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You've graduated, passed the bar, and started your first legal job working with children and families. Perhaps you work for an institutional provider of legal services for children or as a prosecutor of dependency cases, or perhaps you are defending such cases. Perhaps, still, you are in private practice, and this is your first pro bono experience working on a family or juvenile court matter. Whatever your role, your job is the same: to represent your client and seek as favorable an outcome as possible.

But you are new—you don't know the ropes or who the players are, you are unsure what your papers should look like, and you are worried about your upcoming cross-examination, interview, or motion. You don't want to make a mistake, you don't want to embarrass yourself, and you definitely don't want to imperil your client's legal position. You may have had some orientation training, but putting the rubber to the road at this early stage in your career is still so daunting—so what is a new lawyer to do? These universal moments of new-lawyer doubt are part of your initiation to the profession. The doubt isn't what defines new attorneys; what they do about it is—and that sets the course for the rest of their legal careers.

Your new law license would be so much easier to manage if it came with a user's manual. Of course, there are ethical rules, state and federal bar practice standards, CLE courses, and other resources to help guide your decision-making and skills development, but these may be of little use when you are mid-objection in your trial, as you count down the minutes to a midnight electronic court filing deadline, or while you sweat through a supervision meeting with the partner overseeing the case who wants to know yesterday what you plan to do with the witness tomorrow.

As a clinical professor of child advocacy, I've had the pleasure of introducing many years' worth of law students to the thrill and responsibility of their first real lawyering jobs. I have also had the opportunity to observe the most commonly repeated mistakes made by these soon-to-be new lawyers. By avoiding these five mistakes, new attorneys can set themselves up for a creative, proactive, and skilled child-welfare-litigation practice in which ongoing learning and controlled risk-taking can form the centerpiece of a very rewarding career.

Writing like a Lawyer

One of the most common new-lawyer mistakes is "writing like a lawyer." Otherwise clear and straightforward prose is rendered incomprehensible by unnecessary (but legal-sounding) "heretofores" and "whereases"; some words are RANDOMLY CAPITALIZED; number words are followed automatically by their numerical counterparts so that "three-year-old child" becomes "three- (3) year-old child"; and plain English is tortured into sentence structure that resembles Middle English—all in the name of writing like a lawyer. The problem with jargon,

legalese, and Middle English is that your reader is so distracted trying to decode your sentence that he or she doesn't know what point you are trying to make. The result is a missed advocacy opportunity.

Much has been written on the subject of writing like a lawyer who wishes to be understood. *Plain English for Lawyers* (Richard Wydick), *Just Writing* (Anne Enquist), and *Woe Is I: The Grammarphobe's Guide to Better English in Plain English* (Patricia T. O'Connor) are three such books recommended by the legal writing faculty at St. John's; there are many more. New lawyers would do well to remember that legal writing is writing in English about legal matters, not writing in some foreign legal language. Before cutting and pasting the boilerplate language from your office's last set of legalese-laden papers, why not first review that language for the opportunity to minimize jargon and simplify sentence structure? In the Child Advocacy Clinic, we advise students that borrowing language from previously drafted papers, letters, and emails is good practice if it keeps you from reinventing the wheel but bad practice when it perpetuates the use of legal mumbo jumbo. Even worse is cribbing language you don't understand because "it was there before, so I'd better leave it there now." Lawyers should never use words or phrases (or statutes or cases) they don't actually understand. Instead, decode the phrase, and, if it turns out to be surplus or simply isn't doing any work for you, take it out. Think of the old story about the art student who wanted to learn how to carve an elephant: His teacher instructed him to carve away everything that doesn't look like an elephant. The same holds true for legal writing. You need to carve away all the words that aren't doing any work for you. You are left with your argument (or letter, or email.)

Particular care should be taken when writing to clients. Because child-welfare litigation is predominantly a poverty-law practice, and because there is an inverse correlation between poverty and level of education, lawyers who wish to be understood should draft letters that do not require knowledge of Latin as a second language, or a thesaurus, to understand.

It cannot be overemphasized that legal writing is intended to be understood. To do so, draft short, clear sentences in the active voice. Organize your writing in a simple and straightforward manner. "The argument proffered by respondent mother Ms. Jane Doe is, accordingly, and for the foregoing reasons, factually and legally incorrect insofar as . . ." becomes "the respondent's argument is wrong because . . ."

