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Learning To Be a Lawyer: Transition Into Practice Pilot Project

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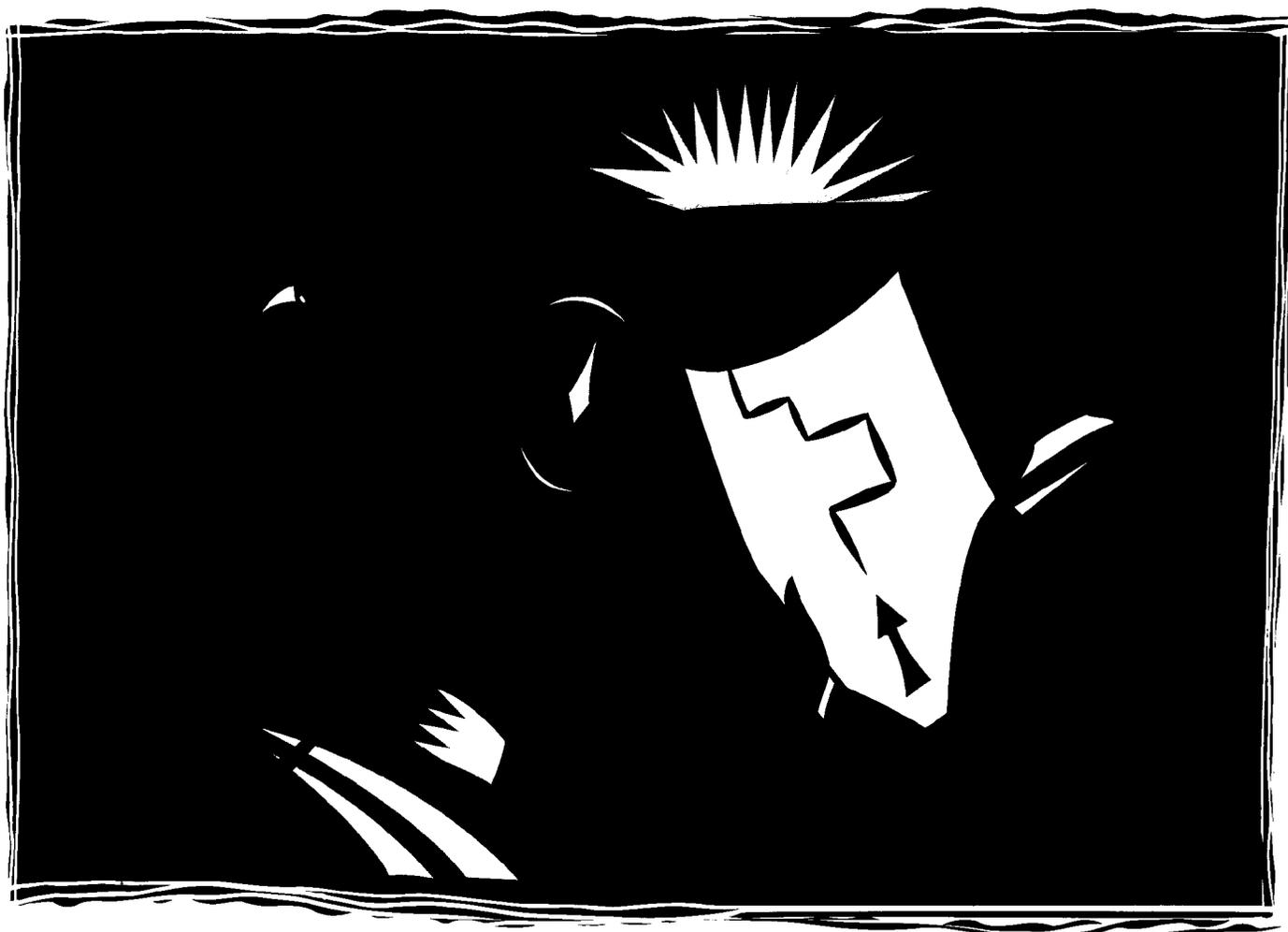
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COVER STORY

LEARNING TO BE A LAWYER:

Transition into Practice Pilot Project

By Sally Evans Winkler, C. Ronald Ellington and John T. Marshall



“A law student, upon graduation, is not a finished product,” a respected law school dean observed. A practicing lawyer might add: “A lawyer, upon passage of the Bar examination, is not a finished product.”

