



Mentoring Resources

To Support Mentoring Plan Implementation

The Washington State Bar Association Leadership Institute (WLI) thanks you for your participation in the Mentorship Program. Your commitment to advancing the cause of professionalism is a credit to you, and your mentoring relationship should be a source of knowledge and inspiration for years to come. In an effort to assist you with the development and implementation of your Mentoring Plan, the WLI Fellows have assembled the following resources that you can use and refer to throughout the course of the program.

All action items in the *Mentoring Plan* are linked to corresponding resources. These resources are suggested activities, discussion topics and references related to each of the five substantive areas—legal ethics, civility, diversity and inclusion, professionalism and wellness—addressed in the *Mentoring Plan*. References to the Washington Rules of Professional Conduct are frequently included to assist in discussion of the philosophical underpinnings and ideal conduct expected of professionals in our legal and judicial systems.

In addition to the resources contained herein, please visit the WLI resources at the WSBA website, www.wsba.org, for more information and updates as to mentoring and professionalism issues.

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1. Legal Ethics

1A. Client Confidentiality

The following points are intended to facilitate a discussion about practices for maintaining client confidentiality.

1. Discuss the importance of client confidentiality and refer to Washington Rule of Professional Conduct 1.6.
2. Discuss common mistakes that inadvertently cause violations of client confidentiality and share practical pointers in and outside one's office for safeguarding confidential information. Among other things, examples for discussion could include:
 - a. Discuss proper procedures for file keeping and ensuring that clients who visit your office do not see information about other client matters;
 - b. Discuss the propriety of discussing your client's case in public (even at the courthouse);
 - c. Discuss the consequence of discussing confidential information with your client when a third party is present by invitation of your client (like a spouse);
 - d. Discuss office procedures for maintaining and destroying client files that affect client confidentiality;
 - e. Discuss the potential hazards of using email and fax to communicate confidential information about a case.
3. Give specific examples of client information which is confidential and when such information should or should not be revealed, including, among others: the propriety of disclosing that you have been retained by someone; disclosing the name of your client to a third party; or sharing information about your client's case to opposing counsel during negotiations.
4. Discuss the appropriate ways to obtain waiver of privilege and the circumstances in which it is likely to be obtained in the new lawyer's area of practice. Discuss the differences between implied and express waiver and identify conduct which effectuates waiver.
5. Discuss a lawyer's obligations with regard to revealing client fraud.
6. Discuss a lawyer's obligation to maintain confidentiality of clients who consult with the lawyer but who do not hire him or her or whom the lawyer ultimately refuses to represent.
7. Discuss a lawyer's obligation to maintain client confidences after the termination of the attorney-client relationship.
8. Discuss the practical concerns that arise when a third party pays for a client's representation and wants to communicate to the client's lawyer about the representation. Discuss the duties owed to the client.

9. Discuss client confidentiality issues likely to arise in the new lawyer's practice area. For example:
 - a. When the new lawyer's client is a corporation, which communications are confidential and with whom at the corporation can the new lawyer discuss confidential information?
 - b. When the new lawyer's client is the government (or a government entity), with whom can the new lawyer discuss confidential information? What obligation does the new lawyer have to inform the public about the matters being prosecuted? What obligation does the new lawyer have to inform the victim of a crime about an investigation or prosecution of a suspect?
10. Discuss practical issues that must be resolved when sharing office space with lawyers not in the same firm regarding safeguarding confidential information of clients. What if the lawyers share staff like a receptionist, secretary, or a paralegal?
11. Discuss how to handle a situation where a lawyer inadvertently receives a document containing what appears to be privileged information about an opposing party in pending litigation.
12. Discuss the exceptions that exist in Disciplinary Rule 1.6, allowing disclosure of confidential information, and provide examples of situations where such exceptions would apply. Share with the new lawyer your firm's procedures to ensure that the law firm staff does not inadvertently disclose client confidences. Discuss the tips in the article: Kirk R. Hall, *Not So Well-Kept Secrets*, <http://apps.americanbar.org/legalservices/lpl/downloads/secrets.pdf>.

Resources:

MRPC 1.6 Commentary: *Client Lawyer Relationship, Rule 1.6 Confidentiality Of Information - Comment*, http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_6_confidentiality_of_information/comment_on_rule_1_6.html.

Kevin Bank and Francesca D'Angelo, *Ineffective Assistance of Counsel Claim: Are There Limits To What You Can Reveal When Defending Yourself In A Complaint About Your Representation?*, WSBA BAR NEWS, March 2012, page 24, http://wsba.org/~media/Files/News_Events/Publications/Bar%20News/2012%20Full%20Issues/201203MarchBarNews2.ashx

1B. Conflicts of Interest

The following points are intended to facilitate a discussion about how to screen for, recognize, and avoid conflicts of interest. *See* Washington Rules of Professional Conduct 1.7, 1.8, 1.9, 1.10, 1.11.

1. Discuss the importance of adequately screening for conflicts of interest. Share with the new lawyer the firm's procedure for screening for conflicts (if in an internal mentoring relationship) or the mentor's office procedure for screening for conflicts (if in an external mentoring relationship).
2. Explain the importance of including prospective clients and declined clients in a conflicts database. Are these clients treated like former clients in terms of conflicts? What does this mean if another client comes along with interests adverse to the prospective client that never hired the lawyer? *See* Rule of Professional Conduct 1.18 (new in 2010).
3. Discuss different types of conflicts of interest that can arise, particularly in the new lawyer's practice area or office setting.
4. Give examples of conflicts that can be waived with informed consent. Explain how to document your client's consent to conflicts.
5. Discuss the substantial relationship test which, when met, prohibits a lawyer from representing a client against a former client. Discuss whether informed consent by the former client can cure the conflict.
6. Discuss the article: Todd C. Scott, *Conflict-Checking Systems: Three Great Ways to Effectively Manage Conflict Checking*, GP/SOLO LAW TRENDS & NEWS, Vol. 2, No. 2, February 26, http://www.americanbar.org/content/newsletter/publications/law_trends_news_practice_area_e_newsletter_home/conflictchecking.html.
7. Discuss screening walls, when they apply, and, practically speaking, how a law office manages them. What may the new lawyer share with others within the same firm if a screening wall exists? What is the office protocol for such matters?
8. Discuss the procedures for handling conflicts when a lawyer changes firms. Should a lawyer be concerned about the same issues when hiring non-lawyer personnel from another firm?
9. Discuss the propriety of working on a case where opposing counsel is a spouse, close relative, or any person with whom the lawyer shares a close personal relationship. Does client consent cure the potential problem?

Resources:

Margaret Graham Tebo, *Make a List, Check It Twice: A Good Conflicts-Checking System Helps Protect You From Ethics Violations*, ABA JOURNAL, February 2006, http://www.abajournal.com/magazine/article/make_a_list_check_it_twice/.

Harry H. Schneider Jr., *An Invitation to Malpractice: Ignoring Conflict-of-Interest Rules Can Open Pandora's Box*, ABA Standing Committee on Lawyers' Professional Liability On-Line Resources,

<http://apps.americanbar.org/legalservices/lpl/downloads/invitation1.pdf>.

Harry H. Schneider Jr., *An Invitation to Malpractice (Part II): Once a Conflict of Interest Is Spotted, Take Action Promptly*, ABA Standing Committee on Lawyers' Professional Liability On-Line Resources, January 1993, Page 100,

[http://books.google.com/books?id=2qkfN4hCxGQC&lpg=PA100&ots=DY_Nm2Belg&dq=Harry%20H.%20Schneider%20Jr.%2C%20An%20Invitation%20to%20Malpractice%20\(Part%20II\)%3A%20Once%20a%20Conflict%20of%20Interest%20Is%20Spotted%2C%20Take%20Action%20Promptly&pg=PA100#v=onepage&q&f=false](http://books.google.com/books?id=2qkfN4hCxGQC&lpg=PA100&ots=DY_Nm2Belg&dq=Harry%20H.%20Schneider%20Jr.%2C%20An%20Invitation%20to%20Malpractice%20(Part%20II)%3A%20Once%20a%20Conflict%20of%20Interest%20Is%20Spotted%2C%20Take%20Action%20Promptly&pg=PA100#v=onepage&q&f=false).

Lawyers' Professional Indemnity Company, *Managing a Conflict of Interest Situation*, On-line Practice Aids, <http://www.practicepro.ca/practice/conflict/ident.asp>.

MRPC 1.7, 1.8, 1.9, 1.10 Commentaries:

http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_7_conflict_of_interest_current_clients/comment_on_rule_1_7.html

http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_8_current_clients_specific_rules/comment_on_rule_1_8.html

http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_9_duties_of_former_clients/comment_on_rule_1_9.html

http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_10_imputation_of_conflicts_of_interest_general_rule/comment_on_rule_1_10.html

1C. Office Working Relationships

The following points are intended to facilitate a discussion about the 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 attorneys. *See* Washington Rules of Professional Conduct 5.3.

1. Explain to the new lawyer each non-lawyer employee's role in the mentor's office/firm, including the employee's title, job duties, and relationship to the new lawyer (if any) if in an in-house mentoring relationship.
2. Discuss the importance of having support staff on your team and treating them with respect.
3. Share suggested "dos and don'ts" of dealing with support staff, colleagues, and those more senior than the new lawyer. Discuss when it may be appropriate (or not) to socialize, provide gifts, or discuss potentially controversial issues such as politics or religion.
4. If the new lawyer has an assistant, secretary and/or paralegal, explain the types of tasks that are appropriate (and inappropriate) to ask each of them to do.
5. If in an internal mentoring relationship, discuss other support resources and when it would be appropriate to assign work to them.
6. If in an in-house mentoring relationship, discuss the office culture in terms of the types of tasks new lawyers are expected (although perhaps not told) to do rather than support staff. For example, if in an office where many lawyers share one secretary, do the newer lawyers handle tasks like making their own changes to documents or making their own copies so that the secretary can focus on doing those tasks for the more senior lawyers?
7. If in an in-house mentoring relationship, discuss any considerations or prohibitions in asking support staff to put in time outside of normal office hours, including whether requests for overtime must be approved, whether overtime requests must only be made on a limited basis, and how much advance notice is typically expected when asking staff to stay later than normal office hours.
8. If in an in-house mentoring relationship, discuss the specific skills and knowledge each support staff member has from which the new lawyer can learn or benefit.
9. Make suggestions about how to handle difficult situations where the new lawyer's assistant/secretary is not performing as expected. If mentoring in-house, explain any procedures that are in place to address this type of problem.
10. Discuss the types of behavior that constitute the unauthorized practice of law in Washington and to the extent possible, define the "practice of law." See Rule of Professional Conduct 5.5. Discuss an attorney's ethical obligation to prevent the unauthorized practice of law and provide specific tips on how to prevent non-lawyer personnel from inadvertently (or intentionally) engaging in it.

