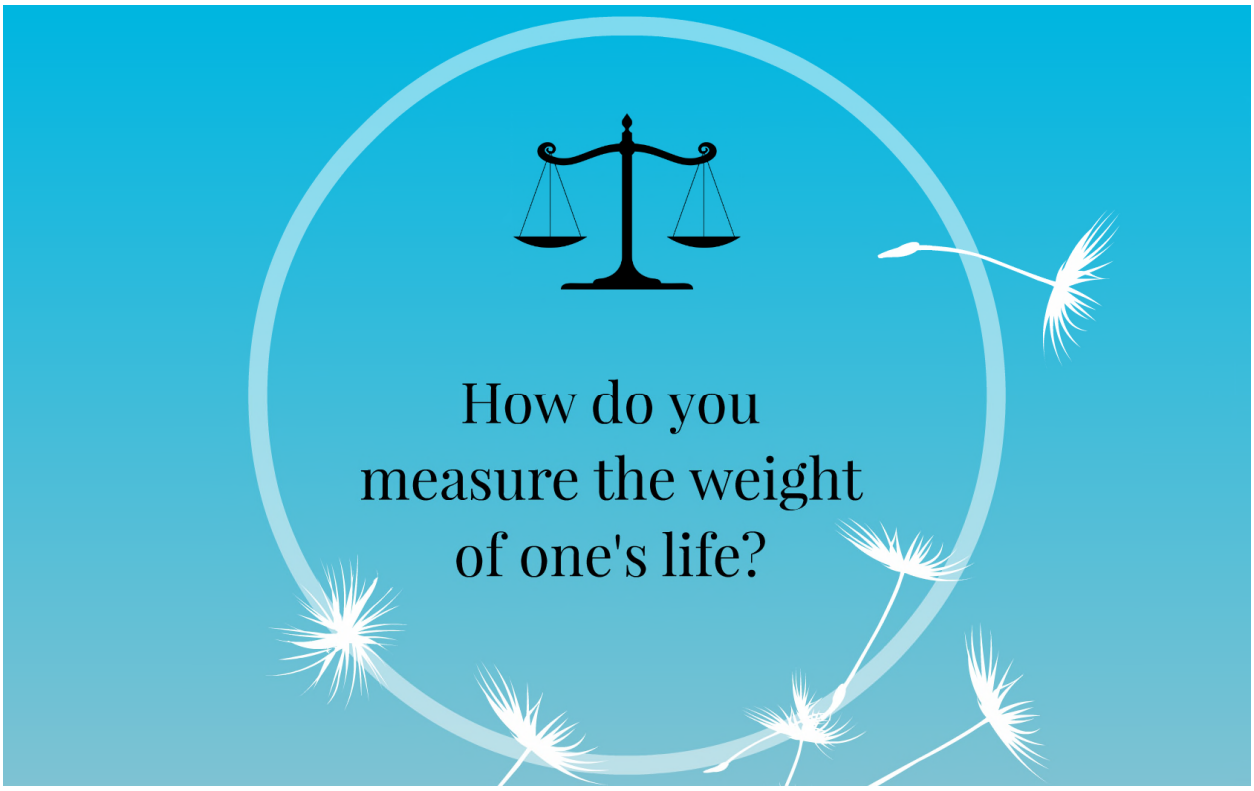

It's a wonderful profession!


How do you measure the weight of one's life?

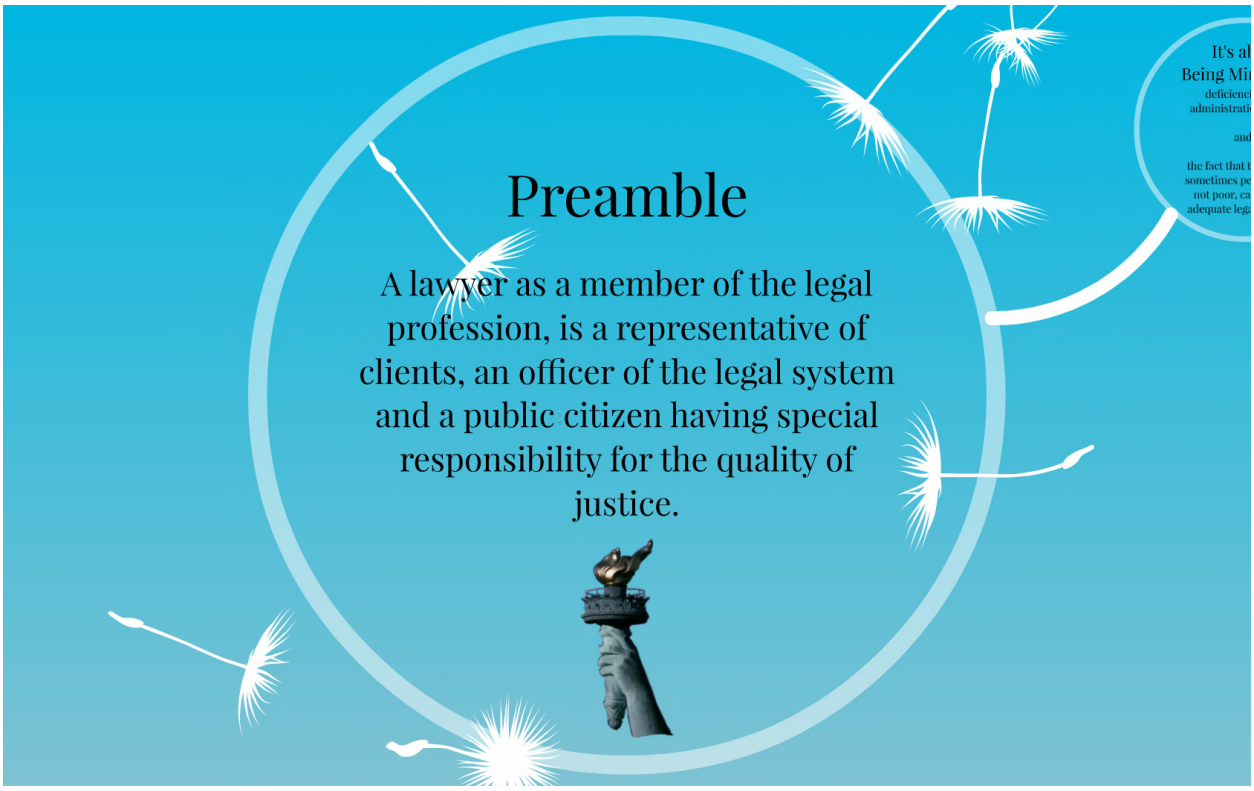

Is it measured by the number of judgements won?

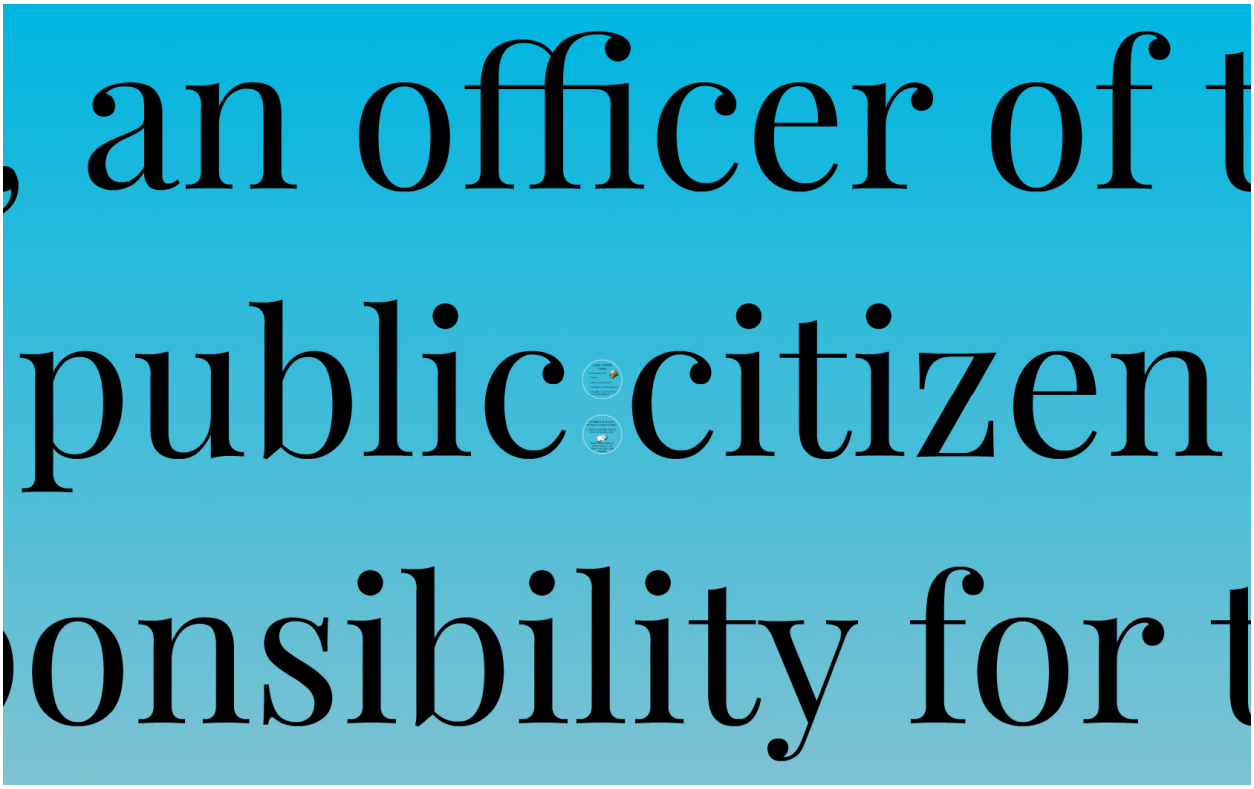

The number of opinions published?


Or the number of lives you have positively impacted?


Can you imagine a world without you?


MOVIECLIPS.COM
YouTube


Preamble
A lawyer as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.


, an officer of t
public citizen
onsibility for t

Lawyer as Public Citizen

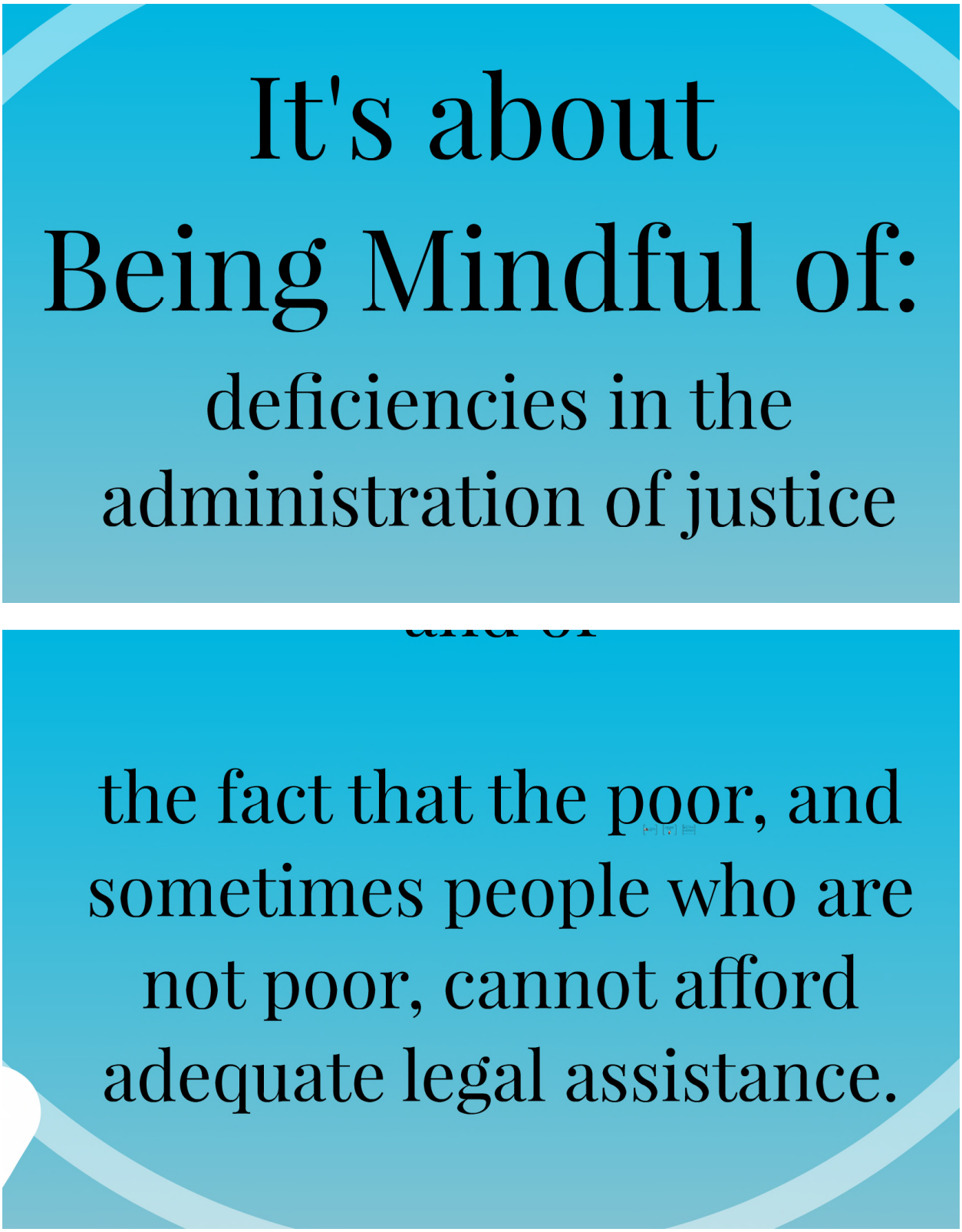
Seeks improvement of:

- The law;
- Access to the legal system;
- The administration of justice; and
- The quality of services rendered by the legal professional.

As Members of a Learned Profession, Lawyers Should:

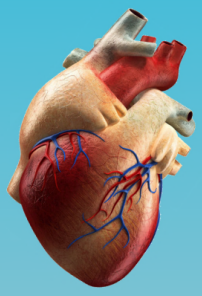
Cultivate knowledge of the law beyond its use for clients;

Employ that knowledge in reform of the law; and
Work to strengthen legal education.


It's about
Being Mindful of:
deficiencies in the administration of justice
the fact that the poor, and sometimes people who are not poor, cannot afford adequate legal assistance.

... But it is about more than serving the poor

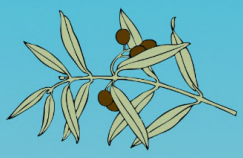
It's about living and breathing the practice of civility...



To each other...

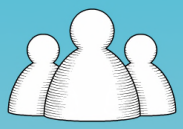
On September 12, 2011, the Florida Supreme Court added this new language to the Oath of Admission to The Florida Bar.

"To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications."



In re The Florida Bar, 73 So. 3d 149, 150 (Fla. 2011).

But...
We submit to you that it is bigger than serving the poor, or serving each other



R. Regulating Fla. Bar 3-7.10(f)(3)(G);
Fla. Sup. Ct. Adm. Bar R. 3-13(g):

"[S]ervice to one's community is an implied [and essential] obligation of members of the Bar."

So, how are you

Giving Back

?

the interest of a client of the lawyer.

When the lawyers knows that the interests of a client may be materially affected by a decision in which the lawyers participates, the lawyers shall disclose that fact but need not identify the client.

R. Regulating Fla. Bar 4-6.3:

A lawyer may serve as a director, officer, or member of a legal service organization apart from the law firm in which the lawyer practices,

Notwithstanding that the organization serves persons having interests adverse to the client of the lawyer...

R. Regulating Fla. Bar 4-6.3:

However, the lawyer shall not knowingly participate in a decision or action of the organization:

(a) if participating in the decision would be incompatible with the lawyer's obligations under R. 4-1.7; or

(b) where the decision could have a material adverse effect on the representation of a client or the organization whose interests are adverse to a client of the lawyer

Where would our Community be without you?





veredus HAYS Recruiting experts worldwide

Tampa Bay's Cut for a Cure CHARITY CHALLENGE

presented by CARRABBA'S ITALIAN GRILL


MA BAILEY
YouTube

West's F.S.A. Bar Preamble

Preamble: A Lawyer's Responsibilities

Currentness

A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice.

As a representative of clients, a lawyer performs various functions. As an adviser, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As an advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As a negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealing with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these rules apply directly to lawyers who are or have served as third-party neutrals. See, e.g., rules 4-1.12 and 4-2.4. In addition, there are rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. See rule 4-8.4.

In all professional functions a lawyer should be competent, prompt, and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or by law.

A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers, and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice, and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law, and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system, because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who

because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

Many of the lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct and in substantive and procedural law. A lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession, and to exemplify the legal profession's ideals of public service.

A lawyer's responsibilities as a representative of clients, an officer of the legal system, and a public citizen are usually harmonious. Zealous advocacy is not inconsistent with justice. Moreover, unless violations of law or injury to another or another's property is involved, preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

In the practice of law conflicting responsibilities are often encountered. Difficult ethical problems may arise from a conflict between a lawyer's responsibility to a client and the lawyer's own sense of personal honor, including obligations to society and the legal profession. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the rules. These principles include the lawyer's obligation to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous, and civil attitude toward all persons involved in the legal system.

Lawyers are officers of the court and they are responsible to the judiciary for the propriety of their professional activities. Within that context, the legal profession has been granted powers of self-government. Self-regulation helps maintain the legal profession's independence from undue government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on the executive and legislative branches of government for the right to practice. Supervision by an independent judiciary, and conformity with the rules the judiciary adopts for the profession, assures both independence and responsibility.

