THE NEWSLETTER FOR LEGAL OFFICE MANAGERS

LAW OFFICE ADMINISTRATOR™

Volume XXI/ Number 12 DECEMBER 2012

Here's how to keep safe from FLSA and EEOC claims

DO AN HR AUDIT AT THE START OF EACH YEAR

Today's protection against tomorrow's employment law claims is a human resources audit.

An audit is essential to keep the firm's employment processes accurate and current – and also followed, says **JOSEPH GODWIN**, human resources consultant for F&H Solutions Group in Ashville, NC.

The audit needs to be done every year, because with time, things get overlooked. Or bad habits crop up and people take easier routes such as signing off on incomplete I-9 Forms. Or new managers come in with their own HR methods and change things.

The places that most need attention are overtime, job applications, and record keeping. That's where the majority of the problems arise.

THE BIGGIE: FLSA

Put compliance with the Fair Labor Standards Act at the top of the audit list, Godwin says. There are more overtime law suits each year than suits "for all other types of discrimination combined."

The major dangers come from three areas.

HOURLY V. SALARIED

First is the classification of hourly and salaried employees – or who is getting overtime and who isn't.

No matter how honest the mistake, a misclassified employee can demand the unpaid overtime.

Check to see if the job descriptions are updated, he says, "because jobs change from time to time." And managers tend to let the descriptions go, because writing and revising them "is a thankless, tedious chore."

His advice is each year to have staff write down what they do and use that information to update the descriptions and see if the hourly people are still hourly. Employees' own descriptions of their work give the most accurate picture of what their jobs entail.

And as to who is eligible for overtime and who isn't, the rule is simple: "if it's difficult to determine whether employees are exempt or nonexempt, they are nonexempt," he says.

"That comes right out of the FLSA." Using that line of thinking, the office won't miss.

UNPAID TIME

The second great overtime danger is not paying people for the total amount of time they work, and that happens often and innocently, particularly with lunch breaks and office social events.

Everybody knows that worked lunch time is paid time. But what firms often don't realize is that even a catered lunch where employees are there "just to get to know each other" is paid time – if the meeting is mandatory.

Early-morning meetings before clock-in time count too. If staff are required to be there 15 minutes early

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Law Office Administrator (ISSN 1071-7242) is published monthly by Ardmore Publishing Company, 1800 Peachtree St., Suite 335, Atlanta, GA 30309. Subscriptions: $257/year. Periodicals postage paid at Atlanta, GA 30309. Postmaster: Send address changes to **Law Office Administrator**, P.O. Box 11670, Atlanta, GA 30355.

On Better Communication

Six easy little questions

It's time for the 2012 final exam! All these topics are covered in the grammar columns that ran in *LOA* this past year.

1. *If* and *whether*

- I don't remember (*if* or *whether?*) they finished that case.
- I don't remember (*if* or *whether?*) the judge ruled on that or the case was dismissed.
- Please tell me (*if* or *whether?*) this is correct.

2. *This/that* and *these/those*

- We like (*this* or *these?*) kind of pickles.
- They prefer ((*that* or *those?*) other pickles.
- (*That* or *those?*) sort of cookies always appeals to children.

3. Long *a* and *uh* (pronunciation)

- We had (*a* or *uh?*) marvelous time!
- She made an (*a* or *uh?*) on the test.
- This is definitely (*a* or *uh?*) giant disaster!

4. A* and *an* with *H

- (*a* or *an?*) honor
- (*a* or *an?*) hysterical child
- (*a* or *an?*) happy child

5. *Who, whom,* and *whose*

- The farmers ____ lived nearby wondered ____ she was. They knew the lady____ they saw in the turret window was a fairy, but ____ surname she bore was a mystery.

6. Write these numbers out

- 23 _____ 1/2 _____ 1,399 _____

THE ANSWERS!

