Standard 303 and the Development of Student Professional Identity: A Framework for the Intentional Exploration of the Profession’s Core Values

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I. Introduction

Legal educators, following the change in ABA accreditation Standard 303(b)(3)\(^1\), must face directly the question “what are the core values of the legal profession?” This article offers a framework both to help faculty and staff clarify their thinking on what are the profession’s core values and to spotlight the choices law schools need to consider in purposeful fashion.

The framework offered here should also help allay two concerns that faculty, staff, and students may have about core values of the profession. One concern is that all statements of values are subjective in the sense that they are expressions of individual subjective preferences, beliefs, and attitudes.\(^2\) A second concern is that statements of values tend to privilege the traditional, and hence fail to reflect the diversity of the profession and the experience and views of marginalized members of the profession – particularly with respect to the elimination of bias, discrimination, and racism.\(^3\)

On the first concern, the article analyzes first the core values of all the service professions to point out two core values foundational to all of them. The article then analyzes the legal profession’s core values articulated in the ABA Model Rules of Professional Conduct, adopted with some variation by all fifty states. The fifty-state adoption of the Model Rules indicates a strong consensus on the core values of the profession. On the second concern, the values framework offered here makes clear that elimination of bias, discrimination, and racism is among the profession’s core values, and that the profession should, on an ongoing basis, seek feedback widely regarding its core values, particularly from marginalized groups, and reflect on the feedback.

Part II outlines the ABA accreditation Standard 303 changes that require each law school to help students develop a professional identity through the intentional exploration of the values of the profession. This means the faculty and staff need to discern the values of the profession they want the students to explore. Part III analyzes what is a professional identity? Part IV provides a framework to help legal educators clarify their thinking about the profession’s core values. The framework features some widely shared fundamental values for all the service professions, and locates also values particular to the legal profession. Part V explores how the core values of the profession in part IV connect to “successful legal practice.” Part VI discusses cautionary arguments that traditional values like those in the Model Rules can privilege some groups and fail to account for the experiences and viewpoints of marginalized groups.

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\(^1\) STANDARDS & RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, Standard 303(b)(3) (AM. BAR ASS’N 2023), [hereinafter Accreditation Standards],


\(^3\) See discussion in Part VI of this article.
II. The Standard 303 changes requiring exploration of the profession’s core values

ABA Accreditation Standard 303(b)(3) now requires each law school to provide “substantial opportunities to students … for the development of a professional identity.” Interpretation 303-5 states that “the development of a professional identity should involve an intentional exploration of the values [and] guiding principles … considered foundational to successful legal practice.” Delineating a clear definition of a professional identity and identifying the values foundational to successful legal practice are important steps for each law school to take when implementing the new standard.

Note that values act as a foundation for principles. In other words, “guiding principles” flow from values. A principle is the behavior or response through which a person lives out their values. For example, if a person has a value of honesty, the guiding principle is never to tell a lie. To give another example, a person having the values of responsibility to others, respect for others, empathy and understanding for others, and self-awareness of one’s own worldview would adopt a guiding principle of developing cross-cultural competency to understand and work productively with people of different cultures. This article focuses on the core values of the profession, noting also the guiding principles of the profession in Part IV.B.

Note also that Interpretation 303-5 above includes in the development of a professional identity an intentional exploration of the well-being practices considered foundational to successful legal practice. While well-being practices are an important guiding principle for the successful practice of law, there is other scholarship defining well-being practices necessary for legal practice, so this article does not focus on well-being practices.

Yet another aspect of the ABA’s reforms to the curriculum standards for accreditation can be found in 303(c), requiring “education to law students on bias, cross-cultural competency, and racism.” While this standard does not explicitly reference the professional identity formation standard, the two are inextricably bound together. One can quite readily see this standard as the explicit acknowledgement that the core values of the profession require both the values of responsibility to others but also a commitment to the values of equal protection and concern for the “defenseless or the oppressed.”

III. What is a professional identity?

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4 Accreditation Standards, supra note 1, Standard 303(b)(3).
5 Accreditation Standards, supra note 1, Interpretation 303-5.
6 Accreditation Standards, supra note 1, Interpretation 303-5.
We start with a brief explanation of what we mean when we discuss a person’s identities and a person’s professional identity. Professor Daphna Oyserman and her coauthors define identities as “the traits and characteristics, social relations, roles and social group memberships that define who one is… Identities are orienting, they provide a meaning-making lens…”9 “Together, identities make up a person’s self-concept – variously described as what comes to mind when one thinks of oneself … and what one believes is true of oneself.”10 “Personal identities are a person’s traits, characteristics and attributes, goals, values, and ways of being.”11 “Social identities are a person’s roles, interpersonal relationships, and group memberships, and the traits, characteristics, attributes, goals, and values congruent with these roles, relationships, and memberships.”12 A person has multiple identities that include the multiple roles that an individual has – such as a parent, a sibling, a friend, or a professional – and these identities continue to develop throughout a lifetime.13 The basic values that influence the choices an individual makes are part of the individual’s personal and social identities.

Generally speaking, professional identity – a type of social identity – is a representation of self, achieved in stages over time, during which the values and guiding principles of the profession are explored, reflected upon, and internalized, resulting in an individual thinking, acting, and feeling like a member of the profession.14 Professional identity formation is a developmental process beginning in law school and extending over a career that should involve an intentional exploration of the values considered foundational to successful legal practice.

