



# Professionalism in the Courtroom

U.S. Attorney Ron Gathe, Middle District of Louisiana  
Judge Chris Hester, First Circuit Court of Appeal  
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# TODAY'S FOCUS

WHY DID YOU DECIDE TO BECOME AN  
ATTORNEY?

# WHAT IS PUBLIC PERCEPTION?

How would you rate the honesty and ethical standards of people in these different professions?

# HOW DOES THE PUBLIC THINK WE ARE DOING?

Please tell me how you would rate the honesty and ethical standards of people in these different fields -- very high, high, average, low or very low? How about -- [RANDOM ORDER]?

	Very high	High	Average	Low	Very low	No opinion
	%	%	%	%	%	%
Nurses	41	48	10	1	*	*
Medical doctors	27	50	19	2	1	*
Grade school teachers	26	49	17	5	2	*
Pharmacists	20	51	23	4	1	*
Police officers	16	36	30	11	7	*
Judges	9	34	40	12	4	1
Clergy	10	29	41	11	4	4
Nursing home operators	8	28	43	15	4	1
Bankers	5	24	48	16	5	*
Journalists	6	22	31	18	22	1
Lawyers	3	18	48	24	6	*
Business executives	2	15	46	26	10	1
Advertising practitioners	1	9	45	31	12	1
Car salespeople	1	7	53	29	8	*
Members of Congress	1	7	29	39	24	--

GALLUP, DEC. 1-17, 2020

Gallup Poll, December 1-17, 2020

# LOUISIANA STATE BAR ASSOCIATION CODE OF PROFESSIONALISM

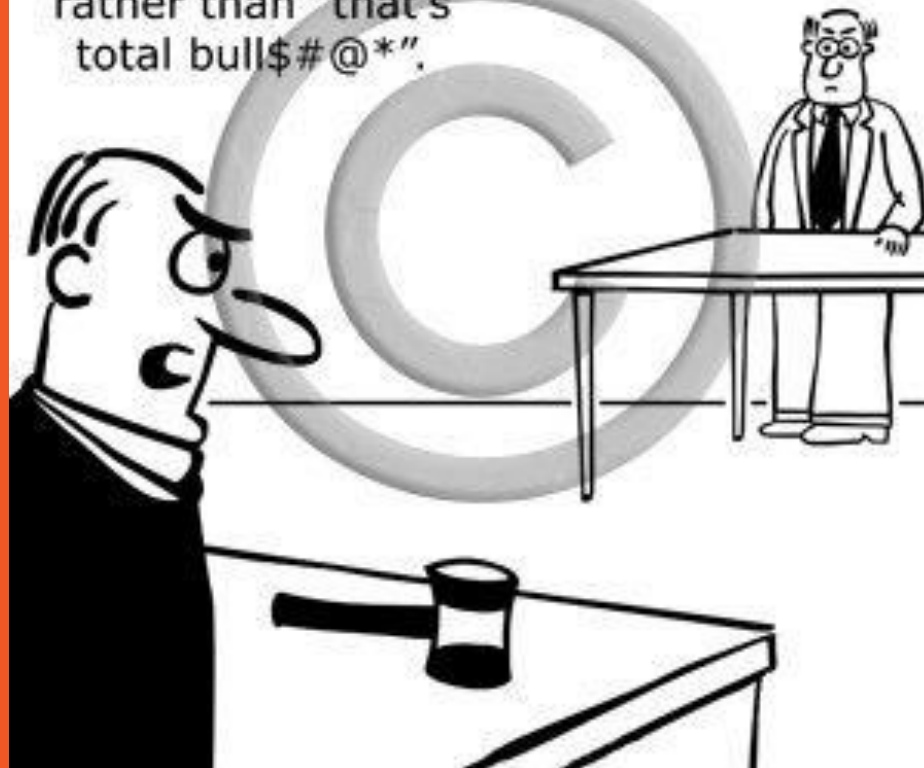
- My word is my bond.
- I will conduct myself with honesty, dignity, civility, courtesy and fairness and will not engage in any demeaning or derogatory actions or commentary toward others.
- I will not knowingly make statements of fact or law that are untrue or misleading and I will clearly identify for other counsel changes I have made in documents submitted to me.
- I will be punctual in my communication with clients, other counsel and the court. I will honor scheduled appearances and will cooperate with other counsel in all respects.
- I will allow counsel fair opportunity to respond and will grant reasonable requests for extensions of time.
- I will not abuse or misuse the law, its procedures or the participants in the judicial process.
- I will cooperate with counsel and the court to reduce the cost of litigation and will not file or oppose pleadings, conduct discovery or utilize any course of conduct for the purpose of undue delay or harassment of any other counsel or party.