Thus, every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest that it serves.

Scope:

The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the rules are imperatives, cast in the terms of "shall" or "shall not." These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may," are permissive and define areas under the rules in which the lawyer has discretion to exercise professional judgment. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion. Other rules define the nature of relationships between the lawyer and others. The rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer's professional role.

The comment accompanying each rule explains and illustrates the meaning and purpose of the rule. The comments are intended only as guides to interpretation, whereas the text of each rule is authoritative. Thus, comments, even when they use the term "should," do not add obligations to the rules but merely provide guidance for practicing in compliance with the

rules.

The rules presuppose a larger legal context shaping the lawyer's role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers, and substantive and procedural law in general. Compliance with the rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion, and finally, when necessary, upon enforcement through disciplinary proceedings. The rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The rules simply provide a framework for the ethical practice of law. The comments are sometimes used to alert lawyers to their responsibilities under other law.

Furthermore, for purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties, such as that of confidentiality under rule 4-1.6, which attach when the lawyer agrees to consider whether a client-lawyer relationship shall be established. See rule 4-1.18. Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

Failure to comply with an obligation or prohibition imposed by a rule is a basis for invoking the disciplinary process. The rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, the rules presuppose that whether discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors, and whether there have been previous violations.

Violation of a rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the rule. Accordingly, nothing in the rules should be deemed to augment any substantive legal duty of lawyers or the extra-disciplinary consequences of violating such duty. Nevertheless, since the rules do establish standards of conduct by lawyers, a lawyer's violation of a rule may be evidence of a breach of the applicable standard of conduct.

Terminology:

"Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

"Consult" or "consultation" denotes communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question.

"Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See

"informed consent" below. If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

"Firm" or "law firm" denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship, or other association authorized to practice law; or lawyers employed in the legal department of a corporation or other organization.

"Fraud" or "fraudulent" denotes conduct having a purpose to deceive and not merely negligent misrepresentation or failure to apprise another of relevant information.

"Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

"Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

"Lawyer" denotes a person who is a member of The Florida Bar or otherwise authorized to practice in any court of the State of Florida.

"Partner" denotes a member of a partnership and a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.

"Reasonable" or "reasonably" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

"Reasonable belief" or "reasonably believes" when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

"Reasonably should know" when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

"Screened" denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these rules or other law.

"Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.

"Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding, or a legislative body, administrative agency, or other body acting in an adjudicative capacity. A legislative body, administrative agency, or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

"Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or video recording, and e-mail. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

Credits

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); March 23, 2006, effective May 22, 2006 (933 So.2d 417).

Editors' Notes

COMMENT

Confirmed in writing

If it is not feasible to obtain or transmit a written confirmation at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. If a lawyer has obtained a client's informed consent, the lawyer may act in reliance on that consent so long as it is confirmed in writing within a reasonable time thereafter.

Firm

Whether 2 or more lawyers constitute a firm above can depend on the specific facts. For example, 2 practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way that suggests that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the rule that is involved. A group of lawyers could be regarded as a firm for purposes of the rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the rule that information acquired by 1 lawyer is attributed to another.

With respect to the law department of an organization, including the government, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct. There can be uncertainty, however, as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.

Similar questions can also arise with respect to lawyers in legal aid and legal services organizations. Depending upon the structure of the organization, the entire organization or different components of it may constitute a firm or firms for purposes of these rules.

Fraud

When used in these rules, the terms "fraud" or "fraudulent" refer to conduct that has a purpose to deceive. This does not include merely negligent misrepresentation or negligent failure to apprise another of relevant information. For purposes of these rules, it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform.

Informed consent

Many of the Rules of Professional Conduct require the lawyer to obtain the informed consent of a client or other person (e.g., a former client or, under certain circumstances, a prospective client) before accepting or continuing representation or pursuing a course of conduct. See, e.g., rules 4-1.2(c), 4-1.6(a), 4-1.7(b), and 4-1.18. The communication necessary to obtain such consent will vary according to the rule involved and the circumstances giving rise to the need to obtain informed consent. The lawyer must make reasonable efforts to ensure that the client or other person possesses information reasonably adequate to make an informed decision. Ordinarily, this will require communication that includes a disclosure of the facts and circumstances giving rise to the situation, any explanation reasonably necessary to inform the client or other person of the material advantages and disadvantages of the proposed course of conduct and a discussion of the client's or other person's options and alternatives. In some circumstances it may be appropriate for a lawyer to advise a client or other person to seek the advice of other counsel. A lawyer need not inform a client or other person of facts or implications already known to the client or other person; nevertheless, a lawyer who does not personally inform the client or other person assumes the risk that the client or other person is inadequately informed and the consent is invalid. In determining whether the information and explanation provided are reasonably adequate, relevant factors include whether the client or other person is experienced in legal matters generally and in making decisions of the type involved, and whether the client or other person is independently represented by other counsel in giving the consent. Normally, such persons need less information and explanation than others, and generally a client or other person who is independently represented by other counsel in giving the consent should be assumed to have given informed consent.

Obtaining informed consent will usually require an affirmative response by the client or other person. In general, a lawyer may not assume consent from a client's or other person's silence. Consent may be inferred, however, from the conduct of a client or other person who has reasonably adequate information about the matter. A number of rules state that a person's consent be confirmed in writing. See, e.g., rule 4-1.7(b). For a definition of "writing" and "confirmed in writing," see terminology above. Other rules require that a client's consent be obtained in a writing signed by the client. See, e.g., rule 4-1.8(a). For a definition of "signed," see terminology above.

Screened

This definition applies to situations where screening of a personally disqualified lawyer is permitted to remove imputation of a conflict of interest under rules 4-1.11, 4-1.12, or 4-1.18.

The purpose of screening is to assure the affected parties that confidential information known by the personally disqualified lawyer remains protected. The personally disqualified lawyer should acknowledge the obligation not to communicate with any of the other lawyers in the firm with respect to the matter. Similarly, other lawyers in the firm who are working on the matter should be informed that the screening is in place and that they may not communicate with the personally disqualified lawyer with respect to the matter. Additional screening measures that are appropriate for the particular matter will depend on the circumstances. To implement, reinforce, and remind all affected lawyers of the presence of the screening, it may be appropriate for the firm to undertake such procedures as a written undertaking by the screened lawyer to avoid any communication with other firm personnel and any contact with any firm files or other materials relating to the matter, written notice and instructions to all other firm

personnel forbidding any communication with the screened lawyer relating to the matter, denial of access by the screened lawyer to firm files or other materials relating to the matter, and periodic reminders of the screen to the screened lawyer and all other firm personnel.

In order to be effective, screening measures must be implemented as soon as practicable after a lawyer or law firm knows or reasonably should know that there is a need for screening.

Notes of Decisions (6)

West's F. S. A. Bar Preamble, FL ST BAR Preamble
Current with amendments received through 2/15/15

End of Document

Model Rules of Professional Conduct: Preamble & Scope

Preamble And Scope

PREAMBLE: A LAWYER'S RESPONSIBILITIES

[1] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.

[2] As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

[3] In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these Rules apply directly to lawyers who are or have served as third-party neutrals. See, e.g., Rules 1.12 and 2.4. In addition, there are Rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. See Rule 8.4.

[4] In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

[5] A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or

intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

[6] As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

[7] Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.

[8] A lawyer's responsibilities as a representative of clients, an officer of the legal system and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done. So also, a lawyer can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

[9] In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in

remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.

[10] The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

[11] To the extent that lawyers meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.

[12] The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.

[13] Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship.

SCOPE

[14] The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the Rules are

imperatives, cast in the terms "shall" or "shall not." These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may," are permissive and define areas under the Rules in which the lawyer has discretion to exercise professional judgment. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion. Other Rules define the nature of relationships between the lawyer and others. The Rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer's professional role. Many of the Comments use the term "should." Comments do not add obligations to the Rules but provide guidance for practicing in compliance with the Rules.

[15] The Rules presuppose a larger legal context shaping the lawyer's role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers and substantive and procedural law in general. The Comments are sometimes used to alert lawyers to their responsibilities under such other law.

[16] Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings. The Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical practice of law.

[17] Furthermore, for purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these Rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties, such as that of confidentiality under Rule 1.6, that attach when the lawyer agrees to consider whether a client-lawyer relationship shall be established. See Rule 1.18. Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

[18] Under various legal provisions, including constitutional, statutory and common law, the responsibilities of government lawyers may include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships. For example, a lawyer for a government agency may have authority on behalf of the government to decide upon

settlement or whether to appeal from an adverse judgment. Such authority in various respects is generally vested in the attorney general and the state's attorney in state government, and their federal counterparts, and the same may be true of other government law officers. Also, lawyers under the supervision of these officers may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. These Rules do not abrogate any such authority.

[19] Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process. The Rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, the Rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations.

[20] Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Nevertheless, since the Rules do establish standards of conduct by lawyers, a lawyer's violation of a Rule may be evidence of breach of the applicable standard of conduct.

[21] The Comment accompanying each Rule explains and illustrates the meaning and purpose of the Rule. The Preamble and this note on Scope provide general orientation. The Comments are intended as guides to interpretation, but the text of each Rule is authoritative.

Preface | Chairperson's Introduction | Ethics 2000 Chair's Introduction | Table of Contents

ABA Center for Professional Responsibility

State Adoption of the ABA Model Rules of Professional Conduct (previously the Model Code of Professional Responsibility)

Dates of initial adoption

Alphabetical Order

Jurisdiction	Date of Adoption
Alabama	5/2/90
Alaska	4/14/93
Arizona	9/7/84
Arkansas	12/16/85
Colorado	5/7/92
Connecticut	6/23/86
Delaware	9/12/85
District of Columbia	3/1/90
Florida	7/17/86
Georgia	6/12/00
Hawaii	12/6/93
Idaho	9/3/86
Illinois	2/8/90
Indiana	11/25/86
Iowa	4/20/05
Kansas	1/29/88

Kentucky	6/12/89
Louisiana	12/18/86
Maine	2/26/09
Maryland	4/15/86
Massachusetts	6/9/97
Michigan	3/11/88
Minnesota	6/13/85
Mississippi	2/18/87
Missouri	8/7/85
Montana	6/6/85
Nebraska	6/8/05
Nevada	1/26/86
New Hampshire	1/16/86
New Jersey	7/12/84
New Mexico	6/26/86
New York	12/16/08
North Carolina	10/7/85
North Dakota	5/6/87
Ohio	8/1/06
Oklahoma	3/10/88
Oregon	1/1/05
Pennsylvania	10/16/87
Rhode Island	11/1/88
South Carolina	1/9/90
South Dakota	12/15/87
Tennessee	8/27/02
Texas	6/20/89
Utah	3/20/87
Vermont	3/9/99

Virgin Islands	1/28/91
Virginia	1/25/99
Washington	7/25/85
West Virginia	6/30/88
Wisconsin	6/10/87
Wyoming	11/7/86

Back to Top

Seattle Journal for Social Justice

Volume 8
Issue 2 *Spring/Summer 2010*

Article 9

May 2010

Teaching Public Citizen Lawyering From Aspiration to Inspiration

Mae C. Quinn

Teaching Public Citizen Lawyering: From Aspiration to Inspiration

Mae C. Quinn[1]

INTRODUCTION

A longtime social justice activist and clinical professor, Douglas Colbert,[2] recently sought information from colleagues across the country[3] for the second part of an important project examining a lawyer's ethical obligation to engage in pro bono work during a time of crisis, such as the aftermath of Hurricane Katrina or 9/11.[4] He sent out surveys to learn which schools actually taught the Preamble to the ABA Model Rules of Professional Conduct in ethics or other courses.[5] As Professor Colbert's letter explained, the Preamble states: "A lawyer, as a member of the legal profession, is a representative of clients, an officer of the court, and a public citizen having special responsibilities for the quality of justice."[6]

I was thrilled to learn that Professor Colbert—a mentor to many newer clinicians like myself—was interested in an issue that I had begun to explore in my own work; that is, how the Preamble's public citizen lawyer message should be used in law school teaching.[7] Indeed, I was surprised to find that while reams had been written about lawyers as representatives of individual clients and officers of the court, very little was said about the role and responsibilities of lawyers or law students as public citizens.[8] Yet as Professor Colbert's inquiry suggests, the Preamble gives us a lot to talk about.[9]

My interest in the Preamble is not so much rooted in the concept of the delivery of pro bono representation as it is on the public citizen lawyer's affirmative responsibility to press for legal reform.[10] And in contrast to focusing on catastrophic events as catalysts for change, this essay is concerned with teaching students about responding to the everyday

travesties and inequities they may encounter in our courts and legal system. Thus, it can be seen as a response to Professor Colbert's important call to action—providing one approach to Preamble teaching—and supporting him in his curricular reform efforts.

This essay outlines the ways in which I have tried to convey to students the importance of the Preamble's message of lawyer as public citizen. In it I share my view that law schools—not only in traditional professional responsibility courses—should encourage students to grapple with this ethical concern which is not fully captured by the "black letter" rules. For instance, in my prior teaching at the University of Tennessee, I tried to encourage students to consider how they could improve the justice system. I urged them to not only accept individual pro bono cases upon graduation, but to take on problematic systemic issues that might call for nontraditional advocacy efforts in order to be meaningfully addressed. Now as a professor at Washington University School of Law in St. Louis, I intend to continue with, and build upon, this agenda. However, I hope to more deeply explore what it means for clinicians and their students to be public citizen lawyers in a given community.

Proceeding in four parts, this essay begins that exploration. Part I of this essay outlines the Model Rules' Preamble.[11] Part II looks at ABA Model Rule of Professional Conduct 6.1 as the single black letter guideline attempting to address a lawyer's special responsibility for the quality of justice.[12] Unfortunately, this rule tends to privilege traditional pro bono client representation as the preferred route for meeting this responsibility.[13] Yet pro bono publico representation is not required; it is merely aspirational.[14] In Part III, I share some ideas for conveying the importance of the Preamble and public citizen lawyering to law students by offering examples from my teaching at Tennessee—in our clinical program, in a practicum course, and in others places across the curriculum. In Part IV, I conclude by offering some lessons learned, as well as discussing challenges I face while helping to launch a new youth advocacy clinic at Washington

University. In the end, my hope is to inspire students to look beyond the rules' aspirational goals and to serve as public citizen lawyers in law school and beyond.

I. THE PREAMBLE: A LAWYER'S RESPONSIBILITY

The Preamble of the ABA's Model Rules of Professional Conduct sets forth three primary responsibilities for lawyers: to serve as a representative of clients, to serve as an officer of the legal system, and to serve as "a public citizen having special responsibility for the quality of justice."[15]

The Preamble goes on to describe the components of these three responsibilities.[16] As to the representational and court officer components, the Preamble offers commonly understood guidelines—those perhaps most frequently discussed in ethics and other law school courses.[17]

With regard to serving as a public citizen, the Preamble explains:

> A lawyer should [also] seek improvement of the law, access to the legal system, in the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law, and work to strengthen legal education.[18]

It further provides:

> A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.[19]

After the Preamble, the drafters offer notes on the "scope" of the rules.[20] These notes explain that the ABA Rules of Professional Conduct are rules

of reason to be interpreted in light of the purposes of legal representation and the law itself.[21] Some rules, the scope says, are "imperatives, cast in the terms 'shall' or 'shall not.'"[22] Thus, they define proper conduct for purposes of professional discipline and are obligatory.[23] Other rules, using terms like "may" are permissive in nature, and thus no discipline will follow when a lawyer exercises appropriate discretion under such rules.[24] A third set of rules "define the nature of relationships between the lawyer and others."[25] Together, the rules are partly obligatory in nature and partly "constitutive and descriptive in that they define a lawyer's professional role."[26]

These introductory materials further explain that the commentary accompanying each rule, most using terms like "should," are merely intended to provide explanation and illustration of the rules in action.[27] They "do not add obligations to the rules, but provide guidance for practicing in compliance with the rules."[28]

On the other hand, these same introductory notes state that the Preamble's framework is intended to "provide general orientation" to the rules.[29] Although no further explanation is provided for what is meant by the term "general orientation," the Preamble's provisions are not expressly limited in the way that the comments are.[30] That is, the drafters did not expressly rule out the possibility that the terms of the Preamble are in fact obligations of every attorney.

II. PRO BONO: THE LOW BAR OF ASPIRATION

Unlike the roles of attorney as officer of the court and client representative, there is no ABA Model Rule that squarely addresses the third prong of the lawyer's duty trilogy: public citizen lawyering.[31] Rather, the only ethical provision that even begins to address components of the public citizen lawyering concept is Rule 6.1, entitled "Voluntary Pro Bono Publico Service."[32]

Rule 6.1 is concerned primarily with increasing access to justice for those who cannot otherwise afford representation. The rule begins by stating that

a lawyer "has a professional responsibility to provide legal services to those unable to pay."[33] Further, a lawyer "should aspire to render at least fifty hours of pro bono publico legal services each year."[34] In fulfilling this responsibility, the lawyer should "provide a substantial portion of the fifty hours of legal services without fee or expectation of fee to . . . persons of limited means," or charitable, or other organizations "in matters that are designed primarily to address the needs of persons of limited means."[35]

As a second possibility for meeting this responsibility, the rule states that a lawyer may provide "any additional services through . . . delivery of legal services at no fee or at a substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties, or public rights," or to governmental or other public service organizations who would not be able to otherwise afford such representation.[36] Thus, the focus again is on traditional client representation for the public citizen lawyer.

