Reinvigorating A Lawyer's Creed of Professionalism

Twenty-Five Years Later

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The 1988-89 “Lawyer’s Creed” and Its Local Distribution
In 1987, prompted by concerns over the decline in lawyer professionalism that had been published several months earlier by the ABA Commission on Professionalism (“the Stanley Commission”), the then-president of the Cleveland Bar Association, Liz Moody, appointed an Ad Hoc Committee on Professionalism, composed of Edward Coaxum, Jr., Karen Davey, Judge Ann Dyke, Richard J. Egan, William W. Falgraf, Stanley M. Fisher, M. Colette Gibbons, Judge Lillian J. Greene, C. Lyonenumber, Mary Ann Jorgenson, Judge Richard M. Markus, Judge Ralph A. McAllister, Harley J. McNeal, Marshall I. Nurenberg, George J. Sadd, Isaac Schulz, Marilyn Shea-Stonum, and Judge William K. Thomas. The Chair of the Ad Hoc Committee was the then-president-elect of the CBA, Marvin Karp, who proposed that the Committee articulate and distribute to the members of the bar a set of professionalism standards on how lawyers should conduct themselves in their everyday dealings with opposing counsel, with the courts and even with their own clients.

Working in conjunction with the Committee on Professionalism of the American Bar Association’s Tort and Insurance Practice Section (TIPS) — which Committee was also chaired by Marvin Karp — the Ad Hoc Committee drafted what was ultimately entitled “A Lawyer’s Creed of Professionalism.” Among other things, the Creed stressed the importance of courtesy and civility between lawyers; of cooperating in scheduling; of refraining from utilizing litigation to harass the opposing party; of not filing frivolous motions and pleadings; of stipulating to facts as to which there was no genuine dispute; of being punctual; and of recognizing that excessive zeal can be detrimental to the interests of the lawyer’s clients and to the proper functioning of our system of justice.

In large measure, these precepts were a response to the “hard-ball” tactics that had increasingly come into vogue with a growing number of lawyers. The Creed, however, also recognized that the growth of this “hard ball” approach was being prompted by clients. Because of what they read in newspapers or magazines or saw on television, many clients had come to believe that the ideal lawyer was one who was nasty, uncompromising, and notorious for making life miserable for his adversaries. The Creed therefore pointed out that a lawyer has certain professional responsibilities that transcend the lawyer’s duties to his or her clients. For while a lawyer must always be loyal and committed to his client’s cause, a lawyer also has an obligation to counsel his or her client against pursuing a course of action that is of dubious merit and from insisting on tactics that are intended to delay, harass, or drain the financial resources of the other side.

In 1988, the “Lawyer’s Creed of Professionalism” was formally adopted by the CBAs Board of Trustees. The Board also authorized the printing of 6,000 copies on decorated and heavy paper, 16 x 20 inches in size. Those printed copies were then mailed to every lawyer and judge in Cuyahoga County, along with a covering letter from the President of the CBA that urged the recipient to frame the Creed and hang it on his or her office wall where it would serve as a daily reminder to the lawyer — as well as to the clients and other persons who visited that office — of the professionalism standards that the lawyer intended to abide by in his or her day-to-day practice.

The National Distribution
That same summer the TIPS Section of the ABA submitted to the ABA House of Delegates a Report and Recommendation that urged the ABA to recommend to all state and local bar associations across the country that they do what the Cleveland Bar Association had done, namely, adopt a creed of professionalism and then distribute printed copies to their members in a form suitable for framing.

That Report and Recommendation was adopted by the House at the ABA Annual Meeting held in Toronto. The TIPS Section then proceeded to mail, to approximately 250 state and local bar associations, a letter describing the House of Delegates recommendation and enclosing a copy of the TIPS/CBA “Lawyer’s Creed of Professionalism” as a model of what was being proposed. Quite a number of bar associations took that recommendation to heart, adopting the “Lawyer’s Creed of Professionalism” as their own and sending out printed copies to their members. In addition — thanks to a laudatory article that appeared in The New York Times — the CBA received requests for copies from a number of judges and lawyers around the country. (It should be noted that the TIPS/CBA Creed, as well as versions subsequently adopted by several other state and local bar associations, was specifically mentioned in the April, 1991 Interim Report of the Seventh Circuit’s Committee on Civility. See 143 F.R.D. 371at 422.)

