



WSBA

WASHINGTON STATE BAR ASSOCIATION

**MATERIALS FOR
PROFESSIONALISM
DISCUSSION**

**WASHINGTON STATE BAR ASSOCIATION
PROFESSIONALISM MATERIALS
TABLE OF CONTENTS**

"Civil Practice" by Rabb Emison, <i>Res Gestae</i> , July/August 2010	3
Footnote from Judge Robart Opinion	4
Judge Sparks Order	5
Hyerphrase Order	7
"4th Circuit Footnote Scolds Prosecutors for 'Disrespectful' and 'Uncivil' Language in Pleadings" by Mark Hansen, abajournal.com, 2-29-12	8
Footnote from <i>U.S. v. Venable</i>	9
Sample Letter to Opposing Counsel (Mark Honeywell)	13
WSBA Creed of Professionalism	15
Washington State Oath of Attorney	16
Fundamental Principles of Professional Conduct	17
WSBA Discipline Notice (example)	19
"Lawyer Volunteers: Preserving Our Democracy and Enhancing Our Profession" by Paula Littlewood, <i>Washington State Bar News</i> , March 2012	20
Excerpts from Professionalism Issue of <i>Washington State Bar News</i> (August 2011):	
• "Taking the High Road" by WSBA President Steve Toole	22
• "Day One in Law School Is Day One in the Profession" by WSBA Executive Director Paula Littlewood	24
• "Professionalism: One Lawyer's View" by Sims Weymuller	26
• "Fresh Perspectives: Professionalism for New Attorneys" with Linda Jenkins and Carly Summers	31
• "5 Steps to Improving Civility" by Washington State Attorney General Rob McKenna	35
• "Profiles in Professionalism: Get to Know a Few of the Recipients of the Random Acts of Professionalism Award" by Mark A. Arthur	38
• "Maintaining Professional Relationships: A View from the Court from Judge Laura Inveen" by Joe Marshall	41

Civil practice

Don't show your anger at anyone until you're close enough to hit him with an axe. A politician's advice.

Change in practice is constant. The limitation on solicitations is uncertain, emphasis on high incomes is prominent, and – it appears to me – lawyers waste energy being rude to each other. Rudeness wastes time and client's money as well.

We all know that our function is to do the best we can for the client, subject to the Rules of Professional Conduct. Why is it that when we advance a client's cause, we think it is an advance to battle over egos?

As the stakes increase, we become polarized, frequently as plaintiff or defense counsel. I am a defense lawyer. Once, while representing a plaintiff, I was treated in a condescending, patronizing manner by the defense counsel. *Do I act that way?* I hope not. That conduct energized my work to defeat my adversary. It was a good lesson. When I meet him again, I will remember. Civil behavior serves two ends. You keep your focus on the issue, and you keep your adversary's temperature down.

Some simple rules:

1. Do not belittle the other lawyer, certainly not in court. I have depositions on my desk in which lawyers offer gratuitous insults to others. There they are, permanent records, pointless and irrelevant, useless except to goad the other lawyer.

2. In court, stand up when you speak to the judge. In a trial, stand when you object. You can use the time getting to your feet to formulate the objection. Seated, lounging like a couch potato, you lose emphasis in your statement. I stand even when the rulings are killing me. I stand out of

Emison Doolittle respect for the court, the Constitution,
Kolb & Roelgen the Bill of Rights and my client.

Vincennes, Ind.
rabbem@sbcglobal.net

3. Place your own calls. The testier the case, the more I want to make the

call to the other lawyer. This is a chance to let that lawyer know I respect his/her opinion. I learn a lot. Pet peeve: lawyers who have a secretary get me on the line so I wait while he/she gets on the line. This makes a tiny suggestion that my time is less valuable. In the preferred style I got a call from Matt Welsh when he was governor. He was on the line when I picked up the phone. He called to say I would not be reappointed to a state commission. Not a critical event as state activities go. I was impressed! Since that day I have always placed my calls and suggest you do, too. You are excused if you are busier than a governor.

I finished a case recently with a lawyer who never called me. Not once. His secretary made all his calls. At the end she called to negotiate the settlement with me. What was *he* doing that was more important?

4. If you practice in Indianapolis, do not assume that the lawyer in the boonies is dumber. I run into this now and then, and there is no basis (believe me) for this presumption. It does not follow that a lawyer in Chicago is smarter, while in turn dumber than a lawyer in New York City. If you practice with this belief, then keep it to yourself. It will only do you harm.

Finally, at the end of a trial, if you lose, a bad temper does not change the result. If you win, the foreman of the jury has just handled the axe for you. ♣

Editor's Note: The Indiana Bar Foundation has published a booklet with nearly all of Rabb Emison's Res Gestae offerings – from when he served as State Bar president, 1986-87, and on. If you are interested in obtaining MY favorite Res Gestae writer's works, contact Jerry Zeigler at Ewing Printing in Vincennes, Ind., www.ewingprinting.com, 800/982-2415. The volume is a treasure!

"Civil Practice" was first published in February 1992.

C

Only the Westlaw citation is currently available.

United States District Court, W.D. Washington.

CR LICENSE, LLC, Plaintiff,

v.

SPA CLUB SEATTLE, LLC, et al., Defendants.

No. C04-555JLR.

May 9, 2005.

Christopher T. Pierson, Jennifer A. Van Kirk,
Richard A. Halloran, Sheila M. Heidmiller, Lewis
& Roca, Phoenix, AZ, Natalie Adams Dearie,
Thomas F. Peterson, Robert F. Lopez, Socius Law
Group PLLC, Douglas C. McDermott, Hagens Ber-
man Sobol Shapiro LLP, Seattle, WA, for Plaintiff.
Mark D. Kimball, Bellevue, WA, for Defendants.

ORDER

ROBART, J.

IV. CONCLUSION

For the foregoing reasons, the court DENIES CRL's summary judgment motion (Dkt.# 53) and DENIES Defendants' summary judgment motion (Dkt.# 50).FN7

FN7. In reviewing the parties' briefing, the court was disappointed to find Defendants' counsel repeatedly invoking language approaching, and sometimes exceeding, the bounds of professional conduct. Counsel characterizes CRL's claims as "grossly unsupported factually and legally" (Defs.' Opp'n at 1); chastises CRL's "false and erroneous misinterpretation [s]" of law (Defs.' Opp'n at 3); accuses CRL of making "*eleventh hour* false allegation[s] ... to prop up its frivolous claim" (Defs.' Opp'n at 16); refers to this lawsuit as a "frivolous, foreign threat" (Defs.' Mot. at 5); accuses CRL of a "feeble and incredulous attempt to manufacture evidence" (Defs.' Mot. at 18); asserts that CRL's consumer survey used "suspect and corrupt methodology" that "borders on absurdity" (Defs.' Mot. at 19); and claims that CRL "misconstrues and falsely manipulates the holdings in all of its cited cases" (Defs.' Reply at 7). The court strongly disapproves of this unnecessary, inflammatory language, and directs counsel to adopt a more professional tone in future submissions to the court. Counsel's missives do not advance his clients' cause; indeed they threaten his clients' cause by distracting the court from the merits of their defenses. In the future, the court will not shy away from using its inherent power to sanction counsel for such conduct.

W.D.Wash.,2005.

CR License, LLC v. Spa Club Seattle, LLC

Not Reported in F.Supp.2d, 2005 WL 1111221
(W.D.Wash.)

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED
2011 AUG 26 PM 1:58
CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY _____
DEPUTY

THERESA MORRIS, WIFE OF
BOB MORRIS,
Plaintiff,

-vs-

Case Nos. A-11-MC-712-SS ✓
A-11-MC-713-SS
A-11-MC-714-SS
A-11-MC-715-SS

JOHN COKER, ALLIS-CHALMERS
CORPORATION AND/OR STRATE
DIRECTIONAL DRILLING, INC.,
Defendants.

ORDER

BE IT REMEMBERED on this day the Court reviewed the files in the above-styled causes, and now enters the following opinion and orders.

Non-parties Lance Langford, Erik Hoover, and Brigham Oil & Gas, L.P. invite the Court to quash subpoenas issued to them on behalf of Jonathan L. Woods, in relation to a matter currently pending in the United States District Court for the Western District of Louisiana, Lafayette-Opelousas Division, because the subpoenas were not properly served, are overly broad and unduly burdensome, and seek privileged information. In response, the Court issues the following invitation of its own:

Greetings and Salutations!

You are invited to a kindergarten party on **THURSDAY, SEPTEMBER 1, 2011, at 10:00 a.m.** in Courtroom 2 of the United States Courthouse, 200 W. Eighth Street, Austin, Texas.

The party will feature many exciting and informative lessons, including:

- How to telephone and communicate with a lawyer
- How to enter into reasonable agreements about deposition dates
- How to limit depositions to reasonable subject matter
- Why it is neither cute nor clever to attempt to quash a subpoena for technical failures of service when notice is reasonably given; and
- An advanced seminar on not wasting the time of a busy federal judge and his staff because you are unable to practice law at the level of a first year law student.

Invitation to this exclusive event is not RSVP. Please remember to bring a sack lunch! The United States Marshals have beds available if necessary, so you may wish to bring a toothbrush in case the party runs late.

Accordingly,

IT IS ORDERED that defense counsel Jonathan L. Woods, and movants' attorney Travis Barton, shall appear in Courtroom 2 of the United States Courthouse, 200 W. Eighth Street, Austin, Texas, on **THURSDAY, SEPTEMBER 1, 2011, at 10:00 a.m.**, for a memorable and exciting event;

IT IS FINALLY ORDERED that Mr. Barton is responsible for notifying Mr. Woods of this order by providing him with a copy by mail or fax on this date.

SIGNED this the 26th day of August 2011.


SAM SPARKS
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

HYPERPHRASE TECHNOLOGIES, LLC
and HYPERPHRASE INC.,

Plaintiffs,

v.

MICROSOFT CORPORATION,

Defendant.

ORDER

02-C-647-C

Pursuant to the modified scheduling order, the parties in this case had until June 25, 2003 to file summary judgment motions. Any electronic document may be e-filed until midnight on the due date. In a scandalous affront to this court's deadlines, Microsoft did not file its summary judgment motion until 12:04:27 a.m. on June 26, 2003, with some supporting documents trickling in as late as 1:11:15 a.m. I don't know this personally because I was home sleeping, but that's what the court's computer docketing program says, so I'll accept it as true.

Microsoft's insouciance so flustered Hyperphrase that nine of its attorneys, namely Mark A. Cameli, Lynn M. Stathas, Andrew W. Erlandson, Raymond P. Niro, Paul K. Vickrey, Raymond P. Niro, Jr., Robert Greenspoon, Matthew G. McAndrews, and William W. Flachsbart, promptly filed a motion to strike the summary judgment motion as untimely. Counsel used bolded italics to make their point, a clear sign of grievous iniquity by one's foe.

Copy of this document has been
provided to: All Counsel

BBC
this 18 day of July 20 03
by C. A. Korth

C.A. Korth, Secretary to
Magistrate Judge Crocker

True, this court did enter an order on June 20, 2003 ordering the parties not to flyspeck each other, but how could such an order apply to a motion filed almost five minutes late? Microsoft's temerity was nothing short of a frontal assault on the precept of punctuality so cherished by and vital to this court.