It is only toward the end of rule 6.1—in subsection (b)(3)—that lawyers are told they can meet their pro bono responsibility through a third means that is not representation based.[37] It may also be satisfied through "participation in activities for improving the law, the legal system, or the legal profession."[38] As examples of activities that might fall within this category, the comments offer "serving on bar association committees, . . . taking part in Law Day activities," or engaging in legislative lobbying to improve the law.[39] These examples, also rooted in formal organizations and processes, seem to offer a limited conception of the public citizen lawyer.[40]

Finally, and perhaps most damaging to any meaningful embodiment of the public citizen lawyer conception by rule 6.1, the pro bono rule is seen as a suggestion only and not an affirmative obligation—"should" language, rather than "shall" is used throughout.[41] The comments explain that although provision of pro bono services is a professional responsibility, that responsibility "is not intended to be enforced through disciplinary process."[42] In light of this mere suggestion, it appears the Preamble has not been expressly operationalized by any mandatory provisions of the rules.[43]

Yet, the public citizen lawyering considerations of the Preamble remain part of an attorney's ethical responsibilities.[44] Since the scope does not restrict the Preamble's impact, as it does with the commentary sections, lawyers must come to terms with what it means to be a public citizen lawyer. Law professors—particularly clinicians—are well positioned to help students make sense of the Preamble for themselves.

III. EFFORTS TO REACH FOR INSPIRATION: A TENNESSEE TEACHING AGENDA

Teaching as a clinician, I discovered students were not familiar with the Preamble and have not spent much time, if any, considering it in professional responsibility courses. Thus, I began teaching about public citizen lawyering, encouraging students to think about that role beyond mere pro bono representation. Doing so, I tried to move students away from mere aspirations and toward taking action to embrace their roles as reformers.

A. Legal Clinics: Presence, Proximity, and Personal Growth[45]

1. General Advocacy Clinic

At Tennessee, I taught primarily in our general Advocacy Clinic. Under faculty supervision, students represented indigent Knox County residents in a variety of matters, including criminal cases, juvenile delinquency prosecutions, and unemployment benefits hearings. In addition to attending a ninety minute class twice each week, students kept office hours and met with faculty for formal supervision sessions. We usually enrolled twenty-four students per semester and team-taught the entire course. Each supervisor was assigned eight students, which divided the class into three different working groups—each working group then taking on its own flavor and focus depending on the individual supervisor.

Students investigated client cases, worked through discovery, drafted motions, and engaged in settlement discussions. When cases were not

resolved, the students represented their clients in hearings and trials. In all, students were expected to dedicate approximately twenty hours per week to the clinic, but they often put in more. Moving from the traditional classroom to the clinic environment, students had to move from the role of passive learner to active advocate.

The standard clinical mantra—planning, doing, and reflecting on individual lawyering tasks—was key.[46] Through the course of my teaching and supervision at Tennessee, I also tried to expose students to values that are core to clinical legal education. For example, I chose to focus on aspects such as respect for clients, empathy, concern for power imbalance and structural inequality, and achieving social justice. I told my students that they did not need to agree with my politics or leanings as a defense lawyer, but simply keep an open mind to all possibilities.

During the last third of the semester, I generally used the Preamble of the Tennessee Rules of Professional Conduct to explore the concept of a lawyer as a public citizen. I expressly discussed with my student working groups their responsibility to do more than competently represent their clients and conduct themselves professionally. Through reading and considering the Preamble, students saw that lawyering best practices also involve seeking to improve the law and justice system where appropriate.

With this groundwork, we discussed recurring issues encountered over the course of the semester. The students brainstormed possible efforts that could be undertaken to press for reform beyond traditional litigation-based challenges in individual cases and then attempted to operationalize those efforts. One example of this involved the students, as a group, writing a letter to local law enforcement at the end of the semester expressing their concerns about ongoing treatment of youth during arrest processes and calling for reform.[47] Another student returned a year after his graduation to work with me to co-counsel a school-related juvenile prosecution for a former client who had been re-arrested.

2. Juvenile Justice Clinic Section

To enhance the special skills needed for representing child clients and persistent problems facing youths in Knox County courts and schools, I taught a specialized section of the Advocacy Clinic in the fall of 2007 as a pilot project that focused on youth advocacy and juvenile defense representation. I used a text, developed by experts at the National Juvenile Defender Center, to teach best practices in child advocacy within the delinquency system.[48] By focusing on juvenile issues in this way, students were able to see the need for systemic improvements and began to take steps to call for reform.

For instance, each group, in addition to individual cases, was assigned an unaddressed issue that the General Advocacy Clinic had identified as a persistent problem. These issues included the shackling of juveniles during court proceedings and underdeveloped educational services within our detention facility. The students were then asked to come up with an idea outside of the confines of individual representation to help address the issue. The efforts undertaken by the students ran the gamut.

The "shackling issue" group drafted sample motions that could be used by students and attorneys in the future to request that shackles be removed from their clients. As for education in the detention center, a group of students asked to have a meeting with the juvenile court judge at the end of the semester to reflect with him on their experiences and express their concerns with the current situation. This juvenile-focused pilot project taught me that systemic reform and outreach efforts led by students can provide rich educational experiences that complement representation in small, individual cases.[49]

B. Juvenile Justice Practicum: Passion and Empowerment

Partly taking into account concerns raised by my Juvenile Justice Clinic students as we worked on a juvenile court transfer matter, I developed and taught a new practicum course, a mini-clinic of sorts, which looked more

carefully at the issues surrounding children standing trial in adult criminal courts. Dubbing ourselves as a "task force," we examined transfer laws, procedures, and policies in Tennessee. We learned that these laws, procedures, and polices resulted in the incarceration of over eleven hundred individuals in Tennessee's adult prisons. These incarcerations stemmed from crimes of their youth, and some individuals were serving life without parole.

Gathering statistics from the Department of Corrections and convening conference calls with experts like Professor Bryan Stevenson, whose work we read for the course, David Raybin, a well-known Tennessee parole and post-conviction attorney, and Patrick Frogge of Tennessee Association of Criminal Defense Lawyers' Legislative Task Force, we explored possible avenues for advocacy and reform. For instance, we considered seeking sponsorship of state legislation to provide juvenile offenders sentenced to more than fifteen years in prison with the opportunity to at least seek special parole review at year fifteen.

In the end, we undertook representation of Jerry Anderson, a twenty-seven-year-old who is serving a sixty-year sentence for his non-triggerman role in a homicide committed in the course of a robbery when he was sixteen years old.[50] The students conducted investigative and other preliminary work in support of his commutation petition. I then carried Mr. Anderson's case back into the General Advocacy Clinic the following semester to have other students continue with the representation. I finally finished and filed the petition once I arrived in St. Louis to join Washington University's clinical program. Mr. Anderson's application is currently under review by the Governor of Tennessee.

C. Other Courses: Stretching Public Citizenship Across the Curriculum

1. Problem-Solving Courts Seminar

During my time at Tennessee, I also developed and taught a seminar course that focused on the law in action and called upon students to play an active role in examining the modern problem-solving court movement in the United States. Through readings, classroom discussions, films, and guest lecturers, they considered legal, political, and other factors contributing to this phenomenon. They surveyed the various types of specialty courts that have been established over the last twenty years, examined their various features, and compared such institutions to earlier specialty courts that existed in prior decades.

Each student was expected to contribute to the ongoing conversation about problem-solving courts and justice by producing a publication-quality paper that addressed some issue or feature of the movement. Throughout the course of the semester, students were assigned readings from *Scholarly Writing for Law Students* to help them improve as true legal scholars.[51]

Encouraging students to find their voices and recognize the power of the pulpit, I had them present their papers at a three-day academic symposium that I hosted in our faculty lounge. Abstracts of their work were posted to the law school's website under a special page showcasing the innovative work of my student group. I also encouraged students to enter their written work into various contests and seek publication placement, and I talked with them about the impact that publication can have in raising awareness and sparking reforms. Although none of the works were published, at least one student wrote to me before her graduation to thank me for pushing her to recognize her potential as a true scholar.

2. Criminal Law

Finally, in teaching criminal law, I attempted to build on my experience as a practitioner and began exposing students to the law, not just in theory

but in practice,[52] and have them consider areas of criminal law possibly in need of reform.[53]

Wanting to reach as many student learning styles as possible, I also attempted to use a range of teaching techniques—lectures, breakout groups, presentations, handouts, jury instructions, courthouse visits, films, skits, and songs—to work through the material. In doing this, students were able to see the law in action—outside the confines of their text book—and recognize various flaws in the system.

Court visits involved reviewing case files to get a sense of how charges are brought in real life (e.g., seeing firsthand the lack of notice and informality versus what they read in their books). Some students were able to observe trials, and all of the students had conversations with trial judges to hear about the good, the bad, and the ugly of courts in practice.[54] We watched the documentary, *Red Hook Justice*, exposing students to the work of a problem-solving court in Brooklyn that seeks to address low-level crime and to improve the quality of life for residents of the area.[55] After viewing the film, students were asked to do a take-home assignment, which consisted of writing a memo to a judge considering the ways the *Red Hook* model did or did not comport with traditional rationales for sentencing. To learn about the realities of the insanity defense, we watched portions of the PBS documentary *The New Asylums*, which examines the serious problem of warehousing the mentally ill in our nation's prisons.[56]

IV. THE ROAD AHEAD: TEACHING PUBLIC CITIZEN LAWYERING IN ST. LOUIS

This somewhat rosy trip down memory lane is not intended to suggest that all of my adventures in public citizen lawyering at Tennessee were executed without a hitch. Nor do I mean to imply that I have created an army of effective reform-minded lawyers, ready to take on inequities in the world. In fact, both my teaching and my efforts to encourage public citizen lawyering are very much works in progress. I have learned some lessons,

but continue to struggle with the contours of challenges raised by such an agenda. Becoming a new faculty member in a new program, in a community that is new to me, provides an opportunity to reflect on such teaching and think more deeply about such an agenda as I move ahead.[57]

A. Ownership and Authenticity

One thing I feel that I have learned along the way is that students generally take more ownership in a public interest lawyering project that they have helped to develop. So, comparing the enthusiasm of students who are assigned a set of issues with those who brainstormed and chose issues to address within a particular context, the latter definitely was a more authentic project with greater student investment.

But even this course of action raises questions. After all, should students feel that they can "own" such issues? Or rather, should we look to our clients as owners of the public citizen lawyering agenda?[58] And if this is the case, how should a clinical program determine which projects to undertake as part of that approach? What about the community in which the clinic operates or where its individual clients live? Should community members play a role in shaping the agenda? What if tensions exist between the needs and wants of a particular community and the needs and wants of an individual client? And as a new community member, what is the best way of going about getting involved with a community's concerns as a public citizen lawyer?[59]

As I continue with youth advocacy work at Washington University, I hope to explore with my students the possibility of ethically addressing legal needs of individuals and communities in light of concerns for the public citizen lawyer role. I began my representation work with our students by delivering direct services in delinquency matters at the local juvenile court. We chose this as one of our first steps, in part, because the juvenile public defender's office was recently defunded, forcing the regular public

defender's office to handle all juvenile matters on top of its already overwhelming caseload.

This work is important and appears to be meeting a need, at least by providing zealous representation in a small number of individual cases. But what should a public citizen lawyer do in this context? Continue to help fill the gap, demand that the gap be otherwise filled, or perhaps both? Complicity seems less than appropriate. But where should we go from here?

Similarly, despite recent news accounts touting the Missouri juvenile justice system as a paragon of progressiveness, there are plenty of areas within this system that are in need of improvement.[60] The state's Department of Youth Services is engaging in promising treatment experimentation in its residential facilities. But alternatives to state placement in the first instance are limited. And the juvenile code and court systems are still characterized by a remarkable level of informality, the kind that *Gault* sought to stem decades ago.[61] Our first set of youth advocacy clinic students have been quick to observe and critique these features, eager to react, and desirous to improve the system. But what is the best way to do that in a new clinic project that will remain a repeat player in the very institutions it seeks to improve? And how do we best harness, operationalize, and perpetuate the momentum created by our inaugural student group?

B. Tackling Problems Big and Small

Similarly, I continue to struggle with determining the size and complexity of issues we can and should take on through the clinic and my other classes. Some issues are too small or idiosyncratic, or seem inconsequential, or are too big or wide-reaching, and I may be expecting students to bite off more than they can chew. And I, too, may find myself overwhelmed by the task, such that my other teaching responsibilities could suffer.

Yet the recent invitation to clinicians, extended by john a. powell, to begin to fundamentally rethink clinical education is well-taken.[62] Overly

routine clinical structures may inhibit our ability to fully embrace our roles as public citizen lawyers to improve and inform the law and society.[63] Therefore, standard methods of operation may require reform and re-radicalization if we are to make further meaningful inroads toward dismantling structural inequality.[64] It is possible we have become too comfortable in the pedagogical frameworks we have created—ones that fit neatly within our own artificial constructs of necessary attorney skill sets, course syllabi, and the like. In doing so, we may be missing opportunities for real change.

C. Sputter and Stall

Reform efforts do not always go smoothly. For instance, in my practicum course, it was difficult to figure out how to distribute tasks and work when our projects did not lend themselves to neat division like small individual cases. We also found ourselves splitting our time between our clemency matter and the legislative project. As a result, our law reform efforts chugged along, sometimes having to take the backseat when our client's case needed attention. And because legislative calendars and the availability of various players do not always coincide with academic calendars and class schedules, accepting at the outset that you might move the ball only so far in a given semester is essential. Or perhaps it is time to rethink academic calendars and class schedules to fit the needs of the real world and real people with real problems.

D. Captive Audiences, Reluctant Disciples, and Measuring Success

I do not want to be seen as a supposed "progressive" who fails to account for the political interests of others. So I try not to force my reform agenda on students who have not self-selected to be part of a reform-based project. Thus, while I might be quite direct about my criticisms of the juvenile justice system in my task force group, in my criminal law course I tend only

to present issues—for example, through films—and explore various points of view about them.

Similarly, not all students like "nontraditional" teaching methods—particularly in first-year courses. However, I was tremendously pleased that the students who came forward after class to thank me for my innovative efforts (those who I apparently "reached") were mostly those who historically have been left out of the legal profession and academy. Perhaps for these students—women and students of color—consideration of real-world public citizen lawyering concerns beyond the holdings of appellate cases feel most important.[65]

Yet, I am at a loss for determining any clear measure of success for such a teaching agenda. Is it in helping, in some small way, a historically disenfranchised group? Or does success mean something more? Do we succeed by merely getting the attention of students who might not otherwise be concerned with the disenfranchised? Or do we need to do more to get their attention in order to succeed? These, too, are big questions that I will explore with students in the days ahead.

E. Maintaining Your Own Inspiration

The final ongoing challenge I face—and frankly a concern I flag for others—is keeping the tank full on the public citizen lawyering road. While I am passionate about my work, pushing for change uses a lot of fuel. And for me—particularly in the face of disappointing outcomes—the work can be downright exhausting sometimes.

As many of us in clinic teach our students, we cannot help clients if we cannot help ourselves. Therefore, we must strive for quality and justice in our own lives too. This is a caution I try to heed, so that, like Douglas Colbert, I can stay the course of seeking to inspire law students to embrace their roles as public citizen lawyers in clinics and beyond for years to come.

---

[1] Copyright © 2010 Mae C. Quinn, Professor of Law and Co-Director, Civil Justice Clinic, Washington University School of Law, St. Louis. This essay is based upon

remarks delivered at a January 2009 faculty workshop at the University of Akron School of Law. My sincere thanks to Professor Tracy Thomas, Dean Marty Belsky, and Associate Dean Elizabeth Reilly for their kind invitation to the workshop. Thanks also to my discussion group at the 2009 Midwest Clinician's Conference, and my colleagues Annette Appell, Ben Barton, and Bob Kuehn for their helpful insights. I am also grateful to Kevin Roberts for his fine editorial and other contributions to this essay, and Nick Lee for his research assistance. For inspiration, I am indebted to the fall 2009 Washington University School of Law Civil Justice Clinic students—our inaugural youth advocacy project group.

[2] For over twenty-five years, Professor Colbert has been working with law students across the country to deliver quality representation to indigent defendants while engaging in systemic reform efforts. For more about Professor Colbert's work, see University of Maryland, Douglas Colbert, in Faculty Profiles, http://www.law.umaryland.edu/faculty/profiles/faculty.html?facultynum=029 (last visited Apr. 9, 2010).

[3] Letter from Professor Douglas Colbert, University of Maryland School of Law, to author (June 18, 2008) (on file with author).

[4] The first part of Professor Colbert's project involved his symposium article, *Professional Responsibility in Crisis*, 51 HOWARD L. REV. 677 (2008). It provides an important account of the work done in New Orleans by law students across the country, including University of Tennessee students who traveled with me to join the efforts of Tulane Law Professor Pam Metzger aided by Professor Colbert. *See also UT Law Students Aid Post-Katrina Indigents*, TENNESSEE LAW (University of Tennessee Knoxville) Fall 2007 at 18 (describing the work of University of Tennessee Law students who volunteered post-Katrina).

[5] *See* Faculty Profiles, *supra* note 2.

[6] *Id.*; *see also* MODEL RULES OF PROF'L CONDUCT pmbl. ¶ 1 (2009).

[7] In fact, I was so excited that I called Professor Colbert and left a long message on his answering machine recounting my interest in and enthusiasm for his project, as well as my use of the Preamble in my teaching. In all of my excitement, I fear, however, that I may have failed to ever complete and return the survey form. Sorry, Doug.

