
Professionalism Committee

David W. Long, Chair

A Comment About Professionalism in Business Transaction Practice

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Much of the Bar's discussion about professionalism deals with lawyers representing clients in an adversarial litigation setting. As a result, there is a possibility that attorneys who represent parties to commercial transactions could feel that discussions of professionalism are not relevant to them. This article is written with the hope of partially correcting that potential oversight.

One rather comprehensive code of professionalism is the "Santa Clara County Bar Association Code of Professionalism" adopted by that organization in 1992. This professionalism or civility code contains the following provision relevant to attorneys negotiating a business transaction:

SECTION 20 REDLINING

A lawyer should clearly identify, for other counsel or parties, all changes that a lawyer makes in documents.

In today's computerized and e-mail age,

massive and lengthy documents are routinely traded between lawyers in an easily downloaded form. In addition, document scanners allow firms to quickly download the text of paper documents into the scanning firm's computer system. Thus, it is now commonplace that documents which in earlier times could only be found in the word processing system of the original drafter may now be found in opposing counsel's word processing system, ready for modification.

When the original drafter is confronted with a document sent by opposing counsel that looks identical or nearly identical to the document the drafter submitted, the drafter does not expect to spend hours reading the document in its entirety in an attempt to uncover subtle changes of wording buried deep inside the document. Instead, the original drafter has an expectation that any

alterations opposing counsel has made to the text of the document will be "redlined" or otherwise highlighted.

The quoted section from the above code of professionalism affirms and endorses the reasonableness of an attorney's expectation that any changes made by the attorney on the other side of a transaction will be highlighted in some manner.

It is submitted that professionalism in the negotiation of transactions includes "redlining" or otherwise highlighting changes an attorney makes in a proposed document.