

University of Tennessee College of Law

Legal Scholarship Repository: A Service of the Joel A. Katz Law Library

UTK Law Faculty Publications

Winter 2014

A Primer on Professionalism for Doctrinal Professors

Paula Schaefer

Follow this and additional works at: https://ir.law.utk.edu/utklaw_facpubs



Part of the Law Commons



DATE DOWNLOADED: Fri Mar 25 15:44:29 2022

SOURCE: Content Downloaded from [HeinOnline](#)

Citations:

Bluebook 21st ed.

Paula Schaefer, A Primer on Professionalism for Doctrinal Professors, 81 TENN. L. REV. 277 (2014).

ALWD 7th ed.

Paula Schaefer, A Primer on Professionalism for Doctrinal Professors, 81 Tenn. L. Rev. 277 (2014).

APA 7th ed.

Schaefer, P. (2014). primer on professionalism for doctrinal professors. Tennessee Law Review, 81(2), 277-306.

Chicago 17th ed.

Paula Schaefer, "A Primer on Professionalism for Doctrinal Professors," Tennessee Law Review 81, no. 2 (Winter 2014): 277-306

McGill Guide 9th ed.

Paula Schaefer, "A Primer on Professionalism for Doctrinal Professors" (2014) 81:2 Tenn L Rev 277.

AGLC 4th ed.

Paula Schaefer, 'A Primer on Professionalism for Doctrinal Professors' (2014) 81(2) Tennessee Law Review 277

MLA 9th ed.

Schaefer, Paula. "A Primer on Professionalism for Doctrinal Professors." Tennessee Law Review, vol. 81, no. 2, Winter 2014, pp. 277-306. HeinOnline.

OSCOLA 4th ed.

Paula Schaefer, 'A Primer on Professionalism for Doctrinal Professors' (2014) 81 Tenn L Rev 277

Provided by:

University of Tennessee College of Law Joel A. Katz Law Library

-- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at

<https://heinonline.org/HOL/License>

-- The search text of this PDF is generated from uncorrected OCR text.

-- To obtain permission to use this article beyond the scope of your license, please use:

[Copyright Information](#)

A PRIMER ON PROFESSIONALISM FOR DOCTRINAL PROFESSORS

PAULA SCHAEFER*

INTRODUCTION.....	278
I. COMPLEX DEFINITIONS OF ATTORNEY PROFESSIONALISM	279
II. THREE ASPECTS OF ATTORNEY PROFESSIONALISM.....	281
A. <i>Fulfilling Duties to Clients</i>	283
B. <i>Fulfilling Duties to the Bar as Reflected in Professional Conduct Rules</i>	286
1. Professional Conduct Rules Guiding Attorneys in Fulfilling Fiduciary Duties to Clients	287
2. Professional Conduct Rules Concerning Limits On What a Lawyer May Do On a Client's Behalf.....	288
3. Professional Conduct Rules Promoting and Preserving the Integrity of the Profession	291
C. <i>Exhibiting Core Personal Values Essential to Being a Good Lawyer</i>	292
1. Effective in Relationships with and Treatment of Others	293
2. Accepts a Special Role in the Legal System and Society.....	294
3. Demonstrates a Strong Work Ethic and Works Effectively With Others.....	295
4. Continuously Strives for Personal Growth and Fulfillment.....	295
D. <i>Conclusion on Integrating All Three Aspects of Professionalism</i>	296
III. DEVELOPING COURSE-SPECIFIC PROFESSIONALISM OUTCOMES.....	297

* Associate Professor of Law, University of Tennessee College of Law. I want to thank Deborah Maranville for encouraging me to publish an article on this subject and for giving me the opportunity to address these issues in a follow-up volume to *Best Practices for Legal Education*. I also want to thank Doug Blaze, Alex Long, Buck Lewis, Brad Morgan, and Cassandra Burke Robertson for reading drafts and providing suggestions that helped me improve the Article. I appreciate outstanding research assistance provided by Amy Bergamo and Isabel Archuleta. Finally, thank you to Michael Cottone and the editors of the *Tennessee Law Review* for their interest in and work on this Article.

A.	<i>What does a competent lawyer need to know and do to effectively represent clients in this area of the law in both litigation and non-litigation settings?</i>	297
B.	<i>When attorneys practice in this area of the law, do they face specific temptations to act in a manner that is disloyal to clients?</i>	297
C.	<i>Which professional conduct rules are of particular interest to lawyers who practice in this area?</i>	298
D.	<i>Which aspects of a lawyer's ideal personal values do I want to emphasize throughout the course?</i>	298
IV.	COURSE CONTENT: TEACHING AND ASSESSING	
	PROFESSIONALISM IN THE DOCTRINAL CLASSROOM	299
A.	<i>Using Case Law</i>	299
B.	<i>Experiential Learning Exercises in the Doctrinal Classroom</i>	301
C.	<i>Other Avenues to Introduce Professionalism into Doctrinal Classrooms</i>	304
V.	CONCLUSION.....	306

INTRODUCTION

Legal education reform advocates agree that law schools should integrate “professionalism” throughout the curriculum.¹ Ultimately, it falls to individual professors to decide how to incorporate professionalism into each course. This can be an especially difficult task for doctrinal professors. The law—and not the practice of law—is the focus of most doctrinal casebooks. Law students typically do not act in role as lawyers in these classes, so they are not compelled to resolve professional dilemmas in class, as students would be in a clinic or simulation-based course. As a result, it takes some additional preparation and thought to introduce professionalism issues into these courses. Some professors may resist making this change—not knowing which aspect or aspects of professionalism should be the focus, fearing that time spent on professionalism will

1. ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP 73–76 (2007), *available at* www.law.sc.edu/faculty/stuckey/best_practices/best_practices-full.pdf; WILLIAM M. SULLIVAN ET AL., CARNEGIE FOUND. FOR THE ADVANCEMENT OF TEACHING, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 14, 147 (2007) (arguing that “professionalism needs to become more explicit and better diffused throughout legal preparation” and describing the various ways professionalism can be integrated into the curriculum).

detract from the real subject matter of the class, or believing professionalism is adequately covered elsewhere in the curriculum.

This Article considers how and why doctrinal professors should address the challenge of integrating professionalism into the classroom. Part I briefly discusses the multitude of meanings ascribed to attorney professionalism and argues that the lack of a clear, concise, and shared definition is a substantial barrier to effectively incorporating professionalism into the law school curriculum. Next, Part II provides a more coherent, streamlined definition of attorney professionalism. This Part also identifies and describes three primary aspects of lawyer professionalism: fulfilling duties to clients, satisfying duties to the bar, and possessing core personal values essential to being a good lawyer. This simplified conception of professionalism should begin to address the concerns of professors who do not know where to begin to incorporate professionalism into their classes. It is also intended to persuade skeptics that professionalism is something they can and should teach as part of their doctrinal classes.

Thereafter, Part III provides guidance for developing course outcomes that connect course subject matter and professionalism. Questions prompt doctrinal professors to look for the natural connections between their course subject matter and issues of professionalism. Then, Part IV considers various methods doctrinal professors can use to introduce professionalism topics into their courses. Integrating professionalism into the classroom does not require professors to abandon their casebooks; using case law can be an effective method. This Part also considers other teaching methods and materials for combining doctrine, skills, and professionalism. Finally, Part V concludes with thoughts on how students benefit when professors make the effort to incorporate professionalism into every law school classroom.

I. COMPLEX DEFINITIONS OF ATTORNEY PROFESSIONALISM

The term professionalism encompasses the standards, values, and qualities of members of a profession.² Attorney professionalism has been defined in a multitude of ways.³ For example, *Best*

2. G. & C. MERRIAM CO., WEBSTER'S NEW COLLEGIATE DICTIONARY 911 (1980) (defining "professionalism" as "the conduct, aims, or qualities that characterize or mark a profession or a professional person"); RIVERSIDE WEBSTER'S II NEW COLLEGE DICTIONARY (Marion Severynse et al. eds., 1995) (defining "professionalism" as "professional status, methods, character, or standards").

3. Alison Donahue Kehner & Mary Ann Robinson, *Mission: Impossible, Mission: Accomplished or Mission: Underway? A Survey and Analysis of Current*

Practices for Legal Education: A Vision and a Roadmap (“*Best Practices*”) explains that beyond complying with professional conduct rules, professionalism is the conduct “expected [by the public and] . . . the best traditions of the profession itself.”⁴ After discussing various facets of attorney professionalism,⁵ *Best Practices* concludes that five professional values deserve special attention: (1) a commitment to justice;⁶ (2) respect for the rule of law;⁷ (3) honor, integrity, fair play, truthfulness, and candor;⁸ (4) sensitivity and effectiveness with diverse clients and colleagues;⁹ and (5) nurturing quality of life.¹⁰

Educating Lawyers: Preparation for the Profession of Law (the “*Carnegie Report*”) provides another definition of professionalism. It explains the “apprenticeship of professional identity” as involving professional ethics (the rules of professional conduct) and “wider matters of morality and character.”¹¹ The *Carnegie Report* argues that professionalism education “should encompass issues of both individual and social justice” and should include “the virtues of integrity, consideration, civility, and other aspects of professionalism” and “conceptions of the personal meaning that legal work has for practicing attorneys and their sense of responsibility toward the profession.”¹²

Of course, these are but two definitions of attorney professionalism. Many other authorities have weighed in on the meaning of the term.¹³ With so many definitions, some have

Trends in Professionalism Education in American Law Schools, 38 U. DAYTON L. REV. 57, 68 n.52 (2013) (noting the numerous definitions of legal professionalism and the lack of consensus about what the term means).

