

The background of the cover is a photograph of a grand, classical-style building with a portico supported by large columns. An American flag is visible on a tall pole to the right of the building. The sky is blue with scattered white clouds. The title 'New Lawyer Handbook' is overlaid in large, white, bold, sans-serif font with a black outline.

New Lawyer Handbook

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FOREWORD

Kenneth M. Rothweiler, Esquire

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So you want be a trial lawyer? The first question you should ask yourself is...why? Being a trial lawyer is not a job, it is a profession. Do you want to be a trial lawyer because you want prestige, power, or because of the potential financial rewards? If any answer is “yes”, you may want to rethink your choice. On the other hand, if you have a passion for helping those in need and making the world a more just place one case at a time, then becoming a trial lawyer may be your calling.

Being a trial lawyer is special. It requires the ability to seek justice by working hard, possessing a relentless attitude, and never giving up. It is both a privilege and a responsibility. It is noble to put yourself on the line to help someone else in need.

So what’s the blueprint to becoming a successful trial lawyer? The initial step would be finding a law firm where a mentor can show you the ropes and hone your skills. Trial advocacy is an art with rules. Being mentored will allow you to see how someone else persuades so that you can develop your own style. A common mistake many young lawyers make is trying to mimic someone else. We all have different ways to persuade and understanding your way is beginning the path to success. Knowing yourself and understanding how you communicate is essential.

The next step is to get into a courtroom as much as possible. Initially, find out who the good trial lawyers are outside your firm and watch them in trial. Being familiar with the courtroom and its procedures is important. Make yourself available in any capacity to help the lawyers in your firm during trial. Learn the case facts and theories better than anyone and you will find yourself to be invaluable and will likely serve as second chair—first chair will come in time.

Along the way, participating in a trial course that AAJ or NITA sponsors will enable you to get hands-on courtroom experience. The critiques of your openings, direct and cross examinations, and your closing will be invaluable in your development as a trial lawyer.

What qualities do I need to possess? You have made it through law school so you already possess the ability to work hard and persevere. These qualities will serve you well, but to win in a courtroom the most successful trial lawyers need to be storytellers. At its core, trying a case is just telling a story. The rules of the courtroom can be learned, but storytelling is an art that needs to be developed. You must know 100% of the facts of your case. You must understand the damages by talking to and spending time with your client and the client's family. You must have the ability to express empathy.

What I have expressed is only a thumbnail sketch of what it takes to be a successful trial lawyer. The true test occurs in a courtroom while in front of the jury. It can be one of the most nerve-wracking experiences, while at the same time being one of the most exhilarating and rewarding. Once you have done it, you will count the days until you can do it again.

WHAT YOU CAN (AND SHOULD) DO BEFORE GRADUATING FROM LAW SCHOOL TO GET READY TO JOIN A PERSONAL INJURY FIRM

Sud Patel, Esquire

Fanelli, Evans & Patel, P.C.

As I write this section of Pennsylvania Association for Justice's (PAJ) *New Lawyer's Guide*, we are still in the midst of the Covid-19 pandemic. The Covid-19 pandemic has been a game changer for the legal community. From a business side, many law firms have realized that working remotely has and will become the "new norm." Many firms are realizing that they have been overstaffed and have occupied too much office space as a result of the steps they have taken since the start of the pandemic. Job interviews are taking place via Zoom and similar videoconferencing means. Courts are navigating how to conduct trials and hearings in the post-Covid world. Case backlogs are growing bigger by the week.

Fortunately, for those who are in or about to enter law schools, it is not all doom and gloom. The fact remains that the legal profession will bounce back, even if we have to make adjustments to how we do business and try cases going forward. There will always be plenty of opportunities for aspiring, hard-working trial lawyers. It is with that in mind that I wanted to impart some thoughts on what you can and should do before graduating from law school to get ready to join a personal injury firm.

- 1. Focus on course selection.** You should focus on selecting courses in law school that will better prepare you to become a trial lawyer. Take an evidence class. Take any class that involves trial advocacy or trial practice. Next, any type of clinical experience that you can get interacting with live clients can also be advantageous to honing client relationship and trial skills. Depending on the law school you are enrolled in, there may even be some classes geared towards the business of practicing law. These classes will teach you about building a practice, how a law firm works from a business side and other similar topics. Finally, I always thought that criminal law, criminal procedure, and advanced criminal procedure were very beneficial classes for me as well in terms of spotting trial issues and thinking about ways to deal with evidentiary issues.

- 2. Try to find a legal internship.** Unless you have parents, siblings, or other similar connections that are going to guarantee you a job as a trial lawyer once you finish law school, I think it is critical to gain exposure to what trial lawyers do before graduating law school. If firms in your area are not hiring summer interns, consider offering yourself up for an unpaid internship so you can get your foot in the door of a litigation firm. If there are no openings at a litigation firm, the next best choice would be a criminal defense firm, a prosecutor's office, or a public defender's office. Even if criminal law is not your choice for a legal career path, many of the trial skills needed to handle criminal cases translate into civil litigation representing injured victims. Finally, you can also consider looking for a position at your local courthouse. Offer to work for or assist a Judge, the Court Administrator or the Prothonotary (civil clerk).
- 3. Visit courthouses to see what trial lawyers do.** Visit your local state and federal courthouses to observe trial lawyers in action. Also, do not be afraid to approach the lawyers at the end of the proceeding or court day, introduce yourself and ask questions about what the case was about, what they were hoping to get out of a particular witness, etc. You may also have the opportunity to sit in on hearings and oral arguments involving discovery disputes. Watching great trial lawyers question witnesses and make arguments to the court is an invaluable experience for an aspiring trial lawyer.
- 4. Join your State's Trial Lawyer Associations.** Every state has a state-wide Trial Lawyers Association (TLA), such as the Pennsylvania Association for Justice. Many states also have regional TLAs. Within Pennsylvania, we have several regional Trial Lawyer Associations, including the Philadelphia Trial Lawyers Association, the Western Pennsylvania Trial Lawyers Association, the Northeast Pennsylvania Trial Lawyers Association, and the Central Pennsylvania Trial Lawyers Association. Many states have free or substantially free TLA memberships for law students. Many regional TLAs have mentoring programs that will actually pair you with an experienced trial lawyer. Take advantage of membership in TLAs and attend their networking events and continuing legal education seminars. At CLE programs, you will see and learn from the most successful trial lawyers in your state. Membership and attendance

will provide you with invaluable networking as you complete your legal education and move on to a career as a trial lawyer.

5. Read books about and by great trial lawyers. Over my 25 years of practice, I have read scores of books written by and about great trial lawyers. These books not only serve as motivational tools for me, but I have picked up dozens and dozens of helpful tips that I now regularly incorporate into my own trial preparation and presentation. The following is a list (by no means all-inclusive) of some of the books that I have found very helpful along the way:

- a. *How to Argue and Win Every Time* by Jerry Spence;
- b. *Courtroom Cowboy: Life of Legal Trailblazer Jim Beasley* by Ralph Cipriano;
- c. *David Ball on Damages* by David Ball. (I also recommend his second book on damages);
- d. *Reptile* by David Ball and Don Keenan;
- e. *The Man to See* – the Edward Bennett Williams biography;
- f. *Case Framing* by Mark Mandell. (I also recommend *Advanced Case Framing* by Mandell);
- g. *Rules of the Road* by Rick Friedman;
- h. *Winning Case Preparation* by David Bossart and Greg Cusimano;
- i. *Danger Above: A Tragic Death, An Epic Courtroom Battle* by Robert Zausner.

Again, there are literally dozens and dozens of great reads available through sources such as the American Association for Justice (AAJ). In the modern age, there are also lots of podcasts you can download and listen to at your convenience. Take advantage of learning from the best and the brightest.

