THE SUPREME COURT *of* OHIO

LAWYER TO LAWYER

MENTORING PROGRAM

New Lawyer Orientation 2016

Increasing the VALUE, VIRTUE and VOICE of PROFESSIONALISM

The Supreme Court *of* Ohio

LAWYER TO LAWYER MENTORING PROGRAM

New Lawyer Orientation

2016

MAUREEN O'CONNOR

Chief Justice

PAUL E. PFEIFER

TERRENCE O'DONNELL

JUDITH ANN LANZINGER

SHARON L. KENNEDY

JUDITH L. FRENCH

WILLIAM M. O'NEILL

Justices

MICHAEL L. BUENGER

Administrative Director

MINDI L. WELLS

Deputy Administrative Director

Office of Attorney Services

SUSAN B. CHRISTOFF

DIRECTOR OF ATTORNEY SERVICES

LORI KEATING

SECRETARY, COMMISSION ON PROFESSIONALISM

614.387.9327

THE SUPREME COURT *of* OHIO

Lawyer to Lawyer Mentoring Program
NEW LAWYER ORIENTATION

Tab I. **Program Overview**

Program Information & Forms

Tab II Timeline & Program Requirements

Tab III Mentoring Plan

In-House Mentoring Agreement

Outside Mentoring Agreement

Certificate of Satisfactory Completion

Tab IV First Meeting — Worksheet A

Tab V. **Advice & Resources**

A. *Ethical issues in Lawyer-to-Lawyer Consultation*, Formal Opinion 98-411 issued by ABA Standing Committee on Ethics and Professional Responsibility, Aug. 30, 1998.

B. Advice to New Lawyers

C. Maya Eckstein, *From an Associate's Perspective*: *If I Knew Then What I Know Now,* The Bencher, Jan/Feb., 2005.

D. Mark A. Fogg, Richard L. Gabriel, and Margrit Lent Parker, *The Mentoring Relationship: How to Make It Work and Why It Matters*, The Colorado Lawyer, Oct. 2013.

E. Additional Resources

I. Program Overview

Lawyer to Lawyer Mentoring Program Overview

I. Starting at the Beginning

A. The Program Objective

The stated purpose of the mentoring program is to elevate the competence, professionalism and success of Ohio lawyers through positive mentoring relationships.

Specifically, your mentoring relationship should accomplish the following:

1. Foster the development of your practical skills;

2. Increase your knowledge of legal customs;

3. Contribute to a sense of integrity in the legal profession;

4. Promote collegial relationships among legal professionals and involvement in the organized bar;

5. Improve your legal ability and professional judgment; and

6. Encourage the use of best practices and highest ideals in the practice of law.

B. More simply stated…

In thinking about how you will accomplish these goals, look to the following principles to apply during your mentoring relationship.

1. Let's Not Recreate the Wheel

You have the benefit of learning from your mentor's experiences. Your mentor will share war stories with you, including techniques that your mentor has found to be successful and mistakes that he or she has made.

2. I Never Got the Memo

Much of the professional practice of law involves learning skills that are not found in law books and are not taught in law school. Your mentor will provide guidance about professional practices, unwritten rules, and practical application of general legal concepts.

3. No Question is A Stupid Question

Your mentor is there to answer the many questions that you have. No question – no matter how insignificant or obvious you think it may be – should be off limits from your mentor.

4. Let Me Introduce You To. . .

Your mentor, as a veteran of the profession, is there to introduce you to people and opportunities. Your mentor should help you develop relationships with lawyers from whom you can learn, direct you to appropriate opportunities which will help you develop your skills, and introduce you to bar association involvement.

You may be a new lawyer who does not currently have employment in the legal field. It is not your mentor's job to find you a job. Providing assistance in finding legal employment is not prohibited, but it is not a part of the program's goals or purpose. Under no circumstances should you pressure your mentor to help you in this way.

II. The Mentoring Term: So How Long Does this Relationship Last?

The mentoring term lasts for about a year. The dates of your mentoring term are listed in Tab I. You are expected to maintain your relationship with your mentor for the entire term. Afterwards, both of you may mutually choose to maintain a relationship; but for purposes of the program, the mentoring relationship ends at a determined date. Over the course of the mentoring term, you and your mentor must complete your personalized Mentoring Plan in a series of in-person meetings.

III. What You Will Be Doing All Year: The Mentoring Plan

A. The Curriculum

The Mentoring Plan is the curriculum for the program. It consists of a list of activities from which you and your mentor must choose so that you have a roadmap of those things that you will discuss during your relationship. You may discuss other issues as you are confronted with them in your first year of practice, but the Mentoring Plan activities are those activities identified by the Commission on Professionalism as essential to your development as a professional lawyer and they must be completed.

By choosing with your mentor your own activities, you are able to personalize your Mentoring Plan so that the activities you discuss together apply to your particular practice setting, individual needs and personal goals.

The Mentoring Plan activities are broken up into five categories:

1. Introduction to the Legal Community and the Community at Large (First Quarter; One Activity)

2. Introduction to Personal and Professional Development (Second Quarter; Two Activities, including substance abuse)

3. Introduction to Ethics (Second Quarter; One Activity)

4. Introduction to Law Office Management (Third Quarter; Two Activities)

5. Introduction to Client Communication, Advocacy and Negotiation (Fourth Quarter; Two Activities)

On the Mentoring Plan, each category indicates a quarter during the mentoring term within which it is *suggested* that you complete the activities chosen therein and a minimum number of activities which are *required* to be chosen therein. Quarters of the mentoring term are suggested for the completion of each category's activities in order to assist you in your timely completion of your Mentoring Plan and to indicate which activities are thought to be most relevant to you as you move through your first year of practice. However, you are not required to complete the activities in the order suggested.

On the other hand, you must select the minimum number of activities that are indicated in each category of the Mentoring Plan. Additionally, every new lawyer must have a discussion about substance abuse and/or mental health issues. That activity has already been selected on your Mentoring Plan for you.

B. Deadline for Choosing Activities

You are expected to meet with your mentor to choose your activities and submit your Mentoring Plan and Mentoring Agreement before the due date provided in the Lawyer to Lawyer Mentoring Timeline (Tab I). This can be completed online at www.supremecourtofohio.gov/AttySvcs/mentoring/app/Login.aspx. To access this computer application, you and your mentor will have to input your attorney registration number and corresponding CLE password. If you do not know your CLE password, you can indicate this on the log-in screen and ask that your password be emailed to you.

Both you and your mentor will also have to acknowledge an in-house or outside mentoring agreement. (See below for further discussion about these two types of mentoring relationships.)

Ideally, you will create your Mentoring Plan and acknowledge your Mentoring Agreement at your first meeting. As the new lawyer, you are responsible for initiating your first meeting with your mentor, so if you have not heard from your mentor, you should contact him or her to schedule your meeting. During your first

meeting, you should determine together how you intend to initiate future meetings.

C. Curriculum

In order to assist you and your mentor with your discussions, curriculum worksheets have been developed. A lettered worksheet is referenced next to each activity on the Mentoring Plan. Each worksheet is intended to be a tool for you and your mentor to use to facilitate your discussion about its corresponding topic. Worksheets contain talking points and suggestions for issues to discuss, as well as copies of other resources that you and your mentor can read and talk about.

Worksheets and the discussion questions they contain are valuable starting points for conversations with your mentor; however, feel free to discuss other topics with your mentor as you experience them in the workplace.

D. Pro Bono

You are encouraged to engage in pro bono work with your mentoring partner during the mentoring term. Mentoring participants will receive periodic emails about pro bono opportunities available throughout Ohio. Engaging in a pro bono activity will meet the requirements of worksheet F. Co-counseling on a pro bono case assigned by a pro bono provider will meet the requirements of worksheet OO. By engaging in pro bono, you will complete activities in your mentoring plan while fulfilling your professional responsibility to help ensure justice is available for all.

IV. Mentoring Agreement

The Mentoring Agreement is an agreement about the parameters of the mentoring relationship which you must discuss and submit online when you submit your mentoring plan.

A. Parameters on Your Relationship

The relationship created between you and your mentor is a teaching relationship. Your mentor is meant to teach you and provide guidance to you primarily about aspects of professionalism in the practice of law.

If you are being mentored by an attorney in your same office or firm, you have an in-house mentoring relationship. You must therefore acknowledge the In-house Mentoring Agreement with your mentor. If you are being mentored by an attorney in a different office or firm, you have an outside mentoring relationship. In that case, you must acknowledge an Outside Mentoring Agreement.

1. In-house Mentoring Agreement

If you are being mentored in-house, your conversations with your mentor are safeguarded by the confidentiality that extends to all employees of your office or firm and a shared responsibility of liability to your clients for the actions taken on their behalf. Accordingly, you and your mentor are able to discuss privileged details about client cases and determine together courses of action on those cases. The In-house Mentoring Agreement therefore does not restrict your conversations with your mentor.

Instead, the In-house Mentoring Agreement that you sign with your mentor is an acknowledgment of the objectives of the mentoring program. During your first meeting you should discuss with your mentor these program objectives as well as your own individual objectives so that you are both comfortable with your goals.

a) Important Consideration for In-house Mentoring

An important consideration for you and your in-house mentor to discuss is the relationship your mentor has with you in your office or firm. For example, your mentor may be your supervisor who assigns and evaluates your work, may be a managing partner with input into which associates make partner and when, or may be an attorney in a different practice group than yours and have no relationship to you other than being your mentor. You should discuss with your mentor how your mentoring conversations will be handled in relation to the other functions he or she has within the firm. Essentially, you need to be aware now of whether your mentoring conversations will be a part of your evaluation by your mentor or how discreet your mentor will be with your conversations, especially in the case that you identify in-house problems to your mentor.

2. Outside Mentoring Agreement

If you are being mentored by someone outside of your office or firm, you do not have the same safeguards protecting your conversations as those with an in-house mentor. Accordingly, the Outside Mentoring Agreement places clear parameters on that which you may discuss with your mentor. Such parameters serve to protect you, your mentor, and your clients.

You should discuss these parameters in your first meeting with your mentor and decide together how you will handle your discussions to ensure that you abide by them. Please familiarize yourself with the following parameters.

a) You are not your mentor's client.

The mentoring relationship does not create a confidential or privileged relationship between you and your mentor. Obviously, we expect both you and your mentor to be discreet and respect each other when you confide in one another. However, there is ultimately no confidential relationship formed by mentoring.

Because of this, you should discuss your expectations about privacy during your first meeting. You should attempt to build a trusting relationship with your mentor and create a safe space to share with each other your feelings, experiences or questions that you feel uncomfortable asking anyone else.

b) Your clients are not your mentor's clients.

Because your conversations are not privileged and it is entirely possible that your clients could have a conflict with your mentor's clients, you are prohibited from discussing privileged detailed information about your clients or their cases. Instead, you should limit your discussions to hypothetical situations.

Additionally, you are expected to exercise your own professional judgment on behalf of your clients. If you seek general guidance from your mentor about a course of action in your client's case, your mentor's guidance is not considered legal advice, nor is he or she taking responsibility for whatever course of action you ultimately decide upon. If you are really lost on a particular case, you have an ethical obligation to associate yourself with competent counsel to provide competent representation to your client.

c) You are not a source of referrals for each other.

Referrals to or from your mentor are prohibited.

d) You are not associates.

Co-counseling cases during the mentoring term is also prohibited.

e) The exception to the rule: The above parameters <u>do not apply</u> if you and your mentoring partner are working on a pro bono matter referred by a pro bono provider.

Mentors and new lawyers are encouraged to do pro bono work during their mentoring term. If you and your mentoring partner choose to engage in a pro bono activity coordinated by a pro bono provider or co-counsel on a case provided by a pro bono provider, the above parameters do not apply to that work. If you would like to work together as co-counsel on a pro bono case, please select worksheet OO in your mentoring plan and follow the guidance provided in those materials.

Other Issues to Consider

1. Your mentor may be your parent's age (or your children's age)

   You are likely to be in a different generation than your mentor. Because there are often misunderstandings when communication occurs between people of different generations, it is important to talk about each of your assumptions and values during the course of your relationship to avoid misunderstandings. Respect your mentor's perspective even if it is different from yours.

2. You may be of a different ethnicity, race, gender or nationality.

   Just as generational differences can sometimes create misunderstanding in communication, so too can differences in ethnicity, race, gender or nationality. If you and your mentor are of a different ethnicity, race, gender or nationality, you should consider your cultural assumptions and values and discuss them with your mentor so as to avoid miscommunication.

V. Problems in the Relationship

A. What if we don't get along very well?

If you are being mentored by someone who you have not met before, it is entirely possible that you will not have perfect chemistry with your mentor. Worse yet, your personalities might clash.

