

## A LAWYER'S ROLE

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*In the court of public opinion, lawyers are big losers . . .*

So begins a recent article in a national legal publication detailing the downward spiral of the reputation of lawyers over the past 20 years.<sup>Ftn 1</sup> This deterioration of our professional reputation should not come as a surprise to any of us. Indeed, the anger and resentment towards those who have been trained in the law probably goes back to the very beginnings of our civilization, making Shakespeare a latecomer with his criticism. In our own nation, there have been periods of extraordinary achievement by those legally trained; one has only to consider the magnificent accomplishments of the Framers to regain a sense of pride in our profession. Yet there is no denying that in recent times our image has suffered horribly.

Perhaps the reason this article caught my eye was that my years as a practicing attorney span the same time frame as that of the poll. (Hopefully, there is no correlation.) Others may have noticed, as I have, a shift in the public's attitude towards the legal profession during these years. Further, it isn't only members of the public who are upset; in the same poll, 83 percent of lawyers responding "felt the profession had changed for the worse" over those same 20 years.<sup>Ftn 2</sup>

This erosion in public confidence has led to a great deal of rhetoric on the part of bar leaders. There is a lot of shaking of heads and feelings of persecution among lawyers but there has been little examination as to how this happened. Let me suggest a number of factors.

### THE SIMPSON CASE

We might as well accept that our profession took a major hit with the televising of the Simpson homicide trial. Putting aside the overwhelming uproar over the verdict, the trial itself led to 16 months of investigation by California bar officials following more than 300 complaints from the public and the judiciary filed against ten defense and prosecution lawyers in the case.<sup>Ftn 3</sup> While there were several public reprimands given, there were few consequences for the attorneys because most of the complaints stemmed from outrage at courtroom behavior, which arguably resulted from an inexperienced judge either unwilling or unable to keep control of the courtroom. Whether you are complimentary or critical regarding the advocacy displayed in that setting, the undeniable fact is that the public perception of the legal profession was dramatically altered for years to come.

Still, while the Simpson case may have accelerated the downward trend of our professional image, our decline in the public's eyes was well-underway before that trial commenced.

## MONEY AND PROFESSIONALISM

There is no reason for lawyers to apologize for wanting to make a good living for themselves and for their families. Historically, being trained in the law resulted in membership in a privileged class with access to power and material wealth likely to follow. In our country and at this time, the harsh reality is quite different from the historical legacy. Many younger lawyers weighted down with school loans are barely able to make a living, much less accumulate wealth. In time, the frustration with finding work and paying bills may lead some to rationalize the cutting of ethical corners leading to complaints that, if they rise to the level of public discipline, further erode the image of the profession.

Rule 1.5, MRPC, provides that "a lawyer's fee shall be reasonable" and then lists eight factors that should be considered in determining the reasonableness of a fee.<sup>Ftn 4</sup> Fee disputes most often involve lack of communication coupled with dissatisfaction regarding the results achieved. Generally, if requirements regarding retainers are met, our office does not become involved with complaints over the amount in dispute, leaving such cases for the more proper forum of fee arbitration. Members of our profession do get in trouble when they fail to spell out in writing the terms and conditions of their contract for services. At the same time, it is not unusual for clients to file ethical complaints in an effort to avoid paying fees. Consequently, when a complaint is filed and there is an underlying fee dispute among other issues, members of this office review the complaint while considering the motives of those involved.

Yet what about the reasonableness of fees? Hourly fees vary greatly from lawyer to lawyer and region to region and arguably are simply a function of the marketplace. Most lawyers are more envious than critical when they see a large contingency fee awarded to an attorney. The result of some of these large awards, however, is that "successful" lawyers, and not only those who violate ethical provisions while attempting to sustain a practice, have contributed to the 20-year decline in the prestige of lawyers. Two examples come to mind, both involving tobacco litigation.

Recently, when four of the largest tobacco companies in the nation agreed to spend \$300 million on research on smoking-related illnesses, the two attorneys in the case were paid \$49 million and fees in costs while individual plaintiffs in the case received nothing. We can all debate whether or not we as lawyers feel such fees are excessive, but we need to be aware that members of the public get increasingly critical when they see a headline, as there was for an article on this case, entitled "First Thing We Do, Let's Pay All the Lawyers."<sup>Ftn 5</sup>

When lawyers offer an altruistic motive in defense of their litigation, and other more obvious motives arise, public cynicism deepens at the results. Again, the tobacco litigation is an excellent example.

