

Polish Your Practice Presentation Notes (Facilitator Notes)

Introduction

Slide 1: Polish Your Practice: Integrating Quality of Life, Professionalism, Diversity and Board Certification. This CLE seminar originally was presented at The Florida Bar annual convention in 2006, and was coordinated by then-10th Circuit Judge Ralph Artigliere. We have edited the course over the years, and now have added a diversity component. This course is available to voluntary (local) bar associations at no charge, and also is intended to educate attending lawyers and paralegals about the professionalism aspects of Florida Bar board certification.

Slide 2: Picture a new lawyer calling his or her parents upon getting the notification from The Florida Bar that he or she passed the Bar exam: “Mom and Dad, you should be so happy and proud: After spending six figures in money and going into debt to send me to three years of law school; after years of vigorous study and stress to get my degree and pass the Bar exam; I have been accepted in a profession that ranks very low in public perception of trust and honesty!”

Slide 3: Only *19 percent* of Americans rate the honesty and ethical standards of lawyers “very high” or “high.” Lawyers rank just below local officeholders and just above business executives in a December 2011 Gallup poll.

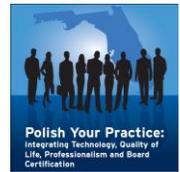
Judge Ralph Artigliere, who now is retired, was a respected civil trial lawyer and circuit judge. He said: “The low point in my realization of the perception of lawyers was when I saw a politician advertising that he was ‘not a lawyer.’”

[Toggle off PowerPoint Presentation – Do Not Advance to Slide 4]

IN THIS PROGRAM, YOU WILL HEAR THREE SEGMENTS THAT APPROACH PROFESSIONALISM ISSUES FROM THREE DIFFERENT AND WE THINK SOMEWHAT NOVEL PERSPECTIVES. TOGETHER WE WILL:

Discuss what you can do to cope with professionalism challenges:

- **Individually**, to find and maximize your personal ethical and professional goals, and
- **Collectively**, as influencers and actors toward meaningful POSITIVE change in the climate of professionalism and the way the public perceives our profession.



PART ONE

Quality Of Life Principles That Can Enhance Your Life, Legal Career and Professionalism: A presentation by FSU College of Law Professor Larry Krieger, Florida Bar 2006 Faculty Professionalism Award recipient and Vice Chair 1996 – 2005, the Bar’s Committee on Quality of Life and Career

[Presentation is on DVD – approximately 40 minutes] Reference material: “The Inseparability of Professionalism and Personal Satisfaction: Perspectives on Values, Integrity and Happiness” and “Quality of Life Principles” PowerPoint presentation.

Synopsis:

- All values are not created equal – why some values produce well-being, others produce aggravation, and others produce success without happiness.
- Psychological perspectives on the relationships between professionalism and a satisfied, successful lawyer
- What is “integrity” in its most fundamental sense, and why does it produce professional behavior?
- Is there also a relationship between integrity and psychological well-being?

PART TWO – Open Slide 4 in PowerPoint

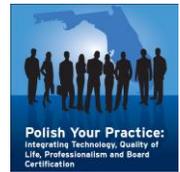
Codes, Creeds, Oaths, and Common Sense: Practicing with Professionalism and Effectiveness

Slide 4: Synopsis: This program will consist of practical, common sense knowledge from a judge who practiced law for over twenty years before appointment to the bench.

We will participate by identifying rules, precepts, and promises from the Creed of Professionalism, the Oath of Admission to the Florida Bar, and the current Chapter 4 Rules of Professional Conduct that establish ideals, guidelines, and rules that are most important to the profession and our system of justice.

