

# REFLECTIONS ON UNPROFESSIONAL CONDUCT: HOW DID WE GET HERE AND WHERE ARE WE GOING?

By: Howard R. Marsee

I entered the practice of law in 1971. The term “professionalism” was then a mere speck on the horizon of our lexicon. Today we wander through a maze of rules, codes, professionalism expectations, committees, commissions, panels, case decisions, and administrative orders—each designed to promote professionalism and to correct unprofessional conduct.

The overt rise of “professionalism” as a subject demanding our increasing attention, seems to have begun in 1986 with the Study and Report of the ABA Commission on Professionalism. In 1986, 1987, and 1988, the first three articles devoted wholly to professionalism appeared in *The Florida Bar Journal* by Patrick G. Emmanuel; Ray Ferrero, Jr.; and Wm Reece Smith, Jr. In 1993, The Florida Bar promulgated “Ideals and Goals of Professionalism.” In 1993 and 1995, The Bar commissioned two lawyer surveys, and they revealed a rising concern with unprofessional conduct. In 1995, The Bar created the Standing Committee on Professionalism (SCOP). In 1996, The Florida Supreme Court created both the Commission on Professionalism and Civility and The Florida Bar Center for Professionalism (renamed the Henry Latimer Center for Professionalism since 2005). In 2013 and 2014, The Florida Supreme Court created a Code for Resolving Professionalism Complaints and a system for dealing with complaints at the local level. How did we get here? There are at least eight suspects.

The first is the law of large numbers. In 1975, there were 18,547 “active members” of The Florida Bar. As of February 1, 2018, there were 88,068 members “eligible to practice.” There have always been some percentage of problem lawyers, those whose reputation for uncivility is well-known among their colleagues. Today, assuming a constant percentage, there are numerically more of them.

The second is a diminution of peer pressure. In the 1970’s, a problem lawyer had to deal almost daily with the same colleagues, and his or her conduct was tempered by



the realization that those colleagues could make his or her job more difficult and their professional life more challenging. Today, except in close-knit specialties, a problem lawyer moves from new colleague to new colleague, wreaking unbridled havoc.

The third is diminished judicial intervention. In the 1970’s, there were far fewer judges, and a problem lawyer appeared regularly before the same judges. Those judges—many of whom were educated to believe in high standards of professional demeanor—soon identified problem lawyers and quickly grew tired of their conduct. Sanctions often followed. Today, a problem lawyer may go months without appearing before the same judge. There seems to be greater tolerance on the part of judges because there is less exposure to the irritant. It is now easier for a judge to mistake bad character for an aberration of the moment.

The fourth is the argument culture. We increasingly have become a culture incapable of reasoned debate. Our entertainment on television consists of two talking heads adopting two extreme positions, with no shades of gray, and trying to shout each other into submission. The problem is exacerbated by the increasing polarization of our news and entertainment media. We

tend to regularly view, to the exclusion of all others, those broadcasts that reinforce our own bias. It should not be surprising that some lawyers come to emulate the bi-polar, strident culture around them.

The fifth is the increasing speed of technology. Computers and smart phones offer seductive tools for venting our immediate, visceral responses to perceived slights and divergent viewpoints. We have lost the cool reflection that comes with reducing words to paper and then reflecting on them before we send them. Both parties can now get lost in an almost immediate whorl of heated exchanges.

The sixth is increased competitiveness and a win-at-any-cost mentality. We have become a society where the end justifies the means. We see it in our politics, in our business enterprises, and in the doping scandals of our sports. We seem to have lost sight of our legal system as a high calling for the civil and orderly resolution of disputes.

The seventh is a reduction of mentoring available to many new lawyers. Larger law firms provide a significant degree of guidance by means of experienced mentors. Larger law firms have a low tolerance for poor behavior because the firm’s reputation will be affected. Today, we produce new lawyers at a feverish pace. Many cannot find a job within established firms. They open their own offices with few professional exemplars and little mentoring.

The eighth is a general decline in communication skills. This is closely related to the speed and immediacy that technology offers. Communication tends to be bottom-line oriented, and the subtleties of language designed to minimize conflict and prevent the loss of face have become ancient relics.

In short, unprofessionalism is largely the result of societal, educational, and cultural forces. Whether we can put the evil genie back in the bottle is open for debate. Our colleges and law schools may afford the

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key. Is it time to reexamine curricula? Is it time to consider legal internships, along the lines of the medical profession, or mandatory mentoring?