It is perhaps easy to view the formation of professional identity as a linear process that results in a uniform representation. Viewed from this vantage point, formation is easily dismissed as homogenization or indoctrination. However, the process of professional identity formation is far more complex, individualized, and social. Students bring to this process a multitude of identities that must be reconciled with their newly forming identity as an attorney. For example, students whose personal identities subject them to systemic bias, narrowing their

10 Id.
11 Id. at 94-95.
12 Id. at 95.
14 Richard L. Cruess et al., Reframing Medical Education to Support Professional Identity Formation, 89 ACAD. MED. 1446, 1447 (2014) (taking this definition from medical education literature, which includes rich and ample research on the concept of professional identity that helped guide the development of professional identity in legal education). Professional identity formation principally involves a process of socialization. Id. at 1448. The professional-to-be begins as an outsider to the professional community and its values and guiding principles. Through experiences over time, inside and outside the classroom and the law school, the new entrant gradually becomes more and more an insider, “moving from a stance of observer on the outside or periphery of the practice through graduated stages toward becoming a skilled participant at the center of the action.” William M. Sullivan, Foreword to TEACHING MEDICAL PROFESSIONALISM: SUPPORTING THE DEVELOPMENT OF A PROFESSIONAL IDENTITY ix, xii (Richard L. Cruess et al. eds., 2d ed. 2016) [hereinafter TEACHING MEDICAL PROFESSIONALISM]; see also Frederic William Hafferty, Socialization, Professionalism, and Professional Identity Formation, in TEACHING MEDICAL PROFESSIONALISM, supra, at 55, 62.
ranges of acceptable behaviors lest they meet with stereotypical responses\textsuperscript{15}, must again measure the range of acceptable behavior as attorneys and consider how to reconcile their personal identities and forming professional identity.

Moreover, the occupational models for that professional identity are too varied to presume that formation results in a single conception of the attorney’s role. For decades, scholars have recognized that the legal profession operates in two worlds of legal practice: attorneys, often in large elite law firm, representing entities, on one hand, and attorneys representing individuals, largely in solo and small firms,\textsuperscript{16} on the other. What the professional identity looks like and feels like might differ for an aspiring public defender and a student who aspires to be a real-estate deal maker.

Yet despite these tensions and variables in the formation process, there are some core values that define what it means to be an attorney and professional. This is so, even if individual attorneys operationalize these values in different ways depending on the clients and communities they serve and depending on the many other identities they bring to their role.

\section*{IV. A framework to help faculty and staff clarify their thinking on what are the profession’s core values}

For close to two decades, the Holloran Center for Ethical Leadership in the Professions (Holloran Center) has focused on researching and promoting professional identity and professional identity formation in the legal profession and legal education. The Holloran Center’s research reveals that there are, indeed, core values of the legal profession that law schools must share with law students to help them move from student to lawyer. The Holloran Center visualizes the core values foundational to successful legal practice metaphorically as a tree. Part IV.A. below focuses on the trunk of the tree – the two most foundational core values. Part IV.B. below explores the other major branches that build off the trunk – the important core values the legal profession has articulated to guide lawyers in the practice of law.

\subsection*{A. The trunk of the tree – the two most foundational values for the service professions including law}

Are there foundational core values that members of all the traditional service professions (e.g., law, medicine, clergy, professoriate, engineering, military, dentistry, nursing, architecture, accounting, psychology, and social work) should internalize? The Holloran Center’s mission emphasizes what we can learn from interdisciplinary research about the development of new entrants into a profession in higher education across the service professions. The analysis below

\textsuperscript{15} RACHEL DEMPSEY & JOAN WILLIAMS, WHAT WORKS FOR WOMEN AT WORK: FOUR PATTERNS WORKING WOMEN NEED TO KNOW (2014) (describing “tightrope” bias).

\textsuperscript{16} JOHN P. HEINZ, ROBERT L. NELSON, REBECCA L. SANDEFUR & EDWARD O. LAUMANN, URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR 7 (2005). Of these two worlds, the percentage of attorneys whose practice is devoted to serving corporate interests and wealth has increased over time. THOMAS D. MORGAN, THE VANISHING AMERICAN LAWYER 110-11 (2010) (“almost two-thirds of the legal talent in this country is now focused largely on meeting the needs of corporate clients.”)
finds two foundational core values across the service professions. Each professional should understand, accept, and internalize:

(1) a deep responsibility to others whom the professional serves in widening circles as the new entrant matures over a career; and

(2) pro-active continuous professional development toward excellence at all the competencies needed to serve others in the profession’s work well.

1. The Carnegie Foundation for the Advancement of Teaching’s five studies of higher education for the service professions

Legal educators and the legal profession itself can learn a great deal from the five Carnegie Foundation studies of higher education in medicine, nursing, clergy, engineering, and law concerning professional formation. From the turn of the century to 2010, the Carnegie Foundation for the Advancement of Teaching conducted dozens of site visits to study how professional schools educate physicians, nurses, clergy, engineers, and lawyers. From these studies, the president of the Carnegie Foundation, Lee Shulman, found that “the most overlooked aspect of professional preparation was the formation of a professional identity with a moral and ethical core of service and responsibility,”17 while the Carnegie Foundation’s final study, Educating Physicians, found that “formation [is] the fundamental goal of the learning process,” and “professional formation [is] the purpose that should guide medical education.”18

