SOUTH CAROLINA ADOPTS PILOT MENTORING PROGRAM

South Carolina has become the third state to adopt a mandatory mentoring program for new lawyers. Georgia adopted a permanent program that went into effect earlier this year, and Ohio has been operating a pilot program during 2006. The program implemented by the South Carolina Supreme Court by an Order issued on September 14, 2006, is a pilot program designed for about 100 of the South Carolina Bar’s November 2006 admittees.

The South Carolina Chief Justice’s Commission on the Profession proposed the pilot program after a study of the Georgia and Ohio programs and a survey of existing mentoring practices in the state. In the pilot year, the Court’s order requires every newly admitted lawyer, with a last name in a specified alphabetic range who is practicing in South Carolina, to have a mentor with at least five years of practice experience.

The new lawyer may select a mentor. In an effort to enhance, rather than replace, existing mentoring programs within law offices, the program anticipates that a mentor normally will be selected from within the new lawyer’s own office. The lawyer may, however, select a mentor from outside the office or ask the Bar to appoint a mentor. A number of lawyers in the Bar’s Senior Lawyer’s Division have volunteered to serve as mentors.

Each new lawyer must complete a checklist of activities with the mentor during the first year of practice. The South Carolina list was based upon a list originally adopted in Georgia. For the pilot program, the mentor and new lawyer will be required, at the end of the year, to report which activities were completed and to indicate why other activities were not completed. They will be asked also to suggest revisions for a permanent list, including any variations that might be appropriate for particular fields of practice.

Areas required to be addressed in the mentor relationship include issues of law practice management, the importance of a support network, professional ethics, guidance regarding appropriate professional education and public service, civility, and the importance of regular and honest communication. Empirical data has shown that, while a number of new lawyers consider another lawyer to be their mentor, the mentoring experience varies significantly. The South Carolina program is intended to provide all lawyers with a more

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Update: Georgia Transition into Law Practice Program

In the 2005 Winter issue of PROFile, we highlighted the brand new Georgia Transition into Law Practice Program. That program is now well underway, with its first set of new attorneys having just finished up the year long menteeship and its second group well on its way. In its first staggered session, 697 new attorneys were mentored by 790 experienced members of the Georgia Bar as selected by the Georgia Supreme Court. Continually receiving attention from local, state and international sources, the program even serves as the model for Ohio's current pilot mentoring project. Particularly, the Georgia program served as the centerpiece for a recent article in the American Bar Association's Bar Leader magazine.

As the program gears up towards its third enrollment of newly admitted attorneys, opportunities for developing attorneys and experienced ones, continue to arise. For example, the Georgia Supreme Court announced earlier this year that it would be webcasting one day of oral arguments each month as part of the program. The webcasts will be available via the Georgia Supreme Court's website to anyone who wishes to view. In addition, the court will make summaries of the cases to be argued available on its website.

At present, roughly 85% of mentees are mentored by a member of their own law firm. Another 5%, mostly solo practitioners, are mentored by outside mentors. The final 10% are not engaged in legal practice and participate in group mentoring sessions.

The Program reports that it “has been implemented and is running effectively and efficiently.”

(For more information, please see the Transition into Law Practice Program at www.gabar.org)
The more accessible media sources become, the more one can expect that attorneys are going to use them to advertise as well as make commentary on legal events, including cases. Courts have a responsibility to ensure that attorneys do not violate ethical rules or discredit the court or the profession when using such sources. Attorneys must remember that professional responsibility follows them at all times, particularly when in the public eye.

In what probably is a typical occurrence, an attorney in Mississippi was quoted by the local newspaper following a court hearing. The atypical aspect of this was when the quote stated that the presiding judge had “the judicial temperament of a barbarian.” The Mississippi Bar brought disciplinary action against the attorney. The court, in its suspension order, stated, “He directly attacks [the judge’s] qualifications, his impartiality, [the court], and the entire judicial system.”

Further, says that court, “the attack is against … society as a whole.” The attorney knowingly made his statements to a headline-seeking reporter, apparently without concern for the profession or repercussions to himself. Thus, the court noted that, not only did he undermine the administration of justice and the integrity of the judicial system, but also “adversely reflected on his ability to practice law.” Mississippi Bar v. Lumumba, 912 So.2d 871 (Miss. 2005).