[8] Prior to Professor Colbert's work examining the role of lawyer as public citizen, very few had addressed the issue other than in passing. *See, e.g.*, Cruz Reynoso, *The Lawyer as Public Citizen—Eleventh Annual Frank M. Coffin Lecture*, 55 ME. L. REV. 336 (2003) (remarking on the lack of existing guidance about the meaning of public citizen lawyer as described in the Preamble and offering a four-point proposal for fulfilling that obligation); Irma S. Russell, *The Lawyer as Public Citizen: Meeting the Pro Bono Challenge*, 72 UMKC L. REV. 439, 443–44 (2003) (discussing the revision of the ABA Model Rules as a catalyst for discussing the lawyer's public service obligation); *see also* Robert E. Scott, *The Lawyer as Public Citizen*, 31 U. TOL. L. REV. 733, 733–34 (2000) (discussing the public citizen lawyer in terms of professionalism); Timothy L. Bertschy, *The Lawyer as Public Citizen*, 87 ILL. B.J. 236, 236 (May 1999) (discussing the importance of lawyers as agents for social change).

[9] While presenting this paper at the University of Akron School of Law in January 2009, I was informed that just days before, the Preamble also served as the focal point for the opening remarks given at the AALS Annual Meeting in San Diego, California. *See*

Rachel Moran, *The President's Message*, AALS NEWS, Mar. 2009 at 1–3, 7, 12–13 (noting that "[t]he image of the citizen-lawyer, whose training can be used to advance the common good, has so thoroughly disappeared from the popular imagination that those who pursue this path are no longer centrally defined as lawyers" and calling upon citizen-lawyers to become "Architect[s] of Transformative Law"). Even students are beginning to ask about the lack of teaching around the public citizen lawyer role. *See* Matthew E. Meaney, Lawyer as Public Citizen: A Futile Attempt to Close Pandora's Box (2010) (unpublished manuscript), *available at* http://works.bepress.com/matthew_meany/1/.

[10] Examining the importance of the Preamble obviously presupposes the continuing applicability of Rules of Professional Conduct and the requirement that lawyers comply with them. There is certainly room to question the continuing efficacy of the rules and whether they allow for suffiently robust or nuanced conceptions of attorney, client, and court. *See, e.g.*, Anthony V. Alfieri, *(Un)Covering Identity in Civil Rights and Poverty Law*, 121 HARV. L. REV. 805, 818 (2008); Stephen Ellman, *Client-Centeredness Multiplied: Individual Autonomy and Collective Mobilization in Public Interest Lawyers' Representation of Groups*, 78 VA. L. REV. 1103, 1104 (1992). Until the rules are revisited in any meaningful way—which perhaps should occur—they remain controlling standards. *See, e.g.*, Mae C. Quinn, *An RSVP to Professor Wexler's Warm Therapeutic Jurisprudence Invitation to the Defense Bar: Unable to Join You, Already (Somewhat Similarly) Engaged*, 48 B.C. L. REV. 539, 543–51 (2007) (noting that the therapeutic jurisprudence may be seeking to displace traditional lawyering ethics norms). The question for many clinicians, therefore, is how to teach and operate within existing rules consistent with a desire to transform existing systemic inequities and structural injustice.

[11] *See infra* note 41 and accompanying text.

[12] *See infra* note 31 and accompanying text.

[13] *Id.*

[14] *See infra* note 41 and accompanying text.

[15] *See* MODEL RULES OF PROF'L CONDUCT pmbl. ¶ 1 (2009). The Preamble to the Tennessee Rules of Professional Conduct, important to my teaching at the University of Tennessee, sets forth the same three responsibilities. TENN. SUP. CT. R. 8, RULES OF PROF'L CONDUCT pmbl. (2003). As noted by Professor Colbert, the vast majority of states have adopted some version of the Model Rules and its Preamble. *See* Colbert, *supra* note 4, at 684. Some states, however, have not embraced the Preamble's message that lawyers should serve as "public citizens" who have a "special responsibility for the quality of justice." Ohio, for instance, recently superseded its former Code of Professional Responsibility with the Ohio Rules of Professional Conduct. But the Ohio Preamble does not use the term "public citizen." Rather, in the first paragraph it provides merely that "[a]s an officer of the court, a lawyer not only represents clients but has a special responsibility for the quality of justice." OHIO RULES OF PROF'L CONDUCT pmbl. ¶ 1 (2007). And although it does indicate that lawyers should seek the improvement of justice, ensure access to justice and the like, it does not talk about such issues as relating to lawyers serving as public citizens. *See id.* at ¶ 6.

[16] MODEL RULES OF PROF'L CONDUCT pmbl. ¶ 1 (2009).

[17] *See id.*; *see, e.g.*, RICHARD ZITRIN, CAROL M. LANGFORD, & NINA W. TARR, LEGAL ETHICS IN THE PRACTICE OF LAW (3d ed. 2006) (describing in detail the attorney-client

relationship and court officer components of the Preamble without similarly addressing the public citizen lawyer provisions, also a popular professional responsibility text).

[18] MODEL RULES OF PROF'L CONDUCT pmbl. ¶ 6 (2009).

[19] *Id.*

[20] MODEL RULES OF PROF'L CONDUCT scope (2009).

[21] *See id.* at ¶ 14.

[22] *Id.*

[23] *Id.*

[24] *Id*.

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] *Id.* The Tennessee Rules add that the rules do not "make suggestions about good practice, which lawyers would be well-advised to heed even though the rules do not require them to do so." TENN. SUP. CT. R. 8, RULES OF PROF'L CONDUCT scope (2003).

[29] MODEL RULES OF PROF'L CONDUCT scope ¶ 21.

[30] *Id.*

[31] *See* ABA MODEL RULES OF PROF'L CONDUCT (2009).

[32] *See* MODEL RULES OF PROF'L CONDUCT R. 6.1 (2009) (part of "Chapter 6" of the rules, entitled "Public Service"). The Tennessee Rules have changed recently. Until January 2010, Tennessee's version of this Rule was entitled "Pro Bono Publico Representation," reflecting a much more limited description of the public citizen lawyer than the one offered in the Preamble—one rooted in the idea of individual client representation. *Compare* TENN. SUP. CT. R. 8, RULES OF PROF'L CONDUCT R. 6.1 (2003).

[33] MODEL RULES OF PROF'L CONDUCT, R. 6.1 (2009). Until recently, Tennessee's Rule 6.1 began by stating that a lawyer "should render pro bono publico services." TENN. SUP. CT. R. 8, RULES OF PROF'L CONDUCT R. 6.1 (a) (old version effective through December 31, 2009).

[34] MODEL RULES OF PROF'L CONDUCT R. 6.1. (effective January 1, 2010), *accord* TENN. SUP. CT. R. 8, RULES OF PROF'L CONDUCT R. 6.1(a) (new version effective January 1, 2010). This amendment was seen as highly controversial, with the Tennessee Supreme Court taking under advisement until a further date the Tennessee Bar Association's request that lawyers actually report the number of hours they devote to pro bono activities. *See In Re Pro Bono Service Rules Amendments*, No. M2008–01403–SC–RL1–RL, *available at* http://www.tba.org/ethics/index.html.

[35] MODEL RULES OF PROF'L CONDUCT R. 6.1(a) (2009). The Tennessee Rule uses the less specific term "substantial portion" versus "substantial majority of the (50) hours" used in the Model Rules, perhaps suggesting less focus on the kinds of individual representation outlined in subpart (a) of the Rule. However, it is still quite clear that client representation is seen as the norm in Tennessee for purposes of pro bono work. *Compare* TENN. SUP. CT. R. 8, RULES OF PROF'L CONDUCT R. 6.1 (2009).

[36] MODEL RULES OF PROF'L CONDUCT R. 6.1(b) (2009). The language in the Tennessee rule is the same in both the old and new rule regarding the remaining provisions discussed. *See* TENN. SUP. CT. R. 8, RULES OF PROF'L CONDUCT R. 6.1(b) (2003).

[37] MODEL RULES OF PROF'L CONDUCT R. 6.1(b)(3) (2009).
[38] *Id.*
[39] MODEL RULES OF PROF'L CONDUCT R. 6.1 cmt. (2009).
[40] Interestingly, Rule 6.4 explains that attorneys may serve on the boards of organizations "involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer." MODEL RULES OF PROF'L CONDUCT (2009). Thus, it provides guidance for those attorneys who do engage in reform efforts without affirmatively mandating or encouraging such behavior.
[41] MODEL RULES OF PROF'L CONDUCT R. 6.1 (2009).
[42] *Id.* The Tennessee Rule states more specifically that this is "[b]ecause [Rule 6.1] states an aspiration rather than a mandatory ethical duty." TENN. SUP. CT. R. 8, R. 6.1 para 12.
[43] *See* Reynoso, *supra* note 8, at 337 (explaining that the record of the deliberations surrounding the adoption of the ABA Rules of Professional Conduct in 1983 contains no reference to the meaning or limits of the Preamble's "lawyer as public citizen").
[44] Russell, *supra* note 8, at 439 ("The placement of this statement as the first sentence of the Preamble suggests that the concept is a foundational or 'core' principle of the legal profession. Nevertheless, the rule on pro bono services has never been made a mandatory, enforceable obligation.").
[45] Professor Bryan Stevenson has powerfully articulated the importance of student proximity to inequity to inform and inspire their work. He has shared this message with law faculty and students around the country, including at the University of Tennessee's 60th Anniversary Conference. *See, e.g.*, Chloe Akers, *This Year at the University of Tennessee College of Law*, 3 TENN. YOUNG LAWYER 3 (Spring 2008), *available at* http://www.tba.org/lawstudent/archive/ut_08.pdf (law student Akers describing being moved by Stevenson's compelling words). I have used online videos of Stevenson's talks, like his New York University Law School, Confronting Injustice program, in the seminar component of my clinic course. *See, e.g.*, Video: Confronting Injustice, A Lecture by Professor Bryan Stevenson (NYU School of Law 2009) *available at* http://www.youtube.com/watch?v=EVD9Zdz8Nbo.
[46] *See generally* Susan Bryant & Elliott Milstein, *Rounds? A "Signature Pedagogy" for Clinical Education?*, 14 CLINICAL L. REV. 195, 195 (2008) (focusing "on the learning opportunities that rounds can maximize this learning"). *See also* Philip M. Gentry, *Clients Don't Take Sabbaticals: The Indispensible In-House Clinic and the Teaching of Empathy*, 7 CLINICAL L. REV. 273, 278 (2000); Nina W. Tarr, *Current Issues in Clinical Legal Education*, 37 HOWARD L.J. 31, 32 (1993).
[47] *See* Mae C. Quinn, *A New Clinician's Ways of (Un)knowing: Forgetting to Remember, Remembering to Forget, and (Re)constructing Identity*, 76 TENN. L. REV. 425, 430–31 (2009).
[48] Elizabeth Calvin, Sarah Marcus, George Oleyer & Mary Ann Scali, JUV. DEFENDER DELINQUENCY NOTEBOOK (2d ed. 2006), *available at* http://www.njdc.info/delinquency_notebook/interface.swf.
[49] *See* Juliet Brodie, *Little Cases on the Middle Ground: Teaching Social Justice Lawyering in Neighborhood-Based Community Lawyering Clinics*, 15 CLINICAL L. REV. 333, 378 (Spring 2009) (describing "middle ground" clinical work as that which "hovers between the extremes, with an emphasis on direct service work, but delivered in a

strategic way and in response to a particular community's articulated priorities"). *See also* Ian Weinstein, *Teaching Reflective Lawyering in a Small Case Litigation Clinic: A Love Letter to my Clinic*, 13 CLINICAL L. REV. 573, 595–96 (2006) (describing choices made in limiting clinical work to small, individual cases as opposed to taking on additional community or systemic issues).

[50] Mr. Anderson's case was referred to the UT Clinic by Georgetown University's Juvenile Justice Clinic. For more about Mr. Anderson's life and case, see State v. Anderson, No. M2006–01045–CCA–R3–HC, 2006 Tenn. Crim. App. LEXIS 809 (Oct. 10, 2006).

[51] ELIZABETH FAJANS & MARY FALK, SCHOLARLY WRITING FOR LAW STUDENTS (3d ed. 2004). I am grateful to my colleague, Jennifer Hendricks, for introducing me to this text.

[52] Obviously I am not the first to try to infuse substantive criminal law with greater concern for practice, policy, and real-world problems. For an excellent discussion of such an approach, including teaching suggestions, see Miguel A. Mendez, *On Teaching Criminal Law from a Trial Perspective*, 48 ST.L.U. L.J. 1181 (2004); Emily Hughes, *Taking First-year Students to Court: Disorienting Teaching Moments as Catalysts for Change*, 28 WASH. U. J.L. & POL'Y 11 (2008).

[53] Erwin Chemerinsky, *Rethinking Legal Education*, 43 HARV. C.R.–C.L. L. REV. 595, 597 (2008) (noting the "false dichotomy" of claiming skills training is "the opposite of teaching theory and interdisciplinary perspectives"); Anthony V. Alfieri, *Against Practice*, 107 MICH. L. REV. 1073, 1073–74 (2009) ("the animus of theory-centered traditions toward practice obscures the interdisciplinary breadth, empirical richness, and moral import of lawyer roles and relationships" and contributes to an "academic caste hierarchy").

[54] This wonderful idea of having first-year students visit court was inspired by my Washington University colleague, Emily Hughes. *See generally* Hughes, *supra* note 52.

[55] RED HOOK JUSTICE (Sugar Pictures LLC 2004), *available at* http://www.pbs.org/independentlens/redhookjustice.

[56] *Frontline*: *The New Asylums* (PBS television broadcast May 10, 2005), *available at* http://www.pbs.org/wgbh/pages/frontline/shows/asylums (last visited April 16, 2010).

[57] Indeed, as a very basic matter I needed to be sure that Missouri embraces the public citizen lawyer in its Preamble. It does. *See generally* MO. SUP. CT. R. 4 pmbl., *available at* http://www.courts.mo.gov/page.jsp?id=707 (follow "Preamble: A Lawyer's Responsibility" hyperlink).

[58] *See generally* Eduardo R.C. Capulongo, *Client Activism in Progressive Lawyering Theory*, 16 CLINICAL L. REV. 109 (2009) (tracing the history of various progressive lawyering movements and warning that modern lawyers concerned with social change should be more mindful of political and other dynamics in supporting client activism).

[59] *See* Brodie, *supra* note 49, at 379 (noting the difficulty of ascertaining the wishes of "the community" and figuring out who "the community" is in the first place).

[60] *See, e.g.*, Solomon Moore, *Missouri System Treats Juvenile Offenders With Lighter Hand*, N.Y. TIMES, Mar. 26, 2009, at A13.

[61] *See In re* Gault, 387 U.S. 1 (1967).

[62] Powell spoke to clinicians at a luncheon at the 2009 Midwest Clinician's Conference in Detroit, Michigan, addressing the issue of what clinician's can do to address racial discrimination in housing and other social justice issues. WAYNE STATE UNIVERSITY LAW SCHOOL, ONE BOOK, ONE COMMUNITY: 24TH MIDWEST CLINICIAN'S CONFERENCE (2009), *available at* http://law.wayne.edu/pdf/onebookonecommunity.pdf.

[63] Clinicians like Colbert have effectively resisted the myopia that can develop from teaching lawyering skills within individual cases without both taking account of the context and working to challenge systemic problems. *See* Brodie, *supra* note 49, at 374 ("social justice lawyers should continue filing lawsuits and representing clients in adversarial contexts, but should not limit their activities to those conventional modes"); *see also* Dean Hill Rivkin, *Legal Advocacy and Education Reform: Litigating School Exclusion*, 75 TENN. L. REV. 265, 267 (2009) (describing some of the challenges of engaging in "systemic, long-term reform" efforts within the clinical education construct and calling for greater sharing of information and expertise among all players, as well as greater creativity from those involved in such work).

[64] Some have called for new approaches for quite some time, see, for example, Ellman, *supra* note 10, at 1107 (calling upon clinicians and others to radically rethink individual client representation models to properly undertake representation of groups), and a lot of exciting re-conceptualizations of the public interest clinical model are beginning to emerge. *See, e.g.*, Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 CLINICAL L. REV. 355, 355–60 (2008); *see also* Dean Hill Rivkin, *Reflections on Lawyering for Reform: Is the Highway Alive Tonight?*, 64 TENN. L. REV. 1065 (1997). But perhaps our re-radicalization should begin with the ways in which we conduct conversations at clinical conferences and beyond. Some believe these gatherings fail to offer sufficient space for new and minority voices to be heard. Time should be dedicated to listening more carefully to emerging concerns in the clinical world—particularly as seen by clinicians of color—to help inform our agendas and enrich our community. That is, perhaps we should be more thoughtfully practicing at our professional gatherings what we preach in our professional lives. *See* Mae C. Quinn, *More Than Mindful: A Call to Practice What We Preach in the Clinical Community* (work in progress; on file with author).

[65] *See, e.g.*, Rachel Anderson, Marc-Tizoc Gonzalez, & Stephen Lee, *Toward a New Student Insurgency: A Critical Epistolary*, 94 CAL. L. REV. 1879, 1880–81 (2006). *See generally* Luz E. Herrera, *Challenging A Tradition of Exclusion: The History of An Unheard Story at Harvard Law School*, 5 HARV. LATINO L. REV. 51 (2002).

William & Mary Law Review

Volume 50 | Issue 4 Article 9

Lawyers as Citizens

Deborah L. Rhode

LAWYERS AS CITIZENS

DEBORAH L. RHODE*

If we judge by wealth and power, our times are the best of times; if the times have made us willing to judge by wealth and power, they are the worst of times.
Randall Jarrell[1]

The Preamble to the American Bar Association's Model Rules of Professional Conduct declares: "A lawyer as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibilities for the quality of justice."[2] In the absence of empirical evidence, it is at least a useful thought experiment to ask whether attorneys view themselves in those terms. What exactly are the "special responsibilities" of lawyers as "public citizens"? Does that question ever occur to a practicing attorney? Or even to the drafters of the bar's Multistate Professional Responsibility Exam? Are these phrases simply ceremonial folklore, embellishments reserved for celebratory speeches and academic symposia? If those questions seem rhetorical, perhaps they are the wrong questions, and far too dispiriting for occasions like this. The more useful inquiry might be: What responsibilities *should* lawyers assume for the quality of justice? And what would it take to get lawyers to take those responsibilities seriously?

