MASSACHUSETTS BAR ASSOCIATION

SECTION REVIEW

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IMPORTANT TITLE IX UPDATE AND ISSUE SPOTLIGHT

BY JUDY A. LEVENSON

UPDATE: ADDITIONAL PUBLICATION DELAY FOR TITLE IX REGULATIONS

In an article in the July/August 2023 issue of the Civil Rights & Social Justice *Section Review*, which discussed anticipated 2023 amendments to the Title IX Regulations (2023 Regulations), we noted that the U.S. Department of Education's (ED) Office for Civil Rights (OCR) had announced a deadline of October 2023 (revised from May 2023) for publication of the final 2023 Regulations. The month of October has come and gone without publication of those Regulations and without an official statement from the ED/OCR about a further revised timeline. However, the agency's most recently updated regulatory agenda shows an anticipated date of March 2024 for final action on the Title IX Regulations.

Even assuming a March 2024 publication date for amended Title IX Regulations and a typical implementation deadline of 60 to 90 days after publication, and further considering the complexity of the Regulations, many experts in the field predict that the current 2020 Regulations will govern for the remainder of the 2023-2024 school year. Therefore, it is important that school district administrators, staff, attorneys and school committee members, students and their parents/guardians, and law enforcement and relevant administrative agencies, become aware of this delay and remain current or become knowledgeable about the governing 2020 Regulations. Highlighted below is a significant implementation issue under those Regulations to which OCR is paying increased attention and that was alleged as a claim in at least one lawsuit parents filed against a Massachusetts school district.

ISSUE SPOTLIGHT: OVERLAPPING SCHOOL DISTRICT AND LAW ENFORCEMENT INVESTIGATIONS INVOLVING TITLE IX SEXUAL HARASSMENT CLAIMS

Under the Title IX statute and 2020 Regulations, school districts are legally responsible for providing education programs and activities free from sex discrimination, which includes sexual harassment. A primary means for schools to accomplish this objective is by developing and implementing a legally required sexual harassment policy compliant with the Regulations. That policy requires schools to perform prompt, thorough and fair investigations of alleged sexual harassment of students and school employees. One critical implementation issue is the failure of certain school districts and higher education institutions to conduct independent Title IX school investigations when a concurrent criminal investigation based on the same set of facts is ongoing.

Independent School Duty to Investigate Sexual Harassment. If an incident of alleged sexual harassment also involves potential criminal conduct,[1] a school (in consultation with legal counsel if necessary) must determine whether to notify appropriate law enforcement and/or other authorities. The preamble[2] to the 2020 Regulations expressly states, however, that a school district ***cannot*** satisfy its legal obligation to investigate simply by referring sexual harassment allegations to law enforcement (or requiring or advising complainants to do so). Similarly, a school ***cannot*** indefinitely, or for a protracted period of time, suspend its own Title IX investigation while law enforcement conducts a concurrent investigation into the same set of underlying factual allegations. A school's responsibility to promptly and fairly investigate and adjudicate claims of sexual harassment exists separate and distinct from any concurrent law enforcement proceeding, even if that law enforcement agency requests that the school district indefinitely suspend its own investigation. As discussed in the following section, temporary and brief delays of a school investigation may be appropriate under certain circumstances.

Reasons for a school's independent duty to investigate include, among others, the different purposes of school and law enforcement investigations and differences between the burdens of proof that they each use. A school investigation must determine whether an alleged harasser (respondent) has violated a school's sexual harassment policy, thereby ensuring that its education programs and activities are delivered free from sex discrimination. A criminal investigation must determine whether probable cause exists to seek a criminal complaint charging a person with violating state and/or federal criminal law. Using the investigatory evidence, prosecutors must prove "guilt beyond a reasonable doubt." Under the Regulations, however, a school uses a lower standard of evidence than "guilt beyond a reasonable doubt" when it decides whether a respondent violated the school's sexual harassment policy. Further, the school is responsible for stopping the sexual harassment, preventing its recurrence and remedying the effects upon not only the person harassed but the entire school community.

Concurrent Investigations. The Regulations recognize, nonetheless, that a school's independent obligation to investigate Title IX claims may overlap with a law enforcement investigation into possible criminal offenses based on the same set of factual allegations. Under those circumstances, a school's students and employees may be best served by having the school cooperate or coordinate with law enforcement. To that end, the Regulations allow schools flexibility to address overlapping investigations so that potential targets of sex offenses are better served by both systems while ensuring that a school's grievance (formerly complaint resolution) process is not made dependent on a concurrent law enforcement investigation.

The Regulations further acknowledge that, under certain circumstances, concurrent law enforcement activity may constitute

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Title IX Update
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"good cause" for a short-term delay or limited extension of a school's time frames under its sexual harassment policy. For example, if a police investigation uncovers evidence that it plans to release at a specific time and that evidence would be material to a school's determination about whether a respondent has violated the school's sexual harassment policy, the school may have "good cause" to *temporarily* and *briefly* delay its grievance process to allow the evidence to be included as part of the school's investigation.

The school, nonetheless, must comply with all provisions of the grievance process spelled out in its sexual harassment policy. It should ***not*** wait until the conclusion of a criminal investigation to conduct its own investigation, should ***not*** wait to notify complainants of their Title IX rights and of the school's grievance process, and should ***not*** wait to promptly offer supportive measures (formerly interim measures) to ensure the safety and well-being of the complainant and the school community while law enforcement's fact-gathering is in progress. Once a police department notifies a school that it has completed the evidence-gathering portion of its investigation (not the investigation outcome or filing of charges), the school must promptly resume and complete its own fact-finding for the Title IX investigation. A Title IX grievance process should be concluded as promptly as possible even if the law enforcement matter is ongoing.

Memorandum of Understanding (MOU) or Other Written Agreement. A recommended best practice is for a school and its local law enforcement agency to enter into a written agreement about how to handle concurrent investigations, preferably *before* such a situation arises. As part of the 2018 Massachusetts criminal reform law, school districts and police departments were required to enter into MOUs to address the roles and responsibilities of school resource officers (SROs) in Massachusetts public schools. A revised, 2022 model MOU is available at https://www.mass.gov/doc/2022-school-resource-officer-memorandum-of-understanding/download. This model MOU may be customized to include guidance to schools and police departments about how to handle concurrent investigations of Title IX and potential criminal offenses (which likely involve law enforcement personnel in addition to an SRO). Alternatively, a new agreement between a school district and police department can be developed.

