Competency-Based Interviews: The Next Generation of Legal Interviewing

BY LORI L. LORENZO

At the recent NALP (the Association for Legal Professionals) Diversity Summit, the buzz was all about a trend toward competency interviews (also called behavioral interviews) in law-firm settings. Although broadly defined, even among experts, a competency is knowledge, skills, abilities, or characteristics associated with high employee performance in a particular job. Specifically, competencies look at the way an individual accomplishes the job’s objectives and not merely whether or not the objectives were met. This article looks first at how competencies are derived and their usefulness in identifying top candidates through competency interviewing, examines their particular usefulness to legal employers and provides suggestions for legal employers to maximize the benefits associated with the use of competencies, looks at the benefits of competencies for legal candidates, and provides suggestions for identifying and refining personal competencies and formulating good competency interview answers.

The idea of assessing employees based on how they achieve their job goals as opposed to simply whether they achieved these goals began gaining popularity in the 1990s. In fact, in the mid-90s, about 75–80 percent of corporate employers used some type of competency framework in their human resources processes. Developing competencies for a given position requires that an employer identify top performers, or “star players,” within the particular position. Star players are defined by their consistent, above-average performance and longevity in the workplace as compared to their colleagues in the same position. Once star players are identified, the methods, techniques, and attributes they employ that allow them to perform in their position better than their contemporaries must be catalogued. The results are then analyzed to identify commonalities. The commonalities are the position’s

Statistics and trends show an increasing number of women and minorities in law firms, particularly larger law firms. However, while the gains have been substantial, they have not been made evenly across the board. And when it comes to the number of women and minority partners at law firms, the gains appear to be smaller. More particularly, firm characteristics such as size, number of offices and their locations, prestige, and earnings rankings appear to have more of an affect on the proportion of minority legal professionals than the proportion of women legal professionals. This article will tell why the gains made by minority legal professionals have been somewhat uneven and what factors led to this trend.

The National Association for Law Placement’s statistics on the percentage of minority lawyers in 2009 show that there are significant differences between different cities and law-firm sizes. Women and Minorities in Law Firms by Race and Ethnicity, NALP (January 2010), www.nalp.org/race_ethn_jan_2010. Overall, minorities accounted for 6.05 percent of partners among the 1,500 employers in the NALP Directory of Legal Employers. Id. However, this does not mean that minorities make up 6 percent of partners at each of the employers surveyed. Indeed, about 30 percent of the offices and firms reported that they had no minority partners. Id.
Focus on Business Development

BY JENNIFER BORUM BECHET, JULIE SNEED, AND RAYMOND B. KIM

We get it. Business development and opportunities for client referral are important to you. A recent ABA survey revealed that 63 percent of our committee members desire opportunities for increased business development and client referrals. The Minority Trial Lawyer Committee more than gets it—we’ve got it.

Through the hard work of our subcommittees, our committee’s effort to enhance business development opportunities for members is taking many forms. Under the guidance of Business Development Subcommittee chair Charles E. Griffin, our committee is compiling a member database for the express purpose of fostering business referrals. Registration for the database is voluntary, and the information compiled will be available for use by the ABA, our committee, the database participants, and others for cross-referral purposes and to assist us in developing programs and resources that will be specifically designed to maximize benefits to our members. We hope you will choose to participate. You can sign up by completing the form on pages 15 and 16 of this issue, and emailing it to Charles Griffin at ceg@griffinlawyers.com.

Our substantive programming efforts have been sharply focused on business development. Hopefully, you attended the program “A Power Shift: Client Development in the Age of Obama,” which our committee sponsored during the 2010 ABA Annual Conference. Program attendees gained added perspective on the perception of minority and women lawyers’ power and competency, and opportunities for increased diversity and business development in the current social climate. Organized by our programming subcommittee chair D. Michael Lyles, the panel included Joseph K. West of Wal-Mart, Joan M. Haratan of Morgan Lewis, Joseph M. Hanna of Goldberg Segalla, and moderator Jacqueline Becerra of Greenberg Traurig.

Our newsletter editorial board also continues to deliver the business development information that committee members desire. For instance, in the past year alone, our newsletter has published the fortifying article “The Art of War: Competing as a Minority-Owned Law Firm in the Global Marketplace” by Jorge Mestre and Ana Munoz; Charles Griffin’s experience-based insight on “Client Development in the Obama Era”; and, via our popular Ask a Mentor column, advice on the most effective ways to stay in touch and reap the benefits of networking. Indeed, in a candid and informative interview appearing in this latest issue of our newsletter, the Section’s chair for 2009–2010, Lorna Schofield, adds her view of the value of ABA membership in building reputation and expertise, which can translate into business referrals.

You’ll also find Lori L. Lorenzo’s cutting-edge article exploring the trend toward competency-based interviewing by law firms as a means of achieving greater efficiency. John Arrastia Jr. argues a strong case for arbitration as the choice for dispute resolution. Joseph Hanna and Soo-young Chang turn much-needed attention to fostering the promotion of minority partners within law firms. And, as you have come to expect, our latest installment of the popular Ask a Mentor column does not disappoint in offering younger lawyers the sage advice that can only come with time and experience. We hope you enjoy.
Why Trial Lawyers Should Love Arbitration

BY JOHN ARRASTIA JR.

Some attorneys complain that they do not like arbitration, but as trial lawyers, we should love it. Arbitration provides trial lawyers with the best opportunity to really experience trying cases to a decision. The following is an explanation of why trial lawyers should embrace arbitration in appropriate cases and suggestions on how to maximize the appeal of arbitration to those of us who enjoy trial work.

When Trial Lawyers Should Give Up the Courtroom

We have all come to learn that each case may take years before the dispute may ever come to trial before a court. But think back for a moment. In law school, most aspiring trial lawyers dreamed of arguing cases before packed courtrooms. Upon graduation, we looked forward to our first day at the firm, expecting to fashion insightful arguments that would win the day for our clients. Of course, none of us expected the seemingly endless mounds of discovery, repeated discovery disputes, and the three years it would take to get to trial.

Arbitration provides us—as trial lawyers representing clients in business-related disputes—with a solution where we can focus on actual trial work without the years of pretrial. Even a complex case can oftentimes be arbitrated in less than a year, from initiation to final award, and many cases take far less time. The focus of the arbitration is not discovery or pretrial but rather the actual presentation of evidence and argument at a final hearing. In this streamlined process, our skills as trial lawyers are at a premium.

Four Overlooked Advantages of Arbitration

We rarely hear about four important characteristics of arbitration that should appeal to most trial lawyers. First, you will have a greater likelihood of actually arguing the case. As a percentage, more arbitrations go to final hearing than litigated cases go to trial simply because arbitration is designed to go to final hearing. As an advocate, you will have a better chance of arguing a dispute in arbitration than in trial.

Additionally, many clients prefer arbitration because it should be quicker and far less expensive and does not require as much participation in discovery and pretrial as with courtroom litigation. One thing that business clients have a hard time understanding is why a $100,000 dispute can seem as complicated and expensive as a $1,000,000 dispute. Of course, the reason is because the rules of procedure and evidence apply equally to all cases above a certain dollar threshold, irrespective of complexity. In arbitration, however, we can tailor the proceedings to the size of the dispute so that discovery is commensurate to the size of the dispute. This concept, and the resulting efficiencies of time and money, seems to appeal to non-lawyer clients.

Arbitration also levels the playing field so that the difference between the proverbial David and Goliath is minimized. In arbitration, it is more difficult for one party to wear down an opponent through discovery, excessive motion practice, “papering” the case, or making the process too expensive. This is a benefit for not only a plaintiff making a claim against a deep-pocket defendant but also for a defendant who does not want to be forced into an unfair settlement by economics just because the plaintiff is making the litigation too expensive to continue.

There should be fewer venue-related and jurisdictional disputes in arbitration than in litigation. If the arbitration clause calls for a hearing in San Diego, then that is the venue. Forum non conviens, lack of personal jurisdiction, and other similar issues do not arise with the same frequency because, to a great extent, the jurisdiction and venue of arbitration is a function of the parties’ arbitration agreement.

What Is Arbitration?

