



MENTORING THE NEXT GENERATION OF TRIAL LAWYERS –
DEVELOPING EXCELLENT TRIAL LAWYERS
IN AN ERA OF DIMINISHING TRIALS

Task Force on Mentoring

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MENTORING THE NEXT GENERATION OF TRIAL LAWYERS – DEVELOPING EXCELLENT TRIAL LAWYERS IN AN ERA OF DIMINISHING TRIALS

I. INTRODUCTION

The number of trials, particularly civil jury trials, continues to decline. Since at least 2004, the American College of Trial Lawyers (ACTL) has expressed concern over the “vanishing trial.” Myriad reasons have been proffered for the decline in trials, including the costs of litigation, discovery, summary judgment motion practice, concern over unpredictable results with potentially disastrous consequences, renewed emphasis on arbitration and mediation, the focus of the courts on management and settlement, and others, all of which are open to debate. There has been little discussion, however, of the impact of fewer trials on the training of the next generation of trial lawyers.

There can be little debate about the following: First, there always will be a need for orderly dispute resolution between citizens and between citizens and their government. Second, citizens, governmental entities and business entities will continue to rely on trial lawyers to advance their positions in many types of dispute resolution. Third, access to justice (including trial as appropriate) is important to societies based upon the rule of law.

Both Canada and the United States recognize the rule of law is an essential component of a constitutional democracy and a civilized society, and trial lawyers play an important role in establishing and fine-tuning the rule of law.

The preamble to the Constitution Act, 1982, one of Canada’s two principal constitutional documents, provides: “Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law...”¹ Virtually every article of the Canadian Charter of Rights and Freedoms² recognizes the rights and freedoms enjoyed by Canadian citizens, but also recognizes those rights and freedoms are “subject ... to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.”³ It is the elected representatives of the Canadian people who work to define those “reasonable limits,” but it is the Canadian courts, aided by trial lawyers charged with developing and introducing evidence and advancing their respective client’s cause, who determine whether the legislation is “demonstrably justified” and therefore in keeping with the law.

The importance of the rule of law is also reflected in the United States Constitution. For example, the United States Constitution guarantees a fair trial through the due process clauses, and it defines the basic elements of a fair trial in the criminal context largely through several provisions of the Sixth Amendment. The Sixth Amendment guarantees an accused the right to counsel to protect the fundamental right to a just and fair trial.⁴ For this reason, the U.S. Supreme Court has found the right to counsel is the right to effective assistance of counsel.⁵ The Seventh Amendment guarantees the right to civil jury trials in many disputes. Once again, trial lawyers play an essential role in arming courts with the evidence and arguments that shape the interpretation of the Constitution, statutes, and regulations.

But the work of most trial lawyers is not on weighty constitutional issues. Matters touching the lives and rights of ordinary people are routinely addressed in courts of both countries, and these cases often have a profound impact on the lives of individuals. Businesses also find themselves in court, and the outcomes in such cases may impact the very existence of the entities involved. When citizens are accused of crimes, defendants, crime victims, and society have an undeniable interest in just resolution of cases. In every instance, lawyers play key roles in the resolution of disputes.

ACTL believes society benefits when both the prosecutor and the lawyer for the citizen accused of a crime are skilled advocates. Society also benefits when well-trained trial lawyers face off in civil courtrooms, whether the dispute concerns a weighty antitrust matter or the resolution of a landlord-tenant dispute. Neither litigants nor society are appropriately served with well-meaning but untrained novice trial lawyers.

For as long as humans exist on earth disputes will arise between and among them, thus necessitating well-trained trial advocates. For this reason alone, young trial lawyers must learn correct trial practice and advocacy skills, including those related to client representation, behavior in court, professional dealings with other lawyers, and the intricacies of trial practice.

But there is more. The law and trial lawyers are highly visible in the public eye and public domain, not only because of trials attracting notoriety, but also because lawyers are routinely involved in proceedings shaping public discourse. Judges and lawyers are the face of the justice system. What they say and do and how they say and do it matter. In a functioning democracy governed by the rule of law, the public must have confidence in our justice systems – and this requires confidence in our trial lawyers (and judges).

Thus, the current lack of trials and courtroom training opportunities for young lawyers has important implications not only for lawyers who want and need trial experience, but also for clients seeking experienced trial counsel and the civil justice system as a whole. As trial opportunities erode, the overall quality of advocacy is at risk of diminishing. The future of the legal profession, continued public confidence in the administration of justice, and the survival of the rule of law depend on assuring a reliable supply of diverse, well-trained, committed and professional trial lawyers. In and of itself, diversity assures the profession is open to all, it helps the profession attract talented lawyers, and it enhances the confidence citizens have in the profession.

ACTL believes ensuring the continued existence of experienced trial lawyers will require a renewed commitment to mentoring lawyers interested in trial work as they enter the practice of law. Basic classroom training in law school, coupled with clinical programs allowing the law student to participate in “real world” training can provide a foundation for effective, honorable trial lawyering. Formal internship programs, like Canada’s articling system, further advance the training for some percentage (but not all) of Canada’s law school graduates.

But the simple fact is the trial lawyer with twenty years at the Bar in 2019 is very likely to have considerably fewer trials than twenty-year lawyers had in 1999 and even fewer than twenty-year lawyers in 1979. Effective research, writing, and issue-spotting in the fields of substantial and procedural law are important to be an excellent trial lawyer. An understanding of the discovery process, particularly taking depositions, is also important for the skilled trial lawyer. A solid grasp of

effective motion practice, including oral argument of motions, builds experience and confidence that will improve advocacy skills. In the end, however, there is no substitute for trial, first in a supporting role and then as lead counsel, with guidance from a lawyer already skilled in the craft.

So, how do we help the next generation of lawyers gather the trial lawyering skills and confidence they need, a task complicated by a diminishing number of trials? How do we reach out to trial lawyers who practice trial law in solo or small-firm environments? How do we pass these skills on to lawyers who historically have faced unjust hurdles on their way to the top of the trial bar? And how do we impress upon all trial lawyers that, though they practice in adversarial system, they should and indeed must maintain the values of honesty, respect and courtesy towards litigants, opposing parties, and the court?

ACTL believes every young or new trial lawyer will materially benefit from the guidance of a mentor not only skilled in the art of trial advocacy but committed to the importance of professionalism and civility. There may be a few outstanding trial lawyers who have developed these skills entirely on their own, but there are not many and they are the exceptions. Even those lawyers blessed with intellect and talent usually had the benefit of learning what to do (or what not to do) from opposing counsel and judges. Most lawyers at the top of the trial bar routinely acknowledge the role more experienced trial lawyers played in helping them develop their talents.

Accordingly, the question for ACTL is not whether it should encourage mentoring but how to accomplish it. In order to identify effective development programs, we looked at what courts, law firms, and bar associations across the United States and Canada do to train new trial lawyers. This paper will share the suggestions and actual practices of leading law firms, experienced trial lawyers, trial and appellate judges, and bar associations for mentoring and training trial lawyers. We also make affirmative recommendations for ACTL, corporate counsel, and law firms for the development of effective mentoring programs, and coordination with professional organizations and the judiciary to ensure the availability of well-trained, committed trial lawyers reflecting the diversity of our nations.

