

By MARTIN COLE

How'd You Spend Your Summer Vacation?

I don't consider myself to be a workaholic. Yet, the last vacation of more than a couple of days I've taken was almost 18 months ago. And before that ... well, it just never seemed to be the right moment to leave much of my work unattended for even a week, as it seemed I'd have to work twice as hard upon my return just to catch up. I suspect many lawyers face the same perceived dilemma. In reality, however, we are doing no one any favor by never leaving our desks or our computers, iPads, or smart phones behind for a while. But as August ends, along with summer breaks from school and court calendars, stop and ask yourself whether you recharged at all this year. Time away from our work activity, *i.e.*, a vacation (!!), is a critical part of the work/life cycle, as some, such as Da Vinci above, have recognized for centuries.

Not a Four-Letter Word

For many lawyers, be they in large firms, small firms or solo practice, "vacation" has become essentially a four-letter word never to be spoken aloud. Indeed, a recent *Minneapolis StarTribune* article cited a study that asserts that seven of ten working



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Americans do not take all of their allotted vacation time, largely out of fear for their job security.¹ What have we done to ourselves? As noted in all candor, I am as guilty as anyone.² Do an Internet search of "stress – legal profession" and you will discover maybe hundreds of articles dealing with stress for lawyers. They contain many tidbits of good advice—including recommendations to take vacation time, be it a long weekend or better yet, one to two full weeks away from the pressures of clients and business generation—advice most of us admittedly find easier to give than to follow.³ A surprisingly high percentage of these articles are from Great Britain, Canada or Australia. Does this



Every now and then go away and have a little relaxation. To remain constantly at work will diminish your judgment. Go some distance away, because work will be in perspective and a lack of harmony is more readily seen.

—Leonardo Da Vinci

indicate that American lawyers are especially resistant or latecomers to dealing effectively with stress? Do another Google search for "lawyer vacation" and you'll get far fewer hits, many of which are offers from various resorts or advertisements for other lawyers ("Were you injured on vacation?"). It remains a topic that is not discussed enough.

Virtual Office, Virtually No Vacation?

All lawyers, especially solo practitioners and those in very small firms, are urged to have an emergency plan in place should there be an unexpected business interruption due to death, illness or injury.⁴ Departing for a vacation is really just a variation on this theme.

Think through all the various possibilities: It's better to spend some extra time and energy in advance of a vacation anticipating all the contingencies than to worry about them throughout the entire time away and then have a possible mess upon your return. If you work in a firm with any sort of teamwork or collegiality, at least one other lawyer will agree to act as your back-up in case any true legal emergencies arise and need immediate attention. Maybe a mutual exchange can be done (this is suggested somewhat sarcastically, as many lawyers have a hard time asking even for this level of assistance for fear of appearing

weak). If you are a solo practitioner, find a lawyer who has expertise in the areas in which you practice who will agree to be available. Notify your active clients of your intended absence and of your back-up plan—some needy clients may require a second notice just before departure. It's alright to maybe call-in once or twice a week (but not daily!) just for a quick update to reassure yourself that the office has not burned down and to see if there are any *real* emergencies that require some directive. (Bear in mind that the client's sense of emergency may be different from yours.) Have someone who will access your phone for messages; best if it's someone who can return many of the calls for you. Remarkably, your practice just might survive without you.

An aspect of "vacation" time that is becoming increasingly complicated is the fact that your office may follow along with you, even if you are wise enough to take some time off. I've been told by a lawyer friend that if he turns off his iPhone,

even for the evening, and certainly for a weekend or a week, that he worries more about what he might be missing than if he just left the da** thing on! But if truly “recharging your batteries” is the goal, is having your smartphone with you and on all the time a smart idea? (Setting it to “vibrate” is not turning it off.)

Is answering work emails for the first two hours of each morning the best way to relax? The answer is obvious. Yet with some reasonable advance planning, perhaps an enjoyable vacation experience can be had, either by just staying home, going to the lake, or truly getting away somewhere relaxing and interesting.

You Can't Make Me

Okay, a vacation is a good idea and maybe, just maybe, you can figure out how to squeeze one in. This may not be enough for some hardwired lawyers, however. They may need some legal authority to support the idea of taking a vacation. First, keep in mind that Rule 1.16(a)(2), MRPC, states that a lawyer shall not accept representation, or shall withdraw from representation, if the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client. Sure, that sounds like it requires something far more than just needing a vacation, and no one truly expects the lawyer disciplinary system to enforce that rule in such a manner, right? Vacations are a sanity issue, yes—but a disciplinary issue?