Begin with the accepted belief that there is very little public sympathy for tobacco companies after years of apparent dishonesty and public manipulation. The lawsuits filed by lawyers across the country against the tobacco industry, to recover smoking-related public health care costs for individual states, have been applauded by many observers as being in the public interest. Yet if the recent results in Florida are any indication, we are almost certainly going to see further fallout regarding greed in the legal profession. In that case, once the litigation was settled, the state agreed to pay 13 lawyers approximately \$19 million each in addition to their costs for their work. Instead of accepting the award, these lawyers--who ostensibly were so interested in helping taxpayers by recovering public health care costs--have now sued to stop the reimbursement of taxpayers, each seeking \$108 million in addition to costs.<sup>Ftn 6</sup> Once again we can all debate the place of contingency fees in our profession, and there is no argument these attorneys deserve to

be well-compensated for their risk and skill, but these figures, and the hourly figures they denote, suggest to the public that lawyers are out of control in attempting to accumulate wealth.

## NO EASY SOLUTION

There will always be a tension between professionalism and money.<sup>Ftn 7</sup> But the argument remains that to a true professional, money will remain a neutral, albeit welcome, force in their lives. When it becomes an end in itself, when lawyers are little more than bond traders or bankers seeking the highest return, than it is arguable that we are no longer "professionals" in the original sense of the term. In the end, as there always has been, an extremely small number of lawyers will help erode our public image. Accepting that, it is up to the rest of us to maintain our dignity and self-image by, as the *National Law Journal* suggested recently, "Day in and day out living ethical lives." The article goes on:

That may sound obvious. But every week, it seems, we find ourselves publishing stories of lawyer ignominy. Law firms, even old-line firms, which should be leading the way, increasingly embarrass themselves with conflicts of interest that seem to stem from an over eagerness to make money. . . . Grasping for money seems to have intensified in recent years, a point picked up by fiction writers in Hollywood, an image-damaging factor that probably contributed to the polls' findings.<sup>Ftn 8</sup>

## WHAT CAN WE DO?

Rule 6.1 reminds us of our duty to provide *pro bono* legal services each year. Other portions of the code remind us of our responsibilities to communicate with our clients, to be diligent, to be fair--to be good lawyers. But I believe each of us know that something more is required.

We cannot dispel two decades of mounting cynicism overnight. We can begin by respecting the Rules of Professional Conduct in the spirit that led to their creation. From there, perhaps we can all listen a little closer to those outside of our profession as to their concerns about lawyers. Perhaps most attorneys, burdened with making a living, feel that working on a public image is a luxury they cannot be bothered with. While I sympathize to a degree, I would suggest that in addition to influencing our public standing, the ethical decisions we make in our professional lives relate directly to our self-image and our image in the eyes of our families. Our reputations, individual and collective, should be a daily concern for each of us, for it is the true legacy we leave behind.

## NOTES

<sup>1</sup> Chris Klein, "Poll: Lawyers Not Liked," *National Law Journal* (August 25, 1997), p. A6.

<sup>2</sup> Ibid.

<sup>3</sup> "Bar Officials Acting Against 2 Simpson Lawyers," *The New York Times* (June 14, 1997); "The Fallout Continues," *ABA Journal* (September 1997), p. 40.

<sup>4</sup> See Rule 1.5(a), MRPC, listing the factors to be considered in determining the reasonableness of a fee.

<sup>5</sup> Neil A. Lewis, "First Thing We Do, Let's Pay All the Lawyers," *The New York Times* (October 11, 1997), p. A8.

<sup>6</sup> Milo Geyelin, "Lawyers on Florida's Anti-tobacco Team Try to Hold Up Pact in Bid for More Fees," *The Wall Street Journal* (September 10,

1997), p. B3.

<sup>7</sup> See Seth Rosner, "Professionalism And Money," ABA Journal (May 1992), p. 69.

<sup>8</sup> National Law Journal (August 25, 1997), p. A18.