4. STUCKEY ET AL., *supra* note 1, at 59. *Best Practices* lists the following ways that lawyers demonstrate professionalism: “civility, honesty, integrity, character, fairness, competence, ethical conduct, public service, and respect for the rule of law, the courts, clients, other lawyers, witnesses, and unrepresented parties.” *Id.*

5. *Id.* at 61–62.

6. *Id.* at 62–63.

7. *Id.* at 64–65.

8. *Id.* at 65–66.

9. *Id.* at 66–67.

10. *Id.* at 67.

11. SULLIVAN ET AL., *supra* note 1, at 129. *The Carnegie Report* conceptualized education concerning professional ethics as “the law of lawyering” and education on moral and ethical matters as “professionalism.” *Id.*

12. *Id.* at 132.

13. *See infra* notes 77–98 and accompanying text (discussing various authorities on professionalism and focusing on the values and traits of the professional lawyer).

questioned whether the legal profession has a common understanding of professionalism.¹⁴

This variety of definitions creates several barriers to effectively incorporating professionalism into doctrinal classes. First, although many professors say they are incorporating professionalism into their classes,¹⁵ it is impossible to know what they mean without probing further. For one professor, “teaching professionalism” means pointing out a relevant professional conduct rule from time to time, while another thinks professionalism education means discussing civility, service, or something else. Second, some professors may be open to integrating professionalism into their classes, but do not know where to begin in addressing the seemingly innumerable aspects of the term. Third, other professors might choose not to address the topic at all because they perceive professionalism to be unrelated to their expertise or the subject matter of their class. Depending on their view of the term’s meaning, they may think professionalism cannot be developed in law school¹⁶ or that someone else on the faculty is better equipped to teach the topic.¹⁷ In each of these cases, professors are not integrating professionalism into the doctrinal classroom because they do not have a clear understanding of what attorney professionalism means.

II. THREE ASPECTS OF ATTORNEY PROFESSIONALISM

Law professors need a better definition of attorney professionalism. A more streamlined and concise definition could help the willing professor know where to focus as he or she begins planning to incorporate the topic into a doctrinal class. A clearer definition could also help skeptical professors understand that

14. Daisy Hurst Floyd, *Foreword Empirical Professional Ethics Symposium of the University of St. Thomas Law Journal*, 8 ST. THOMAS L. J. 101, 102 (2011) (“Even as the discussion has broadened and our understanding has deepened, however, there remains a tendency towards anecdotal or intuitive approaches to the topic of professionalism rather than empirical research.”).

15. See SULLIVAN ET AL., *supra* note 1, at 151 (noting that most law schools say that their faculties use the pervasive method of teaching legal ethics in doctrinal classes, at least to some extent).

16. See *id.* at 133 (asserting that faculty believe that by the time students enter law school it is too late to impact their moral development).

17. For example, a professor who believes that professionalism is synonymous with professional conduct rules will undoubtedly believe professors who teach the law school’s required professional responsibility course are in the best position to teach professionalism. See *id.* at 149 (explaining that professors whose specialty is not the “law of lawyering” might not consider themselves qualified to introduce ethical concerns into their courses).

professionalism is something they are qualified to teach and that addressing the topic will enhance—rather than detract from—student understanding of course subject matter. A shared definition of the term can help faculty members know they mean the same thing when they agree to teach professionalism.

When all of the various meanings ascribed to professionalism are considered, three aspects of attorney professionalism emerge. Professional lawyers (1) fulfill duties to clients, (2) meet their obligations to the bar by complying with professional conduct rules, and (3) exhibit core personal values essential to being a good lawyer. The third aspect—a lawyer's ideal personal values—has been discussed in numerous writings.¹⁸ The other two aspects of professionalism—fulfilling duties to clients and complying with professional conduct rules—are almost always mentioned,¹⁹ but are seldom discussed at length.²⁰

The following discussion is intended to help doctrinal professors develop their understanding of each aspect of professionalism. In the process, many professors will also recognize the natural fit between some of these issues and the subject matter of the doctrinal courses they teach.

18. See STUCKEY ET AL., *supra* note 1, at 62 (concluding that five professional values deserve special attention: (1) a commitment to justice; (2) respect for the rule of law; (3) honor, integrity, fair play, truthfulness, and candor; (4) sensitivity and effectiveness with diverse clients and colleagues; and (5) nurturing quality of life).

19. A 1992 report (generally known as the *MacCrate Report*) of an ABA Task Force described “the provision of competent representation” as one of four values of the profession. AM. BAR ASS'N, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM 140 (1992) [hereinafter “MACCRATE REPORT”]. *Best Practices* mentioned complying with professional conduct rules as an aspect of professionalism, but did not include it (or fulfilling duties to clients) in the five professional values that were highlighted in the volume. See STUCKEY ET AL., *supra* note 1, at 60–61. Additionally, the *Carnegie Report* explained that “professional ethical engagement” encompasses both “matters of character and rules of conduct.” SULLIVAN ET AL., *supra* note 1, at 129.

20. Perhaps these aspects of professionalism (fulfilling duties to clients and duties under professional conduct rules) have received less attention because legal educators believe they are adequately covered in professional responsibility classes or elsewhere in the curriculum. Certainly, students in clinics and simulation-based classes naturally receive more exposure to these issues. If professionalism is to be covered in the doctrinal classroom, however, professors must be deliberate in discussing all three aspects.

A. Fulfilling Duties to Clients

A central value of the legal profession is fulfilling duties to clients. Lawyers and clients are in a fiduciary relationship.²¹ As such, lawyers owe their clients duties of competence, diligence, and loyalty.²² An attorney must act with the competence and diligence normally exercised by lawyers under similar circumstances.²³ The duty of loyalty provides that a lawyer must protect client property and confidences, avoid prohibited conflicts of interests, and take no advantage arising from the attorney–client relationship.²⁴ When a lawyer violates these duties, the client has a cause of action for professional negligence, malpractice, and/or breach of fiduciary duty.²⁵

Professors in doctrinal classes may believe they are focused on the competence component of fiduciary duty. The content of a class is selected, in part, to provide students with the legal knowledge necessary to navigate an area of the law. But there is more to

21. See, e.g., *Cultra v. Douglas*, 444 S.W.2d 575, 578–79 (Tenn. Ct. App. 1969) (“The relationship of attorney and client is an extremely delicate and fiduciary one, so far as the duty of the attorney toward his client is concerned, and the courts jealously hold the attorney to the utmost good faith in the discharge of his duties.”).

22. RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 16 cmt. b (2000) (“*Rationale*. A lawyer is a fiduciary, that is, a person to whom another person’s affairs are entrusted in circumstances that often make it difficult or undesirable for that other person to supervise closely the performance of the fiduciary. Assurances of the lawyer’s competence, diligence, and loyalty are therefore vital.”).

23. *Id.* § 16(2) (“[A] lawyer must, in matters within the scope of the representation: . . . act with reasonable competence and diligence. . . .”); *id.* § 52 (“a lawyer who owes a duty of care must exercise the competence and diligence normally exercised by lawyers in similar circumstances”); see also RESTATEMENT (THIRD) OF THE LAW OF AGENCY § 8.08 (2006) (“If an agent claims to possess special skills or knowledge, the agent has a duty to the principal to act with the care, competence, and diligence normally exercised by agents with such skills or knowledge.”).

24. RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 16(3) (2000) (describing the duty of loyalty as encompassing the obligation to “comply with obligations concerning the client’s confidences and property, avoid impermissible conflicting interests, deal honestly with the client, and not employ advantages arising from the client-lawyer relationship in a manner adverse to the client”). See also RESTATEMENT (THIRD) OF THE LAW OF AGENCY §§ 8.02–8.06 (2006) (describing the duty of loyalty as including the duty not to take a material benefit arising from the relationship, not to act as or on behalf of an adverse party, not to compete, not to use the principal’s property or confidences, absent principal consent).

25. RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 49, 50 (2000) (describing a lawyer’s liability for professional negligence and breach of fiduciary duty).

competence than knowledge of law. Competence demands that a lawyer act as a reasonable lawyer would in a given situation.

Doctrinal professors may unwittingly give students the wrong impression about lawyer competence in a class where case law is the centerpiece of most readings and discussions. Through case law, students are primarily exposed to the lawyer's role as zealous courtroom advocate—someone who presents the best arguments in favor of a client's version of the law or facts.²⁶ Advocacy in litigation by skilled attorneys on both sides of a contested factual or legal issue is central to our system of justice.²⁷ But, lawyers necessarily do more than battle with adversaries on behalf of their clients. In fact, an adversarial mindset hinders a lawyer's ability to play other roles that a competent lawyer must fulfill.

