

CHAPTER FOUR

PROFESSIONALISM...ADR... etcetera...!!!

D'S OF DOWNWARD DETERIORATION & DESTRUCTIVE DECADENCE:

In considering the conduct, aims or qualities that characterize or mark a professional person or our profession of law it might be appropriate to consider some of the perceived problems that deters, detracts and deemphasizes professionalism as well as conceived ADR solutions that can advance, accentuate and promote professionalism.

C'S OF COUNTLESS CHANCE CHAOS & CONFUSION:

PERCEIVED PROBLEMS: In the general practice of law and particularly in litigation lawyers are bombarded with "C" problems of Conflicts, Confabulations, Confusion, Complications, Contracts of Contradiction, Competition, Ceaseless Conferences, Changes, Confounding and Confining Complexities, and Colossal Combativeness. Many people are lawyer-haters because they are misinformed that our members are over-paid and under-principled ambulance-chasers who through trickery, deceit, and shyster methods profit handsomely from other people's misery and misfortune or use underhanded methods to win acquittals for ruthless criminals. While we must acknowledge that our profession is not perfect

or free from all difficulty, we have the opportunity and duty to help set the record straight by deemphasizing the perceived negative problems and accentuating the positive conceived solutions. This we must do first of all through serving as role models of honest, competent lawyers; but also we can and must speak up when we hear unfair criticism voiced.

"KILL ALL THE LAWYERS," IS ACTUALLY A COMPLIMENT:

Many times during the year we hear critics on T.V., the radio, newspaper and during social gatherings say: "Shakespeare had the right solution when he said, 'lets kill all the lawyers.'" Members of our profession must speak out and set the record straight. The character in King Henry VI, part two who said this was named Jack Cade. He was giving advice to his friend Dick the Butcher, who was contriving a despotic plan and scheme to create a totalitarian society with himself as dictator. Cade was telling Dick that the plan would not work as long as there was one lawyer alive to publicly object. That is when he suggested that in order to successfully take over the government "the first thing we do, lets kill all the lawyers." Most of the public seem to believe Shakespeare is making a delightful attack on the legal profession. This is simply untrue and we must counter this misperception wherever it raises its ugly head. Actually this sentence about killing lawyers is a great compliment paid to members of our profession. Dick the Butcher was correct. In any attack on justice and law and order, lawyers would be in the vanguard, defending your rights and mine from any tyrant or dictator. One of the rights that would first disappear when a dictator assumes power is the right to trial by jury, the right to select ones arbitrator or mediator. A dictator would and could usurp the power of the people if it were not for members of our

profession. The public must be reminded that the majority of the signers of the declaration of independence and those attending the constitutional convention were lawyers speaking out to preserve the rights of the people.

"LAWYERS" NOT "OUTLAWYERS":

The legal profession many times receives a bum rap. The lawyer jokes are legend portraying all as cads and bounders. All of us know that doctors wear white coats in hospitals, while lawyers generally wear dark coats in the courtroom. Doctors are thought of by the public as good guys, as they try to help, heal and give their patients hope. By contrast some say that lawyers attack the person, pocketbook and prestige of the other lawyers client, and so lawyers are thought of as "outlawyers," the "bad guys," and villains. We must speak up and articulate to the public that we are a necessary, noble profession whose function it is to take adversarial role in the pursuit of truth and justice; that is, that like physicians, lawyers are seeking to help, not hurt, their fellow human beings. A former judge on the court of appeals, Randall Evans, has said that if the doctors wore dark suits and used their knives and scalpels on each others' patients, they would not be so popular or seem so important.

SOLVERS, NOT EVOLVERS OF PROBLEMS & DISPUTES:

The misinformation and half-truths extend to western movies, which often portray lawyers and judges as shady individuals or outright crooks, and to the other media. The television audience is told not to "take matters in your own hands, take'em to court." We lawyers need to emphasize that, contrary to some current thought, the law says all of us have free wills; we can make choices; and we are responsible for the

consequences of our decisions made. We need to also reiterate that while there is a time for litigation and arbitration (within the statute of limitations, of course), there is likewise a time for mediation and reconciliation of disputes among ourselves. We must make crystal clear to the public in our state and nation that as attorneys and counselors at law we do include ADR principles, precepts, processes and procedures as alternative means of settling disputes. Our profession does include in our vocabularies the words "negotiation," "compromise," "settlement," and "being reasonable." A former colleague of mine, and one of Georgia's great judges H. Sol Clark, and his son Fred S. Clark have pointed out techniques and skills on how to solve and resolve disputes in their book SETTLEMENT LAW AND STRATEGIES.