1. if - whether - if (*If* = yes or no. *Whether* = there's a choice.)
2. this - those - that (Follow the word right after *this* or *those.* It's *these kinds* (more than one kind) but *that sort* (just one sort).
3. uh - a - uh (The letter *A* is a long *a*; the word *a* is *uh*. Read this aloud and pronounce *a* as a long *a*, and it's obvious: *We took **a** train and then **a** bus and finally **a** car to gets to **a** destination only **a** few people had ever had **a** chance to see.)*
4. an - an - a (If the *h* is not hissy, use *an*. If it is, use *a* when the accent is on the first syllable (*a hippopotamus, a heretic)* and *an* when it's on the second (*an Hispanic custom, an historian*).
5. who lived nearby - who she was - whom they saw - whose
6. twenty-three - one half - one thousand, three hundred ninety-nine (Numbers get hyphens: *eighty-two, ninety-nine*. Fractions don't get hyphens: *one third, seven eighths*. And spelled-out numbers get the same commas as the numerals do: *1,280,010 = one million, two hundred eighty thousand, ten*.)

(continued from page 1)

to discuss the day's game plan, that's paid time.

The same for social events. If an hourly employee is required to attend, that's work time.

On the other hand, if the firm brings in lunch for everybody and nobody is required to show up and no work is conducted during lunch, that's not paid time. But if people are expected to attend, it is.

TIME RECORDS FOR EXEMPT PEOPLE

The third overtime audit spot should be whether the firm is keeping records of the work time for the exempt employees.

There's no requirement to do so, Godwin says, but if one of those employees claims overtime violations, those records will be the office's only defense.

The real risk is people who are "marginally exempt." There's wiggle room for them to assert they were actually nonexempt and claim back overtime. And if they are adjudged to be nonexempt and the firm doesn't have any record of their hours, they win.

Godwin adds that response time is also important.

If someone comes in and says "I should be getting overtime" and there's not an immediate response, "the next thing you know you have the Department of Labor at your doorstep."

AUDIT THE HIRING PROCESS

THE APPLICATIONS

With hiring, the first item to audit is whether the job applications request the same information from everybody so nobody can claim discrimination.

Equally important, they need to ask only for information that is directly related to the job.

Surprising discrimination claims arise there, he says. For example, many applications still ask for both a current and permanent address. But no employer "needs to know where somebody used to live." And an applicant whose permanent address is, say, Mexico might claim discrimination due to national origin.

Don't ask for personal references either. That's not illegal, but it's scarcely job related, because no applicant lists somebody "who is going to say bad stuff."

And suppose a reference has a surname that's indicative of a minority and the candidate isn't hired. Now the office "has information it didn't need and didn't want to know," and the turned-down applicant can claim discrimination because of it.

There's also a caution few employers ever think of: use an application form. And require candidates to sign a statement at the bottom that the information is truthful and accurate.

Don't rely on a resume. "A resume is a marketing tool, not an application." It's designed to sell the job seeker. By contrast, an application form sifts out the marketing and shows the actual facts.

THE PEOPLE DOING THE INTERVIEWING

Next is the interview process.

Here the audit needs to evaluate whether the people who are doing the interviewing have been EEOC trained "and aren't asking illegal questions."

People with no training or who use unstructured interviews are prone to "shoot the breeze and talk about dogs and vacations." And in doing so, they risk going into forbidden territories such as child care arrangements or what a spouse does for a living or "how old are your kids?"

"Interviewing is a learned skill," he says. Without training, even an attorney can make mistakes.

THE REJECTION LETTERS

Another item to audit is the rejection letters.

There needs to be a format for them. Otherwise, a letter can go into too much detail. If it says the firm has selected a more qualified candidate, for example, there's room for argument on qualifications.

Neither should the letter say "we'll keep your application on file." That same candidate can now claim discrimination in a later job opening.

The only information the letter needs to impart is "your application was unsuccessful." People might consider that rude, he says, but it isn't open to interpretation. The firm will never have to defend it.

AUDIT THE RECORD RETENTION TIME

Yet another audit item is the record retention.

There need to be retention guidelines for everything pertaining to employment – job applications, I-9 Forms, promotions, transfers, terminations, and so on.

