

Legal Summit

HELPING YOU REACH THE PEAK OF YOUR PRACTICE

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ASSIGNMENT: YOUR REPUTATION

by
John Day

In the last edition of *Legal Summit* we identified 12 characteristics of a good professional reputation. Here they are: honesty, legal knowledge, knowledge of facts of the legal matters, preparation, timely diligence, courtesy, reasonableness, judgment, confidence, creativity, articulateness in writing and speech, and persistence.

Reflection has identified a couple other characteristics of a good professional reputation, although admittedly both may be part and parcel of the previous list. It is important that a lawyer be **ethical** – that he or she know and follow the rules of ethics established by the profession. This concept is broader than honesty and arguably encompassed by “legal knowledge,” but different enough that it should be expressly and separately stated.

Finally, it is also important that a lawyer have the **drive** or **stamina** to continue to demonstrate all identified characteristics over his or her entire career. For example, there are lawyers who start strong – who are always prepared, who know the law, etc., but then begin to rest on their laurels. Such lawyers jeopardize the reputation they built because people’s expectations of the lawyer are not fulfilled by their later experience with them. “Sally just wasn’t prepared for that deposition – it is not like her.” “Frank clearly didn’t know the facts of his case – he told the judge things clearly inconsistent with his own complaint.” So, it is not enough to have a temporary or periodic commitment to excellence. An outstanding reputation as a lawyer requires a task-by-task career-long commitment to excellence demonstrated in every professional interaction with others.

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Enough about the components of a good reputation. Let’s turn to some practical tips about how to earn the reputation of which you can be proud.

It begins with a careful and periodic reoccurring **evaluation** of yourself and your career. Are you truly doing what you want to do? Do you want to practice the type of law that you are practicing? If you like what you are doing, do you like practicing at your current level of practice? Do you want to practice law with the people with whom you are currently practicing?

Why is it important to periodically ask yourself these questions? Because it is difficult to muster the dedication necessary to acquire and maintain an appropriate level of **legal knowledge** if you don’t like what you are doing. A lack of sufficient legal knowledge increases the risk of acting **unreasonably** or without **courtesy** to others because of ignorance or insecurity. It is hard to exercise appropriate **judgment** when you do not like what you do. Bottom line: it is hard to have a good professional reputation if you don’t like your work. It is not impossible: I know lots of lawyers who have a pretty good reputation who would readily do something else if they could make the same amount of money

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or more. These folks are not great lawyers – not leaders in their field – but they check all of the other boxes. But, for most of us, we are more likely to obtain and maintain a good reputation if we are doing something we actually like to do.

The same is true if you are frustrated with the level at which you are practicing. You may be doing what you want to do, but you desire to move up (or down) in the level of complexity of your work. This may be to enhance professional satisfaction, make more money, reduce stress, etc. Or you may like what you are doing, but do not like or trust the people with whom you work. Each of these situations complicates your effort to establish and maintain a good professional reputation.

Your personal life impacts your professional work experience as well. Troubled marriages, children facing life struggles, health issues, financial difficulties – all of these things impact your ability to perform your best work and be at your best every single day.

So, a periodic evaluation of your life situation – both personal and professional – will allow you to identify issues and create an action plan to put you on the path where you attain personal and professional peace of mind. Depending on the issues you identify, you may benefit from the services of a counselor or professional coach to guide you along the path. Do not be afraid to ask for help – there are folks out there who do this type of work for a living. A well-trained, experienced counselor or coach can help you identify issues, create an action plan, and help you maintain accountability for implementing that plan.

I have spoken on this issue many times in multiple states. Several people have told me directly, and I have also heard through the grapevine, that they took this advice to heart and made the decision to quit practicing law. I believe that such a decision, made after careful reflection, does not reflect personal failure but instead reflects real courage. The practice of law is not for everyone. If you do not enjoy it, and cannot develop a means to make it enjoyable, then do yourself and your family a favor and come up with a plan to transition to something else. By definition, you have the brains and the drive to bring value to any workplace where you truly want to be. Or to create the workplace of your dreams. Do not labor in the law vineyard if you are miserable.

Likewise, do not be afraid to transition the nature of your practice or your practice environment to something else if doing so likely will materially enhance your professional satisfaction. This will involve some level of risk, some performance of due diligence, and development of a plan, but you likely will be able to make a transition.