Although the best mentoring relationship occurs when you connect with your mentor, the reality is people sometimes conflict. As a professional who must deal with a multitude of persons such as clients, associates, partners, opposing counsel, judges, and others, a part of your professional development is learning how to effectively communicate and deal with people who have conflicting personalities with yours so as to maintain a working relationship with them.

Accordingly, if you have a problem with your mentor in this regard, you are expected to discuss the problem with your mentor and jointly agree on a resolution. If this does not resolve the issues you have, you should contact the Secretary to the Commission on Professionalism, who will attempt to mediate your problem between you and your mentor. Absent compelling circumstances, the Secretary will not end your relationship with your mentor, but will help you to continue in the mentoring relationship. If you are not sure about whether your mentoring problems amount to "compelling," contact the Secretary to discuss it.

B. What if the mentoring relationship ends early?

Some problems will be cause for the mentoring relationship to end. For example, if your mentor moves away, experiences significant health problems that interfere with participation, or loses all contact with you and this program, your mentoring relationship may be ended. You may also move away, making regular in-person meetings with your mentor no longer feasible. In such cases, you may be assigned a new mentor. **You are responsible** for contacting the Secretary to the Commission on Professionalism when such circumstances exist so that they can be dealt with promptly.

When such situations occur, the Secretary, using a rule of reason, will make all decisions regarding alternate plans for you to complete your mentoring term. Decisions will be made on a case-by-case basis, taking into consideration individual circumstances and other factors, such as what has or has not been achieved during the mentorship, the remaining activities/experiences of the Mentoring Plan that need to be completed, the time left in the mentoring term, and whether the minimum number of mentoring hours have been completed.

VI. New Lawyers Training Credit

You will receive nine hours of new lawyers training credit for successfully completing the mentoring program. To complete the remainder of your required new lawyers training requirement, you must attend three hours of new lawyers training classroom instruction on professionalism, law practice management, and handling client funds.

The nine hours of new lawyers training credit you receive for your participation in this program is not awarded until the end of the mentoring term after you submit your Certificate of Satisfactory Completion online. Failure to complete all of the requirements for the mentoring program will result in your failure to complete new lawyers training as required. Accordingly, it is imperative that you complete the mentoring program requirements.

Please do not submit your Certificate of Satisfactory Completion until the last of your mentoring term. The expectation is that you will maintain your relationship with your mentor throughout the entire term.

VII. Surveys

You will be asked to participate in evaluations that will be emailed to you during the mentoring term. There are two evaluations for program participants – a mid-term survey in about six months and an end-of–term survey at the conclusion of the mentoring term.

If you have questions, concerns or comments about the program along the way, please contact the Commission Secretary.

VIII. Staying Connected

Nearly all communications to you from the program will be made via email. Therefore, it is very important to promptly notify the Commission Secretary if you change your email address.

IX. Going Online

Participants are asked to make all of their mentoring submissions online. You may find that your mentor is not as familiar or as comfortable with online computer applications as you are. In such cases, consider offering to assist your mentor in making these submissions. If you have a mentor who is particularly averse to working online, PDF versions of all of the required program submissions are located at www.supremecourt.ohio.gov/AttySvcs/mentoring/forms.asp. You may print these out for your mentor, who can complete and fax them to the Commission Secretary.

X. The Bottom Line: Minimum Requirements for Mentoring

A. Review Orientation Materials: Carefully read the new lawyer orientation materials in this manual.

B. Submit Mentoring Plan and Mentoring Agreement: Prepare for your first meeting by reviewing Tab III. During or immediately after the first meeting, submit a Mentoring Plan and Mentoring Agreement online at www.supremecourtofohio.gov/AttySvcs/mentoring/app/Login.aspx by the date listed in Tab I.

C. Meet throughout the mentoring term: Participants must engage in at least six in-person meetings for a total of nine mentoring hours over the course of the mentoring term.

Participants must complete all of the activities chosen in their Mentoring Plan. (Please note that the Mentoring Plan may be amended online at any time.)

Despite the fact that you are only required to participate in six in-person meetings, you are encouraged to meet more frequently throughout the mentoring term and talk fairly often. More consistent communication between you and your mentor will foster a stronger and more valuable mentoring relationship for you.

D. Complete mid-term and end-of-term surveys: Complete these surveys online when the survey links are emailed to you.

E. Verify Completion of the Program: Submit your Certificate of Satisfactory to the Commission on Professionalism online by the date listed in Tab I.

XI. A Final Thought. . .

This program will only be as valuable as you make it. Its success depends on your devotion of time to your mentoring relationship and your genuine interest in the activities you choose to discuss. So please, give it your all because only then will you enjoy its true value.

Best of luck in your mentoring relationship and in your first year of practice!

CONTACT INFORMATION

Lori L. Keating, Esq.
Secretary to the Commission on Professionalism
Supreme Court of Ohio
65 South Front Street
Columbus, Ohio 43215
614-387-9317
614-387-9529 (fax)
lawyer2lawyer@sc.ohio.gov

II. Timeline & Program Requirements

Lawyer to Lawyer Mentoring Timeline

For New Lawyers Admitted in November 2015:	
Mentoring Term Begins	Feb. 1, 2016
Mentoring Plans & Mentoring Agreements Due	Mar. 1, 2016
Mentoring Term Ends & Certificate of Satisfactory Completion Due	Dec. 30, 2016

For New Lawyers Admitted in May 2016:	
Mentoring Term Begins	Aug. 1, 2016
Mentoring Plans & Mentoring Agreements Due	Sept. 1, 2016
Mentoring Term Ends & Certificate of Satisfactory Completion Due	June 30, 2017

Lawyer to Lawyer Mentoring Program Requirements	
❑	Read orientation materials
❑	Submit mentoring plan and in-house or outside mentoring agreement (online)
❑	Complete all of the activities selected in the mentoring plan, including a required discussion about substance abuse & mental health issues
❑	Have at least six in-person meetings over the course of the term for a minimum of nine hours
❑	Complete mid-term and end-of-term surveys
❑	Submit Certificate of Satisfactory Completion (online)

III. Mentoring Plan & Required Forms

LAWYER TO LAWYER MENTORING PROGRAM
MENTORING PLAN

NEW LAWYER NAME/_____
ATTORNEY REG. NO.

MENTOR NAME/ _____
ATTORNEY REG. NO.

INTRODUCTION TO THE MENTORING PLAN

The Mentoring Plan includes core concepts, lawyering skills, activities and experiences which should be used as learning activities for the new lawyer and mentor and as topics for discussion between them. The activities and experiences are an introduction to the topics with which lawyers need to be familiar for the successful and professional practice of law.

The Mentoring Plan should be developed by the mentor and new lawyer together during their first meeting and must be submitted, along with the Mentoring Agreement, to the Commission on Professionalism at the start of the mentoring term. Each individualized Mentoring Plan should incorporate the activities and experiences most applicable to the particular practice setting, individual needs, interests, and personal goals of the new lawyer.

The Mentoring Plan submitted to the Commission will be the checklist of activities which the new lawyer and mentor are required to complete together by the end of their mentoring term.

The activities and experiences listed in the Mentoring Plan reference Worksheets, which are intended to be resources for participants to use for facilitation of discussions on the corresponding topics. Completion of the Worksheets is not mandatory, but participants are encouraged to use them as guides to discussions. Mentors should also provide a meaningful review and suggestions for practical application of the concepts found in A Lawyer's Creed and A Lawyer's Aspirational Ideals in regard to each Mentoring Plan topic.

In addition to the discussion topics selected in the Mentoring Plan, new lawyers are encouraged to discuss with their mentors other career issues that arise in their early practice experience.

INSTRUCTIONS

To prepare the participants for their first meeting and to facilitate discussion about this Mentoring Plan, participants are encouraged to refer to **Worksheet A**.

The activities and experiences in the Mentoring Plan are grouped by topic. Instructions accompany each topic indicating the minimum number of activities which must be elected in each section. Additionally, each topic contains a quarterly timeframe by which it is recommended that the corresponding activities are completed. The timeframes are suggestions only; the minimum number of activities for election is mandatory.

Next to each activity description is a box that should be checked if the new lawyer elects to participate in that activity. Once the new lawyer and mentor check the activities that will make up their Mentoring Plan, both of them must sign the Mentoring Plan Pledge. Every participant must engage in a discussion about substance abuse and mental health issues.

In order to successfully complete the Lawyer to Lawyer Mentoring Program, all of the activities elected must be completed by the end of the mentoring term, including a discussion about substance abuse and mental health issues. The completed and executed Mentoring Plan must be submitted by the new lawyer to the Commission on Professionalism, along with the executed Mentoring Agreement, at the start of the mentoring term. Both the new lawyer and mentor should retain a copy of the Mentoring Plan and Mentoring Agreement for reference.

In order to receive credit for completing the Plan, the new admittee must submit a Certificate of Satisfactory Completion form signed by both the new lawyer and mentor at the end of the mentoring term, indicating that all of the activities elected in their Mentoring Plan were completed, including a discussion about substance abuse and mental health issues. Additionally, they must certify that they engaged in a minimum of six in-person meetings for nine hours of mentoring time over the course of the mentoring term.

LAWYER TO LAWYER MENTORING PROGRAM
MENTORING PLAN

FIRST QUARTER - THE LEGAL COMMUNITY & THE COMMUNITY AT LARGE

At least one activity or experience from this section must be elected.

Elected	Activity or Experience
	Meet at the mentor's office so that the mentor may introduce the new lawyer to lawyers and staff at the mentor's firm or legal organization. Discuss basic workplace expectations and how the office personnel work together as a team. ***See Worksheet B.***
	Attend a bar association meeting together and introduce the new lawyer to other lawyers. Discuss local, state and national bar association opportunities and the advantages of being involved in bar association activities. Alternatively, introduce the new lawyer to colleagues in some other way. ***See Worksheet C.***
	Tour the local courthouse where the new lawyer will be appearing, and, to the extent appropriate, introduce the new lawyer to judges, magistrates, bailiffs, administrative assistants, and other court staff. If the new lawyer and mentor practice criminal law, visit the local jail, if feasible, and explain the procedures for jailhouse visits. ***See Worksheet D.***
	Discuss "unwritten" customary rules of civility and etiquette among lawyers and judges in the community. Discuss the ideals of professionalism as expressed in *A Lawyer's Creed* and *A Lawyer's Aspirational Ideals.* ***See Worksheet E.***
	Discuss the vital importance of Legal Aid Associations and other pro bono providers in ensuring access to justice. Discuss opportunities for lawyers to engage in pro bono activities and do civic and charitable work. If schedules permit, engage in a pro bono activity coordinated by a pro bono provider. ***See Worksheet F.***

COMMISSION ON PROFESSIONALISM ▪ OHIO JUDICIAL CENTER ▪ 65 S. FRONT STREET ▪ COLUMBUS, OH 43215
TELEPHONE 614.387.9327 ▪ TOLL FREE 800.826.9010 ▪ FACSIMILE 614.387.9529
www.supremecourtofohio.gov ▪ www.supremecourtofohio.gov/mentoring

SECOND QUARTER - PERSONAL & PROFESSIONAL DEVELOPMENT AND ETHICS

At least one activity or experience from this section must be elected in addition to a discussion about substance abuse and mental health issues.

Elected	Activity or Experience
	Discuss the new lawyer's long-term career objectives and identify ways to meet those goals. ***See Worksheet J.***
	Discuss techniques for finding a balance between career and personal life, putting daily pressures into perspective, reconciling job expectations with actual experience and maximizing career satisfaction. ***See Worksheet K.***
√ **required**	Discuss substance abuse and mental health issues, including possible warning signs of substance abuse or mental health issues; what to do if the new lawyer, a colleague or a superior is faced with a substance abuse or mental health problem; and the resources for assistance with substance abuse and mental health issues. ***See Worksheet L.***
	Discuss different career paths and identify resources for exploring options. Discuss to the extent knowledgeable differences between large firm, small firm, government and non-profit practice and non-traditional legal positions. ***See Worksheet M.***
	Discuss practical ways to manage law school debt. ***See Worksheet N.***
	Discuss job-search strategies. ***See Worksheet N1.***

At least one activity or experience from this section must be elected.

