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Alternative settlement model in domestic abuse cases
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Even helpers sometimes need a helping hand
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Kagan to law schools: go deep
Schools to Kagan: We are

Director Brad Clary, left, and assistant director Christopher Soper oversee Applied Legal Instruction at the University of Minnesota. “We’re doing quite a bit.” Clary said. “Legal analysis and communication are critical.”
Turns out Justice Elena Kagan was right when she said that law schools need to think about their legal writing programs in a "pretty deep way," Minnesota professors of legal writing say.

"Most lawyers are going to do their jobs better if they are great writers instead of terrible writers," Kagan said. Kagan spoke in an interview with legal writing guru Bryan Garner about one month ago at the Supreme Court.

"I don’t think there is a way to disagree with Elena Kagan," said Julie Oseid, professor of legal writing at the University of St. Thomas School of Law. It’s new for law schools to have a discipline of teaching writing, she said.

She noted, as did other professors, that Harvard has been well-known for not teaching writing, as are other top-tier schools. (Kagan was dean of Harvard Law School from 2003 to 2009). Kagan agreed. In the interview with Garner she said, "At the Harvards and the Yales and the Stanfords of the world you’re going to find people whose writing could use work." (Harvard does require IL students to take two semesters of legal writing and a moot court program and also has a written work requirement for a degree.)
At the Harvards and the Yales and the Stanfords of the world you’re going to find people whose writing could use work.”

—Justice Elena Kagan

### Writing

Continued from page 10

**Instruction starts at orientation**

The University of Minnesota is an elite school with a commitment to its legal writing program, said Christopher Soper, assistant director of Applied Legal Instruction. “We’re doing quite a bit,” said Brad Clary, director of Applied Legal Instruction. “Legal analysis and communication are critical.”

The program uses adjunct faculty and upper-level law students, Clary said. Because the class is divided into small sections, more instructors are needed. “No law school can hire enough full-time faculty for small section work,” he said.

The university’s writing curriculum starts at the orientation for first-year students, Soper said. The class starts with a one-page document explaining the legal rule drawn from a group of cases and proceeds to more and more complex writing addressed to other lawyers and clients. The first half of the year is devoted to objective writing. At this stage, the students are provided with the research but also do some independently. Their goals are to analyze the legal situation and explain in language that suits the goals.

In the spring, the students take on advocacy with trial briefs and motion practice memoranda, some of which will require statutory interpretation. Their work is reviewed by other students and they make an oral presentation about a brief. The classes are taught by practicing lawyers and second or third year student instructors, Soper said.

The upper division has a separate writing requirement which may be met by taking an intensive writing course, writing a journal note or participating in a moot court.

In short, Soper doesn’t think Kagan would have a problem with the U’s program. “We’re one of the few schools who take writing seriously,” he said.

But that doesn’t mean law students must forgo having fun — one of Kagan’s writing tips. “It’s generally fun to write about the law,” Soper said. “It’s fun to be a lawyer. You can have fun with words.”

### Legal Writing

Former U.S. District Court Chief Judge James Rosenbaum agreed. “There’s been an evolution that sentence to be?”

Eric Magnuson, former chief justice of the Minnesota Supreme Court, says the overall quality of legal writing has improved. “All law schools ought to be thinking about [legal writing] in a pretty deep way. Not all lawyers have to be great writers but most lawyers will do their jobs a lot better if they’re great writers as opposed to terrible writers,” Magnuson said.

Eric Magnuson, former chief justice of the Minnesota Supreme Court, says the overall quality of legal writing has improved. “All law schools ought to be thinking about [legal writing] in a pretty deep way. Not all lawyers have to be great writers but most lawyers will do their jobs a lot better if they’re great writers as opposed to terrible writers,” Magnuson said.

A great writer is someone who has a lot of personal flair but that never gets in the way of being extremely clear. I think writing is one of the hardest things to teach. There’s not some magic about legal writing — to be a good legal writer is to know the law and be a good writer. The hard thing is to get people to be good writers generally. I think the most important thing they can do is attune students to what good writing is.

### Fill in this sentence:

It is hereby ordered...

A former judge and a former justice spoke up on the quality of legal writing they have observed.