Subsequent Actions In Ohio as a Consequence of the Creed
From the outset of the project the members of the 1988 CBA Ad Hoc Committee were concerned over the fact that, notwithstanding their expectation that the Creed would be ultimately adopted by the Bar Association, there would be no “enforcement” mechanism to deal with those recalcitrant lawyers who would ignore the Creed’s various precepts, thereby souring other lawyers on the importance of abiding by them.

Accordingly, in early 1989 the CBA Board of Trustees authorized Marvin Karp (who, by then, was the President of the Association) to formally ask the Ohio Supreme Court to authorize local bar associations (such as the CBA) to establish standing committees on professionalism that could monitor compliance with any creed of professionalism adopted by the association, receive complaints about the failure of individual lawyers to abide by such creeds, and endeavor (through informal discussion) to persuade those lawyers to alter their conduct. When, however, one of the other metropolitan bar associations objected to what the CBA was proposing, Chief Justice Thomas Moyer convened a meeting of the presidents of all of the metropolitan bars. That meeting culminated with a statement by the Chief
Justice that if “what is being proposed would make the practice of law more pleasant for just two lawyers, it would be worth doing.” The Chief Justice then stated that he would appoint a special committee to make recommendations to the entire Court with respect to the CBA’s proposals.

Accordingly, on August 24, 1989, the Chief Justice announced the appointment of the “Supreme Court Committee to Study Creeds of Professionalism.” That Committee was comprised of three judges and fourteen lawyers (including the presidents, or immediate past presidents, of each of the Ohio metropolitan bar associations). Eugene Weir of Coshocton was named as Chair. The Committee was given a broad and positive mandate by the Chief Justice, who stated, in a letter to Mr. Weir:

I think the Committee should provide the Court with the most comprehensive recommendations the Committee may develop. I would think those recommendations should include enforcement, monitoring and implementation of Creeds of Professionalism.

During the next year and a half, that Committee held seven meetings and conducted three separate mail surveys. Finally, in December, 1990, the Committee issued its Report. That Report contained several recommendations, the first of which was that the Supreme Court should establish a “permanent Commission on Professionalism.” The Committee also recommended that the “first task” of the permanent Commission should be to “draft a comprehensive Creed of professionalism to set forth standards of professional conduct to which all members of the Ohio Bar should aspire.” The Creed would thus “focus the consciousness of Ohio lawyers on professionalism concerns” and also “serve as an educational tool for law schools to teach professionalism concepts to law students for the continuing education of the Ohio Bar.”

Another Committee recommendation was that Rule X of the Rules of Government of the Bar be amended so as to include professionalism education within Ohio’s continuing legal education requirements.

Once again, however, developing a procedure to in some way enforce compliance with any creed promulgated by the Professionalism Commission raised concerns. The Report therefore stated that the new aspirational creed “should not, at this time, be accompanied by a formal enforcement mechanism or sanctions for violative conduct.” Instead, consideration of such a mechanism should be deferred until “after an evaluation is performed of the success of the creed in reducing unprofessional conduct.” On the other hand, the Committee did recognize that “peer review committees, established on a local or regional basis, could monitor unprofessional conduct and encourage attorneys to comply with aspirational standards of a creed of professionalism and accepted local practices. [Such] committees would not have enforcement powers, but would be authorized to speak to an individual attorney who had been identified as engaging in violative conduct.” The latter suggestion, it should be noted, closely paralleled what the CBA had proposed in 1989.

