

# From the Desk of the Chairperson

By Mark R. High

## JACK OF ALL TRADES, MASTER OF...



This lawyering business is hard. By that, I don't mean the hours, which certainly add up, or finding clients, which only applies to some of us, or even living through the lawyer jokes. I mean the actual practice of law. Except for the three percent who are just naturals, or the three percent

who aren't conscious enough to know what they don't know, for the rest of us on this bell curve, it takes a lot of thought and hard effort to make it through a day.

Maybe some people can focus their practice to only work in a small, closely defined topic area. On Wall Street, I expect there is some poor Ivy League grad who spends her whole life concentrating on 15 U.S.C. Sec. 2064(a). Eventually, she may branch out to consider the exemption at Sec. 2067(a). In our markets, however, we are more likely to encounter multiple topics each month, probably each week. I know that I can be working on an M&A deal one week, then get pulled into real estate financing the next week. I could work with a start-up this week, and an in-house counsel at a Tier 1 supplier next week. In my outside general counsel role for privately held clients, I can get asked about employment, environmental, immigration, intellectual property, benefits, and even litigation issues, sometimes all at the same time. And then there are the tax effects. I am very lucky in that I have 224 of the best colleagues in the world to turn to, but I still need at least a working knowledge of a lot of law, and that law is changing all the time.

Whether you are at a 500 person firm or working on your own, I expect you face the same issues. We have a duty to our clients to be competent at what we do. That is the word used in Rule 1.1 of the Michigan Rules of Professional Conduct—competent. I hope that we all aspire to be more than just competent, and I expect that our clients and colleagues are anticipating more than competence from us, probably they expect excellence. Can we provide that? I suggest there are at least two rules we should keep in mind in this effort.

First, don't stretch too far. In the last couple years, I have been in transactions where a labor lawyer or a general litigator represented the seller in a sale of business transaction. As a transactional lawyer, the labor lawyer was a great labor lawyer. Conversely, it is easy to imagine how a business lawyer might muddle through an ERISA matter or other task outside the scope of their expertise.

What is wrong with trying something new? To start, being stuck in depositions for a week in the middle of

negotiations doesn't help anyone. Second, bringing litigation skills, or techniques, or habits, into a business transaction is at least disruptive, if not outright poisonous. Poison is never an effective lubricant in a transaction. Finally, every field has its details and standard issues to address. In acquisitions, it is key to understand how the representations work, what they are intended to do, and how they tie into the indemnification provisions. To go into a transaction and try to lead a client through this process without understanding it yourself creates dangers all around. Caps, collars, baskets, disclosure schedules, knowledge qualifiers, and survival periods are all critical provisions in this area—I have done deals, however, where the seller's counsel never raises those issues.

Which leads me to my second thought, we all need to keep learning. We may not have mandatory CLE in this State (and I don't propose to reopen that discussion here), but we are all required to maintain that "competent" standard. We need to constantly update ourselves in the fields we choose to work in. Relying on experience really means you are just learning from your mistakes—hardly a proactive strategy.

There are many places to learn. ICLE has many effective course offerings; we are very fortunate in this state to have such an active group. The commercial services help fill in the rare gaps in ICLE's portfolio. ABA, PLI, ACC, there is an alphabet soup of options. Web-based offerings through ICLE and others make information available to all, but actual attendance is still the best way to learn in my book. Personally, my year is not complete if I haven't hit both the LLC and Business Entity Update at the beginning of the year and our Section's Business Law Institute in early summer. Certainly, many people take advantage of these and other offerings, but when I see 120 people at our Institute, and maybe 200 at the two Business Entity Update sessions held on either side of the State, it strikes me that this is a very small percentage of our over 3,500 Section members.

I know we are all busy, and it is hard to turn down a matter which a client may bring to you. We are part of a profession, however, one acting under special duties to our customers. We should each remember this every day, and act accordingly. I hope to see you at Boyne this June.