11. Discuss the office policies that are in place to prevent the unauthorized practice of law by non-lawyer staff, if mentoring in-house.
12. Share with the new lawyer appropriate ways to monitor the work product of support staff for which the new lawyer is ultimately responsible as an attorney.
13. Suggest appropriate ways for the new lawyer to socialize and get to know other attorneys and judges in the community.
14. Discuss the types of social or office behaviors that could be perceived as detrimental for a new lawyer's career, both with colleagues inside and outside of the new lawyer's office.
15. If mentoring in-house, discuss the office culture with regard to decision-making and the new lawyer's authority to do so.

Resources:

MRPC 5.1, 5.2, 5.3 Commentaries:

http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_5_1_responsibilities_of_a_partner_or_supervisory_lawyer/comment_on_rule_5_1.html

http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_5_2_responsibilities_of_a_subordinate_lawyer/comment_on_rule_5_2.html

http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_5_3_responsibilities_regarding_nonlawyer_assistant/comment_on_rule_5_3.html

1D. How to Involve Clients in Their Cases

The following points are intended to facilitate a discussion about the responsibilities of the client and the lawyer in decision-making and the best ways to involve a client in the case. *See* Washington Rules of Professional Conduct 1.4, 2.1.

1. Discuss the ethical importance and necessity of involving clients in decision-making in their cases.
2. Provide examples of the types of decisions in the mentor's practice in which he or she involves the client, including, among other things, the way in which the client is involved, the reasons for involving the client in those instances, and the reasons for not involving the client in other decisions.
3. Discuss the difficulty in knowing what instructions are given (or not given) by a client and some traps that a lawyer (particularly in the new lawyer's practice area) can fall into regarding identifying the client's instructions.
4. Share best practices that the mentor has adopted in his or her practice to document client instructions for his or her files, including confirming in writing to the client the instructions which were given and the steps which were or were not taken.

Resources:

MRPC 1.2 Commentary:

http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_2_scope_of_representation_allocation_of_authority_between_client_lawyer/comment_on_rule_1_2.html

1E. Discovery

The following points are intended to facilitate a discussion about handling the discovery aspect of litigation including tips for preparation and proper behavior during depositions. *See* Washington Rules of Professional Conduct 4.4.

1. Share with the new lawyer ways to properly draft and respond to written discovery. Discuss the inadvertent production of documents. *See* Washington Rules of Professional Conduct 4.4.
2. Share with the new lawyer proper behavior and examples of ways *not* to behave in depositions. Discuss the potential consequences for improper behavior. To the extent that you have experienced a lawyer acting improperly in depositions, share those experiences with the new lawyer.
3. Discuss how to properly advise and prepare your client or witness for a deposition. What constitutes improper advice or preparation?
4. Discuss professional ways to handle a situation where opposing counsel is acting improperly or unprofessionally during a deposition.
5. Discuss the types of disputes that would warrant calling a judge for resolution during a deposition.
6. Review the civil and local rules regarding discovery and depositions.

Resources:

Robert C. Cumbow, *On Language: Practical Correctness*, Robert Cumbow, WSBA BAR NEWS, Vol. 65 No. 12, December 2011, Page 21.

http://wsba.org/News-and-Events/Publications-Newsletters-Brochures/Bar-News/Bar-News-Archive/~media/Files/News_Events/Publications/Bar%20News/2011%20Full%20Issues/201112DecemberBarNews.ashx

Mark J. Fucile, *Inadvertent Production Revisited (Yet Again)*, Mark J. Fucile, WSBA BAR NEWS, Vol. 65, No. 3, March 2011, page 30.

http://wsba.org/~media/Files/News_Events/Publications/Bar%20News/2011%20Full%20Issues/201103MarchBarNews.ashx

1F. Negotiations

The following points are intended to facilitate a discussion about the most important points about negotiating with another lawyer and potential issues associated with negotiations. See Washington Rules of Professional Conduct 3.4, 4.1, 4.2, 4.3, 4.4.

1. Discuss how a lawyer should prepare for negotiation of a legal matter, including when and how the negotiation should be initiated, particularly in the new lawyer's area of practice.
2. Discuss ways to involve the client in negotiation.
3. Share with the new lawyer tips for negotiating with an attorney with years of experience, a friend, or someone with whom you do not get along.
4. Discuss the ethics and professionalism issues in negotiating on behalf of your client. In particular, discuss the duty to disclose facts which have a material impact on the negotiation as reflected in Rule 4.1.
5. Talk about the skills that are needed to be an effective negotiator and how to acquire them.
6. Share "best practices" with the new lawyer on how to appropriately deal with others on behalf of your client. Review the tips in the attached article. Jeffrey D. Diener, *When Negotiating, Shed Your Armor*, THE YOUNG LAWYER, Vol. 10, No. 7, May 2006.
7. Share with the new lawyer stories of attorneys who have ultimately harmed their client because of their incivility and lack of consideration in dealing with opposing counsel, the judge or the jury.

Resources:

Jeffrey D. Diener, *When Negotiating, Shed Your Armor*, THE YOUNG LAWYER, Vol. 10, No. 7, May 2006.

Thomas Noble, *Improving Negotiation Skills: Rules for Master Negotiators*, March 2008, <http://corporate.findlaw.com/litigation-disputes/improving-negotiation-skills-rules-for-master-negotiators.html>

1G. Common Malpractice and Grievance Traps

The following points are intended to facilitate a discussion about common malpractice and grievance traps and how to recognize and avoid common pitfalls. See Washington Rules of Professional Conduct 1.5, 1.14, 1.15A/B.

1. Discuss common malpractice mistakes, particularly in the new lawyer's practice area(s), and share ways to avoid them. Discuss the malpractice traps and tips suggested in the article: ABA Standing Committee on Lawyers' Professional Liability, *Top Ten Malpractice Traps and How to Avoid Them*, <http://apps.americanbar.org/legalservices/lpl/downloads/ten.pdf>.
2. Discuss common grievance problems that arise, particularly in the new lawyer's practice area(s), and ways to avoid them.
3. Give the new lawyer practical pointers on the types of practices in which he or she should engage to minimize client dissatisfaction and client complaints, including the best ways to communicate with your client and to involve your client in their representation.
4. Share with the new lawyer your organization's procedures to ensure that the law firm staff does not inadvertently disclose client confidences. Discuss the tips in the article: Kirk R. Hall, *Not So Well-Kept Secrets*, <http://apps.americanbar.org/legalservices/lpl/downloads/secrets.pdf>.
5. Suggest resources that the new lawyer can consult for making important ethical decisions, including the following:
 - a. Provide suggestions for finding ethics counsel and when such action is recommended.
 - b. Identify helpful ethics materials and discuss the importance of supplementing general ethics resources with independent research on Washington's disciplinary case law.
 - c. Identify ethics inquiry services of bar associations.
 - d. Discuss procedures for requesting or researching ethics advisory opinions of bar associations.
6. Discuss the reasons for maintaining malpractice insurance and considerations for choosing the right policy. Discuss the attached *Checklist for Purchasers of Professional Liability Insurance* of the ABA Standing Committee on Lawyers' Professional Liability (LPL), <http://apps.americanbar.org/legalservices/lpl/insurancechecklist.html>.

The ABA LPL has a free hotline for malpractice insurance questions: <http://apps.americanbar.org/legalservices/lpl/hotline.html>.
7. Discuss the best time to involve a malpractice carrier into a claim against you for malpractice liability or ethical misconduct.
8. Discuss the impropriety of settling claims for malpractice with your client.

9. Discuss the impropriety of asking your client to sign a fee agreement that provides for arbitration in the event of a fee dispute, malpractice claim, or ethical misconduct allegation.

Resources:

Mark J. Fucile, *Attorney Liens: Tool or Trap?*, WSBA BAR NEWS, Vol. 66 No. 5, May 2012, Page 20,

http://wsba.org/News-and-Events/Publications-Newsletters-Brochures/Bar-News/Bar-News-Archive/~/_media/Files/News_Events/Publications/Bar%20News/2012%20Full%20Issues/201205MayBarNews.ashx

Mark J. Fucile, *Lawyer Beware: The Consumer Protection Act*, WSBA BAR NEWS, Vol. 66 No. 2, February 2012, page 34.

http://wsba.org/~/_media/Files/News_Events/Publications/Bar%20News/2012%20Full%20Issues/201202FebruaryBarNews.ashx

ABA Standing Committee on Lawyers' Professional Liability, *Top Ten Malpractice Traps and How to Avoid Them*, <http://apps.americanbar.org/legalservices/lpl/downloads/ten.pdf>.

Kirk R. Hall, *Not So Well-Kept Secrets*,

<http://apps.americanbar.org/legalservices/lpl/downloads/secrets.pdf>

Checklist for Purchasers of Professional Liability Insurance of the ABA Standing Committee on Lawyers' Professional Liability (LPL),

<http://apps.americanbar.org/legalservices/lpl/insurancechecklist.html>.

1H. Unethical and Unprofessional Misconduct by Another Lawyer

The following points are intended to facilitate a discussion about how to deal with unethical and unprofessional misconduct by another lawyer. *See* Washington Rules of Professional Conduct 5.1, 5.2, 8.3, 8.4.

