Brave Lawyers’ Work: 
The Pillars of Professionalism

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What makes a nation’s pillars high
And its foundations strong?
What makes it mighty to defy
The foes that round it throng?
. . .
Brave men who work while others sleep,
Who dare while others fly . . .
They build a nation’s pillars deep
And lift them to the sky.

– “A Nation’s Strength,” Ralph Waldo Emerson (1904)

I. Introduction

In order to address an alarming decline in the public’s perception of lawyers and, more importantly, to address the actual decline in civility and professionalism among some members of the Bar, the late Kansas Chief Justice Robert E. Davis suggested what would become the Commission on Professionalism in the Bar (Commission) in 2009.

Over the next two and one-half years, the Commission met recurrently, studied the issues, and conferred through committees and long-distance communication to address Chief Justice Davis’ concerns. The Commission found that no regulatory rules or prosecutorial schemes can enforce civility and professionalism. Rather, it concluded that professionalism is an element of the Law as a Profession, a higher calling, and that tenets of professionalism are fundamental principles inherent in the practice of that Profession.

The result of the Commission’s two-year effort is the Pillars of Professionalism, which are set forth in the Appendix to this article. While many of the elements of each Pillar resonate with similar provisions in the Kansas Rules of Professional Conduct, they are different: the Pillars are not minimum “Rules” (the violation of which will lead to administrative action placing the lawyer’s license in jeopardy). Instead, the Pillars represent higher aspirational goals to which “professionals” should hold themselves – at the risk of public and professional disapproval, and not necessarily the loss of one’s license.

As Justice Sandra Day O’Connor noted (in her dissent in the famous Shapero lawyer advertising case), membership in the legal profession entails an ethical obligation to temper one’s selfish pursuit of economic success by adhering to standards of conduct that could not be enforced either by legal fiat or through the discipline of the market.

Thus, something beyond minimum “ethical” standards – something higher than the “floor” – is needed. The purpose of this article is to review each of the Pillars of Professionalism, and the foundation for each, with the hope of encouraging knowledge – and self-enforcement by all members of the bar. While some readers may consider the principles set forth in the Pillars to be self-evident, not needing recitation, those readers are not the problem.

II. The Problem

The problem is found in the increasing number of lawyers to whom “professionalism” is apparently not self-evident and the alarming decline in civility among those practicing the profession. This is not a new problem.

For many years (perhaps, centuries), lawyers and members of the public have decried the decline in professionalism in the bar. More than 150 years ago, no less an observer of the times than Charles Dickens expounded:

The one great principle of the English law is, to make business for itself. There is no other principle distinctly, certainly, and consistently maintained through all its narrow turnings. Viewed by this light it becomes a coherent scheme, and not the monstrous maze the laity are apt to think it. Let them but once clearly perceive that its grand principle is to make business for itself at their expense, and surely they will cease to grumble.

In 1953, Dean Roscoe Pound observed that lawyers, as professionals, should hold themselves above mere commercialization. In 1995, retired U.S. Supreme Court Chief Justice Warren Burger noted that, “the organized Bar’s failure to maintain high standards of ethics and professionalism certainly warrants criticism.” Indeed, there are literally dozens of articles on the topic, written by lawyers and judges. Forty percent of non-lawyer respondents to an ABA survey concluded in 1993 that lawyers are not “honest and ethical.”

Footnotes

1. Kansas Rules of Professional Conduct (KRPC), Rule 226, Rules of the Kansas Supreme Court.
5. ROSCOE POUND, THE LAWYER FROM ANTIQUITY TO MODERN TIMES 12, n. 3 (1953).
7. See, e.g., DIACOFF, LAWYER, KNOW THYSELF: A REVIEW OF EMPIRICAL RESEARCH ON ATTORNEY ATTRIBUTES BEARING ON PROFESSIONALISM, 46 AM. U. L. REV. 1337 (1997), at 1344. At footnotes 15-17, Professor Diacoff cites no fewer than 19 articles and commentaries decrying the erosion of professionalism in the Bar.
Legal commentators are not the only critics. Judges cannot help but see the problem, and some cannot restrain themselves from commenting on it in their judicial decisions. When a fellow lawyer (who happens to be serving as a judge) sees conduct, which “reflects a serious lack of professionalism and good judgment,” one may expect the judge to comment upon it.9

Law is a profession of egos. “Scorpions in a bottle” was a phrase used to describe nine men with a traditional judicial temperament working in a great think tank in Washington – how much more does the phrase apply to trial lawyers who are accustomed to the mortal engines of trial procedure, the rude throats of opposing counsel, and the pride, pomp and circumstance of glorious litigation.10

Further, when observing unprofessionalism, many judges not only comment upon it – they take action.

