Welcome Letter from the Ethics and Professionalism Committee

By: Sandy P. Jones and Siri Thanasombat, Co-Chairs of the ABA YLD Ethics and Professionalism Committee.

Dear Ethics and Professionalism Committee Members,

As memorialized on our Committee website, “The Ethics and Professionalism Committee examines issues of ethics and professionalism for new attorneys. The committee identifies potential changes to the Model Rules of Professional Conduct as they affect practitioners; comments on proposed rule changes initiated by others; and strives to educate attorneys about the boundaries within which they are required to navigate their practices. The committee also promotes professionalism in the law.”

As your newly appointed Co-Chairs for the 2015-2016 term, we, Sandy P. Jones and Siri Thanasombat, are excited to embrace this role and are in the process of planning terrific events for your benefit. We hope to present events and literature that will keep you apprised of legal developments in this area, further engage you in the sometimes challenging world of Ethics and Professionalism, and provide you with practical applications, advice, mentorship, and networking to support your practice and heighten your understanding of relevant industry issues.

We welcome your involvement and feedback. There are multiple ways to get involved with the Ethics and Professionalism Committee and related entities, and we encourage you to communicate with us, your Committee Chairs. We encourage everyone to get involved in the
Committee by submitting articles for our newsletter, the 101/201 Series, The Young Lawyer, and The Affiliate. We are also seeking volunteers to assist in the preparation of proposals for our live programs and recorded events.

Please see the following links to recent committee publications:

YLD 101 Practice Series: Breaking Down the Basics: 
http://www.americanbar.org/groups/young_lawyers/publications/the_101_201_practice_series.html

ABA YLD The Young Lawyer: 
http://www.americanbar.org/publications/tyl.html

ABA YLD The Affiliate: 

Our contact information is below and includes our email addresses, which are generally the preferred and fastest way to communicate with us is by email. Our email addresses are: Siri, Sirithon.Thanasombat@eeoc.gov; and, Sandy, SPJoneslaw@gmail.com.

For general inquiries, please visit: 
ABA YLD Ethics and Professionalism Committee website: 
http://www.americanbar.org/groups/young_lawyers/committees/ethics.html

ABA Standing Committee on Ethics and Professional Responsibility website: 
http://www.americanbar.org/groups/professional_responsibility/committees_commissions/ethics andprofessionalresponsibility.html

Thank you for your time and interest in the Ethics and Professionalism Committee. We look forward to serving you this year!

Respect for Opposing Counsel & How to Handle Incivility

By: Jessica Guobadia

An important part of handling a case is your ability and willingness to engage and communicate with opposing counsel. Building a working relationship with opposing counsel can be as important to your case as properly advising your client. Without mutual respect and professionalism, communication breakdowns can occur and your client may suffer as a result.

Although you might not realize it, the relationship with opposing counsel starts the day you begin representing the client. It is tempting to review a pleading or a demand letter and make assumptions about the attorney that drafted the document. Maybe the pleading or letter was well drafted and researched. Maybe it was not. Maybe you were left wondering if the author used a thesaurus for every other word. Maybe you noticed that the attorney is your senior and you think that you need to be tougher to gain his respect. Maybe, based on your own conscious or unconscious biases and prejudices, you think that you do not need to give your opposing counsel the same respect as you do your colleagues at your firm.

© 2015 by the American Bar Association. Reproduced with permission. All rights reserved. This information or any portion thereof may not be copied or disseminated in any form or by any means or stored in an electronic database or retrieval system without the express written consent of the American Bar Association.
The question is: how do you let your assumptions, correct or incorrect, affect your view of and interactions with opposing counsel. The simple answer is, you don’t. Each interaction, but especially the first, should be respectful and professional. Setting expectations early can help to avoid incivility and unprofessional conduct later on. The only assumption that you should have when you first contact your opposing counsel is that they are representing their client’s interest – whether or not you agree with it – and that you will have to work with them for the remainder of this case.

Sometimes, even your best attempts at being professional will not be met in kind. You may meet an opposing counsel that does not like your client and, therefore, does not like you. He may demand that he speak to the partner or attorney in charge on the case because you are too young to understand the complexities or long reaching effect of the case. On the other hand, she may not have any overt bias, but is just difficult and refuses to return calls or speak with you, but does not hesitate to file emergency motions for matters that could have easily been resolved.

