

By MARTIN COLE

## Mentors, Supervisors and Professional Responsibility

Recently, a federal judge told an audience that, "I think you will find that by and large it is the younger lawyers, less experienced lawyers, . . . who tend to be more combative, partly because, I think, being young they are somewhat insecure and feel that every point has to be argued to a conclusion, that they have to fight tooth and nail over matters which probably, when all is said and done, don't make that much difference. More experienced lawyers who have been through the process, I think, generally manifest a more relaxed, and therefore civil, attitude."

Does this statement match with your experience? While it does with this particular judge, I'm not so sure it accurately reflects my own experience. There are plenty of very experienced lawyers who are more than willing to "fight tooth and nail" over trivial issues. Several names may come to mind while you read this.

As to younger lawyers, my own view is that newly admitted lawyers, usually fresh out of law school, are still filled with sufficient idealism and good intentions that they are eager to please and, if anything, too willing to compromise in order to achieve resolution of a matter.<sup>1</sup> Now, for some there may follow a period of readjustment in which the pendulum indeed swings over to the combative end of the spectrum before it returns to a more even-tempered handling of matters. Perhaps this

is the period to which the judge refers.

Many younger or less-experienced lawyers do not go through any such period of difficulty in their learning. Some are just good at what we do and fit seamlessly into the practice of law. More likely, an experienced attorney has acted in some way as a mentor, providing guid-

ance and perspective to the young lawyer, helping her to find a comfortable method of practice, and answering the myriad of questions that most new lawyers have, sometimes for several years. For most young lawyers, finding such a mentor (or mentors) is an important step in learning not just how to think like a lawyer, but how to truly be a professional. Many law schools and law-related organizations have started mentoring programs to help mentor aspiring lawyers.<sup>2</sup> Once students graduate from law school, however, further mentoring is likely "hit and miss" depending on whether the lawyer is in solo practice or has joined a firm, and even then it can depend upon the seriousness with which that firm takes its mentoring obligations.

### MENTORING AND THE RULES

Mentoring is not just a sound philosophical concept or business practice. It can be an integral part of an attorney's compliance with the Minnesota Rules of Professional Conduct (MRPC). In particular, Rules 5.1, 5.2 and 5.3, MRPC, deal with the obligations of a supervisory lawyer and those of subordinate lawyers in return, and help define the ethical parameters of the relationship between the supervisor and subordinates, both lawyers and nonlawyer employees. Particularly relevant to mentoring is Rule 5.1(a), which requires a partner in a law firm, or any other lawyer who possesses comparable managerial authority in an organization, to make reasonable efforts to ensure that the entity has in place measures giving reasonable assurance that all lawyers and support staff in the entity comply with the requirements of the Rules of Professional Conduct. Mentoring young lawyers is certainly one of the best ways to establish and maintain a culture of ethical conduct within a firm or entity as the rule seems to envision.

Of course mentoring is only as effective as the quality of the mentors involved and the willingness of the lawyer being mentored to accept guidance and to learn. If a formalized mentoring relationship is assigned or created, both parties should be willing to recommend change if the relationship is not

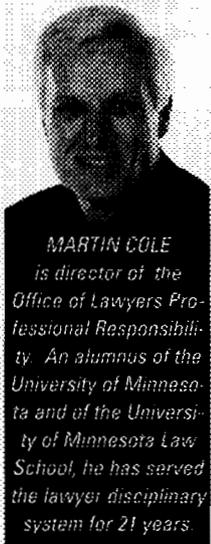
beneficial. If the relationship is more an informal one, then the new lawyer should be willing to seek assistance from several potential mentors until a comfortable fit is assured. Approaching the individual who seems best suited to the mentoring role about formalizing the process might then be appropriate. Oftentimes, the best mentor may not be an attorney's direct supervisor.

Lawyers not in a firm, business or government agency need to be more creative in acquiring a proper mentor to help them through their early careers. Building a network of more experienced attorneys who are willing to take the time to help can be difficult, but well worth the effort. Many complaints against solo practitioners or young attorneys could likely have been avoided if the lawyer had been able to "sound out" a more experienced colleague before undertaking a particular action.

