



THE IOWA STATE BAR ASSOCIATION

Committee on Ethics and Practice Guidelines

Nick Critelli, Chair
David Phipps
Maureen Heffernan
J.C. Salvo,
Matthew Hartman McKinney
Clark I. Mitchell
Sam Langholz
Andrew Heiting-Doane

Mark J. Wiedenfeld
Paula L Roby
Andrew C Abbott
Art Cady
Troy A Howell

ex officio
Guy Cook, Pres ISBA
Dwight Dinkla, Ex. Dir
ISBA

August 27, 2013

Mr. Dwight Dinkla
Executive Director
Iowa State Bar Association
625 East Court
Des Moines, IA 50309

RE: IA Ethics Opinion 13-04 Mentor-Mentee Relationships

Dear Mr. Dinkla,

The Iowa Bar has a rich history of mentoring and training new lawyers. Recently the Committee has been asked to give guidance regarding the parameters of client confidentiality as it relates to the mentoring relationship when the mentor and mentee are not in the same law firm. Can client confidential information be passed between the mentor and mentee for training purposes? The issue arises when the mentee seeks guidance from the mentor regarding a matter in which the mentee is involved, or conversely, when the mentor is attempting to guide and train the mentee regarding a specific aspect of the practice of law. Resolution of the issue is necessary in order to define the nature and scope of a meaningful mentor-mentee relationship.

The terms mentor and mentorship are relatively new to the legal profession. However the concept of lawyer-to lawyer training is as old as the profession itself. Historically lawyers have provided legal education to aspiring members of the bar and

training to its new members. However, the structures by which the training has been offered vary greatly, from pupillage or devilling, afforded by historical Inns of Court, and the mid-nineteenth century American concept of “reading” law¹ to the informal curbstome lawyer-to-lawyer chat and its modern version – the Internet list serve.

Recognizing the need for training, the Iowa State Bar Association and other state bars have adopted mentorship programs and have encouraged members of the bar to enter into mentorship relationships with newly admitted lawyers.² The complexity of these programs vary from the highly organized Illinois and Ohio programs³ to the more informal Iowa State Bar Association’s Rural Practice Committee and the YLD’s Professional Development Committee. Regardless of the program’s formality or complexity the essence mentorship is problem-solving, emphasizing analytical assessment, strategic development, tactical execution and communication. However all of these factors require a dialogue involving real issues. Whether that dialogue can even occur, and if so its extent, is the subject of this opinion.

Mentoring within the confines of one’s own law firm is addressed in Iowa R. Prof’l Conduct 32: 5.1. Comment [5] states that:

“...Partners and lawyers with comparable authority have at least indirect responsibility for all work being done by the firm, while a partner or manager in charge of a particular matter ordinarily also has supervisory responsibility for the work of other firm lawyers engaged in the matter.”

Client confidentiality, within the confines of the law firm, is addressed by Iowa R. Prof’l Conduct 32: 1.6 Comment [5]

“...Lawyers in a firm may, in the course of the firm’s practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.”

¹ Iowa Code 1935, § 10908. *Qualifications for admission.* Every applicant for such admission must be at least twenty-one years of age, of good moral character, and an inhabitant of this state, and must have actually and in good faith pursued a *regular course of study of the law for at least three full years, either in the office of a member of the bar in regular practice of this state or other state, or of a judge of a court of record thereof, or in some reputable law school in the United States, or partly in such office and partly in such law school; but, in reckoning such period of study, the school year of any such law school, consisting of not less than thirty-six weeks exclusive of vacations, shall be considered equivalent to a full year.* Every such applicant for admission must also have actually and in good faith acquired a general education substantially equivalent to that involved in the completion of a high school course of study of at least four years in extent. (Emphasis added).

² In 2009 the Iowa Supreme Court recognized the need for basic skill development for the newly admitted lawyer and adopted Iowa Sup.Ct. R. 41.12(1). The rule requires every lawyer admitted by examination, within one year of their admission, to take an eight hour Basic Skills Course covering civil procedure; criminal law; criminal procedure; family law; guardianships; conservatorships, trusts and powers of appointment; business entities; probate; torts; contracts; real estate transactions and ethics and professionalism. R. 41.12(2). However the issue of training was left to the bar to address.

³ See for example, Illinois: http://ilsccp.org/mentoring/mentoring_index.htm and Ohio: <http://www.supremecourt.ohio.gov/AttySvc/mentoring/>.

