

**EIGHT**

**KEY**

**SKILLS**

**FOR**

**LAWYERS**

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## **I. INTRODUCTION**

Lawyers need to engage in a constant process of professional development. To help them meet this lifelong obligation, it is important and useful to define the key knowledge, skills, and attitudes (KSAs) which are the hallmark of their profession. The framework presented herein provides information concerning the skills that are most important for practicing lawyers, and offers guidance concerning how to most productively and effectively strengthen them.

Lawyers develop their skills through both work and training. In each case, effectiveness depends upon defining the objectives, determining how to best achieve them, and measuring results so as to achieve sustainable progress. With regard to training, a distinction is made between 1) Initial Professional Formation (law school, internships, clerking) and 2) Continuing Professional Formation (regular attendance at training events for a set number of days every calendar year). In both cases, skills development and participation in training are ethical obligations, requirements for membership in the legal profession, and enforced via disciplinary rules and potential sanctions.

The professional formation of lawyers and their mastery of the eight key skills is crucial for securing the rule of law and protecting the rights of all citizens. In addition to their obligations to clients and their profession, lawyers must serve the justice system and their countries.

Legal education provides the basis for skills development, but it is only the first step towards becoming an effective practicing lawyer. Experience is crucial. The initial experience of junior lawyers sets the stage for their future development. Therefore, specialized traineeships providing junior lawyers supervised experience under the guidance of a mentor are extremely valuable.

The exact composition of the required skill set varies for each lawyer. Much depends on the jurisdiction, the type of work they perform, and their personal characteristics. For example, courtroom lawyers excel in advocacy, but may rely on trusted associates to perform legal research. And government lawyers or clerks for judges do not engage in advocacy for clients. Nonetheless, all lawyers need basic competence in all key professional skills. Furthermore, a framework for the optimal skills sets is extremely important, since it enables lawyers to assess their actual status, and determine what areas deserve focus for improvement, in light of the particular nature of their work.

It is important to take account of the relationships and synergies between the eight skills. For example, advocacy and negotiation skills are closely related, and both depend greatly on communication skills. And compliance with ethical standards and rules of conduct is mandatory for everything lawyers do, professionally and personally. On the other hand, preparing documents and performing legal research are somewhat separate, since they can be performed alone in an office. Still, professional development cannot be complete or efficiently carried out without an assessment of progress regarding each of the eight skills, and a review of their interrelationship.

How can this framework for eight key skills of for lawyers be used?

- Law students and junior lawyers can use this framework to determine a) what skills they are building, b) what skills they are lacking, c) how to bridge the gaps between where they are and where they should be or want to be, and d) how to evaluate their progress.
- Senior attorneys or mentors for junior attorneys can use this framework for the same exact purposes, but with respect to their colleagues as well as for themselves.

NB: The order of the eight key skills presented in this framework does not indicate exact priority.

## II. THE EIGHT KEY SKILLS

Each of the eight key skills required for being a good lawyer will be discussed in turn. This is followed by consideration of some of the factors which affect the actual needs of specific lawyers.

### 1. Advocacy Skills

Lawyers are advocates. The primary responsibility of advocates is to zealously and effectively protect and advance the interests of their clients, at all times. No matter the “arena”, advocacy is a form of agency, since lawyers always act on behalf of their clients, within the explicit scope of their authorization. It is for this reason that lawyers are called advocates in many countries, while in others advocates are a specialized group of lawyers handling limited categories of major cases.

In any event, advocacy skills are crucial in all aspects of client representation, and for all categories of client, including legal and natural persons. Advocacy skills are most salient in adversarial matters. This includes pre-trial procedures, negotiation, mediation, arbitration, trials, and appellate proceedings.

Successful advocacy requires:

- Mastery of judicial, administrative, and legal systems, and all applicable procedural requirements
- Full knowledge of relevant law and legal precedents
- Complete familiarity with every aspect of the case and the position and needs of clients
- Superb ability to think logically, strategize, and plan out case management and preparations for trial
- Full understanding of the principles and stages of negotiation and the bargaining process
- Excellent interpersonal and communication skills



Practically speaking, advocacy skills are communication skills which advance and protect the interests of clients by convincing others (such as judges, prosecutors, arbitrators, opposing counsel, etc.). These communication skills are written and oral. Good lawyers must master both.