Recent OCR Sexual Harassment Compliance Review. As recently as this past October 2023, the OCR resolved a sexual harassment compliance review of the New London Public Schools in Connecticut with a broad resolution agreement.[3] In doing so, the OCR concluded, among other things:

> Notably, the district abdicated its Title IX responsibilities when it did not independently investigate allegations of sexual harassment of students by two employees while the matters were being investigated by the police and the Connecticut Department of Children and Families. These actions did not comport with the district's obligation under Title IX to investigate whether sex discrimination occurred and, if so, to provide appropriate support to the victims and school community, and adopt measures to prevent recurrence . . .

Summary and Conclusion. In short, how to handle overlapping school, police and other agency investigations of alleged school-based sexual harassment is an important issue about which schools, students, parents/guardians, law enforcement and other relevant agencies should become familiar. Listed below is a summary of "do's and don'ts" for school districts regarding their Title IX responsibilities in terms of such investigations.

DO determine whether to notify law enforcement and/or other authorities, if allegations of sexual harassment involve potential criminal conduct.

DO conduct a prompt and fair ***independent*** investigation and adjudication of claims of sexual harassment of a student or school employee, notwithstanding the existence of a concurrent law enforcement investigation of the same underlying factual allegations.

DO evaluate whether circumstances involving a concurrent law enforcement investigation may constitute good cause for a temporary, short-term delay or extension of the school's fact-finding time frames under the district's sexual harassment policy.

DO promptly resume and complete your school's fact-finding (if it has been paused) and comply with all other requirements of your Title IX grievance process, including rendering your decision, once your local police department notifies your district that it has completed its evidence-gathering.

DO enter into a written agreement with your local police about expectations, policies and protocols for handling overlapping investigations.

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DO NOT refer sexual harassment allegations to law enforcement for investigation (or require or advise complainants to do so), *in lieu of* fulfilling the school district's legal obligation to conduct its own ***independent*** Title IX investigation.

DO NOT wait until the conclusion of a criminal investigation to conduct your own investigation.

DO NOT indefinitely suspend or allow a protracted delay of your district's Title IX investigation while law enforcement is conducting a concurrent investigation.

DO NOT delay notifying complainants about their Title IX rights under the school's sexual harassment policy or the school's grievance process because of a concurrent police investigation.

DO NOT delay offering a complainant supportive measures, if appropriate, because of a concurrent police investigation. ■

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1. This might occur because "sexual harassment" under the 2020 Regulations is defined to include sexual assault, domestic violence, dating violence and stalking. Additionally, the Massachusetts mandatory child abuse reporting law requires school employees (and others) to report suspected child abuse and neglect to the Department of Children and Families. Further, hate crimes may be based on gender, gender identity or sexual orientation, in violation of school anti-discrimination policies and criminal laws.
2. While a preamble, unlike the Regulations, does not constitute binding law, courts, nonetheless, frequently defer to an administrative agency's interpretation of the law it is responsible for enforcing.
3. Certain of the alleged incidents involved in this OCR review predated the 2020 Regulations.

COMPLEX COMMERCIAL LITIGATION

A NEW NORMAL: GUIDANCE FOR PRACTITIONERS IN SUFFOLK SUPERIOR CIVIL SESSIONS POST-PANDEMIC

BY AIVI NGUYEN

The COVID pandemic and the e-filing system have changed how civil litigators interact with the Suffolk County Superior Court on the day-to-day administration of cases in many ways. On Nov. 16, 2023, the court hosted a Bench-Bar Conference to discuss this new normal. Held live in the Jury Assembly Room of Suffolk Superior Court (and via Zoom), the conference allowed the bar to hear the bench's perspectives on these changes. Chief Justice Heidi Brieger gave opening remarks that reiterated "yes to Zoom" and introduced a panel from the bench consisting of Justices Robert Gordon and Jackie Cowin, Regional Administrative Justice Rosemary Connolly and Acting Civil Clerk John Powers as moderators/panelists.

Below are some takeaways from the issues discussed at the conference.

TO E-FILE OR NOT TO E-FILE

While you can still file motion papers by snail mail or hand delivery, most attorneys are filing papers electronically. E-filing is convenient, efficient and green. However, not everything should be e-filed. Powers provided the following guidance:

Do **not** e-file emergency motions papers. Expect that the judge will want to hear from you, so file the papers in person and wait to be heard.

E-file 9A packages. Submit all the papers related to your motion in one *envelope*. Within the envelope, include your brief as a *file* and all exhibits to your brief as a separate *file*. Do not separate each individual exhibit into its own *file*. Do not deliver courtesy hard copies to the court unless you are asked to do it. When you are asked to deliver a courtesy copy to the court, clearly mark it as a courtesy one to avoid it being docketed twice.

GETTING THROUGH THE DOCKET BACKLOG IS EVERYONE'S PROBLEM

The court and the bar pivoted as much as possible during the pandemic to keep cases moving, but the court is still left with a very large backlog. Practitioners can help the court get through the backlog simply by being efficient with the court's time. Below are some examples.

With respect to 9A motions, the 9C conference requirement should not be treated as perfunctory. The purpose of the 9C conference is to narrow issues down to only those in dispute to present to the court. Revise your papers to include just the outstanding issues before filing the 9A package. Submit proposed orders with your papers, regardless of whether you are the moving party or the opposing party.

When it comes to the trial schedule, do not assume that your trial is the only one the court has booked. The court is double-booking trials (sometimes triple-booking), working under the assumption that cases will settle and trying to avoid a settlement in one case resulting in wasted trial days. There is a risk that no cases scheduled for the same day settle and one of them must be rescheduled. Your case may be the one rescheduled. Manage expectations about that. The system works best if you report settlements to the court as soon as possible so the court can confirm to the attorneys in the other trial booked that the court will move forward as scheduled.

Expect the final pretrial conference to be substantive. Work with opposing counsel to agree on as much as possible in advance of the conference. Be prepared to argue your motions *in limine*. Be prepared to answer all questions from the judge about the merits of your claims and/or defenses as well as the logistics of how you will present your case at trial, including things like scheduling accommodations for witnesses, how exhibits will be presented to jurors (chalks, jury books, etc.), what technology you plan to use and whether the court's technology can support it. (In Suffolk Superior, if you plan to rely on Wi-Fi, plan to bring your own connectivity boosters.)

Beginning in January 2024, the court will revert to the 12-person jury as the default (moving away from the six-person jury implemented during the pandemic). Be thoughtful and nimble about the number of jurors you seek to empanel. Most judges have seen no significant difference in verdicts coming from six-person juries as compared to those coming from 12-person juries.

