



Colorado Mentoring Program

Mentoring Resources

To Support Mentoring Plan Implementation

For New Lawyers and Mentors

The Colorado Bar Association and the Chief Justice Commission on the Legal Profession thanks the Illinois Supreme Court Commission on Professionalism for the completion of most of this material and permission for its use.

The Colorado Mentor Program thanks you for your participation. 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 Commission has 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 areas addressed in the Mentoring Plan.

Additional Materials and information can be found at www.cobar.org and www.denbar.org.

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1.

1A. Introduction to Bar Association and Networking

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

1. Attend any meeting/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. Examples:
 - Local: Denver Bar Association, Arapahoe County Bar Association, Mesa County Bar Association, etc.;
 - State: Colorado Bar Association;
 - National: American Bar Association;
 - Specialty: National Organization of Bar Counsel, Federal Bar Association, Colorado Trial Lawyers Association, Colorado Defense Lawyers Association, Association of Corporate Counsel, American Inns of Court; and Colorado Lawyers Association
 - Affinity: Hispanic National Bar Association.
3. Provide to the new lawyer 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 association(s) in which the mentor is a member, the reasons the mentor chose to be involved in the association(s), the activities the mentor is involved in at the association(s), and how involvement in the association(s) has benefited the mentor.
5. Discuss with the new lawyer what differences exist between Section(s) or Committee(s) 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 contact(s) 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/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 area(s) of interest?
3. Discuss with the new lawyer your own networking experiences and the ways in which networking has helped you professionally and personally.

1B. Introduction to the Courthouse

The following points are suggested to facilitate a discussion about the local courthouse(s) and court personnel.

1. Discuss the local court rules or orders and how they impact your conduct. Discuss whether different judges have different views and interpretations of the local rules, and different courtroom practices. To the extent possible, share information in this regard about the preferences of the judges before whom the new lawyer is likely to appear.
2. Go to the local courthouse(s), particularly those courts where the new lawyer will primarily be appearing, and, to the extent possible, introduce the new lawyer to members of the judiciary, court personnel, and clerks of court.
3. Show the new lawyer the location of the clerk's office, explaining where to file pleadings, obtain certified copies of case documents, get journal entries, or search the docket. If the mentor has errands at court (which are non-privileged), invite the new lawyer to participate in those errands with the mentor. Ask the clerk to provide to the new lawyer his or her perspective on filing protocols such as cover sheets, number of copies, walking copies through to the judge, and the like.
4. Ask the bailiff and/or court clerk to share with the new lawyer protocols such as whether lawyers are required to check in before a hearing, whether simple or uncontested matters are called ahead of the regular docket, how a lawyer should handle a situation where s/he is covering two cases scheduled at the same time, whether courtesy copies are expected and when, whether draft orders should be proposed with courtesy copies, and how far in advance of an appearance the judges receive the files.
5. Introduce the new lawyer to the court's reporters and discuss the procedure for obtaining a transcript from them. If there are no reports provided by the court, discuss the necessity and procedure for privately obtaining a reporter.
6. Ask the judges to whom you introduce the new lawyer to share any pointers they have for handling a case in front of them.
7. Explain the roles of different court staff, including the clerks, the bailiffs, and the judge's assistants. Discuss the appropriate demeanor with court personnel.
8. 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.
9. Discuss when it is appropriate to enter a courtroom that is in session.
10. 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/magistrate every day? Or if you don't appear before the judge in court, but you are on a bar association taskforce with him or her resulting in frequent meetings together?
11. Discuss the appropriate attire for lawyers in your local court(s). 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?
12. Discuss the importance of punctuality in court and the expectations of individual judges in this regard.

