

PROFESSIONALISM PANEL: VIEWS FROM THE BENCH AND BAR

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PROBLEM 1: ANGRY EMAIL FROM CORPORATE OFFICER

As in-house counsel or counsel for a corporation, you send an email to one of the corporate officers wherein you disagree with his or her strategy as set forth in a planning memorandum. The corporate officer does not like the fact that you disagreed and responds with an angry email to you with some inappropriate language.

- What do you do?
- How do you respond?
- What, if anything, could you have done differently?

General Themes/Talking points for Problem 1

- *Professionalism is about candor, integrity and honesty and developing a reputation for same.*
- *Professionalism about controlling your clients and encouraging them to do the right thing despite their anger or frustration with a potential opponent.*
- *To practice law as a profession, not simply as a business.*

References for Problem 1

A Lawyer's Creed

To my clients, I offer faithfulness, competence, diligence, and good judgment. I will strive to represent you as I would want to be represented and to be worthy of your trust.

To the opposing parties and their counsel, I offer fairness, integrity, and civility. I will seek reconciliation and, if we fail, I will strive to make our dispute a dignified one.

To my colleagues in the practice of law, I offer concern for your welfare. I will strive to make our association a professional one.

Aspirational Statement on Professionalism

As a lawyer, I will aspire to model for others, and particularly for my clients, the respect due to those we call upon to resolve our disputes and the regard due to all participants in our dispute resolution process.

As a lawyer, I will aspire to preserve the dignity and the integrity of the profession by my conduct. The dignity and integrity of our profession is an inheritance that must be maintained by each successive generation of lawyers.

As to clients, I will aspire to fully informed client decision making. As a professional, I should:

- . . .
- (2) Counsel clients about the value of cooperation as a means toward productive resolution of disputes;
- (3) Maintain the sympathetic detachment that permits objective and independent advice to clients

PROBLEM 2: DIFFICULT OPPOSING COUNSEL

Opposing counsel is the worst. At least in your view, he/she engages in the following conduct:

- Baiting
- Incomplete/Untruthful Statements
- Sarcasm
- Statements about personal appearance
- Shifting positions – whack-a-mole approach; You constantly feel like you’re playing whack-a-mole
- Works to make everybody in the room mad whether plaintiffs counsel or co-defendants counsel
- Occasionally thinks all is forgiven by giving you a smile or a compliment.

This conduct very seldom occurs on the record. Usually, it is in counsel meetings, phone calls, meet and confers, settlement conferences and other off the record communications.

How do you handle this?

General Themes/Talking points for Problem 2

- *Professionalism is about candor, integrity and honesty and developing a reputation for same.*
- *Professionalism about controlling your clients and encouraging them to do the right thing despite their anger or frustration with a potential opponent.*
- *To practice law as a profession, not simply as a business.*

References for Problem 2

A Lawyer’s Creed

To the opposing parties and their counsel, I offer fairness, integrity, and civility. I will seek reconciliation and, if we fail, I will strive to make our dispute a dignified one.

To my colleagues in the practice of law, I offer concern for your welfare. I will strive to make our association a professional one.

Aspirational Statement on Professionalism

As a lawyer, I will aspire to preserve and improve the law, the legal system, and other dispute resolution processes as instruments for the common good.

As a lawyer, I will aspire to practice law not as a business, but as a calling in the spirit of public service.

As to clients, I will aspire to fully informed client decision making. As a professional, I should:

-
- (2) Counsel clients about the value of cooperation as a means toward productive resolution of disputes;
- (3) Maintain the sympathetic detachment that permits objective and independent advice to clients

PROBLEM 3(A): PRO BONO

A young lawyer in your office comes to you and tells you that she has been asked to take on a pro bono representation. You and another senior member of your officer are determining what response you should make to this young lawyer. All of the lawyers in your department are very busy at this time and the requested pro bono undertaking will clearly add additional strain on your legal personnel.

- What questions do you ask the associate?