Wounded though this court may be by Microsoft's four minute and twenty-seven second dereliction of duty, it will transcend the affront and forgive the tardiness. Indeed, to demonstrate the even-handedness of its magnanimity, the court will allow Hyperphrase on some future occasion in this case to e-file a motion four minutes and *thirty* seconds late, with supporting documents to follow up to *seventy-two* minutes later.

Having spent more than that amount of time on Hyperphrase's motion, it is now time to move on to the other Gordian problems confronting this court. Plaintiff's motion to strike is denied.

Entered this 1st day of July, 2003.

BY THE COURT:



STEPHEN L. CROCKER
Magistrate Judge

Appellate Practice

4th Circuit Footnote Scolds Prosecutors for 'Disrespectful' and 'Uncivil' Language in Pleadings

Posted Feb 29, 2012 4:57 PM CST
By [Mark Hansen](#)

A federal appeals court has warned prosecutors about the potential consequences of using "disrespectful or uncivil language" toward others in their appellate briefs.

The Richmond, Va.-based 4th U.S. Circuit Court of Appeals, in an [opinion](#) last week, said that advocates, including government lawyers, "do themselves a disservice" when their briefs contain intemperate language directed towards the courts, opposing counsel, parties or witnesses in a case.

It cited a brief in the case by federal prosecutors in Alexandria, Va., that it said was replete with such language, including its evident disdain for the district court's "abrupt handling" of the defendant's first appeal, its sarcastic reference to the defendant's previous counsel's "newfound appreciation for defendant's mental abilities," its insinuation that the district court's concerns "require a belief in the absurd," and its claim that the defendant is a "charlatan" who is "exploiting his identity as an African-American."

"The government is reminded that such disrespectful and uncivil language will not be tolerated by this court," Judge Allyson Kay Duncan wrote for the three-judge panel.

The case involved a man, James Venable, who had been indicted on a charge of possessing a firearm while being a felon. Venable, who is African-American, moved to dismiss the indictment on the grounds that prosecutors allegedly selected him for prosecution because of his race.

When the lower court refused to grant Venable discovery on his selective prosecution claim, he appealed. It was the prosecution's response to that appeal which raised the appellate court's ire. But the court affirmed the lower court's decision, ruling that Venable had failed to carry his burden of producing some evidence to make a credible showing of both discriminatory effect and intent.

Hat tip to the [Volkh Conspiracy](#).

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UNITED STATES OF AMERICA, Plaintiff-Appellee,
v.

JAMES E. VENABLE, a/k/a James Eugene Venable, Defendant-Appellant.

No. 11-4216.

United States Court of Appeals, Fourth Circuit.

Argued: December 9, 2011.

Decided: January 18, 2012.

Filed: February 15, 2012.

ARGUED: Patrick Risdon Hanes, WILLIAMS MULLEN, Richmond, Virginia, for Appellant.

Richard Daniel Cooke, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia, for Appellee.

ON BRIEF: Joseph R. Pope, WILLIAMS MULLEN, Richmond, Virginia, for Appellant.

Neil H. MacBride, United States Attorney, Alexandria, Virginia, for Appellee.

Before NIEMEYER, KING, and DUNCAN, Circuit Judges.

Affirmed by published opinion. Judge Duncan wrote the opinion, in which Judge Niemeyer and Judge King joined.

OPINION

ORDER

The Court amends its opinion filed January 18, 2012, as follows:

On page 2, attorney information section, lines 3-5, the name of "Brandon M. Santos, Special Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia" is deleted.

DUNCAN, Circuit Judge.

Appellant James Venable was indicted by the United States Attorney's Office for the Eastern District of Virginia ("United States Attorney's Office") on the charge of possessing a firearm while being a felon, in violation of 18 U.S.C. § 922(g)(1). Venable, an African American, moved to dismiss the indictment against him, claiming that the United States Attorney's Office selected him for prosecution under a federal-state law enforcement initiative known as Project Exile because of his race, in violation of the equal protection component of the Fifth Amendment's Due Process Clause. As part of the motion, Venable sought discovery into the criteria and procedures used by the government in deciding to prosecute him in federal court while two other individuals, both white, who were also felons in possession of the same firearms as him, were not. The district court concluded that Venable had failed to satisfy his rigorous burden to obtain discovery on his selective prosecution claim. On appeal, Venable requests that we reverse the district court's order denying his motion for discovery and remand this case for discovery and an evidentiary hearing. For the reasons that follow, we affirm.

I.

A.

We begin by reciting the relevant facts. We first set forth the events leading up to the arrests of Venable, and the two individuals Venable claims are similarly situated to him, Gary Wayne Turner and Michele Lynn Zechman. Because Venable's selective prosecution claim (including his request for discovery in support of that claim) rests on the allegation that

"This is consistent," we have observed, "with the general rule that in cases involving discretionary judgments essential to the criminal justice process, statistical evidence of racial disparity is insufficient to infer that prosecutors in a particular case acted with a discriminatory purpose." *Id.* at 746 (internal quotations omitted). Notably, there is *not* "a presumption that unexplained statistical evidence of racial disparity proves racial animus." *Id.* Instead, it is the defendant who bears the burden of making a credible showing that the statistical evidence amounts to some evidence of discriminatory intent. *Id.*

In *Olvis*, we found fault with a statistical study that showed that in the Norfolk-Newport News, Virginia, area, "of all the federal crack cocaine trafficking prosecutions in federal court since 1992 in which the defendant's race was apparent, over 90 percent involved black defendants." 97 F.3d at 745. We determined that the study "provide[d] no statistical evidence on the number of blacks who were actually committing crack cocaine offenses or whether a greater percentage of whites could have been prosecuted for such crimes." *Id.* Without an appropriate basis for comparison, the percentage of African American crack cocaine defendants proved nothing, unless it could be presumed that crack cocaine violations were committed proportionately by all races, an assumption rejected by the Supreme Court in *Armstrong*. See 517 U.S. at 470.

Just as in *Olvis*, the statistical evidence provided by Venable, showing that for the three years preceding his prosecution—2005, 2006, and 2007—approximately 87 percent of the firearms prosecutions under Project Exile were brought by black defendants, contains no appropriate basis for comparison. It provides no statistical evidence about the number of blacks who were actually committing firearms offenses or whether a greater percentage of whites could have been prosecuted for such crimes. It does not even provide any evidence regarding the proportion of blacks residing within the relevant geographical area.

Moreover, even were we to accept Venable's statistical evidence as probative of discriminatory intent, we are unpersuaded by the additional facts that Venable points to as evidence that the prosecution against him was invidious or in bad faith. First, we reject his assertion, for which he offers no supporting evidence, that the circumstances surrounding his arrest and indictment "raise[] questions concerning whether the Government's decision to prosecute him under Project Exile was affected by race." Appellant's Br. 18. Second, his contentions that the government's arguments explaining why Venable's selective prosecution claim should fail are "inconsistent," Appellant's Br. 18, and that the government chose not to prosecute two "far more culpable" white individuals, Appellant's Br. 19, simply rehash his meritless argument that other similarly situated individuals were not prosecuted.

In sum, on the record presented, Venable has failed to carry his burden of producing some evidence to make a credible showing of both discriminatory effect and intent.^[4]

III.

For the foregoing reasons we affirm the judgment of the district court.

AFFIRMED.

[1] Campbell County authorities expressed that they wanted to vindicate the rights of the owner of the firearms.

[2] Section 922(g) lists various categories of individuals for whom it is unlawful to, *inter alia*, "possess in or affecting commerce, any firearm or ammunition." The category under (g)(1) is any person "who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year."

[3] Project Exile also involves the Bureau of Alcohol, Tobacco, and Firearms; the Federal Bureau of Investigation; the Richmond Police Department, and the Virginia State Police.

[4] Finally, we feel compelled to note that advocates, including government lawyers, do themselves a disservice when their briefs contain disrespectful or uncivil language directed against the district court, the reviewing court, opposing counsel, parties, or witnesses. See, e.g., *Dranow v. United States*, 307 F.2d 545, 549 (8th Cir. 1962) ("In light of the too numerous decisions of this and other Courts of Appeals, it should not be necessary for us to repeat, [a] brief should not contain language disrespectful to the court nor to opposing counsel and ordinarily a brief containing such scurrilous and scandalous matter should be stricken from the files." (internal quotations omitted)); 36 C.J.S. Federal Courts § 557 (2011) ("Abusive, scandalous, scurrilous, . . . or disrespectful language . . . should not be inserted in the brief."); 4 C.J.S. Appeal and Error § 734 (2011) ("The appellate brief should not contain disrespectful, scandalous, or abusive language directed against the court of review, trial judge, opposing counsel, or parties or witnesses. A brief in no case can be used as a vehicle for the conveyance of . . . insult, disrespect or professional discourtesy of any nature . . . invectives are not argument, and have no place in legal discussion."). Unfortunately, the government's brief is replete with such language: it disdains the district court's "abrupt handling" of Appellant's first case, Appellee's Br. 19; sarcastically refers to Appellant's previous counsel's "new-found appreciation for defendant's mental abilities," Appellee's Br. 21; criticizes the district court's "oblique language" on an issue unrelated to this appeal, Appellee's Br. 22; states that the district court opinion in *Jones* "revealed a crabby and complaining reaction to Project Exile," Appellee's Br. 57; insinuates that the district court's concerns "require[] a belief in the absurd that is similar in kind to embracing paranormal conspiracy theories," Appellee's Br. 59; and accuses Appellant of being a "charlatan" and "exploit [ing] his identity as an African-American," Appellee's Br. 61. The government is reminded that such disrespectful and uncivil language will not be tolerated by this court. See *Ruston v. Dallas County Tex.*, 320 F. App'x. 262, 263 (5th Cir. 2009) (striking pleadings because they "contain abusive and disrespectful language"); *Carter v. Daniels*, 91 F. App'x. 83, 84 (10th Cir. 2004) (finding party's "language in his brief intemperate and disrespectful

of this court and the district court," and cautioning party that it may be subject to sanctions if it continues to file such pleadings); *Hamad v. Desahazo*, 1996 WL 556788, at *1 (5th Cir. 1996)(unpublished) (warning party that "the use of abusive and uncivil language, as displayed in his appellate brief, will not be tolerated by this court" and directing him to "review all pending appeals to make sure that they do not contain such language").

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[date]

[Attorney Name]

[Address]

Re: [Litigate Name]

Dear _____:

I am writing to introduce myself and advise you of certain general principles to which I subscribe. To avoid any suspicion that I may have any other motives in writing this letter, I assure you that it will not be referred to in any court proceeding nor attached to any affidavit.

I know you would agree that we must be loyal and committed to our client's cause and pursue it zealously. Most clients understand, however, that civility and courtesy are not equated with weakness. They should also realize that affording opponents certain considerations and expecting the same in return not only elevates the level of practice, but more importantly saves them money by avoiding unnecessary motions and out of court arguments.

To the extent that I can do so without compromising my client's rights and interests in this litigation, I will adhere to certain general guidelines throughout these proceedings, and invite you to do the same:

1. I will not use time limits set forth in the Court Rules to tactical advantage. For example, I will generally give you ample notice of motions and depositions and cooperate with your office in setting them. I will agree to reasonable requests for extensions of time or for waiver of procedural formalities.
2. If circumstances warrant, I am willing to exchange discoverable information and documents by informal means.
3. I will maintain a professional demeanor at depositions.
4. I will limit my discovery to that necessary to properly prepare my case, and only make requests of you with which I would be willing to comply.

