

# Yes, you can take a vacation

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At this year’s MSBA Convention, I presented on a panel entitled “10 Things You Should Do Before Going on Vacation.”<sup>1</sup> Preparing for and reflecting on the presentation and the questions it drew caused me to realize this is a good column topic. It will surprise no one that lawyers are terrible at taking quality time away from their practices.

The statistics for lawyers are not great. Law360 recently published the results of its 2024 Lawyer Satisfaction Survey.<sup>2</sup> Fifty-two percent of those surveyed reported they plan to take two weeks or less of vacation in 2024. Forty-two percent reported working more than 50 hours per week on average, and 38 percent reported feeling stressed most or all the time. Twenty-seven percent of associates reported being likely or very likely to look for another job within the next year. Yikes!

Notwithstanding these numbers, 66 percent reported being satisfied or very satisfied with being a lawyer. This is just one survey, but the numbers make sense to me. Being a lawyer can be very satisfying for people who love problem-solving and intellectual challenges. But lawyers pride themselves on their work ethic and are often driven. We are members of a stressful, challenging profession with lots of upsides and many downsides.

The Law360 survey did not ask how unplugged lawyers were on their vacation, but a show of hands at the conference suggested that most lawyers in the room are unable to unplug fully when on vacation. Count me among that number. I really admire those who commit to being fully unplugged from their work, but many feel unable to do so because of the demands of their practices or due to bad habits learned over a career. Whatever the case may be, let me put in a plug (pun intended) for taking a quality vacation in the near term. And by quality, I do not mean expensive (although, if you have the means, by all means). Rather, I mean a vacation that allows you to disconnect from the stress and demands of your job and spend time with those you love, doing something that brings you joy. In addition to the wellbeing benefits you will receive, a little planning can decrease the likelihood of any vacation-related ethics issues.

## Ethics issues to consider

The two most complained-about behaviors by lawyers are lack of diligence (Rule 1.3) and lack of communication (Rule 1.4). The complaints we receive, however, typically do not arise from a week or two’s absence from the office or lack of immediate availability. Instead, when vacations

are mentioned in ethics complaints, it is often as a last straw after numerous failed efforts to connect. Clients can be amazingly understanding provided they are not surprised and know what to do if something unexpected happens. The opposite is also true: They are frustrated and often unforgiving when surprises occur on important legal matters, promises are not kept, or they don’t know what to do when something unexpected happens—and you are not there. This does not mean that you must always be available to avoid an issue, but it does mean that your best strategy is to plan for your absence and communicate that plan in advance.

What does that level of communication and planning look like? It depends on the nature of your practice and the environment in which you practice. If you are in a firm or an office, asking a colleague to be your backup while you are out is your best bet. Brief that individual on things you expect to happen or that might happen while you are out, and let them know whom to contact or what to do if action needs to be taken while you are out. Ask that individual or other staff member to review your mail or monitor your inbox for incoming matters that might need immediate attention, if possible. Provide clear directions on how you can be reached in an emergency and define what you mean by an emergency.

Of course, this is more challenging for solo practitioners, particularly those without any staff. In this case, it will be important to assess whether the nature of your practice requires that you make special arrangements to have someone available to handle emergencies while you are gone. Some practices have unexpected issues that arise that need to be promptly addressed, and the failure to do so can result in real harm to our clients. If you have this type of solo practice, being wholly unavailable may present more risk than you are willing to accept. You might be able to manage that risk, however, by associating with someone who agrees to triage those “cannot wait” issues for you, in exchange for your doing the same for them when they take a vacation. If this is something you are interested in, consider obtaining your client’s advance consent in your retainer agreement or through other pre-vacation communications.

In general, I recommend that all solo practitioners have in their retainer agreement a provision that secures their client’s advance informed consent to share client information with another lawyer in order to address an emergency or as part of succession planning activities if the lawyer should become temporarily unavailable or unable

to continue the representation, assuring the client that this lawyer will also keep their confidences, and will only use the information to address the immediate needs that arise from the lawyer's absence. Clients are unlikely to object to such a provision and may appreciate your planning ahead.

I hope it goes without saying, but no matter what kind of law you practice, you should have an out-of-office message that states if or when you will be reviewing messages, and whom to contact if you cannot be reached. Such a message goes a long way toward avoiding client issues. And if you do not have one in place, it is reasonable for clients and others to expect a prompt response from you, even if you are on vacation. In advance of the time you will be out, communicate when you will be gone and when you will return to everyone you can think of—not just clients, but opposing parties or others with whom you frequently interact.

Another suggestion is that if you are sending out communications during the week before you will be out, let people know when you will be able to attend to any needed follow-up or that further responses from you will be delayed until after you return. Depending on the length of your vacation, some people block out their calendar for the first day back to allow time to attend to matters that came up while you were out without immediately feeling behind the eight ball.

As for diligence, if you have promised something to a client but a vacation will interfere with your ability to deliver, please address that fact before your vacation and don't just hope the client will not notice. They will. And make sure you are not taking on new matters before a planned vacation without good communication. Clients are entitled to expect you to start work on their matter as soon as you are hired unless they have agreed to something different, and you have an obligation to explain to them any constraints on your availability so that clients can factor that into their decision to hire you instead of someone else. If a client is unwilling or unable to accommodate a planned vacation, perhaps that is not a client you will enjoy working with. It might be a sign that someone else will be better suited for the matter.

## Conclusion

With some modest planning, there is no reason that lawyers cannot be away from their practices in order to enjoy a quality vacation. If the advance planning seems more challenging than it is worth, may I recommend that you reconsider? Sure, you can plan to check email and handle emergencies while you are out, but even people who thrive on the demands of the profession need time away to recharge and be re-inspired.

And do not forget that your family desires and deserves some undivided time and attention as well. If you are a leader, modeling the use of time off for a quality vacation is an excellent habit to cultivate, and one I am trying to learn. I will end this column where I ended last month's column on the new personal leave policy the Court recently adopted: "allowing attorneys to attend to their well-being will inure to the benefit—not the detriment—of their clients." I hope this column finds you returning from a quality summer vacation or about to take one. ▲

## NOTES

<sup>1</sup> My thanks to fellow panelist Samuel Rufer of Pemberton Law P.L.L.P in Detroit Lakes and Courtney Sebo Savica of Sebo Savica Law Firm, PLLC, of Rochester, for a panel presentation that inspired me to book a vacation in August.

<sup>2</sup> Law360/Pulse, Lawyer Satisfaction Survey, Redefining Success for the Modern Attorney, June 2024, at [Law360.com/pulse](https://www.law360.com/pulse).