

6. CURRENT TRAINING WITHIN LAW FIRMS AND OTHER LAW OFFICES

An effective mentoring program for continued training of lawyers after their admission to the bar does not require imposing upon all new lawyers another layer of centralized instruction. Where training already occurs within law firms and other types of law offices, the initiative may build upon and improve, rather than replace, those programs. The desirability of this approach is supported by evidence that guidance received either formally and informally from an employer is most likely to influence substantially the actual behavior of a lawyer.

A. The Extent and Impact of Informal Communication Among Lawyers Regarding Professional Behavior

Survey responses indicate that, even without any formal mentoring program, appropriate professional behavior and character is already a subject of at least occasional discussion among lawyers. Asked about the extent of discussion among members of the Bar regarding appropriate professional behavior, nearly 4 out of 5 respondents (380 of 481 responses) reported having had discussions about proper behavior at least occasionally with other lawyers – either in their own firm or from other firms. Only 8 of 481 (1.7%) never had such discussions. Another 93 of 481 (19.3%) rarely had such discussions. The same number frequently had such conversations. The remaining 287 of 481 (59.7%) characterized their conversations on the subject as occasional.

Notably, the frequency of these

conversations did not appear to vary significantly depending upon the size of the lawyer's office. Eighty percent of respondents (176 of 220) in firms of 1 to 4 lawyers reported occasional or frequent conversations with other lawyers regarding appropriate professional behavior. That number rose only to 81.8% of respondents (36 of 44) in offices of 31 to 75 lawyers.

The lawyers surveyed were asked not only about the frequency of these conversations, but also about their impact on actual behavior. The responses show that these communications clearly have some impact on the behavior of new lawyers regardless of whether the lawyers practice in the same law office. The likelihood of a *substantial* impact, however, increases significantly when the guidance is from a lawyer in the same firm or office. When the responses are combined of those reporting that such conversations are likely to have either some impact or a substantial impact, 88.1% expect at least some likely impact from conversations with lawyers not in the same firm. A similar number, 90.6%, predict at least some likely impact from conversations with lawyers in the firm. However, when those predicting a substantial likely impact are separated out, only 34.8% expect a *substantial* likely impact from conversations with lawyers *not* in the same office or firm. That number jumps to 57.9% for conversations with members of the same office or firm.

Although these results indicate that informal conversations can influence conduct effectively, there is no assurance that

meaningful conversations will occur with sufficient regularity to obviate the need for more formal training programs. By entrusting professional conduct training to such casual interactions among lawyers, the profession risks a lack of uniformity in the availability, adequacy, and content of the training that new lawyers receive. The survey findings suggest, nevertheless, that if more intentional training methods, such as formal mentoring programs, are created, the training may be most influential and effective if it incorporates guidance from mentors working within the same firm as the new lawyer.

B. The Current State of Formal Training Programs Other Than Mentoring Programs Within Law Offices

The 1998 report of a study by the ABA Section of Litigation suggested that formal programs within law firms to train new lawyers regarding ethical judgment were on the wane.¹ Thus, it is not surprising that, in

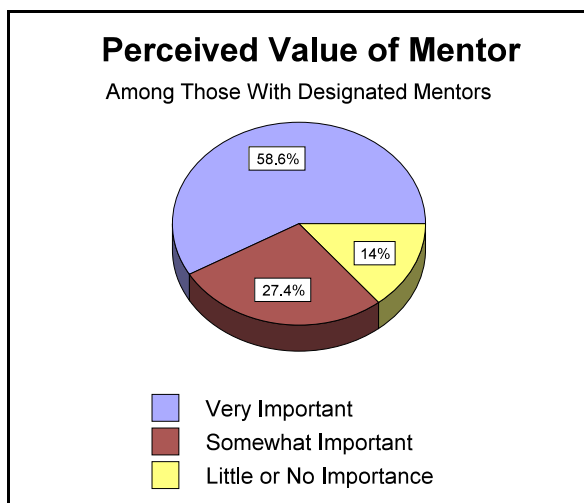
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the new survey, only a relatively low percentage of those responding indicated that their first employer had offered a formal program of professional training. Of 433 respondents who worked initially in an office with more than one lawyer, only 90 indicated

that their first employer offered a formal in-firm training program of any type. Of those, 54 indicated that the program included specific instruction on professional conduct or behavior. In other words, only about 12.5% of the current lawyers surveyed were formally trained by their first employer regarding expectations of professional behavior. The trend of decline in formal training noted in the ABA study, however, may be moderating or even reversing course, at least in South Carolina.² In addition to those who had received some formal training, another 13 lawyers, who had not received such training themselves, reported that professional behavior instruction had been added to their first employer's training program in the time since they started work in that office. Also, while only 54 respondents had received training themselves, at least 105 of the lawyers responding indicated that their current employers now have training programs with specific instruction regarding expectations of professional behavior.³