To determine ways new lawyers can be helped in moving up the steep learning curve that separates law students from competent professionals, the State Bar of Georgia, through its Committee on the Standards of the Profession, is conducting a Transition into Practice Pilot Project.

The purpose of the project is to test the feasibility of a program of professional guidance for beginning lawyers through continuing legal education. That education is focused on developing practical skills and knowledge through mentoring by experienced lawyers during the first two years after admission to practice. Combining a prescribed CLE curriculum with individual mentoring is the unique feature of the project that has caught the attention of the American Bar Association as well as state supreme courts and bar organizations around the country as they explore various formats for education and training to assist in the transition from law school to law practice.

Law schools do a superlative job today of fulfilling their distinctive mission: teaching law students to think like lawyers, to understand and think critically about legal concepts and processes, to separate relevant from irrelevant facts, and to apply the law to a given set of facts. What they do less well is teaching law students how to *act* like lawyers, to *be* lawyers.

And in fairness to the schools, they are limited in their ability to teach how to act like a lawyer because students must actually experience the reality of law practice before they can begin to make their own moral and ethical judgments about what it means to be a lawyer.

Historically, young lawyers were trained in the skills and values of their profession in a slow, patient way by more senior lawyers for whom they worked or with whom they came in contact in their communities. In the last generation, the legal profession has changed fundamentally, as has the way junior lawyers learn its values.

Many new lawyers today have missed out on the mentoring process—the relationship that a junior lawyer forms

with one or more veteran lawyers who can give feedback, guidance, and advice. Through a mentor, the younger lawyer sees in the veteran lawyer how to behave in a host of relationships—with clients, opponents, judges, peers, and support staff—how to act like a lawyer, how to be a lawyer.

This time-tested system of one-on-one training has been foundering due to the economic pressures of modern law practice. Some have said that what we have now is the *sink or swim* approach to training new lawyers: Throw them in the water and see if they make it to shore. This is not a responsible way to treat new lawyers or the public we serve. Losing the lessons once taught by good mentoring has arguably contributed to a decline in civility and a rise in questionable conduct among members of the Bar.

For some time, we have recognized the need to revive mentoring for the long-term health of the legal profession. Just as in a family, our profession’s values are passed down from generation to generation by the more senior members to the juniors. Critics would say that the profession’s values have changed, with emphasis on competition and short-term profits rather than long-term values and goals of service and problem solving. To respond to this criticism, we need to send

the right messages to our newly admitted lawyers about the professional and ethical values that mark the best traditions of our legal profession, to “bend the new twigs in the right direction,” as former Chief Justice Harold Clarke says.

This statewide project is the result of a year-long study and nearly two years of planning and development by the Standards

of the Profession Committee of the State Bar, appointed in 1996 by then-Bar President Ben Easterlin. The Committee, composed of lawyers from across the state, as well as the deans of the four ABA-accredited Georgia law schools, was charged with investigating whether the State Bar should require a period of internship or other supervised work prior to admission to membership in the State Bar and to report to the Board of Governors with the Committee’s recommendations. The Committee studied internship, apprenticeship, and courses for newly admitted lawyers in other states. Attempting to use the most effective features of these and to avoid the attendant problems, the Committee found a middle ground by recommending a program that combines a

“The central feature of this program is to help beginning lawyers. That means translating classroom exposure into problems of actual law practice by addressing issues such as relationships with clients, the judiciary, and colleagues.”

curriculum focused on the skills and values of the profession with mentoring by experienced lawyers. The report recognizes that law schools cannot carry out the entire responsibility of preparing lawyers for the practice of law and states that the State Bar and its individual members have a professional obligation to assist beginning lawyers in acquiring the practical skills, seasoned judgment, and sensitivity to ethical and professional values necessary to practice law in a highly competent manner.

Implementing the Pilot Program

The Standards Committee made its report to the Board of Governors in June 1997, and the Board responded by passing a unanimous resolution authorizing the Pilot Project recommended in the Committee's report. It is significant that the Executive Council of the State Bar's Young Lawyers Division also voted unanimously to approve the report and project. The Supreme Court of Georgia authorized the project, and at the suggestion of Chief Justice Benham, the Committee decided to extend the entire project over four years. The first two years would be devoted to securing funding and resolving preliminary issues, and the remaining two years would be spent conducting the actual CLE curriculum and mentoring components of the program.

