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Professionalism
Our Annual Detention Hall, or Why Do I Have to Write “Professionalism” on the Blackboard 100 Times?
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From time to time, polite discourse among legal colleagues turns to the one hour Mandatory Continuing Legal Education requirement of “Professionalism.” Some of these informal conversations center around the most recent: “war stories” told at this seminar or the incredible examples of unprofessional conduct cited at that seminar. Even some of these conversations contain references to uplifting dialogue by one professionalism speaker or another. However, few of these exchanges end without one or more participants posing the seemingly obligatory question “why?” followed closely by “After all, if you are professional, you are professional; if you are not, you are not.” This article goes in search of an answer.

1. How Did This Get Started, Anyway?

The origin of the modern day legal professionalism movement is commonly traced to a presentation made by then Chief Justice Warren E. Burger at the opening session of the American Law Institute in May of 1971. Chief Justice Burger stated:

With passing time I am developing a deep conviction as to the necessity for civility if we are to keep the jungle from closing in on us and taking over all that the hand and brain of Man has created in thousands of years by way of rational discourse and in deliberative processes, including the trial of cases in the courts.

Whether in private negotiation or public discourse, in the legislative process or the exchanges among leaders, in the debate of parties, or the relatively simple matter of a trial in the courts, the necessity for civility is imperative.1

Chief Justice Burger continued his “call for civility” in the practice of law over a number of years. This ultimately led to the Chief Justice recommending that the American Bar Association “study the question of professionalism.”2 In response, the ABA Commission on Professionalism was established with a stated purpose to “examine and report on matters affecting the performance of legal services by the Bar, having in mind both how those services are being performed and how

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they are perceived to be performed."3 This study led to the adoption by the ABA of The Lawyer's Creed of Professionalism in 1988, and a recommendation to state and local bars to adopt similar creeds.4 Since then, more than 100 such creeds and codes have been adopted by various state and local bars.5 In that connection, the Louisiana State Bar Association Code of Professionalism was approved by the Supreme Court of Louisiana in 1992.6 Later, in 1997, the Louisiana Supreme Court adopted the Code of Professionalism in the Courts.7

During this same time period, the Louisiana State Bar Association ("LSBA") considered various proposals relating to the possible requirement of a CLE hour in "professionalism." After several failed attempts, the LSBA finally proposed such a CLE requirement in January of 1997.8 In May of 1997, the Louisiana Supreme Court entered an order requiring that Louisiana lawyers attend (and presumably listen to) one hour of professionalism as part of the mandatory continuing legal education requirement.9 The rule adopted by the Court describes the subject as follows:

Professionalism concerns the knowledge and skill of the law faithfully employed in the service of client and public good, and entails what is more broadly expected of attorneys. It includes courses on the duties of attorneys to the judicial system, courts, public, clients, and other attorneys; attorney competency; and pro bono obligations.10

It is important to recognize what other changes were transpiring with respect to the governance of attorney conduct during the time the professionalism movement had its beginnings. In Louisiana, from 1910 until 1970, the professional conduct of members of the LSBA was governed by the Canons of Professional Ethics.11 The Canons were a set of standards couched in terms of duties, for example:

3 Id.
5 A list of some of these codes is set forth on the ABA Center for Professional Responsibility web site at www.americanbar.org/groups/professional_responsibility/Resources/professionalism.
6 Rules of the Louisiana District Courts, Rule 6.2(k).
7 Section 11, part G, of the General Administrative Rules of the Louisiana Supreme Court; also see Rules of the Louisiana District Courts, Rule 6.3.
9 Id. at 543.
10 La. Supreme Court Rule 30 CLE Rule 3(c).
11 "In 1910, shortly after the American Bar Association adopted the Canons of Ethics, the Louisiana State Bar Association adopted the Canons without revision. Over time, the
the duty of the lawyer to maintain towards the courts a respectful attitude (Canon 1);
the duty of a lawyer at the time of retainer to disclose to the client all of the circumstances of his relations to the parties, and any interest in or connection with the controversy, which might influence the client in the selection of counsel (Canon 6);
the duty of the lawyer not only to his client, but also to the Courts and to the public, to be punctual in attendance (Canon 21); and

[i]t is the duty of a lawyer to preserve his client’s confidences (Canon 37);

imperatives or directives, for example:

