

bases for the objection, such as “relevance” or “hearsay.” If the court wants the other attorney to respond, the court should so indicate. Lawyers can become sloppy and unprofessional with the objection process. Most judges do not appreciate “speaking objections,” where the attorney ends up giving information to the jury that can’t be obtained from a witness.

**13. Write as if your reputation depended on it.**

During a typical case your written communications will comprise the majority of your contact with the judge, your opponent and your client. In many cases, your written word is often the first contact you will have with each of them. Each time you compose a pleading, brief, letter or e-mail, you shape your professional reputation. With that in mind, don’t write anything you wouldn’t want to be known for among your peers or you wouldn’t want read to a jury. Your written work product should be free of hyperbole, sarcasm, exaggeration, threats and personal attacks. Don’t overstate the facts of the case and be careful to accurately present relevant legal authority. Proofread your written work for grammar, spelling and typographical errors. Remember that each time you write you have the unique opportunity to build your professional reputation among judges, colleagues and clients, so make sure you’re creating a reputation you can live with.

**14. Avoid ex parte contacts with the court.**

Any attempt to gain an advantage over your opponent through an ex parte contact with the court, or the court staff, will poison your reputation with a judge. This includes everything from direct contact with a judge on the merits of the case to supplying information to the court without adequate notice to opposing counsel. For example, it is not appropriate to place a motion or memorandum into the hands of the judge while mailing a copy of the document to opposing counsel, which may arrive at the lawyer’s office two or more days later.

**15. Don’t take unfair advantage of opponents.**

While it’s part of the litigation process to capitalize on your opponent’s mistakes or inexperience, it’s not necessary to deliberately embarrass, humiliate, intimidate or bully an inexperienced or less skilled opponent. Experienced lawyers should model appropriate professional behavior to less experienced lawyers. If we model rude and boorish behavior to less-experienced lawyers, we will create the kind of lawyers that make practice more stressful and less enjoyable. Engaging in such inappropriate conduct might cause your opponent to work harder than

he or she otherwise would, to the ultimate disadvantage of your client - and make you look foolish in the process.

**16. Don’t do something just because you can.**

Justice Potter Stewart once said, “There is a big difference between what you have a right to do and what is right to do.” No ethics rule prohibits lawyers from yelling at their opponents or engaging in intimidating behavior, and the ethics rules don’t require that lawyers be cordial to one another. On the other hand, think about how you’d like to spend the next 40 years as a practicing lawyer. Do you want to build hostile and acrimonious relationships with lawyers against whom you might be practicing for decades? Probably not. It usually takes very little effort to be cordial to your opponent and that small investment of goodwill will pay large dividends to you in the years to come.

**17. Don’t behave differently than you would in front of a judge.**

The great bulk of litigation occurs outside the presence of a judge. The rules of professionalism aren’t different just because the judge isn’t present to watch your every move. If you wouldn’t engage in the behavior in front of a judge, then don’t do so when the judge isn’t around.

**18. Don’t let your opponent control your behavior.**

Some lawyers behave unreasonably or harshly, or are consistently difficult precisely because they want you to lose your objectivity and shift your focus to “getting back” at them. They know that if they can get you to focus on them, then you’ll spend less time working up your case. Once they get you thinking about how to get back at them and not about how to build your client’s case, they’ve won. So keep your balance. Your client deserves an objective, diligent advocate - not a hothead bent on vengeance against another lawyer.

**19. Don’t take yourself too seriously.**

A wise practitioner once said “Take what you do seriously, but not yourself.” Keep in mind that the case is not about you. Many lawyers over estimate the impact they have in the cases they try in the courtroom. The truth is that the trier of fact focuses on the message (i.e., the facts) and not the messenger unless through inappropriate conduct, the messenger gives the trier of fact reason to focus on them.

