Mercer Course Provides First-Year Students Chance to Reflect on Professionalism

Since 2004, all first-year students at Mercer University’s Walter F. George School of Law have been required to take a three-credit course on lawyer professionalism and personal fulfillment in the law.

The students begin with an examination of what professionalism means by applying the school’s five-part definition. Professionalism requires a lawyer to: (1) be competent; (2) display fidelity to the client’s interests; (3) display fidelity to the law and its institutions; (4) practice with civility; and (5) render pro bono service and otherwise work to make legal services accessible to all. There are both private and public reasons for each of these expectations. To take one example, civility, the students learn that incivility can ill-serve clients because it results in more expensive and time-consuming litigation.

Incivility also harms the judicial system because the system depends upon the ability and inclination of lawyers to work together without the intervention of the court. Incivility also is personally harmful to the lawyers involved because of the needless strife and conflict that it causes. This part of the course provides a structure for the rest of the discussion – the five attributes of professionalism – and at the same time seeks to convince the students that professionalism matters for their future clients, for the legal system, and for their own happiness.

The next part of the course is an examination of a variety of practice areas to see how the values of professionalism can be challenged. The students here are introduced to a number of pressures that lawyers face, such as the billable hour, and the effects that such pressures can exert on the ability of inclination of the lawyers to be faithful to the obligations of professionalism.

Students should leave this discussion with the recognition that, while practicing with professionalism is important, it is not always easy to do.

The third part of the course concerns various ways in which the profession promotes and enforces the five elements of professionalism. For example, the students study the enforcement of competence through the licensing process, through disciplinary action, and through malpractice claims. In this context, and in the contexts of the other four attributes of professionalism, the students learn about how the legal profession is regulated, but they also learn something about the limits of such regulation. No system of punitive regulation can hope to ensure that all lawyers will live up to all of their obligations. To some inevitable extent the motivation for doing so must be an internal commitment.

The students find some parts of the course inspiring but other parts troubling.

They write papers early in the semester to describe what kind of people they want to be as lawyers, and almost to a person they give descriptions of lawyers who would observe all the principles of professionalism. Then they learn some of the difficult economic realities of different practice areas, and some of the students become uneasy. One important way in

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which Mercer attempts to remedy that unease is by the requirement that every student participate in a brief “oral history” of a prominent local lawyer or judge. In these interviews the students report learning, to their relief, that one can remain faithful to the principles of professionalism, and thereby find great personal satisfaction in the law, despite the pressures that they learn about in class. The students also hear a number of inspiring guest speakers, including Judge Carl Horn, Steven Keeva, and Daisy and Tim Floyd.

After students have completed their first-year course on professionalism, they are better equipped for their summer jobs and for more advanced discussions of professionalism later in law school and beyond. The course gives them a vocabulary and a structure – and hopefully a resolve – for dealing with issues of lawyer professionalism.

Thomas M. Cooley Law School Professionalism Portfolio Project

Thomas M. Cooley Law School has a comprehensive professionalism program with 18 initiatives designed to create a culture of professionalism in the law school, including a Professionalism Portfolio project. Recent recommendations on legal education published by the Carnegie Foundation for the Advancement of Teaching validate Cooley’s professional development initiatives, including the portfolio. In a book published by the Foundation entitled “Educating Lawyers: Preparation for the Profession of Law,” the authors call for formative assessment of students, which is accomplished at Cooley through a portfolio, and for an integrated model of legal education that combines the elements of legal professionalism with a sense of professional responsibility, an explicit goal of the portfolio.

For many years, artistic professions have been using professional portfolios to exhibit the best of their work product in interview situations. Recently other career fields have begun using portfolios as a method of documenting members’ accomplishments. Cooley Law School believes that this tool can be beneficial for law students as they develop into professionals and prepare to enter the legal profession. To that end, the Professionalism Portfolio project has been implemented as a voluntary program open to all Cooley students.

The school has expanded upon a traditional portfolio by adding exercises designed to cause students to use the many resources available to them, reflect upon their own development, and emphasize the importance of ethics in the legal profession, in addition to exhibiting their accomplishments. During law
school, students create their own individualized portfolio. The portfolio serves three purposes: it requires students to undertake self-assessment—to be aware of and involved in their growth as professionals; it provides a tool for helping students obtain legal employment when they have finished law school by allowing a third party (employer) to assess the qualifications and character of the student; and it allows for institutional assessment of the students—both individually and collectively.