The discussion will include ways that we can encourage and enforce better compliance with professional goals. ***The theme of the exercise is to establish that commitment to practicing at a high level of professionalism and courtesy enhances rather than detracts from a lawyer’s effectiveness while making our profession stronger, more enjoyable, and less stressful.***

If applicable: *Note that your course reference materials are available online, and are meant to reinforce the concepts we discuss here today.*



Slide 5:

1. All of us took an oath for Florida Bar membership.

Here is the preamble: *The general principles which should ever control the lawyer in the practice of the legal profession are clearly set forth in the following **oath of admission to the Bar**, which the lawyer is sworn on admission to obey and **for the willful violation to which disbarment may be had.***

I'm sure you are familiar with the newly added text: "To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications;"

[Discussion about Supreme Court inclusion of "civility."]

Slide 6: The Florida Bar Oath of Admission is only the starting point for guidelines that should shape our professional behavior.

Slides 7 and 8: Florida Bar professionalism guidelines available to you:

- Rules of Professional Conduct
- Oath of Admission
- Creed of Professionalism
- Ideals and Goals of Professionalism
- Trial Lawyers Guidelines for Professional Conduct
- Handbook on Discovery Practice

ABA Guidelines available to you:

- Model Rules of Professional Conduct
- Lawyer's Pledge of Professionalism

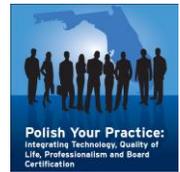
Professional Organizations That Emphasize Professionalism:

- The Florida Bar's board certification program
- American College of Trial Lawyers and other national organizations for practice emphasis
- American Inns of Court
- *Others – who can give me some more examples or list opportunities that might benefit the group?*

Slide 9:

As Professor Krieger stated, the benefits of good behavior go far beyond recognition:

- Stress reduction
- Job enjoyment and satisfaction
- Improvement in the public perception of our profession



Slide 10: How many of you have read The Florida Bar Rules of Professional Conduct found at Chapter 4? Let's review some of the highlights:

THE PREAMBLE: *A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice.*

Slide 11: RULE 4-1.3 DILIGENCE: A lawyer shall act with reasonable diligence and promptness in representing a client.

A lawyer should pursue a matter on behalf of a client despite opposition, obstruction, or personal inconvenience to the lawyer and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. A lawyer is not bound, however, to press for every advantage that might be realized for a client. For example, a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued. See rule 4-1.2. The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.

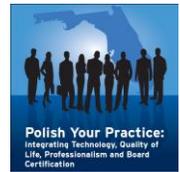
A lawyer's workload must be controlled so that each matter can be handled competently.

Slide 12: RULE 4-4.1 TRUTHFULNESS IN STATEMENTS TO OTHERS

Misrepresentation: A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. A misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false.

Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements. For dishonest conduct that does not amount to a false statement or for misrepresentations by a lawyer other than in the course of representing a client, see rule 4-8.4.

Statements of fact: This rule refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on the circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an



acceptable settlement of a claim are ordinarily in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud. **Lawyers should be mindful of their obligations under applicable law to avoid criminal and tortious misrepresentation.**

Slide 13: RULE 4-8.3 REPORTING PROFESSIONAL MISCONDUCT

(a) Reporting Misconduct of Other Lawyers. A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects **shall inform the appropriate professional authority.**

Slide 14:

What IS professionalism? True *Professionalism* is the broadest category and it includes the whole package: civility, ethics, being well prepared, doing pro bono work, and actively working to improve our profession and the image of our profession.

Ethical requirements and considerations are defined by statute, law, and rules for judges and lawyers. Today we will be addressing ethical requirements only as they relate to and are included in professionalism and civility.

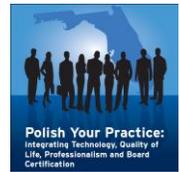
Civility is basically how you treat others. We all know that a civil or courteous lawyer may be unethical or unprofessional for behavior other than courtesy. The opposite is also true: a lawyer who follows the code of ethics may be rude, unnecessarily contentious, and therefore lacking in civility.