THE COURT CLERKS ARE THE KEYS

One thing that has not changed is that the session clerks are invaluable resources for practitioners. Instead of guessing or spinning your wheels when you are unclear on a logistical or administrative issue on a case, reach out to the session clerk. While the judges move from session to session, the session clerks remain static. It is the session clerk who should know all the particularities of your case, so keep them informed.

In recent years, attorneys have been able to communicate more and more with session clerks by email. This is a privilege. Powers encouraged attorneys to feel free to email session clerks but cautioned that the communications should include all other counsel and be restricted to logistical matters, i.e., do not copy the clerk on your bickering emails with opposing counsel.

THE COURT WANTS TO SEE MORE JUNIOR ATTORNEYS

Perhaps the most important message from the judges is the same one that practitioners have been hearing across all the courts in the commonwealth in the last few years — let less experienced attorneys argue motions. With e-filing and many "routine" hearings held remotely now, there are fewer opportunities for junior attorneys to learn how to be a lawyer in a courtroom. It may be that part of helping a junior attorney develop these skills is letting them argue substantive motions without much prior experience. The judges made clear that they do not look negatively upon a senior attorney supplementing a junior attorney's argument at a hearing.

This message personally resonated with me quite a bit. I have been practicing since 2009, and as a junior associate, I had much more interaction with the Clerk's Office and more opportunities to be in the courtroom than associates do now. Motions for special process server and short orders of notice had

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PROBATE LAW

FETCH THE CHARITY! MAYBE NOT.

BY KATHRYN M. BARRY

Is a charitable remainder still valid when the beneficiary of a pet trust predeceases its owner? This issue was at the center in the recent case *In re Estate of Jablonski* decided by the Massachusetts Supreme Judicial Court (SJC).

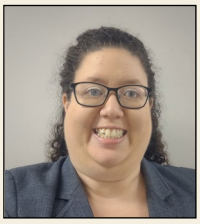
Theresa Jablonski executed a will leaving her entire estate to a testamentary pet trust. The beneficiary was her 15-year-old cocker spaniel, Licorice, and any other pets she may have at the time of her death. The trust funds were to be used for the "health, maintenance, and appearance of the trust beneficiaries."[1] After the last pet's death, the remainder would go to a charity designated by the trustee. Licorice died two years before Jablonski, and she had no other pets at the time of her death. Jablonski heirs by intestacy were her nieces and nephews, one of whom was named personal representative. The personal representative argued the estate should flow to a designated charity. The other heirs objected, arguing the charitable remainder had lapsed, since Licorice predeceased Jablonski. The lower court, the Fiduciary Litigation Session (FLS), granted summary judgment in favor of the personal representative, stating that the charitable remainder provision was still valid under the doctrine of acceleration of remainders.

The SJC disagreed with the lower court, decided that there was an issue of fact, reversed the entry of summary judgment, and remanded the matter to the FLS. The SJC began by examining the plain language of the pet trust statute, which states that "the trust shall terminate upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal."[2] Because Licorice died before Jablonski and no additional pets survived her, the trust terminated before Jablonski's death. In addition, because the trust was a testamentary trust, it would not be funded until after Jablonski's death. Therefore, when the trust terminated, there were no funds within the trust's control. As a result, the testamentary pet trust lapsed and the legacy passed to the residue.

However, because the residue was also left to the failed testamentary pet trust, the disposition remained ambiguous. The ambiguity arose because "the decedent's will does not demonstrate a clear intent that the charitable remainder be awarded to the yet-to-be-named charity in the event Licorice were to predecease the decedent."[3] A further complication was that no specific charity was named. This fact distinguishes *Jablonski* from similar pet trust and charitable remainder cases from other jurisdictions, where a charity was explicitly designated. While the lack of a named charity does not automatically invalidate a charitable remainder, it "at least creates ambiguity whether the decedent wanted the remainder to go to charity or, alternatively, her primary concern was the well-being of Licorice following her death."[4] The SJC stressed, "although the interpretation of a will begins with the four corners of the instrument, extrinsic evidence may be necessary to resolve ambiguities that arise in a will."[5] Given that the language of the will was unclear about Jablonski's intent regarding the charitable remainder, if Licorice predeceased her, there is a need for extrinsic evidence.

The SJC concluded that if, after examining extrinsic evidence, "there exists no clear intent that the charitable remainder was to be accelerated on Licorice's failure to survive the decedent,"[6] both the testamentary pet trust and the residual provision fail because the residue was left to the lapsed trust. If the pet trust and the residual provision lapse, the estate will pass through intestacy. The case was remanded for further proceedings to clarify Jablonski's intent.

This opinion highlights the necessity of encapsulating as many scenarios as possible within the four corners of an instrument. It also emphasizes the importance of clarifying legacies that do not include descendants. The child-free movement has been growing in recent years; therefore, the use of pet trusts, charitable remainders and charitable trusts likely will increase in the near future. ■



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1. *In re Estate of Jablonski*, SJC-13397, 3 (Mass. Aug. 24, 2023).
2. *In re Estate of Jablonski*, SJC-13397, 8 (Mass. Aug. 24, 2023).
3. *Id.* at 12.
4. *Id.*
5. *In re Estate of Jablonski*, SJC-13397, 13 (Mass. Aug. 24, 2023)
6. *Id.* at 15

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to be hand-filed by an attorney, resulting in opportunities to build relationships with the clerks organically. Status conferences were held in person, so I had the benefit of watching other lawyers present to the court while waiting for my case to be called. Needless to say, I took special note of the judges' advice on this front. ■

PUBLIC LAW

THE EVER-CHANGING 'WATERS OF THE UNITED STATES' RULE

BY JAMES STEINKRAUSS

On Dec. 22, 2022, the U.S. Environmental Protection Agency (EPA) and U.S. Department of the Army Corps of Engineers (Army Corps) announced a final rule based upon the pre-2015 definition of the "waters of the United States" (WOTUS) delineating the jurisdiction over waterbodies that Congress intended to protect under the Clean Water Act (CWA). This rule was published in the Federal Register on Jan. 18, 2023, at 88 FR 3004, with an effective date of March 20, 2023.[1]

This final rule included traditional navigable waters as well as those wetlands and surface water impoundments that either were "relatively permanent" or had a "significant nexus" to or effect upon downstream waters or traditional navigable waters. The water bodies included under the "relatively permanent" standard were those permanent, standing or continuously flowing waters connected to paragraph (a)(1) (traditional navigable waters, territorial seas and interstate waters); waters including rivers, lakes, tributaries and certain impoundments; and other additional waters (certain streams, local lakes and wetlands). Those water bodies that do not have permanent, direct or continuous flowing waters to the traditional navigable waters in paragraph (a)(1) would be subject to the CWA jurisdiction if a significant nexus existed and if the waterbody significantly affected the chemical, physical or biological integrity of traditional navigable waters, territorial seas or interstate waters. This definition was created using Justice Anthony Kennedy's definition from *Rapanos*.[2] An example would be a wetland, although separated by a levee, that had an indirect hydrological connection to and impact upon a permanent stream or water.