John Doe Counsel, Esq.

[date]

Page 2

5. When responding to discovery requests, I will do so directly and fairly with discoverable information at my disposal, and not treat the exercise as an opportunity to confuse or avoid the issues.

Variations on the foregoing are probably found in discussions of the Canons or professionalism somewhere, but I feel they simply represent "golden rules" of litigation. Our profession's image could use a boost. I submit that we can litigate tenaciously while still maintaining our professionalism. Hopefully you share these views.

Very truly yours,

Mark G. Honeywell

MGH:jk



Washington State Bar Association Creed of Professionalism

As a proud member of the legal profession practicing in the state of Washington, I endorse the following principles of civil professional conduct, intended to inspire and guide lawyers in the practice of law:

- In my dealings with lawyers, parties, witnesses, members of the bench, and court staff, I will be civil and courteous and guided by fundamental tenets of integrity and fairness.
- My word is my bond in my dealings with the court, with fellow counsel and with others.
- I will endeavor to resolve differences through cooperation and negotiation, giving due consideration to alternative dispute resolution.
- I will honor appointments, commitments and case schedules, and be timely in all my communications.
- I will design the timing, manner of service, and scheduling of hearings only for proper purposes, and never for the objective of oppressing or inconveniencing my opponent.
- I will conduct myself professionally during depositions, negotiations and any other interaction with opposing counsel as if I were in the presence of a judge.
- I will be forthright and honest in my dealings with the court, opposing counsel and others.
- I will be respectful of the court, the legal profession and the litigation process in my attire and in my demeanor.
- As an officer of the court, as an advocate and as a lawyer, I will uphold the honor and dignity of the court and of the profession of law. I will strive always to instill and encourage a respectful attitude toward the courts, the litigation process and the legal profession.

This creed is a statement of professional aspiration adopted by the Washington State Bar Association Board of Governors on July 27, 2001, and does not supplant or modify the Washington Rules of Professional Conduct.

OATH OF ATTORNEY

State: _____

County: _____

I, _____ do solemnly declare:
Please Print Full Name

1. I am fully subject to the laws of the State of Washington and the laws of the United States and will abide by the same.
2. I will support the constitution of the State of Washington and the constitution of the United States.
3. I will abide by the Rules of Professional Conduct approved by the Supreme Court of the State of Washington.
4. I will maintain the respect due to the courts of justice and judicial officers.
5. I will not counsel, or maintain any suit, or proceeding, which shall appear to me to be unjust or any defense except as I believe to be honestly debatable under the law, unless it is in defense of a person charged with a public offense. I will employ for the purpose of maintaining the causes confided to me only those means consistent with truth and honor. I will never seek to mislead the judge or jury by any artifice or false statement.
6. I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with the business of my client unless this compensation is from or with the knowledge and approval of the client or with the approval of the court.
7. I will abstain from all offensive personalities, and advance no fact prejudicial to the honor or reputation of a party or witness unless required by the justice of the cause with which I am charged.
8. I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay unjustly the cause of any person.

(Signature of Applicant)

(Applicant ID #)

Subscribed and sworn to before me this _____ day of _____ 20 ____.

(Signature of Judge)

(Print Name of Judge)

Fundamental Principles Of Professional Conduct¹

The continued existence of a free and democratic society depends upon recognition of the concept that justice is based upon the rule of law grounded in respect for the dignity of the individual and the capacity through reason for enlightened self-government. Law so grounded makes justice possible, for only through such law does the dignity of the individual attain respect and protection. Without it, individual rights become subject to unrestrained power, respect for law is destroyed, and rational self-government is impossible.

Lawyers, as guardians of the law, play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship with and function in our legal system. A consequent obligation of lawyers is to maintain the highest standards of ethical conduct.

In fulfilling professional responsibilities, a lawyer necessarily assumes various roles that require the performance of many difficult tasks. Not every situation which a lawyer may encounter can be foreseen, but fundamental ethical principles are always present as guidelines. Within the framework of these principles, a lawyer must with courage and foresight be able and ready to shape the body of the law to the ever-changing relationships of society.

The Rules of Professional Conduct point the way to the aspiring lawyer and provide standards by which to judge the transgressor. Each lawyer must find within his or her own conscience the touchstone against which to test the extent to which his or her actions should rise above minimum standards. But in the last analysis it is the desire for the respect and confidence of the members of the legal profession and the society which the lawyer serves that should provide to a lawyer the incentive for the highest possible degree of ethical conduct. The possible loss of that respect and confidence is the ultimate sanction. So long as its practitioners are guided by these principles, the law will continue to be a noble profession. This is its greatness and its strength, which permit of no compromise.

[Amended effective September 1, 2006.]

¹ These Fundamental Principles of the Rules of Professional Conduct are taken from the former Preamble to the Rules of Professional Conduct as approved and adopted by the Supreme Court in 1985. Washington lawyers and judges have looked to the 1985 Preamble as a statement of our overarching aspiration to faithfully serve the best interests of the public, the legal system, and the efficient administration of justice. The former Preamble is preserved here to inspire lawyers to strive for the highest possible degree of

ethical conduct, and these Fundamental Principles should inform many of our decisions as lawyers. The Fundamental Principles do not, however, alter any of the obligations expressly set forth in the Rules of Professional Conduct, nor are they intended to affect in any way the manner in which the Rules are to be interpreted or applied.

mywsba



Discipline Notice - [REDACTED]

WSBA Bar#:	6346	Member Name:	[REDACTED]
Action:	Suspension	Effective Date:	07/26/2006
RPC:	4.4 - Respect for Rights of Third Person 8.4 (b) - Criminal Act 8.4 (d) - Conduct Prejudicial to the Administration of Justice 8.4 (k) - Violate Oath of Attorney		
Discipline Notice:	<p>[REDACTED] (WSBA No. [REDACTED], admitted 1975) of Seattle, was suspended for 60 days, effective July 26, 2006, by order of the Washington State Supreme Court, following a hearing. This discipline was based on his conduct in 2002 involving use of means that had no substantial purpose other than to embarrass or burden a third person, commission of the crime of fourth-degree assault, conduct prejudicial to the administration of justice, and violation of the oath of attorney.</p> <p>In October 2002, Mr. [REDACTED] was attending a deposition on behalf of the plaintiff in a wrongful-termination action. Prior to the deposition, there had been an atmosphere of disagreement between Mr. [REDACTED] and the lawyer representing the defendant. The deposition had been ordered following a motion to compel, opposed by Mr. [REDACTED]. At the commencement of the deposition and in its early stages, Mr. [REDACTED] appeared irritated and angry. At times during the deposition, the witness sobbed and cried. As the deposition progressed, Mr. [REDACTED] became more hostile and angry, raising his voice. Just over halfway through the deposition, Mr. [REDACTED] began to criticize the defendant's lawyer and call her names in an unprofessional manner. Mr. [REDACTED] characterized the defendant's lawyer as "a disgrace" and "a total ass." When the defendant's lawyer advised Mr. [REDACTED] to start acting like a civilized person, Mr. [REDACTED] told her that she did not deserve civilized treatment.</p> <p>After the deposition was concluded, Mr. [REDACTED] confronted the defendant's lawyer in the deposition conference room. Mr. [REDACTED] approached the defendant's lawyer in a hostile manner and raised his voice. He came within six to eight inches of her face and body and yelled unprofessional remarks, frightening both her and the court reporter. As Mr. [REDACTED] continued to push towards her, the defendant's lawyer placed her left hand on the front of Mr. [REDACTED] right shoulder area, thereby attempting to restrain Mr. [REDACTED] motion toward her as she was being backed up against the conference room table. She asked Mr. [REDACTED] several times to "leave" or "just to leave." Mr. [REDACTED] persisted, continuing his unprofessional verbal comments to her. Once or twice, Mr. [REDACTED] told the defendant's lawyer to remove her hand from him. When she failed to do so, Mr. [REDACTED] struck her on the left side of her face with his palm. Mr. [REDACTED] then turned and departed.</p> <p>Mr. [REDACTED] was subsequently arrested and charged with fourth-degree assault. The criminal matter was resolved pursuant to an agreement to continue the case for dismissal. In the wrongful-termination action, the superior court judge removed Mr. [REDACTED] as legal counsel and held Mr. [REDACTED] personally responsible for attorney's fees and costs incurred in connection with the motion. Following the incident, the defendant's lawyer experienced swelling, redness, bruising, and pain to the left side of her face. The day after the incident, the defendant's lawyer went to see a physician and was sent to a radiologist for a CT scan, incurring medical expenses of \$1,277.54.</p> <p>Mr. [REDACTED] conduct violated RPC 4.4, prohibiting a lawyer, in representing a client, from using means that have no substantial purpose other than to embarrass, delay, or burden a third person; RPC 8.4(b), prohibiting a lawyer from committing a criminal act (in this case, assault) that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; RPC 8.4 (d), prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice; and RPC 8.4(k), prohibiting a lawyer from violating his or her oath as an attorney.</p> <p>Debra J. Slater represented the Bar Association. James E. Lobsenz represented Mr. [REDACTED]. Julian C. Dewell was the hearing officer.</p>		

The discipline search function may or may not reveal all disciplinary action relating to a lawyer. The discipline information accessed is a summary and not the official decision in the case. For more complete information, call 206-727-8207 and press 7.

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Lawyer Volunteers

Preserving Our Democracy and Enhancing Our Profession

Ours is a democracy based on the rule of law, not the whim of man. The cornerstone of such a system requires that the judiciary be fair and impartial and free from undue influence by the other branches of government — and a fair and impartial judiciary relies on an independent legal profession free of similar pressures from outside influences in order to preserve its independence. Among many functions, lawyers are called upon to dispute governmental actions, challenge the validity of statutes and regulations, defend persons that the state charges with crimes, and, in general, to guard against the over-reaching and under-reaching of the government vis-à-vis the individual. As such, lawyers have been given two important things: regulation independent of the legislative and executive branches and an attorney-client privilege that protects the individual's right to be represented by counsel.

In the United States, as in similar democratic systems around the world, lawyers are self-regulated, or regulated through the judicial branch, in order to safeguard this system based on the rule of law. As a part of self-regulation, the profession sets and enforces its own standards of conduct and is responsible for enforcing those standards governing, for example, admission to practice and discipline of lawyers who violate rules of ethics. One of the hallmarks of this regulatory system is that volunteers are deeply involved in the work of the profession. Volunteers for the WSBA contribute thousands of hours each year and at any given time there

are upwards of 1,100 volunteers involved with the work of the bar.

Many of us have served on boards and performed other voluntary work in our communities, but mostly these volunteer roles find us in an advisory capacity. By comparison, the volunteers for the WSBA serve many different functions: some advisory, but many that are actually performing the work of the Association.

Whether it is those helping with the regulatory work we are required to do as a mandatory bar — like serving as hearing officers for lawyer discipline or sitting on one of our regulatory boards, such as the Disciplinary Board, Character and Fitness Board, or Board of Bar Examiners — or those who give their time and expertise toward our numerous committees working to better our profession and community, such as the Legislative Committee, the Court Rules and Procedures Committee, the Pro Bono and Legal Aid Committee, or the various entities we have working to ensure access to our justice system and the diversity of our profes-

In common law jurisdictions around the world, lawyers are losing self-regulation as regulation is taken over by non-lawyers and moved into, or substantially controlled by, other branches of the government.


sion — every minute and hour of volunteer time strengthens our profession.