Moreover, the absence of a formal training program does not necessarily equate to a lack of training altogether. In addition to those who reported formal training programs, another 95 lawyers indicated that, although their firm or office offered nothing that they would characterize as a formal training program, their first employer had designated a more experienced lawyer to serve as the new lawyer's mentor.⁴ The number of designated mentors illustrates that mentoring already is a significant means by which some firms train new lawyers. The mere designation of someone as a mentor, without providing adequate guidance as to his or her role, however, may offer a less than uniform training experience.

It is reasonable to expect that the larger and more institutionalized an office is, the more likely it is that a lack of uniformity would be of concern to the institution. Predictably, therefore, the likelihood of a new lawyer receiving formal in-house training increases as the size of the law office increases. Fewer than 10% of those in offices of fewer than five lawyers experienced a formal training program, compared with more than 60% of those in offices of more than 75 lawyers.



C. The Current Status of Mentoring Programs Within Law Firms and Other Law Offices

Mentoring relationships offer a means of formalizing longer-term contact and guidance between a new lawyer and a more experienced lawyer. There is little disagreement, at least among newer lawyers, regarding the inherent value of mentoring as an effective means of shaping the professional character of a new lawyer. When asked to rate the likely effectiveness of various possible

program initiatives, 329 of the 477 who answered the question, or 69%, said that a program in which a more experienced mentor is paired with a new lawyer to provide advice as to appropriate professional behavior during the first ten years of practice would likely have “a substantial effect” on the shaping of the new lawyer’s character. Only 6.5% predicted that a mentoring program would be unlikely to have any effect.

A sizable minority of law offices, especially larger offices, have created their own formal mentoring programs for new lawyers. The survey asked respondents whose first employment as a lawyer had been in an office with at least two other lawyers to indicate whether their employer had designated another lawyer in the office to serve as a mentor. Of the 377 responding who had worked initially in an office of at least 3 lawyers, 158 (34.1%) had a designated mentor in the office. The likelihood of having a designated mentor varies depending upon the size of the law office. In the largest offices of more than 75 lawyers, 22 of 32 respondents indicated they had designated mentors. By contrast, in offices of 5 to 15 lawyers, only 47 of 136 responding had designated mentors.⁵

The reported experience of those who had a mentor highlights the potential educational value of a mentoring program. Asked to characterize the importance of their designated mentor in the development of their professional character, 157 of the 158 who had mentors responded, and 92 (58.6%) indicated that the mentor had been “very important” in that regard. Another 43 (27.4%) said the mentor had been “somewhat important” in the development of their professional character, and only 22 (14%) said the mentor had been of “little or no

importance.”

These numbers suggest both that designated mentors can be very influential and that most take advantage of the opportunity to exercise influence over a new lawyer’s character development. In addition to those lawyers who have a mentor formally

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designated by an employer, many lawyers informally acquire one or more mentors to whom they look for guidance or example in developing their own professional character. Nearly 9 of 10 (410 of 471, 87%) lawyers indicated that they had at least one person they considered to have been a mentor for these purposes.

In South Carolina the likelihood of having at least an informal mentor appears unrelated to the size of the community. In the largest counties, 86.6% of the responding lawyers could identify one or more persons as a mentor, and in the smallest counties 87.0% could do the same.⁶ On the other hand, the likelihood of having a lawyer formally designated by an employer as a mentor in an urban practice appears to be about double the likelihood in a rural area.⁷ That difference in

the occurrence of formally designated mentors, however, may be explained as much by firm size as geographic location since larger firms tend to be in urban areas.⁸

Whether chosen formally or informally, nearly all (97.1%) of the persons identified as the most influential mentors in the development of the respondent’s professional character were lawyers. A substantial majority (80.4%) were lawyers with at least 10 years experience when they became mentors. Most commonly the mentor was another lawyer in the new lawyer’s own office or firm.⁹ Not surprisingly, therefore, more than 64% (241 of 374 responding) indicated that their mentor began to influence their professional character after law school. A significant minority of 18.4%, however, said that they had been influenced by their mentor even before attending law school.

