

FEDERAL COURT PRACTITIONERS SERVE AS MENTORS TO NEWLY ADMITTED ATTORNEYS

THE SUPREME COURT OF OHIO'S LAWYER TO LAWYER MENTORING PROGRAM

BY HON. TERRENCE O'DONNELL, ASSOCIATE JUSTICE, SUPREME COURT OF OHIO



On April 2, 2010, Hon. Thomas J. Moyer, chief justice of the Supreme Court of Ohio, died unexpectedly at the age of 70. At the time of his death, Chief Justice Moyer was the longest-serving chief justice of any state court in the United States, having served on the Supreme Court of Ohio for 24 years since first being voted into office in 1986. The chief justice was responsible for a number of novel and significant changes in Ohio's state courts that have, in turn, affected federal practitioners. One such innovation was the adoption of court mediation programs and the hiring of court mediators in each of the trial and appellate courts in Ohio's 88 counties. (The U.S. District Court for the Southern District of Ohio, in the last five years, also hired a full-time court mediator to assist the court in settling cases within the district's three court locales: Cincinnati, Columbus, and Dayton.) Another innovation, the Lawyer to Lawyer Mentoring Program, was introduced to the supreme court by Justice O'Donnell and fostered and embraced by the late chief justice. Under this program, which is now run under the auspices of the Supreme Court of Ohio, lawyer mentors and their newly admitted lawyer protégés are paired by their backgrounds and interests. The mentor and protégé jointly select, from a court-approved list, the topics and activities they will discuss during their year together. The mentoring program, and the pairing of the lawyers, is overseen by Lori Keating, an attorney employed full-time by the supreme court. A large number of federal court practitioners (and their firms) from throughout Ohio have signed on to the mentoring program, and the court has authorized both in-house mentoring (in which, for example, a lawyer in a firm mentors a younger lawyer in the same firm) and outside mentoring (in which the mentor and protégé are employed by different firms or different legal employers). The following article, written by Justice O'Donnell specifically for The Federal Lawyer, is intended both as an explanation of the Supreme Court of Ohio's Lawyer to Lawyer Mentoring Program and its significant and positive impact on the profession as well as a tribute to enduring efforts of Chief Justice Moyer to increase civility and professionalism within both the state and federal courts.

The late chief justice of the Supreme Court of Ohio, Hon. Thomas J. Moyer, instituted the Commission on Professionalism in 1992, stating that the practice of law had, for some, become a mercantile operation. Sensing that the legal profession had lost sight of its dignity, he determined to deal with the problem. As a member of the early days of the commission, I recall how our subcommittee struggled with the problem of how best to define “professionalism” so as to provide information to the lawyers and judges in Ohio on the importance of being a professional.

The commission took several incremental steps and recommended several proposals to members of the Supreme Court of Ohio, most all of which have been implemented. Initially, the commission recommended adoption of *A Lawyer’s Aspirational Ideals* for attorneys. The court embraced the notion and adopted the goals that have been widely published. Next, the commission promulgated a separate guide for judges, known as *A Judicial Creed*. The court again quickly adopted the creed and published copies for judges throughout Ohio.

Eventually, the commission proposed that education on the topic of professionalism be made a part of the continuing legal education requirements of every lawyer and judge in Ohio. The court, after consideration, adopted the proposal and mandated that a professionalism curriculum should be made a part of the CLE requirements for all professionals in Ohio.

Realizing that the professionalism climate had not changed as a result of its efforts, the Commission on Professionalism continued to brainstorm ideas to better deal with the issue. After learning that the Supreme Court of Georgia had mandated mentoring for newly admitted attorneys, Ohio’s commission determined to implement its own mentoring program. The members of the commission developed working outlines on important topics facing lawyers in Ohio that had a direct impact on the level of professionalism they experience in their practice of law: law office management, IOLTA accounts, conduct at depositions, and decorum in the courts, to name a few of the more than 40 such talking points. The commission proposed, and the supreme court approved, one of the finest professionalism enactments in the country: the Ohio Lawyer to Lawyer Mentoring Program.