It is helpful to recognize that arbitration is a true alternative to litigation. It is neither a substitute to litigation nor is it “litigation lite.” For example, litigation is designed to be a process that narrows the facts and issues in almost any dispute over time until a trial is held on the remaining contested issues while the parties refine their claims and defenses. The process is one to resolve disputes, which may or may not result in a trial. Litigation has certain safeguards to protect litigants, including extensive discovery, rules of procedure and evidence, and trial by jury. These safeguards are employed step-by-step as the case proceeds from pleading, to motion to dismiss, to summary judgment, through discovery, and then at trial. Measured by amount of effort expended, generally the pretrial portion of litigation greatly exceeds the actual trial time.

In contrast, arbitration focuses on parties that have generally had prior business dealings with an emphasis not on pretrial, but on the presentation of evidence and argument at a final hearing. The safeguards in arbitration are not designed for fairness in pleading, dispositive motions, and extensive discovery because those are rarely employed mechanisms. Instead, arbitration is designed to allow the participants to have a “day in court,” presenting their positions at one time, irrespective of sophistication and maneuvering, in one place with a level playing field.

A huge distinction between arbitration and litigation is the availability of a jury. The arbitration panel, consisting of one or more arbitrators, serves as the trier of fact and the trier of law. It is up to each trial lawyer to determine whether, in a business dispute, this is an advantage or a disadvantage and then to weigh the resulting benefits.

The Benefits of Arbitration

If we learn how to take advantage of the benefits of arbitration by using the process as intended, most trial lawyers will find that it is an effective resource.
and it will become far more enjoyable. Arbitration is designed to be a simpler, quicker, and less-expensive means to resolve disputes. This includes less discovery, pretrial motion practice, and formality. Seemingly, most complaints about arbitration arise when attorneys try to interject litigation into arbitration and end up with a combination that generally incorporates the worst aspects of each. Arbitration is far more effective if parties utilize the process as designed, i.e., as an alternative to litigation with an eye toward fully presenting a case at the final hearing. If used properly, arbitration should live up to its billing as a form of effective dispute resolution with benefits to the parties and their trial lawyers.

Arbitration as a Creature of Contract

Arbitration only arises from the agreement of the parties, either by contract or through stipulation. In the majority of the cases, arbitration is a contractually required dispute resolution mechanism. Thus, most arbitration results from commercial or consumer transactions even though there are important exceptions.

When first evaluating a dispute, determine whether there is a clause that requires arbitration. This clause typically states the rules that are to be used, the organization that will administer the arbitration, the venue, and any specific agreements relating to the arbitration. For example, the clause may simply state that disputes will be arbitrated according to the Commercial Rules of the American Arbitration Association (AAA), administered by the AAA, and with hearing to take place in Atlanta, Georgia.

Arbitration clauses can also have non-standard provisions. Some clauses state that the jurisdiction's rules of evidence will apply or that punitive damages are not available. Other clauses require three arbitrators or one. Irrespective of what the clause actually provides, it is the guidepost governing the arbitration.

Counsel often forgets, however, that the arbitration agreement, like any contract, may be modified by a subsequent agreement. For example, the parties may agree to modify a venue provision for their convenience. In other instances, the parties may agree to limit or expand discovery to suit the dispute or authorize the arbitrator to decide and award attorney fees. Generally, arbitrations are receptive to any changes to arbitration provisions if the parties so stipulate and they comport with common sense.

Governing Rules of Arbitration

Once the applicable rules are identified, the next step is to research the governing rules. Of the most popular forums, the AAA rules can be located at www.adr.org, and the rules for JAMS (formerly the Judicial Arbitration and Mediation Services, Inc.) can be found at www.jamsadr.com. Just a brief review of the rules will instantly alert you that they are broader, easier to understand, and briefer than any set of civil procedure rules. While the rules of procedure cover most issues that arise, along with thousands of appellate decisions interpreting those rules, the rules of arbitration lay out simple procedures and broad guidelines to direct the parties.

Discovery is currently one of the largest expenses of time, effort, and money in litigation.

Many lawyers ignore the rules, which take only a few minutes to read, and instead start to apply the rules of civil procedure. Perhaps that results from a belief that civil procedure is the best way to proceed, or perhaps it is the comfort of relying on a procedure and process with which we are so familiar. This often results in wasted time and effort because those litigation rules often do not apply in arbitration. For example, document requests in litigation have evolved into highly formalized and structured affairs that can be quite costly, with arguments over the meaning of single commonly used words. In arbitration, document requests are typically made by a simple letter or email, with the expectation that a basic request will be honored by the opposing party. Read the applicable arbitration rules and save yourself time and effort by employing those rules. Again, remember that arbitration is an alternative to litigation and not a different version of it.

Advocates should also familiarize themselves with the applicable state arbitration code and the Federal Arbitration Act (FAA). If the dispute touches on interstate commerce, then the FAA trumps any inconsistent provisions of state law by virtue of the Supremacy Clause of the U.S. Constitution. Generally though, state and federal law is limited to the procedure and process of compelling arbitration and either confirming or vacating the ensuing award. The actual procedure for conducting the arbitration is left for the rules of the administering organization.

Goals of Arbitration

Upon reading the rules or even proceeding in arbitration, most lawyers are struck by the absence of formality, discovery requirements, and prehearing practice. The reason is fundamental to the process. The focus of arbitration is on conducting a final hearing where each party presents its full proofs. This includes the presentation of all witness testimony, documents, and argument. While it is not unheard of, arbitration is generally not designed for resolution prior to the hearing, such as with a motion to dismiss or summary judgment. There are several reasons for this. First, the arbitration's equivalent of the complaint, called a demand, does not require the formality of a pleading and is only designed to provide fair notice of the complaining party's claim. Second, discovery is generally limited so that it is difficult for a party to sustain the prehearing burden of proving that it should prevail as a matter of law. Third, parties are expecting to present their proofs at the hearing and not before, so the process is geared to that final conclusive hearing.

Arbitration generally arises from parties with a preexisting relationship. Because arbitration can only arise from an agreement to arbitrate, the parties typically engage in some sort of business relationship before the dispute. In contrast to a victim who was blindsided by a truck, for example, most parties of the arbitration have a fair grasp of the parties' relationship and the facts underpinning the dispute. Because the arbitration typically only encompasses contracting parties and their agents and affiliates, the disputes can be very focused and directed to the parties' direct interactions. As
a result, arbitration does not typically require third-party discovery, extensive discovery into potential witnesses, and other pretrial mechanisms designed to unearth those facts that are already known by contracting parties.

**Choosing an Arbitrator**

As trial lawyers, we want to know and understand the judge and the trier of fact. In litigation, our judge may be assigned and our jury pool is randomly selected. Arbitration allows us to at least substantively participate in the selection of the “judge” and “jury.” This means that we have the opportunity to select an arbitrator that is suited for the particular case, which has significant benefits.

Arbitrators are ethically bound to disclose relationships with the parties, their counsel, and witnesses and identify potential conflicts of interest. The advantage of choosing an arbitrator is not an unscrupulous or unfair benefit to one side or the other. But the advantage is one of expertise, special skill, and general attitudes towards the process. For example, a construction dispute may be arbitrated more quickly and efficiently if the arbitrator is an attorney and a general contractor, because the arbitrator does not need to be informed of details about the industry and standard practices. Similarly, a smaller dispute or one that needs to be resolved quickly may proceed with less time and expense if you choose an arbitrator that takes a less-expansive view of discovery in arbitration.

We, as trial lawyers, spend a great amount of effort in addressing the variables in our cases. For example, trial lawyers have to accept the fact witnesses available, but we choose our experts carefully. We must accept the facts of the case, but we evaluate and craft our theories and presentation. The arbitrator is a variable in the case, so you should spend time researching and selecting an arbitrator.

Again, most of the issues in arbitration can be modified by that parties’ agreement, and the selection of the arbitrator is no different. An arbitration clause may call for a panel of three arbitrators, but a panel is more expensive than one arbitrator and generally takes more time because of the need for three arbitrators to caucus before rendering decisions. What if the dispute is relatively small? The parties can agree to proceed with one arbitrator. Similarly, the parties can mutually agree to choose a specific arbitrator.

Some attorneys complain that they do not like arbitration because of the possibility that a “rogue” arbitrator will render a capricious decision. This fear presumes that arbitrators are likely to abandon fairness and common sense once they assume a mantle of authority. Ultimately though, arbitrators, like judges, are human, and any such complaint against a particular arbitrator could be equally true of a judge. But there is a distinction: Judges are typically assigned by blind draw so that parties must accept any individual traits specific to the assigned judge.