Society has placed its trust in us to be self-regulated and this privilege cannot be taken for granted. In common law jurisdictions around the world, lawyers are losing self-regulation as regulation is taken over by non-lawyers and moved into, or substantially controlled by, other branches of the government. This erosion has occurred in the United Kingdom and Australia, and Ireland is currently battling an attempt to move regulation of the practice into the executive branch.

The fear in these jurisdictions is that once the profession loses its independence, the next safeguard to the rule of law to fall will be the independence of the judiciary. The significance of the delegation by the government and society to our profession to protect the public interest cannot be overstated. As the only profession whose members are responsible for a whole branch of government

As a part of self-regulation, the profession sets and enforces its own standards of conduct and is responsible for enforcing those standards . . . One of the hallmarks of this regulatory system is that volunteers are deeply involved in the work of the profession.

in the United States, this delegation of responsibility to our profession should be highlighted and always in the forefront of our professional consciousness.

The volunteers who give tirelessly of their time and expertise to the WSBA remind me that, at the core of our profession, is an ethic to give back. Lawyers give to their families, their communities, and they give significantly to this profession to ensure it remains a stable cornerstone of our democracy. Volunteers have made the WSBA what it is today. So to our past and present volunteers, thank you. And to all WSBA members, please consider the many opportunities to participate in our work. Your contribution of time, knowledge, and experience are an invaluable addition to the long tradition of professional self-regulation among lawyers and judges in Washington state. 

Paula Littlewood is the WSBA executive director and can be reached at paulal@wsba.org.

CORRECTION: In the February 2012 Executive's Report, WSBA license fees were compared to those of other professions. Two of the fees were stated incorrectly as annual fees — the fee for physicians and surgeons is for every two years. The amount listed for auto dealers is an initial fee.



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WSBA Lawyers Assistance Program

Washington State Bar Association



Taking the High Road



**WSBA President
Steven G. Toole**

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I am able to focus better on the truly important issues in my cases and not get sidetracked or upset over opposing counsel's antics.

Generally in my experience, if you don't take the bait, your opponent gets frustrated and gives up on the sharp tactics.

”

In my 35-year career as a lawyer, I have rarely encountered an attorney who, in my opinion, has acted unprofessionally. Yes, some have come close and a few have crossed the line. Others have started out, how shall we say, a bit “sharp,” but after maintaining my politeness and consistently giving them the benefit of the doubt, they have come around. I have found that if treated unconditionally professionally by me, they ultimately, albeit at times reluctantly, take the same road. Now, I don't mean to suggest that we are all perfect, myself included. We all have our bad days when we lose our patience way too easily and we temporarily forget about civility when dealing with another attorney who just manages to push our buttons the wrong

way. But for me, these days are fortunately few and far between, both in myself and the other attorneys with whom I interact.

Some of you might argue that I am letting these attorneys take advantage of me and my clients. I would say that I am a cup half-full type of guy and I just see it differently. I take great pride in being able to bring out the best in people. As long as I am prepared, know my case very well, and am fully able and willing to take my case to trial, my being professional does not cost me or my clients anything — in fact, it pays off. By not getting caught up in what a judge might see as petty bickering over discovery, I am able to focus better on the truly important issues in my cases and not get sidetracked or upset over opposing counsel's antics. Generally in my experience, if you don't take the bait, your opponent gets frustrated and gives up on the sharp tactics. Now by acting professionally, I am not suggesting that you assume you can take everyone at their word and not confirm things in writing. I confirm everything in writing, if for no other reason than to remind me of some-

thing to which I agreed.

Although I have not personally experienced a pattern of unprofessional behavior among attorneys, based on anecdotes from a significant number of other attorneys, lack of professionalism is very much a growing problem in the legal profession. It apparently is so prevalent that we cannot ignore these numerous and repeated complaints. Indeed, this entire issue of the *Bar News* is devoted to professionalism.

So, what is the problem? Are some of us just born to be unprofessional? Did we learn this behavior in college? In law school? I'll bet there was no one who, during professional responsibility courses in law school, said, "This is all a bunch of rubbish and once I start practicing law I intend to do whatever it takes to come out on top and to take advantage of other attorneys along the way." After passing the bar and standing up at our swearing-in ceremony taking the attorney oath, none of us was thinking that this is all nonsense. We were incredibly excited about the career we were now finally about to undertake and had every intention of being professional in everything we did.

If we aren't born with a tendency to be unprofessional and we don't learn this behavior in school, where does it come from? Is it the result of bad mentors or lack of any mentorship? This certainly could be a factor, but there must be more than this. After all, where, when, and how did the "bad mentor" lose his or her sense of professionalism? It had to start somewhere. Can we put the blame on pressure placed on us by our clients, particularly those who would be considered sophisticated and are accustomed to telling the lawyer what to do as opposed to looking for counseling and advice from the lawyer? I do believe this can be a factor. But we need to ask ourselves why. We are the educated and trained professionals. We are the ones subject to the Rules of Professional Conduct. We are accountable for our own actions and reactions. Can we explain and justify unprofessional behavior by blaming the clients? In my opinion, to do so does not speak well for the attorney.

When I reflect on what can go wrong with attorneys and, for that matter, with life, it starts and ends with our fears — the more fear we have, the more stress we experience. Fear of failure leads to stress, fear of success leads to stress, fear of looking foolish leads to stress, fear of not satisfying our client leads to stress, fear of losing the client's business leads

If we aren't born with a tendency to be unprofessional and we don't learn this behavior in school, where does it come from? Is it the result of bad mentors or lack of any mentorship? This certainly could be a factor, but there must be more than this. After all, where, when, and how did the "bad mentor" lose his or her sense of professionalism? It had to start somewhere.

to stress, and so on. While stress can be a good thing if it gets our adrenaline going and we are thereby motivated to succeed or even excel, I think that more typically, stress brings out the worst in us. Financial stress, concern about losing clients, etc. can cause many of us to lose sight of the "high road." When we are struggling for survival or we perceive we are struggling for survival, we look for every advantage we can get. If that means playing on the edges of professionalism, then so be it. After all, it is not our job to look out for opposing counsel or his or her client. We have our client to best represent. Although I don't agree with this attitude, I can certainly see how some might resort to this when under stress or pressure to succeed. Self-survival is inherent in all of us.

So, what can we do about this? Is it enough to recognize and acknowledge why we might act unprofessionally, but do nothing about it? I would say absolutely, NO! *However, being aware of the problem is the beginning to finding the solution.* Focus on your own behavior. We all know what professional behavior is. *If you catch yourself being less than professional, if you catch yourself being short or sharp with opposing counsel or with your client or witnesses, acknowledge it. Take a step back and ask yourself what's going on. Remind yourself of the attorney oath and why you*

went to law school and wanted to become a lawyer. Remind yourself of how you were when you started practicing law and ask yourself what you are doing. Ask yourself what pressures or stresses you are feeling at that moment. And ask yourself if there is another way, a professional way, with which you can achieve the same result and still best represent your client.

If you are acting in response to what you perceive is unprofessional conduct of opposing counsel, ask yourself if taking the same approach is going to work for you and your client. What would happen if you turned the proverbial cheek? If opposing counsel is acting poorly in a deposition, instead of fighting fire with fire, make a record and show on that record the unprofessional behavior of opposing counsel. Don't take the attacks personally. For future depositions, consider having them videotaped so that your opposing counsel's antics will be visual and verbal records for the judge or jury to see if appropriate.

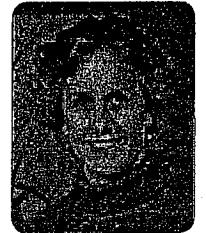
Keeping your cool and retaining a professional demeanor has multiple beneficial effects. By maintaining your professionalism, you can unnerve opposing counsel. In the long run, it will enhance your reputation. It might even improve your ability to interact with your opposing counsel. You will feel good about yourself. You will become a better attorney for learning how to effectively deal with the unprofessional opposing counsel. Developing these skills may take some time and effort, but it will be worth it in the long run.

But what if you just can't help yourself and you respond in kind? I would say, don't beat yourself up. Learn from the experience. Go to friends and colleagues, describe the fact pattern, and ask them how they would have handled the situation. Be better prepared the next time you encounter this type of behavior. Stay on the high road.

If every member of the WSBA would focus on being accountable for his or her own behavior, we would be well on our way to improving the professionalism of the Bar as a whole. Anecdotal stories about unprofessional attorneys will not go away, but there will be more and more people who will be able to report that in their practices they rarely run into unprofessional conduct by attorneys. This will be refreshing! ☺

WSBA President Steven G. Toole can be reached at steve-wsba@sgtoolelaw.com or 425-455-1570.

Day One in Law School *Is Day One in the Profession*



WSBA Executive Director
Paula Littlewood

“

When I speak to law students during 1L orientation, I tell them: 'Look to your left, look to your right — don't worry, you'll all still be here — but these are your future colleagues, our future judges, and the future leaders of the bar.'

”

For too long, entrance into the profession has been divided into three seemingly separate stages: law school, the bar exam, and then one becomes a member of the profession. In Washington over the last several years, the academy and the bar have been working to break down these barriers so that in Washington, law students understand that “Day one in law school is day one in the profession.”

When I speak to law students during 1L orientation, I tell them: “Look to your left, look to your right — don't worry, you'll all still be here — but these are your future colleagues, our future judges, and the future leaders of the bar.”

I then emphasize that the reputations they will build in the profession begin now. Few of us would question this premise: think back to law school and that one classmate who you still remember — the one who often made intemperate comments or generally didn't have a positive reputation. Imagine walking into a courtroom and seeing that classmate on the bench or finding yourself across the table from him or her representing a client. Despite any changes that might have occurred since law school, your first thoughts will be informed by your memories from law school.

In an effort to ensure students get off on a strong footing in the profession, our efforts to create this culture of professionalism in law school operate on many fronts. Starting with orientation, entering 1Ls learn about the social contract we have with society to be the only peer-regulated profession in the United States — and the only profession responsible for an entire branch of government. The responsibility is awesome, and we must honor the trust society

has placed in us if we are to retain this privilege. We honor each other, to honor the profession.

In the fall, the WSBA president, the Young Lawyers Division (WYLD) president, the staff liaison to the WYLD, and I go out to our state's three law schools to talk with students about getting involved with the WSBA and their profession. There are numerous opportunities for them to get involved, whether through the WYLD, our 27 practice sections, or various other avenues. We stress that regardless of what they do when they leave law school, they will always be members of the profession and their reputations will bear upon the profession.


Perhaps the most systematic way in which we reach law students is through the WSBA Professionalism Outreach Initiative. Through this program, two members from the WSBA Professionalism Committee and one staff member visit each professional responsibility class at each Washington law school every year. The goal of these presentations is to stress that the Rules of Professional Conduct are the floor for our profession's expectations of conduct and that we should all strive to go beyond these minimums. The class

session is a combination of emphasizing again the concept of being a member of a profession that has a delegated responsibility to protect the public, as well as giving the students practical tips on building and maintaining a strong reputation in the legal community.