Those guidelines have to follow both federal and state laws. And for safety, Godwin recommends setting a retention period that's longer than what's required.

For example, the standard retention time for job applications is 180 days, because that's the length of time an applicant has to file an EEOC complaint. But employers should extend that to a year, and preferably a year and two months. And for good reason.

If the employee files the complaint with a local agency that takes in complaints, the length of time for filing a charge is extended. And if the filing is done on the last day of that extension, the firm could be caught with no records to defend itself.

AUDIT THE POLICY MANUAL

Audit too the office's policy manual. It's easy for it to slip out of date.

Godwin gives the example of the FMLA provision that says employees must apply for leave. That's what the law says, but over the years it's become the employer's responsibility to recognize when a request

for time off falls into the FMLA category, and that needs to be included in the procedure.

The same with anti-harassment policies. The law itself doesn't require employers to conduct training, but Supreme Court decisions have held employers liable for harassment if they haven't provided training and haven't set up a process for making complaints.

Beyond that, a change in office size can make the manual obsolete. A firm that has grown from, say, 40 to 55 employees now has to provide FMLA leave. Similarly, a firm that has added locations in other states now has to comply with regulations in those states. And some states have more stringent requirements than the federal statutes set out.

It's the simple issues that cause the problems with client records

A lot of questions come up about the most basic elements of maintaining and destroying client records.

And that's because to many of those questions "there's no hard and fast answer," says Washington, DC, attorney and record management consultant **TERESA SCHOCH**. Schoch is also a past member of the Michigan Bar Association's ethics committee.

Here are seven such issues.

THE 10-YEAR RETENTION PRACTICE

How long do client records have to be kept?

Client records are usually maintained for 10 years, Schoch says. "That's a common number." It applies to anything other than wills, trusts, documents related to corporate filings, and original documents that have to be kept long term.

However, other factors need to be considered.

One is state law, which varies on retention periods and destruction

Another is the malpractice carrier's requirements, which often set longer retention periods than state law calls for. When that's the case, the firm should follow the carrier's rules. For that reason, she says, don't set a retention schedule before getting the malpractice carrier's approval.

There's also the client's retention schedule to consider. If possible, the firm should follow it.

Suppose the client has a five-year retention policy and destroys the record at that point. Later, the client gets sued and there's a discovery demand for the record. The client doesn't have the record because it followed its retention schedule, but the firm does have it because it didn't follow the same schedule. The information gets produced and the client is damaged.

The client could sue for breach of fiduciary duty because the firm didn't protect its interest in terms of maintaining a destruction policy that equaled its own.

The firm will then have to show that it followed a reasonable retention schedule. For example, it would be reasonable to follow the schedule the malpractice carrier requires.

That issue is best settled up front, she says. The engagement letter should tell how discrepancies in the client's and firm's retention schedules will be handled.

BILLING RECORDS AND CONTRACT LAW

What about the billing records?

Again, the malpractice carrier may have a requirement. But absent that, keep them for at least the length of time set out in the state's statute of limitations for contract violations.

Also, many state associations have rules or opinions on bill retention.

THE OFFSITE RECORD KIDNAPPER

Offsite storage is a hazard area many firms aren't aware of, Schoch says.

The danger is "enticing deals" that can turn into expensive traps for the unwary.

One that hit many firms in the recent past was an offer to store files free for a certain number of years and then charge a fixed annual rate after that. A great storage deal, but what the firms didn't take into account was that once they turned the records over, they had to pay an administrative fee to get anything out plus a per-box removal fee that ran anywhere from $3 to $18.

For a large matter or for firms with many cases, an arrangement of that sort can run to the thousands of dollars in retrieval fees, she says. In fact, "a lot of the firms cannot afford the fees to get their boxes out."

Worse, if a firm is negotiating a merger, the cost of retrieving the files could be costly to the extent of being a deal breaker.

Take that into consideration when storing data on The Cloud – how will the retrieval fee affect the total cost and the reasonableness of moving to The Cloud?