This is not uncharted ground. The centrality of law and lawyers in American culture has inspired a vast literature on the civic obligations of the profession. Although this nation may not have the world's most developed sense of attorneys' public responsibilities, it

* Ernest W. McFarland Professor of Law, Director of the Center on Ethics, Stanford Law School.

1. Randall Jarrell, *The Taste of the Age*, *in* NO OTHER BOOKS: SELECTED ESSAYS 314 (Brad Leithauser ed., 1999).

2. MODEL RULES OF PROF'L CONDUCT pmbl., para. 1 (2002).

undoubtedly has the most extensive commentary on the subject. If little of the discussion has had the intended effect, that is no reason to abandon the enterprise. It is, instead, an invitation to more searching and sustained inquiry. In his celebrated 1934 address on "The Public Influence of the Bar," U.S. Supreme Court Justice Harlan Stone noted that legal academics were the segment of the profession most "detached ... from those pressures of the new economic order which have so profoundly affected their practicing brethren."[3] With that position came opportunities for disinterested analysis of the "Bar as an institution, seeking to gain an informed understanding of its problems, to appraise the performance of its public functions and to find ways of stimulating a more adequate performance of them."[4] In that capacity, law professors could discharge their own responsibilities for public service.

In that spirit, this Essay assesses three fundamental obligations of the lawyer's civic role. The first involves developing and sustaining legal frameworks, including those that govern the profession's own behavior. The second grows out of lawyers' relationships with clients and entails some responsibility for the quality of justice that results from legal assistance. The third obligation involves access to justice, and the bar's responsibilities not only to engage in pro bono work, but also to support a system that makes legal services widely available to those who need them most.

I.

The foundations for the American bar's civic role are generally traced to the lawyer statesmen who helped shape American governance structures in the late eighteenth century and legal reforms during the early twentieth century. Alexander Hamilton, in *The Federalist Papers*, offered one of the earliest expressions of this idealized portrait: "Will not the man of the learned profession, who will feel a neutrality to the rivalships between different branches of industry, be likely to provide an impartial arbiter between them ... conducive to the general interests of society?"[5]

3. Harlan F. Stone, *The Public Influence of the Bar*, 48 HARV. L. REV. 1, 11 (1934).
4. *Id.*
5. THE FEDERALIST NO. 35, at 221 (Alexander Hamilton) (Jacob E. Cooke ed., 1961).

Alexis de Tocqueville and Louis D. Brandeis similarly stressed lawyers' capacity to serve as "arbiters between the citizens,"[6] and independent intermediaries "between the wealthy and the people, prepared to curb the excesses of either ...."[7] According to Woodrow Wilson, "[p]ublic life was a lawyer's forum," with both opportunities and obligations to shape "matters of common concern."[8]

A related responsibility involves the bar as an intermediary between client and societal interests. As Brandeis famously argued, the issues that arise for lawyers guiding private affairs are often "questions of statesmanship."[9] To nineteenth-century legal ethics experts like George Sharswood, as well as twentieth-century sociologists like Talcott Parsons, the attorney served a crucial role in compliance counseling, and in providing a "kind of buffer between the illegitimate desires of his client and the social interest."[10]

A third aspect of the lawyer's civic role involves making legal services available to clients and causes pro bono publico. The tradition of offering unpaid representation, either voluntarily or by court order, has extended historical roots.[11] The American Bar Association's 1908 Canons of Professional Ethics exhorted lawyers not to decline representation for indigent criminal defendants for "trivial reason[s],"[12] and to give "special and kindly consideration" to requests for assistance from "brother lawyers."[13] Many bar

---

6. ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 243 (J.P. Mayer & Max Lerner eds., George Lawrence trans., 1966).

7. Louis Brandeis, *The Opportunity in Law*, *in* BUSINESS—A PROFESSION 313, 321 (1914); *see* Robert W. Gordon, *The Independence of Lawyers*, 68 B.U. L. REV. 1, 14 (1988).

8. Woodrow Wilson, *The Lawyer in the Community*, *in* 21 THE PAPERS OF WOODROW WILSON 64, 67, 70 (Arthur Link ed., 1976).

9. Brandeis, *supra* note 7, at 319.

10. Talcott Parsons, *A Sociologist Looks at the Legal Profession*, *in* ESSAYS IN SOCIOLOGICAL THEORY 370, 384 (rev. ed. 1964). For Sharswood's claim that "lawyers 'diffused sound principles among the people,' and brought the law 'home ... to every man's fireside,'" see Russell G. Pearce, *Lawyers as America's Governing Class: The Formation and Dissolution of the Original Understanding of the American Lawyer's Role*, 8 U. CHI. L. SCH. ROUNDTABLE 381, 390 (2001) (quoting GEORGE SHARSWOOD, AN ESSAY ON PROFESSIONAL ETHICS 54, 31 (Fred B. Rothman & Co. 1993) (5th ed. 1884)). For general discussion, see Gordon, *supra* note 7, at 14; David Luban, *The* Noblesse Oblige *Tradition in the Practice of Law*, 41 VAND. L. REV. 717, 723-24 (1988).

11. For an overview, see DEBORAH L. RHODE, ACCESS TO JUSTICE 64-66 (2004).

12. ABA CANONS OF PROF'L ETHICS Canon 4 (1908).

13. *Id.* Canon 12. Canon 12 also noted that a client's poverty might justify a reduced fee or "even none at all." *Id.*

leaders throughout the twentieth century gave generously of their time and talents to social causes and indigent clients. Before he assumed a seat on the Supreme Court, Louis Brandeis was celebrated for combining his profitable law practice with pro bono service. "Some men buy diamonds and rare works of art," Brandeis observed, but "[m]y luxury is to invest my surplus effort ... to the pleasure of taking up a problem and solving or helping to solve it for the people without receiving any compensation."[14]

II.

The extent to which lawyers' actual practices reflected these public responsibilities has been a matter of extended debate that need not be recounted at length here. There is, however, little doubt that on most dimensions, the profession's performance has fallen considerably short. For well over a century, the American bar has perceived itself in decline and its sense of professionalism in need of "rekindling."[15] Most of the early articulations of the lawyer's civic role occurred in critiques of its erosion. Brandeis in 1932 charged that "able lawyers have, to a large extent, allowed themselves to be adjuncts of great corporations and have neglected the obligation to use their powers for the protection of the people."[16] Wilson similarly claimed that the "prevailing type" of lawyer in the early twentieth century was no longer a counselor of "right and obligation ... [concerned] with the universal aspects of society."[17] All too often, Stone warned, "the learned profession of an earlier day [had become] the obsequious servant of business, ... tainted ... with the

14. Clyde Spillenger, *Elusive Advocate: Reconsidering Brandeis as the People's Lawyer*, 105 YALE L.J. 1445, 1478 (1996) (citation omitted).

15. ABA COMM'N ON PROFESSIONALISM, ".... IN THE SPIRIT OF PUBLIC SERVICE:" A BLUEPRINT FOR THE REKINDLING OF LAWYER PROFESSIONALISM 1-3 (1986), *available at* http://www.abanet.org/cpr/professionalism/Stanley_Commission_Report.pdf; ABA COMM'N ON THE RENAISSANCE OF IDEALISM IN THE LEGAL PROFESSION, RENAISSANCE OF IDEALISM IN THE LEGAL PROFESSION 2 (2006), *available at* http://www.abanet.org/renaissance/downloads/finalreport.pdf. For other examples, see Deborah L. Rhode, *The Professionalism Problem*, 39 WM. & MARY L. REV. 283, 283-84, 303-04, 307 (1998).

16. Brandeis, *supra* note 7, at 321.

17. Wilson, *supra* note 8, at 69.

morals and manners of the market place in its most anti-social manifestations."[18]

So too, contemporary historians have found relatively little evidence of lawyers' compliance counseling during the allegedly golden ages of civic virtue; in fact, many of the bar's institutional reform initiatives were made necessary by the lawyers' own complicity in client misconduct.[19] Recent competitive pressures and bottom-line orientations have compounded the problem, as examples like Enron amply demonstrate. In all too many cases, lawyers have remained willfully ignorant or unwilling to help prevent unethical conduct.[20] Yet much of the bar's response to overly zealous client representation has remained at the level of exhortation. For example, over one hundred state and local bar associations have adopted aspirational civility codes, despite a striking lack of evidence that they have had any effect on those most in need of restraint.[21] It is scarcely self-evident that unenforced norms will be sufficient to counteract the other rewards that hardball tactics can confer. One of the nation's most notoriously uncivil practitioners, Joe Jamail, is worth close to $100 million and has a pavilion, legal research center, and two statues honoring his accomplishments at the University of Texas Law School.[22]

Moreover, even the profession's most revered figures were not as disinterested in representing the public welfare as bar portraits

---

18. Stone, *supra* note 3, at 7.

19. MARY ANN GLENDON, A NATION UNDER LAWYERS: HOW THE CRISIS IN THE LEGAL PROFESSION IS TRANSFORMING AMERICAN SOCIETY 57 (1994); Stuart M. Speiser, *Trial Balloon: Sarbanes-Oxley and the Myth of the Lawyer-Statesman*, 32 LITIG. 5, 68 (2005).

20. *See* Robert W. Gordon, *A New Role for Lawyers? The Corporate Counselor After Enron*, 35 CONN. L. REV. 1185, 1185-86 (2003); David Luban, *Making Sense of Moral Meltdowns*, *in* MORAL LEADERSHIP: THE THEORY AND PRACTICE OF POWER, JUDGMENT AND POLICY 57, 57-58 (Deborah L. Rhode ed., 2004); Deborah L. Rhode & Paul Paton, *Lawyers, Enron and Ethics*, *in* ENRON: CORPORATE FIASCOS AND THEIR IMPLICATIONS 625, 633-40 (Nancy Rappaport & Bala G. Dharan eds., 2004); William Simon, *Rethinking the Professional Responsibilities of the Business Lawyer*, 75 FORDHAM L. REV. 1453 (2006); William Simon, *Wrongs of Ignorance and Ambiguity: Lawyers' Responsibility for Collective Misconduct*, 22 YALE J. ON REG. 1, 15-17 (2005); Speiser, *supra* note 19, at 66-67.

21. Deborah L. Rhode, *Opening Remarks: Professionalism*, 52 S.C. L. REV. 458, 459-63 (2001).

22. Jonathan Macey, *Occupation Code 541110, Lawyers' Self-Regulation, and the Idea of a Profession*, 74 FORDHAM L. REV. 1079, 1088-89 (2005). Other sites around the university are also named in his honor. *Id.* For Jamail's net worth, see Rhode, *supra* note 21, at 461.

typically assume. For example, when the nation's Founding Fathers spoke of "We the people," they were not using the term generically; the rights they envisioned belonged only to their own white male landowning class.[23] For that reason, Supreme Court Justice Thurgood Marshall declined to join the lionization of the Framers during the American Constitution's bicentennial celebrations. As he noted, their vision of justice was "defective from the start."[24] To underscore the point, Marshall refused to participate in a pageant reenacting the signing of the Constitution unless he could appear in a historically accurate role, dressed in servants' knee britches and carrying trays.[25]

Moreover, whatever the bar's contributions to equitable governance structures in general, its performance has been far less impressive when its own interests have been at issue. Like any occupational group, lawyers have had difficulty identifying points at which professional and public concerns diverge. The ABA's first systematic research on disciplinary processes revealed what the ABA's own commission termed a "scandalous situation."[26] Surveys of bar admission processes have also found chronic inequities and overly exclusionary practices.[27] Despite recent improvements, the profession's oversight practices still leave much to be desired. For example, fewer than 4 percent of public complaints to the disciplinary process result in public sanctions, and few state bars provide consumers with readily accessible sources of information about lawyer performance.[28] Bar regulators are still too often resolving

---

23. Deborah L. Rhode, *Letting the Law Catch Up*, 44 STAN. L. REV. 1259, 1264 (1992).

24. MARK V. TUSHNET, MAKING CIVIL RIGHTS LAW: THURGOOD MARSHALL AND THE SUPREME COURT, 1936-1961, at 5 (1994).

25. Rhode, *supra* note 23, at 1264.

26. ABA COMM'N ON EVALUATION OF DISCIPLINARY ENFORCEMENT, PROBLEMS AND RECOMMENDATIONS IN DISCIPLINARY ENFORCEMENT 1 (1970).

27. *See* DEBORAH L. RHODE, IN THE INTERESTS OF JUSTICE: REFORMING THE LEGAL PROFESSION 150-51 (2000) [hereinafter RHODE, IN THE INTERESTS OF JUSTICE]; Deborah L. Rhode, *Moral Character as a Professional Credential*, 94 YALE L.J. 491, 498-503 (1985).

28. For information on public sanctions, see ABA CTR. FOR PROF'L RESPONSIBILITY, SURVEY ON LAWYER DISCIPLINE SYSTEMS, charts 1 & 2 (2006), *available at* http://www.abanet.org/cpr/discipline/sold/06-ch1.pdf. For an overview, see generally DEBORAH L. RHODE & DAVID LUBAN, LEGAL ETHICS (5th ed. 2008). For an example, see Michael S. Fisch, *No Stone Left Unturned: The Failure of Attorney Self-Regulation in the District of Columbia*, 18 GEO. J. LEGAL ETHICS 325, 332-36 (2005). For information concerning the lack of public data, see Leslie Levin, *The Case for Less Secrecy in Lawyer Discipline*, 20 GEO. J. LEGAL ETHICS 1, 1-2

conflicts between professional and societal interests in favor of those doing the resolving.[29] The same is true of legislative initiatives. The organized bar's opposition to post-Enron reforms requiring disclosure of client fraud represents only the most recent well-publicized example.[30]

The problem is compounded by the unique degree of independence that the legal profession has maintained over its own governance systems. Because courts have asserted inherent power to regulate the practice of law, and state judges often depend on lawyers' support for their election and advance, the legal profession lacks adequate checks on its own oversight.[31] And because attorneys have played such a dominant role in legislative and administrative arenas, the United States has lagged behind other countries in imposing governmental checks on the bar's regulatory autonomy.[32]

So too, the bar's performance concerning access to justice reveals a dispiriting disjuncture between principle and practice. No comprehensive research is available concerning lawyers' pro bono contributions before the late mid-twentieth century, but the limited evidence available is anything but reassuring.[33] Surveys found that lawyers averaged five to thirty hours a year on charitable work, little of which benefitted poor individuals.[34] Most pro bono service assisted friends, family members, and employees of lawyers and their clients, or bar associations and middle- and upper-class organizations such as little leagues and symphonies.[35] Few lawyers

---

(2007). For information concerning the problems in admission systems, see RHODE, IN THE INTERESTS OF JUSTICE, *supra* note 27, at 150-55.

29. RHODE, IN THE INTERESTS OF JUSTICE, *supra* note 27, at 19.

30. *See* Susan P. Koniak, *When the Hurlyburly's Done: The Bar's Struggle with the SEC*, 103 COLUM. L. REV. 1236 (2003); Rhode & Paton, *supra* note 20; *cf.* Speiser, *supra* note 19, at 68-69 (noting the need for reform and a return to the higher ethical standards of the past).

31. *See* RHODE, IN THE INTERESTS OF JUSTICE, *supra* note 27, at 19-20 & n.44.

32. For examples, see Legal Services Act, 2007, c. 29 (Eng.); Leslie C. Levin, *Building a Better Lawyer Discipline System: The Queensland Experience*, 9 LEGAL ETHICS 167, 193-94 (2006); Richard Parnham, *The Clementi Reforms in a European Context—Are the Proposals Really that Radical?*, 8 LEGAL ETHICS 195 (2005); Deborah L. Rhode, *In the Interests of Justice: A Comparative Perspective on Access to Legal Services and Accountability of the Legal Profession*, 56 CURRENT LEGAL PROBS. 93, 114-19 (2003).

33. DEBORAH L. RHODE, PRO BONO IN PRINCIPLE AND IN PRACTICE 5-6 (2005).

34. *See* RICHARD L. ABEL, AMERICAN LAWYERS 129-30 (1989); JEROLD S. AUERBACH, UNEQUAL JUSTICE 282 (1976); RHODE, *supra* note 33, at 14; Joel F. Handler et al., *The Public Interest Activities of Private Practice Lawyers*, 61 A.B.A. J. 1388, 1393 (1975).

35. *See* studies cited in RHODE, *supra* note 33, at 14; Rhode, *supra* note 32, at 100.

reported any involvement in law reform.[36] Although the current situation is vastly improved, the best available data indicate that the average pro bono contribution for lawyers is still less than half a dollar per day and half an hour per week.[37] Yet proposals to require some minimal level of assistance have met overwhelming resistance.[38] Only five states even demand reporting of pro bono contributions, and almost no effort is made to evaluate their quality.[39]

Other bar policies on access to justice have been similarly inadequate.[40] Until the 1960s, lawyers did little to support, and often actively opposed, government-subsidized legal services on the ground that it would result in "'socialization'" of the profession.[41] The bar's campaign against the "unauthorized practice of law" by even qualified lay competitors helped to price justice out of reach for the vast majority of low-income individuals.[42] Although in recent years the profession has strongly supported increased government assistance, its lobbying efforts have fallen well short, and its policies on nonlawyer practice and pro se assistance reflect traditional anti-competitive biases.[43] Partly as a consequence, an estimated four-fifths of the individual legal needs of low-income Americans, and two-thirds of moderate-income Americans, remain unmet.[44] It is a

---

36. *See* studies cited in RHODE, *supra* note 33, at 14.