Although it took a bit of time, most of the Committee’s recommendations were eventually implemented. Thus, in September, 1992, the Supreme Court created a permanent Commission on Professionalism, consisting of five judges, six attorneys, two law school administrators or faculty, and two lay members. Thereafter, the new Commission drafted a “Statement on Professionalism,” which was formally adopted by the Supreme Court in February, 1997. Some of the provisions in that “Statement” (particularly those found in the “Lawyer’s Aspirational Ideals” section) are very similar to certain provisions of the 1988–89 Cleveland “Lawyer’s Creed.”

Also in 1997, the Supreme Court amended Rule X of the Rules for the Government of the Bar, so as to require every Ohio lawyer to receive “60 minutes of instruction related to professionalism” every two years.

The Subsequent Years in Cleveland

By that time (1997), the implementation of the Cleveland “Lawyer’s Creed” had largely run its course. For a few years, in the early 1990s, the CBA did continue to distribute copies of the printed Creed to new admittees to the bar who lived in Cuyahoga County. Framed copies of the Creed also continued to be seen on the office walls of many Cleveland lawyers and in the chambers of many Common Pleas Court and federal judges, who would often point out certain provisions to feuding lawyers appearing before them. Nevertheless, over time, the number of framed Creeds gradually abated. Indeed, the establishment of the Supreme Court Commission on Professionalism and its promulgation of the “Statement of Professionalism” may have caused local bar associations to believe that any further initiatives with respect to professionalism were now the province of that Commission. Whatever the reasons, local bar associations, by and large, focused their attention elsewhere.

Carter Strang’s Initiative

Then, in 2012, Carter Strang became President of the Cleveland Metropolitan Bar Association. One of his announced objectives was to reinstate the organized bar’s focus on professionalism. Carter therefore appointed a Task Force on Civility and Professionalism, chaired by Judge Michael Donnelly and Judge Joan Synenberg, the purpose of which would be “to increase civility and professionalism in the practice of law.” In that connection, Carter specifically asked the Task Force to review and update the 1988–89 CBA Lawyer’s Creed.

The latter assignment was given to a subcommittee of the Task Force, comprised of Judge Dan Polster, Barbara Roman, Robert Secrist, Bruce Hearey, Daniel Gourash, Amanda Gatti, Elliot Kaufman, Fred Wendel, Harlan Karp, Jack Neville, Jim Kline, Jim Sammon, John Schiller, Julie Crockre, Ken Kraus, Max Rieker, Michael Diamant, Michael Tucci, Steve Werber, and Marvin Karp as Chair. That subcommittee held six meetings in the first half of 2013. Given the technological innovations and other changes in the practice of law that had occurred during the twenty-five years since the original Creed was adopted, the subcommittee decided to redo that document, adding new provisions and clarifying and expanding the language of certain of the original principles. For example, where the 1988–89 Creed simply stated that, “in depositions and other proceedings, and in negotiations,” a lawyer would conduct himself “with dignity, avoid making groundless objections and refrain from engaging in acts of rudeness or disrespect,” the new Creed states:

9. At depositions:
   a. I will not be rude or abusive when asking questions of a deponent;
   b. I will not interfere with the questioning of witnesses by other counsel by, for example, making “speaking objections” or rude comments or by coaching or giving improper instructions to witnesses; and
   c. I will not engage in any conduct that would be inappropriate in the presence of a judge.

10. When propounding written discovery, I will be concise in my instructions and I will prepare interrogatories and requests for production that are focused and unambiguous.

The new Creed was then submitted by the entire Task Force to the CMBAs Board of Trustees in November 2013, and was immediately adopted.

The Task Force’s submittal to the Board also included two additional recommendations. The first was that the CMBAs should do what the CBA did back in 1989, namely, deliver enlarged, printed versions, suitable for framing, to all of the lawyers and judges in Cuyahoga
County, with the request that each recipient frame the new “Lawyer’s Creed” and hang it on his or her office wall. The Board approved that recommendation, and the CMBA is now preparing to fully implement that decision this summer. In addition, Judge Donnelly plans to work with Common Pleas Administrative Judge John Russo to see to it that framed copies of the new Creed are hung outside every courtroom in the Justice Center. Judge Donnelly also intends to work with the Ohio Common Pleas Judges Association to have the new Creed distributed throughout the state.

