Professionalism and the Legal Profession

A Report of the Boston Bar Association Committee on Professionalism
TABLE OF CONTENTS

Introduction ........................................................................................................... 1

Components of Professionalism ........................................................................... 2

The Causes of Declining Professionalism ........................................................... 5

The Solutions ....................................................................................................... 9

   Formal Rules: Aspirational Commands .......................................................... 10

   Canon 7: Civil Representation ....................................................................... 12

   Education in Professionalism ...................................................................... 17

Specific Recommendations ............................................................................... 19

Conclusion .......................................................................................................... 21

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INTRODUCTION

Law traditionally has been one of a small number of callings that are seen as special, requiring a commitment to certain ideals, training in particular skills, and a spirit of cooperation among its practitioners. Those attributes distinguished the "learned professions" from other occupations. Young men and women joined these professions with a sense that responsibilities, as well as rights, accompanied their admission to practice.

Over the past several years, however, there have been numerous complaints from inside the profession as well as from outside. Some complaints are registered in direct and articulate form. Others are conveyed implicitly, in the proliferation of jokes about lawyers and broadsides against the profession. The complaints reflect considerable, widespread dissatisfaction, although as elaborated below it is unlikely that complainants are agreed on the nature of the problem, the reasons for dissatisfaction, or the steps that would constitute solutions.

The Committee on Professionalism of the Boston Bar Association was appointed to examine concerns about lawyers' professionalism, its components, its causes, and its cures. The Committee has spent the past year in this endeavor, informally canvassing lawyers and clients as well as drawing upon the experience of the Committee's members.

Our findings, presented in this Report, begin with recognition that the term "professionalism" is used in several distinct senses. Assertions that professionalism is declining at times are rooted in concerns about the ethics of the profession. At other times, the complaints reveal concerns about the competence of legal representation. At yet other times, the lament focuses on consideration lawyers show one another, judges, and members of the public.

The Report addresses all three of these concerns, but concentrates on the last of these, which we have termed the concern for "civility" in the legal profession. As elaborated below, this concern goes beyond the
formal niceties of "manners" and has implications for some fundamental aspects of lawyers’ practice. The other concerns, while even more important to the legal profession, are central to other efforts to improve the profession and do not require extended attention here.

Our recommendations, which we present after canvassing the problem, its causes, and proposed solutions, have two principal parts. First, we suggest a change in the Canons of Ethics to modify the requirement that lawyers zealously represent the interests of their clients. This requirement has been a source of considerable misunderstanding and has led to behavior that diserves the interests of clients as well as broader interests of the legal system. Second, and more generally, we call for increased attention within the bar to the costs of behavior that ignores once-common courtesies. We do not propose new formal rules or specific sanctions, as we believe current rules of the bars and courts are sufficient to discipline lawyers whose behavior merits such action. Rather, the solution we believe lies in renewed and continuing efforts to instruct members of the bar in the benefits of courteous and conscientious behavior, for themselves and for the profession.

A respected member of the Boston Bar summed up the message at the core of these recommendations: "A lawyer is a member of a profession with a distinguished history and tradition which existed long before any present lawyer was born. It is the lawyer’s duty to practice the profession mindful of that tradition and to contribute something in a positive way to that legacy."

**COMPONENTS OF PROFESSIONALISM**

Professionalism is a term that takes on an almost infinite variety of meanings. Indeed, it is, understandably, used to refer to every aspect of the legal profession. More precisely, professionalism represents the total set of positive characteristics that leaders of the profession, or critics
of the profession, wish to promote.¹

The protean quality of the term makes discussion difficult; different aspects of good professional behavior do not invariably have the same consequences. Nor can they invariably be promoted best by the same tactics. For the most part, however, the concerns we encountered over lawyers' professionalism can be expressed under three headings: ethics, competence, and civility.