Written advocacy is particularly important in pre-trial preparations, such as motion practice, carrying out discovery, and taking depositions. Oral advocacy is crucial in live proceedings, for making opening/closing statements and oral arguments, presenting testimony and evidence, examining and cross-examining witnesses, etc. Whether in-person or on-line, successful advocacy during live sessions requires a) excellent oral communication skills, and b) optimal use and interpretation of non-verbal communication (body language).

Advocacy skills are predominantly generated through actual and practical experience. It is highly advantageous to work with and learn from experts. Junior attorneys benefit greatly from practicing with senior colleagues. Training can usefully cover theory, but to really succeed it must include practical and dynamic exercises, such as moot court competitions and role plays.

## 2. Negotiation and Mediation Skills

Negotiation and mediation can be considered forms of advocacy which take place either outside of the court system or along with court proceedings. They are efforts to directly settle disputes.



Since the overwhelming majority of legal disputes are resolved before trial, the ability to successfully negotiate settlements either directly between the parties or through a more structured mediation process is a fundamental legal skill. And it is a skill which all practicing lawyers need to master. It is almost always in the interest of clients to avoid the costs (money and time), delays, stress, and uncertainty which are associated with litigation and trials.

Mediation is an informal and purely voluntary process under the supervision of a mediator, designed to find common ground and a mutually acceptable (or win-win) solution. It is often mandated by the courts, and may take place under different degrees of court supervision or facilitation. Mediation obviates trial, and is therefore a category of Alternative Dispute Resolution. Arbitration is also a category of ADR, but it resembles litigation, and requires a similar skill set.

It is sometimes suggested that lawyers do not appreciate or support mediation, since it can resolve disputes quickly, without a total victory, and without generating much revenue (legal fees). However, lawyers who truly serve their clients do not take such a cynical position. Furthermore, mediation is the best way to preserve a relationship between the parties to a dispute. This can be advantageous for all sides, most notably in commercial cases and family disputes.



During direct negotiations or mediation, successful advocacy requires: a) understanding negotiation strategies and techniques, b) mastery of the art of rhetoric, c) ability to memorize, organize, and utilize details in formulating arguments and positions, and d) superb communication skills.



Training is helpful for building these skills, particularly when it is practically oriented, with case studies and simulations. Formal training and on-line courses on negotiation are readily available.

However, junior lawyers benefit most from experience serving alongside seasoned senior lawyers. In such settings, junior lawyers can learn techniques for a) working with clients, b) strategizing, c) exchanging proposals, d) understanding positions, e) getting to yes, and f) documenting and implementing settlements. When working with clients during negotiations, lawyers need to understand their true requirements, coach them on how to perform and what to expect, and brief them regarding progress and results. The most successful mediators choreograph this process.

### **3. Case Analysis, Case Planning, and Legal Reasoning Skills**

The capacity to analyze and strategize using legal reasoning skills enables lawyers to build and carry out a successful case management plan. Simply stated, profound knowledge of substantive law and procedural law must be combined with legal reasoning skills, and then be applied to the facts of each case, in order to determine what lawyers can or should do, in order to most effectively and efficiently serve the interests of their clients.

Legal reasoning skills are an intellectual exercise which is at the heart of successful litigation. This includes: a) identification of the key legal issues in a case, b) full analysis of how these issues are being addressed under the law and in the court system (including the application of precedent or previous court rulings), c) application of law to facts, d) comparative analysis of international standards and practice in other jurisdictions, and e) understanding of potential policy implications.

This exercise makes it possible to plan and prepare for trial, by engaging in case management, and creating a roadmap/schedule of activities. For example, it is a prerequisite for optimally carrying out all pre-trial measures. This includes a) identifying and obtaining evidence, b) securing witnesses (fact and expert), c) taking depositions or statements, d) working with a variety of institutions, e) preparing motions and briefs, f) engaging in negotiation or mediation, etc.



Furthermore, reasoning, analyzing, and planning enable lawyers to fully understand the strengths and weaknesses of their cases. They are then able to accentuate the strengths and overcome the weaknesses (a key feature of successful advocacy). They can also anticipate what opposing counsel and parties will argue and do, and make adequate preparations in advance.