Mentors can provide guidance through a variety of means. Respondents were asked to list all of the ways in which the mentor has influenced their own character. The most common guidance, cited by 330 of the 410 who have a person they considered to be mentor, was provided through role modeling and observation by the new lawyer of the mentor’s behavior. This passive form of guidance could occur without the mentor even being aware of the role that he or she fulfills.

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More active mentoring, through occasional, but irregular, general conversations about professional character, was reported by 274 of

the 410 respondents. Regular mentoring advice was received by only 171 of those responding, and specific critiques of the new lawyer's conduct had been provided to 114 of the respondents.¹⁰

D. Specific Examples of the Extent of Current Litigation Behavior Training

The existing prevalence of some form of mentoring relationship is not necessarily an indicator of the extent or quality of the guidance actually received from the mentor. A relatively low percentage reported receiving regular mentoring advice. Even in an environment in which many lawyers already consider another lawyer to be a mentor, a well-conceived mentoring initiative could provide significant benefit by improving the uniformity and quality of the mentoring experience. To measure the extent of

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uniformity and comprehensiveness of current training, the survey asked lawyers who have had some litigation practice about the level of guidance they had received at two important and specific moments in their litigation careers. Respondents were asked if they had been observed during their first deposition or at their first trial by another lawyer in their

firm. They were asked also to identify any significant sources of guidance they had received regarding appropriate professional behavior during depositions or at trial.

One important method by which a law firm may provide guidance to a new lawyer is to observe and critique that lawyer's actual performance. However, of 302 lawyers who indicated that they had conducted a deposition during their career, only 130 indicated that another lawyer from their firm had observed their first deposition. The percentage of lawyers who were observed was greatest for lawyers who began practice in offices of 16 to 30 lawyers, where 66.7% of the respondents (24 of 36) who had conducted a deposition reported that they had been observed on the first such occasion. Otherwise, the likelihood of a lawyer being observed by another in the firm did not seem to depend significantly upon the number of lawyers in the office. In both larger and smaller firms, fewer than half of the respondents reported having been observed. In the smallest offices of 1 to 4 lawyers, only 37.8% (51 of 135) of the lawyers who had conducted a deposition were observed by a colleague in their first deposition. The percentage observed increased to 41.4% (36 of 87) of the lawyers in firms of 5 to 15 lawyers and 44.2% (19 of 43) of lawyers in firms of more than 30 lawyers.¹¹

Even when a deposition is observed by another lawyer in the same office, however, it does not necessarily follow that the lawyer receives guidance conduct regarding professional behavior. The feedback from the observing lawyer, if any, may focus only on important substantive or technical skills issues that arise during the deposition, without any attention being given specifically to the professionalism of the lawyer's interactions

with other lawyers or witnesses. Indeed, of the 130 lawyers reporting that they were observed in deposition by others from their office, only 32 also reported that other lawyers in their office had been an important source of guidance as to their appropriate professional behavior during a deposition.

The failure to provide guidance through observation and critique is apparently being offset only slightly through other means

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of education within the law office. Of the 172 lawyers who had taken depositions, but who had not been observed in their first deposition, only 54 reported that another lawyer in their office had, nevertheless, been a significant source of guidance as to appropriate deposition behavior. In total, therefore, only 86 lawyers out of the 302 who had conducted depositions considered other lawyers in their office to have been important sources of guidance regarding professional deposition behavior.¹²

The lack of significant guidance from within a lawyer's own law office regarding appropriate professional behavior at depositions appears to cross boundaries of office size, although smaller firms seem to provide behavioral guidance to a greater extent than the largest firms. In the smallest offices of 1 to 4 lawyers, 34.9% (47 of 135) of

the lawyers who had conducted depositions indicated that a lawyer in their firm had been an important source of guidance on deposition behavior. In contrast, only 1 out of 19 of the lawyers from offices with more than 75 lawyers (5.3%) who had conducted depositions reported having received such guidance.¹³