*Ethics* encompasses the standards of behavior that define minimally acceptable conduct. Lawyers should not, for instance, borrow money from clients' funds for their personal use. The rules of ethical practice are set out in the Canons of Ethics and the Code of Professional Responsibility. These rules are enforced by the bars of the states, and violation of these rules can lead to very serious sanctions, including suspension of a lawyer's license to practice or disbarment. In some instances, criminal penalties may be imposed for conduct that also violates ethical standards. Few complaints about serious ethical lapses are couched in terms of professionalism, but concerns about minor ethical transgressions often are expressed in such terms.

A second set of concerns involves lawyers' *competence*. At the extreme, failure to represent clients with a minimal level of competence violates the Code of Professional Responsibility and is treated in the same manner as unethical practice. Discussions of professionalism seldom focus on serious departures from competent representation. But complaints that lawyers have not displayed a substantial level of competence (including expending considerable time on unnecessary work)--have not adequately managed their time, sufficiently prepared for meetings or depositions to avoid wasting time (their own, other lawyers', and consequently also wasting the financial resources of clients), or critically

¹ A thoughtful discussion of many aspects of professionalism, including its relationship to core values of the legal profession, is James Wildman & Timothy Terrell, *Rethinking "Professionalism*" (paper delivered at ABA Convention, August 1991).
reflected on the likelihood that litigation will be successful--frequently travel under the heading of professionalism.

The third set of concerns is over lawyers' readiness to show courtesy to other lawyers, to judges, to witnesses, to clients, and to the public. This concern for *civility* at first blush might seem trivial or old-fashioned, a concern better addressed by Miss Manners than by the bar. On examination, however, we conclude that this is an important issue for the profession. It follows directly from the prior concerns: if gross departures from good practice present ethical issues, and more modest departures from good practice put attorneys' competence in doubt, the best practice comprehends more than mere freedom from questions of ethics or competence. It encompasses ideals of personal behavior that extend to all aspects of lawyers' practices, to their interaction with every segment of the public and the profession. There is a myriad of ways in which lawyers can advance the highest professional ideals though increased sensitivity to the effects of their business behavior on others, in how they advise clients, arrange meetings, request information, prepare pleadings, and so on. Ultimately, attention to these issues affects the individual lawyer's professional success as well as the tone of the profession.

This Report concentrates on this third set of concerns. That choice is not guided by any sense that the first two--ethics and competence--are less important aspects of professional conduct. Indeed, they form the bedrock on which other aspirations for the profession must build and without which no concept of civility is meaningful. Punctilious but unethical and incompetent lawyers would not make for a profession that suited anyone's notion of professionalism, except perhaps comedians.

Our decision to focus on civility, however, is informed by the availability of other mechanisms within the bar devoted to issues of ethics and competence (issues that today are receiving increased attention within the profession). Further, the Committee's exploration of complaints about the state of lawyers' professionalism suggests more frequent usage of that term to denote concerns about changing standards of civility by
and among lawyers than to describe more serious concerns about ethics or competence.

Complaints of incivility dominate the stories and examples of problems with professionalism that the Committee reviewed. Complaints were recorded by the Committee about *ad hominem* attacks in court documents, oral argument, and negotiations; inability of lawyers to "re-member" or honor agreed upon terms; unnecessary motions, pleadings, and discovery seemingly designed to annoy opposing counsel or parties rather than realistically to advance client interests; and the recurring failure to return phone calls to other lawyers.²

**THE CAUSES OF DECLINING PROFESSIONALISM**

Combatting a decline in professionalism requires an understanding of its causes. As may be imagined given the variety of complaints about declining standards of professionalism, the Committee found no single cause for apparently unprofessional behavior. We did identify several contributing forces.

First, the profession has experienced extraordinary growth in recent years. The number of lawyers in the United States approximately doubled in the past decade, while the number admitted to the bar in Massachusetts rose at a slightly faster rate. In the past two decades, the size of the Massachusetts bar has more than quadrupled.