13. 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 there? 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.
14. Discuss courtroom technology that is available to litigators such as overhead projectors, VCR/DVD players, microphones, computers, or internet. Provide contact information for or introduce the new lawyer to the court personnel who should be contacted when the new lawyer is interested.
15. Discuss protocols and advice for e-filing documents with various courts.
16. What is the appropriate demeanor with your clients both in and out of court? Discuss the importance of sensitivity towards your clients.
17. Discuss the importance of associating with local counsel if you are handling a case outside your community. What are the benefits and disadvantages to doing so? How do you go about finding local counsel in another community with which to associate yourself?
18. If you are acting as local counsel with an out-of-state/town 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?
19. Discuss etiquette for speaking on and off the record.

1C. Responsibility to Improve the Administration of Justice, Pro Bono Service, and Access to Justice

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, Colorado, and local aspirations for levels of *pro bono* service. Discuss *pro bono* goal-setting with the new lawyer.
2. Explain that a lawyer's performance of *pro bono* services encompasses not only the donation of time, but may also include contributing financially to organizations delivering services to those of limited means.
3. 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?
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/organization, discuss the firm's *pro bono* policy. What hours count toward minimum billable, 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. Provide the new attorney with resources from which the new attorney may discover an organization whose work interests him/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 Make History *pro bono* imitative site from the Colorado Bar Association, <http://makehistorycolorado.org/>.
8. Explain that in taking on a *pro bono* case, the new lawyer may be able to limit the scope of representation in the matter through a process known as "unbundling" of legal services. Direct the lawyer to the ABA clearinghouse on unbundled legal services <http://apps.americanbar.org/legalservices/delivery/delunbund.html> for guidance on how unbundling works. There are additional issues to think about on the Make History site at: <http://makehistorycolorado.org/rules/>.
9. If the new lawyer works in a public interest practice, talk about the issue of student loans and what impact 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.

1D. 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. This section is designed to address issues beyond those relevant to either the mentor's or the new lawyer's current employment.

1. Explain how client files in the 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 fee agreements, ethical considerations surrounding agreements, 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 a COLTAF, the how-to of account/auditing, use of interest proceeds, and proper procedures for handling funds and other property belonging to a client. Information on COLTAF accounts can be found at: <http://www.coltaf.org/>.
 - 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. Discuss staff, resources, and other administrative issues in the mentor's office, including 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.
3. 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.

4. 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, Feb. 2006
<http://legalease.blogs.com/visionstatementslawtrends0602.pdf>.

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/>

1E. Time Management

The following points are intended to facilitate a discussion about effective time management skills and techniques.

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 you use which have proven successful in the management of your time.
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:

ABA Young Lawyers Division, *Get a Life: Time Management Tips for New Attorneys*,
<http://www.abanet.org/yld/tyl/speced/getlife.html>

ABA Legal Technology Resource Center, Time & Billing Software,
http://www.americanbar.org/groups/departments_offices/legal_technology_resources/resources/law_office_technology/timeandbilling.html

1F. Client Communication

The following points are intended to facilitate a discussion about the importance of client communication and how to maintain good on-going communication, including the use of retention and fee agreements, keeping clients informed about matters, confirming matters in writing, and being on time.

1. Share with the new lawyer a personal example of how failing to communicate clearly with a client can cause problems in a relationship. Conversely, share with the new lawyer an example of how communication with a client can prevent or resolve 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, Feb. 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 relations skills.
5. Discuss professional and ethical ways to thank a client and receive thanks/gifts from a client. 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 may 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 a client. Discuss how to set a fee with a client. Share with the new lawyer samples of fee agreements and engagement letters. 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.
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.

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

1G. 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.
2. Provide examples of the types of decisions in the mentor's practice in which s/he 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.
4. Discuss the 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?
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.

1H. 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*, <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. 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>.

11. 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 alternative dispute resolution proceeding may be the preferred option, and why.
2. Discuss when it may 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 or disadvantages of each.
4. Invite the new lawyer to observe a mediation or other ADR proceeding.
5. If you have represented a client in mediation or other ADR, discuss your preparation and strategy with the new lawyer. How do you prepare a client? How do you prepare for a 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.
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, JAG, AAA, USAM or others to review mediator biographies with the new lawyer.
8. If the new lawyer is interested in learning more about the mediation process or becoming trained as a mediator, to inquire about upcoming mediation skills trainings or CLE offerings on mediation and related topics. In addition, area law schools and continuing education programs may be good resources for mediation introductory programs and skills training.