Slide 15:

Here's a quote from Holland & Knight founder Chesterfield Smith:

"I don't think it has to be warm and friendly, but I do think it has to be civil, courteous, and polite. I don't think you have to show affection or anything of that nature for other members of the bar, but I don't think you should ever be obnoxious, loud or aggressive. I define civility for lawyers as being professional and doing it the right way, which is recognizing that you are with peers and that they have equal rights to advocate their cause and express their opinions, and that you should be patient and not short with people."

Who can give me an example of unethical behavior you've encountered in the courtroom or by opposing counsel? (2-3 minutes of discussion)



Slide 16:

Taking responsibility: Is more judicial involvement needed?

Judge Ralph Artigliere said: “Lawyers tell me that my colleagues, the judges, need to do something about professionalism.”

Let’s talk about some of the issues we face – and that judges can monitor in court.

Slide 17:

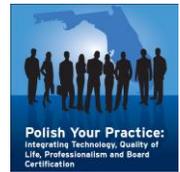
- Many lawyers feel they are at the mercy of lawyers who walk shady ethical/professional lines.
- Worst offenders use a “best defense is a good offense” approach
- The Florida Bar can only sanction ethical violations that can be proven, so judges are a significant line of defense – do you ever view them in that way?
Examples?
- Judge Artigliere said that all lawyers MUST consider their candor toward the tribunal, their familiarity with the judge, their tendencies to argue with the judge, and, above all: THINK before criticizing the judge.
- Judges can set higher “professionalism” standards and have a broader range of “sanctions” available to them. Control of cases and of the courtroom can make it easy or hard for lawyers. What judges say to lawyers privately or in front of colleagues or clients can be very effective deterrents.
- Remember that judges talk with other judges.
- Peer review by judges is an important component of Board Certification and judgeships.

Slide 18:

Should we, as lawyers, be more diligent about policing professionalism?

Now we’ve got ratings/rankings services like Super Lawyers, Best Lawyers, Florida Trend’s Legal Elite and AVVO. More and more lawyer-reputation material is online and available for the public to view.

- Lawyer peer review can be critical
- A lawyer’s reputation is a lawyer’s livelihood.
- Referrals can be affected by the way one treats others.
- Reputation and professionalism affect Martindale-Hubbell ratings.



Slide 19:

Get involved with professionalism efforts and mentoring.

- The Florida Bar Board of Legal Specialization & Education is the sponsor for today's CLE seminar. I'm here as a board certified lawyer to encourage you to challenge yourself and apply for board certification.
 - Florida's program now is the largest in the nation as far as specialties: We've got 24 board certification areas – including three that are first-in-the nation.
 - The number of lawyers who earned certification has increased an average of 10 percent each year since 2009 – and we are up to more than 4,500 certified lawyers.
 - We are the state with the greatest number of specialties available for application, and we constantly are expanding the program.
 - **As you may know, Florida Bar President Scott Hawkins is a board certified business litigation lawyer. Here is what Mr. Hawkins has said about board certification:** *"Board certification has the potential to be transformative in our profession. Florida Bar board certification is synonymous with the terms 'specialist' and 'expert' because of its very high standards for professional excellence. Our board certification program is one of the finest in the country, and helps the public identify lawyers who have been evaluated by their peers for experience, competence and integrity. As a board certified business litigation lawyer, I am personally committed and encourage others to take this important professional step."*

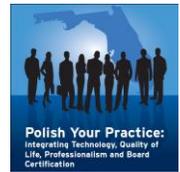
Slide 20:

Board Certification: What is it?

- ✓ Recognition for those who specialize. A thorough evaluation of lawyers' experience and professionalism. Board certification sets those lawyers apart because they have proven to their colleagues, judges, and to The Florida Bar that they have the experience, technical knowledge and skill, and professionalism to be identified as "specialists" or "experts."

Slide 21:

- ✓ The Florida Bar's certification program is working hard to raise awareness about board certification and certified lawyers to the public, to clients and to other lawyers.