If you are set on becoming a trial lawyer and want to focus your practice on helping injured victims, I applaud you. You will be working in an area of the law that is, without question, the most challenging and rewarding area the law has to offer. You will have the opportunity to change lives, pursue justice, and be a part of an elite fraternity of the best and brightest lawyers on the planet. Best of luck to you!

WHAT HIRING PARTNERS IN PERSONAL INJURY FIRMS LOOK FOR

Elizabeth Chiappetta, Esquire

Robert Peirce & Associates, P.C.

It goes without saying that clients are the most important part of our practices. Because of that, when hiring an associate I want to be certain that the associate will be able to professionally and appropriately communicate with injured clients or clients who have lost a loved one. It is imperative to speak to injured clients with more than a dash of compassion. I look for someone who will listen to clients when they speak. I look for someone who will be able to ask the right questions without coming off as inappropriate or dubious of a client's story. I look for someone who will be able to give candid legal advice in a kind but firm manner. I look for someone who will be able to deliver bad news about the developments in the case with kindness but also confidence.

While it is sometimes impossible to know exactly how a new associate will handle being firm with a difficult client, or how a new associate will handle answering a client's sometimes endless questions, hiring someone with confidence and charisma is key. A prospective associate's demeanor and body language at an interview are extremely important to me. Many of the questions that I ask at interviews do not involve legal work or legal experience at all. I want to get to know the person and to know that they will fit in with the work dynamic in the office. I want to be able to see that the associate can carry him or herself with confidence but not overconfidence. I want to be able to see that the associate is friendly and able to carry on with small talk. Many of these traits are visible during the "get to know you" portion of interviews. Being able to talk about their childhood, where they live, where they went to college, and hobbies or interests helps me to put a human element to the hiring practice. So much of meeting people through the practice of law involves these same characteristics. How the prospective associate handles the "get to know you" portion of his or her interview will give me a glimpse of how he or she will act when meeting new clients, meeting defense counsel for the first time, or meeting colleagues at a cocktail party.

When hiring a new associate, I also want them to be as honest as possible at the interview. This sounds self-evident, but I mean it in a different way than we typically define “honest.” I’ll never forget an interview I conducted a few years ago. We were hiring for a first-year associate position. The applicant did not have a Ukrainian-sounding surname, nor did anything else on his resume involve anything related to Ukraine. However, his resume stated that he was in a leadership position in a Ukrainian Club while in college. I asked him about his involvement in the Ukrainian Club. He answered candidly, and said, “Well, I hate to admit this at an interview, but I mostly joined the Ukrainian Club in college because they had delicious beer accessible and at a cheap price. They had a place where I could gather with my buddies and drink cheap beer, so I joined and became President as I went through college.” This applicant could have easily told me he had an affinity for Ukrainian history and was very interested in its culture and language, but instead he was earnest about his willingness to be a regular college kid who wanted to drink beer with friends. It’s something I will never forget and something I respected. I respected that he was not trying to put on airs and concoct a story he thought I wanted to hear. Instead, he was honest about his intentions and it greatly humanized him.

Essentially, be personable and real. You’ll be able to easily answer questions about your law school life and law clerk experiences because you’ve lived them deeply over the last several years. However, the intangibles are what matter most to me – confidence, charisma, honesty, and friendliness. Here are a few pro tips from some of my own experiences in interviews:

1. Make sure that your references are going to give glowing recommendations of you. I once double-checked a reference for an applicant. The reference did not have a good word to say about the applicant, who clearly did not anticipate the bad review. I greatly respected the reference and felt compelled to listen to the reference’s (lack of) recommendation, which ultimately cost the applicant the job.
2. I pay attention to your clothing and accessories, down to your briefcase, folio and pen. You should too!
3. Please do not bring a Starbucks coffee into the interview. It just seems a little too casual.
4. Ask questions about the practice and the firm with which you are interviewing, and ask questions about the partners interviewing you. Partners love to talk about themselves and their accomplishments.

5. Smile, be confident, and always talk about sports or the weather – they're always the best conversation starters!

Good luck!

WHAT TO EXPECT AS A NEW ASSOCIATE

Elizabeth Chiappetta, Esquire

Robert Peirce & Associates, P.C.

1. You are often not going to know what to do. Research as much as you can before going to a partner's office with questions. When a partner undoubtedly asks if you checked (X) or (Y), it's a lot better to say yes.
2. Many of the questions referenced above can be answered in the *Rules of Civil Procedure*. Check there first or second when you have a question.
3. Always have an extra suit in the office. You never know when you'll get called in to cover something last minute. It's good to be reliable and be able to step in when needed. You'll get a good reputation for being that reliable associate.
4. When a partner asks you to come to his or her office, always go with pen and paper in hand. They're likely not asking you to stop in to discuss the Steelers most recent victory on Monday Night Football.
5. Make friends with the seasoned support staff. I learned so much about pleadings, formatting, and filing requirements from paralegals and secretaries who have worked at my firm for some time. They're sometimes the best civil procedure professors.
6. How you treat support staff is often an indictment of you as a person in a law firm setting. Please be kind to the people who are here to help you shine.
7. It's okay to leave a deposition or court appearance and get in the car and think, "Oh shoot, I wish I would have asked (X) question" or "I wish I would have told the judge (Y) fact in support of my position." It's going to happen to you for the rest of your legal career, just less and less as the years go by.
8. The second you think you made a mistake, please tell a superior. Most things can be fixed. The cover-up is often worse than the crime.

9. Even if you work best in a messy office setting, the oldest partner in your office is going to think you're practicing below-average if your office is a disaster. Try to stay tidy.
10. It is normal to be nervous going to a deposition or argument.
11. Face time in the office (pre-Covid) is important. Even if partners tell you it's not—it is. Try and show your face as much as possible.
12. If a partner makes a slight suggestion, do it as if it was a mandate. They'll think highly of you.
13. Try and buy the nicest clothes your budget will allow. Looking the part is super important.
14. You will make mistakes. You will. As I said earlier, most are fixable, especially if you're honest about it.
15. So much of what we do as trial lawyers is based on feel and experience, neither of which you will possess for some time. To get that feel and experience, ask to tag along to as many things as practicable. Volunteer to write a deposition outline or mediation statement so that when you ask to tag along, you've already been involved in the nitty gritty of the litigation.
16. You will often be asked to do or attend unsavory or boring events. It will get better!
17. When asked to attend said unsavory or boring events, please don't complain about them. Grind through unwanted tasks. You'll be lauded for keeping your head down and completing the tasks with aplomb!
18. Try to make an excuse to stop by the managing partner's office or bump into him or her in the hallway.
19. You will have some sleepless nights. As my mentor says, you really prove that you're a conscientious and caring lawyer once you start having sleepless nights. Yikes!
20. Double and triple and quadruple check the statute of limitations on your cases.
21. Free time will be at a premium. It will get better!

Good luck!

WHAT TO EXPECT AS A NEW ASSOCIATE – THE “SMALL” FIRM PERSPECTIVE

Sarah F. Dooley, Esquire

Duffy + Fulginiti

You’ve graduated law school, passed the bar exam, and secured your first job as a newly licensed attorney – congratulations! What to expect in your first few weeks, months, even years at your new job can depend greatly on the size of your firm. While larger firms (15+ attorneys) may have distinct “teams” or specific partners that will dole out assignments, smaller firms tend to take a more collaborative approach, which means being prepared to help everybody in the office, not just your direct “boss.” You may have been told you will be working with or for certain attorneys in the office or on a certain type of case (motor vehicle versus medical malpractice, for example). Do not take this to mean you should not check in with the other attorneys from time to time and offer your help with whatever they might need – this could be anything from summarizing depositions, research, drafting pleadings, or assisting the support staff in preparing a large filing. Being a team player is much more than just helping your boss – it is helping the entire office to be sure things run smoothly and you get the desired results for your clients.