The final rule also clarified certain exclusions from WOTUS jurisdiction, including cropland converted prior to Dec. 23, 1985; waste treatment systems; ditches (that did not carry permanent flow of water); artificially irrigated areas; artificial lakes, ponds, reflecting pools or swimming pools; waterfilled depressions (incidental to construction activity or sand/fill/gravel excavation); and swales and erosional features. This final rule was published in the Federal Register and would be effective 60 days following publication.

On March 25, 2023, however, the Supreme Court issued a ruling in *Sackett v. EPA, 598 U.S. __ (2023)*[3] nullifying the "significant nexus" test by requiring a continuous surface connection to the paragraph (a)(1) water bodies. As a result of this ruling, the EPA and the Army Corps published a notice of intent to reissue a revised WOTUS rule to comply with the holdings in *Sackett*. In addition, the Army Corps suspended all pending Rule 404 certification applications under review until issuance of a revised rule.

On Aug. 29, 2023, the EPA and the Army Corps published a revised final WOTUS rule that eliminated those waters that solely met the significant nexus test and did not have continuous surface connections to paragraph (a)(1) waters, such as adjacent wetlands.[4] This has been called the "Conforming Rule." The purpose of the new rule is to provide clarity to the jurisdiction and application of the CWA in light of the Supreme Court's ruling in *Sackett*. However, this guidance is also designed to provide clarity for ongoing infrastructure projects and economic (development) and agricultural activities.

The new final rule removes interstate wetlands from the text of the interstate waters provision; removes the significant nexus standard from tributaries, adjacent wetlands and additional waters (applying to wetlands and streams); defines adjacent to mean having a "continuous surface connection"; and deletes the definition of "significantly affect" from the WOTUS rule.

How does this change impact municipal communities and ongoing development? Upon issuance of the *Sackett* decision, the Army Corps suspended all pending 404 permit certifications for those dredge and fill projects subject to the jurisdiction of the CWA. However, the Conforming Rule became effective upon publication, so the Army Corps should begin issuing certifications again.

Given the narrowed definition of WOTUS under the revised rules, there may be projects that previously impacted adjacent wetlands or water bodies that met the significant nexus test that are no longer subject to CWA jurisdiction. In addition, this rule change could result in projects seeking development opportunities in lands that were previously protected or subject to the jurisdiction of the CWA that are no longer protected. Fortunately, the state and local regulation of wetlands resources can continue to provide additional protection to these important resources. To that end, there may be greater urgency for cities and towns to adopt wetlands bylaws and regulations to the extent that they have not already done so. ■

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1. https://www.federalregister.gov/documents/2023/01/18/2022-28595/revised-definition-of-waters-of-the-united-states.
2. *Rapanos v. United States*, 547 U.S. 715 (2006).
3. https://www.supremecourt.gov/opinions/22pdf/21-454_4g15.pdf.
4. https://www.federalregister.gov/documents/2023/09/08/2023-18929/revised-definition-of-waters-of-the-united-states-conforming.

YOUNG LAWYERS DIVISION

2023 TRIAL TAKEAWAYS AS A YOUNG ASSOCIATE

BY NICOLE J. COCOZZA

Today, very few cases go to trial, as most cases will settle out of court, but this past year, I had the great fortune to participate in a FINRA (Financial Industry Regulatory Authority) arbitration and three bench trials — one Superior Court trial and two Land Court trials. After speaking with Massachusetts Superior Court Chief Justice Heidi E. Brieger last fall about the Superior Court's policy statement regarding new lawyers (https://www.mass.gov/news/superior-court-policy-statement-re-newer-attorneys), which encourages lawyers to take affirmative steps to promote the participation of less senior lawyers in courtroom proceedings, I set a 2023 goal to actively seek cases that I knew were going to be tried during the year. Each trial I learned new skills to improve my advocacy skills and case presentation to the judge. I also learned the benefits and drawbacks of preparing for a trial. Thus, as a lawyer with very little trial experience before 2023, I would like to share some important takeaways to ensure that my fellow associates are positioned for success. Below are five takeaways for presenting an effective case at your first trial:

1. **Know Your Audience.** The first rule of a successful bench trial is to know your audience — do you know this judge's background and experience? Do research on the judge before trial. Talk with colleagues at work or friends to discover what practice the judge likes, encourages or dislikes in lawyers (e.g., whether the judge is unforgiving with the rules of evidence in a bench trial; whether you have to follow a trial order exactly with respect to witness order, exhibits and issues; whether the judge questions witnesses; and whether the judge will want proposed findings of fact and proposed rulings of law before or after trial). You should learn the judge's behavior ahead of time to prepare as best you can in advance of trial (and to impress your client).

2. **Witness Preparation is Key.** You will want to spend a significant amount of time preparing an examination outline for each witness. You will need to prepare an outline for each witness in advance. The outline should include a series of bullet points listing the evidence that you plan to introduce through the witness.

   Most of your time during witness preparation sessions will be devoted to preparing each witness for direct examination testimony. You will want to carefully determine what questions and documents you want submitted into evidence through your witness. You may also want to consider bringing out weakness during the direct examination of your witness to prevent any surprises on cross-examination (e.g., addressing whether your client has had inconsistent testimony and affidavits to prevent impeachment). Remember that direct examination questions should be direct, to-the-point questions (Who, What, When, Where, Why).

   To prepare for cross-examination testimony, determine what points you want to make on cross and know the evidentiary basis for each question you plan to ask before trial. You should review key exhibits and events about which you anticipate the witness will be asked. A good starting point is the deposition transcript or other recorded statements of the witness to identify inconsistent statements about which you expect the witness to testify. Cross-examination can be used to build up favorable witnesses, corroborate favorable testimony, obtain admissions, minimize the witness's credibility, and minimize or destroy the witness's testimony. Your cross-examination outline should include short, understandable leading questions in the form of statements.