Another distinguished former colleague of mine Judge Harold Banke, was a superior court trial judge for about 17 years. He has stated that about 50% of all the civil matters that came before him could have been resolved out of court if attorneys on both sides had taken the initiative and prevailed upon the parties to be reasonable. Lawyers in stressing ADR are becoming problem-solvers more and more rather than just problem-evolvers; and, by doing so are enhancing professionalism. Some who like to bash lawyers like to remind all that the charter of the colony of Georgia banned 3 things: slavery, rum and lawyers. This is a fact but again only a half truth as it relates to lawyers. This was done partly because each person was entitled to argue his own case, but primarily so the trustees could maintain control over the settlers, who thus had no one to advise them of their legal rights. Lawyers were allowed in Georgia only after a petition was circulated in Savannah, signed by a majority of persons demanding that lawyers be allowed to practice in this 13th colony. You must

help set the record straight that lawyers were banned from Georgia not because of misdeeds but because of governmental greed, power, control and restraint. See 130 Ga. App. 239 for details of these historical facts.

PAINTING A PICTURE & PORTRAIT OF PROFESSIONALISM:

We are a litigious people. Two hundred years ago Edmund Burke told Parliament that more copies of Blackstone's Commentaries had been sold in the Colonies in a year than in England in a decade. Although there are many perceived problems that have blurred the progress and promotion of professionalism in our state we are nevertheless on the verge of painting a picture and portrait of our profession that will receive accolades and applause from the public. ADR will be one of the leading forces in promoting professionalism.

C'S OF CONFIDENCE, COMMITMENT & COOPERATION:

CONCEIVED ADR SOLUTIONS: Abraham Lincoln has said many years ago that we should settle all the cases we can because there will be plenty left to litigate. ADR cures for the problem of promoting and advancing professionalism uses the "C" solutions of Civility, Caring, Compassion, Cooperation, Concern, Camaraderie, Courage, Conciliation, Commitment, Confidence, Confidentiality, Character, Consensus, Contract and Concrete Cash settlements of many disputes. Mediation settlements brings about reconciliation and returns good will among the parties. In seeking to make peace instead of war the entire image of our profession can be elevated and enhanced. The prompt handling of claims by use of Arbitration not only will reduce the high cost of litigation

but will allow the courts more time to move the flow of highly complex civil cases and the prompt trial of the many criminal cases pending in our justice system.

COURTEOUS CONVERSATION CAN CONVINC:

What is the preferred professional approach for participants in a mediation session? A low-key (but loud enough so that all may hear) courteous conversational presentation concentrating on a brief summary of the essential facts, legal principles and position that you are taking is the best way to begin. Always face and address the mediator and do not get into an argument with the other side. All participants must remember the mediator is in charge of the session and will allow everyone an opportunity to speak. In arbitration hearings the same type low-key conversational tone is proper. Concentrating on the facts and the law helps the arbitrator comprehend and understand the root reasons why the judgment should be in your clients favor and can best be accomplished without emotional theatrics and drama. This is also the best way to persuade the arbitrator to your side.

FOLLOW ADVISE OF BLECKLEY, FELTON, GARDNER ETAL:

Don't misstate the facts or the law. Disclose any weak positions that you may have. Don't seek to cover up with cosmetics and camouflage when there is a duty to disclose. Good ethics and professionalism prohibits a lawyer from asserting a position that he knows is frivolous. The legendary Chief Justice Logan Bleckley has said: "The bar is no place for sham or dissimulations, whether in speech or action. In legal attack and defense, there is a field for strategy, but none for stratagem. Litigation, though contest, is not war but peace; its rights are pacific, and so are it methods and morality. It

accepts the service of art in the sense of skill and in the sense of address, but not in the low sense of artifice, trick, trap, subterfuge or chicanery." He stated further: "Truth as a whole, being divisible, we may divide it, utter some and keep back the rest, but we are not at liberty to cut it into slices so minute that what we put forth will mislead or deceive. We are bound to give our communications enough to make them rightly understood, when fairly interpreted, so far as they go. Like some drugs, truth is often poisonous in small doses, We must take care to issue it in doses large enough, if not to medicate, at least to be harmless, and, and in paying our debts, to over-pay rather than fall short."