Instead of waiting until the end, arbitration allows the trial lawyer to address these issues at the beginning by participating in the selection of an arbitrator. Generally, the arbitrators are fellow lawyers and professionals in our community, and we can research their reputation and skill as arbitrators. If advocates select wisely, then there should never be an issue concerning an arbitrator’s ability to render a thoughtful and considered award based on the evidence.

**Discovery**

Commercial litigators move a stack of discovery from one pile to another waiting for a settlement, but trial lawyers actually try cases. This may be a tongue-in-cheek observation, but discovery is currently one of the largest expenses of time, effort, and money in litigation. The way discovery is conducted in arbitration makes it one of the largest cost savings and most significant distinctions from litigation.

The rules of arbitration do not provide for interrogatories or requests for admissions, but generally call only for the exchange of documents and, depending on the rules, one deposition of each party. Again, arbitration is a creature of the parties’ agreement, so this may oftentimes be modified by the parties’ mutual assent. If, for example, the parties agree that each side shall be afforded the deposition of four individuals, then it is likely that the arbitrator will include that provision in any preliminary scheduling order if so requested.

Third-party discovery is also more limited because an arbitrator does not have the same broad authority to compel third parties to give evidence. At the very least, arbitrators are empowered to issue subpoenas to third parties to testify at and bring documents to a hearing, which may be enforced by court order.

Some attorneys complain that they are unable to prepare a case without extensive discovery. This may be a result of a comfort from leaving no stone unturned. But is comprehensive—perhaps even excessive—discovery always necessary? If you consider your last few litigated cases, ask yourself what percentage of documents from discovery were actually considered by the trier of fact. What percentage of deposition testimony was used? Chances are that the discovery net was cast very wide to catch only a few critical, dispositive facts.

An eye-opening exercise is to consider the role of discovery in criminal cases. Even in the case of the most egregious offense, with few exceptions, discovery is exceptionally limited. Lawyers are expected to present their evidence at trial. Of course, the burden of proof is much higher and other safeguards exist, but full and unfettered discovery is not one of them. If these matters, which implicate liberty and social justice, can be resolved without 35 interrogatories, 30 requests for admissions, 50 requests for production, and 10 depositions, then a contract dispute may be adjudicated without the same level of prehearing discovery.

Trial lawyers should consider arbitration if only for the limited role of discovery in a case. With limited discovery, the matter will proceed to a resolution more quickly. Additionally, a case is less likely to become bogged down in prehearing procedures with less discovery, and consequently, fewer discovery disputes. The trial lawyer must rely on his or her own creativity and skill to craft the case theme and argument from the available facts without relying on mountains of paper.

**Motion Practice**

Motion practice tends to be very limited in arbitration. This limitation is not intended to hamstring the advocates, but rather is a result of the practical aspects of the arbitration process. Understanding the practicalities of arbitration guides
us in choosing what motions to file. The pleading standards are only intended to provide notice; therefore, a motion to dismiss can only be granted in the smallest number of clear-cut cases. In addition, because of the limitations on discovery, it is very difficult to conclusively establish the right to prevail as a matter of law prior to the final hearing, which limits the opportunity for a successful motion for summary judgment. The expedited nature of arbitration does not generally contemplate enough time to permit the briefing and consideration of dispositive motions or a continual stream of motions. Arbitration also provides less opportunity for the parties to gain tactical advantages by posturing their cases during pretrial tactics; therefore, there is less incentive to engage in motion practice. This point relates directly to the final reason: Arbitration is designed to be decided during a relatively short in-person, evidentiary hearing and not before.

There is certainly some level of motion practice in arbitration. In most instances, the motions relate directly to discovery obligations, requests for leave to amend to permit claims for punitive damages, and other brief necessary motions. Certainly there is no prohibition against motions being filed in arbitration, but the savvy counsel will pick and choose the best use of his or her time. For example, it is perfectly appropriate to file a motion to compel the production of documents if such materials are not forthcoming. But a motion for summary judgment in an expedited case with a final hearing scheduled in 45 days may have almost no chance of success.

**Relaxed Rules of Evidence**

Arbitration’s limitations on discovery may cause some trial lawyers discomfort because it is impossible to comprehensively examine each possible fact before the final hearing. In some degree, discovery in litigation is necessary to support certain procedures—such as motions for summary judgment—and fulfill certain evidentiary requirements. The limitations on discovery in arbitration are balanced by a relaxation on the procedural rules and the evidentiary requirements. Thus, in arbitration, a trial lawyer may not have the opportunity to depose records custodians to authenticate a party’s documents, but at the same time, there is a very high likelihood that self-evident business records will be accepted as evidence under the rules of arbitration. This also results in less time spent on obtaining evidentiary rulings.

This is not unlike a non-jury trial before an experienced judge. Many judges relax the evidentiary standards when a jury is not present to be unduly prejudiced and accept evidence with the comment that it “will be received and accorded the appropriate weight.”

Arbitration is not any different. At the conclusion of the hearing, the arbitrator will evaluate the totality of the evidence and decide the merit and influence of each element in his or her deliberation.

**Final Hearings**

Arbitration hearings are unlike any trial and tend to suit a trial lawyer’s personality. It is the opportunity to present your client’s case persuasively on a stage that encourages the full expression of facts and arguments. It is held in an informal setting, generally in a conference room with the arbitrator at the head of the table and the attorneys facing one another. The parties and counsel have the arbitrator’s full attention for the allocated time—whether half a day or two weeks—without the distraction of motion calendar hearings, emergency hearings, or other cases crowding the docket. Except in the case of gross abuse, the case moves at counsel’s pace, affording everyone an opportunity to present his or her client’s full argument.

A typical refrain from a good arbitrator is that he or she wants to hear all the evidence and understand each side’s position. In this sense, advocates should be prepared for the arbitrator to ask questions of counsel witnesses. Instead of viewing this as an interruption, accept an arbitrator’s questions as a guide to the points that he or she finds critical. Do not hastily jump back on track to your prepared questions. Instead, follow up with additional questions or make a note to raise new points relating to that issue at the appropriate point.

Most importantly for trial lawyers, the final hearing is truly an opportunity to be persuasive. Unlike typical litigation where a case has been whittled down to one or two issues through discovery and motion practice, an arbitration final hearing provides an opportunity to present your client’s full story. In most instances, when the final hearing arrives, the arbitrator has not made any substantive rulings on the case and is reviewing the evidence and law at the final hearing or just before it.

This raises the point of prehearing briefs. It is always a wise idea to provide the arbitrator with a prehearing brief that presents a synopsis of your client’s position, arguments, evidence, and legal authority. It educates the arbitrator and serves as a road map so that he or she can have an overview of the case as it develops during the hearing. It is easier to follow along at the final hearing if an overview has already been presented. The prehearing brief also serves another useful purpose by advising your opposing counsel of your client’s arguments and facts so that it cannot be later claimed that your opponent was ambushed.

While you want to fully develop your case, like any good trial lawyer you want to hone in on your best points—no more than three—and develop your theme. Because everything is presented at the final hearing, a trial lawyer has a full range of choices from the available theories, arguments, and evidence available for the facts. You are allowed to craft your arguments, prepare your client’s proofs, and structure the case into the tightest, most streamlined, compelling, and persuasive argument possible.

**Conclusion**

Most trial lawyers that handle business-related disputes, whether in the context of insurance, contracts, consumer disputes, or the like, will have a case that must be arbitrated. Instead of fearing the unknown or thinking that your case is stuck in “watered down” litigation, accept arbitration for what it is—an alternative to litigation. Use the process and you may find that the skills and challenges that drew you to trial practice will not only exist in arbitration, but may also be more appealing to you and your client.

John Arrastia Jr. is a trial lawyer, arbitration advocate, and arbitrator practicing in South Florida. His website is www.arrastia-law.com.
Interview with Lorna Schofield, 2009–2010 Section of Litigation Chair

In 2009, Lorna Schofield took over as the first Asian American to head the ABA’s largest section, the Section of Litigation. Recently, the Minority Trial Lawyer Committee (MTL) had an opportunity to speak with Schofield. During a wide-ranging conversation, Schofield, a partner with Debevoise & Plimpton, LLP, in their New York office, discussed how she first became involved with the ABA, the benefits of ABA membership, minority issues, and some thoughts on the future of the profession and the ABA.

MTL: You have been involved with the ABA for many years now and have served in a variety of positions. What was the initial prompt or motivation for you to get involved in the organization?