3. **Use of Exhibits and Chalks at Trial.** Exhibits and chalks should be used efficiently and effectively at trial. The court will typically require the parties to exchange exhibit lists to determine whether they can agree on admissibility in advance of trial. If there is no genuine dispute as to the admissibility of an exhibit, stipulating to its admissibility will allow the parties to avoid laying a foundation for that exhibit at trial. While you can certainly raise objections to the admissibility of exhibits when an actual dispute exits, it is often the best strategy to limit your objections to documents for which legitimate objections exist and that are essential to the triable issues. Though a party agrees to the admissibility of exhibits, you should still provide some foundational information that will assist the judge in understanding the importance of the exhibit. It is all best practice to introduce an exhibit through a witness who can explain the exhibit's importance to the case. And you should never introduce documents without testimony to support them. A disputed exhibit must be marked for identification, and you will be required to lay the foundation of the exhibit by eliciting testimony to establish the requisite foundation before formally offering the exhibit into evidence. If there is no objection, the court will admit the exhibit, but if there is an objection, the court will typically call the parties to sidebar to discuss the basis for the objection before ruling on the exhibit's admissibility.

   Chalks at trial can be extremely powerful if used effectively. Chalks such as a graphic depiction of evidence or a diagram or model can point the court to certain events or evidence. Chalks are not part of the evidentiary record and cannot be used to prove an essential element of a case. The trial judge has considerable discretion when determining the degree to which chalks can be used at trial.

4. **Preserve the Record with Objections.** It is important to object at trial to establish an appropriate record for appeal. You must listen to each question carefully to determine whether it is objectionable. Remember you must stand when you are making an objection. Object only when you have

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a good reason to keep evidence out. You should know the basis to object to the form of questions, the basis to object to the substance of testimony, and the basis to object to exhibits. Be poised to object to each question in a timely fashion, avoiding the need to file a motion to strike. Your tone of voice in making an objection is important (just as your tone is during the rest of the trial). A neutral tone is generally best. Your demeanor is also important. You may need to adjust your demeanor based upon the judge's rulings (which sometimes can be frustrating if it is not going your way!).

5. **Prepare to Be Flexible.** No matter how hard we prepare, we cannot anticipate all the surprises at trial. You must be flexible enough during your planning to allow for and to incorporate these surprises. Have a plan and strategy for your case, but be prepared to modify the plan based on the judge's suggestions, questions or direct requests, and even surprised testimony during an examination of a witness.

I am grateful for having had the opportunity to participate in four trials this past year. And I am thankful for working at a firm that encourages young lawyers to take on speaking roles at trial. Partners and associates need to be willing to work together to ensure that newer lawyers have an active, engaging and speaking role at trial and other courtroom proceedings, as real-world experience is required to master successful witness examination and persuasive arguments. ■

CIVIL LITIGATION IS HARD — LET'S EMBRACE IT: A NEW-ISH LAWYER'S MUSINGS

BY MICHAEL P. DICKMAN

Civil litigation is a very broad and diverse practice area. Encompassing numerous substantive areas of the law. It can be very stressful. It can be very rewarding. For those who work by the billable hour — the satisfaction of entering tight descriptions for those 0.2s and 0.3s is hard to match. (If "Suits" ever decides to have a reboot, I trust that Harvey Specter's prompt and accurate time entry will be covered extensively).

But in all seriousness — the most rewarding aspects of civil litigation are often its most challenging and stressful: taking the deposition of the adverse party's Rule 30(b)(6), dispositive motion practice, oral arguments, jury trials. New and seasoned litigators alike can agree that becoming and staying a strong lawyer requires constant work and attention, especially on these demanding tasks.

From a new-ish civil litigator's perspective, diving into the proverbial deep end and getting your hands dirty is the best way to hone these skills. People tend to learn by doing. I think I speak for most within my experience cohort that we are constantly in search of greater opportunities to fully immerse ourselves in these challenges. To make mistakes. To learn from them. And to become a better lawyer as a result.

As younger attorneys, let's embrace this developmental process. And continue to urge our supervisors, mentors and more seasoned colleagues to increase opportunities to experience "real" lawyering firsthand. They were also once in our shoes and recognize the benefit of leading the next generation and future bar leaders. A supportive work environment is critical, and I'm fortunate enough to work at a place that practices what I'm preaching.

Some further thoughts along these lines:

Newer lawyers crave more trial experience. Civil cases very rarely go to trial. Civil litigation is a story of time-consuming discovery, almost always followed by dispositive motion practice and settlement. This is exacerbated in the post-COVID (ish) world, where court dockets are backlogged and trial dates are only available years into the future, which makes the possibility of pretrial settlement even more likely. The days of lawyers trying multiple cases in the same week and having hundreds of jury verdicts under their belt appears to be becoming a vestige of the past.

Newer lawyers are desperate to get more hands-on trial practice. This is my anecdotal and personal experience — that this is a shared eagerness among young attorneys. But the harsh reality is that newer lawyers have less and less opportunity to cut their trial teeth in today's practice. Where the scarcity of trial work is problematic on its own, the profession would certainly benefit from a broad spectrum of lawyers getting the chance to show off their courtroom skills and become stronger advocates.

There is no substitute for in-person interactions and training. Being in person has immeasurable benefits for the social and substantive areas of practice. In certain respects, the increasing use of videoconferencing has been a silver lining arising from the pandemic. Remote attendance for court status conferences and other routine matters has saved time and expense. But it also has its limits. There is no replacement for the genuine personal and professional connections that are made in person, as opposed to through a computer screen.

In-person interactions make collegiality among the bar more readily apparent, whether it be a networking reception to catch up with former colleagues, new friends, or folks you had only previously known through your email inbox; the organic and genuine interactions in the courthouse halls before, during and after a hearing or conference; or any other type of engagement that cannot be replicated virtually. The in-person experience removes a lot of mystery and illuminates the personalities of the person on the other side of the "v." It humanizes the practice of law. Meeting or getting to know a lawyer outside the confines of a case makes the actual litigating more agreeable — it's more difficult to deny an extension request when the person making the request is someone you know personally.

Advocacy skills can also be blunted when practicing remotely. When appearing before the court in a remote proceeding, lawyers are generally sitting at a desk (and sometimes literally on their hands). Not having the experience of being in front of a judge or jury impedes development of those skills. Part of a litigator's job is to be an effective storyteller. It is hard to tell an effective story when you are not accustomed to being on your feet and moving about the courtroom. With some more experience, I will no longer deal with the plight once faced by legendary racer Ricky Bobby — "I don't know what to do with my hands."