In regard to student self-assessment, as students obtain the legal knowledge, skills, and ethics necessary to their good practice of law, their accomplishments are logged into their portfolios. The Professionalism Portfolio is a compilation and record of individual growth, maturity, personal ethics, training, knowledge, professional accomplishments, awards, public service, and any other information relevant to the student's development and employment qualifications. The Professionalism Portfolio also requires reflection by the student about the student's goals and behaviors in light of professionalism—the ideal that is the umbrella for the entire project.

The Professionalism Portfolio will eventually also supplement a student's resume and transcript and serve as a measure of the ethics, skills, knowledge, values, and professionalism possessed by a job applicant. For example, instead of just accepting an applicant's statement that pro bono work is important, an employer can determine through the portfolio the extent to which an applicant has performed actual public service and pro bono work while in law school.

Within the institution, the Professionalism Portfolio will allow faculty advisors and administrators to help with and measure the development of individual students. Those who are given access to the Portfolio can guide and assist the student with personal and professional development, offering advice on where improvements should be made and where holes can be filled. With this kind of information, the institution can also gauge student development across our campuses and identify strengths or weaknesses in those areas. In addition, as mentioned later, the portfolio reviews can assist a faculty concentration, department, or committee in learning whether their goals related to student development have been accomplished.

The Professionalism Portfolio project requires that students attend six group meetings throughout their enrollment. The first takes place at the conclusion of orientation before classes have begun so that the project will not take away from a student's focus on first term studies. The second group meeting is a seminar developed by Cooley's Academic Resource Center to help students use their Nelson-Denny reading comprehension test results to improve their performance in law school. Other group meetings are held at the beginning of terms two and three and at the beginning of the second and third year.

The exercises assigned each term act, in part, as a treasure hunt, requiring students to make their way to the many offices and programs throughout the school that are designed to benefit them. But more importantly, the exercises cause the student to look inward at values, assumptions, and prejudices that may be affecting that student's growth. Students are also asked to complete at least one professional or academic enhancement activity each term or to volunteer in a community event.

A professionalism review is required in the second year. This exercise requires each student to organize a review that will be attended by their faculty advisor, their career advisor, their mentor, and a peer. The student presents for ten minutes on the steps taken so far to prepare for a successful, ethical legal career, and also comments on his/her plan for continued professional growth and development throughout the student's tenure in law school.

During the third year of enrollment, students are asked to work with their career advisors and

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faculty advisors to identify the documents within their portfolio that may be made public and used in the interviewing process. Writing samples, a continually updated resume, awards, and journal notes from externships may all be included in the public portfolio.

**In Practice**

**Courts Remind Attorneys that Professional Obligations Do Not Stop at the Office Door**

We are reminded recently by the courts that the requirement of integrity on the part of a person engaged in the practice of law is unqualified and extends beyond practice into all aspects of a lawyer’s life. “One of the fundamental tenets of the professional responsibility of a lawyer is that he should maintain a degree of personal and professional integrity that meets the highest standard. The integrity of the profession can be maintained only if the conduct of the individual attorney is above reproach. He should refrain from any illegal conduct. Anything short of this lessens public confidence in the legal profession—because obedience to the law exemplifies respect for the law.” *Cincinnati Bar Assn. v. Hennekes*, 110 Ohio St. 3d 108 (2006).

“...the personal conduct of an attorney must echo the level of integrity required in the performance of the lawyer’s professional work.”

It is all too unfortunate that courts have to remind attorneys of this fundamental value of the profession, much less admonish them on a regular basis for their transgressions.

The Ohio case involved an attorney convicted of conspiracy to distribute and possession with intent to distribute of cocaine, clearly an offense relating to his activities outside the practice of law. Nevertheless, the court found his conduct warranted a significant disciplinary action related to his legal practice beyond what the panel originally recommended for him, which was a retroactive suspension. Instead, the court said, “This afront to the legal system and to the legal profession warrants a sanction that does more than permit the guilty lawyer to return to the practice of law at or about the time we pass judgment.” Clearly, the goal of protecting the legal profession’s reputation is of paramount importance to those in charge of disciplinary activities.