# LOUISIANA STATE BAR ASSOCIATION CODE OF PROFESSIONALISM

- I will not engage in personal attacks on other counsel or the court or use the threat of sanctions as a litigation tactic.
- I will support my profession's efforts to enforce its disciplinary rules and will not make unfounded allegations of unethical conduct about other counsel.
- I will work to protect and improve the image of the legal profession in the eyes of the public.
- I will endeavor to improve our system of justice.
- I will use technology, including social media, responsibly. My words and actions, no matter how conveyed, should reflect the professionalism expected of me as a lawyer.
- I will seek opportunities to be of service to the bench and bar and assist those who cannot afford legal help.
- I will be supportive of new members in the profession.
- I will stay informed about changes in the law, communication, and technology which affect the practice of law.



In the future,  
please say "I object",  
rather than "that's  
total bull\$#@\*".







"YOUR HONOR, IF HIRING A LAWYER WITH  
A TRACK RECORD AS BAD AS MINE DOESN'T  
PROVE MY CLIENT'S INSANITY, I DON'T KNOW WHAT DOES."



"Sustained. Prosecution will refrain from going 'dun dun *dunnnnnnn*...' during the witness' testimony."

## Definition of *professionalism*

: the conduct, aims, or qualities that characterize or mark a profession or a professional person

<https://www.merriam-webster.com/dictionary/professionalism>

## Definition of *profession*

: a calling requiring specialized knowledge and often long and intensive academic preparation

<https://www.merriam-webster.com/dictionary/profession>

# TRAITS

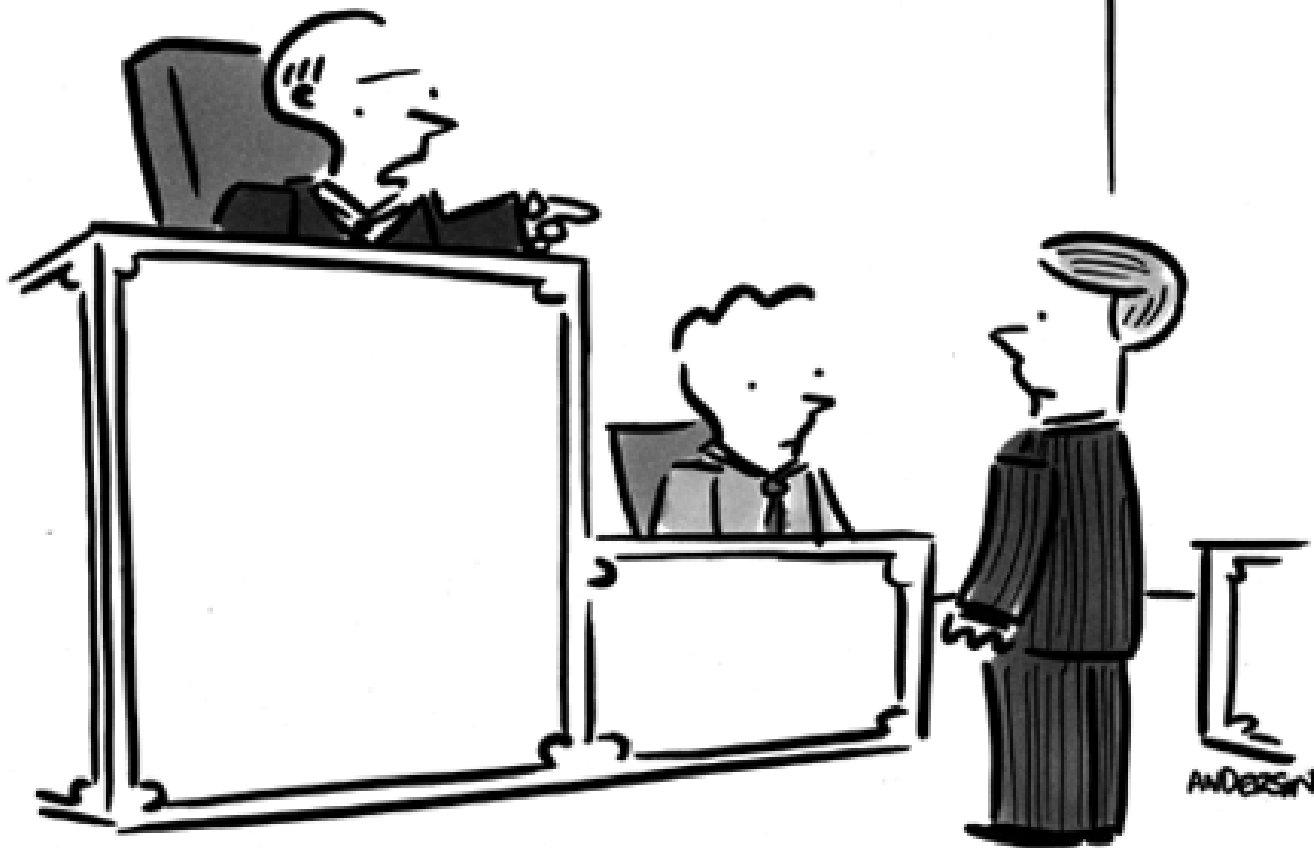
- 1.Specialized knowledge
- 2.Competency
- 3.Honesty and integrity
- 4.Respect
- 5.Accountability
- 6.Self-regulation
- 7.Image