So, my advice is take the next opportunity and set aside some quiet time to ask yourself some tough questions about your life, personally and professionally. Capture your thoughts in writing. Allow yourself to dream about what you want your career and life to look like. Figure out how you can move your life and your career toward that dream. And then, implement that plan. In doing so, you will start to build the foundation of a good reputation, either as a lawyer or your new chosen line of work.

“He who is intelligent and prudent does not act at his peril, in theory of law. On the contrary, it is only when he fails to exercise the foresight of which he is capable, or exercises it with evil intent, that he is answerable for the consequences.”

- Oliver Wendell Holmes, Jr.,
The Common Law 108-09 (1881).

John Day is the founder and owner of the Law Offices of John Day, P.C. He is a Fellow of the American College of Trial Lawyers. He has authored four books, over fifty articles and given more than 300 speeches on legal topics. He represents plaintiffs in injury and wrongful death cases, and also accepts commercial litigation matters.

WHEN DOGS ATTACK (NOT JUST BITE)

by
Caroline Hudson

A LOOK AT THE LAW IN TENNESSEE

Dog attacks generally occur in two situations: (1) when the dog is running at large or (2) when the dog attacks a person on its owner's property. Dog-inflicted injuries usually occur:

- Through physical contact with a person: when a dog bites, jumps on, knocks down, or runs through a person's legs;
- Without physical contact with a person: when a dog lunges at, jumps at, chases, barks, growls, snarls, or bares its teeth at a person;
- On a leash: when the dog's owner does not have the dog under control and the dog's leash tangles or trips a passerby.

One of above scenarios happened in Franklin County, Tennessee, to Donna Acklen when she was walking near her home and dogs attacked and killed her. As a result, the Tennessee legislature enacted the Donna Acklen Act (the Act) in 2007, which created a statutory cause of action against a dog owner when their dog attacks, injures, and/or causes death to a person.¹ The Act established that dog owners have a duty to keep their dog under reasonable control and to keep the dog from running at large.² Running at large is defined as allowing a dog to be on either public or private property without consent. This includes streets, highways and roads.³ If an owner breaches these duties, the owner is strictly liable for the injured person's damages.⁴

There are a number of exceptions that the legislature carved out to this Act, including the following: (1) when the injury occurs when a military or police dog is performing its official duties; (2) when the injury occurs when the person is trespassing upon the dog owner's private, nonresidential property; (3) when the injury occurs when the dog was protecting its owner or another innocent party from attack; (4) when the injury occurs when the dog is secured in a confined kennel, crate, or other enclosure; (5) when the injury occurs because the injured person entices, disturbs, alarms, harasses, or provokes the dog.⁵

There is also the residential exception.⁶ This exception applies if a person is injured by a dog on the dog owner's property.⁷ The injured person must show that the dog's owner knew or should have known of the dog's dangerous propensities.⁸ Dangerous propensities can mean a dog's playfulness or mischievousness on top of a vicious temperament.⁹ An injured person can establish a dog's dangerous propensities by showing that the owner previously knew of the dog's prior harmful conduct to a person, among other ways.

Dog owners should be aware of the above and know whether their dogs have a history of attacking or biting other animals or persons. If a dog does have a history of attacking or biting, a dog owner might consider the following when visitors come onto their property: restrain and prevent the dog from coming into contact with visitors and consider warning visitors of the dog's presence when the dog is in a fenced enclosure on the dog owner's property.

¹S.B. 143, 105th Leg., 2007 Reg. Sess. (Tn. 2007). Section (c)(1) of the Act abrogates any common law claim, which falls within its parameters. See *Searcy v. Axley*, 2017 WL 4743111, at *6 (Tenn. Ct. App. 2017).

²Tenn. Code Ann. § 44-8-413(a)(1).

³*Id.* § 44-8-413(e)(2).

⁴*Id.* § 44-8-413 (a)(1).

⁵*Id.* § 44-8-413(b).

⁶*Id.* § 44-8-413(c).

⁷*Id.* (c)(1).