Technological advances, at trial and throughout litigation, must be embraced. Because we are living in an age of information overload and short attention spans, litigators and trial lawyers must be prepared to effectively use technology to capture and retain the interest of jurors. A specific example — there is sizable research and literature on the role that Gen Z jurors are playing in reshaping jury pools. If razzle-dazzle PowerPoint presentations and other technologies will do a better job of keeping them engaged and more likely to favor your version of the case, a lawyer is doing a disservice by not incorporating some technological flair into their trial presentation. Also, one has to suspect that a lawyer's seamless use of trial technology boosts the merits of their case in the eyes of the jury. (If this lawyer has a mastery of the iPad, graphics and other technology, then surely they must be right on the law and the facts).

The presence of generative AI presents another opportunity. AI's use in legal practice will only increase moving forward. These technologies have the ability to streamline some legal work, including drafting, legal research and image generation. As we have already learned, user beware with the present state of this technology. A lawyer must always verify any AI-produced content before relying on it, especially if you're going to rely on a nonexistent case within a brief filed with the court. But in any event, newer lawyers are positioned to capitalize on this rapidly developing and changing landscape. Now and moving forward. ■

MICHAEL P. DICKMAN is a civil litigator at Kenney & Sams PC. His practice focuses on business, construction, personal injury, and insurance coverage disputes. He represents plaintiffs and defendants in state and federal court. He is on the Board of Directors for the Massachusetts Bar Association's Young Lawyers Division and chairs its Development and Membership committee, and is a council member of the MBA's Access to Justice Section.

HOW TO BE A SUCCESSFUL LEGAL INTERN — LESSONS FROM MY CO-OP AT PRINCE LOBEL TYE

BY SYDNEY GILISON

After finishing my final legal internship before graduating, taking the bar, and being thrust into the "real world" that exists beyond the four walls of the Northeastern Law Library, I have learned some extremely valuable lessons from my time at Prince Lobel Tye. I primarily worked in the litigation department, helping handle a myriad of cases, from construction to corporate bylaw disputes. Although not all law students will work in litigation, I think these five skills I have learned and implemented are applicable to all law students and will make for the best experience as a legal intern.

1. DON'T WAIT FOR WORK — GO FIND IT

The first, and most important, thing I learned from my co-op was that ambition is a highly respected trait. In my first few weeks at Prince Lobel, I used the firm directory and emailed partners and associates, introducing myself and asking if they had any matters I could help them with. Yes, drafting the first email was scary and uncomfortable, but it paid off. I got a variety of assignments, including business litigation, employment, and even corporate, and it got me introductions. In that moment, not every attorney had work for me to do, but some attorneys reached out later on in my co-op when they had something I could work on. Throughout my co-op, I continued to reach out to attorneys to see if they had work I could help with, and this display of ambition and proactivity was continuously recognized and appreciated.

2. BE A 'YES MAN' (OR WOMAN)

The next skill I practiced during my time at Prince Lobel was trying to say yes to as many things as possible. If an attorney approached me with a task, even if it was something I didn't know how to do or an area of law that I didn't think I was interested in, I said yes. This practice led to doing interesting and diversified work, and getting to learn from great attorneys. Almost, if not, as important, say yes to coffee, lunch and any ways to network. You are not only at your internship to learn the law, but to learn the soft skills and how to network. Don't pass up those elusive opportunities, especially because more likely than not, attorneys are choosing to spend their limited free time during the day getting to know you. Say yes to firm events, informal chats and (if you're lucky like I was) outside events the attorneys are inviting you to attend, like Massachusetts Bar Association Young Lawyers Division events.

3. DON'T BE AFRAID TO ADMIT WHAT YOU DON'T KNOW

As mentioned in the previous paragraph, sometimes, you will accept work you are unfamiliar with. In that case, ask for a sample of the document. Ask questions if you have them. It's better to ask questions to get it as close to correct the first time, but don't expect your work to be perfect (remember, you're there to learn!). The attorneys were once in your shoes, and they know that this may be your first time drafting a motion to dismiss or a contract, so they are going to expect some questions. Something that I found extremely helpful during my co-op was going into the office. When I was in the office, I had the opportunity to have face-to-face conversations to ask questions that benefited me in a way that asynchronous communication via email would not have.

4. GO THE EXTRA MILE

Another thing you should be doing in your internship is going the extra mile. This may look different every day. Generally, go out of your way to help people. If you know that a case has a filing due, ask what you can do to help. Sometimes, this might just be printing something, or putting exhibits into binders, but it was one less task that the attorneys had to do. Additionally, if you are working on a task, don't just log off at 5 p.m. and leave someone else to finish it. See your work through, even if that means a longer night. It sounds like the bare minimum, but it's surprising how many people won't do that. Going the extra mile can also look like wanting to be involved in the firm. During my co-op, I helped plan a fundraising event that ended up being an extremely successful and rewarding experience. It was also an opportunity to further connect with the attorneys.

5. BE YOURSELF (SERIOUSLY!)

Finally, remember to be yourself. No one thinks that you are a law student robot who only thinks about the law. You are not only the legal intern, but (in my case) a cat mom, avid indoor cyclist, Swiftie, and New York sports fan. With your prior experience, these are the reasons the firm hired you, out of all the candidates, to be their intern. These are also easy things to connect with the attorneys about. For example, even in one of my interviews, I talked to an attorney about the fleeting relationship of Taylor Swift and Matty Healy. It was something during my co-op that we continuously connected on, and we found we had other things in common, such as we both have black cats!

In summary, proactivity and ambition are probably the best traits that you can bring to your internship experience to make sure it is a valuable and productive one. But being willing to take risks on tasks and areas of law you are unfamiliar with, networking, asking questions, showing up every day, and being yourself will help to make sure that you are the most successful intern that you can be. ■

SYDNEY GILISON is a 3L at Northeastern University School of Law and an incoming litigation associate at Prince Lobel Tye LLP for fall 2024.

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MY PATH FROM LAW SCHOOL THROUGH THE FIRST YEAR OF A SUCCESSFUL PRACTICE

BY JESS LANDRY

My mother was relieved when I told her I was moving to Boston to attend New England Law | Boston. She envisioned my future as a lawyer like many people do: a stable, successful job in a firm with an office and a secretary, and in 40 years, a retirement party and a gold watch.

For many, law school is associated with pursuing a lucrative big law job, where prestige and paycheck take precedence over personal happiness and work-life balance. As I observed my law school friends competing for positions, I felt there had to be a better way. The stress and the grueling hours they were willing to endure didn't align with my vision of a fulfilling life or legal career.

During my first year of law school, through New England's summer fellowship program, I discovered Justice Bridge. This unique initiative supports attorneys within their first five years of practice by providing resources and mentorship to establish a practice. In return, these attorneys commit to serving moderate-income clients at a discounted rate.