Law students should be reminded frequently that every issue in litigation is not in dispute and need not be contested by counsel. In the course of litigation, many issues (such as an extension of time or resolution of a discovery issue) do not impact parties' substantive rights and need not be the subject of argument. In these situations, competent lawyers should be problem-solvers skilled in the give and take necessary to provide excellent representation to their clients.²⁸ When attorneys think it is their role to zealously argue every point, however, they can cost their clients time, money, and good will with the court and opposing counsel.²⁹ And, when they later raise an issue that is genuinely important to their client, it is difficult for the court to know the difference or for opposing counsel to care.

Another lawyering role that is generally absent from the doctrinal casebook is lawyer as advisor: a lawyer in a non-litigation setting advising a client about the propriety of future conduct. Contrary to the conception of most students, the legal advisor's job is not to zealously argue that the client's plan is arguably within the

26. See SULLIVAN ET AL., *supra* note 1, at 127 (explaining that law school's focus on courtroom advocacy neglects the lawyer's role as counselor and court officer).

27. See DAVID LUBAN, *LAWYERS AND JUSTICE: AN ETHICAL STUDY* 54–55 (1988) (describing the lawyer's role as zealous advocate in trial); Stephen Gillers, *Is Law (Still) an Honorable Profession?*, 19 PROF. LAW. 23, 24 (2009) (describing the roles of opposing counsel and judge in checking zealous advocacy in a courtroom); Michael Hatfield, *Professionalizing Moral Deference*, 104 NW. U. L. REV. COLLOQUY 1, 6 (2009) (explaining the role of zealous advocacy in the American legal system).

28. See, e.g., *The Sedona Conference Cooperation Proclamation*, 10 THE SEDONA CONF. J. 331, 331–32 (2009) (explaining that cooperation in discovery is consistent with zealous advocacy).

29. An example is provided later in this article. See *infra* notes 107–08 and accompanying text.

bounds of the law. A competent advisor must fully analyze the client's prospect for liability and advise the client of the risks of liability.³⁰ A competent advisor knows that moral reasoning plays an essential role in providing legal advice. This is because conduct that attorneys recognize as "unethical" often results in legal liability. Lawyers who ignore moral intuition do so at their clients' peril.³¹

There are three key reasons that competent legal advisors must have a mindset of exercising judgment and *advising* (sometimes advising against) rather than *advocating*. First, a client cannot make an informed decision to engage in risky conduct if a lawyer has not fully apprised the client of the risks of liability. In this way, good advising respects client autonomy.³² Second, lawyers face civil and criminal liability (as well as professional discipline) when they facilitate client crimes, frauds, and breaches of fiduciary duty.³³ So, even if a client decides to engage in legally risky behavior, the lawyer still must decide if facilitating the client's plan puts the lawyer at risk of liability as well. Third and finally, lawyers owe special duties to protect clients who cannot protect themselves, such as organizational clients and clients with diminished capacity.³⁴ The lawyer's duties of competence and loyalty are owed to the clients themselves and not to the clients' agents who may otherwise harm the clients by engaging in a legally misguided course of conduct.³⁵

If law students are not exposed to these issues in the doctrinal classroom, they are less likely to act competently when addressing client problems in practice.

30. See, e.g., *Bellino v. McGrath North Mullin & Kratz, PC LLO*, 738 N.W.2d 434, 445–47 (Neb. 2007) (client stated a claim against attorney for failing to advise client of the risk of liability if client engaged in planned conduct).

31. Paula Schaefer, *Harming Business Clients with Zealous Advocacy*, 38 FLA. ST. L. REV. 251, 265 (2011) (explaining that the problem with lawyers separating morality and legality is that "morality often bears upon legal liability").

32. See Fred C. Zacharias, *The Images of Lawyers*, 20 GEO. J. LEGAL ETHICS 73, 87 (2007) (explaining the lawyer's role in enhancing client autonomy).

33. See, e.g., RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 94(1)(a) (2000) (explaining when a lawyer will be liable to third parties for conduct arising from the lawyer's representation of a client); *id.* § 8 (discussing lawyer criminal liability). Professional conduct rules require lawyers to withdraw from a representation in those circumstances. See MODEL RULES OF PROF'L CONDUCT R. 1.16 (2013).

34. See, e.g., RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 96 cmt. f (2000) (stating that a lawyer's duties are owed to organizational client and the lawyer must act in best interests of the client when the client's agents plan to violate a duty to the organization or engage in misconduct that will be imputed to the organization).

35. *Id.* § 96 cmt. e.

*B. Fulfilling Duties to the Bar as Reflected in
Professional Conduct Rules*

The next aspect of professionalism is an attorney's duties to the bar. These duties are reflected in the professional conduct rules adopted by the highest court of each state as well as federal courts. In most jurisdictions, these rules are based to some extent upon the ABA's *Model Rules of Professional Conduct*.³⁶ It is important to know that most jurisdictions adapt the rules (sometimes slightly and other times extensively), which results in widely varying versions of the rules in each jurisdiction.³⁷

Some professors may think they can effectively teach professionalism without reference to professional conduct rules. They will simply tell students to "do more than the minimum" required by the rules.³⁸ That approach, however, does a great disservice to students. Professional conduct rules apply in a multitude of situations that lawyers may encounter. In most cases, "do more than the minimum" is not meaningful guidance for handling these situations.³⁹ It would be more enlightening for classes to explore whether a lawyer's personal values can be reconciled with conduct permitted or required under the applicable rule.⁴⁰ But having that discussion requires students—and their professors—to be familiar with professional conduct rules.

36. It is important to note that the Model Rules are not binding authority—they are merely model rules upon which a jurisdiction may base its professional conduct rules. Doctrinal professors should avoid the common mistake of referencing conduct "required by the Model Rules." An attorney is not required to do anything under the Model Rules; an attorney is bound to follow the *professional conduct rules* of a given jurisdiction. When it is unclear which of various jurisdictions' rules may govern, choice of law principles incorporated into professional conduct rules should resolve the issue. See, e.g., MODEL RULES OF PROF'L CONDUCT R. 8.5(b) (2013).

37. For example, the ABA has created a twenty-one page chart describing state variations on the confidentiality rule. See CPR Policy Implementation Comm., *Variations of the ABA Model Rules of Professional Conduct, Rule 1.6*, AM. BAR ASS'N (Aug. 16, 2013), http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mrpc_1_6.authcheckdam.pdf.

38. STUCKEY ET AL., *supra* note 1, at 59 (describing complying with professional conduct rules as what is "the minimally required conduct of lawyers").

39. For example, Rule 1.6 requires a lawyer to keep client confidences except in certain defined situations when the lawyer can reveal client confidences to protect third parties. MODEL RULES OF PROF'L CONDUCT R. 1.6 (2013). What does it mean to "do more than required" by this rule—should the lawyer disclose more or less than permitted by the rule?

40. For example, students should be prompted to consider whether they could be respectful to opposing counsel and uphold their obligation to provide competent

The following overview will surprise anyone who has previously dismissed professional conduct rules as merely describing an ethical minimum.⁴¹ From a conceptual standpoint, professional conduct rules can be understood as falling into one of three categories: (1) rules that guide attorneys in fulfilling fiduciary obligations to their clients, (2) rules that describe limits of what lawyers can do on a client's behalf, and (3) rules aimed at promoting and preserving the integrity of the profession. The following discussion explains the rules that fall within each category. The goal of this discussion is to provide a framework for professors who do not teach professional conduct rules on a daily basis. Knowing a rule's purpose can help professors (and students) better understand the interests at stake and the choice the bar has made in adopting a given rule.

1. Professional Conduct Rules Guiding Attorneys in Fulfilling Fiduciary Duties to Clients

Rules in the first category provide guidance to lawyers in fulfilling their fiduciary duties of competence, diligence and loyalty. Rule 1.1 provides that a lawyer must be competent, while Rule 1.3 states a lawyer's obligation to be diligent.⁴² Rule 2.1 notes the attorney–advisor's obligation to provide independent professional judgment to the client.⁴³ Rules 1.13 and 1.14 outline the special issues that arise when a lawyer owes a fiduciary duty to an organizational client and to a client with a diminished capacity.⁴⁴ Further exploring the fiduciary nature of the attorney–client relationship, Rule 1.2 describes the allocation of authority between

representation to their client under Rule 1.1. *See* MODEL RULES OF PROF'L CONDUCT R. 1.1 (2013). Students should also be asked whether they could comply with a confidentiality rule even if it means that the wrong person will be convicted of murder. *See* CARL PIERCE ET AL., PROFESSIONAL RESPONSIBILITY IN THE LIFE OF A LAWYER 495 (2011) (discussing the case in which lawyers kept their client's confidence that he had committed a murder for which another man—Alton Logan—was wrongly convicted and imprisoned for twenty-six years).

41. This discussion does not suggest that the professional conduct rules are a perfect guide in all circumstances. Many scholars have articulated good reason to find fault with various professional conduct rules. The point here is simply that the professional conduct rules cannot be lumped together and described generally as stating an ethical minimum.