General Themes/Talking points for Problem 3(A)

- *Professionalism is about finding time to serve the public and our systems of justice.*
- *Professionalism is about finding a balance between billable work and pro bono work.*

References for Problem 3(A)

A Lawyer's Creed

To the public and our systems of justice, I offer service. I will strive to improve the law and our legal system, to make the law and our legal system available to all, and to seek the common good through the representation of my clients.

Aspirational Statement

As to the public and our systems of justice, I will aspire to provide the pro bono representation that is necessary to make our system of justice available to all.

As to the public and our system of justice, I will aspire to support organizations that provide pro bono representation to indigent clients.

PROBLEM 3(B): PRO BONO – ADDITIONAL FACTS

Additional facts:

A. The representation will not be unpopular, it will simply be time consuming.

B. The pro bono activity relates to something which is very unpopular in the community and may well cause some of your existing clients to be unhappy, perhaps even to leave your firm if you take on the representation.

How does this change your answer?

Same General Themes/Talking Points

PROBLEM 4: THE DELEGATING SENIOR LAWYER

On his way out the door to the Masters, a senior lawyer in your department tells a younger lawyer to research a matter, not to spend more than two hours on it, and to have a memo on his or her desk the next morning. The young lawyer is not familiar with the particular area of law and really does not know where to begin. The young lawyer comes to you for advice.

- How would you advise the young lawyer. Should he or she tell the partner the research cannot do it under those criteria?
- Do you advise the young lawyer to accept the assignment and spend as much time as necessary to get it done?

General Themes/Talking points for Problem 4

- *Professionalism is about diligence and competence.*
- *Professionalism is about doing quality work, but not always charging your clients for all of the time you spent getting up to speed just to bill the hours.*
- *Professionalism is about not cutting corners.*

References for Problem 4

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Aspirational Statement

As to clients, I will aspire to [the] expeditious and economical achievement of all client objectives.

PROBLEM 5: ANGRY CLIENT WITH NO CLAIM

Your corporate client is sued by an individual who is alleging negligence of the company caused him minor damages. The corporate president comes to you to ask you to file counterclaim against the individual that you feel is frivolous. The corporate client angry about being sued and is willing to pursue the counterclaim at all costs because as he says "it will make that S.O.B. suffer."

- What do you do?

General Themes/Talking points for Problem 5

- *Professionalism is about candor, integrity and honesty and developing a reputation for same.*
- *Professionalism about controlling your clients and encouraging them to do the right thing despite their anger or frustration with a potential opponent.*
- *To practice law as a profession, not simply as a business.*

References for Problem 5

A Lawyer's Creed

To the opposing parties and their counsel, I offer fairness, integrity, and civility. I will seek reconciliation and, if we fail, I will strive to make our dispute a dignified one.

To the courts and other tribunals, and to those who assist them, I offer respect, candor and courtesy. I will strive to do honor to the search for justice.

To my colleagues in the practice of law, I offer concern for your welfare. I will strive to make our association a professional one.

Aspirational Statement on Professionalism

As a lawyer, I will aspire to preserve and improve the law, the legal system, and other dispute resolution processes as instruments for the common good.

As a lawyer, I will aspire to practice law not as a business, but as a calling in the spirit of public service.

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...

(2) Counsel clients about the value of cooperation as a means toward productive resolution of disputes;

(3) Maintain the sympathetic detachment that permits objective and independent advice to clients

PROBLEM 6: GRANTING EXTENSIONS

Your corporate client is negotiating a deal and the opposing counsel, who is a friend of yours, calls and asks for an extension of the deadline for closing the deal because she is overloaded with work and simply cannot get prepared in time.

- Do you agree to it?
- Do you inform your client?
- What if your client instructs you not to agree to the extension?
- Does the reason for the request matter?
- What if her father died and she must leave town?
- What if she isn't a friend but is the "jerk" who refused to give you a continuance in a recent case? Does that change your answer?
- What if you do not know her and don't expect ever to deal with her again?