What do you do? You treat them with respect, professionalism, and civility. As tempting as it might be to respond in kind, showing restraint will make you a better advocate for your client. You do not want to be accused of being unprofessional or uncivil to a fellow attorney; not only can this affect your case, but also it could affect your reputation in the legal community. Remember, every communication, verbal or written, should be undertaken with the assumption that it will be presented to the Court.

Some options for dealing with an unprofessional opposing counsel are:

- Talk to them. Explain the situation and that open communication will help to move the case along faster. Explain that it is in the best interest of everyone, and your clients, if some matters can be handled without court intervention.

- Agree to disagree. In some cases, opposing counsel’s goal may seem to be nothing other than to argue. That’s what lawyers do. But, if everyone agreed on every issue, fact, or point of law, our profession would be extinct. If opposing counsel calls and tries to suck you into a heated argument over the interpretation of law or the facts of the case, explain to them that, while you understand their position, you disagree and you will have to agree to disagree.

- Stand your ground. Part of our daily life is to negotiate. Sometimes, in order to deal with a difficult opposing counsel, you will need to show them that you are willing to stand your ground and fight for your client. If counsel knows that you are not going to cede to their every demand, she might become more reasonable.

- Prove them wrong. Work hard. Represent your client. Do not let opposing counsel’s attitude, assumptions, or incivility negatively affect your ability to represent your client. It can be difficult, but persevering and succeeding is the best way to overcome adversity.
Talk to your supervising attorney. If opposing counsel demands to speak with the partner or the person with authority or if the attorney is just rude and demeaning, talk to your supervising attorney if you have one. They might have dealt with a similar situation in the past, or maybe with this particular attorney. Experience can provide useful advice. Sometimes, all you or your supervising attorney may need to do is call opposing counsel and say that, while you understand that they want to speak with the more senior attorney, the case is being handled by you and you are the decision maker. If you take control of the case, counsel may be more willing to work with you. Your willingness to assert control may cause them to respect you more.

Our goal is to resolve client disputes in the manner most favorable to the client. We cannot do this if we cannot work with opposing counsel and we cannot take every dispute that we have to the court. Instead, we have to work together, regardless of our own biases and prejudices, and give and demand respect from our fellow attorneys. It is our responsibility, especially as young lawyers, to continue practicing with respect, dignity, professionalism, and civility.

Jessica Guobadia is an attorney with Turek DeVore, PC in The Woodlands, Texas. Jessica's practice focuses on commercial disputes, including health care and employment matters.

Socializing Ethically

By: Andrew J. Baer

Social media has become an increasingly prevalent aspect of everyday life, permeating into the legal community. Young lawyers in particular have grown up using social media, numbing them to some of the potential professional pitfalls it poses within the legal community. The transition into the workplace has skewed the lines between what is socially acceptable as opposed to professionally ethical. With increasingly overlapping uses, here are some things attorneys should think about when utilizing social media.

1. Know Your Jurisdiction’s Rules on Advertising

What you post on social media may qualify as advertising under your jurisdiction’s ethics rules, subjecting certain information posted on your profile subject to restrictions on advertising. For example, the New York State Bar Association’s litigation section recently released Social Media and Ethics Guidelines which noted that a lawyer’s LinkedIn profile will likely constitute advertising through the skills, areas of practice endorsements, or testimonials. The guidelines also note that an attorney should not identify himself as a specialist on social media pages, unless certified as such.

Similarly, the Florida Supreme Court revamped the state rules on attorney advertising to explicitly include social networking in what is considered advertising1, and California Ethics

1 In re Amendments to Rules Regulating the Florida Bar--Subchapter 4-7, Lawyer Adver. Rules, 108 So. 3d 609 (Fla. 2013)

© 2015 by the American Bar Association. Reproduced with permission. All rights reserved. This information or any portion thereof may not be copied or disseminated in any form or by any means or stored in an electronic database or retrieval system without the express written consent of the American Bar Association.
Opinion 2012-186\(^2\) explicitly noted the state’s lawyer advertising rules apply to lawyer’s social media pages. Even sites such as LinkedIn may lead to false advertising under your state’s rule, particularly when people begin endorsing and recommending you for particular areas of law, which you may not focus on in your practice.

2. **Don’t Get Overly Judge-y**

While in-person networking and interaction with judges is expected in the legal profession, the same may not be permitted when it comes to social media. Jurisdictions take vastly different approaches to a lawyer’s social media interactions with the judiciary.