42. MODEL RULES OF PROF'L CONDUCT R. 1.1, 1.3 (2013).

43. *Id.* at R. 2.1. Rule 2.3 states that a lawyer can provide an evaluation of a matter affecting a client for use by a third party but only if doing so is compatible with other aspects of the lawyer's relationship with the client, the client provides informed consent. *Id.* at R. 2.3.

44. *Id.* at R. 1.13, R. 1.14.

attorney and client, while Rule 1.4 explains the lawyer's duty to communicate with the client.⁴⁵

"Loyalty" rules concern protecting client confidences, money, and property; prohibiting conflicts of interest; and forbidding attorneys from taking unfair advantages arising from the attorney-client relationship.⁴⁶ Rules 1.5 and 1.15 address the lawyer's obligation to fairly bill the client and to protect the client's property.⁴⁷ Rule 1.6 describes a lawyer's duty of confidentiality.⁴⁸ Rules 1.7 through 1.10 concern conflicts of interest, with Rule 1.8 specifically addressing conflicts between the lawyer's self-interest and that of the client.⁴⁹

Recognizing that the relationship is fiduciary in nature, Rule 1.16 provides that the relationship ends when the client discharges the lawyer.⁵⁰ Rule 1.17 explains the information a current client must be provided if the lawyer sells his or her law practice.⁵¹ Rule 1.18 explains duties to prospective clients.⁵²

2. Professional Conduct Rules Concerning Limits On What a Lawyer May Do On a Client's Behalf

Even though lawyers owe fiduciary duties to their clients, there are limits to what a lawyer can or should do on a client's behalf. The rules in this category address situations when a lawyer *may* or *must* take action that is contrary to a client's stated interests. Some of these rules are adopted by the bar as an expression of its values—such as rules that protect the integrity of the legal process or the

45. *Id.* at R. 1.2, R. 1.4.

46. *See supra* note 24 and accompanying text.

47. MODEL RULES OF PROF'L CONDUCT R. 1.5, 1.15 (2013).

48. *Id.* at R. 1.6.

49. *Id.* at R. 1.7 ("Conflict of Interest: Current Clients"), R. 1.8 ("Conflict of Interest: Current Clients: Specific Rules"), R. 1.9 ("Duties to Former Clients"), R. 1.10 ("Imputation of Conflicts of Interest: General Rule"). Rule 1.8 primarily addresses situations in which the lawyer's interests are likely to conflict with clients' interests, including business transactions with clients, using information to the disadvantage of clients, soliciting gifts from clients, agreements giving the lawyer media or literary rights to a portrayal of the representation, financial assistance to clients, settlement of malpractice claims with clients, a lawyer taking a proprietary interest in clients' causes of action, and sexual relations with clients. *Id.* at R. 1.8(a)–(f), (i)–(j). This rule also guides attorneys in avoiding these situations or taking steps to lessen or eliminate the conflict. *Id.*

50. *Id.* at R. 1.16. The rule also describes the circumstances in which a lawyer may or must decline or terminate a representation. *Id.* Those rule provisions are discussed in more detail later in this Article.

51. *Id.* at R. 1.17.

52. *Id.* at R. 1.18.

rights of third parties. Other professional conduct rules recognize ethical dilemmas that attorneys may face in practice and give the attorney discretion to make a personal judgment within the rule's parameters—such as rules that allow the disclosure of client confidences to protect a third party in defined circumstances. Still other rules mirror other sources of law—a lawyer is legally and ethically prohibited from participating in a client crime.

The following discussion describes the Model Rules of Professional Conduct that fall within this category. Professors should be mindful that many of the rules in this category vary widely from jurisdiction to jurisdiction.

A lawyer must comply with legal obligations even when a client might prefer otherwise. Thus, Rule 1.16 requires that a lawyer withdraw if the representation will violate law or professional conduct rules.⁵³ In the same vein, Rule 1.2 prohibits a lawyer counseling a client to engage in or assist a client in criminal or fraudulent conduct.⁵⁴ Lawyers are not shielded from court sanctions or civil or criminal liability for their own conduct—even if they were acting as a lawyer.⁵⁵ These professional conduct rules guide attorneys in avoiding personal liability.⁵⁶

Other provisions of Rules 1.2 and 1.16 acknowledge that lawyers must make choices about how they conduct themselves in the representation of a client.⁵⁷ While the client decides about the ultimate objectives of a representation, the attorney takes the lead in determining the means by which those objectives are achieved.⁵⁸

53. *Id.* at R. 1.16(a)(1) (requiring a lawyer to withdraw from a representation if “the representation will result in violation of the rules of professional conduct or other law”). *See also id.* at R. 1.16(b)(2)–(3) (permitting—but not requiring—withdrawal if the attorney reasonably believes the client is either persisting in a course of action involving the lawyer’s services that is criminal or fraudulent or that in the past the client used the lawyer’s services to perpetrate a crime or fraud).

54. *Id.* at R. 1.2(d).

55. *See* RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 94(1)(a) (2000) (discussing lawyer civil liability to third parties); *id.* § 8 (discussing lawyer criminal liability).

56. Bruce A. Green, *The Criminal Regulation of Lawyers*, 67 *FORDHAM L. REV.* 327, 347–48 (1998) (explaining that professional conduct rules encourage lawyers to comply with criminal law).

57. MODEL RULES OF PROF’L CONDUCT R. 1.2, R. 1.16 (2013).

58. *Id.* at R. 1.2(a) (“Subject to paragraphs (c) and (d) [concerning limited scope representations and client crime and fraud], a lawyer shall abide by a client’s decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation.”).

If attorney and client disagree about how the representation should be conducted, either may seek to terminate the relationship.⁵⁹

In adopting professional conduct rules, each jurisdiction makes a judgment about the role a lawyer should play in protecting the integrity of the legal process. Jurisdictions that follow Model Rule 3 prohibit lawyers from bringing non-meritorious claims and contentions,⁶⁰ require lawyers to expedite litigation,⁶¹ prohibit lawyers from presenting false statements to a court, and require that lawyers not present false evidence to a tribunal (and correct false statements that have already been made to the court).⁶² Further, this rule requires a lawyer to act honestly in discovery,⁶³ prohibits lawyers from attempting to improperly influence a judge or juror,⁶⁴ restricts defined forms of trial publicity,⁶⁵ and bars the lawyer testifying as a witness in the same case in which he or she is counsel.⁶⁶

Some professional conduct rules require or permit the lawyer to act in the interest of someone other than the client. For example, Rule 3.8 details eight special responsibilities of prosecutors.⁶⁷ Rule 1.6(b) lists several situations in which an attorney may disclose confidential information even though the client would prefer confidences be maintained.⁶⁸ Other rules elevate attorney honesty and integrity above any advantage that might be gained by a client if the attorney acted to the contrary. These rules require truthfulness in statements to third parties,⁶⁹ prohibit lawyers communicating with people represented by counsel,⁷⁰ require that a lawyer clarify the lawyer's role when meeting with unrepresented

59. *Id.* at R. 1.2 cmt. 1-2 (describing how attorney and client may end the representation if they cannot agree to the means to be used to accomplish the client's objectives); *see also id.* at R. 1.16 (explaining when a lawyer may and must withdraw from a representation, including when the lawyer has been discharged by the client, when withdrawal can be accomplished without material adverse effect on the client, and when the client insists upon action the lawyer considers repugnant or "with which the lawyer has a fundamental disagreement").

60. *Id.* at R. 3.1.

61. *Id.* at R. 3.2.

62. *Id.* at R. 3.3.

63. *Id.* at R. 3.4.

64. *Id.* at R. 3.5.

65. *Id.* at R. 3.6.

66. *Id.* at R. 3.7.

67. *Id.* at R. 3.8.

68. *Id.* at R. 1.6(b).

69. *Id.* at R. 4.1.

70. *Id.* at R. 4.2.

parties,⁷¹ and mandate that an attorney give notice to someone who inadvertently discloses a confidential document.⁷²

3. Professional Conduct Rules Promoting and Preserving the Integrity of the Profession

In the third and final category, professional conduct rules are aimed at promoting and preserving the integrity of the profession. Rule 5 describes when lawyers are responsible for their own or someone else's violation of a professional conduct rule.⁷³ Rule 6 concerns public service and covers issues such as the lawyer's obligation to accept court appointments and the duty to perform pro bono service.⁷⁴ Rule 7 places limits on how a lawyer may advertise and solicit clients.⁷⁵ Finally, Rule 8 concerns bar admission, prohibits false statements about the integrity or qualifications of judges, mandates that attorneys report professional misconduct, and explains a jurisdiction's disciplinary authority.⁷⁶

71. *Id.* at R. 4.3.

72. *Id.* at R. 4.4(b). Subpart (a) of this rule also requires that a lawyer "not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person." *Id.* at R. 4.4(a).

73. *Id.* at R. 5.1 ("Responsibilities of Partners, Managers, and Supervisory Lawyers"), R. 5.2 ("Responsibilities of a Subordinate Lawyer"), R. 5.3 ("Responsibilities Regarding Nonlawyer Assistance"). Rule 5 also contains provisions aimed at protecting the lawyer's independence, defining prohibited unauthorized practice and permitted multijurisdictional practice, prohibiting restrictions on the right to practice (such as in an employment agreement), and explaining a lawyer's obligation to comply with professional conduct rules while providing law-related services. *Id.* at R. 5.4–5.7.

