

After 27 years at Stoel Rives, I have decided to move my practice to the new Portland office of Hinshaw & Culbertson. Tom Browne, one of my new Hinshaw partners, wrote the following article about what a lawyer who has made a mistake should and should not do. As Tom correctly notes, every one of us will make mistakes, but none of us has to turn a matter of arguable negligence, which may or may not cause damages or be forgiven, into a cover-up.

## **Confession Is Good for the Soul of the Firm**

**By Thomas L. Browne**

One of the biggest mistakes law firms make is to create an atmosphere that discourages lawyers from disclosing their own professional liability problems to other lawyers in the firm.

This is particularly true with respect to the errors of young lawyers. Show me a firm in which an associate is afraid to disclose his own mistakes to more senior lawyers, and I will show you a firm with a malpractice claim, or worse, one waiting to happen.

All lawyers encounter professionally difficult situations. All lawyers make mistakes. After all, imperfection is part of the human condition. But most professional responsibility problems can be resolved favorably, or even avoided altogether, if they are detected early and addressed in an objective and intelligent manner.

For example, take a new, young associate who through inadvertence allows a large default judgment to be entered against a firm's client. To make matters worse, the associate does not discover the judgment until more than 30 days have passed since its entry.

This situation presents serious civil liability and ethical problems. Nevertheless, any experienced, detached lawyer would recognize immediately that the problem may be 100 percent correctable with a proper Section 2-1401 petition. Moreover, even if the judgment cannot be set aside, there may be no legal malpractice liability, anyway, if the case were indefensible to begin with.

If the problem is mishandled, however, a no-liability situation can be converted instantly into a sure loser. To do so, one need only make inappropriate or unnecessary admissions against interest, or fail to understand the technical and evidentiary requirements of Section 2-1401.

Clearly, the young associate who permitted the default judgment to be entered would not be the firm's first choice to handle the problem. Moreover, even if he or she were, the associate would never be left completely unsupervised with such an important responsibility.

All firms should understand, however, that this is exactly what they can expect if young associates are overly apprehensive about the consequences of legal mistakes to their careers. The same is true, although to a lesser extent, with more senior lawyers.

The simple truth is that lawyers often react to their own mistakes in a number of predictable but completely inappropriate ways. One response is to do nothing - in effect, to deny the existence of the problem. Other lawyers freeze like a deer in the headlights of a car, allowing precious time to pass while the problem worsens. A few lawyers will go so far as to conceal serious problems from the client and anyone else who may have an interest in the situation, such as other lawyers in the firm.

Each of these responses is virtually certain to aggravate any professional problem. All too often, each is also the product of some fear or apprehension that one's standing, compensation or future will be jeopardized if other lawyers in the firm become involved.

It is in a law firm's best professional and financial interests to create an atmosphere in which each lawyer perceives other lawyers as part of the solution and not part of the problem. Obviously, there are many ways to create an appropriate atmosphere, and what works for one firm may not work in another. But firms that handle their own legal problems well, often have much in common.

In particular, ethics and civil liability problems ordinarily are not perceived as compensation or advancement issues if disclosed to the firm in a timely fashion. Thus, fear of disclosure is minimized.

Partners and associates alike are encouraged, if not required, to bring professional issues to a designated person(s) who can assure that the problem will be handled with some measure of objectivity and skill.

There is really no trick to creating an atmosphere that promotes nondisclosure of professional problems. Display anger or intolerance toward those who prove to be less than perfect. Create obstacles to open communication. Let individual lawyers know or fear that they will pay directly for their own mistakes, and human nature will take its course.

Just remember that whether a firm is big or small, such an atmosphere is likely to be counterproductive. Ironically, by focusing on an individual lawyer's accountability for his own mistake, the law firm as a whole will probably suffer more.