

Professionalism

by
Patricia Riddick, General Counsel
Louisiana Department of Insurance
priddick@ldi.state.la.us

For

East Baton Rouge Parish Attorneys CLE
April 18, 2008
Baton Rouge, LA

Professionalism

by
Patricia Riddick, General Counsel
Louisiana Department of Insurance
priddick@ldi.state.la.us

For

Baton Rouge Bar Association
CLE by the Hour 2007
11:30 AM-12:30 PM , December 31, 2007
Lod Cook Alumni Center, LSU Campus
3848 West Lakeshore Drive
Baton Rouge, LA

PROFESSIONALISM

Outline

	<u>Page</u>
I. <u>Introduction: What is the difference between professionalism and ethics?</u>	1
A. Modern lawyers as a professional	4
B. Ten frequently alleged rule violations	5
II. <u>Code of Professionalism and The Lawyer's Oath</u>	5. 6
III. <u>Code of Professional Conduct Rules involving Professionalism</u>	7
A. Rule 3.1. Meritorious Claims and Contentions	7
B. Rule 3.2. Expediting Litigation	7
C. Rule 3.3. Candor Toward the Tribunal	8
D. Rule 3.4. Fairness to Opposing Party & Counsel	10
E. Rule 3.5. Impartiality and Decorum of the Tribunal	11
F. Rule 6.1. Pro Bono Publico Service	14
G. Rule 6.2. Attorney Conduct	14
H. Rule 8.4. Professional Misconduct	15
IV. <u>Other Laws and Rules affecting Professionalism</u>	18
A. Louisiana Code of Civil Procedure	18
1. La. C.C.P. article 371. Duties of an attorney as an officer of the court	18
2. La. C.C.P. article 863. Signing of pleadings, effect	19
3. La. C.C.P. article 864. Attorney subject to disciplinary action	22
4. La. C.C.P. article 964. Motion to Strike	22
5. La. C.C.P. article 1443. Examination and cross-examination; record of examination; oath, objections	23
B. Uniform Rule 2-12.4, Courts of Appeal	23
C. Federal Rule 11. Signing of Pleadings, Motions, and Other Papers; Representations in Court; Sanctions	25
D. General Administrative Rules, Supreme Court of Louisiana Section 11, The Code of Professionalism in the Courts Current with amendments	25
1. Preamble	25
2. Judges' Duties to the Court	26
3. Lawyers' Duties to the Court	27
V. <u>Conclusion: Why act professionally?</u>	29
Appendix: Biography	30

PROFESSIONALISM

I. Introduction: What is the difference between ethics and professionalism

The following quotations are often cited in an attempt to define professionalism and to distinguish it from legal ethics.

"Ethics is that which is required and Professionalism is that which is expected"

Justice Brennan

"Professionalism is not comprised of a single trait or attribute, but is a combination of elements...ethics and integrity, competence combined with independence, meaningful continuing learning, civility, obligations to the justice system and pro bono service."

Frank Neuner

Endnote 1.

"Do unto others as you would have them do unto you."

The Golden Rule

Often thought to be one of the sources of The Golden Rule and early Christianity, the Code of Hammurabi also covers professionalism and ethics issues. It is the ancestor of our Civil Code, by way of the Spanish Siete Partidas and the German and French Civil Codes.

The Mesopotamian ruler, Hammurabi codified existing laws (circa 1780 B.C.) into what is considered the oldest written legal code in the world. He placed the code in the middle of Babylon where all could see it and never be able to use ignorance as a defense.

Hammurabi said he was selected by the gods "to bring about the rule of righteousness in the land, to destroy the wicked and the evildoers, so that the strong should not harm the weak . . . and enlighten the land, to further the well-being of mankind.

Codex Hammurabi, Law 196, provides a familiar proscription:

If a man put out the eye of another man, his eye shall be put out. [An eye for an eye]

The rest of the more modern prohibition is in Law 200 of the Codex:

If a man knock out the teeth of his equal, his teeth shall be knocked out. [A tooth for a tooth]

The laws also include early concepts of usufructs and tort liability, for example, in Rule 232: "If it ruin goods, he shall make compensation for all that has been ruined. . . ."

One example of a professionalism issue is found in Law 127:

If any one "point the finger" (slander) at a sister of a god or the wife of any one, and can not prove it, this man shall be taken before the judges and his brow shall be marked. (by cutting the skin, or perhaps hair.)

The Epilogue to the Codex explains the purposes of the 282 Laws: "that the strong might not injure the weak, in order to protect the widows and orphans, . . . In order to declare justice in the land, to settle all disputes, and hear all injuries, set up these my precious words, written upon my memorial stone, before the image of me, as king of righteousness." Translation by L.W. King, www.fordham.edu/halsall/ancient/hamcode.html.

A. The Modern Lawyer as a Professional

The distinction between ethics and professionalism is not always clear today, especially since some of the professionalism violations may also be punished as ethics violations. Most lawyers strive to be ethical and professional, but may make mistakes and occasionally fall short of both professional and ethical standards. Generally, ethics is what lawyers are required to do under the Code of Ethics. Professionalism is what wise lawyers choose to do. The good lawyer strives to be both. Adherence to the Rules of Professional Conduct and the Code of Professionalism will allow a lawyer to practice safely, successfully and honorably.

Professionalism concerns the knowledge and skill of the law faithfully employed in the service of client and public good, and entails what is more broadly expected of attorneys. It includes courses on the duties of attorneys to the judicial system, courts, public, clients, and other attorneys; attorney competency; and pro-bono obligations. Section 1, Rule 3(c) of the "Rules of Continuing Legal Education" as amended by the Louisiana Supreme Court on May 23, 1997.

These differences between Ethics and Professionalism appear in many professionalism talks. However, in real life, the differences may be less obvious, especially when some of the Rules of Professional Conduct appear to involve mandatory ethics provisions and what most call professionalism to which we should aspire. This paper will attempt to review some of those issues involving professionalism, inappropriate attorney behavior, and cases interpreting professionalism when it intersects with ethics violations or occurs by itself.

Then, there is the opposing view. From another perspective, since attorneys are taught to argue their cases in court, it shouldn't be surprising that they may disagree on the importance of the teaching of professionalism. Some say it is entirely unnecessary or even unteachable or unlearnable, especially after a certain age. A serious ethical dilemma exists when litigators are told to be nice, even though that may be contrary to the obligation of zealous advocacy. [For additional discussion of professionalism, see the papers cited in Endnote 1.]

B. Ten Frequently Alleged Rule Violations in Louisiana

Among the ten frequently alleged rule violations are the following, some of which, as you will see from the following examples and cases, may also involve professionalism violations.'

1. Lack of communication. (Rules 3.2, 3.3, 3.4)
2. Lack of diligence. (Rules 3.2, 3.4)
3. Misrepresentation/dishonesty. (Rules 6.2, 8.4)
4. Unearned fees.
5. Scope of representation/failure to recognize client authority.
6. Failure to promptly release a client file/client property.
7. Improper funds handling.
8. Ineffective assistance of counsel. (Rules 3.4, 3.5)
9. Conflict of interest. (Rules 3.4, 3.5)
10. Unreasonable/excessive fees.

II. Code of Professionalism

Following approval by the Louisiana State Bar Association House of Delegates and Board of Governors at the Midyear Meeting, and approval by the Supreme Court of Louisiana on Jan. 10, 1992, the Code of Professionalism was adopted for the membership. The Code originated out of the Professionalism and Quality of Life Committee. Some of these may involve professionalism violations of the Ethics Code.

