



Taking the High Road



**WSBA President
Steven G. Toole**

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In my 35-year career as a lawyer, I have rarely encountered an attorney who, in my opinion, has acted unprofessionally. Yes, some have come close and a few have crossed the line. Others have started out, how shall we say, a bit “sharp,” but after maintaining my politeness and consistently giving them the benefit of the doubt, they have come around. I have found that if treated unconditionally professionally by me, they ultimately, albeit at times reluctantly, take the same road. Now, I don't mean to suggest that we are all perfect, myself included. We all have our bad days when we lose our patience way too easily and we temporarily forget about civility when dealing with another attorney who just manages to push our buttons the wrong

way. But for me, these days are fortunately few and far between, both in myself and the other attorneys with whom I interact.

Some of you might argue that I am letting these attorneys take advantage of me and my clients. I would say that I am a cup half-full type of guy and I just see it differently. I take great pride in being able to bring out the best in people. As long as I am prepared, know my case very well, and am fully able and willing to take my case to trial, my being professional does not cost me or my clients anything — in fact, it pays off. By not getting caught up in what a judge might see as petty bickering over discovery, I am able to focus better on the truly important issues in my cases and not get sidetracked or upset over opposing counsel's antics. Generally in my experience, if you don't take the bait, your opponent gets frustrated and gives up on the sharp tactics. Now by acting professionally, I am not suggesting that you assume you can take everyone at their word and not confirm things in writing. I confirm everything in writing, if for no other reason than to remind me of some-

thing to which I agreed.

Although I have not personally experienced a pattern of unprofessional behavior among attorneys, based on anecdotes from a significant number of other attorneys, lack of professionalism is very much a growing problem in the legal profession. It apparently is so prevalent that we cannot ignore these numerous and repeated complaints. Indeed, this entire issue of the *Bar News* is devoted to professionalism.

So, what is the problem? Are some of us just born to be unprofessional? Did we learn this behavior in college? In law school? I'll bet there was no one who, during professional responsibility courses in law school, said, "This is all a bunch of rubbish and once I start practicing law I intend to do whatever it takes to come out on top and to take advantage of other attorneys along the way." After passing the bar and standing up at our swearing-in ceremony taking the attorney oath, none of us was thinking that this is all nonsense. We were incredibly excited about the career we were now finally about to undertake and had every intention of being professional in everything we did.

If we aren't born with a tendency to be unprofessional and we don't learn this behavior in school, where does it come from? Is it the result of bad mentors or lack of any mentorship? This certainly could be a factor, but there must be more than this. After all, where, when, and how did the "bad mentor" lose his or her sense of professionalism? It had to start somewhere. Can we put the blame on pressure placed on us by our clients, particularly those who would be considered sophisticated and are accustomed to telling the lawyer what to do as opposed to looking for counseling and advice from the lawyer? I do believe this can be a factor. But we need to ask ourselves why. We are the educated and trained professionals. We are the ones subject to the Rules of Professional Conduct. We are accountable for our own actions and reactions. Can we explain and justify unprofessional behavior by blaming the clients? In my opinion, to do so does not speak well for the attorney.

When I reflect on what can go wrong with attorneys and, for that matter, with life, it starts and ends with our fears — the more fear we have, the more stress we experience. Fear of failure leads to stress, fear of success leads to stress, fear of looking foolish leads to stress, fear of not satisfying our client leads to stress, fear of losing the client's business leads

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to stress, and so on. While stress can be a good thing if it gets our adrenaline going and we are thereby motivated to succeed or even excel, I think that more typically, stress brings out the worst in us. Financial stress, concern about losing clients, etc. can cause many of us to lose sight of the "high road." When we are struggling for survival or we perceive we are struggling for survival, we look for every advantage we can get. If that means playing on the edges of professionalism, then so be it. After all, it is not our job to look out for opposing counsel or his or her client. We have our client to best represent. Although I don't agree with this attitude, I can certainly see how some might resort to this when under stress or pressure to succeed. Self-survival is inherent in all of us.

So, what can we do about this? Is it enough to recognize and acknowledge why we might act unprofessionally, but do nothing about it? I would say absolutely, NO! *However, being aware of the problem is the beginning to finding the solution.* Focus on your own behavior. We all know what professional behavior is. *If you catch yourself being less than professional, if you catch yourself being short or sharp with opposing counsel or with your client or witnesses, acknowledge it. Take a step back and ask yourself what's going on. Remind yourself of the attorney oath and why you*

went to law school and wanted to become a lawyer. Remind yourself of how you were when you started practicing law and ask yourself what you are doing. Ask yourself what pressures or stresses you are feeling at that moment. And ask yourself if there is another way, a professional way, with which you can achieve the same result and still best represent your client.

If you are acting in response to what you perceive is unprofessional conduct of opposing counsel, ask yourself if taking the same approach is going to work for you and your client. What would happen if you turned the proverbial cheek? If opposing counsel is acting poorly in a deposition, instead of fighting fire with fire, make a record and show on that record the unprofessional behavior of opposing counsel. Don't take the attacks personally. For future depositions, consider having them videotaped so that your opposing counsel's antics will be visual and verbal records for the judge or jury to see if appropriate.

Keeping your cool and retaining a professional demeanor has multiple beneficial effects. By maintaining your professionalism, you can unnerve opposing counsel. In the long run, it will enhance your reputation. It might even improve your ability to interact with your opposing counsel. You will feel good about yourself. You will become a better attorney for learning how to effectively deal with the unprofessional opposing counsel. Developing these skills may take some time and effort, but it will be worth it in the long run.

But what if you just can't help yourself and you respond in kind? I would say, don't beat yourself up. Learn from the experience. Go to friends and colleagues, describe the fact pattern, and ask them how they would have handled the situation. Be better prepared the next time you encounter this type of behavior. Stay on the high road.

If every member of the WSBA would focus on being accountable for his or her own behavior, we would be well on our way to improving the professionalism of the Bar as a whole. Anecdotal stories about unprofessional attorneys will not go away, but there will be more and more people who will be able to report that in their practices they rarely run into unprofessional conduct by attorneys. This will be refreshing! ☺

WSBA President Steven G. Toole can be reached at steve-wsba@sgtoolelaw.com or 425-455-1570.