

Professionalism: Rekindling Greatness

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Why is professionalism important to the practice of law? On a fundamental level, lawyers are representatives of clients, officers of the legal system, and public citizens having special responsibility for the quality of justice.² To breathe life into these roles, each lawyer should cultivate the habits of professionalism.

This essay offers five “habits” of professionalism: (1) Honesty; (2) Civility; (3) Humility; (4) Mentoring; and (5) Public Service and Pro Bono. Why “habits”? Aristotle wrote that “moral virtue comes about as a result of habit.”³ For example, Aristotle believed that “we become just by doing just acts, temperate by doing temperate acts, brave by doing brave acts.”⁴ So too each lawyer becomes professional by acting professionally. To become deeply engrained in the practice of law, professionalism must become a habit.

I. Honesty

The Creed of Professionalism states: “I will not knowingly misstate, distort, or improperly exaggerate any fact or opinion and will not improperly permit my silence or inaction to mislead anyone.”⁵ The Rules explicitly prohibit making false statements in the course of representing clients, and a lawyer may not permit any witness to offer testimony or other evidence that the lawyer knows is false.⁶ Furthermore, each lawyer is sworn upon admission to

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2 FLORIDA RULES OF PROFESSIONAL CONDUCT PREAMBLE TO CH. 4 (2006) (hereinafter, “FLA. RPC”).

3 ARISTOTLE, THE NICOMACHEAN ETHICS 101 (DAVID ROSS TRANS., OXFORD UNIV. PRESS 1980) (1925). More recently, Stephen R. Covey recommended seven interdependent principles as habits to achieve “effectiveness.” See STEPHEN R. COVEY, THE SEVEN HABITS OF HIGHLY EFFECTIVE PEOPLE (1989).

4 ARISTOTLE, THE NICOMACHEAN ETHICS 102 (DAVID ROSS TRANS., OXFORD UNIV. PRESS 1980) (1925).

5 THE CREED OF PROFESSIONALISM (hereinafter “THE CREED”; adopted by the Executive Council of the Trial Lawyers Section of The Florida Bar and approved by the Florida Conference of Circuit Judges), *available at* The Florida Bar website: <http://www3.flabar.org/tfb/TFBProfess.nsf>.

6 FLA. RPC 4-3.3(a)(4), 4-4.1.

obey this oath: “I will employ . . . such means only as are consistent with truth and honor”⁷

For the willful violation of this oath, disbarment may be had.

The Florida Supreme Court stated the principle as follows: “When an attorney adds or allows false testimony to be cast into the crucible from which the truth is to be refined and taken to be weighed on the scales of justice, he makes impure the product and makes it impossible for the scales to balance.”⁸ Through the simple, daily acts of representing clients, each lawyer balances the scales of justice.

Furthermore, a professional lawyer has a duty to be a “moral voice of clients to the public in advocacy while being the moral voice of the public to clients in counseling.”⁹ Clearly, in the role as society's mediator between justice and advocacy, each lawyer is subject to extraordinary scrutiny, by peers and the public alike. In a profession in which one's word is often the most valuable stock-in-trade, dishonesty can ruin a reputation, and even destroy a career.¹⁰

II. Civility

A “professional” lawyer is civil. The Creed does not specifically mention “civility,” but calls for abstaining “from all rude, disruptive, disrespectful, and abusive behavior” and promotes acting at all times “with dignity, decency, and courtesy.”¹¹ In a speech to the American Bar Association in 1997, Justice Anthony Kennedy said, “Civility has deep roots in the idea of respect for the individual.”¹² Civility, he said, is “the mark of an accomplished and superb

7 The Florida Bar, OATH OF ADMISSION TO THE FLORIDA BAR, CLAUSE 4, *available at* The Florida Bar website: <http://www.floridabar.org/tfb/TFBProfess.nsf/basic+view/04E9EB581538255A85256B2F006CCD7D?OpenDocument>.

8 *Dodd v. Florida Bar*, 118 So. 2d 17, 19 (Fla. 1960).

9 Georgia Supreme Court, *Aspirational Statement on Professionalism in STATE OF GEORGIA DIRECTORY AND HANDBOOK 1995-96*, 114-H, *available at* The Florida Bar, Henry Latimer Center For Professionalism website: <http://www.floridabar.org/tfb/TFBProfess.nsf/5D2A29F983DC81EF85256709006A486A/AC951AC3ADA1F20085256B2F006CCDA6?OpenDocument>.

10 FLA. RPC PREAMBLE, *supra* note 2.

11 THE CREED, *supra* note 5.

12 Anthony M. Kennedy, *Law and Belief*, 34 TRIAL 23, 24-25 (1998).

professional, but it is even more than this. Civility is an end in itself.”¹³

However, the Rules, surprisingly, make no mention of civility. For example, in a situation in which a lawyer perceives of a conflict between the “responsibility to a client” and one’s “sense of personal honor,”¹⁴ the Preamble to the Rules advises resolution “through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the rules.”¹⁵ Civility should be considered as one of these principles.

