Professionalism 2018: What If I’m That Person?

Cosponsored by the Professionalism Commission

Thursday, November 29, 2018
1 p.m.-4:15 p.m.

3 Ethics credits
PROFESSIONALISM 2018: WHAT IF I’M THAT PERSON?

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   — The Honorable Wells Ashby, Deschutes County Circuit Court, Bend, Oregon
   — The Honorable Marilyn Litzenberger, Multnomah County Circuit Court, Portland, Oregon
   — The Honorable Youlee You, U.S. District Court of Oregon, Portland, Oregon
SCHEDULE

Moderator: Alycia Sykora, Alycia N. Sykora PC, Bend

12:00  Registration

1:00  When the “Them” Is “Us”: Working with Our Professional Blind Spots
      Michael Dwyer, Dwyer Mediation Center, Portland

1:45  Professionalism Through the Lens of Cultural Diversity
      Jacqueline Alarcón, Yates Family Law PC, Portland
      Parna Mehrbani, Tonkon Torp LLP, Portland
      Jonathan Patterson, Compassion & Choices, Portland

2:30  Break

2:45  Professionalism in Litigation: How Judges See Us
      The Honorable Wells Ashby, Deschutes County Circuit Court, Bend
      The Honorable Marilyn Litzenberger, Multnomah County Circuit Court, Portland
      The Honorable Youlee You, U.S. District Court of Oregon, Portland

4:15  Adjourn
Jacqueline Alarcón, Yates Family Law PC, Portland. Ms. Alarcón is an associate attorney with Yates Family Law PC, practicing exclusively in the area of family law. She received her undergraduate degree in Politics and French at Willamette University and her law degree from Willamette University College of Law. She is a native Spanish speaker and a proud Salvadorian. Ms. Alarcón was named “Rookie of the Year” by the Multnomah Bar Association for her contributions in creating the Young Lawyer Section 2014 Family Law series. She serves on the OWLS Executive Committee and is President of Adelante Mujeres, a local nonprofit that assists Latinas and their families.

The Honorable Wells Ashby, Deschutes County Circuit Court, Bend. Judge Ashby has been a Deschutes County Circuit Court Judge since his election in 2010. He is the Presiding Judge for the 11th District (Deschutes). He received his undergraduate degree in history and his law degree from the University of Colorado, Boulder. He began his legal career as a civil litigator in Denver, then he practiced as a criminal defense attorney and a prosecutor in Twin Falls, Idaho. In 2004, Judge Ashby moved to Oregon and continued as a prosecutor. He has served on the Bend-La Pine School District Board and as an instructor in local schools, for the local community college, and for law enforcement. He is a native Oregonian.

Michael Dwyer, Dwyer Mediation Center, Portland. Mr. Dwyer is a mediator and lawyer in Portland specializing in resolving family and relationship conflicts. Three times (2019, 2017, and 2015), Mr. Dwyer has been honored as Lawyer of the Year for Family Law Mediation in Portland by Best Lawyers of America. He has been listed in Best Lawyers of America for Family Law Mediation since 2009 and in Oregon Super Lawyers for Alternative Dispute Resolution since 2007. Before specializing in mediation, he had a long career as a trial attorney—as a federal prosecutor and criminal defense attorney, as a plaintiff’s and defense lawyer in civil tort cases, and as a family lawyer. In addition to his mediation practice, Mr. Dwyer teaches conflict resolution, mediation and negotiation, and communication skills. He is an Adjunct Professor of Law at the Straus Institute for Dispute Resolution, Pepperdine School of Law, in Malibu, California, the country’s top-ranked ADR program by U.S. News & World Report. He previously taught at Willamette School of Law and Maitripa College. Mr. Dwyer served as the 2008–2009 president of the Multnomah Bar Association.

The Honorable Marilyn Litzenberger, Multnomah County Circuit Court, Portland. Judge Litzenberger has been a Multnomah County Circuit Court Judge since her election in 2002. She received her undergraduate degree in Pharmacy from Oregon State University and worked as a Registered Pharmacist for six years. She graduated from Lewis & Clark Law School and began private practice primarily in multi-party products liability litigation. She is a Commissioner on the Oregon Bench and Bar Commission on Professionalism, a member of the OSB Civil Practice and Procedure Committee, and a mentor in the Multnomah Bar Association Equity, Diversity, and Inclusion Committee, which is designed to retain minority law students in Oregon. She was an Adjunct Professor of Law at Lewis & Clark Law School, teaching trial practice skills. Judge Litzenberger has served as President of the Oregon Law Institute Advisory Board, OWLS, and the Owen Panner Inn of Court, and she has served on numerous other committees.

