

Cultivating Professional Identity Formation in the Doctrinal Course

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I. What do we mean by “professional identity”?

Suggested definitions of the concept and related terms

Professional identity represents “[t]he skills and inclinations, along with the ethical standards, social roles, and responsibilities that mark the professional.”

—WILLIAM M. SULLIVAN, ET AL., *EDUCATING LAWYERS* 28 (2007)

Professionalism encompasses “the values, behaviors, attitudes, and ethical requirements of a lawyer and to infuse a commitment to them.”

—ROY STUCKEY, ET AL., *BEST PRACTICES FOR LEGAL EDUCATION* 60 (2007)

“The study of professional identity encompasses issues of personal satisfaction and professional success and must necessarily take into account individual personalities, experiences, talents, and values.”

—Daisy Hurst Floyd, *Pedagogy and Purpose: Teaching for Practical Wisdom*, 63 *MERC. L. REV.* 943, 947 (2012)

Lawyer professionalism is defined as including: (1) “personal conscience,” (2) accepting the “duty” to comply with the legal profession’s standards of conduct, (3) aspiring, over the lawyer’s career, not only to honor the core values of the profession but to internalize “the highest standards . . . [of] professional skills and ethical conduct,” (4) recognizing the need to hold other lawyers accountable to the profession’s minimum standards and encourage pursuit of the highest standards, and (5) seeks “justice” despite pressures to serve one’s self interest.

—Neil W. Hamilton, *Professionalism Clearly Defined*, 18 *PROF. LAW.* 1 (2008)

“Indeed, the fact that philosophers, legal ethics teachers, and the rest of the law school faculty have largely failed to generate a meaningful account of the normative value of professionalism has had important consequences beyond the academy. As many commentators have noted, there is a growing separation between law schools and the legal profession itself.”

—David B. Wilkins, *Redefining the “Professional” in Professional Ethics: An Interdisciplinary Approach to Teaching Professionalism*, 58 *LAW & CONTEMP. PROBS.* 241, 245 (1995)

II. What does “professional identity” mean to you? How would you define at your school the objectives of helping students develop their professional identity?

- Does professional identity formation include helping students acquire certain values, virtues, and/or attributes that are important to the legal professional?
- Does it include helping them acquire certain skills as well, like communication skills?
- Does it include helping them enhance their ability at self-reflection and self-awareness so that they can ensure their professional practice aligns with their values?

Write below your thoughts on these objectives.

Now discuss your thoughts with your discussion partner/group before we have large-group reflection.

III. Examples of Instructional Techniques to Develop Students' Professional Identity

1. Professional identity questions and journal and essay assignment in Prof. Madison's State Civil Pretrial Practice & Procedure course.

Sample Professional Identity Question

Suppose you work for a senior partner who tells you that his standard practice is to file a counterclaim in every case in which he can find anything possible to raise, even if it's unlikely to "stick." As he further explains, "I've found that in 75% to 80% of cases I can find something to raise as a counterclaim—sometimes affirmative defenses can be massaged to assert them as a claim." The goal, he says, is not necessarily to have the counterclaim stay in the case, but rather to test just how serious the plaintiff is about bringing the case. He says that if a plaintiff complains and seeks Rule 11 sanctions against him, he just withdraws the claims that he cannot support. Would you follow this approach? If not, how would you deal with the partner's request? What involvement should your client have in this process?

—adapted from BENJAMIN V. MADISON, III, CIVIL PROCEDURE FOR ALL STATES 91 (2010)

See Appendix for syllabus language on the assignment.

2. Personal philosophy of lawyering assignment in Prof. Gantt's Professional Responsibility course.

In the assignment, students are to set forth and discuss a framework that will guide them as they: (1) integrate their personal and professional lives; and (2) approach ethical issues in their practice as lawyers.

Assignment adapted from—

NATHAN M. CRYSTAL, PROFESSIONAL RESPONSIBILITY: PROBLEMS OF PRACTICE AND THE PROFESSION 52-55 (5th ed. 2012).

See Appendix for syllabus language on the assignment.

IV. What instructional techniques could you employ in the courses you teach to help your students develop their professional identity?

Write below your ideas on these techniques.