Elected	Activity or Experience
	Discuss common malpractice and grievance traps and how to recognize and avoid common pitfalls. ***See Worksheet O.***
	Discuss potential resources for dealing with complicated ethical issues, including conflicts of interests. If the mentoring relationship is an in-house relationship, discuss the firm's procedures for assisting with complicated ethical issues. ***See Worksheet P.***
	Discuss benefits of carrying malpractice insurance and lawyers' obligations in the event of the failure to do so. ***See Worksheet Q.***
	Discuss the appropriate way to handle situations where the new lawyer believes another lawyer (both in and outside of the new lawyer's firm) has committed an ethical violation; the obligation to report misconduct; and the appropriate way to handle a situation where the new lawyer has been asked by a senior member of the firm to do something that is unethical or unprofessional. ***See Worksheet R.***
	Discuss the grievance process and a lawyer's duty to cooperate with a disciplinary investigation. ***See Worksheet S.***

COMMISSION ON PROFESSIONALISM ▪ OHIO JUDICIAL CENTER ▪ 65 S. FRONT STREET ▪ COLUMBUS, OH 43215
TELEPHONE 614.387.9327 ▪ TOLL FREE 800.826.9010 ▪ FACSIMILE 614.387.9529
www.supremecourtofohio.gov ▪ www.supremecourtofohio.gov/mentoring

THIRD QUARTER - LAW OFFICE MANAGEMENT

At least two activities or experiences from this section must be elected.

Elected	Activity or Experience
	Tour the mentor's office to demonstrate and explain how the mentor's law office is managed. Discuss resources where the new lawyer can learn more information about law office management issues. ***See Worksheet T.***
	Discuss good time management skills and techniques. ***See Worksheet U.***
	Discuss practices to maintain client confidentiality. ***See Worksheet V.***
	Discuss how to screen for, recognize and avoid conflicts. ***See Worksheet W.***
	Discuss roles and responsibilities of paralegals, secretaries and other office personnel and how to establish good working relationships with others in the same office who are support staff, colleagues, or senior. ***See Worksheet X.***
	Discuss how to prevent issues of unauthorized practice of law with staff. ***See Worksheet Y.***
	Discuss office politics, including appropriate networking, socializing and personal behaviors. ***See Worksheet Z.***
	Discuss the importance of planning ahead for how a lawyer's practice should be handled in the event of the lawyer's retirement, death or disability. ***See Worksheet AA.***
	Discuss the issues surrounding leaving a firm, such as how to protect oneself, advising clients and withdrawing from cases. ***See Worksheet BB.***

COMMISSION ON PROFESSIONALISM ▪ OHIO JUDICIAL CENTER ▪ 65 S. FRONT STREET ▪ COLUMBUS, OH 43215
TELEPHONE 614.387.9327 ▪ TOLL FREE 800.826.9010 ▪ FACSIMILE 614.387.9529
www.supremecourtofohio.gov ▪ www.supremecourtofohio.gov/mentoring

FOURTH QUARTER - CLIENT COMMUNICATION, ADVOCACY AND NEGOTIATION
At least two activities or experiences from this section must be elected.

Elected	Activity or Experience
	Discuss methods of client development that have been successful for the mentor, and discuss other techniques for business development, including any relevant ethical concerns and the most professional practices in this regard. ***See Worksheet CC.***
	Discuss the responsibilities of the client and the lawyer in decision-making, and the best ways to involve a client in their case. ***See Worksheet DD.***
	Discuss the best ways to evaluate a potential case and how to decide whether to accept a proffered representation. ***See Worksheet EE.***
	Discuss how to deal with a "difficult" client. ***See Worksheet FF.***
	Discuss the importance of client communication and how to maintain good on-going communication, including the use of retention and fee agreements, keeping clients informed about matters, confirming things in writing, being on time, etc. ***See Worksheet GG.***
	Discuss proper legal counseling techniques, and duties and responsibilities of advising clients. ***See Worksheet HH.***
	Discuss appropriate ways (including ethical concerns, etiquette, etc.) for dealing with others on behalf of your client. ***See Worksheet II.***
	Discuss tips for preparation for and proper behavior during depositions. ***See Worksheet JJ.***
	Discuss the most important points about negotiation with another lawyer and potential issues associated with negotiations. ***See Worksheet KK.***
	Discuss relevant issues surrounding effective legal writing, such as techniques for the most effective legal writing, how to avoid common mistakes causing pleadings to be rejected, how to effectively use sample legal pleadings and forms, techniques to efficient legal research, etc. ***See Worksheet LL.***
	Discuss the types of alternative dispute resolution (such as mediation, binding and non-binding arbitration, high-low arbitration, early neutral evaluation, court-annexed arbitration, summary jury trials, etc.) and the benefits and disadvantages of each. ***See Worksheet MM.***
	Observe (in person or by streaming video on-line) an appellate argument in the Supreme Court of Ohio, Ohio appellate district court or United States circuit court, and discuss techniques and tips for effective oral argument. ***See Worksheet NN.***
	Discuss co-counseling and how to determine when it is mutually beneficial for attorneys and appropriate. If schedules permit, work together as co-counsel on a pro bono case assigned by a pro bono provider. ***See Worksheet OO.***

COMMISSION ON PROFESSIONALISM ▪ OHIO JUDICIAL CENTER ▪ 65 S. FRONT STREET ▪ COLUMBUS, OH 43215
TELEPHONE 614.387.9327 ▪ TOLL FREE 800.826.9010 ▪ FACSIMILE 614.387.9529
www.supremecourtofohio.gov ▪ www.supremecourtofohio.gov/mentoring

LAWYER TO LAWYER MENTORING PROGRAM
MENTORING AGREEMENT FOR IN-HOUSE MENTORING RELATIONSHIPS

I agree to participate in the Lawyer to Lawyer Mentoring Program (the "Program") in accordance with its rules and regulations as may be amended from time to time. I understand that the Program relies upon the development of a one-on-one mentoring relationship which primarily entails coaching, recounting experiences, lesson-sharing, and providing support.

I acknowledge the specific goals of the Program:

- To foster the development of the new lawyer's practical skills and increase his or her knowledge of legal customs;
- To create a sense of pride and integrity in the legal profession;
- To promote collegial relationships among legal professionals and involvement in the bar;
- To improve legal ability and professional judgment; and
- To encourage the use of best practices and highest ideals in the practice of law.

The new lawyer agrees to waive all claims against, and to hold harmless, the mentor and the Supreme Court of Ohio, its employees and agents, for any actions or inactions associated with the Program or with the new lawyer's participation in same.

I pledge to devote the time and effort needed to complete the activities selected in our Mentoring Plan.

I hereby certify that I have read the above Mentoring Agreement and agree to its terms.

_____	_____
Signature of New Lawyer Date	Signature of Mentor Date
_____	_____
Print/Type Name	Print/Type Name
_____	_____
Attorney Registration Number	Attorney Registration Number

LAWYER TO LAWYER MENTORING PROGRAM
MENTORING AGREEMENT FOR OUTSIDE MENTORING RELATIONSHIPS

I agree to participate in the Lawyer to Lawyer Mentoring Program (the "Program") in accordance with its rules. I pledge to devote the time and effort needed to complete the activities selected in our Mentoring Plan and to participate in a one-on-one mentoring relationship which primarily entails coaching, recounting experiences, lesson-sharing, and providing support.

I acknowledge the specific goals of the Program:

- To foster the development of the new lawyer's practical skills and increase his or her knowledge of legal customs;
- To create a sense of pride and integrity in the legal profession;
- To promote collegial relationships among legal professionals and involvement in the bar;
- To improve legal ability and professional judgment; and
- To encourage the use of best practices and highest ideals in the practice of law.

Except for any pro bono work that the mentor and new lawyer agree to undertake jointly, I acknowledge that the following parameters apply to the mentoring relationship:

- The mentor will not co-counsel any matter with the new lawyer, nor will the mentor make referrals to or accept referrals from the new lawyer during the term of their mentoring relationship through the Program.
- Any communication between the mentor and new lawyer is not intended to be the rendering of legal or professional advice to the new lawyer or his or her clients, and the new lawyer will not rely upon such communications or cause any client to rely upon them. The new lawyer will rely solely upon his/her own judgment, legal opinions, or independent research.
- Any communication between the mentor and the new lawyer arising out my participation in the Program is for the sole purpose of guiding and teaching the new lawyer about the practice of law and the issues that the new lawyer is likely to face in the practice of law.
- No confidential relationship is formed between the mentor and the new lawyer as a result of participation in the Program. The new lawyer will not identify any client to the mentor or reveal to the mentor any client confidence, nor will the new lawyer seek professional or legal advice from the mentor about specific legal matters or clients. Instead all discussions about substantive legal matters between the new lawyer and mentor will be limited to hypotheticals.
- The mentor is not assuming any liability or responsibility with respect to any legal matter of the new lawyer's clients, nor will the mentor render professional services to or take any responsibility for any aspect of representation of the new lawyer's clients

The new lawyer agrees to waive all claims against, and to hold harmless, the mentor and the Supreme Court of Ohio, its employees and agents, for any actions or inactions associated with the Program or with the new lawyer's participation in same.

I hereby certify that I have read the above Mentoring Agreement and agree to its terms.

_____	_____
Signature of New Lawyer Date	Signature of Mentor Date
_____	_____
Print Name & Attorney Registration No.	Print Name & Attorney Registration No.

LAWYER TO LAWYER MENTORING PROGRAM
CERTIFICATE OF SATISFACTORY COMPLETION OF PROGRAM

The new lawyer and mentor certify the following:

1. The new lawyer has satisfactorily completed the Lawyer to Lawyer Mentoring Program;
2. The activities elected in the Mentoring Plan at the outset of the mentoring term were completed;
3. We participated in a discussion about substance abuse and mental health issues; and
4. We had at least six in-person meetings over the course of the term for a minimum of nine mentoring hours.

I hereby certify that the above information is true and accurate to the best of my knowledge.

_____	_____
Signature of New Lawyer Date	Signature of Mentor Date
_____	_____
Print/Type Name	Print/Type Name
_____	_____
Attorney Registration Number	Attorney Registration Number

THIS CERTIFICATE MUST BE SIGNED BY BOTH THE NEW LAWYER AND MENTOR AND RETURNED TO THE COMMISSION ON PROFESSIONALISM AT THE END OF THE MENTORING TERM.

IV. First Meeting — Worksheet A

LAWYER TO LAWYER MENTORING PROGRAM
WORKSHEET A
FIRST MEETING OF THE NEW LAWYER AND MENTOR

Worksheet A is intended to facilitate the discussion between the new lawyer and mentor during their first meeting and prepare them for the joint development of the mentoring plan.

* * *

MENTORING GOALS

The new lawyer should articulate his or her specific goals for the mentoring relationship to assist in the development of a meaningful personalized mentoring plan. Discuss together three or more goals the new lawyer has for the mentoring relationship.

Keep in mind that a goal is something that one wants to achieve - an objective. A new lawyer reflecting on his or her goals for the mentoring program might complete the following statements:

a) I am most interested in the following mentoring plan activities. . .
b) I have the following personal development plans that I want to achieve in the next year. . .
c) I need to know more about. . .
d) I want to strengthen the following skills. . .
e) In five to ten years, I see myself doing. . .

MENTORING EXPECTATIONS

The new lawyer and mentor should discuss their individual expectations and resolve any concerns over expectations.

Keep in mind that an expectation is a confident belief, strong hope or presumed notion that a particular result or event will occur. The exercise of listing the expectations of the mentoring relationship is intended to help the new lawyer and mentor understand each other's intentions so that neither feels disappointed or betrayed when they do not conform to some expectation that was never made explicit and so that they can resolve from the outset any unrealistic expectations of each other.

To assist you in reflecting on the expectations you have of your mentoring relationship, think about how you might complete the following statements:

a) I expect that we will meet (how often) for (how long).
b) I hope that you will be otherwise accessible to me (how often and in what capacity).
c) I expect that we will do the following types of activities together. . .
d) I would like you to help me to. . .
e) I expect that you will treat me. . .
f) I think you need to know this about me. . .

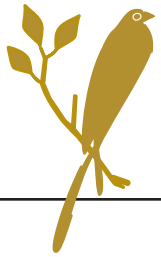
COMPLETING THE MENTORING PLAN

The new lawyer and mentor should discuss the specific activities and experiences in the mentoring plan to develop a personalized plan that they will complete together by the end of the mentoring term. Both the new lawyer and Mentor must pledge to complete the mentoring plan. The mentoring plan must be submitted to the Commission on Professionalism within 30 days of the start of the mentoring term.

V. Advice & Resources

A.

Ethical issues in Lawyer-to-Lawyer Consultation,
Formal Opinion 98-411
issued by ABA Standing Committee
on Ethics and Professional Responsibility,
Aug. 30, 1998.



AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY

Formal Opinion 98-411 **August 30, 1998**

Ethical Issues in Lawyer-to-Lawyer Consultation

When one lawyer consults about a client matter with another lawyer who is not associated with him in the matter, both the consulting lawyer and the consulted lawyer must take care to fulfill their ethical obligations to their respective clients. Hypothetical or anonymous consultations thus are favored where possible. The consulting lawyer is impliedly authorized to disclose certain information relating to the representation without client consent, but may not disclose information that is protected by the attorney-client privilege or that would otherwise prejudice the client. No client-lawyer relationship between the consulting lawyer's client and the consulted lawyer arises as a result of the consultation, but the consulted lawyer may be obligated to protect the confidentiality of the information disclosed to the extent that she expressly or implicitly agrees to do so or to the extent that such obligation is imposed by law. In that event, the consulted lawyer and her firm may be limited in their ability to undertake or continue representation of their own clients if the representation will be materially limited by her duty to protect the consulting lawyer's client information.

This opinion discusses the ethical issues raised when one lawyer consults about a client matter with another lawyer who is neither a member of the consulting lawyer's firm nor otherwise associated on the matter, and where there

1. We believe the ethical issues are the same whether the consultation involves the substantive legal or procedural aspects of a client's matter or the consulting lawyer's ethical duties in furtherance of the client's matter. On the other hand, this opinion does not necessarily apply to or discuss all of the ethical issues concerning a consultation in which the consulting lawyer seeks representation for his own benefit regarding a

This opinion is based on the Model Rules of Professional Conduct and, to the extent indicated, the predecessor Model Code of Professional Responsibility of the American Bar Association. The laws, court rules, regulations, codes of professional responsibility and opinions promulgated in the individual jurisdictions are controlling.

AMERICAN BAR ASSOCIATION STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY, 541 North Fairbanks Court, 14th Floor, Chicago, Illinois 60611-3314 Telephone (312)988-5300 CHAIR: Deborah A. Coleman, Cleveland, OH ❑ Loretta C. Argrett, Washington, DC ❑ Albert C. Harvey, Memphis, TN ❑ Daniel W. Hildebrand, Madison, WI ❑ Donald B. Hilliker, Chicago, IL ❑ William H. Jeffress, Jr., Washington, DC ❑ Bruce Alan Mann, San Francisco, CA ❑ M. Peter Moser, Baltimore, MD ❑ Sylvia E. Stevens, Lake Oswego, OR ❑ CENTER FOR PROFESSIONAL RESPONSIBILITY: George A. Kuhlman, Ethics Counsel; Eileen B. Libby, Associate Ethics Counsel

© 1998 by the American Bar Association. All rights reserved.

is no intent to engage the consulted lawyer's services.[1] The decision to seek another lawyer's advice may be precipitated by an atypical fact pattern, a knotty problem, a novel issue, or a matter that requires specialized knowledge. A lawyer who practices alone, or who has no colleague in or associated with his firm with the necessary competence will, and indeed often must, seek assistance from a lawyer outside the firm. Even the most experienced lawyers sometimes will find it useful to consult others who practice in the same area to get the benefit of their expertise on a difficult or unusual problem.

Consultations between lawyers take a variety of forms. Some are superficial discussions, such as might occur between an audience member and a continuing legal education ("CLE") speaker, or an inquiry between colleagues to get a research lead or information about a particular judge. Others are lengthy, detailed discussions to obtain substantial assistance with the analysis or tactics of a matter. Many fall somewhere in between. Seeking advice from knowledgeable colleagues is an important, informal component of a lawyer's ongoing professional development. Testing ideas about complex or vexing cases can be beneficial to a lawyer's client.[2] Without careful attention, however, such consultations may create unanticipated consequences for both the consulting lawyer and the consulted lawyer. Bright line rules are difficult to draw in this area; we endeavor here to explore the risks and provide some practical guidance consistent with the lawyer's duties under the ABA Model Rules of Professional Conduct.

I. Issues for the Consulting Lawyer

The consulting lawyer must take care not to breach his duty of confidentiality under Rule 1.6. That rule expresses the principle that "all information

---

grievance or dispute with the client or regarding his own ethical duties vis-à-vis a client. For discussion of the issues specific to ethics consulting, see Drew L. Kershen, *The Ethics of Ethics Consultation*, THE PROFESSIONAL LAWYER, Vol. 6, No. 3 (May 1995). *See also The Ethics of Ethics Consultation*, 1997 SYMPOSIUM ISSUE OF THE PROFESSIONAL LAWYER, SELECTED PAPERS FROM THE 23RD NATIONAL CONFERENCE ON PROFESSIONAL RESPONSIBILITY at 7-60 (ABA Center for Professional Responsibility 1997); *Ethics of Ethics Consultation*, *Center Update*, THE PROFESSIONAL LAWYER, Vol. 8, No. 4 at 18-19 (August 1997).

2. A lawyer has a duty to "provide competent representation to a client" under ABA Model Rules of Professional Conduct Rule 1.1, but Comment [2] recognizes that "[a] lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar." As the Comment notes, the necessary expertise can be attained "through association of a lawyer of established competence in the field in question." Consultation with a colleague also can aid a lawyer in attaining the necessary competence.

3. "The confidentiality rule applies not merely to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source." Rule 1.6, Comment [5]. The rule does not require the client to indicate what information is confidential, nor does it permit the lawyer to speculate whether

relating to representation of a client" is confidential.[3] No information may be disclosed without client consent, except where the disclosure is "impliedly authorized in order to carry out the representation," Rule 1.6(a), or in the specific and limited circumstances set forth in Rule 1.6(b).[4] Comment [7] explains: "A lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation, except to the extent that the client's instructions or special circumstances limit that authority."

We interpret Rule 1.6(a), as illuminated by Comment [7], to allow disclosure of client information[5] to lawyers outside the firm when the consulting lawyer reasonably believes the disclosure will further the representation by obtaining the consulted lawyer's experience or expertise for the benefit of the consulting lawyer's client. However, the consulting lawyer's implied authority to disclose client information in consultation is limited, as our further discussion reflects.

A. Consult Hypothetically or Limit the Information Revealed

A consultation that is general in nature and does not involve disclosure of client information does not implicate Rule 1.6 and does not require client consent. For instance, a lawyer representing a client accused of tax fraud might consult a colleague about relevant legal authority without disclosing any information relating to the specific representation. Similarly, a lawyer might consult a colleague about a particular judge's views on an issue. Neither consultation requires the disclosure of client information.

Somewhat like the general consultations are those that can be done anonymously or in the form of a hypothetical case. The consulting lawyer can "suppose" a set of facts and frame an issue without revealing the identity of his client or the actual situation. Where there is no disclosure of information identifiable to a real client or a real situation, the consulting lawyer does not violate Rule 1.6 when he consults outside the firm.

The consulting lawyer should not assume, however, that the anonymous or

---

particular information might be embarrassing or prejudicial if disclosed. So long as the information relates to the representation, it is protected. *See discussion* ABA/BNA LAWYER'S MANUAL ON PROFESSIONAL CONDUCT §55:101. The duty of confidentiality under Rule 1.6 clearly is broader than the scope of the evidentiary attorney-client privilege. Thus, while the client's name and identity generally are not considered privileged, they may be entitled to protection under Rule 1.6 unless disclosure is necessary or desirable for the representation.

4. Rule 1.6(b) allows disclosure when necessary to prevent the client from committing a crime that will result in imminent death or substantial bodily harm, or to establish a claim or defense on behalf of the lawyer in a matter involving the representation.

5. For purposes of this discussion, we use the short-hand term "client information" to mean "information relating to the representation" as that phrase is used in Rule 1.6.

hypothetical consultation eliminates all risk of disclosure of client information. If the hypothetical facts discussed allow the consulted lawyer subsequently to match those facts to a specific individual or entity, the information is not already generally known, and disclosure may prejudice or embarrass the client, the consulting lawyer's discussion of the facts may have violated his duty of confidentiality under Rule 1.6.[6]

Similarly, the disclosure of privileged information specific to an identifiable client, without the client's consent, violates an attorney's duty under Rule 1.6. If a lawyer reasonably can foresee at the time he seeks a consultation that even the hypothetical discussion is likely to reveal information that would prejudice the client or that the client would not want disclosed, then he must obtain client consent for the consultation. On the other hand, if circumstances that were not reasonably foreseeable by the consulting lawyer at the time of the consultation result in the consulted lawyer subsequently discovering the client information, one cannot in hindsight say that the consulting lawyer has breached his duty under Rule 1.6.

B. Obtain the Informed Consent of the Client to the Consultation

Rule 1.6(a) permits disclosure of client information if the client consents "after consultation."[7] When the consulting lawyer determines that the consultation requires disclosure of client information protected by the attorney-client privilege or that foreseeably might harm the client if disclosed, the lawyer must assure that the client is made aware of the potential consequences of the disclosure and that the client grants permission to consult the other lawyer. The consequences may be significant. A disclosure of privileged communications by the consulting lawyer could be held to waive the attorney-client privilege. Moreover, as discussed in Part II, a consulted lawyer who is not engaged or asked to be engaged may not have a duty under Rule 1.6 to preserve the confidentiality of information obtained in a consultation, nor is she necessarily prohibited from representing a client whose interests are adverse to those of the consulting lawyer's client in the matter.

Some protection for a client may be afforded by obtaining the consulted lawyer's agreement to hold information in confidence, but privileges will be

---

6. As mentioned in footnote 3, *supra*, the client's identity may be entitled to protection under Rule 1.6 if the fact of the representation itself should be confidential. For instance, a client may not want it revealed that bankruptcy advice has been sought, and the consulting lawyer must avoid disclosing the identity of the client to the consulted lawyer. On the other hand, if it is public knowledge that a lawyer represents a particular criminal defendant, the defense lawyer may reveal that fact in a consultation without violating Rule 1.6, although disclosure of other facts not publicly known may be a violation.

7. "Consultation" is defined in the Terminology section of the Model Rules as "communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question."

preserved only if the circumstances of the consultation are such that the privilege is not waived under applicable law. The consulting lawyer's client should be informed of those possibilities and their potential adverse effect on the client's interest in the matter when being asked to consent to the consultation.

C. Avoid Consulting with a Lawyer Who May Represent the Adverse Party

In selecting another lawyer with whom to consult, the consulting lawyer should exercise care to avoid consulting a lawyer who is likely to be or to become the adverse party's lawyer.[8] For example, a lawyer representing management in a labor dispute should exercise caution in consulting with a lawyer whose practice is limited to representing unions to minimize the risk that the information subsequently might be used adversely to the consulting lawyer's client.

D. Obtain Assurances of Confidentiality

The consulting lawyer should consider requesting an agreement from the consulted lawyer to maintain the confidentiality of information disclosed, as well as an agreement that the consulted lawyer will not engage in adverse representations. As discussed above, in the absence of such agreement, the consulting lawyer discloses client information at some peril to the client. If the client's consent to the consultation was sought and obtained, the client may have a reasonable expectation that the disclosure will go no further than the consulted lawyer and will not be used adversely. If the consulted lawyer is unwilling to make such an agreement or offer adequate assurances, the consulting lawyer may wish to reevaluate whether the consultation should take place.

II. Issues for the Consulted Lawyer

The ethical responsibilities of the consulted lawyer are less clearly expressed by the Model Rules. The consulted lawyer does not have a client-lawyer relationship with the consulting lawyer's client by virtue of the consultation alone. Nevertheless, the consulted lawyer may acquire a duty of confidentiality regarding the information received; she must also be sensitive to her duty of loyalty to her own clients when consulting for the benefit of the clients of another.

A. Ask Whether the Information to be Disclosed is Confidential

In Formal Opinion 90-358, we concluded that a lawyer has a duty under Rule 1.6 to preserve the confidentiality of information received in a consultation with a would-be client even if no legal services are provided and the rep-

---

8. A consultation for the deliberate purpose of disqualifying potential adversaries would violate Rule 8.4(c), which prohibits conduct involving dishonesty, fraud, deceit or misrepresentation, and possibly Rule 8.4(d), which prohibits conduct prejudicial to the administration of justice.

resentation is declined. Under some circumstances, the Rule would protect not only the information disclosed by the would-be client, but also the would-be client's identity and the nature of the matter for which representation was sought. We also concluded that Rule1.7 (b) might, absent client consent, disqualify the lawyer from a current or future representation if that representation would be materially limited by the lawyer's duty to protect the would-be client's information.