This rapid increase in the number of lawyers has introduced several forces that militate against maintaining high professional standards. The most basic of these is the reduction in obvious "tit-for-tat" policing of professional conduct. The increasing number of attorneys diminishes (at an accelerating rate) the chances that a given lawyer will

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² The failure to return phone calls from other attorneys—at all, or within a reasonable period of time—was the most frequent complaint voiced across the board by and to the members of the Committee. It is striking how many respondents report irritation at attorneys for failing to return phone calls—or at least direct someone to let the caller know that the call was received.
later oppose the same attorney in another case. This "distancing" of the bar means that rude, impolite, or discourteous behavior may never provoke a direct response from the attorney who was at the receiving end of the behavior (or whose client or witness was). Of course, response in the individual proceeding itself often is possible, but the opportunity for effective reaction is maximized where law is practiced by a relatively small number of "repeat players." In such settings, there is widespread acceptance of sentiments captured by well-worn propositions about sauces for geese and ganders or about things going around and coming around.

The growth of the profession also has weakened "second-hand" learning. In a small bar, members of the bar commonly play an active role in indoctrinating new members in the particular customs that have been found best at facilitating harmonious relations among the group. Knowing how the particular practice operates is an effective tool for increasing professionalism, as the established "rules" of practice will be based on experience about how that practice can function with reduced friction among its members. The information conveyed by "old hands"—including experienced non-lawyer participants, such as legal secretaries, clerks, and others—historically has improved relations among participants in the legal system as well as the competence of the bar. Such informal mentoring systems had both lower costs and greater benefits for the mentor when the bar was smaller. These mentoring systems have not disappeared, but they appear less common than was once the case.

In addition, the pronounced and rapid expansion of the profession has decreased the sense of it being quite so special a way of earning a  

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3 In self-contained practices such as labor law or even family practice, opposing counsel frequently meet each other across the table and usually find ways to preserve a professional working relationship, even as they bargain. See also "Focus: Hampshire County Bar Association—The Bar President Speaks on 'Western' Civilization," 20 M.L.W. 94 (September 30, 1991) (Linda S. Fidnick writes of practice in the western part of the Commonwealth: "Civility in practice is a godsend. Cases settle more fairly and efficiently when lawyers effectively communicate with one another and the court. The cost to clients for a settlement or a trial with reasonable stipulations is far less than the cost for months of sniping and guerilla tactics.") Yet, even in these practices, growth within the bar appears to have loosened constraints on incivil behavior.
living. There is no evidence that lawyers entering the profession today are less intelligent or educated or industrious than their predecessors, but there is consensus that the sheer number of lawyers diminishes the profession's status. It is easiest to see this effect in a small town; the first lawyer or doctor in town enjoys a special aura that cannot be sustained when there are ten or twenty or a hundred. Although that change in status should not command any change in behavior by practitioners, it is our suspicion that a sense of reduced importance of a calling does subtly alter the way its members behave.

A second cause of declining professionalism is the increased competition among lawyers. This, of course, is closely related to the growing number of lawyers. But other factors also have increased competition within the profession. Old constraints on the way lawyers competed for business have weakened, both *de facto* and *de jure*. Limitations on lawyer advertising, for instance, have been found to violate antitrust laws and constitutionally guaranteed freedom of speech.

Heightened competition among lawyers also is a product of increased competitive pressure on businesses that hire lawyers, which in turn means reduced demand for all the goods and services (including legal services) that those businesses employ. Competitive pressure on clients is exacerbated by short-term phenomena, such as the current economic downturn which has been particularly severe in Massachusetts and surrounding states. The genesis of competitive pressures on American businesses, however, is in longer-term, structural changes in the United States' economy and the global economy.