[a] lawyer shall not in any way communicate upon the subject of controversy with a party represented by counsel (Canon 9);
[t]he conduct of the lawyer before the Court and with other lawyers shall be characterized by candor and fairness (Canon 22);
[a] lawyer shall not ignore known customs or practice of the Bar or of a particular Court, even when the law permits, without giving timely notice to the opposing counsel (Canon 25); and
[t]he lawyer must decline to conduct a civil cause or to make a defense when convinced that it is intended merely to harass or to injure the opposite party or to work oppression or wrong (Canon 30);

as well as what was professional and unprofessional, for example:

[i]t is unprofessional and dishonorable to deal other than candidly with the facts in taking the statements of witnesses, in drawing affidavits and other documents, and in the presentation of causes (Canon 22);
[a]ll attempts to curry favor with juries by fawning, flattery or pretended solicitude for their personal comfort are unprofessional (Canon 23).
[i]t is unprofessional to solicit professional employment by circulars, advertisements, through touters or by personal communications or interviews not warranted by personal relations (Canon 27); and
[i]t is unprofessional for a lawyer to volunteer advice to bring a lawsuit, except in rare cases where ties of blood, relationship or trust make it his duty to do so (Canon 28).

Louisiana State Bar Association amended the Canons, often, but not always, following the lead of the ABA.” Maraist, Smith, Dailey and Galligan, Louisiana Lawyering, Vol. 21 Louisiana Civil Treatise § 3.2 B.2 (2007) (footnotes omitted.)
As one can see from the foregoing examples, "the Canons had a pronounced inspirational or hortatory thrust."

In Louisiana, these Canons were replaced in July of 1970 by the Code of Professional Responsibility. The Code consisted of Canons, Ethical Considerations, and Disciplinary Rules. The Canons in the Code were statements of "axiomatic standards" of the professional conduct expected of lawyers, and the Ethical Considerations were aspirational and represented "the highest objectives toward which each lawyer should strive." Only the Disciplinary Rules were mandatory. In essence, Louisiana, along with most other states, had divided the standards set forth in the Canons of Professional Ethics into that which should be done, as opposed to that which must be done. Not surprisingly, some lawyers began focusing far more attention on the Disciplinary Rules than the Ethical Considerations. For those lawyers, aspirational goals had taken a back seat.

The adoption of the Code of Professional Responsibility was not the end of change. In the ABA and in most states, the Code of Professional Responsibility was relatively short lived and replaced by the Rules of Professional Responsibility. In Louisiana, this replacement occurred effective January 1, 1987. With this change, and with only minor exceptions, aspirational goals had been removed from the rules governing the conduct of attorneys altogether and the legal profession was left with a set of governing rules that contained only mandatory requirements.

It is within this historical context that the modern professionalism movement arose. The changes made by the ABA and the bar associations of the various states in adopting the Rules of Professional Responsibility created a void. It was this void along with other factors that gave rise to the need for the reestablishment of aspirational standards that stated the broader and more basic concepts of what it means to be a legal professional.

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12 *Id.* at § 3.2 A.1.

13 Some had complained that "[t]he Canons expressed many ideals, but they did not express many standards for lawyer discipline." *Id.*

14 "The transition from the Canons to the Code to the Model Rules was paralleled by the development of disciplinary enforcement machinery in the several states. As a consequence, lawyers have tended to take the rules more seriously because of an increased fear of disciplinary prosecutions and malpractice suits. However, lawyers have also tended to look at nothing but the rules; if conduct meets the minimum standard, lawyers tend to ignore exhortations to set their standards at a higher level." Commission Report, 112 F.R.D. at 259.

15 Maraist, supra note 11, at §3.2 A.3.
2. I'm Confused: Exactly What Are We Talking About?

The ABA Commission on Professionalism described "professionalism as an elastic concept the meaning and application of which are hard to pin down." In attempts to define the term, many have looked to the beginnings of the modern professional movement and concluded from the comments of Chief Justice Burger and others that professionalism equates to courtesy and civility in the interaction between attorneys and the court. This view of professionalism is far too limited. While courtesy is certainly an important part of the professionalism movement, it is not the only part. Professionalism includes concepts of integrity, honor, diligence, excellence, as well as dignity, honesty, candor, respect for the law and its legal systems, the avoidance of abuse of process, and more.