My word is my bond. I will never intentionally mislead the court or other counsel.
(Rules 3.3, 3.4, 3.5)

I will not knowingly make statements of fact or law that are untrue. (Rule 3.3)

I will clearly identify for other counsel changes I have made in documents submitted to me. (Rule 3.3, 3.4)

I will conduct myself with dignity, civility, courtesy and a sense of fair play. (Rules 3.3, 3.4, 3.5)

I will not abuse or misuse the law, its procedures or the participants in the judicial process. (Rules 3.3, 3.4, 3.5)

I will consult with other counsel whenever scheduling procedures are required and will be cooperative in scheduling discovery, hearings, the testimony of witnesses and in the handling of the entire course of any legal matter. (Rules 3.2, 3.4)

I will not file or oppose pleadings, conduct discovery or utilize any course of conduct for the purpose of undue delay or harassment of any other counsel or party. (Rules 3.2, 3.4)

I will allow counsel fair opportunity to respond and will grant reasonable requests for extensions of time. (Rules 3.2, 3.4)

I will not engage in personal attacks on other counsel or the court. (Rule 3.1, 3.3, 3.4, 3.5)

I will support my profession's efforts to enforce its disciplinary rules and will not make unfounded allegations of unethical conduct about other counsel. (Rules 3.1, 3.3, 3.4)

I will not use the threat of sanctions as a litigation tactic. (Rules 3.1, 3.2, 3.3, 3.4)

I will cooperate with counsel and the court to reduce the cost of litigation and will readily stipulate to all matters not in dispute. (Rules 3.2, 3.4)

I will be punctual in my communication with clients, other counsel and the court, and in honoring scheduled appearances. (Rules 3.2, 3.3, 3.4, 3.5)

Signature, Louisiana State Bar Association Member
"Focus on Professionalism", 54 LABJ 456, April/May, 2007.

The Lawyer's Oath

The Code of Professionalism is different from the oath we all take when sworn in to practice law.

I solemnly swear (or affirm) I will support the Constitution of the United States and the Constitution of the State of Louisiana; (Rules 3.1, 3.3, 3.4, 3.5, 8.4)

I will maintain the respect due to courts of justice and judicial officers; (Rule 3.3, 3.5)

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land; (Rules 3.1, 3.3, 3.4, 3.5, 5.2, 8.4)

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by an artifice or false statement of fact or law; (Rules 3.1, 3.3, 3.4, 3.5, 6.2, 8.4)

I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with a client's business except from the client or with the client's knowledge and approval; (Rules 1.0, 1.1, 1.6, 3.1)

I will abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged; (Rules 3.1, 3.2, 3.3, 3.4, 3.5)

I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any person's cause for lucre or malice. (Rules 3.1, 3.2, 3.4, 3.5, 6.1)

So help me God.
54 LABJ 455

III. Louisiana Code of Professional Conduct Rules involving Professionalism violations

A. Rule 3.1. Meritorious Claims & Contentions

A lawyer shall not bring or defend a proceeding or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established

In re Stratton, 869 So.2d 794, 2003-3198 (La. 4/2/04).

An attorney who sued his secretary after she went to work for the attorney's former tenants following termination of an office-sharing arrangement acted with the intent to burden third persons, particularly the secretary, and violated rules regarding meritorious claims and contentions and respect for the rights of third persons. However, a three-year suspension, rather than disbarment, was warranted in light of the lack of a disciplinary record in more than 30 years of practice, cooperation in the disciplinary process, and the significant award of damages to the secretary in her malicious prosecution case. The attorney's claims were largely frivolous and designed to harass the secretary for quitting her job, and the attorney caused significant emotional distress when he engaged in nearly ten years of protracted litigation.

Criminal Defense Counsel criticized for representing terrorist defendants

Senior Pentagon official Charles D. Stimson, deputy assistant secretary for detainee affairs, suggested publicly that corporations should consider severing business ties with law firms that provided criminal defense lawyers for Guantanamo Bay detainees. He named over 12 law firms in an interview for Federal News Radio. He said, "I think, quite honestly, when corporate C.E.O.'s see that those firms are representing the very terrorists who hit their bottom line back in 2001, those C.E.O.'s are going to make those law firms choose between representing terrorists or representing reputable firms." Sarah Abruzzese, "Pentagon Aide Regrets Stance on Law Firms for Detainees," www.nytimes.com, January 18, 2007. In a Wall Street Journal article, an "anonymous Bush official who sounds an awful lot like Cully Stimson shows up on the op-ed page" quoted as saying "Corporate C.E.O.'s seeing this should ask firms to choose between lucrative retainers and representing terrorists." Suellentrop, *The Opinionator*, www.opinionator.blogs.nytimes.com, January 12, 2007. After the Pentagon disavowed his comments and a public furor criticized him, Stimson, a former Navy defense lawyer, recanted and said "I believe our justice system requires vigorous representation." He said he "zealously represented unpopular clients." Abruzzese, *id.*

B. Rule 3.2. Expediting Litigation

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

C. Rule 3.3. Candor Toward the Tribunal

- (a) A lawyer shall not knowingly:
- (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
 - (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
 - (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.
- (b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.
- (c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.
- (d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

False statement

In re Bilbe, 841 So.2d 729, 2002-1740 (La. 2/7/03), rehearing not considered, 842 So.2d 1090, 2002-1740 (La. 5/2/03)

Three year suspension from the practice of law was warranted where attorney informed judge that opposing counsel had no objection to a motion when attorney knew that opposing counsel objected to the motion. She advised judge that client's immigration visa petition had been approved when it had not. She failed to appear before the ODB after she was served with a subpoena and she contacted executives with corporation her client was suing multiple times after counsel for corporation requested that she contact him and not the executives.

Kops v. Lee, App. 4 Cir. 2004, 871 So.2d 1187, 2003- 1407 (La.App. 4 Cir. 3/31/04)

In re Pinkston, 852 So.2d 966, 2002-3251, 2002-3252 (La. 5/20/03), rehearing denied, certiorari denied, 124 S.Ct. 1413, 158 L.Ed.2d 81,323264

Permanent disbarment was warranted for attorney's conduct, including making false statements to court and concealing evidence from court which he should have revealed; by making false representations and concealing facts, attorney subverted judicial process to his own ends and engaged in conduct that was calculated to frustrate administration of justice.

In re Harris, 847 So.2d 1185, 2003- 0212 (La. 5/9/03), rehearing denied.

Permanent disbarment was warranted for attorney's conduct in manufacturing evidence and presenting perjured testimony in an attempt to avoid lawyer discipline in a prior

disciplinary proceeding, and his conduct in threatening former clients with civil litigation if either of them testified against him in that disciplinary proceeding.

In re Rogge, 876 So.2d 43, 2004-0291 (La. 6/18/04)

Transferring substantial personal assets with the intent to defeat the claims of creditors prior to filing for bankruptcy violated prohibition against making a false statement to a tribunal, involved elements of dishonesty, fraud, deceit, and misrepresentation, and was prejudicial to the administration of justice.

In re Bailey, 848 So.2d 530, 2003-0839 (La. 6/6/03).

Two-year suspension was warranted, where attorney filed a motion for continuance based on a knowing misrepresentation to the court that he had a scheduling conflict and attempted to introduce a medical report into evidence when he clearly knew that the report had been altered and the alteration pertained to an issue that was central to client's case.

Misrepresentation

In re Hany A. Zohdy, 04-B-2361 (La. 1/19/05), 892 So.2d 1277, 2004-2361 (La. 1/19/05)

This case involves many issues in an usual setting. Zohdy worked as a security guard at Ciba-Geigy before he had a dual role as a member of a class action chemical exposure suit and one of its attorneys. He was given a three-year suspension, with one year deferred for the following violations: incompetence to handle complex litigation, 1.1; obstruction, 3.1; inhibiting litigation, 3.2 and 3.5(c); misrepresentation, 3.3, 3.4(c and e); and violation of rules and court orders, 8.4. He misinformed the Court and other parties, hindered completion of the lawsuits, and filed numerous frivolous suits despite final judgments and court orders. Zohdy's misrepresentations were egregious.

One of the settlements applied only to plaintiffs who suffered bladder cancer or other urinary system afflictions. However, Zohdy, despite medical evidence to the contrary, attested under penalty of perjury that one of his clients and a member of the plaintiff class, died of bladder cancer. He actually died of stomach cancer, which was not a compensable injury.

Also, although Zohdy alleged some of his plaintiffs were directly exposed to chlordimeform on their jobs, they were actually family members of those who did.

Although a stipulation required him to dismiss "any and all claims", he misled the court by saying only some of the claims were to be dismissed, in order to continue milking the litigation for his own personal benefit.

Sanction hearings were held, with conclusions of "overwhelming bad faith conduct" and "outrageous" conduct. Judge Parker, MD LA, considered Zohdy's objections and appeal to be yet another blatant and frivolous attempt to circumvent the decisions by the court and avoid paying costs to which class representatives are clearly entitled. ***In re Hany A. Zohdy***, 04-B-2361 (La. 1/19/05) and Kyle J. Wilson, "In re Zohdy: The Importance of Mitigation in Avoiding Louisiana Bar Discipline," 80 Tul. L. Rev. 2031 (June 2006)(citations omitted).

