

## FROM THE CHAIR OF THE PROFESSIONAL ETHICS COMMITTEE

SEAN E. BREARCLIFFE

As chair of the Professional Ethics Committee of the Federal Bar Association, I am pleased, along with our committee, to be a part of this issue of *The Federal Lawyer*. This issue focuses to a great degree on issues of ethics and professionalism among the members of the federal bar. As federal practitioners, we are members of a smaller group of lawyers who practice primarily or exclusively in state courts. As a rule, we come to know the other lawyers in our community who are primarily federal practitioners more readily, and we have benefited from the collegiality that arises from such relationships. With some exceptions, of course, that collegiality tends to make our working relationships with opposing counsel less hostile and more cooperative.

As federal practitioners, we have also benefitted from the environment established by our federal judges. When professionalism is demanded, and when an example of professionalism comes from the bench, it is easy to be professional. Sometimes in the most difficult of circumstances, U.S. magistrate judges and district judges—not to mention appellate judges—set the example of decorum in the way they control their courtrooms. When each of us knows that the court will not tolerate nonsense and borderline frivolous motion practice, we are less likely to fall into the trap of engaging in it when the temperatures of the moment rise.

The very existence of the FBA enhances both professionalism and ethical practice. By bringing practitioners from a variety of disciplines together and bringing practitioners together with members of the judiciary the Federal Bar Association plays a key role in making all of us play nice in the sandbox. I am sure that many of us—particularly those in less-populated districts and divisions—have experienced the out-of-district lawyer who breezes in as “the pro from Dover,” using unnecessarily aggressive tactics and demonstrating a combative demeanor. When faced with such counsel, we are tempted to

respond defensively in kind in order to protect our turf and to show that we are not yokels. A confrontational relationship can spiral out of control, until the goal of effectively representing our clients is either forgotten or put on the back burner in the interest of chopping the outsider down to size. As a national organization, the FBA brings lawyers from across the country together. By providing national CLEs in labor and employment law, in Indian law, and in government contracting, for example, the FBA gives lawyers the opportunity to meet their competition before the latter becomes the competition and to build relationships that may not make plaintiffs’ and defense lawyers friends but will allow them to work in an environment that sheds the pretense that often arises and lets us get to the point of protecting our clients’ interests the right way.

The Professional Ethics Committee takes seriously the charge from FBA President Fern Bomchill that we use the advantage that we have as a national organization to work to recognize the professionalism among members of our



select bar and to enhance both the standards of professionalism and ethical practice in our courts. Our committee also has set its goal to increase the visibility of the Professional Ethics Committee. To that end, we are proud to have contributed to this issue of *The Federal Lawyer* by providing articles of interest and relevance written by committee members on the issue of ethics and professionalism. Our committee has also prevailed on the organizers of the 2012 Annual Convention to allow our committee to sponsor a CLE program on ethics and professionalism in San Diego. We are pleased to announce that the guest speaker for that CLE program will be Ronald Mallen, partner in the San Francisco office of Hinshaw & Culbertson LLP and co-author of the five-volume work *Legal Malpractice*, which is widely held to be the go-to manual on legal malpractice liability issues. We hope that we will continue to offer such programs as a tradition at annual conventions to come.

As part of our larger charge, the Professional Ethics Committee is looking at ways to make the FBA the stan-

governing those practitioners in state courts and thus, almost universally, to the ABA's Model Rules. Since 1990, the ABA's Model Rules have been amended and new comments to those rules have been issued, but the FBA's Model Rules have not been amended, and the two codes have diverged to a certain degree. Because no known jurisdiction or federal agency has adopted the FBA's Model Rules since they were adopted 22 years ago, the association's Professional Ethics Committee is examining ways to keep the FBA relevant in setting the high-water mark for federal practice, even while acknowledging the nearly universal adoption of the ABA's Model Rules. Our committee hopes to bring innovative ideas on this issue to the FBA's Board of Directors in the coming months.

On behalf of myself and the Professional Ethics Committee—which includes Hon. Karen Wells Roby from the New Orleans Chapter, Linda Amidon from the Atlanta Chapter, Shannon Awsumb from the Minnesota Chapter, Eric Darnell from the El Paso Chapter, Tom Gressette

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**IN THE LATE 1980S, THE FBA'S PROFESSIONAL ETHICS COMMITTEE AND THE ADVISORY COMMITTEE TO THE PROFESSIONAL ETHICS COMMITTEE COLLABORATED TO CREATE A SET OF RULES, MODELED ON THE ABA'S MODEL RULES OF PROFESSIONAL CONDUCT, GEARED TO THE PROFESSIONAL CONDUCT OF FEDERAL PRACTITIONERS IN BOTH THE PRIVATE AND PUBLIC SECTORS. THOSE RULES CAME TO BE CALLED THE MODEL RULES OF PROFESSIONAL CONDUCT FOR FEDERAL LAWYERS AND WERE ADOPTED BY THE FBA IN 1990, REPLACING THE FBA CANONS OF ETHICS AND FEDERAL ETHICAL CONSIDERATIONS.**

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dard-bearer for professional rules of conduct for federal practitioners. In the late 1980s, the FBA's Professional Ethics Committee and the Advisory Committee to the Professional Ethics Committee collaborated to create a set of rules, modeled on the ABA's Model Rules of Professional Conduct, geared to the professional conduct of federal practitioners in both the private and public sectors. Those rules came to be called the Model Rules of Professional Conduct for Federal Lawyers and were adopted by the FBA in 1990, replacing the FBA Canons of Ethics and Federal Ethical Considerations. The FBA's Model Rules were comprehensive in scope and purpose and thoughtful in tailoring the ABA's Model Rules to the reality federal practice. The FBA's Model Rules were designed to be a single resource providing ethical rules across the breadth of federal practice by addressing the standards of conduct that are particular to federal court practitioners, even while being applicable generally to the ethical practice of law. Since the adoption of the FBA's Model Rules, the ABA's Model Rules have been adopted in whole or in part in 48 states and the District of Columbia. Many federal jurisdictions, in turn, hold practitioners to the code of conduct

from the South Carolina Chapter, Ryan McCabe from the New Orleans Chapter, Cornelius Moynihan from the Massachusetts Chapter, and Chris Parker from the Atlanta Chapter—we look forward to continuing to serve the FBA and its membership in 2012, and we look forward to seeing you all in San Diego. **TFL**

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