Given an opportunity to provide more?? a simple quote or sound bite, some lawyers also compound their ethical problems. Consider the recent case of an attorney from Michigan who, during his weekly radio show, decided to exhibit his distaste for a recent Court of Appeals decision by inviting certain lewd acts to be taken against the judges and declaring war upon the panel that ruled against his client. Attorneys, however, remain bound by their professional rules and obligations no matter the forum in which they choose to speak. The Supreme Court of Michigan, issuing a reprimand against the lawyer, stated that the attorney “attacked the judges in their capacity as judges and in a forum designed to reach both the public and these judges …,” and thus held that the comments were directed against the tribunal in violation of the Rules of Professional Conduct. While certain statements of criticism that are courteous and civil will be permitted,

“such coarseness in the context of an officer of the court participating in a legal proceeding warrants no First Amendment protection when balanced against this state’s compelling interest in maintaining public respect for the integrity of the legal process.”

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The comments were recognized by the court as adverse to the attorney’s ability to practice law, as well, by its comment that these rules vindicate the responsibility that officers of the court, or lawyers, ethically have, which “may require abstention from what in other circumstances might be constitutionally protected speech.” *Grievance Administrator v. Fieger*, 719 N.W.2d 123 (Mich. 2006).

Clearly attorneys must be careful to remain within the professionalism requirements of civility and courtesy even when comments are made outside a courtroom, particularly while the case is ongoing. Constitutional protections probably will not save them from discipline. The ethical requirements are not limited to comments offered in mainstream media. Of particular interest is commentary made in less well-known fora, like internet profiles and blogs or blawgs.

An attorney in North Dakota, already under suspension, was denied reinstatement by the Supreme Court of North Dakota based on comments he made on an internet profile. It stated that he “intended to convey his disparaging and demeaning remarks,” and that

> “Obedience to ethical precepts may require abstention from what in other circumstances might be constitutionally protected speech.”

Because applicant had impugned the character of his former wife and her new spouse on the internet, the Court found him not suitable for reinstatement, stating, “In the context of applications for admission or readmission to the bar, courts routinely hold that an applicant’s ‘abusive, disruptive, hostile, intemperate, intimidating, irresponsible, threatening, or turbulent behavior is a proper basis’ for denying the application.” *In re Hoffman*, 704 N.W.2d, 810.

In recent years, there have been numerous other examples of uncivil deposition behavior or ill-conceived electronic messages recorded and made available on the internet, to the embarrassment of those involved. Undoubtedly at least some of those incidents have come at the cost of a lost client or a lost job, even if no formal discipline followed.

With the present ease of access to the media, attorneys must remember that civility and discretion is necessary, no matter the forum.

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**Upcoming Events**

**December 15-17, 2006:**
National Institute for Teaching and Professionalism (NIFTEP) workshop at the Red Top Mountain Lodge, northwest of Atlanta, Georgia

**February 7-13, 2007:**
American Bar Association Mid-Year Meeting, Miami, Florida
Professionalism Consortium Meeting
Friday, February 9, 2007
3 p.m.- 5 p.m.

**Interested in sharing ideas and information on Professionalism??**

Please subscribe to the Nelson Mullins Riley & Scarborough Center on Professionalism listserv.
Send mail to LISTSERV@LISTSERV.SC.EDU and include as the message the command:

SUBSCRIBE PROF-ISM firstname lastname.
It is also possible to subscribe through the web interface (http://listserv.sc.edu). If you have difficulty subscribing, please contact Sharon Williams at williams@law.sc.edu
American Inns of Courts Announces Winner of 2006 Warren E. Burger Prize

Benjamin P. Falit, a 2006 magna cum laude graduate of Harvard Law School, has been selected as the winner of the 2006 Warren E. Burger Prize. The essay contest, held on the topics of legal excellence, civility, ethics or professionalism, is sponsored by the American Inns of Court in conjunction with the Nelson, Mullins, Riley & Scarborough Center on Professionalism at the University of South Carolina School of Law.