With file storage, "there needs to be long-term planning versus short-term thinking," she says. Don't leave the retrieval costs open lest the firm be held hostage to an exorbitant fee.

GETTING FILES TO THE CLIENT

How far does the firm have to go in shipping files to clients?

A rule of thumb is that the client has a right to the

file. But – and again, a general rule – the requirement is that the firm make the file "available for pick-up."

A question here, Schoch says, is what to do when a former client that has relocated to, say, Boston, wants its former New York firm to send all the files.

For a very a large client, the firm might have "a whole barge of documents" stored in a warehouse, and the cost of retrieving, copying, and shipping the file can be prohibitive.

Thus, the firm has a right to charge for the retrieval and shipping as well as the cost of organizing the file.

To avoid that issue entirely, she says, add a statement to the engagement letter that the firm will deliver all copies of files electronically. That makes it relatively easy to meet any request.

That won't be possible with all clients, of course. An individual client in a custody matter "may not even have a computer." But do it wherever possible, and always with a large client.

DOES THE CLIENT GET THE NOTES?

Is the client entitled to the attorney's notes?

The majority view is that the attorney must give the client everything that's part of the file, she says. "But there is also a minority view," which is that the attorney should be able to take out the personal notes – and not without reason. What firm wants to produce a note that says "I think this client is flaky"?

Some states do say the client owns the file, and it's possible a client might insist that the firm produce everything. But usually that's not an issue.

Again, common sense prevails, she says. Just be reasonable. And what's reasonable is to tell the client ahead of time what elements of the file will be available, perhaps "you are entitled to everything you want other than our personal notes, which we do not consider part of the file."

WHICH STATE RULES?

Another issue occurs when firm and client are in different states. Which state's ethics rules on file maintenance apply?

"It's where the files are" that counts, Schoch says.

If both firm and client were originally in Virginia and the client moves to New York, it's Virginia law that applies.

However, if the firm has a physical office in New York, there's good argument that New York law should apply.

THE TRIP FROM ONE FIRM TO ANOTHER

Still another issue is who gets the files when an attorney leaves a firm.

When an attorney leaves, it's up to the client to say if the business leaves as well, she says. And current files stay with the client.

Thus, if the client stays with the attorney, the attorney takes the file along. Though for its own protection, the first firm should keep copies of it.

Past files, however, stay with the former firm. Again, that's common sense. "Whoever made the money from the representation is responsible for the files."

THREE LITTLE DESTRUCTION ITEMS

Schoch also points to three basic but oft overlooked safety practices on file destruction.

First, keep an account of everything that is destroyed.

Second, "take one last look before the final shred" to make sure there are no documents such as wills and trust information and property deeds that should not be destroyed with the rest of the file.

And third, "make sure the files are shredded and not just dumped."

An administrator's career success rests heavily on presentation skills

How well the administrator presents information to the partners is a strong career determiner.

What the partners want in a manager is "someone who is of value to them," says **KEVIN E. O'CONNOR, CSP**, a Long Grove, IL, presentation consultant and professional speaker.

Value to them is a matter of "how can you solve our problems? If you can't solve them, you're wasting our time." And that's true "even if they love you."

The scenario: An issue arises. The administrator is making a presentation on how to solve it.

FIRST, FIND THE PAIN

Begin with background work. Find out what concerns the partners have about the issue.

Ask each one, for example, "I am developing a plan for changing our staff assignments to accommodate our associates. If there's one thing that concerns you most about this, what is it?"

It's a waste of time to propose even a good solution without addressing those concerns. Mention them at the start of the presentation. A workable opener is "I need your help here. What I've heard from you about changing assignments is that you are concerned about

X and Y. Can you tell me more about that?"

After each partner speaks, paraphrase what was said. Doing so shows the administrator understands the concern. And only if they know that will they be open to what the administrator has to say.

THE TRICKS OF THE TRADE

From there, O'Connor cites the elements that enhance – or undermine – the presentation.

