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How to Keep Monsters at Bay

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One of the best parts of my day is putting my four-year-old son, Jack, to bed. Invariably, we read his favorite book of the moment, which as we speak is *The Berenstain Bears Go on Vacation*; next, I sing a few songs. Jack then gets under the covers with his "guys" (namely, about seven stuffed animals) and tries to figure out a way to keep me at the door. Some nights, he whispers to me in a sweet voice: "Daddy, there are monsters under my bed." I proceed to take the monsters out of his room, kick them down the stairs, open the door, and throw them outside. I am not sure what it is about kids and monsters, but I imagine that the "monsters" are just a way of describing and dealing with their various fears about growing up, being in the dark, or otherwise trying to figure out the world they live in.

Throughout my career, I, too, have had to deal with my share of "monsters"—and no, I am not talking about an angry senior partner or short calendar judge. Rather, the monsters for a young lawyer are often the fears that go along with learning how to practice law and succeed in today's environment. I cannot tell you how many times I walked into a room and was the youngest person by a few decades. For a litigator, there are countless opportunities to feel inexperienced, including at a pretrial conference, deposition, or at trial.

I have by no means "cracked the code" for controlling this nervousness/fear, although I can say that after you practice for several years everything seems to get a bit easier. The key is to try to control that fear and use it to your advantage. Although I am sure there are a lot of ways to do it, four things in particular have helped me as I have progressed through my career:

Tip #1—Be prepared.

I was never a Boy Scout, but I fully agree with their motto of "be prepared." As a young lawyer, you can often compensate for your lack of experience with a complete mastery of the details, which, in the case of a litigator, are the facts and the law. Although everyone tells young lawyers to be prepared, it is one of those adages that absolutely should be followed. Recently, I first chaired a federal jury trial, where at the charge conference, I rolled in four boxes of binders that contained various cases supporting my requested charge. Opposing counsel, who was an experienced trial lawyer, had a few folders. Yet, when it came time for the judge to look at our respective instructions, I was ready to show her the cases that supported my arguments. Opposing counsel was not in that position, and accordingly, the conference went smoothly for me. Of course, that does not mean you always need a hand truck when you go to court, but I have found that young lawyers are often given a lot less latitude in this respect.

Tip #2—Don't be afraid to admit what you do not know.

This is not an easy skill to master. Sometimes we all fall into the trap of compensating for our lack of experience by feigning

mastery of every possible issue that might arise in a case. Yet, I have seen great lawyers with impeccable reputations achieve their purposes by responding: "I don't know, Your Honor, I haven't considered that." While this may be a scary proposition for some young lawyers, it often enhances your credibility with the court because it does not show a "win at all costs" mentality that may be divorced from the facts or the law. Rather, the court can rely on you as a young lawyer to assess what is clear and what is ambiguous. The secret, of course, is to transform that "I don't know" into a cogent, persuasive answer at some future point—whether in thirty seconds, thirty minutes, or thirty days.

Tip #3—Don't be afraid of confrontation.

During my first year of practice, I was sent by a more experienced associate to Juvenile Court to represent a domestic violence shelter that had been subpoenaed by the Attorney General's Office in a DCF matter. The associate who had given me the assignment expressly told me to put on the record before the court that the witness was testifying because we had received a signed consent from the patient. As expected, when the time came for me to have my moment, everything went at lightning speed and I did not speak up. When I came back and told the associate that I had not spoken up (partly because I felt intimidated by opposing counsel), I got the best piece of advice I have ever gotten during my career. Basically, the associate told me that I should not be afraid of upsetting opposing counsel; rather, I should be afraid of coming back to the firm and telling a partner or a client that I did not get the job done. Every time I find myself in a hostile situation with opposing counsel or a witness, I think about this advice and focus on doing my job.

Tip #4—Embrace your inexperience.

As a young lawyer, it is often easy to view your inexperience as a weakness. However, that is not always the case. In fact, many times during my early years I used it to my advantage. For instance, I once deposed an owner of a logging company in the Pacific Northwest who could not believe that someone 40 years younger was taking his deposition. Throughout the day, he tried to intimidate me by calling me a "tree-hugger" or by saying that I was not smart enough to understand certain things. Yet, because he underestimated my abilities and experience, he felt a certain ease with the proceedings and, therefore, gave me several favorable answers. In other words, there have been several occasions where I have used my lack of gray hair to my advantage by lulling a witness into dropping his guard.

I do not, by any means, have all of the answers. It is not easy to be a young lawyer, and I have not mastered all of the ways to fend off the monsters. Frankly, it is not always possible to open the door and throw the monsters out into the cold. Yet, there are ways to make sure that you, and not the monsters, control the legal world you live in. **CL**

Highlights
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surance are not limited to the premiums paid for the period during which the plaintiff received medical services. This opinion allows a credit equal to the premium payments for the two-year period preceding and including the months during which treatment was provided.

Metropolitan Trucking v. Rand-Whitney Containerboard LP, 49 CLR 584 (Cosgrove, Emmet L., J.), holds that although a claim under CUTPA cannot be based on a simple breach of contract, multiple and continuing breaches can constitute a CUTPA violation. The opinion holds that allegations that the defendant refused to pay a shipper after issuing multiple bills of lading for various shipments of goods are sufficient to state a CUTPA claim. The opinion also holds that allegations that the defendant contracted for shipping services with no intent to pay for the services are sufficient to state a claim under the Civil Theft Statute, Conn. Gen. Stat. § 52-564.

The commencement of a foreclosure action while refusing to recognize an agreement to modify the original debt and mortgage can constitute a CUTPA violation. *BAC Home Loans Servicing LP v. Presutti*, 49 CLR 609 (Scholl, Janes S., J.).

Trusts and Estates

Marino v. Burgess, 50 CLR 22 (Robinson, Angela C., J.), holds that a letter from defense counsel simply stating that "it has recently come to our attention that our client has passed away" provides sufficient "written notification" to commence a plaintiff's one-year period under the Survival of Actions Statute to file a motion for substitution of the executor of the decedent's estate (including obtaining the appointment of an executor if necessary), Conn. Gen. Stat. § 52-599 ("If a party defendant dies, the plaintiff within one year after receiving *written notification of the defendant's death*" must apply for an order to substitute defendants); it is not necessary for defense counsel to comply with a request for a copy of the decedent's death certificate or to file a formal "suggestion of death" pleading. Furthermore, the facts that the plaintiff"s late compliance was brought about by defense counsel's tardy response to a request for a copy of the death certificate, and the plaintiff's desire to avoid additional expense by waiting for the decedent's family to commence a probate proceeding, do not provide "good cause" excusing the plaintiff from compliance with the one-year limit.

Summary judgment is not authorized in probate appeals. *In re Estate of Banning v. Probate Appeal*, 49 CLR 695 (Rittenband, Richard M., J.T.R.).

A conservator of the person does not have standing to prosecute an action against the ward's former conservator of the estate for mishandling of estate assets; rather, such a claim may be prosecuted only by a successor conservator of the estate, at least where separate conservators of the estate and of the person are currently appointed for the ward. The opinion grants the motion to dismiss the conservator of the person as a plaintiff for lack of standing. *Kawecki v. Saas*, 50 CLR 54 (Roche, Vincent E., J.). **CL**