

**PROFESSIONALISM**  
**by William F. Gallagher**

Professionalism is a concept difficult to define. There are many viewpoints, most include learned knowledge of the law; skill in applying the applicable law to the facts; thoroughness of preparation; practical wisdom; integrity; ethical conduct; and a dedication to justice and the public good. Other definitions would be a bit more specific, and include competence; diligence; appropriate deportment and civility; and independence. All of these are attributes of professionalism.

We are all aware of the discussion in numerous books, articles and bar association reports complaining about a decrease in professionalism among American lawyers. It is as a result of this criticism that the Connecticut Bar Association recently concluded a task force on professionalism, and created its own Standing Committee on Professionalism, whose activities are now getting underway.

In 1996 the ABA Section of Legal Education and Admissions to the Bar published a report on "Teaching and Learning Professionalism." The report identified six prevalent themes in the publications decrying a decrease in professionalism, and made recommendations with the hope that they "will provide concrete ways to inspire and enhance a greater sense of professionalism in American lawyers."<sup>1</sup>

It is useful to review these recommendations and the "themes" identified in the literature and bar reports concerning the decline of professionalism. The themes are<sup>2</sup>:

1. the loss of an understanding of the practice of law as a "calling;"
2. changes in the economics of the practice of law which have converted law practice from a profession to a business – making it more difficult for lawyers to devote significant amounts of time to public service activities and generating a growing sense of dissatisfaction with law practice as being incompatible with personal values and goals;

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<sup>1</sup> ABA Professionalism Committee report, "Teaching and Learning Professionalism," 1996, p. 10.

<sup>2</sup> *Id.*, pp. 3-4.

3. perceived excesses of the adversarial process, including the loss of civility;
4. an undermining of the traditional independent counseling role of lawyers;
5. concerns about the competency of lawyers and their compliance with applicable ethical codes; and
6. the loss of a sense of the ultimate purpose of lawyers resulting from a change in the traditional concept of lawyers serving the public good as the intermediaries between the conflicting interests in our society.

Not everyone will agree with the causes of the decline in professionalism identified in the six “themes” set out in the report. The report annotates each theme to a variety of law journal articles, books, and bar reports. The increased emphasis on billable hours as the principal criteria for compensation and the evaluation of lawyers has frequently been singled out as the most important recent change that has undermined the capacity and willingness of lawyers to engage in public service activities and pro bono representation.

The recommendations to “inspire and enhance” a greater sense of professionalism are divided into three sets. The first set deals with pre-law education; the second with law school training. The third focuses on teaching and learning professionalism in the practice of law. Taken together, the recommendations are said to “provide a comprehensive and interrelated system for inculcating lawyer professionalism.”<sup>3</sup>

There are six recommendations applicable to learning professionalism in the practice of law. They are:<sup>4</sup>

1. *National, state, local and specialty bar associations must assume a leadership role in defining and promoting professionalism ideals and in implementing professionalism programs that reach all their members.*

Many bar associations have formed professionalism committees, as has the Connecticut Bar Association. The most prominent work product of these committees to date has been the aspirational civility and professionalism codes. The report recommends that all courts and bar associations consider

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<sup>3</sup> *Id.*, p. 10.

<sup>4</sup> *Id.*, pp. 27-34.

adopting these types of codes. The report recommends additional steps as follows:

- Holding statewide meetings between lawyers, judges and public officials with a view towards support for a comprehensive professionalism program.
- A program for newly-admitted lawyers, either voluntary or mandatory, which would cover a wide range of professionalism issues, including practical ethics, courtroom etiquette, civility, codes of professionalism, lists of available pro bono activities, and a review of available mentoring programs and other lawyer assistance programs.
- Including ethics and professionalism issues in all CLE courses.
- In those states where CLE is mandatory, instituting a minimum ethics and professionalism requirement as part of the CLE program.
- Establishing a voluntary special certification program for firms that meet rigorous ethical standards and procedures. These include
  - financial controls (trust account standards);
  - conflicts of interest check system;
  - risk management procedures (a two-partner rule for legal opinions)
  - procedures for monitoring billing practices;
  - procedures for monitoring outside activities of the lawyers in the firm that might create conflict of interest or malpractice issues;
  - client relation procedures;
  - continuing legal education requirements;
  - participation in pro bono activities;
  - strict standards for legal advertising and other public relations activities;
  - peer review of the firm's legal work.
- Establishing a mentor program.
- Establishing a resource directory containing the names of lawyers in specialty areas who volunteer to answer basic questions that less experienced lawyers may have in that area.
- Sponsoring bench-bar conferences with regularity which have a primary purpose of the airing of etiquette, civility and professionalism issues.
- Increasing the number of pro bono or reduced fee opportunities available for practicing lawyers, and coordinating and facilitating these activities and programs.
- Establishing one or more local inns of court as part of the American Inns of Court Program.
- Sponsoring in-house CLE programs designed to cover issues such as sexual harassment and gender, sexual orientation, and racial discrimination issues in law firms and the judicial system.
- Implementing a lawyer quality of life program designed to make law firm working conditions more compatible with the professional as well as personal goal of lawyers.