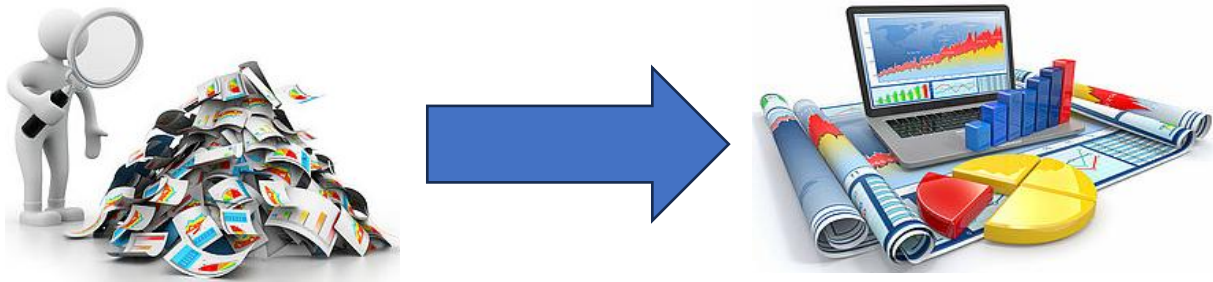


Legal reasoning and case analysis skills are also necessary for working closely with clients.

They facilitate a) managing client expectations, b) keeping clients informed about how the case is progressing, c) making sure that clients understand their prospects for specific outcomes, whether through litigation or negotiation, and d) justifying claims for legal fees and expenses.



In addition to intellectual skills, case planning requires organizational skills. These include: a) setting and sticking to schedules, b) constantly meeting a variety of deadlines, c) time management, d) keeping files and records in order, e) integrating clients into logistics, etc. Personal skills can also be decisive. The most important include: a) creative problem-solving, b) multi-tasking, c) resourcefulness, d) adaptability, e) congeniality, f) punctuality, and g) attention to detail.



As illustrated in the diagram above, the case management process is a strategic and intellectual task, an organizational challenge, and at the same time also a creative opportunity.

#### 4. Communication Skills

Lawyering and litigating are essentially communication processes. Unfortunately, lawyers tend to overemphasize the importance of written documents and legal arguments, and underemphasize the role of interpersonal communication (both verbal and non-verbal).

Nonetheless, communication skills are extremely important in the course of advocacy, negotiations, handling court proceedings, working with governmental institutions, collaborating with clients, interacting with witnesses (fact and expert), and dealing with co-workers.



Indeed, whenever lawyers are not engaged in potentially solo activities (such as performing legal research or drafting/reading documents), they are most likely involved in a communication process. Trials in particular are all about communication and interaction.



Skills for working with and communicating with clients deserve special mention. They are usually covered in considerable detail in codes of ethics. And they are a routine source of ethical complaints against lawyers.



Specifically, lawyers must a) establish a legitimate and fair contractual relationship with clients, b) obtain all relevant information from them, c) gain their trust, d) keep them informed about all developments e) work with them to prepare for trial and learn what to expect, f) coach them on how to behave at trial and testify (if required), g) manage their expectations concerning possible outcomes of litigation, h) collect payments, and h) resolve differences.

As stated above, faulty communication and consultation with clients is one of the major causes of ethical complaints against lawyers. Clients often claim that lawyers did not a) fully advise them about important matters, b) keep them adequately or timely informed about important developments, or c) exceeded their capacity as agents. It is imperative to avoid such claims.

Clients are less likely to allege ethical violations when they are convinced that their lawyer is truly on their side. This is best achieved through effective and constant communication and consultation. Lawyers who master technical legal skills but lack communication and interpersonal skills will continually have problems with their clients.



Non-verbal communication is crucial in this regard. To be truly effective, lawyers must be able to a) use non-verbal communication in order to better express and deliver their messages, and b) read others in order to assess their positions, determine if they are getting the message, and know when it is necessary to modify the approach.

Non-verbal communication is most important in live settings, but also remarkably valuable on-line.

To illustrate: lawyers can 1) use non-verbal signals to show their clients empathy, and encourage them to be open and share information, and 2) interpret non-verbal signals to better understand clients and their feelings, and more effectively respond to those feelings.

Finally, both verbal and non-verbal communication skills are particularly important for team work. Practicing lawyers need to behave like leaders, and convince others of their leadership skills. They also need to be able to synchronize their body language and recognize mirroring, in order to strengthen their teams and send powerful and unequivocal signals to others.