37. *Id.* at 20. ABA survey results finding that a majority of lawyers report doing some pro bono work are not inconsistent with this estimate, given that the average hourly contribution of lawyers who offered pro bono assistance needs to be adjusted for the numbers who did not, and for those whose contributions involved activities such as bar association service. For ABA survey results, see ABA STANDING COMM'N ON PRO BONO AND PUB. SERV., SUPPORTING JUSTICE: A REPORT ON THE PRO BONO WORK OF AMERICA'S LAWYERS 4 (2005).

38. *See* RHODE, *supra* note 33, at 15-17, 31-46.

39. ABA State-by-State Pro Bono Service Rules, http://www.abanet.org/legalservices/probono/stateethicsrules.html (last visited Feb. 8, 2009). For the absence of quality data, see RHODE, *supra* note 33, at 40-43, 174.

40. RHODE, *supra* note 11, at 112.

41. *Id.* at 60 (quoting a 1950 warning by the ABA's president).

42. RHODE, IN THE INTERESTS OF JUSTICE, *supra* note 27, at 135-40; Deborah L. Rhode, *Policing the Professional Monopoly: A Constitutional and Empirical Analysis of Unauthorized Practice Prohibitions*, 34 STAN. L. REV. 1, 6-10 (1981). For a historical overview, see RHODE, *supra* note 11, at 75-76.

43. RHODE, *supra* note 11, at 84-90.

44. For information on low-income Americans, see LEGAL SERV. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA 12-18 (2005). For information on middle-income Americans, see RHODE, *supra* note 11, at 79.

shameful irony that the nation with the world's highest concentration of lawyers has one of the least adequate systems for making legal services accessible.

III.

According to the recent Report of the ABA's Commission on Renaissance of Idealism in the Legal Profession, "while it is undeniably true that the pace and pressures of modern practice pose serious challenges to the values of the profession, it is equally true that the spirit of idealism needed to meet those challenges is alive and well."[45] If so, more efforts will be necessary than the largely exhortatory initiatives chronicled in the Report, such as public service awards, model powerpoints, billboard campaigns, continuing education programs, advisory resolutions, and "I Am an Idealist" buttons.[46] Translating the bar's civic obligations into daily practices will require less aspirational rhetoric and more structural reform.

This is not the occasion for a full-scale blueprint, but the general direction of change is clear. In essence, the bar needs to become more publicly accountable for its public responsibilities. If, as lawyers often lament, the profession has become more like a business, then it needs to be regulated more like a business.[47] Although some measure of professional independence remains necessary, models from other nations suggest that it can be maintained under governance systems that have greater distance from the self-interests of the organized bar.[48] At a minimum, such systems need

---

45. ABA COMM'N ON THE RENAISSANCE OF IDEALISM IN THE LEGAL PROFESSION, *supra* note 15, at 2.

46. *Id.* at 20-23.

47. *See, e.g.*, David Barnhizer, *Profession Deleted: Using Market and Liability Forces To Regulate the Very Ordinary Business of Law Practice for Profit*, 17 GEO. J. LEGAL ETHICS 203, 221 (2004); Russell G. Pearce, *Law Day 2050: Post-Professionalism, Moral Leadership, and the Law-as-Business Paradigm*, 27 FLA. ST. U. L. REV. 9 (1999); Russell G. Pearce, *The Professionalism Paradigm Shift: Why Discarding Professional Ideology Will Improve the Conduct and Reputation of the Bar*, 70 N.Y.U. L. REV. 1229 (1995); *cf.* Macey, *supra* note 22 (tracking the shift in the law profession, and noting the increased levels of competition and decreased levels of civility and professionalism that have accompanied the shift).

48. *See* RHODE, IN THE INTERESTS OF JUSTICE, *supra* note 27, at 162. For descriptions of co-regulatory structures in which the bar shares oversight authority with independent bodies, see RHODE & LUBAN, *supra* note 28, at 984-85.

to provide more transparency regarding lawyer performance and stiffer sanctions for those complicit in client misconduct.

The profession's regulatory structures and workplace norms also must provide more support for lawyers' public responsibilities in representing private clients. One of those responsibilities is to foster compliance with the purposes as well as letter of the law and with core principles of honesty and fairness on which legal processes depend.[49] That, in turn, will require better oversight structures in law firms and corporate counsel offices, and stiffer liability standards for lawyers who fall short.[50] Everyone's ethical compass benefits from some external checks; clients need pressure from attorneys, and attorneys need pressure from each other.[51]

With respect to pro bono services, lawyers need not just exhortation but enforceable expectations, imposed by courts, bar associations, or legal employers.[52] More information should be widely available about lawyers' contributions and the quality of services provided. Since Florida has required reporting of pro bono work, the number of lawyers providing assistance to the poor has increased by 35 percent, the number of hours has increased by 160 percent, and financial contributions have increased by 243 percent.[53] The *American Lawyer*'s rankings of pro bono contributions by large firms, and the special visibility that it gives to high performers and "cellar dwellers," also has had a significant impact.[54] But more efforts are necessary, and enlisting law students and clients in the demand for better public service records should be a high priority.[55]

---

49. *See* MODEL RULES OF PROF'L CONDUCT R. 3.3, 3.4 (2002); Deborah L. Rhode, *Moral Counseling*, 75 FORDHAM L. REV. 1317, 1319, 1329 (2006).

50. *See* Gordon, *supra* note 20, at 1210-11 (explaining possible oversight structure); Rhode, *supra* note 49, at 1333-34.

51. Rhode, *supra* note 49, at 1334.

52. RHODE, *supra* note 33, at 167-69.

53. STANDING COMM'N ON PRO BONO LEGAL SERVICE, REPORT TO THE SUPREME COURT OF FLORIDA, THE FLORIDA BAR AND THE FLORIDA BAR FOUNDATION ON THE VOLUNTARY PRO BONO ATTORNEY PLAN 3 (2006).

54. Ben Hallman, *Pro Bono Starts at the Top*, AM. LAW., July 2007, http://www.law.com/jsp/article.jsp?id=1183107989276.

55. *See* RHODE, supra note 33, at 167-71. One such initiative is Building a Better Legal Profession, a database grading firms on their diversity and pro bono records. Building a Better Legal Profession, Leadership, http://www.betterlegalprofession.org/leadership.php (last visited Feb. 8, 2009); *see* Adam Liptak, *In Students' Eyes, Look-Alike Lawyers Don't Make the Grade*, N.Y. TIMES, Oct. 29, 2007, at A10.

Law schools also need to become more active partners in this effort. In too many institutions, issues of professional responsibility are relegated to a single required course, which focuses largely on the minimum requirements of the ABA's Model Rules of Professional Conduct.[56] The result is legal ethics without the ethics and little attention to broader issues of access to justice.[57] The Carnegie Foundation's recent overview of legal education found that issues such as social responsibility or matters of justice rarely received significant coverage in the core curriculum; when the issues arose they were "almost always treated as addenda."[58] In my own recent national survey of several thousand lawyers, only 1 percent reported that pro bono service received coverage in orientation programs and professional responsibility courses; only 3 percent reported that it received visible support from faculty.[59] Another national study found that less than half of students participated in pro bono work while in law school.[60] If legal educators are serious about reinforcing values of public service, then they cannot treat these issues of professional responsibility as someone else's responsibility.

Some sixty-five years after Harlan F. Stone reminded law schools of their need to assemble facts that would stir the profession's "latent idealism,"[61] David Wilkins echoed similar themes in a plenary speech to the Association of American Law Schools.[62] In his remarks on the professional responsibilities of professional schools, Wilkins talked about the responsibility to study and teach about the bar:

> At a time when the American legal profession is being radically transformed on almost every dimension, ... the legal academy must become an active participant in developing ... [the] knowledge about legal practice that will allow us to construct a

56. RHODE, IN THE INTERESTS OF JUSTICE, *supra* note 27, at 200-01.

57. *Id.*

58. WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS 187 (2007).

59. RHODE, *supra* note 33, at 162.

60. IND. UNIV. CTR. FOR POSTSECONDARY RESEARCH, STUDENT ENGAGEMENT IN LAW SCHOOLS: A FIRST LOOK 8 (2004).

61. Stone, *supra* note 3, at 12.

62. David B. Wilkins, *The Professional Responsibility of Professional Schools To Study and Teach About the Profession*, 49 J. LEGAL EDUC. 76 (1999).

> vision of legal professionalism fit for the twenty-first century ....[63]

If we want that vision to include the obligations of lawyers as public citizens, with a "special responsibility for the quality of justice," we also must assume that responsibility ourselves.

63. *Id.* at 76-77.

West's F.S.A. Bar Rule 3-7.10

Rule 3-7.10. Reinstatement and Readmission Procedures

Currentness

(a) Reinstatement; Applicability. A lawyer who is ineligible to practice due to a court-ordered disciplinary suspension of 91 days or more or who has been placed on the inactive list for incapacity not related to misconduct may be reinstated to membership in good standing in The Florida Bar and be eligible to practice again pursuant to this rule. The proceedings under this rule are not applicable to any lawyer who is not eligible to practice law due to a delinquency as defined in rule 1-3.6 of these rules.

(b) Petitions; Form and Contents.

(1) *Filing.* The original petition for reinstatement and 1 copy must be in writing, verified by the petitioner, and addressed to and filed with the Supreme Court of Florida. A copy must be served on Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300.

(2) *Form and Exhibits.* The petition must be in such form and accompanied by such exhibits as provided for elsewhere in this rule. The information required concerning the petitioner may include any or all of the following matters in addition to such other matters as may be reasonably required to determine the fitness of the petitioner to resume the practice of law: criminal and civil judgments; disciplinary judgments; copies of income tax returns together with consents to secure original returns; occupation during suspension and employment information; financial statements; and statement of restitution of funds that were the subject matter of disciplinary proceedings. In cases seeking reinstatement from incapacity, the petition must also include copies of all pleadings in the matter leading to placement on the inactive list and all such other matters as may be reasonably required to demonstrate the character and fitness of the petitioner to resume the practice of law.

(c) Deposit for Cost. The petition must be accompanied by proof of a deposit paid to The Florida Bar in such amount as the board of governors prescribes to ensure payment of reasonable costs of the proceedings, as provided elsewhere in this rule.

(d) Reference of Petition For Hearing. The chief justice will refer the petition for reinstatement to a referee for hearing; provided, however, that no such reference will be made until evidence is submitted showing that all costs assessed against the petitioner in all disciplinary or incapacity proceedings have been paid and restitution has been made.

(e) Bar Counsel. When a petition for reinstatement is filed, the board of governors or staff counsel, if authorized by the board of governors, may appoint bar counsel to represent The Florida Bar in the proceeding. The duties of such lawyers are to appear at the hearings and to prepare and present to the referee evidence that, in the opinion of the referee or such lawyer, should be considered in passing upon the petition.

(f) Determination of Fitness by Referee Hearing. The referee to whom the petition for reinstatement is referred must conduct the hearing as a trial, in the same manner, to the extent practical, as provided elsewhere in these rules. The matter to decide is the fitness of the petitioner to resume the practice of law. In determining the fitness of the petitioner to resume the practice of law, the referee will consider whether the petitioner has engaged in any disqualifying conduct, the character and fitness of the petitioner, and whether the petitioner has been rehabilitated, as further described in this subdivision. All conduct engaged in after the date of admission to The Florida Bar is relevant in proceedings under this rule.

(1) *Disqualifying Conduct.* A record manifesting a deficiency in the honesty, trustworthiness, diligence, or reliability of a petitioner may constitute a basis for denial of reinstatement. The following are considered disqualifying conduct:

(A) unlawful conduct;

(B) academic misconduct;

(C) making or procuring any false or misleading statement or omission of relevant information, including any false or misleading statement or omission on any application requiring a showing of good moral character;

(D) misconduct in employment;

(E) acts involving dishonesty, fraud, deceit, or misrepresentation;

(F) abuse of legal process;

(G) financial irresponsibility;

(H) neglect of professional obligations;

(I) violation of an order of a court;

(J) evidence of mental or emotional instability;

(K) evidence of drug or alcohol dependency;

(L) denial of admission to the bar in another jurisdiction on character and fitness grounds;

(M) disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction;

(N) failure of a felony-suspended lawyer to submit proof that the affected lawyer's civil rights have been restored; and

(O) any other conduct that reflects adversely upon the character or fitness of the applicant.

(2) *Determination of Character and Fitness.* In addition to other factors in making this determination, the following factors should be considered in assigning weight and significance to prior conduct:

(A) age at the time of the conduct;

(B) recency of the conduct;

(C) reliability of the information concerning the conduct;

(D) seriousness of the conduct;

(E) factors underlying the conduct;

(F) cumulative effect of the conduct or information;

(G) evidence of rehabilitation;

(H) positive social contributions since the conduct;

(I) candor in the discipline and reinstatement processes; and

(J) materiality of any omissions or misrepresentations.

(3) *Elements of Rehabilitation.* Merely showing that an individual is now living as and doing those things that should be done throughout life, although necessary to prove rehabilitation, does not prove that the individual has undertaken a useful and constructive place in society. Any petitioner for reinstatement from discipline for prior misconduct is required to produce clear and convincing evidence of such rehabilitation including, but not limited to, the following elements:

(A) strict compliance with the specific conditions of any disciplinary, judicial, administrative, or other order, where applicable;

(B) unimpeachable character and moral standing in the community;

(C) good reputation for professional ability, where applicable;

(D) lack of malice and ill feeling toward those who by duty were compelled to bring about the disciplinary, judicial, administrative, or other proceeding;

(E) personal assurances, supported by corroborating evidence, of a desire and intention to conduct one's self in an exemplary fashion in the future;

(F) restitution of funds or property, where applicable; and

(G) positive action showing rehabilitation by such things as a person's community or civic service. Community or civic service is donated service or activity that is performed by someone or a group of people for the benefit of the public or its institutions.

The requirement of positive action is appropriate for persons seeking reinstatement to the bar as well as for applicants for

admission to the bar because service to one's community is an essential obligation of members of the bar.

(4) *Educational Requirements.*

(A) In the case of a petitioner's ineligibility to practice for a period of 3 years or longer under this rule, the petitioner must demonstrate to the referee that the petitioner is current with changes and developments in the law:

(i) The petitioner must have completed at least 10 hours of continuing legal education courses for each year or portion of a year that the petitioner was ineligible to practice.

(ii) The petitioner may further demonstrate that the petitioner is current with changes and developments in the law by showing that the petitioner worked as a law clerk or paralegal or taught classes on legal issues during the period of ineligibility to practice.

(B) A petitioner who has been ineligible to practice for 5 years or more will not be reinstated under this rule until the petitioner has re-taken and passed the Florida portions of the Florida Bar Examination and the Multistate Professional Responsibility Examination (MPRE).

(g) Hearing; Notice; Evidence.

(1) *Notice.* The referee to whom the petition for reinstatement is referred will fix a time and place for hearing, and notice will be provided at least 10 days prior to the hearing to the petitioner, to lawyers representing The Florida Bar, and to such other persons as may be designated by the referee to whom the petition is referred.

(2) *Appearance.* Any persons to whom notice is given, any other interested persons, or any local bar association may appear before the referee in support of or in opposition to the petition at any time or times fixed for the hearings.

(3) *Failure of Petitioner to be Examined.* For the failure of the petitioner to submit to examination as a witness pursuant to notice given, the referee will dismiss the petition for reinstatement unless good cause is shown for such failure.

(4) *Summary Procedure.* If after the completion of discovery bar counsel is unable to discover any evidence on which denial of reinstatement may be based and if no other person provides same, bar counsel may, with the approval of the designated reviewer and staff counsel, stipulate to the issue of reinstatement, including conditions for reinstatement. The stipulation must include a statement of costs as provided elsewhere in these Rules Regulating the Florida Bar.

(5) *Evidence of Treatment or Counseling for Dependency or Other Medical Reasons.* If the petitioner has sought or received treatment or counseling for chemical or alcohol dependency or for other medical reasons that relate to the petitioner's fitness to practice law, the petitioner must waive confidentiality of such treatment or counseling for purposes of evaluation of the petitioner's fitness. The provisions of rule 3-7.1(d) are applicable to information or records disclosed under this subdivision.

(h) Prompt Hearing; Report. The referee to whom a petition for reinstatement has been referred by the chief justice will proceed to a prompt hearing, at the conclusion of which the referee will make and file with the Supreme Court of Florida a report that includes the findings of fact and a recommendation as to whether the petitioner is qualified to resume the practice of law. The referee must file the report and record in the Supreme Court of Florida.

(i) Review. Review of referee reports in reinstatement proceedings must be in accordance with rule 3-7.7.

(j) Recommendation of Referee and Judgment of the Court. If the petitioner is found unfit to resume the practice of law, the petition will be dismissed. If the petitioner is found fit to resume the practice of law, the referee will enter a report recommending, and the court may enter an order of, reinstatement of the petitioner in The Florida Bar; provided, however, that the reinstatement may be conditioned upon the payment of all or part of the costs of the proceeding and upon the making of partial or complete restitution to parties harmed by the petitioner's misconduct that led to the petitioner's suspension of membership in The Florida Bar or conduct that led to the petitioner's incapacity; and further provided, however, if suspension or incapacity of the petitioner has continued for more than 3 years, the reinstatement may be conditioned upon the furnishing of such proof of competency as may be required by the judgment in the discretion of the Supreme Court of Florida, which proof may include certification by the Florida Board of Bar Examiners of the successful completion of an examination for admission to The Florida Bar subsequent to the date of the suspension or incapacity.

