

Firms need to provide new lawyers with clear ethical guidance

By Debra A. Squires-Lee
and Thomas W. Kirchofer



With summer approaching and the July bar exam looming, law firms are beginning to think about next year's incoming class of associates.

There will be training and mentoring and plenty of work to begin to transform the newest law school graduates from law students into lawyers.

That is because, while our profession is changing rapidly, the law is still primarily an apprenticeship profession with on-the-job training. It takes more than a law degree and a bar card to make someone a full-fledged lawyer; newly degreed, newly barred attorneys need time and training to hone and develop their legal skills.

For example, we do not expect young lawyers who took a single contracts class to understand every nuance of a complicated commercial deal, or to know how to draft each of the numerous contracts and instruments the deal might require.

New lawyers need to learn how to apply the law they studied in law school to the situations and facts before them.

The same is true for the Rules of Professional Conduct. One class in professional responsibility and one test do not make lawyers experts in how to follow the ethical rules in complicated and often highly fraught situations.

Even lawyers who are honest and ethical may find themselves on unfamiliar ground when it comes to the ethical rules. Moreover, attorneys in the management ranks of law firms have an obligation under Mass. Rule Prof. C. 5.1(a) to take reasonable steps to ensure "that all lawyers in the firm conform to the Rules of Professional Conduct."

To begin to think about professional ethics training for new lawyers, law firms should start with the

areas in which new associates are most likely to encounter problems. Because newer lawyers are probably not originating a lot of work, conflicts are not likely a big cause for concern.

What are the areas of concern for new lawyers? In our view, most ethical issues involving new lawyers concern billing, overzealous advocacy, and negligence caused by drug and alcohol use.

Billing and timekeeping. Junior lawyers at law firms are new to the notion that every minute of their day must be recorded in six-minute intervals. New lawyers also understand that their compensation can increase if they hit certain billable-hour targets — or that their job can vanish if they do not. Thus, an unrelenting pressure to bill more hours can cause new lawyers to begin the perhaps understandable, but always impermissible, slide from scrupulous biller to haphazard biller to over-biller.

The pressures of the work itself, and the pressure to bill can cause an associate to negligently, or even intentionally, overbill clients.

New associates need to be reminded that they must accurately and correctly record their time. Firms can help by reminding new lawyers to contemporaneously track their time.

Firms also should consider new technologies that will help lawyers record their time as accurately as possible. For example, there are smartphone apps on the market that help attorneys record time.

Overzealousness. New lawyers are new to an adversarial profession. Both litigators and transactional lawyers face a pressure to "win" — a price concession, a deal point, a motion or a trial. That pressure to win cannot cloud a new lawyer's ethical obligations, including candor to the tribunal, fairness to opposing parties, and respect for the rights of third persons.

The Supreme Judicial Court's mandatory professionalism course is a positive new requirement for lawyers just starting out, but mentors and senior attorneys with whom new lawyers work each day will likely have far more influence as models of professionalism — or lack of professionalism.

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The best mentors teach by example, but law firms must play a role as well. Any initial ethics training for new lawyers should include clear expectations about behavior, courtesy and truthfulness, and provide concrete examples to new lawyers of what kind of conduct crosses the line.

Firms also should consider a formal mentorship program that matches senior lawyers with junior lawyers.

Alcohol use and abuse. According to a New York Times report on a study commissioned by the American Bar Association and the Hazelden Betty Ford Foundation, one in three practicing lawyers are problem drinkers, based on the volume and frequency of alcohol consumed; 28 percent suffer from depression; and 19 percent show symptoms of anxiety.

According to the Times, "lawyers working in law firms had the highest rates of alcohol abuse [and] junior associates reported the highest rate of problem drinking."

Lawyers who abuse alcohol can neglect their work and their clients and engage in other ethically questionable conduct. Yet, law firms often create an alcohol-rich environment. Social outings, mentoring activities, deal dinners and other events often include substantial alcohol use.

Law firms must recognize that alcohol abuse is a problem that can lead to ethical lapses. Firms must take steps to address any perceived alcohol abuse and consider their role in causing or exacerbating alcohol abuse.

Firms also can and should make very clear that attorneys who seek help or who report lawyers who may need help will be fully supported and face no adverse consequences.

The transition from law student to lawyer is a difficult one. Firms should treat ethical training and compliance as a vital aspect of training their next generation lawyers. **MLW**

Debra A. Squires-Lee is a partner at Sherin and Lodgen and co-chair of the firm's professional liability practice group. Thomas W. Kirchofer is an associate at the Boston firm. Both represent lawyers and law firms in professional malpractice and bar discipline matters, counsel and advise law firms, and provide ethics training.