1. Review Disciplinary Rule 8.3 and discuss a lawyer's obligation to report lawyer/judge misconduct, including the reasons why lawyers should report other lawyers' misconduct and to whom such misconduct should be reported. Discuss the concepts of "knowledge" and "non-privileged information" in the context of the Rule.
2. Discuss the types of factors that should be considered in determining whether misconduct should be reported to a tribunal, disciplinary agency, prosecutor's office, or other authority.
3. Discuss the following situations and suggest the most appropriate authority (if any) to whom the conduct should be reported and the reasons therefore:
 - a. Continuous discovery abuse by opposing counsel;
 - b. Opposing counsel filing frivolous lawsuits or lawsuits merely to harass your client;
 - c. Egregiously unprofessional conduct during litigation;
 - d. Suspected theft by an attorney of a former client's funds;
 - e. Suspected financial misconduct by a lawyer who is a guardian for an incompetent person;
 - f. An attorney's failure to pay expert fees or other costs of litigation;
 - g. Theft of IOLTA monies by a lawyer in your firm;
 - h. Abusive and disrespectful behavior toward counsel and/or witnesses by a judge;
 - i. Client neglect because of suspected substance abuse or mental health issues of another attorney;
 - j. Erratic and unfair behavior by a judge because of suspected substance abuse or mental health issues;
 - k. Opposing counsel representing a party with whom there is a conflict of interest; and
 - l. Unauthorized practice of law by an attorney licensed in a jurisdiction other than Washington.
4. Discuss a lawyer's obligation to assist in and provide information about a lawyer or judge's conduct in an inquiry by a tribunal or other authority investigating that lawyer or judge.
5. Discuss the appropriate action for a new lawyer who suspects that a partner in the firm has committed misconduct. Discuss the procedure when an associate in the firm is suspected of misconduct.
6. Discuss what the new lawyer could do in the following scenarios: if unsure whether a partner or associate's conduct is inappropriate and suspects that it might be; if a superior in the new lawyer's firm instructs the new lawyer to do something that the new lawyer believes to be unethical, such as under/over-reporting billable hours and if the pairing is internal, what internal resources exist, if any?
7. Suggest resources that the new lawyer may consult for making important ethical decisions, including the following:

- a. Procedure for obtaining in-house ethics advice (if you are in an in-house mentoring relationship).
- b. How to find outside ethics counsel and when such action is recommended.
- c. Identify ethics resources and the importance of supplementing general ethics resources with independent research on Washington disciplinary case law when the ethics resources reviewed are not based on the Washington Rules of Professional Conduct.
- d. Identify ethics inquiry services of bar association(s).
- e. Discuss procedures for requesting or researching ethics advisory opinions of the WSBA.

Resources:

MRPC 8.3:

http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_8_3_reporting_professional_misconduct/comment_on_rule_8_3.html

1I. Grievance Process and Disciplinary Investigation

The following points are provided to facilitate a discussion about the grievance process and disciplinary investigation procedures in Washington.

1. Discuss the types of conduct that would merit a disciplinary investigation. Have you witnessed any such conduct?
2. If the new lawyer works in the same firm or organization, is there an internal disciplinary process of which he or she should be aware?

Resources:

Summary of Lawyer Discipline in Washington:

<http://www.wsba.org/Licensing-and-Lawyer-Conduct/Discipline>

Washington State Rules of Professional Conduct:

http://www.courts.wa.gov/court_rules/?fa=court_rules.list&group=ga&set=RPC

Information about the WSBA Disciplinary Board:

<http://www.wsba.org/Licensing-and-Lawyer-Conduct/Discipline/Disciplinary-Board>

Information about the Hearing Officer Panel:

<http://www.wsba.org/Licensing-and-Lawyer-Conduct/Discipline/Hearing-Officer-Panel>

The Grievance Process in Washington:

<http://www.wsba.org/Licensing-and-Lawyer-Conduct/Discipline/File-a-Complaint-Against-a-Lawyer/The-Grievance-Process>

2011 WSBA Annual Report of Lawyer Discipline:

http://www.wsba.org/Licensing-and-Lawyer-Conduct/~media/Files/Licensing_Lawyer%20Conduct/Discipline/2011%20Annual%20Report%20%20Final.ashx

1J. Electronic Ethics

The following points are provided to facilitate a discussion of the electronic storage of data and the rise of social media as a global tool for communication, which has resulted in electronic issues becoming center stage in the practice of law.

1. Discuss law firm electronic storage of materials.
2. Review the materials below and discuss the principles of e-discovery.
3. What care should be used regarding social media, and what issues arise in discovery?
4. Review and discuss Washington Rules of Professional Conduct 4.2, 7.2, and 7.3.

Resources:

Mark J. Fucile , *Electronic Ethics, Part 1: Friends and Other Stranger*, WSBA BAR NEWS, Vol. 65 No. 6, June 2011, page 30,

http://www.wsba.org/News-and-Events/Publications-Newsletters-Brochures/Bar-News/~media/Files/News_Events/Publications/Bar%20News/2011%20Full%20Issues/201106JuneBarNews.ashx#page=32

Mark J. Fucile, *Electronic Ethics, Part II: Communication, Metadata, and File Storage*, WSBA BAR NEWS, Vol. 65 No. 9, September 2011, page 38,

http://www.wsba.org/News-and-Events/Publications-Newsletters-Brochures/Bar-News/~media/Files/News_Events/Publications/Bar%20News/2011%20Full%20Issues/201109SeptemberBarNews.ashx#page=40

Don Horowitz and Barbara Endicott-Popovsky , *Unintended Consequences of Digital Evidence*, WSBA BAR NEWS, August 2012, page 13.

http://www.wsba.org/News-and-Events/Publications-Newsletters-Brochures/~media/Files/News_Events/Publications/Bar%20News/2012%20Full%20Issues/201208AugustBarNews.ashx#page=13of68

2. Civility

2A. Issues of Incivility in Legal Profession

Review the WSBA Creed of Professionalism and discuss the following questions about the civility in the legal profession:

http://wsba.org/~media/Files/Legal%20Community/Committees_Boards_Panels/Professionalism%20Committee/Creed%20of%20Professionalism.ashx

1. What does “civility” mean in the context of the legal profession? How is it different from the dictionary definition of “politeness”? Read *Professional Attitude* from the ABA Journal and consider how Justice Kennedy defines “civility”:
http://books.google.com/books?id=hBuePNuK3hMC&pg=PA66&lpg=PA66&dq=louis+pollak+professional+attitude&source=bl&ots=s9V8khi3mP&sig=XbJBf36NTFLi-tlLKoxb070_wo&hl=en&ei=fisTdOLD4ep8AbCm2uZuCg&sa=X&oi=book_result&ct=result&resnum=3&ved=0CCYQ6AEwAg#v=onepage&q&f=false
2. What types of uncivil or unprofessional behavior do lawyers most frequently encounter? How serious is the problem and has it changed over time?
3. How are lawyers dealing with unprofessional behavior when they encounter it? What did you learn in law school about dealing with unprofessional behavior?
4. What are the causes of incivility? Discuss the driving factors behind incivility and how these may be encountered and neutralized in practice. Consider some of these examples:
 - a. Client expectations based on how lawyers are portrayed in the media and entertainment.
 - b. Increased competition among a growing numbers of lawyers.
 - c. Dissatisfaction of lawyers with their work or profession.
 - d. A generally negative perception of lawyers by the public.
 - e. Overburdened and overworked court systems.
 - f. Abuse of the discovery process.
 - g. Belief that civil behavior may be perceived by an opposing party as weakness.
5. Share with the new lawyer stories of attorneys who have ultimately harmed their client because of their incivility and lack of consideration in dealing with opposing counsel, the judge, or the jury.
6. Discuss the relationship between incivility in the legal profession and myriad of barriers to access to justice. Read and discuss Ronald R. Ward, *Civility: The Preservation of Access to Justice*, WSBA BAR NEWS, Vol. 65 No. 3, Page 33,
http://wsba.org/~media/Files/News_Events/Publications/Bar%20News/2011%20Full%20Issues/201103MarchBarNews.ashx

Resources:

Joseph J. Ortego and Lindsay Maleson, *Incivility: An Insult to the Professional and the Profession*, <http://apps.americanbar.org/abapubs/lrc/pdfs/ortego.pdf>.

Jean M. Cary, *Teaching Ethics and Professionalism in Litigation: Some Thoughts*, <http://justice.law.stetson.edu/LAWREV/abstracts/PDF/28-2CARY.pdf>.

Ethical Considerations in Collaborative Practice, ABA Standing Committee on Ethics and Professional Responsibility formal Opinion 07-447, August 9, 2007.
http://www.collaborativelaw.us/articles/Ethics_Opinion_ABA.pdf

Stella Rabaut, *Civility: Power Beyond Politeness*, WSBA BAR NEWS, Vol. 65 No. 2, February 2011, page 26,
http://www.wsba.org/News-and-Events/Publications-Newsletters-Brochures/Bar-News/~media/Files/News_Events/Publications/Bar%20News/2011%20Full%20Issues/201102FebruaryBarNews.ashx.

Cynthia L. Alexander and G. Andrew H. Benjamin, *Civility Is Good for Your Health*, WSBA BAR NEWS, Vol. 65 No. 4, April 2011, page 33,
http://www.wsba.org/News-and-Events/Publications-Newsletters-Brochures/Bar-News/~media/Files/News_Events/Publications/Bar%20News/2011%20Full%20Issues/201104AprilBarNews.ashx.

Mark G. Honeywell, *Civility Is Good Business*, WSBA BAR NEWS, Vol. 65 No. 6, June 2011, page 34,
http://www.wsba.org/News-and-Events/Publications-Newsletters-Brochures/Bar-News/~media/Files/News_Events/Publications/Bar%20News/2011%20Full%20Issues/201106JuneBarNews.ashx.

Rob McKenna, *5 Steps to Improving Civility*, WSBA BAR NEWS, Vol. 65 No. 8, August 2011, page 26,
http://www.wsba.org/News-and-Events/Publications-Newsletters-Brochures/Bar-News/~media/Files/News_Events/Publications/Bar%20News/2011%20Full%20Issues/201108AugustBarNews.ashx.

Ernest Radillo, *From the Cotton Fields to the Courtroom*, WSBA BAR NEWS, Vol. 65 No. 2, October 2011, page 40,
http://www.wsba.org/News-and-Events/Publications-Newsletters-Brochures/Bar-News/~media/Files/News_Events/Publications/Bar%20News/2011%20Full%20Issues/201110OctoberBarNews.ashx.

Dan Ballbach, *A Changing Legal Profession Calls for Civility*, WSBA BAR NEWS, Vol. 65 No. 11, November 2011, page 35,
http://www.wsba.org/News-and-Events/Publications-Newsletters-Brochures/Bar-News/Bar-News-Archive/~media/Files/News_Events/Publications/Bar%20News/2011%20Full%20Issues/201111NovemberBarNews.ashx#page=37of68.

