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You Can't Make This Stuff Up

The next time you hear a presumably far-fetched fact pattern in a professionalism CLE or you wonder why a professionalism presenter is talking about something that is apparently obvious, remember there is a reason why.

BY KARLISE Y. GRIER

Often when I present for professionalism CLE trainings, I use hypothetical problems. There are times when attendees seem to feel that the hypothetical problems are “unrealistic” despite the fact that they are usually taken from real life fact patterns where the names have been changed.

Many times, the hypotheticals I use come from disciplinary cases or from reading the pages of the *Daily Report* or

other legal news. Let's look at a few examples, but before I begin, I want to reiterate the late Justice Harold Clarke's now iconic words regarding the difference between ethics and professionalism. Justice Clarke wrote: “[E]thics is a minimum standard *require* of all lawyers while professionalism is a higher standard *expecte* of all lawyers.”¹ I try to use hypothetical that either ask lawyers to consider the

difference between ethics or professionalism or that ask lawyers to consider the choices they make when aspiring to act with professionalism. So, let's consider a few examples.

In December 2021 and January 2022, I had conversations with two individuals in very distinct areas of practice that informed me they were seeing increased incivility in emails. As a result, I did a search for law-



yer email incivility. I was shocked by what I discovered. For example, in a Dec. 11, 2019, *ABA Journal* article, an attorney in California faced sanctions for language he used in emails that made me blush.² Since I train on professionalism, not ethics, I created a hypothetical problem based on this article by cutting and pasting toned-down, non-profane words for some of the actual language the attorney used in his emails. One part of the hypothetical problem I created, however, quoted directly from the article because the attorney facing sanctions told one lawyer in a written email “I know where you live[.]” You can’t make this stuff up. Note that the lawyer who was the subject of the article sent the emails before the COVID-19 pandemic began. Since the pandemic began more than two years ago, I believe we are all a bit more tired and a bit more stressed. My nerves are frayed and I suspect yours are as well. For these reasons, and others, my professionalism trainings, and I hope others, need to discuss more than ever “the basics” of professionalism, which includes civility. Every attorney I speak with during a professionalism training tells me that he or she knows not to put anything in writing that you would not want on the front page of a legal journal. But it happens and we know it happens, otherwise lawyers and judges would not call me to say they are seeing increased incidences of nasty emails. So even though everyone reading this article “knows,” take a moment to absorb the lesson again and think about the things you can do to ensure that your emails remain courteous. Respectfully write what you need to say to articulate your client’s legal position. Then re-read your email to ensure that anything written while you are tired, angry or frustrated is removed. It helps you and it helps your client. (I am making a note to myself to ensure I follow my own advice.)

Lawyers are also sometimes somewhat surprised when I speak to them about the

use of “templates.” So, let’s look at another headline because you can’t make this stuff up. In an article entitled “OK, You Broke Me. I Give Up on Motions in Limine,” Hon. Jane P. Manning, State Court of Cobb County, wrote: “I am routinely cited 19th century caselaw in support of a motion in limine. . . . One of the frustrating things about motions in limine before me is that it is readily apparent that the attorneys have not read their own motions.”³

Ouch! Our professionalism aspirations state as a lawyer, I will aspire: “to expeditious and economical achievement of all client objectives.”⁴ This does not extend, however, to saving client’s money by using boilerplate templates that lawyers do not read. Therefore, I encourage lawyers that the next time you use a template as a starting point for whatever legal work you are doing, the overarching goal for all lawyers should be: “I will strive to represent you as I would want to be represented and to be worthy of your trust.”⁵

In conclusion, the next time you hear a presumably far-fetched fact pattern in a professionalism CLE or you wonder why a professionalism presenter is talking about something that is apparently obvious, remember there is a reason why. One reason is because attorneys should—at least once per year—use “A Lawyer’s Creed” and the “Aspirational Statement on Professionalism” to reexamine the justifications of the practice of law in our society and to consider the implications of those justifications for their conduct.⁶ The second reason is because attorneys actually do stuff you would never imagine they would do. You can’t make this stuff up. ●



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Endnotes

1. *Professionalism: Repaying the Debt*, Presiding Justice Harold G. Clarke, *Georgia State Bar Journal*, Vol. 25 No. 4, p. 170-173 (May 1989)(Emphasis in original).
2. See Debra Weiss, *Lawyer who told BigLaw attorneys to . . . faces possible sanctions*, *ABA Journal, Trials & Litigation* (December 11, 2019), <https://www.abajournal.com/news/article/lawyer-who-told-biglaw-lawyers-to-eat-a-bowl-of-dicks-faces-possible-sanctions> (Last visited Feb. 25, 2022). See also Debra Weiss, *Judge tells lawyer who sent . . . emails the profession doesn’t need him*, *ABA Journal, Trials & Litigation* (December 17, 2019), <https://www.abajournal.com/news/article/profession-doesnt-need-you-judge-tells-lawyer-who-sent-bowl-of-dicks-emails> (Last visited February 25, 2022).
3. Jane P. Manning, *OK, You Broke Me. I Give Up on Motions in Limine*, *The Daily Report* (September 10, 2021), <https://www.law.com/dailyreportonline/2021/09/10/ok-you-broke-me-i-give-up-on-motions-in-limine/> (Last visited Feb. 25, 2022).
4. Chief Justice’s Commission on Professionalism, *A Lawyer’s Creed and Aspirational Statement on Professionalism* at Lines 73-74, <http://cjcpga.org/wp-content/uploads/2019/07/2-Lawyers-CreedAspStatement-v-2013-Line-Number-with-new-logo-and-seal-v07-25-19.pdf> (Last visited Feb. 25, 2022).
5. Chief Justice’s Commission on Professionalism, *A Lawyer’s Creed and Aspirational Statement on Professionalism* at Lines 3-5, <http://cjcpga.org/wp-content/uploads/2019/07/2-Lawyers-CreedAspStatement-v-2013-Line-Number-with-new-logo-and-seal-v07-25-19.pdf> (Last visited Feb. 25, 2022).
6. Chief Justice’s Commission on Professionalism, *A Lawyer’s Creed and Aspirational Statement on Professionalism* at Lines 42-44, <http://cjcpga.org/wp-content/uploads/2019/07/2-Lawyers-CreedAspStatement-v-2013-Line-Number-with-new-logo-and-seal-v07-25-19.pdf> (Last visited Feb. 25, 2022).