



Raising the Bar for Legal Service Standards

Lex Mundi and Professionalism: A Statement of Shared Fundamental Values

Professionalism is a distinctive set of fundamental values that shape the practices of the best law firms and lawyers - including the member firms of Lex Mundi. Because these values are, however, abstract and sometimes difficult to express, Lex Mundi has undertaken an effort to develop a practical understanding of the guiding principles that law firms of significant prominence throughout the world aspire to embody. This Statement of Shared Fundamental Values was developed by Lex Mundi to assist and encourage its member firms and all firms that practice at the highest level as they strive to embody these values in their practices. Being aspirational in nature, it is not intended to address specific situations, which must be assessed based on the facts and circumstances of any particular engagement, nor is it intended to establish a particular duty of care in any engagement.*

At its most basic, professionalism is about “capital” - the particular positive reputation, somewhat like the “good will” of a business, that a person or firm brings to the accomplishment of a task or the solving of a problem. It is therefore the kind of esteem sought by *any* professional group - doctors, engineers, business executives, and the like. But we will focus on *legal* professionalism, which means the special capital - the unique professional respect - that lawyers specifically seek to generate through their work.

Beyond Legal Ethics: The Distinctive Demands of Professionalism

Professionalism must be distinguished from the more familiar topic of legal “ethics.” Over time, the latter has become synonymous with efforts in every jurisdiction to establish the minimum standards to which all members of a profession must adhere simply to maintain their licenses to practice. Professionalism, on the other hand, is aspirational in character. It

is about lawyers at their best, rather than their acceptable least. This drive for superior quality is more, however, than simply a point of personal pride, for it is based in the profession’s profound importance to our social heritage: the indispensable connection of the practice of law to the maintenance of civil community everywhere. Professionalism is therefore the set of values that the legal system itself inspires in those who seek to preserve and extend that professional

* This statement was developed under the leadership of Timothy P. Terrell, Professor of Law, Emory University School of Law. The starting point was an article co-authored by Professor Terrell, *Rethinking Professionalism*, 41 Emory L.J. 403 (1992). Professor Terrell then led discussions at six Lex Mundi regional conferences from 2004 through 2006.