Andrea Brenneke, *Civility and Effectiveness*, WSBA BAR NEWS, Vol. 65 No. 12, December 2011, page 35,
http://www.wsba.org/News-and-Events/Publications-Newsletters-Brochures/Bar-News/Bar-News-Archive/~media/Files/News_Events/Publications/Bar%20News/2011%20Full%20Issues/201112DecemberBarNews.ashx#page=37.

Judge Henry J. McCarthy, *The Creed of Professionalism Revisited*, WSBA BAR NEWS, Vol. 62 No. 8, August 2008, page 14,
http://www.wsba.org/News-and-Events/Publications-Newsletters-Brochures/Bar-News/~media/Files/News_Events/Publications/Bar%20News/2008%20Full%20Issues/200808AugustBarNews.ashx.

Judge John P. Erlick, *Professionalism in the Courtroom*, WSBA BAR NEWS, Vol. 62 No. 8, August 2008, page 16,
http://www.wsba.org/News-and-Events/Publications-Newsletters-Brochures/Bar-News/~media/Files/News_Events/Publications/Bar%20News/2008%20Full%20Issues/200808AugustBarNews.ashx.

Judge Ellen Kalama Clark, *10 Tips Toward Professional Behavior...In the Courtroom and Out*, WSBA BAR NEWS, Vol. 62 No. 8, August 2008, page 18,
http://www.wsba.org/News-and-Events/Publications-Newsletters-Brochures/Bar-News/~media/Files/News_Events/Publications/Bar%20News/2008%20Full%20Issues/200808AugustBarNews.ashx.

2B. Professional Conduct Duties of the Lawyer to the Client and to the Administration of Justice

The following points are provided to facilitate a discussion about a lawyer's duties to the client and to the administration of justice.

1. Review and discuss Washington Rule of Professional Conduct 8.4(d). What are the consequences when a lawyer is engaged in misconduct? What are examples of "conduct that is prejudicial to the administration of justice"? Might these examples also fall under the Rule 3.5(d) prohibition of "conduct intended to disrupt a tribunal"?
2. Review and discuss the Washington Rules of Professional Conduct Preamble and Scope:
http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=RPC&ruleid=garpcpreamble.

Throughout the Preamble and Scope, attorneys are called upon to be "zealous" advocates for their clients. How does "zealous" advocacy conform to duties of "civility"? When can zealous advocacy cross the line into incivility?

3. Consider real-world examples of incivility and unprofessional behavior interfering with the administration of justice that may rise to the level of sanction or discipline:
 - a. Respondent engaged in disparaging, humiliating and discriminatory e-mails against opposing counsel (*Florida Bar v. Mitchell*, SC10-637 (Fla. 2010)).
 - b. Respondent found guilty of unlawful misconduct while engaging in a series of disparaging, humiliating, and discriminatory e-mails against opposing counsel. (*Florida Bar v. Mooney*, SC10-640 (Fla. 2010)).
 - c. Posting information on website about confidential disciplinary investigation into alleged misconduct of rival law firm (*In re Moran*, 840 N.Y.S.2d 847 (N.Y. App. Div. 2007)).
 - d. Filing briefs making inflammatory personal attacks against opposing counsel (*In re Abbott*, 925 A.2d 482 (Del. 2007));
 - e. Harassing and humiliating deponents and mischaracterizing deponents' statements (*In re Fletcher*, 424 F.3d 783 (8th Cir. 2005));
 - f. Making accusations of bias and racism in retaliation for an unfavorable ruling (*In re Hayes*, 777 N.Y.S.2d 120 (N.Y. App. Div. 2004));
 - g. Filing petitions that demean the judiciary and the legal profession (*In re McClellan*, 754 N.E.2d 500 (Ind. 2001));
 - h. Using profanities and physically attacking opposing counsel (*In re Moore*, 665 N.E.2d 40 (Ind. 1996); *In re McClellan*, 754 N.E.2d 500 (Ind. 2001));

Resources:

Gena Walling McCray, *A Lawyer's Duties in the Practice of Law*,
<http://www.attorneymccray.com/ALAWYER%27SDUTIESINTHEPRACTICEOFLAW.pdf>

Sims Weymuller, *Professionalism: One Lawyer's View*, WSBA BAR NEWS, Vol. 65 No. 8, August 2011, page 11,

http://www.wsba.org/News-and-Events/Publications-Newsletters-Brochures/Bar-News/~media/Files/News_Events/Publications/Bar%20News/2011%20Full%20Issues/201108AugustBarNews.ashx.

Stephen Hayne, *The Proper Care and Feeding of Clients*, WSBA BAR NEWS, Vol. 61 No. 4, April 2007, page 20,

http://www.wsba.org/News-and-Events/Publications-Newsletters-Brochures/Bar-News/~media/Files/News_Events/Publications/Bar%20News/2007%20Full%20Issues/200704AprilBarNews.ashx.

G.M. Filisko, *Be Nice: More States Are Treating Incivility as a Possible Ethics Violation*, April 2012,

http://www.abajournal.com/magazine/article/be_nice_more_states_are_treating_incivility_as_a_possible_ethics_violation/.

2C. Strategies for Managing Incivility

The following points are provided to facilitate a discussion about strategies to manage incivility.

1. Share with the new lawyer an example of how you handled an uncivil lawyer and how the difficult relationship affected the representation.
2. Identify characteristics of uncivil lawyers of which the new lawyer should be aware.
3. Provide suggestions of the best and most professional ways to address situations in which incivility commonly occurs: depositions, interrogatories and document requests, scheduling, continuances, and extensions of time.
4. Discuss how to handle disrespect, bad faith, accusations, name-calling, and baseless claims.
5. Discuss the value of alternative dispute resolution processes. How might ADR reduce the likelihood of incivility? How might training in ADR methods help a lawyer better avoid incivility?
6. Review and discuss William B. Smith, *Civility: Setting the Tone for Respect*, <http://www.aswllp.com/CM/Custom/Civility.pdf>

Resources:

Celeste F. Bremer, *Fostering Civility Within the Legal Profession: Expanding the Inns of Court Model of Communal Dining*, www.innsocourt.org/Content/File.aspx?Id=1213

William B. Smith, *Civility: Setting the Tone for Respect*, <http://www.aswllp.com/CM/Custom/Civility.pdf>

Molly Kenny and Grace Healy, *Does it Take Two to Tango, Not Always*, WSBA BAR NEWS, Vol. 68 No. 8, August 2008, page 20, http://www.wsba.org/News-and-Events/Publications-Newsletters-Brochures/Bar-News/~media/Files/News_Events/Publications/Bar%20News/2008%20Full%20Issues/200808AugustBarNews.ashx

Mercedes Riggs, *Don't Take it Personally, High Conflict Personalities Don't Realize They Are Jerks*, DE NOVO, February 2012, page 6. http://www.wsba.org/News-and-Events/Publications-Newsletters-Brochures/~media/Files/News_Events/Publications/De%20Novo/de%20novo%200212.ashx#page=6

2D. Dealing with Difficult Clients

The following points are intended to facilitate a discussion about how to deal with “difficult” clients.

1. Discuss why lawyers should be concerned about difficult clients.
2. Share with the new lawyer an example of a difficult client you had, how you handled the client, how the difficult relationship affected the representation, and what you might have done differently.
3. Identify characteristics of difficult clients about which the new lawyer should be aware at the initial meeting with the potential client, as well as how to factor such difficulties into a decision about whether or not to accept the potential representation.
4. Identify client behaviors that occur during representation which indicate your client is angry or dissatisfied. Provide suggestions about the best and most professional ways to address the client and handle their anger.
5. Review and discuss the following: Noelle C. Nelson, CONNECTING WITH YOUR CLIENT 69-87 (1996); Carole Curtis, *Dealing with the Difficult Client*, <http://practicepro.ca/practice/pdf/DealingDifficultClientCaroleCurtis.pdf>.
6. Discuss the importance of talking to a client as early as possible about realistic expectations of the representation, the scope of the representation, and the fee arrangement. Explain how discussing these and other issues can help to prevent misunderstandings and disagreement in your attorney-client relationship.

Resources:

Carole Curtis, *Dealing with the Difficult Client*,
<http://practicepro.ca/practice/pdf/DealingDifficultClientCaroleCurtis.pdf>.

Noelle C. Nelson, CONNECTING WITH YOUR CLIENT 69-87 (1996).

Merf Ehman, *What I Have Learned, Tips and Advice for Working with Vulnerable Clients*, WSBA BAR NEWS, Vol. 65 No. 5, May 2011, page 21.
http://www.wsba.org/News-and-Events/Publications-Newsletters-Brochures/Bar-News/~media/Files/News_Events/Publications/Bar%20News/2011%20Full%20Issues/201105MayBarNews.ashx

Mark Mays, *Dealing with Difficult People*, WSBA BAR NEWS, Vol. 62 No. 8, August 2008, page 22,
http://www.wsba.org/News-and-Events/Publications-Newsletters-Brochures/Bar-News/~media/Files/News_Events/Publications/Bar%20News/2008%20Full%20Issues/200808AugustBarNews.ashx

2E. Civility and Access to the Courts

The following discussion points are intended to promote an understanding about how incivility may affect access to the courts.

1. Discuss how different members of society perceive the justice system and the courts.
2. Discuss how the court system, attorneys, and judges may be intimidating to members of the general public, and how incivility by court insiders—such as clerks, attorneys, commissioners, and judges—may discourage members of the general public to seek redress from the courts.
3. Discuss how incivility by attorneys may adversely affect the willingness of clients, witnesses, and the general public to seek and pursue justice from the courts.
4. Discuss scenarios in which certain actions made by judges and attorneys in an attempt to be civil may not be in keeping with the standard of professionalism.
5. Discuss how incivility by attorneys increases public mistrust and lack of confidence in the court system.

Resources:

Ronald Ward, *Civility, the Preservation of Access to Justice*, WSBA BAR NEWS, March 2011, page 33.

http://www.wsba.org/News-and-Events/Publications-Newsletters-Brochures/Bar-News/~/_media/Files/News_Events/Publications/Bar%20News/2011%20Full%20Issues/201103MarchBarNews.ashx

Justice Barbara Madsen, *Professionalism and the Pro Se Problem*, WSBA BAR NEWS, August 2011, page 22.

http://www.wsba.org/News-and-Events/Publications-Newsletters-Brochures/Bar-News/~/_media/Files/News_Events/Publications/Bar%20News/2011%20Full%20Issues/201108AugustBarNews.ashx

Justice Gerry Alexander, *Access to Justice, A Justice System Imperative*, WSBA BAR NEWS, May 2008, page 16.

http://www.wsba.org/News-and-Events/Publications-Newsletters-Brochures/Bar-News/~/_media/Files/News_Events/Publications/Bar%20News/2008%20Full%20Issues/200805MayBarNews.ashx

2F. Race, Culture and Civility

The following points may be used to discuss issues of race, culture and civility

1. Discuss how issues of race and culture affect the legal profession and the justice system.
2. Discuss how issues of race and culture are currently handled within the legal community.
3. Consider how issues related to race and culture may be debated and discussed with civility.