Early on, the Committee realized that prior to assigning mentors and mentees, it would have to address a host of issues, including securing funding, clarifying the impact of the program on law school curricula, resolving the issue of potential mentor liability for the acts of beginning lawyers, and seeking the support of bar groups and judicial organizations. To deal with these issues, the members of the Committee divided into the following subcommittees: Finance, Mentor Recruitment and Selection, Mentors' Work, Mentee Recruitment and Selection, Curriculum, Evaluation, and Special Issues.

Funding for the Pilot Project is provided by grants from the State Bar, the Georgia Bar Foundation, the Institute of Continuing Legal Education in Georgia, the Chief Justice's Commission on Professionalism, and the Open Society Institute.¹

As envisioned by the Pilot Project, beginning lawyers would be admitted to the State Bar upon passing the Bar examination. The law license would allow the holder to practice law as now, without restriction. The beginning lawyer, however, would complete the mentoring and curriculum components of the Pilot Project within the first two years of admission to practice.

The Pilot Project is based on the recognition that, despite the addition of clinical experience as a regular feature of legal education, law schools cannot carry the entire responsibility of preparing lawyers for the practice of law and that a young lawyer's ethical standards are likely to be shaped far more by on-the-job experience in the early years of practice than by the limited practice setting available in law school.

For the past three years, members of the Standards Committee have been giving updates on the Pilot Project periodically to bar and judicial groups. State and federal judges and members of the Bar are expressing overwhelming support for the Pilot Project. A number of them, as well as members of the Young Lawyers Division, have commented that they wish such a program had been in place when they were admitted to the Bar.

Key Features of the Plan of the Pilot Project are:

Mentorship

- The project provides a beginning lawyer with access to meaningful counsel and professional guidance from an experienced lawyer during the first two years after admission to the Bar.
- To link CLE with the mentoring component, a Schedule of Activities and Experiences was developed as a guide for the mentors and beginning lawyers.

Curriculum

- The two-year curriculum focuses on teaching practical skills, professional values, and the mechanics of exercising sound professional judgment in the beginning lawyer's relationships with the client, the court, other lawyers, the legal system, and the public.
- This two-year curriculum takes the place of the current Bridge-the-Gap Program for participants in the Pilot Project.
- CLE lays a foundation of topics and information to enable the mentors to extend training and practical guidance in one-on-one or small group discussions.

The First Year Curriculum for beginning lawyers consists of 18 hours of instruction delivered in 3 units of 6 hours each. The three day-long seminars in the Pilot Project were spaced over calendar year 2000. Instruction in the first-year seminars focused on laying a base of practical skills and judgments in dealing with the client,

“The program provides a means for me to gain benefits of experience without suffering through trial and error.” — Project Participant

acting for the client, and negotiating for the client:

Session I *Dealing with Your Client: The Lawyer as Counselor*

Session II *Acting for Your Client: The Lawyer as Advocate and Architect of Future Conduct*

Session III *Negotiating for Your Client: The Lawyer as Negotiator*

Advisory Groups composed of practicing lawyers and law faculty created the First Year Curriculum, and a number of experienced lawyers from around the state participated as discussion group leaders in presenting these three programs. Professors Marjorie Girth and Doug Yarn of Georgia State University, Professor Jack Sammons of Mercer, and Professor Alex Scherr of the University of Georgia made significant contributions to the development and presentation of the First Year Curriculum.

