

THE ALI-ABA INSIDER

A Newsletter of In-House Training Developments

VOLUME 17, NO. 2

SUMMER 2003

CONSULTANT'S CORNER

Training Junior Transactional Associates — Third and Fourth Years

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In the last edition of *The ALI-ABA Insider*, I discussed programs that a firm could offer to first- and second-year transactional associates. The programs were of two types: first, practice-specific courses designed to bring the associates up the learning curve as quickly as possible; and second, skills courses, such as drafting, that apply to all transactions.

In this article, I will discuss programs that are appropriate for third- and fourth-year transactional associates. At this stage, transactional associates should be useful (read, profitable). The key now is to make them more productive with respect to the work they are currently performing and to set the stage for the training they will receive as mid-level and senior associates. In general, these programs should reflect the associates' advancement and the more sophisticated work that they do.

Some program suggestions follow:

- *Substantive Law.* Thus far, most associates have been learning the law that relates directly to the tasks they have been performing. Now, as their responsibility broadens, so too must their substantive law training. For example, associates in an M&A practice should learn about the tax issues inherent in acquisitions, as well as the employment law issues that often surface. Similarly, as another example, real estate associates should learn about environmental law matters.
- *Contract Analysis.* As third- and fourth-year associates become more involved in drafting and negotiating, their understanding of particular contracts needs to become more sophisticated. Consider creating programs devoted to the detailed analysis of specific provisions of a contract. For example, in an acquisition agreement, discuss each representation and warranty. What is its purpose? What are the alternative ways it can be drafted to achieve different business goals? To make the program more interactive, divide the participants into groups and ask each group to analyze two or three versions of the same provision to determine the business and legal ramifications of each. Afterwards, a more senior lawyer can

debrief the groups and lead a discussion of the provisions.

- *Negotiation.* Many outside instructors teach excellent negotiation programs. Note, however, that many of the hypotheticals used focus on issues that transactional lawyers rarely negotiate. For example, while litigators often negotiate the amount of the settlement, the principals in a transaction, not the lawyers, negotiate the purchase price. One possibility is to have an outside instructor teach the basic negotiation program so that the associates learn the theory and techniques of negotiation, then have the firm run follow-up training specifically geared to transactional practice. The fact patterns need not be complicated. Try creating hypotheticals based on recent transactions.
- *Advanced Drafting.* Drafting is a critical skill for transactional lawyers. It requires them to understand the transaction and the deal from a business perspective. Two suggestions for your programs in this area:
 - Find long, convoluted provisions from the firm's precedents files and ask the associates to redraft the provisions. What works particularly well is to have the associates redraft a provision on a laptop and then work through the redraft using PowerPoint.
 - Focus on the interplay of the business deal and a contract provision. For example, give participants a precedent and a term sheet, and ask them to incorporate the business points into the draft. The review of the exercise should focus not only on the "good writing" aspects of the draft, but also on whether the business points were appropriately incorporated.
- *Business and Finance.* Because business and the law are inextricably intertwined in a transactional practice, associates should receive a sophisticated grounding in business and finance. Assuming that they have had introductory accounting courses, courses for these associates could focus on the notes to the financial statements. In

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addition, consider programs on ratio analysis and the time value of money.¹ (Some outside instructors will even work with the associates so that they learn how to use a financial calculator.) Business-oriented programs could address such matters as how the capital markets work or why a corporation might want to pay for an acquisition with stock rather than cash.

- *Legal Opinions.* Legal opinions are often a condition precedent to the consummation of a closing. Although third- and fourth-year associates may not negotiate opinions for several more years, they are probably drafting them. A program on opinions should cover each of the components of an opinion and the due diligence necessary to support each component.
- *Client Counseling.* There is art and skill associated with discussing a matter with a client. Training on this topic should start early. An initial program could be structured around a meeting at which an associate is to report to a client the results of her due diligence investigation. The associate could review a document and then orally report her conclusions to the client (a partner or senior associate could assume this role).
- *Business Development and Marketing.* It is never too early in a lawyer's career to begin working on business development and marketing skills. At this juncture in their careers, third- and fourth-year associates should be working assiduously to develop their networks of friends and business associates. Junior investment bankers eventually become senior investment bankers, at which time they will turn to peo-

ple they know — people with whom they have previously done deals and become friendly. Therefore, consider a course that teaches associates how to network. The firm should also encourage associates to become involved in firm presentations, even if at this stage their responsibility is limited to assisting the more senior lawyers in preparing for the presentations.

- *Presentation Skills.* Presentation skills go hand-in-hand with marketing. A lawyer cannot network and market properly if she cannot "present" the firm properly. But the use of presentation skills goes beyond formal marketing presentations directed to a potential client, and beyond informal marketing presentations, such as CLE courses. The ability to present ideas is a salient skill for deal lawyers because it is an integral part of negotiating. A lawyer may have wonderful points to make, but if she does not know how to present them, she may not be nearly as persuasive as she could have been in negotiating the terms of a contract for a client.
- *Management Skills.* As they become more senior, third- and fourth-year associates generally take on more supervisory responsibilities towards newer associates. Although they may not be running a deal, they may well be running part of a deal — for example, the due diligence investigation. Thus, this is an excellent time in the associates' careers to introduce training in delegation and supervision. The skills that the associates learn at this time become the basis for more sophisticated management training later in their careers. Although outside instructors are available to teach supervisory skills, your firm can develop its own program. A course could begin with associates recounting their own supervision nightmares (naming no names, of course). These tales of their own night-

mares will highlight the importance of learning and practicing proper delegation and supervision skills. The course could continue with mock role-plays of good and poor delegation skills. Exaggerated performances can lend humor to the program while highlighting the skills that the associates must learn. The training could conclude with each associate practicing the skill set by role-playing the delegation of an assignment.

- *Ethics.* Now that the third- and fourth-year associates have had more practical experience, the ethics seminars they attend can be more sophisticated. Many firms base their hypotheticals on the experiences of their lawyers. Note, however, that soliciting fact patterns by sending out a memo does not often result in many responses. Instead, try hosting a one-hour luncheon with good food and ask people to come and share their experiences. Although training junior transactional associates can be challenging, perseverance pays off when partners comment on what the associates can do, rather than on what they cannot.

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¹ Although outside instructors are available to teach these courses, a firm can create its own programs. An excellent resource for materials is Harvard Business School, www.hbsp.harvard.edu.