Purely voluntary, newly admitted attorneys to the bar select a mentor who has agreed to meet with them one-on-one for a minimum of six sessions over the course of a year and discuss a specific topic at each meeting. At the beginning of the mentoring year, the mentor and protégé jointly select these topics from an extensive list of topics suggested by the court. The one-on-one sessions bring great results:

- The mentor realizes that, as an instructor, it is important to review the materials.
- The new lawyer has a confidant in the profession who can be asked all the “dumb” questions the new lawyer may have and a relationship between the two can be established.
- The profession itself is enhanced, because the program

helps to root out the rogue, maverick, Rambo-type conduct that is sometimes exhibited by counsel and can impart a higher level of behavior that is far more in keeping with the standards expected from attorneys.

In addition, both the new lawyer and the mentor receive CLE credit for participating in the program: nine hours of credit for new lawyer training for the protégé and 12 hours of credit for the mentor. Those 12 CLE hours fulfill the mentoring lawyer’s CLE requirements for ethics, professionalism, and substance abuse hours. The arrangement is the ultimate win-win situation for the attorneys and for the profession. The sessions can be held in offices, over lunch, at bar association meetings, or in other locations.

Mentoring Examples

Fred Ransier, a partner at the Columbus law firm of Vorys, Sater, Seymour and Pease, and Jason James, a first-year lawyer, share a common understanding of what it means to graduate from law school in difficult economic times. Ransier was handed his diploma from The Ohio State University College of Law just a few short months after the Arab oil embargo ended. Gas, if you could find it, was only 55 cents a gallon at that time, but inflation was above 11 percent.

Inflation was not the issue when James earned his law degree from Capital University and passed the Ohio bar exam in 2009. For him, the problem was the economic meltdown that surrounded the collapse of the home mortgage banking industry and related unemployment. More to the point, law firms were cutting staff as well as attorneys, and, in some instances, firms were rescinding offers to new associates.

It took months for James to find a job as a lawyer, but one thing that kept his spirits up was the regular conversations he had with Ransier, who had been matched up with James by the Lawyer to Lawyer Mentoring Program. James appreciated Ransier’s honesty. “Mr. Ransier told me, ‘I’ve never seen a market like this one.’ He knows. He’s seen it. He has practiced as a sole practitioner and practiced in a large firm. He knows what he is talking about.”

“We don’t want young people to walk away because they don’t have a job,” Ransier said. It is an admonition he often repeats given the fact that two of the three lawyers he has mentored through the Lawyer to Lawyer Mentoring Program did not have jobs as lawyers at the time he mentored them. “I tell them, ‘think about your strengths and work with your strengths. Assist with Legal Aid to learn about areas of the law. It doesn’t mean you have to stand still.’”

Jason James says that fellow new attorneys made general suggestions about what to do upon admission to the bar, recommending that he join professional organizations and pursue networking opportunities. Ransier was far more practical, according to James. “He has more specific suggestions, like joining this group, talking to this attorney. I feel it is better advice.”

Kathleen Trafford, a partner at Porter Wright Morris & Arthur in Columbus, reminds the young attorneys she

AT THE END OF THE MENTORING YEAR, PARTICIPANTS ARE ASKED TO COMMENT ON THEIR EXPERIENCE TOGETHER. RECENT POSITIVE COMMENTS FROM MENTORS INCLUDE THE FOLLOWING RESPONSES TO THE QUESTION, "WHAT HAS BEEN THE GREATEST BENEFITS OF YOUR PARTICIPATION IN MENTORING?":

"Rejuvenating my interest in the practice of law. I almost forgot what it was like to be a new attorney. So to see that fresh perspective was nice."

"I could not believe how much I enjoyed the program. It has really been fun getting to know a new attorney and imparting words of wisdom. The greatest benefit is the lasting relationship that has developed out of this program."

"It has made me stop and rethink how I handle my relationships with others in the legal community, both in-house and outside."

"My hope is that, by virtue of participating in this program, I have helped my mentee to avoid problems in his practice that many young attorneys encounter. I enjoyed the program so much and have made a friendship that I believe will be lasting. We plan to continue our meetings, despite the end of the official mentoring relationship."

"It is gratifying to be part of a new lawyer's development. Also, it is great to see how fresh eyes view the profession and the rules governing the bar."