Another thing to expect with a smaller firm is that there tends to be less time for a probationary period and the approach is more of a “baptism by fire.” This is not to say you will be trying cases the first week of work (or maybe you will!), but you will have a gamut of assignments as cases are in various stages of litigation. My first week of assignments included a medical records summary, preparing a Mediation Memorandum, drafting a complaint, reviewing discovery responses, and finalizing a Petition to Approve a Minor’s Settlement. It was hard to jump into the middle and end of some cases when I was not there for the depositions and discovery that had preceded my start date. As such, do not just assume you will start fresh with a new file and a new case – you will likely need to learn a file, and quickly, in order to complete assignments in a timely fashion.

In smaller firms, when one attorney is on trial, the entire office is on trial. Be available and offer help on whatever could be needed – trial exhibits, watching video depositions, preparing bench memoranda – even if it

is a case you did not personally work on. Trial preparation is a different breed of animal and your help will always be appreciated, no matter how small the task might be that you are working on. Do not wait for someone to come to you with a question – make yourself accessible and help everybody. Come in early, stay late, be ready to come in on the weekends, and prove your worth and value to the firm as a true team player.

Do not be afraid to ask questions! One of the benefits of a smaller firm is the overall availability of the other attorneys. No one expects you to know everything. The best way to continue to learn and grow as an attorney is to ask questions. You will never stop learning. Lastly, be yourself. Techniques and strategies that work for your co-workers or your boss might not work for you. Do not be afraid to do something differently! While working at a small firm can be intense, it also offers great opportunities to learn and to be in the middle of the action.

THE DO'S AND DON'TS OF BUILDING A PRACTICE

Robert Zimmerman, Esquire

Saltz Mongeluzzi & Bendesky, P.C.

As a young lawyer, the idea of building your practice and establishing referral sources may seem daunting, especially when you are spending so much time learning the basics of civil litigation. You may feel that after working long hours on your caseload and taking time to study the work of more experienced attorneys that there just aren't enough hours to become a business generator. You may be happy to simply work on the cases you have been assigned, and spend the rest of your time far away from the law.

Having that mentality is great for many people. But if you are reading this and are engaged in the mission of the Pennsylvania Association for Justice, my guess is you are motivated to build your own practice regardless of whether you are a solo practitioner, at a small firm, or are at a larger firm. Early in my career, the cases I handled were almost exclusively generated by other attorneys. I still have the great fortune to work on many significant and meaningful cases that come to our firm, but I consider it an honor every time I am called by a friend or colleague to investigate a new case. While it may take time, building your practice will ultimately rely on the contacts you make and, even more importantly, providing the clients they refer to you outstanding service and representation.

There are countless ways to build a practice. Here are a few Do's and Don'ts that were relevant for me:

Do's

1. Become engaged in legal profession associations.
2. Bar Associations and trial lawyer networks, such as PAJ, offer great opportunities to meet attorneys who practice in different areas, both geographically and by case type. Even in PAJ, there are varied practice areas, including workers' compensation, product liability, medical negligence, and automobile accidents—just to name a few.
3. Become engaged in other associations

4. Find something meaningful outside of the law to devote your time, and find ways to help those with whom you interact. Whether it is a religious organization, community organization, or child's athletic organization, it is important to surround yourself with people from different walks of life. The way you carry yourself within these communities can only help in building the trust of your friends and other participants.
5. Take opportunities to write or present on legal topics: CLEs or legal articles can be a great way to show others your skills and creativity.
6. Find a mentor - whether it is at your firm or somewhere else, seek the guidance of someone who has been through what you are going through. It is crucial to find an attorney you trust and respect to get honest, and sometimes critical, advice.
7. Learn about the practices of others. Some people are focused solely on their own practices and don't take the time to learn about the practices of the other person in the conversation. Ask questions. Find out what types of cases others like to handle. Chances are, if you take interest in the practices of others, they will take interest in yours.
8. Help others. Whether it is on a Listserv, email chain, or at a happy hour, if you find someone dealing with an issue you have faced, try to help. You may have deposed an expert, or faced a nuanced legal issue that someone else is handling. For so many reasons, it is important that others find success when it comes to the hurdles you have faced.

Don'ts

1. Don't fight with every defense lawyer you encounter. There is a time and place in every case to zealously represent the interests of your client. Don't find other times to practice your arguing skills just for the sake of making a point. Defense attorneys refer cases too, normally to attorneys they respect and with whom they communicate well.

2. Don't ignore people who contact you. You may receive a request for a type of case you don't handle, or maybe you get a call for a case that you know isn't a case. Call the person back. Help how you can, even if that just means giving your thoughts on why a particular incident may or may not be a case.
3. Don't feel the need to turn every conversation into a referral. Not every conversation requires a hard sell. Be yourself, work hard on things you are asked to do, and when a referral opportunity is available, it will come.
4. Don't spread yourself too thin. Remember, most referrals you get will be because of the hard work you exhibit on your cases and in your profession. Especially at a larger firm, don't forget that the most important cases and clients are the ones you already have. Handle those exceptionally, and more will follow.

HOW TO DEVELOP A PERSONAL INJURY PRACTICE – THE “SMALL”

FIRM PERSPECTIVE.

Patrick Doyle, Esquire

Anzalone Law Offices, LLC

It all matters. Your ability matters. Your networking efforts matter. Your reputation matters. Your civic involvement matters. When developing your personal injury practice, every day presents an opportunity to grow professionally and to develop your practice. Finding the balance between practicing law and developing your practice is often the most difficult task for young attorneys, and it is critical in having an enjoyable and successful career.

In attempting to achieve success as a young attorney, immerse yourself in the community in which you plan to develop your practice. As an attorney, your skill set will be in high demand to serve civic and non-profit organizations. Using your degree to improve your community will not only provide you with self-satisfaction but it will also begin to form a referral network for purposes of the development of your personal injury practice.

Similarly, socializing with other young lawyers is critical to create a lasting referral network. You will find that the best source of new cases will come from trusted colleagues. Developing relationships—*real* relationships—with your colleagues, is the best way to gain trust and eventually clients. The young lawyer’s division of your local bar association and PAJ provide outlets for you to form personal and professional relationships. As a young lawyer, you will certainly be approached by potential clients with legal issues that may fall outside your area of practice. A referral to a colleague who is also developing her practice will undoubtedly be returned to you in the future. As you develop these professional relationships, be sure to establish a referral fee arrangement with each referral source that will prompt your colleague to contact you every time she has a potential referral.

Build your reputation. When it comes to the practice of law, this is the most important factor a young lawyer should focus upon. Every time you file a pleading or brief and every time you represent a client in court, your arguments are only as strong as your reputation. Judges and opposing counsel remember and respect the

lawyers that present strong, honest arguments. The opposite is also true. It is critical for young lawyers to conduct themselves with professionalism and integrity. Efforts as a young lawyer to develop and establish your reputation will benefit your clients because your arguments will be well-received and will benefit you professionally. You will find no greater compliment than to be referred a case by an attorney with whom you were previously opposed.

As your practice develops and your client base grows, it is important to remember that your focus must remain on serving all of your clients. With some success, it is natural to be drawn to work on cases that will yield the most profit for your firm. This may come at the detriment of other cases and clients. As a law student, I recall receiving sage advice from a judge who reminded a group of us interns that clients come to a lawyer during some of the most significant moments in their lives and rely on lawyers to guide them through those times. In a personal injury practice, it is sometimes tempting to focus on your most serious cases. However, for each of your clients, their case is the most serious case. As their lawyer, it is your obligation to treat each client's case with the same level of diligence and determination. Working each case to its fullest will not only lead to satisfied clients but also a successful practice.

Lastly, join PAJ. This organization will make your practice more enjoyable and more successful. Our members rely on one another for professional advice, guidance, and comradery. Whether you need assistance locating an expert, evaluating a case, researching an issue, or selecting a jury, our members are always willing to share their experiences and knowledge. Your membership will avail your firm to the same resources and experience as your insurance industry adversaries.