II. MENTORING THE NEXT GENERATION OF TRIAL LAWYERS TO DEVELOP TRIAL SKILLS

Our research revealed the following trial-training programs undertaken by law firms, bar associations, and the judiciary in the United States and Canada. Based upon our research and discussions with experienced advocates, we review and make recommendations for each sector of the legal community.

A. LAW FIRMS⁶

Many large law firms have created noteworthy trial practice programs for lawyers in their firms. Several conduct an annual trial academy, for example, in which senior trial lawyers dedicate considerable time to prepare and teach in an intensive, hands-on trial practice seminar.⁷ The program may last as long as a week and be conducted off the premises of the firm; others are shorter, perhaps only three days, with each day focused on different phases of the trial. All include opportunities for associates or more junior lawyers to participate in trial activities such as direct and cross examination, opening, and closing.

Regardless of the format, these trial academies receive accolades from participants. Larger firms obviously have ample resources and are particularly equipped to devote the necessary time and effort to such internal programs.

Many local prosecutor or public defender offices offer three- to four-month programs in which law firm associates may participate on a temporary or full-time basis. These programs, which provide real hands-on trial experience to inexperienced trial lawyers in the criminal arena, require application and acceptance into the program. Once accepted, the law firm must be willing to grant a three to four month paid leave from the firm.

During this period, the junior lawyer will not only work closely with prosecutors and defenders but will be allowed to try cases solo. The junior lawyer will return to his or her law firm with the invaluable real-life experience of trying several cases before juries as well as appearing before trial judges.

Some firms partner with the National Institute for Trial Advocacy (NITA) or similar organizations for trial practice teaching. In these situations, three-day intensive interactive deposition skills workshops and five-day trial practice programs conducted annually are offered to select law firm associates who spend dedicated practice time with experienced trial lawyers at an off-site NITA location, either in Colorado or regionally. Students are given the opportunity to prepare, give and be evaluated on opening statements, direct and cross examinations and closing arguments.

1. ***Recommendations for Law Firm/In House Trial Training Programs:***

- a. Institute internal programs to allow junior lawyers to observe local trials, discuss trial observations in regular meetings, and include such observations as part of associate evaluations.
- b. Assign regular homework to junior lawyers, including such activities as review of a chapter in a trial practice handbook, watch skills training video, prepare outlines for direct or cross examination, etc.
- c. Coordinate with local prosecutors/public defenders for representation in trials.
- d. Ask local judges for pro bono trials for junior trial lawyers.
- e. Conduct internal dress rehearsals in which a junior lawyer outlines and conducts an examination of a senior lawyer serving as the witness the associate is assigned to examine at trial (doing repeatedly if necessary) including use of documents, order of examination, words and intonation as part of trial preparation.
- f. Establish formal internal trial mentor programs, which specify how pretrial and trial activities will be offered to associates to develop their trial skills.

g. Provide written materials on mentoring young trial lawyers to those mentors (see samples in the resource materials).

h. Identify and provide trial practice opportunities outside of law firms. For instance, some local bar associations have pro bono clinics on relatively narrow subjects of law (e.g. landlord-tenant law) that need the help of junior trial lawyers. Firms should determine what opportunities exist (or can be established) in their communities and incorporate pro bono efforts as part of their training program.

i. If firm resources allow, establish an internal trial academy, modeling it on programs offered by other firms or on programs offered by various continuing legal education providers.

j. Partner with NITA or similar organizations or provide opportunities for junior lawyers to attend bar-sponsored trial academies.

k. Encourage experienced lawyers to take junior lawyers to trial without billing clients or to trials of pro bono cases.

l. Approach clients about allowing junior lawyers to try or to participate in cases with little financial risk.

m. Establish a policy to take some cases the law firm might not otherwise accept but for client agreement that junior lawyers will try the case under supervision of senior lawyers.

n. Make junior lawyers as visible as possible to clients, including brief writing, participation in arguments or mock trials, and recommendations for trial participation at an appropriate level. Doing so will increase the familiarity clients have with junior lawyers, thus increasing the likelihood that clients will feel more comfortable allowing junior lawyers to take a more active role at trial.

o. Lend associates to prosecutor or public defender offices to gain trial experience – either through paid leave or on individual cases.

p. Develop and provide an internal trial practices manual for junior lawyers and emphasize the importance of studying it and using it during the lawyer's career as a trial lawyer.⁸

Smaller firms often lack the personnel or financial resources to have full-blown trial skills training programs but still can mentor junior trial lawyers in their firms. Such firms can take advantage of programs offered by bar associations. They can include a junior lawyer as a member of the team early in the litigation so as to allow the lawyer to see how to deal with discovery disputes, how litigation strategy is developed, how witnesses are prepared and deposed, and how a case is prepared for trial. By using a mentoring checklist such as those designed by several bar associations,⁹

the firm can monitor the professional development of the junior lawyer and keep the junior lawyer on an appropriate professional development path.

Finally, we would be remiss if we did not mention one important barrier to mentoring those in one's own firm: the ability of the mentor to "let go" of the work that will help the junior lawyer develop trial skills. We do not discount the wishes of clients who desire input, perhaps even the final say, in which lawyer does what task at trial; any reasonable lawyer would place great weight on the client's wishes in this regard. But there is a natural tendency of trial lawyers, and perhaps all lawyers, to hold on to certain types of work including most aspects of the trial, oral arguments at significant hearings, and the taking of key depositions. Some attribute this conduct to client request, trial lawyer ego, time or financial constraints (it is often quicker and less expensive to do something yourself than train another to do it), the senior lawyer's fear of becoming irrelevant, or a combination of the above. But there is another factor: most well-trained, effective trial lawyers simply enjoy the work. And when the number of trials decline, those lawyers get fewer opportunities to do the work they enjoy, which makes them less likely to want to share the work with someone else.

ACTL suggests this understandable behavior interferes with the development of the next generation of trial lawyers, and thus ACTL encourages experienced lawyers to find an appropriate balance between doing the work they love while helping the next generation of trial lawyers develop the skills they need. Lawyers who actively mentor others report tremendous professional satisfaction from the activity, and wise law firms focused on the long-run best interests of both their present and future clients recognize, promote and reward such activity.

B. BAR-SPONSORED TRIAL ACADEMIES, PROGRAMS, AND MENTORING PROGRAMS

Lawyers in solo practice or very small firms must often turn to bar associations or similar groups to develop trial skills.

Several professional or state bar associations offer week-long intensive mentorship or trial programs. These include programs by the American Bar Association (ABA), International Defense Counsel Association (IADC), American Board of Trial Advocates (ABOTA), and American Association for Justice (AAJ, formerly ATLA). Many law firms regularly send promising junior trial lawyers to one of these programs, although attendance is sometimes limited to lawyers in certain practice areas or whose members include senior lawyers in the association. Likewise, solo lawyers seek out these programs to develop or enhance their skills. Most of these programs provide opportunities for junior lawyers to either try cases, or at least participate in different aspects of the trial after instruction and demonstrations from skilled instructors. Some programs offer deposition skills training, and the skills enhanced at these programs aid in developing cross-examination skills for trial.