Consequently no issue of confidentiality arises when the mentorship relationship occurs within the law firm.

However a significant problem does occur when the mentoring relationship occurs outside of the parameters of a law firm. This can happen in two instances. A lawyer mentored within a law firm may be assigned to a lawyer outside of the law firm who specializes in an area of the law that the firm does not practice. Or, the relationship may exist between a mentor-mentee who are not in the same law firm. Mentoring external to one's law firm directly impacts Iowa R. Prof'l Conduct 32: 1.6. Comment [5], prohibiting the disclosure of client confidential information without the express consent of the client.

The American Bar Association addressed the subject, not as it concerns the mentor-mentee relationship, but the more common and informal lawyer-to-lawyer consultation and list serve discussions. ABA Formal Opinion 98-411 commented that "A consultation that is general in nature and does not involve disclosure of client information does not implicate Rule 1.6 and does not require client consent." It also opined that "the consulting lawyer can 'suppose' a set of facts and frame an issue without revealing the identity of his client or the actual situation."

Other state ethics committees addressing the problem have come to the same conclusion, See, for example IL Ethics Op 12-16 :

"Lawyer A may discuss general information relating to discovery procedures with his or her mentor, Lawyer B. However Lawyer A should take caution not to reveal any information relating to the representation of a particular client with Lawyer B. Moreover, both Lawyer A and Lawyer B should avoid the creation of a conflict of interest with any existing or former clients by virtue of the creation of the mentoring relationship."

This is good advice for general consultations and computer list serves, but it does not further training within the scope of the mentorship. The inability to discuss real life situations strikes at the very heart of the mentor-mentee relationship. While it is possible to phrase discussions in the hypothetical form, the practice often results in over-scrubbing the salient details to the extent that the learning point is lost. Consequently if a mentorship is to be meaningful it must be something more than a casual or social relationship and must be accomplished within the parameters of an ethical construct that will allow full discussion of real life problems.

Absent specific consent by the client there are only four relationships that would allow disclosure under Iowa R. Prof'l Conduct 32: 1.6 Comment [5]:

- An employer-employee relationship, Iowa R. Prof'l Conduct 32: 5.1;
- a co-counsel relationship; Iowa R. Prof'l Conduct 32: 1.7;

- an of-counsel relationship; IA Ethics Opinion 13-01
- Contracted –Retained lawyer relationship; IA Ethics Opinion 13-03.

An internship within the parameters of the employer-employee relationship, as discussed above, is common and an exchange of client information is permissible under Iowa R. Prof'l Conduct 32: 1.6 Comment [5]. Likewise, while it is possible to use a co-counsel relationship as a basis for mentorship training, it will, by its very nature, be limited to that one specific matter and require the mentee to enter into a direct attorney-client engagement with the client. It is possible to build a mentorship relationship using the contracted-retained lawyer relationship described in IA Ethics Opinion 13-03, however doing so creates a logistical burden for the mentor who will be required to anticipate which client's matter will most likely be used during the mentorship and obtain the client's consent.

The last alternative, and we believe the best, is the of-counsel relationship. It suffers from none of the restrictions discussed above. As described in IA Ethics Opinion 13-01 the of-counsel lawyer is considered part of the law firm for all ethics purposes. Consequently an exchange of client information is permissible under Iowa R. Prof'l Conduct 32: 1.6 Comment [5]. Client consent is not required because the of-counsel lawyer is considered part of the law firm. With the consent of the law firm, the mentee can form multiple of-counsel relationships with mentors from differing fields of practice provided, however, that they all understand the potential for direct and imputed conflicts of interest as described in IA Ethics Opinion 13-01.

Conclusion

Iowa lawyers are encouraged to form mentorship relationships. Both the profession and the administration of justice benefit from a legal profession that is well formed and trained. However in doing so lawyers should remember that their duty to train the profession is secondary to their duty to the client. Using a formal, albeit time limited, of-counsel relationship to facilitate the mentorship relationship provides the ability to discuss real life situations as needed during the period of the relationship, while maintaining the degree of confidentiality required by Iowa Rules of Prof'l Conduct Iowa R. Prof'l Conduct 32: 1.6.

For the Committee,



NICK CRITELLI, Chair
Iowa State Bar Association
Ethics and Practice Guidelines Committee