Resources:

Judge Mary Yu, *Civility in Our Conversations About Race and Culture*, WSBA BAR NEWS, May 2011, page 47.

http://www.wsba.org/News-and-Events/Publications-Newsletters-Brochures/Bar-News/~media/Files/News_Events/Publications/Bar%20News/2011%20Full%20Issues/201105MayBarNews.ashx

3. Diversity and Inclusion

3A. Diversity and Inclusion in the Legal Profession

The American Bar Association's Report, *Diversity in the Legal Profession: The Next Steps*, provides the foundation for a facilitated discussion to increase awareness about diversity and inclusion in the legal profession. The report states that, despite efforts thus far, racial and ethnic groups, sexual and gender minorities, and lawyers with disabilities continue to be vastly underrepresented in the legal profession. The legal profession is less racially diverse than most other professions, and trends regarding racial diversity have slowed considerably. The overarching message of the ABA report is that a diverse legal profession is more just, productive, and intelligent because diversity, both cognitive and cultural, often leads to better questions, analyses, solutions, and processes.

Read the ABA Report:

http://www2.americanbar.org/centers/diversity_migrated/PublicDocuments/Next%20Steps%20Final-Virtual%20Accessible%20042010.pdf to provide a conceptual and normative context. The report begins by articulating four rationales for creating greater diversity within the legal profession.

1. Discuss the "Democracy Rationale" for diversity and inclusion in the legal profession (*see* page 9). Why do lawyers and judges have a unique responsibility for sustaining a political system with broad participation by all its citizens? How does a diverse bar and bench create greater trust in the mechanisms of government and the rule of law?
2. Discuss the "Business Rationale" for diversity and inclusion in the legal profession (*see* page 9). Given that business entities are rapidly responding to the needs of global customers, suppliers, and competitors by creating workforces from many different backgrounds, perspectives, skill sets, and tastes, how are culturally and linguistically proficient lawyers better able to serve their clients?
3. Discuss the "Leadership Rationale" for diversity and inclusion in the legal profession (*see* page 10). Individuals holding law degrees often possess the communication and interpersonal skills and the social networks to rise into civic leadership positions, both in and out of politics. Why then is it important that law school enrollment become more broadly inclusive?
4. Discuss the "Demographic Rationale" for diversity and inclusion in the legal profession (*see* page 10). The legal profession is about 90% Caucasian and this has been the trend for over a decade. What are the issues for the legal profession given the population shift to Caucasians as the racial/ethnic minority by 2042? What are the opportunities and challenges to advancing diversity and inclusion for the following groups: large law firms and corporate general counsel offices? Small firms and solo practitioners? Minority-owned firms? Female, LGBTQ, and disabled attorney-owned firms?

Resources:

Gordon Hirabayashi, *What the College Student, Client, and Professor Taught Us About Seeking Justice*, Lorraine Bannai, WSBA BAR NEWS, March 2012, page 44.

http://wsba.org/~media/Files/News_Events/Publications/Bar%20News/2012%20Full%20Issues/201203MarchBarNews2.ashx

ABA Center for Racial and Ethnic Diversity:

<http://www.americanbar.org/groups/diversity.html>.

EMBRACING THE OPPORTUNITIES FOR INCREASING DIVERSITY INTO THE LEGAL PROFESSION:
COLLABORATING TO EXPAND THE PIPELINE,

<http://apps.americanbar.org/op/pipelineconf/speakers.html>

Kristin J. Larson, *Washington Women Lawyers, Enhancing Opportunity and Diversity in the Law*, WSBA BAR NEWS, January 2012, page 28

http://www.wsba.org/News-and-Events/Publications-Newsletters-Brochures/Bar-News/Bar-News-Archive/~media/Files/News_Events/Publications/Bar%20News/2012%20Full%20Issues/201201JanuaryBarNews.ashx#page=38of68

3B. Personal Actions to Support Diversity and Inclusion

The following points are intended to facilitate a discussion to develop a deeper consciousness about diversity and inclusion and personal actions to support diversity and inclusion.

1. Discuss the meaning of diversity and inclusion.

Diversity means difference. Diversity is the range of human differences, including but not limited to race, ethnicity, gender, gender identity, sexual orientation, age, social class, physical ability or attributes, religious or ethical values system, national origin, and political beliefs.

Inclusion is the capacity to include difference. Inclusion involves promoting and sustaining a sense of belonging, valuing and empowering differences, respecting the talents, beliefs, backgrounds, ways of living and working. Inclusion requires deliberate action. It does not matter what your intentions, feelings, beliefs, or aspirations are as an individual or as a group if there is no action to support them.

- a. What does diversity and inclusion mean to you?
- b. What does diversity and inclusion mean to you within the context of your role as a lawyer?
- c. Do you see diversity and inclusion as sources of value for your professional life? Provide examples of how diversity and inclusion have added value?

2. Discuss personal actions to support diversity and inclusion. In addition to system and organizational initiatives, diversity and inclusion comes about through individual acts of inclusion. There are daily opportunities to make a difference in your own and someone else's life. Every human interaction is an opportunity for an act of inclusion. The list below provides a few ideas for personal actions.

- a. Witness one's own diversity sensitivity and impact on others.
- b. Make a conscious effort to learn about others who are different than oneself.
- c. Engage in a range of experiences with others who are different than oneself.
- d. Listen actively for other frames of reference and do not prejudge.
- e. Seek to understand and adapt to different styles when working with others.
- f. Become flexible to change the way you do things to meet the needs of others.
- g. Embrace diversity as a resource to benefit business and co-workers.
- h. Encourage and capitalize on the diverse contributions and strengths of team members.
- i. Practice inclusive behaviors in groups and intervenes sensitively when exclusionary behaviors occur.
- j. Get involved in organizations that promote diversity and inclusion.
- k. Challenge prejudice and injustice.
- l. Increase awareness of personal attitudes and beliefs about members of your own and others' social identity groups.
- m. Learn about different styles of conflict resolution and monitor own preferred conflict management style and its effect on others.
- n. Manage conflict over difference when it arises rather than avoiding it.

- o. Advocate to treat people fairly and to accommodate difference in all spheres of life, *i.e.*, personal, social, professional and the wider community.

Resources:

Robert S. Chang, *Taking to Task Race and the Criminal Justice System*, WSBA BAR NEWS, June 2011, page 32,

http://wsba.org/News-and-Events/Publications-Newsletters-Brochures/Bar-News/Bar-News-Archive/~media/Files/News_Events/Publications/Bar%20News/2011%20Full%20Issues/201106JuneBarNews.ashx

From Visible Invisibility to Visibly Successful: Success Strategies for Law Firms and Women of Color in Law Firms

http://www.americanbar.org/groups/women/initiatives_awards/women_of_color_research_initiative.html.

ABA Center for Racial and Ethnic Diversity,

<http://www.americanbar.org/groups/diversity.html>.

Nicola M. Pless and Thomas Maak, *Building an Inclusive Diversity Culture: Principles, Processes and Practice*, JOURNAL OF BUSINESS ETHICS 54, October 2004, Pages 129-147,

<http://diversity.cofc.edu/journal-articles/building-an-inclusive-diversity-culture>.

Alma Zuniga, *Pre-Law Student Leadership Conference in Yakima*, WSBA BAR NEWS , May 2012, Page 42,

http://www.wsba.org/News-and-Events/Publications-Newsletters-Brochures/Bar-News/Bar-News-Archive/~media/Files/News_Events/Publications/Bar%20News/2012%20Full%20Issues/201206JuneBarNews.ashx#page=42of68

4. Professionalism

4A. Civility and Etiquette

The following points are suggested to facilitate a discussion about customary rules of civility or etiquette among attorneys and judges in the community.

1. Discuss the local court rules or orders and how they affect your conduct. Discuss whether different judges have different views and interpretations of the local rules, and different courtroom practices.
2. Explain the roles of different court staff, including the clerks, the bailiffs, and the judge's assistants. Discuss the appropriate demeanor with court personnel.
3. Explain the protocol for meeting with a judge, such as how to get to a judge's chambers, or who should be contacted to set up a meeting. Discuss examples of *ex parte* contact and how to avoid it.
4. Discuss when it is appropriate to enter a courtroom that is in session.
5. Discuss how a judge is customarily addressed in court, at formal functions and events, in social settings, or at the grocery store. Does this custom change depending upon how often you appear before the judge or the capacity in which you know the judge? For example, if you are a prosecutor and appear before the same judge or magistrate every day? Or if you do not appear before the judge in court, but you are on a bar association taskforce with him or her resulting in frequent meetings together?
6. Discuss the appropriate attire for lawyers in your local courts. Discuss how you should advise your client to dress. Does your client's dress depend upon the type of case being litigated? What if your client does not have the proper attire to appear in court?
7. Discuss the importance of punctuality in court and the expectations of individual judges.
8. Discuss the appropriate demeanor with opposing counsel. How should you address opposing counsel? What if you know opposing counsel well because you often oppose each other in cases? Because you went to law school together? Because you are good friends? How should you react if opposing counsel has been underhanded or dishonest during your case? What types of recourse are available? Discuss tips that the mentor has for keeping calm during conversations with an opposing counsel who is conducting himself or herself unprofessionally, such as yelling at you, attacking you personally, or threatening you.
9. Discuss protocols and advice for e-filing documents with various courts.
10. What is the appropriate demeanor with your clients both in and out of court? Discuss the importance of sensitivity towards your clients.

11. If you are acting as local counsel with an out-of-state lawyer, what is your relationship to each other and to the case? What do you do when the other counsel wants to completely control the litigation and your actions?
12. Discuss etiquette for speaking on and off the record.

4B. Responsibility to Improve the Administration of Justice, Pro Bono Service, and Access to Justice

Rule of Professional Conduct 6.1, Pro Bono Public Service encourages all lawyers licensed to practice in Washington to provide at least 30 hours of *pro bono* or public service each year. WSBA members voluntarily report the number of hours they spend providing *pro bono* and public service annually. The WSBA Board of Governors recognizes lawyers who report performing more than 50 hours of service.