All five of the Carnegie Studies Educating Physicians, Educating Nurses, Educating Clergy, Educating Engineers, and Educating Lawyers agreed that a foundational element of professional identity formation is internalizing a deep responsibility to the person(s) and communities being served. For example, Educating Physicians notes that a responsible physician is a physician that has “a deep sense of commitment and responsibility to patients, colleagues, institutions, society, and self.”19 And Educating Nurses explains that through professional formation, nurses “learn to focus on the ‘person at the end of the bed.’”20 Educating Clergy, Educating Engineers, and Educating Lawyers provide that clergy, engineers, and lawyers also hold up the importance of a deeply held sense of responsibility for their parishioners, clients, and/or communities they serve.21

Four of the Carnegie Foundation studies agree on three additional elements of professional identity formation: (1) competency and a commitment to excellence in all domains of the profession;22 (2) moral reasoning; and (3) an understanding of interpersonal relationships.

17 Lee S. Shulman, Foreword to Molly Cooke et al., Educating Physicians: A Call for Reform of Medical School and Residency, at v, ix (2010) [hereinafter Educating Physicians].
18 Id. at 41, 60.
19 Id. at 41.
20 Patricia Benner et al., Educating Nurses: A Call for Radical Transformation 166 (2009) [hereinafter Educating Nurses].
22 Educating Physicians, supra note 17, at 41, also describes a commitment to excellence in all domains of the profession as an “aspiration” to improve.
Competency and a commitment to excellence in all domains of the profession as well as moral reasoning are elements of professional identity formation noted in Educating Physicians, Educating Nurses, Educating Engineers, and Educating Lawyers. Educating Physicians, for example, explains that a professional physician has an internalized aspiration to improve and achieve true professional excellence and “an unfailing aspiration to perform better and achieve more.” Educating Nurses describes this ongoing commitment to competency and excellence as having “knowledge” and “skilled know-how” and views professional formation as a process of nurses engaging in lifelong learning to improve their practice. Educating Engineers explains the ethical codes of engineers “articulate the overriding importance of competence” and continuing professional development. Similarly, Educating Lawyers cites competency as a core aspect of professional identity.

Educating Physicians emphasizes that a physician’s understanding of interpersonal relations and ability to work with their patients, colleagues, and communities is another important aspect of professional identity. Through the process of working with others to achieve shared patient care goals, the new entrant expands his or her professional identity and practical competence. Educating Nurses observes that focusing on the “person at the end of the bed” requires nurses to form effective relationships and act with compassion. Educating Clergy emphasizes relationship skills with the community served and Educating Lawyers includes relationship skills with clients.

2. Dr. William Sullivan’s synthesis of the Carnegie Foundation’s Studies

Dr. William Sullivan, the Co-Director of all five Carnegie Foundation for the Advancement of Teaching studies of higher education for the professions, concluded that the “chief formative challenge” for higher education in the professions is to help each student entering a profession to change from thinking like a student where he or she learns and applies routine techniques to solve well-structured problems toward the acceptance and internalization of responsibility to others (particularly the persons served) and for the student’s own pro-active development toward excellence as a practitioner at all of the competencies of the profession.

23 Id.
24 Educating Nurses, supra note 21, at 166-67.
25 Educating Engineers, supra note 21, at 141.
26 Educating Lawyers, supra note 21, at 14.
27 See Educating Nurses, supra note 21, at 167 and 165 (nurses must use moral imagination also); Educating Physicians, supra note 14, at 61; Educating Engineers, supra note 21 at 141 (explaining the necessity of competency, responsibility, accountability, and fairness in the profession); Educating Lawyers, supra note 21, at 144. Educating Lawyers further describes that “moral discernment” is also an element of professional identity. Educating Lawyers at 12.
28 Educating Physicians, supra note 17, at 62-63.
29 Id. at 63.
30 Educating Nurses, supra note 21, at 166.
31 Educating Clergy, supra note 21, at 13; Educating Lawyers, supra note 21, at 130.
32 William M. Sullivan, Foreword to Teaching Medical Professionalism at xi, xv (Richard Creuss et al. eds., 2009).

Note to editor: this is the first edition of this book.
Each person served (e.g., a client or patient) needs to trust that the professional serving the person is dedicated above all else to care for the persons served with all of the professional’s ability.

3. 2022 study of ethics education in eight professions

In Educating in Ethics Education Across the Professions (2022), editor Professor Richard Jacobs chose distinguished ethics scholars in eight professions asking each to write a chapter on the core values and guiding principles of ethics education in their profession. Professor Neil Hamilton wrote a chapter synthesizing the core values emphasized in all eight professions. Educators in the eight professions are asking each new entrant to grow from being a passive student, doing what the faculty asks, toward a core value of an internalized pro-active ownership over continuous professional development. Educators in the eight professions are also asking each new entrant to grow from a self-interest orientation toward a core value of an internalized ethic of responsibility to, and care for, others served by the profession. Note that some of the professions like law and medicine give more emphasis to the person served (client/patient), and some like engineering or the military give more emphasis to the community/society served.

4. Holloran Center’s synthesis of the two most foundational core values for a new entrant to any service profession to internalize - the trunk of the tree

Synthesizing the core values of a professional identified in the Carnegie studies discussed earlier, the core values emphasized by Dr. Sullivan, and the core values from the Jacobs’ book, we suggest there are two foundational core values that members of a service profession (including students) should understand and internalize in a developmental process. Each professional should understand, accept, and internalize:

(1) a deep responsibility to others whom the professional serves in widening circles as the new entrant matures over a career; and

(2) pro-active continuous professional development toward excellence at all the competencies needed to serve others in the profession’s work well.