74. *Id.* at R. 6.1 ("Voluntary Pro Bono Publico Service"), R. 6.2 ("Accepting Appointments"). Rule 6 also addresses conflicts between a lawyer's duty to client and a lawyer's role in a legal services organization, participation in law reform activities, and participation in nonprofit and court-annexed limited legal services programs. *Id.* at R. 6.3–6.5.

75. *Id.* at R. 7.1 ("Communications Concerning a Lawyer's Services"), R. 7.2 ("Advertising"), R. 7.3 ("Solicitation of Clients"), R. 7.4 ("Communication of Fields of Practice and Specialization"), R. 7.5 ("Firm Names and Letterheads"). Rule 7.6 provides that a lawyer shall not make a contribution or solicit contributions for the purpose of obtaining or being considered for a government legal engagement or an appointment by a judge. *Id.* at R. 7.6 ("Political Contributions to Obtain Government Legal Engagements or Appointments by Judges").

76. *Id.* at R. 8.1 ("Bar Admission and Disciplinary Matters"), R. 8.2 ("Judicial and Legal Officials"), R. 8.3 ("Reporting Professional Misconduct"), R. 8.4 ("Misconduct"), R. 8.5 ("Disciplinary Authority; Choice of Law"). Rule 2.4 describes the lawyer's role when serving as a third-party neutral. *Id.* at R. 2.4.

In conclusion, a lawyer's compliance with the rules cannot be assumed and it should not be dismissed as reflecting shallowness in ethical judgment. The rules require much of attorneys—that they fulfill duties to clients, the profession, courts, and others. The rules leave ethical judgments to the attorney in some situations, and guide the attorney in how other conflicts must be resolved in the judgment of the bar. Integrating a meaningful discussion of pertinent professional conduct rules will help students understand their purpose. Perhaps then these students will become lawyers less likely to engage in hyper-technical interpretations of the rules and more likely to comply with the rules' spirit—in furtherance of the bar's vision of attorney professionalism.

*C. Exhibiting Core Personal Values Essential to
Being a Good Lawyer*

Much of the scholarship on lawyer professionalism has focused on the values and traits of the ideal lawyer. This scholarship provides a vision of lawyering to which students and professors should aspire.⁷⁷ The professional lawyer effectively builds and maintains relationships, acting with integrity and treating others with civility and respect. This lawyer also embraces the special role that lawyers play in the legal system and in society. Further, the ideal lawyer demonstrates a strong work ethic and the ability to work effectively with others. Finally, the professional lawyer continuously seeks personal growth and fulfillment.

To help students develop their professional identities, professors must do far more than tell them to act with “integrity” and “civility.”⁷⁸ Certainly that is part of it, but there is much more. Students should be prompted to analyze the reasons attorneys in cases and problems they study sometimes act inconsistent with these core values—i.e., why they lie, show a lack of respect, violate legal obligations, etc. Students should not be left to believe that such lawyers are just bad people. Instead, professors should probe the pressures, rationalizations, and misunderstandings about a lawyer's

77. Consistent with this, many law schools have described the values they hope to instill through professionalism education. See, e.g., Earl Martin & Gerald Hess, *Developing a Skills and Professionalism Curriculum—Process and Product*, 41 U. TOL. L. REV. 327, 336–37 (2010) (describing twelve essential values defined by Gonzaga University School of Law).

78. Deborah L. Rhode, *Lawyers as Leaders*, 2010 MICH. ST. L. REV. 413, 414 (2010) (noting the lack of utility in “homespun homilies and platitudinous exhortations” like “[b]e true to your core values” and “create a climate of goodness”).

proper role that lead lawyers to engage in unprofessional behavior.⁷⁹ This will help students understand they are capable of making such mistakes if they are not vigilant.

Just as important, students must be encouraged to explore how these core values can be harmonized with their other duties as lawyers. Here, context is key. Students should be prompted to reflect on how lawyers in various situations can act consistently with their personal values while also serving their clients' interests and meeting their professional conduct obligations.⁸⁰

The following four sub-parts attempt to bring together old and new research on the core personal values essential to being an excellent lawyer.

1. Effective in Relationships with and Treatment of Others

The professional lawyer is effective in building and maintaining relationships with others, including clients, opposing counsel, opposing parties, judges, colleagues, and support staff.⁸¹ This lawyer is often described as having integrity and treating others with respect, honesty, civility, and courtesy.⁸² The lawyer is sensitive and

79. See *id.* at 420 (explaining how “cognitive bias, situational pressures, and organizational dynamics” undermine good decision-making); Patrick E. Longan, *Teaching Professionalism*, 60 MERCER L. REV. 659, 673–79 (2009) (describing challenges to professionalism).

80. Michael H. Schwartz, *Improving Legal Education by Improving Casebooks: Fourteen Things Casebooks Can Do to Produce Better and More Learning*, 3 ELON L. REV. 27, 51–52 (2011) (explaining that it is not enough to teach professional values, but that students must also be given the opportunity to synthesize personal and professional values).

81. See Susan L. Brooks, *Meeting the Professional Identity Challenge in Legal Education Through a Relationship-Centered Experiential Curriculum*, 41 U. BALT. L. REV. 395, 405–10 (2012) (describing the relationship-centered lawyer); Daisy Hurst Floyd, *We Can Do More*, 60 J. LEGAL EDUC. 129, 132 (2010) (explaining a lawyer's need for “relationship skills”); Neil Hamilton & Verna Monson, *Ethical Professional (Trans)formation: Early Career Lawyers Make Sense of Professionalism*, 8 U. ST. THOMAS L. J. 129, 147 (2011) (discussing that lawyers surveyed early in their careers described professionalism in terms of successful relationships with others, noting the need for respect, decency, kindness, courtesy, and excellent service to clients).

82. STUCKEY ET AL., *supra* note 1, at 65–66 (explaining that special consideration should be given to acting with “honor, integrity, fair play, truthfulness, and candor.”); SULLIVAN ET AL., *supra* note 1, at 130–31 (noting essential qualities of honesty, integrity, consideration, and civility); Hamilton & Monson, *supra* note 81, at 147 (of 37 early career lawyers surveyed about professionalism, the most frequently cited trait was respect (n=15), with honesty (n=11), and courtesy (n=9) close behind); Neil W. Hamilton, *Law Firm Competency Models and Student Professional Success:*

effective in interacting with, building relationships with, and leading diverse people, appreciating dimensions of culture, empowerment, strengths, and emotion.⁸³

2. Accepts a Special Role in the Legal System and Society

A professional lawyer understands that being a public servant means providing access to the legal system.⁸⁴ This lawyer is committed to seeking individual and social justice.⁸⁵ The lawyer devotes time to pro bono service, bar associations, and community.⁸⁶ Further, the ideal lawyer shows respect for the rule of law and courts, and works to improve both.⁸⁷

Building on a Foundation of Professional Formation/Professionalism 7 (Univ. of St. Thomas (Minn.) Legal Studies Research Paper No. 13-22, Aug. 4. 2013), available at <http://papers.ssrn.com/abstract=2271410> (noting firms that consider integrity, honesty, and/or trustworthiness in evaluating attorneys); Rhode, *supra* note 78, at 417 (describing a leader's values as including "integrity, honesty, trust, [and] an ethic of service").

83. STUCKEY ET AL., *supra* note 1, at 66 (urging that law students "learn to identify and respond positively and appropriately to issues of culture and disability that might affect communication techniques and influence a client's objectives"); Brooks, *supra* note 81, at 406–09 (describing how lawyers can develop in their understanding of the person-in-context and appreciate the need for attention to four issues in building relationships: (1) culture, (2) empowerment, (3) strengths, and (4) emotion); Rhode, *supra* note 78, at 416–17, 422 (describing the interpersonal skills of a leader as including social awareness, empathy, persuasion, and conflict management).

84. Brooks, *supra* note 81 (describing how lawyers can provide clients with respect for the law and its actors by attending to issues of "trust, respect, fair-mindedness, judgment, and perceptions around the opportunity to be heard").

85. STUCKEY ET AL., *supra* note 1, at 62–63 (one of five professional values deserving special attention is "a commitment to justice"); SULLIVAN ET AL., *supra* note 1, at 130–31 (explaining that the apprenticeship of professional identity should encompass issues of both individual and social justice); MACCRATE REPORT, *supra* note 19, at 140–41 (describing two of the fundamental values of the legal profession as "[s]triving to [p]romote [j]ustice, [f]airness, and [m]orality" and "[c]ontributing to the [p]rofession's [f]ulfillment of its [r]esponsibility to [e]nhance the [c]apacity of [l]aw and [l]egal [i]nstitutions to [d]o [j]ustice").

86. SULLIVAN ET AL., *supra* note 1, at 130–31 (professional lawyers have a sense of responsibility to the profession); Hamilton, *supra* note 82, at 7 (eight of eighteen law firms studied evaluate lawyers' pro bono, community, and bar association involvement).