The following points are suggested to facilitate a discussion about the lawyer's responsibility to improve the administration of justice, *pro bono* opportunities, and access to justice issues.

1. Discuss ABA, Washington, and local aspirations for levels of *pro bono* service. Discuss *pro bono* goal-setting with the new lawyer.
2. Discuss any *pro bono* activities in which you are involved. What led you to become involved in these matters? What have you gained from these experiences?
3. Review the WSBA Access to Justice resources at: <http://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/Access-to-Justice-Board>.
4. Discuss the meaning of "access to justice." What is the role of a lawyer in ensuring access to justice? What happens when litigants attempt to access the justice system without the guidance of an attorney? How do unrepresented *pro se* parties in the courtroom affect the efficient administration of justice?
5. If the new lawyer works in the same firm, discuss the firm's *pro bono* policy. What hours count toward minimum billable hours, if applicable? Are there limits to what the firm will "count" toward an attorney's annual hours? Who is the appropriate contact person to express interest in *pro bono* matters?
6. Discuss how the new attorney might bring in a new *pro bono* matter as a new client for his/her organization. How would the attorney ensure a new client and matter were acceptable to the firm? What are the procedures for opening new client matters? What is the conflicts procedure to ensure there are no conflicts in representing the new client?
7. Discuss Rule of Professional Conduct 6.5, regarding rules in nonprofit and court-annexed limited legal services programs.
8. Provide the new attorney with resources from which the new attorney may discover an organization whose work interests him or her. Local and state bar association foundations often list organizations funded on their websites or in their annual reports, which may also provide helpful information. Encourage the new lawyer to explore *pro bono* opportunities available on the ABA website, http://www.americanbar.org/groups/probono_public_service.html, and the Washington *pro bono* website, <http://www.wsba.org/Legal-Community/Volunteer-Opportunities/Public-Service-Opportunities/Pro-Bono-Opportunities>.

9. Explain that in taking on a *pro bono* case, the new lawyer may be able to limit the scope of representation through a process known as “unbundling” of legal services.
10. If the new lawyer works in a public interest practice, talk about the issue of student loans and what effect repayment of these debts might have on the lawyer’s long-term public interest commitment. Direct the lawyer to loan repayment program resources developed by the ABA at http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/loan_repayment_assistance_programs.html.

The following points are suggested for a discussion about the organized bar and the advantages of being involved in bar association activities:

1. Attend a meeting or event of an organized bar association together and introduce the new lawyer to other lawyers in attendance at the event.
2. Give the new lawyer examples of local, state, specialty, and national bar associations, and discuss the differences among them.
3. Provide brochures or website links to local, specialty or national associations so that the new lawyer can review information about each in his or her spare time.
4. Share with the new lawyer the associations in which the mentor is a member, the reasons the mentor chose to be involved in the associations, the activities the mentor is involved in at the associations, and how involvement in the associations has benefited the mentor.
5. Discuss with the new lawyer what differences exist between sections or committees of particular associations. Is a particular association more well-regarded in a substantive area over others, *i.e.*, would the local bar association or state bar association be more helpful to further the new lawyer’s particular interests?
6. Provide to the new lawyer examples of activities one can become involved in as a member of an association. Discuss specific reasons why one may want to be involved in those activities. Emphasize opportunities presented by New/Young Lawyer Divisions within bar associations, which often offer free membership to new attorneys and provide educational programming, resources and publications, and an entry point for getting involved in bar activities.

The following points are suggested to facilitate a discussion about networking within the legal community and, in particular, to introduce the new lawyer to one or more attorneys with similar interests:

1. Discuss the new lawyer’s interests, including professional interests. What type of contacts would be appropriate and helpful for the new lawyer to have?
2. Select at least one attorney colleague having interests similar to the new lawyer (preferably outside the firm if the new lawyer also practices in the same firm) and arrange for a coffee or lunch meeting to introduce the new attorney to your colleague or friend. What shared interests do they have? What advice would your

colleague have for the new lawyer to open opportunities for the new lawyer in the shared areas of interest?

3. Discuss with the new lawyer your own networking experiences and the ways in which networking has helped you professionally and personally.

Resources:

Washington *Pro bono* Volunteer Opportunity Search website:

<http://www.wsba.org/Legal-Community/Volunteer-Opportunities/Public-Service-Opportunities/Pro-Bono-Opportunities>

Washington State Civil Legal Needs Study

<http://www.courts.wa.gov/newsinfo/content/taskforce/CivilLegalNeeds.pdf>

4C. Law Office Management

The following points are intended to facilitate a discussion about the mentor's law office, how it is managed, and where to locate resources for learning more information about law office management issues.

1. Explain how client files in mentor's office are managed and discuss the best practices for at least the following related issues:
 - a. Time records.
 - b. Records of client-related expenses.
 - c. Billing system.
 - d. Client retainer and/or payment schedules.
 - e. Fee agreements, including setting a fee and common fee agreements, the advantages and disadvantages to each, ethical considerations surrounding each, examples of improper provisions in fee agreements, and the importance of using engagement, non-engagement and disengagement letters.
 - f. Escrow and trust accounts, including establishing an IOLTA, the how-to of account/auditing, use of interest proceeds, and proper procedures for handling funds and other property belonging to a client.
 - g. Filing and e-filing systems, including procedures for opening and closing files, procedures for conflict checking, creating a checklist for new files, the importance of preparing a case memorandum and case plan, how to document the progress on cases, organizing both the file contents and the office filing system, and file inventory and review procedures.
 - h. Document retention plan; e-files; and back-ups.
 - i. Calendar and other reminder systems.
 - j. Information technology systems, including docketing software.
 - k. Methods of keeping clients informed about the progress of their matters.

2. Review and discuss the following articles:
 - a. Dan Pinnington & David Bilinsky, *Implement Appropriate Internal Controls*, LAW PRACTICE TODAY, April 2006, <http://apps.americanbar.org/lpm/lpt/articles/fin04061.shtml>.
 - b. Reid F. Trautz, *Practice Management Systems and Procedures: What They Don't Teach You in Law School*.
 - c. Allison C. Shields, *How to Take Control of Your Practice by Creating Vision and Mission Statements*, GP/SOLO LAW TRENDS & NEWS BUSINESS LAW, February 2006, http://www.americanbar.org/newsletter/publications/law_trends_news_practice_area_e_newsletter_home/visionstatements.html

Resources:

American Bar Association Law Practice Management Section:

http://www.americanbar.org/groups/law_practice_management.html

American Bar Association Young Lawyers Division E-Library:

http://www.americanbar.org/groups/young_lawyers/publications.html

American Bar Association Lawyers' Professional Liability, State List of Malpractice Insurance Coverage: <http://apps.americanbar.org/legalservices/lpl/directory/>

Dan Pinnington & David Bilinsky, *Implement Appropriate Internal Controls*, LAW PRACTICE TODAY, April 2006, <http://apps.americanbar.org/lpm/lpt/articles/fin04061.shtml>.

Allison C. Shields, *How to Take Control of Your Practice by Creating Vision and Mission Statements*, GP/SOLO LAW TRENDS & NEWS BUSINESS LAW, February 2006, http://www.americanbar.org/newsletter/publications/law_trends_news_practice_area_e_newsletter_home/visionstatements.html

Reid F. Trautz, *Practice Management Systems and Procedures: What They Don't Teach You in Law School*.

4D. Time Management

The following points are intended to facilitate a discussion about effective time management skills and techniques. *See* Washington Rules of Professional Conduct 1.3, 1.4.

1. Discuss ways to handle situations where the new lawyer becomes overloaded with work. If in an in-house relationship, discuss realistic expectations about the workload of new lawyers in your office and ways to cope with those expectations.
2. Share with the new lawyer techniques that have proven successful for your time management.
3. Together, work on a practical plan for managing the new lawyer's time, including how to prioritize work, ways to refuse work without jeopardizing the new lawyer's reputation or treatment by others, and ways to stay organized.

Resources:

Kathleen Brady, *Achieving Life/Work Balance Through Effective Time Management*, LAW PRACTICE TODAY, August 2009,

<http://apps.americanbar.org/lpm/lpt/articles/ptr08092.shtml>

ABA Legal Technology Resource Center, Time & Billing Software,

http://www.americanbar.org/groups/departments_offices/legal_technology_resources/resources/charts_fyis/timeandbilling.html

4E. Client Communication

The following points are intended to facilitate a discussion about the importance of client communication and how to maintain good ongoing communication, including the use of retention and fee agreements, keeping clients informed about matters, confirming matters in writing, and being on time. *See* Washington Rules of Professional Conduct 1.2, 1.4, 1.5, 1.16.

1. Share with the new lawyer a personal example of how failing to communicate clearly with your client caused problems in the relationship. Conversely, share with the new lawyer a personal example of how communication with your client prevented or resolved problems that could have ended the attorney-client relationship.
2. Provide tips to the new lawyer on effective communication. Read and discuss the article: Stewart Levine, *Essentials of Effective Communication*, LAW PRACTICE TODAY, February 2006, <http://apps.americanbar.org/lpm/lpt/articles/mba03071.shtml>.
3. Share best practices for communicating with clients, including practices like the following:
 - a. Sending copies of pleadings and correspondence to your clients.
 - b. Keeping clients involved in making decisions in their cases.
 - c. Returning calls personally and promptly; handling email effectively.
 - d. Utilizing staff to provide exceptional customer service.
 - e. Confirming instructions and/or advice in writing.
 - f. Clarifying reasonable expectations about the representation.
 - g. Clarifying your role and scope of the representation from the outset and as it changes.
 - h. Explaining clearly the fee arrangement.
 - i. Promptly providing detailed billing records to your clients.
 - j. Being respectful to your clients in all communications.
 - k. Respecting clients' time.
 - l. Making sure your client understands the steps of the process, including what will happen next and the appropriate way to respond.
4. Discuss ways that a new lawyer can improve his or her client relationship skills.
5. Discuss professional and ethical ways to thank a client and receive thanks or gifts from a client. *See* Rule of Professional Conduct 1.8. Review and discuss the article: Wendy Werner, *How to Thank a Client*, LAW PRACTICE TODAY, June 2005, <http://apps.americanbar.org/lpm/lpt/articles/mkt06051.html>.
6. Discuss different types of client relationships (*e.g.*, individual clients, government clients, and corporate clients) and provide tips for the best and most professional communication practices with the type of clients that the new lawyer will have.
7. Discuss how a lawyer clearly defines the scope of representation in a retainer or engagement letter.