"Renewing my enthusiasm for the practice of law, which had flagged somewhat. The idealism and energy of young lawyers is contagious."

"One-on-one mentoring makes you realize what is most important and what is of greatest value in being an attorney."

"I think it is a good way to help a new lawyer to understand what practicing law entails and the importance of civility. It also allowed me the importance of not taking what it has taken years to learn for granted."

"To my surprise, the mentoring experience, in 'forcing' me to work through the various topics, rekindled my enthusiasm for our profession."

THE NEW LAWYERS WHO WERE MENTORED ARE EQUALLY ENTHUSIASTIC, AS IS EVIDENT FROM THEIR RESPONSES TO THE SAME QUESTION:

"I have developed a relationship with a seasoned attorney that practices in my area. I feel comfortable calling her for advice as simple as parking recommendations around court houses to the most complex issues within my field of practice. I have gained a mentor, friend, and colleague that will be an asset for the remainder of my career."

"Meeting with such an inspiring and passionate attorney. I intend to ask him to continue to act as my mentor indefinitely."

"Getting through the first year of being a lawyer without feeling completely lost and alone, especially because I do not come from a family of lawyers."

"I know I have gained a mentoring relationship that will last long after this program ends. It's really comforting to know that I will continue to have someone that I can rely on for advice."

"My greatest benefits were becoming more self-confident, meeting a new person, and having someone else outside my small office to turn to for advice."

"The ability to see how someone who has actually practiced law for 30 years views the law instead of reading it from a textbook."

"I learned there are many different ways to analyze problems and to still be successful as an attorney. There is room for creativity in my work."

"I have even higher standards now of what the profession deserves as to the caliber of work and ethics involved."

"Law school provides you with the tools to be a lawyer, but does not teach you what a legal career looks like or will be like. My mentor provided a long view of a legal career that is absolutely critical for any newly minted lawyer. The mentoring experience was one of the best parts of my first year practicing law."

mentors to remain positive. “We have a lot of faith in the future,” Trafford said. “But it’s so hard. We are not here to find them jobs but it is the elephant in the room and you can’t help wanting to help them.”

Both Trafford and Ransier admit that they benefit from being mentors perhaps as much as the new lawyers who come to them for advice. Trafford said, “When I engage in mentoring, it reinvigorates why I entered the profession by seeing it through somebody else’s eyes. It gives me a chance to reflect on the profession.” With a smile in her voice, she adds that the fresh outlook of new lawyers “makes me sort of jealous.” Ransier believes mentoring has given him license to let his mind revisit the early years of his practice, when he opened a law firm with his wife, Kathy. “We were very green,” remembers Ransier. “We would confer with each other. The solution might have been easy but the anxiety of not knowing was great.”

The Cutting Edge of a National Trend

Ohio is a national leader in developing, implementing, and enlarging its mentoring program, and its model has been used by a number of other states that are now gravitating toward this format. Only three states at present—Ohio, Georgia, and Utah—have permanent statewide, centrally administered mentoring programs that are a component of the required continuing legal education of their new lawyers. Whereas Georgia and Utah mandate participation by their new lawyers, Ohio’s program is voluntary. Ohio’s new lawyers who choose not to enroll in mentoring may obtain their required new lawyers’ training credit by attending new lawyers training classes. Kentucky and South Carolina are in the midst of pilot programs that mandate mentoring for new lawyers. Later this year, the Maryland Professionalism Commission will recommend that the Maryland Court of Appeals adopt a pilot mentoring program that will be voluntary for their beginning lawyers. Other states have mentoring initiatives in various stages of development and participation. (For a complete list, see www.abanet.org/cpr/professionalism/mentoring.html.)

Georgia was the first state to implement a statewide mandatory mentoring program for new lawyers. According to Douglas Ashworth, the director of Georgia’s Transition into Law Practice Program, mentoring got its start after “enough leaders of Georgia’s bench and bar got mad about a growing lack of professionalism and civility.” Georgia’s leaders saw mentoring as a way to protect the public and the profession from incompetence and lack of civility by instilling the values of professionalism at the beginning of a lawyer’s practice. Ashworth reports that new lawyers and mentors alike highly value their participation in mentoring. As one new lawyer expressed, the program gave her “a safe place to ask a stupid question.” Mentors have attested that their experiences “reaffirmed their faith in the profession.”