D. Rule 3.4. Fairness to Opposing Party & Counsel

A lawyer shall not:

- (a) **unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value.** A lawyer shall not counsel or assist another person to do any such act;
- (b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
- (c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists;
- (d) in pretrial procedure, **make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;**
- (e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or
- (f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:
 - (1) the person is a relative or an employee or other agent of a client, and
 - (2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

In re Harris, 847 So.2d 1185, 2003- 0212 (La. 5/9/03), rehearing denied.

Permanent disbarment was warranted for attorney's conduct in manufacturing evidence and presenting perjured testimony in an attempt to avoid lawyer discipline in a prior disciplinary proceeding, and his conduct in threatening former clients with civil litigation if either of them testified against him in that disciplinary proceeding.

Examples of unprofessional behavior:

The **Rambo** factor:

- refuses to return phone calls
- refuses to grant routine extensions of deadlines
- refuses to even shake hands in court
- engages in vulgarity and name calling, shouting, temper tantrums or even the occasional fisticuffs during depositions

Carroll v. Jacques Admiralty Law Firm, P.C. 110 F.3d 290, C.A. 5 (Tex.), 1997; 926 F.Supp. 282 (E.D. Tx. 1996)

The U.S. 5th Circuit Court of Appeals held that the U.S. Dist. Ct. had the inherent power to impose sanctions; that imposition of sanctions did not raise due process issues or violate the attorney's First Amendment rights; that the attorney's use of threats and profanity at his deposition was in bad faith, thus constituted egregious and totally repugnant conduct on his part, so as to warrant sanctions; and \$7,000 was the least severe sanction available.:

District Court Judge Schell calculated the \$7,000 award to opposing counsel as follows:

1. \$400 for each of four times Jacques called plaintiff's counsel as an "idiot" or an "ass";
2. \$1000 for suggesting during deposition that plaintiff's counsel "ought to be punched in the g-damn nose";
3. \$1,000 for each of three times he called plaintiff's counsel a "slimy son-of-a-bitch"; and
4. \$1000 for his parting words to plaintiff's counsel (f***-you, you son-of-a-bitch).

Id., 110 F.3d at FN3.

Paramount Communications, Inc. v. QVC Network, Inc., 637 A.2d 34 (Del. 1994).

One of best discussions in a reported case on the general principles of professionalism and the need for civility. Delaware Supreme Court Judge Veasey noted in an Addendum to the decision regarding a serious issue of professionalism involving deposition practice in proceedings in Delaware trial courts. The issue was raised *sua sponte* as part of the Court's exclusive supervisory responsibility to regulate and enforce appropriate conduct of all lawyers appearing in Delaware proceedings, not just members of the Delaware bar and those admitted *pro hoc vice*. 837 A.2d at 53.

The Addendum quotes extensively from one of the depositions in which egregious attorney behavior was noted: A brief excerpt follows:

Q. (by Mr. Johnston [Delaware counsel for QVC]). Okay. Do you have any idea why Mr. Oresman was calling that material to your attention?

Mr. Jamail:[the offending attorney]: Don't answer that. How would he know what was going on in Mr. Oresman's mind" Don't answer it. Go on to your next question.

Mr. Johnston: No, Joe----

Mr. Jamail: He's not going to answer that. Certify it. I'm going to shut it down if you don't go to your next question.

Mr. Johnston: No. Joe, Joe---

Mr. Jamail: Don't "Joe" me, asshole. You can ask some questions, but get off of that. I'm tired of you. You could gag a maggot off a meat wagon. Now, we've helped you every way we can.

The Court welcomed a voluntary appearance by Mr. Jamail to explain the questioned conduct and to show cause why such conduct should not be considered as a bar to any future appearance by Mr. Jamail to a Delaware proceeding. The Court promised to undertake to strengthen the existing mechanisms for dealing with this type of conduct.

E. Rule 3.5. Impartiality and Decorum of the Tribunal

A lawyer shall not:

- (a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;

- (b) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order;
- (c) communicate with a juror or prospective juror after discharge of the jury if:
 - (1) the communication is prohibited by law or court order;
 - (2) the juror has made known to the lawyer a desire not to communicate; or
 - (3) the communication involves misrepresentation, coercion, duress or harassment;
- or
- (d) engage in conduct intended to disrupt a tribunal.

In re Thomas, --- So.2d ----, 2004 WL 345718, 2003-2738 (La. 2/25/04), La., February 25, 2004 (NO. 2003-B-2738)

Joseph W. Thomas used insulting, abusive language toward the trial judge, verbally and physically threatened another attorney (pinning him against the wall) near the judge's chambers, and was utterly unprepared, which violated several rules of professional conduct, including rules prohibiting conduct intended to disrupt tribunal and prohibiting conduct prejudicial to the administration of justice. In addition to failure to take any action in multiple clients' legal matters, when he showed up late in one case, he had never met with his clients prior to trial, had no witness list, and even objected to his own medical documents submitted during his associate's discovery on the basis of hearsay. During the trial, Thomas demonstrated a complete lack of familiarity with the procedural rules of the administrative proceeding, accusing the Judge of asking hostile questions to his client, of being biased, of trying to torpedo his testimony and referred to the proceedings as a joke.

Thomas also failed to pay \$133,935 in court-ordered child support and used his client trust account to pay his personal child support obligation. After being notified of the judgment of noncompliance, the Supreme Court declared respondent immediately ineligible to practice law in the State of Louisiana, due to his failure to pay court-ordered child support, then directed the ODC to institute appropriate disciplinary proceedings. **In re: Thomas**, 01-1142 (La. 5/2/01), 798 So.2d 920'. Thomas entered into a consent agreement, in which he agreed to make an immediate payment of \$100,000 for his past due child support obligation, and to pay a remaining \$48,000 by August 31, 2001. After the \$100,000 payment, the Court reinstated his eligibility to practice law. **In re: Thomas**, 01-1142 (La. 6/28/01), 798 So.2d 921. When he neglected to satisfy the balance, he was returned to ineligibility status. **In re: Thomas**, 01-1142 (La. 10/11/01), 803 So.2d 962. Once the debt was completely satisfied, he was returned to eligibility. **In re: Thomas**, 01-1142 (La. 11/9/01), 803 So.2d 962.

The Supreme Court held that a three-year suspension from the practice of law was appropriate sanction given the numerous instances of attorney misconduct and violation of Rules 1.1 (incompetence), 1.3 (lack of diligence), 1.15 (safekeeping client property), 3.1 (failure to pursue meritorious claims), 3.3 (candor toward the tribunal), 3.4(c) (fairness to opposing party and counsel; knowing disobedience of the rules of a tribunal), 3.5(c) (engage in conduct intended to disrupt tribunal), 8.2(a) (comments regarding judicial official), 8.4(a) (violating the Rules of Professional Conduct), 8.4(b) (criminal acts adversely reflecting on the lawyer's honesty), 8.4(c) (conduct involving fraud, deceit, dishonesty or misrepresentation), 8.4(d) (conduct prejudicial to the administration of justice) and 8.4(e) (imply ability to influence judicial officer) of the Rules of Professional Conduct. **In re Thomas**, at FN3. Subsequently, the ODC amended the formal charges

to allege additional violations of Rules 3.4(c) and 8.4(b) based on the declaration of ineligibility to practice law stemming from respondent's failure to satisfy his past child support obligations.

