

Keep Busy When Business Is Slow

By Sarah North

In every legal career, a day comes when work slows down or, worse, comes to a screeching halt. If you're currently chained to your desk until midnight and on a first-name basis with the local food delivery service, you may dream of sitting around in your office with little or nothing to do. When slow days become slow weeks, however, the reality of not having enough work or not having enough *interesting* work sets in, and you may feel bored, restless, and frustrated. To combat these feelings and make the most of slow periods, try these tried and true suggestions:

Focus on efficiency. When you have too much time and not enough work to fill it, it's all too easy to allow current projects to expand to fill the time available. One way to avoid this "project bloat" is to allocate specific blocks of time to working on a particular task. For example, dedicate one hour to a specific legal research project and focus solely on that research during that time. When the hour is up, move on to something else. If you need more time for the project, schedule another hour for it later in the day. Setting time limits will not only prevent you from spending too much time on a particular project but will focus your attention and result in more productivity.

Beware of the Web. Although it's tempting to click on your browser "just for a second" to read your favorite blog, order some great shoes, or check your personal e-mail account, the Internet has a way of sucking you in and spitting you out half an hour and ten Web sites later. If you can't resist the

online urge, promise yourself two ten-minute Web breaks a day and save your serious surfing for home.

Ramp up your marketing efforts. Slow periods can be a perfect time to focus on bringing in new business. Call or e-mail friends, acquaintances, and business contacts you haven't heard from in a while. Research and write a law review article or, better yet, an article for an industry publication targeted at potential clients. Submit a speaker proposal for a CLE or trade conference. Not only will you spend your time doing something meaningful, you may also attract new business that will solve your problem of too much downtime.

Do some good. If you usually "don't have time for pro bono work," you now have no excuse. Call up your local bar's pro bono referral center and volunteer. Apart from the obvious benefits of helping someone who needs legal services, you'll also engage your mind and keep the rust off your legal skills.

Complete your CLE requirements. You have to get your CLE hours sometime, so you may as well do it while you have the time. Attending CLE programs is a productive use of your time and may present good networking opportunities.

By following these suggestions during slow periods, you'll remain productive, use your time wisely, and perhaps even make it rain. Before you know it, you may even be overworked, overwhelmed, and longing for the good old slow days.

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Blowing the Whistle on Yourself: When to Report Potential Legal Malpractice Claims to Your Insurer

By Michael K. Feeney

Inexperience—it's the obstacle impeding all young lawyers at the beginning of their legal careers and, unfortunately, often leads to mistakes. When are young lawyers required to report those mistakes to their legal malpractice carriers?

According to most legal malpractice insurance policies, lawyers are required to report potential claims to their carriers when the lawyer has an "independent knowledge of

ment of whether there is a potential claim at hand. Get the file. Examine it exhaustively. Look for error and assess the potential harm resulting from the mistake. Determine whether the error can be remedied. Have a more experienced lawyer review the file for a second opinion. Many times, a thorough case analysis will reveal a solution to the underlying error so that a claim need not be brought at all. And, when you're not that lucky, an in-depth

you don't report. Not reporting a potential claim could result in significant coverage issues and possible exposure to personal liability. In other words, if you don't timely report potential claims to your carrier, you get to pick up the tab for damages.

Although many lawyers are hesitant and perhaps embarrassed to report a potential claim, the sooner you report it to your carrier, the better protected you will be. Legal mal-

"The sooner you report a potential claim to your carrier, the better protected you will be."

facts or circumstances that could give rise to a claim" under the policy. So what does that mean to young lawyers trying to make their way in the real world?

Being hit over the head with a legal malpractice lawsuit or a demand for money damages is not the only way in which circumstances demonstrate that a claim is at hand, although it is the most obvious. If that happens, call your carrier at once. Notice of *potential* claims, however, are more cleverly disguised: a letter from a former client's new lawyer announcing their intention to investigate your handling of the case, an inquiring letter from the client, or a simple phone call asking for possession of the case file. None should be ignored.

To sort out this gray area, lawyers should make an independent and unbiased assess-

review will at least reveal whether the potential claim should be reported to your carrier.

Reporting a potential claim, of course, always carries with it the potential of increased insurance premiums. Your wallet, however, could end up being considerably lighter if

practice insurance carriers don't just indemnify you from damages covered by the policy—they also provide a defense. If problems are caught early, they can sometimes be rectified before the harm fully takes hold. Bringing in experienced legal malpractice defense

■ continued on page 4



The FOIA: Your Right to Snoop through Government Files

By Stephen Gidiere

Snooping on the federal government is not wrong—it's your statutory right. The federal Freedom of Information Act (FOIA), 5 U.S.C. § 552, gives every person the right to access federal agency records upon request. Think of the FOIA as your key to the federal government's filing cabinets.

The FOIA can be an important tool for all types of lawyers. Litigators can use FOIA requests to supplement discovery. Transactional lawyers can use requests for due diligence. And regulatory lawyers can find out what the regulatory agencies are up to. There are, however, some things to keep in mind when considering a request.