During that first summer with Justice Bridge, I worked with Legal Squirrel, a revolutionary technology designed to streamline intake, referral processes and knowledge management. Working with Justice Bridge and Legal Squirrel resolved two of the biggest blockers I felt before opening my practice: how to be a lawyer and how to get clients. Through the mentorship and referrals I could receive through both, I felt secure enough to continue down the path of ownership.

Over the next two years, I tried to take courses that would prepare me to open a practice and provide me with practical guidance, such as Advanced Legal Research with Kristin McCarthy and Law Practice Management with David Russman.

As graduation approached, I made a decision that many considered unconventional and, as my mom would say, reckless — I didn't apply for a job. I decided to open my legal practice. It was a decision fueled by my desire for freedom, the need to be present for my family, the flexibility to focus on my mental and physical health, and my yearning to engage in activities that resonated with me. I craved autonomy — the ability to choose my clients and cases based on my values and interests.

Despite my determination, I was painfully aware of my lack of practical experience. I recognized that I had a steep learning curve ahead of me, but I also knew I was among many people to do this. As I sought guidance, I turned to mentors, collaborators, and the wealth of knowledge available through the local law library.

After I took the bar, I read everything I could get my hands on about starting a law practice. While some sources painted it as a last-ditch effort after bombing on-campus interviews or being unexpectedly fired, I refused to accept that narrative. Instead, I focused on the aspects that resonated with me and provided valuable insights into building a practice. Resources like Massachusetts Continuing Legal Education's (MCLE) "Hanging Your Own Shingle" and MIT's "Nuts and Bolts of Entrepreneurship" and the wisdom of experienced attorneys were invaluable. Building a team of people I can call when I don't know something has been instrumental to my success — specifically the kind and patient attorneys at Clifford Law Office; Hachey Urbanoski Law; Peridot Family Law; and Kerstein, Coren and Lichtenstein. The Massachusetts legal community is filled with beautiful and supportive people, and I am so proud to be a part of it. No attorney I have wanted to learn from has told me "No" when I have called and told them I wanted to know more about what they do.

After my first appearance in court, I confided in opposing counsel that I had only been sworn in three months prior. Her response was a testament to the kindness of the bar. She praised my performance and introduced me to every lawyer she knew in the courthouse that day.

I have learned no one knows all the answers; in fact, it is best to assume you don't know the answer and double-check before you tell anyone you know anything. The power of a legal education is not that you learn how to be a lawyer but that you learn where to find answers. I learned to rely on my resources, ask questions, and seek guidance when needed. I discovered the support I needed to excel in my legal career through organizations like Justice Bridge, MCLE, the Social Law Library and the Board of Bar Overseers Ethics Hotline.

I am often asked whether it's possible to make a living starting a law practice after law school, and the answer is yes. I've supported my family with the income from my law practice for the past year. I set clear financial goals and committed to adhering to my law school budget for an additional three years. Remarkably, within the first six months, I surpassed my initial goal of a $6,000 month and am on track to achieve my next financial milestone. I expect to hit it before the first anniversary of my firm.

JESS LANDRY is the owner of Ivy Law PC, which she started in January 2023. She is a graduate of New England Law | Boston and admitted to practice in Massachusetts.

Approximately one-third of my income comes from work at other law firms. As I sought advice from mentors and openly discussed my experiences and challenges, I discovered that many lawyers were overwhelmed and needed assistance. I started taking on surplus tasks from mentors, pinch-hitting court appearances, doing legal research, and writing. Their willingness to offer contract work, share leads and entrust me with their clients contributed to my income and provided invaluable lessons that I applied to my practice. Through their work, I am learning what kind of attorney I want to be.

People often tell me I'm brave for starting my practice. However, I don't consider myself brave — I followed my heart and pursued a path that felt right for me. Now, friends who initially embarked on corporate and big law careers are contacting me. They seek advice and insight into my chosen path, and I'm more than happy to share my experiences because I am having so much fun.

My name is Jess Landry. I am the owner of Ivy Law PC. I started my practice in January 2023 after graduating from New England Law | Boston in May 2022 and passing the bar in July 2022; I swore in as an attorney in the Commonwealth of Massachusetts in November 2022. Being a lawyer is an honor and a privilege. This is the best job I have ever had, and I love what I do.

I named my law office Ivy to remind myself that we put down our roots and grow. I am still growing. I am still learning. I am still looking for mentors and collaborators. Thank you for allowing me to share the story of my practice with you, and thank you for allowing me the privilege of being a part of this community. ■

WHAT YOU DON'T LEARN IN LAW SCHOOL

BY EDWARD FERRANTE

After graduating from school and doing criminal law on a daily basis, I realized how little law school taught me for the real world. Law school is very abstract and academic. The vast majority of time in law school is spent on researching and writing. Learning case law and legal writing is an important part of being a lawyer, but lawyers do so much more. Students can easily read and write on their own. However, lawyers must communicate with opposing counsel, experts, investigators, witnesses and clients. Lawyers have to coordinate schedules with the court and essentially teach clients about the legal process. Lawyers also have to argue facts, humanize clients and explain their clients' stories. The clients depicted in the case law are all indistinguishable minor characters in their own stories. The case law does a horrible job humanizing the clients. The clients are all living people with their own personalities, dreams, hopes, fears, traumas and temperaments. The whole point of becoming a lawyer is to help clients, but law school never appropriately conveys that message since so little of the curriculum mentions clients. Law school focuses too much on legal theory over practical experience. We get three or four years of law school but still spend most of our time in school in the classroom.

After actually communicating with clients, I realized that law school does not prepare you for interacting with clients or how to earn their trust. I never had a class on how to calm down a client, how to tell client bad news or how to get a client to cooperate with intake. I have to meet clients in lockup for the first time in the middle of the worst time in their lives, where they risk having to wait for trial while sitting in jail. Another thing I realized is the clients vent to the attorney because they have no one else to talk to. Law school puts way too much emphasis on grades, class rank and extracurriculars. However, clients do not care about how well you did in school. They just want someone to fight for them. Sometimes, the clients just have unrealistic expectations. I can't tell you how many times clients ask me if I can get their cases dismissed even though it is never that easy. The clients vent about their personal lives. You just have to listen and give them space to express themselves before you try to get down to business. Law school does not focus enough on listening. They focus on making winning arguments and thinking about what rebuttal to make when the other person is speaking. Dealing with clients requires the same skills as any other relationship. Some clients will be mad at you if the case does not go their way. It is common for clients to blame lawyers for their legal situation since the lawyer is the lightning rod and the only one clients can talk to. It is very disheartening when a client is mad at you because we all go into this profession to help clients. It is very important not to take a client yelling at you personally. I learned that I have no control over what a client says or does. You have to give them the bad news, but they will react however they please. The attorney's job is to give the client the bad news and let them figure out what to do with the information. Not every client is compatible with you. Compatibility is just something that you have no control over. Although the purpose of the privilege is to encourage frank discussions with clients, one of the unintended effects of the privilege is that it isolates lawyers. We do not get to see how other lawyers handle clients, which could help with figuring out our own approach to clients. Also, it is reassuring to hear from other lawyers that clients get mad at them and fire them. It makes me feel less alone since I am not the only one who has difficult clients. Luckily, most clients are easy to work with.