8. Discuss how to talk about fees with your client. Discuss how to set a fee with your client. Share with the new lawyer samples of fee agreements and engagement letters that you use in your practice. Or, if mentoring in-house, share with the new lawyer the fee agreements and engagement letters which are used in your firm. Explain to the new lawyer why certain provisions are either included in your fee agreement or excluded from your fee agreement. *See* Rule of Professional Conduct 1.15.
9. Discuss when terminating the lawyer-client relationship is appropriate and suggest the best ways to proceed and document doing so.

Resources:

Managing the Lawyer/Client Relationship, PRACTICEPRO (Provides suggestions and checklists for communicating with your client.)

http://www.practicepro.ca/practice/pdf/Lawyer_Client.pdf.

Berry Adams, *Client Communication and Contact*, Betty Adams, ABA GPSOLO MAGAZINE, http://www.americanbar.org/content/newsletter/publications/gp_solo_magazine_home/gp_solo_magazine_index/2008_jan_feb_clientcommunication.html.

Steward Levine, *Communication Essentials*, Stewart Levine, LAW PRACTICE TODAY, March 2007, <http://apps.americanbar.org/lpm/lpt/articles/mba03071.shtml>.

Wendy Warner, *How to Thank a Client*, Wendy Werner, LAW PRACTICE TODAY, June 2005, <http://apps.americanbar.org/lpm/lpt/articles/mkt06051.html>.

4F. Proper Legal Counseling

The following points are provided to facilitate a discussion about proper legal counseling techniques and duties and responsibilities of advising clients.

1. Discuss the different roles a lawyer plays with clients in advising them. Discuss the aspirational goals which encourage sharing with clients non-legal considerations for their informed decision-making. Discuss the importance of not delving into areas which are outside a lawyer's expertise. Discuss how a lawyer balances these considerations. *See* Rules of Professional Conduct of 2010, Preamble, Rule 1.2.
2. Provide examples of the types of decisions in the mentor's practice in which he or she involves the client. Share tips on counseling the client for each of those decisions.
3. Discuss the importance of being sensitive to emotional aspects of clients' cases but not becoming emotionally involved in their matters. Discuss what you should do if you do become emotionally invested in your clients' cases. *See* Washington Rules of Professional Conduct 1.8(j) regarding prohibited sexual relations.
4. Discuss the ethical obligations a lawyer has in advising his or her clients. What does it mean to make sure clients are informed in their decision-making? What should you do if your client elects a course of action against your advice? *See* Washington Rules of Professional Conduct 1.2, 2.1, 3.1, 8.4.
5. Discuss the basic elements and techniques for counseling a client, including the following:
 - a. Talking to the client about time, such as how long the case will take, what could delay it, or what the opposition could do to prolong it.
 - b. Considering cost, what types of expenses should be expected, and how much the case could end up costing.
 - c. Discussing the upsides and downsides of the case.
 - d. Focusing the interview. How to outline what will happen during the meeting with the client and keep on track.
 - e. Being a good listener.
 - f. Advising fully on all relevant considerations or consequences to a course of action.
 - g. Following up.
 - h. Informing the client of privilege issues when the client wants a third party involved during meetings.

4G. Alternative Dispute Resolution

The following points are provided to facilitate a discussion about the types of alternative dispute resolution (such as mediation, binding and non-binding arbitration, high-low arbitration, early neutral evaluation, court-annexed arbitration, and summary jury trials) and the benefits and disadvantages of each.

1. Discuss the aspiration to counsel clients on how to resolve disputes by alternative methods. Should an attorney try to influence his or her clients to pursue a method of alternative dispute resolution? Read and discuss the article. Arnie Herz, *Lawyers as Everyday Peacemakers: Reframing the Attorney-Client Relationship for Optimal Conflict Resolution in the 21st Century and Beyond*, June 2004, <http://www.legalsanity.com/2004/06/about-arnie/articles-ebooks/lawyers-as-everyday-peacemakers-reframing/>.
2. Describe situations where a client may be better served by avoiding litigation. Discuss the principles in the article: Stewart Levine, *Resolutionary View: 10 Principles for Developing the Attitude of Resolution*, LAW PRACTICE TODAY, Sept. 2006, <http://apps.americanbar.org/lpm/lpt/articles/mba09061.shtml>.
3. Discuss the following types of alternative dispute resolution (among others you think of), the types of cases for which those forms of ADR are typically used, and the benefits and disadvantages of each:
 - a. Mediation
 - b. Binding and non-binding arbitration
 - c. High-low arbitration
 - d. Early neutral evaluation
 - e. Court-annexed arbitration
 - f. Summary jury trials
 - g. Private judges
4. Share with the new lawyer stories of your successes with ADR.
5. Discuss when to consider ADR as a possible means for resolving a case (particularly in the new lawyer's practice area) and how to talk to your client about it.
6. Identify local resources for attorneys who would like to use ADR for resolving cases, including local ADR programs, court programs, and mediation or arbitration services. Are any of the courts in which the new lawyer practices requiring mediation or arbitration before proceeding to court? Discuss training opportunities and other resources for lawyers who are interested in becoming mediators or arbitrators.
7. Discuss Rule of Professional Conduct 2.4 (new in 2010), which defines the duties of lawyers who serve as third party neutrals.
8. If applicable, discuss court rules regarding mandatory mediation or arbitration.

Resources:

ABA Section of Dispute Resolution,
http://www.americanbar.org/groups/dispute_resolution.html.

ABA Section of Litigation Alternative Dispute Resolution Committee,
<http://apps.americanbar.org/litigation/committees/adr/home.html>.

4H. ADR Observation and Discussion

The following points are provided to facilitate a discussion about the process of at least one type of ADR proceeding.

1. Describe situations where a client may be better served by avoiding litigation, which ADR proceeding may be the preferred option, and why.
2. Discuss when it would be appropriate to advise a client to include an ADR clause in agreements. Which type of ADR? What are the benefits? Disadvantages? What are considerations in drafting such clauses?
3. Discuss what different types of ADR you have experienced (such as facilitative, evaluative, or transformative mediation) and the benefits and disadvantages of each.
4. Invite the new lawyer to observe mediation or other ADR proceeding, either one of your own or arrange for the new lawyer to observe a colleague's.
5. If you have represented a client in mediation or other ADR, discuss your preparation and strategy with the new lawyer. How did you prepare your client? How did you prepare for the proceeding, and in what ways, if any, did it differ from your preparation strategy for litigation?
6. Share your reflections on previous ADR experiences with your new lawyer. What might you do differently for your next mediation?
7. Discuss your process for selecting a mediator or arbitrator. What qualities do you and your colleagues look for in determining the best fit? As a reference, it may be helpful to consult the websites of JAMS, the American Arbitration Association, United States Arbitration and Mediation, or others to review mediator biographies with the new lawyer.

Resources:

Collaborative Law Act:

<http://www.uniformlaws.org/Act.aspx?title=Collaborative%20Law%20Act>

ABA Section of Dispute Resolution,

http://www.americanbar.org/groups/dispute_resolution.html.

ABA Section of Litigation Alternative Dispute Resolution Committee,

<http://apps.americanbar.org/litigation/committees/adr/home.html>.

JAMS, <http://www.jamsadr.com/>

American Arbitration Association, <http://www.adr.org/>

United States Arbitration and Mediation, <http://www.usam.com/>

5. Wellness, Mental Health and Addiction

5A. Career Paths

The following points are provided to facilitate a discussion about different career paths for lawyers, the environments in different types of practice settings, and the resources for exploring career options that fit with the lawyer's definition of balance and wellness. The WSBA Law Office Management Assistance program (LOMAP) assists solo and small firm practitioners in delivering legal services.

1. Discuss the different types of law practice. For example, government or public office, private practice, large firm vs. small firm vs. solo practice, corporate, environmental, the judiciary, non-traditional legal positions, legal aid.
2. Share with the new lawyer your experiences and the environments in the different practice settings in which you have worked. Invite another experienced lawyer to discuss with you and the new lawyer his or her experiences in different practice settings.
3. If the mentor specializes in an area of practice, share with the new lawyer how you acquired the expertise in that area. Why did you choose to practice in that concentration? Discuss how to secure a position in your practice concentration.
4. Describe to the new lawyer your typical day with respect to things such as court appearances, trial work, research and writing, client contact, discovery, mediation/dispute resolution, hours/vacation/benefits/quality of life, and similar topics.
5. Share with the new lawyer what you enjoy most and least about your practice area. What or who was most instrumental in developing your practice expertise? What has been your greatest achievement?
6. If the new lawyer is not in the type of practice s/he would like to be in long-term, the mentor should try to introduce the new lawyer to lawyers in the field s/he would like to explore.
7. Discuss networking opportunities that would coincide with the new lawyer's objectives.
8. Share with the new lawyer tips for succeeding in the practice of law, especially in the practice setting in which the new lawyer works.

If the Mentee is interested in starting his or her own practice, discuss staff, resources, and other administrative issues in mentor's office, cover the best practices for at least the following matters:

- a. Mail distribution procedures.
- b. Procedures for handling telephone calls, including when they should be returned.

- c. Procedures for handling email communications, including when email should be used or avoided in favor of other methods of contact.
- d. Considerations in purchasing office furniture and where it can be purchased.
- e. Library and research systems.
- f. Considerations in purchasing office equipment and the types which are essential and/or most helpful.
- g. Other resources (publications, seminars, equipment, and the like) that a new lawyer might find particularly helpful in his or her work.
- h. Personnel, including identifying employees who are needed to run the office efficiently and the benefits and disadvantages to hiring different types of employees (*i.e.*, traditional, independent contractor, temporary).
- i. Employee selection, including interviewing techniques, background investigations, extending offers, and maintaining personnel files.
- j. Employment and discrimination laws of which an employer must be aware.
- k. Supervising staff, handling employee discipline and preventing the unauthorized practice of law and the unethical practice by associates.
- l. Considerations in purchasing liability insurance.

Share with the new lawyer ethical and professional marketing and business development techniques, effective rainmaking tools, and how to create a marketing plan for a firm.