(k) Successive Petitions. No petition for reinstatement may be filed within 1 year following an adverse judgment upon a petition for reinstatement filed by or on behalf of the same person. In cases of incapacity no petition for reinstatement may be filed within 6 months following an adverse judgment under this rule.

(*l*) Petitions for Reinstatement to Membership in Good Standing.

(1) *Availability.* Petitions for reinstatement under this rule are available to members placed on the inactive list for incapacity not related to misconduct and suspended members of the bar when the disciplinary judgment conditions their reinstatement upon a showing of compliance with specified conditions.

(2) *Style of Petition.* Petitions must be styled in the Supreme Court of Florida and an original and 1 copy filed with the court. A copy must be served on Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300.

(3) *Contents of Petition.* The petition must be verified by the petitioner and accompanied by a written authorization to the District Director of the Internal Revenue Service, authorizing the furnishing of certified copies of the petitioner's tax returns for the past 5 years or since admission to the bar, whichever is greater. The authorization must be furnished on a separate sheet. The petition must have attached as an exhibit a true copy of all disciplinary judgments previously entered against the

petitioner. It must also include the petitioner's statement concerning the following:

(A) name, age, residence, address, and number and relation of dependents of the petitioner;

(B) the conduct, offense, or misconduct upon which the suspension or incapacity was based, together with the date of such suspension or incapacity;

(C) the names and addresses of all complaining witnesses in any disciplinary proceedings that resulted in suspension; and the name and address of the referee or judge who heard such disciplinary proceedings or of the trial judge, complaining witnesses, and prosecuting lawyer, if suspension was based upon conviction of a felony or misdemeanor involving moral turpitude;

(D) the nature of the petitioner's occupation in detail since suspension or incapacity, with names and addresses of all partners, associates in business, and employers, if any, and dates and duration of all such relations and employments;

(E) a statement showing the approximate monthly earnings and other income of the petitioner and the sources from which all such earnings and income were derived during said period;

(F) a statement showing all residences maintained during said period, with names and addresses of landlords, if any;

(G) a statement showing all financial obligations of the petitioner including but not limited to amounts claimed, unpaid, or owing to The Florida Bar Clients' Security Fund or former clients at the date of filing of the petition, together with the names and addresses of all creditors;

(H) a statement of restitution made for any and all obligations to all former clients and The Florida Bar Clients' Security Fund and the source and amount of funds used for this purpose;

(I) a statement showing dates, general nature, and ultimate disposition of every matter involving the arrest or prosecution of the petitioner during the period of suspension for any crime, whether felony or misdemeanor, together with the names and addresses of complaining witnesses, prosecuting lawyers, and trial judges;

(J) a statement as to whether any applications were made during the period of suspension for a license requiring proof of good character for its procurement; and, as to each such application, the date and the name and address of the authority to whom it was addressed and its disposition;

(K) a statement of any procedure or inquiry, during the period of suspension, covering the petitioner's standing as a member of any profession or organization, or holder of any license or office, that involved the censure, removal, suspension, revocation of license, or discipline of the petitioner; and, as to each, the dates, facts, and the disposition and the name and address of the authority in possession of the record;

(L) a statement as to whether any charges of fraud were made or claimed against the petitioner during the period of suspension, whether formal or informal, together with the dates and names and addresses of persons making such charges;

(M) a concise statement of facts claimed to justify reinstatement to The Florida Bar;

(N) a statement showing the dates, general nature, and final disposition of every civil action in which the petitioner was either a party plaintiff or defendant, together with dates of filing of complaints, titles of courts and causes, and the names and addresses of all parties and of the trial judge or judges, and names and addresses of all witnesses who testified in said action or actions; and

(O) a statement showing what amounts, if any, of the costs assessed against the accused lawyer in the prior disciplinary proceedings against the petitioner have been paid by the petitioner and the source and amount of funds used for this purpose.

(4) *Comments on Petition.* Upon the appointment of a referee and bar counsel, copies of the petition will be furnished by the bar counsel to local board members, local grievance committees, and to such other persons as are mentioned in this rule. Persons or groups that wish to respond must direct their comments to bar counsel. The proceedings and finding of the referee will relate to those matters described in this rule and also to those matters tending to show the petitioner's rehabilitation, present fitness to resume the practice of law, and the effect of such proposed reinstatement upon the administration of justice and purity of the courts and confidence of the public in the profession.

(5) *Costs Deposit.* The petition must be accompanied by a deposit for costs of $500.

(m) Costs.

(1) *Taxable Costs.* Taxable costs of the proceedings must include only:

(A) investigative costs, including travel and out-of-pocket expenses;

(B) court reporters' fees;

(C) copy costs;

(D) telephone charges;

(E) fees for translation services;

(F) witness expenses, including travel and out-of-pocket expenses;

(G) travel and out-of-pocket expenses of the referee;

(H) travel and out-of-pocket expenses of counsel in the proceedings, including the petitioner if acting as counsel; and

(I) an administrative fee in the amount of $1250 when costs are assessed in favor of the bar.

(2) *Discretion of Referee.* The referee has discretion to award costs and absent an abuse of discretion the referee's award will not be reversed.

(3) *Assessment of Bar Costs.* The costs incurred by the bar in any reinstatement case may be assessed against the petitioner unless it is shown that the costs were unnecessary, excessive, or improperly authenticated.

(4) *Assessment of Petitioner's Costs.* The referee may assess the petitioner's costs against the bar in the event that there was no justiciable issue of either law or fact raised by the bar unless it is shown that the costs were unnecessary, excessive, or improperly authenticated.

(n) Readmission; Applicability. A former member who has been disbarred, disbarred on consent, or whose petition for disciplinary resignation or revocation has been accepted may be admitted again only upon full compliance with the rules and regulations governing admission to the bar. No application for readmission following disbarment, disbarment on consent, or disciplinary resignation or revocation may be tendered until such time as all restitution and disciplinary costs as may have been ordered or assessed have been paid together with any interest accrued.

(1) *Readmission After Disbarment.* Except as might be otherwise provided in these rules, no application for admission may be tendered within 5 years after the date of disbarment or such longer period of time as the court might determine in the

disbarment order. An order of disbarment that states the disbarment is permanent precludes readmission to The Florida Bar.

(2) *Readmission After Disciplinary Resignation or Revocation* A lawyer's petition for disciplinary resignation or revocation that states that it is without leave to apply for readmission will preclude any readmission. A lawyer who was granted a disciplinary resignation or revocation may not apply for readmission until all conditions of the Supreme Court order granting the disciplinary resignation or revocation have been complied with.

Credits

Former Rule 3-7.9 renumbered as Rule 3-7.10 March 16, 1990, effective March 17, 1990 (558 So.2d 1008). Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 1, 1993 (621 So.2d 1032); Oct. 20, 1994 (644 So.2d 282); July 17, 1997 (697 So.2d 115); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); Feb. 8, 2001 (795 So.2d 1); April 25, 2002 (820 So.2d 210); July 3, 2003 (850 So.2d 499); May 20, 2004 (875 So.2d 448); Oct. 6, 2005, effective Jan. 1, 2006 (916 So.2d 655); April 12, 2012, effective July 1, 2012 (101 So.3d 807); May 29, 2014, effective June 1, 2014 (140 So.3d 541).

Editors' Notes

COMMENT

To further illuminate the community service requirements of Rule 3-7.10(f)(3)(G), bar members can take guidance from the Florida Supreme Court's decision in *Florida Board of Bar Examiners re M.L.B.*, 766 So. 2d 994, 998-999 (Fla. 2000). The court held that rules requiring community service "contemplate and we wish to encourage positive actions beyond those one would normally do for self benefit, including, but certainly not limited to, working as a guardian ad litem, volunteering on a regular basis with shelters for the homeless or victims of domestic violence, or maintaining substantial involvement in other charitable, community, or educational organizations whose value system, overall mission and activities are directed to good deeds and humanitarian concerns impacting a broad base of citizens."

Court decisions dealing with reinstatements and other discipline provide further guidance as to what specific actions meet the test of community service. The court approved dismissal of a petition for reinstatement where the respondent had no community service and had devoted all her time during suspension to raising her young children. *Fla. Bar v. Tauler*, 837 So. 2d 413 (Fla. 2003). In a more recent decision, the court did not specifically mention lack of community service in denying reinstatement, but the respondent had shown no evidence of work for others outside his family in his petition. Respondent's community service consisted solely of taking care of his elderly parents and his small child. *Fla. Bar v. Juan Baraque*, 43 So. 3d 691 (Fla. 2010).

Notes of Decisions (143)

West's F. S. A. Bar Rule 3-7.10, FL ST BAR Rule 3-7.10
Current with amendments received through 2/15/15

End of Document

West's Florida Statutes Annotated
Rules of the Supreme Court Relating to Admissions to the Bar (Refs & Annos)

West's F.S.A. Admission to Bar, Rule 3

Rule 3. Background investigation

Currentness

3-10 Standards of an Attorney. An attorney should have a record of conduct that justifies the trust of clients, adversaries, courts, and others with respect to the professional duties owed to him or her.

3-10.1 Essential Eligibility Requirements. The board considers the following attributes to be essential for all applicants and registrants seeking admission to The Florida Bar:

(a) knowledge of the fundamental principles of law and their application;

(b) ability to reason logically and accurately analyze legal problems; and,

(c) ability to and the likelihood that, in the practice of law, one will:

(1) comply with deadlines;

(2) communicate candidly and civilly with clients, attorneys, courts, and others;

(3) conduct financial dealings in a responsible, honest, and trustworthy manner;

(4) avoid acts that are illegal, dishonest, fraudulent, or deceitful; and,

(5) comply with the requirements of applicable state, local, and federal laws, rules, and regulations; any applicable order of a court or tribunal; and the Rules of Professional Conduct.

3-11 Disqualifying Conduct. A record manifesting a lack of honesty, trustworthiness, diligence, or reliability of an applicant or registrant may constitute a basis for denial of admission. The revelation or discovery of any of the following may be cause for further inquiry before the board recommends whether the applicant or registrant possesses the character and fitness to practice law:

(a) unlawful conduct;

(b) academic misconduct;

(c) making or procuring any false or misleading statement or omission of relevant information, including any false or misleading statement or omission on the Bar Application, or any amendment, or in any testimony or sworn statement submitted to the board;

(d) misconduct in employment;

(e) acts involving dishonesty, fraud, deceit, or misrepresentation;

(f) abuse of legal process;

(g) financial irresponsibility;

(h) neglect of professional obligations;

(i) violation of an order of a court;

(j) evidence of mental or emotional instability;

(k) evidence of drug or alcohol dependency;

(*l*) denial of admission to the bar in another jurisdiction on character and fitness grounds;

(m) disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction; or

(n) any other conduct that reflects adversely on the character or fitness of the applicant.

3-12 Determination of Present Character. The board must determine whether the applicant or registrant has provided satisfactory evidence of good moral character. The following factors, among others, will be considered in assigning weight and significance to prior conduct:

(a) age at the time of the conduct;

(b) recency of the conduct;

(c) reliability of the information concerning the conduct;

(d) seriousness of the conduct;

(e) factors underlying the conduct;

(f) cumulative effect of the conduct or information;

(g) evidence of rehabilitation;

(h) positive social contributions since the conduct;

(i) candor in the admissions process; and,

(j) materiality of any omissions or misrepresentations.

3-13 Elements of Rehabilitation. Any applicant or registrant who affirmatively asserts rehabilitation from prior conduct that adversely reflects on the person's character and fitness for admission to the bar must produce clear and convincing evidence of rehabilitation including, but not limited to, the following elements:

(a) strict compliance with the specific conditions of any disciplinary, judicial, administrative, or other order, where applicable;

(b) unimpeachable character and moral standing in the community;

(c) good reputation for professional ability, where applicable;

(d) lack of malice and ill feeling toward those who, by duty, were compelled to bring about the disciplinary, judicial, administrative, or other proceeding;

(e) personal assurances, supported by corroborating evidence, of a desire and intention to conduct one's self in an exemplary fashion in the future;

(f) restitution of funds or property, where applicable; and,

(g) positive action showing rehabilitation by occupation, religion, or community or civic service. Merely showing that an individual is now living as and doing those things he or she should have done throughout life, although necessary to prove rehabilitation, does not prove that the individual has undertaken a useful and constructive place in society. The requirement of positive action is appropriate for applicants for admission to The Florida Bar because service to one's community is an implied obligation of members of The Florida Bar.

3-14 Bar Application and Supporting Documentation.

3-14.1 Filed as an Applicant. Applicants are required to file complete and sworn Bar Applications. Transcripts required by this rule must be sent directly to the board from the educational institutions. The application will not be deemed complete until all of the following items have been received by the board:

(a) an authorization and release on a form available on the board's website requesting and directing the inspection of and furnishing to the board, or any of its authorized representatives, all relevant documents, records, or other information pertaining to the applicant, and releasing any person, official, or representative of a firm, corporation, association, organization, or institution from any and all liability in respect to the inspection or the furnishing of any information;

(b) a Certificate of Dean certifying the applicant's graduation from a law school accredited by the American Bar Association;

(c) an official transcript of academic credit from each law school attended including the law school certifying that the applicant has received the degree of bachelor of laws or doctor of jurisprudence;

(d) if the applicant received an undergraduate degree, then an official transcript from the institution that awarded the degree;

(e) if the applicant has been admitted to the practice of law in 1 or more jurisdictions, evidence satisfactory to the board that the applicant is in good standing in each jurisdiction, and a copy of the application for admission filed in each jurisdiction;

(f) an affidavit on a form available on the board's website attesting that the applicant has read Chapter 4, Rules of Professional Conduct, and Chapter 5, Rules Regulating Trust Accounts, of the Rules Regulating The Florida Bar; and,

(g) supporting documents and other information as may be required in the forms available on the board's website, and other documents, including additional academic transcripts, as the board may require.

3-14.2 Filed as a Registrant. A registrant is required to file a complete and sworn Registrant Bar Application. Transcripts required by this rule must be sent directly to the board from the educational institutions. The application will not be deemed complete until all of the following items have been received by the board:

(a) an authorization and release on a form available on the board's website requesting and directing the inspection of and furnishing to the board, or any of its authorized representatives, all relevant documents, records, or other information pertaining to the registrant, and releasing any person, official, or representative of a firm, corporation, association, organization, or institution from any and all liability in respect to the inspection or the furnishing of any information;

(b) if the applicant received an undergraduate degree, then an official transcript from the institution that awarded the degree; and

(c) supporting documents and other information as may be required in the forms available on the board's website, and other documents, including additional academic transcripts, as the board may require.

3-14.3 Defective Applications. A Bar Application or Registrant Bar Application initially filed in a defective condition (e.g., without notarization, without supporting documents, or having blank or incomplete items on the application) may delay the

initiation or the processing of the background investigation. A Bar Application or Registrant Bar Application filed in a defective condition will be accepted, but a fee of $150 will be assessed.

3-14.4 Filing Timely Amendments. An application filed by an applicant or registrant is a continuing application and the applicant or registrant has an obligation to keep the responses to the questions current, complete, and correct by the filing of timely amendments to the application, on forms available on the board's website, until the date of an applicant's submission to the Oath of Attorney in Florida. An amendment to the application is considered timely when made within 30 days of any occurrence that would change or render incomplete any answer to any question on the application.

3-14.5 Timely Processing. In order to ensure timely processing of the background investigation, an applicant or registrant must be responsive to board requests for further information. The Bar Application or Registrant Bar Application must be vigorously pursued by the applicant or registrant.

3-14.6 Non-Compliance.

(a) An applicant's failure to respond to inquiry from the board within 90 days may result in termination of his or her Bar Application and require reapplication and payment of all fees as if the applicant were applying for the first time.

(b) A registrant's failure to respond to inquiry from the board within 90 days may result in cancellation of his or her application and require full payment of the student registrant fee.

3-15 Withdrawal of a Bar Application without Prejudice. An applicant or registrant may request withdrawal of a Bar Application without prejudice. The board will consider acceptance of the request, but may continue its investigative and adjudicative functions to conclusion.

3-16 Withdrawal of a Bar Application with Prejudice. An applicant or registrant may request withdrawal of a Bar Application with prejudice. The board will accept the withdrawal and immediately dismiss its investigative and adjudicative functions. An applicant or registrant who files a withdrawal with prejudice will be permanently barred from filing a subsequent application.

3-17 Extraordinary Investigative Expenses.

3-17.1 Transcript or Records Cost. The cost of a transcript or any record or document reasonably required by the board in the conduct of investigative or adjudicative functions will be paid by the applicant or registrant.

3-17.2 Petition for Extraordinary Expenses. On a showing of actual or anticipated extraordinary expenditures by the board,

the Supreme Court of Florida may order any applicant or registrant to pay to the board additional sums including attorney's fees or compensation necessary in the conduct of an inquiry and investigation into the character and fitness and general qualifications of the applicant or registrant including the procurement and presentation of evidence and testimony at a formal hearing.

3-20 Investigative Process.

3-21 Inquiry Process. The board will conduct an investigation to determine the character and fitness of each applicant or registrant. In each investigation and inquiry, the board may obtain information pertaining to the character and fitness of the applicant or registrant and may take and hear testimony, administer oaths and affirmations, and compel by subpoena the attendance of witnesses and the production of documents.

3-21.1 Noncompliance with Subpoena Issued by the Board. Any person subpoenaed to appear and give testimony or to produce documents who refuses to appear to testify before the board, to answer any questions, or to produce documents, may be held in contempt of the board. The board will report the fact that a person under subpoena is in contempt of the board for proceedings that the Supreme Court of Florida may deem advisable.