⁸*Id.* In *Searcy v. Axley*, the Court of Appeals discussed how the court had previously described this burden by requiring that "the dog owner knew of the dangerous disposition of the dog, but that the 'injuries result[ed] from [such] known vicious tendencies or propensities.'" *Searcy*, at *6 (citing *Mayer v. LaMonte*, 122 S.W.3d 142, 145 (Tenn. Ct. App. 2003) (quoting *McAbee v. Daniel*, 445 S.W.2d 917, 925 (Tenn. Ct. App. 1968)). The Court included that the "[t]he question in each case is whether the notice was sufficient to put the owner on his guard and to require him, as an ordinarily prudent man, to anticipate the injury which has actually occurred." *Searcy*, at *6 (citing to 13 AM. JUR. 2d Knowledge of Animal's Vicious Propensities § 3).

⁹*Moore v. Gaut*, No. E2015-00340-COA-R3-CV, 2015 WL 9584389 (Tenn. Ct. App. Dec. 30, 2015).

OF NOTE:

SOME RECENT STATUTORY CHANGES

by
Liz Sitgreaves

The conclusion of a legislative session to me is a bit like the conclusion of the holiday season...part disappoint, part relief, and part joy. In case you were not watching the recent statutory enactments resulting from the Tennessee General Assembly, below we have listed a smattering of changes, some that will be useful for your practice areas and some that may be useful at a neighborhood dinner party.

- Tenn. Code Ann. § 56-7-102 was amended to add additional language on the interpretation of a policy of insurance. Subsections (b)-(e) were added to the statute, which now provide that: “(b) A policy of insurance is a contract and the rules of construction used to interpret a policy of insurance are the same as any other contract; (c) A policy of insurance must be interpreted fairly and reasonably, giving the language of the policy of insurance its ordinary meaning; (d) A policy of insurance must be construed reasonably and logically as a whole; and (e) An insurance company’s duty to defend depends solely on the allegations contained in the underlying complaint describing acts or events covered by the policy of insurance. This subsection (e) does not impose a duty to defend on an insurance company that has no duty to defend pursuant to this title or that has an express exclusion of the duty to defend in the policy of insurance.”
- 2018 Public Chapter 965 as enacted with an effective date of May 15, 2018 states that an employer shall require an employee or a prospective employee to execute or renew a non-disclosure agreement with respect to sexual harassment in the workplace as a condition of employment. (Note that the official certification of the final, official Tennessee Code has not been made available, though Westlaw currently cites to an unofficial classification of Tenn. Code Ann. 50-1-108).
- A number of statutory changes occurred impacting family law. Tenn. Code Ann. § 36-6-108, which governs parental relocation, was dramatically changed. One significant change is the elimination of the analysis of substantially equal intervals of time v. substantially unequal intervals of time. The analysis now focuses on the factors for determining whether a parental relocation is in the best interests of the child if a petition to relocation is filed. Family law practitioners should also look to changes to the language in Tenn. Code Ann. § 36-5-103(c), which provides clearer language regarding the recovery of attorney’s fees for prevailing parties in civil or contempt actions or other actions to enforce, alter, change, or modify, any decree of alimony, child support, provision of a permanent parenting plan, or any suit or action concerning the adjudication of the custody or change of custody of any children.
- Fight with your teenager no more. Tenn. Code Ann. § 68-117-104 now prohibits persons under the age of sixteen (16) years of age from using a tanning device at a tanning facility. (Previously persons between 14-18 years could tan with certain conditions met). Persons between the age of 16-18 must still meet certain requirements to use the tanning facility.
- And lastly, many may have already noticed but liquor stores are now permitted to be open during the same hours that beer can be sold and restrictions for sale of alcoholic beverages for certain holidays have been removed. If you’re getting questions from relatives on the full impact of this legislation (including when the effective date for grocery stores to sell wine), head to Tenn. Code Ann. § 57-3-406.



The Law Offices of John Day, P.C., with offices in Brentwood and Murfreesboro, is an award-winning law firm representing clients in personal injury and wrongful death claims. Our attorneys help clients receive compensation for injuries sustained in auto and trucking accidents, pedestrian and biking accidents, and injuries related to medical negligence, dangerous and defective products and many other types of accident cases. The firm also represents clients in legal and professional malpractice claims, as well as commercial litigation lawsuits. Our highest honor is to be called to assist other lawyers in pursuing cases outside their practice area, or which require the investment of time or money beyond their comfort zone. Referral fees are paid in accordance with the Rules of Professional Conduct. To discuss a case referral, call John Day at (615) 742-4880 or email referral@johndaylegal.com. To request a free copy of our book about the process and ethics of case referrals, email referral@johndaylegal.com, ask for a copy of “Win Win,” and give us your contact information. It will be sent by return mail.