The Committee does not extend the analysis of Formal Opinion 90-358 to a consultation between lawyers where there is no expectation of an engagement. To do so, we believe, would discourage lawyers from agreeing to share knowledge and experience with others, and would thereby diminish the overall quality of legal services rendered to clients. The reasonable expectations of a prospective client that support the imposition of a duty of confidentiality when the lawyer is consulted about a possible representation cannot be said to exist in lawyer-to-lawyer consultations in which the client is not directly involved. Like a CLE panelist answering questions from the audience, the consulted lawyer does not, as a matter of ethics, automatically assume any duties to the consulting lawyer's client, particularly where consultation is general or hypothetical, or otherwise does not involve the direct disclosure of client information.

This is not to suggest, however, that the consulted lawyer never will be found to have duties with respect to a consultation. A consulting lawyer may request and obtain the consulted lawyer's express agreement to keep confidential the information disclosed in the consultation. There also may be situations in which an agreement to preserve confidentiality can or should be inferred from the circumstances of the consultation. If the consulting lawyer conditions the consultation on the consulted lawyer's maintaining confidentiality, the consulted lawyer's agreement should be inferred if she goes forward even in the absence of an expression of agreement. Similarly, the information imparted may be of such a nature that a reasonable lawyer would know that confidentiality is assumed and expected.

A consulted lawyer who has not expressly or implicitly agreed to maintain the confidentiality of client information acquired in a consultation should not be found to have breached an ethical duty under Rule 1.6 if she later discloses or uses the information, although the disclosure may have consequences under other law.[9] Further, in the absence of an express or implied agreement to preserve confidentiality, the consulted lawyer will not be subject to a "springing" duty of confidentiality under Rule 1.6. For instance, assume a lawyer is consulted anonymously about a tax issue; she discusses the matter only hypotheti-

---

9. One who agrees with an agent to act for the principal in a matter becomes a subagent and owes to the principal all the duties of a fiduciary to a beneficiary. RESTATEMENT (SECOND) OF THE LAW OF AGENCY §428 cmt. a. We do not believe such duties arise in the absence of an express agreement.

cally and makes no promise to maintain the confidentiality of the information. Later, the consulted lawyer meets with a new client about a divorce and in the course of the first meeting realizes that the tax issue consultation was on behalf of the new client's spouse. The consulted lawyer has no duty of confidentiality under Rule 1.6 or a conflict of interest under Rule 1.7 in representing her new client merely because she has learned, after the consultation, the identity of the consulting lawyer's client. This is true regardless of how obvious it seems after the fact that the consulting lawyer should have insisted on a confidentiality agreement if he had intentionally disclosed the information or anticipated it could be ascertained from the "hypothetical" facts.

B. The Consulted Lawyer Should Reasonably Assure that the Advice Given is Not Adverse to an Existing Client

Although a consulted lawyer need not be concerned about confidentiality issues in the typical anonymous or hypothetical consultation, she must be sensitive to how the consultation may affect her responsibilities to her existing and future clients. Loyalty is an essential element in the lawyer's relationship to a client. Rule 1.7, Comment [1]. Loyalty to a client is impaired when a lawyer advocates a course of action for another that is contrary to the interests of her own client, or when a lawyer cannot consider, recommend or carry out an appropriate course of action for a client because of the lawyer's responsibilities to others, including non-client third parties. Model Rule 1.7, Comments [3] and [4]. The duties of a lawyer to be a competent, diligent, and zealous advocate for the interests of her clients[10] also suggest that she must take reasonable steps to avoid engaging in conduct adverse to her own client's interests.

The need for caution is illustrated by the following example. A lawyer skilled in real estate matters is consulted for ideas to help the consulting lawyer's tenant client void a burdensome lease. No information about the identities of the parties is exchanged, nor does the consulting lawyer reveal any confidential information about his client. Based on the consulted lawyer's ideas, as implemented by the consulting lawyer, the tenant repudiates the lease and abandons the leased premises. The consulted lawyer subsequently learns that the landlord is a long-time client of the firm who wants the firm to pursue a breach of lease action against the former tenant. Because the consulted lawyer did not know the identities of the consulting lawyer's client or the landlord, she has, albeit unwittingly, helped the consulting lawyer's client

---

10. *See* Rule 1.1 Competence ("A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."); Rule 1.3 Diligence ("A lawyer shall act with reasonable diligence and promptness in representing a client."); and Rule 1.3, Comment [1] ("A lawyer should act with commitment and dedication to the interest of the client and with zeal in advocacy upon the clients' behalf."). *See also* Preamble: A Lawyer's Responsibilities [2] ("As advocate, a lawyer zealously asserts the client's position . . . .").

engage in conduct adverse to the interest of her own client in a way that Rule 1.7(a) would have prevented her from doing if the tenant had sought her advice directly as a prospective client.[11]

Counseling against a client's interests is the antithesis of the client-lawyer relationship. We do not believe the consulted lawyer violates any ethical rule by inadvertently doing so, but the consultation may have affected the landlord client adversely and may well affect the consulted lawyer's relationship with her landlord client adversely if the consultation comes to light. The consulted lawyer who failed to clear conflicts may find herself in the intractable position of having given advice to and received information from both parties to a dispute. When a lawyer learns that this has occurred, and assuming no agreement was made to keep the consultation confidential, Rule 1.4 requires the consulted lawyer to inform her client of the consultation and the possible consequences of it.

Among these consequences, she may be charged with a violation of Rule 1.7(b) for failure to employ reasonable measures to avoid conflicts of interest, sued by her landlord client for malpractice, or at the least find her representation challenged on the ground that information about the adverse party obtained in the consultation is entitled to protection. Moreover, if the consulted lawyer agreed to keep the consultation confidential, the consulted lawyer may have to decline representation of the landlord in the matter.

These problems can be avoided if the consulted lawyer ascertains the identity of the consulting lawyer's client or the other parties involved in the matter and checks for conflicts before engaging in the consultation. They also likely can be avoided if, without learning the identity of the consulting lawyer's client, the consulted lawyer obtains sufficient information reasonably to assure herself that the matter is not one affecting the interest of an existing client.

C. The Consulted Lawyer Should Ask the Consulting Lawyer to Waive Conflicts

Even though a client-lawyer relationship is not created between the consulted lawyer and the consulting lawyer's client because of the consultation (and hence, no duty of confidentiality under Rule 1.6), a duty of confidentiality undertaken or imposed outside the client-lawyer relationship nevertheless can limit the consulted lawyer in representing others. The consulted lawyer who agrees expressly or impliedly to preserve confidentiality in connection with the consultation cannot, under Rule 1.7(b), continue or undertake a representation that will be materially limited by her responsibilities to the consulting lawyer's client unless she reasonably concludes the representation will not be adversely affected and obtains her client's consent after consultation

---

11. The result would be the same even if the consulting lawyer's client was identified, if the consulted lawyer was unaware that the landlord was her own client.

12. In Formal Opinion 90-358, we concluded that a lawyer's interview with a prospective client might also trigger Rule 1.9(c), which prohibits the use of a former

regarding the limitations on the representation created by her duty to the consulting lawyer's client.[12] As a practical matter, the consulted lawyer who undertakes to maintain confidentiality in a consultation will have to include the name of the consulting lawyer's client in her own client database in order to avoid inadvertently undertaking an adverse representation that implicates Rule 1.7(b). Moreover, we note, as we discussed in Formal Opinion 90-358, that in some circumstances, the obligation to maintain confidentiality may prevent the consulted lawyer from providing sufficient information to obtain informed consent from her own client.

On the other hand, there should be no disqualification under Rule 1.7(b) if the consulted lawyer secured the agreement of the consulting lawyer, on behalf of his client, that the consultation will not create any obligations to the consulting lawyer's client, where the consulting lawyer is authorized by his client to make such an agreement. If that is not possible, the consulted lawyer might ask that the consulting lawyer's client consent to a form of screening to avoid disqualification of other members of the consulted lawyer's firm.[13]

III. Conclusion

Despite their indisputable value to practitioners of every experience level, consultations with colleagues can be risky if undertaken without careful consideration. This opinion is not intended and should not be interpreted to discourage the practice of consulting between lawyers. However, both the consulting lawyer and the consulted lawyer should proceed with caution. A consulting lawyer must be careful to avoid disclosing client information, especially privileged information, without permission and in circumstances where the information will not be further disclosed or otherwise used against the consulting lawyer's client. The consulting lawyer must also exercise caution in consulting with lawyers who are likely to represent adverse interests. Although the consultation does not create a client-lawyer relationship between the consulting lawyer's client and the consulted lawyer, the consulted lawyer is obligated to protect information she receives that she has agreed explicitly or implicitly to keep confidential. Moreover, if the obligation to

---

client's confidential information to the disadvantage of the former client. Although we conclude here that a consulted lawyer may be obligated to protect the confidential client information acquired in the consultation, the consulting lawyer's client does not thereafter have the status of a former client to the consulted lawyer such that Rule 1.9 would be applicable.

13. Screening as a matter of right to avoid disqualification of an entire firm is available in only a few jurisdictions and is not allowed under Rule 1.10. However, there is no reason why a "third person" who otherwise could disqualify the consulted lawyer cannot consent to other lawyers in the consulted lawyer's firm representing an adverse interest if the consulted lawyer does not participate in the representation or disclose confidential information.

protect that information will materially limit her ability to represent her own clients, she can proceed with those representations only with consent. We believe these risks can be minimized if the lawyers take some or all of the following measures:

1) The consultation should be anonymous or hypothetical without reference to a real client or a real situation.

2) If actual client information must be revealed to make the consultation effective, it should be limited to that which is essential to allow the consulted lawyer to answer the question. Disclosures that might constitute a waiver of attorney-client privilege, or which otherwise might prejudice the interests of the client must not be revealed without consent. The consulting lawyer should advise the client about the potential risks and consequences, including waiver of the attorney-client privilege, that might result from the consultation.

3) The consulting lawyer should not consult with someone he knows has represented the opposing party in the past without first ascertaining that the matters are not substantially related and that the opposing party is represented by someone else in this matter. Similarly, a lawyer should exercise caution when consulting a lawyer who typically represents clients on the other side of the issue.

4) The consulted lawyer should ask at the outset if the consulting lawyer knows whether the consulted lawyer or her firm represents or has ever represented any person who might be involved in the matter. In some circumstances, the consulted lawyer should ask the identity of the party adverse to the consulting lawyer's client.

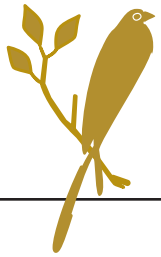
5) At the outset, the consulted lawyer should inquire whether any information should be considered confidential and, if so, should obtain sufficient information regarding the consulting lawyer's client and the matter to determine whether she has a conflict of interest.

6) The consulted lawyer might ask for a waiver by the consulting lawyer's client of any duty of confidentiality or conflict of interest relating to the consultation, allowing for the full use of information gained in the consultation for the benefit of the consulted lawyer's client.

7) The consulted lawyer might seek advance agreement with the consulting lawyer that, in case of a conflict of interest involving the matter in consultation or a related matter, the consulted lawyer's firm will not be disqualified if the consulted lawyer "screens" herself from any participation in the adverse matter.

B.

Advice to New Lawyers



Advice to New Lawyers
Provided By Lawyer to Lawyer Mentoring Participants
In End-of-Term Surveys

From New Lawyers:

"Jump into the program with both feet. Be willing to discuss any topic. Use the worksheets as a guide to your discussions but don't be afraid to go even further."

"Enjoy the experience and see it as an opportunity to learn and to network with seasoned attorneys."

"Keep an open mind with respect to the mentor's attitudes and perspectives that may differ from your own. This relationship is a great opportunity for personal and professional growth."

"Don't be afraid to talk to your mentor about issues that come up. You can't just keep everything inside and this is a great way to have even your 'dumb' questions answered."

"[T]reat the process like an interview. Prepare and pay attention. Your mentor could be a resource down the line."

"You will get out of the program what you are willing to put into it."

"Listen. Listen. Listen. The mentors have a lot to teach you. Take notes."

"Participate, challenge your mentor, and really take advantage of the opportunity to speak frankly to an experienced attorney."

"Develop a mentoring plan specific to your questions, concerns and needs. Actively seek to gain a relationship with your mentor. Change the setting of the meetings. We met at the [m]entor's office, my office, met for lunch and also attended a businessman's lunch at the Indians game. This change in venue was a great benefit."

"Seize the opportunity. Ask your questions, even if they seem stupid. Learn who your mentor really is; ask about past experiences in the law, good and bad, ask about family, ask for specific advice, ask for general advice."

"I would encourage the new lawyer to keep a running list of random/general questions regarding the practice of law in a notebook and bring it to each meeting with their mentor. Their mentor wants to help and the new lawyer should not pass up a learning opportunity."

"Your mentor will have years of experience and practical knowledge they will share with you. This is invaluable knowledge that is only gained by time in the field. By sharing it with you, you're receiving a gift."