• ***We*, *ourselves*, and *us*.** Don't speak in terms of *I* and *you*. That separates administrator from firm. Use instead the first person plural – *we* and *us*. Now the presentation says "we are all trying to achieve the same goal."

• ***Stick to the time allotted.*** Set a length of time for the presentation and don't veer from it. Whether 15 minutes or two hours, when the closing time nears, say "I promised you I'd finish in X minutes."

If the response is "no, it's okay," then continue on. But if there's no such invitation, stop. To say more is to overstay the welcome.

• ***Waste no words.*** Get to the point and get there fast, O'Connor says.

Also hit the nail on the head. Talk about what absolutely has to be talked about and nothing else.

Attorneys treasure their time because it's billable. Too much information is a money loss for them.

• ***Don't be the predator on the podium.*** Be a participant, not the task master at the front of the room staring everybody down. That sets a "predator-to-predator" tone.

To get the audience to participate, use a white board. Get them to write their comments on it or add items to it and "Bingo! They're in."

Now instead of judging the presentation, the partners are working with the administrator. "It's the same reason a car dealer takes customers for a test drive," he says. It moves them "from judgment to collaboration."

Writing out their opinions also eliminates a lot of criticism and argument. "It's hard for them to argue with the data if they are participating."

• ***Parrot the vocabulary.*** "Honor the partners" by using the same terms and phrases they use.

If they refer to a document as an agreement, call it an agreement, not a contract. Or if they say "continuing legal education," don't call it attorney training.

To get a message across, "everything has to be devoted to the receiver." Speaking the receiver's language shows the administrator is on the same page and indeed the same level as the partners.

• ***Don't get tethered to the agenda.*** Don't be a stickler for covering each item fully.

It might call for X, Y, and Z. But if the partners start asking good questions right in the middle of X, stay there. Don't thwart the enthusiasm with "okay, moving on now . . . "

If something is working, "keep doing it," O'Connor says. If the questions are generating good discussion, encourage more of them.

The rest of the presentation might have to be jammed into the last five minutes, but if there's been a good discussion, the message has been delivered.

He adds, however, that if the discussion veers off, the administrator does need to take control of it, and to do that, use the white board.

Just interrupt with "let me summarize what I'm hearing you say." Write down only what's been said about the topic and say "tell me if this makes sense."

• ***Roll the dice more than once.*** When there's an issue to be solved, offer at least three solutions.

Give the advantages and disadvantages of each. Also tell what third parties have had to say about them so it's not just the administrator's opinion the partners are hearing.

By contrast, to say flatly "we should do this" or "we can do A or B" is an invitation to disaster. If the partners don't like those options, the answer is no, the discussion is over, and nothing gets changed. "You rolled the dice and you're out."

Having three options, however, leads to good discussion on what they can and cannot live with.

• ***Don't talk like a dictator.*** The way the options are laid out is also important, O'Connor says. Don't be dogmatic with "these are the only three options."

Make it an open recommendation such as "I was thinking about this in three different ways. Would you mind if I laid them out here, and you can tell me what you think about them?"

Then present each as "well, we could do X" and "another possibility is Y" and so on

• ***Don't lose the decision-making moment.*** At the end of the meeting, ask for a decision: "What do you think our next step should be?"

And if there's no immediate answer, push the discussion along. Mention the reactions to the suggestions, such as "it sounds like you are not happy with option 3" or "you seem to prefer option 1."

And if there's still no decision, ask "would you like to think about this for a week and discuss it again?"

Otherwise, the matter will get placed on the back burner and eventually be dropped and forgotten.

Follow up with an e-mail summarizing what's been said. Also, if there's a possible fourth option, mention it in the e-mail: "Thank you for considering issue X. I have one extra idea I'd like to discuss, and it is . . . "

If the first three options get turned down, that fourth option will keep the discussion open. Nobody can say "we had a meeting. It's over with. Issue closed."

This Month's Idea

Ongoing vendor contact brings ongoing savings

Regular meetings with the vendors have led to significant savings for a North Carolina firm.