The second recommendation was that the CMBA should, at long last, establish a “semi-enforcement” procedure along the lines of what the CBA had proposed to the Ohio Supreme Court twenty-five years ago (and which was noted by the Supreme Court Committee in its December, 1990 Report), namely, a peer conciliation panel. This proposal reflected the unanimous conclusion of the 2013 Creed subcommittee that something needed to be done about those lawyers who either “wouldn’t get the message,” or who might on occasion forget themselves and engage in conduct that interfered with or impeded the proper handling of a matter. The Board of Trustees therefore approved this recommendation (to establish a peer conciliation panel) and authorized the Task Force to draft such a program.

The Creation of the Professionalism Conciliation Panel
Judges Donnelly and Syenenberg then appointed a new subcommittee, comprised of Jim Kline, Richik Sarker, Max Rieker, Frank DeSantis, Abigail Greiner, Michael Diamant, John Schiller, Alan Petrov and Roger Syenenberg, and chaired, once again, by Marvin Karp. The latter subcommittee proceeded to prepare a document that set forth the structure and operating procedures of a CMBA “Professionalism Conciliation Panel,” modeled in large part after a “Peer Professionalism Assistance Program” that has been in effect in Colorado, under the auspices of the Denver Bar Association, for roughly fifteen years. That document — which was approved by the CMBA Board in April of this year — spells out how the conciliation panel is to be constituted and appointed. It then describes how any lawyer or judge in this area who is not complying with the precepts of professionalism set forth in the new Lawyer’s Creed can call the CMBA for assistance with respect to a lawyer (or lawyers) who is not complying with the precepts of professionalism set forth in the new Lawyer’s Creed or in the Supreme Court’s Statement on Professionalism; how an individual member of the Panel will then be assigned to contact the lawyers who are involved and attempt to resolve the situation through informal discussions, counseling, mediation, etc.; and how the details of what occurs (and the names of the lawyers involved) will be kept confidential.

The hope of the Task Force — and of the Board of Trustees — is that, through utilization of the new Creed the new Professionalism Conciliation Panel, the CMBA can further the goals that were first formulated twenty-five years ago, which were to improve the climate in which lawyers interact with each other and with judges and their staffs; make the practice of law less abrasive and more professional; and elevate the standards of practice in this community to a level of which all of us can be proud. After all, we lawyers should always remember that we are the recipients of a unique privilege, namely, having exclusive access to, and the opportunity to earn a living from, an extraordinary legal system. Therefore, we, as lawyers, have an obligation to do everything we can to ensure that the public continues to respect that system for its integrity, its fairness and its basic decency. We can only do that by seeing to it that the public does not lose respect for the lawyers who are supposed to serve that system. And we can only retain that respect if we are viewed by the rest of society as being truly professional.

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Judge Michael P. Donnelly is a member of the Cuyahoga County Common Pleas Court. He is appointed to the Ohio Supreme Courts Commission on Professionalism 2007 to present. He has been a CMBA member since 1997. He can be reached at CPMPD@cuyahogacounty.us.

REQUEST YOUR FREE “LAWYER’S CREED OF PROFESSIONALISM”

We have three possible ways of obtaining you own copy of this creed, which is 18x24 inches. We have designed this in the hope that you will frame it and display in your office or home.

✓ Pick up a copy at the CMBA offices, 1301 East 9th Street, Second Level, Cleveland, 44114.

✓ Have it shipped to you free of charge. Please contact Melanie Farrell at mfarrell@clemetrobar.org if you would like a creed shipped to your home or office. Please include your name, address, and phone number in your order.

✓ Download it at www.CleMetroBar.org/LawyersCreed

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