Schofield: I first got involved in 1991. I had just become a partner in my firm. One of my then partners, Jud Best, was the former chair of the Section of Litigation and a member of the ABA House of Delegates. He encouraged me to get involved. He suggested me for an appointment on the Planning Committee for the first ever program about and for women litigators. I think that most people who become actively involved in the ABA do it because someone took the trouble to invite them and show them the benefits.

MTL: So one of the early keys for your involvement was having an ABA mentor?

Schofield: Exactly—in the sense that he encouraged me and told me what was good about the ABA. I think that for most people who are leaders in the Section, there is usually somebody who got them involved and told them what a good experience it was, because I don’t think it is necessarily intuitive.

MTL: Your participation in the ABA started at a very high level when you were involved in a planning committee. After that experience, what motivated you to stay involved in the ABA?

Schofield: The experience was inspirational and exciting. I have been interested in women’s issues since high school and women in the profession since I have been a lawyer. So it was a very exciting time in 1991 to be a part of this conference. We filled a hotel ballroom with 600 women litigators at a time when it was still pretty common that you would go into court or a conference room and be the only woman. So, being a part of this first ever program was exciting. The next year I was asked to chair a reprise of that conference, and I happened to meet the person who was incoming chair of the Section. He was in the process of making appointments. We hit it off and talked about my practice. The next thing I knew, I was a committee chair. What has kept me involved is that it has been a very gratifying professional experience.

MTL: Can you expand on how it has been a gratifying experience?

Schofield: When we practice law, we are advocates. We have to advocate our client’s position. The Bar is a different kind of place. Your perspectives are formed by where you have been with your clients, but you really leave your clients at the door and try to make the system better for everyone. It is wonderful to participate in the ABA and have a professional role that is completely constructive and policy-oriented to balance the professional fighting mode of being a litigator.

MTL: Would you say that when you first started out in law school and as a lawyer that you were motivated by a substantial desire to improve the profession?

Schofield: I went to law school because I thought it would be a good fit. I was a debater and I did theater, so I thought being a lawyer would just be fun. But what has been so gratifying about ABA work is that focus on public policy, improving the profession, and making the world a better place.

MTL: In addition to being Section chair, what other leadership positions have you had within the Section and the ABA?

Schofield: I was a committee chair for the Class Actions and Derivative Suits Committee, and I chaired a task force on discovery principles. I was also the budget officer for the Section, which is like being the CFO. I really enjoyed that role because it offered a very business-oriented view of the Section, e.g., who and what we are as a business and what we have to do to make it run better. There is a large aspect of being a chair of the Section that is about the business, and I have enjoyed that as well.

MTL: How do you balance your ABA and association commitments with your commitments as a partner and leader at your firm?

Schofield: The primary way that I balance things is by not being involved as much in other organizations. Although I am nominally a member of several other organizations, I am not an active member. There are only so many hours in a day and only so many organizations that you can give your heart and soul to. The other way I manage to strike a balance is that my firm is incredibly supportive of the Bar activities. My firm recognizes what ABA membership can do to enhance your reputation, help you network in the legal community, and help you learn about your job.

MTL: Has your experience leading various ABA committees and the Section benefited your practice?

Schofield: Absolutely. My experience in the ABA has made me a better lawyer. But it works both ways. Learning how to manage a large team of 20–30 lawyers certainly helps you learn to manage in...
other settings, like the ABA, although there is a huge difference between managing 250 volunteer leaders versus managing a group of lawyers who are all paid to be there.

MTL: You indicated that when you first became involved with the ABA, you were an experienced attorney and a partner at your law firm. Prior to joining your firm, Debevoise & Plimpton, you were at the United States Attorneys Office and another firm prior to that. When you were a government employee, did you participate in the ABA at all? Schofield: Not at all. At that time, I did not have a clue about the value of the association.

MTL: Do you think that this is something that the ABA could do a better job of—marketing its services, opportunities, and the benefits of membership to government employees? Schofield: Yes—and not just to government employees. Marketing is one of the things I have really tried to work on this year with a great team of people. We in the Section have great products and services with a lot to offer our members and people who are not members. Many lawyers, and even some who are our members, do not know the extent of what they can get out of the organization. A big challenge for us is trying to communicate that. Frankly, in this day and age, communication is really hard, because everybody is deluged with information.

MTL: What other impact has Bar leadership had on your career and your day-to-day practice? Schofield: The most important thing is knowledge and expertise. We talk a lot today about the vanishing trial—i.e., we lawyers do not get to try cases as much as we would like to. So, I have actually learned a lot and kept my trial skills honed by being active in the Section and participating in programs. For example, I just attended the 2010 Conference on Civil Litigation at Duke University. In preparing for the conference, I learned a lot about procedure and how to save my clients money using the existing rules of civil procedure. These are things I would hope that everyone knows, but I know they do not. And, on a more personal level, some of my closest friends are those that I have met through the ABA, and those friendships are in part what keep me at it.

MTL: Would you also say that being a member of the ABA has helped you with business development? Schofield: Sure. ABA membership is great for developing your reputation and meeting other lawyers and sometimes clients who can refer business to you. I think it is harder to get these referrals when you are in a place like New York City. There are so many lawyers here, and everybody knows at least 10 of them. But I know lawyers in smaller cities who have had decent success in turning their bar experience into an important source of business. But I also think in terms of reputation building and expertise building, ABA membership has been extremely helpful.

We are forced to think about how we can provide the most value—and communicate that value effectively—to members.

MTL: Moving on to some diversity-related issues, you are the first Asian American to chair the Section of Litigation. What can ABA members—both minority and non-minority attorneys—take from your achievements, and what does it say about where the Bar is headed? Schofield: Well, I think what should be clear is that we are a very diverse organization committed to diversity. I am the first Asian American to chair the Section, but we have had an African American chair, and we have had many women chairs over the years. Our membership is about half female, and our Section leadership is about one-quarter people of color. Those numbers are especially extraordinary given the minority representation in the lawyer population. The diversity in our Section has not been accidental but has come from an absolute commitment to being diverse. If you walk into the room at one of our leadership meetings, it is striking how diverse it is. I have had other lawyers of color come to me and say, “Wow this is really great, I noticed the large number of people like me the minute I walked in.”

MTL: During the years you have been involved in the ABA, what changes have you seen in the role of minority attorneys, both in the ABA and the practice at large? Do you think that the ABA and its commitment to diversity is playing a role in helping to speed these changes? Schofield: I have seen a lot of change, and I really do think the ABA has been instrumental in effecting that change. The Section has been on the forefront of advancing diversity. For example, we require that our panels and programs be diverse and that our publications and photographs show a diverse population. We try to work on diversity at many levels. Those are just two examples. I think the profession as a whole has become more diverse, but it is still a real challenge and there is still a long way to go. The ABA offers people who are minorities a platform, and it is also a way to validate them. I think some lawyers in their law firms where there are fewer diverse people may not feel that they can readily find their voice. But, in a group where there are more diverse people, I think it is sometimes easier to find that voice or that sense of self or confidence. Minority attorneys can take that confidence and that voice back into the workplace and into other settings. So, I think the profession has become more diverse, and I think the ABA helped it get there too.

MTL: You mentioned earlier that one of your initial ABA mentors was Judd Best, and along the way you have probably encountered other individuals who have been your role models or your mentors, both in the ABA and in your profession at large. Who would you say were your chief role models or mentors? Schofield: Well, another mentor through the years has been Judge John Koeltl, who was a law partner of mine before he became a judge in the Southern District of New York. At the time, he
was a member of the Section’s leadership as an editor of *Litigation*. Today he continues to participate in the leadership of the Section as a member of the Federal Practice Task Force. I worked with him very early in my career. He was a real role model and mentor, although I did not realize that he was acting as a mentor at the time. Recently, he was the head of the planning committee for the Duke Conference. He got me and the Section involved. I was honored to participate and really grateful and appreciative. I think the collaboration between the Section and the Advisory Committee for Civil Rules has been very good for us lawyers, and I hope it has also been good for the Advisory Committee, which initiates changes to the Federal Rules of Civil Procedure.

**MTL:** Do you have any advice or suggestions for minority attorneys for how they can or should seek out role models or mentors, or should it be just as circumstances dictate?