These core values are not without internal tension. The first core value – service – is fraught with tension when we ask “serve whom?” The first sentence of the Preamble of the ABA Model Rules describes three different answers to that question: “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.” As the Preamble notes, these three roles are “usually harmonious.” However, as the Preamble notes, “virtually all difficult ethical problems arise” from situations in which these roles are not in harmony. In these circumstances,

35 Id. at 221.
36 Id., supra note 33, at xxviii.
38 pmb. para. 8.
the Rules direct that attorneys must use “sensitive professional and moral judgment.” 39 A large part of professional identity formation, then, requires the development of this judgment and an ability to rise above self-interest. While the philosophy of lawyering that helps attorneys to resolve these ethical conflicts can vary among attorneys, the core value of the profession that drives these philosophies remains: that an attorney has a deep responsibility, not only to their clients, but also to the courts, and the system of justice.

Likewise, the second core value of continuous professional development toward excellence can be distorted in the formation process if not interrogated carefully. While law students and lawyers need to be focused on developing the knowledge, skills, and competencies needed to serve their clients well, they also need to be attending to their well-being. A survey of lawyers in four jurisdictions showed that lawyer well-being is much more strongly correlated with intrinsic motivations than extrinsic motivations. 40 Nonetheless, surveys of law students demonstrate that the law school experience fosters a shift from intrinsic motivation to extrinsic motivation, with increased emphasis on grades and wealth and prestige. 41 Although not tremendously robust, information provided by some disciplinary authorities suggests that significant percentages of lawyers facing disciplinary action have well-being challenges in the form of mental health issues or substance use/addiction issues. 42 Thus, attention to well-being concerns should be foundational to help lawyers fulfill their deep responsibility to their clients, the courts, and the system of justice.

B. The major branches of the tree for the legal profession – the most important core values and guiding principles that build off the trunk

The two foundational core values for a new entrant into any service profession above inform the core values and guiding principles of the legal profession both in the codified Rules of Professional Conduct and in the Preamble’s guidance regarding the discretionary calls of lawyering.

1. Core values and guiding principles of the legal profession that have been codified into the ABA Model Rules of Professional Conduct

The first major branch off the trunk has the core values and guiding principles of the legal profession that have been codified into the ABA Model Rules of Professional Conduct. The Model Rules of Professional Conduct, now adopted with some variation in all fifty states, define a code of legal standards that state a minimum level of conduct below which a lawyer cannot fall without

39 pmbl. para. 9.
being subject to a disciplinary process.\textsuperscript{43} Table 1 below indicates the core values and guiding principles codified into each of the eight major sections of the Rules.

<table>
<thead>
<tr>
<th>Major Sections of the Rules</th>
<th>Core Values/Principles Codified in the Rule</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rule 1 Series: Client-Lawyer Relationship</td>
<td>Responsibilities to the client including competence, client autonomy, diligence, communication to support client autonomy, fairness in billing, confidentiality, and loyalty plus responsibility of lawyer regarding means, no unlawful conduct by the lawyer, and optional withdrawal</td>
</tr>
<tr>
<td>Rule 2 Series: Counselor</td>
<td>Independent professional judgment and candid counsel to the client</td>
</tr>
<tr>
<td>Rule 3 Series: Advocate</td>
<td>Responsibilities to the justice system including truthfulness</td>
</tr>
<tr>
<td>Rule 4 Series: Transactions with Persons other than Clients</td>
<td>Respect for others, truthfulness, and no undue influence</td>
</tr>
<tr>
<td>Rule 5 Series: Law Firms and Associations</td>
<td>Responsibilities to the law firm/department</td>
</tr>
<tr>
<td>Rule 6 Series: Public Service</td>
<td>Responsibilities to the disadvantaged and the justice system</td>
</tr>
<tr>
<td>Rule 7 Series: Information about Legal Services</td>
<td>Truthfulness and no undue influence</td>
</tr>
<tr>
<td>Rule 8 Series: Maintaining the Integrity of the Profession</td>
<td>Responsibilities to the profession and justice system, truthfulness, and no discrimination/harassment</td>
</tr>
</tbody>
</table>

\textsuperscript{43} See GREG SISK ET AL., LEGAL ETHICS, PROFESSIONAL RESPONSIBILITY, AND THE LEGAL PROFESSION 113 (2018). See also MODEL RULES OF PRO, CONDUCT pmbl. cmt. 19.
All eight major sections of the Model Rules are codifying values and guiding principles that build off the first foundational trunk core value that a lawyer should understand, accept and internalize deep responsibilities to others whom the lawyer serves (the client, others in the justice system, the law firm/department, the profession, and the justice system). With respect to the second foundational trunk core value that a lawyer should understand and internalize pro-active continuous professional development toward excellence at all the competencies needed to serve others in the profession’s work well, Model Rule 1.1 codifies the value of competence reasonably necessary for representation.

The Model Rules define a minimum floor of conduct below which a lawyer is subject to disciplinary process, but they leave many decisions to be made at the discretion of each lawyer. Table 4 in the Appendix explores a number of the most important rules looking at the discretionary calls a lawyer makes within the rule. The next section analyzes the core values and guiding principles of the profession that should guide each lawyer’s discretionary calls.