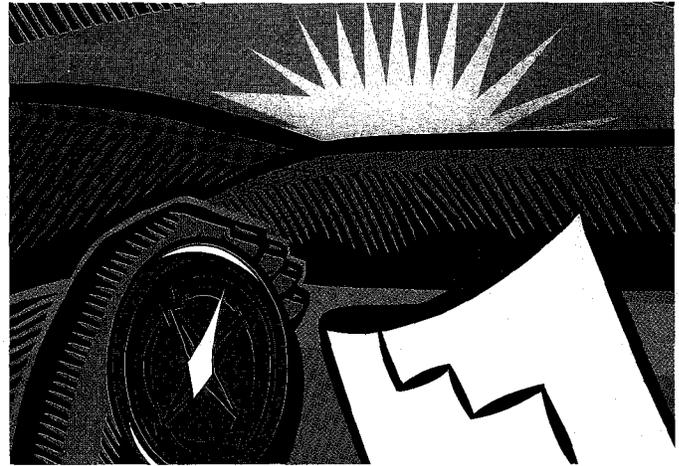
The Second Year Curriculum gives beginning lawyers the opportunity to address specific practice areas through an elective curriculum of 12 hours. The elective curriculum will feature certain programs from the Institute of Continuing Legal Education's (ICLE) regular offerings during 2001. Beginning lawyers have been asked to choose two electives for a total of 12 CLE hours during 2001 from one or more of the following subject areas: Civil Litigation, Criminal Litigation, Corporate and Transaction, General Practice, Law Practice Management, and Legal Writing. Electives were designated for the Pilot Project because of their content and quality and their expected usefulness to beginning lawyers. The Pilot Project and the chairs of each designated ICLE program will work together to identify questions about ethics and professionalism endemic to each subject area where possible. The lists of topical questions will be offered to beginning lawyers and mentors for future discussion between them after the program.

Mentors

Mentors in the Pilot Project represent a broad cross section of the Bar, diverse in geography, size and area of practice, gender, race, and ethnicity. The mentors were selected for participation in the Pilot based on their standing at the Bar and their reputation for character and professionalism. A Mentor Orientation was held on November 5, 1999, with a live repeat of this program on January 12, 2000. A total of 84 mentors attended these sessions, which gave an overview of the Pilot Project, previewed the upcoming first year CLE programs for beginning lawyers, and offered tips on good mentoring.

Beginning Lawyers

Selected law school graduates from the class of 1999 who passed the July 1999 Bar examination were invited to serve as beginning lawyers in the Pilot. Beginning lawyers



were chosen to represent a cross section of the Bar, diverse in geography, size and area of practice, gender, race, and ethnicity. The lawyers were selected for participation by their law schools or by their employers. The Standards Committee worked with the State Bar Membership Department and the law schools to reach a percentage of mentorships in each state judicial district which approximated the percentage of State Bar members in each district.

In January 2000, the Pilot Project was launched with 100 mentors and 100 beginning lawyers, most matched one-on-one. (Some mentors have two beginning lawyers.)

Back in 1996 when this project was conceived, the Standards Committee was particularly concerned about devising a program that would provide mentors to those new lawyers who were opening practices with no one to guide them. By the time the Pilot Project was implemented, the Standards Committee found that the pool of new lawyers going out on their own had grown very small. This means that in the Pilot Project, most of the participants have "in firm" mentorships; i.e., the mentor and mentee work for the same firm. Fifteen of the mentorships, however, are composed of beginning lawyers who have "hung out their own shingles." These mentors and beginning lawyers have no employment relationship.

Assessing the Program's Success

The Pilot Project will run for two years, until January 2002, with periodic evaluations. A final report and recommendations will be made to the Board of Governors of the State Bar and the Georgia Supreme Court in mid-2002.

The Standards Committee recognized from the outset the importance of a thorough, careful, and continuing evaluation of the Pilot Project. The Standards Committee engaged a professional research firm to perform a baseline survey of

CONTINUED ON PAGE 58

Continued from page 11

mentors' and beginning lawyers' attitudes on professionalism, assessments of lawyering skills, and perceptions of the Pilot Project. These surveys will be repeated in the middle of the project and at the end to gauge the results of the project. These evaluations will be important when the Standards Committee makes final recommendations.

Evaluation is also important because the lawyer-world seems to be watching this Pilot Project. The Committee has made several presentations to the ABA and to the National Conference of Bar Presidents. In July 2000 at the ABA Annual Meeting in New York, the Standards Committee Reporter, Professor Ron Ellington, former dean of the law school at the University of Georgia, made a presentation to the ABA Committee on Legal Education and Admissions to the Bar. His talk generated numerous requests from all over the country for information and copies of materials.

