Using Specialty Certification to Promote Professionalism

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Web Resources

- Links listed on Table of Contents

- Burge Chair Professionalism Page
  - GSU Law School
    - Cunningham Home Page
Background

- **Origins of the Burge Chair in Law & Ethics**
- **Co-authored article with Adrian Evans**
  - Alternative to
    - Purely voluntary bar activities
    - Mandatory transition to practice requirements
    - Changes to law school
- **Specialty certification**
  - Voluntary but rigorous
  - Progressive professionalism
3 Models

■ (1) Recognition of existing experience and knowledge
  - U.S. lawyer specialty certification

■ (2) Professional development
  - Board certification for doctors
  - Lawyer certification in Aus blend of (1),(2)

■ (3) Quality assurance
  - Quality Mark in England
Quality Assurance

- BOTH
  - Screen out “hacks”
  - Prompt and guide professional development
Real-Life Example

- Major felony case in Georgia
- M/New Trial – Ineffective assistance
- Expert testimony on representing co-Ds
  - Husband & Wife
  - Conspiring to sexually abuse her teen-age son
  - Both convicted
- 18 years of practice – 90% criminal
  - More than 200 jury trials
Testimony of D’s Atty
(Motion for New Trial)

- Did you specifically explain to [husband] individually the Rule of Professional Conduct 1.7?
- When did you provide that [rule] in writing to them?
- Did you read it to them?

- What rule is that please?
- I don’t believe I ever did.
- I don’t recall. I don’t believe I did.
Testimony of D’s Atty
(Motion for New Trial)

- Did you send either [client] any letters about what was going on with this case? Any?
- You never sent a letter informing of a court date?

- Not that I can recall.
- Not that I can recall.
Testimony of D’s Atty
(Motion for New Trial)

Then give me a piece of paper, a note, a date, **something** to show and tell me that you had a conversation with [husband] independently of [his wife] so that you could explain and go over these things in an open manner.

I don’t have that.
Testimony of D’s Atty
(Motion for New Trial)

- Do you have a log of those phone conversations and what was said over them?
- No, I don’t.

- Are there any notes in your file whatsoever about any meeting you had with [your clients]?
- No, not that I can recall nor do I find.
Testimony of D’s Atty
(Motion for New Trial)

- I wish I hadn’t done it … I regret it
- But honestly … I think the concern was that if they were to have separate counsel, [the wife] would end up being a witness against [the husband] and I think that was … the overriding concern … that possibility be foreclosed.
Would Quality Assurance Certification Have Made A Difference?

- Screen out “hacks”
- This lawyer probably isn’t a hack
  - Prompt and guide professional development
    - Case file management
    - Client communication
    - Refresher on Rules of Professional Conduct
      - GA rules had been adopted only a year before this trial
      - Prior rules (Model Code) less explicit about how to handle conflicts of interest
Australia v U.S.

- Less experience required
  - 5 yrs of practice
  - 3 yrs in specialty
  - 25% of time in specialty
  - No specific checklist required

- More comprehensive criteria for competency

- Performance-based testing
Quality Mark in England
Roger Smith article on pp 39-44

Specialist Quality Mark evolved from two different sources
- (1) Voluntary certification efforts by organized profession
  - E.g. BARMARK
- (2) Quality assurance for government-funded legal services
Quality Assurance for Legal Aid

Roger Smith article on pp 39-44

- “Judicare” approach to legal aid/defense
  - $ 4.8 billion / 52 million population
  - 2900 criminal defense providers

- Started with preferred provider approach
  - Franchising Quality Assurance Specifications

- Effective April 2002, all providers required to have a Specialist Quality Mark
Requirements for Quality Mark

Pages 45-53

- **Seven standards**
- Quality Mark audits primarily to assure that procedures are being used
  - Do not assess quality of service actually provided
- **Client feedback process required**
Lawyer skepticism about client feedback

- Low response rates
- Very happy or unhappy clients most likely to respond
- Skewed by outcome
- Clients not qualified to assess lawyer effectiveness
- Better client communication not a focus of professional development
More experience not enough

- Avrom Sherr study (pp 17-18)
- 143 actual 1st interviews
  - 24% lawyers in training (articled clerks)
  - 76% experienced lawyers
    - 70% at least 6 years
    - 23% more than 11 years
- High percentages of ineffective interviews
  - Experienced lawyers generally no better
Common Problems with All Lawyers
(Sherr Study)

- 51% failed to get the client’s agreement to advice or plan of action
- 76% failed to confirm with client the lawyer’s understanding of the facts
- 85% failed to ask before ending whether there was anything else the client wanted to discuss
Where There **Were** Differences Between New and Experienced Lawyers

- Experienced lawyers
  - Used less legalese
  - Better at “filling in the gaps”
  - Rated their own interview performance higher than did new lawyers

  ▪ But the clients saw no difference in performance
Pilot project focuses on initial meeting
- 100% response rate
- Not skewed by outcome
- Feedback can be used to improve representation of THIS client
- Tells client the lawyer cares about how client experiences the first meeting

Let’s look at the forms
Other Ways to Assess Actual Performance
(Back to England)

- Case file audits
  - Transaction Criteria for Criminal Defense

- “Mystery Shoppers”
For More Information and Further Developments

Burge Chair Professionalism Page