



Why Civility Matters — It Is The Essence of Professionalism

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I thank the leadership of ABOTA for inviting me to address “professionalism” with ABOTA members. In this article, I will focus on the core values of our profession: honesty, integrity and civility, why we all must strive to cultivate those values, and how we cultivate those values through activities of our professional organizations.

What Is Professionalism?

The word “professionalism” may mean different things to different lawyers. If you ask a lawyer what the term means, my guess is, if that lawyer has thought about the concept of “professionalism,” the response will include a fairly specific and thoughtful definition. Others, who just don’t consider the term very meaningful, may assign the term no definite meaning at all. Perhaps, for those who accord no special meaning to the term, a vague meaning, such as “being a good lawyer,” will suffice.

I know that when I look at that word, “professionalism,” and when I think about it, that concept definitely means more, and a lot more, than simply “being a good lawyer.” In my view, at the “core” of professionalism are the values of honesty, integrity and civility. Because those values are alive at the “core” of professionalism, our profession and our legal system have substance and are not vacuums that are devoid of values.

What does one mean when one speaks of the values of honesty, integrity and civility? I think we all learned the basic meaning of those concepts by the time we arrived in

the second grade. We knew the rules were: **1. Don’t lie. 2. Don’t steal. 3. Don’t hurt anyone.** Well, those concepts translate directly into the values of our profession.

When it comes to honesty, I think the meaning of that term should be obvious to lawyers. ABOTA and AIC have defined the meaning of that term so there can be no misunderstanding. ABOTA’s Code of Professionalism specifically provides, “I shall . . . always remember that **my word is my bond** and honor my responsibilities to serve as an officer of the court and protector of individual rights.” (emphasis added). The American Inns of Court (AIC) movement focuses on these values in its *Professional Creed* where it says, “I will value my integrity above all. **My word is my bond.**” (emphasis added). Can we express the meaning of “honesty” any more clearly than stated in ABOTA’s Code and in the AIC’s Creed?

However, some disagree that we must always be honest. At least one commentator has observed, “In situations where honesty conflicts with other important values, there is no reason to presume that honesty should prevail.” See William H. Simon, *Virtuous Lying: A Critique of Quasi-Categorical Moralism*, 12 GEO. J. LEGAL ETHICS 433, 436, 463 (1999); see also Fred C. Zacharias, *Fitting Lying to the Court into the Central Moral Tradition of Lawyering*, 58 CASE W. RES. L. REV. 491, 510 (2008) (stating author’s instinct that “discarding a lawyer’s obligation of candor in favor of the ethic of zeal has serious costs for the institution of the law.”).

Others in our profession use the words, “zealous advocacy” as a sword to pursue a strategy of winning at all costs. See *Dondi Properties Corp. v. Commerce Sav. & Loan Ass’n*, 121 F.R.D. 284 (N.D. Tex. 1988) (requiring adherence to standards of civility stated in the Dallas Bar Association’s Lawyers Creed). Can we teach any brand of “moral balancing” and excessive, “zealous advocacy” to beginning lawyers? I say, loudly, “No!”

Integrity is a term I believe is as straightforward in its meaning as honesty. To me, it means trustworthiness. That is, how people view you, i.e., respect. The proven liar is not respected, nor trusted. The only thing you can count on with an untrustworthy person is that their lack of trustworthiness is predictable. Such people will be repeat offenders.

So then, what is the meaning of the term civility as applied to the legal profession? I believe one of the best descriptions of civility was stated by United States Supreme Court Justice Anthony M. Kennedy in a speech at the 1987 American Bar Association Annual meeting. He said, “[Civility . . .] is not some bumper-sticker slogan, ‘Have you hugged your adversary today?’ Civility is the mark of an accomplished and superb professional, but it is even more than this. It is an end in itself. Civility has deep roots in the idea of respect for the individual.” See also *Higgins v. Coatsville Area Sch. Dist.*, No. 07-4917, slip op. at 10 (E. D. Pa. Sept. 16, 2009) (mem. op.).

The importance of these values is obvious to me. To those who question the relevance of these

values to the practice of law, I say we adhere to them because it is the right thing to do. However, if more proof is necessary for the “doubters,” I suggest they simply read the disciplinary rules applicable to their jurisdictions. I cannot imagine that there is a jurisdiction that does not require candor toward opposing counsel, the court, and all others involved in a matter. *See, e.g.*, Tex. Disciplinary R. Prof’l Conduct 2.01 (render candid advice to client), 3.03 (candor toward the tribunal), 4.01 (truthfulness in statements to others), *reprinted in* TEX. GOV’T CODE ANN., tit. 2, subtit. G app. A (West 2005).

Yet, it is clear the disciplinary rules are the lowest acceptable level of behavior that will be allowed. When any lawyer violates those or other disciplinary rules, that lawyer is subject to sanctions by the regulatory arm of the licensing agency or bar as well as possible sanctions from a court. The ABOTA and AICF credo of “My word is my bond.” is a much higher standard to which we adhere.

