

GRANGER AND GERTRUDE COMPLETE THE FIRST YEAR OF THEIR PRACTICE

What a fast year it had been. It seemed like just yesterday Granger and Gertrude commenced practicing at their firm. They had worked hard and were both satisfied with the decisions they had made to join a large firm.

They decided to celebrate the first anniversary of their practice as attorneys with several of their contemporaries from other firms in town. As they sat discussing the ups and downs and the highs and lows of the past year, the topic of their conversation shifted to what each felt were important pointers concerning the practical aspects of practicing at their firms.

Granger commented that he had no idea when he commenced working how important it was to follow the file opening process at his firm. He, Gertrude, and the other new associates at the firm had been continuously admonished during their first year of practice to scrupulously follow their firm's procedures for opening new files. Simple things, like always running a conflicts check prior to talking to prospective clients about a proposed new matter. He recounted the horror story about the young associate at another large firm who eagerly discussed the substance of a prospective new matter with a new client without first running a conflicts check. He later found to his dismay that his firm already represented a party adverse to his prospective new client. Not only was the associate unable to take on the new matter, but also his firm was disqualified from continuing its representation of the adverse party because the young associate had learned confidential information about the prospective new client's claims. That information was imputed to all the lawyers at the associate's firm and, thus, they were disqualified from continuing their representation of their client in the matter. Such a simple rule. Always check for conflicts first. But so often ignored.

Gertrude added that when she commenced working she did not appreciate the importance of obtaining a signed engagement letter from a client for new matters. She mentioned a troublesome situation that arose at her firm because one of the firm's lawyers failed to obtain such a letter. The lawyer was trying to help a relative organize a securities firm on a "brother-in-law" basis. That meant helping out on a shoe string budget without an engagement letter. The lawyers work was very limited—just some guidance on how to incorporate—but the firm's name ended up appearing on many documents generated by the new securities firm. And when it collapsed and investors filed suit, they quickly sued the firm as an aider and abettor. The firm's protestations that all it did was help incorporate the securities firm, and that it had no aider and abettor liability, fell on deaf ears. An engagement letter, showing how limited the firm's representation was, would have sheltered the firm from third party lawsuits.

One of Granger and Gertrude's friends who had joined them for a celebratory glass of wine commented on the importance of being careful in publishing emails and tweets. He mentioned the embarrassment that stemmed from a sarcastic and caustic email one of his fellow associates sent to another attorney at his firm. The associate made various harsh and demeaning comments about a firm client. Litigation between that client and the associate's firm would ensue after the client's relationship with the firm deteriorated. The associate's email had to be produced in the litigation and proved to be very problematic in defending the case. How easily situations such as that can be avoided. Sadly, people forget to be circumspect in what they transmit.

Yet another of their friends mentioned the danger of discussing firm business outside one's firm. She mentioned the situation concerning a young associate at another firm who, while at a social function, could not help bragging about an important matter he had been working on at his firm. The matter was discreet and it turned out that one of the lawyers at the social function represented a client that would be prejudiced by the transaction the young associate was involved in. By being "tipped off" the lawyer was able to position his client in a manner that allowed the client to extract concessions that worked very much to the detriment of the young associate's client. In the end all agreed that they had each had a meaningful and rewarding first year of practice. Much learned—but much to be learned. A year well spent.

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