As aggravating factors, the ODC board recognized prior discipline, pattern of misconduct, multiple offenses, refusal to acknowledge the wrongful nature of his conduct and substantial experience in the practice of law. In mitigation, the board noted the imposition of other penalties in light of the contempt ruling in Judge Belsome's court, the contempt proceedings instituted by Judge Kerr, and the declaration of ineligibility which made respondent ineligible to engage in the practice of law. Also, Thomas showed no remorse or admission of guilt.

in re Adair D. Jones, 747 So.2d 1081, 1999-1036 (La. 10/19/99)

After several Supreme Court disciplinary actions (see *In re Jones*, 708 So.2d 413, 1998-0207 (La. 3/27/98), 708 So.2d 413 (Mem), involving failure to comply with mandatory CLE requirements and to pay his bar dues, Jones became ineligible to practice law. However, he continued to practice and Judge McDonald noted that Jones' name was on the list of ineligible attorneys. The judge advised him to bring proof of his eligibility to practice before he could practice in his court. When he appeared at a status conference without such proof, a referral was made to the ODC and disciplinary action ensued. Jones objected to the hearing committee's report, using extremely disrespectful language, printed in full in FN3:

FN3. In his objection, respondent stated:

Adair D. Jones does not make it a practice to admit to wrong when he honestly believes he has not done anything wrong. That means that the bar association can conduct as many kangaroo hearings, impose as many fraudulent charges and penalties as it has the power to impose, respondent will not admit to wrongdoing or humble himself to you. In order for you to understand the strength of respondent's conviction, Adair D. Jones vehemently states that "I don't care if you are the bar association, supreme court (state or federal), any other court, God, Jesus Christ, father, mother, church, religion, devil, angel, lost soul, found soul, child, parent, homeless, sick, psycho, 'I did not do anything wrong.'"

The bar association has continued to refer to respondent's "attitude" to justify disbarment. Yet, the bar association has displayed an "attitude" in prosecuting these fraudulent claims against respondent. . . . The bar association brought these fraudulent charges against respondent specifically to cause respondent financial and emotional hardship. It is ridiculous and even sick for the bar association to think respondent should only respond with glee to the bar association's fraudulent actions and sick intentions.

For the record, regarding the committee report, "shove it up your ass." For the record, regarding the costs statement, "Shove it up your ass." For the record, if I forgot something, "Shove it up your ass."

To no one's surprise, Jones was disbarred.

In re Collins, 2006-2356 (La. 11/3/06), 941 So.2d 19

Donita Brooks Collins made an obscene gesture to the judge in response to an adverse ruling. She admitted she intended to disrupt the court and that her action was prejudicial to justice. She requested and received consent discipline of a public reprimand.

In re J. Clemille Simon, 2004-2947 (La. 6/29/05), 913 So.2d 816

Mr. Simon made knowing false statements about the qualification and integrity of judges. He argued that use of a hypothetical example of an imaginary conversation in the courtroom was permissible. However, the Supreme Court noted that real names and derogatory comments about judges were knowingly false and that the hypothet was an artifice to express his feelings. He was suspended for six months, with all but 30 days suspended.

F. Rule 6.1. Pro Bono Publico Service

A lawyer should render public interest legal service.

G. Rule 6.2. Attorney Conduct

- (a) Any attorney who tenders himself or herself before the court and represents that he or she is duly authorized to practice law, but who has been declared ineligible, suspended, or disbarred from practice before the courts of this State, shall be subject to contempt proceedings.
- (b) No one may represent a party in any proceeding except counsel of record, unless allowed to do so by law.
- (c) When an attorney is interested in two or more matters fixed for hearing in different sections or divisions of court on the same day, that attorney must notify the minute clerk of the section or sections from which he or she expects to be temporarily absent as to his or her presence in another court.
- (d) As a general rule, attorneys desiring to address the court while it is in session shall do so while standing. Unless directed otherwise by the judge, all judgments, orders, decrees, or other documents shall be handed to the clerk, who shall hand them to the judge.
- (e) Private conversation or conference between attorneys or others in attendance during any court session should not be disruptive to the proceedings.
- (f) Attorneys shall address all remarks, objections, and comments to the judge, never to opposing counsel. Impromptu argument or discussion between counsel will not be permitted.
- (g) Except with leave of court obtained, only one attorney for each party shall examine any one witness.
- (h) Counsel may not approach the witness in the witness chair without first obtaining the court's permission.
- (i) Before showing an exhibit to a witness, counsel must first either show opposing counsel the exhibit or provide opposing counsel a copy of the exhibit.
- (j) Counsel and parties to any litigation shall not send the court copies of correspondence between them.
- (k) Attorneys should abide by the Rules of Professional Conduct and the Louisiana Code of Professionalism,

H. Rule 8.4. Professional Conduct

It is professional misconduct for a lawyer to:

- (a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) Commit a criminal act especially one that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) Engage in conduct that is prejudicial to the administration of justice;
- (e) State or imply an ability to influence improperly a judge, judicial officer, governmental agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;
- (f) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable Rules of Judicial Conduct or other law; or
- (g) Threaten to present criminal or disciplinary charges solely to obtain an advantage in a civil matter.

In re Jerry K. Schwehm, 2003-2444 (La. 11/21/03), 860 So.2d 1108 at 1112-1113.

A Legislative Auditor audit of the office of a Justice of Peace for the St. Tammany Parish Eighth Ward found Schwehm had assessed and collected \$6,025 in litter fines, but not remitted the money to the St. Tammany Parish Police Jury. He was also found to have charged fees of at least \$4,060 for the filing of peace bonds in violation of state law. The grand jury charged him with malfeasance in office, unauthorized use of movables and theft of money over \$500.

Since he was convicted, the only issue before the Court was the appropriate discipline. Since malfeasance involves an intentional act, he was disbarred. In *In re: Bankston*, 01-2780 (La. 3/8/02), 810 So.2d 1113, the Supreme Court held that "an attorney occupying a position of public trust is held to even a higher standard of conduct than an ordinary attorney." See also, *In re: Naccari*, 96-2643 (La. 5/20/97), 705 So.2d 734; *In re: Huckaby*, 96-2643 (La. 5/20/97), 694 So.2d 906. *In re Jerry K. Schwehm*, 2003-2444 (La. 11/21/03), 860 So.2d 1108 at 1112-1113.

Williams v. Department of Utilities, 2003-1473 (La.App. 4 Cir 1/28/04), 867 So.2d 26
This case does not involve an attorney, nor is a Code of Professional Ethics case, but is included for the interesting observations of the City Civil Service Commission and the Louisiana Fourth Circuit Court of Appeal about working in a corrupt environment. Ms. Williams was a permanent civil service employee in the taxicab permit department as a counter clerk. She was arrested, along with a number of other employees (including her two supervisors who profited from the scheme) and numerous taxicab drivers for the criminal offense of public bribery. At the hearing regarding her emergency suspension for 120 days, there was testimony that she gave a permit to an unqualified person. The testimony also included the fact that there was no evidence that she had bribed anyone or received any bribe money. She was ordered to issue such permits without testing, background checks, or drug screens. 867 So.2d at 28-29. The Court upheld her termination for malfeasance for processing 11 taxicab permits applications of ineligible persons. The Court agreed with the Civil Service Commission, which stated: "**The appellant must accept responsibility for her actions. At the very least, she should have refused to participate in activities that she knew to be wrong. All civil service employees should know that civil service rules protect them from retaliation for reporting or refusing to participate in prohibited activities. They are**

not required to comply with directions that they know to be wrong.” 867 So.2d at 29. The Court said the Civil Service Commission was reviewing civil service policy, not punishing her for failure to act as a whistleblower. 867 So.2d at 31.

Examples of unprofessional conduct:

1. Lies about:
availability for deposition/trial?
amount of settlement authority?
discovery responses will be tendered shortly?

2. 8.4(d)'s acts "prejudicial to the administration of justice"?
extremely nebulous concept subject to subjective interpretation;
encompasses any and all acts that contribute to a negative public perception of
lawyers as officers of the court

battery with private citizen?
failure to file income tax?
failure to take ethics and professionalism CLE's

In re Archie L. Jefferson, 878 So.2d 503, 2004-0239 (La. 6/18/04)

Jefferson **failed to reply to charges of engaging in the unauthorized practice of law**, 5.5(a); commission of a criminal act reflecting adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer, 8.4(c) violation of the Rules of Professional Conduct, 8.4(a); **engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, 8.4(c); and engaging in conduct prejudicial to the administration of justice, 8.4(d)**, so they were deemed admitted. Prior to disbarment, Jefferson faced interim suspension from the practice of law in 1990, ***In re Jefferson***, 613 So.2d 959 (La. 1993), but never applied for reinstatement. Despite disbarment, ***In re Jefferson***, 01-1296 (La. 6/15/01), 789 So.2d 569, he continued to practice law. Finding only aggravating factors of prior disciplinary offenses, a pattern of misconduct, obstruction of the disciplinary process and refusal to acknowledge the wrongful nature of the conduct, with no mitigating factors, Jefferson was permanently disbarred.