It is a commonplace that competition is good for society. At the same time, competition can preclude or limit benefits from some activity for which coordination is required. Most lawyers assert that civility serves the interests of all participants in the legal system, including clients on whose behalf the lawyer may be tempted to engage in less thoughtful behavior. Certainly, this seems to us true if we take a long enough view. Yet, even if civility is of benefit to all clients as well as lawyers so long as everyone adheres to the same civilizing conventions, there may be
short-run advantage to more aggressive behavior. In a competitive market, instincts for pursuing such advantage are unlikely to be checked so fully as we would want. Increased pressures within firms to produce short-term income and from clients to produce short-term victories doubtless encourage some lawyers to behave in less professionally desirable ways.

Third, behavior within the legal profession reflects changes in society at large. Standards of etiquette and mannerly behavior have changed substantially over the past two decades in America. The old "social graces," once a part of all social and professional relations have been devalued, ignored, or scorned in recent years. To some extent, this may be an inevitable byproduct of more salutary social change, including greater mobility and greater opportunity for individuals and groups that previously had been excluded from many positions of power and prestige. Whatever the ultimate source of the change in standards of speech and behavior, the legal profession has not escaped the effects of the more general eclipse of etiquette.

Moreover, the absence of societal consensus on the ends to which the legal system should strive is reflected in sharply differing views within the profession about the way law should be practiced.\(^4\) We cannot say that the consensus about law's ends is less strong or less widely shared today then 20, 40, or 60 years ago. But we do see relations within the legal system reflecting differences in conceptions of the system's proper role, differences that erupt periodically in public, political dispute over abortion, affirmative action, school busing, rights of criminal defendants, and a series of other issues. These differences inevitably will fuel some lawyers' and clients' sense that their use of the law is right and just while their opponents' at best borders on the immoral. Such sentiments rarely are conducive to civil conduct.

\(^4\) Wildman and Terrell, *supra* note 1, are particularly instructive on this point.
THE SOLUTIONS

Given the entrenched and pervasive nature of the forces that contribute to the decline in professionalism, we cannot expect substantial improvement, especially in the near term. Even if the rate of increase slows, the profession’s ranks will not decline in the foreseeable future; the pressures on the legal profession will not disappear or even diminish; and social consensus will remain a dream. So, too, social graces of old will at best resurface fitfully. Lawyers will not abandon tactics they believe advance their client’s prospects and their own careers. Lawyer jokes will not vanish overnight, and lawyers will not cease registering the complaint that law has "become a business."

That does not, however, mean that improvement in lawyers’ professional demeanor is impossible. It does not mean that investment in improving professional conduct is not worthwhile.

Indeed, reflection on the causes of decline suggests that some steps can be taken to address the problem and offers hope for modest gains. Some aspects of the growth of the bar, such as the absence of instruction on accepted practices by those with more experience, do not pose insurmountable obstacles. The demise of older forms of instruction, for example, simply serves as a prompt to create new forms of instruction. Competitive pressures likewise may not be reversible (and, perhaps, should not be), but they need not lead to significant unprofessional conduct if lawyers are persuaded that more thoughtful, careful, civil conduct of their business better advances career goals.

The Committee is unanimous in the view that civility does in fact almost always work to lawyers’ (and their clients’) advantage, and that unprofessional behavior is not a prescription for success. Some tactics that may be regarded as unprofessional, such as "Rambo-style" litigation or "scorched earth" approaches to controversy, may yield benefits in particular instances. By and large, however, more respectful conduct of lawyers’ affairs increases the likely payoff for the lawyer as well as improving the atmosphere for all other participants in the legal process.
Because we strongly believe that professional conduct is dominant and--
even if lawyers acted only in response to their immediate self-interest--
should continue to be dominant, the challenge is not how to overcome the
tide of personal interests but how to illuminate and channel them.

*Formal Rules: Aspirational Commands*

The Committee explored three alternative types of solution: formal
rules, formal education and informal approaches. The Committee agreed
readily on the roles for the last two approaches, but had difficulty specify-
ing the appropriate role for the first of these alternatives.

