

# *New Jersey Commission on Professionalism in the Law*

## **Rambo Is A Loser**

During a meeting of law firm partners called to discuss the professionalism of the bar, one of the partners said he, and other litigators, had a mental list of troublemakers. He meant lawyers who can be counted on to cause problems at every stage of litigation for no good reason. He gave as examples: lawyers who act abusively during a deposition, who fail to accord an adversary much more than the slightest hint of respect, or who view a judge as an impediment to achieving their particular litigation goal.

But then he smiled and said that even though these jackal litigators can cause one's blood to boil, they are for the most part losers. He said he loved being in the courtroom with these tormentors because they go to such extremes they always turn off the judge and jury. Rather than follow the Rambo model, he suggested that lawyers need to be taught that professionalism is not only a quality to be admired, it also produces good results.

The fact is, "anything" does *not* go. Behavior that crosses over the line of professionalism will not work, even if you believe it to be in the best interests of a client. It is a strategy destined for failure. But, don't take it from me, ask some judges.

At our professionalism conference this past June, United States District Court Judge Stephen Orlofsky was asked about the performance and behavior of the lawyers who appear in his courtroom. He said that most are able and honorable, but others "appear to have been raised by wolves". The judge has not been shy about dealing with them. In an opinion he chastised a lawyer for displaying a lack of courtesy and professionalism in a brief filled with *ad hominem* attacks. "In this court", he advised, "Counsel should be comforted by the fact that civility and professional courtesy will not be mistaken for weakness". Recently, Judge Orlofsky imposed sanctions and ordered a lawyer to take ICLE classes following a finding that the lawyer had filed a civil rights action for the purpose of harassing his adversary. He described the role of an advocate as representing a client's interest with "zeal and diligence, consistent with the Rules of Professional Conduct". He cautioned that "...trial lawyers must show respect and courtesy for their adversaries."

Justice Stewart Pollock of the New Jersey Supreme Court has summed it up very clearly and effectively. Writing in *Kernan v. One Washington Park Associates, et als.*, he dealt with the failure of a lawyer to reveal a client's bankruptcy and concluded "shenanigans have no place in a lawsuit."

Shenanigans, incivility, and other forms of unprofessional conduct have no place in anyone's law practice. Such conduct frequently leads to a lost case, an unhappy client, an embittered adversary, and a sanction from the court.