Upcoming Events:

February 4, 2017
Dade County Bar Association’s
Kozyak Minority Mentoring Picnic
Amelia Earhart Park
Hialeah, FL

February 10, 2017
St. Petersburg Bar Foundation’s
“Changes in Latitudes, Changes in Attitudes”
Professionalism Seminar
Stetson University College of Law
Gulfport, FL

February 10, 2017
Practicing with Professionalism
Rosen Plaza
Orlando, FL

February 17, 2017
Practicing with Professionalism
West Palm Beach Marriott
West Palm Beach, FL

March 17, 2017
Practicing with Professionalism
The Westin Fort Lauderdale
Fort Lauderdale, FL

March 31, 2017
Practicing with Professionalism
St. Petersburg Marriott Clearwater
St. Petersburg, FL

April 21, 2017
Putting the “Pro” in Professionalism
West Palm Beach Hilton
West Palm Beach, FL

Henry Latimer Center
for Professionalism
Director:
Jacina Haston
Program Coordinator:
Elizabeth “Leisa” Davis

Florida Supreme Court
Commission on Professionalism
Chair:
Justice R. Fred Lewis

The Florida Bar
Standing Committee on Professionalism
Chair:
Tim Chinaris
Vice-Chairs:
Judge Frances Perrone
Kara Berard Rockenbach
Board Liaison:
C. Richard Nail

More Important All the Time
By Tim Chinaris, Chair of the Standing Committee on Professionalism

It is becoming more important all the time. “It,” of course, is professionalism! Lawyers are seeing that professionalism has become increasingly important, not only to clients and the public, but also to themselves.

This issue of our newsletter is devoted to the “power of professionalism.” As others have so articulately explained, the professional and personal lives of lawyers who focus on professionalism are enriched. Practicing professionalism can improve career satisfaction, making it easier to keep balance in tough times and spread positive energy to others.

Individual lawyers differ in many ways, including how they view professionalism. Some lawyers embrace it enthusiastically because of their personality. Others find it attractive because they saw it lived out by mentors or role models in the legal community. Some (perhaps most?) lawyers tend to take a pragmatic approach. These lawyers want to know why it is a good thing to practice professionalism. They want to know how taking professionalism seriously can better their careers. I tend to fall in the “pragmatic” category, so I can share some information that might help sway lawyers who find themselves straddling the professionalism fence.

Professionalism undoubtedly is becoming more important all the time to those who govern our professional lives – the Florida Supreme Court and The Florida Bar. The Supreme Court started with an incremental approach to encouraging professionalism, but has become much more active. First, the Court approved a rule requiring that Florida lawyers take at least five hours of continuing legal education each year in professionalism, ethics, or substance abuse training. More recently, the Court added professionalism to the list of subjects that can be tested on the Florida Bar Examination. In re: Amendments to Rules of the Supreme Court Relating to Admissions to the Bar, 51 So. 3d 1144 (Fla. 2010). Following closely on the
heels of that action, the Court amended the Oath of Admission to The Florida Bar to require that lawyers pledge “fairness, integrity, and civility” to opposing parties and counsel. In re: Oath of Admission to the Florida Bar, 73 So. 3d 149 (Fla. 2011).

In 2013, the Supreme Court increased its emphasis on professionalism through an order that established a mechanism for addressing and correcting professionalism problems among lawyers. The Code for Resolving Professionalism Complaints provides members of the public and the legal community with a procedure for filing complaints about a lawyer’s unprofessional conduct. In re: Code for Resolving Professionalism Complaints, 116 So. 3d 280 (Fla. 2013). The Court’s order also provided for the creation of Local Professionalism Panels in each circuit to help resolve complaints through an informal process at the local level. Courts are referring lawyers to these panels. See Nocari Investment, LLC v. Wells Fargo Bank, N.A., 2016 WL 6092069 (Fla. 3d DCA Oct. 19, 2016) (lawyer referred by Third DCA to Local Professionalism Panel as sanction for abandoning appeal).