The Committee does not believe that new, formal "command-and-
control" rules--specifying particular aspects of civility and commanding
adherence--are necessary or even advisable. A number of current disci-
plinary rules, generally drafted as limitations on other rules for lawyers
rather than as positive, free-standing commands to civility, do address
issues of civility. Some committee members thought that new, positive,
formal rules, such as those drafted by other groups concerned with
lawyers' behavior,\(^5\) might improve professional conduct. Some members
opined that the proposals already advanced to that end were fully ade-
quate. Other members, however, thought that new, formal, aspirational
rules would not be helpful in addressing issues of civility.

In the majority's view, new rules are not necessary to constrain
incivility in court, the setting that has given rise to the greatest number of
complaints about lawyers' behavior. Judicial powers of instruction and
enforcement already are fully adequate to address incivil behavior in the

\(^5\) See, e.g., *Interim Report of the Committee on Civility of the Seventh Federal Judicial Circuit*
at 50, 53-58 (April 1991), *Statement on Lawyer Professionalism*, Massachusetts Bar Association
(March 14, 1989).
litigation process. Judges should be encouraged to make full use of those powers, but adoption of further formal rules of conduct addressed to litigation behavior is, in the Committee’s judgment, more apt to provide an additional argument in motions to sanction opposing counsel (for frivolous litigation, abuse of process, and so on) than to produce improvement in lawyers’ behavior.\(^7\)

Outside the litigation context, there is much less ability for judges or bar associations effectively to constrain lawyers’ incivil behavior, in part because the evidence of such behavior is less easily gathered and is more open to dispute. Consequently, the costs of determining when misbehavior meriting sanction has occurred are likely to exceed the gain to any individual from pursuing the issue.

That does not mean that there is no benefit to be derived from some stronger formal statement of the bar’s aspirational goal for lawyer professionalism. Indeed, some such statement, which might most effectively be cast as a mandatory rule of lawyers’ behavior, would clearly have a salutary impact in making larger numbers of lawyers sensitive to

\(^6\) In *Dondi Properties Corp. v. Commerce Savings & Loan Ass’n*, 121 F.R.D. 284 (N.D. Tex. 1988), the district court established standards for attorney behavior in civil litigation including “candor, diligence, and utmost respect,” “a duty of courtesy and cooperation,” and “courtesy and civility.” The court concluded that “effective advocacy does not require antagonistic or obnoxious behavior” and exhorts members of the bar to “adhere to the higher standard of conduct which judges, lawyers, clients, and the public may rightfully expect.” Significantly, the Supreme Court has recently upheld the inherent power of a court to sanction a party for bad faith conduct, noting that the imposition of sanctions “transcends a court’s inherent power concerning relations between the parties and reaches a court’s inherent power to police itself.” *Chambers v. NASCO, Inc.*, 111 S. Ct. 2121 (1991). (In *NASCO, Inc. v. Calcasieu Television and Radio*, 894 F.2d 696 (5th Cir. 1990), the district court sanctioned the attorneys for “wanton and vexatious conduct in the prosecution of the case” and “bad faith litigation practices,” relying on a federal district court’s “inherent power” to shift attorney’s fees and costs.)

\(^7\) One Committee member notes that a review of disciplinary cases shows little enforcement of current disciplinary rules that could govern civility; indeed, most disciplinary cases focus on a small number of egregious delicts. Several committee members suggested that additional efforts to enforce current rules would be worthwhile.
the need for attention to this aspect of their behavior. This, rather than the punishment of occasional errant lawyer, would be the most significant benefit of a formal rule.\(^8\)

It is important for the bar to emphasize its commitment to professional ideals. Given the costs of enforcing such an aspirational rule and the Committee's concerns about the misuse of such a rule in the litigation context, we believe that efforts to educate lawyers in the benefits of better professional conduct provide better vehicles than do formal commands for improving professionalism. If there is a loss of visibility--and concomitant loss of force--in divorcing our aspirations of civility from the bar's disciplinary rules, the Committee nonetheless does not believe a self-contained, formal rule of civility is advisable. The Committee does not take a position on whether specific guidelines tailored to particular practice settings would prove useful, leaving that issue up to individual practice sections of the bar.