In some instances, a lawyer's “zeal can . . . blind them to their other ethical obligations or cause them to violate other professional duties.”¹⁶ For example, in *Florida Bar v. Buckle*, the Florida Supreme Court publicly reprimanded a criminal defense lawyer after he wrote his client's victim a letter that was “objectively humiliating and intimidating.”¹⁷ Civility tempers zealotry.

Even though a lawyer's obligation to zealously advocate for a client is a primary duty, it is placed under a broader duty to the administration of justice and the judiciary.¹⁸ This duty to administer justice demands zealous advocacy, yet prohibits zealotry and implies a concurrent duty of civility. Furthermore, the Preamble to the Rules of Professional Conduct recognizes that “a lawyer zealously asserts a client's position . . . *under the rules of the adversary system*”¹⁹ Respecting other participants in the legal system in daily practice is a necessary component of “competency,” required of all lawyers. The Preamble also states, “A lawyer's responsibilities . . .

13 *Id.*

14 FLA. RPC PREAMBLE, *supra* note 2.

15 *Id.*

16 Douglas R. Richmond, *The Ethics of Zealous Advocacy*, 34 TEX. TECH L. REV. 3, 4 (2002).

17 *Florida Bar v. Buckle*, 771 So. 2d 1131, 1132 (Fla. 2000) (reprimanding under FLA. RPC 4-8.4(d)). *See also* PROPOSED RULE OF DISCIPLINE 3-5.4, *available at* The Florida Bar website: <http://www.floridabar.org/tfb/TFBProfess.nsf/93534de21ecc6a7285257002004837a3/696172ba9ac09c25852571ee006783f4?OpenDocument> (authorizing judges to fine lawyers \$100 - \$500 for violations of the Guidelines for Professional Conduct). The proposed rule arose from numerous complaints by trial lawyers that episodes of incivility and unprofessional behavior were increasing.

18 FLA. RPC PREAMBLE, *supra* note 2.

19 *Id.*

are usually harmonious. Zealous advocacy is not inconsistent with justice.”²⁰ In our system, in which adversaries are not enemies, civility will always prevail over incivility.

III. Humility

The Creed charges each lawyer to “be guided by a fundamental sense of honor.”²¹ Lawyers, as members of a “learned profession,” are expected to be competent and courteous. But lawyers who become overconfident in their abilities risk becoming conceited. Humility counteracts a prideful bearing, and maintains the golden mean between the extremes of pride and worthlessness.²²

Achieving humility allows a lawyer to recognize her own flaws. Absent a prideful insecurity, even an experienced lawyer may be persuaded that they are wrong. A proverb from the Old Testament of the Bible states, “When pride comes, then comes disgrace, but with humility comes wisdom.”²³ A humble lawyer will have the capacity to be surprised by a new argument, and will be flexible enough to realize the value of new perspectives.²⁴

The importance of humility is directly related to a lawyer’s skill and status. As a lawyer gains experience, that lawyer may become more prone to arrogance. As civility tempers zealotry, humility tempers arrogance. When experienced lawyers display conceit about their abilities, they run the additional risk of misinforming the young lawyers around them. Developing the habit of humility allows each lawyer to be truly honest with herself. A humble lawyer who accepts and learns from mistakes can more readily pass on simple wisdom from their

20 *Id.*

21 THE CREED, *supra* note 5.

22 ARISTOTLE, *supra* note 3, at 89-95. Humility is the state of being humble. Humble is defined as “(1) not proud or haughty[;] not arrogant or assertive; (2) reflecting, expressing, or offered in a spirit of deference or submission.” MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 605 (11th ed. 2003).

23 *Proverbs* 11:2 (New International Version).

24 Chenise S. Kanemoto, *Bushido in the Courtroom: A Case for Virtue-Oriented Lawyering*, 57 S.C.L. REV. 357, 373 (2005).

experience.

IV. Mentoring

For lawyers, mentoring is “a voluntary, mutually beneficial relationship of professional growth, career development, and personal fulfillment that benefits the mentee and mentor, and provides a service to our clients.”²⁵ New lawyers - whether they know it or not - need guidance on the fundamentals of practicing law. Law school can teach legal doctrine and application, but many facets of lawyering may only be acquired through practice.²⁶ Mentors help to bridge the gap between legal education and the legal profession.