The Court has used a “carrot-and-stick” approach to furthering professionalism. Education and informal conflict resolution processes are carrots, but the Court has shown that it will not hesitate to use a stick when needed. In its published disciplinary cases, the Court has stated expressly and repeatedly that it “has moved toward imposing stronger sanctions for unethical and unprofessional conduct.” Florida Bar v. Rosenberg, 169 So. 3d 1155, 1162 (Fla. 2015) (emphasis added). See also Florida Bar v. Adler, 126 So. 3d 244 (Fla. 2013). In at least 16 published disciplinary decisions since 2013, the Court has imposed a stricter disciplinary sanction than recommended by the referee or requested by the Bar. Clearly, it is not a good time to be an unprofessional lawyer in Florida.

The Standing Committee on Professionalism continues to encourage the practice of professional behavior in a variety of ways. A key event on the professionalism calendar takes place on Friday, April 21, at the new Hilton West Palm Beach. Our half-day symposium titled “Putting the ‘Pro’ in Professionalism” features an array of useful information presented by leaders in professionalism, such as federal judges, state judges, and bar officials. The symposium includes: a keynote address by former Florida Bar President Eugene Pettis, breakout sessions on communication, mindfulness, and career satisfaction, a judicial panel on courtroom civility, an interactive presentation on understanding your behavioral style and fitting it into professionalism, a discussion of the new Professionalism Expectations approved by the Board of Governors, and a professionalism awards presentation. Lunch and a post-symposium reception are included as well. We urge you to join us!

Another key event next fall will be a workshop designed to bring together, for the first time, many of the stakeholders who work in the front lines of law student professionalism. These include law school deans of students, deans of academics, professional responsibility teachers, clinical teachers, and representatives from the Florida Board of Bar Examiners. The workshop will allow these stakeholders to share ideas about how to more effectively make professionalism an integral part of the legal education experience. Reaching law students and encouraging them to make professionalism a part of their practice as lawyers is one of the best things that we can do to ensure that the legal profession will fulfill its vital role in our society.

Our Committee invites you to join us in experiencing the power of professionalism.
The Power of Professionalism

By Jacina Haston, Director of the Henry Latimer Center for Professionalism

Professionalism is often discussed in a negative way. We read about those that run afoul of the discipline system in The Florida Bar News. One’s reputation can be ruined in an instant from behaving in an unprofessional manner. War stories are often shared amongst colleagues after encountering an attorney with less than desirable behavior. Complying with the minimal legal, ethical, and procedural standards does not make one professional. Professionalism is largely a matter of attitude, and the discussion of those attitudes and values held by today’s attorney is essential if we are to resolve some of the critical issues facing the profession.

With over 100,000 attorneys in the Bar and minimal cases ending in discipline last year, why do we focus on the negative aspects of professionalism so much? Within this article, I will choose to focus on the innate power of professionalism, giving rise to a more positive approach.

There is more to professionalism than inculcating the idea of “don’t be a jerk.” When professionalism is viewed as a tool and utilized as power, it has the potential to do wonders for our career path, provide success for clients, and improve our public perception. The essential components of professionalism that we all should embody are character, competence, commitment, and civility.

Character plays an imperative role on how co-workers, opposing counsel, clients, and the judiciary approach and deal with us daily. The moral qualities that we possess could make the difference in receiving the client referral or reaching the settlement.

Character will allow one to empathize during mediation while still zealously advocating for his or her client. Realizing that we do not have to stoop low when someone chooses to hit below the belt takes great power; positivity cancels out negativity any day of the week. John Wooden once said, “Be more concerned with your character than your reputation. Character is what you really are. Reputation is just what people say you are.”

As with any new venture or area of law that we choose to practice, we must “study to show thyself approved.” Rule 4-1.1 mandates a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. Competence is a pillar of professionalism and being a lawyer requires that we stay abreast of the everchanging laws. The Florida Bar offers a myriad of resources including the Practice Resource Institute, Lawyers Advising Lawyers, Ethics Hotline, and CLEs to assist in obtaining knowledge in a specific area of law. As they say, knowledge is power.

Practicing law is no part-time job by any means. Motivation is what gets you started in the legal profession; commitment is what keeps you going. Commitment embraces an all or nothing mentality, that is, being committed to your staff, clients, community, and the profession. The choices that we make daily are a sign of our commitment, which leads to the results that we are aiming to seek. Nothing great happens without a level of commitment.

We should all take some time to consider why we entered the profession and renew our commitment.