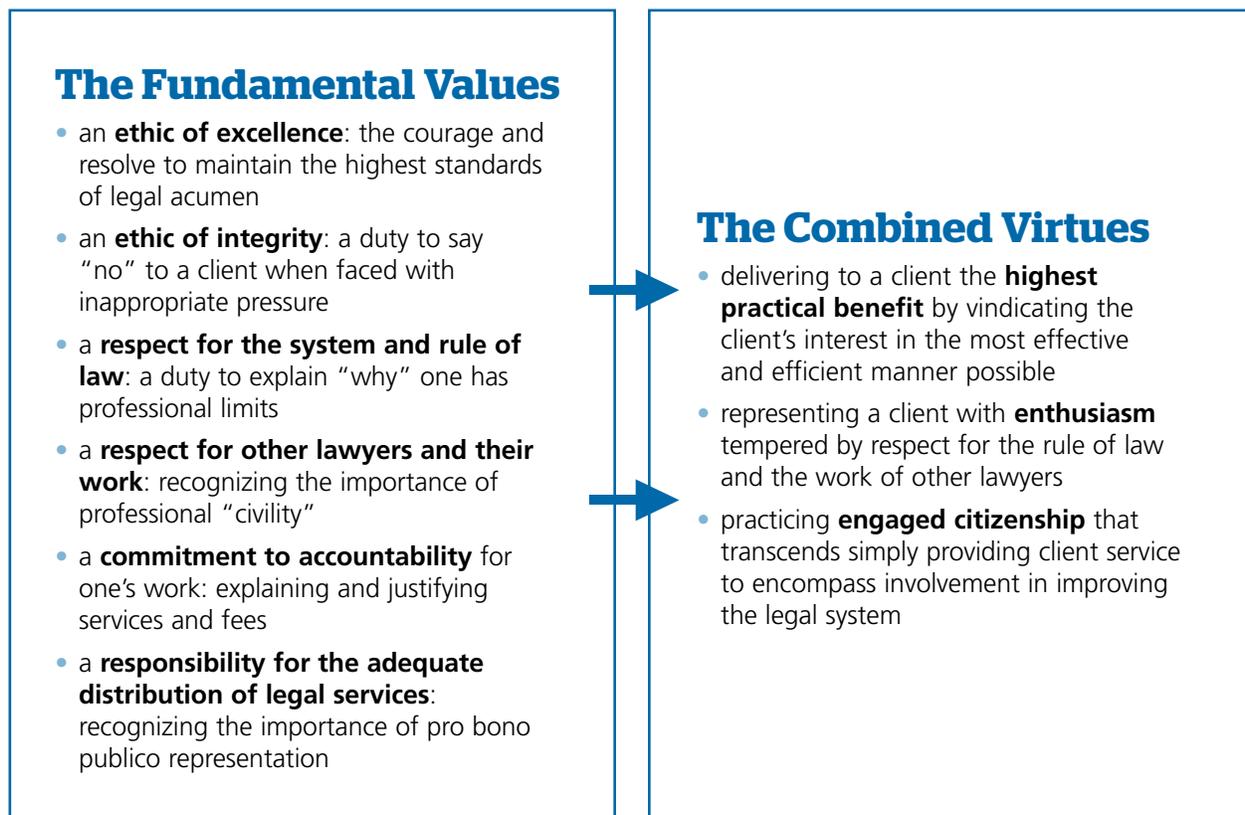
legacy. These demanding values are “beyond” the requirements of the rules of legal ethics. Certain basic duties are essential to law practice of any sort: for example, competence, diligence, loyalty to a client, honesty, independent judgment, and duties of confidentiality. The task that Lex Mundi undertook was to identify what must be added to these traditional responsibilities to define the character of those who aspire to provide superior legal services.

The Intersecting Elements of Professionalism

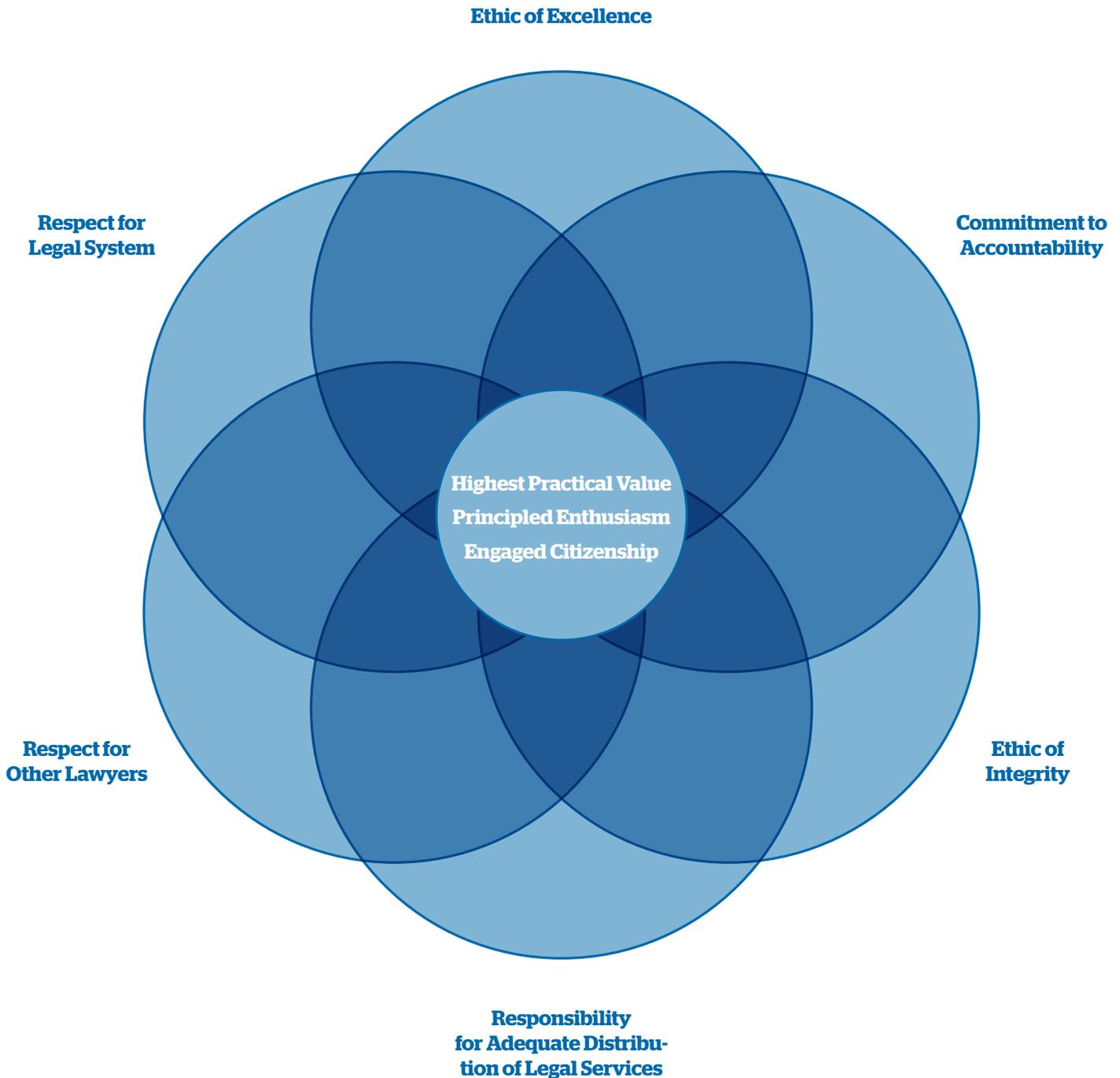
Professionalism is a complex concept, just as the practice of law is a complex profession. It is best defined as an amalgam – a synthesis – of qualities having two layers or levels: First, professionalism is composed of **six fundamental values**, each separately important, but all jointly necessary to describe the approach to practice of the most