The most troublesome aspect of this lawsuit is the lack of professionalism and civility displayed by the lawyers. ... This case serves as an example of the unfortunate lack of civility in the practice of law which is receiving considerable attention at this time. ... The adversary process in the judicial arena does not require attorneys to be clothed in a suit of armor and fight to the bitter end. The parties, the profession, and the public all lose when the attorneys fail to treat each other with common courtesy.11

Moreover, lack of professionalism by one lawyer hurts all lawyers, by bringing the very profession into disrepute.12 Lawyers should be mindful that unprofessional conduct “will not be tolerated” by the courts, and that sanctions are available to prevent lawyer misconduct “from bringing [the Bar’s] image into disrepute.”13

There should be little need for further commentary to support the proposition that professionalism in the Bar has eroded, and continues to erode.

III. The Definition

What is a Profession? A profession – more than mere “employment” – carries with it a sense of “calling,”14 involving higher education, standards for admission, standards of conduct, and self-regulation.15 A “profession” is defined by its characteristics, which are:

the requirements of extensive formal training and learning, admission to practice by a qualifying licensure, a code of ethics imposing standards qualitatively and extensively beyond those that prevail or are tolerated in the marketplace, a system for discipline of its members for violation of the code of ethics, a duty to subordinate financial reward to social responsibility, and, notably, an obligation on its members, even in non-professional matters, to conduct themselves as members of a learned, disciplined, and honorable occupation.16

“The practice of law is a profession and its uniqueness distinguishes it from all other endeavors.”17 The Law is not just a business; indeed, its best practices are contrary to those found in “business.”

[T]he rules of professional ethics that attorneys are duty-bound to observe must scrupulously be diametrically opposed to the code by which businessmen must live if they are to survive.” State Bar of Arizona v. Arizona Land Title & Trust Co., 90 Ariz. 76, 366 P2d 1, 9 (1961). The Rules of Professional Conduct ensure that “[t]he practice of law is not simply an occupation; it is a profession,” Daigle v. City of Portsmouth, 137 N.H. 572, 576, 630 A.2d 776, 778 (1993), whose members seek “to avoid even the appearance of impropriety and, thus, strive[ ] to live by a higher standard of conduct than a layperson,” Wehringer’s Case, 130 N.H. 707, 719, 547 A.2d 252, 259 (1988) (quotations omitted).18

Moreover, lawyers are not interchangeable technicians who apply unbending principles to unassailable facts. Rather, lawyers hold a unique and important historic place in the preservation of law and justice in society.

Since the time of Edward I (King of England 1272-1307) and continuing for centuries to follow, the legal profession has occupied a unique role in society, in part, by virtue of the important responsibilities entrusted to it. Justice Frankfurter eloquently pronounced the legal profession’s responsibilities when writing that “[o]ne does not have to inhale the self-adulatory bombast of after-dinner speeches to affirm that all the interests of man that are comprised under the constitutional guarantees given to ‘life, liberty, and property’ are in the professional keeping of lawyers.” Schware v. Board of Bar Examiners, 353 U.S. 232, 247, 77 S. Ct. 752, 760, 1 L. Ed. 2d 796 (1957) (Frankfurter, J., concurring).

A lawyer’s responsibility is preeminently to stand “as a shield [ ] in defense of right and ward off wrong.” Id.19

12. Attorney Griev. Comm’n v. Rose, 391 Md. 101, 111, 892 A.2d 469, 475 (2006) (“conduct which tends to bring the legal profession into disrepute. ... is, ... prejudicial to the administration of justice”).
**What is Professionalism?** Within this context, then, the Pillars of Professionalism appropriately begin with their own definition.

Professionalism focuses on actions and attitudes. A professional lawyer behaves with civility, respect, fairness, learning and integrity toward clients, as an officer of the legal system, and as a public citizen with special responsibilities for the quality of justice.

The attitude, the intent, the life-plan to be professional exhibits itself in actions. By committing to a professional attitude, a professional lawyer commits himself to act with civility, respect, fairness, learning, and integrity. The Pillars remind us:

Kansas lawyers have a duty to perform their work professionally by behaving in a manner that reflects the best legal traditions, with civility, courtesy, and consideration.

The Pillars’ introductory paragraph then explains that each Pillar pertains to a lawyer’s relationship with five different constituencies — the lawyer’s relationship to Clients, to Courts, to Opposing Parties and Opposing Counsel, to the Legal Process, and to the Legal Profession and the Public. Each of these will be discussed in the remaining sections of this article.

**IV. The Lawyer’s Relation to Clients**

The Pillars begin where a lawyer’s duties should begin: with his relationship to his clients. Obviously, there is no “practice of law” without clients. Thus, preserving the relationship with clients should be a high priority for every lawyer.

1. **Respect your clients’ goals and counsel them about their duties and responsibilities as participants in the legal process. Treat clients with courtesy, respect, and consideration.**

   This resonates with the lawyer’s duty under the KRPC to “abide by a client’s decisions concerning the lawful objectives of representation.” As defined, the KRPC cites “informed consent” no less than 20 times.

   Additionally, all clients should be treated — and should expect to be treated — with courtesy, respect, and consideration.