On the flip side, extra effort to be sufficiently formal should be made when communicating electronically. The near-instantaneous nature of electronic communication (email, texts, and tweets) is intoxicating and addictive, and attorneys should consciously slow it down before texting or emailing their clients, opposing counsel, and witnesses. Our clinic represents children who often request that we, at least initially, communicate with them by text. Caution is advised when you need to communicate about confidential matters (which should never be done by text), and attention must be paid to not appear too casual and familiar lest you inadvertently blur the lines of the attorney-client relationship or reflect a less-than-professional level of informality to opposing counsel.

Asking for Advice Without Offering Suggestions

New lawyers are, understandably, often hesitant and deferential about how to proceed in their cases, preferring to seek the advice of more senior attorneys than reason out a course of action independently. To be sure, experienced attorneys are a gold mine of practical how-to knowledge for the novice lawyer—but relying too heavily on the advice of others will do little to build up your own legal muscle.

One way to look at it is to remember that the minute you graduate, you become a "veteran legal expert in training." It may sound counterintuitive to suggest that brand-new lawyers should make recommendations to supervising attorneys, but in fact, it works. As in physical exercise, the best way to develop independent legal muscle is to exercise it. Because supervising your own litigation is a learned skill, and because everyone has to start somewhere, the best way to begin developing your own good legal judgment is to start proposing possible courses of action during supervision meetings. There is a world of difference between the attorney who asks "what should I do now?" and the one who walks, no matter how tentatively, into his supervisor's office armed with three possible suggestions about what to do next—even if every suggestion is ultimately shot down. Good supervision will generate a conversation about the pros and cons of each suggestion, leading to a better understanding of the factors that go into a wise course of action and the factors that result in a course of action being sent back to the drawing board. It is this process of developing independent litigation supervision skills that will set self-motivated and creative thinkers apart from the crowd. Independent thinkers will not only develop skills more rapidly than their counterparts, but also they will quickly develop a reputation as a thoughtful and proactive attorney.

Underestimating the Importance of File Maintenance

Just the words "file maintenance" bring tears to the eyes. Updating call logs, scanning in correspondence, keeping the contact list current, maintaining contemporaneous time records—your law-school essay likely did not focus on the desire to serve justice through record keeping. And yet, here we are—me writing about it, and you reading about it.

Care and attention to record keeping isn't just important, it's critical. It's critical so that private practitioners can bill their clients properly; so that attorneys can protect themselves from malpractice claims; and so that trial lawyers can quickly respond to inquiries from the court. More than once, our office has made motions based on a pattern of unreturned phone calls, letters, and email. Such motions can only be made by keeping accurate records of not just the conversations had, but also the attempts made to have those conversations. We once obtained a court order directing the local agency to return our phone calls within 24 hours this way.

On this same subject, there are many ways to organize a file, and so long as you are able to locate the documents and information you need when you need them, your system will probably work for you. But new practitioners may find the following practices particularly helpful in maintaining files. First, maintain a contact list for each case in a central location in the case file. Update the list regularly when addresses, phone numbers, or attorneys change. It is especially

important to keep track of the locations and contact information of foster homes, as they can change frequently, and you cannot predict when or why you might need to communicate with or about a prior foster parent. Make sure to date your contact list each time you update it. Never delete old contacts from a contact list; instead, retire old lists to a separate folder or use a strikethrough font with an "as of" date to indicate when the information changed. This way, you will always have a record of the contacts relevant to each point in time during the litigation.

Next, never keep recorded time by jotting it down on little scraps of paper stuffed into your pockets. This is an invitation to send your billable hours to the dry cleaner instead of the client. Instead, carry a notebook for the purpose of recording time, download a timekeeping program to your smartphone or iPad (there are, literally, hundreds of such programs), or, as a last resort, address an email to yourself on your phone, noting the time you spent on various tasks, saving the email as a draft as you update it throughout the day and sending it before you go home for the night. Just last year, the Second Circuit denied half a million dollars in fees to a solo practitioner for lack of contemporaneous timekeeping. *See*, *Scott v. City of New York*, 643 F.3d 56 (2d Cir. 2011). Reconstructing billable hours, therefore, is not only unwise, it is almost always impermissible and financially painful as well.