Tracy Gruber, administrator of the New Lawyer Training Program for the state of Utah, explained that Utah followed the “general drumbeat of other states” when it recently decided to mandate mentoring for its new lawyers. As one Utah mentor articulates in the state’s online mentor recruitment video, “My hope is that through mentoring

we can transfer values of significance—values of civility and courtesy and respect for other people and excellence in the profession. All of those things combined [are] what makes a great lawyer.”

In Texas, a mentoring program that began at the Dallas Bar Association is being replicated by other local bar associations in the state. Justice Douglas S. Lang of the Court of Appeals for the Fifth District in Texas was integral to the development of the Texas Transition to Practice Program and credits Roland Johnson, president of the State Bar of Texas, for making this program a high priority. Justice Lang reports that mentors uniformly love the opportunity to participate and believe that they are providing an invaluable service for new lawyers. The new lawyers’ reception of the program has also been very positive. For the new lawyer it is “like the sun came out on a cloudy day,” explains Justice Lang. The program successfully shows new lawyers what goes on in the profession in a way that law school simply cannot. Justice Lang asserts that the Texas mentoring program is especially important in the current economic climate, as new lawyers are finding it more difficult to find legal positions upon graduation from law school. New lawyers who have been unable to secure employment in the legal field have called participation in the program “a life-changing experience” that allowed them to start developing a professional network beyond their college and law school friends and boosted their confidence that there was opportunity in the profession.

The value and importance of mentoring to the legal profession was evident at a national conference focusing on attorney mentoring sponsored by the Nelson Mullins Riley & Scarborough Center on Professionalism and the University of South Carolina School of Law. Held this past April and hosting attendees from 22 states, this conference addressed the best practices for establishing, administering, and evaluating mentoring programs. Participants included judges, practicing lawyers, law school professors, representatives from state professionalism commissions, and members of the Inns of Court. Undeniably, enthusiasm for attorney mentoring is gaining momentum nationwide.

Ohio’s Success Story

The Supreme Court of Ohio could not be more proud of this program or more pleased with its results. The best description of these results comes from the comments of participants who promote the concept every chance they get. The mentors are renewed and enthusiastic about participating. Most satisfying for the court and the Commission on Professionalism are the statistical results, which speak for themselves. At this point, almost 600 new attorneys in Ohio are being mentored, and the program continues to grow. Beginning in January 2011, we expect to have more than 2,000 Ohio attorneys involved and active in this effort. New lawyer survey results reveal the following:

- 99 percent would recommend the program to other new lawyers;
- 96 percent believed that they would maintain a

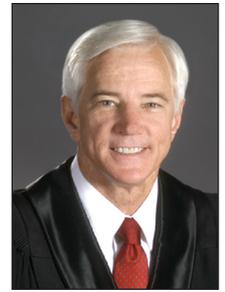
- relationship with their mentor after the mentoring term ended; and
- 97 percent said they were better equipped to deal with ethical and professional considerations in their daily practice.

The mentors echo the high percentages of satisfaction:

- 98 percent would recommend the program to other experienced practitioners;
- 82 percent said their participation contributed to an increase in their professionalism; and
- 77 percent reported that the experience contributed to an increase in job satisfaction.

We are confident that the Lawyer to Lawyer Mentoring Program in Ohio is achieving the results we hoped for and

expected. As a justice of the Supreme Court of Ohio, I am very pleased to have had a role in implementing this program, and I will continue to do all I can to improve it and expand professionalism in our state. **TFL**



Hon. Terrence O'Donnell sits as an associate justice on the Supreme Court of Ohio. He was elected to the court in 2003. He previously served on both Ohio's trial court (the Cuyahoga County Court of Common Pleas) and Ohio's Eighth District Court of Appeals. Lori Keating, secretary to the Supreme Court of Ohio's Commission on Professionalism, and Joseph R. Smith, administrative assistant to the chief justice, contributed to this article.