TRACY COOK, administrator with Gailor, Wallis Hunt, an eight-attorney firm in Raleigh, started the meetings when she came to the firm three years ago.

One of her first actions as administrator was to go through the vendor files to see which vendors had contracts or did regular business with the firm. There were many, from the copy machine vendor to the insurance provider, the accountant, on down to the courier, and she set up meetings with all of them.

Her opening with each was to explain that the attorneys had given her the job of reducing office expenses and "I need your help. What can we do differently?"

OFFICE SUPPLIES, WATER, AND COFFEE

One of the largest savings was with office supplies.

The firm was at that time using three vendors – one for water, one for coffee and soda, and another for office supplies.

Cook found that the office supply company could supply all three services. So she consolidated and saw a savings in time as well as money.

As for time, she now handles just one invoice instead of three. And in a small firm where the administrator is responsible for all the operations, "any way I can save a little bit of time is helpful."

As for money, the supply company offered lower prices on frequently purchased items such as binders, post-it notes, and note pads in exchange for the firm's agreeing to limit those purchases to individual brands.

The vendor also agreed to identify new products the firm starts to order often and add them to the savings list.

Prior to that, she says, the receptionist had simply sent out an e-mail asking if anybody needed supplies, and things were ordered at random. Limiting the brands has made the ordering far easier and far less expensive.

A FULL-TIME, HALF-PRICE COURIER

Another good savings was found in the courier service. There Cook was able to turn the part-time courier into a full-time employee – at what amounts to a part-time salary.

The courier, who is an employee of the courier company, originally came in only once in the morning and again in the afternoon. And at the same time, the paralegals were doing a lot of unbillable busy work such as covering the phones when the receptionist was out.

Cook met with the company and found that the owner wanted to expand into facility management but didn't know where to start. So they set up an agreement whereby the courier became a full-time contract employee for the firm with the new title of operations supervisor.

She and the company also came up with a job description, a work schedule, and a price.

Now the courier does the regular courier jobs that can be billed to the clients plus a lot of the unbilled work the paralegals were doing. And because he is a contract employee, the firm is not responsible for benefits, overtime, or time off.

The result is that about half the monthly fee the firm pays for the courier gets billed back to the clients – and that puts him at a part-time pay level.

Along with that, the company itemizes its bills to show which clients get what services, so the firm captures all the charges. In the past, she says, the firm was billing for the services but wasn't capturing all the charges.

More still, the paralegals are doing paralegal work and billing more.

And the clients are seeing a savings as well, because the company gave the firm a discounted rate in exchange for using the courier full-time.

LESS MONEY AND BETTER SERVICE

The meetings have led to a number of other savings as well, Cook says.

For example, the meeting with the phone company resulted in the elimination of six wireless air cards "that no one was using."

There were savings too on insurance premiums. Previously, she says, the firm simply renewed the same policies year after year "without shopping around." Now the terms are better, because the provider knows the firm constantly evaluates prices.

And savings aside, Cook points out that the vendors had never met the previous administrator "and had never even been inside the firm." Now, however, she meets with each one every quarter, and that has given her "a more personal and professional relationship" with them.

As a result, they are now available for immediate response when the office needs a product or service. "They put us high up on the VIP status because they know I'm paying attention."

Five skills tell whether a new managing partner grows or kills the firm

It's easy to name a managing partner. It's difficult to name a right managing partner.

A firm can succeed or fall apart depending on who's at its head, says **STEPHEN MABEY,** a chartered accountant and managing director of Applied Strategies, a law firm management consulting company in Halifax, Nova Scotia.

The job can't automatically go to the highest producer or the most popular person. It has to go to a leader who motivates the other partners "to do more than they thought they could do."

There are five base-line criteria an MP has to have.

SKILL #1: A FIRM-FIRST MENTALITY

A firm-first mentality is the top requirement.

The managing partner's first concern has to be firm, not self. The individual "has to be above reproach in that," because decisions have to be made solely for the benefit of the firm and not for personal gain.