As we stated in *Broderick’s Case*, 106 N.H. 562, 215 A.2d 705 (1965), the purpose of disciplinary action is to assure the public and the bar that “the practice of law is a profession which demands that its members adhere to fiduciary standards of conduct and that the failure to do so will result in expeditious disciplinary action.” *Id.* at 563, 215 A.2d at 705 (quoting *Broderick’s Case*, 104 N.H. 175, 179, 181 A.2d 647, 650 (1962)).

2. **Be candid with clients about the reasonable expectations of their matter’s results and costs.**

   Clients have a reasonable expectation that their lawyers communicate with them about the representation. Clients do not hand a matter over to a lawyer and thereby abandon it.

   (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

   This does not mean communicating for the sake of satisfying some esoteric rule; it means really communicating, so that clients can make meaningful decisions about their matters. Many times, the obligation is to provide even more detailed information and analysis. Under the KRPC, “informed consent” is defined as follows:

   “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.

   As defined, the KRPC cites “informed consent” no less than 20 times.

   Further, clients should not be oversold about the value of their case — for example, to encourage the client to engage the lawyer or to prolong a lucrative litigation — nor should they be undersold about the value of their case — e.g., to encourage a quick settlement.

3. **Encourage clients to act with civility by, for example, granting reasonable accommodations to opponents.**

   Maintaining a courteous relationship with opponents often helps achieve a more favorable outcome. Counsel clients against frivolous positions or delaying tactics, which are unprofessional even if they may not result in sanctions.

   Even when lawyers are getting along with each other, they should counsel their clients to get along with opposing parties as well. This may mean addressing, and dealing with, the stresses which come from a busy law practice.

   The practice of law is a profession which can be attended by significant stress, and a lawyer’s inability to manage such stress can harm the interests of a client.

   See, e.g., *State ex rel. Counsel for Dis. v. Thompson*, 264 Neb. 831, 652 N.W.2d 593 (2002) (lawyer’s failure to take necessary actions on behalf of clients related to untreated depression). Substance abuse is often a factor in attorney discipline cases. See *State ex rel. Counsel for Dis. v. Hughes*, 268 Neb. 668, 686 N.W.2d 588 (2004);

   20. Pillars of Professionalism (Pillars), preamble.
   21. *Id.*
   22. See Section IV, infra.
   23. See Section V, infra.
   24. See Section VI, infra.
   25. See Section VII, infra.
   26. See Section VIII, infra.
   27. Rule 1.2(a), KRPC.
   29. Rule 1.4(a), KRPC.
   30. Rule 1.0, KRPC, “Definitions.”

Thus, not only should lawyers agree to extensions of time where they are reasonable (see Section VI, infra), but they should encourage clients to make such concessions and explain the reason.

Further, no one benefits from frivolous claims or delaying tactics, which are also prohibited by the KRPC.

4. Counsel clients about the risks and benefits of alternatives before making significant decisions. Act promptly to resolve the matter once the relevant facts have been obtained and a course of action determined.

As noted in the Comment to Rule 1.4 of the KRPC:

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.  

Thus, the lawyer should obtain and provide sufficient information for a client to understand the various alternatives available to him.

The fact that counsel was in a “pro bono” matter is not an excuse for his failure to make a sufficient investigation of the facts and law to establish probable cause prior to filing any suit. The practice of law is a profession and the fact that an attorney accepts a case without the expectation of receiving a fee does not excuse his conduct.

Then, armed with the client’s decision, the lawyer needs to act promptly and diligently. The Comment to Rule 1.3 sharply observes:

Perhaps no professional shortcoming is more widely resented than procrastination. A client’s interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client’s legal position may be destroyed. Even when the client’s interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer’s trustworthiness.

Kansas lawyers in numerous cases have been disciplined for failing to represent clients diligently and with reasonable promptness.

Delay should not be indulged merely for the convenience of the advocates, or for the purpose of frustrating an opposing party’s right to obtain rightful redress or repose. It is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.

5. Communicate regularly with clients about developments. Keep them informed about developments, both positive and negative.

Clearly, a lawyer should counsel with his client about the facts, the legal issues, and other considerations affecting the matter entrusted to him.

The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so.

Clients need to be aware of the risks involved in various avenues for action, as well as alternatives available.

In sum, the lawyer’s primary duty is to clients, who should be treated with respect and civility, and who should receive the level and quality of communications which one expects from a professional.

V. The Lawyer’s Relation to Courts

Next, the Pillars of Professionalism address professionalism in a lawyer’s relationship to courts. Because the legal profession is regulated by the judicial branch, unlike any other profession, its members have a special relationship to the courts before which they practice.

“The practice of law is ... a profession the main purpose of which is to aid in the doing of justice. ...” In re Application of Griffiths, 162 Conn. 249, 254-55, 294 A.2d 281 (1972), rev’d and remanded, 413 U.S. 717, 93 S. Ct. 2851, 37 L. Ed. 2d 910 (1973), quoting Rosenthal v. State Bar Examining Committee, 116 Conn. 409, 414, 165 A. 211 (1933). An attorney “as an officer of the court in the administration of justice, is continually accountable to it for the manner in which he exercises the privilege which has been accorded him.” In re Peck, 88 Conn. 447, 450, 91 A. 274 (1914). This “unique position as officers and commissioners of the court ... casts attorneys in a special relationship with the judiciary and subjects them to its discipline.” (Citations omitted.) Heulin v. Connecticut Law Clinic of Trantolo & Trantolo, 190 Conn. 510, 524, 461 A.2d 938 (1983).

