, Roosevelt, instead of continued attempts at compromise with his opponents (mostly other Republicans and a reluctant Republican Congress), would go public with his concerns, frustrations and difficulties with Congress and other conservatives. This almost mimics certain present day problems between our Illinois' governor and the

democrats in our General Assembly.

At the beginning of their relationship, these personality differences seemed to complement each other, and, according to the author, they both enlarged economic opportunities and social justice. They were both progressive Republicans, and they viewed compromise with conservatives, including other Republicans, as treacherous.

Roosevelt rose through the ranks of the Republican Party, starting as the youngest member of the New York General Assembly, then as a United States Civil Service Commissioner, New York City Police Commissioner, and Governor of the State of New York. Because of his reform methods, many New York politicians and business magnets wanted him out of New York politics. This ultimately led to his being nominated as the Vice Presidential candidate with William McKinley in the 1900 national election, which McKinley-Roosevelt won.

The thinking at that time was to put

Roosevelt into a mostly ceremonial position in McKinley's second administration for at least four years so that the political bosses and industrial giants in New York would again have free hands to do what they usually did pre-Roosevelt.

However, this maneuver lent truth to the old saying that the best laid plans many times go astray, because McKinley was shot on September 6, 1901, which was a little more than six months after his inauguration, and he died on September 14th. Roosevelt, at age 42, then became President of the United States. He was and is the youngest person to become President. Actually, the author entitled the tenth chapter of this book as "That Damned Cowboy Is President," which expressed the sentiment and presumed frustration of many Republican Conservatives at the time.

Once Roosevelt assumed the Presidency, reforms started throughout the country from breaking up business trusts and monopolies to preserving forests and natural resources. As stated earlier, he had a knack for working the press to accomplish these reforms. He would give them detailed information and descriptions for stories to be published in newspapers and magazines—both weekly and monthly—about the economic inequities in this country, as well as the endangerments to its natural resources and environment.

When Roosevelt was elected President in his own right in 1904, he stated that he would not seek re-election in 1908. It was later rumored that Roosevelt said that this statement was the biggest mistake he ever made. While he easily could have been elected again in 1908, he stuck to his word and declined to run.

A good reason for declining the 1908 nomination was the fact that Roosevelt had been grooming Taft to take over and continue his agenda. Unfortunately, their ideas of accomplishing these agenda items varied considerably. While Roosevelt was like the TV bunny that never stops, Taft was more laid back and a thinker.

While Roosevelt had a very sickly childhood, he made himself develop into not only into an athlete, hunter and war hero, but he also wrote numerous books in his spare time.

Taft, on the other hand, had a very loving and devoted family and a very good childhood in Ohio, but he had weight and diet problems that seemed to plague him most of his adult life. His ambition was not to lead the nation as President, but to serve in the Judiciary, preferably in the United States Supreme Court.

When he was appointed as Governor General of the Philippines, President McKinley promised him a Supreme Court appointment when his term ended as Governor General. While Roosevelt offered this Supreme Court appointment after McKinley's assassination, Taft chose to remain as Governor General.

Ultimately, Taft achieved his judicial goal when he was appointed as Chief Justice of the United States Supreme Court in October of 1921 by President Warren Harding, where he remained until he resigned for health reasons in early 1930 and shortly before his death in March of 1930 at age 72. Among his accomplishments while on the Supreme Court, Taft streamlined Court procedures, and he obtained from Congress the money to construct a separate Supreme Court building, which is still used today (previously the Court sat in the old Senate Chamber).

As stated earlier, both Taft and Roosevelt wanted to achieve the same social and business changes in the country, but their means to this end were extremely different and frustrating for Roosevelt. It also led Roosevelt to seek the Republican Presidential nomination in 1912 against Taft, the sitting President.

When he failed to get the Republican nomination against Taft, Roosevelt formed a third party known as the Bull Moose Party. While Roosevelt received more votes than Taft in the 1912 election, they both lost to Woodrow Wilson, and as they

say: "The rest is history."