The roots of the legal profession are deliberate and profound. Our role in society developed out of a need to protect the individual from the over-reaching and under-reaching of the government. This responsibility requires two important things: the ability to regulate ourselves independent of the legislature and executive, and a lawyer-client privilege that is nearly inviolate. Lawyers also hold a unique position in society, since people turn to us during what are often the most stressful times of their lives. We are also the guardians of the cornerstone of democratic societies: the rule of law.

I have worried over the years that we are a profession that has lost, or is at least losing, our ethos around being a profession. Many older lawyers point to the U.S. Supreme Court decision in 1977¹ as the turning point for when the profession began to operate more as a business than

a profession. *Bates v. The State Bar of Arizona* was significant because the Supreme Court ruling led to lawyers being able to advertise for their services. The effects of this case on the profession are hard to determine, and my concern over the direction taken by the profession is perhaps unfounded. It is my hope, however, that as we enter law school and eventually receive our bar cards that we remind ourselves of the higher standard we hold ourselves to as a self-regulated profession.

We must understand this privilege, we must honor this privilege, and we must never lose sight of the critical role that lawyers play in our democratic society. I am hopeful that as we orient law students to these concepts, we will enhance the roots of our profession and, as a result, this appreciation of our personal responsibilities and responsibility to society will permeate our culture. 

Paula Littlewood is the WSBA executive director and can be reached at paula@wsba.org.

NOTE

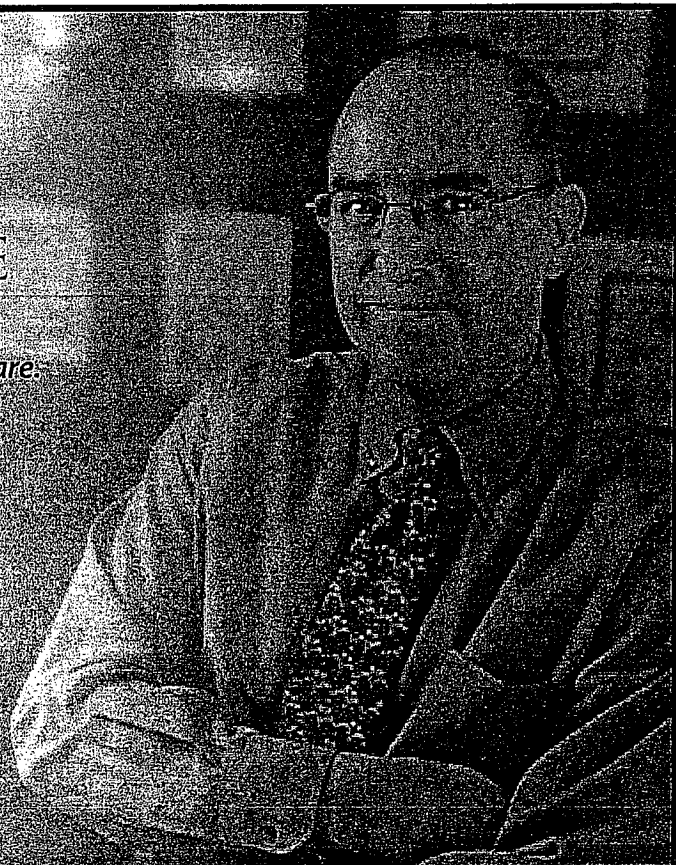
1. 433 U.S. 350 (1977).

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- ❖ Litigator and counselor for clients from all walks of life including workers, executives, and professional athletes.



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Professionalism: One Lawyer's View

BY SIMS WEYMULLER

“
We have been granted the public trust; the public deserves service in return. Professionalism includes an understanding of that privilege and an embracing of the duty to serve.
”

I'm no angel. I am passionate, opinionated, and stubborn. My practice is not perfect, though I strive for it to be. I work to give back, but there is still more to give. I begin here because discussing professionalism without sounding imperious, if not downright patronizing, is difficult. The subject equally evokes applause and rebukes, and rightfully so. Important discussions do that. As the current chair of the WSBA Professionalism Committee,¹ former chair of the Lawyers' Fund for Client Protection Board,² and a professional negligence trial

lawyer, I have gleaned a few lessons about the importance of professionalism. The Professionalism Committee focuses on

proactive steps to improve our profession, while the Lawyers' Fund focuses on reactive recompense when professionalism has failed. I have found sincere benefit from the collective wisdom, and mistakes, of my colleagues (not to mention my own mistakes along the way).

The members of the Professionalism Committee have worked hard with the WSBA and *Bar News* staff to bring you this issue. I

thank the members, staff, and contributing authors for their dedication to professionalism and their generosity in sharing their time and insights.

While professionalism is often mistaken for civility alone,



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the latter is a subset of the former. The broad, if not nebulous, term "professionalism" reaches further to include all elements of our practice. In working and reworking our message, the Professionalism Committee has reduced the core concepts of professionalism to competence, civility, and community.

Competence

If we do nothing else, let us effectively represent our clients. The bench and bar are the sole conduit between the public and the court system. As self-governed members of the legal profession, lawyers have been given by the body politic a monopoly on justice. This tremendous grant of the public trust is a privilege to which serious duties adhere. Competence is chief among these duties. We must, above all else, effectively advance the goals of our clients within the bounds of the system.

Meeting this challenge often means we need to fight for our clients. We can learn from professional fighters. Boxers do not win with their arms, they win with core strength. A boxer needs a firm base to generate power for a strong blow. A lawyer needs a similar base from which to serve her clients. Building the base begins with preparation. The professional lawyer is the prepared lawyer. We can never fully anticipate what will happen in each transaction, deposition, negotiation, or argument, but those who work with steady intensity in preparation for the event are usually those who serve their client best. Consider these quotes:

The fight is won or lost far away from witnesses — behind the lines, in the gym, and out there on the road, long before I dance under those lights.

MUHAMMAD ALI, BOXING GREAT

Preparation is the be-all of good trial work. Everything else — felicity of expression, improvisational brilliance — is a satellite around the sun. Thorough preparation is that sun.

LOUIS NIZER, TRIAL LAWYER

But before a lawyer can begin case preparation, the law practice must be in order. Lacking in glamour, organization gets short shrift. Organization, though, can keep you from calling your liability carrier.³ The professional lawyer runs a tight ship. Deadly deadlines — statutes of limitation,

The professional lawyer makes time for herself and those important to her.

Perfect facts and good law are wasted in the hands of the practitioner without the physical and mental health to effectively see the client through trial.

SEC filings, first appearances, notice provisions, etc. — are the bugaboo of any practice, small or large, and they should be managed with the utmost care and attention, lest your client find a new defendant. A trustworthy calendaring system is important, but the human element is more so. Any number of date reminders will fail to rescue the lawyer who inputs the wrong year.⁴

While law schools are not business schools, the practice of law is often a business and should be run that way. Most lawyers joined the profession for a larger calling, but also to make a decent living. Feeding one's family is a laudable goal, if not one instilled by evolutionary biology, and should not be disparaged. Moreover, a bankrupt lawyer serves her clients poorly. A practice managed with little fiscal discipline invariably leads to greater problems. Desperation begets dishonesty. The quarterly Lawyers' Fund for Client Protection docket is littered with the names of lawyers who, in lean times, borrowed from Peter to pay Paul and ended up stealing from both.

The client and practice alone cannot appropriate all focus. Again like the boxer, a lawyer's stability requires balance. The professional lawyer makes time for herself and those important to her. Perfect facts and good law are wasted in the hands of the practitioner without the physical and mental health to effectively see the client through trial. The eternal flame is not a candle burning at both ends.

Add fuel to a double-lit candle and a greater conflagration may result. Substance abuse is a common problem in our ranks, more common than the national average.⁵ Drugs and alcohol play a leading role in Lawyers' Fund parables as well. If you have a problem, or think you might, find the cour-

age to seek help. Though most lawyers spend entire careers helping clients with their deepest troubles, it is the rare and admirable lawyer who can face his own demons and conquer them before it is too late.⁶

Civility

Though one can feel anonymous among 35,000 other lawyers, we are not. Our state's legal community is not small, but the subsections make it so. Organization into practice areas, associations, and other demographics circumscribes our relative legal communities into groups of hundreds instead of thousands. In these small groups, reputation is essential. The WSBA Professionalism Committee impresses upon law students that their careers began the first day of orientation. Reputations of quality, diligence, and honesty are being made now. So, too, are the opposite. Lawyers are a skeptical bunch; we pay attention and do not soon forget. Accordingly, we gain credibility in drops, but can lose it in buckets.

What, then, of civility? Other articles in this edition will discuss civility in depth from a variety of perspectives. The term, like the issue it represents, is fickle. Civility resists definition and begets "Miss Manners" quips and the like. It is easier to say what it is not; civility is not a mandate to be a door mat, to offer niceties at the expense of advocacy. It is not a rigid code of conduct with objective measurables.⁷ The reality is that only the practitioner can be the true judge of her civility. Only one person is in every room you enter, every time. That person must be the judge. My favorite rule (as offered by a member of the Professionalism Committee who practices in Washington and in Canada) is this: "Always act as if the Queen is in the room." Wouldn't we all avoid heaps of petty bickering if that were so? Remember that notion in all interactions, not just with the court and staff, not just when in a deposition with the court reporter transcribing, but all exchanges with counsel and client, on the record or not. The word "courteous," after all, was derived from "courtly" elegance. A touch of humility, grace, and perhaps humor, can take you a long way.

There are those who would argue that, in the pursuit of the clients' interests, we must sacrifice civility for the sake of competence. Our clients' interests come first and, in the rough-and-tumble world of litigation, civility must take second. Meet fire with fire, they say. If one gains a material advantage by being uncivil, is it not the lawyer's obligation as an advocate to do so?

This is a false choice. I have engaged

deeply with the civility supporters and cynics and inquired on the issue. I have asked for an example, a fact pattern, where an act of civility has harmed the interests of a client or where incivility was necessary to protect a client. No reply ever came. On this point, the Washington Oath of Attorney has this to say:

I will abstain from all offensive personalities, and advance no fact prejudicial to the honor or reputation of a party or witness unless required by the justice of the cause with which I am charged.⁸

The oath contemplates the rare occasion when attacking the honor of a party is essential and, even then, nothing is said to condone personally attacking opposing counsel. Such situations — where incivility is required to advance the client's interest — must surely exist, but they are just as surely exceptional. In the wide swath of daily interactions that transpire between these rare occurrences, let our actions be civil.

Community and a Culture of Service

When the Professionalism Committee speaks to the law schools, WSBA Executive Director Paula Littlewood reminds students that, once they have their license, they are lawyers 24 hours a day, seven days a week. A lawyer is an officer of the court, all day and every day. Public opinion polls notwithstanding,⁹ individual citizens often view individual lawyers in their life with some degree of respect, if not reverence. Whether we like it or not, lawyers are leaders.¹⁰ We, as lawyers, should grasp this opportunity to engage with our communities — both business and personal — to lead and give back. We have been granted the public trust; the public deserves service in return. Professionalism includes an understanding of that privilege and an embracing of the duty to serve.