Without that, every e-mail will be subject to "what's in it for him?" And that opens the door to financial disaster and dissolution.

A very good sign of an MP candidate's focus is also a very simple one: a me-first person talks about successes in terms of *I*; an us-first person talks in terms of *we*. It's "we brought in this client" as opposed to "I brought the client in."

Another good and simple indicator is the questions the candidate asks about the job. Somebody who starts with "how am I going to be compensated for this?" is looking out for personal interests. But somebody who begins with "what do we want to do here?" or "what are our main issues?" is a firm-first person.

Also ask why the candidate wants to take on the position. Be wary of someone whose practice is waning. The goal may not be to serve the firm but to save the job, or even create an exit strategy.

SKILL #2: MOTIVATOR, NOT DICTATOR

Essential too is the ability to motivate. An effective MP respects other people's opinions and situations and "knows what buttons to hit" to get them moving.

A you-will-do-this-because-you-have-to person is no leader.

Again, the signs are obvious.

During an interview, the dictator does more talking than listening and dominates the conversation.

The leader asks questions and wants to hear the answers, positive or negative. The statements might be along the lines of "here's where I agree and here's where we might have disagreement." But they have to indicate that the person has listened, not just talked over everybody.

SKILL #3: A WIDE OPEN MIND

Yet another necessity is that the manager partner be "a receptacle for new ideas."

"The best managing partners are able to balance their own opinions with the ideas of others," Mabey says. They put their egos aside and "draw on a deeper brain trust than themselves."

Further, they are receptive to good ideas regardless of the source. They appreciate that the nonattorney staff have valuable recommendations. They "forget the source and look at the quality of the idea."

To evaluate receptivity, just ask a question that dismantles some recommendation the candidate has made. For example, "You say you want the firm to increase business in area X. But that area of law appears to be dying. Why do you want to make that move?"

The open-minded person will ask for more information with a response such as "You raise a valid point. What is your view of the long-term viability of that area of law?"

The closed-minded candidate argues and says "No way. That area is where we need to go."

In an interview situation, he says, "people react on instinct" and their true personalities come out.

SKILL #4: BELIEVABILITY

Credibility is a further requirement.

The candidate "needs to have a good track record" of following through with promises and recommendations. There also needs to be a history of success in managing conflicts and hitting profitability targets and dealing with crises.

A sure sign of credibility is the willingness to own up to mistakes, Mabey says. Ask about a past mistake, for example, "Let's talk about how you handled X. Here is what I understand happened. What's your take on the situation?"

The sign of credibility is a response of "I made a mistake." The sign that the firm needs to find another candidate is a response that "revises history" or places the blame on somebody else.

Anybody who can't say "I was wrong" has no credibility. Eventually, nobody will believe that person.

SKILL #5: KNOWING HOW TO TALK

The last factor is communication ability.

Getting the other partners to collaborate on a project or idea requires explaining it so they understand

what's going on and showing the win/win side and demonstrating a passion for it. A good communicator also can say "no, this isn't going to work" in such a way that the listener responds with "thanks for telling me no."

There has to be a sense of team within any firm, he says. "Lawyers need to hunt in packs even in an eat-what-you-kill environment."

The skill is easy to detect. Just ask an open-ended question, even as simple as "what do you think about the future of law here in Oregon?" and see if the answer is clear, well articulated, and passionate.

A CONSENSUS, NOT AN ELECTION

As to how to select the new MP, Mabey's advice is don't vote on it.

Make the choice instead an informal consensus of who's the best fit for the job. The search committee presents it as "we've canvassed everybody, and we think So-and-So is the best candidate for the position." Then everybody says yes or no and moves on. With that approach, the decision is a thoughtful one.

By contrast, an election "becomes a popularity contest." It forces people to choose sides, and the invariable outcome is that one side supports the new MP while the other supports the rejected candidate.

Reader Question

How in the world can anybody stop gossip?

Question: How can a manager effectively put the squelch on office gossip?