Civility has garnered a lot of attention around the state. The Supreme Court made it very clear that civility is due not only in court, but in all written and oral communications when it amended the Oath of Admission in September of 2011. This includes exchanges with opposing counsel in the hallways of the courthouse, our communication on social media, the content and tones of our emails — all are encompassed by the provision. Civility is the gateway to positive results. Have you ever seen an attorney lose his or her cool in court? It typically does not fare very well with the judge. If you operate with the tactic of being uncivil and bullying your way through the process, your reputation will precede you. As they say, you catch more bees with honey than vinegar, so exude civility.

The innate powers of professionalism are character, competence, commitment, and civility. It is a new year with limitless opportunities for change and improvement; take the power of professionalism, move forward and do great things. When faced with unprofessional behavior, your response is what will set the stage on how things will be throughout the course of the case; respond rather than react. I encourage you to attend Putting the “Pro” in Professionalism on Friday, April 21, 2017 at the Hilton West Palm Beach to further the discussion of the positive aspects of professionalism with leaders in the legal community. I hope to see you there!
The Florida Bar, the Center for Professionalism and the Standing Committee on Professionalism present

Putting the “Pro” in Professionalism

COURSE CLASSIFICATION: INTERMEDIATE LEVEL

Friday, April 21, 2017
Hilton West Palm Beach
600 Okeechobee Blvd.
West Palm Beach, Florida
(561) 231-6000
Course No. 2422R

This symposium will focus on developing professionalism from within through soft skills training. The cost for attendance will include presentations on emotional intelligence, impression management, mindfulness, and DISC facilitation (with a personal 20+ page DISC behavioral assessment). During the DISC facilitation, you will discover your behavioral style, why you think and act the way that you do and learn strategies using your assessment to better lead and work with others who may be different than you. The symposium will include lunch, as well as the presentation of several professionalism awards during an evening cocktail mixer.

11:00 a.m. – 12:00 p.m. Check in
12:00 p.m. – 1:00 p.m. Lunch
12:00 p.m. – 12:50 p.m. Reconnecting to your “Why”
  Keynote Speaker Eugene Pettis, Haliczer, Pettis & Schwamm, P.A.
12:50 p.m. – 1:00 p.m. Break
1:00 p.m. – 1:50 p.m. Breakout Sessions (three options)
  1. Waking Up to What Matters: Mindfulness, Professionalism, and Reciprocal Practice
     Scott Rogers, University of Miami School of Law
  2. Communicating Professionalism: An Introduction to Impression Management for Lawyers
     Kirsten Davis, Stetson University College of Law
  3. We Finally Know: What Makes Lawyers Happy
     Larry Krieger, Florida State University College of Law
1:50 p.m. – 2:00 p.m. Break
2:00 p.m. – 2:40 p.m. You’re out of Order: Dealing with Incivility in the Courtroom
  Moderator: John Howe, Law Offices of John M. Howe, P.A.
  Judge Sarah Zabel, Eleventh Judicial Circuit
  Judge Dorian Damoorgian, Fourth District Court of Appeal
  Judge Robert Scola, Jr., U.S. District Court
  Judge Robin Rosenberg, U.S. District Court
2:40 p.m. – 4:15 p.m. Understanding your DISC Behavioral Style to Become a More Professional Leader, Dr. Mimi Hull, Hull & Associates
4:15 p.m. – 5:00 p.m. Great Expectations: Professionalism Expectations for Florida Lawyers
  Moderator: Tim Chinaris, Chair of the Standing Committee on Professionalism
  Greg Coleman, Critton, Luttier & Coleman, LLP
  D. Culver Smith III, Culver Smith III, P.A.
  Kara Berard Rockenbach, Methe & Rockenbach, P.A.
5:00 p.m. – 7:30 p.m. Professionalism Awards and Cocktail Mixer

STANDING COMMITTEE ON PROFESSIONALISM
Tim Chinaris — Chair
Judge Frances Perrone — Vice Chair
Kara Berard Rockenbach — Vice Chair

CLE COMMITTEE
Evett Louise Simmons, Chair
Terry L. Hill, Director, Programs Division

STEERING COMMITTEE
Whitney Untiedt — Chair
Kara Berard Rockenbach — Co-Chair
Myer Cohen
Aaron Behar
Lisa Marjorie Berlow-Lehner
Matthew Feeley
Judge Phyllis Kotev
Cherine Smith Valburn
Neal Sonnett
Judge Sarah Zabel