For lawyers who operate in a world of intersecting objectives, right and wrong are more than elements of a purely dialectic equation. In difficult situations, it is often helpful to know, “*What would my mentor do?*”

Mentors, particularly experienced lawyers whose advice carries great weight, can demonstrate to new lawyers the importance of professionalism. Through their own good example, mentors can impart to new lawyers the ways that desirable professional habits are developed. For retired mentors, maintaining a connection to the profession sets an example that nurtures the legal profession. The legal profession needs mentors.²⁷

V. Public Service and Pro Bono

This is arguably a two-part “habit,” but the underlying concept is the same. Again, the Creed's edict is clear: “I will further my profession’s devotion to public service and to the public

²⁵ Tod Aronovitz, *Mentoring Is For You!* 77 FLA. BAR J. 4 (2003).

²⁶ *Id.*

²⁷ The Florida Bar has created the “eMentor Program” which pairs practicing attorneys and law students in a mentor/protégé relationship in order to provide guidance to law students. The student and mentor communicate through email. Enrollment information for mentors and students is *available at* The Florida Bar website: <http://www.floridabar.org/tfb/tfbmentor.nsf/welcome?openform>.

good.”²⁸ The Preamble adds that each “lawyer should strive . . . to exemplify the legal profession's ideals of public service.”²⁹

When contemplating whether to undertake pro bono work, each lawyer should remember that lawyers' market dominance is state-enforced, and highly profitable. Florida's aspirational rule regarding pro bono public service gives Florida lawyers a choice. Annually, either provide 20 pro bono hours or contribute \$350 to support legal aid services for the poor.³⁰ However, failure to do so will not subject a lawyer to discipline.³¹ Nevertheless, Florida's lawyers have been prolific. From July 1, 2004, to July 1, 2005, Florida's lawyers worked 1,541,603 pro bono hours, and donated \$3,790,700 pro bono dollars to the poor.³²

The Florida Bar President's Pro Bono Service Award, established in 1981, recognizes lawyers for their work on behalf of indigent clients.³³ The Award is intended to encourage lawyers to volunteer free legal services to the poor. One representative example is an Apopka attorney who was a 2007 recipient.³⁴ Over the course of her career, the attorney served as a guardian ad litem for 71 children, donating more than 3,600 pro bono hours in closed cases, alone. Another recipient, a Sarasota attorney, served as a volunteer attorney with Legal Aid of

28 THE CREED, *supra* note 5.

29 FLA. RPC PREAMBLE, *supra* note 2.

30 FLA. RPC 4-6.1. Pro bono service is aspirational under the Rules. However, each lawyer must generally report either the number of pro bono hours worked or the amount contributed to a legal aid organization.

31 FLA. RPC 4-6.1(d).

32 STANDING COMMITTEE ON PRO BONO LEGAL SERVICE'S REPORT TO THE SUPREME COURT OF FLORIDA, THE FLORIDA BAR AND THE FLORIDA BAR FOUNDATION ON THE VOLUNTARY PRO BONO ATTORNEY PLAN (July 2006), *available at* <http://www.floridaprobono.org/library.cfm?fa=detail&id=118064&appView=folder>. Note, however, that in 2005, pro bono hours and fund contributions appear to have declined. Lawyers provided 1.3 million hours of pro bono work in 2005, down from 1.5 million in 1998, *available at* The Florida Bar website: <http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/8c9f13012b96736985256aa900624829/f9f022852864317b8525727d00574a44?OpenDocument>.

33 More information regarding the President's Pro Bono Service Award, *available at* The Florida Bar website: <http://www.floridabar.org/tfb/TFBPublic.nsf/WNewsReleases/97C79B1FE40B2D578525725E00534265?OpenDocument#Susan%20V.%20Stucker>.

34 Susan V. Stucker was a 2007 Recipient from the 9th Judicial Circuit of Florida, *available at* The Florida Bar website: <http://www.floridabar.org/TFB/TFBPublic.nsf/WNewsReleases/97C79B1FE40B2D578525725E00534265?OpenDocument>.

Manasota since 1991, donating more than 2,000 hours of pro bono service to the community.³⁵

By providing pro bono service, each lawyer puts into practice the virtues of honesty, civility, and humility. It is one thing to espouse, on an intellectual level, virtuous conduct. But these habits become anchored in deeper bedrock when used to help those who are less fortunate.

Conclusion

Every day in Florida, thousands of lawyers practice law with honesty, civility, and humility. Each lawyer is duty-bound to help others throughout the course their career. This includes mentoring new lawyers and advocating for those who cannot afford to pay for legal services. To best represent and advocate for clients, each lawyer must commit to “revere the law, the judicial system, and the legal profession.”³⁶ Lawyers must each habituate virtue in order to practice law professionally. The preceding five “habits” offer a beginning, a means to a noble end.³⁷

35 Neil W. Scott was a 2007 Recipient from the 12th Judicial Circuit of Florida. *Id.*

36 THE CREED, *supra* note 5.

37 ARISTOTLE, *supra* note 3 at 102.