As you begin your personal injury practice, remember that each day, each client, and each case bring the opportunity to develop, improve, and succeed. Make every effort to immerse yourself in the practice and to develop your skill set and reputation. If you do this while helping your community and befriending your fellow lawyers, your practice will thrive.

THE DO'S AND DON'TS OF BUILDING A PRACTICE - THE RURAL

FIRM PERSPECTIVE

Sud Patel, Esquire

Fanelli, Evans & Patel, P.C.

My firm is a six-lawyer firm based in rural Schuylkill County, Pennsylvania. Schuylkill County is primarily a coal mining/farming community with a relatively small population. There are some unique challenges to practicing in a rural area and also some unique opportunities. I want to touch on a few of the challenges and opportunities that practicing law in rural areas present.

First, if you want to become a successful trial lawyer in a rural area, you might not have as much anonymity as you would if you lived and practiced in a larger city. Your personal and professional life can, at times, make it seem like you are constantly in a fish bowl. Whatever you do, good and bad, can become a lot more magnified in a rural area. Accordingly, try not to be the first one to arrive at happy hours and social functions and certainly do not be the last one to leave. Everyone likes to have a good time, but no one wants to see their lawyer or future lawyer having too good of a time. Be mindful of how you treat everyone, no matter where you go.

Next, think of everyone you meet every day as your chance to interview for the job of someday being their lawyer. This includes the folks where you buy your coffee, the clerks at the grocery store, every courthouse employee, and literally everyone you have contact with. Recognizing that everyone we encounter may be a potential client someday, it is important to take a few extra minutes to ask others how they are doing, learn about their families, and take a moment or two to help brighten their day. Over the years, I cannot tell you how many clients I have gotten who end up hiring me and reminding me where I met them and appreciating the fact that I took some extra time to talk to them along the way.

Along these lines, rural areas give you a wonderful opportunity to get involved in the community in a very visible way. Whether it is joining a local fire company, coaching youth sports (and that can happen even before you have children of your own), being active in your church, joining the local Lions

Club and other similar groups, the list goes on-and-on. To that end, do more than become a "serial joiner."

Show a higher level of commitment by becoming an officer/leader of your community-based groups. Many of the clients I met through community involvement continue to be among my best referral sources.

Moving on, I am very much a believer and proponent of the "trial lawyer community" concept. By that, I mean it is important to be active in your local bar association, your statewide trial lawyers association (PAJ for those of you who plan on practicing in Pennsylvania), regional trial lawyer associations, as well as the American Association for Justice. Being a member of multiple trial lawyer associations not only gives you great insight on hot topics both nationally and in other parts of the state, but also allows you to develop fantastic working and referral relationships with colleagues outside of your local area. Ultimately, as trial lawyers, we are all in this together and there is no better way to work collaboratively than to become a member of multiple trial lawyer associations.

There are also some basic work-related maxims that you should be aware of. First, put the time in and do the work. I believe that great trial lawyers are made through hard work, commitment to the profession, and sacrifice. Like any craft, whether it be mastering a sport, an instrument, or one of the arts, hard work and repetition can certainly make you a better trial lawyer. Seize every opportunity you can to tackle a research project. Never pass up the opportunity to take or even attend a deposition. Try as many cases as you can, even if you take court-appointed cases at the local level just to gain trial experience.

Second, if you are working for a firm of any size, make it a point to get to the office before your partners and senior lawyers, and do not go home before they do. Be willing to work nights and weekends. As a young lawyer, there is so much to do and learn. Becoming a successful trial lawyer involves a lot more than completing the assignments that are delegated to you and calling it a day.

Third, do not be afraid to ask questions of the lawyers you are working with or for or even other members of your local bar. You will be surprised how much lawyers are willing to help each other. Do not feel that you will look foolish or clueless by asking a question, even one that you think is simple. Regardless of

which great trial lawyer we may be talking about, every one of them has had many, many questions along the way.

Fourth, carry yourself a step above your peers and your competition. By that, I mean take pride in the car you drive, the clothes you wear, and your appearance in general. Starting out as a new lawyer, you might not have the financial means or the ability to drive a fancy vehicle. But whatever you drive, keep it clean and presentable, as you may find yourself having to travel to and from a deposition, a trial, or a medical examination with your client. The same holds true with how you dress. You do not need to be in a fancy suit, wearing an expensive watch, and designer shoes every second of every day. There are ways that you can dress down but still look a cut above your peers and competition. I cannot tell you how many times I shake my head at peers of mine who regularly have no problem being seen throughout our community looking like they just finished a major landscaping job or raided the local thrift store. Remember that people want their trial lawyers to be successful. Your clients will be coming to you in their absolute worse of circumstances, and how you carry yourself can make the difference between whether you are chosen to be someone's lawyer or never given a second thought.

Finally, immerse yourself in the art and practice of being a trial lawyer. Go to as many continuing legal education seminars as you can, especially the ones given by trial lawyer legends. Invest time in reading trial lawyer-related books. Read jury verdict reviews and the latest appellate court decisions. Join trial lawyer list serves. Keep up-to-date on current events locally, nationally and globally. Make being a trial lawyer a lifestyle, not just a job. Best of luck to you!

Sud Patel, Esquire, PAJ President

PAJ's 52nd President (2019-2020)

STRIKING A REASONABLE AND MANAGEABLE WORK/HOME BALANCE

Catelyn McDonough, Esquire

Anapol Weiss

Unsurprisingly, work-life balance is difficult to strike in many professions. If you find yourself answering emails in the middle of the night or combing over today's to-do list in the shower, your job is probably all-consuming. Lawyers have consistently demanding schedules that never seem to stop – between managing support staff, complying with court-ordered deadlines, scheduling, briefing and travel – many of us may relate to feelings of overwhelming pressure and stress. Especially with the technological accessibility of today's world, it has become nearly impossible to escape from the confines of work – even when at home. Young lawyers struggle with balancing work and home life much more than seasoned attorneys because they have a constant need to impress their hiring and managing partners. Many personalities attracted to the legal profession thrive from this lifestyle, but every so often it is valuable to step back and ensure you are not sacrificing your own physical, emotional, and mental well-being at the furtherance of your career.

As a fellow young lawyer (concluding my fourth year in practice), I of course fall victim to the pressures and stress of an all-consuming job. I take work home almost every night and, even when I do not, I am always thinking about deadlines and what needs to be done tomorrow. My phone is constantly in my hand to answer emails immediately and pick up any work-related calls right away. Of course, there's nothing wrong with that – it is exactly what is expected of us, especially as young lawyers with something to prove and never-ending competition. But it is vital that we, as a profession, acknowledge that young lawyers will quickly burn out, or, even worse, develop dependency issues that continue to plague the legal industry a work-life balance is not developed early in the career. What can we, especially as young lawyers, do to ensure we are taking care of ourselves and properly channeling those feelings of stress and a pressure to competitively perform? How do we properly maintain a work-life balance? Here are some tools that I have developed to help maintain a healthy work and home-life balance as a young practicing lawyer.

Say No

It took me years to learn how to say "no" to colleagues and it is something with which I still struggle. Of course, I am not advising you say no to your boss when he or she asks you for a memo, but it is okay to politely decline an invitation to write that extra article or chair another committee. Young lawyers must learn how to honestly survey their ever-fluctuating workload and "extra-curricular" commitments or engagements and make responsible decisions about the feasibility of taking on an extra commitment. Will you learn something new? Will it expand your network? Will it provide a professional benefit? Ask yourself these questions and if you don't think the commitment will benefit you, or you simply cannot fit it into your schedule, politely decline the invitation to participate. Chances are, whomever asked you to participate will respect your candidness. After all, it will only reflect poorly on you if you try to juggle too many things at once and fail to follow through with a commitment. Be honest with yourself and your calendar as to what commitments you can accept and do your best at the ones you do; politely decline the ones you cannot.