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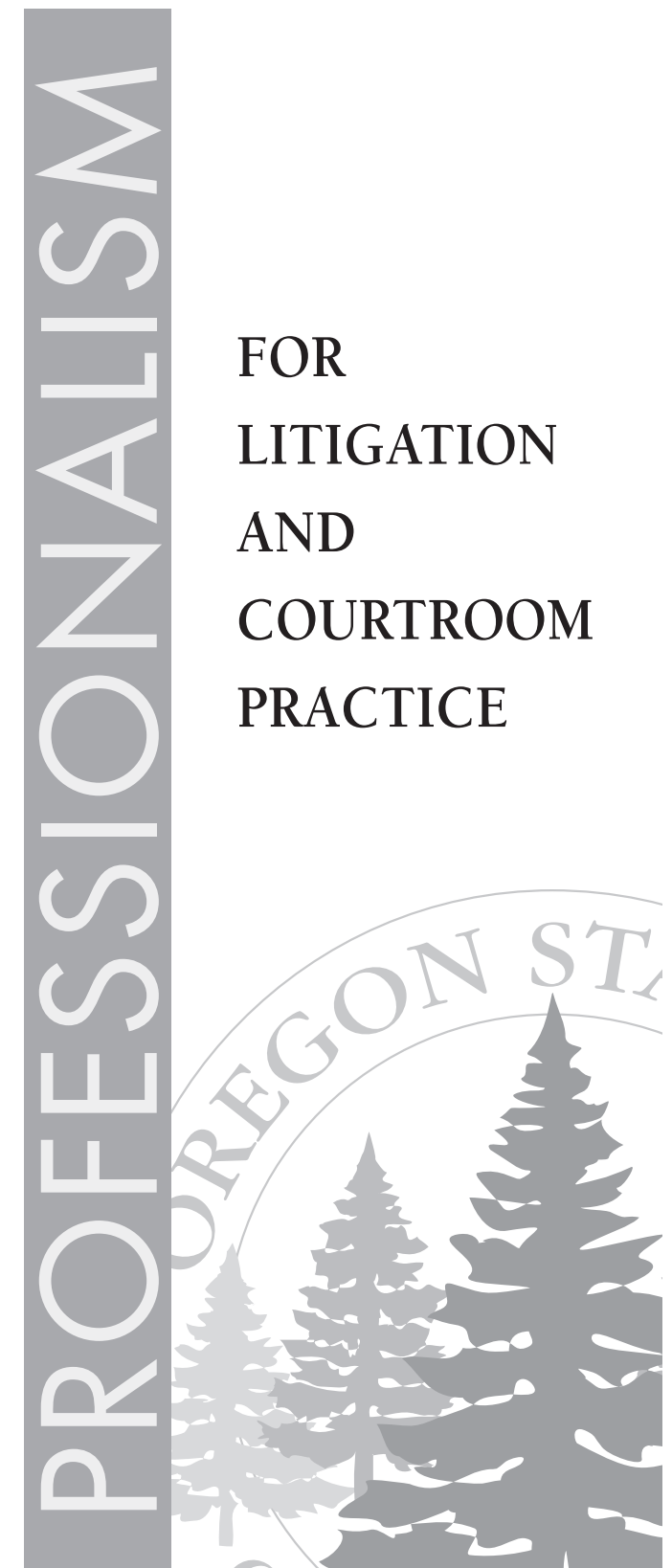
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Ensuring the quality of our professional lives and improving the public's perception of our profession begins with our conduct toward each other. It also rests on our conduct in the courtroom, before judges, opposing counsel, juries and members of the public. Lawyers are educated and trained to exercise a high degree of skill and competence in representing individuals and organizations in the legal system. They should complement those attributes by exercising the highest standard of conduct when dealing with judges, clients and one another, whether verbally or in writing.

Professionalism differs from ethics in that ethics rules are mandated rules of conduct while professionalism is a standard to which lawyers should aspire. The following suggestions for observing professionalism stem from years of litigation and courtroom experience, and some hard lessons learned during that time. This list was compiled from comments received from judges, attorneys and clients who were asked for suggestions on what can be done to improve professionalism. Integrating these suggestions into daily practice not only will improve the quality of your professional life, but will also make you a more effective advocate for your client.

### **1. Promote the efficient resolution of disputes.**

In most cases, an attorney should advise the client of the availability of mediation, arbitration and other appropriate methods for resolving disputes outside of the courtroom. A professional lawyer should always consider, and advise the client of, the most efficient way of resolving the dispute. This includes consideration of the effect litigation and particularly the trial will have on your client and the benefits to your client that flow from resolving a dispute sooner rather than later. Most clients want a dispute resolved in a timely manner with minimal cost; staying out of court usually accomplishes that goal. Attorneys should do everything they can to resolve pretrial disputes without involving the court. This is especially true with disputes over discovery issues—many motions to compel discovery can be resolved without using the resources of the justice system.

### **2. Be a counselor to your client, not a mere puppet.**

Clients don't always know what is and isn't right. They aren't familiar with the ethics rules that bind lawyers and the unwritten local conventions lawyers observe when working on cases with one another. Some clients want you to dislike the opposing party as much as they do and, thus, they expect you to make the other side's life miserable. Some clients also might not appreciate

that you and your opponent are professional colleagues and very likely will have cases against one another in the years to come, and they might not take into account that your relationship with a judge is important to your ability to represent them in the current case and other clients in future cases.

Adopting a "scorched-earth" or "take-no-prisoners" approach to litigation will not serve your client's interests and ultimately will work to your client's disadvantage in resolving the dispute. A lawyer should defuse emotions that might interfere with the effective handling of litigation and which could complicate or preclude resolution of a dispute in a way that best serves the client's interests. If a client requests or insists upon a course of action that is contrary to local custom or would be counter-productive to the client's interests, tell the client so and explain why. Some clients might take longer to understand this notion than will others, but you can't represent your client's interests by taking an action you know will ultimately harm those interests.