3-22 Investigative Hearing. An applicant or registrant may be requested to appear for an investigative hearing. Investigative hearings will be informal but thorough, with the object of ascertaining the truth. Technical rules of evidence need not be observed. The admissibility of results of a polygraph examination will be determined in accordance with Florida law. An investigative hearing will be convened before a division of the board consisting of not fewer than 3 members of the board. Any member of the board may administer oaths and affirmations during the hearing.

3-22.1 Investigative Hearing Cost. Any applicant or registrant requested to appear for an investigative hearing must pay the administrative cost of $250.

3-22.2 Response and Selection of a Preferred Hearing Date. An applicant or registrant who has been requested to appear for an investigative hearing must promptly respond to written notice from the board and give notice of preferred dates. Failure to respond within 60 days will result in termination of the application for non-compliance as provided in rule 3-14.6.

3-22.3 Investigative Hearing Postponement. Postponement of a previously scheduled investigative hearing is permitted on written request and for good cause when accompanied by the following fee:

(a) **$75** if the request is received at least 31 days before the hearing date; or

(b) **$125** if the request is received less than 31 days before the hearing date.

3-22.4 Board Waiver of an Investigative Hearing. In cases where the facts are undisputed regarding an applicant's or registrant's prior conduct that adversely affects his or her character and fitness for admission to The Florida Bar, the board may forgo an investigative hearing and proceed directly with the execution of a Consent Agreement or the filing of Specifications as provided in rule 3-22.5.

3-22.5 Board Action Following an Investigative Hearing. After an investigative hearing, the board may make any of the following determinations:

(a) The applicant or registrant has established his or her qualifications as to character and fitness.

(b) The board will offer to the applicant or registrant a Consent Agreement in lieu of the filing of Specifications pertaining to drug, alcohol, or psychological problems and subject to provisions of rule 5-15. In a Consent Agreement, the board is authorized to recommend to the court the admission of the applicant who has agreed to abide by specified terms and conditions on admission to The Florida Bar.

(c) Further investigation into the applicant's or registrant's character and fitness is warranted.

(d) The board will file Specifications charging the applicant or registrant with matters that, if proven, would preclude a favorable finding by the board.

3-22.6 Investigative Hearing Transcript Cost. The cost of a transcript reasonably required by the board in the conduct of investigative or adjudicative functions must be paid by the applicant or registrant.

3-22.7 Public Hearing for Disbarred/Resigned Attorneys. All applicants who have been disbarred from the practice of law, or who have resigned pending disciplinary proceedings must appear before a quorum of the board for a formal hearing. The formal hearing will be open to the public, and the record produced at the hearing and the Findings of Fact and Conclusions of Law are public information and exempt from the confidentiality provision of rule 1-60.

3-23 Specifications. Specifications are formal charges filed in those cases where the board has cause to believe that the applicant or registrant is not qualified for admission to The Florida Bar. If the board votes to prepare and file Specifications, the Specifications are served on the applicant or registrant. The response to Specifications must be filed in the form of a sworn, notarized answer to the Specifications within 20 days from receipt of the Specifications.

3-23.1 Failure to File the Answer. If an applicant or registrant fails to file an answer to the Specifications within the 20-day deadline or within any extension of time allowed by the board, the Specifications will be deemed admitted. The board will enter Findings of Fact, finding the Specifications proven, and appropriate conclusions of law that may include a recommendation that the applicant not be admitted to The Florida Bar, or that the registrant has not established his or her qualifications as to character and fitness.

3-23.2 Formal Hearing. Any applicant or registrant who receives Specifications is entitled to a formal hearing before the board, representation by counsel at his or her own expense, disclosure by the Office of General Counsel of its witness and exhibit lists, cross-examination of witnesses, presentation of witnesses and exhibits on his or her own behalf, and access to the board's subpoena power. After receipt of the answer to Specifications, the board will provide notice of the dates and locations available for the scheduling of the formal hearing. Formal hearings are conducted before a panel of the board that will consist of not fewer than 5 members. The formal hearing panel will consist of members of the board other than those who participated in the investigative hearing. This provision may be waived with the consent of the applicant or registrant. The weight to be given all testimony and exhibits received in evidence at a formal hearing must be considered and determined by the board. The board is not bound by technical rules of evidence at a formal hearing. A judgment of guilt to either a felony or misdemeanor will constitute conclusive proof of the criminal offense(s) charged. An order withholding adjudication of guilt of a charged felony will constitute conclusive proof of the criminal offense(s) charged. An order withholding adjudication of guilt of a charged misdemeanor will be admissible evidence of the criminal offense(s) charged. The admissibility of results of a polygraph examination will be in accordance with Florida law.

3-23.3 Formal Hearing Cost. Any applicant or registrant who receives Specifications that require the scheduling of a formal hearing must pay the administrative cost of $600.

3-23.4 Selection of a Preferred Formal Hearing Date. The applicant or registrant and the board must agree on a date and location for the formal hearing. If the applicant or registrant fails to agree on 1 of the dates and locations proposed, the board will set the date and location of the hearing. If the applicant or registrant, without good cause, fails to attend the formal hearing, the Specifications will be deemed admitted. The board will enter Findings of Fact, finding the Specifications proven, and appropriate conclusions of law that may include a recommendation that the applicant not be admitted to The Florida Bar or that the registrant has not established his or her qualifications as to character and fitness.

3-23.5 Formal Hearing Postponement. Postponement of a previously scheduled formal hearing is permitted by written request and for good cause when accompanied by the following fee:

(a) $250 if request is received between 45 and 31 days before the hearing date; or

(b) $600 if the request is received less than 31 days before the hearing date.

3-23.6 Board Action Following Formal Hearing. Following the conclusion of a formal hearing, the board will promptly notify the applicant or registrant of its decision. The board may make any of the following recommendations:

(a) The applicant or registrant has established his or her qualifications as to character and fitness.

(b) The applicant be conditionally admitted to The Florida Bar in exceptional cases involving drug, alcohol, or

psychological problems on the terms and conditions specified by the board and subject to the provisions of rule 5-15.

(c) The applicant's admission to The Florida Bar be withheld for a specified period of time not to exceed 2 years. At the end of the specified period of time, the board will recommend the applicant's admission if the applicant has complied with all special conditions outlined in the Findings of Fact and Conclusions of Law.

(d) The applicant or registrant has not established his or her qualifications as to character and fitness and that the applicant or registrant be denied admission to The Florida Bar. A 2-year disqualification period is presumed to be the minimum period of time required before an applicant or registrant may reapply for admission and establish rehabilitation. In a case involving significant mitigating circumstances, the board has the discretion to recommend that the applicant or registrant be allowed to reapply for admission within a specified period of less than 2 years. In a case involving significant aggravating factors (including but not limited to material omissions or misrepresentations in the application process), the board has the discretion to recommend that the applicant or registrant be disqualified from reapplying for admission for a specified period greater than 2 years, but not more than 5 years. In a case involving extremely grievous misconduct, the board has the discretion to recommend that the applicant or registrant be permanently prohibited from applying or reapplying for admission to The Florida Bar.

3-23.7 Findings of Fact and Conclusions of Law. In cases involving a recommendation other than under rule 3-23.6(a), the board will expeditiously issue its written Findings of Fact and Conclusions of Law. The Findings must be supported by competent, substantial evidence in the formal hearing record. The Findings, conclusions, and recommendation are subject to review by the Supreme Court of Florida as specified under rule 3-40. The Findings, conclusions, and recommendation are final, if not appealed, except in cases involving a favorable recommendation for applicants seeking readmission to the practice of law after having been disbarred or having resigned pending disciplinary proceedings. In those cases, the board will file a report containing its recommendation with the Supreme Court of Florida for final action by the court. Admission to The Florida Bar for those applicants will occur only by public order of the court. All reports, pleadings, correspondence, and papers received by the court in those cases are public information and exempt from the confidentiality provision of rule 1-60.

3-23.8 Formal Hearing Transcript Cost. The cost of a transcript reasonably required in the conduct of investigative or adjudicative functions must be paid by the applicant or registrant.

3-23.9 Negotiated Consent Judgments. Counsel for the board and an applicant or registrant may waive a formal hearing and enter into a proposed consent judgment. The consent judgment must contain a proposed resolution of the case under 1 of the board action recommendations specified above. If the consent judgment is approved by the full board, then the case will be resolved in accordance with the consent judgment without further proceedings.

3-30 Petition for Board Reconsideration. Any applicant or registrant who is dissatisfied with the recommendation concerning his or her character and fitness may, within 60 days from the date of the Findings of Fact and Conclusions of Law, file with the board a petition for reconsideration with a fee of $165. The petition must contain new and material evidence that by due diligence could not have been produced at the formal hearing. Evidence of rehabilitation as provided by rule 3-13 is not permitted in a petition for reconsideration. Only 1 petition for reconsideration may be filed.

3-40 Petition for Court Review.

3-40.1 Dissatisfied with Board's Recommendation. Any applicant or registrant who is dissatisfied with the recommendation concerning his or her character and fitness may petition the Supreme Court of Florida for review within 60 days from receipt of the Findings of Fact and Conclusions of Law or within 60 days of receipt of notice of the board's action on a petition filed under rule 3-30. If not inconsistent with these rules, the Florida Rules of Appellate Procedure are applicable to all proceedings filed in the Supreme Court of Florida. A copy of the petition must be served on the executive director of the board. The applicant seeking review must serve an initial brief within 30 days of the filing of the petition. The board will have 30 days to serve an answer brief after the service of the applicant's initial brief. The applicant may serve a reply brief within 30 days after the service of the answer brief. At the time of the filing of the answer brief, the executive director will transmit the record of the formal hearing to the court.

3-40.2 Dissatisfied with Length of Board's Investigation. Any applicant or registrant whose character and fitness investigation is not finished within 9 months from the date of submission of a completed Bar Application or Registrant Bar Application may petition the Supreme Court of Florida for an order directing the board to conclude its investigation. If not inconsistent with these rules, the Florida Rules of Appellate Procedure are applicable to all proceedings filed in the Supreme Court of Florida. A copy of the petition must be served on the executive director of the board. The board will have 30 days after the service of the petition to serve a response. The applicant may serve a reply within 30 days after the service of the board's response.

Credits

Added June 5, 1997 (695 So.2d 312). Amended June 4, 1998 (712 So.2d 766); March 20, 2003 (843 So.2d 245); October 18, 2007, eff. May 1, 2008 (967 So.2d 877); Dec. 10, 2009 (23 So.3d 1179); Dec. 16, 2010 (52 So.3d 652); Feb. 3, 2011 (54 So.3d 460).

Notes of Decisions (115)

West's F. S. A. Admission to Bar, Rule 3, FL ST BAR ADMIS Rule 3
Current with amendments received through 2/15/15

West's Florida Statutes Annotated
Rules Regulating the Florida Bar (Refs & Annos)
Chapter 4. Rules of Professional Conduct (Refs & Annos)
4-6. Public Service

West's F.S.A. Bar Rule 4-6.4

Rule 4-6.4. Law reform activities affecting client interests

Currentness

A lawyer may serve as a director, officer, or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially affected by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.

Editors' Notes

COMMENT

Lawyers involved in organizations seeking law reform generally do not have a client-lawyer relationship with the organization. Otherwise, it might follow that a lawyer could not be involved in a bar association law reform program that might indirectly affect a client. See also rule 4-1.2(b). For example, a lawyer specializing in antitrust litigation might be regarded as disqualified from participating in drafting revisions of rules governing that subject. In determining the nature and scope of participation in such activities, a lawyer should be mindful of obligations to clients under other rules, particularly rule 4-1.7. A lawyer is professionally obligated to protect the integrity of the program by making an appropriate disclosure within the organization when the lawyer knows a private client might be materially affected.

West's F. S. A. Bar Rule 4-6.4, FL ST BAR Rule 4-6.4
Current with amendments received through 2/15/15

End of Document

West's Florida Statutes Annotated
Rules Regulating the Florida Bar (Refs & Annos)
Chapter 4. Rules of Professional Conduct (Refs & Annos)
4-6. Public Service

West's F.S.A. Bar Rule 4-6.3

Rule 4-6.3. Membership in legal services organization

Currentness

A lawyer may serve as a director, officer, or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to the client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization:

(a) if participating in the decision would be incompatible with the lawyer's obligations to a client under rule 4-1.7; or

(b) where the decision could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.

Credits

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

Editors' Notes

COMMENT

Lawyers should be encouraged to support and participate in legal service organizations. A lawyer who is an officer or a member of such an organization does not thereby have a client-lawyer relationship with persons served by the organization. However, there is potential conflict between the interests of such persons and the interests of the lawyer's clients. If the possibility of such conflict disqualified a lawyer from serving on the board of a legal services organization, the profession's involvement in such organizations would be severely curtailed.

It may be necessary in appropriate cases to reassure a client of the organization that the representation will not be affected by conflicting loyalties of a member of the board. Established, written policies in this respect can enhance the credibility of such assurances.

West's F. S. A. Bar Rule 4-6.3, FL ST BAR Rule 4-6.3
Current with amendments received through 2/15/15

End of Document

Revised admission oath now emphasizes civility

By Jan Pudlow
Senior Editor

In an adversarial system, lawyers don't always play nice. Attorneys don't always address their arguments to the court, sniping at each other instead. Polite communication devolves into snarky emails. Tempers flare at depositions. Good manners, professionalism, and civility sometimes get lost in the fray of winning a case.

So, on September 12, the Florida Supreme Court added this new language to the Oath of Admission to The Florida Bar, sworn to by every new lawyer, effective immediately:

"To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications."

"It's something that should have been in the oath of admission from the beginning, in my opinion," said Robert A. Cole, of Jacksonville, immediate past president of FLABOTA, the state chapter of the American Board of Trial Advocates that has been working on this issue for years, along with The Florida Bar and law schools.

"We should all treat each other with professionalism and civility. It should be understood. But I think it's just reacting to the lack of civility that is going on in our society as a whole — not just the legal profession. I think it was the right thing to do by the Supreme Court."

Acting on its own in a unanimous decision in Case No. SC11-1702, the court noted two trends: Growing concerns in recent years about incivility among attorneys, and that ABOTA, among others, have taken steps to raise the level of awareness about the importance of civility in practicing law.

For several years, Cole said, the national ABOTA has presented an educational program called "Civility Matters," to bar association groups and law schools. One of the core missions of ABOTA, made up equally of civil defense and plaintiffs' trial counsel, with nearly 7,000 members in all 50 states, is the promotion of professionalism and civility. A committee in the national organization has encouraged states to amend their oaths of admission to require civility in all dealings.

The Florida Supreme Court specifically noted that ABOTA's Code of Professionalism includes a pledge to be "respectful in my conduct toward my adversaries."

South Carolina added a civility pledge to its oath of admission in 2003. Other states, including Utah and New Mexico, have taken similar actions.

Kenneth Marvin, staff counsel of the Bar's Lawyer Regulation Department, noted there is already an existing rule — Rule 4-8.4 Misconduct — that could be used to enforce civility, even though that term is "somewhat vague."

But, Marvin said, the new language in the Oath of Admission to The Florida Bar "is not aspirational, but enforceable to all those who take the oath."

At a recent civility seminar in Tampa, co-sponsored by Tampa Bay ABOTA, the Hillsborough County Bar Association, and Stetson University College of Law, National ABOTA Vice President Mick Callahan, of St. Petersburg, said he asked Chief Justice Charles Canady, the keynote speaker, if he would consider supporting adding the civility clause to Florida's Oath of Admission.

"He said he would explore it with the court and supported the idea," Callahan said, adding he thinks it's necessary because "uncivil conduct by trial lawyers in depositions, in correspondence and phone communications, in scheduling matters, and in mediation proceedings has been increasing."

As a lawyer for 33 years, Cole said, he has "seen a decline in civility. It's been just kind of a gradual type of problem. I see it more with younger lawyers just coming out of law school who are relatively inexperienced. They haven't been properly trained or properly mentored to know courtroom decorum and generally how to treat other members of the profession with civility. It's something you have to learn. You have to be taught it and gain it by experience."

Cole said he learned how to practice law with civility from his two mentors, Rut Liles, president of The Florida Bar in 1988, and longtime Jacksonville lawyer Joe Milton.

Even though Cole was admitted to the Bar in 1978, he said he's never outgrown his mentors. He still gives them a call to ask: "What would you do? How would you handle this?"

Here's an example of uncivility by lawyers Cole has noticed:

"You are in court or in the judge's chambers arguing a disputed motion. Your argument should also be directed to the court. Your comments, your legal and factual arguments, should be made to the judge. What you see sometimes is things break down, and the two lawyers sitting across the table from each other start arguing with each other. The judge has to step in and maintain control."

He has also noticed that some young lawyers "are not being respectful or showing the right etiquette towards not only other attorneys, but the judges."

Miami lawyer Herman Russomanno, 2000 Bar president, past president of the ABOTA Miami Chapter and FLABOTA, and now serving on the ABA Commission on Ethics 20/20, quoted the late U.S. Supreme Court Chief Justice Earl Warren: "The law floats in a sea of ethics."

"One of the specific purposes of ABOTA is to elevate the standards of integrity, honor, and courtesy in the legal profession," Russomanno said.

"It is indeed a high honor for ABOTA/FLABOTA to work with the Florida Supreme Court and The Florida Bar on litigation, civility, and professionalism. For our Supreme Court to revise the Oath of Admission to include this pledge of civility speaks volumes of the excellent work of ABOTA, not only in Florida but throughout the United States."

[Revised: 04-10-2015]

News HOME