Slide 22:

- ✓ Peer review is an important component of board certification. Peer review on professionalism began after a 1998 Supreme Court opinion added the requirement. **Lawyers certified before 1998 have actually been denied recertification on professionalism peer review.**
- ✓ Becoming certified made me a better lawyer.
 - FOCUS
 - CHALLENGE (test, recertification requirements)
 - ASPIRATION TO A STANDARD
 - PROVING YOU ARE GOOD ENOUGH

Slide 23:

- ✓ Certification is one of my proudest accomplishments as a lawyer. It does not mean I am better than other non-certified lawyers, but it shows that I am certainly as good as the 7 percent who are certified. **[More discussion here about practice benefits, referrals, etc. – personal experience with regard to board certification]**
- ✓ Judge Ralph Artigliere said that he relied on board certification in assessing those lawyers who appeared before him; certification directly affected those lawyers' case assignments and fees. Other judges have said the same.
- ✓ Also, when practicing law, Ralph Artigliere would not refer a specialized matter to a non-certified lawyer whom he did not know and trust.
- ✓ **It is likely that as more minority lawyers earn board certification – and join its statewide referral network – then they will not only advance in their firms, but be in positions to mentor other minority lawyers. Board certification can provide the extra credential that demonstrates minority lawyers' commitments to advancement and professionalism.**

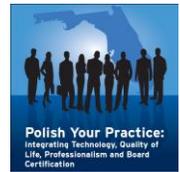
Conclusion of Part Two – Q & A regarding presentation and board certification.

Slide 24:

PART THREE

Diversity in the Legal Profession: Dialog to Stimulate Next Steps

Synopsis: This program will help attendees define diversity; determine why it is a pressing priority for the legal profession; learn why law firm diversity initiatives fail, and discuss possible options for greater involvement in the movement to promote diversity in law firms, in Florida Bar sections and committees and in voluntary bar associations.



Reference Materials: “Diversity in the Legal Profession: The Next Steps” report and recommendations (Race and Ethnicity, Gender, Sexual Orientation, Disabilities. ABA Presidential Initiative Commission on Diversity, April 2010. [Available with numerous other resources at the ABA Center for Racial & Ethnic Diversity web page: <http://www.americanbar.org/groups/diversity.html>]

Slide 25: Starting Point: What is Diversity?

Definition of Diversity: “The term “diversity” has a dynamic meaning that changes as the demographics of Floridians change. Apart from differences in race, color, gender, national origin, religion, age, sexual orientation, citizenship, and geography, to mention a few, the public and our profession will experience changes in thought, culture, and beliefs. These demographics are constantly in flux. Defining ‘diversity’ based on current differences would limit its application to future changes, and likewise restrict or limit The Florida Bar’s consideration of and response to such changes.”

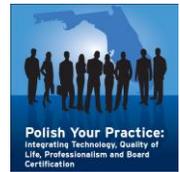
The Florida Bar Board of Governors, May 2010

What are your reactions to this statement? [5-minute discussion]

Slide 26: Why is “DIVERSITY” a pressing priority for the legal profession?

ABA: *From a racial/ethnic perspective, whites constitute about 70% of working people over age 16, yet they represent 89% of all lawyers and 90% of all judges, according to 2009 census data. Each year, the numbers of lawyers with disabilities and openly lesbian, gay, bisexual or transgendered (LGBT) lawyers increase slightly, but their respective representation remains less than 1%.*

- ✓ **The Democracy Rationale.** Diversity is the term used to describe the set of policies, practices, and programs that change the rhetoric of inclusion into empirically measurable change. Civil society, and especially professional organizations such as the ABA [and The Florida Bar], occupy a crucial role in legitimizing, facilitating, and instantiating the changes that are implicit in diversifying the larger society and its professions. *Without a diverse bench and bar, the rule of law is weakened as the people see and come to distrust their exclusion from the mechanisms of justice.*
- ✓ **The Business Rationale.** A diverse workforce within legal and judicial offices exhibits different perspectives, life experiences, linguistic and cultural skills, and knowledge about international markets, legal regimes, different geographies, and current events. In many instances, corporations are ahead of the legal profession in



diversifying their professional and technological workforces. *It makes good business sense to hire lawyers who reflect the diversity of citizens, clients, and customers from around the globe. Indeed, corporate clients increasingly require lawyer diversity and will take their business elsewhere if it is not provided.*

