**Defense Office Practice 101: How to Win Friends, Manage the Email Deluge, Impress Your Managing Partner, and Knock the Socks Off Your Clients**

1. **Your Responsibility as an Associate Attorney**
   1. **The Role of an Associate**

# Practicing law is a rules-based endeavor, so it should not surprise you that knowing how to be a great associate starts with a rule. Begin with ABA Model Rule of Professional Responsibility 5.2: Responsibilities of a Subordinate Lawyer:

1. A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.
2. A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

# To some extent, an associate, or any less experienced lawyer, is protected by the Rules of Professional Conduct when he or she is acting under the guidance of a supervisory attorney. The comments to the ABA Model Rules describe such a situation as:

# When lawyers in a supervisor-subordinate relationship encounter a matter involving professional judgment as to ethical duty, the supervisor may assume responsibility for making the judgment. Otherwise a consistent course of action or position could not be taken. If the question can reasonably be answered only one way, the duty of both lawyers is clear and they are equally responsible for fulfilling it. However, if the question is reasonably arguable, someone has to decide upon the course of action. That authority ordinarily reposes in the supervisor, and a subordinate may be guided accordingly. For example, if a question arises whether the interests of two clients conflict under Rule 1.7, the supervisor's reasonable resolution of the question should protect the subordinate professionally if the resolution is subsequently challenged.

# The comment makes clear that this rule does not protect the subordinate lawyer in a case where it should be clear that there is only one ethical course of action. The subordinate lawyer is only protected under the ABA Model Rules of Professional Responsibility when the ethical issue requires the supervising attorney to use their judgment in an ethically uncertain environment. Since reasonable and ethical attorneys could have different approaches to the same issue, the subordinate attorney can defer to the supervising attorney’s decision. And cases bear this out:

# *Ky. Bar Ass'n v. Helmers*, 353 S.W.3d 599, 599 (Ky. 2011): A young attorney working on the Fen-Phen class action was permanently disbarred for actions he took when he was only a few years out of law school. The Supreme Court of Kentucky found that when the matter was being settled, the young attorney had known that the attorneys had decided how much each plaintiff’s individual award would be, that each client’s case was just one of many settled for a very large aggregate sum, that the class had been decertified and dismissed, that a large potion of the settlement funds had been held back for possible indemnity claims, and several other important facts. The young attorney did not disclose this to clients as he was advising them to sign releases. The court noted, “[W]e cannot ignore the fact it takes no technical expertise or experience in the settling of class action lawsuits, or any sophisticated understanding of the rules of ethics to know that Respondent's course of conduct, personally and directly deceiving his clients, some of whom had been egregiously injured, was wrong. That he did so at the direction of his employer does not permit us to overlook the serious deficiency in character revealed by the facts before us.”

# *Disciplinary Counsel v. Smith*, 2009-Ohio-5960, ¶ 19, 124 Ohio St. 3d 49, 54, 918 N.E.2d 992, 997 (November 9, 2019): Subordinate attorney was not exonerated by Rule 5.2 when charging a fee for assisting a client with receiving PIP coverage in a NY when NY law clearly stated that attorneys may not collect a contingent fee from a client on PIP payments and the fee collected was in excess of the fees stated in the engagement agreement.

# Associates should also pay particular attention to the ABA Model Rules of Professional Responsibility that outline the competence and diligence expectations of all attorneys. Rule 1.1: Competence:

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

And Rule 1.3, Diligence:

A lawyer shall act with reasonable diligence and promptness in representing a client.

While these give you the bare bones basics of what it is to be an associate, in reality, anyone who has been around a law office for a few days knows it is so much more complicated than that. A truly great associate can make a partner’s career.

* 1. **The Role of a Partner**

The ABA Model Rules have something to say about how partners should practice too, Rule 5.1: Responsibilities of a Partner or Supervisory Lawyer:

(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

For example, in *Ky. Bar Ass'n v. Chesley*, 393 S.W.3d 584, 600 (Ky. 2013), the supreme court held, that an attorney who attempts to cover up the unethical conduct of his fellow attorneys violates Rule 5.1.

1. **Assignments**
   1. **Getting Assignments**
      1. **Who to Ask**

One problem that many young associates face is determining how to find assignments from partners at the firm. Who you might receive work from is less a legal matter than a practical one. Things to consider:

* Have you been assigned to a particular practice group? Particular attorneys?
* Is there an attorney or group of attorneys that is very busy or taking on a big case or assignment?
* Is there a topic that interests you?
* Is there an attorney in the office you are seeking to cultivate as a mentor?

Each firm has its own organizational structure and some of these approaches may be more accessible to associates than others.

* + 1. **How to Ask**

Take note that looking at a case and determining which parts can be properly assigned to an associate is a task in itself which requires a great deal of care and organization on the part of a partner. Many experienced attorneys want to be a mentor to younger attorneys, but they have little time to devote to the task. With this in mind, it is important to be sensitive to this when looking for work.