Stay Healthy

I cannot stress this enough – you are no help to your clients or your firm if you sacrifice your health for your job. Eating well, getting enough sleep, and regular exercise are so hugely important to our physical and mental health, but are not typically recognized as "keys to success" for young lawyers. While it can be difficult to make healthy eating decisions when you are traveling a lot or working late hours, preparing your meals ahead of time or simply choosing healthier options while eating out with colleagues will contribute to maintaining a healthier lifestyle. In order to get more sleep, skip a happy hour with the other associates if you know you have a tremendously busy week ahead or start regularly reserving one night a week as a "sleep catch-up night." We find it much easier to justify missing social events if we must work, so why not bail on some events for our own health and well-being? Joining social fitness clubs can be a great way to stay healthy while still networking with young professionals. It is a good idea to sign-up for a fitness class, like yoga or spin, and add it to your work calendar. That way, you not only hold yourself accountable by adding fitness to your busy to-do list, but most importantly no one will schedule anything for that hour if you have it blocked off in your schedule as a personal appointment.

Yes – I am proposing that you add even more to your already hectic schedule, but I guarantee these lifestyle changes will help you stay happy, healthy, and focused.

Be Realistic

Work-life balance is exactly that – a balance. Meaning it will weigh from side-to-side and from day-to-day. We are all striving to strike a "perfect" balance, but there is realistically no perfect equilibrium of work priorities and home-life enjoyment. Some weeks you are going to have important deadlines and non-stop phone calls requiring you to work late and miss dinner with your spouse, or you will be on trial, allowing little-to-no exercise or sleep, and that is okay. So long as we do not allow ourselves to get stuck in a "workaholic" rut of trying to constantly impress and out-bill the others at the sacrifice of our bodies and minds. In fact, after a particularly arduous deposition or assignment requiring long hours, travel, and self-neglect, I've started to make it a point to reward myself. Whether that's melatonin and a sleep mask, or a long run, or a date night without my work phone, I try to allow myself to take a break and enjoy the occasional ebb.

Like anything else it takes time and practice, but it is crucial for young lawyers to learn how to unplug every so often. Whether it is finally taking that vacation (or stay-cation), reserving an hour to exercise, making sure to take a lunch break, or just setting aside ten minutes for an invigorating walk during the day, it is perfectly okay to step away from your desk and breathe. Developing mindfulness early in the career will help young lawyers develop professionally, personally and prevent them from falling victim to a life of stress-induced dependency or quick burn-out.

THE INTERSECTION OF WORK LIFE AND HOME LIFE

Edward Ciarimboli, Esquire

Fellerman & Ciarimboli Law

Achieving a reasonable and manageable work and home life balance is often times easier said than done. While we all want, and frankly, need better work and home life integration, many of us have no real idea how to achieve it or, even worse, where to start. For me, work and home life balance is a constant work in progress. I am fortunate enough to have a wife that owns a mindfulness company that works with individuals and companies on this exact topic and many of these ideas are tried and true mindfulness practices that if consistently done will dramatically improve our work life balance.

Prioritize self-care. This sounds easy enough but ask yourself if you really put your physical and mental health first. For many people, myself included, prioritizing self-care focuses on exercise and activity. Try scheduling your workout, whether that is a run, walk, or swim, as if it were a meeting and plan for it including an agenda (i.e. your workout for that day), what you are going to wear (i.e. your running kit, workout clothes and gym bag). It is amazing how these small steps of planning and preparation can lead to consistency, which in turn opens the door to countless physical and mental health benefits. The other aspect of self-care that is often overlooked, especially by lawyers, is the prioritization of mental health. Many years ago, at the urging of wife, and frankly due to the fact that I had little to no flexibility, I started a regular yoga practice. At the end of each practice, the teacher would devote five minutes to meditation. I would skip the meditation each and every time until one day I figured I would give it a shot. I couldn't even do it for two minutes. It was a humbling experience. I couldn't sit still and shut my mind off and be present for five minutes so I set out to conquer meditating for five minutes. For any of you that have ever mediated, you know that "conquering" is certainly not something that you do in the practice of meditation. Slowly, I began to quiet my mind, control my breathing, and even sit motionless for five minutes, and then seven minutes, ten minutes and so on. The benefits of regular meditation practice are grounded in neuroscience and there are apps, classes, books and videos that are dedicated to the subject. Just as running improves our physical conditioning, meditation

improves and sharpens our brain health. I try to meditate every day, but honestly some days I just don't get to it and those are the days that I need it the most. When we work hard to improve our physical and mental health, the byproduct of feeling better naturally spills into and improves our work and home life balance.

Set boundaries. Just because we can work all the time and from anywhere, it doesn't mean that we should. Burnout is a real thing and is, unfortunately, far too prevalent in our profession. This is especially true because so few of us set boundaries between our work and home life. Technology has enabled us to be accessible twenty-four hours a day, but at what cost? How many family dinners, kids' activities or drinks with friends have been interrupted or cut short by work? Ask yourself, was that call really necessary or was it necessary because you failed to set boundaries between your work and home life. We all have the ability to and set boundaries all the time. For example, we would never answer our cell phone while arguing in front of a judge or better yet, we would never walk out of a meeting with a "huge" potential client unless it was a bona fide emergency. Why then don't we use these same boundary setting skills when it comes to defining work time and home time? How many of our families would gladly agree to us coming home and having dinner at 7:00 p.m. instead of 5:00 p.m. if they knew that at 7:00 p.m. they were going to get our undivided attention? The consequence of not setting boundaries is that when we are at home, we are so out of touch with what is going on with our wives, husbands, kids, families, and friends that we are like visitors from another country trying to understand a new language. Setting boundaries is essential to achieving better work life balance and we all can and should do a better job. A small first step on this path can be as simple as setting aside one hour each night dedicated to no cell phone use and if that proves successful then adding more time dedicated to your home life.

Prioritize essential meetings. I hate meetings. I mean it, I *hate* meetings, especially at the end where we talk about setting up future meetings. So much time is wasted having mindless, non-essential meetings that we push aside meaningful work and leave it for home or later. Prioritizing and being selfish with your meeting time is critical to gaining a better work and home life balance. We all know which meetings are essential and productive and which meetings are just meetings to set another meeting. The latter, I have almost cut out of my practice. This has been both mentally freeing as well as time liberating. It has allowed me to hold meetings on

my timetable and on items that are both mentally stimulating such as case work up and moving our firm forward on important financial and staffing decisions.

Set the same type of goals for family and personal life as you do for work. This is perhaps the most important of all of the suggestions for striking a reasonable and manageable work and home life balance. We are constantly striving and setting goals for ourselves and our people at our office but how often do we do the same for our family and personal life and if we did what would they look like? Imagine if you set a goal of planting a garden for the first time with your small children, running a marathon with your best friend, or doing volunteer work with your family one day a month. How good would you feel accomplishing these goals? As with any goal, the first step is to set one. Next, if it's a family goal, how are you going to involve your entire family in accomplishing this goal and, more importantly, letting your family hold you accountable for doing your part? If it's a personal goal, start with small milestones and write them down in a journal. I am a firm believer in journaling, especially goals, because once you write something down it becomes real, concrete, and something that you have to look at and ask yourself over and over again what you are doing to achieve that goal. I am sure that setting goals is nothing new and I am also sure that you have set and achieved many, such as going to law school and passing the bar, but these goals are different. These goals aren't meant just for us—these goals are meant to bring us closer to family and friends. Achieving shared goals with family and friends creates long lasting memories and deepens relationships.

A good friend once told me that we are all failing our way to success and in many ways striking that perfect work life integration will be finding out what doesn't work and making sure that we don't repeat those mistakes. When you finally do strike that perfect work life balance, even if it is only for a short time, be present and enjoy the moment because long after we are done practicing law, these precious moments with family and friends will be what we truly long for.