### **3. Keep your word.**

Lawyers spend a lot of time putting things in writing, but in the daily practice of litigation a lot of routine business gets done verbally. Your ability to practice effectively will depend to a large degree on whether opposing counsel and co-counsel trust you. If your colleagues know they can trust you to do what you say, your professional life will be a lot easier. So, do what you say you will, and if you can't do or agree to something, then say you can't do or agree to it. You'll find that a little candor goes a long way.

### **4. Don't fudge.**

Credibility is everything. Some lawyers gain a reputation for being fudgers. They overstate the facts in a case, misrepresent the holding in a case, or misstate the position of the opposing party. Some attorneys believe they are simply zealously representing their clients when they stretch or shade the truth. They are actually doing a disservice to their client. Once this reputation sets in, it is difficult for a lawyer to regain credibility and it ultimately diminishes the lawyer's ability to be effective as an advocate. Credibility and reputation are earned from hard work, ethical practice and a believable and accurate representation. Credibility and reputation will get you a lot further during litigation and especially in a courtroom than any other aspect of your practice.

### **5. Disagree agreeably.**

Lawyers don't always agree, especially when they are on opposite sides of a case. But a disagreement between lawyers shouldn't devolve into a declaration of war. Lawyers should keep in mind that disagreements are inherent in litigation and that each side has a job to do for his or her client. In doing that job it is inevitable that lawyers will disagree on the facts, legal or procedural issues, the credibility of a party or witness, or the value of a case. When the disagreement can't be resolved, accept that the disagreement is a legitimate difference of opinion between two professionals and don't take it as a personal affront.

### **6. Extend professional courtesies.**

"Live by the sword, die by the sword." It's a maxim that applies to litigation and to litigators. The professional lawyer consents to reasonable requests for extensions of time, resets, reschedulings and other routine matters. If such a request won't prejudice your client, there's usually no legitimate reason not to agree to an opponent's request. If you refuse a reasonable request and your opponent takes the matter to the judge and you can't demonstrate prejudice to your client or unreasonableness by your opponent, think about how you'll look to the judge. The time will come when you'll need an extension, reset or rescheduling of a deadline or event. When that time comes, don't expect your opponent to be reasonable toward you if you've refused similar requests from your opponent.

### **7. Be prepared.**

The process of litigating a case and preparing it for trial can be more important than the trial itself. Being prepared is to know the rules of civil procedure and courtroom protocol, and to follow those rules. This includes such things as conducting efficient and focused depositions, knowing cases cited in the briefs to address questions at oral argument, marking your exhibits and preparing an exhibits list before trial, exchanging your exhibits with the opposing counsel before trial; knowing what is and is not appropriate to mention in your opening statement, knowing how to offer an exhibit into evidence; carefully selecting and preparing jury instructions, and understanding the hearsay rule. Professionalism begins with conducting all phases of litigation well and being prepared to enter the courtroom to conduct your business there in a competent manner.

### **8. Be on time!**

Some lawyers have a hard time showing up at a deposition, a hearing or even the trial at the time it is

scheduled to be conducted. Most lawyers work at showing up on time and if they can't be there on time, they make an effort to notify their opponent or the court of the reason for their tardiness. But some lawyers have no problem with regularly being ten or more minutes late for a scheduled appearance and never understand that showing up late for a scheduled proceeding or court appearance exhibits an attitude of disrespect for those who are being made to wait.

### **9. Be courteous and respectful.**

A little courtesy and respect go a long way. You can't belittle or mistreat courthouse staff or opposing counsel without affecting your standing with the judge or the trier of fact. Whether dealing with opposing counsel, a court reporter, courtroom staff or your own co-workers, showing respect toward everyone is often the most effective way to establish the basis for relationships that will serve you and your client well later on. Treating an opponent with respect and professional courtesy typically creates a cordial if not friendly dynamic that gives you credibility and influence with your opponent. Ultimately, these characteristics will translate into better results for your client, regardless of whether the case settles or goes to trial.

### **10. Pay attention to your appearance.**

Most lawyers are appropriately dressed and groomed when they participate in a case proceeding and come into the courtroom. Some forget where they are at. Professional lawyers present themselves in such a way as to not detract from the presentation of their case.

### **11. Maintain an appropriate demeanor.**

It is unprofessional to over react in the courtroom to something you don't agree with—especially to a ruling by the judge on an objection. Some lawyers have the unfortunate habit of over-reacting to testimony or to a ruling they don't agree with in the courtroom. This tends to undermine a lawyer's effectiveness and credibility in the courtroom. The advice of one judge is to "not take a judge's ruling or decision personally."

### **12. Object to the evidence in an appropriate manner.**

Trial lawyers should be frugal with their objections. If it is not hurting your case, don't object. Seasoned trial lawyers object infrequently; rookies jump up and down constantly. It is unprofessional and ineffective to be registering constant objections. When an attorney makes an objection to the evidence, the attorney should stand and say "objection," and in a summary fashion state the