

PROFESSIONALISM AND INDEPENDENCE

New Jersey Commission on Professionalism in the Law

Just what is “professionalism” anyway? It is a valid and timely question, and one that has generated differing responses. For starters, the term “professionalism”, when applied to lawyers, has much broader connotations than many realize. For instance, professionalism means more than smiling at your adversary, or standing politely at the counsel table when a judge takes the bench.

It is also important to recognize the distinction between professionalism and ethics, even though they go hand in hand. The ethics rules (codified in the Rules of Professional Conduct) are mandatory, black letter standards that establish a minimum level of conduct. Failure to abide by the rules may result in disciplinary sanction. Professionalism, however, is grounded in aspirational goals and traditions that seek to encourage the bar, and bench, towards conduct that preserves and strengthens the dignity, honor, and integrity of the profession. See *Between Law and Virtue*, Joseph P. Tomain and Barbara G. Watts, 71 U.Cin.L.Rev 585 (2003).

Often professionalism is equated with civility, but it is much more than that. A few years ago a New Jersey State Bar Association study committee attempted to come up with a definition, and concluded that professionalism means “not what you have the right to do, but rather to do what’s right.”

United States Supreme Court Justice Sandra Day O’Connor has said that “the essence of professionalism is a commitment to develop one’s skills and to apply them responsibly to the problems at hand. Professionalism requires....a willingness to subordinate narrow self interest in pursuit of the more fundamental goal of public service....Lawyers must temper bold advocacy for their clients with a sense of responsibility to the larger legal system which strives, however imperfectly, to provide justice for all.”

Implied in Justice O’Connor’s definition is a key component in the fabric of a truly professional lawyer -- an understanding that the exercise of independent judgment is essential. Too many lawyers seem to have forgotten that they should not, indeed must not, slavishly do the bidding of a client without regard for the consequences. For instance, the lawyer who has an aggressive and “hands on” client must know better than to heed a client’s advice to “litigate like a mad dog” or “make them not only sweat, but bleed cash.”

RPC 2.1 requires lawyers to provide clients with independent judgment and candid advice. The Principles of Professionalism adopted by the Commission encourage lawyers to advise clients against pursuing a course of action that is without merit, or tactics that are intended to harass or drain the financial resources of an opposing party.

Lawyers must remember that they are counselors, not hired hands or legal technicians. The highly competitive nature of practice results naturally in a desire to please and retain clients. However, the truly professional lawyer knows that unrealistic client expectations must be addressed and effectively managed. In this way, the best interests of the client will be served, and lawyer independence and moral accountability preserved.

This article is one of a series intended by the Commission on Professionalism in the Law to encourage discussion about professionalism issues and problems facing the legal community.