CHECK KITING *continued from page 26*

In re Cannon, supra, note 9 (attorney); *NBT Bank, NA v. First Nat'l Comm Bank*, 393 F.3d 404 (3d Cir. 2004) (Pennsylvania businesses); *Colonial Bank, supra*, note 8 (Illinois businesses); *LeDonne, supra*, note 10 at 1421–22 (Indiana business owner); *In re Russie*, 10 B.R. 832 (Bankr. N.D. Ill. 1981)(president of corporation); *U.S. v. Restivo*, 8 F.3d 274 (5th Cir. 1993) (bank president and CEO of insurance company); *Rogers v. McDorman*, 521 F.3d 381 (5th Cir. 2008) (civil RICO, bank president, board of directors); *First National Bank v. Midwest Autohaus Inc.*, 241 F.3d 862 (7th Cir. 2001) (civil RICO, automobile dealerships); *U.S. v. Abboud*, 438 F.3d 554 (6th Cir. 2006) (small-business owners).

¹²*Williams, supra*, note 9 at 280–81 (more than \$58,000.00); *Severson, supra*, note 1 (\$824,019.32); *In re Cannon, supra*, note 9 at 845–46 (\$1.8 million); *NBT Bank, supra*, note 11 at 407 (at least \$706,000.00); *Colonial, supra*, note 8 at 1223 (\$3 million); *LeDonne, supra*, note 10 at 1421–22 (\$150,000.00); *In re Russie, supra*, note 11 at 833 (\$33,000.00); *Restivo, supra*, note 11 at 277 (\$500,000.00); *Rogers, supra*, note 11 at 384 (\$41.2 million kited, \$3.3 million in losses); *Midwest Autohaus, supra*, note 11 at 871 (\$796,552.16); *Abboud, supra*, note 11 at 563 (at least \$1.3 million).

¹³*Colonial Bank, supra*, note 8 at 1222. Article 4 of the UCC is codified in Illinois and can be found at 810 ILCS 5/4-101. Discussions of Article 4 in this article will refer to the UCC in general.

¹⁴*Id.* at 1222; it appears that in the original text the district court erroneously cited to the wrong section of Article 4.

¹⁵*Id.* at 1222–23.

¹⁶*Id.* at 1223. The federal regulation most relevant to the collection of checks is Regulation CC, 12 CFR § 229, which states that funds are to be available two days following deposit. During the period the funds are “uncollected” and a bank may return a check during this period. If a check is not returned within this period, the check is considered

“collected” for Regulation CC purposes. *Colonial Bank, supra*, note 8 at 1223, n.3

¹⁷521 F.3d 381 (5th Cir. 2008).

¹⁸*Id.*

¹⁹*Id.*

²⁰*Id.* at 392.

²¹*Colonial Bank, supra*, note 8 at 1220, 1223.

²²*Id.*, citation omitted.

²³*Id.*

²⁴See note 16 *supra*.

²⁵*Id.*

²⁶18 USC § 1964(c).

²⁷If a bank employee reports wrongdoing and is then terminated, the employee may have a claim of retaliatory discharge. *Mackie v. Vaughn-Chapter-Paralyzed Veterans of America Inc.*, 354 Ill. App. 3d 731, 820 N.E.2d 1042 (5th Dist. Ill. 2004). Such claims are allowed when an employee is fired for (1) filing a workers' compensation claim or (2) reporting illegal or improper conduct. See *Mackie* at 1044.

²⁸18 USC § 1343; the penalty is a 30-year maximum term in prison and a fine of up to one million dollars.

²⁹18 USC § 1349; the penalty is the same as the one for underlying offense.

³⁰18 USC § 1001.

³¹18 USC § 1014; the penalty is a 30-year maximum term in prison and a fine of up to one million dollars.

³²*Abboud, supra*, note 11 at 554, 567.

³³Section 1344 was rewritten by Congress to encompass check kiting, and the maximum penalty was increased to 20 years imprisonment and a fine of one million dollars. Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRRE), PL 101-73, Aug. 9, 1989, 103 Stat. 183. In 1990, the maximum penalty was increased to 30 years imprisonment.

³⁴*United States v. Booker*, 543 U.S. 220 (2005).

³⁵*Severson, supra*, note 1 at 689.

³⁶*Id.* at 690.