MISTAKES NEW TRIAL LAWYERS MAKE

Carin O'Donnell, Esquire

Stark & Stark

New trial lawyers are asked to do a lot of things at one time with the imposition of deadlines lurking. Below are some of the problems new trial lawyers face with solutions to help you become a better attorney:

1. Prioritization

While procrastination can be an issue, more often than not it is inadequate prioritization of projects that new trial attorneys struggle with. Sometimes a difficult project that you do not think is the priority, is the very thing that should be done first. Learning how to prioritize projects is an important skill. Do not prioritize by ease, but rather by deadlines and your supervisor's preference. Communication with your supervisor in this regard is important. If you are struggling as to priorities, you should have an open conversation so that priorities can be adjusted.

2. Time allotment

Things that are new take longer to understand—it is just the way it is. New trial attorneys need to realize that what may take a more senior attorney a certain amount of time is going to take you longer. Budgeting how long something will take based off how long it takes a more senior attorney to do it is a mistake. Without having the experience of working for several years, it can be difficult to adequately judge how long a project may take. Also, new trial attorneys assume because of the name of the project, it will not take long. I often hear new attorneys say “it's just a motion,” or “it's just a complaint,” leaving minimal time to work on the project to only find out that once started, it is more complex than they thought. To alleviate these errors, regardless of what the project is, you should look at it early and make an outline. Sometimes, what you perceive as a simple project is more involved. Doing an outline flushes out issues early, and allows you to budget time appropriately. As a general rule as well, until you learn how long a project will take, assume that the project will take you twice as long as you think.

3. Asking for help and keeping your supervising attorney up to date of your progress

The most important thing a new trial attorney can learn is that “you do not know what you do not know”. It is important to acknowledge that there are many things that you may be doing for the first time and you might not know how best to accomplish the task. It is critical that you admit to your supervising attorney that you need help. Your honesty will be appreciated. Additionally, they will appreciate you taking the initiative to learn new things either through them or your fellow colleagues. Lastly, keep people up to date on progress. This includes not only your supervisor but staff as well, especially if they will be involved in the project. Putting something on someone’s desk last minute for filing or pulling exhibits for example will not go over well.

4. Deadlines

We are trial lawyers—deadlines are imposed on us every day. Whether these deadlines are imposed by the court, your firm, or your supervising attorney, you must never miss a deadline. If you are anticipating difficulty meeting a deadline, it must be addressed, and an extension should be sought and discussed regardless of who imposed the deadline.

When it comes to projects assigned by your supervising attorney, a deadline may not mean the actual due date, or filing date. You should discuss with your supervisor how much time in advance of the actual due date or filing date the project should be turned in. This is to allow your supervisor to review the same and give meaningful feedback. Many times, new trial attorneys hand projects in to supervisors on the day the court is requiring the same to be filed. New attorneys then expect their supervisor to stop what they are doing and to review the project that was just handed to them. This is not only inconsiderate to your supervisor but it does not benefit you because there is little time for constructive criticism to help you improve your skills. You should discuss with your supervisor a general time frame in advance of filing deadlines that your supervisor would like to receive projects. These deadlines may also need to be adjusted depending on the complexity of the project.

While mistakes happen, when it comes to court imposed deadlines, if you find yourself pushing a deadline and do not think you can meet it, you should contact the court. Extensions should be sought timely, meaning in advance of the actual deadline.

5. Depositions

Depositions can be confrontational, but it often is a time for more experienced attorneys to seize on a new trial lawyer. I have seen new trial lawyers be the subject of deposition abused merely because of their inexperience. Seasoned trial attorneys cannot help themselves and will try to use speaking objections or other tactics to ask inappropriate questions and coach witnesses. In this regard, know your deposition rules, have case law ready, and make a record of the opposing counsel's conduct. Mark the case law as an exhibit if the conduct is extreme. Shut down inappropriate conduct immediately with the appropriate legal response. And, video tape all your depositions. This will not only assist you in all your cases but will minimize opposing counsel's conduct urge to be obstructive.

6. The cut and paste

As attorneys we sometimes don't want to re-create the wheel. If someone else has already addressed an issue, some attorneys tend to take what was already written and use verbatim that which has already been done. While this is a good start, be leery of the cut-and-paste. First, make sure you read what others have written to ensure it truly fits your fact pattern. Second, add additional facts or research if needed. Just because someone did it before that doesn't necessarily mean it was correct or thorough. Third, you need to check the research to make sure the cases are still good law. Often you will find the law previously cited has been changed or even overruled. You do not want to submit something to the court where the law has changed. Finally, if you are cutting and pasting, make sure you change the names, captions, plurals and possessives. These simple mistakes will be perceived as sloppiness and lack of effort.

7. Getting involved in your local, state, and national bar organizations and donate

Your local, state, and national bar organizations are not only great resources, but are vital to the continuation of the legal practice as a whole. These organizations provide education and comradery but most

importantly they are dedicated to protecting the laws to preserve victims' rights. Get involved. Start attending meetings, seminars, and retreats to support these organizations. Many of these organizations have sections specifically for new lawyers and may offer discounts for new lawyers to encourage involvement. Whether it is your time or financial support that is offered, participation in these organizations is vital. You should do what you can to contribute, it will only serve to help you and your practice of law in the future.

8. Find a sponsor

A mentor and a sponsor are different. A mentor will help you learn, but a sponsor is someone senior in your organization who will assist you understanding firm dynamics, advocate for you when needed, and help you understand what is expected in order to achieve the next level. Find this person early and discuss with them often your accomplishments and goals. Ask this person if they will be your mentor so they understand the assistance you are seeking.

9. Develop a niche, specialty, or be the “expert” on an issue

Find something you like and become the expert or the go-to person on the issue. This will create value for you as a trial lawyer. Once versed on a topic, find ways to share your knowledge such as writing articles or lecturing. Seek opportunities to market yourself as the specialist on the issue. Having a niche will help develop work and many times secure your position in a firm.

10. Know when to acknowledge the court is on your side

As attorneys, we will advocate and engage and continue to advocate and engage even when things are going our way. A key to being a successful trial attorney is knowing when to stop, listen, and be silent. Too often new trial lawyers, in the spirit of “winning” or proving their point, continue to debate to a detriment. Work on developing the skill of knowing when to add to a conversation and when to say nothing. Silence can be golden.

THE BIGGEST MISTAKES NEW TRIAL LAWYERS MAKE

Honorable Beth A. Lazzara

Allegheny County Courthouse

I have watched a lot of trials and a lot of trial lawyers. For 15 years I was a trial lawyer and had the privilege of watching, associating with, and learning from some of the best trial lawyers across the Commonwealth of Pennsylvania. I am now in my 15th year on the bench watching trial lawyers perform their craft daily and still learning what works—and what doesn't work—in front of a jury and in front of a judge. In my 30 years (wow, I sound old!) in the courtroom, I have distilled the hallmarks of a successful trial lawyer down to four key attributes. As I tell my trial advocacy students at Pitt Law each year, these are the four P's. A trial lawyer is a **Professional**, who is always **Prepared**, who has **Presence** in the courtroom, and who is a **Passionate** advocate of his/her client's cause. The mistakes that I see young lawyers make inevitably occur in one of these four categories.

Professionalism: First, you need to look the part. Many young lawyers will have the right attire, but then they have that cell phone clipped to their belt or hanging out of their jacket pocket. Or, they accessorize with a refillable water bottle or the durable backpack they have carried since high school. Leave that stuff back at the office or hide it from view. It looks sloppy, which can reflect on your overall presentation. You also need to act the part. Start by introducing yourself to the courtroom staff, court reporter (to whom you should hand a business card), and judge. It never ceases to amaze me how many young attorneys miss this basic step. Even if just dropping off a motion, stating your name and the firm you work for earns you a measure of respect. Getting off on the right foot with courtroom staff can help you down the line while failing to do so can make your life harder. For example, you may wish to ask the staff about courtroom rules, procedures, and practices. If you have been professional with the judge's staff, you are bound to get not only the answers to your questions, but also tips and advice that can make your trial go much smoother.