The WSBA website is loaded with pro bono opportunities just waiting for lawyers to volunteer. Providing free or low-cost legal services can open the doors of the courthouse to citizens who would otherwise be shut out. Our service should not stop there. As the only profession that controls an entire branch of government, we are the keepers of the justice system. As the lawyers and judges who practice in that system every day, we must argue and agitate for its protection. Generally, that means money. Court funding in this economic climate is as difficult

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as ever, but it is our duty to fight for those funds. So, too, should we fund civil legal aid to low-income citizens of our state. New lawyers swear never to reject "the cause of the defenseless or oppressed." Those causes are funded by legal aid; legal aid is in large measure funded by lawyers.

Diversity, too, is an essential element of professionalism. Our primary function is to effectively advocate for all clients, not just some. Our clients are as diverse as the public, yet our ranks are not. The medical field has a similar public mission, and a recent report from the Institute of Medicine found that "evidence demonstrates that greater diversity among health professionals is associ-

ated with improved access to care for racial and ethnic patients, greater patient choice and satisfaction, and better patient-provider communication."¹¹ Racial and ethnic minority providers have been found to be more likely than non-minorities to serve minority populations, thereby improving access to healthcare.¹² Moreover, diversity within a profession brings with it improvements in "cultural competency," allowing professionals the capacity to better serve patients of differing backgrounds.¹³

There is little reason to think that our profession is any different. Diversity of ethnicity, culture, race, gender, religion, sexual orientation, and physical ability

among members of the bar improves the likelihood that the bar will serve diverse populations and fosters a broader understanding of the issues facing those communities. A diverse bar, and wide exposure to members of the bar to diverse backgrounds and perspectives, can aid a critical element of our service: empathy. Some scholars argue that empathy is a core skill — on par with logical reasoning — when it comes to the service of our clients.¹⁴ While we can argue whether members of the bench should empathize with the parties before them, I suspect few would argue that lawyers, as advocates and counselors, should not empathize with their clients. Our differences — language barriers, customs, beliefs, dress — can hinder our communication with clients at best, and excise our ability to empathize at worst. Cultural competence of the bar is critical for us to meet our goals of service. If we care about effectively representing our clients, and serving the public who has entrusted us with the administration of justice, then it is our shared professional responsibility to promote and embrace diversity within our profession.

In sum, I see professionalism as a series of objectives toward which we should collectively stride. We will each view the goal through our own prism, with differing definitions and priorities, but we should at the very least be mindful of these issues as we shape our practice and our profession. As our first American President wrote in the 110th rule of his 110 rules of civility:

*Labor to keep alive in your breast that little spark of celestial fire called conscience.*¹⁵

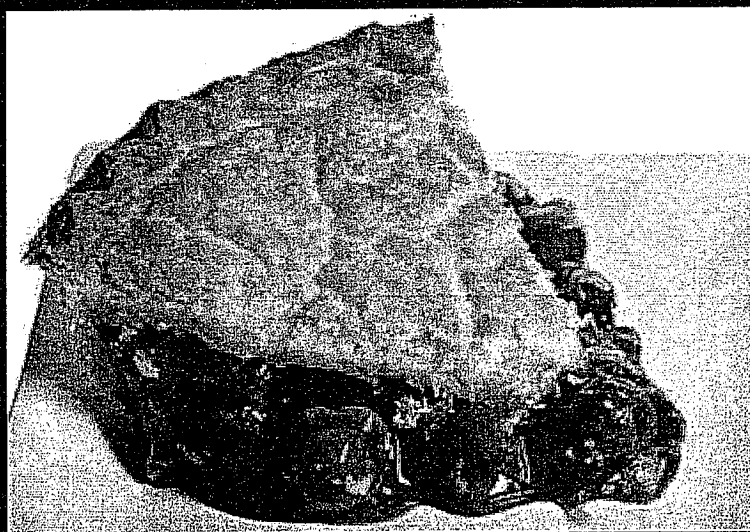
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Sims Weymuller is a member of the Seattle law firm Johnson-Flora, PLLC. His practice areas include legal malpractice, medical malpractice, and personal injury claims.

Sims currently chairs the WSBA Professionalism Committee and is a former chair of the WSBA Lawyers' Fund for Client Protection Committee.

NOTES

1. The WSBA Professionalism Committee "recommends programs to increase professionalism by

- assisting attorneys in fostering better client relations, improving civility among practicing attorneys, and developing a better public image." For more information, visit www.wsba.org. From the Legal Community tab, select Committees, Boards, and Other Groups; then Professionalism Committee.
2. The Lawyers' Fund celebrated its 50th anniversary of client protection last year. Since a fund was established in 1960, Washington lawyers have compensated the victims of the few dishonest lawyers who misappropriate or fail to account for client funds or property in an amount totaling more than \$5.3 million. See, *WSBA Lawyers' Fund for Client Protection, Annual Report, 2010*, available at www.wsba.org. From the Legal Community tab, select Committees, Boards, and Other Groups; then Lawyers' Fund for Client Protection Board where you will find a link to the report.
 3. See "Malpractice Prevention, The Top Ten Malpractice Traps and How to Avoid Them," *ABA Desk Guide on Legal Malpractice*, available at <http://apps.americanbar.org/legalservices/lpl/downloads/ten.pdf>.
 4. The WSBA Law Office Management Assistance Program is a terrific resource for low-cost and confidential assistance with law office administration. From the Resources and Services tab at www.wsba.org, select Law Office Management Assistance Program.
 5. Benjamin, Darling, and Sales, "The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse Among United States Lawyers," *13 International Journal of Law and Psychiatry*, 233-246 (1990).
 6. The WSBA Lawyers Assistance Program (LAP) provides education, referrals, and direct confidential mental health and addiction counseling. The Resources and Services tab at wsba.org has a link more information about LAP.
 7. Objective criteria may be inappropriate, but systematic subjective criteria can help. Some members of the medical profession engage in a "360 review" of young physicians in which all who surround the individual in question (patients, nurses, techs, other doctors, secretaries, etc.) are interviewed to grade the physician.
 8. *WSBA Oath of Attorney, No. 7*, available at www.wsba.org.
 9. When the Gallup Poll asked, "Please tell me how you would rate the honesty and ethical standards of people in these different fields: very high, high, average, low, or very low?" 17 percent of respondents answered very high/high for lawyers. January 7-9, 2010, Gallup Poll, available at www.pollingreport.com/values.htm.
 10. Heineman, Ben W. Jr., "Lawyers as Leaders," *116 Yale L.J. Pocket Part 266* (2007), available at <http://thepocketpart.org/2007/2/16/heineman.html>.
 11. Chisholm, Marie A., "PharmD, Diversity: A Miss-

ing Link to Professionalism," *American Journal of Pharmaceutical Education* (2004); 68 (5) Article 120, at 1.

12. *Id.*
13. Cultural and linguistic competence is "a set of congruent behaviors, attitudes, and policies that come together in a system, agency, or among professionals that enables effective work in cross-cultural situations. 'Culture' refers to integrated patterns of human behavior that include the language, thoughts, communications, actions, customs, beliefs, values, and institutions of racial, ethnic, religious, or social groups. 'Competence' implies having the capacity to function effectively as an individual and an organization within the context of the cultural beliefs, behaviors, and needs presented by consumers and their communities." As defined by U.S. Department of Health and Human Services; available at <http://minorityhealth.hhs.gov>, under the "Cultural Competency" tab (Adapted from Cross, 1989).
14. Gallacher, Ian, "Thinking Like Non-Lawyers: Why Empathy Is a Core Lawyering Skill and Why Legal Education Should Change to Reflect Its Importance" (2010). *College of Law Faculty Scholarship Paper 6*, n. 2.
15. *Rules of Civility: The 110 Precepts That Guided Our First President in War and Peace*, Brookhiser, Richard, editor (2003). The rules were derived by Washington, at the age of 16, from a set of rules by French Jesuits.

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Fresh Perspectives

Professionalism for New Attorneys

WITH LINDA JENKINS AND CARLY SUMMERS

“
... beginning lawyers are encouraged to join WSBA sections and other organizations to develop relationships outside the firm. Volunteering is another way to meet people and have a life outside of the legal community ...

”



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For new attorneys just beginning to develop their practice, professionalism and ethical issues can present themselves almost immediately — whether through interactions with opposing counsel, appearance and filings in court, or in their private lives. Linda Jenkins, an associate with Tuohy Minor Kruse PLLC in Everett, and Carly Summers, an associate

with Davis Wright Tremaine LLP in Seattle, discuss some of the issues that arise for new lawyers in both a small- and large-firm setting.

The New Lawyer's Role

CARLY: Professionalism in the legal industry is a timely topic, and new attorneys face distinct challenges. As a new attorney in a large firm, I am acutely conscious that while I am learning to practice, I also represent a well-respected firm.

A partner told me that during his first few years at our

firm, he kept expecting the managing partner to knock on his door, tell him they had made a mistake, and ask him to pack up his things. He called that period "the faking-it years" and said that if he had just asked for help and feedback, he would have realized he was doing great. Another experienced litigator advised me that skill-building is like home-building — your tenth house will look better than your first. Although I am not yet equipped to handle everything, I am lucky to be learning from incredible attorneys at a firm that gives new associates appropriate responsibilities according to our clients' high expectations.

LINDA: Yes, the early years are about accepting the hard truth that we are learning. As an attorney in a small firm that is deeply rooted in the local community, I know that there are high expectations of my work. That "faking it" feeling is universal for new attorneys. To help alleviate that, I have found that mentors are an incredible asset. More than any treatise or form book, experienced mentors add to a new lawyer's practice by giving generously of not only their legal knowledge but also their wisdom and encouragement.

For me, professionalism is easy when working with mentors — be grateful. I say "thank you," return calls, always show up for scheduled appointments, don't ask for too much time, and try to give something back when I can. Right now my mentors are becoming good friends and I have mentees of my own. I am thankful for every mentoring relationship, new and old, and I am rich in the number of people I can call on whom I truly admire. That's the benefit of maintaining professionalism with mentors.

CARLY: Speaking of mentoring, most new attorneys are supervising the work of others for the first time — paralegals, assistants, document clerks, and other support staff. I was lucky to have several years' work experience as a paralegal before law school, and to supervise and coordinate the work of others on my team. Even with that experience, supervisory roles are simply challenging and humbling.

LINDA: I also came to practicing law after a few years in the working world. It's a challenge to be supervising the work of others when as a new lawyer you are also learning your own job. I try to focus on

people's strengths in the workplace. I also find it valuable to talk through mistakes as they arise, set out clear written directions, and be available for clarification. Kindness and courtesy really are essential — I've often been saved from hours of wandering and confusion by the highly experienced and knowledgeable administrative staff in our office and in our small legal community. However, supervising others can be difficult with a busy schedule, and time management plays a big role each day.

Time Management and Billing Requirements

CARLY: Time management and the struggle for work-life balance at large firms is probably the most talked-about issue for new and experienced lawyers. I am frequently asked — not how I am — but how busy I am. If I respond, "My workload is pretty crazy," the overwhelming response is, "Great!" That said, I am lucky to work at a firm that recognizes the value of work-life balance, reflected in a lower billing requirement than many other large firms.

LINDA: We don't have a billing require-

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ment at my small firm. For me, time management is about balancing time spent learning, taking advantage of working alongside senior attorneys, serving clients' needs, and meeting hourly billing goals that I have set for myself. I know that my firm is a business, and managing my time effectively is important. I see this as a call to stay productive and serve my clients well. I am goal-driven, and measurable goals give me a focus.