2. Core values of the legal profession in the Model Rules Preamble that guide the discretionary calls of lawyering

The second major branch off the trunk has the core values of the legal profession that the Preamble to the Model Rules and Model Rule 2.1 provide to guide each lawyer in exercising discretion. Each lawyer should understand, accept, and internalize:

1. a deep responsibility and service orientation to others, especially the client, whom the lawyer serves in widening circles as the lawyer matures including a commitment to:

   a. competently and diligently protecting and pursuing a client's interests while demonstrating respect for the legal system and all persons involved in that system;\footnote{See Neil Hamilton, Internalizing a Fiduciary Mindset to Put The Client First, 24 THE PROF. LAWYER 1-11 (No. 3, 2017).}

   b. improving the law and ensuring equal access to the legal system, particularly for the disadvantaged, and providing pro bono service to the disadvantaged;\footnote{MODEL RULES OF PRO. CONDUCT pmbl. paras. 9 (“zealously asserts the client’s position”), ¶ 5 (“conform to the requirements of the law” and “demonstrate respect for the legal system and those who serve in it”), and ¶ 9 (“lawyer’s obligation zealously to protect and pursue a client’s legitimate interest, within the bounds of the law, while maintaining a professional, courteous, and civil attitude toward all persons involved in the legal system”).}

   c. developing and being guided by personal conscience – including the exercise of “sensitive professional and moral judgment” and the conduct of an “ethical person” – when deciding all the “difficult issues of professional discretion” that arise in the practice of law;\footnote{pmbl. para. 6 (“a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession … “All lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel”).}

   d. developing independent professional judgment, including moral and ethical considerations, to help the client think through decisions that affect others;\footnote{R. 2.1.}

\footnote{See Neil Hamilton, Internalizing a Fiduciary Mindset to Put The Client First, 24 THE PROF. LAWYER 1-11 (No. 3, 2017).}
\footnote{MODEL RULES OF PRO. CONDUCT pmbl. paras. 9 (“zealously asserts the client’s position”), ¶ 5 (“conform to the requirements of the law” and “demonstrate respect for the legal system and those who serve in it”), and ¶ 9 (“lawyer’s obligation zealously to protect and pursue a client’s legitimate interest, within the bounds of the law, while maintaining a professional, courteous, and civil attitude toward all persons involved in the legal system”).}
\footnote{pmbl. para. 6 (“a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession … “All lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel”).}
\footnote{R. 2.1.}
2. pro-active continuous professional development toward excellence at all the competencies needed to serve others in the profession’s work well;\textsuperscript{49} and
3. compliance with the minimum standards of competency and ethical conduct in the Rules of Professional Conduct.\textsuperscript{50}

The values and guiding principles in the Preamble build off both the first foundational trunk core value that a lawyer should understand and internalize deep responsibilities to others whom the lawyer serves (the client, others in the justice system, the law firm/department, the profession, and the justice system) and the second foundational trunk core value that a lawyer should understand and internalize pro-active continuous professional development toward excellence at all the competencies needed to serve others in the profession’s work well.

3. The profession’s core values and guiding principles include the value of promoting a justice system that provides equal access and eliminates bias, discrimination, and racism.

The Preamble to the Model Rules emphasizes the values of improving the law and ensuring equal access to the justice system, particularly for the disadvantaged, and both the Preamble and Rule 6.1 emphasize providing pro bono service to the disadvantaged. Interpretation 303-6 adds that the “obligation of lawyers to promote a justice system that provides equal access and eliminates bias, discrimination, and racism in law should be among the values and responsibilities of the legal profession to which students are introduced”\textsuperscript{51} in each school’s required professional responsibility course. This article argues Interpretation 303-6 provides important further definition of the foundational value in the Model Rules Preamble that lawyers should improve the law and ensure equal access to the justice system. The value that lawyers are obligated to promote a justice system that provides not only equal access but also eliminates bias, discrimination, and racism in law, is foundational to successful legal practice in Interpretation 303-5 and to the ongoing support in our country for the Rule of Law. Thus, in addition to the Interpretation 303-6 requirement to include these values in the required professional responsibility course, these values should also be included among the values that students intentionally explore in substantial and frequent opportunities during each year of law school as required by Interpretation 303-5.\textsuperscript{52}

V. How do the core values and guiding principles of the profession analyzed in IV connect to “successful legal practice”?

\textsuperscript{49} pmbl. para. 7 (“A lawyer should strive to attain the highest level of skill.”)
\textsuperscript{50} pmbl. para. 12 (“Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers.”)

\textsuperscript{51} Interpretation 303-6 states these values and responsibilities should be included in ABA Accreditation Standard 303(a)(1)’s requirement that each law school shall require one course of at least two credit hours that includes instruction in the values and responsibilities of the legal profession. If the required professional responsibility course now must include that lawyers are obligated to promote a justice system that provides equal access and eliminates bias, discrimination, and racism in law, it is reasonable that the ABA considers this same value foundational to successful legal practice in Interpretation 303-5.

\textsuperscript{52} Note that the ABA's Model Rule for Minimum Continuing Legal Education in Section C (A) also requires lawyers to earn CLE credit hours in Diversity and Inclusion Programming.

Interpretation 303-5 emphasizes that students should have substantial opportunities to explore the values and guiding principles considered “foundational to successful legal practice.”