According to the Louisiana Supreme Court Rules, "[l]egal ethics set forth the standards of conduct required of a lawyer; professionalism

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17 Critics of the professionalism movement cast doubt on the meaning of professionalism. For example, one writer stated that "beyond good manners and avoiding temper tantrums, no one knows what professionalism means." L. Fox, Setting the Priorities: Ethics Over Expediency, 28 Stetson L. Rev. 275 (1998).
18 "Professional courtesy is the lubricant that allows the wheels of justice to turn smoothly." Carlucci v. Piper Aircraft Corp., 775 F.2d 1440, 1454 (11th Cir. 1985) (concurring opinion). "Without the rudimentary amount of courtesy or accession to reasonable requests, the legal profession is demeaned and its procedures reduced to a 'vulgar scramble'... Zeal, while admirable, must be tempered by decency." Duckson v. Wee Wheelers, Inc., 520 A.2d 1206, 1212 (Pa. Super. Ct. 1993) (citations omitted). "Trial lawyers should be advocates, but they cannot be zealots." D. Richmond, The Ethics of Zealous Advocacy: Civility, Candor and Parlor Tricks, 34 Tex. Tech L. Rev. 3, 58 (2002).
19 "Whether other lawyers or judges or clerks or commissioners trust you and take your word, whether you are straight with your clients (and everyone else), whether principles and people matter to you, whether your adversaries respect you as honest, fair and civil, whether you have the guts to stand up for what you believe—these are some of the hallmarks of integrity." J. George, The "Rambo" Problem: Is Mandatory CLE the way Back to Atticus?, 62 La.L.Rev. 467, 505 (2002) (quoting Jerome P. Facher). For an interesting discussion of integrity, see P. Schiltz, On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession, 52 Vand.L.Rev. 871, 949-50. ("Do not take that first step toward being an unethical lawyer. I'm telling you—I'm promising you—that sometime during your first couple years of practice, you will be sitting at your desk late at night with your pen poised over your time sheet, and you will be tempted to pad your hours. Padding time sheets is 'the perfect crime'; it is profitable for you and it is profitable for the firm and there is virtually no chance that you will get caught. The only thing that will stop you from padding your time sheets is your own integrity." (Citations omitted)).
20 George, supra note 19, at 505.
includes what is more broadly expected." While one can certainly understand the Court making this distinction in segregating the separate CLE requirements of Ethics and Professionalism, this does not change the fact that ethics is where professionalism starts. Just because some professional standards have been reduced to mandatory rules does not change the fact that they are standards of professionalism. Moreover, some subjects that are frequently presented in papers on professionalism, such as the “win at all costs” or “Rambo” approach to practice, are areas where there is a clear overlap of ethics and professionalism.

3. Is This Where the Examples of Unprofessional Behavior Begin?

The question of what unprofessional conduct is also unethical or sanctionable by the Courts is not altogether clear even though there is a growing body of caselaw setting forth the excruciating details of instances of unprofessional behavior on the part of various attorneys. The circumstances of reported unprofessional conduct range from discourteous, uncivil and rude behavior to improper objections, from discovery misconduct and abuse to lack of candor, from pursuit of frivolous claims to other dishonest practices.

22 La. Supreme Court Rule 30 CLE Rule 3(c).
23 Admittedly, it is just a start. “Professionalism includes, but is not limited to, the requirement of following [state disciplinary rules].” In re McCann, 669 A.2d 49, 56 (Del. 1995). “Professionalism is a higher calling of what is expected of a member of the Bar, not merely what is required.” Id. at 56 n. 3. “Complying with the rules is usually a necessary, but never a sufficient, part of being an ethical lawyer.” Schiltz, supra note 19 at 909. For some, the mandatory rules of conduct are “the lowest common denominator of conduct that a highly self-interested group will tolerate.” Deborah L. Rhode, Institutionalizing Ethics, 44 Case W.Res.L.Rev. 665, 730 (1994).
24 “Thus, the attorney who engages in unethical conduct also participates in unprofessional conduct; however, the attorney who acts unprofessionally does not necessarily act unethically.” Professor Thomas Richard, Professionalism, The 51st Louisiana Mineral Law Institute, April 1-2, 2004. Professor Bruce Green of the Fordham University School of Law has a slightly different viewpoint. For him, “[f]ollowing the rules is not acting professionally, it is acting lawfully. Professionalism codes should go beyond disciplinary and legal obligations to address areas where lawyers do have a choice.” B. Green, Public Declarations of Professionalism, 52 S.C.L.Rev. 729, 735 (Spring 2001).
25 After all, would be little case law from which to draw specific examples of unprofessional behavior if mandatory bar rules and court sanction rules were not involved.
26 It seems as though almost every scholarly writing concerning professionalism focuses on or at least contains a large section devoted to examples of unprofessional conduct. Apparently, the legal reader is like a NASCAR fan; he does not want a wreck to occur but he cannot take his eyes off of one when it happens. For an article that is chock-full of examples of unprofessional behavior, see Richmond, supra note 18.
There are two reported cases that provide a clear divergence of views by courts as to when unprofessional conduct becomes unethical, sanctionable conduct. The first is the often cited case of Paramount Communications Inc. v. QVC Network Inc. A high-profile Houston attorney defended a witness in a deposition taken in Texas for purposes of a lawsuit pending in Delaware. The Houston attorney was abusive in his efforts to obstruct the deposition. He threatened to "shut [the deposition] down"; called the opposing counsel an "asshole"; told opposing counsel to "shut up"; criticized opposing counsel's abilities saying opposing counsel had "no concept" of how to take a deposition; and in his most famous line said that opposing counsel "could gag a maggot off a meat truck."