respected lawyers. Second, these separate values, when combined, form **three fundamental virtues** that capture the full professional maturity to which lawyers who practice at the highest level, including those within Lex Mundi member firms, aspire.

The constituent elements of professionalism, are shown in the diagram below.



The interconnected relationship of all these values can be depicted by the following diagram of overlapping circles, with each separate circle representing a particular value, the overlap of the circles depicting the inevitable influence of each value on the others, and the central area of the diagram symbolizing the region of the “combined virtues” listed above.



In the discussion that follows, each of the six basic values will be developed, followed by an analysis of the three combined virtues they create.

The Fundamental Values of Professionalism

An Ethic of Excellence

Within the practice of law generally, the quality of an individual's work is an obvious point of departure, for little else matters if the job performed by the lawyer is second-rate or the client's interests have not been thoroughly addressed. All clients certainly deserve the lawyer's appropriate attention and the full measure of his or her expertise.

But as a matter of professionalism, excellence means more than just immediate "skill" of some sort. What is required is an "ethic" in the sense of an *attitude* – a deeper sense of direction concerning how to conduct oneself as a professional, and what to expect from one's colleagues. While excellence might be associated with particular results, an "ethic of excellence" is a long-term commitment to providing the best service possible to a client, overcoming whatever obstacles, in terms of knowledge or circumstances, that might compromise that responsibility. It demands, then, a special form of professional courage: To assist a client may sometimes place the lawyer's own personal interests at risk, but that is professionalism's price.

This critical aspect of professional character is not limited, however, to the individual lawyer – it extends as well to groups of lawyers bound together professionally, whether in private firms, associations of law firms, corporate legal departments, government agencies, or otherwise. Within these entities, the ethic of excellence creates a responsibility of that group to develop internally an "environment" of excellence: an expectation that the firm or office will generate within itself the appropriate support services, intellectual resources, and thoughtful supervision that will enable its lawyers to flourish professionally, and thus be the strongest assets for their clients that they can be. "Excellence" in this setting means pressing for the "highest common denominator."