We stress that the Committee's view on the more general formal rule for civil behavior is not simply "why bother" if the aspiration cannot be put into a readily enforced command. Instead, it is that the benefits to be derived from such an independent, aspirational rule can be better achieved by other means, especially by prominent attention to issues of professionalism in the education, and even more the continuing education, of lawyers.

**Canon 7: Civil Representation**

Before turning to education, however, there is one change in formal rules that the Committee recommends. This recommendation is advanced in part because it captures many of the benefits of an aspirational rule in more useful form and in part because it corrects what the Committee perceives to be a real, and unnecessary, problem with current

\(^8\) One committee member disagrees with this statement, advocating stronger enforcement of bar disciplinary rules as the most effective means of counteracting incivility.
rules of the bar.

Rule 3:07 of the Supreme Judicial Court Rules (Canons of Ethics and Disciplinary Rules) provides in Canon 7 that "A lawyer should represent a client zealously within the bounds of the law." This formulation, which is commonly used throughout the United States, was designed to underscore that the lawyer's job is not to advance his own personal interests at the expense of his client's, but rather to take every reasonable step to advance the client's interest. Clients should demand that of lawyers, and market forces should help promote that behavior. Lawyers who put client interests first are obviously more valuable to their clients than lawyers who put their own interests first. The effect of market forces, however, was not thought to be enough. The provision of legal services is sufficiently difficult to monitor that the additional spur of a professionally-enforced ethical responsibility was deemed critical to assuring the desirable level of attention to client interests.

Unfortunately, the command of Canon 7, while central to lawyers' obligations, too often is misunderstood. It is taken by some lawyers as a command to take clients' grudges as their own or, worse yet, to act maliciously toward opponents for whom the client bears no malice. Canon 7 should not be a shield for such conduct, much less a prompt for it. Canon 7 should not be read to direct lawyers to act discourteously to opposing counsel, parties, or witnesses, or otherwise to reflect the ill will clients may feel. Canon 7 should not be read to command incivility as a demonstration of zealous advocacy. Various disciplinary rules interpreting the Canon make these points explicit, albeit not always in a way that relates clearly to all forms of legal practice or that places a high priority on the lawyer's courtesy and consideration in dealings with others.

The broad run of lawyers understands this Canon's mandate. However, some lawyers have read Canon 7 to command any action that might serve a client's interest, without regard for the reasonableness of the action. Their assertion is that zealous advocacy of their client's position is not intended to be representation that is restrained by considerations such as we have described with the term civility. Those lawyers'
actions have increased costs and reduced confidence in the legal system.

Recently, lawyers engaged in litigation have found recourse in rules, such as Rules 11 and 26 of the Federal Rules of Civil Procedure, that penalize opposing lawyers for the unreasonable pursuit of clients' interests. The news about these formal rules is both good and bad. To the good, these rules do, to some degree, limit wasteful litigation, unsustainable claims, and unreasonably burdensome discovery by shifting the costs of such behavior back to the lawyers responsible for it. To the bad, these rules have been invoked almost reflexively by some lawyers, often simply adding another issue in litigation, and increasing, rather than reducing, litigation costs.\textsuperscript{9}

Moreover, these rules do not address the problems encountered outside litigation, in negotiations and other "office-based" settings. Indeed, a similar problem affects the rules elaborated under Canon 7, which clarify the meaning intended for zealous representation: they are tailored in many particulars to problems that arise in litigation, not to problems lawyers encounter with their colleagues in other settings.

We do not associate ourselves with general criticism of the legal profession, but we strongly believe that there is legitimate dissatisfaction with the behavior of enough lawyers to merit action from the bar. It is time for lawyers to combat the excesses of our profession directly and visibly.