Similarly, many State and Province Committees of the ACTL sponsor trial practice programs for lawyers, including public interest lawyers. Some involve actual participation in mock trials. These programs, and others sponsored by state or local bar associations, give participants the opportunity to learn from others.

Some state bar associations have formalized programs requiring participation by new admittees to the bar. The State Bar of Georgia, for example, has adopted the mandatory Transition into Law Practice Program (“TILPP”), which combines mentoring and continuing education. This program seeks to match lawyers with mentors during their first year of practice. The mentoring, along with the continuing education, is intended to give all new lawyers in Georgia “meaningful access to an experienced lawyer equipped to teach the practical skills, seasoned judgment and sensitivity to ethical and professionalism values necessary to practice law in a highly competent manner.”¹⁰ While hardly limited to developing trial skills, such programs help junior lawyers recognize the need for continuing education and encourage them to seek training from the organized Bar.

New Mexico likewise has a mandatory mentoring program called “Bridge the Gap.” The program pairs new attorneys in their first year of practice with attorneys who have practiced at least seven years, and it seeks to “help bridge the gap in skills new attorneys need to acquire to become successful practitioners.” Newly admitted attorneys are required to complete the program, which provides them their required CLE credit for the first year of practice¹¹

The Indiana State Bar Association has a voluntary mentoring program for young attorneys called “Mentor Match.” This program helps new lawyers find a mentor and seeks to “elevate the competence, professionalism, and success of Indiana lawyers through positive mentoring relationships.”¹²

In Illinois, new members of the bar can apply to be admitted to the year-long “Lawyer-to-Lawyer Mentoring Program.” Participants can receive continuing education credit for completing this program, which must include at least eight in-person meetings.¹³ In addition, the Illinois Supreme Court Commission on Professionalism has a mentoring program. The Commission’s excellent website provides links to sponsoring organizations and mentoring tools with the aim of promoting “a culture of civility and inclusion[.]”¹⁴

Local bar associations are also providing support to the next generation of trial lawyers. The San Francisco Bar Association uses virtual technology supported by Harvard Law School’s Access to Justice Lab to help lawyers prepare for their first courtroom experience.¹⁵ The virtual reality technology debuted in Maryland and will be used to help lawyers who are doing pro bono work understand the courtroom before they appear in court. The Access to Justice Lab intends to bring the program to Florida (for debt collection cases) and Chicago (for pro bono divorces) in the near future.

These programs constitute good exemplars for other bar associations to consider and borrow.

1. ***Recommendations for Bar Associations:***

a. Sponsor trial training programs providing attendees with not only lectures from experienced trial lawyers but the ability to practice what they have learned.

b. Participate in appropriate ACTL initiatives, including approaching courts in their jurisdiction regarding professionalism training and requirements, pro bono assignments to junior lawyers, and provision for younger lawyers to argue motions.

c. Allow senior lawyers to fulfill CLE obligations through a formal hands-on mentoring of a junior trial lawyer not associated with the mentor's firm.

d. Establish a formal mentoring program in which all newly admitted lawyers participate. While it is recognized these programs must be aimed at all lawyers and thus can but only touch on trial practice, the programs provide a framework for creating additional mentoring programs in the future and help the mentees recognize the need for it.

e. Establish mentoring programs specifically designed for lawyers who become solo practitioners, who serve in the public sector or who practice in legal aid organizations.

C. ROLE OF THE JUDICIARY

The judiciary has significant ability and opportunities to contribute to the development of skilled and professional trial lawyers. Judges may solicit or appoint junior lawyers as pro bono counsel for indigents, habeas counsel for prisoners, and defense counsel. In addition, courts may comment upon and tutor young lawyers and their performances in court (preferably in private).

Recognizing the need for development of the next generation of trial lawyers, jurists across the United States have increasingly issued orders encouraging inexperienced lawyers' participation in hearings, often in the strongest possible language. Orders representative of this approach are included in the resource materials referenced and available with this paper.¹⁶

Examples of relevant standing order language used by a district court judge in the Northern District of California follow:¹⁷

“Counsel need not request a motion hearing date and may notice non-discovery motions for any Thursday (excepting holidays) at 8:00 a.m. The Court sometimes rules on the papers, issuing a written order and vacating the hearing. If a written request for oral argument is filed before a ruling, stating that a lawyer of four or fewer years out of law school will conduct the oral argument or at least the lion's share, then the Court will hear oral argument, believing that young lawyers need more opportunities for appearances than they usually receive.”¹⁸

“The one-lawyer-per-witness rule is usually followed but will be relaxed to allow young lawyers a chance to perform.”

“The Court strongly encourages lead counsel to permit young lawyers to examine witnesses at trial and to have an important role. It is the way one generation will teach the next to try

cases and to maintain our district's reputation for excellence in trial practice."¹⁹

“Counsel will please keep in mind the need to provide arguments and courtroom experience to the next generation of practitioners. The Court will particularly welcome any lawyer with four or fewer years of experience to argue the upcoming motion.”

The emergence of the orders mentioned in this section may generate a mixed response, dependent upon a multitude of factors in the pretrial and trial context: the nature of the case, the client(s), the junior and senior involved lawyer, the law firm, the judge. While well-intentioned and always with the goal of increasing much needed trial experience, ACTL urges judges to recognize one size may not fit all with these types of orders.

As just one example, consider the instance where a client has provided the permission needed to allow the most junior lawyer to take on the task of arguing some or all of a motion for summary judgment. A well-intentioned judge, focused on what he or she perceives to be skill development of a young lawyer says: “Young man, you are mumbling. I cannot understand a word you are saying. You are talking too fast too. The court reporter cannot prepare an accurate record unless you slow down. If I cannot understand you, how can I be persuaded by your arguments on behalf of your client?”

While on the one hand this tutorial may be great instruction for even the well-prepared young lawyer, senior counsel might face legitimate criticism from a client observing or reading the comments for allowing the young lawyer to make the presentation.

Separately, clients understandably may object to the elimination of their choice as to which lawyer may represent them in the court by a jurist who holds the client's fate in his or her hands.

These represent just some of the challenges to work through when considering the now frequently encountered orders, which are intended to foster junior lawyer participation at critical pre-trial and trial junctures. Notwithstanding these concerns, the contribution of the judiciary to the proper training and development of young trial lawyers is important; indeed, it may be critical in encouraging both senior lawyers and clients to providing the necessary opportunities to gain experience. Client comfort with these orders will increase and the young lawyer's experience will be enhanced if the judge provides constructive feedback about the performance in a private setting.

Finally, the federal court for the Northern District of Illinois has a “trial bar” to which lawyers must be admitted to serve as lead trial lawyer in any case. Lawyers only are admitted to the Northern District's trial bar, however, if they meet certain requirements.²⁰ One of the obligations of Trial Bar members is judges can appoint them to represent pro se litigants (usually just when a case raises complex issues or is heading to active depositions or trial). The judges of the Northern District could utilize its Trial Bar to help mentor junior lawyers by requiring the lawyer appointed to serve in such a case to involve a more junior lawyer in the case and actively involve that lawyer in depositions, motion arguments, mediation and trial.