An Ethic of Integrity: The Duty to Say "No"

While the concept of "excellence" is relatively easy to grasp, even if it is difficult to measure, the value

of "integrity" is more complicated than most realize. Particularly in the context of professionalism, it means much more than simply honesty. It is "a wholeness or unity of person, an inner consistency between deed and principle."¹ In law practice, it entails the lawyer's ability to remain steadfast and consistent when the stress of delivering strong client service pushes against the lawyer's own personal and professional values.²

The value of integrity is therefore closely related to the idea of "professional independence" – the capability of a lawyer to exercise unclouded and uncompromised judgment on behalf of a client. In its starkest form, it is the question of the point at which the lawyer must reject a client's direction or request for service – when the answer must be "no." Further, to become an *ethic* of integrity, this resistance to inappropriate pressure must become "a habit of mind,"³ a "virtue exercised over a lifetime."⁴

For lawyers, then, an ethic of integrity becomes synonymous with *trust*: Can a client, or a fellow lawyer with whom you are working, rely upon you to deliver advice that is unwelcome? As painful and economically dangerous as this may be in the short run, professionalism demands a recognition of the long-range benefit produced by forthright appreciation of the limits of the law.

This does not mean, however, that lawyers have a responsibility to, or that clients should expect that their lawyer will, sacrifice the client's interests to some "higher good," whether defined by the lawyer personally or by society. Instead, integrity requires a lawyer to recognize a middle ground between, on the one hand, simply being a slave to a client, mindlessly doing whatever one is told, and, on the other, assessing each client request for its moral or political "worthiness." This principled position does not involve moral rationalizing, in which the lawyer engages in self-deception, imagining that the client's interests are indeed the lawyer's own. To the contrary, *professional* integrity simply demands that integrity be understood in a professional context: In private practice, the lawyer is being paid by a client, not by the public, which necessarily means that the client is entitled to have the lawyer act as if the client's interests were his or her own. Rather than abandoning one's personal values, professionalism requires a lawyer to engage in what could be termed a *principled substitution of principles*, in which the lawyer recognizes that one of his or her own principles is to vindicate the values of the client – up

¹ David Luban, *Integrity: Its Causes and Cures*, 72 *Fordham L. Rev.* 251 (2003).

² Deborah L. Rhode, *If Integrity Is the Answer, What Is the Question?*, 72 *Fordham L. Rev.* 333, 335 (2003).

³ Mary C. Daly, *Teaching Integrity in the Professional Responsibility Curriculum: A Modest Proposal for Change*, 72 *Fordham L. Rev.* 261, 263 (2003).

⁴ *Id.* at 263.

to the limits of the law.

This final restraint is an important one, of course, but it is much narrower than many in the public realize. An ethic of integrity means that a lawyer can be trusted to be consistently zealous in pursuing a client's interests up to a *particular* point: not when the lawyer's actions would be inconsistent with values currently important to the general public, and not when those actions might be thought inconsistent with the vague idea of the "common good." Instead, the constraint of integrity on the lawyer are the limits imposed by *professionalism*: the demands of excellence, respect, and service discussed here.

Respect for the System and Rule of Law: The Duty to Explain "Why"

For "integrity" to have any practical meaning, then, rather than remaining some pious platitude, a lawyer must be able to explain a refusal to act as directed by a client, or as pressured by society more generally. This means that there must indeed be some "good" – some value – that is "higher" than the client's or society's immediate interests. This cannot be, however, as noted above, the amorphous concept of the "common good," even though social welfare is always relevant in a general way to anyone's actions. The problem that all lawyers confront in this context is the difficulty in defining satisfactorily and consistently the nature of the "good" that is alleged to be "common," or the "interest" that is supposed to be shared by some unidentified "public." Lawyers must constantly confront clashing and interweaving interests that must be resolved and untangled, and reasonable people can very much disagree concerning which path to doing so is "appropriate." Instead, to be a legitimate part of *legal professionalism*, the "public interest" must be understood more narrowly and specifically.