CLE CREDITS

(Rep. 5.0 credits)

CLER PROGRAM
(Max. Credit: 5.0 hours)
  General: 5.0 hours
  Ethics: 0.0 hours
  Professionalism: 5.0 hours
REFUND POLICY: A $25 service fee applies to all requests for refunds. Requests must be in writing and postmarked no later than two business days following the live course presentation or receipt of product. Registration fees are non-transferrable, unless transferred to a colleague registering at the same price paid. Registrants who do not notify The Florida Bar by 5:00 p.m., April 7, 2017 that they will be unable to attend the seminar, will have an additional $100 retained. Persons attending under the policy of fee waivers will be required to pay $100.

HOTEL RESERVATIONS: A block of rooms has been reserved at the Hilton West Palm Beach, at the rate of $179 single/double occupancy. To make reservations, call the Hilton West Palm Beach directly at (561) 231-6000. Reservations must be made by March 28, 2017 to assure the group rate and availability. After that date, the group rate will be granted on a “space available” basis. Group Code: ZFLBAR

Register for the “Putting the “Pro” in Professionalism” Symposium
ONE LOCATION: (110) HILTON WEST PALM BEACH, WEST PALM BEACH (APRIL 21, 2017)

TO REGISTER OR ORDER AUDIO CD, DVD, OR COURSE BOOKS BY MAIL, SEND THIS FORM TO The Florida Bar, Order Entry Department, 651 E. Jefferson Street, Tallahassee, FL 32399-2300 with a check in the appropriate amount payable to The Florida Bar or credit card information filled in below. To receive the link to complete the DISC assessment, you must register by April 14, 2017. If you have questions, call 850/561-5831. ON-SITE REGISTRATION, ADD $25.00. On-site registration is by check only. On-site registration will not include the DISC assessment.

Name_________________________________________________________________ Florida Bar # _______________________
Address _____________________________________________________________ Phone: ( ) _______________________
City/State/Zip____________________________________________  E-mail* __________________________________________

*E-mail address is required to receive the electronic course materials and link to take the DISC assessment. Upon completing the DISC assessment, print the results and bring a copy with you to the symposium.

JJH: Course No. 2422R

ELECTRONIC COURSE MATERIAL NOTICE: Florida Bar CLE Courses feature electronic course materials for all live presentations, live webcasts, webinars, teleseminars, audio CDs and video DVDs. This searchable electronic material can be downloaded and printed and is available via e-mail several days in advance of the live presentation or thereafter for purchased products. Effective July 1, 2010.

REGISTRATION FEE (CHECK ONE):
☐ Standing Committee on Professionalism: $160
☐ Non-committee member: $175
☐ Full-time law college faculty or full-time law student: $155
☐ Persons attending under the policy of fee waivers: $125

Please check here if you have a disability that may require special attention or services. To ensure availability of appropriate accommodations, attach a general description of your needs. We will contact you for further coordination.

METHOD OF PAYMENT (CHECK ONE):
☐ Check enclosed made payable to The Florida Bar
☐ Credit Card (Fax to 850/561-9413; Email to registrations@flabar.org)
☐ MASTERCARD  ☐ VISA  ☐ DISCOVER  ☐ AMEX  Exp. Date: _____/____ (MO./YR.)

Signature: ________________________________________________________________________________________________
Name on Card: ___________________________________________Billing Zip Code: ________________________
Card No. ________________________________________________________________________________________________

Related Florida Bar Publications can be found at http://www.lexisnexis.com/shop/flabar/default.page
As I left for a Florida Bar committee meeting recently, a colleague asked why I would want to be involved in “all that.” My answer was simple: the Bar is the governing body of my chosen profession. “Professionalism” encompasses more than civility in the practice of law. It also includes participation in governance of the profession. The Bar makes decisions that impact all of its members’ professional licenses. Bar members can participate meaningfully in these significant decisions through voluntary Bar service. In fact, WE are the Bar, so WE should engage.