D. ROLE OF CORPORATE COUNSEL IN THE DEVELOPMENT OF JUNIOR TRIAL LAWYERS, OF ALL COLORS, GENDERS AND CREEDS

As explained at the outset of this paper, the challenges posed by a constantly evolving legal, regulatory and demographic landscape assure there will always be a need for talented and experienced trial lawyers, including diverse attorneys. But, as indicated above, factors in the legal landscape, and others inherent in corporate representation, have contributed to the reduction in the number of trial opportunities in which to master skills.

For example, the costs and stakes in commercial litigation and mass tort product liability litigation have become so great that corporate counsel have focused on resolution and are in all events often reluctant to allow less experienced lawyers participate in trial —although corporate counsel’s reluctance generally is limited to allowing juniors try major, high profile cases as first- or second-chairs unless the junior has amassed considerable trial experience elsewhere. Thus, the lack of first-or second-chair trial experience gives rise to the continued lack of first-or second-chair trial experience.

In addition, concern about litigation costs and fear of potential adverse results has led the corporate world to place increasing reliance on mediation, arbitration, and non-jury trials. Incorporation of arbitration clauses and contractual waivers of a jury trial has become almost standard in commercial agreements.

A combination of these and many other factors has resulted in fewer trials in which lawyers can master and hone their trial skills, to the ultimate detriment of corporate interests. The potential absence of well trained, highly experienced trial lawyers poses risks for the corporate world. Corporate decision making continues to be the subject of significant public critique, and the potential criminalization of corporate actions/decisions increases the need for well-qualified trial lawyers. The lack of experienced trial counsel also may render it difficult for corporations to protect their commercial interests (i.e. through patent litigation), or susceptible to large adverse verdicts.

In order to ensure the availability of experienced trial lawyers to assist in protecting corporate interests, corporate counsel should encourage the development of younger lawyers to insure they gain the experience to succeed the older more experienced trial lawyers who have been the counselors to the corporation. This will require granting reasonable permission for younger lawyers to participate in trial preparation, arguments to the court and the actual trial. While the ultimate responsibility for purposeful development of associates rests with the law firm, prudent corporate counsel likely will see the benefit of working with law firms to enhance the trial skills of junior lawyers.

Succession planning plays a role here, too. Each law firm knows who its superstar trial lawyers are, but few can identify who will replace one or more of them if the superstars suddenly leave or retire. Figuring that out in advance signals to in-house counsel the firm is proactive and committed to the company’s ongoing litigation success. A cooperative approach to the development of junior trial lawyers on the part of the law firm and its business clients insures continued availability of experienced trial counsel. Succession planning also ought to be as important to the firm as it is to the client because it facilitates maintenance of the former’s brand and quality assurance for important trial work.

1. ***Recommendations for Corporate Counsel:***

a. Allow younger lawyers to assume roles in “mock trials” or jury research in preparation for trial, even if more senior lawyers will handle those examinations at trial. This has the two-fold benefit of allowing corporate counsel to observe younger lawyers on their feet, and it allows younger lawyers to gain experience and confidence.

b. Select junior lawyers to prepare for and argue motions and certain events at pretrial conferences. Not only is this a valuable experience, but it has the added benefit of being economical for the client. Corporate counsel should rely on trusted outside counsel (more senior lawyers) and personal observations to identify those likely to be successful as trial lawyers.

c. In-house counsel can encourage firms to send a junior lawyer to trial alongside a more experienced senior lawyer, at the firm expense, for experience. This will give the client a sense of security that the voice of experience is present in case it is needed.

d. Identify smaller cases without significant adverse potential and insist upon junior lawyers to manage these cases, including trials. This may include flat fee arrangements for law firms, which provide junior lawyers with trial experience at an economically acceptable rate for the client. In addition, the client reaps an additional benefit: young lawyers learn the business of the client as they gain trial experience.

e. Identify trial roles for junior lawyers, including direct and cross of family members or economic witnesses in personal injury cases, damage witnesses, fact witnesses, etc., who may not be crucial witnesses on liability or otherwise significant, but whose examinations nonetheless provide experience in the courtroom.

f. Give junior lawyers roles on trial teams in “back room” assignments: prepping witnesses, writing in-trial briefs and working on jury charges. Not only will the younger lawyers benefit from being associated with a trial, they will become visible to corporate counsel.

g. Ask junior lawyers from one firm to work with another firm at trial as a second or third chair as part of the “virtual law firm,” where lawyers from different firms representing the same client may have varied roles in the same proceeding or litigation.

h. Request trial counsel strive for diverse trial teams.²¹

i. Permit junior lawyers to take or defend important depositions for their development. Preparing for a pre-trial examination and getting a witness ready for same are invaluable teaching tools. In an effort to accelerate development of trial lawyers, partners should arrange for an associate to take the lead in a number of important depositions and produce an outline of the issues they intend to cover with the witness for their review and discussion. More important, because many depositions are now videotaped and used at trial as trial testimony, the work of junior lawyers becomes visible and subject to evaluation by corporate counsel.

E. POTENTIAL ACTL INITIATIVES FOR DEVELOPMENT OF TRIAL SKILLS

ACTL offers a perfect forum to develop the trial skills of young lawyers. Both ACTL as a whole, as well as its State and Province Committees and various substantive standing Committees, can engage in pertinent initiatives. What follows are the recommendations for ACTL itself:

1. Work with state and federal courts to develop model programs for pro bono representation of pro se litigants and to assure hearings/oral arguments if a junior trial lawyer will be arguing the motion.
2. Prepare letters for ACTL to send to corporate general counsel asking for their assistance in providing experience to junior lawyers and encouraging them to ask their law firms to give junior trial and appellate lawyers opportunities to handle hearings, argue motions, participate in trial, or make appellate arguments. (Draft letter attached as Exhibit A)
3. Make ACTL's trial and appellate skills video programs available to the legal profession on a public website and make it clear they can be used without a payment of any fee.
4. Prepare (through the ACTL's Teaching Committee) a video program on "confronting your fear of the courtroom," together with a bibliography of written articles on trial-related subjects.
5. Prepare program/guidelines for advocacy tips for junior lawyers, including advice on dealing with a hostile or patronizing judge or opposing counsel.
6. ACTL has a wealth of educational program materials, but it does not have its own dedicated trial practice academy on a national or regional level. Sponsoring such an activity may be an option for the ACTL to consider.²²
7. Present a program on recommendations in Section III below at a future ACTL meeting and encourage state or province committees to do work in the field.
8. Reinforce initiatives by State or Province Committees to provide mentoring and training, including CLE programs and abbreviated trial academies, directed toward lawyers engaged in solo practice, public interest representation, or representation of the underprivileged.
9. Educate Fellows about the need to educate junior lawyers about trial skills, including allowing them active participation in the courtroom. Emphasize the professional satisfaction to be obtained by helping train the next generation of trial lawyers.

III. PROFESSIONALISM AND COLLEGIALITY AMONG TRIAL LAWYERS

It is not enough for a trial lawyer to learn how to effectively cross-examine a witness, select a jury, or make a closing argument. Trial lawyers also need guidance in understanding and fulfilling

their professional responsibilities to their clients, opposing counsel, the judiciary, and the justice system.