One fundamental value does exist upon which everyone in civil society can agree – one that is not only essential to the fabric of any community, but is also a value at the heart of lawyering itself: the critical importance of the rule of law. Citizens connect with each other in significant part by the way they make claims against each other: When disputes arise, rather than resort to self-help, we invoke our system of law to vindicate our rights. The practice of law, then, is central to this fundamental aspect of modern culture. Professionalism, in turn, requires lawyers to acknowledge their intimate connection to, and responsibility for, the rule of law.

One part of that duty therefore imposes a special professional courage: resisting the demands of

popular interests by remaining dedicated to the client's rights, regardless of immediate consequence. Another part of this duty is to practice law in such a way that we do not compromise the legal system's ability to structure social relationships appropriately and efficiently, and to resolve disputes as fairly and harmoniously as circumstances will allow. Lawyers must recognize that the social usefulness of the legal system, and in turn the esteem in which lawyers are held by the general public, depends ultimately on the respect the law receives from non-lawyers. Others will understand the importance of the rule of law to their communities only if lawyers themselves take seriously their responsibility to hold the system and rule of law in respect. And only with that public understanding will society accept that, to preserve our communities, lawyers must be able to act with independent professional judgment, unimpeded by inappropriate pressure from either clients or government.

Respect for Other Lawyers and Their Work

A fourth value within professionalism follows directly from the former discussion: If we truly respect the rule of law, and appreciate its importance to our civic culture, then we must also respect those who labor within it. This, then, is the proper foundation for the requirement of "civility" among lawyers – not simply to enable people to interact without unnecessary social and personal pain, but to permit the legal system to function without unnecessary interference and cost. Although the limits lawyers impose on themselves in the name of civility will always be vague and somewhat controversial, this restraint will nevertheless always be connected with professionalism: Our respect for each other as lawyers will inevitably continue to have an impact on the functioning of the legal system.

The respect required by professionalism extends beyond just contacts among lawyers, however. It includes as well a special responsibility involving a lawyer's conversations with his or her clients. When discussing other lawyers who are representing a client's opponents, or judges who may have ruled unfavorably in a matter, professionalism demands that these adversaries not be held in disrepute or denigrated behind their backs in a misguided effort by the lawyer to curry favor with the client, or to explain away an adverse result. The obvious exception to this restraint, however, is the circumstance in which the actions by the opposing lawyer were themselves contrary to professionalism. This more limited range to legitimate criticism of other practitioners recognizes that the public's respect for the rule of law

will be closely related to the respect it gives to those who practice it.

A Commitment to Accountability

Accountability in the context of professionalism is a lawyer's recognition that clients – and by extension, society as a whole – are entitled to understand the services that the lawyer renders, and moreover, to be convinced that the fees charged for those services are appropriate. The practice of law is, after all, a service industry: Private practice involves being paid a fee by a willing client who is convinced that it is receiving something of value in the exchange. The days of the imperious lawyer who can command respect and payment simply from the status of being “the lawyer” are gone. They have been replaced with relationships that are closer to ordinary consumerism, where market forces (long disdained by much of the legal profession as beneath their dignity) now rule. Professionalism requires lawyers to recognize, accept, and indeed respect that situation. Those lawyers who reflect the profession's deepest values will readily be able to do so.

Accountability is therefore the cornerstone of the professional independence that lawyers enjoy, for the public generally accepts the proposition that lawyers need to be unfettered to be able to provide their full value to society. But people will continue to believe this only if lawyers respect their reciprocal duty to take seriously the need to make the value of their work clear, and their fees fair.

A Responsibility for Adequate Distribution of Legal Services

The final separate value constituting professionalism is the particular responsibility of lawyers to assist in the effort to make legal services as widely available in society as possible. This element, like all the others discussed here, has as its foundation the importance of law to civic community everywhere: Because law pervades all significant social arrangements and institutions, legal services must be widely available to members of society, and the legal system must function adequately on their behalf. Although governments therefore obviously have a basic responsibility to create the structures and foundations of the legal system, professionalism requires lawyers in particular to go further.