Look online first. A person looking for federal records should exhaust every possible avenue before (or concurrently with) resorting to a formal written FOIA request. Many federal records are readily available on agency Web sites or those of other organizations. Often, a simple Internet search for a government document using one of the major Internet search engines will yield positive results. Assuming that the sought-after records cannot be located through these other avenues, a FOIA request to the relevant agency may be necessary.

Know your target. FOIA requests are directed to a specific federal agency and sometimes a specific office or division of an agency. There is no central, governmentwide records office. Even individual agencies do not have centralized, searchable record systems that allow for quick retrieval of any and all agency documents.

An agency's operations are usually spread over multiple offices and geographic locations, with each office and location

maintaining its own records. It is usually good practice to direct the request to the agency office or location that is most likely to have the particular records that are sought. Nevertheless, it remains the agency's obligation to search for responsive records, and that includes searching in all of the offices that are likely to contain the records.



Deliver it correctly.

Consider the method of delivering a FOIA request to the agency. The statute does not prescribe a particular method of delivery. Instead, the statute gives agencies the authority to issue "published rules stating the time, place, fees (if any), and procedures to be followed." Thus, agency regulations will describe how a FOIA request should be made and to what agency office it should be directed.

It is also important to send the request via a method that will allow confirmation that the agency's FOIA office received it (for example, certified mail, return receipt requested) because the statutory time limit for the agency response does not begin to run until the request is received by that office.

Recently, agencies began allowing FOIA requests to be sent via e-mail or an online request form through the agency's Web site. Electronic submission can be a convenient way to submit a request and can avoid mail delays or losses. For example, the anthrax attacks in October and November 2001 delayed up to six weeks the receipt of mailed FOIA requests by agencies in the D.C. area.

Know the deadlines. An agency is required to provide its response to a proper FOIA request within 20 working days. But a requester should not count on receiving a complete

response within 20 days—a full response can sometimes take much longer than that.

For one thing, the date of receipt that triggers the 20-day clock is the date that the correct agency office receives the request. In addition, an agency may unilaterally extend the 20-day limit by notifying the requester in writing of "unusual circumstances" necessitating an extension and the date upon which a determination on the request is expected.

If the agency is late with its response, your first step should be a polite call to the agency FOIA office. As the old saying goes, "you catch more bees with honey than vinegar."

Know the exceptions. Not all agency records must be released under the FOIA. The statute contains nine exemptions and three exclusions that create cat-

egories of records that need not (and in some cases must not) be disclosed. Through the FOIA's exemptions, the statute seeks to strike a balance between open government and the protection of legitimate governmental and private interests. For example, the FOIA's exemptions address such matters as classified information, confidential business information, internal agency deliberations, personal privacy information, and law enforcement information. Some exemptions are discretionary with the agency, so it never hurts to ask for a record even if you think it might fall within an exemption.

Know your appeal rights. A FOIA requester who is denied some or all of the records that were requested has the statutory right to file an action in federal district court to compel release of improperly withheld records. A FOIA requester generally must exhaust all available administrative remedies prior to filing suit, including filing a timely administrative appeal pursuant to the agency's regulations.

Only injunctive relief is available in a FOIA action. Money damages are not. The FOIA does, however, authorize the court to award reasonable attorney fees and other litigation costs to a FOIA requester who has "substantially prevailed" in the suit.

Using the FOIA takes patience and sometimes a little luck. Following these tips will give your request the best chance of success.

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This article is adapted by the author from his book on the FOIA and other government information laws, The Federal Information Manual.

READY RESOURCES

■ *The Federal Information Manual: How the Government Collects, Manages, and Discloses Information under FOIA and Other Statutes.* 2006. PC #535-0144. Section of Environment, Energy, and Resources members receive a discounted price. Order online at www.ababooks.org.

Capital Murder

■ continued from page 5

associate another lawyer and sit second chair.

Client Communication.

Many individuals charged with a capital crime become extremely guarded and reluctant to trust. Trust, however, is absolutely essential for you to adequately represent your client. Without developing a level of trust, your client will never divulge the crucial information you need to properly represent him. The natural reaction of someone charged with such a crime is to tell you only what they feel helps their case. You need to know what helps your client's case and what hurts it to avoid surprises at trial.

Anxiety. If the thought that your performance could lead to someone serving time in jail is stressful, think about someone dying because your performance was sub par. These thoughts are inevitable if you accept a capital murder case. The overriding question is whether you will be able to use the threat of the death penalty or life imprisonment as your motivation to provide the best representation possible or if you will allow it to consume you and detract from your ability to represent your client. Your client and his family will remind you constantly that his life is in your hands. Be truthful with yourself and your potential client regarding your ability and readiness to provide the best defense.

There is no greater feeling than hearing a not guilty verdict when your client faces the death penalty. Do your homework, hone your craft, and only apply for such cases when you know you are ready. Saving a life is a larger than life accomplishment—no pun intended.

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FOR MORE INFO

Visit the ABA Death Penalty Representation Project at www.abanet.org/deathpenalty.