A. OBLIGATIONS

ACTL has articulated its view of these obligations as follows:

1. ***Obligations to Clients.*** A lawyer must provide a client undivided allegiance, good counsel and candor; the utmost application of the lawyer's learning, skill and industry; and the employment of all appropriate means within the law to protect and enforce legitimate interests of a client. A lawyer may never be influenced directly or indirectly by any consideration of self-interest. A lawyer has an obligation to undertake unpopular causes, if necessary, to ensure justice. A lawyer must maintain an appropriate professional distance in advising his or her client, in order to provide the greatest wisdom.²³
2. ***Obligations to Colleagues.*** A lawyer should be straightforward and courteous with colleagues. A lawyer should be cooperative with other counsel while zealously representing the client. A lawyer must be scrupulous in observing agreements with other lawyers.²⁴
3. ***Obligations to the Court.*** Judges and lawyers each have obligations to the court they serve. A lawyer must be respectful, diligent, candid and punctual in all dealings with the judiciary. A lawyer has a duty to promote the dignity and independence of the judiciary, and protect it against unjust and improper criticism and attack. A judge has a corresponding obligation to respect the dignity and independence of the lawyer, who is also an officer of the court.²⁵
4. ***Obligations to the System of Justice.*** A lawyer has an obligation to promote the resolution of cases with fairness, efficiency, courtesy, and justice. As an officer of the court and as an advocate in the court, a lawyer should strive to improve the system of justice and to maintain and to develop in others the highest standards of professional behavior.²⁶

All of these obligations are very important, and lawyers who have the benefit of working under the supervision of a skilled trial lawyer mindful of his or her professional obligations will learn on a day-to-day basis how one fulfills these obligations in an adversarial system. Lawyers who have the benefit of working with opposing counsel who accept and fulfill these obligations also learn from them.

But lawyers who find themselves in employment environments where such obligations are either not recognized or not practiced quickly can find their mindset tainted by the conduct of co-workers. Those engaged in litigation with opposing counsel who employ sharp-practices or worse may respond in-kind, assuming it must be done to compete effectively with opposing counsel. Solo practitioners may gravitate toward the tactics of lawyers in the community who appear to be successful at what they do, whether such tactics are truly professional or not.

Thus, ACTL believes effective, comprehensive mentoring of trial lawyers includes the effort to (a) help lawyers understand the obligations stated above; and (b) give them guidance on how to conduct themselves as trial lawyers, particularly when confronted with scenarios challenging even to skilled, honorable trial lawyers.

B. A DECLINE IN PROFESSIONALISM AND CIVILITY

One of the great challenges of practicing law is learning how to balance zealous advocacy for one's client with the responsibility to treat opponents in a civil, professional manner. With diminishing opportunities for mentorship, increased combative representations of attorneys in the media, and phone calls and meetings being replaced by electronic communications (which often embolden people to say things they would not say face-to-face and which are often sent without taking adequate time for reflection), the level of professionalism in our field is declining. In fact, a 2014 survey of Illinois lawyers found over 85% of those responding to the survey had experienced at least some uncivil or unprofessional behavior from another lawyer in the preceding six months.²⁷

Of course, a lawyer's duty to his or her client is paramount. According to the comments to the Model Rules of Professional Conduct:

A lawyer should pursue a matter on behalf of a client...and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. A lawyer is not bound, however, to press for every advantage that might be realized for a client.²⁸

The requirement for civil behavior is imbedded in this comment; zealous advocacy always must fall within the realm of "lawful and ethical measures," and lawyers do not have "to press for every advantage that might be realized for a client."

While the Model Rules of Professional Responsibility note the tension between ethical behavior and zealous advocacy, there is an even greater gray area that exists when considering behavior that does not necessarily run afoul of the ethics rules, yet is inarguably uncivil and unprofessional. This type of incivility, which often does not quite amount to an ethics violation, is pervasive in today's legal field²⁹ and does great damage to the profession. Unprofessional behavior can contribute to negative views of the legal profession as well as increased job dissatisfaction among good practicing attorneys. Just as lawyers have obligations to clients, colleagues, and the court, incivility in the legal system is usually directed towards these groups, as well as towards opposing parties.

1. ***Incivility towards Clients.*** Although lawyers need clients to make a living, disagreements with clients can lead to unprofessional interactions. A Maryland attorney was reprimanded for violating the rules of professional conduct after sending letters to his client that contained highly inappropriate language.³⁰ The letters called the client "A TRUE C**T" who had "finally f***ed up one time to many," as well as a "reprehensible human being" with "worthless progeny" and a "pathetic and dysfunctional world."³¹ The letters further suggested the client "perhaps was responsible for her grandson's death[.]"³²

2. ***Incivility towards Colleagues.*** A vast amount of lawyer incivility is directed at other lawyers. Especially in litigation, but also in transactional fields, tensions run high, and client

expectations can contribute to a lawyer saying and doing things that may not be unethical, but are certainly not professional or collegial.

One example of behavior that demonstrated the difference between ethics and civility occurred in *The Florida Bar v. Martocci*, 699 So. 2d 1357 (Fla. 1997). Here, after opposing counsel noticed a deposition in a questionable manner, the lawyer at issue allegedly used two curse words and either pushed or pointed at opposing counsel's chest. He also said something to the effect of "Hey looney, when did you send the subpoena," among a few other comments.³³ The Florida Supreme Court held that while the "conduct involved [was] patently unprofessional," the lawyer was "not guilty of the formal ethical violations alleged" in the complaint, and thus no sanction was warranted.³⁴

In Texas, a bankruptcy court's decision to sanction a lawyer \$25,000 was affirmed based on his behavior towards opposing counsel, among other issues.³⁵ During the underlying case, the lawyer referred to other counsel as "(1) a stooge; (2) a puppet; (3) a weak pussyfooting deadhead who had been dead mentally for ten years; (4) various incompetents; (5) inept; (6) clunks; (7) falling all over themselves, and wasting endless hours; (8) a bunch of starving slobs; and (9) an underling who graduated from a 29th-tier law school."³⁶ The Court rejected the attorney's argument that his sharp practices "help[ed] him recover more money for his clients" and "serve[d] him well in settlement negotiations," and the Court referred to his conduct as "deplorable," "wholly unprofessional," and "egregious."

While the above examples are extreme, more subtle instances of incivility occur between legal professionals daily. Behaviors such as noticing a deposition without first conferring with opposing counsel regarding dates or refusing to extend a reasonable extension needed due to a holiday permeate some lawyers' practices. These lawyers equate civility with weakness, leading to an unnecessarily contentious relationship with opposing counsel, which does not serve the legal profession or even the lawyer's own client well.