By its own motion, the Delaware Supreme Court in Paramount raised the issue of the Houston attorney’s conduct and characterized that conduct as "an astonishing lack of professionalism and civility that is worthy of special note." The Court further described the conduct as "outrageous and unacceptable" and found that the attorney had "abused the privilege of representing a witness in a Delaware proceeding." However, since the Houston attorney was not licensed in Delaware or admitted pro hac vice, he was not subject to attorney discipline.

In contrast to the Paramount case, is the Second Circuit Court of Appeal decision in Revson v. Cinque & Cinque. In the lower court in Revson, $50,000 in sanctions were imposed against the plaintiff’s attorney for the following conduct:

(1) writing a letter to opposing counsel threatening to ‘tarnish’ his reputation and subject him to the ‘legal equivalent of a proctology exam;’

(2) making a sham settlement offer and setting an unreasonable deadline and then immediately filing suit;

(3) publicly accusing Cinque of fraud without any concrete evidence to support the claim;

28 637 A.2d 34 (Del. 1994).
29 Id. at 53.
30 Id. at 53-54.
31 The issue was raised by the Court “as part of [its] exclusive supervisory responsibility to regulate and enforce appropriate conduct of lawyers appearing in Delaware proceedings.” Id. at 52 n. 23.
32 Id. at 52.
33 Id. at 55.
34 Id. at 53.
35 Id. at 53, 56.
36 221 F.3d 71 (2d Cir. 2000).
(4) threatening to interfere with opposing firm's other clients, including (i) conducting an investigation to identify those clients, (ii) contacting one or more of the firm's former clients, and (iii) seeking permission to send a letter to all the firm's clients to inquire as to 'experiences, good or bad,' with the firm's billing practices;

(5) serving overly broad subpoenas, including a subpoena for all of the firm's banking records and a subpoena seeking records from the golf course where Cinque played golf;

(6) threatening to add a RICO claim;

(7) threatening to sue Cinque individually and to seek discovery of Cinque's personal finances;

(8) threatening to send a letter to the court accusing the firm of criminal conduct if it did not capitulate to his client's demands;

(9) making good on his threat to 'tarnish' Cinque's reputation by contacting a reporter to influence him to write a story regarding the litigation;

(10) engaging in unfair tactics at trial, including cross-examining Cinque in an unfair manner; and

(11) repeatedly attacking Cinque in an offensive and demeaning fashion, including calling Cinque 'a lawyer who ... had acted in a manner that shames all of us in the profession,' 'a disgrace to the legal profession,' and an example of 'why lawyers are sometimes referred to as snakes,' and accusing Cinque of 'engag[ing] in the type of mail fraud that has led to the criminal conviction of other attorneys,' being so 'desperate for money he resorted to ... extortion,' and being 'slimy.'