32. Rule 3.1, KRPC.
33. Rule 3.2, KRPC (“A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.”).
34. Rule 1.4(b), KRPC.
35. Prewitt v. Sexton, 777 S.W.2d 891, 899 (Ky. 1989).
36. See Rule 1.3, KRPC. See also Rule 3.2, KRPC.
37. Id., Comment.
40. Rule 1.4, KRPC, Official Comment.
Because of the unique relationship between lawyers and the courts which admit them to practice and before which they must practice, it is important for lawyers as professionals to treat those courts with respect.

To be sure, at the foundation of the rule of law is respect for the law, the courts and judges who administer it. And the attorneys who practice law and appear in the courts are officers of the court.42

As officers of the court, lawyers owe to the court an obligation of respect.

A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials.43

1. Treat judges and court personnel with courtesy, respect, and consideration.

The KRPC prohibits disrespect to a court. Rule 3.5(d), KRPC provides that, “A lawyer shall not: (d) engage in undignified or discourteous conduct degrading to a tribunal.”44 But dignified, courteous, and civil conduct toward the tribunal from which the lawyer’s client hopes for a good result is more than ethical or even professional, it is just common sense. Indeed, “Acts of common courtesy should be encouraged, not discouraged.”45

Civility is imperative in the courtroom: it is an essential element of the fair administration of justice. If we as a profession tolerate such an attitude among some of our practitioners, we cannot expect greater respect from the public. Lawyers, as officers of the court, should be problem-solvers, harmonizers, and peacemakers-the healers, not the promoters, of conflict. In the words of Abraham Lincoln: “As a peace-maker the lawyer has a superior opportunity of being a good man. There will still be business enough.”46 Here we see the necessity for civility.47

2. Act with candor, honesty, and fairness toward the court.

Rule 3.3, KPRC, prohibits false statements of fact or law to a court, failure to disclose controlling legal authority, and offering false evidence.48 Again, the violation of these provisions has resulted in lawyer discipline in a number of cases.49 And again, to couch the rule in positive terms, lawyers should be candid, honest and fair toward the courts before which they practice.

Law is a profession which demands trust. Lawyers must be able to rely on each other’s word. Courts must take what lawyers say at face value. Clients must be able to rely on the truthfulness of what their lawyers tell them. Otherwise, our system of justice cannot operate. Jarrett’s misconduct in lying to Ms. Smith has ramifications well beyond the injury to Ms. Smith’s belief in the legal profession. His misconduct further erodes public confidence in the members of the bar and our system of justice.50

3. Counsel clients to behave courteously, respectfully, and with consideration toward judges and court personnel.

Because lawyers cannot undertake actions through others that they cannot undertake themselves,51 lawyers should encourage clients to act with courtesy and respect.52

4. Accept all rulings, favorable or unfavorable, in a manner that demonstrates respect for the court, even if expressing respectful disagreement with a ruling is necessary to preserve a client’s rights.

Although one may express respectful disagreement with a court’s decision – in order to preserve and protect a client’s rights – that disagreement should be expressed with the respect which is due to a tribunal. Thus, it is unprofessional for a lawyer openly to express disrespect for a court, including its personnel.

But “[o]ur legal system, indeed the social compact of a civilized society, is predicated upon respect for, and adherence to, the rule of law” (People v. Chong (1999) 76 Cal. App. 4th 232, 243 [90 Cal. Rptr. 2d 198].) “[I]t is vital to the integrity of our adversary legal process that attorneys strive to maintain the highest standard of ethics, civility, and professionalism in the practice of law. In order to instill public confidence in the legal profession and our judicial system, an attorney must be an example of lawfulness, not lawlessness.” (Ibid.)54

In a Kansas ethics case, where the respondent lawyer “shouted profanities at the clerks” of a municipal court and “at the court security officers and the United States Deputy Marshals,” and the lawyer “was rude and disruptive” in two courts, the lawyer was disbarred.55

The practice of law is a profession. Lawyers, as officers of the Court, and Judges have a mutual obligation each to the other to be considerate of their respective professional positions.56
VI. The Lawyer’s Relation to Opposing Parties and Opposing Counsel

While even emotional and unrestrained lawyers hesitate to misbehave before a court, more lawyers appear willing to act in an unprofessional manner toward opposing counsel, perhaps being unwilling or unable to restrain themselves, or perhaps suffering from the misguided belief that it makes the lawyer appear strong.

1. Be courteous, respectful, and considerate. If the opposing counsel or party behaves unprofessionally, do not reciprocate.

The practice of law is an honorable profession, a high calling. Thus, it does and should require a high standard of conduct from its members, including standards of competence, civility, and public service. Disrespectful, discourteous, and impolite conduct should be discouraged, and should not be part of any honorable profession.