3. ***Incivility towards the Court.*** Unfortunately, even judges, court staff, and mediators do not escape lawyer incivility. In 2013, a Florida attorney received a reprimand and a two-year suspension after engaging in multiple unprofessional behaviors. While defending his client in a lawsuit, he stated the judge was at the "beck and call" of the plaintiff; accused the mediator of having a "cozy, conspiratorial" relationship with the plaintiff; "improperly threatened the filing of a legal action against [the mediator] personally;" was disruptive and disrespectful during hearings; and "engaged in unceasing efforts to denigrate and humiliate opposing counsel."³⁷

A North Dakota attorney was given a public reprimand and ordered to pay over \$7,000 in disciplinary proceeding costs after engaging in behavior the trial judge called "threatening, defiant, and obstructionist."³⁸ The attorney repeatedly questioned the trial judge about the legal basis of his jurisdiction, and the trial judge believed the attorney threatened to sue him personally.³⁹ While the attorney argued "his conduct, while perhaps at time impolite, was merely zealous representation of his client," the Court found he had violated ethical rules.⁴⁰ The Court specifically noted "[c]ivility is not too much to expect in a civilized society's alternative to brute force, stealth, and deception."⁴¹

4. ***Incivility towards Opposing Parties and Third Parties.*** While unprofessional behavior often is directed at other lawyers or even judges, lay people sometimes

find themselves at the receiving end of incivility. Lawyers may hurl insults or unnecessary sarcasm at opposing parties or third-party witnesses, especially during depositions where there is no judge present. Emails, which are often written quickly and sent in the heat of the moment, may refer to opposing parties and witnesses in ways that only serve to make the litigation process more contentious and unnecessarily difficult.

One extreme example of incivility towards a third party occurred in South Carolina in 2011. An attorney represented a church that had received a letter regarding zoning laws, and in response he wrote his client a letter and copied the city manager. The letter stated:

You have been sent a letter by purported Town Manager Kenneth McIver. The letter is false. You notice McIver has no order. He also has no brains, and it is questionable if he has a soul. Christ was crucified some 2,000 years ago...The pagans at Atlantic Beach want to crucify His body here on Earth yet again....The pagans of Atlantic Beach think they are above God and the federal law.

Based on this letter, the South Carolina Supreme Court suspended the attorney for 90 days and ordered him to complete an ethics and professionalism program.⁴²

In another South Carolina case, an attorney was given a public reprimand based on his “making gratuitously insulting, threatening, and demeaning comments in the course of two depositions.”⁴³ During the deposition of a retired schoolteacher who suffered from several disabilities and had been previously hospitalized for emotional issues, the lawyer engaged in repeated antagonistic behavior, making statements such as:

- “Was that because you are cheap or you think you are smart enough to be your own lawyer?”
-
- “Don’t get snide with me. Just answer my questions or you are going to be in severe difficulty, especially if you make me angry at you.”
-
- “You are coming across as an absolutely ridiculous person.”
-
- “You are not smart enough to argue with.”⁴⁴

In the second deposition with a different opposing party, the same attorney made a comment after the deposition that he wanted to put the opposing party in a bag with no air hole, and that she was a “mean-spirited, vicious witch[.]”⁴⁵

C. CURRENT EFFORTS TO ADDRESS THE PROBLEM OF INCIVILITY

While the need for action to curb the civility decline is clear, the path forward is less obvious. Many states, provinces, bar associations, and courts are adopting civility standards, oaths,

and mentoring programs. The effect these mostly aspirational tools will have on the day-to-day practice of lawyers is uncertain, however.

1. ***Efforts in the United States - Professionalism Creeds and Civility***

Standards. The most common weapons aimed at eliminating our profession's growing incivility are professionalism creeds. As of 2015, thirty-nine states plus the District of Columbia as well as some county and city bar associations had adopted professionalism creeds or standards of conduct.⁴⁶ These codes, however, vary greatly in substance and form, with no consistent model.⁴⁷ Some of them contain only ten lines of text, while others extend over ten pages.⁴⁸ What they all have in common, though, is they attempt to address unprofessional and uncivil behavior that may not necessarily run afoul of or be clearly addressed by the Model Rules of Professional Conduct.⁴⁹

While professionalism creeds differ, the most common provision addresses treating others with courtesy and dignity, or acting in a generally civil way.⁵⁰ Because many of these codes were adopted as early as the 1990s, they rarely address the use of technology.⁵¹ With the rise of social media and blogging, as well as the near total reliance on email for communication, these creeds and standards need to be revised to address technology-based issues.

The greatest challenge to addressing incivility through professionalism standards or suggestions is the absence of an enforcement mechanism. Most codes contain language stating they are not intended to be used for disciplinary purposes.⁵² While aspirational creeds are a step in the right direction, they often fail to influence the lawyers who most need to change their behavior.

2. ***United States – Oaths.*** In addition to adopting professionalism creeds, some states have added civility and/or professionalism language to the oaths their attorneys take when being sworn into the bar. As of 2015, Alaska, Arizona, Arkansas, Colorado, Florida, Hawaii, Louisiana, Minnesota, New Mexico, Ohio, South Carolina, Utah and Virginia, had all added civility language to their oaths.⁵³ While these oaths may not make professionalism recommendations any more enforceable, they do serve the purpose of increasing awareness of the issue of incivility.

3. ***United States – Mentoring.*** One of the most promising ways to address incivility is to educate young lawyers before they are exposed to or adopt unprofessional practices. While this education should begin in law school, it can be continued and expounded upon through mentoring programs. Some states have adopted formal mentoring programs for young attorneys, and these programs are likely to be a key resource in promoting professional behavior in the legal field. (See discussion on bar associations and mentoring programs above.)

4. ***United States – Other Efforts.*** Some jurisdictions are experimenting with additional efforts to curb incivility amongst lawyers. Colorado, for example, has a Peer Professionalism Assistance group, which is available to offer confidential advice for navigating civility issues.⁵⁴ The group receives questions from attorneys and referrals from judges and magistrates, and it can communicate with opposing counsel if necessary.⁵⁵

5. ***Efforts in Canada – Background.*** The Supreme Court of Canada's recent decision in *Groia v. Law Society of Upper Canada*⁵⁶ provided guidance to law societies when

bringing disciplinary proceedings against lawyers for professional misconduct based on uncivil behavior. In that case, the court balanced the Law Society's mandate to set and enforce standards of civility in the legal profession with a lawyer's right to free speech, duty of resolute advocacy, and the client's constitutional right to make full answer and defense.

It is important to keep in mind the governance of the legal profession in Canada when trying to understand the reference in the judgment to law societies.

Every lawyer in Canada is required by law to be a member of one of the fourteen provincial and territorial law societies and abide by its rules. Each law society is established by provincial and territorial laws and each has a mandate to ensure legal professionals meet high standards of competence and professional conduct. Because the public has the right to be represented by a legal profession independent from the government, provincial and territorial laws allow for the self-regulation of the legal profession. Therefore, law societies must regulate the legal profession in the public interest, and to do so, they, among other things, regulate the conduct expected of lawyers.

The Advocate's Society has been a leader in understanding the need to promote professionalism and civility in the trial bar over and above what is provided in Canada's Rules of Professional Conduct for the legal profession. Over a decade ago it published an excellent booklet on the subject,⁵⁷ and created The Advocate's Society Institute for Civility and Professionalism. Its exemplary work on this issue provides guidance not only for the trial lawyers of Canada but also for state and local bar associations in the United States.