“[L]isten and learn from their mentor's experience. No matter what the generational gap might be, the practice of the law has obstacles and rewards that are the same no matter what generation one belongs to. Don't be afraid to ask questions and be very respectful.”

“[D]evelop a friendship with your mentor beyond the structure of the program.”

“Don't treat it as an assignment; treat it as a great learning experience.”

“Try to get in a few sessions right away - maybe three in the first two months. That way you can go to them with questions. It takes awhile to build a rapport with the mentor, but once the rapport is there, the mentor becomes an excellent resource.”

“Utilize your mentor because he or she has a lot of great knowledge, advice and knows more than you can even imagine when you're first starting out as an attorney. This mentoring program is a great benefit and your mentor would not participate in this program if he or she were not there to help you.”

“Make sure to prepare for the sessions so you can have thoughtful and engaged conversations.”

“Be respectful of your mentor and your mentor's time.”

“Soak in the wisdom of your mentor- she has been through it!”

“Be clear with yourself about your goals. Take charge of the program: you are responsible for seeing it is completed. Treat it like a client matter, and have a tickle file.”

“Outline in advance when the meetings will be. This way, there will be no scrambling to find days to meet or playing email or phone tag. Don't be afraid to take charge and set up meetings - these are your hours that need to be completed.”

“Make sure you set an adequate schedule so you don't feel rushed in the end. Also, choose fewer topics [in your Mentoring Plan] so you can have a more in depth discussion on them.”

“Be open to learning more about the law, yourself, and how you fit in the big picture.”

“Be enthusiastic about it. You never know who you will meet or where the program can lead you.”

From Mentors:

“We are all learning every day. Don't be surprised that you encounter unexpected problems.”

“You should feel free to ask any question you have without being embarrassed or feeling stupid. We are here to help you succeed in this profession and to be professional.”

“Take the mentoring program seriously. I think my mentee initially signed up for the program with the idea of avoiding a long couple of classroom CLE sessions. He was surprised at how seriously I took my obligation as a mentor, but then saw how it could benefit him and became engaged. New lawyers sometimes fail to appreciate how much time and effort a mentor devotes to them, and so they should be advised to consider this when the program begins.”

“Don't be afraid to show your vulnerabilities and inexperience. The mentor is there to help you.”

“Get involved; do not allow the program to be an opportunity for mentors to swamp you with war stories. Make the program what you want. Suggest activities.”

“Be patient with your mentor as his or her schedule is likely more crowded than yours.”

“Appreciate you are being matched up with successful attorneys who are giving you their valuable time in a profession that rarely does so and can hopefully impart some valuable guidance.”

“This program will not give you all the answers on how to practice law but if the relationship is strong it will be invaluable.”

“Do not be afraid to press your mentor and to ask the tough questions.”

“Show up on time; thank the mentor for taking time; be prepared with good questions to help carry the discussion.”

“Ask questions; challenge your mentors; keep a journal and bring it with you to facilitate discussions.”

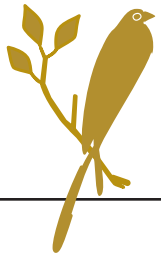
“Go after what you need to derive from the relationship; if you don't ask for what you need, you probably won't get it; be respectful but not deferential; be very candid about yourself and your goals.”

“Ask your mentor pertinent questions and be willing to share as much as you are willing to listen. Don't be afraid to challenge your mentor. Invest in the relationship.”

“Do not make this the last mentoring program. Always keep looking to establish mentoring relationship throughout a career.”

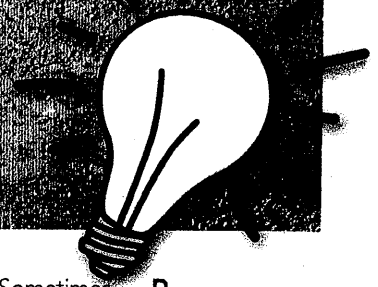
C.

Maya Eckstein,
F*rom an Associate's Perspective:*
If I Knew Then
What I Know Now,
The Bencher, Jan/Feb., 2005.



From the Inns of Court's Perspective

If I Knew Then What I Know Now...



By Maya Eckstein

"If I knew then what I know now" is a common refrain among more seasoned attorneys when referring to their experience practicing law. Many of these lawyers could have known then what they know now had they had good mentoring relationships when they began practicing law.

I have been fortunate to have formed mentoring relationships with a few attorneys with whom I work. From my mentors I have learned what I consider to be one of the most important lessons of the legal profession—that the practice of law truly is a noble profession, and one that should be marked by civility and respect for other lawyers and the law. My mentors have also taught me other crucial lessons including that I am the only person truly responsible for my career, that no one will stand up for me if I do not stand up for myself, and that sometimes, rocking the boat could be a positive thing.

Mentoring cannot be mandated. A mentor must want to mentor and a protégé must want to be mentored. Both potential mentors and potential protégés should realize the benefits of participating in such a relationship—benefits that accrue to mentors as well as protégés.

Mentoring is not difficult. It does take a modicum amount of time in which to impart some wisdom, but mentoring is one of the most effective ways to pass on skills, knowledge and wisdom in training the next generation of attorneys.

To be a good mentor:

- Spend the time and energy necessary to be a good mentor. Mentoring does not have to be time-consuming, it simply requires your availability to impart advice and offer guidance.
- Realize that it's your responsibility to the profession. Young lawyers learn best by example and from the receipt of advice from individuals in whom they trust and confide.
- Maintain regular contact. Mentors should take the initiative to jump-start the mentoring relationship, as young lawyers often feel awkward about contacting their mentors. That said, once several meetings have occurred, the protégé should take the initiative to show a continued interest in the relationship.
- Always be honest. Trust and respect are the foundations of any effective relationship.
- Don't expect to have all the answers. Sometimes your protégés will not need advice, but just need you to listen attentively. Be there for them.
- Respect confidentiality. A good mentor mentoring relationship will not and cannot be established if your protégé believes you will reveal his/her discussions to others.
- Help guide your protégé's career. Advise honestly about career decisions and professional dilemmas.
- Teach your protégé be a good lawyer. Teach practical lawyering skills and more importantly, professionalism and civility.
- Help your protégé learn about the firm. Explain the firm's political issues and unwritten rules, as appropriate.
- Listen. Be a sounding board by listening to ideas and plans, as well as doubts and fears.

A mentor-protégé relationship is a two-way street. While the mentor often should take the initiative in the relationship, the protégé must take ownership of it, too, if it is to be successful.

To be a good protégé:

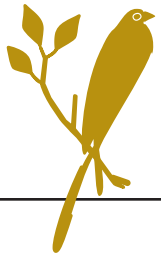
- Do not expect to meet unreasonable goals through a mentoring relationship. The mentoring relationship will not offer shortcuts to success.
- Set goals. Identify the goals you hope to reach through the mentor-protégé relationship.
- Remember that ultimately, you are responsible for your own career development.
- Ask questions. Your mentor does not know what you want to know. Ask thoughtful, reflective questions, and follow up on the answers given.
- Respect your mentor's boundaries and time.
- Consider having more than one mentor and seek diversity in your mentor-protégé relationships.

My mentors, whose friendship and sage advice over the years I treasure greatly, have given me the opportunity to succeed and fail, to learn, and to grow as a lawyer. They have taught me civility by example and respect for our profession. More importantly, they have been my friends—people in whom I can confide and trust. I have learned more from them than anyone else in my still brief legal career. I hope that I have imparted to them at least a fraction of the great wisdom they have imparted to me. ◆

Maya Eckstein is a member of the John Marshall AIC and an associate with Hunton & Williams in Richmond, Virginia. She received the 2003 American Inns of Court Sandra Day O'Connor Award for Professional Service.

D.

Mark A. Fogg, Richard L. Gabriel,
and Margrit Lent Parker,
The Mentoring Relationship:
How to Make it Work and Why It Matters,
The Colorado Lawyer, Oct. 2013.



Reproduced by permission. ©2013 Colorado Bar Association
42 *The Colorado Lawyer* 53 (October 2013). All rights reserved.

The Mentoring Relationship: How to Make it Work and Why it Matters

by Mark A. Fogg, Richard L. Gabriel, and Margrit Lent Parker

This article identifies the elements of what makes a successful mentoring relationship. It provides tips on what good mentors and mentees do, based on input from those who have enjoyed successful mentoring relationships.

The most prominent and well-respected lawyers share many traits. They are intelligent, quick on their feet, persuasive, able to listen and process information from disparate sources, professional, ethical, and adept at effectively and efficiently solving problems. Most also have had the benefit of excellent mentors, whether through formal mentoring programs or informal relationships that have developed over time.

Experience shows that successful mentoring relationships tend to share common elements. This article aims to identify those elements and to explain why the success of mentoring relationships matters for the long-term success of the legal profession. The article begins by discussing the need for an increased focus on mentoring, particularly in today's highly competitive legal environment. The discussion moves to the renewed focus on mentoring in the profession and introduces some of the mentoring programs that are currently available, including the new Colorado Attorney Mentoring Program (CAMP). Tips are provided on what good mentors and good mentees do, based on input from mentors and mentees who have enjoyed successful mentoring relationships. The article concludes with a discussion of why mentoring is important to the legal profession.

The Need for Mentoring

The concept of mentoring in the legal profession is as old as the profession itself. Indeed, long before bar exams, new lawyers learned their trade by serving as apprentices for practicing attorneys.[1] As legal education moved away from this kind of on-the-job training, the institution of the law school evolved into the academic endeavor it is today.[2]

With the focus of legal education on academics, more formal mentoring programs in the practicing bar attempted to fill the need for practical training. For example, many firms developed programs in which a new lawyer would be paired with a more senior lawyer in the firm. Such programs tended to provide a good start, because they gave new lawyers an initial place to turn when they had questions. Sometimes, these formal relationships blossomed into long-term professional relationships. When this did not happen, the newer lawyers often were fortunate enough to develop informal but more long-term mentoring relationships with other lawyers with whom they were working. Regardless of the path newer lawyers took, those who desired successful mentoring relationships seemed to be able to find them fairly readily.

In recent years, however, the legal world has changed dramatically. The focus in law firms on economics and "law as a business" has tended to diminish the focus on mentoring. Partners and associates alike have become more concerned with billing hours and generating revenue, which too often has left little time to work on building successful mentoring relationships.[3] Moreover, the competitive legal market has adversely affected such relationships. In the not too distant past, experienced lawyers did not think twice about bringing a younger lawyer to watch a deposition, court proceeding, or closing argument; now, the experienced lawyers must be concerned about how a client might react to seeing two lawyers at the same proceeding (even if the junior lawyer was not billing time for being there).[4]

These effects have not been limited to lawyers in the private sector.[5] Attorneys in the public sector, too, have seen a decline in their ability to mentor newer lawyers. In this age of budget-cutting and larger caseloads per attorney, the time and resources available to lawyers in the public sector to mentor new attorneys has dwindled dramatically.

Perhaps ironically, these economic and competitive realities highlight the critical need for good mentoring relationships.[6] Numerous recent law school graduates have had difficulty finding jobs in the

About the Authors

Mark A. Fogg is the General Counsel of COPIC, the immediate past president of the Colorado Bar Association, and a member of the CBA/DBA Professionalism Coordinating Council. Richard L. Gabriel is a judge on the Colorado Court of Appeals and also serves on the CBA/DBA Professionalism Coordinating Council. Margrit Lent Parker is a former law clerk to U.S. Magistrate Judge William Beaman of the U.S. District Court for the District of Wyoming and to Chief Justice Mary Mullarkey of the Colorado Supreme Court. She currently is an associate with Kennedy Childs P.C. The authors serve on the Chief Justice's Commission on the Legal Profession working group that is devoted to mentoring.

legal profession, and they are increasingly hanging their own shingles, often without any mentor down the hall to whom they might turn for advice. Likewise, the competitive legal environment has tended to result in a decline in professionalism and civility among lawyers,[7] and the practice of law has become exceedingly specialized and more complex—all of which calls for more, not less, mentoring.

Although law schools have become increasingly focused on experiential learning and professionalism, they simply do not have the time or resources to devote to teaching soon-to-be lawyers how to deal with the day-to-day issues that lawyers face in practice—for example, how to deal with an unprofessional opposing counsel (or a difficult partner); how to handle an impatient or angry judge or client; how to perform a conflicts check; and how to properly bill time. Also, the law schools do not have the resources to teach the business aspects of the practice of law, including how to think like an owner of a business; how to recognize, develop, and mine referral sources; and, in an environment in which alternative billing arrangements are becoming more prominent, how to make such arrangements work effectively and economically (for instance, by working efficiently in a team setting).