WHAT ARE THE OUTWARD  
MANIFESTATIONS?

# Your Communication

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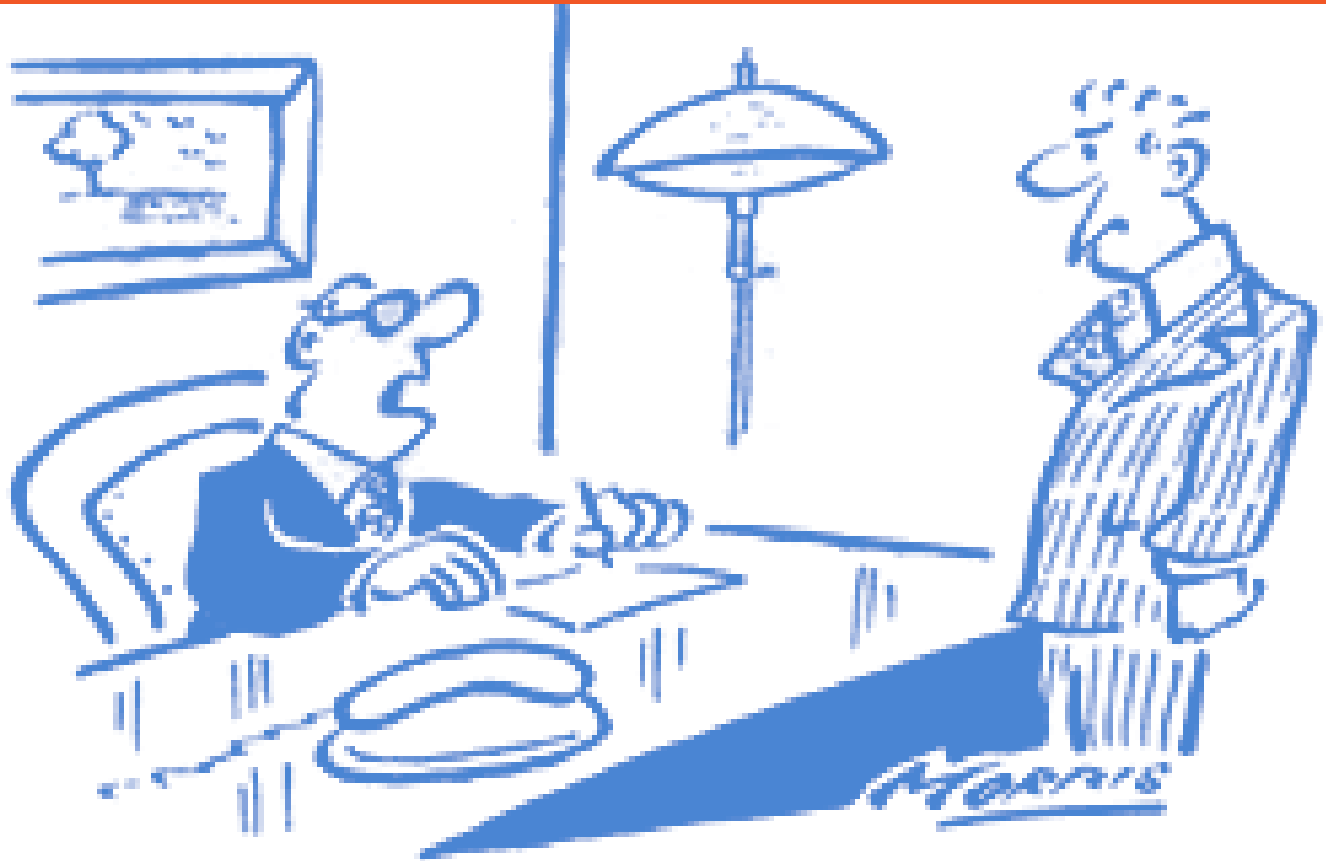