Civility and Communication

LINDA: Once in law school, a particularly stressed classmate called me "nice" like it

was a four-letter word. However, I credit my empathy and interest in others as the source of my continued gainful legal employment and advancement opportunities. I think professionalism in communication as a new lawyer is about communicating appropriately for the situation and the venue and managing stress well. I've seen new lawyers descend into outright obnoxiousness to disguise a lack of experience. A lawyer's conduct and choice of words can change people's lives, and that's something to honor, not to defile with behavior that is as transparent as it is uncivil.

CARLY: I agree. I have also been accused of

being "nice," but I have never seen the utility in turning an adversarial relationship with opposing counsel into an uncivil one. New attorneys can be especially susceptible targets for abuse by more senior attorneys trying to capitalize on their lack of experience and confidence. Even if it passes ethical rules — which are only a floor for attorney conduct — is it civil? I think not. And, as new attorneys, we rely on more experienced members of our bar to support, encourage, and model for us the integrity that drew us to the profession, even when our interests are fiercely opposed.

LINDA: Yes, and this also applies to the online world. Communicating with friends and other attorneys on social networking sites is a great way to support each other and stay connected. However, I am disappointed to see that some people seem to forget themselves and our ethical rules when posting on social networking sites. There is no such thing as anonymity in the Internet; even if your friends will keep your secrets, the Internet will not. As new attorneys, we may be the most likely to run afoul of this hard truth because we rely on online social connections to get us through the difficult first few years of practice and stay connected to law school friends and colleagues.

Client and Career Development

CARLY: At my firm, new attorneys are instructed to treat the partners and senior associates they work with as their "clients." That said, beginning lawyers are encouraged to join WSBA sections and other organizations to develop relationships outside the firm. Volunteering is another way to meet people and have a life outside of the legal community, and it sometimes pays unexpected dividends in the form of client development.

Some firms, including mine, encourage pro bono work by crediting pro bono hours toward their attorneys' billing requirement. An active pro bono practice is an important part of my professional life: it helps me stay grounded in legal issues that matter to me and my community, and as a result, my practice is more fulfilling.

LINDA: Volunteering is a big part of my life. For me, it is rewarding to stay actively involved in my community. Every volunteer group is different; sometimes it takes a few tries to find the right fit. I have also found that clients invariably want to con-

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nect with me about my volunteer work and community involvement. I enjoy these interactions, and I find that it adds something to my relationship with clients and my attitude toward my practice.

Mentors have stressed to me that volunteer work can be a good source of new business development, and for an attorney in a small firm those community associations are important and make a new attorney more marketable in a lean job market.

A Fresh Perspective on Professionalism

CARLY: Professionalism for new lawyers is not an oxymoron. I try to remind myself that, although I am still learning about my area of practice, good lawyers never stop that learning process. And because the law is ever-changing, you must be flexible. I think one of the greatest benefits of being a newbie is having fresh eyes and an open mind that can see creative arguments and solutions. And along with that will hopefully come a new generation of lawyers who can view the adversarial process with fresh eyes, too, and move the profession into an era of civility that is sorely needed.

LINDA: The benefit of being new is that we are always learning and realizing that none of us, no matter how low our bar number is, has all the answers. Professionalism can help ease the stresses and challenges of being a new attorney by providing guidance on how to manage our new roles and thrive in our first few years of practice. ☺

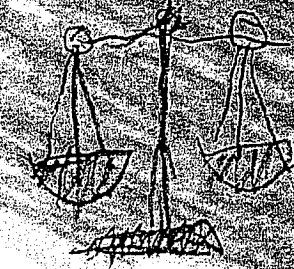


Linda Jenkins graduated from Seattle University School of Law in 2008. She is an associate attorney at Tuohy Minor Kruse PLLC in Everett, where she practices in real estate, business, estate planning, and probate matters. She can be reached at linda@tuohyminor.com. Carly Summers graduated from Seattle University School of Law in 2009. She is an associate attorney at Davis Wright Tremaine LLP in Seattle, where she practices in civil litigation. She can be reached at carlysummers@dwt.com.



She can be reached at carlysummers@dwt.com.

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5 Steps to Improving Civility

BY WASHINGTON STATE ATTORNEY GENERAL ROB MCKENNA

“
Civility . . . means employing a sense of decency and consideration for all involved, thinking through the strength of your case, fully understanding the ramifications of your actions, and displaying respect for all parties.
”

It's the first principle in the Washington State Bar Association's Creed of Professionalism:

In my dealings with lawyers, parties, witnesses, members of the bench and court staff, I will be civil and courteous and guided by fundamental tenets of integrity and fairness.



Professionalism is as simple as holding the door for opposing counsel, returning phone calls, or providing documents in a timely manner. Professionalism is embodied in the tone and tenor of all our interactions with one another.

You can find this principle at work at its highest level in the U.S. Supreme Court, where parties are required to collaborate on joint appendices and Supreme Court justices refer to opposing counsel as “friends.” We find shining examples of civility and professionalism every day across our profession.

Unfortunately, at the same time, we face a continuing erosion of this basic principle. This lack of civility is found in angry or offensive emails, refusal to respond to motions for discovery necessary to establish the basic facts in a case, or at-

tacking opposing counsel in the media.

It's been said, "To whom much is given, much is expected." Seattle University Law Professor Paula Lustbader alluded to this in her January 2011 *Bar News* article announcing Robert's Fund, a new foundation created in honor of her uncle, Robert Lustbader, to encourage increased civility in society. Lustbader points out, "Lawyers exert a powerful influence within our society . . . they shape our values and laws as judges and politicians... serve vital roles in private industry... [and] serve as leaders in our respective communities in their capacity as lawyers or as members of a group." "Like it or not," she writes, "as lawyers we are role models for many people."

Much has been said about the root of incivility in our world today. Some blame the large number of attorneys now practicing for the decline of civility, claiming that because attorneys know they may never see opposing counsel or their clients again, they give themselves a pass when it comes to polite behavior. Similarly, a lack of familiarity among lawyers furthers a lack of trust and defensiveness that breeds incivility. Others claim greater competition in the field leads attorneys to compromise civility toward one another in the name of zealous advocacy on behalf of their clients. To these people, the end justifies the means. Still others theorize that older attorneys and legal educators are failing to instill in younger attorneys the importance of civility in our profession.

Regardless of the root of the problem, I'm inspired by the Washington State Bar Association's commitment to recognize, reward, and revive civility in the legal field. Civility is the foundation of the professionalism training we provide to new assistant attorneys general at our Attorney General's Office (AGO) Academy. We also feature professionalism as a segment in our continuing legal education (CLE) seminar on "Effective Public Lawyering." I'd like to draw upon this training in suggesting five things we can all do to increase civility and, in turn, improve professionalism.

1. Recognize the power we have to change lives and use it wisely.

In his presentation at the Effective Public Lawyering CLE, AGO Chief Deputy Brian Moran counsels assistant attorneys general to remember the power attorneys have to change lives for the better — and for the worse. As lawyers, we all play an important role in people's lives. Whether trying family law cases involving abuse, trying complex consumer protection cases, or giving ad-

vice to a person facing home foreclosure, one mistake can tear a family apart, destroy a business's reputation, or ruin a person's life. Civility in this case means employing a sense of decency and consideration for all involved, thinking through the strength of your case, fully understanding the ramifications of your actions, and displaying respect for all parties.

2. Communicate effectively.

Communication is a two-way street. Listen to your clients, to the public, to opposing counsel, and to the bench. As per the Creed of Professionalism, be forthright and honest in your dealings with them. Review

your correspondence for tone and tenor. Avoid sending email or leaving voicemail messages when you're angry. While the legal universe may seem expansive, your reputation is important and displaying civility in communication — on a personal level, in public and in the courtroom — is an important way to enhance that reputation.

3. Value candor and integrity.

Rule of Professional Conduct 3.3 requires candor toward the tribunal, but that candor should be applied to all. As the Creed of Professionalism suggests, your word "is your bond in (your) dealings with the court, with fellow counsel and with others." It also

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encourages us to "be forthright and honest in (your) dealings with the court, opposing counsel and others."

Discredit yourself at your own peril. Despite the sheer number of attorneys, the legal community is a connected network that is smaller than it might seem. Maintaining your integrity is critical to your reputation.

4. Demonstrate a healthy work ethic.

Demonstrating respect is key to civility and professionalism — and, beyond communicating civilly and exhibiting candor and integrity, displaying a strong work

ethic shows your opponent, your client, the bench, and the public that you value them, their time, and the legal profession as a whole. The Creed of Professionalism directs us to "honor appointments, commitments, or case schedules and be timely in all your communications." Beyond that, excellent briefing, witness preparation, and overall preparation for oral argument demonstrates respect not only for yourself, your client, and our profession, but also for the judge, jury, and opposing counsel. A strong work ethic doesn't only establish you as a professional and civil advocate, it tends to persuade both judges and potential jurors to listen more favorably to your case.

5. Learn that winning comes in many forms.


As mentioned earlier, many believe one of the roots of incivility today is the "win-at-all-costs" mentality prevalent in so many areas of modern life. But winning depends upon how that term is defined. Is it avoiding mediation with a winner-take-all strategy? Is it racking up prosecutions? Some might say yes — and in today's super-competitive world, it might seem that is the case. The Creed of Professionalism suggests otherwise, encouraging us to "endeavor to resolve differences through cooperation and negotiation, giving due consideration to alternative dispute resolution."

In the Attorney General's Office, we encourage our assistant attorneys general to do the right thing for the right reason. Oftentimes, in liability cases, the state recognizes its liability and employs early dispute resolution to help make the victim whole while reducing exposure for taxpayers. Similarly, we strive to work with businesses accused of violating the consumer protection act or groups charged with defying the state's campaign finance laws to bring justice without prolonged litigation.

In a time when the media, the entertainment industry, and society as a whole seem to increasingly value the sharp comeback, political gamesmanship, deceit, disrespect, and disdain toward others, I agree with the Washington State Bar Association that civility starts with us.


As Chief Justice Warren Burger noted 40 years ago when he gave his famous speech on civility to the American Law Institute:

... lawyers who know how to think but have not learned how to behave are a menace and a liability not an asset to the administration of justice . . . I suggest the necessity for civility is relevant to lawyers because they are the living exemplars — and thus teachers — every day in every case and in every court; and their worst conduct will be emulated . . . more readily than their best.

We have a duty to our profession, to our communities, and to our nation to continue our efforts to return civility and professionalism to our society. 

Rob McKenna is serving his second term as Washington's attorney general. He is the 2011-2012 president of the National Association of Attorneys General and co-chair of the 2011-2012 Campaign for Equal Justice.


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Profiles in Professionalism

Get to Know a Few of the Recipients of the Random Acts of Professionalism Award

BY MARK A. ARTHUR

“

The following Profiles in Professionalism are a necessary reminder that our Bar is composed of dignified, courteous, and honest members who do not confuse ardent client advocacy with 'win at all costs' tactics.