## 5. Legal Drafting Skills

Lawyers require skills for drafting a variety of legal and procedural documents for the different categories of matters which they handle. This includes everything from correspondence with other attorneys to petitions to governmental/administrative bodies to court filings (such as pleadings, legal briefs, motions, appeals, etc.).

Key requirements include a) knowing how to access and utilize handbooks, standardized forms, and templates, b) knowing which documents to submit to which parties at what time and in what order, c) scrupulously observing protocol, and d) meticulously focusing on details.

There is no excuse for mistakes in legal drafting.





Legal drafting can be considered a basic “bread and butter” skill for lawyers. It is normally mastered early in a legal career. Indeed, senior lawyers often rely upon more junior colleagues for at least the initial work on routine documents.



As with legal research (see below), technology can be extremely helpful for legal drafting. Computer programs offer ways to simplify and expedite the process. On-line and electronic filing systems standardize and facilitate litigation. But technology is always a double-edged sword. Artificial intelligence can assist with the preparation of documents, but can also be mis-used. And significant attention must be paid to on-line security, to prevent unauthorized access to information, destruction of information, ransom attacks, and other malicious actions.

Finally, lawyers must fully appreciate the importance of what they write. This is especially true for documents submitted to courts or other authorities, but also the case for everything else, including letters, emails, posts, etc.

Simply stated, lawyers are legally and ethically responsible for everything that they sign, and subject to professional discipline for any errors or deficiencies.



## 6. Legal Research Skills

Legal research is crucial for winning litigation, and is also a “bread and butter” skill for lawyers. However, unlike many of the other seven skills, legal research is taught and practiced rather extensively during the legal education process.

In order to prevail on the merits, lawyers must be able to focus their advocacy skills on investigating, interpreting, and applying laws and judicial decisions to their cases.

Legal research entails a) locating and accessing various kinds of materials and resources, b) mastering techniques for using key technology such as electronic databases and search engines, c) understanding the uses of other modalities (from social media to artificial intelligence), d) being able to identify and follow leads, and e) knowing how to analyze and utilize the results of legal research to prepare convincing briefs and arguments.



These characteristics make legal research a scholarly as well as a pragmatic task. Success requires analyzing and synthesizing the on-going results in order to identify the most fruitful additional avenues to pursue, and ultimately orchestrating the most favorable results for clients.

Legal research is actually a broad concept, which can encompass many different sources and methodologies.



Much depends upon the subject matter and the specifics of each case. For example, clients often have problems of an administrative, quasi-judicial, or socio-economic nature, combined with legal ramifications.



Information management is an important element of legal research. This includes obtaining, organizing, storing, utilizing, sharing, and protecting any information that is salient.

Finally, it is important to mention that technology and the demands of information management are constantly changing. Lawyers need to keep up with these developments, in order to serve and protect their clients, and fulfill their ethical obligations.

## **7. Knowledge of the framework and organization of juridical and administrative institutions**

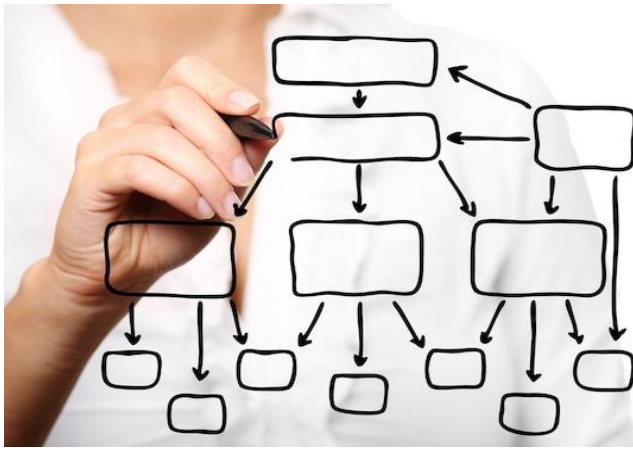
Lawyers need to know how the juridical and administrative systems really work, and how they can most effectively fulfill their responsibilities through interactions with a wide range of public authorities, governmental institutions, and professional bodies. Key categories include:

- The courts and their governing/supervisory bodies
- Criminal justice bodies, such as the prosecutorial service, law enforcement agencies, penitentiaries, investigative entities, forensic laboratories, etc.
- Notaries and bailiffs
- Professional bodies, especially for expert witnesses
- Their bar association and its disciplinary bodies
- A wide range of governmental institutions and administrative agencies, dealing with topics ranging from taxation to social services, on national, regional, and local levels



In addition, lawyers should know which international organizations or supra-national bodies might have jurisdiction or influence over their work. In this context, it is extremely useful to be familiar with comparative and best practices concerning the operation of different legal and juridical systems, and universal mechanisms for protecting human and legal rights.