"Sustained. As this is a patent case, counsel will refrain from repeating 'patently false' while winking at the jury."

I'D LIKE TO SAY YOU'VE GOT A CHANCE  
AT THIS JOB, BUT, HONESTLY, WE  
FIND YOUR LOOK UNPROFESSIONAL.



# Competence



**"I agree you do have drive, ambition and self-confidence, but what we're looking for is competence."**



“COURTESY IS AS MUCH A MARK OF A  
[LADY OR A] GENTLEMAN AS COURAGE.”  
- THEODORE ROOSEVELT

# MOTION PRACTICE

- Avoid vitriol and hyperbole
- Check citations and do not mislead the court
- Shorter is better
- Be clear about the relief you are seeking
- Exhaust your conferral obligations
- Be familiar with the local rules (including those regarding time to object, page limitations, formatting)

# AVOID VITRIOL AND HYPERBOLE

- Asserting the other side responded to discovery “with woefully inadequate responses,” that were “also half-baked.”
- Use of “clearly,” “obviously,” “it is beyond doubt,” etc.
  - if it was truly clear, obvious, or beyond doubt, everyone would agree on it.
- Do not attack or ridicule opposing counsel, the other party, or the court

# EXHAUST YOUR CONFERRAL OBLIGATIONS

- TALK to counsel before contacting the court
- Usually, especially when it comes to discovery disputes, the parties can reach a compromise without the necessity of court intervention
- When seeking leave, find out if the other side consents and let the court know

# BRIEFING

- Your brief is your first impression on the court.
- Do your best work in the briefs you submit.
- Timely file your briefs.
- Briefs must conform with court rules, including attachments (order/judgment/reasons), required tables, font sizes, page limitations, margins, etc.
- When seeking leave, find out if the other side consents and let the court know
- Before filing, confer to see if you can reach a compromise without the necessity of court intervention
- You control the brief; the court will control oral argument (if you get it)
- Write in a clear, concise, simple and direct manner.

# BRIEFING TIPS

- Generally, less is more.
- Briefs are to persuade.
- Avoid jargon when possible.
- Excessive footnotes will not help you and could be distracting.
- Tell a story. Develop a theme or legal theory for your case.
- Organize your brief.
- Structure your arguments in an order that is logical. Start with your strongest arguments.
- Brief all arguments. Any argument not briefed may be deemed abandoned.

# BRIEFING TIPS

- Limit rhetorical questions.
- Use headings and subheadings as roadmaps.
- Spell check and proofread.
- Correctly cite authority.
- Distinguish (do not ignore) unfavorable jurisprudence.
- Present the court with all the relevant facts and provide citations to the record. Record citations are crucial!
- Do not leave out unfavorable facts or misrepresent facts.
- Do not cite facts outside the record.
- Be prepared for the arguments of your opponent.
- Update your authority, if necessary.