Eric Magnuson, former chief justice of the Minnesota Supreme Court, says the overall quality of legal writing has improved. “All law schools ought to be thinking about [legal writing] in a pretty deep way. Not all lawyers have to be great writers but most lawyers will do their jobs a lot better if they’re great writers as opposed to terrible writers,” Magnuson said.

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Writing

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her comments make sense to me. We constantly evaluate best practices," Raths said. The IRAC formula is still king, Raths said.

Raths describes Mitchell’s program as a “scaffold” in that it starts with fundamentals and builds toward more complex documents with review and individual consultation with the instructors. The students have certain understandable objectives to meet, he said.

Raths has taught at Mitchell for 22 years and believes that the quality of the top students hasn’t changed much but the middle and lower-achieving students seem to have more difficulty than classes in years past. The school offers an online tutoring program to assist them called Core Grammar for Lawyers, which is also available on the Web. The school also has an academic excellence program where students can get personal help as needed.

‘It’s thinking skills’

Although an academic discipline of legal writing is a relatively new thing to schools it has been years in the making, Oseid said. She agreed with Kagan, who said that it is difficult to teach any kind of writing. But the legal writing instructor is teaching how to read a case and critically analyze a case. Oseid said, “I think that good writing is good thinking. If the writing is deficient it’s the deep thinking that is deficient.”

Oseid pointed out that Kagan said that she did not really understand a case until she started writing it. “It’s thinking. So I think it can be a mask when people say writing skills are poor. It’s also thinking skills.”

The program at St. Thomas is staffed mostly by tenured faculty, Oseid. She thinks the program is similar to most others, starting small and building to more complex documents. Teaching writing is time-intensive and happens mostly when the instructor meets with the student individually, she said. That’s why people think teaching writing is hard, she said.

Oseid believes that great writers develop because someone takes an interest in them. Kagan has said that her mother and a history professor were her early influences who edited her word by word.

Students don’t seem to pursue law school because they want to write, Oseid said. “I have never had a student say that ‘I was told I was a good writer and I should go to law school.’”

Abuse

Continued from page 2

don’t object to that. A no-contact provision can be easily incorporated into a family court order.

But what happens if the family no-contact order is violated?

The petitioner in an OFP proceeding is unlikely to reach a settlement calling for dismissal of the Order for Protection unless he or she is convinced that there is substantial incentive for the Respondent to comply with the family no-contact order.

We find that two things work particularly well. First, the family no-contact order can specifically provide for dismissal of the OFP without prejudice, and allow the petitioner to re-file in the event of a violation. Second, the alleged aggressor may agree to pay all fees and costs associated with the petitioner’s re-filing of the OFP.

Once the petitioner is confident that contact will be limited, he or she is likely to address other key issues not normally addressed in great detail in an OFP case. The same is true of the accused, knowing that the concern of having an Order for Protection issue against them is satisfied. The parties can discuss temporary parenting time, transportation responsibilities and support issues.

Parents engaged in settlement discussions will often look to rehabilitate familial relationships.

They begin to explore mental health alternatives, such as counseling for the parties, counseling for the children, anger management, co-parenting classes, chemical use assessments or domestic abuse programming. Any, or all, of the foregoing can be stipulated to as a condition of parenting time, or continued dismissal of the OFP.

The parties can also look toward the best interest of the child(ren). A guardian ad litem may be appointed to investigate the underlying allegations, participate in a subsequent early neutral evaluation and make recommendations in the family court file. That may be particularly helpful in terms of defining the nature and context of the alleged abuse for a custody evaluator, or family court judge, and placing adequate weight on the parties’ history in that regard.

Finally, we often see a framework for ongoing communication established between the parties. Most are willing to agree to limit their communication to issues surrounding the children, via email. If an emergency arises, text messages may be used. The parties may also agree to use a mutually trusted third-party neutral to convey messages to one another.

Of course, there are some who wish to allow additional contact for purposes of settlement discussions, and court appearances, in the family court file. For those who question whether divorce is really the solution to the problems among the parties, agreement may be reached that communication may continue if directed toward reconciliation efforts. Keep in mind that a family court file can always be placed on inactive status if things are moving along too quickly for your client.

The OFP process, in current form, provides a limited number of settlement alternatives. Opening a family court file before the evidentiary hearing provides a forum for the parties to enter into an agreement that addresses the nuances of the situation. Better to work with a scalpel, rather than a hatchet, when so much is at risk.