Pro bono publico is the usual term for this duty, but it must be understood in proper context. Although *pro bono* is well-known as work done by lawyers

on behalf of clients who cannot otherwise afford to pay the lawyer's fees, this activity is not required as a matter of *professionalism* because some people have the misfortune to be indigent. Instead, the duty exists because of a lawyer's commitment to the law and the rule of law. All members of the public, rich and poor alike should have the impression that the legal system is available to them for redress, vindication, and protection. For law to serve its vital function as an aspect of the social glue that holds society together, it cannot be a special province of a select and fortunate few.⁵ Lawyers, therefore, as members of the profession directly responsible for the health of the legal system, have a unique duty to involve themselves in activities that will make legal services pervasive.

This responsibility can be met in various ways. The most obvious, of course, is volunteering directly to work for organizations established for this purpose, such as legal aid offices. But within the context of the demands of professionalism more generally, the pressure to fulfill this responsibility must be tempered by the lawyer's responsibilities to clients who are otherwise paying for the lawyer's time and attention. The requirements of excellence and accountability dictate that *pro bono* work cannot be allowed to compromise the efforts ordinarily associated with private practice. And at the same time they dictate that any *pro bono* work undertaken must be carried out with the same level of professionalism that is accorded work for paying clients.

This important sense of balance and perspective has important implications not only for individual lawyers who are trying to honor professionalism within the context of busy lives, but also the law firms where they work. On the one hand, it may not be practical to impose on all lawyers an expectation that they will individually and personally engage in *pro bono* work, for the demands of practice may cause either that work or the work on behalf of the firm's clients to be impacted inappropriately. But on the other, it is appropriate to expect all law firms to, at the least, make it reasonably possible for their lawyers to meet this professional duty. As an aspect of professionalism, then, law firms should recognize an “enabling” responsibility for *pro bono* services: They should avoid, again at the very least, internal policies, practices, or incentives that discourage law firm members from becoming involved in such work, and instead to the extent possible, encourage and honor such work.

⁵ It should be noted that in a few jurisdictions, governments have in fact recognized this point so fully that *pro bono* legal services are provided by public funds, and lawyers in private practice are forbidden to interfere with this system of representation. The discussion in the text is therefore addressed to lawyers in all other jurisdictions where the need for legal representation is not so comprehensively managed by public authorities.

Professionalism’s Combined Basic Virtues: The Hallmarks of the Best Lawyers and Firms

A final, but crucial, step in the effort to define legal professionalism is to examine the *combination* of the separate values – to determine, the nature of law practice at the center of the earlier diagram of concentric circles. The blending that occurs there is itself important, for the interaction of the various values produces a distinctive set of three fundamental virtues, listed earlier, that uniquely define the practice of law at its very best.

Highest Practical Value

Professionalism’s demand for “excellence” and “accountability” creates a sense that a client’s interests should be vindicated in the most effective – and efficient – manner possible. This does not mean that the best lawyers always “win” from the client’s perspective, whether in litigation or in the negotiation of a deal. Instead, these lawyers, and their firms, should be able to link their efforts to results they can fully justify as a professional matter. Excellent and accountable lawyering in this sense therefore means producing the highest “practical value” or benefit for the client in the circumstances. The client, in other words, should be in the best position that could reasonably have been achieved, and the lawyer should be able to demonstrate that positive result to the client.

This concept of “practical value” can be difficult to articulate, but the professional skills on which it will be based can be identified. The following diagram summarizes the progression of professional maturity that characterizes the most respected lawyers: (see below)

To the left in the diagram are the basic analytic skills – the rigorous thinking – that should be produced by a law school education. Any good lawyer should, early on, be able to understand the importance of investigating facts and law thoroughly on behalf of a client; to be able to reason in a logical, syllogistic order through a series of analytic steps to an appropriate conclusion; and to be precise and careful in his or her thinking, rather than loose and haphazard. But professionalism will push lawyers further: They will hone their reasoning, through experience and reflection, to truly “master” the area of law with which they deal. This lawyer will be able to perceive within the haze of facts and law the correct elements on which to focus to best serve the clients interests. In turn, this command of the material will enable the lawyer more readily to make his or her thinking evident and comprehensible to others, not just to himself or herself. With this strong grasp of the situation, the lawyer moves from mere facility with the material to a deeper confidence in the message he or she will deliver, giving the client an equal confidence in the value of the lawyer’s advice.