**Schofield:** I would say a couple of things. One is you can have different role models and mentors for different purposes. You should not think that one role model or mentor should fit every need that you have. Second, your role model or mentor does not have to look or be just like you. If you are a minority lawyer, don’t think that your mentor necessarily has to be a minority lawyer. In fact, it is good to have several mentors. If one of them is similar to you, that is great, but if the others are not, that is OK too. I would add that you need to seek out those relationships, because it really is a relationship. You need to find somebody who you hit it off with professionally and who is willing to mentor you.

**MTL:** How important do you think it is for minority attorneys to get involved in diversity-related efforts within the practice and the ABA?

**Schofield:** I think it is important, but it is also important to get out of that diversity pigeonhole and get into the substantive areas of the ABA. There is a crying need to get people to oversee diversity efforts, but frankly, it is going to help your profession a lot more if you chair a substantive committee. I am not saying that it is not important to further diversity efforts. People helped me along, and I feel a real commitment to help other people along—people who face similar kinds of challenges and issues. But I also think that people need to think more broadly and do both.

**MTL:** We have seen huge changes in the economy and the legal industry in the past 18 months. How do you see the ABA’s role changing in response to these economic circumstances? What does the future hold for the Bar and the ABA in general?

**Schofield:** The economy has put pressure on the profession in all corners—in our practices, client’s businesses, and law firms. The ABA and the Section are not immune to that. We have seen some challenges in the membership area, because people have had to cut back on their expenses and firms have had to cut back on their expenses. I think the silver lining in all of this is that we are forced to think about how we can provide the most value—and communicate that value effectively—to members and potential members. People are really voting with their feet, and if they do not see the value, they are not going to continue with the ABA. Our challenges are being relevant to our members and continuing to be relevant as times change. As lawyers become more technological and less inclined to fly around the country to meetings, we have to figure out how to provide those lawyers with value.

**MTL:** You said that one of the things that first motivated you to get involved with the ABA—and stay involved—was fostering a better role for women in the profession. When you started out as a lawyer, there was not a single woman on the Supreme Court, and, soon, the Court may have three women. What do you think that says about where we are headed as a profession, and is that a trend that is going to continue?

**Schofield:** I think it is amazing. Women in particular have come so far since I began the practice of law. The problem of gender discrimination is not entirely fixed, but the profession is so different and much more inclusive of women. I think it really changes the dynamic in any group when you have more than just one or two women—in a good way. So I would really look forward to having another woman on the Supreme Court.

**MTL:** A lot of firms still struggle with the challenge of accommodating all the demands that women face in the practice. Do you think we are doing a good job meeting those challenges as a profession?

**Schofield:** I think it depends on who the “we” is. My firm is one of the very best and a real leader in this area. We at Debevoise have partners who are, or who have been, part time. We have associates who are, or who have been, part time. And it is not seen as an impediment; it does not make you a second-class citizen. There are right ways to accommodate family needs. I actually think a part-time program is pretty easy to implement if people have the right attitude. The attitude change is the difficult part. I have talked to friends in other firms where it seems like it is just so difficult. I know from having been here at Debevoise that it can be done.

**MTL:** You have accomplished a lot, and you are still very young. What do you think the future holds for you?

**Schofield:** That is the hard one. I’m not sure. My view of life has always been to keep my eyes open. When interesting opportunities come along, you see something and maybe act on it. I do not necessarily see myself going into any other area of practice. I love my firm, and I love my practice. There are new clients, new industries that clients are involved in, and new kinds of relationships now with the economy changing. I also feel like I am getting into a more senior part of my career where clients are more and more looking for a counselor. Even though I am a litigator, clients often want counseling and advice, which is something I really enjoy.

Lorna Schofield served as chair of the Section of Litigation from 2009 to 2010. Brian Josias is with Hill Ward Henderson in Tampa, Florida. He serves on the editorial board for the Minority Trial Lawyer.
Dear Ask a Mentor,
As a young attorney transitioning into an experienced attorney role, I am noticing more of my colleagues switching firms. If (or when) a young associate decides to change firms, what is the best way to communicate that to the firm you are leaving and to your clients and other professional connections? What are some of the dos and don’ts of changing jobs?

J.S., St. Louis, Missouri

Dear J.S.,
In most instances, the rules of professional responsibility will govern the manner in which a departing lawyer must communicate his or her intentions to switch law firms. The ABA Standing Committee on Ethics and Professional Responsibility (Committee) addressed this issue in 1999 when it issued Formal Opinion 99-414, Ethical Obligations When a Lawyer Changes Firms (1999). In that opinion, the Committee stated that “[a] lawyer’s ethical obligations upon withdrawal from one firm to join another derive from the concepts that clients’ interests must be protected and that each client has the right to choose the departing lawyer or the firm, or another lawyer to represent him.” ABA Formal Opinion 99-414. The Committee also recommended that the departing lawyer and the law firm send a joint letter to all clients for whom the departing lawyer provided significant professional services while at the law firm, noting

The departing lawyer and responsible members of the law firm who remain have an ethical obligation to assure that prompt notice is given to clients on whose active matters she currently is working. The departing lawyer and responsible members of the law firm who remain also have ethical obligations to protect client information, files and other client property. The departing lawyer is prohibited by ethical rules, and may be prohibited by other law, from making in-person contact prior to her departure with clients with whom she has no family or client-lawyer relationship. After she has left the firm, she may contact any firm client by letter.

ABA Formal Opinion 99-414. A departing lawyer should also consult his or her jurisdiction’s own disciplinary rules to determine whether there are any specific rules that govern that lawyer’s ethical obligations upon withdrawal from one firm to join another.

From a practical standpoint, it is prudent that a departing lawyer not announce his or her intention to switch law firms until the departing lawyer’s notice obligations have been satisfied. There have been instances in which a departing lawyer’s intention to switch firms has been rumored or come to the attention of the law firm’s management before the law firm received notice directly from the departing lawyer. Such a scenario can obviously breed resentment and distrust at a time when cooperation should be paramount between the departing lawyer and the law firm.

Finally, common sense should prevail. Remember to express gratitude for the training and opportunity extended by your prior firm. Also, be mindful that the departing lawyer’s prior law firm can be a fertile source of referrals to the departing lawyer’s new law firm as well as an excellent source for character references, which are essential in a profession where upward mobility is often defined by peer recognition. Thus, when switching firms, remember that your goal should be to diffuse a potentially emotional situation as much as possible and use your departure as a starting point to generate new goodwill.

Lanse Scriven is an attorney practicing in Tampa, Florida. He can be reached at www.scrivenlaw.com.

Dear J.S.,
Many young attorneys enter the practice of law with the idea that if they accept a job offer and subsequently find that it is not their “ideal” job or it is simply not for them, there is no problem in merely turning in their resignation and looking for another position. Well, it is not that simple. In fact, there are several potential flaws with this scenario. The following are some dos and don’ts associated with leaving legal jobs.

**DOs**
- Do try to start looking for a new position while you are still working with your old employer. It is always better to have a job while looking for another job. It looks better on your résumé, as potential employers won’t assume that you were terminated or laid off.
- Do leave your old firm with proper references. Good references are essential, especially in a competitive job market such as is the case today.
- Do make a list of your client matters to identify and clear up any potential conflicts with a new employer.
- Do give enough notice to your old employer prior to leaving and attempt to train a replacement and/or assist with the changes brought on by your absence from the firm.

**DON’Ts**
- Do not be perceived as a job hopper. Attorneys do not like to see candidates who cannot or will not stay with an employer for an extended period of time. It does not give them confidence that the candidate will remain with them for a lengthy period of time, and this is a negative to a potential employer who has vested time and expense in the new hire in terms of training.
- Do not be perceived as a malcontent. Attorneys do not like nor typically hire candidates with a negative attitude.
- Do not burn bridges. Even in cities with a larger legal community, everything gets around pretty fast. Therefore, always leave an employer with professionalism and on friendly terms.