To start, try a time when the partners in your office seem less busy. With careful attention, you will probably notice that there is always a down time in an office setting. For many, this is near the beginning or ending of the day or sometimes just after lunch. Pay attention and strive not to approach people when they are in a hurry. For example, a parent that has to run from the office to pick up a child after school or daycare is not going to appreciate being approached at the end of the day. However, for other partners, this might be when the phone finally stops ringing and things are calmer and meetings easier. Taking note of the partners’ schedules not only helps an associate build better relationships with the partners at their firm, it also ensures that the partner will have the time to give the associate a thoughtful project that helps them grow as an attorney.

When you approach someone looking for work, make sure you are prepared. Have a legal pad or notebook with you to jot down the specifics. Be ready to ask questions: What is the file number? When is this due? How long do you anticipate it taking? What should the final work product look like?

* 1. **Completing Assignments**
     1. **Expectations on Work Product**

It is often said that an associates’ work product should be as close to filing-ready as possible. However, when in doubt, err on the side of making your work more polished, filing-ready is honestly not always the goal. Sometimes all that is needed is a case printed out with parts highlighted (or emailed as many are now paperless). Make sure you get the end goal of the assignment at the time when it is assigned and seek to meet those expectations.

* + 1. **Deadlines**

Many senior attorneys will set two deadlines on a project: one for a draft and one for the final copy. In such a case, the draft deadline is always the deadline for associates. However, even if this is not the situation, an associate should never assume that the final deadline is the deadline to get a draft of a project to the supervising attorney. An associate should always ask about a deadline and assume that it will be at least a few days in advance of any final deadline. The partner who assigned the project to the associate needs time to thoughtfully review the work before filing. When an associate gives the partner enough time to review the assignment, they not only build a good rapport with the partner, they are also giving themselves an opportunity to learn from the changes that the partner will make to the assignment when given more time to review the associate’s work.

* 1. **Navigating Mistakes**

Perhaps the best thing to do as an associate when making a mistake is not to keep your mistake a secret. Disclosing an error can be embarrassing and can, particularly when you are new to a job, feel like a problem of huge proportions. However, it is an almost certainty that those in your office who have been practicing longer will be better equipped to handle these missteps and in a better position to smooth over anything truly damaging with opposing counsel or the client. And rest assured, all attorneys have made mistakes. Get the error and any information you need to explain it in front of your supervising attorney as soon as it is apparent to you that there is a problem. Do not under any circumstances think that you can either hide the issue or fix it yourself.

1. **Billing**
   1. **Daily Expectations**

Figure out what the expectation is and bill your time. Write it down or put it into the billing system, as is the custom in your office, at least everyday, but preferably after each item or task. Once your day gets rolling it is a hassle, but billing time is the way we get paid and really the bare basics of what you need to get done in a day. Do not, under any circumstance, save billing to something you do once a week or once a month. You will lose time or improperly report your time. No one’s memory is so good that delay in entry really works.

* 1. **Expectations on Particular Assignments**

When you receive an assignment, it is entirely appropriate to ask the assigning party how long he or she thinks the assignment should take. This may or may not be a common question in your office (it never was when I began practicing), so this might be a new concept for partners in your firm. If you are approaching the limit and have not finished the project, this does not mean that you should sell the project short. Instead, go back to the assigning partner and let him or her know of the discrepancy and see how that partner wants to handle the situation. Perhaps under the circumstances additional time is warranted and can be billed. In other cases, the partner may want to no charge or write off your time but is happy to allow you to continue the assignment (perhaps with some additional guidance) as a learning project.

1. **Advancement**

The ultimate goal of any associate is to stop being an associate and be a partner. Everyone’s journey on this road is unique, but I have found the following tips to be particularly helpful.

* 1. **Education**

There are no shortage of ways to improve as a lawyer and education is surely near the top. Continuing legal education in substantive legal areas is well known to all attorneys who have been practicing at least a few years and does not really need a retread here. However, also consider the other ways in which you might improve yourself:

* + - * trial academies or workshops,
      * giving presentations yourself,
      * pro bono cases,
      * assisting with drafting amicus briefs for organizations like KDC, or
      * helping with the research on a publication being principally authored by an older attorney.

Each of these learning experiences allows an associate to familiarize themselves with different aspects of the practice of law so that they are prepared for the responsibilities associated with becoming a partner at their firm.

* 1. **Mentoring**

Many firms have excellent mentoring programs, but it is prudent to also consider picking a few of your own mentors in addition to anyone assigned to you. After all, you are in the best position to look after your own career. Consider the practice area you would like to work in, your personal practice style, and who you personally get along with. Try to reach out of your comfort zone on this one—if you think someone outside your firm would make a good fit, call them up or send an email asking them to lunch. Also, do not feel constrained to having a single mentor, insights from several different people can only help.

* 1. **Marketing**

While most clients will be reluctant to hire a new attorney to take their business, this does not mean that marketing is a futile effort for a young associate. Marketing efforts commonly take many years to come to fruition, so it is necessary to start early making the connections necessary to recruit business later on in your career.

Consider joining associations that make sense for your practice: your local bar association, DRI, and any groups that cater to professionals in the areas you want to practice in. Then don’t just sit idly by, volunteer for positions within those organizations. The people in charge need your help with the organizing, writing, and speaking that make those types of organizations go, and you will certainly endear yourself to everyone by stepping up and putting in some work. Figure out what it takes to become the leader of one of those organizations and get yourself set on a path to become that person.