

Professionalism Under Siege



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The vast majority of lawyers understand the importance of professionalism and civility in the practice of law. However, a number of lawyers place the law “business” above the law “profession.” And, unfortunately, the public perception of a good lawyer is an aggressive lawyer who beats up and destroys his or her opponent, i.e., the “hired gun.”

Michigan lawyers are facing stiff competition in very difficult economic times. Adding to their woes are out-of-state lawyers coming here to represent their clients. In fact, the globalization of our practice further erodes our comfort levels. This increased competition in the legal marketplace and the perceived need to act more like a business than a profession to survive have placed additional pressure on lawyers to distinguish themselves to attract clients. Some lawyers attempt to portray themselves as the toughest, meanest attack dogs a client can buy, pandering to the public perception that they are “good” lawyers who will help the client get his or her just reward. In the big picture, however, these lawyers are not helping themselves or the legal profession.

Lawyers who resort to rude, hostile, insulting, and offensive tactics are not acting in their clients’ best interests. For example, why would any lawyer offend a witness at a deposition, causing the witness to be guarded and defensive, when friendly and skilled questioning will obtain all the information needed to win the case? Offensive and obstructionist tactics also cost a client more time and money. Although a lawyer may temporarily please the client with such tactics, the lawyer will lose the client in the end, when he or she has paid more than expected and the result is less than expected.

More importantly, a lawyer’s most significant asset—his or her reputation—will be harmed. A primary source of business for all lawyers is referrals from other lawyers. Most lawyers will not refer their clients to lawyers they deem to be unprofessional.

The most respected and successful lawyers treat the practice of law as a profession first and a business second. They give back to their communities and their profession, and generously contribute their time and money to provide access to justice for those who cannot otherwise afford it. They treat everybody in a courteous and respectful way, including opposing parties, opposing counsel, clients, judges, and staff. They are tough, zealous advocates for their clients, but their advocacy ends in the courtroom. As Shakespeare states in *The Taming of the Shrew*:

And do as adversaries do in law—strive mightily, but eat and drink as friends.

These professional lawyers are what make the practice of law a noble profession. They understand that law is also a business, but their personal satisfaction comes not from the money they make, but from the service they give.

Unprofessional conduct hurts not only the individual lawyers engaging in it, but also our profession and the justice system.

In the words of former United States Supreme Court Chief Justice Warren Burger:

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 our 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.

For our justice system to work, it must function efficiently. In this regard, former United States Supreme Court Justice Sandra Day O’Connor stated:

The justice system cannot function effectively when the professionals charged with administering it cannot even be polite to one another. Stress and frustration drive down productivity and make the process more time-consuming and expensive....The profession and the system itself lose esteem in the public’s eyes.

As the law business continues to become more competitive worldwide, we must not lose sight of the bigger picture. We play an important role in society and have the responsibility to safeguard our Constitution

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and the independence of the judiciary, protect human rights, advance the rule of law, and ensure access to justice for everyone, as well as represent our clients to the best of our abilities.

We also have a responsibility to educate the public and lawyers, starting with law students, about what it takes to be a good, effective lawyer. Education is a long-term process, but it is the ultimate solution to what some perceive as a decline in professionalism and civility. The State Bar is investigating an orientation program for first-year law students on professionalism in the practice of law. If you are interested in participating in this program or have other ideas on this subject, I would love to hear from you.

Courts and other bar associations are adopting civility codes and recognizing lawyers who exhibit the highest standards of professionalism and civility. This also helps in the education process, but every lawyer admitted to practice law in the state of Michigan need only adhere to the Lawyer's Oath he or she took when admitted to practice law:

I will maintain the respect due to courts of justice and judicial officers[.]

* * *

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor[.]

* * *

I will abstain from all offensive personality [.]

* * *

I will in all other respects conduct myself personally and professionally in conformity with the high standards of conduct imposed upon members of the bar as a condition for the privilege to practice law in this State.

It is a privilege to be a lawyer. With that privilege comes the responsibility to act professionally with truth and honor. We should all be proud to be a part of this noble profession. At stake are the welfare of our profession and the individual success of our lawyers. ■