In the Kansas case from which this statement was taken, the respondent had sent a letter characterized as “vicious, offensive, and extremely unprofessional,” employing “a number of vile and unprintable epithets referring to opposing counsel.” The lawyer was suspended indefinitely.

Civility, above all, should be exemplified and encouraged by all thinking professionals. Justice Robert Benham, of the Georgia Supreme Court, took the opportunity to comment on the role and importance of civility in litigation in a criminal case in which a defendant claimed his trial counsel had been “ineffective because he showed respect for and friendship with opposing counsel.” Naturally, the court rejected that contention, and Chief Justice Benham – in concurring – took some effort to explain.

While serving as advocates for their clients, lawyers are not required to abandon notions of civility. Quite the contrary, civility, which incorporates respect, courtesy, politeness, graciousness, and basic good manners, is an essential part of effective advocacy. Professionalism’s main building block is civility and it sets the truly accomplished lawyer apart from the ordinary lawyer.

Civility is more than good manners. It is an essential ingredient in an effective adversarial legal system such as ours.

The absence of civility would produce a system of justice that would be out of control and impossible to manage: normal disputes would be unnecessarily laced with anger and discord; citizens would become disrespectful of the rights of others; corporations would become irresponsible in conducting their business; governments would become unresponsive to the needs of those they serve; and alternative dispute resolution would be virtually impossible.

It is important to remain civil even in the face of incivility. A professional should “take the high road” when treated uncivilly, and remain above the fray.

2. Respond to communications and inquiries as promptly as possible, both as a matter of courtesy and to resolve disputes expeditiously.

As discussed above, the prompt resolution of clients’ matters is a valuable goal of the professional practitioner. It is also consistent with the proper administration of justice. Thus, failure to respond to communications and inquiries is inimical to that proper administration of justice. In a Kansas disciplinary case, the respondent lawyer caused substantial delay in two federal cases by repeatedly failing to respond to motions, by repeatedly failing to comply with court orders, [and] by repeatedly failing to properly communicate with opposing counsel.

As a result of this, and other, conduct, the lawyer was disbarred.

3. Grant scheduling and other procedural courtesies that are reasonably requested whenever possible without prejudicing your client’s interests.

Making agreements for extensions of time or other concessions that would likely be granted anyway and/or where no real harm can result to the client’s matter, is common courtesy – and an element of the Golden Rule. One certainly cannot foresee and foretell when an agreement for an extension may be required from the opposing counsel.

When engaged in even the most contentious litigation, attorneys should be ever mindful that the practice of law is a profession and that attorneys are expected to extend professional courtesy to opposing counsel when health problems or other unforeseen events prevent attendance at scheduled proceedings. Moreover, parties are expected to contact the opposing party and attempt to resolve discovery disputes amicably prior to seeking sanctions from the court. See Rule 2-431. Once Glassman knew Post was in the hospital, he made no attempt to reschedule the deposition or otherwise informally resolve the matter. Such conduct does not reflect well on the practice of law, and most assuredly should not be rewarded by the grant of a default judgment.

58. Id. at 622.
59. Id. at 632.
61. Id. at 485 (Benham, C.J., concurring).
63. Id. at 23.
Short and non-repetitive extensions of time to accommodate counsel should be routine, again within the context of protecting the client’s substantive rights.

4. Strive to prevent animosity between opposing parties from infecting the relationship between counsel.

Clients often feel strongly in their animosity to opposing parties, particularly in litigation. But, as the spokesperson for his client, the lawyer need not take on the mask of that animosity. Indeed, the professional lawyer remains courteous and civil even when confronted with animosity.

A good attorney is detached from the emotions of the parties. They serve as an objective voice of reason; an independent source of wise counsel. A good attorney understands the conflict, but is never part of the hostilities. A good attorney is above the fray. He or she is careful to never inflame the passions of their client. A good attorney is a peacemaker who resolves disputes, not encourages them.65

This also does not mean the lawyer should act in a passive-aggressive manner, for example acting aloof from the dispute, while counseling or encouraging the client’s boorish behavior.

It is no defense that the individual participant’s conduct, when isolated from that of the group as a whole, would not violate the court’s order. The foregoing applies with equal weight to those who direct, control, plan and supervise activity in defiance of the court order. The true instigators may not be absorbed by maintaining the appearance of remaining above the fray. One who conspires to induce contemptuous conduct by others which does in fact occur, may be equally guilty with those who actually engage in that conduct.66

Lawyers should remain professional, and prevent client animosity from infecting attorney relations.

And do as adversaries do in law,
Strive mightily, but eat and drink as friends.67

5. Be willing and available to cooperate with opposing parties and counsel in order to attempt to settle disputes without the necessity of judicial involvement whenever possible.

