

PROFESSIONALISM

**FOR PRESENTATION TO
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PROFESSIONALISM

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As one who has practiced in a small country town in Louisiana since January, 1960, I have seen many examples of professional and unprofessional conduct among lawyers. From time to time the Louisiana State Bar Association attempted to define and describe Professionalism. I thought when I began to read, research and write this paper that a definition of professionalism would come quick and easy. Regretfully, I am no better prepared to describe or define professionalism now than I was when I started. For some time the issue of whether or not professionalism should be a mandatory continuing legal education requirement was debated among the members of the Bar Association. The debate focused when Frank X. Neuner, Jr., favoring mandatory professionalism, and Phillip A. Wittmann opposing mandatory professionalism, wrote in Volume 45, No. 1 of the Louisiana Bar Journal. In opposing mandatory CLE Phillip Wittmann expressed the view that teaching professionalism was like teaching character or virtue, something that was illusive at best and impossible at worst. Phil's view was that professionalism belongs with ethics and the two should be considered together. Frank on the other hand suggested that professionalism could and should be considered separate from ethics and defined areas where professionalism and ethics were certainly separate and distinct.

The Supreme Court acting in response to requests from the Louisiana State Bar Association ordered as of January 1, 1998 that the rules for mandatory continuing legal education require that attorneys licensed in Louisiana obtain one hour of professionalism credit each year in addition to one hour of ethics. The admonition is given that the courses may not be combined and that they should be considered separate from one another. It is suggested:

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

Legal ethics sets forth the standards of conduct required of a lawyer; professionalism includes what is more broadly expected.” (LSBA paper on “What is Professionalism?”).

That said, I am still not sure that I understand the difference. Perhaps a discussion of professionalism should first consider the areas of contact the attorney has in his practice. Of course, he first has contact with clients. Then, depending upon the nature of his practice, he has contact with his adversary attorney, contact with the judicial branch and contact with the public. Perhaps in a discussion of professionalism we should separate these contacts and determine what we should expect of the lawyer in those various relationships.

THE LAWYER AND HIS CLIENT

First, a lawyer gets a client. What does professionalism demand of the lawyer in his dealings with that client? Following these few suggestions can heighten your client’s view of your professionalism:

- (1) The initial interview should be extensive. The facts as expressed by the client should be fully explored. The preliminary decision to accept the case or to reject the case should be made when the attorney begins to “feel good” that the client has a legitimate, justiciable cause as to which the attorney can offer assistance. Perhaps the decision to take or not to take the case lies very near the heart of professionalism. At one point or another in our legal careers we are all hungry for business. The inclination is to take the case and work on it realizing that at any time we determine that the case has no merit we can terminate the relationship. Such an attitude, however, often leads us to traps of unprofessionalism. We stay on board too long. We hesitate to give the client the bad news that we do not feel that his case has merit. We lose our enthusiasm for the case. The client becomes dissatisfied when he senses that something is wrong. I submit that a great deal of the problems that arise from taking cases which have borderline merit might be avoided if we spend a little more time and effort screening the case. This is not to suggest that attorneys screening new business should lose their inventiveness or creativity. It is the backbone of the practice of law that lawyers take tough cases and pursue them diligently. Nevertheless, careful screening of questionable cases is of utmost importance.
- (2) After counsel has decided to take the case and the contract is signed, it seems to me that the next logical step in the process should be to write the client a letter of engagement. Here professionalism and ethics walk hand and hand. The Code of Professional Conduct (Rule 1.2) defines the scope of representation and a letter of engagement actually should first satisfy the requirements concerning scope of representation. More important, however, the engagement letter should let the client know what his case is all about, what he can expect from his attorney and the attorney’s staff and what he can expect in terms of time. A carefully written engagement letter can be referred to time and again as the plan of action in the client’s case. The engagement letter also has an additional effect. Let the client know you care and that you have given his case some thought and that you have a plan for his case. This is very important to business clients and, believe it or not, it is important to unsophisticated clients who get very few letters in their lives. A letter from one’s lawyer thanking him for considering the lawyer for representation and giving him the plan is a very important first step in cementing a good lawyer-client relationship.
- (3) Once the case has started the lawyer should make regular written reports to the client of the status of his case. The client should be given a file. The client should be encouraged to file the letters in date order. A written report from the lawyer accomplishes many purposes. First, and most obvious it keeps the client

