



## SHOVELING SMOKE: PROFESSIONAL STANDARDS: BEYOND CONDUCT RULES



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*In this column on legal department management, professional issues, and relations between in-house and outside counsel, Ron Pol discusses elements of managing lawyers, sometimes likened to herding cats, or, as he prefers, shoveling smoke. Here, he offers a conversation on standards beyond the rules of professional conduct.*

**Garth Cadman (General Counsel):** Thanks for coming in to discuss this new case. Didn't interrupt anything, I hope?

**Oliver Crisp (Outside Counsel):** I was about to leave on a family vacation, but it's ok, I had one a couple years back.

**GC:** Great. We received the claim a few weeks ago, and need to respond pretty soon—well, tomorrow actually—so you'll understand the urgency.

**OC:** Sure. It arrived a few weeks ago?

**GC:** Yep. I bet you're grateful that my PDA never lets me down. I input the response date as soon as we got the claim, so when its alarm sounded today, I called you immediately.

**OC:** Uh, right.

**GC:** Now, we need to make sure that you have no conflicts. It'll be fine if you just confirm that you've never

acted for anyone else in our industry before.

**OC:** Well, we're the leading firm, with the largest legal team of industry specialists. **GC:** That's why I called you. We need the best on this one. **OC:** What I was getting at was that we built our expertise over many years, so we've acted for lots of industry participants. We've checked though. We act for some of your competitors, but in entirely unrelated areas, and we meet all applicable ethical rules.

**GC:** That may be so, but here in the commercial world, I've got to explain it to a chief executive who demands loyalty. You want to act for us, right?

**OC:** Absolutely.

**GC:** So I'm sure you'll work it out. Now, your hourly rates are way too high.

**OC:** We're confident that they represent industry standard. In fact, we recently dropped some of them a little to reflect recent market changes in your industry. Have you seen the latest rates? I'd be happy to have them sent across.

**GC:** No need. I can't recall the specifics, but they just need to come down 10 percent.

**OC:** I know that your CEO called for 10 percent cuts across all business units, with savings reflecting directly on individual bonuses, so we'd be happy to work with you to help achieve savings, but there may be more effective ways.

**GC:** Maybe so, but rate cuts are easiest to demonstrate immediately to the CEO, so we'll stick with them this time. This transaction's a big

one, but we're looking across the entire business here, so we really want someone to partner with. You're a team player, right?

**OC:** Sure, we want to work with you to ensure that both our needs are met.

**GC:** Great, so if you give us rate cuts and everything else we ask for, it'll be win-win.

**OC:** Hmm, I, er, hope so.

**GC:** Just a couple more things. First, travel. When you work for us, you fly coach.

**OC:** Don't you mean for flights less than six hours, like your internal policy?

**GC:** Is that what it says?

Anyway, whatever our own policy says isn't really relevant. We have people who arrange flights for us, so we have no say. As I'm sure you'll appreciate, our attorneys across the country will need to monitor your fees in a consistent manner, so it's obviously better for both of us to have one simple rule.

**OC:** Well, it's certainly that.

**GC:** And we'll need a couple of seconded attorneys, obviously at no cost to us, for 18 months or so.

**OC:** Like free services that you provide to your own customers, perhaps?

**GC:** I hope that's not sarcasm I hear? I thought that I said we need a team player.

**OC:** Yes, we're keen on working together constructively.

**GC:** Good. One last thing. Teamwork means we support each other. As you know, we're in the rest home and funeral business, so if all of your partners purchased our

prepaid funeral services, I'm sure that it would help our decision-making process.

**GC:** Yes, if this relationship develops fully, I can see that it might well be prudent.



This exchange is obviously fictional. After all, who ever heard of a law firm unilaterally reducing hourly rates? Yet it might sometimes be useful to step back from immediate pressures to reflect also on the value of relationships genuinely based on mutual trust, respect, and professional standards that sometimes go beyond the strict requirements of professional conduct rules. Put another way, for "common" once again to precede "courtesy."

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