Now discuss your ideas with your discussion partner/group before we have large-group reflection.

Appendix

1. Excerpt from Prof. Madison's syllabus involving assignment for students to consider and respond to Professional Identity Questions

- **Mandatory Professional Development Work and Essay:**

Like many law professors around the country, one of my goals is to give you the skills, knowledge, and values you need to be able to learn and to grow as a professional. I therefore have chosen to make these skills an explicit and graded part of my course.

You will satisfy your professional development obligation by continuing to keep a journal. You will satisfy this obligation by completing 500 word journal entries on the specified Professional Identity Questions from the Casebook. Your journal entries will be absolutely confidential. I will not share them with anyone else, and I am not grading them on whether your values are aligned with mine. Instead, I will be reviewing them to see whether you engage the question, reflect on it, and develop a proposed resolution according to the criteria defined below. The 500-word limit is not an arbitrary one designed for you to "fill space." Instead, I have found in the several years in which I have asked students to perform journaling that one cannot provide a meaningful response demonstrating the qualities outlined above without it being 500 or more words.

Begin by realizing that this exercise is calling on you to do something different from pure legal analysis. You will be relying on not only your mind, but also on those convictions that reside in your ethical and moral compass. You often will experience an emotion when you read and imagine yourself in the scenario created by the Professional Identity Question. Pay attention to such emotions. Some recoil and think a law student or lawyer should ignore emotions. However, I ask you to keep an open mind. Emotions sometimes provide the first signal to which one needs to pay attention because something is rubbing against our conscience. As you will see, however, I encourage you to go through a process of working through an issue to clarify what may bother you and how you can respond.

I will be looking at your journal entries to see whether you IDENTIFY THE VALUES AT THE SOURCE OF AN INTERNAL CONFLICT. You need to be clear on the conflict you are dealing with before seeking to resolve it. I will then look to see whether your journal entry reflects that you have SEARCHED for sources to inform your conscience. You do not have to do a research project here. Reflect on readings that reflect the values you have found to be important in your life. Consider ethical principles you've learned and incorporated into the way in which you live. Also consider whether the Model Rules of Professional Responsibility provide guidance on the question. In short, I will be looking at your journals to see whether you make an effort to consider sources that can inform your resolution of the conflict.

I will also be looking at the entries to see whether you are DIALOGUING with someone. Ideally, such dialogue would be with a mentor. I prefer that you not rely on other classmates. Try to find someone with at least a good deal of life experience, even if they are not lawyers. For instance, you could discuss the matter with a parent, a favorite uncle, your pastor or spiritual

advisor, or a professor. If you are married, your spouse can often be a valuable resource for helping resolve issue of conscience. The point is that I want you to develop the habit of seeking out the views of others who are likely to be able to help. Some have said to me in the past: “I’m not the kind of person who talks to others.” My response has been: “I’m sorry, but when I used to think that way I realize that it was pride getting in my way. Those who have worked through moral questions know that discussing an issue with another is often a crucial step and that we should never seek to resolve something without consulting others.

After DIALOGUING, the last part of your journal entry should involve REFLECTING in writing on the resolution you find most compatible with your moral compass. After all, you have to live with yourself. Consider whether you have faced anything similar in the past. Have you made decisions with which you were uncomfortable? What impact do you believe will result if you make decisions in law practice that conflict with your moral compass? Some say that integrity comes from making decisions consistent with our principles. If one does not approach moral questions in this way, and if one follows the purely “cognitive” I’ll-do-whatever-the-Rules-allow approach, a potential result is that one will end up feeling a lack of integrity. As the research shows, and as my experience confirms, law school can unintentionally lead one to believe that one should separate one’s head from one’s heart. If someone does that, and makes decisions in that one-dimensional way, she will sooner or later likely begin not to like herself, dislike law practice, and suffer other effects of the failure to lead an integrated life.