Naturally, the range of institutions will vary in accordance with each layer's type of practice, area(s) of specialization, and the actual needs of their specific clients.



In any event, successful lawyers need to know how to get things done in bureaucratic environments. In many respects, this is a communication skill. It includes preparing correspondence and documents, making phone calls, using websites, etc. It is necessary to reach the right people in the right department, figure out what they require, and take each step in the right order, on schedule, and according to a master plan.

Unfortunately (but understandably), knowledge and skills in this regard are not fully developed through the legal education system. Capacity is usually built through on the job training and practical experience. Therefore, junior lawyers face a steep learning curve, and senior lawyers supervising/supporting junior lawyers have significant responsibilities.

In addition to legal and governmental institutions, lawyers should also know how to deal with the media. While certain categories of cases and clients attract the most attention, any legal dispute or issue can end up being debated on-line or via social media. In the same light, lawyers need to carefully manage their public relations, and create a suitable and dignified public image. Indeed, the publicity of each lawyer has a profound effect on the status and public perception of the entire legal profession. In other words, as members of the legal profession and officers of the court, each lawyer has duties and obligations to the legal community, even when pursuing individual interests.

## **8. Knowledge, Understanding, and Compliance with Ethical Standards**

Ethics, responsibility, and accountability are the cornerstones of every self-governing profession.

Accordingly, lawyers are obliged to develop a full and practical understanding of the professional and ethical standards which apply to their work. This includes national legislation, codes of conduct, disciplinary rules, and international standards and best practices.



The ethical standards and rules of conduct for the legal profession apply to everything that lawyers do. This includes their personal lives as well as their professional activities.

The key elements of this obligation include:

- Full knowledge of the normative and ethical framework/rules for the profession
- Full knowledge of the institutions that monitor and enforce the professional standards, and in particular the functioning of the disciplinary system/process
- Regular review of all decisions and rulings regarding lawyer misconduct

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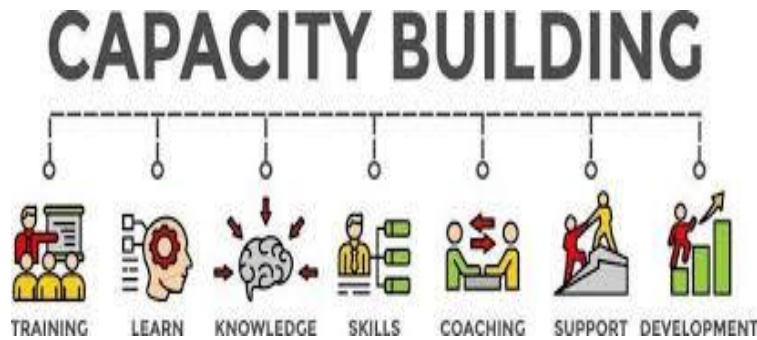
This includes recognizing and responding to issues regarding the appearance of impropriety, which is as serious as actual impropriety, since it affects the prestige and image of lawyers and the legal system.

In order to maximize capacity development, the general framework for the eight key skills outlined above should be adapted and customized to the particular circumstances of each lawyer.

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- Is the lawyer interested in working on cases for any special social groups, for example covering human rights, gender rights, children's rights, protection of vulnerable or marginalized groups, migration/asylum issues, public interest litigation, pro bono or legal aid cases, etc.?



Answering these kinds of questions, and any related or follow-up questions which arise, will help lawyers refine their objectives for capacity and skills development, and more effectively and efficiently improve the way that they work and their ability to represent their clients.

## **VI. CONCLUSION**

Effective and efficient skills development requires asking and answering four key questions:

1. Where am I?
2. Where do I want to be?
3. How will I get there?
4. How will I measure my progress?

Because skills development is a continuous process and a constant challenge, lawyers can only achieve sustainable progress by constantly asking and answering the fourth question.



Simply stated, it is always possible to do better.

By utilizing the framework for skills development and considering the recommendations presented herein, conscientious lawyers can better fulfill their lifelong obligation to constantly improve their performance and more successfully represent their clients.

**END**