Acting the part also means dealing professionally with your opponents, which includes talking to them and trying to resolve issues before trial. If an issue can't be resolved, a joint request to speak to the judge before

trial may be appropriate. I don't know a single judge who wouldn't rather deal with an evidentiary or exhibit issue before trial begins as opposed to after a jury is empaneled or in the box.

Professionalism also means doing the little things that everyone knows that they should, but that most young attorneys, and many veterans, don't actually do. Address objections and arguments to the bench, not your opponent. Do not talk on top of or interrupt a witness, opposing counsel or, especially, the judge. Do not attack or belittle a witness unless absolutely necessary as a last resort. Jurors dislike that kind of behavior. Just practice the manners that you learned as a kid!

Preparedness: Most judges that I know, including myself, don't care when the file got handed to you or whether your involvement in the case is just to present a motion or request a continuance. You need to know your case! It is rare that anything in the courtroom occurs without a question from the judge. You had better be prepared to answer it because, "I don't know" or, "I have to check/find out" doesn't cut it. This is a mistake that I often see from young attorneys. Read the file and ask questions at your office before coming to court.

Preparedness also means knowing your opponent (Is he likely to settle on the courthouse steps? Does she hide discovery?) and the judge (Does she require all courtroom formalities? Does he read motions before argument? Does she ask questions of witnesses during trial?). Getting a "book" on people that you will deal with in the courtroom is as easy as asking a partner or colleague. It is especially important when going to an unfamiliar courtroom or county. Despite the fact that having that "book" will make you more effective, most young lawyers don't bother to take this easy step.

Another preparedness mistake that young lawyers make is failing to know the other side's case as well as their own. Understanding your opponent's case is the best way to prepare the direct testimony of your own witnesses or conduct effective re-direct, and it is absolutely essential to planning and conducting a successful cross-examination.

Young lawyers also make a mistake in the area of preparedness by failing to take advantage of the ready-made focus groups at their disposal—non-lawyer friends and family. To help you plan your case strategy and presentation, you should run your case past these folks. Listen to their reactions about your case. What

more do they want to know? How do they analyze your case? What was important in their analysis and decision? Doing this can provide you with invaluable insight into your case. Having feedback from laypeople (you know, the type of people that will make up your jury) is critical to not overlooking matters that you might have thought unimportant, to crafting an understandable and persuasive theme for your case, and addressing any deficiencies in your evidence or argument. It may also help you create exhibits that the jury will relate to and comprehend.

Presence: Some would say that you either have it or you don't, but that's not true. I have seen the shyest person outside of the courtroom command the entire proceedings, and I have seen the blusteriest individual fail miserably to connect to the jury. Presence is not about being arrogant, bombastic, loud, preachy, self-righteous, snide, or clownish. It is about having confidence in your skills, in your preparation, and in your case. This means looking people in the eye, whether judge, jury or witness. This means not hiding in your notes! It is all well and good to have an outline for witness questioning, but you should not use notes for openings and closings. Too many young lawyers use those notes as a crutch, and their performance suffers for it. I have seen more young lawyers trip over their notes than be helped by them.

Another common mistake is failing to speak up. I should never have to tell a lawyer to speak louder so that the jury, witness, or I can hear, and you should not want me to do so. Don't you agree that less judicial interaction is better? I should also never have to tell a lawyer to slow down. If a court reporter, who is trained to type between 200-300 words per minute or more, is having difficulty following you, do you think that the jurors are hearing, understanding, and digesting what you are saying? Use the court reporter's typing cadence to help you gauge the speed at which you are speaking. If you hear the court reporter clicking on the keys furiously, you are going too fast and need to slow down. Also, leave the quarter words at home. We all know that you have a law degree and are smart. You do not need to prove it to the jury or me by demonstrating your large vocabulary. The lawyers with the most presence are the most conversational with the judge and jury. They also tend to get the best results.

Another mistake that young lawyers make in “presence” is the lack of an interesting way to talk about your case. Learn to be a storyteller. People listen to stories with rapt attention. People listen to lists (of witnesses, of what you will prove, etc.) almost not at all. Weave your facts, the law, and anything else you need to educate the jury on (medicine) into an interesting, relatable story, and the jurors will listen attentively, understand your presentation and have an easier time recalling the facts during deliberations.

Passionate Advocate: There should be no mistakes here, but there are. The first is belittling your own case. I certainly understand not over-selling your case, but that is not belittling the case. You should never say to the jury that “this is only a rear-end collision,” or “I know that the injuries are not serious,” or “there really aren’t a lot of damages here.” The case, whether big or small, is important to your client! It should be important to you, and you must make it important to the jury. Whether that client retained you, or a partner in your firm, you are the person that the client is looking to for success. Do your job just as thoroughly for the low impact rear end collision as for the misdiagnosis of cancer case.

Second, don’t belittle your client. Believe it or not, I have heard young attorneys call their clients “stupid,” “lazy,” “dumb,” and more. There is a difference between an action and a person. Someone’s action might be stupid, but that doesn’t make the actor stupid. Juries are very offended when they see an attorney insulting his/her own client, or any other witness for that matter.

Passionate advocacy requires you to ARGUE your client’s case. The biggest mistake that I see young lawyers make is not arguing during a closing argument. I cannot tell you the number of times that I have heard an attorney provide a list/recitation of the facts to a jury, tell the jury that the judge will provide the law or just restate the law and then sit down, with no argument or explanation of how the facts apply to the law. This is like someone giving you a connect the dots puzzle without the corresponding numbers or letters to tell you how to connect the dots. What should have been a picture of a cute puppy becomes an unrecognizable blob. Your job is to make the jury’s job easier. You do that by clearly setting out how the law is applied to the facts in your case, and how that results in a verdict for your client. Don’t “leave it up to the jury” to decide! You are in the courtroom to show them clearly how the decision that you want is the only one that they can and should make.

When I go back to talk to my juries, which I have done in every trial, whether I tried the case as an attorney or presided over it as a judge, the biggest complaint that I hear is that the attorneys did not adequately explain how the facts and law relate. We do this for a living – juries don't! You MUST help them.

These are the main mistakes that I see in what I consider to be the key attributes of a trial lawyer. I would like to provide you with one last word of advice/caution. Your reputation accompanies you into every courtroom in which you will ever enter. Aside from the paper that your diploma is printed on, all you get from a law degree is the ability to place Esq. behind YOUR name. Make sure that your name is always something of which you are proud. Don't sell out your name for a quick fee, to impress a client, or score a victory. No matter where you practice, the legal community is smaller than you might think, connected and vocal. Lawyers talk to each other and their contacts in the community at large. It does not take very long for bad behavior to make the rounds. Judges talk too, and often name names. You do not want to walk into a courtroom where your misdeeds have preceded you. Don't be the one everyone is talking about—unless that talk is to praise you for following the four P's!

INVESTIGATING THIRD-PARTY CONSTRUCTION CASES

Carin O'Donnell, Esquire

Stark & Stark

When an accident occurs at a workplace the law allows, potentially, not only for a workers' compensation claim, but also a negligence claim against a third-party.

1. Introduction

The Pennsylvania Workers' Compensation Act prohibits an injured worker from pursuing a personal injury lawsuit against their employer and/or co-employees for negligence. Common law, however, does provide injured employees remedies, commonly called third-party actions. This is a civil suit against anyone other than the injured workers employer or co-employees. These actions are called third-party cases because the first party is the injured person, the second party is the employer, and the third-party is someone other than the employer or co-employees. These third parties can include, for example, owners, landlords, engineers, general contractors, construction managers, developers, architects, sub-contractors, manufacturers of equipment and tools, suppliers of equipment and tools, and chemical suppliers or manufacturers.