The observation rate for lawyers in their first civil or criminal trial was higher than for depositions. Of 346 who indicated that they had been responsible for presenting all or part of a case in either a civil or criminal trial, 225 had been observed in their first trial by another lawyer from their office. Again, however, despite the higher observation rate, relatively few of the lawyers' own law firms seem to have provided significant guidance specifically regarding trial behavior. Only 74 of the 225 who were observed also reported that they had received important guidance about trial behavior from other lawyers in their office. Of the 121 who had presented a case for trial, but were not observed on the first occasion, 40 reported that they, nevertheless, received important guidance about trial behavior from lawyers in their office.¹⁴ When law office size is taken into account, the percentages of lawyers reporting that they received guidance from others in the firm regarding trial behavior are similar to the percentages for guidance regarding deposition behavior.¹⁵

These numbers suggest that current training programs, and even current mentoring programs, often lack the comprehensive guidance that a uniform program might require. They suggest also that any current deficiencies in guidance are likely to be experienced by new lawyers in firms or offices of any size. Thus, a comprehensive initiative

should apply to lawyers in firms or offices of all sizes, offering universal enhancement of guidance required to be given by mentors, particularly regarding litigation behavior.

E. Do Formal Training Programs Reflect Prevailing Firm Cultures?

When training is offered regarding an employer's expectations of behavior, it is important that the actual culture and practices within the office reflect and reinforce those stated expectations. Otherwise, the training may have little practical impact, as new lawyers may be expected to adapt their behavior to the observed norms, disregarding other standards stated in the training.¹⁶ Among those surveyed, it appears that office cultures do generally reflect their training principles. Of the 105 who evaluated the consistency between their training and the actual practices they have observed in the office, only one said that their firm's actual culture was generally inconsistent with the firm's stated principles. A substantial majority, 58 of 105, said their firm's actual practices were very consistent with training, and another 46 said they were generally consistent.

The explanation for the apparently strong correlation between actual firm culture and the principles articulated in formal training is not clear. There are several possible

interpretations. The correlation, for example, may suggest that in-house training programs are effective methods by which offices are able to shape the actual practice of their lawyers. On the other hand, it is possible that only firms which already have strong and consistent behavioral cultures are the ones most inclined to attempt to perpetuate those cultures formally by creating training programs. Yet another interpretation might be that the process of creating a training program, requiring the lawyers in the office to consider and articulate certain guidelines and expectations of behavior, is a healthy exercise, having the salutary effect of causing all lawyers in the firm to be more conscious of the expectations of their colleagues.

Unfortunately, which of these or other interpretations is most accurate cannot be answered with certainty based upon the data from this survey. The possibility clearly exists, however, that the administration of a formal training or mentoring program, with clearly stated expectations of behavior, may not only provide the desired uniformity of training for new lawyers in an office, but also could have the salutary effect of strengthening the overall culture of the office.

ENDNOTES – Part 6

1. See Douglas N. Frenkel, Robert L. Nelson & Austin Sarat, *Bringing Legal Realism to the Study of Ethics and Professionalism*, 67 *FORDHAM L. REV.* 697, 704-05 (1998).

2. One factor that may be contributing to an increase in formal law firm training programs is the South Carolina Supreme Court's use of Rule of Professional Conduct 5.1 to discipline supervisory lawyers for failure to train adequately a junior lawyer in the firm. The Court has made clear that it expects each law firm to create an appropriate environment in which the lawyers and employees understand and follow obligations imposed by court rules and that the Court will hold senior

members of the firm or office responsible for inadequate supervision. See *In re Anonymous Member of the South Carolina Bar*, 552 S.E.2d 10 (S.C. 2001)(in sanctioning a senior lawyer for failure to properly supervise a junior lawyer’s discovery conduct, the court noted “that a senior attorney in a large firm has an even greater responsibility than an attorney in a smaller practice to enact formal office procedures to ensure compliance with the Rules of Professional Conduct”); *In re Myers*, 584 S.E.2d 357 (S.C. 2003)(sanctioning chief prosecutor for a failure to properly supervise a deputy prosecutor).

3. The number may actually be greater, but there is some uncertainty as to the exact number of firms that currently had training programs because of the manner in which this information was obtained. The survey did not ask directly whether a respondent’s current office had a training program then in place. A question, however, was directed to respondents “whose current law has a training program that includes specific instruction regarding expectations of professional behavior,” asking the respondents working in those offices to evaluate the extent to which the actual behavior of lawyers in the office reflected the principles of the training program. Of the 482 survey responses, 105 offered an evaluation of the extent to which actual practice in their offices reflected the principles stated in training. Thus, it appears that training was offered in at least these offices. Another 184 lawyers indicated that their office had no such training program and 97 left the answer blank. It seems a reasonable assumption that a primary reason for leaving the answer blank would be the absence of any such training program to evaluate. The remaining 96 indicated they felt unable to evaluate the extent to which actual practice reflected training principles. It is not clear whether the inability to evaluate was due to the lack of a training program or to some other reason.