87. STUCKEY ET AL., *supra* note 1, at 64–65 (listing "respect for the rule of law" as one of five professional values deserving special attention and explaining, "[a]s gate keepers to the judicial system . . . lawyers have a special obligation to respect and foster respect for the rule of law, irrespective of their personal opinions about

3. Demonstrates a Strong Work Ethic and Works Effectively With Others

The professional lawyer demonstrates a strong work ethic and produces an excellent work product.⁸⁸ The lawyer is described as hard working, responsible, dependable, and self-motivated.⁸⁹ He “takes ownership” of a client’s case or matter (putting forth the thought and effort necessary to see it through) and is responsive to client needs.⁹⁰ Further, the professional lawyer is skilled at project management, working efficiently and completing work in a timely manner.⁹¹ This lawyer can work independently and also works effectively with others. She has the ability to collaborate (and form strong working relationships) with various groups, including clients, colleagues, support staff, and others.⁹² The lawyer is also a leader, as demonstrated by an ability to delegate, supervise, and mentor others.⁹³

4. Continuously Strives for Personal Growth and Fulfillment

Finally, the professional attorney continuously strives to develop personally and professionally. This lawyer seeks happiness and balance in his personal and professional life.⁹⁴ He strives to manage

particular aspects of the law”).

88. Hamilton, *supra* note 82, at 7–8 (eight of the twenty-three competencies considered by eighteen large law firms in evaluating associates are directly related to an attorney’s work habits and work ethic).

89. *Id.* at 7 (fifteen of eighteen law firms studied evaluate lawyers’ initiative, ambition, drive, or strong work ethic).

90. *Id.* (sixteen of eighteen law firms studied evaluate lawyers’ responsiveness to clients or dedication to client service).

91. STUCKEY ET AL., *supra* note 1, at 80 (“A professional lawyer will . . . perform on schedule, keep promises, [and] respond promptly to telephone calls”); Hamilton, *supra* note 82, at 7 (seventeen of eighteen law firms in the study evaluate lawyers’ “project management, including high quality, efficiency, and timeliness”).

92. Hamilton, *supra* note 82, at 7 (eighteen of eighteen law firms studied evaluate lawyers’ ability to initiate and maintain strong work and team relationships while four of the subject firms specifically state that they evaluate the ability to work independently).

93. *See id.* (noting that nine of eighteen studied firms evaluate an attorney’s delegation, supervision, and mentoring, while two specifically evaluate “leadership”).

94. SULLIVAN ET AL., *supra* note 1, at 131 (discussing the personal meaning that attorneys find in legal work); Floyd, *supra* note 81, at 132 (“We should urge students to take the time to develop the inner life, to know who they are and what matters to them, to consider such questions as what their places are in the world, and how to practice law consistently with their values and morals.”).

stress in healthy ways.⁹⁵ The professional lawyer is a self-reflective learner, growing from past experiences.⁹⁶ The lawyer seeks feedback and guidance from others and shows gratitude to others.⁹⁷ Further, the professional lawyer engages in strategic planning to reach both personal and professional goals.⁹⁸

D. Conclusion on Integrating All Three Aspects of Professionalism

All three parts—duties to clients, duties to the bar, and core personal values—are essential aspects of attorney professionalism. Failing to describe to law students what each aspect entails will leave students to draw their own (often incorrect) conclusions. Neglecting to explain how all three aspects can be harmonized may actually result in less professional behavior. Equally dangerous, if professors discuss personal values without reference to duties to clients and obligations under professional conduct rules, students might believe that their conscience must be their sole guide. This is also incorrect.

95. STUCKEY ET AL., *supra* note 1, at 67 (identifying “nurturing quality of life” as a professional value deserving special attention, and explaining that lawyers suffer high rates of depression, anxiety, mental illness, suicide, divorce, alcoholism, drug abuse, and poor physical health); Jerome M. Organ, *What Do We Know About the Satisfaction/Dissatisfaction of Lawyers? A Meta-Analysis of Research on Lawyer Satisfaction and Well-Being*, 8 U. ST. THOMAS L.J. 225, 268–70 (2011) (noting prior studies supporting a conclusion that lawyers disproportionately experience alcoholism, depression, and other mental health issues and urging further study of these issues and their relationship to lawyer satisfaction with the practice of law).

96. Hamilton & Monson, *supra* note 81, at 147–48 (surveyed early career lawyers frequently noted that an aspect of professionalism is “growth in understanding professionalism” over time and indicated the importance of self-reflection to professionalism); Rhode, *supra* note 78, at 417 (explaining the importance of “being reflective about experience”).

97. Hamilton, *supra* note 82, at 7 (five of eighteen law firms studied evaluate this trait in attorneys).

98. MACCRATE REPORT, *supra* note 19, at 141 (noting that a fundamental value of the legal profession is “professional self-development” which includes seeking opportunities to increase knowledge and improve skills and selecting employment that will allow the lawyer to “[d]evelop [a]s a [p]rofessional and [p]ursue [h]is or [h]er [p]rofessional and [p]ersonal [g]oals”); Hamilton, *supra* note 82, at 7 (twelve of eighteen law firms studied evaluate lawyers’ “commitment to prof[essional] development toward excellence”).

III. DEVELOPING COURSE-SPECIFIC PROFESSIONALISM OUTCOMES

This section concerning course outcomes and the next (on course content) are written for doctrinal professors who have decided to be more deliberate about integrating professionalism into a course. Though presented in this order, the process of developing course outcomes and planning course content will likely be more cyclical than linear. Generating ideas for outcomes may result in decisions to add certain content into the course. Decisions about content—or teaching a course with a greater sensitivity to professionalism issues—may result in subsequent updates to course outcomes.

The following questions are intended to prompt doctrinal professors to think about professionalism issues that may be a good fit for a specific course. A professor's answers to these questions could be the starting point for drafting professionalism-related outcomes for the course syllabus.

A. What does a competent lawyer need to know and do to effectively represent clients in this area of the law in both litigation and non-litigation settings?

This first question encourages professors to describe what students should expect to know at course completion about being a competent lawyer in the subject area of the law.⁹⁹ Professors should consider how knowledge of the law in this area will be used by lawyers in both litigation and non-litigation settings. This means considering lawyers' various roles of counseling clients, planning for future events with clients, negotiating on behalf of clients, drafting documents, and advocating on a client's behalf in court. A course outcome in an employment law course could be as simple as, "Students will understand issues that a competent lawyer must address when counseling clients about employment matters and when representing plaintiffs or defendants in employment litigation."

B. When attorneys practice in this area of the law, do they face specific temptations to act in a manner that is disloyal to clients?

As discussed earlier, an attorney's fiduciary duty of loyalty requires an attorney to keep client confidences, protect client property, not represent parties with conflicting interests, and not

99. See *supra* notes 21–35 and accompanying text concerning a lawyer's competency obligation.

take an unfair advantage arising from the attorney-client relationship.¹⁰⁰ When planning the course, professors should consider whether any of these issues frequently occur in the subject area of law. For example, attorneys are often asked to represent multiple parties in estate planning and when forming a new business. An outcome in an estates and trusts or business organizations course might include the following: “Students will be able to identify and resolve potential conflicts of interest in [estate planning or business formation].”

C. Which professional conduct rules are of particular interest to lawyers who practice in this area?

Many professional conduct rules are of particular interest to practitioners in specific practice areas. The following are just a few examples. Prosecutors have multiple obligations under Rule 3.8, “Special Responsibilities of a Prosecutor.”¹⁰¹ The up-the-ladder reporting and loyal disclosure provisions of Rule 1.13 (and related Securities and Exchange Commission professional conduct rules) are of critical importance to all attorneys who represent business organizations.¹⁰² Attorneys who represent plaintiffs for a contingent fee—such as in a personal injury practice—should understand not only Rule 1.5(c) (concerning when a contingent fee is permissible), but also Rule 1.8(e) (the limits on financial assistance to a client) and Rules 1.5(e) and Rule 5.4 (limits on to whom a lawyer may pay a referral fee).¹⁰³ When doctrinal professors identify a relevant rule or rules, they should make reference to understanding that professional obligation in course outcomes.

D. Which aspects of a lawyer’s ideal personal values do I want to emphasize throughout the course?

Rather than drafting a course outcome that references “professionalism” without further explanation, professors should consider referencing two or three values students should expect to develop in the course.¹⁰⁴ This decision could be driven by the values a law school has emphasized in its mission statement or in its

100. See *supra* notes 24–25 and accompanying text concerning a lawyer’s loyalty obligation.

101. MODEL RULES OF PROF’L CONDUCT R. 3.8 (2013).

102. *Id.* at R. 1.13(b)–(c).

103. *Id.* at R. 1.5(c), (e), R. 1.8(e), R. 5.4.

104. See *supra* notes 81–98 and accompanying text (discussing values and traits of professional lawyers).

articulation of professionalism. Other professors may wish to include the values that they have always emphasized but not previously referenced explicitly in course outcomes.