Resources:

WSBA Law Office Management Assistance Program (LOMAP)

<http://www.wsba.org/Resources-and-Services/Lawyers-Assistance-Program>

ABA-CLE Career Counsel,

http://www.americanbar.org/resources_for_lawyers/careercenter.html

NALP Career Paths, http://www.nalp.org/careerpaths_careerservadmin#cargen.

5B. Career Objectives

The following points are suggested to facilitate a discussion about the new lawyer's career objectives and ways to achieve them.

1. Discuss the article Kathleen Brady, *Navigating Detours on the Road to Success*, LAW PRACTICE TODAY, March 2005, <http://apps.americanbar.org/lpm/lpt/articles/mgt03058.html>.
2. Discuss the different types of law practice. For example, government or public office, private practice, large firm vs. small firm vs. solo practice, corporate, environmental, judicial clerkships, non-traditional legal positions, legal aid.
3. Share with the new lawyer the long-term goals you had as a new lawyer. Discuss how and why those goals changed and/or the successes and failures you had in reaching those goals. Discuss what you have achieved and what career goals you have now.
4. Share with the new lawyer how you would do things differently in pursuing your career objectives if you had a chance to start over.
5. If the new lawyer is not in the type of practice he or she would like to be in long-term, the mentor should try to introduce the new lawyer to lawyers in the field he or she would like to explore.
6. Discuss networking opportunities that would coincide with the new lawyer's objectives. Discuss the new lawyer's resume and suggest activities in which engagement would help to strengthen ability to meet career goals. Suggest other ways for the new lawyer to develop professionally.
7. Assist the new lawyer in creating a five-year plan stating career objectives and strategies for meeting them.

Resources:

ABA Career Counsel,
http://www.americanbar.org/resources_for_lawyers/careercenter.html

5C. Balance between Career and Personal Life

The following points are intended to facilitate a discussion about balancing career and personal life, putting daily pressures into perspective, reconciling job expectations with actual experience, and maximizing career satisfaction.

1. Share with the new lawyer techniques to create and maintain balance between personal and professional life. Share your own experiences, including successes and failures, in finding balance between your personal life and career.
2. Discuss strategies to achieve the following components to balancing personal and professional life. (For specific strategies, see *Life in the Balance: Achieving Equilibrium in Professional and Personal Life* cited below.)
 - a. How to create expectations for your employer and clients that are compatible with a healthy and balanced lifestyle.
 - b. How to give your all at work while saving energy and emotion for family.
 - c. How to maintain physical health with a busy schedule and how doing so contributes to your productivity and success.
 - d. How to make nutritious choices at home, at work, or on the road, and how doing so maximizes performance and energy levels.
 - e. How to plan ahead for the challenges of caring for children or aging parents.
 - f. How to develop and maintain friendships or other relationships when time seems to be in critically short supply.
 - g. How to foster professional relationships.
 - h. How to be efficient and productive at work, as well as how to prioritize and delegate tasks.
3. Share stress management techniques. Discuss the article: Pat McHenry Sullivan, *You Can Find Time to De-Stress*, LAW PRACTICE TODAY, Feb. 2006, <http://apps.americanbar.org/lpm/lpt/articles/mgt02064.shtml>.
4. Discuss how to reconcile job expectations with the actual experience at work. Discuss the new lawyer's expectations for his or her job, identify the aspects of his or her job which do not meet those expectations, determine together whether the expectations are realistic, and discuss ways to make changes which will positively affect the work experience.
5. Discuss ways to maintain a positive attitude at work and create a positive work environment to maximize enjoyment of work.
6. Discuss the importance of identifying an individual or individuals in the work setting who can help answer questions about the culture of the office and how to balance your career and personal life. If mentoring in-house, help the new lawyer identify that person (if it is not the mentor) or those people.
7. Discuss ways to positively deal with the criticism of employers and clients.
8. Discuss the "dos" and "don'ts" of leaving a job because of job dissatisfaction, including the following tips:

- a. Do work hard until you leave. If you are in the process of looking for another job, it may be easier to find one while you still have one.
- b. Don't burn bridges by leaving on bad terms. You never know when and how you will have to interact with a member of your old firm in the future, or whether you will want to come back to your old firm.
- c. Do be careful about the reasons you say for leaving. To keep the relationships you have built intact, keep your reasons for leaving focused on the positive growth you expect by moving on rather than the negative experience you had which caused you to want to leave.
- d. Don't forget to mend difficult relationships before you go. Find something nice to say and shake hands with those you had problems with at your old employer so that you will be remembered as pleasantly as possible.
- e. Do stay in touch with your old employer. Maintain the good relationships you built because an old employer always has influence over your career and your reputation.

Resources:

Life in the Balance: Achieving Equilibrium in Professional and Personal Life, American Bar Association Young Lawyers Division 2002-2003 Members Service Project, <http://www.americanbar.org/content/dam/aba/migrated/yld/lifeinthebalance.authcheckdam.pdf>.

Sharon Meit Abrahams, 100 PLUS POINTERS FOR NEW LAWYERS ON ADJUSTING TO YOUR JOB, ABA Publishing (2004), <http://apps.americanbar.org/abastore/index.cfm?section=main&fm=Product.AddToCart&pid=V040HPZ0>.

Kathy Morris et al., ASK THE CAREER COUNSELORS...ANSWERS FOR LAWYERS ON THEIR LIVES AND LIFE'S WORK, ABA Publishing (2003), http://www.amazon.com/Ask-Career-Counselors-Answers-Lawyers/dp/1590311388/ref=sr_1_1?ie=UTF8&qid=1347313108&sr=8-1&keywords=ASK+THE+CAREER+COUNSELOR+MORRIS

M. Diane Vogt et al., KEEPING GOOD LAWYERS: BEST PRACTICES TO CREATE CAREER SATISFACTION, ABA Publishing (2000), <http://www.amazon.com/Keeping-Good-Lawyers-M-Diane-Vogt/dp/1570737932>

George W. Kaufman, LAWYERS GUIDE TO BALANCING LIFE AND WORK: TAKING STRESS OUT OF SUCCESS, ABA Publishing (1999), <http://www.amazon.com/Lawyers-Guide-Balancing-Life-Work/dp/1570737002>.

Julie M. Tamminen, LIVING WITH THE LAW: STRATEGIES TO AVOID BURNOUT AND CREATE BALANCE, ABA Publishing (1997), http://www.amazon.com/Living-Law-Strategies-Burnout-Balance/dp/1570733619/ref=sr_1_fkmr1_1?ie=UTF8&qid=1298481373&sr=8-1-fkmr1.

"*Striving for Balance in a High Stress Job*" is a one hour on line CLE developed by the Lawyer's Assistance Program and available at www.lapcle.org.

WSBA What is Work-Life Balance:

<http://www.wsba.org/Resources-and-Services/Lawyers-Assistance-Program/Self-Care/Work-Life-Balance>

Ellen Condera Dial, *The Search for Balance*, WSBA BAR NEWS, March 2007, Page 13.

http://www.wsba.org/News-and-Events/Publications-Newsletters-Brochures/Bar-News/~media/Files/News_Events/Publications/Bar%20News/2007%20Full%20Issues/200703MarchBarNews.ashx

Irene Leonard, *A Happy Lawyer is a Professional Lawyer: Finding Enjoyment in Your Career Can Make You a Better and More Effective Lawyer*, WSBA BAR NEWS, August 2008, page 29.

http://www.wsba.org/News-and-Events/Publications-Newsletters-Brochures/Bar-News/~media/Files/News_Events/Publications/Bar%20News/2008%20Full%20Issues/200808AugustBarNews.ashx

Amy Kosterlitz, *Don't Be So Quick to Judge . . . Yourself*, DE NOVO, April 2011, page 13.

http://www.wsba.org/News-and-Events/Publications-Newsletters-Brochures/~media/Files/News_Events/Publications/De%20Novo/denovo0411.ashx#page=13

Heidi Seligman, *Walking the Work-Life Balance Tightrope – Without Falling*, DE NOVO, August 2011, page 25.

http://www.wsba.org/News-and-Events/Publications-Newsletters-Brochures/~media/Files/News_Events/Publications/De%20Novo/de%20novo%200811.ashx#page=25

5D. Substance Abuse and Mental Health Issues

The following points are provided to facilitate a discussion about substance abuse and mental health issues in the legal profession, including possible warning signs, what to do if the new lawyer is faced with a substance abuse or mental health issue, and resources for assistance.

1. Objectively discuss the legitimate goals of mandatory substance abuse instruction which include raising the attorney population's consciousness regarding the problems of chemical dependency, informing all attorneys of how to detect, prevent and assist impaired attorneys, and increasing awareness of available assistance programs.
2. Review the Washington Lawyers Assistance Program (<http://www.wsba.org/Resources-and-Services/Lawyers-Assistance-Program>) and discuss the statistics regarding substance abuse and mental health problems among lawyers.
3. Share with the new lawyer experiences, if any, that you have had dealing with an impaired lawyer or judge, and how you handled or should have handled the situations.
4. Discuss the signs and symptoms of chemical dependency.
5. Discuss with the new lawyer your experience, if any, with noticing the signs and symptoms of chemical dependency in someone with whom you worked. Talk about how to professionally address that type of situation.
6. Discuss the most professional ways for dealing with the following situations:
 - a. The judge before whom you appear seems to be impaired.
 - b. The opposing counsel in your case attempts to negotiate with you while s/he appears to be impaired.
 - c. The opposing counsel in your case appears with his or her client at a deposition or hearing and you suspect s/he is impaired.
 - d. Your client appears for a hearing impaired.
7. Discuss a lawyer's personal and professional duties to assist their colleagues if they suspect impairment.
8. Discuss a lawyer's heightened responsibility to a client who is mentally impaired.

Resources:

WSBA Lawyers Assistance Program: <http://www.wsba.org/Resources-and-Services/Lawyers-Assistance-Program>

Mark H. Bardwell, *Attorneys Who Hit the Bottle . . . and Then the Road*, DE NOVO, December 2010, page 13.

http://www.wsba.org/News-and-Events/Publications-Newsletters-Brochures/~media/Files/News_Events/Publications/De%20Novo/denovo1210.ashx#page=13

Theresa Wang, *Young Lawyers and Mental Health*, DE NOVO, December 2009, page 6.

http://www.wsba.org/News-and-Events/Publications-Newsletters-Brochures/~media/Files/News_Events/Publications/De%20Novo/denovo1209.ashx#page=6