4. A total of 158 reported that they had designated mentors. Of the 90 who reported that their employer provided formal training of some type, 63 had designated mentors. An additional 90 indicated that they had designated mentors, but no formal training program. An additional 5 respondents indicated that they had designated mentors, but did not indicate whether their firm had a formal training program.

5. Table 10 shows the distribution by office size of lawyers indicating they had a mentor designated by their first employer:

TABLE 10

	Number of Lawyers in Initial Office				
	1-4	5-15	16-30	31-75	>75
Total Number of Responses	195	136	57	42	32
Number of Responses Indicating Mentor Designated	30	47	30	36	22

6. Counties were grouped by the number of lawyers in each county. The largest counties were Group A, the next largest were Group B, and so forth down to the smallest in Group E. See notes 31-35 and accompanying text *supra*. The percentage of respondents in each group reporting that they have “consistently looked to one or more particular individuals for guidance or example in developing or shaping” their “professional character as a lawyer was as follows: Group A – 86.6%; Group B – 87.9%; Group C – 88.4%; Group D – 86.2%; and Group E – 87.0%.

7. The percentage of lawyers in each geographic area who responded positively when asked if their first employer had designated a specific mentor was as follows: Group A – 37.5%; Group B – 38.1%; Group C – 25.6%; Group D – 14.8%; and Group E – 17.4%.

8. In offices of more than 75 lawyers, 22 of 32 respondents indicated they had designated mentors.

9. Unfortunately, it is not possible to report with confidence the exact frequency at which various categories of persons, such as lawyers in the same firm, are selected as mentors. When asked to identify their relationship to their most influential mentor, some of the respondents appeared to have described several mentors, making the exact numbers unreliable. Even factoring in the uncertainty as to exact numbers, however, it is clear from the responses that the most common mentor relationship was with a “lawyer who worked in my same office or law firm.” That conclusion is bolstered by a separate question that indicates 47.6% of mentors still worked in the same office as the lawyer being mentored. Another lawyer, not working in the same office or firm, appears to have been a significantly less common choice as the most influential mentor, but it was still the second most popular source. Other categories of persons with significant mention as possible mentors were relatives, law professors, and judges for whom a lawyer had clerked.

10. Also, 32 respondents indicated that their mentor had suggested specific readings for their benefit.

11. One lawyer who had conducted a deposition, but had not been observed on the first occasion, did not indicate the size of his or her first law office.

12. Interestingly, another 17 who had participated in discovery, but had never conducted a deposition personally, indicated that they had nevertheless received guidance from their firm regarding deposition behavior.

13. Respondents who had participated in civil discovery were asked to identify other important sources of guidance as to professional behavior during discovery. The most frequently named source of guidance, listed by 276 of the respondents, was the “Bridge the Gap” continuing legal education program required prior to bar admission. Observation of the conduct of others was listed by 274 respondents. The rules of procedure were listed by 246. It is notable that South Carolina has a relatively uncommon rule that specifically addresses behavior during a deposition. S.C. R. Civ. Proc. 30(j). Only 33 cited guidance from lawyers in other firms, and 30 listed law school courses.

14. Respondents who had been responsible for all or part of a civil or criminal trial were asked to identify other important sources of guidance as to professional behavior during trial. The most frequently named source of guidance, listed by 303 of the respondents, was the court. Observation of other trials was listed by 289 respondents, and 254 listed the “Bridge the Gap” continuing legal education program required prior to bar admission. The rules of procedure were listed by 132. Only 30 cited guidance from law school courses and 26 cited guidance from lawyers in other firms.

15. In law offices of 1 to 4 lawyers, 46.3% (68 of 147) of those who had presented cases for trial reported such guidance. In offices of 5 to 15 lawyers, the percentage was 25 % (27 of 108); in offices of 16 to 30 lawyers it was 22.9% (11 of 48); in offices of 31 to 75 lawyers it was 23.1% (6 of 26); and in offices of more than 75 lawyers it was 12.5% (2 of 16).

16. As Eleanor Myers, “*Simple Truths*” *About Moral Education*, 45 AM. U. L. REV. 823 (1996), has suggested, actual experience is more influential than classroom lessons.

