

Jury Trial

Advise your client to settle, if possible, rather than risk the results of a jury trial. Although I have great faith in juries and the jury system, there is no guarantee what six or twelve jurors will do behind closed doors. Juries can often focus on issues/events/facts never anticipated by either the attorneys or the judge. Never guarantee a result to a client who chooses his/her "day in court." I believe the client will be given a fair trial by citizens who will take their role as jurors seriously, but the client should understand going in that every controversy has various perspectives and there is no guarantee that a jury will agree with their perspective. Always advocate your client's heartfelt perspective, while also advising them of the risks of going further.

Hon. Richard Scherer
4th Judicial District
Minneapolis



upon them to take the initiative to ask questions. They may be embarrassed or think that they should know what is unclear to them without having to ask about it.

Fifth, and finally, be willing to admit your own mistakes. There is nothing more frustrating for support staff than to be blamed for something that is not their doing.

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minimum expires, by asking for additional time off as a "reasonable accommodation" under the Americans with Disabilities Act (ADA) or the parallel disability discrimination provision of the Minnesota Human Rights Act. An employer is obligated to participate in an "interactive" process with an employee seeking additional time off for disability-related purposes, which can effectively prolong the leave time under the FMLA.

(See, e.g., *Fjellestad v. Pizza Hut of America, Inc.*, 188 F.3d 944 (8th Cir. 1999). Employers may also, at their discretion, provide more leave than the minimum 12 weeks required by FMLA, regardless of any ongoing disability claims by employees. Because of these vagaries, employees should check with management before any leave of absence to determine the permissible length. Employers should articulate clear policies with respect to the duration of any such leaves of absence.

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Family & Medical Leave

The Family & Medical Leave Act (FMLA) requires employers with more than 50 employees to provide a minimum of 12 weeks' leave on an annual basis for qualified employees who have worked for a year on a full-time basis. But employers who have their own sick leave policies can combine those with the 12-week requirement, even without notice to the employee, effectively capping the total permissible leave at 12 weeks. See *Ragsdale v. Wolverine World Wide, Inc.*, 535 U.S. 81 (2002); see also *Sientz v. City of Republic*, 448 F.3d 1008 (8th Cir. 2006). Employees who do not return to work within the 12-week FMLA period could be subject to termination. But employees may seek to extend their leave, after the 12-week

Training Staff

At some point in their career, every attorney takes responsibility for training a new person, usually someone who is replacing an already trained or more experienced member of the staff. Unless one is careful, it's easy in these circumstances to expect the same level of support from someone who has neither the training nor the experience to provide that support. Following a few simple and straightforward training principles can greatly lessen the time required to train a new person up to speed.

First, consider what you expect from a member of your staff. Take the time to fully analyze what is essential and what is less so. Strip the various tasks down to the essentials and only add more bells and whistles as the trainee grows into the job.

Second, be patient. Treat the trainee as you would like to be treated. Praise in public and criticize in private. Never embarrass the people you

work with in front of others.

Third, do not ignore shortcomings. It does the person being trained little good to continue to perform in a substandard manner if they are never told that they are failing to live up to expectations.

Fourth, actively seek feedback from the person you are trying to train. Do not rely



Trial Practice

Most lawyers know that judges dislike it when attorneys direct personal aspersions toward one another or use sarcasm as a tool of argument. Even so, I did not realize until taking the bench the degree to which those tactics are counterproductive or just how strongly I would react to them. Take the high road, even if you have a client who wants you to act like a TV lawyer. It is in your client's best interest.

Furthermore, if the horse is



dead, stop beating it. If you have made a point with a witness, do not continue to ask questions that have the sole purpose of making that same point.

That tells the judge and the jury that you think they are too slow to have understood the question and answer the first time. You want them to like you, not feel insulted by you.

Hon. Terrence M. Walters
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