M. Teresa Rodriguez is assistant director of the Career Development Office at the University of Miami School of Law.
Legal Interviewing

Continued from page 1

... competency categories. Although competencies can be used during many phases of the employer-employee relationship (including in the development of training, mentorship, and advancement programs) for the purposes of a competency-based interview, the categories are used to develop interview questions targeted at uncovering the presence of the position’s competencies in future candidates for the same position. Finally, to be successfully applied, a competency-based interview system must have a uniform framework for the administration of interview questions and the recording and evaluation of candidate responses.3

While many employers utilize competencies in their human resources processes, the overwhelming majority of employers do not use competency-based interviewing and instead rely on unstructured interviews to attempt to identify individuals who may be capable of performing the generally defined requirements of a job.4 This interview method gives little or no attention to the innate characteristics or life experiences of an applicant that may contribute to his or her success in the position and is widely criticized because it is highly susceptible to interviewer bias. It is also overwhelmingly ineffective in identifying the ideal candidate for any given position. A study of interviewing techniques found that an employer is about as likely to hire a star player through traditional interviewing (53 percent) as blindly selecting a random candidate (an approach that yields a 50-50 chance of hiring a star player). Additionally, the odds of hiring a star player through a traditional interview do not increase even where the interviewer has experience in hiring for the position. Conversely, a structured, competency-based interview will yield a 70 percent likelihood of identifying a star player.5 Thus, because a star player can predictably be counted on to both perform consistently above expectations and to exhibit employment longevity, an employer utilizing this method of hiring has the potential to significantly reduce costs through the increased efficiency of its workforce and the reduction in employee attrition. In fact, more than one study has proven these results, collectively, finding a 20 percent higher productivity rate among star players as compared to their fully trained colleagues, and, after implementing competency-based human resources tools, a more than 15 percent increase in revenue and greater than 65 percent decrease in attrition.6

Competencies for Firms and Other Legal Employers

Like most companies, law firms currently rely primarily on unstructured interviews. Generally, an invitation to interview is extended almost exclusively to candidates who attend prestigious law schools, maintain a high GPA, and are involved in certain extra curricular activities. Historically, it has been these factors that law firms rely on to predict the candidates that will be successful in the firm. The interview, then, becomes little more than a formality as long as the candidate exhibits good interview skills and social disposition during the interview. Consistent with unstructured interviews, generally there are no definitive criteria by which the candidates are evaluated in the interview. Firms, however, are beginning to admit that this model may not be effective and that some of the indicators they have relied on in the past to predict associate success may not be the best predictors of success in law practice.7 In fact, a recent study of the 10-20 year hiring and development practices of multiple firms found that factors such as law-school rank and GPA do not have a strong relationship to associate success.8 Furthermore, unstructured law-firm interviews are not immune to the criticism of interviewer bias, and staggering associate attrition statistics highlight the degree to which traditional means of law-firm hiring has been a spectacular failure.

In 2003, lateral associate attrition due to not meeting performance expectations was approximately 21 percent,9 with 1 in 5 laterals leaving the firm within two years.10 In the same year, attrition of entry-level attorneys due to not meeting performance expectations was 20 percent.11 The monetary loss to firms of associate attrition is inordinately high, cited in 2007 as almost $300,000 per departing third-year attorney,12 but estimated to be as high as $500,000.13 In the last decade, firms have not turned a blind eye to the issue of associate attrition and have attempted to stem the flow in several ways. Large firms drastically increased associate salaries, in some cases raising first-year associate salaries by tens of thousands of dollars in a single year. While salary increases can be a strong recruiting tool, it is a poor means of addressing associate attrition because of the correlative increase in required billable hours. Studies suggest that an increase in required billable hours likely contributes to associate dissatisfaction and actually raises attrition rates.14 Additionally, firms of all sizes attempted to market work-life balance to their associates; however, anecdotal evidence suggests that these work-life options are rarely invoked by associates. Ultimately, neither of these initiatives has proven successful in stemming the tide of associate attrition. In 2009, the number of lateral associates lost due to not meeting performance expectations had grown to 43 percent, with one in four associates leaving within two years.15 Entry-level attorney losses attributed to not meeting performance expectations spiked as well to 37 percent in 2009.16 Admittedly, the 2009 statistics may reflect the state of the economy and the fact that many firms experienced unprecedented levels of downsizing.17 However, even if we assume attrition rates due to unmet performance expectations remained constant throughout the first decade of the twenty-first century had it not been for the economic downturn experienced at the end of the decade, firms would still stand to benefit substantially from the identification of star players during their recruitment efforts. Law firms that invest in both creating competencies reflective of the various associate positions within the firm and training those in a position to make hiring decisions to efficiently administer and evaluate competency interviews could see unprecedented results. First, because each star player is significantly more productive than his or her average colleagues, a firm could cultivate a smaller associate class of star players and still produce the
quantity and quality of work expected by its clients. This allows for the reduction in costs associated with salaries and benefits. Conversely, a firm could maintain its associate numbers but efficiently service more clients. This provides for an increase in revenue. Second, firms would see a dramatic decrease in attrition expenses because star players, ideally suited to the specific position, are less likely to leave the firm. Finally, well-developed competencies allow for the efficient training and mentoring of associates.

The following are suggestions for legal employers interested in implementing a successful competency system. First, identify the star players. Again, star players are those who exhibit above-average performance and maintain longevity with the organization, which for law firms is measured as the time between the point at which the associate becomes profitable to the firm and the time at which the associate departs the firm. A study of many firms found generally that longevity and likelihood of reaching partnership were both increased in associates with one or more of the following three characteristics: participation in the firm’s summer associate program, judicial clerkship experience, and high utilization rates.20 Remember, however, that to maximize the efficiency of competencies, firms should work to identify characteristics of star players and the resulting competencies that are unique to the particular firm.21 Second, they should develop a systematic interview and evaluation process that decreases interviewer bias and increases the efficiency of competency interviews. Third, they must maximize the benefits of competencies by extending interviews to candidates who would have previously been outside the range of consideration based on law school rank and GPA. Ron Jordan, founding principal of Carter-White Shaw agrees:

GPAs don’t practice law. People practice law. Their various experiences, along with their theoretical background, will determine what type of lawyer they will become. Going to Harvard is not going to guarantee that you’re going to be successful. A firm loses out by not drilling down [by looking deeply for candidates] at other law schools. [M]itigating circumstances encompass what type of lawyer you get; being smart does not necessarily make you a good attorney.22

Not only does this principle increase the firm’s recruiting base, but it may also increase the number of diverse candidates, and consequently, diverse associates and partners. Firms must also commit to maintaining records of the efficiency of competency-based initiatives and update and refine the competencies as necessary. Finally, they should allow candidates to better evaluate their aptitude for a position by providing at least some of the competencies of a given position to the candidate prior to the interview.

The candidate will be best served by truthfully evaluating his or her personal competencies required by a particular position.

Competencies for Legal Candidates
A competency-based interview and retention system presents several benefits for legal candidates as well. Candidates who spend time discovering and developing their personal competencies will be better equipped to evaluate whether or not they are apt for a particular position, a self-evaluation that could lead to lowered attrition rates. Additionally, a candidate who can effectively and efficiently communicate his or her competencies during an interview can make the interview process more predictable, because in a purely competency-based system, the only variable is whether or not the candidate clearly expresses the presence of the required competency. There is no subjective evaluation or interviewer bias. And finally, a candidate who is employed in a position for which his or her personal competencies match the competencies required for the position will likely be happier and more successful in the position.

Since, to date, the competencies that make great litigators or transactional attorneys have not yet been developed by legal employers23 (or if they have, they have been heavily guarded), the key to demystifying competencies in law-firm interviews lies in deciphering what general knowledge, skills, abilities, and characteristics are likely to yield a star player in a law firm.

When partners at some of the nation’s largest and most prestigious law firms were asked which of the following six characteristics they value most in a candidate—writing skills, advocacy skills, positive attitude, analytical skills, work ethic, or initiative—they ranked positive attitude, work ethic, and initiative highest.24 The reason? These characteristics, coined the “gateway attributes” by Werten Bellamy of Stakeholders, Inc., are very difficult—if not impossible—to teach, whereas the other attributes can be taught and developed through already established means. Additionally, if a partner can identify these characteristics in a candidate, the partner can easily assume that other related and equally important characteristics exist, even if those related characteristics were not observed during the interview.25 Beyond the interview, the ability to aptly demonstrate the gateway attributes to others within the firm invites investment in the candidate by senior associates and partners. This investment, in the form of work assignments, mentorship, and interaction with clients and other influential people, creates forward and upward movement in the candidate’s career, whereas the absence of investment leaves the candidate’s career stagnant.26 Thus, the ability to identify within oneself and then articulate the presence of these skills during an interview (and throughout the course of the candidate’s career) becomes of vital importance.