From the evaluations turned in by beginning lawyers at the CLE programs, the Committee gained valuable information about how to improve programs for future beginning lawyers. These are representative of comments on the CLE programs:

- "This small group session was excellent. Our moderator did not focus solely on the problems or the facts but rather discussed many areas involved with dealing with clients and opposing attorneys."
- "This training was very useful. The topics covered today were right on target."
- "The role-playing and debriefing were very valuable."
- "This was a wonderful session—good mix of activity and video involvement/large group discussion. Remaining 'engaged' was therefore easy."

Beginning lawyers identified some of the most important things they learned from these programs:

- "How to deal with difficult and uncooperative opposing counsel better."
- "Maintain professionalism and civility for the good of the profession, not just because you may cross paths with opposing counsel again."
- "Be assertive, but not obnoxious because it can hurt your client in the courtroom."

"This small group session was excellent. Our moderator did not focus solely on the problems or the facts but rather discussed many areas involved with dealing with clients and opposing attorneys." —Project Participant

- "My own struggle with many of the issues is common, and an approach is available to tackle the issue."
- "Be honest about your competency and be civilized."
- "Ways to solve problems for clients before litigation starts"

- "Look at long-term relationship goals instead of short-term."
- "Learn to 'expand the pie'—look at lots of options."
- "Keep lines of communication open, ask questions."

To assist in the evaluation of the Pilot Project, quarterly Interim Reports

from the mentors and beginning lawyers were required the first year. Each Interim Report consisted of three parts:

- Schedule of activities and experiences
- Narrative evaluation by the beginning lawyer
- Narrative evaluation by the mentor

One mentor wrote: "The schedule forces us to discuss specific areas, so that nothing 'falls through the gaps.'" A beginning lawyer said, "I like having someone who is experienced to call with questions. I know lots of new lawyers; however, I am more comfortable speaking with my mentor on these issues."

The Committee is learning that beginning lawyers in mid-size and larger firms find that the program allows them to ask questions that they otherwise might not ask because of embarrassment, or not wanting to impose on the mentor's time. Typical was this comment: "The questionnaires force the mentees to seek answers to questions that normally would not arise until a problem occurred. It is better that the program asks the mentee to be proactive, rather than reactive, to learning the 'practice' of law."

At this midpoint of the Pilot Project, a beginning lawyer gave a concise expression of how it helps new lawyers and protects the public: "The program provides a means for me to gain benefits of experience without suffering through trial and error."

The Pilot Project seeks to improve in a fundamental way the transition process from law student to compe-

tent practitioner. It focuses on the most formative period, the first two years of practice, and calls on experienced lawyers to play indispensable roles in the education of young professionals—to offer counsel and guidance to beginning lawyers as they acquire practical skills, make judgments with lasting consequences, and first confront ethical and professional

For a list of participants in the Transition into Practice Pilot Project, see pages 60-62.

challenges in the practice of law. This is an ambitious undertaking. The Standards Committee has sought to formulate a proposed plan of action that meets three tests:

- Will it work?
- Is it sustainable over time?
- Will it do more than nibble at the margins, that is, will it make a significant difference over time in the level of competence and professionalism among members of the Bar?

At this point in the Pilot Project, the Standards Committee remains optimistic that the program will meet all three of these goals and, as a salutary by-product, make the practice of law more civil, humane, and satisfying to beginning lawyers as well as experienced lawyers who serve as mentors. If successful, this project could lead to a systematic professionalism experience that will reach all newly admitted lawyers in Georgia. All involved in this program's development believe that it holds great potential to shape the legal culture in Georgia in ways that make real our professional ideals. ☐



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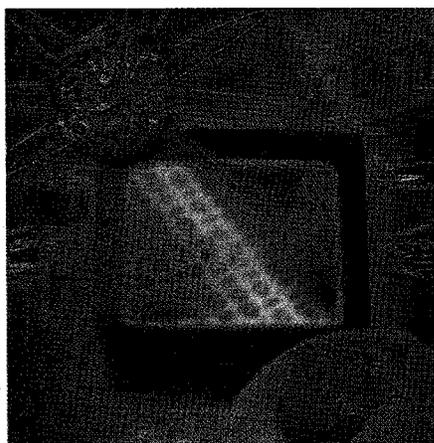


John T. Marshall is a partner at Powell Goldstein and has served as chair of the Standards of the Profession Committee since its creation in 1996.

Endnotes

1. The Open Society Institute is a charitable foundation created by financier George Soros to improve the administration of justice.

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