Some offices have document-naming conventions that can be extremely helpful in organizing computer files. If your office does not use a document-naming convention, consider creating one for yourself. Instead of version numbers, you might name documents using the format CaseName.DocType.DocDescrip.Date.Time so that you do not end up with documents such as "Smith Visitation Motion_Tuesday Morning Version 4," but with "Smith.OTSC.visits.070411.0830am" (Order to Show Cause for visits on Smith case, July 4, 2011, 8:30 am) instead. However you choose to name your documents, avoid using the word "final" until after the papers have been filed or sent. There is nothing more annoying than a document named "FINAL.final" or the equally bad "final[2]."

Becoming Emotional

Working with children and families in crisis is draining work. Emotions run high, and it takes skill, self-control, and personal and professional maturity to be an effective and passionate advocate without crossing the line and becoming emotional. Judges do not wish to hear from emotional attorneys, and your argument would be swallowed by the drama of the presentation in any event. Emotional attorneys are also written off as difficult to work with.

New attorneys can be full of outrage and passion for justice—but law happens. Sometimes you will be successful, and sometimes you will not. Sometimes you can persuade your adversary, and sometimes you cannot. Keep in mind that you can only control what you can control—your own work, not the work of others. The more effective advocate is the one who can maintain his or her composure in the courtroom and in the conference room. If you find yourself becoming emotional, take a drink of water, request a brief break, or step outside for a moment to compose yourself. If you are moved by a client's circumstance and find yourself becoming emotional in conversation with or about him, try to (discretely) briefly and physically refocus your attention

elsewhere, perhaps by contracting a muscle or gripping your fingernails into your palm. (I've done both.) Remember your legal options: Is the issue appealable in one forum or another? Is there a legal avenue on which you can focus your emotional energy?

Avoiding strong displays of emotion and remaining composed under all circumstances is critical for maintaining and enhancing your reputation as a professional.

Failing to Reflect on Experiences

Lawyers are "professional learners." Not only must lawyers keep up with current developments in the law by learning about new cases and legislative amendments, but they must also keep up with litigation—including child-welfare litigation—which often requires learning about entirely new substantive subject areas. Lawyers must learn not just how to get widgets into evidence, but also what widgets are, what makes widgets tick, how widgets are built, common off-label widget uses, how the public (a jury) feels about widgets, the main differences between a widget and a gizmo, common widget misconceptions and biases, policy implications of widget regulation, and more. Child-welfare lawyers must also learn about the effect of widgets on adolescent development, widgets for siblings, safety concerns for children and widgets, and so on. Learning all of this information and much, much more is what lawyers do every day. Becoming a skillful and well-rounded lawyer, therefore, requires becoming a skillful and well-rounded learner.

Skillful learning requires reflection. Whether or not your reflective process thus far has been the product of deliberate and conscious effort, it is unlikely that you made it past the bar exam without some degree of reflection on which kinds of note-taking, test preparation, or study-group practices worked best for you. Until this point, you have probably also relied on grades to help you assess the success of your various learning techniques. But how does the practicing child-welfare lawyer gauge the success of his or her lawyering skills without a final exam as a guide? How does he or she know whether a client interview, legal argument, cross-examination, or letter to opposing counsel was excellent or if it missed the mark?

Lawyers must learn to reflect on their experiences to learn from them. New lawyers can ask themselves, "What made that winning argument tick?" Expensive videos and training materials are not necessary when live action is unfolding before you. Take notes on what you observe. Was the effective attorney organized, speaking clearly, prepared with case law? Was the less-effective attorney scattered, caught off-guard, and unsure of his or her position? Take similar notes on that cross-examination you are sitting through while waiting for your case to be called. Which kinds of questions are most effective? How did the attorney set a trap for the witness? Observe, too (but from a distance), attorneys speaking with their clients in waiting rooms. Do the clients appear interested, angry, despondent, terrified, or reassured? How is the attorney handling the client? Is it effective? Review your adversary's papers. Are they well organized? Did your adversary use a particularly effective rhetorical device? Were there unprofessional aspects of the papers?

New lawyers might form a regular lunchtime meet-up to discuss what they observed that week. Or a lawyer might choose to journal privately about recent events. Regardless of the method used, making a regularly scheduled time each week to consciously reflect on the elements of excellence in lawyering will allow the new litigator to focus on the specific skills needed to improve his or her own performance.

As noted above, reflection is a skill. Each of the "mistakes" outlined in this article is, in fact, a learning experience on which new attorneys can build an improved practice—but only if the attorney takes the time to analyze each experience thoroughly for ways to move forward. It is hoped that the tools set out in this article will help give new attorneys the confidence to try new methods of moving toward excellence in the field of child welfare.

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