*2. Practicing lawyers must become more acutely aware of the need to nurture and to renew their professionalism ideas on a continuing basis, always aspiring to maintain the highest standards of the lawyer-statesman paradigm.*

*3. Law firms should adopt standards of practice and risk management procedures that enhance the level of competence and efficiency of all the lawyers in their law firm.*

*4. Practicing lawyers need to become more sensitive to important quality of life issues and implement in their law firms enlightened working conditions that are compatible with the personal as well as the professional goals of the firm's lawyers.*

*5. All law firms should have one or more committees that monitor the firm's compliance with ethical rules, continuing legal education, requirements, risk management procedures, pro bono activities, quality of life, and other professionalism issues.*

*6. Judges and judicial organizations must take a greater leadership role in raising the level of professionalism among practicing lawyers.*

The ABA report is worthwhile reading for every lawyer.

My own view is that the disarray in our system of justice is apparent. It is clearly not a problem of lack of competence on the part of lawyers. If anything, the standard of performance of lawyers, in my opinion, is as high as it has ever been. It is the lack of moderating qualities of lawyers: such things as accommodation to others, trust and compassion, to name a few. Many lawyers, lacking in these qualities and adhering to the total commitment of winning at any cost, will multiply litigation, abuse every possible procedural device, and employ any strategy or tactic that will help win the case. This does not result in justice, and frequently brings about disaster. Among these lawyers there is a lost sense of obligation to the courts, to opponents, and to the general public.

I think that as a profession our view of ourselves must be reshaped. The idealistic tradition of the profession – to balance service to the client and to one's self with a realistic regard of the interest of others as well as what is right – is the cornerstone on which the profession can be reshaped. Balance is the key. A lawyer must care about his or her clients, about what is right or wrong with the client's claim, case or position, and engage in a dialogue with the client on such issues. A lawyer must also care about equal access

to justice for all persons. In short, a lawyer must bring his or her moral conscience to bear on everything done as a lawyer.

Some are very skeptical about the prospect of reshaping the profession. Consider the comments of Dean Anthony Kronman of the Yale Law School (Kronman, *The Lost Lawyer: Failing Ideals in the Legal Profession* (1993), pp. 353-354):

The profession we have inherited is not the one we joined twenty years ago. In many outward ways it is remarkably different. Its schools now encourage a style of scholarly work that is increasingly remote from – even hostile to – the concerns of practicing lawyers. Its leading firms have become giant industries, marked by an extreme division of labor and aggressive commercial tactics, that bear only a fading resemblance to their predecessors. And the caseload crisis has transformed our courts and made the work of judging a more managerial and less deliberative activity....

Dean Kronman argues that there has been a great inward change that has overtaken the profession which is largely unacknowledged. He suspects that the profession will drift more and more in the direction that it has been moving in the recent past, and that the work of rebuilding what has been torn apart is a doubtful enterprise.

I do not have the experience or wisdom to take such a global view of the problem. I think I speak for most of the members of the Association in recognizing the problem and aspiring to do something about it. Although Dean Kronman thinks we may not be successful, that is almost beside the point. We have to make the effort. It is clear that increasing the level of professionalism will not be an easy task. It will involve fundamental changes not only in the practice of law, but also in the education of lawyers. It will take time, dedication to purpose and discipline. The ABA recommendations are a starting point. It is time to get started and to meet the challenge.