“Dilatory practices bring the administration of justice into disrepute.”68 As professionals, lawyers should work to resolve their clients’ matters promptly, and try to work out disputes without having to file motions.69

VII. The Lawyer’s Relation to the Legal Process

1. Focus on the disputed issues to avoid the assertion of extraneous claims and defenses.

Lawyers should avoid the assertion of frivolous or extraneous claims or defenses, and should assert only those claims or defenses which are meritorious.70 Again, this is not only professional, it is ethical. For example, where a Kansas lawyer “in six federal court cases and two state court cases,” filed “frivolous lawsuits, disobey[ed] court orders, fail[ed] to comply with court orders, and fail[ed] to dismiss nonmeritorious cases,” the lawyer was placed on probation for two years.71

2. Frame discovery requests carefully to elicit only the information pertinent to the issues, and frame discovery responses carefully to provide that which is properly requested.

Where discovery seeks information beyond what is relevant, and ventures into the purely personal and private, such discovery “could encourage abusive inquiries designed to harass, embarrass, and discourage plaintiffs from pursuing their claims.”72 Again, the KRPC speaks to this issue, by prohibiting “a frivolous discovery request.”73

3. Work with your client, opposing counsel, nonparties, and the court to determine whether the need for requested information is proportional to the cost and difficulty of providing it.

It is no secret that the cost of discovery has escalated exponentially.74 Counsel should attempt to balance the perceived benefit to be derived from discovery requests against the relative cost of responding to those requests.75 This principle is consistent with the civil discovery rules. For example, the Federal Rules and the Kansas state court rules require the court to limit discovery if it finds that the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties’ resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.76

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68. Rule 3.2, KRPC, Official Comment [1].
69. This is consistent with the “Golden Rule” required in most courts as a prerequisite to filing motions to compel discovery. See, e.g., K.S.A. 60-237(a) and Rule 37(a)(1), Fed. R. Civ. Proc. 70. Rule 3.1, KRPC.
71. Rule 3.4(d), KRPC.
73. Rule 3.4(d), KRPC.
4. Maintain proficiency, not only in the subject matter of the representation, but also in the professional responsibility rules that govern lawyers.

It is only common sense that a true professional only practices in the subject areas where he is competent to practice and keeps up with changes in the law in those areas, as well as in the rules of professional conduct.

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

This requires continuing study and education.

5. Be prepared on substantive, procedural, and ethical issues involved in the representation.

Of course, legal knowledge is not enough: one must know the issues and be prepared to present the client’s matter or otherwise handle the representation appropriately. First, the issues have to be identified.

Perhaps the most fundamental legal skill consists of determining what kind of legal problems the situation may involve, a skill that necessarily transcends any particular specialized knowledge.

Then, the matter must be prepared: the lawyer must do the work necessary to accomplish the client’s ends and goals.

Competent handling of a matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more elaborate treatment than matters of lesser consequence.

VIII. The Lawyer’s Relation to the Profession and to the Public

1. Be mindful that, as members of a self-governing profession, lawyers have an obligation to act in a way that does not adversely affect the profession or the system of justice.

First, the bar is a self-regulating profession: one whose members take on the responsibility and obligation to report ethical violations by themselves and other members, and to assist in enforcing the ethical rules.

Self-regulation also helps maintain the legal profession’s independence from government dominion. 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.

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.

Second, recognizing the profession to be self-regulating and self-policing, lawyers should conduct themselves in a manner that does not reflect adversely upon their fitness to practice, nor bring disrepute to the profession as a whole.

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 professional affairs.

2. Be mindful that, as members of the legal profession, lawyers have an obligation to act in a way that does not adversely affect the profession or the system of justice.

Laws on accepted the high calling to practice this profession. It is up to those most familiar with the rule of law to uphold the rule of law. Further, the law plays no favorites. Justice is blind to color, creed, religion or gender.

While it is the lawyer’s duty, when necessary, to challenge the rectitude of official action, it is also a lawyer’s duty to uphold legal process.

Lawyers should also participate actively and willingly in pro bono legal service. Rule 6.1, KRPC, provides:

A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups and organizations, by service in activities for improving the law, the legal system or the legal profession.

77. Rule 1.1, KRPC.
78. Id., Official Comment [6].
79. Rule 1.1, KRPC, Official Comment [2].
80. Id., Official Comment [5].
81. Rule 8.3, KRPC and Rule 207(e), Rules of the Kansas Supreme Court.
82. Rule 207(a), Rules of the Kansas Supreme Court.
83. KRPC, Preamble: A Lawyer’s Responsibilities.
84. See Rule 8.4(g), KRPC (“It is professional misconduct for a lawyer to: … (g) engage in any other conduct that reflects adversely on the lawyer’s fitness to practice law.”).
85. KRCP, Preamble, ¶ [5].
86. Genery v. State, 625 N.E.2d 1268, 1276 (Ind. App. 1993) (“The State must steadfastly remember that justice is blind and equally available to all, without regard to race, color, or creed.”).
87. KRCP, Preamble, ¶ [5].
and by financial support for organizations that provide legal services to persons of limited means.\textsuperscript{88}

And the Comments to Rule 6.1 observe that, “Every lawyer, regardless of professional prominence or professional workload, should find time to participate in or otherwise support the provision of legal services to the disadvantaged.”\textsuperscript{89}

3. Participate in continuing legal education and legal publications to share best practices for dealing ethically and professionally with all participants in the judicial system.