An excellent example of a Bar decision impacting all members’ licenses is the recent increase in the minimum CLE requirement (effective January 1, 2017) from 30 to 33 credits per three-year cycle. Three credit hours were added to require courses in technology. This is the first increase since mandatory CLE was adopted in 1987. The decision was not made overnight, nor was it made in a vacuum by the Board of Governors at a remote meeting location. It was the culmination of study, review, and a rule-amendment process involving a Bar special committee, a Bar standing committee, the Board of Governors, and the Florida Supreme Court.

In October 2013, the Bar created the Vision 2016 Commission to perform an in-depth review of four general areas that impact the future practice of law, and it established committees for each area— one of which was technology. In its March 2015 report to the Board of Governors, the Technology Committee recommended the CLE requirement be increased to 36 hours, with the extra hours devoted to technology courses.

As with any recommendation that involves a change to Bar rules (in this case, Rule 6-10.3), the Board of Governors did not take up the recommendation directly, but rather vetted it through a standing committee—the Program Evaluation Committee (PEC). The PEC considered the Technology Committee’s proposed change at its May 2015 meeting and, after discussion, approved the recommendation by a 13-1 vote. The Board of Governors took up the issue at both its May and July 2015 meetings. At its July 2015 meeting, after review by both the Rules and Budget Committees, the Board of Governors rejected the proposal to increase minimum CLE from 30 to 36 hours. Instead, the Board approved a motion from the floor to increase the minimum CLE requirement from 30 to 33 hours per three-year cycle, with three required technology hours.

The Bar published notice of intent to amend the CLE rule in the March 2016 issue of The Florida Bar News. It received only one comment in opposition to the proposed CLE increase. Thereafter, the Bar on April 4, 2016, petitioned the Supreme Court to amend Rule 6-10.3. The Court approved the amendment by Order dated September 29, 2016.

The above CLE change is just one of many decisions, made by our governing body through the committee process, that affect our ability to maintain our professional licenses, ensure the integrity of our profession, and regulate our day-to-day practice. Given the vast impact our governing system has on the profession, member involvement should be a given. Yet, few members participate in governance of the profession. Of the total members in good standing to practice law in Florida, only 2.1 percent serve on a Bar standing committee.

In addition to committee service, members can influence decisionmaking through service within Bar sections. The sections plan and deliver practice-area-specific CLE programs, provide input on practice-area rule changes, and propose and comment on proposed legislation. Yet, only 8.2 percent of the Bar membership serves within the Bar’s twenty-one sections. Assuming no overlap between standing committee membership and section leadership, a mere 10 percent of members participate in the work of the Bar.

If the increase in the CLE requirement took you by surprise, consider getting involved in a Bar standing committee or section to have a voice in future decisions impacting our profession. Become involved in the profession as well as the practice of law. I am convinced you will find it rewarding.

Suzanne Van Wyk became an Administrative Law Judge for the Florida Division of Administrative Hearings in August 2012. She presides over agency rule challenges, bid disputes, and a wide variety of cases from Florida’s state agencies and school districts. Judge Van Wyk was formerly a shareholder with Bryant Miller Olive in the firm’s Tallahassee office, where she focused her practice on land use law, primarily for public clients. Prior to entering private practice, Judge Van Wyk was an Assistant County Attorney in Leon County, Staff Attorney for the Senate Committee on Community Affairs, and Assistant General Counsel for the former Department of Community Affairs.

Judge Van Wyk is a Board Certified Specialist in City, County and Local Government Law. She serves on the Florida Bar Professionalism Committee and the Florida Bar Administrative Law’s Section Executive Council. Judge Van Wyk is a Director of the Florida Bar Foundation and is a Foundation Fellow; President of the Board of Directors of the Florida State College of Law.
SMALL, UNPROFESSIONAL ACTS CAN LEAVE INDELIBLE, NEGATIVE IMPRESSIONS

By Howard R. Marsee, Member of the Standing Committee on Professionalism, Upchurch Watson White & Max

Unprofessional acts do not have to be monumental to leave lasting, negative impressions. This is especially true when unprofessional conduct involves the public. Such acts reflect poorly on our profession. The following incident is a good example.

I recently represented a young woman pro bono in a matter related to a real estate transaction in Alabama. My client was in Florida and had to handle the closing long distance. My client and her sister were selling real estate they owned as joint tenants in Alabama. The two had entered into a contract that required the seller at closing to pay each of the sisters with a separate check, distributing one-half of the settlement proceeds to each sister. The problem was that neither sister trusted the other to properly disburse to the other should one sister receive one-hundred percent of the settlement proceeds.

