

The Duty to Mentor

The term “mentor” connotes a trusted friend, counselor or teacher, usually a more experienced person. It has become nearly ubiquitous in modern culture, with successful people in nearly every profession claiming that they owe their achievements to their mentors.¹ The word derives from the name of a character in Homer's Odyssey.² A wise and trusted friend, Mentor promises to look after and teach Odysseus' son while Odysseus himself is away at the Trojan wars. This person encapsulates the dual role of mentoring, which involves elements of both teaching and caring. Mentors are best seen as people who provide advice, support, information and sponsorship to their protégés, share their values and help their mentees move forward in their careers. Protégés, on the other hand, are those who receive guidance from their mentors and learn at the feet of acknowledged masters in the field.³

Given the almost universal acknowledgement regarding the value and importance of a mentoring relationship, the absence of a prescribed duty to mentor in the Rules of Professional

¹Among some of the more famous mentoring relationships are: Alexander the Great (mentored by Aristotle); King Arthur (mentored by Merlin); Thurgood Marshall (mentored by Charles Hamilton Houston); Carl Jung (mentored by Sigmund Freud); Bob Marley (mentored by Jimmy Cliff); Lance Armstrong (mentored by Eddy Merckx); and Luke Skywalker (mentored by Obi-wan Kenobi).

²Homer, The Odyssey (E.V. Rieu trans., Penguin Classics 2010).

³As one might expect, the television series Seinfeld had a very take on this relationship:

George: I still don't understand this. Abby has a mentor?
Jerry: Yes. And the mentor advises the protégé.
George: Is there any money involved?
Jerry: No.
George: So what's in it for the mentor?
Jerry: Respect, admiration, prestige.
George: Pssh. Would the protégé pick up stuff for the mentor?
Jerry: I suppose if it was on the protégé's way to the mentor, they might.
George: Laundry? Dry cleaning?
Jerry: It's not a valet, it's a protégé.

Seinfeld: The Fatigues, (NBC television broadcast Oct. 31, 1996), *available at* <http://www.seinfeldscripts.com/TheFatigues.html>.

Conduct is notable, if not lamentable. Rather than avoid this responsibility, more experienced lawyers should embrace the opportunity to serve as a mentor, and younger lawyers actively should seek out this potentially nurturing and meaningful relationship.

Rules of Professional Conduct

The Rules of Professional Conduct do not impose an ethical obligation to mentor. The Rule that comes closest to bearing on this topic is Rule 5.1, which sets forth the responsibilities of partners and supervisory lawyers over subordinate lawyers within a law firm. Rule 5.1 provides, in pertinent part, that

(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.⁴

Louisiana's Rules of Professional Conduct contains an identical provision.⁵

By its very language, the scope of this Rule is extremely limited. With regard to lawyers who are partners in a law firm and those who possess "comparable managerial authority," their only obligation is to ensure that their firm makes "reasonable efforts" for its attorneys to follow the Rules of Professional Conduct. This portion of the Rule does not impose any obligation on the attorney – as an individual – to work with younger lawyers or personally to oversee their professional conduct. Similarly, the obligation on lawyers with "direct supervisory authority over another lawyer" applies only to other lawyers in the same firm.⁶ Although the Rule

⁴Model Rules of Prof'l Conduct 5.1(a) & (b) (2009), *available at* http://abnet.org/cpr/mrpc/rule_5_1.html.

⁵Louisiana Rule of Professional Conduct 5.1(a) & (b) (2010), *available at* <http://www.ladb.org/Publications/ropc.pdf>.

⁶Model Rules of Prof'l Conduct 5.1 cmt. (2009).

imposes a personal obligation on these attorneys, it requires nothing more than assuring minimal compliance with the Rules of Professional Conduct.

In short, Rule 5.1 does not extend beyond the office door, and it focuses solely on ethical behavior. While laudable, merely assuring that subordinate lawyers are not brought up on disciplinary charges falls far short of the kind of nurturing relationship in which a more skilled practitioner serves as a professional and personal role model for less experienced person.

Code of Professionalism

In addition to the Rules of Professional Conduct, Louisiana also has a Code of Professionalism.⁷ Like the ethical rules, however, this Code is silent with regard to whether a lawyer should have professional goal (as compared to an ethical obligation) to serve as a mentor. Indeed, the Code contains almost nothing about dealing with lawyers outside of the adversarial context. Unlike the professionalism codes of some other states which stress the importance of a lawyer acting both as a role model and to improve the public's perception of attorneys,⁸ Louisiana's Professionalism Code says only that lawyers "will conduct [themselves] with dignity, civility, courtesy and a sense of fair play."⁹ The Louisiana State Bar Association does sponsor a Mentoring Program,¹⁰ but this program is purely voluntary, and participation is not premised on any existing ethical or professional requirement.¹¹

⁷Louisiana State Bar Ass'n Code of Professionalism, *available at* <http://www.lsba.org/2007MemberServices/codeofprofessionalism.asp>.