✓ **The Leadership Rationale.** As Justice O'Connor reminded us in her opinion in the Grutter case, this society draws its leaders from the ranks of the legal profession and that is one reason why diversity is a constitutionally protected principle and practice. *The nation's demographic profile is changing to expand the proportion of women, racial/ethnic minorities, LGBT, and the disabled who now have the credentials, experience, and expectations of rising to the highest levels of leadership.*

✓ **The Demographic Rationale. The U.S. population is getting older and more diverse.**

An aging population:

38.7 million: Number of U.S. residents 65 and over in 2008

88.5 million: Projected number of U.S. residents 65 and over in 2050

A more ethnically and racially diverse population:

46.7 million: Number of Hispanics residing in the U.S. in 2008

132.8 million: Projected number of Hispanics residing in the U.S. in 2050

41.1 million: Number of black residents of the U.S. in 2008

65.7 million: Projected number of black residents of the U.S. in 2050

15.5 million: Number of Asians residing in the U.S. in 2008

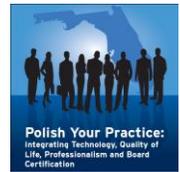
40.6 million: Projected number of Asian residents of the U.S. in 2050

Slide 27:

7 Reasons Why Law Firm Diversity Initiatives Fail

Jatrine Bentsi-Enchill, J.D., attorney and founder/director of the Esq. Development Institute. [Do not reprint without permission]

1. **Lack of commitment at the top.** In order for diversity initiatives to succeed, there must be vigorous support for it at the senior level of the firm or organization. Partners are the change agents of the firm. *Committees formed to address issues of diversity, recruitment, retention and cultural competence must be lead by key leaders within the firm.*
2. **Failure to assess the firm's environment.** Assessment is critical in helping to create and implement an effective diversity initiative plan. It's critically important to understand an organization's level of development before launching a diversity or



cultural competence initiative. *Firms must be prepared to assess their hiring practices, overall culture, interpersonal relationships, views about diversity and promotion practices.*

3. Over emphasis on recruitment and hiring. Relying on recruitment as a primary means of creating diversity will prove to be an ineffective strategy. Instead, recruitment is simply an initial step in the overall process.

- Firms must ensure that their work environment can support a diverse staff.
- Next, firm-wide, culturally effective systems and practices must be implemented in order to prevent excessive attrition among women and attorneys of color.

- Retention and development of a strong and diverse pool of attorneys depends on the firm's ability to create a work environment that values and leverages difference, mentors cross culturally and consistently measures and monitors the progress and development of all attorneys.

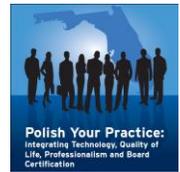
4. Failure to include diversity objectives in the organization's strategic plan.

Many firms fail to include diversity goals into the firm's overall vision and plan for growth and development. Organizational change is a process and in order to successfully reach objectives related to diversity, goals must be included in the firm's strategic plan. *Firms successful in building a diverse workforce have implemented specific strategies in the areas of hiring, retention, professional development, communication, promotion, mentoring, etc.*

5. Lack of understanding of diversity phases. Many firms fail to view the creation of a diverse organization as a developmental process. Diversity and cultural competence develop along a continuum.

In the early stages of the process, firms need to define diversity, identify problems and opportunities, provide education and awareness, and develop a leadership plan along with the business case for diversity, a clear vision and well-defined goals. Finally, firms must understand that building a diverse and inclusive work environment is an ongoing effort.