We must produce graduates and lawyers who skillfully communicate, engage without acrimony in reasoned debate,

and who possess a deep appreciation of our system of justice as a high calling. We must have lawyers who follow the pre-script of Bob Woolf in *Friendly Persuasion*: “When you are creating a balance sheet on which to judge the issues, you should give strong consideration to reputation, motivation, production, success, camaraderie, style, trust, compassion, honor, and respect—all the components which offer you dignity. You may find that some

things are worth more than money.” Until we produce such lawyers, we are fighting a rear-guard action—proscribing and punishing bad conduct until reinvention becomes the watch-word.

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# FSU LAW LAUNCHES NEW “RAISING THE BAR” PROFESSIONALISM PROGRAM

By: Melanie Kalmanson

Yet again, the Florida State University (FSU) College of Law has introduced a program that is the first of its kind—FSU Law’s “Raising the Bar” Professionalism Program.<sup>1</sup> “Raising the Bar” is the brainchild of FSU Law’s Associate Dean for Student Advancement, Nancy Benavides. This transpired from FSU Law Dean Erin O’Connor wanting to provide students with more professionalism programming—something that is often absent from law school curriculum.

Dean Benavides’s first step was to create and meet with an alumni advisory board—Sean Desmond (Dudley, Sellers, Healy, Heath & Desmond, PLLC), Christine Graves (Carlton Fields PA, Tallahassee), and Melanie Kalmanson (Supreme Court of Florida). The board discussed various possible formats for the program, aspects of professionalism with which students often struggle, and topics that would aid employers in considering and hiring students for internships and post-graduate positions.

To address these and other professionalism-related topics, Dean Benavides launched “Raising the Bar.” In addition to the alumni advisory board, the program is advised by a student advisory panel. “Raising the Bar” offers a variety of opportunities for participating law students to learn about and discuss professionalism in the legal field, including lectures, a mentoring program, and a writing competition. As to

mentoring, participating 3L students are paired with FSU Law alumni in the “Passing the Torch” mentorship program. Students are encouraged to build a relationship with their mentor and use their mentor as a resource as they transition from law school to the legal profession.

While the program started during the Spring 2018 semester and granted its first award at graduation in May 2018, the 2018-2019 academic year marks the program’s first official year. Jenna Von See, FSU Law Class of 2018, was honored with the 2018 Raising the Bar Professionalism Award this past May.

In Spring 2018, “Raising the Bar” hosted several presentations, including “Professionalism in Clerkship Applications,” where a J.D. Advisor from FSU’s College of Law Career Services Center reviewed etiquette and best practices for students submitting applications for post-graduate judicial clerkships, and “Why Mentoring Matters,” where panel members—Lolia Fernandez (Second Circuit Public Defender’s Office), Anthony Miller (Florida Agency for State Technology), Sean Desmond, Professor Mary Ziegler (FSU College of Law), and Melanie Kalmanson—shared their individual experiences with mentoring along with tips for approaching potential mentors.

In August 2018, a panel comprised of James Parker-Flynn (Carlton Fields, PA, Tallahassee), Adriannette Williams (Assistant Director, The Florida Bar Henry

Latimer Center for Professionalism), Judge Ashenafi-Richardson (Florida’s Second Judicial Circuit), and Melanie Kalmanson, and moderated by Rebecca Bandy, Director of The Florida Bar Henry Latimer Center for Professionalism, presented to the class of 2021 at FSU Law 1L Orientation on the importance of professionalism throughout one’s legal career. The panelists then facilitated small group interactive sessions with the new students in which they discussed various ethical scenarios students may encounter in law school and in practice. Future presentations will discuss mental health and wellness, emotional intelligence, technology, and e-professionalism.

This fall, the program kicked-off its annual writing competition. Students were asked to submit entries on a professionalism-based topic. A panel of judges will review the entries and select a winner, and the winning entry will be published in the spring edition of *The Professional*.

FSU Law’s “Raising the Bar” shows great promise in educating Florida’s future lawyers on the importance of professionalism and providing the skills necessary to ensuring that the future of professionalism is bright.

## Endnote

1 FSU Law’s Donald J. Weidner Summer for Undergraduates program was also the first of its kind.