

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 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

Effective Lawyer-Client Communication Project

Pages 26-28

- 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](#)