6. Ignoring the importance of training and development. Cultural competence and diversity training with a focus on building awareness and alliances vs. "blaming and shaming" is critical to creating a productive, diverse and inclusive workforce. Staff must have the opportunity to explore current views and misconceptions around issues of inclusiveness, race, gender, sexual orientation, religion and individuals with physical challenges.



Failing to link training and development with firm-wide diversity objectives will result in the firm's inability to build an inclusive and diverse organization.

7. **Cultural incompetence.** *Many firms communicate a desire to build an inclusive and diverse work environment yet they still place a high value on "sameness."* Whether consciously or subconsciously this value for sameness is communicated to others in the firm. Instead, firms need to develop a high level of cultural competency.

Slide 28:

Cultural competence requires that organizations:

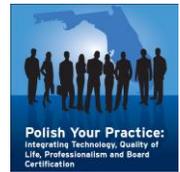
- Have a defined set of values and principles that demonstrate behaviors, attitudes, policies and structures that enable them to work effectively and cross-culturally.

- Have the capacity to:
 - 1) value diversity,
 - 2) conduct self-assessment,
 - 3) manage, appreciate and leverage the dynamics of difference,
 - 4) acquire and institutionalize cultural knowledge and
 - 5) adapt to diversity and the cultural contexts of their employees and the clients and communities they represent.

Think of cultural competence as fertile ground upon which to plan, grow and develop a successful recruitment, retention and firm wide cultural diversity program. Without the necessary foundation, efforts to build a diverse team of attorneys will prove to be unsatisfactory.

Slide 29:

Diversity Dialog to Stimulate Next Steps: To help increase diversity in the board certification program, the BLSE is considering a thorough evaluation of its recruitment process, including analysis of certification committees' compositions, ways to better communicate with local and minority bar associations and ways to communicate more effectively with consumers. Our organization might consider a model like the "Legal Organization's Self-Reflection: How is the organization modeling diversity in its leadership and actions?"



- How can the organization’s conferences and programs advance diversity in the profession?
- Does the organization’s leadership, including internal subgroups, reflect diversity commitments and goals?
- Does the organization’s budget, when considered as a moral document, reflect its values and priorities? Where does the organization commit its resources (money, time, clout)?
- What are the organization’s demographics? How do they compare with the entire profession and that of specific states and regions?

Slide 30: Ideas for your possible use – and feedback as to your experience and success/failure with similar initiatives in your firms. *[Invite discussion about each and take notes for BLSE]*

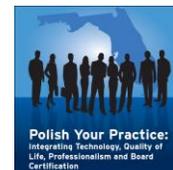
IDEA: Create a Commission on Racial and Ethnic Diversity. The ABA Commission on Racial and Ethnic Diversity in the Profession is a diverse group of committed lawyers serving as the catalyst for creating leadership and economic opportunities for racially and ethnically diverse lawyers within the ABA and the legal profession.

IDEA: Formulate Alliances With Outside Groups. Survey firm leadership to determine personal memberships in minority/LGBT/Disability groups. Encourage memberships in, and outreach to, minority legal and community groups as avenues for communication and promotion.

IDEA: Require and/or Provide Diversity-Related CLE Hours. ABA Recommendation: Institute continuing legal education, as part of regular bar association programming, on the elimination of bias and affirmative training on diversity in the profession (including making “service learning” qualify for CLE credit) to socialize new lawyers toward valuing diversity in the profession.

OTHER IDEAS?

Slide 31: Conclusion and Question/Answer



We hope that you, as leaders in our profession, will go back to your respective firms with renewed commitments to educate your partners and associates about:

1. the overall merits of professionalism to lawyers and to the profession.
2. the current lack of diversity in the field of law and possible ways to address the issues.
3. the merits of board certification, particularly for minority lawyers, as a mechanism to increase lawyer profiles, generate referrals and encourage professionalism.