IV. COURSE CONTENT: TEACHING AND ASSESSING PROFESSIONALISM IN THE DOCTRINAL CLASSROOM

A. *Using Case Law*

Doctrinal professors can integrate professionalism themes into their classes using cases already in their textbooks. Even when a case says little or nothing about the role of lawyers in the matter, lawyers were undoubtedly involved.¹⁰⁵ From the advice and services the client received prior to litigation to the way a lawyer conducted the litigation, every case contains the fingerprints of lawyers. These cases provide opportunities to discuss every aspect of lawyer professionalism.

A lawyer's advisory role can be highlighted by asking students to present a case from the perspective of the lawyer who advised a client about the underlying conduct. Some of the following questions would facilitate a discussion of the competent legal advisor. What fact investigation and legal research do you think the lawyer completed prior to advising the client? Based on later events in the case, what advice do you believe the lawyer provided? Do you think that advice allowed the client to adequately weigh the risk of this very litigation? Do you think the lawyer made any mistakes in the way he or she handled the matter? All of these questions consider both the substantive law of the class and the lawyer's role as advisor.

Other cases can be used to discuss factors that should influence how a competent lawyer conducts litigation. For example, civil procedure casebooks often include cases involving discovery misconduct.¹⁰⁶ Professors can ask students to present such a case from the perspective of the lawyer who advised the client to withhold responsive documents, who failed to advise a client to preserve

105. Of course, some cases are explicit in discussing the role of attorneys in the underlying matter. These cases are particularly rich tools for discussing attorney professionalism. *See, e.g., Anderson v. Wilder*, No. E2006-02647-COA-R3-CV, 2007 WL 2700068, at *13 (Tenn. Ct. App. Sept. 17, 2007) (discussing the advice provided by counsel when client asked for guidance regarding ability to expel owners of minority interest in the limited liability company).

106. *See, e.g., BENJAMIN SPENCER, CIVIL PROCEDURE: A CONTEMPORARY APPROACH* 691–97 (2011) (excerpting a discovery dispute ruling in *Poole ex rel. Elliott v. Textron*, 192 F.R.D. 494 (D. Md. 2000)).

evidence, etc. In many cases, the issue was not a close call: the client had an obligation under the rules of civil procedure and other law to comply with the discovery obligation.¹⁰⁷ Professors can ask students whether the lawyer or the client was in a better position to understand the legal obligation (they will see that it is the lawyer) and how the lawyer could have explained the law to the client. Ask if a client might have preferred this information prior to paying the legal fees (for the lawyer's time arguing the motion) and the sanctions that resulted.¹⁰⁸

Cases can also present opportunities to discuss how professional conduct rules should influence a lawyer's conduct. Returning to the discovery example, Rule 3.4 prohibits a lawyer from unlawfully obstructing a party's access to evidence and prohibits failing to comply with a proper discovery request.¹⁰⁹ Introducing these rules can help students see the connection between professional conduct rules and other sources of law. If a professor is uncertain of the exact text of a given rule, then the professor could ask a student to research the applicable rule (in the jurisdiction where the case was pending) and report it at the next class.

Finally, cases can be a springboard for discussing how core personal values are consistent with providing excellent representation to a client. In most cases, students will see it is possible for a lawyer to act in accordance with the personal values discussed in this Article while simultaneously fulfilling duties to clients and complying with professional conduct rules. Further, as noted earlier, treating others with honesty and respect is a value that lawyers should exhibit. Cases can highlight the connection between a party's mistreatment of others and legal liability.¹¹⁰ A lawyer who understands these issues can better advise his client regarding how to avoid liability.¹¹¹ Finally, a client is at a substantial advantage in litigation if her lawyer can get along with opposing counsel. Litigation is more productive and less expensive for clients when lawyers are fair and respectful to everyone involved.¹¹² Consistently raising these issues enhances student

107. See, e.g., *Poole*, 192 F.R.D. at 501-03 (discussing Textron and its counsel's deficient efforts in locating, collecting, and producing documents responsive to a request for production of documents).

108. See *id.* at 510-11 (court imposed monetary sanction of \$37,258.39 jointly and severally against attorney and client for discovery misconduct).

109. MODEL RULES OF PROF'L CONDUCT R. 3.4 (2013).

110. See Schaefer, *supra* note 31 and text accompanying note 31.

111. *Id.*

112. See *supra* note 28 and accompanying text.

understanding of how the content of the course is relevant to their future practice and consistent with their personal values.

Assessment is possible—and necessary—when professors use case law to discuss professionalism. Students may believe that anything professionalism-related is a matter of opinion and there is no right answer.¹¹³ It is essential that students be dissuaded of this notion. Professors should point to concrete examples of the consequences: the negative repercussions to a client of a lawyer's poor legal advice, the possibility of a malpractice lawsuit against the attorney, and the prospect of a disciplinary complaint with the bar. Undoubtedly, there are many professional dilemmas for which there is not a single right answer, but professors should still share their perspective on the issue—particularly when the class discussion heads in a questionable direction. Professors should offer examples from their own practice and explain why handling a matter in a certain way is advantageous to the client and good for the profession.¹¹⁴ Professors should guide students in discussing the consequences—legal, ethical, and reputational—of following a different course.

B. Experiential Learning Exercises in the Doctrinal Classroom

Some professors teaching doctrinal classes already recognize the benefit of using experiential learning activities in class. By requiring students to act in the role of lawyers, these exercises help students understand doctrine and develop lawyering skills. The same exercises can be used to improve students' ability to identify professionalism challenges and reconcile a lawyer's various professional obligations and values.

A growing number of resources are available to help doctrinal professors introduce such exercises into their classes. Subject matter specific websites contain compilations of exercises in various areas of law.¹¹⁵ Groups such as the International Forum on Teaching Legal Ethics and Professionalism,¹¹⁶ the Legal Education, ADR, and

113. SULLIVAN ET AL., *supra* note 1, at 133 (remarking that law students believe that it is too late to develop morally in law school).

114. Of course, this is more difficult for professors without significant practice experience. This is another reason why law schools should be open to hiring professors who practiced law.

115. See, e.g., FAMILY LAW EDUCATION REFORM PROJECT, <http://flerproject.org> (last visited Nov. 17, 2013).

116. See *Teaching Materials*, INT'L FORUM ON TEACHING LEGAL ETHICS AND PROFESSIONALISM, www.teachinglegalethics.org/content/teaching-materials (last visited Nov. 17, 2013); Ctr. for Transactional Law & Practice, *Emory Exchange for*

Practical Problem Solving (“LEAPS”) Project,¹¹⁷ Educating Tomorrow’s Lawyers,¹¹⁸ and others provide experiential learning materials that can be used in courses across the curriculum.

Additionally, a number of individual textbooks¹¹⁹ and several practice-focused series of texts and supplements¹²⁰ from every law school publisher contain experiential learning exercises for doctrinal classes. Addressing professionalism issues is central to students working through the questions and problems in these books. Michael Hunter Schwartz’s and Denise Riebe’s text, *Contracts: A Context and Practice Casebook*,¹²¹ contains questions that implicate professional conduct rules and that require students to reflect on the intersection of legal ethics and personal values.¹²² A representative exercise in Colleen Medill’s book *Developing Professional Skills: Property* gives students the opportunity to learn about property law and attorney professionalism as they negotiate a commercial lease.¹²³

Numerous law review articles describe innovative exercises law professors have developed to put students in the role of lawyers in the doctrinal classroom. The exercises they describe can be adopted

Transactional Training Materials, EMORY UNIV. SCH. OF LAW, www.law.emory.edu/centers-clinics/center-for-transactional-law-practice/emory-exchange-for-transactional-training-materials.html (last visited Nov. 17, 2013).

117. See, e.g., *Consultants and Resources by Subject Area*, LEAPS PROJECT, <http://leaps.uoregon.edu/content/consultants-and-resources-subject-area> (last visited Nov. 17, 2013).

118. Inst. for the Advancement of the Am. Legal System, *Educating Tomorrow’s Lawyers—Course Portfolios*, UNIV. OF DENVER, <http://educatingtomorrowlawyers.edu/course-portfolios> (last visited Nov. 17, 2013).

119. See, e.g., *Legal Texts that Incorporate Practical Problem-Solving and Professional Skills Development*, LEAPS PROJECT, <http://leaps.uoregon.edu/content/legal-texts-incorporate-practical-problem-solving-and-professional-skills-development> (last visited Nov. 17, 2013).

120. *Id.* Current series include: CONTEXT & PRACTICE (Carolina Academic Press); SKILLS & VALUES (LexisNexis); DEVELOPING PROFESSIONAL SKILLS (West Academic Press); BRIDGE TO PRACTICE (West Academic Publishing); THE LEARNING SERIES (West Academic Publishing); EXPERIENCING LAW (West Academic Publishing).

121. MICHAEL HUNTER SCHWARTZ & DENISE RIEBE, *CONTRACTS: A CONTEXT AND PRACTICE CASEBOOK* (2009).

122. Schwartz, *supra* note 80, at 54–55 (discussing questions in the text that prompt students to think about gratitude, to reframe struggles in a positive way, and to plan how they will manage stress in practice).