6. ***Canada – Continuing Education Through Law Societies.*** Law Societies mandate continuing legal education. As part of that continuing education, law societies offer courses and seminars related to civility, such as:

- a. "Professional Legal Training Course" offered by the Law Society of British Columbia.⁵⁸
- b. "Sidebar Social Series: Ethics in Everyday Practice" offered by the Law Society of Saskatchewan.
- c. "Communication Toolkit" offered by the Law Society of New Brunswick (the course provides advice on communication techniques that foster civility).⁵⁹
- d. "Éthique et courtoisie: se comporter professionnellement en tout temps," offered by the Barreau du Québec.⁶⁰
- e. « Le code de déontologie des avocats fait peau neuve, » offered by the Barreau du Québec.⁶¹

7. ***Canada – Education Through Bar Associations.*** In addition to law societies, bar associations, i.e. voluntary organizations of lawyers, tackle the issue of civility with articles, courses, and seminars, such as:

- a. “Civility in the Courtroom: Essentials for Trial Lawyers” offered by the Canadian Bar Association.
- b. “Ethical Practices E-Learning Modules” offered by the Canadian Bar Association.
- c. “Ethics and Civility in the Courtroom and Beyond” offered by the Canadian Bar Association.⁶²
- d. “Ethical Queries and Quandaries: Issues Commonly Raised with Practice Advisors” published by the Alberta Branch of the Canadian Bar Association.⁶³

8. **Canada – Law Schools.** Finally, Canadian law schools have incorporated the topic of civility into their curricula. Many schools touch on the topic of civility in their trial advocacy, negotiation, and professional ethics courses, and incorporate civility into orientation and professional development programming throughout the year.

For example, the University of Calgary Faculty of Law incorporates civility into their mandatory ethical lawyering course as well as their advocacy and negotiation experiential learning courses. Similarly, the Lakehead University Bora Laskin Faculty of Law incorporates civility into its second year “Professional Responsibility” course. Lakehead also had a guest speaker give a talk on civility in the fall and had a lunchtime presentation by the Ontario Bar Association on civility during orientation at the beginning of this school year. The University of Windsor Faculty of Law also teaches students about the importance of civility in the legal profession in a course titled, “(The) Legal Profession.”

9. **A New Initiate of ACTL.** ACTL is in the final stages of launching a pilot program to establish working groups to promote civility. The program, inspired by the Honorable Eleanor A. Cronk’s October 19, 2018 lecture to the 2018-19 ACTL Leadership Workshop in Nashville,⁶⁴ Tennessee, is being developed by ACTL’s Teaching Committee and the Committee on Legal Ethics and Professionalism. The working groups would bring together Fellows and non-Fellows from diverse backgrounds to bring attention to the civility issue and equip people with the tools necessary to address and prevent uncivil conduct.

10. **Additional General Recommendations for increasing Civility and Collegiality among Lawyers.** There is no magic solution to the problem of incivility in the legal profession in either Canada or the United States. The legal field is adversarial by nature, and some attorneys will always take that adversarial environment to the extreme; it is up to the appropriate disciplinary authorities and the courts to address bad behavior which violates the rules of ethics. For those willing to learn, however, some combination of mentoring, continuing education, adoption and revision of professionalism creeds, and increased dialogue regarding professionalism are likely to best address the rise of lawyer incivility.

Potential steps to accomplish this include:

a. Fellows should continue to model the behavior called for by the Code. Leading by example effectively communicates not only how one should act but why proper conduct does not decrease one's effectiveness as an advocate.

b. Professional groups should establish awards to lawyers for professionalism (as many bar associations and legal organizations do) as an important way to highlight the importance of professionalism and honoring those who exemplify this conduct while also being successful.

c. ACTL should increase efforts to meaningfully distribute the Code to new lawyers.

i. Educate both Fellows and members of the Bar of the existence of the Code, the Teaching Syllabus, and Video Resources

ii. Consider distribution of the Code to law schools, perhaps through a guest lecture by a local Fellow to the school's ethics and professional classes. Consider creation of a stock PowerPoint presentation to aid Fellows in giving these lectures.

iii. Encourage law firms, governmental entities, and legal aid societies to include the Code as part of their in-house training programs.

iv. Consider distribution of the Code through existing mentoring programs of various law societies and bar associations. Consider working with these mentoring programs to incorporate discussions of the Code into the mentoring plans and educational materials.

d. Educate State or Province Committees on the use of these resources to develop State Committee sponsored ethics and professionalism programs (or lectures on programs sponsored by bar associations, especially the "new lawyer," women's and minority subsections of those organizations in an effort to touch those who may lack a mentor in the day-to-day practice). Consider creation of a stock PowerPoint presentation to aid Fellows in giving these lectures.

e. Consider the creation of additional training videos to help explain how to handle other difficulties arising in litigation that challenge the ability of a lawyer to fulfill his or her professional obligations, including the particular difficulties minority and female trial lawyers face. ACTL is currently in the process of creating a series of videos in which Fellows will share their experiences with overcoming incivility, including, but not limited to racism, sexism, and other demeaning conduct.

f. Consider advocating for the addition of a civility component in bar CLE requirements, possibly as a portion of an existing ethics requirement.

IV. CONCLUSION

Ensuring the development of talented and experienced trial lawyers is critical to the preservation of the rule of law upon which the governments of Canada and the United States are founded. Experienced trial lawyers are necessary not only in resolving disputes but in inspiring confidence in the fairness of the judicial systems.

The task of mentoring and development of both advocacy skills and professionalism is complex and somewhat daunting – but not impossible. Each stakeholder - lawyers, law firms, private businesses, public entities, professional bar associations, and the judiciary - must participate if we are to prepare the next generation of well-trained trial lawyers to serve our society.

