

A Self-Regulating Profession? **By Melvin F. Wright, Jr.**

What if there was no need for the North Carolina State Bar, the regulatory agency responsible for policing attorney conduct? What if there was no need for Continuing Legal Education or ethics rules or the Client Assistance Program or the hiring of lawyers to investigate and prosecute other lawyers? What if there was no need for words like “mandatory,” “requirement,” and “professional obligation” in the lawyer’s vocabulary? What if lawyers simply acted the way they are supposed to – honorably and with integrity – without any rules telling them they must do so? What an interesting profession the law would be.

Of course, these agencies, requirements, and words exist because while the vast majority of licensed attorneys are moral, hard working, honorable and committed – and do not need rules, regulations and continuing education to govern their conduct and how they do their jobs, a few certainly do.

The state legislature long ago decided to protect the people and the justice system by charging the State Bar with its regulatory duties. But, what if the members of the legal profession decided that as a collective group it would not tolerate unethical and unprofessional conduct among its ranks? Former Chief Justice Burley Mitchell once said about the future of the legal profession: “A wall of silence will be our demise.”

The wall of silence is silence about unprofessional conduct, silence about illegal and unethical conduct, silence about the kind of conduct that affords the press and therefore the public to scrutinize, bemoan and belittle our contributions to society at large.

The road leading to the wall of silence is paved with the bits and pieces of the very soul of the legal profession. It is time to stop paving that road with our soul, and if it is too late to do that, then we need to break down the wall of silence and pick up the pieces, reconstructing the very reason we became lawyers.

Why is there a wall of silence? Is it because people do not like to ‘rat out’ fellow lawyers? Is it because we are so jaded that we do not recognize unprofessional conduct any longer? Is it because we fear retribution for speaking out? Is it because to do so would be hypocritical? If there is a violation of the Rules of Professional Conduct, we need to report it pursuant to Rule 8.3 (Reporting Professional Misconduct), but self-regulation for the legal profession does not just mean the State Bar. Self-regulation also means looking within yourself and trying to always do the right thing.

Recently, Carolin Bakewell, the State Bar’s lead prosecutor for over twenty years, left her position for a new opportunity. Tom Lunsford, the Executive Director of the State Bar, commented in a recent edition of the *State Bar Journal* about Carolin’s many outstanding attributes and contributions. As I read Tom’s comments, I thought to myself: *What if there is no LYING, CHEATING, or STEALING by lawyers in 2007? Then there would be no reason to fill*

this position. (Since the writing of that article, Katherine Jean has been hired as Counsel, and I am sure she will do an excellent job in that position.)

NO LYING –

What if we did not lie by making up excuses as to why we missed a deadline. What if we admitted to our clients, instead of refusing or not returning their phone calls, that we had not yet done the work we promised. What if we did not lie to our clients by guaranteeing results and then blaming the judge or the other side for our own failures. What if we did not relate untruths to the Court in order to get a continuance or other relief sought.

NO CHEATING –

What if we did not cheat our clients by doing something as seemingly harmless as padding our time sheets, with the plan to give them some free time in the future, which never happens. What if we did not cheat the system – and therefore steal the truth – by hiding or pretending to lose damaging materials to our clients in discovery. What if we instead sent the relevant documentation as the Rules require. What if we did not try to fool the other side by sending them on wild goose chases or playing games with discovery. What if we reread the Rules of Professional Conduct every year and required everyone in our office, including our staff members, to do the same.

NO STEALING –

What if we did not invade our trust accounts or take money that does not belong to us. It is called a “trust account” for a reason.

What if we were simply committed to the truth – as our oath demands? There would be no lying to our clients, cheating the system, or stealing from justice.

It is obviously unreasonable to suggest that there is no need for the State Bar. Our profession and society at large has demanded protection from those few bad apples and deservedly so. That is a part of living in an orderly, just, and fair society. However, just because there is a valid need for the regulatory Bar does not mean that we need to give them reasons to work.

Professionalism is the higher standard not regulated by the Bar; but, professionalism should be informally regulated by each individual lawyer by not being silent when you see unprofessional or unethical conduct, taking the high road of professionalism yourself, and continuing to be a zealous but honorable advocate for your clients.

The Hart Report (A Survey of Attitudes Nationwide Toward Lawyers and the Legal System), published in 1993, indicated that the legal profession has lost respect among some members of the public. There are lawyer jokes and movies and sitcoms that satirize the work of lawyers. This is nothing new – remember the now famous phrase, “First thing we do, let’s kill all the lawyers” from Shakespeare’s Henry VI. Our profession has always stood for the right thing. Defending the accused, adhering to a strict interpretation of the Constitution, representing the poor and injured is not always popular, but these are things that lawyers do which makes our country great (and why hundreds die each year trying to illegally enter our land).

We as a profession need to keep doing what we are doing, but do it better. In talking about the attributes of the legal profession, Chief Justice Sarah Parker often quotes John W. Davis, who said: “True, we build no bridges. We raise no towers. We construct no engines. We paint no pictures – unless as amateurs for our own principal amusement. There is little of all that we do, which the eye of man can see. But we smooth out difficulties; we relieve stress; we correct mistakes; we take up other men’s burdens and by our efforts we make possible the peaceful life of men in a peaceful state.”