# ORAL ARGUMENT

- Advise the court timely if you will not be there to answer the docket.
- Be on time.
- Dress professionally (even if the argument is via video).
- Silence electronic devices.
- Relax, take a deep breath and make regular eye contact with the panel.
- Avoid distracting the court with facial expressions, body language and/or outbursts when opposing counsel is speaking.
- Slow down.
- Do not interrupt the judge or talk over a judge.
- Do not argue with the judge.
- Do not be too casual with the court; avoid slang and flippant/joking remarks.
- Avoid vitriol and hyperbole; save the theatrics



# ORAL ARGUMENT TIPS

- Do not read from your brief.
- Outline your main arguments.
- Answer the question(s) asked.
- Generally, less is more.
- If you can concede a point, DO IT! Acknowledge weaknesses.
- Speak to the court; do not argue with opposing counsel.
- Do not interrupt opposing counsel.
- You do not have to use all the time allotted.
- Divide the time in advance if multiple lawyers are going to argue a side and alert the court to this.
- Prepare a closing sentence to summarize your argument.

HOW DO WE AS A BAR "SELF REGULATE"  
TO ENSURE OUR PRACTITIONERS HAVE  
"HONESTY AND INTEGRITY?"

WHAT HAVE YOU SEEN THAT HAS  
BENEFITTED ATTORNEYS BY TAKING  
THE HIGH ROAD?

HOW CAN SOMEONE DO THE  
RIGHT THING AND ZEALOUSLY  
REPRESENT THEIR CLIENT?

HOW CAN WE EXCEED THE STANDARD SET  
BY OUR PROFESSION IN A WAY TO BETTER  
OUR PROFESSION AND ALSO HONOR THE  
LEGACY OF CATHOLIC HIGH SCHOOL?

# RECENT CHALLENGES IN OUR PROFESSION

- COVID
- Fear-Some attorneys did not feel comfortable in person for trials, depositions, hearings
- Illness- Some attorneys were sick or had to take care of family members or maybe clients were sick
- Zoom- This was a simple response for some but not so simple for others (Cat face at hearing slide)

394th Judicial District Court

Recording of this hearing or live stream  
is prohibited.

Violation may constitute contempt of  
court and result in a fine of up to \$500  
and a jail term of up to 180 days.

394th Judicial District Court



Jerry L. Phillips



H. Gibbs Bauer



red ponton

# WHAT HAVE WE LEARNED AND WHAT SHOULD WE DO BETTER?

- Generational Gaps and Challenges
  - Different perspectives and comfort levels
  - Technology comes easier for some
  - Some people unfortunately took advantage of the situation (unneeded continuances, faking illness, manipulating system, using technology as an unfair advantage)
  - Forced us to come together
    - All of a sudden the junior associates looked pretty damn smart and useful!



**NOT MUTING YOUR MIC IS THE NEW  
REPLY ALL**



WHERE HAVE YOU SEEN THE VALUES OF  
RESPECT, COMPASSION, AND TRUST  
SHOW UP IN YOUR TIME ON THE BENCH?

# CHALLENGE

Live every day in our profession in a way that honors those that came before us and opens doors for those that will come after us.

# OPEN PANEL QUESTIONS

# PUTTING IT INTO PRACTICE

## Hypothetical No. 1

You receive a call from opposing counsel requesting an extension of time to file an opposition memorandum to a motion for summary judgment. You know your client will be furious if you grant the extension of time.

What should you do?

## HYPOTHETICAL NO. 1 (CONTINUED)

What if the deadline to file the opposition has already passed?

What if the reason is a recent COVID diagnosis?

## HYPOTHETICAL NO. 2

You have scheduled several videotaped depositions of non-party witnesses. Opposing counsel just called to ask that you not videotape a particular witness because she has a stuttering problem under stress, and it would be embarrassing for her.

Do you proceed with the videotaped deposition of this witness?

