Creating Collegiality Among Adversaries

Thursday, June 23, 2011
3:00 – 4:30 p.m.
Hotel Captain Cook
Anchorage, AK

CLE #2011-021 1.5 Ethics CLE Credits

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FACULTY

Chief Justice Walter L. Carpeneti, born in San Francisco in 1945 and raised there, joined the Alaska Supreme Court in 1998 upon appointment by Governor Tony Knowles. He was elected by his colleagues as chief justice in June 2009. Before his appointment to the Supreme Court, he served for seventeen years on the superior court, having been appointed by Governor Jay Hammond in 1981. Before his appointment to the bench he served as a member of the Alaska Judicial Council, served on the committee that drafted the Alaska Rules of Evidence, and was the reporter to the Supreme Court's Criminal Pattern Jury Instructions Committee. While on the superior court he served on the Alaska Commission on Judicial Conduct and as a member of the Three-Judge Sentencing Panel; he also chaired the Supreme Court's Committee on Criminal Sentencing Practices and Procedures. During his time on the Supreme Court he has chaired that court's Judicial Education Committee. Chief Justice Carpeneti graduated with an A.B. degree (with distinction, Honors in History) from Stanford University in 1967 and received a J.D. degree from the University of California at Berkeley in 1970, where he was managing editor of the law review. He came to Alaska in 1970 to serve as law clerk to Justice John H. Dimond of the Alaska Supreme Court. He also served as law clerk to Justice Jay A. Rabinowitz of that court. After a period of private practice in San Francisco with Melvin Belli, he joined his father, retired San Francisco Superior Court Judge Walter I. Carpeneti, and his brother, Richard Carpeneti, in private practice. Returning to Alaska, he was supervising attorney in the Juneau office of the Alaska Public Defender Agency and in private practice with William T. Council before his appointment to the superior court. He was married in 1969 to Anne (Dose) Carpeneti. They have four children: Chris, Marianna, Lia, and Bianca

Mark C. Niles is dean of Seattle University School of Law. He has taught and specializes in civil procedure, administrative law, constitutional law, governmental liability, and law and literature. He has published numerous articles and essays on subjects including the Ninth Amendment, federal tort liability, airline security regulation and the depiction of law and justice in American popular culture. Earlier in his career, he served as a clerk for the Honorable Francis Murnaghan, Jr., of the U.S. Fourth Circuit Court of Appeals. He was an associate at the D.C. firm of Hogan and Hartson and an attorney on the civil appellate staff of the U.S. Department of Justice. Dean Niles is a graduate of Stanford Law School.

Creating Collegiality Among Adversaries

Seattle University School of Law

Dean Mark Niles

Law School is where the foundations of professionalism and collegiality are formed

Recent and influential report known as the "Carnegie Report" (2007) looked into the ways in which legal education might improve, and might better prepare law students for the practice of law

Summary of the report's findings:

(1) Lawyers are best taught through a curriculum that integrates the three pillars of doctrine, skills, and professional identity, rather than having a curriculum that focuses on doctrine, and treats the other pillars as "add ons."

Ideally, these three pillars (or "apprenticeships") can be integrated in the same course. For example, rather than having a course called "Torts" that focuses on doctrine, a separate course called "Factual Investigation" that focuses on a skill that any torts lawyer needs, and a course on "Professional Responsibility" that covers ethical dilemmas facing such lawyers, these things can all be included in one course.

(2) The combination lecture/Socratic method is far overused, as is the Langdellian approach of learning the law through the dissection of appellate opinions. These problems are particularly pronounced *after* the first year.

(3) Law schools are far behind other educational institutions in how they assess student learning, and the extent to which they provide feedback that improves learning outcomes.

Do we remember Professor Kingsfield's socratic tactics in the movie *The Paper Chase?*

Sink or Swim attitude exhibited by the faculty and also found within the legal profession.

Essential role of colleagues and friends to combat the adversarial tendencies within the professional legal arena.

This foundation for civility in the legal profession begins in law school.

So: *What Can Law Schools Do?*

Where can we improve?

Where are we already on the right track?

Professors:

Model Professional and Collegial Behavior in and out of the classroom

Foster supportive, cooperative atmosphere among students

Staff:

Treat students with courtesy and respect, require the same in return

Ensure as little direct competition and confrontation between students as possible

Students:

Remember that even in challenging times the most important part of law school is the relationships you develop with fellow students, faculty and staff

Always remember that you are becoming part of a profession that has high demands and expectations

Dean and Institution:

Set up rules and requirements for comportment and interpersonal interaction within school that mirror the rules of ethics and professional responsibility proscribed by the Bar

Maintaining the Integrity of the Profession

Alaska Rules of Professional Conduct

Preamble: A Lawyer's Responsibilities

[1] A lawyer, as a member of the legal profession, is a *representative* of clients, an *officer of the legal system*, and a *public citizen* having special responsibility for the quality of justice.

Rule 8.2

Judicial and Legal Officials

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

Rule 8.3

Reporting Professional Misconduct

(a) A lawyer who knows that another lawyer has committed a violation of the RPC that raises a substantial question as to that lawyer's **honesty**, **trustworthiness**, or **fitness as a lawyer** in other respects shall inform the appropriate disciplinary authority *unless* the lawyer reasonably believes that the misconduct has been or will otherwise be reported.

Rule 8.4

Misconduct

It is a professional misconduct for a lawyer to:

(a) violate or attempt to violate the RPC, knowingly assist or induce another to do so, or do so through the acts of another;

Rule 8.4

Misconduct (cont'd)

It is a professional misconduct for a lawyer to:

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

Rule 8.4

Misconduct (cont'd)

It is a professional misconduct for a lawyer to:

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

Rule 8.4

Misconduct (cont'd)

It is a professional misconduct for a lawyer to:

(d) state or imply an ability either to influence a government agency or official or to achieve results by means that violate the RPC or other law; or

Rule 8.4

Misconduct (cont'd)

It is a professional misconduct for a lawyer to:

(e) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

Questions?

Thank you!

See you at the reception!!