ABA Formal Opinion 462 determined that judges may participate in online networking, as long as the interactions comply with the judicial code of conduct. In contrast, one jurisdiction has gone so far as to prohibit lawyers from “friending” judges whom they may appear before. Before accepting the friend request, it is best to know where your state stands on those types of interactions, erring on the side of caution.

3. **Remember Your Prior Relationship**

ABA Model Rule 7.3, and any local equivalent, may apply to social media content, restricting direct contact with prospective clients. Social networks, such as Twitter, provide instantaneous access to potential clients who require legal services, tempting an immediate response to secure your next client. While tempting, you may ultimately violate your jurisdiction’s rules on client solicitation by immediately volunteering your services. Before replying to those tempting needs, evaluate whether you have the requisite prior relationship with that person to solicit their business.

Andrew J. Baer is an attorney with Deutsch, Kerrigan & Stiles, LLP in New Orleans, Louisiana. Andrew’s practice focuses on commercial litigation and professional liability.

**NEWS AND ANNOUNCEMENTS >>**

**2015 YLD Fall Meeting**

October 15-17, 2015
Little Rock, Arkansas

Earn CLE credit and make valuable connections at the YLD Fall Meeting. The schedule is packed with events to help you grow your practice, network and make a difference in your community and the legal profession.

**Special Note:** The Committee on Ethics and Professionalism is co-sponsoring a program entitled “Chaos to Mindfulness,” presented by Judi Cohen of Warrior One. The program is


© 2015 by the American Bar Association. Reproduced with permission. All rights reserved. This information or any portion thereof may not be copied or disseminated in any form or by any means or stored in an electronic database or retrieval system without the express written consent of the American Bar Association.
scheduled to take place October 16, 2015 at 10:30 – 11:30 a.m. Ms. Cohen has also agreed to provide instructive podcasts which will be placed on the Committee’s website, following her presentation.

ABA Everyday Initiative

The ABA Everyday Initiative provides daily podcasts, publications, webinars, CLE and resources. Check out the calendar here: http://www.abaeveryday.org.

Update from YLD Public Service Project:

Inaugural Outreach: The Public Service Team will hold its inaugural “World Wise Web (“WWW”) outreach on Friday, October 16, 2015 at 9:00 a.m. at Henderson Middle School in Little Rock, Arkansas. This outreach is in conjunction with the ABA YLD Fall Conference. If anyone is interested in volunteering for this outreach, please contact ckannenb@fclaw.com.

Update from Disaster Legal Services Team: New Team for 2015-2016

The DLS team welcomed three new members to its team for this bar year: Karl Bach, Victor Flores, and Victoria Nedospasova. Returning to the team from last year is Wendy Ellard, Kim Goins, and Matthew Vlasman. Former DLS Director David Nguyen was appointed as Special Advisor and is helping the incoming DLS Director, Andrew VanSingel, transition into his new role.

The DLS team responded to an unusually high number of disasters in a short period of time (four, to be exact) in Texas, Wyoming, Saipan (I had to google where that was) and Kentucky. To put things in perspective, last year DLS was implemented only once, for the flooding in Michigan. The DLS team dodged the proverbial bullet as several hurricanes in the Atlantic and Pacific bypassed U.S. soil. Despite the volume of disasters, the DLS team responded swiftly and quickly to help disaster survivors get the legal help that they need.

Everyone should be thinking about disaster planning, whether it’s to help out the YLD DLS team, or in your own personal or professional life. Visit Ready.com for ways you can prepare yourself for disaster. Also, don’t forget to check out the ABA Disaster Legal Services website as well as the Disaster Legal Aid website for up to date disaster-related information.

Update from the Member Services Project:

- On October 14, the ABA YLD will host a Twitter chat at 3PM PT/6 PM ET entitled Addressing Mental Health Stigmas in the Legal Profession. Rachael Barrett of The Dave Nee Foundation will host the chat.
- On October 15, Hilary Chancy will present an Ethics-CLE program entitled “The Bipolar Attorney: When the Mental Impairment is Your Own.”

CALL FOR ARTICLE SUBMISSIONS

© 2015 by the American Bar Association. Reproduced with permission. All rights reserved. This information or any portion thereof may not be copied or disseminated in any form or by any means or stored in an electronic database or retrieval system without the express written consent of the American Bar Association.
We are accepting articles for publication in our quarterly newsletter on an on-going basis on a wide variety of topics and subject matters. It is an easy way to get your work published and build up your reputation.

Please submit submissions or inquiries to Melissa Lessell, Newsletter Editor, mlessell@dkslaw.com. The next newsletter will be issued in January 2016.