In re Nina S. Broyles, 901 So.2d 1039, 2005-1098 (La. 5/17/05), La., May 17, 2005 (NO. 2005-OB-1098)

Broyles pleaded guilty to one count of conspiracy to make **false statements** stemming from her participation in an illegal immigration scheme and sought to permanently resign from the practice of law in lieu of discipline.

In re James Gaudet, 2005-1082 (La. 2/22/096), 922 So.2d 477.

In claiming to be a "judge" or "soon to be a judge" when he was only a judicial candidate and making lewd and inappropriate comments to the hotel staff at a Mississippi bar conference, Gaudet was found to have violated 8.2(b), judicial candidates must comply with the Code of Judicial Conduct; 8.4(a), the Rules of Professional Conduct and 8.4(c), engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, in addition

to violations of the Judicial Code of Conduct. His clients were damaged when he failed to act with reasonable diligence and committed a large number of additional Rules: 1.2(a), 1.5(b), 1.15(b), 1.16(d), 3.3 (a and b), 8.4(a and c). He was sanctioned by a six-month suspension with three months deferred.

In re Curtis J. Coney, Jr., 891 So.2d 658, 2004-2603 (La. 1/7/05)

Evidence showed that Coney used runners to solicit personal injury clients for his law practice. To conceal his cash payments to the runners, he purposely instructed his check cashing activity (made payable to cash) so as not to trigger federal currency transaction reporting requirements ("smurfing"). Then, when there was a federal investigation into his activities, Coney went to great lengths to convince his legal assistant to give perjured testimony to the grand jury. He told her to say "all I am is a secretary" and to say "I don't know what you're talking about paying [for] cases or anything else.". He explained to her that if she told the truth, "I'm gone. I'm dead. I'm going to jail." Prophetic, but his license was also permanently revoked.

In re Joshua Frank, 876 So.2d 57, 2004-0238 (La. 6/25/04).

Attorney's persistent and serious professional misconduct, which included failure to communicate with clients, abandonment of clients, and failure to account for or refund unearned fees, warranted disbarment. Although Joshua Frank Jr. made partial restitution, multiple offenses and previous disciplinary proceedings were involved, causing actual harm to clients, third parties, and the legal system. Rules 1.1(a), 1.3, 1.4, 1.5(a, b), 1.15(a, b), 1.16, 3.2, 3.4(c), 8.1(c), 8.4(a, c, d, g) were violated. Frank failed to file the appropriate judgment or pay court costs in an insurance case settlement; paid a client's creditor with a delayed, then an NSF check; failed to file a status report after multiple requests and judicial orders and was cited for contempt by the federal magistrate; failed to pay creditors in multiple personal injury cases; failed to offer an accounting for the work he performed when he elected not to enroll as counsel the day of a criminal trial nor did he return the file.

Additionally, after he failed to convey a plea offer in a criminal trial to his client or to discuss the offer with the AUSA because he characterized the offer as insulting and ridiculous, the Judge terminated him as counsel, appointed a federal public defender, recommended suspension from practice in the U.S. District Court, Western District, and filed a complaint with the ODC. ***In re Frank***, 875 So.2d at 62 and N7.

Although the attorney offered his cocaine addiction and efforts at rehabilitation in mitigation, the committee instead found this to be an aggravating factor and also commented that Frank was not persuasive that he accepted complete responsibility for his misconduct.

The Supreme Court found that the evidence overwhelmingly supported the conclusion that Frank's knowingly and intentionally failed to communicate with his clients, neglected his clients' legal matters, abandoned his clients, failed to respond to his clients' requests for information, failed to expedite his clients' litigation, failed to account for or refund unearned fees, failed to return his clients' files, failed to withhold sums from clients' settlements and/or remit payment to third parties, made misrepresentations during settlement negotiations, and failed to cooperate with the ODC.

Frank's actions caused actual harm to his clients, third parties and the legal system. In addition to disregarding his responsibilities to his clients and third parties, he has repeatedly ignored orders of courts. Numerous aggravating factors are present, including prior disciplinary offenses, a pattern of misconduct, multiple offenses, bad faith obstruction of the disciplinary process by failing to comply with the disciplinary rules, vulnerability of the victims, and substantial experience in the practice of law. The sole mitigating factor is that respondent made partial restitution by making some payments to the chiropractic clinics he owed.

The Court found that Frank's actions taken as a whole demonstrate he has little regard for the welfare of his client or his responsibilities as a member of the bar. The sheer volume of misconduct presented in this case reveals that respondent lacks the fitness necessary to practice law in Louisiana

In re Mack I. Frank, 2006-0727 (La. 10/17/06), 943 So.2d 1059 at 1066.

Attorney Mack Frank's conduct resulted in violations of Rules 1.1(d), 1.3, 1.4, 1.5(f)(6), 3.1, 3.3(a)(1), 5.5(a), and 8.4 (a), (c), (d) and (g). These violations included ineffective assistance of counsel due to failure to keep his client informed, failure to diligently pursue the client's case, failure to ensure witnesses were available to testify at trial, and failure to promptly return an unearned fee after advising he would not represent a client; charging an unreasonable fee. He agreed to a contingency fee, then requested an additional \$3,250 fee. He failed to communicate the dismissal of the case, failed to follow through on appeal, and failed to convene a medical review panel. He also failed to pay a medical provider, failed to maintain a client trust account for settlement funds and failed to cooperate with the ODC. In preparing an affidavit of death and heirship for a succession, he knowingly and falsely attested that the decedent had been married only once and omitted decedent's second and surviving spouse. Therefore he made a false statement to a tribunal and engaged in dishonest, fraudulent conduct. Frank was permanently disbarred based on the egregious nature of his charges, plus aggravating circumstances, including prior disciplinary offenses, a dishonest or selfish motive, a pattern of misconduct, multiple offenses, refusal to acknowledge the wrongful nature of the conduct, vulnerability of the victims, substantial experience in his law practice and indifference to making restitution. Almost no mitigating factors were established, except for some restitution attempts. His previous disbarment was in 1985, therefore remote in time.

IV. Other Laws and Rules affecting Professionalism

A. Louisiana Code of Civil Procedure

1. La. C.C.P. 371 Duties of an Attorney as an officer of the court

An attorney at law is an officer of the court. He shall conduct himself at all times with dignity and decorum, and in a manner consistent with the dignity and authority of the court and the role which he himself should play in the administration of justice.

He shall treat the court, its officers, jurors, witnesses, opposing party, and opposing counsel with due respect; shall not interrupt opposing counsel, or otherwise interfere with or impede the orderly dispatch of judicial business by the court; shall not knowingly

encourage or produce false evidence; and shall not knowingly make any misrepresentation, or otherwise impose upon or deceive the court.

For a violation of any of the provisions of this article, the attorney at law subjects himself to punishment for contempt of court, and such further disciplinary action as is otherwise provided by law.

2. La. C.C.P. 863 Signing of pleadings, effect.

- A. Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name. . . .
- B. Pleadings need not be verified or accompanied by affidavit or certificate, except as provided by law, but the signature of an attorney or party shall constitute a certification by him that he has read the pleading; that to the best of his knowledge, information or belief formed after reasonable inquiry it is well grounded in fact; that it is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. (emphasis added)
- C. If, upon motion of any party or upon its own motion, the court determines that a certification has been made in violation of the provisions of this Article, the court shall impose upon the person who made the certification or the represented party, or both, an appropriate sanction which may include an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, including a reasonable attorney's fee.
- D. A sanction authorized in Paragraph D shall be imposed only after a hearing at which any party or his counsel may present any evidence or argument relevant to the issue of imposition of the sanction.