## HYPOTHETICAL NO. 3

You have always tried to be cooperative with other counsel in scheduling depositions in a particular matter, but you have had difficulty with one particular lawyer. He either refuses to give you his avoid dates, or gives you so many avoid dates that you suspect he is making himself unavailable on the thinnest of pretenses. At one point, his paralegal tells you he cannot schedule the depositions on a particular date because “he might be called into trial at any time.”

What do you do?



## HYPOTHETICAL NO. 4

You have a client who tends to be very “hands on” in her legal matters. Over the past few months, she has expressed some frustration with the civility you have shown toward the lawyer representing your client’s adversary. She tells you she hired you to be a “pit bull” and she wants you to start being tougher when you deal with the other lawyer.

What do you tell your client?

## HYPOTHETICAL NO. 5

You have a particularly difficult client who calls one day while you are in a meeting. He speaks with your assistant and demands that she get you out of the meeting or provide him with your cell phone number. She refuses at which point he starts to yell and curse at her. Your assistant tells you what has occurred when you return to the office.

How do you deal with your client?

## HYPOTHETICAL NO. 6

You and opposing counsel have been exchanging numerous drafts of transactional documents in connection with trying to get a deal done quickly. Your opposing counsel sends you the final draft shortly before closing but does not redline a provision he has added on one of the documents, although other changes in the documents are redlined. You don't have time to read the entire package before the closing, so you only look at the redlined changes and do not notice the additional provision.

Has opposing counsel violated his duties of professionalism?  
What should you do?

## HYPOTHETICAL NO. 7

Do you say something?

Does it matter if you are in the office or at a bar after work?

What if you are an associate?

What if the person telling the joke you find offensive is a client?

## HYPOTHETICAL NO. 8

You have agreed to prepare and file a case for a client. You quote a flat fee of \$5,000, rather than an hourly rate. In arriving at the fee, you took into account several factors, but the primary consideration was your belief that it would take you 20 hours to do the work. The client pays the full fee in advance. Just as you are about to get started, you learn that another lawyer in your firm has recently prepared and filed a case for another client under very similar circumstances. The work to prepare and file your client's case will now take you only 5 hours, instead of the originally estimated 20.

Should you refund a portion of the fee?

## HYPOTHETICAL NO. 9

You represent a client in a matter in which your client's adversary is unrepresented. The unrepresented party has advised you he moved and provided you with his new address and telephone number. You receive a notice of hearing on a motion you filed in the case and realize the unrepresented party must not have provided the clerk's office with updated contact information and, therefore, the notice has been sent to his old address. You appear at the hearing and the unrepresented party is not present.

Does your duty of professionalism require you to notify the court of the error?

## HYPOTHETICAL NO. 10

You are an Assistant District Attorney on a case and have offered the defendant a plea of five years. The defendant rejects the offer and wants to go to trial. You receive a call before the trial informing you that your key witness has died of a heart attack. Without this witness, you do not believe you can prove your case. Before you can tell the judge and opposing counsel that you intend to dismiss the case, the defendant's lawyer calls you and says the defendant will take the deal.

What would you do?

## HYPOTHETICAL NO. 11

As an associate in the firm, you are asked to prepare and file a motion outlining a certain position. After exhaustive research, you are unable to find any case law to support that position. In fact, the case law is to the contrary. You advise the partner on the file and she tells you even if the cases do not support the position you are arguing, just to cite something because “the court doesn’t really read all the cases anyway.”

What does your duty of professionalism require you to do?

When attorneys cite cases for propositions the cases clearly do not stand for, what should the court do?

Is this a professionalism issue? An ethical issue? Both?



## HYPOTHETICAL NO. 12

Your client has been charged with child molestation. Your client admits to committing the acts but wants to plead not guilty as he believes the child will not be a good witness. Would you be willing to try to impeach the child's testimony on the stand even though you know that the child is telling the truth and that by doing so, while you may get a favorable result for your client, you would further traumatize the child?

## HYPOTHETICAL NO. 13

You represent a defendant in a civil lawsuit that has significant financial resources. The client wants you to engage in various tactics to “bleed the plaintiff dry,” including, propounding voluminous discovery requests and taking many depositions. You do not believe much of this discovery is necessary or useful, but your client is adamant.