There are many resources that provide sample questions designed to identify the presence or absence of the gateway attributes.27 More important than the questions, however, is whether a candidate can aptly demonstrate the gateway attributes through their responses. Several commentators in the field of competency interviews have advanced clever acronyms for constructing an appropriate response. Much like how law students use IRAC in their legal writing, formulas such as
SCAR (Situation, Challenge, Action, Result), IPAR (Identify the Problem, Action, Result), and STAR (Situation, Task, Action, Result) have been developed to remind candidates of the essential elements of a good competency interview answer. Essentially, the best answer to a competency interview question identifies and describes a situation in which the candidate was in the position described in the interviewer’s question, explicitly details the action(s) the candidate took in the situation (making sure to emphasize the candidate’s role as opposed to the role any other participants may have had), and, finally, describes the result achieved. Good competency answers avoid both seeing challenges as problems and taking criticism personally. Note that in competency interviewing, the result that the interviewer is evaluating is not necessarily whether or not the described situation turned out well for the candidate, but rather the resulting acknowledgment by the candidate of the attribute(s) they gained through the process of having experienced the situation. A good competency answer draws from a life experience that caused the candidate to develop a life motto for how he or she would handle a similar situation in the future. Because the guiding principle behind competency interviewing is that past behavior is the best predictor of future behavior, an example in which the applicant was able to develop a motto clearly expresses to the interviewer that the applicant was in the position described and what was learned from the experience(s).

Identify personal mottos. Mottos are important because they are borne out of experiences that leave a lasting impression and create the predictive behavior competency interviews are designed to identify. Practice the delivery of a competency interview answer. The ability to relate one’s experiences to the required competency is imperative. Answers should be detailed and highlight the gateway attributes but not be longwinded or convoluted with unnecessary details (and certainly not with any details describing characteristics in opposition to the gateway attributes). A competency answer should never be exaggerated or made up. It is acceptable to not have an answer as long as one can demonstrate a clear understanding and appreciation of the competency and an aspiration to develop it. Finally, examine positions of interest and make an honest determination of whether or not one’s personal competencies mesh with the competencies required by the position. Remember, while the gateway attributes are almost universally important in law-firm hiring, one may possess other competencies that make one more suited or less suited to a particular position. Ultimately, the candidate will be best served by truthfully evaluating his or her personal competencies in light of the competencies required by a particular position. Furthermore, just as firms will need to move past their narrow obsession with prestigious credentials, candidates who are interested in a forward-moving career must look past the prestige associated with a particular firm, and instead focus on whether the candidate will be able to cultivate investment from partners and others within the firm.

Conclusion

While no statistical data currently exists detailing the degree to which competency interviewing is currently used in law firms, a shift in the immediate future does seem likely. Currently, firms are seeking to more efficiently manage associate salary expenditures as firms face mounting pressure from clients to reduce costs. Because competency-based interviewing (and training and development programs) offer a potential means by which firms can achieve the goal of reduced costs, its use is likely to increase. Ultimately, if properly developed and deployed by firms and thoroughly understood and assessed by candidates, competency-based systems, including competency interviewing, present a substantial benefit to both the employer and candidate and appear to be the next generation of law-firm hiring best practices.

Lori L. Lorenzo is a legal career professional in Florida.

Endnotes

3. Shipmann, supra note 1, at 704.
4. Werten Bellamy, Presentation at the Fifth Annual NALP Diversity Summit, Associate Competencies: The Next Great Diversity Breakthrough or the Next Barrier to Diversity? (June 11, 2010).
6. Id.
7. Id.
10. Kris Satkunas, Managing Associate
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13. Patterson, supra note 11, at 12–13.
16. Id. at 54.
17. Patterson, supra note 11, at 12–13.
18. Id.
19. Id. at 13.
21. See id. (identifying variations from the general indicators of successful associates).
23. But see Majorie M. Shultz & Sheldon Zedek, Final Report Identification, Development, and Validation of Predictors for Successful Lawyering, BERKELEY LAW (Sept. 2008), www.law.berkeley.edu/files/LSACReportfinal-12.pdf, which, despite listing the 26 essential elements of successful lawyering, is not useful in this discussion because of both the expansiveness of the list and the limitations of the sample.
25. Id.
26. Id.
27. See Victoria A. Hoevemeyer, High-Impact Interview Questions, 701 Behavior-Based Questions to Find the Right Person for Every Job (2005).
31. Id.
32. Lewis, supra note 29.
34. Id.
The *Minority Trial Lawyer* 
Needs Your Feedback

A number of our members have indicated that they want to see more effort made to enhance member employment and business development opportunities. Our committee is working to accomplish this. One of the resources we are putting together is a member database.

Registration for this database is voluntary, and the information contained in the database will be available for use by the ABA, our committee, the database participants, and others for cross referral purposes and to assist us in developing programs and other tools, which will be more specifically designed to maximize the benefits to our members. We hope you will choose to participate. You may sign up for the database by filling out this form and emailing it to Charles E. Griffin, Business Development Subcommittee chair, at ceg@griffinlawyers.com.

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How do you believe the MTL Committee can assist you in business development?
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Have you tried five or more civil cases to verdict as lead counsel? What is your largest verdict and/or settlement?

How do you believe the MTL Committee can assist you in business development?
Promote Minority Lawyers

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Geographically, minority representation was highest in the largest cities. Law firms in Los Angeles and San Francisco had minorities account for 12.13 percent and 10.25 percent of the firm’s makeup respectively. Likewise, firms in Atlanta, New York, Seattle, and Washington, D.C., are close to exceeding national averages. Among smaller cities, Miami (23.46 percent minority partners, mostly Hispanic) and San Jose (15.89 percent minority partners) exceeded national averages. Id.

However, in many other smaller cities, law firms were well below the national average with respect to minority partners. Cities in this category include Birmingham, Charlotte, Grand Rapids, Kansas City, Nashville, Salt Lake City, and Wilmington. Law Firm Diversity Demographics Show Little Change. Despite Economic Downturn, NALP (October 21, 2009), www.nalp.org/oct09lawfirmdiversity. One would expect to find parallels in the minority representation of the population in these cities to explain the differences in minority partnerships geographically. While this is largely true, particularly with respect to larger cities, it is not always the case. For example, in Charlotte, North Carolina, almost half the population is comprised of minorities, and in Richmond, Virginia, approximately 60 percent of the city’s population is made up of minorities. Id.

Minorities account for greater percentages of associates in the surveyed law firms, making up 19.67 percent of all associates. Women and Minorities in Law Firms by Race and Ethnicity, NALP (January 2010). Minority associate representation is highest in Hartford, Las Vegas, Los Angeles, Miami, Orlando, San Francisco, San Jose, and Seattle, where one-third or more of the attorneys are minorities. Law Firm Diversity Demographics Show Little Change, NALP (October 21, 2009). As before, this average figure is not representative of all law firms. Sixteen percent of law firms have no minority associates, and 41 percent exceed the average figure of 19.67 percent. Women and Minorities in Law Firms by Race and Ethnicity, NALP (January 2010).

Geographic differences and explanations aside, the significant difference between the overall percentage of minority partners and associates begs the question, why is this the case within law firms? Even in those metropolitan areas where law firms boast the highest percentage of partners (Los Angeles, Miami, and San Francisco), there is a significantly greater ratio of minority associates. For example, Los Angeles firms have on average 12.13 percent minority partners but 29.59 percent minority associates. Miami has 23.46 percent minority partners and 38.95 percent minority associates. San Francisco has 10.26 percent minority partners and 28.43 percent minority associates. The difference becomes even greater in those cities that have minority partners that are close to or exceed national averages. Atlanta has 7.2 percent minority partners with 17.87 percent minority associates. New York has 6.38 percent partners and 23.95 percent associates. Seattle and Washington, D.C., have 8.34 percent and 3.79 percent minority partners, respectively, and 20.48 percent and 20.83 percent minority associates, respectively. Id. Thus, by proportion, even in those areas where there are more minority partners than average, there are on average more than two times the percentage of minority associates.

Explaining the Gap Between Minority Partners and Associates

These figures lead to questions about whether there are any barriers or bottlenecks to minority associates becoming partners within law firms. Are there trends or findings that can explain this discrepancy in the numbers?