Borne v. New Orleans Health Care, 616 So.2d 236 (La.App. 4th Cir. 1993):

"Article 863 requires the signing, certifying attorney or litigant to make an objectively reasonable inquiry prior to signing the pleading. ***Diesel Driving Academy, Inc. v. Ferrier***, 563 So.2d 898 (La.App. 2d Cir.1990); ***Loyola v. A Touch of Class, Transp. Service, Inc.***, 580 So.2d 506 (La.App. 4th Cir.1991); ***Romero v. Chris Crusta Flying Service, Inc.***, 587 So.2d 803 (La.App. 3d Cir.1991). Subjective good faith does not satisfy article 863's duty of reasonable inquiry. ***Fairchild v. Fairchild***, 580 So.2d 513 (La.App. 4th Cir. 1991); ***Loyola v. A Touch of Class Transp. Service, Inc.***, *supra*; ***Diesel Driving Academy, Inc. v. Ferrier***, *supra*. The rule applies to the signing of pleadings, motions and other papers and imposes upon attorneys and litigants affirmative duties as of the date the document is signed. ***Fairchild v. Fairchild***, *supra*; ***Loyola v. A Touch of Class Transp. Service, Inc.***, *supra*; ***Murphy v. Boeing Petroleum Services, Inc.*** 600 So.2d 823 (La.App. 3d Cir.1992). The affirmative duties are personal and non-delegable. ***Diesel Driving Academy, Inc., v. Ferrier***, *supra*. The signing attorney must satisfy himself, by application of his own judgment, that the pleading is factually and legally responsible. Id. Article 863 is intended for exceptional circumstances; it is not violated simply because a party's argument or ground for relief is

subsequently found unjustified. ***Fairchild v. Fairchild, supra; Murphy v. Boeing Petroleum Services, Inc., supra.***"

"Plaintiff made no concerted effort to even gather any semblance of evidence which could in any manner reasonably support their dastardly allegations against the _____ lawfirm [sic]. Depositions were cancelled, no personal contacts were made, and nothing worthwhile was pursued in the furtherance of their lawsuit. Plaintiffs, to the contrary, were content to let the allegations stand against the _____ lawfirm [sic] to suit plaintiffs' scheming purposes."

"From a review of the record it can be clearly shown that had the plaintiffs, or their counsel made the slightest inquiry they would have determined without the least bit of difficulty that there existed no legal nor factual basis for the lawsuit. . . ."

"This court cannot tolerate the behavior of the parties who act in an incurious manner and who make speculative and unsupported allegations of fraud and malicious activity against a reputable lawfirm [sic]. And this court imputes bad faith on the part of plaintiffs and their counsel because the truth could have been easily discovered by a simple investigation of the accuracy of the facts."

"On appellate review, a trial court's finding as to a sanctionable violation of C.C.P. art. 863 may not be disturbed unless the record furnishes no evidence to support the finding, or the finding is clearly wrong. See ***Loyola v. A Touch of Class Transp. Service, Inc., supra; Diesel Driving Academy, Inc. v. Ferrier, supra; Murphy v. Boeing Petroleum Services, Inc., supra; Romero v. Chris Crusta Flying Service, Inc., supra.*** Once a court determines that a violation of C.C.P. art. 863 has occurred, it has considerable discretion as to the type of severity of sanctions to be imposed. ***Derouim v. Champion Ins. Co.,*** 580 So.2d 1043 (La.App. 3rd Cir.1991), writ denied, 585 So.2d 574 (La.1991)."

In ***Borne***, the plaintiffs alleged in their petition that the attorneys for the defendant made false and malicious statements and provided incomplete and inaccurate information, resulting in the denial of certificates of need to construct and operate nursing home facilities. The court awarded sanctions to the attorneys, in the amount of \$82,047.84.

Fairchild v Fairchild, 580 So.2d 513 (La.App. 4th Cir.1991):

"Article 863 is derived from Rule 11 of the Federal Rules. Because there is limited jurisprudence interpreting and applying Article 863, (FN3) the Federal decisions applying Rule 11 provide guidance to this court. See, ***Diesel Driving Academy, Inc. v. Ferrier,*** 563 So.2d 898 (La.App. 2nd Cir.1990).

Among the factors to be considered in determine whether reasonable **factual** inquiry has been made are:

- 1) The time available to the signer for investigation;
- 2) The extent of the attorney's reliance on his client for the factual support for the document;
- 3) The feasibility of a prefiling investigation;
- 4) Whether the signing attorney accepted the case from another member of the bar or forwarding attorney;

- 5) The complexity of the factual and legal issues; and
- 6) The extent to which development of the factual circumstances underlying the claim requires discovery.

Diesel Driving, supra, citing ***Thomas, supra***.

The factors for determining whether reasonable legal inquiry was made include:

- 1) The time available to the attorney to prepare the document;
- 2) The plausibility of the legal view contained in the document;
- 3) The pro se status of the litigant; and
- 4) The complexity of the legal and factual issues raised.

Diesel Driving, supra, citing ***Thomas, supra***.

"Article 863 is intended only for exceptional circumstances and is not to be sued simply because parties disagree as to the correct resolution of a legal matter. See, ***Gaiardo v. Ethyl Corporation***, 835 F.2d 479 (3rd Cir.1987), citing ***Morristown Daily Record, Inc. v. Graphic Communications Union Local 8N***, 832 F.2d 31 (3rd. Cir.1987). Furthermore, nothing in the language of Rule 11 or Article 863 empowers the district court to impose sanctions on lawyers simply because a particular argument or ground for relief is subsequently found to be unjustified. ***Gaiardo, supra***, citing ***Golden Eagle Distributing Corporation v. Burroughs Corporation***, 801 F.2d 1531 (9th Cir.1986). Failure to prevail does not trigger a sanction award. ***Gaiardo, supra***."

In determining a violation of Rule 11 or Article 863 the trial court should "avoid using the wisdom of hindsight and should test the signer's conduct by inquiring what was reasonable to believe at the time the pleading, motion or other paper was submitted." ***Gaiardo, supra*** at 484.

In ***Fairchild***, an attorney propounded interrogatories although there were no pending proceedings. Opposing counsel objected to the interrogatories as being procedurally improper since there were no pending proceedings at the time. The attorney propounding the interrogatories then filed a motion to compel answers to the interrogatories, at which point the opposing attorney sought sanctions. Although there was no legal basis for the interrogatories to be propounded, the court denied sanctions because of the facts of this particular case. ***Fairchild*** involved a custody dispute. The most recent court order granted custody to a particular party with the understanding that the party would continue to seek psychiatric therapy. There were only eight interrogatories, asking only information concerning residents and the party's continued psychiatric therapy. The court noted that "the slightest justification for the exercise of the legal right precludes sanctions. Only when the evidence is clear that there is no justification for the legal right exercised should sanctions be considered. Any lesser standard would serve to seriously impair the rights of a party as a litigant." The court found that the interrogatories were in fact not propounded for harassment purposes.

Armond v Fowler, 694 So.2d 358 (La.App. 5th Cir.1996).

In ***Armond***, the court ruled that there is "no excuse for failure to present evidence in court of one's petition at the trial." Although this was an election challenge where there was not adequate time to engage in thorough discovery or extensive fact finding, the court took note of the fact that the plaintiffs produced no expert testimony and made

numerous irrelevant allegations in the petition. Sanctions of \$2,500.00 were awarded and affirmed. See *Sternberg v. Sternberg*, 695 So.2d 1068 (La.App. 5th Cir.1997); *Loyola v. A Touch of Class Transportation Service Inc.*, 580 So.2d 506 (La.App. 4th Cir.1991); *Hester v. Hester*, 680 So.2d 1232 (La.App. 4th Cir.1996), writ denied.

3. La. C.C.P. 864 Attorney subject to disciplinary action

An attorney may be subjected to appropriate disciplinary action for a willful violation of Article 863, or for the insertion of scandalous or indecent matter in a pleading.

4. La. C.C.P. 964 Motion to Strike

The court on motion of a party or on its own motion may at any time and after a hearing order stricken from any pleading any insufficient demand or defense or any redundant, immaterial, impertinent, or scandalous matter.

U.S. v. Michael O'Keefe, Sr., Gary Bennett, John O'Brien, Unpublished opinion, No. 03-31061 (5th Cir. 2005), on petition for rehearing.

The entire change in the U.S. Fifth Circuit Court of Appeals ruling requested by O'Keefe's attorneys is quoted as follows in the per curiam decision on rehearing:

Counsel for O'Keefe contends that our description of one of his arguments was unduly harsh. We grant the motion for limited panel rehearing as follows: We delete the following sentence from our opinion:

O'Keefe's argument to this court that Moore gave "false testimony to the jury that he had 'no deal' with the Government," O'Keefe's opening brief at 9, and that in a post-trial civil deposition Moore "for the first time admitted that, through his attorney, he did obtain a 'deal with the government,'" *id.* at 28, is **highly misleading and a mischaracterization of the record.**

We substitute the following sentence in place of the deleted sentence:

O'Keefe's argues that Moore gave "false testimony to the jury that he had 'no deal' with the Government," O'Keefe's opening brief at 9, and that in a post-trial civil deposition Moore "for the first time admitted that, through his attorney, he did obtain a 'deal with the government,'" *id.* at 28.

