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*The Constitution is
the guide which I
never will abandon.*

George Washington



Northern
Kentucky
Bar
Association

A PRIMER ON PROFESSIONALISM

Lee Metzger

Most of us like to think that we act professionally. But more often than not, whenever the idea of “professionalism” crosses our minds, it is when we are passing judgment on what we perceive to be the unprofessional behavior of others. Few of us ever stop to reflect and examine our own behavior to decide whether we have, in fact, acted in a professional manner.

This sort of introspection is made possible by the Kentucky Bar Association’s Code of Professional Responsibility (“CPR”). The CPR is intended to guide lawyers in their dealings with the courts, clients, opposing parties and their counsel, and the general public. It is not a disciplinary code, but rather an aspirational statement with the goal of making us all better representatives of our profession.

Most NKBA attorneys are already familiar with the CPR, but a quick refresher could probably do us all some good. The aspirational statements of the CPR are in bold; my comments follow in normal font.

1. A lawyer should avoid taking action adverse to the interests of a litigant known to be represented without timely notice to opposing counsel unless ex parte proceedings are allowed.

Do unto others as you would have them do unto you. If you would want notice, give opposing counsel notice.

2. A lawyer should promptly return telephone calls and correspondence from other lawyers.

In my experience, this is the rule that is broken most frequently. In this day and age of unlimited connectivity, there is really no reason a call, email, or letter cannot be returned within a business day or two (unless you’re in trial or otherwise out of the office). Even if you do not have a substantive response, at least follow up indicating that you received the correspondence, and will address the issue as soon as you are able.

3. A lawyer should respect opposing counsel’s schedule by seeking agreement on deposition dates and court appearances (other than routine motions) rather than merely serving notice.

Another one that is frequently violated. We all have busy schedules and personal lives. But unless time is of the essence or we cannot get a response from the other lawyer, there is no reason we cannot accommodate each other’s schedules.

4. A lawyer should avoid making ill-considered accusations of unethical conduct toward an opponent.

The key here is “ill-considered.” If you intend to make an accusation of unethical conduct against an opponent, you better be darn sure you’re right. Otherwise, it isn’t going to go over well with the judge.

5. A lawyer should not engage in intentionally discourteous behavior.

I was recently speaking with a lawyer who had the perfect response for an opposing counsel engaging in intentionally discourteous behavior. This particular opposing counsel was using crude language in their conversations by, for example, calling her a ...well, a pejorative term for a female canine. Instead of

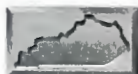


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rising to the bait, she just mailed him a copy of the CPR.

6. A lawyer should not intentionally embarrass another attorney and should avoid personal criticism of other counsel.

We're all in this together. We're all learning; that's why it's called "practicing" law. None of us is perfect or knows everything, and there is no need to embarrass another attorney who knows less than you about an area of law, or is mistaken about a particular fact. Personal attacks are always unnecessary. Whenever possible, refer to the other lawyer's client, not the other lawyer. Referring to the other lawyer, especially in a pleading, makes it personal. Unless you are discussing obstructionist behavior, such as flagrant abuse of the Rules of Procedure, leave the other lawyer's name out of it.

7. A lawyer should not seek sanctions against or disqualification of another attorney unless necessary for the protection of a client and fully justified by the circumstances, not for the mere purpose of obtaining a tactical advantage.

This can be summed up in the maxim my partner Gerry Dusing taught me in the first few months of my law practice: "Don't be a jerk. And never pay retail." (Okay, so the part about not paying retail doesn't really fit here, but it's still generally good advice.) Seeking sanctions should be your last resort, not your first move. Seeking disqualification of an attorney or firm should never be considered if disqualification would not further your client's interests.

8. A lawyer should strive to maintain a courteous tone in correspondence, pleadings, and other written communications.

We can disagree on just about everything in a case and still be civil about it.

9. A lawyer should not intentionally mislead or deceive an adversary and should honor promises or commitments made.

This one is pretty easy: tell the truth and keep your word.

10. A lawyer should recognize that the conflicts within a legal matter are professional and not personal and should endeavor to maintain a friendly and professional relationship with other attorneys in the matter. In other words, "leave the matter in the courtroom."

It's just a job. Don't take it personally. Fight like hell for your client, and do your best to obtain a favorable outcome, but don't make enemies of the attorneys on the other side. They're just doing their job, too.

11. A lawyer should express professional courtesy to the court and has the right to expect professional courtesy from the court.

What we do is a privilege. How we carry ourselves in the courtroom, on both sides of the bench, reflects how the public views our profession.

In addition to the sage advice contained in the CPR, I offer four additional professionalism insights from my (admittedly limited) time in the trenches -- with the disclaimer that we often learn more from our mistakes than our successes:

12. Learn to take an insult with grace. If another lawyer insults you, intentionally or not, responding in kind only lowers you both. Just turn the other cheek. If we are being honest, many of us think too highly of ourselves anyway. It wouldn't be the worst thing in the world for us to be humbled a bit from time to time. Just take it on the chin when another lawyer says something underhanded.

13. Take the high road. This one is fairly self-explanatory, and I have to admit I didn't come up with it myself. I cannot count the number of times as a law clerk I heard Jim Kruer counsel one of his domestic relations clients with this very advice. You will never get into trouble by taking the high road, and will typically be better off for it.

14. Save the arguments for the courtroom. Arguments are for the courtroom, not for the hallway after you've left the courtroom. One of the most embarrassing moments of my career to this point as a defense lawyer was spent outside a circuit courtroom arguing with (nay, shouting at) a plaintiff's lawyer over the distinction between joint and concurrent tortfeasors. I still can't come up with a rationale for why I thought *that* was a good idea.

15. Have patience with "idiots." One day, you may be the idiot. (See the anecdote about the idiot defense lawyer arguing outside a circuit courtroom, above.)

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WHAT ARE THE SYMPTOMS OF PROSTATE CANCER?

In the early stages, when prostate cancer is a small, treatable tumor, there are no symptoms. When the growth becomes more advanced, these symptoms may appear:

- Weak or interrupted urine flow
- Difficulty starting or stopping the flow of urine
- Increased need to urinate, especially at night
- Blood in your urine
- Pain or a burning feeling when urinating

Constant pain in your lower back, hips or upper thighs

Remember, more than 85 percent of prostate cancer that is treated in an early stage is curable.