Two gems of sage advise on how to succeed in the practice of law and how to develop professionalism have been provided by Judge B.C. Gardner: (1) Stay in your office, or keep the store. (2) Make certain that all your papers, pleadings, and documents are prepared on time and with care and thoroughness so that they are always in good order. These two suggestions are applicable to ADR. The mediator or arbitrator can hold the session or hearing in your conference room or store if you will get the consent of the other side. Make certain all your papers are in good order when using ADR. Judge Jule Felton had good advice: "If it takes a friend to make a dollar, save the friend. If it takes a dollar to make a friend, save the dollar." If a settlement of a dispute can be made both friendships and dollars may be saved.

STATE BAR VOLUNTEERS NEEDED AT LOCAL LEVEL TO ASSIST YOUNG PEOPLE:

At a statewide meeting held recently to consider vital aspects of professionalism and the law the following question was presented: "Where are the programs [of the State Bar] that would cause the lay person to say the public is blessed

with good lawyers, that the bar is serving society as it should, and that the public can be satisfied that justice is being administered in our society as it should be?" Permit me to issue a challenge to the state bar and other professional groups in Georgia, that is, to reemphasize the teaching function which will include information to citizens within our state as to the role of ADR in dispute resolution, reconciliation and problem-solving! Consider this: Our young people..our most valuable asset..spend a great deal of time in problem-solving. Great stress is placed on considering the consequences of choices that are made. Lawyers and other professionals could volunteer to be available as speakers when invited to the schools to assist young people in identifying what is right and wrong, what is legal and illegal under the juvenile and criminal codes, and how mediation and arbitration differs from litigation in solving problems in real life. This would be beneficial to young people, would be helpful to lawyers and would improve the image of our profession. Lay people could rightly say that the public is blessed with good lawyers, the bar is serving society and that justice is being administered as it should. This type project will uplift professionalism and generate respect for law in our state. Carrying the message to all Georgia citizens about problem-solving and ADR is an idea whose time has come!

**ENHANCING PROFESSIONALISM
NATIONWIDE..SIX PILLARS OF CHARACTER:**

As to enhancing, elevating and emphasizing professionalism and ethics in ADR, in the practice of law, and in private life, this writer strongly recommends adoption of the "Six Pillars of Character" suggested by The Josephson Institute of Ethics 1993. They are: I. TRUSTWORTHINESS (Honesty, Integrity, Promise-Keeping, Loyalty). II. RESPECT

(Autonomy, Privacy, Dignity, Courtesy, Tolerance, Acceptance). III. RESPONSIBILITY (Accountability, Pursuit of Excellence). IV. CARING (Compassion, Consideration, Giving, Sharing, Kindness, Loving). V. JUSTICE & FAIRNESS (Procedural Fairness, Impartiality, Consistency, Equity, Equality, Due Process). VI. CIVIC VIRTUE & CITIZENSHIP (Law Abiding, Community Service, Protection of Environment). These six listed "core ethical values" when used in principled decision making always take precedence over other non-ethical ones. Examples of the latter are power, making money, fame, popularity and the like. The six core values in the opinion of the writer are dominant such as "trump cards" in playing bridge or the large pieces such as queen, rook, knight, and bishop in playing chess.

Josephson urges all of us to keep the six pillars, or trump cards in mind, and then also agree further: A. All decisions must take into account and reflect concern for the interests and well being of all stakeholders. B. Core ethical values and principles always take precedence over non-ethical ones., and, C. It is ethically proper to violate an ethical value only when it is clearly necessary to advance another true ethical value which, according to the decision maker's conscience, will produce the greatest balance of good in the long run. Josephson further suggests that when making our final important decisions we should do so with three additional things in mind: (a). Pretend our decision might be the headlines on our local newspaper and consider how we feel about it? (b). Pretend our son or daughter is looking over our shoulder and how would they react to our decision?, and (c). How does our final decision comport with the Golden Rule?

Making the six pillars of character a part of our

problem-solving process will surely advance all within our profession. Seemingly public schools and colleges would do well to consider replacing "Values Clarification" and "Situation Ethics" with the "Six Pillars of Character" as outlined by The Josephson Institute. The former two listed methods of problem solving deal with doing "whatever feels good" and "whatever one prizes" while the latter uses methods of problem solving comporting with compassion, courage, correctness, courtesy, competency, capacity and character. Having definite standards and guideposts such as the Six Pillars of Character available in making daily decisions will be of great benefit to our youth. Likewise it will help lawyers to strengthen one's our personal ethics, resulting in elevating ethics within our profession, as well as fostering good professionalism in general.