On appeal, the Second Circuit Court of Appeal reversed the trial court's decision concluding that none of the attorney's conduct justified an award of sanctions. While the Court of Appeal considered counsel's reference to "proctology" to be offensive and lacking in civility, the Court of Appeal dismissed it as "reflective of a general decline in the decorum level of even polite public discourse."
What a contrast! On the one hand, the Delaware Supreme Court, \textit{sua sponte}, expresses its disgust over the attorney’s conduct in \textit{Paramount} not imposing sanctions only because it technically could not. On the other hand, the \textit{Revson} court of appeal excuses conduct characterized by one writer as “a new classic in incivility.”\footnote{40} One court has described the \textit{Revson} decision as follows:

Any fair assessment of [the conduct of the lawyer in \textit{Revson}] would concur that the lawyer’s extreme language and tactics sank as close to the threshold of the gutter as imaginable and still escape judicial sanctions. How much lower such conduct could have descended before becoming punishable is difficult to fathom. Suffice it to say that \textit{Revson} sets the low water mark defining the ethical and professional behavior on the part of an attorney that passes muster immune from discipline.\footnote{41}

\section*{4. What Caused This Professionalism Problem?}

The perceived decline in professionalism over the last several decades unquestionably corresponds to a significant increase in the number of lawyers per capita.\footnote{42} Why the increase in lawyers has produced “unprofessional” conduct is, however, the subject of considerable discussion.

Some believe that this increase in attorneys has resulted in increased competition and that the increased competition provides “a partial explanation for the apparent and much lamented decline in civility and general ‘professionalism’ among lawyers.”\footnote{43} Professor Roger Schechter expressed the view that:

\begin{quote}
Mr. Greenburg: Your Honor, I’m going to object right now-
Mr. Lewis: -or somebody … the law-
The Court: Gentlemen, quiet.
Mr. Greenburg: -and ask that this jackass-
The Court: Gentlemen, quiet. Quiet, gentlemen.
Mr. Greenburg: -quit bringing up anything-
Mr. Lewis: Jackass?
Mr. Greenburg: Jackass.
Mr. Lewis: Your mother is a jackass.
The Court: Hey, hey, hey. All right, y’all are both in contempt.
Following the exchange of profanities, Mr. Greenburg grabbed Mr. Lewis’ suit jacket and both men fell to the floor.
\end{quote}

\footnote{40} Richmond, supra note 18, at 17 (quoting R. Ziegler, \textit{The Price of Incivility}, Nat’l L.J., Feb. 7, 2000, at A16.)

\footnote{41} Duffy, supra note 21, at 604 (quoting from \textit{Mathias v. Jacobs}, 167 F.Supp. 2d 607, 624 (S.D.N.Y. 2001)).


\footnote{43} Id. at 1079. This writer agrees that to the extent increased competition has brought with it a decrease in earnings by some lawyers, the competition is a partial explanation for not
In a narrower sense, however, the word ‘profession’ is often used by lawyers as an antonym for ‘business,’ and there is considerable current sentiment that the practice of law has become much more like a business, with negative effects on both the public and bar.

The law-as-business critique focuses in a large measure on the increased financial pressures that confront many firms. The allegation is that the increased emphasis on the bottom line has eroded loyalties, created a ruthless competitiveness, and even triggered an ethical race to the bottom by hungry practitioners who seek only to advance their immediate financial self-interests.

With the increase in the number of lawyers there has been an undeniable change in the make-up of the legal profession. The profession is “more diverse and provides more legal services to more people than ever before.” Not only are there more lawyers, the overall Bar is younger with a higher percentage of women and minorities. This diversity was recognized by the ABA Commission on Professionalism:

Thus, if it ever could have been said that the Bar was composed of persons having the same backgrounds and values, that certainly is no longer the case. We are as diverse as one could imagine.

Added to this diversity are the increased number of large firms and the increase in legal specialization.

Some attribute the decline in professionalism to the profession becoming more heterogeneous. The claim is that people of differing backgrounds have less in common, do not understand each other, and are not as likely to consider each other as comrades. According to these scholars, “at least some of the blame for any decline in civility and

only “unprofessional” but sometimes “unethical” conduct. It is this writer’s experience, as former Chair of the Louisiana Attorney Disciplinary Board, that severe economic pressures can cause otherwise compliant lawyers to do bad things. To be clear, it does not excuse the improper conduct but it does explain it, in part.

44 J. George, supra note 19, at 496 (quoting from R. Schechter, Changing Law Schools to Make Less Nasty Lawyers, 10 Geo. J. Legal Ethics 367, 389-90 (1970)). See also C. Wiggins, “He’s Such a Jerk!!” Education As a Response to Professionally Inappropriate Behavior, 29 Hanline J. Pub. L. & Pol’y 299, 304 (Spring 2008) (“Over the past twenty years there has been a transformation … from what traditionally has been considered a profession to one more properly analyzed as a business.”)