For the best lawyers, professionalism produces additional steps. Adroit and resourceful lawyering also enables one to act pragmatically in the client’s best interests. Concerning the lawyer’s reasoning, this means that research and results must be achieved with minimum expenditure by the client – that is, professional products must be generated efficiently. Those results must also be, from the client’s perspective, practical, reasonable, and realistic. And the best lawyers also understand that, because confidence can sometimes be perceived as arrogance, they must temper their approach to, and interaction with, clients and others with a professional character and attitude that is engaging rather than smug or haughty.

Reason Carefully	Master Effectively	Act Pragmatically
thorough	(perception) focused	efficient
logical	(command) coherent	useful
precise	(control) confident	professionally engaging

Principled Enthusiasm

The professional values of “integrity” and “respect for the rule of law and other lawyers” are sometimes understood to mean that a lawyer’s efforts in advocating a client’s interests must be measured, restrained, and aloof – that the relationship between lawyer and client must be distant. While there is some truth to this perspective, it should not become exaggerated. “Excellence” is still a foremost value of professionalism, and it demands that clients be given “zealous” representation. The proper balance between these considerations can be labeled “principled enthusiasm.”

Clients pay their lawyers not just for results, but for attitude as well. Clients are therefore entitled to a special commitment from their lawyer, meaning that the best lawyers will manifest and cultivate traits that demonstrate their lack of neutrality concerning the client’s interests: “bias, interest, partiality, [and] favoritism.”⁶ This commitment should be combined with a passion and energy that produces, consistent with the virtue discussed above, the highest practical benefit that a client can expect.

This enthusiastic representation must, however, be professionally tempered. While a lawyer’s advocacy cannot be unlimited or unrestrained, the source of constraint – as a matter of professionalism – must be understood as being rooted in considerations particularly relevant to the practice of law, rather than morality more generally. “Principled” enthusiasm must take into account the other critical professional values of “respect for the rule of law” and “respect for the work of other lawyers.” Thus, professionalism demands that the pursuit of client service cannot go so far as to denigrate or bring into disrepute a community’s body of law or its legal system: Advocacy should not cause the public to lose, or even doubt, its sense that society is governed by the fairness and justice inherent in the rule of law, as distinct from the whims of the few and the powerful. Zealous representation must therefore entail appropriately legal representation.

Engaged Citizenship

Professionalism’s demand for “excellence,” combined with a “respect for the rule of law” and a “commitment to wide distribution of legal services,” means that the best lawyers are not passive and invisible purveyors of private business-related services. Instead, they are more publicly engaged and committed participants in the political and social processes on which the legal system depends. They are, in short, leaders in their communities.

This involvement, however, as a matter of professionalism, requires more than just being generally socially aware and active – it is more focused on the intersection of law and society: for example, in particular circumstances, representing those least able to defend themselves; or, more generally, participating in the political process to pursue legal reforms that will enhance civil and individual rights or economic development. One characteristic manifestation of this professional “zeal” is membership and participation in bar associations of various kinds, where the practices of the best lawyers often have significant civic impact. All of this is “engaged” citizenship, which pushes the practice of law beyond client service.

⁶ Anita Bernstein, *The Zeal Shortage*, 34 Hofstra L. Rev. 1165, 1172 (2006).

The practice of law has forever been, and will always be, subject to undeniable economic pressures and difficult moral choices, both of which can cause concern that professionalism is under constant threat. But the best lawyers understand that this tension is inherent in the effort to provide superior client service. Their willingness to meet these challenges while aspiring to the highest professional values is what earns for them the highest respect within their profession.