informed of the status of his case. Secondly, it satisfies most clients' need for personal contact thereby requiring less time than engaging in repeated office calls and visits by the client for information on his case. Once the client becomes accustomed to hearing from his lawyer every few weeks his calls for status reports become unnecessary and he eagerly awaits the written report. Secondly, a carefully written letter is not likely to be misunderstood as readily as a verbal communication. Therefore, misunderstandings between the lawyer and the client can be avoided by a carefully written status report.

- (4) When the client does contact the lawyer personally the lawyer should devote his full attention to the client. We are busy and it is easy to become distracted and to engage in trying to do two or three things at once. You have a client in your office. You are trying to get your secretary to type a document which needs to go out in today's mail or over the fax machine today. You get a call from another client. You are juggling three matters in the air at the same time. The client who took the time to come to your office and sit across the desk from you starts to wonder whether or not his case is really as important to you as you said it was. The lawyer should strive to be able to give the client a fair share of uninterrupted time. Hold the calls, prepare the secretary's time so that she need not interrupt you for a few minutes and give your client your full, uninterrupted attention. Make sure that when the client terminates the conference and leaves your office that he has asked all of the questions that he had in mind when he came to see you. Make sure that you have given him direct, concise answers to his questions. If any question remains unanswered let him know that you will research the problem or find the answer and get back to him.
- (5) If you tell the client you are going to do something by a particular date, do it. There is nothing more frustrating for a client and nothing more damaging to the relationship for the client to walk in and say, "You said you would have this for me on Tuesday. It is now Thursday and you haven't started on it. What's going on?" In other words, if you can't get something by the day promised, don't promise it.
- (6) There are other things that you can do in relation to your clients that will increase their appreciation of your services and heighten their regard for your professionalism. Meet with clients in neat, clean surroundings. If you are in the habit of having an office full of files consider meeting with them in a neat, well organized conference room. If your conference room is generally your work room, keep your office neat for meetings with clients. When clients are waiting in the waiting room train your receptionist to keep them comfortable and to let them

know they are not forgotten. Offers of coffee, with or without cream, soft drinks or the use of a telephone often are very much appreciated by clients. When the work for your client has been completed spend a few moments asking the client whether or not your services were satisfactory. Get feedback from your clients as to manner in which your office procedures or your services might be better tailored to meet the needs of clients. There is much that we can learn from our clients who have experienced the legal system from their particular vantage point.

THE RELATIONSHIP AMONG LAWYERS

A great deal of our legal practice involves your relationship with opposing counsel. That relationship is adversarial. Quite often, in the heat of battle and in our adversarial system, the contentious relationship between lawyers is fertile ground for unprofessional conduct. Lawyers must remain on constant alert to remain dignified and civil toward one another. They should display courtesy and fairness in dealing with one another. Lawyers should be cooperative in scheduling and should not abuse, unduly delay or harass. Consider the request of other counsel for scheduling, delays and other time extensions in light of what you would expect if you were making a similar request. Return telephone calls. Respond to correspondence. You will not be expected to like opposing counsel or agree with him on every issue. You should, however, resist the urge to make any personal attack.

Most misunderstandings among counsel can be worked out with frank, open conversation. In your dealings with opposing counsel when it becomes apparent that a misunderstanding has arisen, stop. Get on the telephone and call the opposing attorney. Ask him to spend a few moments with you. Determine how the conflict arose and resolve to iron out the conflict without further difficulties.

Scheduling is one of the most frustrating things that we have to do as lawyers. The more attorneys there are in the case and the more parties involved, the more difficult it is to find dates. Professionalism demands that attorneys cooperate in scheduling. An attorney who is requested to supply dates should do so freely and without reservation. The attorney taking charge of coordinating the date should keep the interested parties informed as to available dates of the lawyers and the witnesses. Efforts to schedule should be started as soon as possible. Habitually we all wait too long before attempting to schedule matters. How many depositions are scheduled in the week before discovery is closed? The simple answer is too many. We should all share in the responsibility of getting depositions scheduled early and in cooperating with the scheduling. I submit to you that it is unprofessional to wait until the last minute to schedule something and similarly, it is unprofessional not to cooperate in any or all scheduling efforts.

