

Learning to be better litigators

Veterans refine their skills while helping young lawyers

By Lee Dryden

The educational process of becoming an effective litigator extends long after law school.

In fact, it never really stops.

Law firms regularly offer training that ranges from participating in elaborate mock trials to simply observing seasoned lawyers in action. The focus is largely on new lawyers, but there is an opportunity for courtroom veterans to hone their skills as well.

With the majority of cases never reaching trial, the training is more wide-ranging than learning how to sway a jury. It extends to taking depositions, participating in initial client interviews and much more.

West Michigan firms have a convenient means of providing training for trial lawyers with the renowned Hillman Advocacy Program in their backyard. More than 2,000 budding litigators have gone through the intensive program since the early 1980s.

The Hillman philosophy extends to law firms — it's best to learn by doing.

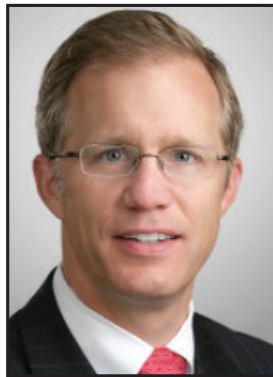
The program founder, the late Judge Douglas W. Hillman of the U.S. District Court for the Western District of Michigan, said, "Trial lawyers are made, not born."

Mock trial, real feedback

Mantese Honigman PC has a mock courtroom at its Troy office that is used for practice by the entire firm — from rookies to 30-year veterans.

"We will have a mock trial — sometimes two or three mock trials — before the actual trial," said partner Gerard V. Mantese.

The firm gathers mock juries of about



CENTNER

10 people who don't know the case or the attorneys involved. They choose "friends of friends" rather than close friends because they want an unbiased assessment, Mantese said.

In fact, they don't tell the mock jurors who their client is in the practice session for the case that includes Mantese Honigman lawyers as the judge and counsel on each side. The panel listens to witnesses and deliberates.

"The jury will never know which side we actually represent," he said. "We want candid feedback."

Mock trials are a summer tradition at Varnum LLP.

Summer associates and full-time associates are involved in the effort in a nearby courtroom borrowed by the firm, said partner Perrin Rynders.

Experienced lawyers serve as witnesses and the exercise can be nerve-racking for young lawyers performing in front of partners, but they are glad they participated afterward, Rynders said.

"We feel the best way to do it is on your feet," he said.

Despite the small percentage of cases that reach trial, courtroom training is still important, he said.

"I'm a little bit old school on this. I feel a good litigator has to be a good trial lawyer or you're not going to get the best result you can get," Rynders said.

Rynders is on the steering committee for the Hillman program, which is a priority for Varnum associates in their first January with the firm.

Hillman program

In 1981, Judge Hillman responded to a challenge by then-U.S. Supreme Court Chief Justice Warren E. Burger to improve the quality of advocacy in federal courts nationwide. He sought help from fellow judges and trial lawyers to provide a hands-on experience for young attorneys.

The program has staying power with its 2½-day annual sessions of training for criminal and civil cases at basic and advanced levels. Each participant conducts direct- and cross-examination of witnesses and they also tackle impeachment of witnesses and introduction of exhibits. Their performances are recorded and critiqued by a faculty member with the student.

"This is really a mainstay of trial training in west Michigan," said David W. Centner, chair of the program for 2015-2016 and 2016-2017 and a Clark Hill PLC member. "We like to say we teach, we demonstrate and we require the students to perform."

The volunteer faculty includes highly-regarded trial lawyers, assistant U.S. attorneys and members of the public and private sectors and large and small firms, Centner said. Also, Western District judges and magistrates are involved with the training occurring in federal courtrooms.

"I just don't think you see that anywhere in the country," Centner said.

The faculty rotates every three years and many are Hillman alumni. Western Michigan University Cooley Law School provides jurors and videographers.

The instructor-to-student ratio is 3 to 1. While the focus is learning by doing, attendees also watch faculty members make arguments. Tuition is kept at a reasonable rate and the program is funded by many law firms and donations.

“We have incredible feedback,” Centner said.

A unique feature is communications expert Brian K. Johnson, who is not a lawyer. He offers tips on how to speak to a jury and pops in and out of the courtroom to give feedback after an initial presentation, Centner said.

Rynders said having the Hillman program nearby is an advantage as it would be difficult to offer training of that scale. Young Varnum litigators are encouraged to return to Hillman a second time for the advanced training.

More in-house training

Other litigation lessons may not match the excitement of preparing for dramatic courtroom moments, but they are just as vital, practitioners say.

Mantese said attorneys must be skilled at taking notes while working on cases and speaking with clients.

“It is so critical to write it all down,” he said. “There is a lost art of taking good, detailed notes.”

A first-year attorney at Mantese Honigman PC recently participated as part of a team in an initial client interview, asking questions and taking notes, Mantese said.

“It was good for her, good for the client and good for representing the client well,” he said. “We’re committed to giving young attorneys a full litigation experience. We make sure we give them a lot of time and attention and the ability to observe.”

Young Mantese Honigman attorneys watch several depositions before they begin taking depositions, Mantese said. They also attend mediations and motion calls.

Everyone gets involved in trial preparation at his firm with files spread out on the table in the conference room.

“We have a team approach,” he said. “We meet regularly and discuss our



All lawyers at Mantese Honigman PC prepare for cases in a mock courtroom in their Troy office. (Photo courtesy of Mantese Honigman PC)

cases thoroughly. That’s the nuts and bolts of preparing a case for trial — get your arms around every aspect of trial.”

While there is no continuing legal education requirement in Michigan, Varnum requires a minimum of 10 hours per year for every lawyer, Rynders said. Practice groups offer such opportunities in-house.

He cited amendments to the Federal Rules of Civil Procedure as an example where an attorney can study the changes and make a presentation to the group.

“This is obviously just as valuable for senior lawyers as it is for junior lawyers because we all have to follow the rules,” Rynders said.

Aside from the Hillman offerings, new lawyers learn deposition skills from the National Institute for Trial Advocacy, he said. Some participate

in the institute’s trial skills program as well.

“It’s much more likely a young lawyer will get a chance to take a deposition than try a case,” Rynders said.

Other offerings include presentations by a damages expert in forensic accounting, an electronic discovery consultant and companies’ in-house counsel. A storyteller also has been brought in to provide advice on how to tell a client’s case in a way that is memorable for the listener, Rynders said.

Mantese advised young litigators to use the “full measure of your energy and passion and focus” and seize every opportunity to watch seasoned attorneys.

If you would like to comment on this story, email Lee Dryden at lee.dryden@mi.lawyersweekly.com.

CLARK HILL

Legal and Professional Services

Clark Hill PLC is an entrepreneurial, full service law firm that provides business legal services, government & public affairs, and personal legal services to our clients throughout the country. With offices in Arizona, Delaware, Illinois, Michigan, New Jersey, Pennsylvania, Washington, D.C. and West Virginia, Clark Hill has more than 350 attorneys and professionals. For more information on our firm and our services, visit www.clarkhill.com.