The Supreme Court of South Dakota, in *In re Discipline of Janklow*, 709 N.W.2d 28 (S.D. 2006), has also explicitly recognized that even the conduct of a lawyer outside of the lawyer’s professional activities affects the public’s respect for the profession. That court asserted an interest in maintaining public confidence in the profession as a consideration in an attorney disciplinary proceeding. A lawyer and public figure had violated traffic laws, resulting in a death. After the lawyer was convicted of second-degree manslaughter, the Disciplinary Board suspended him from the practice of law. The state Supreme Court noted, “The two goals of
disciplinary proceedings are: “1) the protection of the public from further fraudulent, unethical or incompetent activities involving this attorney; and 2) the preservation of the image and integrity of the attorneys, the bar association and the legal profession as a whole.”

The direct harm caused by the lawyer's driving was not heightened by the fact that the driver was a lawyer. Nevertheless, attorneys still have a special “responsibility as an officer of the Court to obey laws.” Further the Court said, “Violations of the law by lawyers undermine public trust and confidence in the rule of law. This must be a component of our evaluation as we consider the appropriate discipline.”

The Maryland Supreme Court, in Attorney Grievance Com’n of Maryland v. Sweitzer, 395 Md. 586, (Md. 2006), agrees that the personal conduct of an attorney must echo the level of integrity required in the performance of the lawyer's professional work.

Atorneys must be aware that, by undertaking conflicted representation, they can cause the public to question their integrity, and thus the integrity of the profession and system.

In that case, a lawyer had falsified personal vehicle ownership and transfer records to avoid some tax liability involving his and his wife's property. The Court stated, “[A] lawyer's act of dishonesty, fraud, or deceit might cause the public to lose confidence in other lawyers and the judicial system as a whole.... [C]ond/or by a lawyer, in any capacity, is one of the most important character traits of a member of the Bar.... The very integrity of the judicial system demands that the attorneys who practice in this state, who represent clients in the courts, and who interact in judicial matters with the courts do so with absolute honesty and personal integrity.”

Fortunately, not all matters of integrity and professionalism involve a criminal act or dishonest personal or professional dealing of an attorney. Conflicts of interest can also detrimentally affect the integrity of a legal process or governmental institution.

In City and County of San Francisco v. Cobra Solutions, Inc., 38 Cal.4th 839, 43 Cal.Rptr.3d 771 (2006), a city attorney and his office were disqualified because of an imputed conflict from the attorney's prior involvement in private practice. A company being sued by the city attorney's office had been represented by the head of that office before that attorney was elected to the public office. The court, in holding the city attorney's office disqualified, stated, “There is another reason to require the disqualification of the conflicted head of a government law office. That reason arises from a compelling societal interest in preserving the integrity of the office of a city attorney. It is beyond dispute that the citizens of a city are entitled to a city attorney's office that unreservedly represents the city's best interests when it undertakes litigation. Public perception that a city attorney and his deputies might be influenced by the city attorney's previous representation of the client, at the expense of the best interests of the city, would insidiously undermine public confidence in the integrity of municipal government and its city attorney's office.”

Atorneys must be aware that, by undertaking conflicted representation, they can cause the public to question their integrity, and thus the integrity of the profession and system.

The courts have long been vigilant in punishing lapses of integrity and in admonishing lawyers to be attentive to public perceptions of the profession and legal institutions. These cases are but more reminders that integrity begins at home, as well as at the office.
**ABA Standing Committee on Professionalism Strives to Keep Professionalism in Focus**

The American Bar Association Standing Committee on Professionalism is a seven-member committee made up of judges, law professors and practicing attorneys from across the United States. One of approximately 39 such committees created by the ABA, the Standing Committee was created in August 1992 as the successor to the Special Coordinating Committee on Professionalism and its predecessor, the Commission on Professionalism.

Although its mission has evolved over the years, its primary focus is to encourage, recommend, and provide assistance to ABA entities in the development and coordination of professionalism initiatives, to encourage and provide assistance to state and local bar associations, the judiciary, law schools, and the legal community in their efforts to improve lawyer professionalism and competence; to educate members of the legal profession, the judiciary, the law school community and the public about professionalism, competence and advertising issues; and to evaluate and report on trends and developments impacting lawyer professionalism, competence and advertising and recommend initiatives and policies to address them.