Parna Mehrbani, Tonkon Torp LLP, Portland. Ms. Mehrbani is a partner at Tonkon Torp whose practice is focused on intellectual property, trademark registration and enforcement, and advising and litigating trademark portfolios for local, national, and international companies at all stages of growth. She received her undergraduate degree from the University of Illinois and her law degree from Lewis & Clark Law School. Beyond trademark law, Ms. Mehrbani has broad experience in a wide array of intellectual property issues. These include copyright law, right of publicity, trade secret, licensing, false advertising, and intellectual property contracting. She also has particular experience in the use and enforcement of intellectual property online in e-commerce and social media contexts. Ms. Mehrbani is cochair of Tonkon Torp’s Information Privacy & Security Practice Group, advising businesses on the management and security of personal data and the laws that regulate the collection, use, and protection of personal data. She is an active member of the bar and the community, currently serving as chair of the Bench and Bar Commission on Professionalism. She is secretary of the Oregon State Bar Intellectual Property Section and a member of the Leadership Council for Partners in Diversity, a program of the Portland Business Alliance.
Jonathan Patterson, Compassion & Choices, Portland. Mr. Patterson is the Staff Attorney at Compassion & Choices, the nation’s oldest and largest nonprofit corporation dedicated to improving care and expanding choice at the end of life. He received his undergraduate degree in Political Science and Psychology at Hawai‘i Pacific University and his law degree from the University of Oregon. He is chair of the Advisory Committee on Diversity and Inclusion and immediate past chair of the Oregon State Bar Diversity Section. Mr. Patterson also is a past president of the National Bar Association Oregon Chapter. He received the 2018 President’s Diversity & Inclusion Award from the Oregon State Bar, the 2018 Minoru Yasui Justice Award from the University of Oregon School of Law, and the Oregon New Lawyers Division Advancing Diversity Award.

Alycia Sykora, Alycia N. Sykora PC, Bend. Ms. Sykora received an undergraduate degree from the University of Michigan and a law degree from the University of Oregon, then clerked for Justice George A. Van Hoomissen on the Oregon Supreme Court. After serving as an honors attorney for the Oregon Department of Justice, she has worked in private practice. She serves on the American Constitution Society Oregon Lawyers Chapter Board of Directors, the Oregon State Bar Constitutional Law Section, and the Deschutes County Bar Association. She is an appointed commissioner on the Oregon Bench and Bar Commission on Professionalism. For the past decade, she has assembled the annual Constitution in the Classroom Project that matches local attorneys with teachers for Constitution Day in Central Oregon; that local project has won a national award. Ms. Sykora is a pro tem judge and an arbitrator for the Deschutes County Circuit Court. She received the Oregon Bench and Bar’s Edwin J. Peterson Professionalism Award in 2015.

The Honorable Youlee You, U.S. District Court of Oregon, Portland. Judge You is a United States Magistrate Judge for the District of Oregon. She received her undergraduate degree in Economics and Urban Planning from Wellesley College and her law degree from the University of Washington. Before her appointment to the federal bench in March 2016, she was a Multnomah County Circuit Court Judge for almost a decade. She was a staff attorney for the U.S. District Court for the Central District of California (Los Angeles), a Senior Assistant Attorney General in Oregon, and a deputy bureau chief in the District Attorney’s Office in Brooklyn, New York. Judge You actively mentors students and new attorneys and has received the Oregon State Bar Award for Judicial Excellence, the Multnomah Bar Association Award of Merit, and the National Asian Pacific American Bar Association Trailblazer Award.
Chapter 1

When the “Them” Is “Us”: Working with Our Professional Blind Spots

MICHAELE DWYER
Dwyer Mediation Center
Portland, Oregon

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Synopsis of Presentation

The reality is that today most cases settle, and in mediations and settlement conferences, lawyers usually act professionally. We do good and hard work. We feel proud of our profession. We proclaim the virtues of, and defend, our adversarial system of justice.