45 Commission Report, 112 FRD at 251.
46 Id. at 252.
47 Id.
48 Id. at 251-52.
professionalism must be attributable to the increasing gender, race, and
cultural diversity in the legal profession."^50

Professor Emeritus Thomas A. Harrell of the LSU Law Center had a
slightly different take on the effect of the "rapid increase" in the number
of lawyers opining that the increase in lawyers has "made it more
difficult to maintain [a] sense of collegiality — of membership in a
profession that stood together and apart from the public and our clients
— which was the foundation for much of our profession's structure."^51
He coupled this factor with "a failure [of the Bar] to pass on the
traditions, practices and courtesies the bar had developed over the years
for the conduct of our business."^52

5. Is Professionalism Just Old Fashioned?

Many detractors from the professionalism movement focus on
civility and argue that the notion of civility "looks to a by-gone era that
either did not exist, or should not: 'a happily lost past.'"^53 According to
some, "[t]he decline in civility is ... attributable to the demise of the 'old
boys' network' in which informal sanctions, such as ostracism and
stigmatization, have lost much, if not all, of their bite."^54 Others suggest
that earlier generations learned courtesy, respect and "morality in church
and in the family setting, not in law school." To them, if
a lawyer did
not learn manners, politeness and fidelity from his or her parents, it's too
late now.

This does not mean that professionalism has seen its day. There is
nothing inherently wrong with a call for adherence to higher standards of
professional conduct that are sometimes nostalgically associated with the
conduct of our elders and predecessors. Some say the standards are old

^50 Macey, supra note 42, at 1081.
^51 T. Harrell, Professionalism, The 55th Louisiana Mineral Law Institute, March 27-28,
^52 Id. According to Professor Jean Cary of Campbell University, Norman Adrian Wiggins
School of Law:

In the fast-paced, billable-hours-conscious, computer-driven world of today, clients
are not willing to pay for two lawyers on a case, firms cannot afford two attorneys
engaged in lengthy ethical discussions, lunches consist of a Diet Coke and a packet
of Nabs or a container of yogurt while returning phone calls, and many new
lawyers flounder in the moral relativism created by L.A. Law and The Firm media
images when wrestling with an ethical issue. These new lawyers have no support
system in which to make tough ethical decisions, and no reflective time to analyze
why tempers are flaring and how best to respond to them.

J. Cary, Teaching Ethics and Professionalism in Litigation: Some Thoughts, 28 Stetson L.
Rev. 305, 311 (Fall 1998).

^53 A. Glist, Enforcing Courtesy: Default Judgments and the Civility Movement, 69
Fordham L.Rev. 757, 759 (November 2000).
^54 Macey, supra note 42, at 1081.
^55 Cary, supra note 52, at 310.
or from a different time. That is a matter of perspective. Another way to
describe these long-standing standards of conduct is that they are "tried
and true." Professional courtesy, civility, integrity, honesty, respect and
the like are the reasons why the public entrusted the rule of law to the
legal profession for safekeeping in the first place. After all, if those strict
standards of professional conduct better serve the client and the
administration of justice, why are those standards not appropriate
today?56 For example, there is no reason why the legal profession as a
group cannot have "a point of unity among the bench, bar, and academic
world that name-calling, demeaning gestures, and personal threats are
unacceptable in any context."57 Even those who are highly critical of the
current state of affairs recognize that "over the long term, the best
decision for all lawyers is to act professionally."58

6. So Tell Me Again: Why Are We Doing This?

It cannot be denied that there are many challenges that confront the
legal profession giving rise to numerous skeptics of the professionalism
movement. In spite of these skeptics and their criticisms, "the concept of
professionalism still has force for many lawyers. After all, most lawyers
would be stung by a charge of acting 'unprofessionally' and, conversely,
flattered by being recognized as 'highly professional.'"59 Thus, most
lawyers are proud to be professionals and want to know what is required
of them so that they may seek to conform to those standards.

For those few lawyers who have already abandoned the concept of
professionalism, do not care about their reputations and practice law only
for the money, please consider Professor Patrick Schiltz's advice:

My 'big picture' advice is simple: Don't get sucked into the game.
Don't let money become the most important thing in your life.
Don't fall into the trap of measuring your worth as an attorney — or
as a human being — by how much money you make.60

Also consider the importance (perhaps economic) of continuing to
maintain the practice of law as a profession.

