

You're a Lawyer? No Joke!

Presented by John H Smith and Loren Shanklin Fleshman

Smith Shanklin Sosa, L.L.C.

A profession differs from other occupations in that membership "entails an ethical obligation to temper one's selfish pursuit of economic success by adhering to standards of conduct that could not be enforced by legal fiat or through the discipline of the market."¹ In a broader sense, legal professionalism refers to those goals, values, and attitudes which exemplify the nobler aspects of the practice of law and that enhance the public image of lawyers and the legal profession.²

Professional ethics is generally a set of guidelines, standards, and expectations set by members of associations and organizations which are intended to apply to members' personal and professional interaction with each other, third parties, and the public in general. While designed to internally protect the integrity and reputation of an organization or association, these professional standards also protect those outside of the organization by requiring certain standards of behavior. Hundreds of organizations seeking professional recognition —doctors, dentists, plumbers, engineers—have proposed, promulgated, and adopted standards of professional ethics in some form or another.

Although we may believe professionalism and civility is a matter of common sense, many practitioners do not. In fact, it was those practitioners who consistently failed to act with the appropriate decorum and respect towards opposing attorneys and clients, and the court, which led to the enactment of Louisiana Rules of Professional Conduct. As you well know, the Louisiana Rules of Professional Conduct establishes guidelines for self-regulation of the legal profession to promote civility and professionalism. Arguably, the legal profession has the most stringent applicable professional and ethical standards.

Even though our standards are cut from similar ideals as other professions and the legal profession is highly regulated, public perception of lawyers is exponentially lower than that of similarly-situated professions.³ This presentation explores the public image of our profession and is a call for action to repair our reputation.

¹ *Shapiro v. Kentucky Bar Ass'n*, 486 U.S. 466, 488-89 (1989) (O'Connor, J., dissenting).

² *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, Susan Diacoff, *The American University Law Review*, Vol. 46:1337, 1343, (1997).

³ "Honesty/Ethics in Professions" Gallup Poll, December 5-8, 2013.

"There is no truth. There is only perception." -Gustave Flaubert

I. Exploring the Roots of the Negative Public Perception

A. The Adversarial Nature of the Legal System Creates Aggressive, Hostile, and Competitive Lawyers

By design, law is an adversarial endeavor. However, the adversarial nature of the legal profession should not dictate the manner in which we, as legal professionals interact with one another, clients, and the public. All lawyers carry the heavy burden of zealously advocating for their clients while at the same time being civil and professional to each other.

Given the nature of the profession, the need for professionalism in all aspects of the legal process is imperative. In litigation, those lawyers who approach a case as professionals trying to work out a solution—as opposed to being adversaries with a “win at all costs” approach—project a substantially better image to the public and promote faster resolutions to legal issues. Furthermore, clients take their cues from their attorney. Civility and professionalism among attorneys encourages their respective clients to treat each other amicably—not as enemies. If an attorney portrays the opposing counsel in a negative fashion, the client is more likely to view the opposing side negatively and less likely to respond rationally.

Professionalism and civility improve attorney communications, client communications, interactions with the court, and project a better image to the public.

Think about a time when an opposing counsel has complimented you in front of your own client. Or when the Court has complimented the work you have done in front of your client. How did that make you feel?

Likewise, think about a time when opposing counsel insulted and ridiculed you in front of your own client? Or when the Court chastises you in front of your client. How did that make you feel?

B. The Public's Personal Interactions with Lawyers

Litigation is not an experience that the majority of the population desire. In fact, litigation is most often, an unpleasant experience for the parties involved—victims have to relive traumatic

events; spouses have their most intimate relationship on display and become adversaries; and businesses/persons have to face a potential financial hardship.

What we say and do are a reflection of our clients. As attorneys we are strictly contracted to conduct the business of our clients; we are their advocates and their voices. Clients often look to their attorneys for guidance on circumstances beyond the legal issue at hand, and during those times, it is imperative that the attorney show civility. Through civility, an attorney may better understand their client's perspective, turn a case around, and could also lead to future business.

C. Time and Cost of Litigation

Similar to the image Oil companies face, the legal profession is believed to be an extremely “profitable” business. In times of economic hardship, a seemingly profitable business may experience public scrutiny. It is vitally important, now more than ever, for attorneys to promote the professional and civil aspects of the legal profession over an emphasis on profit and the bottom line.

There are those out there that believe attorneys intentionally drive up the cost of litigation. Unwarranted arguments between attorneys halt the legal process and cost clients time and money. Mutual respect and professionalism between attorneys, however, will most often lead to a more efficient and advantageous outcome.