On the day of closing, a closing clerk with the title company in Birmingham told my client by phone that under Alabama law the closing agent could only cut one check. My client contacted me solely to see if I could help with the two-check situation. I called the closing agent, the title insurer, to see how we might handle the problem of dual disbursement to the sisters. The closing clerk transferred my call to a person she described as “an attorney.”

The attorney answered, obviously annoyed and hostile -- even before I could say hello or identify myself. I told her I was a Florida attorney and explained who I represented and the circumstances. I asked whom she represented, and her answer came harsh and sharp, “I own the company.” She was clearly agitated, I guess, that I didn’t know her status without asking. I explained that I wanted to make sure I wasn’t talking to the purchaser of the property or the attorney for my client’s sister.

This attorney said that Alabama law allowed the closing agent to cut only one check. Although I privately doubted this was an absolute, I told her I was not an Alabama lawyer and was perfectly willing to take her word for what was or was not Alabama law. I explained, as much as this attorney would allow, that my client and her sister had sought separate checks in the contract to avoid problems between them. I asked her what we could do to help solve the disbursement problem. You could literally hear her exhalation of exasperation as she said, “I don’t need this sort of problem.” Then she said abruptly and peremptorily that she would reluctantly accept affidavits from the sisters regarding distribution by separate checks -- and that she had wasted enough time and wouldn’t discuss the matter further. Her voice dripped hostility. I concluded the call by telling her we would send the affidavits, and I resisted the temptation to tell her I felt her conduct was unprofessional. The entire phone conversation probably took less than three minutes.

My client was in the room during this conversation, and the call was on speaker. When I hung up, my client asked, “Are lawyers always like that? Aren’t we paying the closing agent for his or her services?” I explained to her that my client and her sister were indeed paying for the closing agent’s services and that, “No,” all lawyers are not like that. I assured her that this was true whether in Florida or Alabama. I wondered myself whether this attorney understood that her job was to help solve problems inherent in closings, not be annoyed by them. I especially wondered whether she realized the image she was conveying of herself and our profession.

Unprofessional conduct can be more than a flagrant or obvious act, more even than the wrong choice of words. It can manifest itself in tone of voice and attitude. It seems we as lawyers should be vigilant to avoid the same -- especially when dealing with the public. It is, after all, our job to help solve problems, and we ought to be proud of that role.

Howard R. Marsee is a mediator, arbitrator and special master with the ADR firm of Upchurch Watson White & Max. He was admitted to The Florida Bar in 1971 and for over thirty years served as a trial lawyer in Orlando, Florida. He is a member of the Standing Committee on Professionalism.
All law students and student organizations are encouraged to participate individually or in groups. The skit must pertain to legal professionalism expectations in Florida, incorporating the Ideals and Goals of Professionalism, Guidelines for Professional Conduct, and/or the Rules Regulating The Florida Bar. Entries should be 2 to 4 minutes in length and must be submitted with an approval letter from law school administration. The winning submission will be posted on the Center for Professionalism’s website.

All entries become property of The Florida Bar and are subject to use in CLE programs.

Full details at floridabar.org/professionalism, under “Awards and Contests.”
PROFESSIONALISM TIPS
A CONTRIBUTION FROM MEMBERS OF THE FLORIDA BAR

THE STEALTH MENTOR
As a practicing lawyer for over 25 years, I have occasionally had experiences with young lawyers who, for whatever reason, behave in a way that lacks civility. Over the years, I have been tempted to respond in like fashion, but as I have gotten older, I have adopted a new tactic – that of the stealth mentor. When I receive a harsh email response, or I am spoken to in an inappropriate tone, I now take those as opportunities to model the appropriate behavior in my response. Typically, I acknowledge that they are obviously upset, and I apologize for upsetting them. If appropriate, I then offer some sort of compromise on whatever the issue is, and offer to seek guidance from the court in a hearing if we are unable to agree. More often than not, we not only come to some agreement about the issue at hand, but establish an ongoing cordial relationship throughout the litigation and beyond. I have found that 90% of litigation can involve little issues that ultimately have little to no bearing on the outcome of the case. Experience has taught me to try to stay focused on what’s most important in my cases, and in life.