Well, one federal circuit court at least chastised an attorney who refused to agree to let an opposing attorney have a family holiday and found that a district court abused its discretion when it agreed with him. In *Ahanchian v. Xenon Pictures, Inc.*,⁵ the 9th Circuit Court of Appeals reversed a federal district court that had granted summary judgment against an attorney's client, when the attorney was late filing a responsive pleading that was due the day after the Labor Day weekend. The lawyer had a previously planned out-of-state family event and the opposing counsel clearly had filed the motion so as to minimize the number of working days available to respond. The court noted that:

Attorneys, like everyone else, have critical personal and familial obligations that are particularly acute during holidays. It is important to the health of the legal profession that attorneys strike a balance between these competing demands on their time.⁶

The court found that absent bad faith, the request for a brief extension (at least for a previously planned vacation around a holiday as in this case) was reasonable and the refusal to allow it was not. A case worth remembering?

Conclusion

So, how was your summer vacation? Started planning a midwinter vacation yet? We can only urge, but not require, lawyers to do so. But realize that in all likelihood you are helping yourself and your family, your colleagues, your clients, and the legal profession if you include the occasional vacation in your regular law practice schedule. Seems well worth it. ▲

Notes

¹ Ann McFeatters, Scripps Howard News Service, “Take a vacation: it's your duty,” *StarTribune* (06/22/2012).

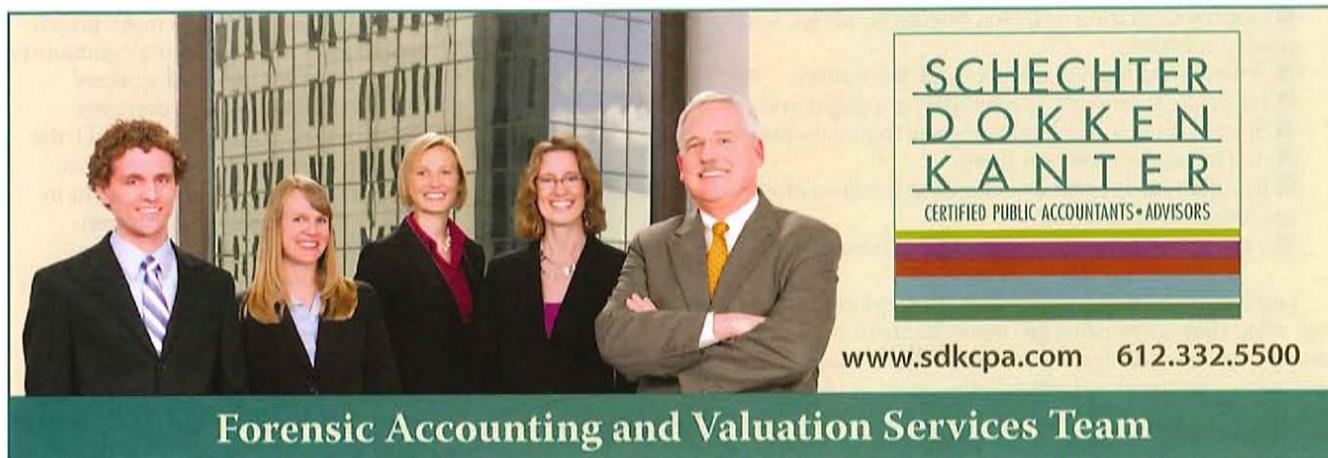
² Indeed, I regret to inform the readers that I took a Friday off from work but then had to finish up work on this month's column on that weekend!

³ Vacations are not the answer for all levels of stress, of course. Depression or abuse of chemicals may also result. In such cases, professional assistance may be necessary. In Minnesota, Lawyers Concerned for Lawyers (LCL) is available to provide confidential (see Rule 8.3(c), Minnesota Rules of Professional Conduct (MRPC)) help. LCL can be reached at (651) 646-5590 or 1 (866) 525-6466.

⁴ See, Cole, “Succession Planning & Trusteeships,” 67 *Bench & Bar of Minnesota* 4 (April 2010) and articles cited therein; Rule 1.3, MRPC, Comment [5].

⁵ 624 F.3d 1253 (9th Cir. 2010).

⁶ 624 F.3d at 1259, n. 7.



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