All of these issues cry out for the development of good mentoring relationships. Fortunately, the practicing bar has responded.

The Rebirth of Mentoring in Colorado

Practicing lawyers around the country and throughout Colorado have recognized the vital importance of mentoring in today's legal profession, and law firms, specialty bars, and bar associations generally have responded. Here in Colorado, perhaps the most visible and successful of the formal mentoring programs (outside the law firm setting) may be the Denver Bar Association's (DBA) Mentoring Program.[8] Numerous local and specialty bars throughout Colorado also have developed mentoring programs, with varying degrees of success and staying power.[9]

In 2011, Colorado Supreme Court Chief Justice Michael L. Bender convened the Chief Justice's Commission on the Legal Profession. One of the Commission's working groups was tasked with researching and evaluating the possibility of developing a statewide mentoring program similar to what has been adopted in other states.[10]

CAMP was the brainchild of the mentoring working group. CAMP Director John Baker is steering this new platform, through which the legal community can develop and grow the culture of mentoring in Colorado. Designed to complement and bolster programs already in existence and to incentivize the formation of new mentoring programs, CAMP will provide centralized resources and support that local bars and other lawyer-based organizations can use to provide greater service and value to their members through lasting mentoring programs.[11] CAMP also provides a mentoring program outline with suggestions and tips for entering into and developing the mentoring relationship.

Every mentoring program is important; however, mere existence does not ensure it will lead to successful mentoring relationships. So, the question arises as to what the best mentors and mentees do to ensure the success of the mentoring relationship.

What Good Mentors Do

In the medical profession, it often is easy to recognize a physician who trained under the supervision of a particular mentor. A specific surgical technique or use of a particular medical protocol easily identifies a talented group of doctors who learned from an expert in the medical field.

Although it is not as easy to recognize traits and skills taught by a particular mentor in the legal profession, lawyers who are the products of great legal mentors are recognizable because they have internalized the values of devotion to clients, honor and commitment in the profession, and integrity and civility. They also tend to be skillful and thoughtful in the practice of their craft.

What is it that the great legal mentors do? When considering this question, the authors looked at their own experiences and interviewed several lawyers and judges who have developed well-earned reputations for being great mentors—namely, Judge Bruce Campbell, David Furgason, Dale Harris, Patricia Jarzobski, Judge Alan Loeb, Judge Elizabeth Starrs, Mariana Vielma, and Brooke Wunnicke. Perhaps not surprisingly, several common themes emerged from these interviews. Following are several comments about the qualities, styles, and methods of successful mentors that are worth noting.

- Successful mentors recognize the importance of conveying to their mentees values such as service to clients, honor, integrity, commitment, and civility, and they tend to do so by modeling the values they seek to teach. For example, as Brooke Wunnicke points out, the mentee must "witness your caring for the client and caring about the client's problem, whether the client is the CEO of a national corporation or a grieving widow."
- Successful mentors recognize that the mentoring relationship itself serves as a model for the relationships that mentees will

develop in the future with clients and opposing counsel, and these mentors act accordingly.

- Successful mentors truly care about their mentees, both personally and in terms of their growth as attorneys. These mentors take the time to learn about their mentees' interests outside the law. They encourage leadership and community service among their mentees. They invest time and energy in the mentees' development and well-being. As a result, as Judge Campbell noted, great mentors may not remember all of the transactions or cases on which they worked throughout their careers, but they remember their mentees.
- Successful mentors recognize that trust is a cornerstone of the successful mentoring relationship. In this regard, the confidentiality of the mentoring relationship is critically important. The mentee must feel comfortable approaching the mentor with problems and concerns, secure in the knowledge that the mentor will not judge adversely if he or she asks a simple or naïve question and will not use such an exchange in the context of a review or evaluation.
- Successful mentors recognize that their mentees may find them intimidating, at least at first. The mentors actively help their mentees overcome that feeling by reaching out and conveying that communications from the mentees are always welcome. Judge Loeb tells a story about when he was a young lawyer at Davis Graham & Stubbs. Dick Davis, one of the firm's founders, offered to give him a ride home. In fact, it later became a routine for Loeb to hitch a ride with Davis. The fact that a legal legend like Davis would reach out like this to a young associate made a lasting impression on Loeb.
- Successful mentors make themselves available to their mentees and give freely of their time and experience. This is not to say, however, that every mentoring relationship requires a lifetime commitment and an inordinate amount of time. In fact, some very successful mentoring relationships involve only occasional and very brief (though still invaluable) communications. Successful mentoring relationships are what the mentors and mentees mutually want them to be. Regardless of the scope of such relationships, however, all successful mentors instinctively recognize a call for help—as in, "Would you have a minute to discuss this?" They respond promptly. They also understand that teaching involves not only black letter rules and procedures, but also the wisdom and judgment that come from experience, and they generously share the lessons learned in the school of hard knocks.
- Successful mentors impart to their mentees the mandate found in the first sentence of Rule 1.1 of the Colorado Rules of Professional Conduct: "A lawyer shall provide competent representation to a client."[12] These mentors also help to provide the mentees the tools they need to comply with this mandate. In this regard, one-on-one meetings to hone communication skills and discuss legal analyses are essential.
- Successful mentors who have worked with a mentee to achieve a good result for a client are quick to tell the mentee that the excellent result could not have been achieved without the mentee's help. Conversely, successful mentors give prompt constructive feedback and offer suggestions for improvement when warranted, and do so in person. In this regard, successful mentors recognize that in the practice of law, there is an abundance of teachable moments of which to take advantage. In these moments, great mentors take the time to explain why they did what they did, the alternatives they considered, and the benefits and risks presented by each alternative. From such interactions, mentees learn what their mentors do best (and perhaps what they do not do as well), and the mentees develop their own approaches to similar problems. In doing so, the mentees learn that one size does not fit all in how a lawyer might respond to a particular problem, just like one size does not fit all in how a lawyer might deal with clients or other participants in the justice system. Mariana Vielma refers to the ability to recognize such distinctions as "adaptability"—a skill that all successful lawyers must possess.
- Successful mentors encourage their mentees to come to them with proposed solutions to problems, not just with the problems. By then helping the mentees evaluate the problems and potential solutions, mentors teach their mentees how to think critically and how to solve problems for themselves, which makes for a more fulfilling—and productive—experience for the mentee.
- Successful mentors are good listeners. They recognize a young lawyer's natural insecurities and doubts, and they acknowledge such feelings as perfectly normal and rational. They also offer suggestions for how to overcome these insecurities.
- Successful mentors welcome discussion and disagreement from their mentees. The mentoring relationship is, in many ways, an ongoing dialogue, as opposed to a lecture, and the ensuing discussions tend to make the relationship more fulfilling for both the mentor and the mentee.
- Successful mentors, when working with their mentees, ensure that the mentees understand how their work fits into the big picture and how the work is contributing to the client's cause. One of the most common complaints among younger lawyers is that they are given only "pieces" of a case or transaction without being given an understanding of how the pieces fit into the overall matter. It is in everyone's interest for younger lawyers to be privy to the big picture; only then can they contribute materially to discussions of case strategy. Moreover, allowing access to the big picture teaches the younger lawyers how a case or transaction is managed from start to finish, which is a skill that the younger lawyers will need when they become the "first-chair" lawyers. Conversely, when younger lawyers are denied access to the big picture, they become far less invested in the client's cause and tend to feel like fungible employees, as opposed to the professionals and important team members they are.
- Successful mentors teach their mentees how to delegate effectively. This is another skill that lawyers must have as their careers progress.
- Successful mentors recognize that even in the current competitive legal market, where billing hours and generating revenue receive so much attention in the firm setting, mentoring not only is a professional obligation but also makes good business sense. Among other things, good mentoring teaches the mentees how to practice law effectively and efficiently, which is in every organization's economic interest. Moreover, successful mentors often report that attorneys whom they once mentored later became excellent referral sources for new business.
- Successful mentors involve mentees more fully in cases and transactions, including bringing them to initial client meetings.

These mentors also take the time to explain to their clients the roles that the mentees will play, the different billing rates that will be charged, and the fact that the mentoring lawyers will ensure that the clients will not be double-billed. Such conversations affirm the mentees' importance and role in the matters at issue, as well as the mentors' trust and confidence in the mentees. Importantly, the conversations introduce the mentees into the client relationship.

- Successful mentors understand the concept of sponsorship, which involves advocating for those in whom the mentors recognize promise and talent to other lawyers, existing clients, and prospective clients. Such sponsorship reflects the mentors' investment in their mentees, and it conveys a sense of trust, confidence, and respect that is invaluable in cementing the mentoring relationships and in making younger lawyers feel valued as professionals. Moreover, such sponsorship provides a unique opportunity to promote inclusiveness and diversity in the legal profession, particularly when established lawyers are able to promote women, lawyers of color, and others who historically have confronted the glass ceiling in the legal profession and the business world.[13]

What Good Mentees Do

The authors also interviewed a number of mentees who have enjoyed successful mentoring relationships through one or more formal mentoring programs, including programs now under the auspices of CAMP. Perhaps not surprisingly, these mentees, like the successful mentors, have identified a number of common themes that underlie their mentoring relationships.

- At the beginning of the mentoring relationship, successful mentees seek to establish an understanding of how the mentor and mentee best operate. For example, some pairs prefer a more structured approach and closely follow CAMP's mentoring program outline. This approach allows the mentor and mentee to track their conversations and facilitates discussions about topics of interest that the pair might not otherwise have considered exploring. Other mentors and mentees prefer a more informal approach, developing their relationship as they go along. Either approach can be successful, as long as the mentor and mentee are on the same page as to how their mentoring relationship should function.
- Successful mentees tend to clarify early in the relationship who will be responsible for scheduling meetings between the two, thus ensuring the continuing progress of the relationship. In general, mentees tend to take on this role, and the mentors, who frequently have the more challenging demands on their time, welcome the mentees' assistance and diligence in keeping the relationship on track.
- Successful mentees tend to think about the particular areas in which they would like guidance, and share their goals for the relationship with their mentors. This tends to structure the relationship, and it also ensures that mentees will get what they need and want out of the relationship. Successful mentees report that their mentors welcome the mentees' input on how best to focus the mentoring relationship. Absent such input, a mentoring relationship can become haphazard and unproductive.
- Successful mentees are willing to share their experiences and concerns but also are good listeners, even when the message is difficult to hear. More than one mentee whom the authors interviewed emphasized how valuable it was to have a dedicated mentor with whom he or she could share not only hopes and aspirations, but also vulnerabilities. In this regard, successful mentees value a mentor's candor, especially when, after listening to the mentee's concerns about a professional challenge, the mentor advises the mentee (in a professional way) as to why the mentee's approach to the situation is not necessarily the best one.[14]
- Although formal mentoring programs that match mentors and mentees cannot guarantee ideal matches, successful mentees in these programs recognize that they and their assigned mentors likely have in common something besides their law degrees and the practice of law. These mentees actively identify such commonalities, which tends to facilitate the building of a successful relationship, even among lawyers who were strangers to one another before the mentoring program paired them.
- Successful mentees are respectful of their mentors' time. Although mentors have an obligation to their mentees, particularly in the more formal programs, the reality is that mentors, as more senior lawyers, tend to have more commitments to juggle. Although mentees are right to expect that their mentors will devote an appropriate amount of time to the mentoring relationship, successful mentees are willing to be flexible—and patient—and accommodate their mentors' time constraints.
- Successful mentees recognize that they can learn as much from watching what their mentors do as they can from sitting down and having more formal conversations in which the mentors instruct and explain what they do. New lawyers tend to emulate those whom they admire. There is much to be learned simply by watching a top-notch lawyer at work.
- Finally, successful mentees come to the mentoring relationship with a desire and enthusiasm to learn from their mentors. These mentees frequently report that their enthusiasm is contagious and that it fosters enthusiasm in return from their mentors.

Print and Online Resources

The tips from successful mentors and mentees can serve as a useful starting point in any mentoring relationship. There are, however, many other resources available. Indeed, the universe of mentoring resources online is boundless. The following are examples of some of these resources:

— the CBA's Five-Minute Mentor Series: five-minute videos on topics such as trust account basics, effective appellate advocacy, professionalism, and lawyer website marketing[15]

— Colorado's Mentoring Resources: an online guide providing detailed suggestions for each aspect of the CAMP program[16]

— Ida O. Abbott, "Being an Effective Mentor: 101 Practical Strategies for Success" (2d ed., 2006)

— Ida O. Abbott, "Working with a Mentor: 50 Practical Strategies for Success" (2d ed., 2006)

— Maya Eckstein, "If I Knew Then What I Know Now . . ." *The Bencher* 13 (Jan./Feb. 2005)

— Gary Seiser, "Mentoring: A Partnership in Growth," *The Bencher* 14 (Jan./Feb. 2005).