⁸See, e.g., State Bar of New Mexico, Bench & Bar Directory, A Creed of Professionalism of the New Mexico Bench and Bar, *available at* <http://www.nmbar.org/Attorneys/creed.html>.

⁹See note 7.

¹⁰See Louisiana State Bar Ass'n Mentoring Program, *available at* <http://www.lsba.org/Mentoring/Mentoring.asp>.

¹¹ To the contrary, in agreeing to serve as a mentor, a lawyer states that "I understand that I am not a supervising lawyer as defined by Rule 5.1 of the Louisiana Rules of Professional Conduct." Mentor Disclaimer and Release, *available at* <http://www.lsba.org/Mentoring/Mentor%20Disclaimer%20and%20Release.pdf>.

More to Consider

The simple fact that mentoring is not a mandatory ethical requirement or even an aspirational goal does not mean that a lawyer – particularly an experienced and knowledgeable one -- should not fill this role. To the contrary, the precepts and guidelines found in these compilations set forth only the barest outline of what attorneys can do. To be a truly invested member of the bar, however, takes more. As Judge Rubin noted in McCuin v. Texas Power & Light Co., “[l]awyers are members of a learned profession asserting high ethical standards. The lawyer’s exclusive right to practice is afforded because of the ethical standards of the profession as well as its members’ technical knowledge and specialized skill.”¹² Experienced lawyers should view mentoring not as a chore, but as an essential part of their practice.

Mentoring junior attorneys can and should be an integral part of a lawyer’s professional duty to supervise subordinates under Rule 5.1. Mentoring can serve a prophylactic function in protecting firms and supervising attorneys from a junior attorney’s ethical breaches. Junior attorneys are much more likely to bring a possible ethical issue to a mentor’s attention early, allowing more opportunity to prevent the breach altogether or at least head off injury to the client (and a later malpractice action against the firm). Additionally, mentoring should speed the development of the junior associate’s own ethical and practical legal skills, reducing the time in which the junior attorney is most vulnerable to committing unintentional ethical breaches.

¹² 714 F.2d 1255, 1264 (5th Cir. 1983) (internal quotation marks & citation omitted). See also Doe v. A Corporation, 709 F.2d 1043, 1047 n.10 (5th Cir. 1983) (“The profession of the law, in its nature the noblest and most beneficial to mankind, is in its abuse and abasement the most sordid and pernicious.”) (quoting State v. Horan, 123 N.W. 488, 490 (Wis. 1963) (per curium)).

Mentoring young lawyers is certainly one of the best ways to establish and maintain a culture of ethical conduct within a firm, as Rule 5.1 seems to envision.¹³

For those lawyers whose focus remains firmly rooted on the profitability of their practice, mentoring – or the lack of it – can affect a firm’s bottom line. Firms commonly complain that “greedy” associates train at the firm’s expense, then leave, taking with them the firm’s investment in their development. For their part, dissatisfied junior and midlevel associates claim that they feel abandoned, untrained, and unappreciated by their law firms, and with no personal connection to their firms or colleagues, willingly change jobs solely for better pay. Attrition costs firms a staggering amount, including lost revenues, lost training expenses, lost institutional knowledge, and replacement costs.¹⁴ Mentoring can build stronger connections between lawyers in a firm that go beyond merely working together for a common client or on the same case.

Additionally, mentoring directly affects firm reputation and culture. A firm that strives to build positive mentoring relationships with its junior attorneys will have a strong edge in attracting and retaining new associates. And associates who leave firms for in-house general counsel positions likewise will be more inclined to seek outside counsel with whom they have strong personal and professional relationships.

Conclusion

At its essence, professionalism is the combination of the core values of personal integrity, competency, civility, and public service that distinguish lawyers as the caretakers of the rule of law. Each lawyer, as a custodian of the system of justice, must be conscious of this responsibility. For this reason, experienced lawyers should willingly take on the role of mentor

¹³See Model Rules of Prof’l Conduct 5.1 cmt. (2009) (“[T]he ethical atmosphere of a firm can influence the conduct of all its members and the partners may not assume that all lawyers associated with the firm will inevitably conform to the Rules.”).

¹⁴See, e.g., Rachel Breitman, 2009 Associates’ Survey, The American Lawyer, Aug. 2009, at 61-63.

and teacher, whether through formal education programs or individual mentoring of less experienced lawyers. This includes accepting the responsibility for setting a good example for another lawyer, as well as an obligation to help bridge the gap between formal legal education and the realities of the legal profession.

The legal profession needs mentors.