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Training Junior Transactional Associates – First and Second Years

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When new corporate associates arrive, corporate partners grumble, gripe, and groan. Few things depress them more than paying high salaries to neophytes who are of little or no help. Under these circumstances, professional development directors come under substantial pressure to bring new recruits up to speed as rapidly as possible. But how?

Before deciding what and how to teach new associates, it's important to determine the goals of their training. I think that they are two-fold. First, to teach the new associates the knowledge and skills they need to be productive as quickly as possible. Second, to provide associates with the foundation for later learning and more sophisticated work. The second goal is often slighted, to the associates' detriment.

To achieve these objectives, associates need to learn:

- How to perform specific *tasks and skills* associated with their practice area.
- The *context* in which these tasks and skills are used.
- The *substantive law* related to their practice area.

In addition, they need to acquire training that is not practice specific, but rather is generally applicable to all transactional practices ("foundation training").

Tasks and Skills

To state the obvious, in order to make new associates productive, a professional development director must first know what tasks the associates are going to be asked to do. For associates in the litigation department, this analysis is generally fairly straightforward. They'll be researching and writing briefs and memos. However, for transactional associates, their tasks will differ depending upon the firm's practice and the associates' areas of specialization. For example, an associate in an M&A practice may need to learn how to perform due diligence, while a real estate associate may need to know how to read a title report.

One way of compiling the list of tasks is to survey second and third-year associates and ask them what their initial assignments were. (It might also be politically astute to survey the partners and ask what they would like first-year corporate associates to be able to do.)

Context

Associates are the most productive when they learn not only how to perform a specific task, but also the context in which that task is performed. With the additional knowledge, their work product will be more sophisticated. Thus, the M&A associate needs to understand not only how to perform due diligence, but also what an acquisition is and how due diligence affects the acquisition. For example, the results of a due diligence investigation are often incorporated into the representations and warranties and the covenants of the acquisition agreement. Therefore, in addition to teaching the skills associated with conducting a due diligence review, the training program should include an overview of an acquisition agreement and the different purposes of representations and warranties, covenants, and conditions precedent.

Substantive Law

Although many litigators don't believe that transactional lawyers know any law ("They just mark up the same document over and over again"), this is a misapprehension. Depending on the practice area, a lawyer will need to know the securities laws, banking regulations, or the common law (*e.g.*, how broad in scope may a non-compete clause be?). The substantive law programs should correlate with the programs on skills and context.

In addition to knowledge of the substantive law in their field of expertise, transactional lawyers are also often required to understand the law in other disciplines to the extent it impacts the transaction. For example, M&A lawyers generally need to know what environmental and

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tax issues could affect a transaction. Rather than creating specific courses on these topics for first and second-year associates, they can be invited to the programs for the more senior lawyers. While they may not understand everything, it begins the learning process.

Foundation Training

Foundation training programs cover a broad spectrum of topics, including the following:

Understanding the Client. How are clients organized? Is the client contact a member of a profit center or a cost center? What are straight-line v. dotted-line relationships? How do the reporting requirements affect decision-making?

Overview of the Transaction Process. How do parties make a deal? When are the professionals brought in? What types of business decisions have already been made? How does the transaction proceed? What's the difference between a signing and a closing?

Introduction to Business. As transactional lawyers are business lawyers, it is imperative that junior associates begin to learn about business and the business world as soon as possible. Seminars can cover such basics as how to buy and sell shares listed on an exchange.

Finance. Transactional associates must have knowledge of accounting-related concepts and how they are incorporated into business deals. The failure to

understand accounting concepts means the failure to understand crucial aspects of a business transaction. Indeed, it has been suggested that the lack of knowledge of accounting could be a violation of the ethics rules.

Drafting. Deal lawyers draft contracts, so drafting is, of course, an essential component of a transactional training program. Teaching associates how to draft is a multi-step process and should be taught in a series of programs:

- How to incorporate the business deal into the document.
- The nitty-gritty of drafting — the rules for drafting recitals, definitions, signature lines, etc.
- How to avoid common mistakes that create ambiguity. General good writing principles could also be incorporated into this class.

Ethics. Although most associates have had ethics courses in law school, very few courses address questions that are quintessentially corporate-oriented. Using hypotheticals based upon real world issues is one way to teach this material.

Odds and Ends

Finally, when planning your programs, keep in mind the following points:

Avoid talking heads. The more interactive a program is, the more associates will learn.

Articulate analyses. Teach junior associates how senior lawyers think through issues, something not always visible from the documents or audible when it takes place in phone calls or in a negotiation.

Coordinate training and assignments. Create a list of skills that each associate should have acquired by the end of each year, and try to coordinate training programs and assignments with this list.

Provide a list of resources. A program should not be the end of the learning experience for the topic. Provide a bibliography to permit the associates to continue to learn on their own.

Set modest goals. It's not possible to create a full scale training program all at once. It's generally better to have modest goals and to achieve them, than to have more lofty goals that are not attained.

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