

FOCUS ON Professionalism

By Michelle Beaty-Gullage

CHESS, ANYONE?

Lawyers are expected (and required by the Rules of Professional Conduct) to conduct themselves professionally at all times. How many of us actually review the Rules of Professional Conduct? I would venture a guess it's not something most lawyers consult on a regular basis. Many of us also feel that professionalism is sort of inherent, built-in and intuitive. We look at professionalism as one of those words that defines itself. Professionalism: To behave professionally. We know we are supposed to advocate for our clients zealously, extend professional courtesies when possible, and refrain from misrepresenting to the court, among other tenets of good behavior.

In spite of the codification of rules and that little voice inside that tells us what's right and wrong, we all see various instances of conduct that are clearly unprofessional. Whether it's that wrong-headed and negatively toned email that landed in your inbox from opposing counsel, belligerent behavior during a deposition, or playing fast and loose with the facts in written or oral argument, we have all seen it. Unfortunately, this kind of behavior is perceived by some as a good way to practice law. Civility is difficult, if not impossible, to legislate, and there will be those who comply with the letter but not the spirit of the rules. Even so, it is so important to the level of satisfaction we experience as lawyers.

In 1986, the American Bar Association's Commission on Professionalism noted that "lawyer professionalism may well be in steep decline."¹ This sentiment, shared by other legal professional associations and state bar associations, led to the promulgation of Codes of Professional Conduct in the states. The Louisiana State Bar Association adopted its Code of Professionalism in 1992. It begins: "My word is my bond. I will never intentionally mislead the court or other counsel. I will not knowingly make statements of fact or law that are untrue..."



The thrust of the call to a higher standard of professionalism has largely been couched in terms of improving the image of the legal profession and to encourage public trust in the profession. I would suggest that if more lawyers behaved in accordance with our adopted creed of professionalism, we might all actually enjoy the practice a little more. That "steep decline" in professionalism has not only wreaked havoc on the public perception of lawyers but it also has decimated our perception of ourselves and the practice, making it, for some, a much less satisfying pursuit.

Dean Roscoe Pound said that a profession is "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."² In thinking about my own issues with the practice and in talking to colleagues who also complain of dissatisfaction, the common theme is not dissatisfaction with the substance of what we do. I believe most lawyers truly enjoy the intellectual challenge of the practice, the challenge of finding solutions to clients' problems, trying cases or the fun of immersing themselves

in new subjects to learn about issues they may find themselves litigating. The most common complaint (other than the hours) is the bad behavior of other lawyers. It seems we have lost sight of a couple of things. First, and foremost, Dean Pound's observation on what a "profession" is and, secondly, the description of the nature of the relationship of legal adversaries given by Shakespeare who wrote that adversaries in the law "[s]trive mightily, but eat and drink as friends."³ A strong current of civility is supposed to flow unimpeded throughout our dealings with each other. That current has been reduced to a trickling stream.

I have heard some argue that the gamesmanship, discourtesy and outright chicanery that are found within the profession today are necessary evils. Clients don't want weak lawyers. They want aggressive warriors who will fight hard on their behalf. Litigation is war and, as we have been told, all is fair in love and war, right? Wrong. It is not a given that lawyers will lose ground in handling matters by conducting themselves with some measure of grace and civility. Lawyers can conduct themselves in a civil manner without losing one iota of power,

respect or force of argument. You might find yourself benefitting from a perception of maturity and thoughtfulness. It is up to us as professionals to raise the level of expectation of our clients about this process. While our litigants' behavior may have driven them to us in the first place, we should take over the wheel once we get involved. The ultimate decisions are up to them and they may have absolutely no love for their opponent. But, that attitude does not have to spill over into how counsel deal with each other or how we conduct ourselves in advocating for them.

While it is true that not all legal disputes can be resolved through mediation or negotiation and that, for those we represent, the case may dominate their perspective as the fight of their lives, the ready acceptance of the "war" analogy is, in my humble opinion, beneath the calling of our profession. A more suitable analogy might be a chess game. No one screams at or threatens his opponent over a chess board. I have never felt the need to curse my opponent when he or she captured my queen. You cannot lie to or mislead your opponent. The pieces are *what* they are and they are *where* they

are on the board. They each have different abilities as far as where they can go and how they can get there but the game is not over until someone's king is captured. It's all about strategy, thinking ahead, focus, diligence, boldness, seeing the big picture *and* civility. Chess, anyone?

FOOTNOTES

1. See American Bar Association Commission on Professionalism, *In the Spirit of Public Service: A Blueprint for the Rekindling of Lawyer Professionalism*, 7 (1986).

2. Quoted in Douglas W. Hillman, "Professionalism — A Plea for Action!," 69 Mich. B.J. 894, 895 (1990), and in Justice Sandra Day O'Connor, "Professionalism," 76 Wash. U. L.Q. 5 (1998).

3. William Shakespeare, *The Taming of the Shrew*, Act 1, Scene 2.

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CODE OF PROFESSIONALISM

▶ My word is my bond. I will never intentionally mislead the court or other counsel. I will not knowingly make statements of fact or law that are untrue.

▶ I will clearly identify for other counsel changes I have made in documents submitted to me.

▶ I will conduct myself with dignity, civility, courtesy and a sense of fair play.

▶ I will not abuse or misuse the law, its procedures or the participants in the judicial process.

▶ I will consult with other counsel whenever scheduling procedures are required and will be cooperative in scheduling discovery, hearings, the testimony of witnesses and in the handling of the entire course of any legal matter.

▶ I will not file or oppose pleadings, conduct discovery or utilize any course of conduct for the purpose of undue delay or harassment of any other counsel or party. I will allow counsel fair opportunity to respond and will grant reasonable requests for extensions of time.

▶ I will not engage in personal attacks on other counsel or the court. I will support my profession's efforts to enforce its disciplinary rules and will not make unfounded allegations of unethical conduct about other counsel.

▶ I will not use the threat of sanctions as a litigation tactic.

▶ I will cooperate with counsel and the court to reduce the cost of litigation and will readily stipulate to all matters not in dispute.

▶ I will be punctual in my communication with clients, other counsel and the court, and in honoring scheduled appearances.

Following approval by the Louisiana State Bar Association House of Delegates and the Board of Governors at the Midyear Meeting, and approval by the Supreme Court of Louisiana on Jan. 10, 1992, the Code of Professionalism was adopted for the membership. The Code originated from the Professionalism and Quality of Life Committee.

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