The 50-state adoption of the Model Rules of Professional Conduct indicates a wide consensus that the values in the Model Rules are foundational for successful legal practice. We also have a number of empirical studies identifying the capacities and skills that legal employers and clients want. The capacities and skills that legal employers and clients want are framed in practical terms rather than in terms of the underlying values that inform each of the practical capacities and skills. Eleven of these empirical studies are summarized in Appendix A to Law Student Professional Development and Formation: Bridging Law School, Student, and Employer Goals (2022). Tables 2 and 3 below summarize the data.

Table 2: Traditional Technical Capacities and Skills That Law Schools Emphasize

1. Knowledge of doctrinal law in the basic subject areas
2. Legal analysis
3. Legal research
4. Written and oral communication in the legal context
5. Legal judgment
6. Knowledge of the law-of-lawyering responsibilities to clients and the legal system

The additional capacities and skills that the empirical studies indicate clients and legal employers need from lawyers are listed in Table 3.

Table 3: Additional Competencies Empirical Studies Indicate That Clients and Legal Employers Need

1. Superior client focus and responsiveness to the client
2. Exceptional understanding of the client’s context and business
3. Effective communication skills, including listening and knowing your audience
4. Client-centered creative problem-solving abilities and good professional judgment
5. Ownership over continuous professional development (taking initiative) of both the traditional technical competencies in Table 2, the client relationship competencies above, and the capacities and skills 6-11 below.
6. Teamwork and collaboration
7. Strong work ethic
8. Conscientiousness and attention to detail

53 Cite to Interpretation 303-5.
9. Grit and resilience

10. Organization and management of legal work (project management)

11. An entrepreneurial mindset to serve clients more effectively and efficiently in changing markets (this includes understanding technology to reduce costs)

Trunk core value one – an internalized deep responsibility to others whom the student serves as a professional in widening circles as the student matures – is also foundational for both the Table 2 and Table 3 capacities and skills because a new entrant who has a deep responsibility to others will want to serve them well, but trunk core value two will particularly drive development of the relationship skills like 1-4 and 7 in Table 3. Trunk core value two – proactive continuous professional development toward excellence at all the competencies needed to serve others in the profession’s work well – is foundational for success at all the Table 2 and Table 3 capacities and skills.

The values in the Preamble to the Model Rules also are foundational for the Table 2 and Table 3 capacities and skills, and thus are foundational for successful legal practice. Note that the Preamble adds additional important values for successful legal practice beyond those that empirical research indicates clients and employers want. For example, the Preamble to the Model Rules emphasizes improving the law and ensuring equal access to the justice system, particularly for the disadvantaged, and both the Preamble and Rule 6.1 stress providing pro bono service to the disadvantaged. Interpretation 303-6 also states that the core values include promoting a justice system that provides not just equal access but eliminates bias, discrimination, and racism in the law. The profession itself is defining these values as important for successful legal practice. Interpretation 303-6 also emphasizes the importance of cross-cultural competency to professionally responsible practice.

VI. Cautionary arguments that traditional values like those in the Preamble can privilege some groups and fail to account for the experience and viewpoints of marginalized groups

There are important cautionary arguments concerning these professional identity core values that add to our understanding and analysis. One cautionary argument in Part A below is that professionalism historically has had some biased and discriminatory elements. A second cautionary argument in Part B below is that professional identity formation curriculum should give more emphasis to racism and inequity in the justice system. A third line of cautionary argument in Part C is that professional identity formation attempts to inculcate certain values privileging views that may marginalize or exclude minority views.

A. Professionalism historically has some biased and discriminatory elements

Attorney Shannon Cumberbatch asserts that the heavy emphasis in traditional standards of professionalism placed upon professional appearance permeates every part of the legal profession. This emphasis is part of an oppressive culture that created these norms in a time

56 Shannon Cumberbatch, When Your Identity is Inherently “Unprofessional”: Navigating Rules of Professional Appearance Rooted in Cisheteronormative Whiteness as Black Women and Gender Non-Conforming Professionals,
when the law explicitly encouraged active hostility toward marginalized people.\textsuperscript{57} Equitable standards of professional appearance that embrace marginalized people are needed.\textsuperscript{58} Attorney Leah Goodridge stresses that professionalism standards relating to appearance, communication style, and the ability to “laugh off” hostile work environment conduct are based in a set of beliefs grounded in racial subordination.\textsuperscript{59} Goodridge also points out that there is also a racially biased double standard regarding how these professionalism standards are applied including many stories of discriminatory, biased, and racist conduct toward minority lawyers without repercussions for the perpetrators.\textsuperscript{60}

Some opponents of civility as a goal of professionalism argue that civility norms carry “the imprint of a class-contingent image of civility and courtesy.”\textsuperscript{61} Conduct that deviates from upper-middle-class white male norms will be more likely to be deemed discourteous.\textsuperscript{62} Professor Anne Gordon also observes, for example, that professors may push back on legitimate student grievances under the guise of professionalism that forces students to communicate in a way that makes professors and institutions comfortable.\textsuperscript{63}

It is important for a healthy community of practice to be pro-active in analyzing its values regarding needed changes in the profession. Starting in the mid-1980s, the concept of “professionalism” became a focal point for the organized bar’s debate whether the profession was adequately renewing its public purpose and core values in each generation of lawyers.\textsuperscript{64} Scholars had difficulty defining professionalism clearly. One brand of scholarship asserted that professionalism was in decline, citing evidence of change from traditional culture like growing incivility among lawyers, increased malpractice actions, and greater focus on profit and personal gain. This brand did not provide any clear affirmative definition of professionalism, but by emphasizing a decline of professionalism attributable to change from traditional culture was particularly susceptible to the bias and discrimination problems raised by Cumberbatch and Goodridge. A second brand of scholarship did attempt to define professionalism as a set of core values with special emphasis on commitments to public service, client-oriented service, and respect for others.\textsuperscript{65}
The Carnegie Foundation for the Advancement of Teaching’s series of five studies on higher education for the professions moved away from “professionalism” toward the development or formation of a professional identity as a stronger concept to capture the developmental process of understanding and internalizing the core values of a profession. This approach also avoids the definitional confusion around professionalism and should mitigate the use of pretextual professionalism to promote bias and discrimination.