2. Identifying Third-Party Cases or Other Causes

To be successful in identifying third-party cases, one must look beyond what the actual injured worker did. Most incidents were preventable at a time prior to that of the injured worker being exposed to the hazard. One must look back in time to the planning, training, design, set up, and operation that may have contributed to the worker being exposed to the hazard, before the worker was exposed.

There is no question in every construction case, there will be an argument that the worker was at fault. As mentioned above, however, one must look at what happened before the worker was injured. This does not mean that you should not anticipate defense arguments. In every construction case the issue of whether the injured worker was inattentive, violated a safety policy or procedure, violated standards (e.g. OSHA, ANSI), was rushing, was trained and was not following training, or the employer caused the incident will be asserted in your case. You must anticipate these issues and address them early in the case. Start at the interview and discuss

these issues with your injured worker. Throughout discovery and depositions, minimize these issues by shifting to the earliest point in time when the incident could have been prevented.

3. Document Requests

Documents are the most important items to obtain in construction cases, specifically, if there are written contracts. These contracts will dictate safety obligations and duties regarding safety. You must get all the contracts involved. This includes contracts entered into with owners, construction managers, general contractors, contractors and subcontractors including your client's employer. Consideration to document requests, depending on your case, may include:

- Agreements and contracts
- Approved drawings
- Accident investigation
- Accident prevention programs
- As built drawings
- Architect drawings
- Final construction packages
- Bid packages
- Change orders
- Construction photographs and real time video
- Gate logs
- Inspection records
- Job meeting minutes
- Job schedules
- Monthly reports
- Daily reports
- Job hazard analysis
- Safety manuals
- Safety meeting minutes
- Safety training
- Employee personnel files
- Safety gear requirements
- Safety gear provided
- Training records
- Training certificates
- Construction meeting notes
- Maintenance records
- Superintendents and supervisors notes
- Testing records of equipment
- Equipment and machine manuals
- Tool box talks
- Permit requests
- Preservation of equipment or tools involved
- Workers' compensation file
- Zoning

4. Helpful Websites for Other Investigation

If you are having difficulty obtaining documents from the defendant, there are other options for information. First, you want to obtain prior lawsuits that the defendant may have been involved in, contact counsel in those matters and obtain any depositions or other information they may have. Second, subpoena the workers' compensation file of your client. Finally, visit the below websites that not only may have information

directly on your defendant, but also the safety standards that the defendant should have complied with that would have prevented your client's injury:

www.osha.gov - Occupational Safety and Health Act (OSHA)

www.ansi.org - American National Standards Institute (ANSI)

www.iso.ch - International Organization for Standardization

www.uspto.gov - United States Patent Office

www.recalls.gov - Product recall information

www.dot.gov - US Department of Transportation

www.nsc.org - National Safety Council

www.cdc.gov/niosh - National Institute for Occupational Safety and Health

www.fda.gov - US Food and Drug Administration

www.consumeraction.gov - Consumer action web site

www.edc.org/childrens-safety-network-csn - Children's Safety Network

www.ntis.gov - National Technical Information Service

5. Depositions

Once you have obtained the necessary documents, you will obviously take depositions. Persons you are likely to depose will include corporate designees of defendants' companies, safety supervisors, co-workers, foreman, superintendents, architects, manufacturers and eye witnesses. Like many other cases, you must consider the point of view of the witnesses you are taking. Often times, but especially in construction cases, witnesses are reluctant to testify or provide thorough information out of their own concern. You must consider these views before the deposition and be prepared. Co-workers are reluctant to provide detailed information because they themselves are concerned about losing their jobs. They are also reluctant to tell you if some other worker was involved. Supervisors and management personnel are reluctant to provide information about other companies in fear of ruining relationships which may affect future projects. Training facilities are reluctant to provide information on any deficiency in training for fear that an apprentice program, or training program

would be perceived as insufficient; however, they all will be willing to tell you what your client did wrong. Consider these views ahead of time, have the necessary documentation ready for impeachment at your deposition.

6. Settlement and Workers' Compensation Benefits

If you are able to negotiate a settlement in a third-party construction case, be concerned and educate yourself how the third-party settlement will affect your client's workers' compensation benefits. The law permits the workers' compensation carrier to subrogate and get reimbursed for the benefits that were paid. As part of your third-party settlement you may be able to reduce or eliminate this subrogation interest. In addition, any settlement may reduce the future indemnity (wage) benefits your client is currently receiving so you must advise your client on the effect the settlement will have on future workers' compensation payments.

As always, if you have any questions concerning construction cases, please do not hesitate to contact me at 267-907-9613.

5 TIPS FOR INVESTIGATING WORKPLACE INJURIES FOR THIRD-PARTY

CLAIMS

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Each year, there are approximately 5,000 fatal accidents and over 2,800,000 nonfatal workplace injuries and illnesses in America that are reported to the U.S. Occupational Safety and Health Administration (OSHA). These staggering numbers do not even account for the untold number of workplace accidents that go unreported.

In any accident that involves a serious injury or death of a worker, an investigation must be conducted to determine the client's full legal options. In Pennsylvania, and nearly every other United States jurisdiction, an employer is only responsible for workers' compensation benefits and cannot be sued under theories of negligence. These benefits do not fully compensate victims for their economic and noneconomic losses. As such, there may be other companies or individuals who could be liable for your client's accident.

A detailed and exhaustive investigation may reveal parties that were not immediately known, making it important to start your investigation early. Below are five tips to assist in investigating whether your client may have a third-party claim in addition to the receipt of workers' compensation benefits.

1. Identify the Employer

While this sounds simple, I have investigated hundreds of cases where the identity of the employer is not the only entity that was legally responsible for safety obligations at a worksite. The investigation of the identity of your client's employer should include obtaining copies of his or her pay stubs, tax returns, and W-2s. The entity (or sometimes entities) that are identified on these documents will have specific Federal Employer Identification Numbers. Research the entity and any related entities through the state's corporation website and through whichever legal research platform you use. You will be able to find information related to the owners of the company that employs your client, the entities that are affiliated with the location of the accident, and any other related entities that may have been involved in the operations. In many instances, the employer of your

client may not be the employer of his or her supervisor or other managers at a worksite. If supervisors or managers are employed by other entities, those other entities may be valid third-party defendants.

2. Identify the Entity that Paid Workers' Compensation Benefits

Compare the identity of the employer with the identity listed on the workers' compensation documents your client receives. It is common for another entity to appear on this paperwork. This will assist you in understanding the full scope of entities who were involved in the activities at a workplace.

3. Research the Safety History of Potential Defendants

OSHA maintains a comprehensive database of workplace accidents which can be searched in a number of ways. If you are investigating a potential third-party defendant, research its accident history at <https://www.osha.gov/pls/imis/establishment.html>. This search can provide valuable information on former projects, former accidents, and former violations.

4. Use all Resources Available to Obtain Information

Your clients and the workers' compensation insurance carrier can provide valuable information that may not be available through public searches. A detailed interview with your client can reveal safety manuals, safety inspection companies, and names of managers and third-party companies that have ongoing business activities at the site of an accident. Similarly, the workers' compensation carrier may have access to project documents such as bid documents, contracts, inspection reports, and accident reports. They may also be able to assist in scheduling a site or product inspection. The workers' compensation carrier often has a monetary interest in any third-party recovery, as the carrier will assert a lien that is subject to repayment terms from a verdict or settlement. Use the carrier as a resource in the appropriate case.

5. Know the Law

There are various legal defenses that will be raised in any workplace accident. For example, in construction cases, many third-party defendants argue that they are immune from suit as a "statutory employer" of the injured worker. It is important to understand the legal defenses that may be raised in your case before determining whether to move forward with a lawsuit. If you intend to move forward with a case, be sure to draft your complaint and

discovery requests with the legal defenses in mind so that you can obtain evidence and information on these defenses early in the litigation.

These are just a few of the many tasks that go into researching third-party defendants in workplace accident cases. Should you have any questions, or want additional tools or resources, please don't hesitate to reach out.