As stated in the Preamble to the KRPC, lawyers should “work to strengthen legal education.”\textsuperscript{90} The quality of legal education programs and legal publications can only improve if more lawyers offer their time and knowledge to teach and write. Diversity of point of view, experience, and expertise in CLE programs and legal articles will help to expand the legal knowledge and ability of those who participate in those programs and read those articles.

4. Take opportunities to improve the legal system and profession.

Certainly, the practice of law is a profession which, in the public interest, must be jealously guarded.\textsuperscript{91}

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 services 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.\textsuperscript{92}

If lawyers do not take responsibility and take the lead in improving the rule of law, no one else will take that responsibility. Further, if the legal profession does not police itself properly, someone else will try to take on that task.

5. Be mindful of how technology could result in unanticipated consequences. A lawyer’s comments and actions can be broadcast to a large and potentially unanticipated audience.

Numerous are the stories of confidential emails which have been misdirected or inadvertently sent to the wrong address. This includes a reply to “all,” when a response was intended for one recipient; a message sent to a group, when delivery was intended to one member of that group; delivery to the wrong addressee, when address completion software inserted the recipient’s address when a different recipient was intended; or just sending an impolite or emotional email that would better have been deleted before delivery.

In one highly-publicized incident, a young lawyer inadvertently sent a sexually explicit email to 30 members of his firm, resulting in his suspension from employment.\textsuperscript{93} In another instance, a summer associate inadvertently sent an email to 40 lawyers in his group, bragging about doing no work.\textsuperscript{94} And in a third case, a press secretary inadvertently attached a confidential salary schedule to an emailed press release.\textsuperscript{95}

Care should be taken to try not to make mistakes of this nature.\textsuperscript{96}

6. In all your activities, act in a manner which, if publicized, would reflect well on the legal profession.

It is important for lawyers to set the example, not only for other lawyers, but so the public can recognize the practice of law for the profession – the high calling – that it is.

Those who hold themselves out as lawyers should realize that they help shape and mold public opinion as to the role of the law and their role as lawyers. The law sets standards for society and lawyers serve as problem solvers when conflicts arise. To fulfill their responsibility as problem-solvers, lawyers must exhibit a high degree of respect for each other, for the court system, and for the public. By doing so, lawyers help to enhance respect for and trust in our legal system. These notions of respect and trust are critical to the proper functioning of the legal process.\textsuperscript{97}

IX. Conclusion

As members of a profession, lawyers should aspire to the promise of Justice Oliver Wendell Holmes, speaking proudly of the legal profession, that, “Of all secular professions this has the highest standards.”\textsuperscript{98} Along with the KRPC, the Pillars of Professionalism provide a structure for professional attitudes – and action.

“Historically, the practice of law is a profession. It must remain a profession if the purposes of representation in litigation as part of the machinery of justice are to be achieved. A profession is a group of men pursuing a learned art as a common calling in the spirit of public service and professional responsibility.” (KRPC, Preamble, ¶[6].)
service-no less a public service because incidentally it may be a means of livelihood. The exigencies of the economic order require most persons to gain a livelihood and the gaining of a livelihood is a purpose to which they are constrained to devote their activities. But while in all walks of life men must bear this in mind, in business and trade it is the primary purpose. In a profession, on the other hand, it is an incidental purpose, pursuit of which is held down by traditions of a chief purpose to which the organized activities of those pursuing the calling are to be directed primarily and by which the individual activities of the practitioner are to be restrained and guided. 5 Pound, Jurisprudence 676-677 (1959). The legal profession exists primarily for the advancement of justice. “The best service of the professional man is often rendered for no equivalent or for a trifling equivalent and it is his pride to do what he does in a way worthy of his profession even if done with no expectation of reward. This spirit of public service in which the profession of law is and ought to be exercised is a prerequisite of sound administration of justice according to law,” Pound, The Lawyer From Antiquity to Modern Times 10 (1953).

The privilege of practicing law carries with it obligations and duties, not only to think professionally, but also to exemplify professionalism in every act and deed.

To be a member of the Bar and an officer of the court is a high calling which bestows unique opportunities on one so endowed. However, there is an obligation which corresponds to the privilege of being a member of the Bar and it is best expressed in a passage from the book of our most fundamental laws: “… For unto whomsoever is much given, of him shall be much required: and to whom men have committed much, of him they will ask the more.”

If lawyers commit to thinking professionally and acting professionally, the practice of law will be improved, thus improving the profession. With that improvement in the Bar and the practice of law, the perception of the Bar and its practitioners from those outside the Bar will naturally improve.

Built on the Law, foundation strong, The Pillars of Profession stand. The Law protects against the Wrong, And every storm it can withstand.

Lawyers answer Law’s high calling, Their oath and pledge do they renew. Strong support keeps Law from falling, These Pillars stand up straight and true.

