



By Barry H. Grodsky

“So, Do We Really Need It?... Yes, We Do!”

A few years ago, I presented a professionalism CLE and talked about the Code of Professionalism. About a week later, I received a call from an attorney whose name I do not recall but he said he had practiced for 60 years. He said he had been at my presentation and then said, “The Code of Professionalism is B.S. and we don’t need it.” (For the sake of disclosure, he did not use the abbreviation). He went on for a few minutes and ended the call.

This attorney truly caught me off guard and I was not able to respond to him in this short conversation. Frankly, from his tone, I don’t think he was looking for dialogue. Then I thought about one part of what he said, “. . . we don’t need it.” I later realized that, perhaps, there was some merit in that comment; however, it was clear to me that his statement was that he just did not like any rules or regulations. In the call, this attorney also said we don’t need the Rules of Professional Conduct either.

But is there possibly another meaning to his message? We’re lawyers and judges. We are professionals. Do we really need to be told to be civil, courteous, honest and fair? Aren’t these character traits that were, or should have been, instilled in all of us at an early age? Perhaps they were. So, as we progress through our legal careers, starting with law school, have we just lost our focus?

It seems I often give professionalism lectures reminding those in attendance to do things we already know we should do but may not always be doing. But how hard can it be to take a quick look at the Code, now newly amended, and ask ourselves: Are we doing this? And, if not, how can we?



But do we, in fact, always know? A young lawyer told a story in a professionalism talk about his first few weeks in law school. He asked his father, a prominent New Orleans attorney, “Dad, how can I figure out who is the class ass?” His father replied, “Wait a couple more weeks. If you can’t figure it out, it’s probably you.” Maybe we just don’t realize that our conduct is not as professional as it should be. Maybe we just don’t know.

I tried a case in St. Martin Parish with two other lawyers. It was the first trial for a young attorney who had practiced for just over a year. He did a fine job but, during the entire trial, he never once stood up when the judge entered or left the courtroom. Even his own client stood up. I thought how rude and discourteous that was until I realized late in the day that he simply did not know to do this. A simple act of respect for the dignity of the court was missed. A little attention to the Code of Professionalism could have helped.

Much of the Code is just plain old common sense. Do we really need to codify such things as being punctual, cooperate in scheduling matters and being reasonable and fair when some extra time is requested? I suspect everyone who reads this will certainly agree that,

in theory, this sounds great. But let’s be honest. How many times has each of us drifted from such simple ideals? Sometimes we just don’t know but other times we need a reminder. A few weeks ago, an attorney told me he had been engaging in unnecessary back-and-forth with another attorney about scheduling a deposition. The inference was that he may not have been quite as cooperative as he could have been. He also mentioned the other attorney forwarded him my message sent to all 23,000 lawyers licensed to practice in the state, with a copy of the amended Code of Professionalism. Message delivered.

Sometimes common sense, or the lack thereof, can be problematic. A contentious piece of litigation involving ownership of multiple tracts of land was on the verge of settling. An attorney from a large New Orleans firm snuck in a phrase (which he never pointed out) in a random paragraph reserving certain rights just for his client. An eagle-eyed attorney caught it and, of course, the settlement fell apart. It took another year — and the removal of that clause — to get the case resolved. What a waste of time and money! About a month after that, the offending attorney gave a CLE on “Ethics in Real Estate Transactions.” (Some things just can’t be made up.)

We all read stories about personal insults hurled at lawyers (and even to and from judges) during litigation. Perhaps the heat of the moment, or our education as advocates under a Socratic teaching approach, or just a “win at all costs” mentality is to blame. But is it worth it? What is gained? Have we come to a point where, while we know such conduct is wrong, we still need a document to tell us?

I was in rule day in the 15th JDC (Lafayette) and sixth on the docket. In each of the five hearings which preceded mine (two were very hotly contested), once the judge ruled, all lawyers shook hands. Very professional. In one hearing where an older lawyer prevailed over a poorly prepared younger lawyer, as they walked out, the older attorney put his arm around his opposing counsel's shoulders and was speaking quietly to him. The younger attorney was just nodding. I don't know what was said, of course, but I would like to think they were words of encouragement and civility.

As we move further into the 21st century, do we need to be reminded to use social media responsibly and stay up-to-date on technology and changes in the law? Shouldn't we already know we should protect and improve the image of the legal profession? Isn't it in everyone's best interest to be supportive of new members

in the profession? Of course, but sometimes we just need a gentle nudge. A quick glance at the Code can do wonders.

I spoke to an attorney in Monroe who I had never dealt with before. The issue in the case was if an original note was marked as paid. I had the original note in my possession but told him I obviously could not send it to him. He asked, "Is it marked paid?" I said I was looking at both sides and it had no such marking. He replied, "Good enough for me." I offered to send him a copy, and he said, "Why? You just told me the answer. I have no reason to disbelieve you." He certainly knew that, if I was not being truthful and he later saw the note, then there could be serious problems for me. Nonetheless, his response was refreshing. That same day, a lawyer in a different case told me he was going to file a motion for extension of time to file an answer to a lawsuit his client was served with. I told him an email

or a letter would be sufficient. He said no. I even offered to email him to confirm the extension. He said no. He said he would file a motion. I asked why and he said, "I don't know you and you don't know me. Even with an email, you might still try to default me!" My next communication with that lawyer was when he forgot to file his answer on time. The first thing he said was "Did you default me?" Not "Sorry" or "I'll do it now" or "Thanks for the call." Of course, there was no default taken but that call was a reminder that we still do need the Code of Professionalism. Maybe one day we won't.

To review online or download a copy of the new Code of Professionalism, go to: www.lsba.org/goto/CodeofProfessionalism.



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