

Practicing with Professionalism During COVID-19

Submitted by the Publications Committee of the Oregon Bench and Bar Commission on Professionalism

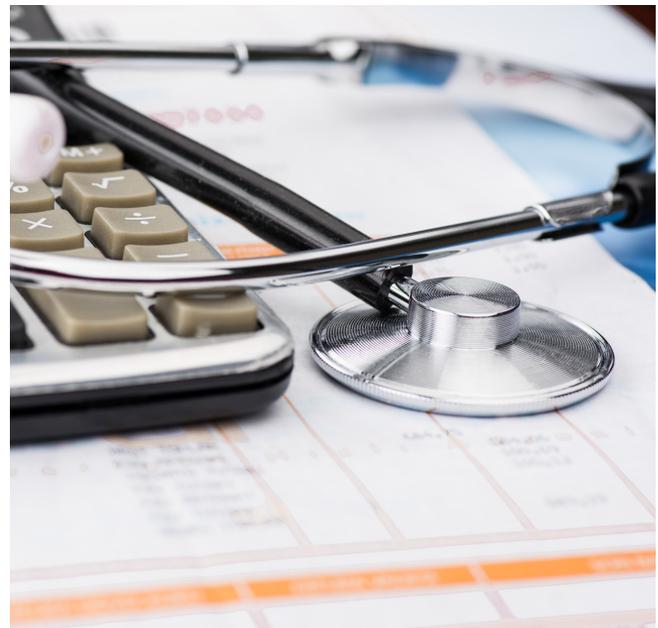
What does it mean to practice law with professionalism? The COVID-19 pandemic and its repercussions throughout society shine a new light on that important question. The Oregon State Bar (OSB) adopted a Statement of Professionalism in October 1990, and the statement, amended most recently in 2019, is a useful place to seek guidance about how to practice with civility and professionalism. The Publications Committee of the Oregon Bench and Bar Commission on Professionalism prepared a few thoughts on how some of the principles (in bold, below) from the Statement of Professionalism offer guidance during this time:

■ **I will promote the integrity of the profession and the legal system.**

Customs and procedures in legal practice have suddenly and dramatically changed, such as the abrupt transition to videoconferencing for hearings. Although clients may be attending important events remotely, civility and respect for judges and the process remain critical. You should counsel clients about the expectations for conduct in the new virtual environments, and work with them to help them feel comfortable in these new, unfamiliar environments.

■ **I will work to ensure access to justice for all segments of society.**

Much of the professional world's response to the pandemic has been to turn to technologies for virtual communications. But not all parts of our population have any (or reliable) access to the technologies that other, more privileged people have. Be mindful of these limitations and consider ways to ensure that all



segments of society have access to the legal system in the new remote environments.

At a time like this, access to justice can be expanded through creative solutions. If an attorney's workload is temporarily diminished by the impacts of COVID-19, consider contacting the OSB,

the Campaign for Equal Justice, or a local bar association to offer volunteer services you may not otherwise have had time to do. As just one example, probate departments in courts sometimes appoint an attorney for a respondent in a protective proceeding, and they need volunteer attorneys who are willing to serve as a successor/interim guardian, conservator, administrator, or personal representative. Invest some downtime in indulging in creative thinking about longer-term projects to reach out to underserved populations. Even if you can't complete these projects yourself once the pandemic passes, good ideas can be channeled to other lawyers or organizations to implement when the time is right.

■ I will promote respect for the courts.

One aspect of professionalism is resisting the temptation to vent about frustrations with shortcomings of the justice system to anyone less familiar with it. At a time when the courts are struggling to balance competing obligations to protect citizens' legal rights and their health, litigants may be disappointed by delays, jurors may be disappointed that summonses for duty continue, and attorneys may be disappointed by diminished communication from reduced court staff. Professionalism calls upon attorneys to stay abreast of positive efforts being made by the courts, including continuing to hear restraining order and child immediate danger matters, continuing to try cases in which incarcerated accused people have a right to a speedy trial, and continuing to hear civil commitment matters, while prioritizing health and safety through measures that range from remote technology to creating distance between jurors in court. The more you learn about the positive efforts courts make, the more you can help citizens develop balanced perspective about the courts' commitment to justice and safety.