Roosevelt and Taft did patch up their differences more by coincidence than by design, and they again became close friends before Roosevelt's death in January 1919, at age 60.

One final story about Roosevelt, which, in my opinion, makes him bigger than life, took place during his 1912 campaign against Taft and Wilson. While he was going to make a campaign speech, a would-be assassin shot him in the chest. Roosevelt then put a handkerchief inside his shirt and coat and proceeded to go to the assembly hall and gave a one and a half hour speech before going to the hospital.

# Basic computers for seniors: The next step

BY DON MATEER

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On May 15, 2019 from 8:45AM to 1:00PM at Illinois State University, in Bloomington, the *Basic Computers for Seniors: The Next Step* will again be presented in a computer lab with hands on instruction. The agenda for the program is as follows.

1. Windows 10. This program opens with a brief lesson on the basic operations of the computer and Windows 10, the latest update to Windows. The emphasis is focused on individualized training in which the presenter and our team of hands-on instructors help you overcome any difficulties you may have with the basic operation of the computer and Windows.
2. Basic Email Security. The attendee will learn how to scrub, encrypt and then attach a document to an email. In addition the attendee will learn how to unsend an email that was

sent and how to default to “reply all.”

3. Microsoft Word Essentials for Lawyers. Both attorneys who are new to drafting and those who are well versed in Microsoft Word will learn how to effectively use the program’s features to streamline their practice. Attendees will review the program basics, become acquainted with tracking changes, and learn how to add signatures, footnotes, and tables to their documents.
4. Accessing the Internet. The attendees will learn how to proceed at their own pace as our team of experienced instructors show how to access the internet for communicating with others, doing basic research, like Google searches, Outlook for Calendars, email and some legal research. In addition,

they will learn online resources that are useful in the day-to-day practice of law.

5. Cyber Security. The attendee will be introduced to the threat posed to lawyers and their clients by computer hackers, and what to do about them. The need for cyber security defenses will be discussed from the standpoints of mitigating operational, financial and ethical risks.

At the end of the program there will be a panel discussion by the presenters with the opportunity for all attendees to ask the experts any questions they may have. This has proven to be a well-received program with limited space due to the number of computers available. Therefore, it is strongly suggested that you watch for the enrollment to begin and sign up as soon as possible.■

# New statutory training requirement for guardians

BY WILLIAM W. AUSTIN

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Article XIa of the Probate Act, Guardians for Adults with Disabilities, was amended by P.A. 100-483, § 10, effective September 8, 2018. 755 ILCS 5/11a-12 now provides, in pertinent part, as follows:

“(e) The order of appointment of a guardian of the person in any county with a population of less than 3 million shall include the requirement that the guardian of the person complete the training program as provided in Section 33.5 of the Guardianship and Advocacy Act that outlines the responsibilities of the guardian of the person and the rights of the person under guardianship and file with the court a certificate of completion one year from the date of issuance of the

letters of guardianship, except that: (1) the chief judge of any circuit may order implementation of another training program by a suitable provider containing substantially similar content; (2) employees of the Office of the State Guardian, public guardians, attorneys currently authorized to practice law, corporate fiduciaries, and persons certified by the Center for Guardianship Certification are exempt from this training requirement; and (3) the court may, for good cause shown, exempt from this requirement an individual not otherwise listed in item (2). For the purposes of this subsection (e), good cause may be proven by affidavit. If the court finds good cause to exempt an individual from the training

requirement, the order of appointment shall so state.” [emphasis added]

This change applies to guardians of the person (to the exclusion of guardians of the estate) of disabled adults. It also appears to apply prospectively to guardians of the person appointed by orders entered on or after the effective date, September 8, 2019, and not to guardians to whom letters of office were issued prior to the effective date of the Act.