Forgive my reference to “the old days” in talking about the next portion of the attorney’s relationship with the adversarial attorney. This is the issue of whether or not it needs to be put in writing. When my law practice began I would frequently get calls from opposing attorneys assigned to defend my workers’ compensation suit or tort suit with a request for a time extension. The time extension was routinely granted. Seldom was the time extension confirmed in writing. Never was a preliminary default or judgment by default taken. Regretfully, that practice seems to have long since vanished. Requests for time extensions now should be placed in writing. The time extension received from the attorney should be confirmed in writing. We

should be more respectful of our opponent in terms of granting delays and in confirming these delays in clear, concise and unequivocal terms.

More and more we hear war stories of personal attacks on opposing counsel. This is regretful and perhaps it is the source of most of the public perception that today's attorneys are unprofessional. We should strive not to engage in personal attacks on opposing counsel. There are going to be times in your dealings with opposing counsel that try your patience and your professionalism. Whenever possible and before becoming confrontational ask yourself the following question, "How do I expect to be treated under these circumstances?"

RELATIONSHIP BETWEEN LAWYERS AND THE COURT

There are several cardinal rules to follow in your dealings with the Court if you want to exhibit real professionalism.

You should speak and write civilly and respectfully in all of your communications with the court. Deal with the issues. Avoid dealing with personalities.

Be on time and whenever possible, if delayed, communicate with the court immediately as a courtesy to the court and all parties. Conduct yourself responsibly in the courtroom. Do not bring disorder or disruption to the court. When you bring clients and witnesses into the courtroom let them know what to expect and let them know how to behave. Often emotions of clients are very hard to control in heated litigation. Nevertheless counsel should remain "above the fray." This is not to suggest that you should not be impassioned and steadfast in your representation of your client. By the same token remember that you are an officer of the court.

You should argue forcefully and with passion. You should not argue with disrespect or discourtesy.

As an advocate of your client frequently you will be called upon to recite facts or to argue from case law or statutory law. Counsel must not knowingly misrepresent, mischaracterize or misquote facts or legal authorities. When there is a dispute in the facts you should not be hesitant to “dispute” your client’s position as to those facts. When the facts are undisputed you certainly should attempt to argue the unimportance or irrelevance of those facts but it would seem unprofessional to dispute undisputed facts.

Counsel should avoid ex parte communication with the court on issues involved in the case. Particularly in the rural communities we often see the court in informal surroundings. It is tempting to discuss matters of interest pending before the court. We should avoid this temptation. While ex parte communication with the court may not be unethical when it is innocent and not intended to influence the court, the tendency of an appearance of impropriety is great and should be avoided.

Our respect for the court should also extend to court personnel. The court’s bailiff, clerks and secretaries should all be treated with respect and dignity as integral parts of the judicial system.

LAWYERS’ DUTIES TO THE PUBLIC

Professionalism also demands that lawyers share or participate in community responsibilities. The community in which we live has every right to expect that lawyers will be

valued, participating members in the community. Membership in civic clubs, charitable associations and business associations can enhance the public's view of the legal profession and will assist in showing that the legal community is doing its part in promoting the civil and business interests of the community. Often lawyers take a rap that they are self-centered and self-interested people and not interested in the promotion of their respective communities. Nothing can be further from the truth. As a lawyer living and raising one's family in a community we all have vested interests in the well-being of that community. We tend to share in the good fortunes of a community and we must shoulder responsibility when bad fortune strikes. Therefore, as an integral part of becoming a professional and exhibiting professionalism, you are urged to participate in the religious, charitable, business or civic functions in your community.

Finally, we come back to the question of what is professionalism. I suggest to you that a lawyer exhibits professionalism when he conducts himself considering the following question:

What would or should I do in this situation even if I am not writing the rules and even if I don't know who is writing them or even whether they should apply to me?

The answer to this question requires the lawyer to act civilly and responsibly. Ask yourself that question and let your actions be guided by your answer.