And yet . . . how quick we are to blame our colleagues for their tactics and behaviors. How deeply the public despises our profession. And how disconcerting that lawyers rank near the top of all professions for depression and self-destructive coping behaviors. What is lurking in the shadows that we not seeing? In this presentation, we will explore the places in ourselves, and in our profession, which we cannot see and have been reluctant to face. That is, the “other” inside of us and in our profession.

With an attitude of curiosity rather than harsh self-judgment, we will delve into this topic not to demean or self-flagellate, but rather to understand ourselves and each other better. With this deeper understanding, we might breathe new depth and meaning into our professional lives, cease blaming and take responsibility when appropriate, offer true client-centered representation, communicate more effectively, and tweak our relationships with our colleagues in our mediations and settlement negotiations.
Chapter 1—When the “Them” Is “Us”: Working with Our Professional Blind Spots

Professionalism 2018: What If I’m That Person?
When “Us” is “Them”:
Working with Our Professional Blindspots in Mediation

1. A Quick Word about Human Nature
   b. Competition and Cooperation.
   c. Projections and Blind Spots.

2. Litigation, Laws and the Legal System.
   a. The peaceful resolution of conflict.

3. The Rise of Mediation in the Age of Settlement

4. Professionalism in Mediation.
   b. Competitive/Adversarial Mediation – The Dominant Mediation Model for Lawyers.
   c. Characteristics of Competitive Mediation.
   d. Benefits and Drawbacks

5. The Emergence of Non-Adversarial or Cooperative/Collaborative Mediation
   a. Causal Factors
   b. Characteristics
   c. The New Orientation and Skill Set for Attorneys in Collaborative Mediations.
Chapter 1—When the “Them” Is “Us”: Working with Our Professional Blind Spots

6. The Evolution of Professionalism?
   a. A New Bar for Professionalism in Cooperative/Collaborative Mediations?
   b. What Impact on Adversarial/Competitive Mediations?
   c. New Challenges for Professionalism

7. Professionalism and the Link with Lawyer’s Personal Distress.

8. Concluding Remarks

* * *

About Michael. Michael Dwyer is a mediator and lawyer in Portland specializing in resolving family and relationship conflicts.

Three times (2019, 2017 & 2015) Michael’s has been honored as Lawyer of the Year for Family Law Mediation in Portland by Best Lawyers of America. He has been listed in Best Lawyers of America for Family Law Mediation since 2009 and in Oregon SuperLawyers for Alternative Dispute Resolution since 2007.

Before specializing in mediation, he had a long career as a trial attorney – as a federal prosecutor and criminal defense attorney; as a plaintiff’s and defense lawyer in civil tort cases; and as a family lawyer.

In addition to his mediation practice, Michael teaches conflict resolution, mediation and negotiation, and communication skills. He is an Adjunct Professor of Law at the Straus Institute for Dispute Resolution, Pepperdine School of Law, in Malibu California, the country’s top-ranked ADR program by U.S. News & World Report.

Michael served as the 2008-09 President of the Multnomah Bar Association.
Chapter 1—When the “Them” Is “Us”: Working with Our Professional Blind Spots

FURTHER READING

https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1406&context=aulr

http://classic.austlii.edu.au/cgi-bin/download.cgi/cgi-bin/download.cgi/download/au/journals/MonashULawRw/2011/1.pdf

https://www.osbar.org/publications/bulletin/13nov/professionalism.html

Chapter 2

Professionalism in Litigation: How Judges See Us

THE HONORABLE WELLS ASHBY
Deschutes County Circuit Court
Bend, Oregon

THE HONORABLE MARILYN LITZENBERGER
Multnomah County Circuit Court
Portland, Oregon

THE HONORABLE YOULEE YOU
U.S. District Court of Oregon
Portland, Oregon

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Multnomah Bar Association Commitment to Professionalism 2–5
I. What is Professionalism?

Integrity + Fidelity to personal and professional values = Credibility

Credibility is the coin of the realm in court

Honor commitments

More is gained when more is given.

Statements of professionalism

II. Differences Across Judicial Districts

Judicial districts in Oregon are like states. The rules vary and the differences matter.

Outside of ORS, UTCR, SLR, there are significant differences based upon docketing systems and staff/judicial resources

Knowing the differences separates adequate from excellent representation.