56 "[T]he justice system cannot function effectively when the professionals charged with
administering it cannot even be polite to one another. ... The profession and the system
lose esteem in the public's eyes. ... In my view, incivility disserves the client because it
wastes time and energy ..." Paramount, 637 A.2d at 52 n. 24 (quoting Justice Sandra
Day O'Connor, Address Delivered to an American Bar Association Group on "Civil
Justice Improvements" (Dec. 14, 1993)).

57 Cary, supra note 4, at 601.

58 Macey, supra note 42, at 1084 ("if all lawyers act uncivilly, sooner or later clients and
other market participants will come to realize that such tactics are ineffective and highly
costly.")

59 Green, supra note 24, at 745.

60 Schiltz, supra note 19, at 921.
A member of the ABA Commission, NYU Professor Eliot Freidson, defined the legal profession as follows:

An occupation whose members have special privileges, such as exclusive licensing, that are justified by the following assumptions:

1. That its practice requires substantial intellectual training and the use of complex judgments.
2. That since clients cannot adequately evaluate the quality of the service, they must trust those they consult.
3. That the client’s trust presupposes that the practitioner’s self-interest is overbalanced by devotion to serving both the client’s interest and the public good, and
4. That the occupation is self-regulating—that is, organized in such a way as to assure the public and the courts that its members are competent, do not violate their client’s trust, and transcend their own self-interest.

Professor Freidson’s definition is derived, in part, from earlier writings of legal scholars such as those of Dean Roscoe Pound of Harvard Law School, who stated:

[Profession] refers to a group . . . pursuing a learned art as a common calling in the spirit of public service — no less a public service because it may incidentally be a means of livelihood. Pursuit of the learned art in the spirit of a public service is the primary purpose.

Of utmost importance is Professor Freidson’s recognition of self-regulation as an essential element of the legal profession. “The citizens of this country should expect no less than the highest degree of professionalism when they have entrusted administration of the rule of law — one of the fundamental tenets upon which our society is based — to the legal profession.” This concept was presented in more practical terms by Chief Justice Burger, to-wit:

Lawyers are granted monopoly to perform essential services for hire, and it has long been almost an article of faith to us that monopolies are subject to strict regulation and public accountability for adherence to standards.

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64 Burger, *supra* note 1, at 212.
Stated another way, if the legal profession fails to establish standards to be expected of those in the legal profession that are perceived as strict by the public, someone else will.\(^6^5\) And if that happens, the legal profession may well become just another regulated business and not a profession at all.\(^6^6\)

Finally, if none of the foregoing has persuaded those few remaining skeptics, this writer must agree with Professor Harrell that "[p]rofessionalism cannot be forced upon anyone."\(^6^7\)

**Conclusion**

All of the challenges confronting the profession discussed above appear to provide compelling reasons why there has been a departure from strict standards of conduct and a decline in professionalism. However, these explanations should not be used as an excuse for the profession’s failures. The profession should not throw up its collective hands and settle for less simply because the task may be more difficult today than in earlier times. Instead, the explanations should be used for guidance as to what the legal profession must do to correct the situation. It seems as though education of legal professionals on professionalism is an important step in correcting the situation. In a very small part, that is the answer to “why” and the purpose of this CLE hour on professionalism.

\(^6^5\) In this writer’s opinion, the potential loss of self-regulation was a primary reason why the ABA Commission on Professionalism focused not only on “how [legal] services were being performed” but also on how the public “received” those services were being “performed.” Commission Report, 112 F.R.D. at 248. There was serious concern on the part of the ABA Commission that the public viewed “lawyers, at best, as being of uneven character and quality.” Id. at 254. That was in 1985. Id. What do you think the public perception is now?

\(^6^6\) Some scholars appear to have already thrown in the towel. Professor Jonathan Macey of Yale Law School has written that due to the highly competitive nature of the profession today, “[b]eing a lawyer is not what it used to be.” Macey, supra note 42, at 1979. Professor Macey claims that lawyers have failed at self-regulation and he argues against further efforts to self-regulate recommending instead a “private contracting model.” Id. at 1082. Professor Dane Ciolino of Loyola Law School New Orleans is of the opinion that “[f]or better or worse, lawyering is no longer a self-regulated profession.” D. Ciolino, 49 Loy.L.Rev. at 239. According to Professor Ciolino, the “Courts, rather than bar committees of comrades, now regulate our conduct.” Id.

\(^6^7\) See Harrell, supra note 51, at 921.