D. Growing Dissatisfaction of the Profession by Attorneys Themselves

"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 justice."⁴

Many attorneys feel that the legal profession has declined. Due to the lack of civility and professionalism between attorneys, as well as the negative public opinion of the profession as a whole, it is not surprising that many attorneys feel overwhelmed and helpless. In the beginning, varying ideals inspire an attorney to enter the profession. But, how long that attorney will continue practicing law often depends on whether those ideals are being fulfilled. Despite an attorney's particular area of practice, no enjoyment or satisfaction can be derived from a system plagued with devious tactics and dubious behavior inside and outside the courtroom.

⁴ Supreme Court Chief Justice Warren Berger

A disenchanted attorney may feel that the profession not only allows, but actually rewards, unethical and unprofessional behavior which may cause the attorney to abandon the practice of law altogether. The loss of an ethical practitioner for lack of civility and professionalism, however, has rippling effects on our legal community. Civility and professionalism are essential elements for a meaningful and effective legal practice. With civility and professionalism, complex problems and every day challenges can be tackled and solved in a much more productive and respectful manner.

The practice of law is difficult. Not only are lawyers competing for favorable results for their clients, but there is bitter competition with each other to attract new clients. We must shift our focus back onto our professional image and restore the respect and dignity of our profession.

II. Public Images of Lawyers

- A. Aggressive**
- B. Cocky**
- C. Competitive**
- D. Greedy**
- E. Sketchy**
- F. Manipulative**
- G. Condescending**

"And God said: 'Let there be Satan, so people don't blame everything on Me. And let there be lawyers, so people don't blame everything on Satan.'"
- Pete Luchini

Q: What's the difference between a vacuum cleaner and a lawyer on a motorcycle?

A: The vacuum cleaner has the dirt bag on the inside.

Q: What's the difference between a jellyfish and a lawyer?

A: One's a spineless, poisonous blob. The other is a form of sea life.

Q: What's the difference between a lawyer and a leech?

A: After you die, a leech stops sucking your blood.

Q: What's the difference between a lawyer and God?

A: God doesn't think he's a lawyer.

Q: How are an apple and a lawyer alike?

A: They both look good hanging from a tree.

Q: What do you call 25 attorneys buried up to their chins in cement?

A: Not enough cement.

Q: How can you tell when a lawyer is lying?

A: Their lips are moving.

Q: How does an attorney sleep?

A: First he lies on one side, then he lies on the other.

Q: What's the difference between a lawyer and a liar?

A: The pronunciation.

Q: Why did New Jersey get all the toxic waste and California all the lawyers?

A: New Jersey got to pick first.

Q: Why don't lawyers go to the beach?

A: Cats keep trying to bury them.

Q: What do you call 5000 dead lawyers at the bottom of the ocean?

A: A good start!

Q: What's the difference between a dead skunk in the road and a dead lawyer in the road?

A: There are skid marks in front of the skunk.

Q: Why won't sharks attack lawyers?

A: Professional courtesy.

Q: What do you have when a lawyer is buried up to his neck in sand?

A: Not enough sand.

Q: How do you get a lawyer out of a tree?

A: Cut the rope.

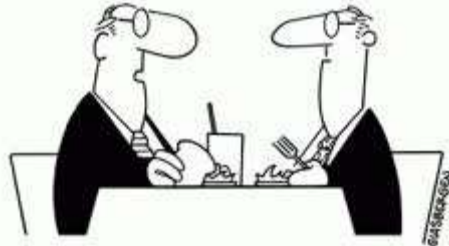
Q: Do you know how to save a drowning lawyer?

A: Take your foot off his head.

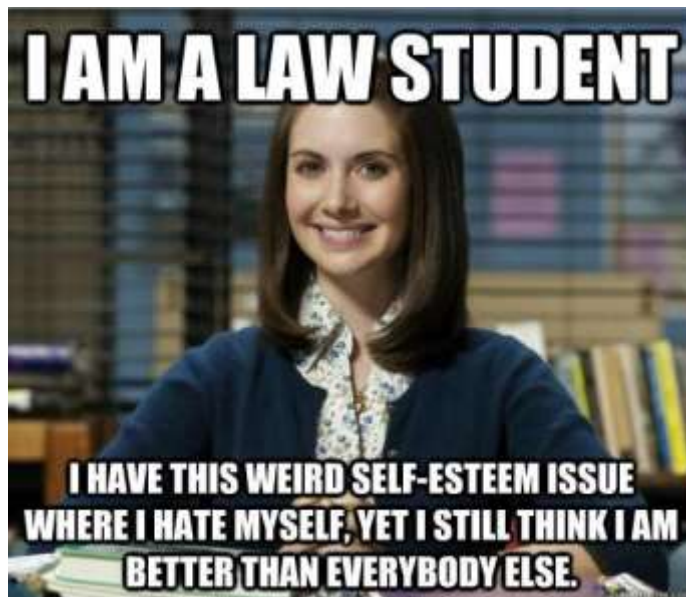
Q: What's the difference between a lawyer and a bucket of manure?