There being no other petition for rehearing, the mandate shall issue.

Chambers Medical Foundation v. Chambers, Slip Copy, 2006 WL 1895463 (W.D.La. July 5, 2006)

Chambers Medical Foundation moved to strike a footnote in its opponent's Opposition to the Appeal of the Magistrate Judge's ruling denying remand. Chambers argues that his footnote is "immaterial, impertinent and scandalous," and that the judge should require all statements by opposing counsel be made by sworn affidavits to overcome his credibility issue. The accused attorney does not allege that the statements are not true, just that they are irrelevant and immaterial.

Judge Minaldi reacted with this comment:

In cases such as the one now before the court, where the litigation stakes are high, **attorneys must be vigilant not to cross the fine line between zealous advocacy and mendacious conduct.** The court expects, and the rules of professional responsibility require, attorneys to fulfill their duty of candor to the court and to be truthful in disclosures to their adversary. An attorney's signature on a document that is misleading is a serious breach of this affirmative duty. An attorney certifies by his signature on pleadings and other documents filed with the court that: to the best of the person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances [that the filing] is not being presented for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation; that the denials of factual contentions are warranted on the evidence or, if specifically so identified are reasonably based on lack of information or belief. See Fed.R.Civ. 11(b); ***In re Tutu Wells Contamination Litigation***, 162 F.R.D. 46 (1995), 78-79 (D.Virgin Islands, 1995)

.....
The statements contained in this footnote are not integral to the court's making a decision on the appeal. Neither is striking the footnote necessary. [The accused attorney's] credibility may well be an issue in this litigation, but the court will weigh each motion and assertion on its own merits, assuming until proven otherwise, that an officer of the court is exercising complete honesty and candor.

[The accused attorney] is concerned that his reputation is being impugned and his reputation for honesty is certainly being challenged. This doesn't change the fact, however, that the documents introduced by [the accuser] facially support her allegations and credibility is relevant. Accordingly,

IT IS ORDERED that the Motion to Strike by Chambers Medical Foundation IS DENIED.

Slip Copy, 2006 WL 1895463 at p.2.

5. La. C.C.P. 1443 Examination and cross-examination; record of examination; oath; objections (amended 1997)

- D. Unless otherwise stipulated, all objections are considered reserved until trial or other use of the deposition. However, a party may instruct a deponent not to answer when necessary to protect a privilege, to enforce a limitation on evidence imposed by the court, to prevent harassing or repetitious questions, or to prevent questions which seek information that is neither admissible at trial nor reasonably calculated to lead to the discovery of admissible evidence.

B. Uniform Rule 2-12.4, Courts of Appeal

[Uniform Rules of the Louisiana District Courts also mandate professionalism. See Rules 6.2K and 6.3. Rule 6.2K incorporates the Code of Professionalism and Rule 6.3 incorporates the "Lawyers Duties to the Court."]

The language used in the brief shall be courteous, free from vile, obscene, obnoxious, or offensive expressions, and free from insulting, abusive, discourteous, or irrelevant matter or criticism of any person, class of persons or association of persons, or any court, or judge or other officer thereof, or of any institution. Any violation of this Rule shall subject the author, or authors, of the brief to punishment for contempt of court, and to having such brief returned.

Galle v Orleans Parish School Board, 623 So.2d 692 (La.App. 4th Cir. 1993)

"ADMONITION:

"The issue of civility and professional conduct is of great institutional concern in the administration of justice. Every jurisdiction, including Louisiana, has rules to minimize unnecessary contention, abusive litigation and acts that range from incivility to obstruction of justice. The Louisiana lawyer's oath at admission requires attorneys to maintain the respect due to courts of justice and judicial officers and to abstain from all offensive personality. **Rule 3.4 of The Louisiana Rules of Professional Conduct** contains a section entitled "**Fairness to Opposing Party and Counsels**" which sets forth the standards of professionalism. **Article 7** of that code states "I will not engage in personal attacks on other counsel or the court. . . and will not make unfounded allegations of unethical conduct about other counsel." This rule is in addition to article 3 which states, "I will conduct myself with dignity, civility, courtesy and a sense of fair play."

"We believe that a lawyer's conduct should be characterized at all times by the personal courtesy and professional integrity enunciated in the rules above. The truth seeking adversarial process is designed to resolve human and societal problems in a civilized, rational and efficient manner. Conduct that may be characterized as uncivil, abrasive, abusive, hostile, dishonest or obstructive interferes with the fundamental goal of resolving disputes in a civilized, rational and efficient manner. Such conduct wastes limited judicial resources, increases transactional costs, delays justice and causes loss of public confidence in the judicial system. WE cannot tolerate lawyers' conduct, toward the court and toward other lawyers, which violates these standards."

"Under the **Uniform Rules of the Appellate Courts** of this State, attorneys are required to submit a brief which is "free from insulting, abusive, discourteous, or irrelevant matter or criticism of any person, class of persons or association of persons, or any court, or judge or other officer thereof." A violation of this rule shall subject the author of the brief to punishment for contempt of court. Uniform Rules of the Courts of Appeal 2-12.4."

"In reviewing plaintiff counsel's brief, we look to both the content of the brief and any factual support for those statements to determine whether the material included in the brief violates **Rule 2-12.4**. The content of plaintiff's brief is detailed and profuse with allegations of professional misconduct, unethical and illegal behavior. Such allegations are insulting and offensive. Furthermore, these scandalous allegations are compounded by the fact that they are totally uncorroborated by any evidence. Thus, without any record evidence to support such offensive allegations, plaintiff counsel's brief is offensive to this court and in

violation of Rule 2-12.4."

C. Federal Rule 11: Signing of Pleadings, Motions, and Other Papers; Representations to Court; Sanctions

(a) Signature.

Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An undersigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) Representations to Court.

By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,

1. it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
2. the claims, defenses, and other legal contentions therein are warranted by existing law or by nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
3. the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity based on a lack of information or belief.
4. the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) Sanctions.

If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorney, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

Professionalism in the Courts

by the LSBA Professionalism and Quality of Life Committee

D. General Administrative Rules, Supreme Court of Louisiana Section 11. The Code of Professionalism in the Courts Current with amendments through October 26, 1999

1. Preamble

The following standards are designed to encourage us, the judges and lawyers, to meet our obligations to each other, to litigants and to the system of justice, and thereby achieve the twin goals of professionalism and civility, both of which are hallmarks of a learned profession dedicated to public service.

These standards shall not be used as a basis for litigation or sanctions or penalties. Nothing in these standards alters or detracts from existing disciplinary codes or alters the existing standards of conduct against which judicial or lawyer negligence may be determined.

However, these standards should be reviewed and followed by all judges of the State of Louisiana. Copies may be made available to clients to reinforce our obligation to maintain and foster these standards.

2. Judges' Duties To The Court

We will be courteous, respectful, and civil to lawyers, parties, and witnesses. We will maintain control of the proceedings, recognizing that judges have both the obligation and authority to insure that all litigation proceedings are conducted in a civil manner.

We will not employ hostile, demeaning, or humiliating words in opinions or in written or oral communications with lawyers, parties, or witnesses.

We will be punctual in convening all hearings, meetings, and conferences; if delayed, we will notify counsel, if possible.

We will be considerate of time schedules of lawyers, parties, and witnesses in scheduling all hearings, meetings and conferences.

We will make all reasonable efforts to decide promptly all matters presented to us for decision.

We will give the issues in controversy deliberate, impartial, and studied analysis and consideration.

While endeavoring to resolve disputes efficiently, we will be considerate of the time constraints and pressures imposed on lawyers by the exigencies of litigation practice.

We recognize that a lawyer has a right and a duty to present a cause fully and properly, and that a litigant has a right to a fair and impartial hearing. Within the practical limits of time, we will allow lawyers to present proper arguments and to make a complete and accurate record.

We will not impugn the integrity or professionalism of any lawyer on the basis of clients whom or the causes which a lawyer represents.

We will do our best to insure that court personnel act civilly toward lawyers, parties, and witnesses.

We will not adopt procedures that needlessly increase litigation expense.

We will bring to lawyers' attention uncivil conduct which we observe.