Section 33.5 of the Guardianship and Advocacy Act requires that the state guardian provide a training program that “... outlines the duties and responsibilities of guardians appointed under Article XIa of the Probate Act...and the responsibilities

of a guardian and the rights of a person with a disability in a guardianship proceeding...” The guardian is required to file a certificate of completion of the training with the court within one year of the issuance of the guardian’s letters of office.

The statute lists some exceptions, although most lawyers representing individuals seeking guardianships for disabled family members will likely find that their clients do not meet the criteria for being exempt from the requirements. Note that attorneys currently authorized to practice law, as well as corporate fiduciaries, are exempt. A court may, for good cause shown, exempt an individual from the training requirement, however, the order must so state. The statute is silent as to what might constitute good cause.

The training is supposed to be accessible on the Illinois Guardianship and Advocacy Commission’s website, <https://www2.illinois.gov/sites/gac/Pages/default.aspx>, which has a link on the right-hand side of the GAC’s home page to Guardianship Training. As of the writing of this article, if you attempt to access the training in that manner, however, you will not be successful. The author’s office was recently informed by the director of the Office of State Guardian that the presentation part of the program is complete, but they are still in the process of making it accessible to the public in a secure manner online. Currently they are working on what the director referred to as “glitches,” but they hope to have it up and running by the end of March. The following link appears to provide a preview of what

the training will consist of, but there is no certification process as of this writing that accompanies this training module <https://www2.illinois.gov/sites/gac/OSG/.../GUARDIANSHIP%20TRAINING.ppsx>. ■

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## Evidentiary admissions and judicial admissions: A quick refresher

BY MICHAEL J. MASLANKA

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The case of *Armstead v. National Freight, Inc.*, 2019 IL App (3d) 170777, decided by the third district appellate court on February 5, 2019, gives a good explanation of the differences between evidentiary admissions and judicial admissions. All practitioners who find themselves in court or in administrative tribunals, for any reasons whatsoever, should know the differences.

“Judicial admissions are formal admissions in the pleadings that have the effect of withdrawing a fact from issue and dispensing wholly with the need for proof of the fact.” The court further explained that a judicial admission must be clear, unequivocal, and uniquely within the admitting party’s personal knowledge. A statement, to be a judicial admission, must also be an intentional statement by the person making the statement, that relates to concrete facts and not just an inference or uncertain summary. Further, the court

explained that: “Judicial admissions ‘do not include admissions made during the course of other court proceedings.’”

“Evidentiary admissions may be made in, among other things, pleadings in a case other than the one being tried.” Evidentiary admissions do not have the strength of judicial admissions, as evidentiary admissions may be explained by the party who made the statement.

Therefore, a statement is not a judicial admission when it was made in the course of another proceeding. It, therefore, would be considered an evidentiary admission that may be admitted in a different case, but to undermine and challenge the credibility of the witness. Both types of admissions are very useful in litigation and counsel will want to know if the person making a statement regarding a relevant fact, ever made a statement about that same fact in another forum. Any and all such prior statements

should be investigated and analyzed for possible impeachment and defense purposes. Contradictory statements are evidentiary admissions and can be very useful when facts regarding material issues in a case are highly disputed. ■

# Young lawyer buying out a law practice with a retiring senior partner and the issues related thereto

BY LEONARD F. AMARI AND TRENT WEST

I was sitting in my office one afternoon in early May 2018, minding my own business, when out of a clear blue sky I received a call from a young lawyer from some place in far Southern Illinois I never heard of. Anyway, this young man indicated to me that he knows of me as a result of reading articles in the Illinois State Bar Association Senior Lawyers Section Counsel newsletter that I've written over the years (e.g., an article on "tail" coverage for retiring lawyers, an article dealing with the meaning and liability of the use of the term "of counsel" in the firm's stationery, among others), and, because he was dealing with these very circumstances for which he needed a little help from a person like me, a senior lawyer, he called to discuss what he was confronted with professionally.