No attorney starting out is going to know everything. Law school and the profession expect that we always know the answers. We are never taught the importance of saying, "I don't know." You are always learning on the job since the education never stops after graduation. Nobody knows everything about the law. We learn the best from our mistakes since experience is just what we call our mistakes. You do not have to know the answer. You just have to know where to find the answer. In criminal law, I learned about psychology, immigration and substance abuse on the job. I am still learning on the job. Even experienced attorneys will admit they are still learning on the job.

Despite demystifying the trial process, law school doesn't do a good job of explaining what to do when things don't go according to plan. Despite doing multiple trials, I cannot say that trials ever go according to plan. Witnesses say something that you never expected. One time, I had a trial where my client was consistently late for trial. My client never showed up after the lunch break. I never had a class on disappearing clients. I was so nervous about something that I could not possibly control or anticipate. I learned from experience that you can ask for a continuance to find your client or have a mistrial. Luckily, my client appeared a half hour late before I had to make a decision. School taught us the importance of getting favorable witnesses but never taught us how to summons a witness, how to find witnesses, how to prepare witnesses, how to respond if a witness says something that you did not expect, and what to do if a witness does not attend court.

In law school, I was under the impression that any case can be won if you have the best argument. Not every case is winnable. You can't control the facts of your case. We are like actors. We have our scripts that we don't write and just have to make the most of them. Not all of our scripts are going to win the Oscar. Sometimes, you don't have a case. Clients may want you to insist on going to trial. Other times, the client may decide to testify midway through the trial. You just have to know your case so you can have some sort of structure in directing your client. An improv class would be really helpful since it requires you to constantly think on your feet and react to unexpected situations. You also have to do a class show, where you have to perform in front of people that you have never met before, just like at a jury trial. If someone says that you did the best you could with what the facts were, then you did a great job.

We learn all the rules on picking jurors and challenging jurors, but we never learn in

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EDWARD FERRANTE was sworn in as a lawyer in 2017. After struggling to find his place in the legal profession, he created his own position in the legal profession. He started the Law Office of Edward M. Ferrante in 2019. He is a member of the Essex Bar Advocates, a private attorney who represents indigent people charged with crimes. He represents people in Salem District Court. Recently, the Committee for Public Counsel Services accepted him for its Mental Health Litigation Division, where he will represent clients when the mental hospital tries to commit them as dangers to themselves and others.

Law School
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school how to actually pick a good jury. I was surprised at my first trial when I got the jury questionnaires. I get little time to review the questionnaires since I get them on the day of trial. I have no time to get an investigator to question the prospective jurors. I have to make split-second decisions on who to exclude and who to allow in the jury.

Law school assumes that all cases go to trial. Part of the issue is that it is really hard to appeal a plea or settlement, so we do not see a lot of case law on settlements and pleas. Law students read case law all day and would reasonably assume that everything goes to trial. Most cases are either dismissed or resolved through a deal. Sometimes, the facts are really bad, and you do not have a defense. Sometimes, the opposing party does not have cooperating witnesses and is not prepared for trial. Other times, the clients just want their case dismissed and don't want to go through the risky, stressful gamble of a trial. Law school does not teach you how to communicate and negotiate with opposing counsel, especially if the opposing counsel is difficult. Law school should focus on negotiating a deal with the same amount of fervor as trials.

Law school does not put enough emphasis on taking care of your mental health. It is important to have interests outside of work. Sometimes, you just need an escape from the chaotic and hectic world of law. It is not healthy to focus on clients' problems 24/7. Judges always expect you to have an argument even if you do not have the facts to make an argument. If you focus too much on work, you will burn out. I know it is easier said than done for firms with high billable hours and workaholic bosses. We are all more than our professions. We cannot define ourselves by our professions. When you graduate school and pass the bar, you get more time to yourself to explore other interests. You don't have to spend time studying or outlining. You can't help clients if you can't take care of yourself. Once you are done with work, you can travel, take classes, start exercising, grow a garden, learn an instrument, study another language, read a book, perform in a drama, etc. The possibilities are nearly endless. Law school turns you into a workaholic who focuses on getting the best grades to get into the best law firms. It does not tell you how to manage time while dealing with pressures from everyone else in the case, stress and competing deadlines.

The lawyers in case law seem like superhumans who have everything under control, but that is not the reality. The appellate lawyers in the case law are very experienced. We never see how they got to that point in their lives. Very few people are skilled as soon as they start. There are times that you will make mistakes and struggle to find your path. Judges appreciate it if you admit your mistake and accept responsibility. Mistakes are learning experiences on what not to do. Very few mistakes are irreversible. We never really learn how to be resilient when you have a bad day in court. Everything in school is a controlled environment where there is a clear-cut answer. Court is very unpredictable since you are no longer dealing with professors who are trying to help you. The opposing counsel and judge are not necessarily on your side. Court rarely goes as planned with so many variables.

Another obstacle unique to young lawyers is that some clients will not trust young lawyers since they have no experience. They have an understandable concern since clients do not want to take a risk of losing at trial with a young attorney. It is a catch-22 since you need trials to get the experience. If clients do not let you take their case, you cannot get the experience. You can always get a mentor or some more experienced attorney to help you out if you have any questions on your case, so you can borrow another attorney's experience. If you are a newer lawyer, you do not have a large caseload. Then, you can focus more time on a client's case. Some clients may not be worried about the experience as long as you are willing to keep them updated and do your best to fight for them. ■

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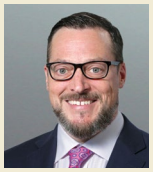

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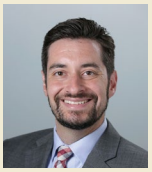

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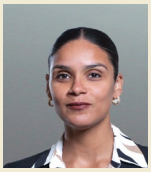

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