Our present discernment is that the two trunk foundational values of professional identity formation and the branch core values of the legal profession defined in Parts II and IV do not reflect bias, discrimination, or racism. However, the core values of the profession now include an affirmative obligation of lawyers to promote a justice system that eliminates bias, discrimination, and racism, so our discernment is open to continuing inquiry and interrogation.

Of course, we acknowledge that all espoused ideals and values struggle with the "values in action" challenge. In all organizations and communities, we see conduct that falls short of the espoused values. The goal is to create cultures where the gap between the espoused values and the values in action is as small as possible. Interpretation 303-6 reinforces the value of an affirmative obligation of lawyers to promote a justice system that eliminates bias, discrimination and racism, and Interpretation 303-5 mandates engaging students on these values so these changes should, over time, narrow the gap. We should stay open to the possibility that some values are so prone to implicit bias and thus “the values in action” challenge that the value itself should be reconsidered.

B. Professional identity formation values should give more attention to structural racism and inequity.

Professors Eduardo Capulong, Andrew King-Ries, and Monte Mills observe that while current models of professional identity formation value diversity and cross-cultural competence, they do not adequately prepare the next generation of legal professionals to engage in the sustained work of interrupting and overthrowing race and racism in the legal profession and system. They argue that the value of antiracism is essential to the profession’s responsibility to serve justice and therefore key to legal professional identity. This is a strong argument, and we include in the branch core values of the profession the specific value of an affirmative obligation of lawyers to promote a justice system that eliminates bias, discrimination, and racism.

68 *Id.*
69 Critical Race Theorists might also point to a tenet of CRT that racism is endemic and ordinary, such that racism permeates society, which includes legal education and the legal profession. *Richard Delgado & Jean Stefancic, Critical Race Theory: An Introduction* 8 (3d ed. 2017). Law schools and legal employers might push back by arguing that, following the murder of George Floyd, many law schools institutionalized or embraced diversity, equity, and inclusion (DEI) offices/departments at their law schools or their undergraduate institutions, and legal employers continue to seek increased diversity, equity, and inclusion through their hiring, promotion, and retention policies. Need cite on DEI at law schools; see, e.g., *Diversity Rules: A Closer Look at Mansfield Certification*, THE LEGAL 500.
C. Professional identity formation attempts to inculcate certain values privileging views that may marginalize or exclude minority views

Professor Harmony Decosim o observes that professional identity formation “builds on and attempts to inculcate certain debated and substantive values.”\(^70\) This approach can run “the gamut from the inculcation of values that are relatively uncontroversial, universal, or endorsed by people across a wide range of belief systems to those that are more individualistic, novel, or controversial.”\(^71\) Decosim o’s principal concern with this “value-inculcation” approach is that there should be heightened sensitivity to indoctrination, heightened sensitivity to the privileging of some views over others, and heightened sensitivity to imposing orthodoxy in a community in a way that might marginalize or exclude minority perspectives, stifle open inquiry, or alienate those who disagree.”\(^72\) The problem with Decosim o’s critique of the approach to professional identity formation that prioritizes values, ethics and meaning, is that seems to be founded on the premise that prioritizing values somehow reflects a change in legal education – as if legal education generally does not inculcate values. But this ignores the “hidden curriculum” which “includes not only the more or less articulated value systems of law teachers but also the unarticulated value assumptions communicated to students by example or by teaching methods, by what is not taught, and by the student culture of law schools.”\(^73\) The reality is that law school