We will be courteous, respectful, and civil in opinions, ever mindful that a position articulated by another judge is the result of that judge's earnest effort to interpret the law and the facts correctly.

We will abstain from disparaging personal remarks or criticisms, or sarcastic or demeaning comments about another judge in all written and oral communications.

We will endeavor to work with other judges in an effort to foster a spirit of cooperation in our mutual goal of enhancing the administration of justice.

3. Lawyers' Duties To The Courts

We will speak and write civilly and respectfully in all communications with the court.

We will be punctual and prepared for all court appearances so that all hearings, conferences, and trials may commence on time; if delayed, we will notify the court and counsel, if possible.

We will be considerate of the time constraints and pressures on the court and court staff inherent in their efforts to administer justice.

We will not engage in any conduct that brings disorder or disruption to the courtroom.

We will advise our clients and witnesses appearing in court of the proper conduct expected and required there and, to the best of our ability, prevent our clients and witnesses from creating disorder or disruption.

We will not knowingly misrepresent, mischaracterize, misquote, or miscite facts or authorities in any oral or written communication to the court.

We will not engage in ex parte communication on any pending action.

We will attempt to verify the availability of necessary participants and witnesses before dates for hearings or trials are set, or if that is not feasible, immediately after such date has been set, so we can promptly notify the court of any likely problems.

We will act and speak civilly to court marshals, clerks, court reporters, secretaries, and law clerks with an awareness that they too, are an integral part of the judicial system.
Adopted Aug. 5, 1997.

State v. Reese Sims, ____ So.2d ____, 2007 WL 4126895 (La.), 2007-2216 (La. 11/16/07).

An interesting case involving professionalism requirements of both the Judge and the attorney appearing before the judge occurred in ***State v. Reese Sims***. Judge Frank Marullo found Steve Singer, chief of trials for the New Orleans public defender system, in contempt of court for violating an order to stay out of this case. Judge Marullo ruled

that Reese Sims (charged with felony theft of copper) owns a house, vehicles and dressed very nicely and therefore was not indigent. So, Singer referred the case to another pro bono attorney.

Marullo said the judge determines who is indigent, not the public defender's office, and that Singer's attitude was part of a "continuing problem" and proves Singer operates with a "bunker mentality" of bucking court orders. "That's not a professional or ethical way to handle things," said Marullo. Marullo also ordered the defendant to fire his pro-bono attorney, a staff member of the Loyola Law Clinic, and to hire a new attorney. Singer's new attorney, Herbert Larson, said that his client was merely following an ethical obligation to help Sims find a lawyer. Gwen Filosa, "Judge finds public defender program leader in contempt," Updates *The Times-Picayune*, nola.com/t-p, 11/15/2007. "Editorial: Justice, common sense prevail," *The Times-Picayune*, nola.com/t-p, 12/8/2007. The Times-Picayune editorial also criticized both Singer and the judges, who it said need to realize that the public defender's office is supposed to work as an independent body, and thus occasionally will be at odds with court decisions--just as private attorneys are when representing their clients. About Singer, it said,

But Mr. Singer, who openly challenged Judge Marullo in court regarding the contempt conviction, also needs to be more diplomatic. In the long run, antagonizing judges is not in the best interests of the clients the public defender's office serves.

Let's hope both sides are mature enough to see it that way.

The Louisiana Supreme Court held that reinstatement of the defendant's attorney was required.

A defendant is guaranteed the right to counsel of choice so long as the defendant can obtain and afford the services of said counsel. See, U.S. Const. amend. VI; La. Const. art. I, §13; *State v Jones*, 97-2593, p.2 (La. 3/4/98), 707 So.2d 975, 976. The right to private, non-appointed counsel of choice does not distinguish between a paid attorney and a pro bono lawyer. *Caplin & Drysdale, Chartered v. United States*, 491 U.S. 617, 624-625, 109 S.Ct. 2046, 105 L.Ed.2d 528 (1989). {"[T]he Sixth Amendment guarantees the defendant the right to be represented by an otherwise qualified attorney whom that defendant can afford to hire, or who is willing to represent the defendant even though he is without funds."}; *Jones*, 97-2593 at 2, 707 So.2d at 977. (Where counsel was obtained at no cost to defendant, defendant could manage to retain counsel and the United States and Louisiana constitutions preclude counsel's removal). The order of the trial court removing defendant's counsel of choice, Bradley E. Black, is hereby reversed and counsel's representation of defendant is reinstated.

Justice Knoll dissented, finding the real issue to be whether the defendant is indigent and that "relator's conduct was reprehensible, "in that it is in defiance of the trial court's ruling, with the cooperation of Mr. Singer, Chief of Trials for the ODP. Relator's proper remedy would have been to take a writ contesting his indigency status rather than asking this court to bless his defiant conduct.

V. Why act professionally?

1. solely to avoid disciplinary action?
2. Can't be/Shouldn't be
3. Quality of life reasons
4. "in the old days"
A lawyer's word of his or her bond.
Agreements were made by handshake without necessity of written confirmation
professional courtesy was both expected and appreciated
"practice of law" was an honorable profession
Lawyers were respected as honorable, trustworthy professionals and officers of the court
"practice of law" was actually enjoyable and rewarding.

The Law

in the '50's, it was a calling'
in the '70's, it was a profession;
in the '80's, it became a business;
by 2000, it will be a racket.'

Celia Johnstone, President, Canadian Bar Association, August 1992.

It all comes down to reputation--a reputation for honor, diligence, professionalism and excellence--and the constant daily hard work to preserve such a reputation--. that is what the professionalism movement is all about.

Endnote 1: See CLE papers by Val P. Exnicios, "Professionalism & Ethics in the Practice of Law", Loyola Law School Skills Program, October 18, 2003, sponsored by LSBA Bench & Bar Section and Professionalism & Quality of Life Committee. and by Frank X. Neuner, Jr., "Professionalism?: Charting a Different Course for the New Millennium" and "Professionalism: A Cost/Benefit Analysis for the Defense Lawyer and His or Her Client?". All are available on the LSBA website, www.lsba.org, as are additional papers on professionalism.

Biography

**Patricia Turner Riddick, General Counsel
Louisiana Department of Insurance
P. O. Box 94214, Baton Rouge, LA 70804-9214
Telephone: (225) 925-6722; Facsimile: (225) 929-6334
priddick@ldi.state.la.us**

Patricia Riddick has been General Counsel of the Louisiana Department of Insurance since 1994. Her responsibilities have included administrative and regulatory law; creation of administrative procedures and forms; creation of a litigation report and database for tracking administrative actions in the adjudicatory process; reorganization of the Fraud Section; fraud investigation; complex litigation, including cases involving constitutional, Public Records Act & confidentiality issues. She has served on federal law enforcement task forces, including the FBI Task Force on Health Care Fraud and the 18 USCA 1033 Task Force (dealing with felons in the insurance industry), and has served as liaison with federal law enforcement officials for insurance fraud trials.

Her prior experience includes serving as Senior Attorney for the Louisiana Office of Financial Institutions, where she worked on federal and state financial institutions law and banking litigation; served as liaison with law enforcement officials on bank fraud cases; supervised complex case management; wrote enforcement orders; served as a hearing officer; wrote legal opinions on banks, S&L's LFFI's, CU's, BIDCOs, CAPCOs, savings banks, finance companies, licensed lenders, etc.

Prior to that, she served as the attorney for the Louisiana Department of Agriculture and Forestry, where she represented most of its boards and commissions in administrative, as well as federal and state cases, involving agri-business law and prosecuted statutory violations in administrative hearings and court cases.

Mrs. Riddick received her B.A. in political science from ULL and her J.D. from LSU Law Center. She is also a Certified Fraud Examiner and taken many courses taught by the International Association of Certified Fraud Examiners; in addition to political science Ph.D. coursework at Columbia University, Tulane University and UNO. Before working for state government, Mrs. Riddick served as an Associate Professor of Political Science at Southern University.

She was admitted to the practice of law in 1983 and has practiced in Louisiana district courts, appellate courts and Supreme Court; all U.S. District Courts in Louisiana; and has argued before the federal Fifth Circuit Court of Appeals. She is also admitted to practice before the U.S. Supreme Court.

Currently, she also serves on the LSBA Ethics and CLE committees and has delivered eight CLE papers on ethics and professionalism in the last three years.