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How To Train The Next Generation Of Litigators

By **Aebra Coe**

Law360, New York (July 1, 2016, 2:11 PM ET) -- BigLaw firms are rethinking how they train young litigators as run-of-the-mill trial work dries up and high-stakes, high-rate work — largely performed by experienced veterans — flourishes.

Sluggish demand for litigation work across the industry in recent years — coupled with a move by BigLaw, concerned with keeping profit margins high, away from lower-rate trial work — has put the profession in a bind, according to litigation leaders who say that noncomplex trial work, long used by firms to train young lawyers, has petered out.

“The industry has changed a lot, certainly since I started 20 years ago,” said Mintz Levin Cohn Ferris Glovsky & Popeo PC litigation section head Scott Ford.

As attorneys enter the workforce now, he says, they have fewer opportunities to take depositions, write briefs, argue cases, and appear in court than they had in the past.

“Firms need to find ways to develop those skills in our associates so that when there does come a time for them to utilize those skills they’re ready to do so,” he said.

The phenomenon has forced firms to get creative, Ford says. Here, he and other BigLaw vets share two key approaches their firms use to turn young lawyers into trial all-stars.

Handing Newbies Pro Bono Work

Pro bono work is an “excellent vehicle” for providing green associates with hands-on client experience, Ford says. His firm runs clinics at local homeless shelters, through which a wide array of litigation matters come to them, including civil disputes, disability appeals and criminal disputes.

Mintz Levin also runs an appellate clinic where young attorneys have the opportunity to argue criminal and quasi-civil appeals, and at least two associates participating in the clinic have had the chance to argue before Massachusetts' Supreme Judicial Court, he says.

“Pro bono gives associates the opportunity to get some real hands-on client experience and solve problems for our clients,” Ford said. “It provides for an opportunity to see a matter from the beginning to the end.”

One Texas litigation heavyweight has found an innovative way to use pro bono work to provide its new attorneys with experience in the courtroom. Andrews Kurth LLP has an arrangement with the Houston Municipal Courts that allows its junior attorneys to take on criminal misdemeanor cases as volunteer prosecutors, according to Tom Taylor, co-chair of the firm’s litigation section.

The most common kind of case that the volunteers handle is a traffic ticket, but Taylor says it gives young attorneys experience being the lead attorney on a case from beginning to end.

“What’s great is it’s a real trial with a real judge and if you are the volunteer prosecutor you are representing the city of Houston prosecuting the defendant for whatever offense they’re charged

with," he said.

Volunteers in the program, following a week of training under a senior prosecutor in the city attorney's office, spend one day each week for 18 weeks handling that day's active files. They have prosecutorial discretion to talk to defense counsel and individual defendants and to make recommendations to the court.

"In the 18 weeks that the volunteer prosecutors spend doing this they're in all likelihood going to have at least 10 jury trials that they will handle to conclusion," Taylor said.

"It is a really good training tool because part of being a trial lawyer is you need to be able to stand up in front of a jury and know how to address them politely and persuasively," he continued. "It's a benefit both for the city and the law firms that participate."

Get Creative With Professional Development

BakerHostetler litigation training partner Laurin Quiat says that as soon as litigation associates step foot in the law firm they are run through a robust training program that prepares them to take cases all the way to trial and continues throughout their career.

"Our training goes well beyond what they experience in law school," Quiat said. "BakerHostetler's training puts young lawyers through the paces of a real-life courtroom experience, followed by immediate feedback from experienced trial lawyers."

He explained that the training program begins with a monthly video conference series across the firm's 14 offices, and includes an associate's eventual participation in mock trials complete with real juries, direct and cross examinations of fact and expert witnesses, and having a verdict rendered by jurors representing all walks of life.

"The training program has been so successful, we've expanded it to include depositions to help associates learn the ins and outs of how to handle evidence — evidence that's persuasive to the jury," Quiat said. "Ultimately, the pieces and parts that make up our training create a foundation to build a skillful trial attorney."

According to BakerHostetler litigation group chair Ray Whitman, the relatively new program was created just five years ago.

"Not only do the associates obtain a significant benefit from the training, but time and time again, partners say they get as much from the training program as the associates," Whitman said. "It's a win-win for everyone involved."

Ford says his firm realized about 12 years ago that it needed a more formal and robust professional development program for young litigators.

Since then, Mintz Levin has honed in on professional development, creating a department with four people, and formulating a curriculum that puts on between 120 and 200 training sessions a year, Ford says.

"Before, we relied on informal mentoring and utilized the bar association for outside services," he said. "We've found it more beneficial to bring as much of it as possible in-house."

He explained that the firm puts on at least one training session every day of the work week, if not more than one, in local offices or through video conferencing from the firm's home office in Boston. The programs cover a range of topics, including "how to start working at a large law firm" to "how to write briefs" to "how to craft appellate arguments."

And for some sessions, the firm does still bring in professionals from outside. Ford says he walked into work recently and ran into Bryan Garner, a well-known legal writing expert who taught two programs on legal writing for the firm.

"The [professional development] programs we offer from the litigation side are as extensive and

diverse as the practice is," he said.

--Editing by Rebecca Flanagan and Kelly Duncan.

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