■ I will support a diverse bench and bar.

The interruptions in daily and professional life caused by the pandemic have particular effects on newer lawyers, who are in the stage of their careers in which they benefit from mentoring and support from experienced practitioners. Despite remote working environments, you can endeavor to continue to mentor newer lawyers, using newer communication technologies to include newer lawyers in your work as a more experienced lawyer.



■ I will support the education of the public about the legal system, and

■ I will support pro bono activities.

Another option for focusing on professionalism during downtime caused by pandemic restrictions is to visit the website of the Classroom Law Project (<https://classroomlaw.org/>) and familiarize yourself with all the ways it works to advance civics education in Oregon. Or search for one of the many other organizations that offer pro bono services or provide education. There may be programs you've forgotten about (or were too busy to discover) that ignite your enthusiasm. If so, consider how you can contribute yourself, or who else you know who might be a valuable contributor to their mission.

■ I will work to achieve my client's goals, while at the same time maintain my professional ability to give independent legal advice to my client.

Many lawyers are enduring diminished levels of productivity due to social distancing measures required by the pandemic. This reduction in workload is coupled with concerns that businesses and individual clients will struggle to pay for legal services on a timely basis. Resist the temptation to work on matters for clients likely to pay, to the detriment of clients you perceive as at greater financial risk. Conversely, do not perform unnecessary "busywork" for financially secure clients for the purpose of increasing revenue.

■ I will always advise my clients of the costs and potential benefits or risks of any considered legal position or course of action.

Many clients are facing new personal and professional challenges during these unique times. Desperate clients may be tempted to utilize unethical tactics in their businesses or personal lives, and may urge their lawyers to employ such tactics while negotiating transactions or

during litigation. Counsel clients against such tactics and, if necessary, withdraw from representing clients who insist on inappropriate conduct.

■ I will communicate fully and openly with my client, and I will use written fee agreements with my clients.

We are all being bombarded with mixed messages from our elected leaders, law enforcement, the media, our colleagues, and our communities. More than ever, clients will benefit from lawyers' sound advice and counseling. Consistent communication is reassuring and welcomed during difficult times. Return phone calls and emails from clients on a timely basis, and set clear expectations regarding the scope of representation, billing procedures, and realistic timelines for dispute resolution in light of trial and hearing postponements made necessary by the pandemic.

■ I will not employ tactics that are intended to delay, harass, or drain the financial resources of any party, and

■ I will be courteous and respectful to my clients, to adverse litigants and adverse counsel, and to the court.

Many lawyers are working remotely, and some, because of family commitments, may be doing so in difficult circumstances, with children or aging relatives at home while the lawyer is working. And everyone is contending with the stress and anxiety

caused by the confluence of a historic public health crisis and widespread economic fallout. Consider requests for extensions of time and schedule communications and events with due regard for the unusual time we are in.

Further, professionalism is sometimes tied more to what we refrain from doing than to what we do. For some attorneys, there is a temptation to misuse the opportunity to delay court proceedings by dropping out of conversations with opposing counsel, abandoning email communication to troubleshoot immediate conflicts, and requesting unnecessary continuances to gain advantage. Often, it is what we do when no one is watching that truly defines our commitment to professionalism. Rise above temptation and, whenever possible, act in ways that honor the belief that "justice delayed is justice denied."

■ I will explore all legitimate methods and opportunities to resolve disputes at every stage in my representation of my client.

Despite limitations on the ability to participate in in-person events, continue to explore all legitimate methods to resolve disputes. These methods could include mediation or settlement conferences by videoconference technologies, or broadened and more persistent efforts to resolve cases or disputes through direct negotiations between counsel.

The full text of the Statement of Professionalism is available on the Professionalism Commission's web page at <https://www.osbar.org/professionalism>. ■