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PROFESSIONAL CONDUCT

3rd Annual Resolutions for a Happier and Healthier Law Practice

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Special to the Legal

It has become a tradition: Each year in our first column of the year we discuss our New Year's Resolutions for the brand new year ahead. Let's face it; 2008 was a bruiser. In 2009, we are hoping for the best but preparing for less, and we think our resolutions reflect both our optimism and our realism.

As our first resolution for 2009, we resolve to spend more time seeking out newer members of the bar, for our good and for theirs. Simply put, it's fun to be around young lawyers, to feel their enthusiasm about the law, their new careers and their potential to make a positive contribution to society. Young lawyers can help us in our practices, as they are more technology savvy and have more recent experience and familiarity with a wider range of legal topics. Unfortunately, they are entering the job market in difficult times, and it's up to us to reach out and try to help them.

Our second suggested resolution for 2009 is connected to our first. As more experienced attorneys should seek out younger attorneys, younger attorneys should proactively seek out senior attorneys. A healthy mentor-mentee relationship, whether in a formal or informal capacity, is invaluable for younger attorneys who are just beginning their careers. To help bring attorneys together, the Philadelphia Bar Association has created a mentoring



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program that matches senior practitioners with young lawyers (lawyers under 37 years old or those who have been practicing less than three years). This program accepts new participants each fall. For more information, see the Philadelphia Bar Association's Web site, <http://www.philadelphiabar.org>.

For our third resolution, we should all resolve to tackle time management in 2009. It is no great secret that managing our time effectively increases our professional productivity. At the same time, it significantly reduces the risk of

malpractice and potential ethics issues. As the new year begins, re-assess your time management strategies and revamp them where necessary to optimize your efficiency and effectiveness. Doing so will provide the added fringe benefit of ensuring you the greatest amount of time possible to spend with the people you love doing the things (aside from practicing law) that make you most happy and fulfilled.

For our fourth suggested resolution, we urge you to seek advice in the new year. Professional advice, ethics advice, personal advice, spiritual advice, you name it — we can all profit from the wisdom and experience of others. Don't let foolish pride, embarrassment or any other impediment keep you from reaching out to seek counsel when and where you really need it. Remember, as the old saying goes, it is much easier to stay out of trouble than it is to get out of trouble. Soliciting advice from the right person at the right time can make all the difference in the world. Contrary to popular public opinion, we lawyers are generous with our time and attention; you can rest assured that if you need advice from a fellow lawyer, you won't have to search long or hard to find a willing helping hand. As for ethics issues or disciplinary problems, our telephone lines are always open, and if we can't help you, we will certainly point you to someone who can.

No. 5 on our hit parade: take some time to review and ensure that your policies and procedures are in compliance

with Rule of Professional Conduct 1.15 (Safekeeping Property). The newly amended rule (latest amendment effective date: Sept. 20) includes significant new definitions, record keeping, segregation and other requirements for the safekeeping of funds and other property. In addition, the amended rule expressly sets forth specific duties and responsibilities for attorneys holding funds or other property in a fiduciary capacity. This year and every year, make sure you stay in compliance with Rule 1.15 and out of trouble with respect to client and fiduciary funds and other property in your possession.

Our sixth suggested resolution involves malpractice insurance and related client communications. The “new” Rule 1.4 requires written disclosure to all clients if and when a lawyer’s malpractice insurance drops below \$100,000 per occurrence and \$300,000 in the aggregate per year with commercially reasonable deductibles. The disclosure provision of the rule has been on the books now for more than two years without much public outcry from any section of the bar so far as we can see. Our first suggestion is that you make sure that your malpractice insurance remains in continuous force at levels at least equal to those set forth in Rule 1.4. If, however, your malpractice insurance lapses, is terminated for any reason or if you cannot maintain insurance at least equal to the stated amounts, remember your disclosure obligations under the rule. Be sure to maintain a record of each such disclosure for at least six years following termination of the representation in which the disclosure was made. If you’re behind in your disclosure obligations, make them now.

Our lucky seventh resolution will only take a few moments to scratch off your list and will be of assistance throughout the year: If you do nothing else, sign-up for the Disciplinary Board’s attorney e-newsletter. Reading the e-newsletter is an easy way to keep up-to-date regarding changes in the Pennsylvania Rules

of Professional Conduct. In addition, recent e-newsletters have contained tips on how to avoid ethical pitfalls, information for attorneys struggling with addictions and updates concerning the membership of the board. You can sign-up for the e-newsletter on the Disciplinary Board’s Web site, www.padisiplinary-board.org/attorneynews_signup.php.

Next for 2009, we recommend focusing on responsible marketing and advertising to obtain more clients in your practice area. For lawyers who practice in New Jersey, the Supreme Court of New Jersey recently issued an important decision that will likely lead to changes in the New Jersey rules on advertising. On Dec. 17, the court vacated Opinion 39 of the court’s committee on attorney advertising. In Opinion 39, the committee had concluded that advertisements describing lawyers as “Super Lawyers” or “Best Lawyers in America” violated two of New Jersey’s ethical rules: the prohibition against ads that are inherently comparative in nature, Rule 7.1(a)(3) and the rule that ads may not create unjustified expectations regarding results, Rule 7.1(a)(2). In vacating Opinion 39, the court explained that a blanket ban on truthful, fact-based claims could be found unconstitutional under the First Amendment when the state fails to establish that the regulated claims are actually or inherently misleading. The court thus referred Rules 7.1(a)(2) and (3) to the advisory committee for reworking in light of its holding. The full text of the court’s opinion can be found on the court’s Web site at <http://www.judiciary.state.nj.us>.

As for lawyers who practice in Pennsylvania, the Philadelphia Bar Association’s professional guidance committee issued an ethics opinion in December 2004, Opinion 2004-10, in which it advised that a designation, such as “Pennsylvania Super Lawyer,” is acceptable only if the advertisement contains sufficiently detailed information about the selection process and criteria.

No. 9: engage in pro bono work.

Rule 6.1 of the Pennsylvania Rules of Professional Conduct encourages all lawyers, regardless of professional prominence or workload, to render public interest legal service. Not only does pro bono work help those who need it most, pro bono work carries other benefits as well, including professional development, the opportunity to form new relationships in the community and personal fulfillment. For more information about how to become more involved in public interest work, here are two helpful Web sites: the Philadelphia Bar Association’s Web site, <http://www.philadelphiabar.org>, which provides a list of more than 30 public interest organizations in the Philadelphia area; and Philadelphia VIP, www.phillyvip.org, which provides mentoring and training to pro bono attorneys.

Our final resolution for 2009 is for you to take care of yourself. As 2009 may be a difficult year financially or otherwise, it is important to remember to stay healthy and happy. Although we work in a profession that is often adversarial, it is important to remember that many of us became lawyers because we wanted to help others. As a result, in our experience, we believe that the legal profession is composed of, for the most part, caring professionals who are happy and eager to offer advice or assistance. Anonymous help is also available. Lawyers Concerned for Lawyers, or LCL, is an organization that assists lawyers, judges and their family members who are struggling with alcohol or drug problems, stress, anxiety, depression or other emotional and mental health issues. LCL’s Web site is <http://www.lclpa.org/homepage.html> and their confidential helpline is 1-888-999-1941. In 2009, remember to focus on your physical and emotional well-being and be sure that your job is just one facet of a healthy and happy life.

Litigation associate Kristine Mehok assisted with the research and drafting of this article. •