Resources:

Collaborative Law Act: <http://www.nccusl.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/>

2. Ethics

2A. Client Confidentiality

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

1. Discuss the importance of client confidentiality.
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 which impacts 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 a lawyer's obligations with regard to revealing client fraud.
5. Discuss a lawyer's obligation to maintain confidentiality of clients who consult with the lawyer but who do not hire him or her or who the lawyer ultimately refuses to represent.
6. Discuss a lawyer's obligation to maintain client confidences after the termination of the attorney-client relationship.
7. 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.
8. 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?
9. 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?
10. 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.

11. Discuss the exceptions to 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>.

2B. Conflicts of Interest

The following points are intended to facilitate a discussion about how to screen for, recognize and avoid conflicts of interest.

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?
3. Discuss different types of conflicts of interest that can arise, particularly in the new lawyer's practice area(s) or office setting.
4. Give examples of conflicts which can be waived with informed consent. Explain how to document your clients' 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, http://www.americanbar.org/content/newsletter/publications/law_trends_news_practice_area_e_new_sletter_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 how conflicts are handled when a lawyer changes firms. Should a lawyer be concerned about the same issues when hiring non-lawyer personnel who come 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, Feb 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>.

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

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, [http://books.google.com/books?id=2gkfN4hCxGQC&pg=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=2gkfN4hCxGQC&pg=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).

2C. 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.

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 Colorado and to the extent possible, define the "practice of law." 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.
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

2D. 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.

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 s/he 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 certain decisions which the Mentor makes.
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 instructions.
4. Share best practices that the mentor has adopted in his/her practice to document client instructions for his/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

2E. 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.

1. Share with the new lawyer generally ways to properly draft and respond to written discovery. Discuss the inadvertent production of documents.
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 generally how to properly advise and prepare your client or witness for a deposition. What constitutes improper advice and/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:

MRPC 3.3 Commentary:

http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_3_3_candor_toward_the_tribunal/comment_on_rule_3_3.html

2F. 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.

1. Discuss generally how a lawyer should prepare for negotiation of a legal matter, including when and how 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 generally 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. [LINK]
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:

Thomas Noble, *Improving Negotiation Skills: Rules for Master Negotiators*,
<http://library.findlaw.com/2001/Jan/1/130785.html>

2G. 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.

1. 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 s/he 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'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.
 - 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 in 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.

2H. Dealing with Others On Behalf of Your Client

The following points are intended to facilitate a discussion about appropriate ways (including ethical concerns and protocol) for dealing with others on behalf of your client.

1. Discuss a lawyer's ethical obligation to be honest with other parties and the court in all dealings with them.
2. Discuss the importance of dignified, honest, and considerate transactions.
3. Discuss the importance of reputation and how a lawyer's conduct dealing with others in a case is pivotal to his or her reputation.
4. Share "best practices" with the new lawyer on how to appropriately deal with others on behalf of your client.
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, or because they failed to properly and fully represent their clients.
6. Share with the new lawyer stories of attorneys who have encountered ethical difficulties due to a failure to adequately communicate with their clients, colleagues within their organization, opposing counsel, and the court.

2I. 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.

1. 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 which 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 guardian for an incompetent person;
 - f. An attorney's failure to pay expert fees or other costs of litigation;
 - g. Theft of COLTAF 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 Colorado.
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.
 - d. Identify ethics inquiry services of bar association(s).
 - e. Discuss procedures for requesting or researching ethics advisory opinions of bar associations.

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

2J. Grievance Process and Disciplinary Investigation

The following points are provided to facilitate a discussion about the grievance process and disciplinary investigation procedures in Colorado, and the role of the Office of Attorney Regulation.

www.coloradosupremecourt.com

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

3. Civility

3A. Issues of Incivility in Legal Profession

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+professiona+l+attitude&source=bl&ots=s9V8khi3mP&sig=XbJBfI36NTFLi-tlLKoxb07O_wo&hl=en&ei=fis_TdOLD4ep8AbCm_2uCg&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 growing numbers of lawyers.
 - c. Dissatisfaction of attorneys 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.