He is a young associate attorney in a two-man law firm, where the senior partner is contemplating retirement, a firm that deals with the general practice of law, but has historically done a great deal of estate planning work, wills, trusts, etc. The young man was interested in purchasing the firm but he wanted to run by me what he thought the issues are that he had to address and would I mind walking through the process and advising him as I deem appropriate and necessary. I was flattered by the call and also recognized immediately that it was an opportunity to share this experience.

As this bright young lawyer pointed out to me, we had to examine the transaction from the framework of rules governing the legal profession in Illinois. What prohibitions, guidelines, etc. do the Illinois Attorney Registration and Disciplinary Commission (ARDC) rules provide? Secondly, we had to review the practicalities of the sale of the firm from the retiring partner in terms of continuing malpractice

exposure to him, and to the successor owner of the firm. The third potential tangential issue he wanted to discuss was whether he can buy the firm from the retiring attorney and continue to list his former senior partner as "of counsel" on the stationery of the successor firm.

As to the first issue, the ARDC rules apply in terms of selling/buying a law practice. He suggested to me during our first phone conversation that Rule 1.17 would certainly apply, dealing with the sale of law practice. The published ARDC comment to that rule makes this issue very clear when it provides "the practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to this rule, when a lawyer or an entire firm ceases to practice, or other lawyers or firms take over the representation, the selling lawyer or firm may obtain compensation for the reasonable value of the practice as may withdrawing partners of the law firm." Of course, that then begs the question of determining fair market value, but that was not an issue that the young lawyer brought to my attention on which to focus. The rule further states that in the event of the sale of the practice at the time of a retirement to existing members of the firm—in this case the young inquirer—the seller ceases to engage in the private practice of law.

This last caveat raises the question, can the senior retiring lawyer ceasing to actively engage in the practice of law for public relations purposes, out of respect and for whatever other reason or reasons, remain on the stationery as "of counsel" or, as he would prefer, the name of the retired lawyer followed by the word "retired?"

The second and extraordinarily important issue to be discussed involved

coverage for potential claims of malpractice that arise or became recognized after the sale of the practice but result from work done by the retiring attorney prior to his retirement. This is an especially significant issue to deal with because the practice of the firm historically was in no small part estate planning. We all know the bugaboo of claims arising from trusts and wills done years ago that arise as a result of the client passing subsequently to the preparer-lawyer's death or retirement. Of course, a discussion then ensued about "tail coverage." As a refresher, I will restate here a few paragraphs from the article I wrote some years back that was a primer dealing with the subject of "tail" coverage.

Insurance 101 tells us that all legal malpractice insurance policies are "claims-made" policies. That an attorney is provided lawyer malpractice coverage for claims made and reported to the insurance carrier only while the policy is in force. Further, the alleged act or omission of practice upon which a claim is based had to occur only after the policy was written—the inception date of the first claims-made policy purchased, providing there has not been a gap in coverage. Lawyer malpractice policies provide coverage year-to-year and, therefore, in order for an attorney to have coverage in force at all times, a policy must be purchased (or renewed) every year—without a gap in coverage. Also, an attorney can only purchase or renew a malpractice insurance policy while actively engaged in the practice of law. Of course, this presents a problem for an attorney who is planning on going into retirement as the attorney can no longer purchase coverage because he or she will no longer actively practice law. This is where tail coverage comes into play, also known as the extended reporting period ("ERP").

Simply put, the word “tail” is a synonymous term for the concept of an extended reporting period. A retiring lawyer buying tail coverage adds an extended reporting endorsement (ERE) to an existing policy that extends the time in which a claim may be reported to the insurance carrier. In short, the purchased endorsement (tail coverage) provides an attorney the right to report claims to the insurer after his or her retirement and, therefore, after a policy has expired or been cancelled.