Mr. Falit’s winning essay, entitled “Ancillary Service and Self-Referral Arrangements in the Medical and Legal Professions: Do Current Ethical, Legislative and Regulatory Policies Adequately Serve the Interests of Patients and Clients?”, will be published in Volume 58, Issue 2 of the South Carolina Law Review. The prize was presented at the 2006 American Inns of Court Celebration of Excellence on October 21, 2006 in Washington, D.C. with host United States Supreme Court Associate Justice Ruth Bader Ginsburg.

The annual essay contest is named for the late Chief Justice, who championed the establishment of the American Inns of Court in the 1980s to promote civility, ethics and professionalism among the nation’s lawyers and judges. The 2007 contest is now underway, with a deadline for submissions of June 15, 2007. Details are available at www.innsofourt.org.

National Professionalism Awards

American Inns of Court

Lewis F. Powell Award for Professionalism and Ethics – given to a person, either an attorney, judge, government official, journalist, philanthropist or other community leader, who gives outstanding service in the areas of legal excellence, professionalism, and ethics.

Warren E. Burger Prize – presented to the winner of an essay contest designed to foster significant contributions to the body of scholarship in the areas of excellence, civility, ethics and professionalism.

Professionalism Awards – awarded annually to a lawyer from each federal circuit, these recognize a life and career of the highest character and integrity, maintaining dedication to the legal profession and the rule of law.

American Bar Association

Michael Frank Professional Responsibility Award – acknowledges “individuals whose contributions in the area of lawyers’ professional responsibility set an example of insight into the demands of legal professionalism, dedication to the highest level of ethical conduct, and a vision of constant improvement of lawyer regulation in the public interest.”

E. Smythe Gambrell Professionalism Award – cash awards recognizing effective and continuing efforts by bar associations, law schools, law firms and non-profit organizations to ensure that the legal profession maintains the highest degree of integrity and dedication to its work and the public.

National Award for Innovation and Excellence in Teaching Professionalism – Begun in 2003, this award recognizes law professors and schools who have been innovative and creative in finding ways to effectively teach professionalism to their students.
WORKSHOP TO DISCUSS PROFESSIONALISM TEACHING INITIATIVES

The 2006 Workshop of the National Institute for Teaching Ethics and Professionalism (NIFTEP) will be held in Georgia On December 15-17. Twenty-eight invited academicians and practitioners who teach ethics and professionalism at law schools or in CLEs will participate in the second annual workshop. Discussion will focus on three current professionalism topics.

Lawyer Accreditation Programs

The first discussion topic will be a pilot project being considered by the Tennessee Commission on Continuing Legal Education and Specialization to develop proficiency examinations for practicing lawyers. The intensive CLEs and examinations designed to test a lawyer’s proficiency in client communications, ethical decision making, and law practice management are being considered for Tennessee lawyers who have been in practice for 4 to 6 years.

Law Practice as a Business

A second discussion session will consider whether the ethics and professionalism of lawyers might benefit from the use of models of good business practice. This session will be led by Dr. Timothy Mahoney, a professor of philosophy and business ethics at Providence College.

Teaching Fundamentals of Law Practice

The final subject of discussion will build on discussions from the 2005 Workshop regarding the desirability of a course that would teach ethics and professionalism within the framework of a broader course on the fundamentals of law practice, focusing especially on the establishment and management of a small or solo law firm.

NIFTEP was established in 2005 as a consortium of five nationally-recognized centers on ethics and professionalism: The W. Lee Burge Endowment for Law & Ethics at Georgia State University; The Louis Stein Center for Law & Ethics at Fordham University; The Mercer University School of Law Center for Legal Ethics and Professionalism; The Nelson Mullins Riley & Scarborough Center on Professionalism at the University of South Carolina; and The Stanford Center on Ethics. NIFTEP is also sponsored by the American Bar Association Standing Committee on Professionalism and the Georgia Chief Justice’s Commission on Professionalism.

(To receive notices about future NIFTEP events e-mail Professor Clark Cunningham at cdcunningham@gsu.edu. Put “NIFTEP MAILING LIST” in the subject line and place your contact details in the text of the email message.)