Paul C. Perkins, Jr., Esq. is a personal injury lawyer practicing in Orlando, Florida. He is a founding partner of Paul & Perkins, PA and member of the American Board of Trial Advocates.

LOOK FOR THE MOTIVE
As a trial lawyer for over three decades, I gradually learned that almost every act or comment springs from some underlying motive. The search for motive is especially valuable when we are faced with unprofessional conduct. Is the offender retaliating for conduct on our part? Is he ignoring common courtesy in order to gain a tactical advantage? Does she know her conduct is unprofessional? How much experience does she have? Is he trying to anger or provoke me? Does he have a basic misconception as to what it means to zealously represent a client? Does her overly aggressive behavior mask uncertainty or insecurity? Is he by reason of upbringing and environment an intrinsically uncivil person? Is she merely a poor communicator? Is he a repeat offender? Before we respond in knee-jerk fashion to a breach of professionalism, it seems important that we understand the motive behind it. If we don’t know the motive, then we don’t understand the problem well enough to fashion a remedy. By dealing blindly with unprofessional conduct, we risk escalating a bad situation.

Howard R. Marsee is a mediator, arbitrator and special master with the ADR firm of Upchurch Watson White & Max. He was admitted to The Florida Bar in 1971 and for over thirty years served as a trial lawyer in Orlando, Florida.
The Center offers an interactive CLE-credited seminar for legal groups and organizations which will educate participants on how professionalism can increase their workplace success. For more information, contact the Center: (850) 561-5747 or cfp@floridabar.org
SELECTED RECENT PUBLICATIONS AND CASES

PUBLICATIONS

Peter S. Poland, King Arthur, Rambo, and the Origins of Civility at the Bar, 42 Litigation 53 (2016).
Elizabeth Adamo Usman, Nurturing the Law Student’s Soul: Why Law Schools are Still Struggling to Teach Professionalism and How to Do Better in an Age of Consumerism, 99 Marq. L. Rev. 1021 (2016).

CASES

Nocari Investment, LLC v. Wells Fargo Bank, N.A., No. 3D16-1333 (Fla. 3d DCA Oct. 19, 2016)*: Lawyer and his clients failed to timely file an initial brief, failed to obey an order to file the order being appealed, and failed to obey an order to file a brief. The court viewed the lawyer’s conduct as a violation of Rule 4-1.3 (diligence) and ordered a copy of its opinion sent to the Local Professionalism Panel for the Eleventh Circuit.

Boyles v. Dillard’s, Inc., 199 So. 3d 315 (Fla. 1st DCA 2016)*: The First DCA reversed a verdict for the plaintiff and the trial court’s denial for a mistrial in a personal injury suit. The court concluded that defense counsel’s conduct in referring to a deposition not in evidence was “so prejudicial as to warrant a new trial.” The appeals court also criticized the conduct of Plaintiff’s counsel, finding “[P]laintiff’s counsel’s snide denigration of [a defense expert’s] professional occupation in the presence of the jury and postings by plaintiff’s counsel on his own public Facebook page were well outside the bounds of professional conduct.”

State v. Haas, 196 So. 3d 515 (Fla. 2d DCA 2016)*: In a lengthy opinion, the Second DCA reversed a finding of indirect criminal contempt against two lawyers, as the evidence did not prove beyond a reasonable doubt that they acted with the intent to disobey a court order. Nevertheless, the court noted that “a review of the facts outlined in this opinion should remind every member of the legal profession who reads it of the importance of making civility and professionalism an integral part of his or her daily life.”

*As reported by sunEthics, a website that digests cases and articles regarding professionalism, legal ethics, judicial ethics in Florida and nationally, at http://www.sunethics.com/. SunEthics is maintained by Associate Dean of Academic Affairs and Professor of Law at Belmont University College of Law in Nashville, Timothy P. Chinaris, a member of The Florida Bar Standing Committee on Professionalism.

Words to the Wise

“First keep the peace within yourself; then you can also bring peace to others.”
- Thomas A. Kempis

“Life begins at the end of your comfort zone.”
- Neale Donald Walsch

“The purest treasure mortal times can afford is a spotless reputation”
- William Shakespeare