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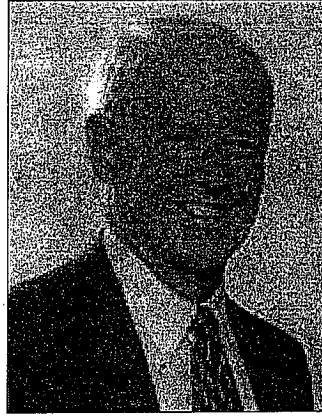
In 2001, the WSBA Board of Governors adopted the Creed of Professionalism, a statement of professional values intended to guide and inspire all members of the Bar to conduct themselves with civility, integrity, and fairness. Two years later, the WSBA Professionalism Committee created the Random Acts of Professionalism Award to promote the Creed and highlight those who have demonstrated these principles, whether from the bench or in practice.

The recipients, nominated by their fellow members of the Bar, receive a certificate of recognition, a copy of the Creed of Professionalism, and a congratulatory letter from the Professionalism Committee chair explaining the laudable conduct recognized by the recipient's nominating peer. While neither the WSBA Board of Governors nor the Professionalism Committee specifically endorse a selection, the award serves as an important testament to the professional behavior of our members.

The following Profiles in Professionalism are a necessary reminder that our Bar is composed of dignified, courteous, and honest members who do not confuse ardent client advocacy with "win at all costs" tactics. Likewise, the conduct of the following recipients encourages every member of the Bar to act with similar integrity and to recognize the commendable professional acts that they witness.



James A. Conley



Robert Graham Cross

James A. Conley

James Conley practices in commonly contentious areas of law and does so with integrity, grace, and, as he puts it, "an innate sense of justice." After serving as a prosecutor for 11 years, James established his own Edmonds firm in 2001 to provide plaintiffs' personal injury and criminal defense services.

His dedication to professionalism is apparent both in the courtroom and out. After noting a deposition for an opposing counsel's witness, James learned that the witness was forced to use his only day off that week to attend, and that the witness's employer would not cover the witness's wages for the day missed. Upon receiving this news, Mr. Conley graciously offered to pay for the witness's lost wages and expenses to attend the deposition. Without prompting from opposing counsel, Mr. Conley immediately offered to pay the witness an amount which more than covered the lost wages and expenses. Mr. Conley had no obligation to pay for the witness's time, but he chose to look beyond legal mandates to promote what he believed to be just and courteous.

When he is not in a suit supporting his clients, James is in a baseball cap rooting on the Seattle Mariners, often with his wife and eight-year-old daughter by his side. He has been a season passholder since 1979, was named the "three millionth fan" in 2002 and even threw out the first pitch at a game. James's dedication to professionalism produces just results; here's hoping that his loyalty to the Mariners does the same.

Robert Graham Cross (posthumous)

Robert Graham Cross was posthumously nominated for a Random Act of Profes-

sionalism award for his years of service to his profession and his community. In this regard, Mr. Cross's dedication to professionalism was far from random, but was borne out each day of his life. Graham attended the University of Idaho College of Law and, upon graduating, clerked for the Honorable Richard B. Ott, the chief justice of the Washington State Supreme Court at the time. Graham went on to found the firm Cross & Hadley, where he practiced until the day of his passing. During his 44 years of service, he was a dedicated lieutenant in the Naval JAG Corps Reserve, was a member of the Longview Chamber of Commerce, Longview Lions Club, Kelso Mason Lodge No. 90, Kelso Scottish Rite, and served on the Board of Directors of Youth and Family Link.

His nominator wrote: "Graham represented hundreds of youth who found themselves in trouble with the law. He not only shared his legal knowledge and advice with them but counseled many youth to do the 'right' thing, to change the course of their lives if need be, to earn respect and achieve their goals. He and his wife worked hard with the court to establish the HOPE (Helping Our Parents Excel) Court, which is a 'drug court' specifically designed to help parents overcome their

addiction and to reunite their family. Graham always had a smile and treated everyone with respect and kindness. He was the embodiment of the principles set forth in the Creed of Professionalism and inspired others to do the same. He will always be remembered as a person with the highest ethical standards." And as Graham's brother, Shaun Cross, one of six Cross family lawyers in Washington, shared, "Graham saw law as a vehicle, a platform, to help people, to serve his community and to right wrongs." Mr. Cross's legacy is a shining example of a life lived in service and professionalism.

Lisa J. Dickinson

Lisa J. Dickinson

Spokane attorney Lisa Dickinson seems to do it all. Lisa previously worked for a law firm in Spokane but formed her own solo practice in 2008. While she enjoyed her time at the firm, she hung her own shingle to free up more time for public service. When Lisa is not providing civil litigation and business legal services to her clients, she is engaged in myriad leadership roles. Lisa is a past chair of the Professionalism Committee, and although her tenure is up, she has continued to speak about professionalism at Gonzaga University School of Law. Lisa is currently serving as the vice president of the Northwest Justice Project, and was the previous president of both the Spokane County Young Lawyers Division and the Spokane County Washington Women Lawyers Club.

Lisa's nominator summed up her professionalism best: "Lisa merits recognition for her dedication to professional and courteous conduct and maintaining the respect of our profession — she per-



Above: Lisa J. Dickinson. Below: Brad A. Lancaster with his wife, Kim, and their dog, Sofie.





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
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sonally presented to Gonzaga University law classes on professionalism for some five years; is active in a number of Bar and Spokane organizations; and, as I understand it, has upheld professional conduct in a number of highly pitched cases and depositions, all the while achieving great results for her clients in a wide range of matters, including leading the way in the principle of 'equitable adoption' in a high-profile estate case."

Brad A. Lancaster

Brad Lancaster is a solo practitioner currently practicing in Shoreline. He predominantly provides assistance with wills, trusts and estates, elder law, and collaborative family law and mediation services. Brad's journey to the WSBA included time as a general contractor and as the director of youth ministries in the Presbyterian Church. Brad and his wife, Kim, not only find time to run his practice, but they also provide support for the Rain City Rotary Club, packing food and cleaning streets. You can also find Brad at Third Place Books in Lake Forest Park on Saturdays, leading a class that distills the world's great ethics writings, or out and about with his dog, Sofie.

Brad was nominated for this award by opposing counsel in an estate case. After all parties had signed a final settlement document which called for payment to Brad's client, Brad's client passed away and a subsequent inventory of the client's home was conducted. The inventory revealed that disputed payments had in fact been forwarded to Brad's client. Brad brought this new information to opposing counsel and a new settlement agreement was drafted that accounted for all previous payments. Brad's honesty and fair dealing is commendable and did not go overlooked by his colleague. 

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Mark A. Arthur is currently in-house counsel and vice president of business development at Luxtom Homes and Construction, LLC, and a member of the WSBA Professionalism Committee.

Prior to joining Luxtom, Arthur was a solo practitioner, and assisted clients with a variety of real estate litigation and transactional needs.

Maintaining Professional Relationships

A View from the Court from Judge Laura Inveen

BY JOE MARSHALL

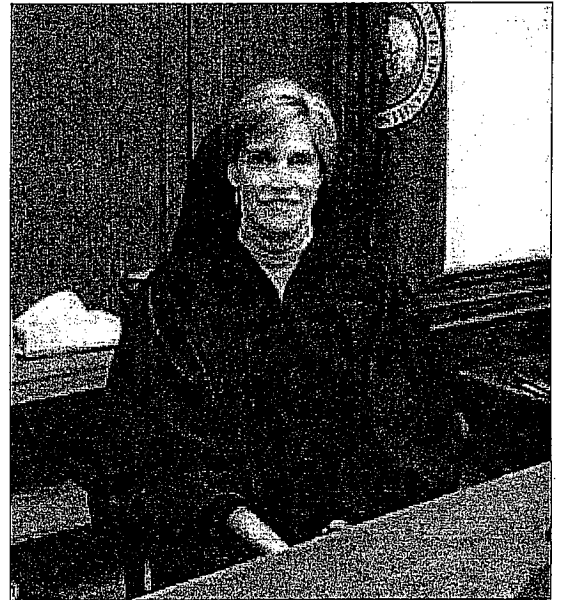
“

You will see people again in your professional life, and you can get more of what you want through good relationships than through bad behavior. The highest-stakes cases with experienced, professional counsel are often the least litigious.

”

When I left public defense practice and crossed into the country of civil litigation, the previously discounted stereotype of “civil” being less civil than criminal suddenly became relevant.

Prosecutors and defenders saw each other almost daily and generally interacted with respect; after a single case, civil lawyers might never have to think of each other again, which sometimes resulted in a vigorous disrespect. I infuriated and was infuriated in due course, and I thought something should change. Hence, this article. But I thought that lawyers would



listen most to a person who makes the ultimate decision on advocacy, so I interviewed Judge Laura Inveen.

The Honorable Laura Inveen, chief civil judge, King County Superior Court, serves as president of the Washington Superior Court Judges' Association. In her over 20 years on the bench, her commitment to justice has led to a juvenile drug court and truancy reforms among many other accomplishments. She is a graduate of the University of Washington School of Law.

JOE MARSHALL: Why shouldn't lawyers feel free to burn bridges, taunt, or insult opposing counsel, when the odds are good they won't cross paths again?

JUDGE LAURA INVEEN: Life is too short. To the extent that we can, it is very important to achieve professional goals while still keeping personal relationships intact. It's amazing how small Seattle is. You will see people again in your professional life, and you can get more of what you want through good relationships than through bad behavior. The highest-stakes cases with experienced, professional counsel are often the least litigious.

As you lose family members and friends over the years, you realize you only have so much time to spend with them and there are experiences you can't replicate, like a special vacation or milestone event. A trial, deposition, or a brief deadline has the potential to impact these important events. I am tolerant of people who need to balance their court obligations with family life to the extent their client is not negatively affected. To safeguard this and better prepare, people do need to plan ahead. Lawyers should be careful of the case schedule.

JM: Why shouldn't a lawyer be a discovery miser for her own client and a sanction scourge to the other side, and battle every last motion, even family emergency/health/vacation continuance requests? Aren't lawyers winning if they intimidate or infuriate the opposition? Doesn't that impress the Bench?

LI: I am a big believer that you will be on the receiving end sometime. If you take the hardball approach you may not get an accommodation when you need one, and it just makes you look like the bad guy/gal, and judges see through it.

A motion for order shortening time or emergency motion, for instance, is telling the judge to rearrange their schedule because the motion is more important than anything the judge has to deal with that day. Such a motion should be used sparingly. Instead, picking up the telephone can often save everyone time and the client money.

Email has fueled the problem of being excessively adversarial! People tend to be more terse and behave like they are anonymous in email. Nothing can equal a personal conversation. If you can't resolve it in three emails — scheduling settlement, for instance — pick up the phone. There's

nothing quite like personal conversation. I respect lawyers who are judicious regarding requests for sanctions, asking only when they're appropriate and when they really matter.

The largest case before me was one in which the lawyers acted very professionally while advocating vigorously for their clients. This group was very organized, with multiple parties, and arranged among themselves in advance to share time in court. They focused on the merits as opposed to ancillary matters.

JM: Is it even possible to define "Professionalism?"

LI: Yes, it's possible, because I see lawyers all the time who comply. ☺



Joe Marshall practices real estate, municipal law, and criminal defense at Williams & Williams in Bothell. He has represented property owners in eminent domain cases, fought for fire districts against hydrant charges before the Washington State Supreme Court, and won dismissal for a client caught in the courthouse with non-medicinal marijuana.

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