If after considering the rules the doubting lawyers still remain unconvinced that we must live by these values, then they should consider the observation of Professors Neil Hamilton and Melissa H. Weresh. The professors contend we must perform at the highest levels of professionalism because we, as lawyers, have a contract with the public, through the legislature. Specifically, they posit pursuant to this contract, the public has granted the legal profession “autonomy” for “peer review,” control of membership, and setting of standards.

In exchange, each member of the legal profession and the profession have solemn duties to maintain high minimum standards, discipline members who fail to meet those standards, promote the “core values and ideals of the profession,” and restrain self-interest to serve the public purpose of the profession. Neil Hamilton, *Professionalism*

Clearly Defined, 18 No. 4 PROF. LAW. 4, 4-5 (2008); Melissa H. Weresh, *I’ll Start Walking your Way, You Start Walking Mine: Sociological Perspectives On Professional Identity Development and Influence of Generational Differences*, 61 S.C. L. REV. 337 (2009).

If the doubting lawyers remain unconvinced in the face of all of the foregoing, then it seems to me, they are ignoring the evidence. In my view, the evidence clearly proves the necessity of adhering to the values of honesty, integrity, and civility is based not only on morality, but it is also legally and practically based.

Action Speaks — Cultivating Professionalism by Mentoring

With these values and the necessity to adhere to them in mind, one should ask: How do we, as lawyers, address the need to cultivate values in our profession? Can we rely solely on law schools to see to it that values are injected into nascent lawyers? The answer is, probably not. The academy generally focuses on reworking the patterns of a law student’s brain so that a law student “thinks like a lawyer.” *See* Jeffery A. Maine, *Importance of Ethics and Morality in Today’s Legal World*, 29 STETSON L. REV. 1073, 1074 (2000); Richard K. Greenstein, *Against Professionalism*, 22 GEO. J. LEGAL ETHICS 327 (2009). The academy can and must do more to discuss and impress students with the importance of values through more expansive professional responsibility classes and curriculum that injects the sense of these values in class lectures and materials.

Yet, some say, our professional values cannot be taught in the same manner that we teach the rule in *Shelley’s* case or the definition of murder. *See* Christopher J. Wehlan, *Ethical Conflicts in Legal Practice: Creating Professional Responsibility*, 52 S.C. L. REV. 697,

725 (2001). Then, where and how are these values to be taught and acquired? In my estimation, the values of our profession are learned by observing and working with other lawyers. It is a process as old as the human race. We have always learned by observation and through association. *Id.* This process, at its finest, is what is called mentoring. Mentoring is becoming a primary mission of many of our professional organizations, including the American Inns of Court movement.

The need for mentoring has become almost an “emergency” today. While many firms and law departments have excellent training and mentoring programs, too many beginning lawyers have no such environment in which to learn and grow. That is one of the stark realities of our economic times. Large numbers of beginning lawyers have hung their shingles, but have little opportunity to observe and learn from experienced lawyers. At the same time, some beginning lawyers practice in work environments, even in firms, that do not focus closely enough on those learning needs. Also, working hand in hand with bar groups, law schools, and as part of mentoring programs we should create demonstrative educational programs that graphically teach the meaning of these values.

Developing Goals and Programs To Enhance Mentoring

That is where our professional organizations must step in. We must supplement or even serve as the central supply of mentoring and practical education needed by law students and beginning lawyers. Many state bars and other organizations, including ABOTA and AICF, are on that track. They have created programs and vehicles to foster mentoring and educate law students and beginning lawyers. Additionally, they display on their websites assorted materials available to all that describe

ways to develop relatively simple, straightforward programs.

One of the most positive and active programs that fosters the development of professionalism through mentoring, both in the law school student and in the beginning lawyer, is the Nelson Mullins Riley & Scarborough Center on Professionalism at the University of South Carolina School of Law. The Center has sponsored, among other programs, at least two national conferences on the “best practices” of mentoring. In my view, the Center has demonstrated extraordinary leadership in convening forums to gather a broad spectrum of our legal profession’s organizations so that we can learn of, communicate about, and develop effective mentoring programs. At this time, the Center and the AICF are working together to formulate a model mentoring program adapted for smaller groups, like Inns of Court and local ABOTA chapters. The model is being tested now by at least two Inns in the Southeast.

Further, ABOTA’s Civility Matters program hits the mark. It graphically demonstrates the meaning of civility through DVDs that contain scenes showing conduct of lawyers in excerpts from movies, television productions and video depositions. Combine the two program concepts and you have a foundation on which to build a system for practical education of law students and beginning lawyers about how they must conduct themselves in the practice of law.

A Call to Action—A Vigorous Movement Pushing Ahead

The professionalism movement in the United States is vigorous and strong. We are enthusiastic and moving ahead to cultivate the values of honesty, integrity, and civility in our profession. Strong professional organizations like ABOTA, the American Inns of Court, state and local bar associations and countless others across the country,

must join together to cultivate the values of our profession. How do we enhance this effort? We, the “flagship” organizations, must make a concerted effort to work together, use the resources available now, and make professionalism programs function in every local bar to put our beginning lawyers on the right path. Thank you for being part of this great effort to cultivate professionalism!