A: The bucket.

© Randy Otshagen.
www.otshagen.com



"The way I see it, unethical ethics are better than no ethics at all!"



You told a lot of really great lawyer jokes at the party. My favorite was after everyone left and you said to me "But, seriously, I have this little problem I was wondering if you could help me with..."



ROTTENSCARDS

Do these jokes describe you? Do these jokes make you happy to be an attorney? These jokes are about everyone in the room. While we might defend a client who has been defamed and ridiculed, we do not seem to care about our own professional reputation. You can argue that each attorney is responsible for his or her own reputation and has no responsibility for the reputation of other attorneys or the profession, but all lawyers have an obligation to themselves and to the profession. Rule 8.3 requires that attorneys report any ethical rule violation to the Office Disciplinary Counsel. What about unprofessional behavior? Have you ever told another attorney that what he or she was doing was unprofessional? Would it make a difference?

Lawyers are responsible for legislation and law that protects people. We help provide a safe place for people to live, work, and prosper. We put criminals in jail. We defend the constitution. We do impactful work every day. Being a professional lawyer is no joke. What have you done to improve the reputation of the legal profession?

III. Ways to Repair Our Reputation

Start with the man in the mirror. If we are going to make the [profession] a better place, take a look at yourself, and then make a change! – Michael Jackson

Being a professional lawyer means never having to say you're sorry.

1. Professional lawyers don't lie to each other or to the court.
2. A Professional lawyer will not default another lawyer when he has been notified that the other lawyer will be representing a party in a case.
3. A Professional lawyer does not set up depositions without first coordinating the times and dates with the calendars of all other attorneys involved in the case.
4. A Professional lawyer will not file a motion to compel without first notifying the other lawyer that he is going to do so and without allowing the offending lawyer a chance to respond after being so notified.
5. Professional lawyers do not engage in ex parte conversations with the court.
6. When a Professional lawyer says he is going to do something or send you something, he does.
7. No written motions are required if a Professional lawyer gives you an extension of time, unless, of course, some official court rule requires it.
8. Professional lawyers are considerate to other lawyers, judges, their paralegals, secretaries, law clerks and staff.
9. Professional lawyers realize that a lawyer's client is very precious to him and, as such, do not try to entice another lawyer's clients away.
10. Professional lawyers do not file unnecessary pleadings just for the purpose of generating an attorney's fee.
11. Professional lawyers always return phone calls and e-mails from other Professional lawyers (maybe late, but eventually).
12. Professional lawyers do not use the threat of sanctions as a litigation tactic.

13. Professional lawyers do not engage in personal attacks on other lawyers or witnesses.
14. Professional lawyers don't hide behind electronic communications to say something to another lawyer that they wouldn't say to his or her face.
15. Professional lawyers think about that nasty e-mail they just typed before they hit the "Send" button.

(Adopted and revised from the works of Ed Walters - Professionalism and Ethics Paper, 2014)

IV. Conclusion

The present state of the legal profession is dependent on the existence of civility and professionalism. Civility in the practice of law requires balancing aggressive client advocacy and professional conduct. The average person's perception of an attorney is one of a liar or manipulator. However, practicing civility and professionalism can help prevent the erosion of the public's opinion of the legal system and lawyers and maintain the morality of the rule of law. A person's experience with an attorney practicing with integrity and decorum can, and often will, change a person's attitude towards the legal profession and restore their faith in the legal system.

Members of the legal community are held to a higher ethical standard; therefore, people scrutinize their actions. Conducting one's self professionally, not only on the professional level but also the personal level, is imperative to mend the perception of the profession on a whole.

Moreover, civility and professionalism preserves the public trust in the justice system. The public's confidence in the justice system is eroded, and the integrity of the rule of law is compromised, when the public observes misbehaving lawyers and unprofessional conduct.

Civility and professionalism go hand in hand in the legal profession and are just as important to the practice of law as a good legal education. Without them, the current legal system cannot exist. It is our time as a legal community to act. Professionalism begins with each of us, and if we continue to show respect for our clients, other attorneys, and our legal system, we will continue to improve our reputation and make practicing law more enjoyable for us all.

Q: Why do they bury lawyers under 20 feet of dirt?

A: Because deep down, they're really good people.

Links and Additional Sources:

<http://lalegaethics.org/louisiana-rules-of-professional-conduct/>

<http://www.wcl.american.edu/journal/lawrev/46/daicoff.pdf>

<http://www.mindtools.com/pages/article/professionalism.htm>

<http://www.cnn.com/2014/01/19/us/lawyer-suicides/>