Your Mandatory Professional Development grade will depend on:

- (1) maintaining throughout the course a Professional Development journal in which you write your responses to Professional Identity Questions assigned, following the guidance just given, and turning them in by the due date; and
- (2) providing an essay at the end of the course (usually five pages) discussing whether the process of contemplating these questions (a) has allowed you to know yourself, your values, and your limits better than at the start of the course; (b) how moral values are different from the minimally acceptable conduct prescribed by the Rules of Professional Conduct and the extent to which a lawyer has discretion in determining and carrying out the means of representation; and (c) the extent to which the Professional Identity Questions make you better aware of the subtleties of the ways in which one can compromise one’s values in those areas that the Model Rules leave to your discretion—and what “checks” or protections you can put in place to ensure you do not compromise your own.

Your Journal entries and Essay will count 15% of the Course Grade. I will assess the journal entries and Essay as follows. If you include all of the criteria identified in the above description, and make a good-faith effort to produce excellent work, you will receive full credit. If you do some but not all of the analysis asked, or provide less than a good faith effort to perform excellent work, you will receive half credit. If you do not make a good faith effort on the entries and the Essay, you will receive no credit.

2. Excerpt from Prof. Gantt's syllabus involving personal philosophy of lawyering assignment

15% of final grade: Personal Philosophy of Lawyering

As stated in the Crystal textbook and as will be stressed in class, developing a personal philosophy of lawyering is critical to any student who desires to develop a professional identity and practice law within a consistent and personally relevant ethical framework. For this reason, students will be required to draft a philosophy of lawyering paper in which they set forth a framework that will guide them as they: (1) integrate their personal and professional lives; and (2) approach ethical issues in their practice as lawyers. Thus, in terms of the methodology in the Crystal textbook, students must address in their paper their philosophy of lawyering on the personal and practice level, but not on the institutional level.

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In drafting their philosophy, students should consider the discussion in the Crystal textbook on pages 52-55 ("The Concept of a Philosophy of Lawyering"). Students need not answer in their paper each question on page 53, but they should at least discuss the area(s) of practice they are considering and how the area(s) will impact their philosophy. In addition, students must set forth particular ethical principles that will guide them as they integrate their personal and professional lives and as they approach ethical issues as lawyers. Students should discuss how they will prioritize these principles when they face ethical dilemmas that involve conflicts between two competing virtues or goals. For instance, if they sense that the principles of honesty and zealous advocacy conflict in a certain dilemma, they should discuss how they will resolve this conflict and where they will draw the line in prioritizing these principles. They will not be graded on the particular principles on which they concentrate in their framework. Instead, they will be graded on the extent to which their philosophy is internally consistent, well-organized, well-thought-out, well-written, well-supported (with biblical (where appropriate) and other citations), and practically applicable (by indicating how it will apply to and help them make ethical decisions in their day-to-day lawyering).

The professor does not expect students to have "ironed out" every aspect of their philosophy, but students should recognize in their paper the areas where their philosophy needs further development. For instance, if students know that an ethical dilemma will arise in their intended practice area(s), they should identify that dilemma and explain their current approach to resolving the dilemma even if their approach is incomplete at this time. Students are encouraged to consider points 2-7 in Problem 1-4(c) on page 55 of the Crystal textbook for examples of typical ethical issues they will face and therefore should address in their paper.

The papers must be between three and five (3-5) double-spaced pages (exclusive of any title page but inclusive of any endnotes) using a 12-point font and one-inch margins, and the professor may penalize students who do not comply with these requirements. In light of the paper's brevity, students need not, and likely should not, devote substantial time to

addressing specific ethical scenarios, such as whether they will represent someone they know is guilty. However, as noted above, they should at least mention a few typical ethical dilemmas in their intended practice area(s) and *should be specific and detailed enough in their paper to illustrate to the professor how they intend to apply their framework in their day-to-day life as a lawyer*. To guide students as they write their paper, the professor will put one or more previous student papers on reserve at the law library. Because the paper is the student's *personal* philosophy, students are to type or print their names at the end of their paper and then sign it.

Regarding citation to external sources, as noted above, students should cite [the Bible or other ethical works] to provide a basis for their ethical principles. They should also cite particular Model Rules to show how their framework compares or contrasts with those rules. This paper, however, is not a research paper *per se*, and the professor will not be looking for citations to external sources other than those mentioned. Moreover, citations need not be in Bluebook format. Students may use footnote, endnotes, or internal citations; citations need only be in a format that clearly identifies the referenced source and relevant page(s) such that a reader could locate that source.