John M. Conley, professor of law at the University of North Carolina at Chapel Hill and professor of anthropology at Duke University, addresses these issues. Conley, John M., Tales of Diversity: What Lawyers Say About Racial Equity in Private Firms. Law and Social Inquiry, 2006; UNC Legal Studies Research Paper No. 06-5. In his paper, Dr. Conley identifies a “chicken or the egg” problem when it comes to minority lawyers being promoted to partners. Id. In short, to retain a significant number of minority attorneys, the law firm needs to already have minority attorneys in positions of power, which is unlikely unless there is a significant number of minority lawyers to begin with.

As evidenced by the greater number of minority associates in larger cities, the legal profession as a whole has become more diverse in recent years. But Dr. Conley has found that the trend has not manifested itself in individual practice organizations, especially at the partnership level. Id. While increasing the number of minority attorneys is a good start, it is the informal mentoring of an associate that creates real opportunities. The distribution of attention and training on associates comes from law-firm partners. Where minority associates lack this informal mentoring—which includes meaningful training, supervision, and interesting work—there is the real risk of the associate’s career going nowhere.

Dr. Conley found that the problem is even more complicated than simply needing more minority partners. Id. The few minority partners that exist, he found, often felt more pressure than their non-minority counterparts to do public service work, which may divert their attention and time from cultivating influence within the firm. Id. On a more pessimistic note, some studies have concluded that the types of racial minorities most likely to succeed may not be those who are most likely to perform door-opening activities for other minorities. Id.

Yet, Dr. Conley found that even where law firms are scrupulously nondiscriminatory in their hiring practices, there are distinct barriers to minority associates becoming partners. Id. Small law firms, for instance, tend to have partners who naturally promote people most like themselves. Small law firms liken themselves to marriages—i.e., the members of a small law firm see one another every day, collaborate on significant decisions, and may have difficulty ignoring major disagreements. And, like a marriage, a prospective partner seeks someone with similar values and expectations. Thus, even if the partners of a small law firm go out of their way to be nondiscriminatory and invite diverse candidates and actually hire them, chances are that the partners will end up affiliating themselves with someone with
a similar background. As a result, small law firms are unlikely to have substantial racial diversity in the foreseeable future.

Instead, the trend among small firms is to create a boutique firm culture with clear racial or ethnic identities that serve diverse constituencies. For example, there are African American and Latino small firms that cater to the members of their own communities.

With large law firms, Dr. Conley found that minority associates and applicants are confronted with what large firms refer to as their “standards.” Large firms argue that their work is so challenging that there is an overriding need to ensure that any lawyers hired can do the work. To ensure this, large law firms tend to interview only those students at the top law schools who rank a certain percentage in the others. In the case of African Americans, for example, this leaves a very small pool of students eligible under this kind of criteria.

### The Shrug Response

Dr. Conley calls the large law-firm response to diversity initiatives the “shrug” response. The narrative basically states that large firms work very hard at doing something about discrimination and increasing diversity, but, with a shrug, what can they do without lowering their standards?

In 2002, the Minority Corporate Counsel Association (MCCA) completed a research project to identify barriers to diversity in law firms. The Myth of Meritocracy: A Report on the Bridges and Barriers to Success at Large Law Firms, Minority Corporate Counsel Association (2003) http://mcca.com/index.cfm?fuseaction=page.viewpage&pageid=614. The project identifies the “myth of the meritocracy” as one of the major obstacles most frequently encountered. The myth of meritocracy is the traditional view that an attorney’s law school, law-school grades, and participation in law review will provide measure as to how well one will succeed as a practicing attorney. However, it also found that a significant number of the partners at the most profitable law firms lack the same standards that are a barrier to many minority candidates. Additionally, none of the respondents interviewed by this study felt that the credentials called for by these standards were prerequisites for success in law firms.

The MCCA project also reiterated a point made by Dr. Conley: Good mentoring is essential to making partner in a large law firm. The study made it clear that senior associates who were in serious contention for partnerships have relationships with senior partners who champion their candidacy and were willing to give them the benefit of doubt when mistakes are made. The mentoring relationship does not need to be provided by a partner of the same race or gender. However, as Dr. Conley points out, with a lack of minority partners in the first place and the tendency for people to be attracted to others sharing their interests and values, we again enter the “chicken or the egg” quandary.

Coney, Tales of Diversity.

### Firms should develop internal policies and practices to include minority attorneys in marketing efforts, including client contact.

Dr. Conley found that mid-sized law firms have a great deal of difficulty finding minority attorneys who might meet their standards, because chances are that the applicant is being courted by a larger firm for more money and prestige. For example, a larger firm may expand its selection pool to include the top quarter or half of a law-school class where a mid-size firm would normally hire from, leaving the mid-sized firms with few potential hires. The risks of hiring a minority candidate below the mid-size firm’s standards are perceived to be too great. Thus, like the large law firms, mid-sized firms are victims of circumstances beyond their control. And with the lack of minority hires, again there is the lack of minority mentoring that is essential to transitioning from associate to partner.

Clientele and business have often been cited as a driving factor to achieve greater diversity. The business world is well ahead of the legal world in this regard, with the argument that clients and customers want to be diverse. Even Fortune 500 corporate clients demand that their attorneys be diverse.

However, Dr. Conley’s findings are pessimistic about clients and business effecting significant gains in minority advancement in law firms. With small law firms, he found that while clients want lawyers who are like themselves and are most comfortable when dealing with members of their own ethnocultural communities, the clients may prefer a lawyer who is like them but does not care about the diversity makeup of the rest of the law firm. Thus, as long as there is at least one attorney that can make a client comfortable in terms of ethno-cultural familiarity, there is no concern about the racial, ethnic, or cultural background of the law firm’s partners. Particularly, in small law firms, this means there is little pressure felt to promote minority attorneys to partner so long as the firm can present a “friendly face” to its clients.

Large law firms have reported that they are aware of their corporate clients’ desire for greater diversity in the firms that represent them. But their demands have been largely unmet because large firms believe their corporate clients have nowhere else to go. If the corporations wanted to put pressure on the large firms to become more diverse, they would have to threaten to take their business to a smaller firm. However, large firms do not believe their corporate clients would actually be willing to do this, because corporate executives believe it would be too risky to not be able to say their legal affairs are being handled by a large, expensive firm.

### Decisive Moves Are Necessary

Just as law school administrations have made affirmative and decisive moves to diversify their student bodies, so must law firms to leave behind the “chicken or egg” quandary of having too few minority partners or mentors to develop and promote minority partners and mentors. Yet, even after making this affirmative decision, several strategies and recommended practices can help meet the goal of greater diversity in partnership. Law firms that are serious about increasing diversity must move past the
recruiting stage to offer associates the opportunity to work with challenging assignments and to receive critical feedback on work.

Successful diversity programs share several key attributes. One is the formation of committees to address diversity recruitment and retention. This is led by a senior member of the firm to communicate the idea that diversity goals are strongly supported by each member of the firm. Another is to establish a system that governs the success or failure of diversity recruitment or retention initiatives. These initiatives could tie results to bonus-incentive pay for partners.

Firms should develop internal policies and practices to include minority attorneys in marketing efforts, including client contact. The ability to attract clients and market the law firm is a large component of an associate’s growth and potential to become partner. This requires both the opportunities to market as well as the skills to close a deal. Ensuring the inclusion of minority attorneys in these efforts provides invaluable experience and education that usually cannot be learned elsewhere but among the firm’s elite.

A formal mentoring program designed and monitored by the diversity committee will greatly assist firms in developing and maintaining diversity. The mentor need not be a minority but should be a senior attorney—preferably a senior partner. Successful law firms that have programs that promote mentoring relationships between senior partners and young associates have been very successful. The mentoring relationship provides the partner with a substantive basis to judge an associate’s potential and at the same time offers an associate an opportunity to receive substantial work, critical feedback, and an education on what will be necessary to become partner.

Ending the “Chicken or Egg” Quandary
There have been some substantial gains in the legal profession by minority attorneys. However, even with a foot in the door, there are immense challenges to advancing within the law firm that are rationalized as either innate in human relationships or due to external circumstances. As is apparent in the discrepancy between the percentage of minority associates to minority partners, even after getting a foot in the door, a minority associate must still be offered an opportunity to develop and be promoted to partner. Law firms must make greater efforts to narrow the gap between minority associates and partners or repeatedly fall victim to the “chicken or the egg” quandary.

Joseph M. Hanna is a partner, and Soo-young Chang is a trial attorney, in the Buffalo, New York, office of Goldberg Segalla, LLP. They can be reached at jhanna@goldbergsegalla.com and schang@goldbergsegalla.com, respectively.
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