– Submitted by **TIMOTHY BURNS**, chief administrative officer, Glenwood Medical Associates, Glenwood Springs, CO.

Answer: Gossip is an issue for almost all managers, and for some it's a plague.

It's childish, it's negative, it's damaging to productivity, and it won't stop until the manager does something about it.

Over the years, *LOA* has addressed the problem many times, and what all management experts say is that the starting point for eliminating gossip is a professional conduct policy in the handbook.

The policy should say that professionalism is essential for a law firm because clients need to respect and trust the attorneys and staff. Then list whatever standards the office expects from staff such as honesty, empathy, respect for others, courtesy, and so on.

Along with those, list the behaviors that are not acceptable such as abusive language, rudeness, and "gossiping and other personal discussions that are inappropriate for the work setting."

With a written policy in place, the administrator can treat gossip as a disciplinary issue.

HANDLING THE GOSSIP COMPLAINT

As to how to handle gossip, the consensus is that when someone complains about it, ask what is being said. Then ask the complainer to write down who said what to whom and when. Explain that the office has to have the information clear and in writing before it can address the issue.

If the staffer doesn't want to put the accusation in writing, do nothing. The complaint is probably not valid.

If there is a written complaint, however, thank the staffer and explain that the issue will be taken care of. And say no more.

THE DREADED CONFRONTATION

Now it's time to beard the lion.

Meet with the gossiper and say "I have heard something that concerns me. I have heard that you have been saying such-and-such about Staffer A. Is that true?"

If the accused doesn't deny the charge, turn it into a business issue: "Does what Staffer A is doing affect your job?"

If the answer is yes, point out that work concerns should be brought to the administrator directly and not talked about with the other staff. Then discuss whatever the work problem is.

However, if the answer is no, ask "did Staffer A give you permission to discuss this?" And if not, "why do you need to be involved with this?" Ask too "when you told So-and-So about Staffer A, how was that helpful to So-and-So?"

Refer to the policy and why everybody has to follow it: "We have a policy that everybody must respect everyone else in this office. If you spread stories about somebody else's business, that person will not be willing to help you out when you need help. The same is true with other people. They will avoid you out of fear that you'll talk about them. And your performance will suffer as a result."

Finally, address the personal side of the issue: "How do you think Staffer A feels about what you

have said? How do you think Staffer A feels about you?"

HANDING DOWN THE ULTIMATUM

Then lay down the law.

"You know that gossiping is against our policy. From here on, I expect you to focus on your job and not make personal comments about other people. If someone is affecting your performance, you must tell me about it, not anybody else, and I will take care of the problem for you."

A GOSSIP-FREE OFFICE

Management consultants also recommend taking a strong stance against gossip. Tell staff the office will be a gossip-free environment. Most likely, everybody will appreciate that.

Define gossip. It is passing hearsay information to others, usually negative information.

Identify the kind of person who gossips. Gossipers are people who take pleasure in spreading rumors. They want to make themselves feel important. They want to be the big cheeses who know everything.

Explain the resultant damage. It kills trust. It wastes time and causes everybody's work to pile up. And it kills teamwork because the victims don't want to work with the gossiper.

Give staff a script to follow when someone comes in with a story, perhaps "I don't think we ought to talk about that. It's So-and-So's business, not ours" or "Let's not criticize him. He's not hurting us."

Point out too that closing the door to gossip increases anybody's stature. People neither respect nor trust someone who talks about others; they reserve that for someone who is discreet.

And support that with an Irish quote: "Who gossips with you will gossip of you."

A FEW GOOD TACTICS

Beyond that are personal things the administrator can do to discourage gossip.

One is not to take any comment about a staffer at face value. Get the facts. Talk with the accused.

Another is to refuse to listen to personal stories. Simply say "I prefer to leave personal issues alone."

But most effective of all is to assume that anybody who has time to gossip doesn't have enough work to do. When a staffer comes in with a story, say "I don't have time to discuss that. I'm swamped right now. Can you help me out?" And then hand over some extra work. That staffer won't be back.