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.

3B. 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. 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. 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 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));
4. Review and discuss the following:

Gena Walling McCray, JD., *A Lawyer's Duties in the Practice of Law*,

<http://www.attorneyccray.com/ALAWYER%27SDUTIESINTHEPRACTICEOFLAW.pdf>

3C. 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 areas where 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, claims that are baseless.
5. Discuss the value of alternative dispute resolution processes. How might ADR processes reduce the likelihood of incivility? How might training in ADR methods help a lawyer better avoid incivility?
6. Review and discuss the following: William B. Smith, CIVILITY: SETTING THE TONE FOR RESPECT, <http://www.aswllp.com/CM/Custom/Civility.pdf>

Resources:

Celeste F. Bremer, J.D., Ed.D, FOSTERING CIVILITY WITHIN THE LEGAL PROFESSION: EXPANDING THE INNS OF COURT MODEL OF COMMUNAL DINING, www.innsofcourt.org/Content/File.aspx?Id=1213

3D. 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.
3. Identify characteristics of difficult clients of which the new lawyer should be aware at the earliest contacts with the potential client, as well as how to factor that into accepting the potential representation.
4. Identify client behaviors that occur during representation which indicate your client is angry or dissatisfied. Provide suggestions of the best and most professional ways to address the client and handle their anger.
5. Review and discuss the following:
 - a. 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.

4. Diversity and Inclusion

4A. 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 racial diversity has slowed considerably. The overarching message of the ABA report is 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%2042010.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). Given that individuals with 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, then why 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 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? For women, LGBT, and disabled attorney-owned firms?

Resources:

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://www.americanbar.org/content/dam/aba/migrated/op/pipelineconf/PipelinePostReport.authcheckdam.pdf>.

4B. 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, notional 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 own and others social identity group.
- m. Learn about different styles of conflict resolution and monitor own preferred conflict management style and its impact 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:

ABA Center for Racial and Ethnic Diversity, <http://www.americanbar.org/groups/diversity.html>.

Institute for Inclusion in the Legal Profession, <http://www.theiilp.com/>.

Nicola M. Pless and Thomas Maak, *Building an Inclusive Diversity Culture: Principles, Processes and Practice*, JOURNAL OF BUSINESS ETHICS 54, 129-147 (2004), <http://diversity.cofc.edu/journal-articles/building-an-inclusive-diversity-culture>.

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 balancer and wellness.

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.

Resources:

ABA-CLE Career Counsel, <http://www2.americanbar.org/careercenter/Pages/careercenter.aspx>.

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 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.
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://www2.americanbar.org/careercenter/Pages/careercenter.aspx>.

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 you are 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=V04OHPZ0>.

Kathy Morris et al., ASK THE CAREER COUNSELORS...ANSWERS FOR LAWYERS ON THEIR LIVES AND LIFE'S WORK, ABA Publishing (2003),

<http://apps.americanbar.org/abastore/index.cfm?section=main&fm=Product.AddToCart&pid=V03ATCZ0>.

M. Diane Vogt et al., KEEPING GOOD LAWYERS: BEST PRACTICES TO CREATE CAREER SATISFACTION, ABA Publishing (2000),

<http://apps.americanbar.org/abastore/index.cfm?section=main&fm=Product.AddToCart&pid=5110437>.

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.

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. Share with the new lawyer experiences, if any, that you have had dealing with an impaired lawyer or judge and how you handled (or c/should have handled) the situation(s).
3. Discuss the signs and symptoms of chemical dependency.
4. 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.
5. 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.
6. Discuss a lawyer's personal and professional duties to assist their colleagues if they suspect impairment.
7. Discuss a lawyer's heightened responsibility to a client who is mentally impaired.