Why All of This Matters

Why should lawyers care about whether mentoring relationships succeed or fail? Experience suggests a number of reasons.

First, good mentoring relationships yield better lawyers, and as any experienced lawyer knows, the legal system functions best when there are competent attorneys on both sides of a case or transaction. A successful mentoring relationship does not make only the mentee a better lawyer. Mentors routinely report that they also learn from their mentees and are better lawyers for it.

Second, good mentoring relationships tend to increase professionalism in the practice of law, which, in turn, makes the practice more enjoyable and tends to be good for business.[17] Professionalism also tends to elevate the legal profession in the eyes of the public, which can only help to ensure the long-term success of the profession.

Third, good mentoring plays a significant role in achieving an inclusive and diverse legal profession by providing unique sponsorship opportunities for women, lawyers of color, and others who historically have been denied access to professional opportunities and client development networks.[18]

Finally, good mentoring relationships are highly beneficial in and of themselves. Good mentors and mentees often describe how rewarding their mutual relationship has been, and some of these relationships last a lifetime.

Conclusion

In today's competitive legal environment, the importance of good mentoring relationships cannot be overstated. Such relationships do not always readily develop on their own but instead take effort and commitment on the part of both mentors and mentees. Fortunately, new mentors and mentees need not reinvent the wheel. They can learn valuable lessons from those who have enjoyed, and who continue to enjoy, successful mentoring relationships. The development of such relationships in the future is not simply a luxury. It is an indispensable part of creating and maintaining a profession of which all attorneys can be justifiably proud.

Notes

1. *See* Scalia *et al.*, "A Brief Comparison of the Training and Accreditation of Lawyers in the United States and the United Kingdom," 2 Discussion Paper, Anglo-American Legal Exchange (Sept. 2005) (on file with the authors) (explaining that in the late 18th-century United States, legal education comprised an informal apprenticeship system in law offices and that law schools sprang from this system and ultimately evolved from practical training to an academic endeavor).

2. *Id.*

3. *See* Campbell, "Mentoring—An Unmet Challenge," 40 *The Colorado Lawyer* 99 (July 2011). *See also* Derocher, "Mentoring, Changing Programs for Challenging Times," *Bar Leader* 6, 8 (Winter 2011):

> [M]any bar associations are involved in mentoring to try and fill a growing gap at many law firms throughout the country, places where mentoring was a long-standing tradition. . . . That feeling [of law firms failing in mentoring] is part of a continuing cultural shift in the legal profession that is impacting mentoring at a time when it may be most needed. Some of those mentoring gaps start appearing at law schools . . . where many schools no longer teach the "nuts and bolts" of solo and small-firm practice at a time when more attorneys—many out of necessity—are turning to that practice.

See also Scalia, *supra* note 1 at 2:

Yet the quality of mentoring, whether at law firms or government agencies, is neither regulated nor coordinated by either the profession or law schools, and some new lawyers are not mentored at all. Even those new lawyers lucky enough to work at law firms with formalized mentoring programs are likely to receive less training where, as is often the case, law firms are driven to focus more upon the bottom line. Associates who must work harder to satisfy increasing billable-hour requirements are less likely to receive thoughtful mentoring from seasoned lawyers.

4. Gallagher and Sienko, Jr., "Put Me In Coach! Mentoring and Coaching at Today's Law Firm," 18 *The Professional Lawyer* 1, 24 (2008):

> As lawyers are increasingly being challenged to produce greater billable hours, opportunities for young practitioners to "learn by doing" are being eliminated. In past years, it was not uncommon for a senior attorney to include junior attorneys when handling client matters. Taking depositions could be used to train several younger lawyers who all had an opportunity to reflect, learn, and develop on a daily basis. Today, there is such pressure from clients to control costs that junior attorneys are losing out on these one-on-one training opportunities.

5. *See* Campbell, *supra* note 3 at 99.

6. *See* Derocher, *supra* note 3 at 8.

7. *See generally* Gabriel, "Professionalism in Today's Competitive Legal Market," 39 *The Colorado Lawyer* 65 (June 2010).

8. See denbar.org/index.cfm/ID/21197/DBA/Mentoring-Program.

9. For example, informal research by the authors in 2011 identified several groups that have varying kinds of mentoring programs, activities, or other means to link new lawyers with mentors, including the University of Colorado School of Law, the University of Denver Sturm College of Law, the CBA Family Law Section, the Colorado Criminal Defense Bar Association, the Larimer County Bar Association, local chapters of the Asian Pacific American Bar Association and the South Asian Bar Association working jointly, the Colorado Women's Bar Association, and the Colorado Trial Lawyers Association.

10. *See, e.g.*, State Bar of Georgia Transition into Law Practice Program, www.gabar.org/membership/tilpp/index.cfm; Illinois Supreme Court Commission on Professionalism Mentoring Program, ilsccp.org/mentoring/mentoring_index.htm; Supreme Court of Ohio Lawyer-to-Lawyer Mentoring Program, www.supremecourt.ohio.gov/AttySvcs/mentoring; Utah State Bar New Lawyer Training Program, utahbar.org/nltp.

11. Organizations that currently are participating in mentoring programs under the auspices of the Colorado Attorney Mentoring Program (CAMP) include the Denver Bar Association, the 17th Judicial District's District Attorney's Office, the Minoru Yasui Inn of Court, the Larimer County Bar Association, and the Colorado Defense Lawyer's Association. Nearly a dozen other local bar associations, inns of court, law offices, and other legal organizations across the state are considering and/or planning to participate in CAMP starting in 2014.

12. Colo. RPC 1.1.

13. Reeves, "Five Principles for Creating Diversity in Law Firms," *The Practical Lawyer* 46 (Oct. 2002) (noting that mentoring has been proven to provide greater access to professional opportunities and client development networks to which minority attorneys historically have not had access).

14. With respect to these types of conversations, one mentee whom the authors interviewed suggested that in her view, the better mentoring relationships are those with attorneys who are not the mentee's immediate supervisors. Although great mentoring relationships can and frequently do form within a mentee's office, a mentor who is from outside one's own office can be a valuable resource and can provide a safe place for a mentee to speak perhaps more candidly about practice- and career-related issues.

15. *See* www.cobar.org/index.cfm/ID/22036.

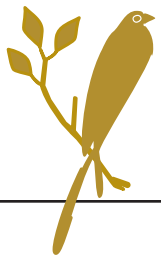
16. www.cobar.org/repository/mentoring/MentoringResources_March2012.pdf?ID=21965. This document was prepared as part of the pilot phase of CAMP and was adapted from materials developed for Illinois' analogous program, ilsccp.org/mentoring/mentoring_index.htm. The authors thank the Illinois Supreme Court Commission on Professionalism for permitting this adaptation.

17. Gabriel, *supra* note 7 at 65.

18. Reeves, *supra* note 13 at 46. ■

E.

Additional Resources



Additional Resources

Lawyers & Mentoring

Abbott, Ida O., *The Lawyer's Guide to Mentoring*, National Association for Law Placement, Washington, DC, 2000.

Cristiano, Matthew and Amy Timmer, *Maximizing Relationships to Become a Successful Lawyer: Innovative Mentoring For Lawyers and Law Students*, Thomson Reuters, 2012.

Keating, Lori L. and Michael P. Maslanka, "Finding and Getting the Most Out of a Mentor," Chapter 13 of *Essential Qualities of the Professional Lawyer*, Paul A Haskins, Editor, American Bar Association, 2013.

Keating, Lori. L. and Amy Timmer, "Mentoring: No App for That," Chapter 17 of *The Relevant Lawyer: Reimagining the Future of the Legal Profession*, Paul A Haskins, Editor, American Bar Association, 2015.

Mentoring and Law Firms / Business Organizations

Bell, Chip R., *Managers as Mentors: Building Partnerships for Learning* (2nd Edition), Berrett-Koehler Publishers, San Francisco, 2002.

DeLong, Thomas J., John J. Gabarro, and Robert J. Lees, *Why Mentoring Matters in a Hypercompetitive World*, Harvard Business Review, January 2008.

Lacey, Kathy, *Making Mentoring Happen: A Simple and Effective Guide to Implementing a Successful Mentoring Program*, Allen & Unwin Pty., Limited, Australia, 2000.

Manch, Susan G., *Building Loyalty: The Relationship between Mentoring and Retention*, The Oregon State Bar Bulletin, April 2000. (LexisNexis search by citation – 60 Or. St. B. Bull. 21)

Zachary, Lois J., *Creating a Mentoring Culture: The Organization's Guide*, Jossey-Bass, San Francisco, 2005.

Mentoring's Impact on Lawyers' Professionalism

Hamilton, Neil and Lisa Montpetit Brabbit, *Fostering Professionalism though Mentoring*, Journal of Legal Education, Volume 57, Number 1, March 2007.

Mentoring Skills

Abbott, Ida O., *Sponsoring Women: What Men Need to Know*, Attorney at Work/Feldcomm, Chicago, 2014.

Kram, Kathy and Wendy Murphy, *Strategic Relationships at Work: Creating Your Circule of Mentors, Sponsors and Peers for Success in Business and Life*, McGraw- Hill Education, New York, 2014.

Ensher, Ellen A. and Susan E. Murphy, *Power Mentoring: How Successful Mentors and Proteges Get the Most Out of Their Relationships*, Jossey-Bass, San Francisco, 2005.

Shea, Gordon, *Mentoring: How to Develop Successful Mentor Behaviors* (3rd Edition), Crisp Learning, Menlo Park, California, 2001.

Mentoring Theory

Kram, Kathy, *The Handbook of Mentoring at Work: Theory, Research and Practice*, Sage Publications, Inc., Thousand Oaks, California, 2007.

Mentoring & Managing the Millennials

Howe, Neil and William Strauss, *Millennials Rising: The Next Great Generation*, Vintage Books, New York, 2000.

Raines, Claire, Ron Zemke, and Bob Filipczak, *Generations at Work: Managing the Clash of Boomers, Gen Xers, and Gen Yers in the Workplace*, AMACOM, New York, 2013.

Inspirational

Albom, Mitch. *Tuesdays with Morrie: An Old Man, A Young Man, and Life's Greatest Lesson*, Time Warner Paperbacks, 2003

Doyle, Mark K., *Mentoring Heroes: 52 Fabulous Women's Paths to Success and the Mentors Who Empowered Them*, 3E Press, Geneva, Illinois, 2000.

THE SUPREME COURT OF OHIO COMMISSION ON PROFESSIONALISM

The Supreme Court of Ohio created the Commission on Professionalism in September 1992. As stated in Gov.Bar R. XV, the commission's purpose is to promote professionalism among attorneys admitted to the practice of law in Ohio. The commission aspires to advance the highest standards of integrity and honor among members of the profession.

The 15-member commission includes five judges and two lay members appointed by the Supreme Court, six attorneys appointed by the Ohio Metropolitan Bar Association Consortium and Ohio State Bar Association, and two law school administrators or faculty. The duties of the commission include:

- Monitoring and coordinating professionalism efforts and activities in Ohio courts, bar associations and law schools, and in jurisdictions outside Ohio
- Promoting and sponsoring state and local activities that emphasize and enhance professionalism
- Developing educational materials and other information for use by judicial organizations, bar associations, law schools and other entities
- Assisting in the development of law school orientation programs and curricula, new lawyer training and continuing education programs
- Making recommendations to the Supreme Court, judicial organizations, bar associations, law schools and other entities on methods for enhancing professionalism
- Overseeing and administering a mentoring program for attorneys newly admitted to the practice of law in Ohio.

COMMISSION CHAIRS

- Judge Jeffrey Hooper, 2016
- Mary Cibella Esq., 2015
- Michael L. Robinson Esq., 2014
- Marvin L. Karp Esq., 2013
- Judge Michael P. Donnelly, 2012
- Lee E. Belardo Esq., 2011
- Professor Stephen R. Lazarus, 2009-2010
- Monica A. Sansalone Esq., 2007-2008
- Judge David Sunderman, 2005-2006
- Barbara G. Watts, 2003-2004
- Judge C. Ashley Pike, 2001-2002
- John Stith, 1999-2000
- Richard Ison, 1997-1998
- Kathy Northern, 1995-1996
- Richard Ison, 1992-1994

Visit sc.ohio.gov for more information.

The Supreme Court *of* Ohio

Office of Attorney Services
65 South Front Street
Columbus, Ohio 43215-3431
www.supremecourt.ohio.gov