### FOLLOWING ADVICE

Beyond the more general mentoring that can assist a young lawyer in learning how to practice law, more specific guidance may occasionally be needed. A new attorney may encounter a specific ethical issue he has not faced before, and therefore may be unsure how best to proceed. To whom can the attorney turn for help and to what extent can she rely upon the advice received? The MRPC envision that a subordinate lawyer may seek the guidance of a supervisory lawyer in such situations.

But, it will be argued, supervising lawyers are not infallible. How does the attorney determine when to rely on the directive of a supervisor to take a particular course of action? What if the subordinate lawyer believes that a different course is required under the Rules of Professional Conduct? In such a situation, might an attorney's ethical obligations conflict with the reality of the workplace? Are such questions more in the nature of employment law matters than issues for the Office of Lawyers Professional Responsibility? As may readily be seen, there are likely far more questions than answers concerning issues of responsibility for actions taken that may conflict with the Rules of Professional Conduct.



**MARTIN COLE**  
is director of the  
Office of Lawyers Professional Responsibility. An alumnus of the University of Minnesota and of the University of Minnesota Law School, he has served the lawyer disciplinary system for 21 years.

Rule 5.2 states that a subordinate lawyer is bound by the MRPC, notwithstanding that the lawyer acted at the direction of a supervisory lawyer. The subordinate may, however, be insulated from discipline if the lawyer acted at the supervisor's direction concerning an arguable question of professional duty. The key aspect is that the ethics issue must be arguable. Following plainly unethical advice ("It's okay to sign the client's name to the affidavit that must be filed today") will not protect the subordinate lawyer from her own obligations. The real difficulty for a young associate lies, of course, in sorting things out when the demands of his employment and professional obligations appear to conflict. How does a young lawyer say no? Here too a more senior mentor may be able to intervene and provide guidance.

Those who lack such a mentor may of course conduct their own research of the question, consult independent counsel,<sup>1</sup> or contact the Director's Office for an advisory opinion. Questions concerning the underlying "arguable" issue are appropriate and advice can be provided.

Far more difficult is when a subordinate lawyer inquires whether she must follow her supervising lawyer's directions if the subordinate finds fault

with the supervisor's decision and believes a different course would be preferable. The subordinate lawyer may further inquire whether he is obligated to report the supervisor for attempting to have him engage in allegedly unethical conduct. Such inquiries often involve not only an ethics issue, but questions of employment law and legal rights beyond what the Director's Office can answer. If such a situation truly arises, and a more neutral mentor is not available to intervene or there is no one more senior to contact, then independent counsel's advice may be required.

#### CONCLUSION

Ultimately, we are all responsible for our own actions. Less experienced lawyers, however, may be unaware of the proper course of ethical conduct in some situations. Timely advice from a mentor early in one's career can educate and help a new attorney avoid many such problems. A supervisor's decision usually can be relied upon and followed. Outside advice may be available. When truly in doubt, there's no need to "go it alone." The goal ought to be exactly as the judge proclaimed, that more experienced lawyers will have a more relaxed and civil attitude. ▲

#### Notes

<sup>1</sup> Hon. George W. Miller, United States Court of Federal Claims, Washington D.C., reported in 2006 Symposium: "Twenty Years of Legal Ethics: Past, Present and Future," *Georgetown Journal of Legal Ethics*, Vol. XX, No. 2, Spring 2007, p. 345.

<sup>2</sup> An exception is for basic character qualities, which usually are not learned, but are part of the person before he becomes an attorney. The Supreme Court has recognized this, stating for example that "we believe youth and inexperience do not mitigate acts of dishonesty." *In re Ward*, 563 N.W.2d 70, 71 (Minn. 1997).

<sup>3</sup> The University of St. Thomas, since its opening in 2001, for example, has instituted a fairly structured mentoring program in which many respected Minnesota attorneys have participated. Groups such as Minnesota Women Lawyers have conducted lawyer-to-law student mentoring programs as well.

<sup>4</sup> Rule 1.6(b)(7), MRPC, permits disclosure of otherwise confidential information related to the representation of a client if the lawyer reasonably believes disclosure is necessary to secure legal advice about a lawyer's compliance with the MRPC.

Your game is about more than your swing.

It's about your follow through.

Let NITA give you the tools necessary to master every part of the case.

## Building Trial Skills

September 15-22

58 CLEs

St. Paul, MN

To register:

[www.nita.org](http://www.nita.org)  
877.648.2632

Get \$100 off - use code NCTRAD online or by phone

# NITA

National Institute for Trial Advocacy