About the Author

J. Nick Badgerow is the partner-in-charge of the Overland Park office of Spencer Fane Britt & Browne LLP. He is a trial lawyer specializing in the areas of construction, employment, and professional responsibility. Badgerow is a member of the Kansas State Board of Discipline for Attorneys, member of the Kansas Judicial Council, chair of the Judicial Council Civil Code Committee, co-chair of the Judicial Council Antitrust Committee, chair of the Kansas Ethics Advisory Committee, and chair of the Johnson County (Kansas) Ethics & Grievance Committee. He is also a member of the Kansas Commission on Professionalism, which wrote the Pillars of Professionalism. Badgerow is co-author and co-editor of the KBA Ethics Handbook, and a co-author of the KBA Employment Law Handbook.

APPENDIX

PILLARS OF PROFESSIONALISM

Professionalism focuses on actions and attitudes. A professional lawyer behaves with civility, respect, fairness, learning and integrity toward clients, as an officer of the legal system, and as a public citizen with special responsibilities for the quality of justice.

Admission to practice law in Kansas carries with it not only the ethical requirements found in the Kansas Rules of Professional Conduct, but also a duty of professionalism. Law students who aspire to be members of the Kansas bar should also heed these guidelines. Kansas lawyers have a duty to perform their work professionally by behaving in a manner that reflects the best legal traditions, with civility, courtesy, and consideration. Acting in such a manner helps lawyers preserve the public trust that lawyers guard and protect the role of justice in our society. Lawyers frequently interact with clients, courts, opposing counsel and parties, and the public at large. A lawyer’s actions also reflect on the entire legal profession. With those interactions in mind, the following Pillars of Professionalism have been prepared. These Pillars should guide lawyers in striving for professionalism.

(Con’t. on next page)
With respect to clients:
1. Respect your clients’ goals and counsel them about their duties and responsibilities as participants in the legal process. Treat clients with courtesy, respect, and consideration.
2. Be candid with clients about the reasonable expectations of their matter’s results and costs.
3. Encourage clients to act with civility by, for example, granting reasonable accommodations to opponents. Maintaining a courteous relationship with opponents often helps achieve a more favorable outcome. Counsel clients against frivolous positions or delaying tactics, which are unprofessional even if they may not result in sanctions.
4. Counsel clients about the risks and benefits of alternatives before making significant decisions. Act promptly to resolve the matter once the relevant facts have been obtained and a course of action determined.
5. Communicate regularly with clients about developments. Keep them informed about developments, both positive and negative.

With respect to courts:
1. Treat judges and court personnel with courtesy, respect, and consideration.
2. Act with candor, honesty, and fairness toward the court.
3. Counsel clients to behave courteously, respectfully, and with consideration toward judges and court personnel.
4. Accept all rulings, favorable or unfavorable, in a manner that demonstrates respect for the court, even if expressing respectful disagreement with a ruling is necessary to preserve a client’s rights.

With respect to opposing parties and counsel:
1. Be courteous, respectful, and considerate. If the opposing counsel or party behaves unprofessionally, do not reciprocate.
2. Respond to communications and inquiries as promptly as possible, both as a matter of courtesy and to resolve disputes expeditiously.
3. Grant scheduling and other procedural courtesies that are reasonably requested whenever possible without prejudicing your client’s interests.
4. Strive to prevent animosity between opposing parties from infecting the relationship between counsel.
5. Be willing and available to cooperate with opposing parties and counsel in order to attempt to settle disputes without the necessity of judicial involvement whenever possible.

With respect to the legal process:
1. Focus on the disputed issues to avoid the assertion of extraneous claims and defenses.
2. Frame discovery requests carefully to elicit only the information pertinent to the issues, and frame discovery responses carefully to provide that which is properly requested.
3. Work with your client, opposing counsel, nonparties, and the court to determine whether the need for requested information is proportional to the cost and difficulty of providing it.
4. Maintain proficiency, not only in the subject matter of the representation, but also in the professional responsibility rules that govern lawyers.
5. Be prepared on substantive, procedural, and ethical issues involved in the representation.

With respect to the profession and the public:
1. Be mindful that, as members of a self-governing profession, lawyers have an obligation to act in a way that does not adversely affect the profession or the system of justice.
2. Be mindful that, as members of the legal profession, lawyers have an obligation to the rule of law and to ensure that the benefits and the burdens of the law are applied equally to all persons.
3. Participate in continuing legal education and legal publications to share best practices for dealing ethically and professionally with all participants in the judicial system.
4. Take opportunities to improve the legal system and profession.
5. Give back to the community through pro bono, civic or charitable involvement, mentoring, or other public service.
6. Defend the profession and the judiciary against unfounded and unreasonable attacks and educate others so that such attacks are minimized or eliminated.
7. Be mindful of how technology could result in unanticipated consequences. A lawyer’s comments and actions can be broadcast to a large and potentially unanticipated audience.
8. In all your activities, act in a manner which, if publicized, would reflect well on the legal profession.