The Committee believes that modifying Canon 7 will help. The command of zealous representation is well known, while lawyers are far less likely to know in any detail the qualifying language in the disciplinary rules and interpretations. In its present form, it sets a tone for some practitioners that reinforces tendencies to incivility, tendencies that exist principally for the other reasons discussed above. The more important

\textsuperscript{9} The net effect of these rules is a matter of dispute, and serious examination of them is being undertaken by other groups.
causes of incivility are not easily changed, but improvement of Canon 7 lies entirely within the profession's own hands.

We suggest that the Canon be changed to clarify the behavior expected of attorneys, directing them to put client interests above personal interests, but not to act unreasonably and specifically not to act incivilly.

To that end, a majority of the Committee believes that the word "zealously," which has been the basis for much of the current misunderstanding, should be taken out of the Canon and replaced with language that directs diligent pursuit of client interests. Where "zeal" carries connotations of passion, "diligence" conveys attention, industry, and persistence, qualities we believe come closer to describing the heart of the duty lawyers rightly owe to their clients.

In recommending changes in Canon 7, the Committee does not purport to address the broader issues of lawyer-client relations. Nor does the Committee intend to change the interpretation of Canon 7 by the bar. We specifically do not intend to displace the connotations of independence and commitment that have been associated with Canon 7's command. Instead, this change in Canon 7 is proposed solely to address problems of unprofessional conduct to which the current phrasing of the Canon has been a contributing cause.

The prominence of the Canon's, and especially Canon 7, in comparison to the disciplinary rules and other bar regulations influenced the Committee's majority. Some Committee members noted that a term like "diligent" lacks some of the positive flavor of zealous advocacy--the sense of personal commitment of attorney to client interests. They recommend a change in the subsidiary rules interpreting Canon 7 and inclusion of a thoughtful definition of "zealous" along with other definitions following Canon 9. While we sympathize with the intent of this suggestion, the majority does not believe that other changes can compensate for the misdirection that the term "zealously" can suggest. Further, we believe that the profession today needs more guidance away from excessively aggressive behavior than from insufficient passion on clients'
behalf. Critical for both majority and minority on this point, however, is the understanding that both concepts must play a role in lawyers’ representation of clients.

In addition to the change in the term "zealously," and in the same spirit, we suggest a second, related change to Canon 7. Following the qualification that client representation be within the bounds of the law, we would add the qualification that representation be consistent with professional standards of courtesy and consideration.

This change has two effects. First, it would raise up to the text of the Canon language that already has been incorporated into disciplinary rules elaborating the meaning of Canon 7. By doing so, the Canon will on its face suggest the importance of professional behavior, allowing the message to reach those lawyers whose knowledge of the Canons does not extend beyond the most prominent aspects of the canonical texts.

Second, it places the command of courtesy and consideration in a positive light, making the Canon read as though such behavior is a responsibility of the lawyer rather than merely one form of acceptable behavior. At present, the rules suggest that a lawyer need not fear sanction for being courteous, that this behavior is not cause for serious embarrassment: "A lawyer does not violate this disciplinary rule [of zealous representation] . . . by acceding to reasonable requests of opposing counsel . . ., by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process."\(^\text{10}\) This drafting inadvertently signals disinterest in promoting courtesy and consideration; lawyers are not told to engage in this behavior but are simply advised that such behavior is not grounds for disbarment. We do not believe this conveys the importance leaders of the bar in fact attach to professional behavior and certainly not the importance that should attach to such behavior.

\(^\text{10}\) DR 7-101(A)(1), Supreme Judicial Court Rules.
The Committee also urges the appropriate bar officials to review the current disciplinary rules with an eye to improving their fit with practice outside of litigation. Although incivility is a problem in any practice setting, several rules are drafted as though such issues only arise during litigation.