Initiatives of the Standing Committee on Professionalism include the following awards and publications:

**E. Smythe Gambrell Professionalism Awards**

The annual E. Smythe Gambrell Professionalism Awards recognize projects contributing to the understanding of professionalism among lawyers. The awards are presented annually by the ABA Standing Committee on Professionalism in the amount of $3,500 each. Law schools, bar associations, law firms and other law-related organizations are eligible for the awards.

The Gambrell Awards were established in 1991 and are named for E. Smythe Gambrell, ABA and American Bar Foundation president from 1955 to 1956. Gambrell founded the Legal Aid Society in Atlanta, where he practiced law from 1922 until his death in 1986.

The 2007 Gambrell Awards will be presented at the ABA Annual Meeting in San Francisco.

**The Professional Lawyer**

The Professional Lawyer is published by the Standing Committee on Professionalism through the ABA Center for Professional Responsibility. This journal, which is in its 18th year, is published quarterly and contains articles devoted to professionalism issues that should be of interest to practicing attorneys, members of the judiciary, state Bar officials, law professors, and others interested in issues of professionalism, regulation and ethics in the legal profession. The first issue in 2007 contained articles devoted to management and supervisory responsibility for the misconduct of others under Model Rules 5.1 and 5.3, when financial disincentives to lawyers contemplating leaving a firm constitute improper competition, a discussion of the IRS Office of Professional Responsibility, and client confidentiality and threats of future harm.

**Lawyer Advertising**

Because the Committee’s mandate from the ABA includes educating attorneys and members of the public about advertising issues, the Committee maintains an Internet site that provides information on rules, continued on page 7
cases, opinions, ABA policies, and other information about legal advertising.

The Committee is currently working on compiling data about trends in legal advertising, and plans to sponsor a CLE about legal advertising issues.

**Report on a Survey of Law School Professionalism Programs**

In 2006, the Committee published a report on a survey of law school professionalism programs. The report contains a wealth of information for law deans and law teachers to utilize in terms of professionalism programs being offered in law schools around the country. The Committee hopes that the report will encourage those law schools that do not have professionalism programs to develop them and to capitalize on the efforts of trailblazers at other law schools who have already developed those programs effectively.

**Guide to Professionalism Commissions**

In 2001, the Committee published a Guide to Professionalism Commissions. The Guide is designed principally to assist judges and lawyers in states that do not yet have a professionalism commission as they contemplate the possibility of establishing one. The Committee is in the process of producing a second edition of the Guide.

(More information about the work of the Committee can be found at http://www.abanet.org/cpr/professionalism/home.html.)

This article was prepared by Jim O. Stuckey, II, a Shareholder with Littel Mendelson, P.C. in Columbia, SC, and the Chair of the ABA Standing Committee on Professionalism.

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**Proposed New California Attorney Guidelines of Civility and Professionalism**


The voluntary Guidelines are intended to foster a level of civility and professionalism as the standard of civility in the practice of law in California. The Guidelines are not mandatory rules of professional conduct, nor rules of practice, nor standards of care. They are not to be used as an independent basis for disciplinary charges or claims of professional negligence. They are also not intended to supplant rules or laws that govern attorney conduct.

A number of other state bars and some California voluntary bar associations have adopted standards, guidelines, codes, or principles of civility and professionalism. California lacks a statewide set of civility guidelines for all members of the State Bar.

The proposed Guidelines would be available in two versions. One version would contain the complete text, with an Introduction, 21 specific guidelines with detailed example and a pledge that an attorney can take at the end. The other is a two-page version that omits the Introduction and the detailed examples. Both versions are offered as a package.

(More information on the proposed guidelines can be found online at http://calbar.ca.gov/state/calbar/calbar_generic.jsp?cid=10145&iid=1736)
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Upcoming Events

Professionalism Consortium Meeting
at the Hilton Hotel
August 10, 2007 • 2:00pm - 4:00pm
ABA Annual Meeting, San Francisco

Publications of Interest

Educating Lawyers
Preparation for the Profession of Law
William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond, Lee S. Shulman
2007 by The Carnegie Foundation for the Advancement of Teaching
Jossey-Bass Publishers

Lawyers Crossing Lines
Nine Stories
James L. Kelley
2001 Carolina Academic Press

Best Practices for Legal Education
A Vision and A Road Map
Roy Stuckey and Others
Clinical Legal Education Association