ENDNOTES

- 1 *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.
2 *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK),
1982, c 11.
3 *Id.* at s.1.
4 *Strickland v. Washington*, 466 U.S. 682, 286 (1984).
5 *McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970).
6 For purposes of this discussion, we include larger offices of attorneys general, prosecutors and public defenders as “law firms.”
7 Readers are directed to the resource materials to find examples of programs offered by law firms.
8 Robins Kaplan Essentials of Trial Practice Manual, <https://www.robinskaplan.com/pages/mentoring-action-plan>.
9 For example, Wisconsin Bar Association has mentoring booklet that includes a checklist of skills / activities that may be
included as a part of a mentoring plan. The booklet may be accessed at [https://marketplace.wisbar.org/Documents/Products/
Ready-Set-Practice-New-Lawyer-Mentoring-Program.pdf](https://marketplace.wisbar.org/Documents/Products/Ready-Set-Practice-New-Lawyer-Mentoring-Program.pdf). The Oregon State Bar also has suggested list of topics to be
addressed during the mentoring process. This list may be accessed at <https://www.osbar.org/nlmp/requirements.html>. Finally,
the State Bar of Georgia has a wealth of information on mentoring and mentoring plans, including checklists. This information
may be accessed at <https://www.gabar.org/membership/tilpp/tilpp-docs.cfm>.
10 Information about TILPP for Other Bars, State Bar of Georgia, <https://www.gabar.org/membership/tilpp/other-bars.cfm> (last
visited May 20, 2019).
11 Bridge the Gap Mentorship Program, State Bar of New Mexico, <https://nmbar.org/mentorship> (last visited May 20, 2019).
12 Mentor Match, Indiana State Bar Association, https://www.inbar.org/page/mentor_match (last visited May 20, 2019).
13 ISBA Lawyer-to-Lawyer Mentoring Program, Illinois State Bar Association, <https://www.isba.org/mentoring> (last visited May
20, 2019).
14 <https://www.Isba.org/mentoring>
15 <https://www.law360.com/articles/1181735/how-tech-is-helping-courtroom-newbies-become-virtual-pros>
16 Judicial Orders Providing/Encouraging Opportunities for Junior Lawyers, [https://nextgenlawyers.com/wp-content/
uploads/2017/02/JudicialOrdersRegardingNextGen.docx-2.pdf](https://nextgenlawyers.com/wp-content/uploads/2017/02/JudicialOrdersRegardingNextGen.docx-2.pdf).
17 Judge William Alsup, Northern District of California, Supplemental Order To Order Setting Initial Case Management
Conference In Civil Cases Before Judge William Alsup (January 11, 2016) <http://www.cand.uscourts.gov/whaorders>.
18 Guidelines For Trial And Final Pretrial Conference In Civil Jury Cases Before The Honorable William Alsup, [www.cand.
uscourts.gov/filelibrary/192/JuryTrials1.pdf29](http://www.cand.uscourts.gov/filelibrary/192/JuryTrials1.pdf29).
19 Judge William Alsup’s Notice Re Opportunities For Young Attorneys (sent out to parties one week prior to every civil motion
hearing)
20 https://www.ildn.uscourts.gov/_assets/_documents/qaTrialBarRenewalFINAL.pdf
21 Indeed, the ACTL has already taken a step to assist in-house counsel in this regard. In May 2020, the ACTL is sponsoring
the “In-House Corporate Litigation Attorney Program” to strive to equip and assist those in-house lawyers in tasks essential to
the performance of their job, such as selecting diverse trial counsel, managing trial them development, and guiding trial and
settlement strategies. The program, organized by the Teaching of Trial and Appellate Advocacy Committee, will be held in
Chicago.
22 The ACTL is offering a trial skills program targeted at diverse trial lawyers. The “Diversity in the Courtroom Program” offered
by the Teaching of Trial and Appellate Advocacy Committee, will be held in Chicago in May 2020.
23 American College of Trial Lawyers Code of Pretrial and Trial Conduct, p. 3 (hereinafter “ACTL Code”).
24 ACTL Code, p. 4.
25 ACTL Code, p. 4.
26 ACTL Code, p. 5. Some bar associations have adopted professionalism and civility codes. For example, see Rule 5 of the
Local Rules of Court for the Circuit, Chancery and Probate Court of the Twentieth Judicial District of Tennessee (Nashville and
Davidson County), which may be assessed at <https://circuitclerk.nashville.gov/circuit/circuitlocalrules.asp#5>.
27 Survey on Professionalism: A Study of Illinois Lawyers 2014, National Center for Professional and Research Ethics, [http://
www.2civility.org/wp-content/uploads/2015/04/Study-of-Illinois-Lawyers-2014.pdf](http://www.2civility.org/wp-content/uploads/2015/04/Study-of-Illinois-Lawyers-2014.pdf).
28 Model Rules of Prof’l Conduct R. 1.3, Comment 1 (2018).
29 Indeed, incivility is not unique to interactions between lawyers.
30 *Attorney Grievance Commission of Maryland v. Basinger*, 109 A.3d 1165 (Md. Ct. Spec. App. 2015).
31 *Id.* at 1166.
32 *Id.*
33 *The Florida Bar v. Martocci*, 699 So.2d 1357, at 1359 (Fla. 1997).
34 *Id.* at 1358.
35 *In re First City Bancorporation of Texas, Inc.*, 282 F.3d 864 (5th Cir. 2002).
36 *Id.* at
37 Samson Habte, *Lawyer’s ‘Appalling’ Incivility Warrants Tougher Sanction Than What Bar Sought*, Bloomberg News (Nov. 20,
2013), <http://www.bna.com/lawyers-appalling-incivility-n17179880238/>.
38 *In re Disciplinary Action Against Garaas*, 652 N.W.2d 918, at 919 & 922 (N.D. 2002).
39 *Id.* at 922.
40 *Id.* at 925.

41 *Id.* at 927.
42 G.M. Filisko, *You're Out of Order! Dealing with the Costs of Incivility in the Legal Profession*, ABA Journal (Jan. 1, 2013),
43 http://www.abajournal.com/magazine/article/youre_out_of_order_dealing_with_the_costs_of_incivility_in_the_legal
44 *Matter of Golden*, 329 S.C. 335, 496 S.E.2d 619 (S.C. 1998).
45 *Id.* at 337-38.
46 *Id.* at 340.
47 Cheryl B. Preston & Hilary Lawrence, *Incentivizing Lawyers to Play Nice: A National Survey of Civility Standards and Options*
48 *for Enforcement*, 48 U. Mich. J. L. Reform 701, at 707-08 (2015).
49 *Id.*
50 *Id.* at 722.
51 *Id.* at 714.
52 *Id.* at 723.
53 *Id.*
54 *Id.* at 728.
55 *Id.* at 729-30.
56 Peer Professionalism Assistance Group, Colorado Bar Association, <https://www.cobar.org/For-Members/Professionalism-Resources/Peer-Professionalism-Assistance-Group> (last visited May 20, 2019).
57 *Id.*
58 2018 SCC 27, [2018] 1 S.C.R. 772.
59 https://www.advocates.ca/Upload/Files/PDF/Advocacy/BestPracticesPublications/Principles_of_Civility_English.pdf. The French version of the document may be assessed here: https://www.advocates.ca/Upload/Files/PDF/Advocacy/BestPracticesPublications/Principles_of_Civility_French.pdf
60 For a specific discussion of civility, see page 29 at <https://www.lawsociety.bc.ca/Website/media/Shared/docs/becoming/material/Ethics.pdf>
61 For a specific discussion of civility, see the first section on “Common Communication Problems” at <http://lsnb-educ-bnb.ca/node/910>. Sections following also mention the importance of civility as they discuss other communication problems.
62 The course materials can be accessed at: <https://www.barreau.qc.ca/formation/event.jsp?noActiv=1786&noEv=4699&namePage=event.jsp&Langue=fr>
63 The Materials can be accessed at: <https://www.barreau.qc.ca/formation/event.jsp?noActiv=2233&noEv=6458&namePage=event.jsp&Langue=fr>
64 The materials for the three courses above can be accessed at the links provided in the footnotes by signing into the CBA website, registering, and then having that registration processed by CBA staff.
65 This article can be accessed at: <https://cba-alberta.org/Publications-Resources/Resources/Law-Matters/Law-Matters-Winter-2019/Ethical-Queries-and-Quandaries-Issues-Commonly-Ra>
66 https://www.actl.com/docs/default-source/default-document-library/task-force-on-mentoring/speaking-notes-of-the-hon-ea-cronk-mentoring_2018_2019_leadership_ws

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