*Education In Professionalism*

Beyond this change, the Committee believes that there is an important role for both formal and informal education about professionalism. The core causes of a decline in professionalism are systemic, "environmental" changes--changes in the size of the bar and the nature of legal practice. In other areas, the most successful strategy for altering behavior have been broad-based educational efforts that create countervailing "environmental" pressures. Efforts to curtail smoking or drug use among young non-users or to change dietary habits are exemplary. Similar efforts are called for here.

We conclude that informal approaches offer the best prospect for addressing issues of professionalism. We believe that it is vital to stress the importance of professional behavior early in an attorney's career, to repeat that message frequently and in highly visible fashion, to provide instruction from respected lawyers on the pitfalls for lawyers to beware of and the ways in which lawyers can improve their performance, and to provide human resources for individuals who have particular difficulties (because they are inexperienced, because they are under financial pressure, or for other reasons).

This recommendation must be understood as encompassing numerous actions of schools, bar organizations, and professional firms. As with other aspirational goals, the goal of increased professionalism requires repeated emphasis in numerous settings, in part because that underscores its importance. Its achievement also depends on understanding how best to effectuate professional ideals--which can differ in particular contexts--and on the availability of resources to help individuals who, because of personal difficulties (physical, family, finances, or other), find profession-
Professionalism and the Legal Profession
Boston Bar Association Committee on Professionalism
page 18

...al ideals especially hard to attain. Continuing legal education and informal bar programs are ideally suited to discussion of professionalism issues in specific contexts. And professional organizations, as well as firms, should give attention to those who are least likely to understand how to implement professional goals or who, without help, are most likely to depart from them.
SPECIFIC RECOMMENDATIONS

The Committee offers the following recommendations for action:

1. Canon 7 should be modified to read:

   "A Lawyer Should Represent A Client Diligently, Advancing Client Interests Within the Bounds of the Law and Consistent With Professional Standards of Courtesy and Consideration."

2. This change should be accompanied by a definition of "Courtesy and Consideration" that comprehends professional ideals of honesty, decency, and civility.

3. The Bar should review disciplinary rules under Canon 7 to assure that they conform to the intent expressed in this report that lawyers not merely accept but actively promote ideals of courtesy and consideration in the practice of law.

4. In undertaking this review, specific attention should be paid to drafting rules that will reach problems encountered outside the litigation context as well as problems associated with litigation.

5. Informal programs sponsored by bar organizations should address issues of professionalism on a regular basis, generally in conjunction with discussion of substantive legal issues.
6. The organized bar should recognize standards of professionalism as an integral part of efforts at continuing legal education, both through formal and informal treatment. Discussion from the perspectives of senior lawyers, judges, and clients should be encouraged. Specific attention should be paid to the effect of economic pressures of practice on professional performance.

7. Legal associations as well as law firms and public agencies employing lawyers need to encourage "mentoring" by experienced attorneys who can instruct by direction and by example on the ways in which zealous representation can be made more effective without sacrificing courtesy.

8. Law schools should be encouraged to introduce students to standards of professional practice and courteous advocacy. Issues of civility and ethics should be broached in a form that promotes students' understanding of professional ideals.

9. The Committee does not believe that general, formal rules on standards of civility or professional behavior would be useful, whether in precatory or mandatory form, but individual practice sections of the bar should consider whether professional standards or guidelines specifically addressed to particular practice settings would be useful to their members.
CONCLUSION

The Committee urges the Boston Bar Association to devote increased attention to the standards of professional conduct. These standards affect the way law is experienced by those who function within our legal system and the way the system and its participants are viewed by the public at large. The forces that now militate against professional conduct of the highest caliber—conduct that would make the legal system function most smoothly—will not disappear. But the bar can encourage improvement in lawyers’ conduct that will redound to the benefit of all bar members, of their clients, and of the public that supports the legal system. The Boston Bar Association, along with other professional organizations, should help to reassert the highest ideals of our profession.
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