So, is the answer for this succession question to this young, practice-purchasing lawyer just to be sure the retiring lawyer has “tail” or “ERP” coverage? And how long a term shall he purchase—the three years standard malpractice insurance company tail periods? Five years? Longer? And at what premium cost?

Another consideration we discussed is just to keep the “firm” as it was, and for which and to which malpractice insurance was purchased. For example, the situation for an attorney retiring from a multi-member, continuing-to-stay-in-existence firm, is quite different than this senior partner retiring situation and the firm no longer existing in its prior iteration—before the buy-out. A number of insurance companies will not provide an opportunity for this retiring attorney to purchase an ERP, arguably because the firm’s existing policy is not expiring or about to be canceled and the retired lawyer is still covered under the policy of the continuing entity. The firm will continue to remain insured and therefore the retiring attorney remains insured so long as the firm continues, and continues to renew their firm’s insurance coverage, without any gaps in coverage.

Some insurance carriers do, however, offer a free retirement ERP to their insureds who are retiring from the practice of law. ISBA Mutual’s lawyers professional liability policy now offers certain insureds who have been insured with ISBA Mutual for at least three continuous years the ability to secure a free, unlimited retirement ERP. A limit of liability available of up to \$1 million is available, depending on the firm’s current limit of liability.

Therefore, what has this young lawyer learned about what he has to do at this critical time in his young career, when faced with a wonderful business opportunity?

Here is the decision this young purchasing associate has made, in his own words:

Plan: the buyout is going forward and the retiring attorney is not becoming “of counsel.” The retiring attorney’s name is staying in the firm name, but the firm name will be slightly altered and a new company is being formed. A “firm tail” will be purchased that covers all actions by the retiring attorney and his firm going back to its inception date.

My opinion as to keeping a retiring attorney’s name on the firm letterhead: We, as attorneys, cannot mislead clients per rules 7.1 and 7.5 as cited in ISBA Opinion No. 03-02 January 2004 (see for examples and more insight). Research indicates that a purchasing attorney can keep a retiring attorney’s name in the new firm name but the purchasing attorney must signify that the retiring attorney is in fact retired on the letterhead, so clients are not misled. In the purchasing attorney’s situation and most likely most situations like this, the retiring attorney’s name holds value in their community as the attorney has been around for 40 years, whereas the purchasing lawyer is not even 40 years old.

One hundred percent retirement instead of becoming “of counsel”: Under the rules of ethics, a call made to the ARDC inquiry line, and a great article drafted previously by Leonard Amari, it appears that a purchasing attorney can buy a law practice and the retiring attorney would be allowed to become “of counsel,” but only if the retiring attorney is not “practicing,” does not earn fees from clients, and is in just an advisory role. This is still a murky area of ethics in Illinois as it may still mislead clients and there may be added complicating factors regarding “firm tail” coverage. Based on these facts and the fact that the retiring attorney wants a full exit for the sake of enjoying of retirement, the “of counsel” route was not taken.

ERP/tail coverage: While most lawyers malpractice insurance companies do offer a

“firm tail” that can be purchased and some offer free retirement, death, or disability tails, not all lawyers malpractice insurance policies contain the same options. It is important to remember this feature of professional liability policies when making the decision which carrier to choose for your firm’s lawyer’s malpractice coverage. After a few discussions with Andrew Murray, ISBA Mutual’s director of sales, the ISBA Mutual policy offers an unlimited firm tail option that can be purchased as well as a free retirement, death or disability tail for insureds covered under the policy. The cost of an unlimited firm tail, if offered by your current policy, can range from 275 percent to 325 percent of expiring premium with the coverage limit the same as the policy limit in effect at the time of purchasing the tail. This is great because it covers all work done by the retiring attorney and his firm from date of opening his private practice in 1982 to date of his retirement and the sale of the practice. The price is understandable and well worth it.

This experience with this young associate tells me he’s (a) a terrific young lawyer and (b) will be successful as a lawyer—and a good, quality, ethical Illinois attorney. ■

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