123. COLLEEN MEDILL, *DEVELOPING PROFESSIONAL SKILLS: PROPERTY* (2011). Students who complete this Chapter Eight exercise will gain experience representing a client in a non-litigation setting, see the benefits of treating opposing counsel with respect, and gain an understanding of their obligation under professional conduct rules (Rule 4.1) to be truthful in statements to others. *Id.* at 63–69.

by a professor teaching the same class, or may serve as an inspiration to a professor thinking about creating his or her own materials. The following are some notable examples from a variety of doctrinal courses. Miriam Albert and Jennifer Gundlach focus on professionalism in the first year curriculum, explaining a simulation they use in a contracts class.¹²⁴ Ann Juergens and Angela McCaffrey explain how to use role-plays in the first year curriculum.¹²⁵ Transactional (rather than litigation-focused) experiential learning is the focus of articles by Karl S. Okamoto¹²⁶ and Celeste M. Hammond.¹²⁷ Other excellent articles describe exercises developed for family law,¹²⁸ civil procedure,¹²⁹ and land use law courses.¹³⁰

Shorter problems can also be used to put students in the role of lawyer to explore the law of the course and professionalism. Doctrinal professors should consider developing problems based on recent cases, news items, issues discussed in blogs in the legal subject matter area, and clips from movies and television. Problems already in casebooks can often be reframed to prompt a discussion of professionalism issues. For example, a problem in an excellent business organizations textbook mentions in passing that a lawyer represented two women in forming a limited liability company.¹³¹

124. Miriam R. Albert & Jennifer A. Gundlach, *Bridging the Gap: How Introducing Ethical Skills Exercises Will Enrich Learning in First Year Courses*, 5 DREXEL L. REV. 165 (2012).

125. Ann Juergens & Angela McCaffrey, *Roleplays as Rehearsals for "Doing the Right Thing" – Adding Practice in Professional Values to Moldovan and United States Legal Education*, 28 WASH. U. J.L & POL'Y 141 (2008).

126. Karl S. Okamoto, *Learning and Learning-to-Learn by Doing: Simulating Corporate Practice in Law School*, 45 J. LEGAL EDUC. 498 (1995).

127. Celeste M. Hammond, *Integrating Doctrine and Skills in First-Year Courses: A Transactional Attorney's Perspective*, 17 LEGAL WRITING: J. LEGAL WRITING INST. 409 (2011).

128. Susan B. Apel, *No More Casebooks: Using Simulation-Based Learning to Educate Future Family Law Practitioners*, 49 FAM. CT. REV. 700 (2011).

129. William R. Slomanson, *Pouring Skills Content Into Doctrinal Bottles*, 61 J. LEGAL EDUC. 683 (2012); Lloyd C. Anderson & Charles E. Kirkwood, *Teaching Civil Procedure With the Aid of Local Tort Litigation*, 37 J. LEGAL EDUC. 215 (1987).

130. Keith H. Hirokawa, *Critical Enculturation: Using Problems to Teach Law*, 2 DREXEL L. REV. 1 (2009).

131. The referenced problem even goes on to explain how the lawyer was the father of one of the women and that he drafted the LLC agreement to favor his daughter, making her the sole manager with no term limit and providing no method for her removal. D. GORDON SMITH & CYNTHIA A. WILLIAMS, *BUSINESS ORGANIZATIONS, CASES, PROBLEMS, AND CASE STUDIES* 111 (2012). Certainly, this problem is meant to be humorous and is intended to prompt a discussion of limited liability company law. It seems just as important, though, for students in a business

The conflict of interest issue is not meant to be the focus of the question, but should be addressed by the class just as a lawyer in the situation must confront the issue.

Integrating service-learning or pro bono projects into doctrinal classes is another way to connect legal knowledge and professionalism. Professors Susan Waysdorf and Laurie Morin teach disaster law in a course with a service-learning requirement that sends students to the Mississippi Center for Justice for a week of work.¹³² At UNLV William S. Boyd School of Law, Community Law Practicums are offered for various doctrinal courses. In these companion courses, students do legal work for a selected community partner in coordination with the doctrinal class.¹³³ Professor Tony Arnold teaches a Land Use and Planning Law course with a service-learning component.¹³⁴ In these classes, students learn the law and lawyer professionalism, including the value of pro bono service.

C. Other Avenues to Introduce Professionalism into Doctrinal Classrooms

Inviting members of the bench and bar to speak in a doctrinal class can add a valuable perspective on professionalism issues in a given area of practice. United States Magistrate Judge Clifford Shirley often speaks to an e-discovery class at the University of Tennessee College of Law, explaining how costly it is to clients when attorneys engage in “over-discovery” and refuse to cooperate with opposing counsel.¹³⁵ Attorneys who have been engaged in high profile local litigation in the subject matter area are also good

associations class to recognize the lawyer violated a duty to one of his clients and a related professional conduct rule by favoring one client over another.

132. Susan Waysdorf & Laurie Morin, *Syllabus: Katrina and Beyond: Reclaiming Rights and Restoring Communities in the Face of Disasters*, UNIV. OF THE DIST. OF COLUMBIA DAVID A. CLARKE SCH. OF LAW, <http://c.ygcdn.com/sites/www.law.udc.edu/resource/resmgr/syllabi/katrinaspri2012.pdf> (last visited Nov. 17, 2013).

133. See *Electives*, UNLV WILLIAM S. BOYO SCHOOL OF LAW, <http://law.unlv.edu/academics/courses/list-of-electives.html> (last visited Nov. 17, 2013) (providing a description of the community law practicum course).

134. See generally *Craig Anthony (Tony) Arnold*, UNIV. OF LOUISVILLE LOUIS D. BRANDEIS SCH. OF LAW, www.law.louisville.edu/faculty/tony_arnold (last visited Nov. 17, 2013) (noting that Professor Arnold “integrates professional practical skills development through experiential learning into the courses he teaches, such as service-learning projects and zoning permit hearing simulations in Land Use & Planning Law”).

135. Paula Schaefer, *Syllabus: E-Discovery – Fall 2012*, UNIV. OF TENN. COLL. OF LAW 5 (on file with author).

candidates for guest speakers. For example, Hamline University has invited local attorneys engaged in litigation concerning a bridge collapse to speak with law students.¹³⁶ It is easy to envision how lawyers from such a case—including attorneys that represented opposite sides in the underlying dispute—can contribute to students' understanding of the law and attorney professionalism.

Doctrinal professors might also consider assigning a book that integrates issues of professionalism and the subject matter of the course.¹³⁷ Civil procedure professors have assigned *A Civil Action*¹³⁸ and *The Buffalo Creek Disaster*¹³⁹ for their students; both books highlight professionalism issues in civil litigation.¹⁴⁰ *The Smartest Guys in the Room*,¹⁴¹ a book that describes the Enron collapse, can be a springboard for discussing what an attorney should do when a corporate client is engaged in fraudulent conduct. William Colby's book *Long Goodbye: The Deaths of Nancy Cruzan*¹⁴² is the story of a young attorney who took on the Cruzan family's right to die case pro bono. Colby litigated the case for years, including arguing the case at the Supreme Court of the United States. This book would be a good fit for a law and medicine class or a professional responsibility course. Finally, professors might consider assigning biographies of famous lawyers and judges who have a connection to the subject area of the course.¹⁴³

136. Bobbi McAdoo et al., *It's Time to Get It Right: Problem-Solving in the First-Year Curriculum*, 39 WASH. U. J.L. & POL'Y 39, 87 (2012).

137. Alternatively, books that are not closely related to course doctrine, but that will help students prepare for the challenges of practice, could be incorporated as an optional reading in any doctrinal class and discussed outside of class time. Some examples include: KELLY LYNN ANDERS, *THE ORGANIZED LAWYER* (2009); AMIRAM ELWORK, *STRESS MANAGEMENT FOR LAWYERS* (1995); NANCY LEVIT & DOUGLAS O. LINDER, *THE HAPPY LAWYER: MAKING A GOOD LIFE IN THE LAW* (2010); MICHAEL F. MELCHER, *THE CREATIVE LAWYER* (2007).

138. JONATHAN HARR, *A CIVIL ACTION* (1995).

139. GERALD M. STERN, *THE BUFFALO CREEK DISASTER* (1977).

140. *Approaches to Incorporating PPS into Civil Procedure*, LEAPS PROJECT, <http://leaps.uoregon.edu/content/approaches-incorporating-pps-civil-procedure> (last visited Nov. 17, 2013).

141. PETER ELKIND & BETHANY MCLEAN, *THE SMARTEST GUYS IN THE ROOM: THE AMAZING RISE AND SCANDALOUS FALL OF ENRON* (2004).

142. WILLIAM H. COLBY, *LONG GOODBYE: THE DEATHS OF NANCY CRUZAN* (2003).

143. See, e.g., Longan, *supra* note 79, at 697 (discussing assigning biographies of lawyers and judges to professional responsibility students).

V. CONCLUSION

Doctrinal professors have the tools necessary to integrate professionalism into their classes. Doing so does not require a shift away from doctrine, but only a slight change in orientation—a focus on the lawyers who practice in the subject matter area. Integrating professionalism topics into a class can be seamless. Rather than taking away from the subject matter of the class, professionalism discussions provide students greater context and enhance their understanding of the area of practice.