Examples/Thoughts

Work and calendar backwards from your trial date

UTCR and SLR establish the rules not the realities of the court. Call to learn realities.

A realistic time estimate is the hallmark of a pro – account for prep and decision time.

Inadequate planning can result in significant delay and expense.

III. Discovery and Motions

RPC 3.4

Bring to court promptly, with clean hands, and with corroboration in writing.

Judicial options

IV. Disqualification of Judges

Know how the judicial district manages its docket – master vs. individual assignment.

How does the law apply within the district?
Understand the law of unintended consequences: disqualifying a judge is case permanent, no special docket treatment. This is generally forum shopping and we know it.

V. Self-represented cases

Rare in criminal and tort; less rare in family law and smaller civil cases

Usually tried to the court.

Extend all professional courtesies.

Discovery

Cases and citations

Objections – frequency, manner, type

You can help a self-represented without helping them win – be a pro, know the difference.

Judges are keenly aware of how you treat self-represented parties.

Why extend courtesies?

Judge wants fairness

Wide or narrow strike zones (e.g. evidentiary rulings)

VI. Juries

Juries. Miss. Nothing. And they are watching you.

Juries want to get it right.

Start-to-finish professionalism

Credibility is diminished with asymmetry: treat everyone the same.

Slights and fights before trial do not matter to the jury or the judge.

They notice and resent pettiness as distractions.

The professional cannot be the bully.

A theme shows you know your case and is a sign of a prepared pro.

VII. Summary

Integrity plus fidelity creates credibility.

You may need to draw on your credibility reserves, as no one is perfect.

Big difference between perfection and professionalism.

Wins and losses come and go – professionalism is enduring.

Professionalism is a choice.
As lawyers, we belong to a profession that serves our clients and the public good. As officers of the court, we aspire to a professional standard of conduct that goes beyond merely complying with the ethical rules. Professionalism is the courage to care about and act for the benefit of our clients, our peers, our careers, and the public good. Because we are committed to professionalism, we will conduct ourselves in a way consistent with the following principles in dealing with our clients, opposing parties, opposing counsel, the courts, and the public.

- I will promote the integrity of the profession and the legal system.
- I will work to ensure access to justice for all segments of society.
- I will avoid all forms of unlawful or unethical discrimination.
- I will protect and improve the image of the legal profession in the eyes of the public.
- I will support a diverse bench and bar.
- I will promote respect for the courts.
- I will support the education of the public about the legal system.
- 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.
- I will always advise my clients of the costs and potential benefits or risks of any considered legal position or course of action.
- I will communicate fully and openly with my client, and use written fee agreements with my clients.
- I will not employ tactics that are intended to delay, harass, or drain the financial resources of any party.
- I will always be prepared for any proceeding in which I am representing my client.
- I will be courteous and respectful to my clients, to adverse litigants and adverse counsel, and to the court.
- I will only pursue positions and litigation that have merit.
- I will explore all legitimate methods and opportunities to resolve disputes at every stage in my representation of my client.
- I will support pro bono activities.
COMMITMENT TO PROFESSIONALISM

We are committed to professionalism; we believe that lawyers should solve problems, not create them. Accordingly, we will conduct ourselves in a manner consistent with the following principles:

◆ We will promote integrity and independent judgment. As officers of the court, we will work to support the effectiveness and efficiency of the legal system.

◆ We will treat all persons with courtesy, fairness and respect, without regard to any distinguishing personal characteristic such as gender, race, ethnicity, disability, sexual orientation, gender identity or expression, social or economic status, military status, age, national origin, or religion.

◆ We will accurately represent the law to the court and our clients, to the best of our abilities.

◆ We will accurately represent the facts and our authority to bind the client.

◆ We will only pursue litigation, engage in conduct, or take positions that have merit.

◆ We will act in a timely fashion.

◆ We will support a diverse bench and bar.

◆ We will not engage in or condone unlawful or unethical discrimination.

◆ We will represent our clients’ best interests while seeking to resolve matters with a minimum of legal expense to all involved.

◆ We will explain the fee arrangement to our client at the beginning of the representation.

◆ We will support activities to educate the public about the legal system.

◆ We will work to ensure access to justice for all segments of society.

Adopted by the Multnomah Bar Association as of June 1, 2004.
Updated by the Multnomah Bar Association on May 7, 2014.