General Themes/Talking points for Problem 6

- *Professionalism is about doing the right thing and being treated the way you would want to be treated if you asked for a continuance, whether or not you will ever litigate against this person again.*
- *Professionalism is about developing a good reputation in the legal community and presenting the public with a positive view of lawyers.*

References for Problem 6

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Aspirational Statement on Professionalism

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As to opposing parties and their counsel, I will aspire to cooperate with opposing counsel in a manner consistent with the competent representation of all parties. As a professional, I should . . . [grant] reasonable requests for extensions or scheduling changes.

PROBLEM 7: STONEWALLING

Assume you are a younger lawyer and you and a senior lawyer in your department are in a conference room negotiating a corporate merger on behalf of your corporate client with another entity and its lawyers. During the conference, your partner asserts that a crucial document requested by the other side cannot be located. You know that the document is in the senior lawyer's briefcase, and you whisper in her ear that the document is present and available. The partner remains silent.

- What should you do?

General Themes/Talking points for Problem 7

- *Professionalism is about upholding the law and our systems of justice.*
- *Professionalism is about honesty and integrity.*
- *Professionalism is about doing the right thing even though it may be detrimental to the client.*

References for Problem 7

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To the public and our systems of justice, I offer service. I will strive to improve the law and our legal system, to make the law and our legal system available to all, and to seek the common good through the representation of my clients.

PROBLEM 8: EAVESDROPPING

You are on a lunch break during intense negotiations of a deal. While sitting in the restaurant while eating lunch, you realize the group sitting in the next booth is discussing the deal you are negotiating.

- Do you have an obligation to interrupt them and tell them who you are?
- Do you have an obligation to tell the attorney for the other side that you heard individuals from his client discussing the deal and the negotiations?

General Themes/Talking points for Problem 8

- *Professionalism is about doing the right thing and being treated the way you would want to be treated if you asked for a continuance, whether or not you will ever litigate against this person again.*
- *Professionalism is about developing a good reputation in the legal community and presenting the public with a positive view of lawyers.*

References for Problem 8

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As to opposing parties and their counsel, I will aspire to cooperate with opposing counsel in a manner consistent with the competent representation of all parties. As a professional, I should . . . [g]rant reasonable requests for extensions or scheduling changes.

PROBLEM 9: CONFIDENTIAL INFORMATION

One day you receive an email from a lawyer on the other side of an acquisition you are handling for your corporate client that includes communications between the other entity and his counsel related to the acquisition. Without reading the substance of the email you realize two things:

- (a) the email lays out the other side's negotiation strategy; and (b) it was emailed to you by mistake.
- What do you do with this email? If it is ten pages long, would you read the entire email before deciding? Would you inform your client that this happened? Would your answer be different if attorney/client privileged materials were inadvertently provided to you in response to a document request in a lawsuit?

General Themes/Talking points for Problem 9

- *Professionalism is about doing the right thing and being treated the way you would want to be treated if you asked for a continuance, whether or not you will ever litigate against this person again.*
- *Professionalism is about developing a good reputation in the legal community and presenting the public with a positive view of lawyers.*

References for Problem 9

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PROBLEM 10: TOO MUCH WORK.

You are one of several corporate lawyers for your client. You have been wanting to do more of the client's corporate work. The President of the company finally calls and asks you to handle a very complicated and high-profile matter. She wants you to handle all the work personally and not delegate it to anyone else. Unfortunately, you are so busy that it is going to be extraordinarily difficult for you to take on this new work.

- What do you tell the company?

General Themes/Talking points for Problem 10

- *Professionalism is about honesty and integrity.*
- *Professionalism is about providing a quality work product for the client.*
- *Professionalism is not just about making money.*

References for Problem 10

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To my clients, I offer faithfulness, competence, diligence, and good judgment. I will strive to represent you as I would want to be represented and to be worthy of your trust.

Aspirational Statement

As to clients, I will aspire to fully informed decision-making. As a professional, I should:

- ...
- (4) Communicate promptly and clearly with clients;
- (5) Reach clear agreements with clients concerning the nature of the representation.