https://www.legal500.com/fivehundred-magazine/diversity-and-inclusion/diversity-rules-a-closer-look-at-mansfield-certification [perma.cc/QQA4-T8BF] (last visited Apr. 11, 2023) (describing how the Mansfield Rule, named after the first female lawyer in the United States, requires that adopting “law firms track and measure that they have affirmatively considered at least thirty percent women, lawyers from underrepresented racial/ethnic groups, lawyers with disabilities, and LGBTQ+ lawyers for top leadership roles, senior-level lateral hiring, promotions into the equity partnership, and participation in client pitch meetings”). The Mansfield Rule has been adopted by a number of the most eminent law firms in the world, including, but not limited to, the following firms: Latham & Watkins; Davis Polk; Paul, Weiss, Rifkind, Wharton & Garrison; Paul Hastings; Debevoise & Plimpton; Covington & Burling; White & Case; Sullivan & Cromwell; Weil; WilmerHale; and Cleary Gottlieb Steen & Hamilton. Mansfield Rule, DIVERSITY Lab (June 28, 2021), https://www.diversitylab.com/pilot-projects/mansfield-rule-5-us-uk-canada [perma.cc/DA6D-Y2WJ]. Two other tenets of CRT – intersectionality and the voice of color thesis – actually align with the development of unique professional identities for historically underrepresented lawyers. Intersectionality recognizes that “[n]o person has a single, easily stated, unitary identity.” RICHARD DELGADO & JEAN STEFANCIC, CRITICAL RACE THEORY: AN INTRODUCTION 10 (3d ed. 2017). For example, a person can be a law student, Black, bisexual, single father; all of these identities will help shape that individual’s professional identity. The voice of color thesis states that racial minorities maintain a “‘presumed competence [(1)] to speak about race and racism’ because of their ‘different histories and experiences with oppression,’ and (2) to educate Whites on racism because Whites likely do not know about these histories or experiences. This tenet encourages racial minorities to share their ‘experiences with racism and the legal system and to apply their own unique perspectives to assess law’s master narratives.’” David A. Grenardo, Getting to the Root of the Problem: Where are All the Black Owners in Sports?, 91 UMKC L. Rev. 727 (2023) (quoting RICHARD DELGADO & JEAN STEFANCIC, CRITICAL RACE THEORY: AN INTRODUCTION 11 (3d ed. 2017)). Rather than silencing the historically underrepresented, proper professional identity formation embraces and incorporates all aspects of an individual’s personal identity, and that individual should be encouraged to educate and inform others in the profession to increase all parties’ cultural competency.

\(^70\) Id. at 14.

\(^71\) Id. at 22.

is not a value neutral environment. Law schools are always engaged in prioritizing some values – they just tend to do it through pervasive inattentiveness rather than purposeful, collective intentionality.

We believe law schools should be intentional in embracing the two trunk foundational values of professional identity formation and the core branch values of the legal profession discussed earlier in this article have been adopted by the profession broadly. These values now include pro-actively promoting the elimination of bias, discrimination, and racism. The goal is to engage practicing lawyers and students to explore and reflect upon these values including minority perspectives in a developmental process.

VII. Conclusion

This article provides a framework to help faculty and staff clarify their thinking on what are the profession’s core values so they can foster the development of each student’s professional identity through an intentional exploration of the profession’s values. The tree metaphor spotlights choices regarding the core values that law schools should purposefully consider. Part IV provides strong evidence that the core values explored in the tree metaphor are not just individual subjective preferences or beliefs but rather represent a widely shared and agreed upon ethical framework for the profession as a community of practice. Part VI of the article addresses the important concerns that this framework of values is failing to reflect the experiences and views of marginalized groups in the profession, particularly with respect to the elimination of bias, discrimination, and racism.

74 See Normative Methods, supra note 2 at 913-927 (describing how several purportedly neutral approaches to teaching law have embedded value propositions that can’t be avoided); EDUCATING LAWYERS, supra note 21 at 132-33 (discussing how the third apprenticeship of professional identity is largely shaped by the profound emphasis on the first apprenticeship).

75 Professor Decosimo also notes that professional identity formation suffers from a definitional haze. In addition to values, it includes well-being with a goal of lawyers who are mentally and physically healthy, happy, and balanced. She notes that well-being can be an infinitely broad concept, and the current corporate approaches to employee well-being show very weak results. However, there is some overlap of well-being with professional identity approaches that emphasize values. She recommends exploring the well-being of law students and lawyers primarily through the lens of self-determination theory. Id. at 22 – 30. Although this essay focuses on the core values of the profession, not well-being practices, we agree with Decosimo that self-determination theory makes clear that the two are closely related. Cite to Hamilton and Biljonis book on well-being where we examine Krieger and Sheldon's work.

Professor Decosimo notes a further definitional haze because professional identity formation “prioritizes the development of a practical, professional skill set that enables students to proactively identify, acquire, and succeed in the legal career to which they aspire.... It is all about practice fit, readiness, and professional success.” Id. at 32. She later observes that “what makes the competency-based approach a form of professional identity formation as opposed to straight professionalism or skill acquisition is its emphasis on self-reflection, intrinsic motivation, and internalization of professional norms.” Id. at 36. One of the two trunk foundational values of professional identity formation across the professions is a pro-active continuous professional development toward excellence at all the competencies needed to serve others in the profession's work well so it is a foundational element of professional identity formation to help students understand and develop the capacities and skills needed to serve well. Our experience is that many students need a great deal of help to “buy in” to the challenge of understanding and internalizing the professional identity the values and guiding principles unless they clearly see a direct connection with the capacities and skills needed to be successful in the practice of law.
Note that Standard 303(b)(3) requires each law school to provide **substantial opportunities** for the development of a professional identity. Interpretation 303-5 adds that “Because developing a professional identity requires reflection and growth over time, students should have frequent opportunities for such development during each year of law school and in a variety of courses and co-curricular and professional development activities.” \(^{76}\) This means that a law school’s curriculum must engage students multiple times in a coordinated progression of modules to explore these values, especially in experiential contexts. \(^{77}\) The developmental process continues throughout a student’s law school years and a lawyer’s career \(^{78}\) and features “a series of identity transformations that occur primarily during periods of transition” \(^{79}\) often marked by anxiety, stress, and risk for the developing professional. \(^{80}\) This process of socialization is a product of the developing lawyer’s social interactions and activities in environments authentic to the legal profession’s culture and enriched by coaching, mentoring, modeling, reflection, and other supportive strategies. \(^{81}\) A recent book, *Law Student Professional Development and Formation*, outlines ten principles to guide effective curriculum for the development of each student’s professional identity. \(^{82}\)

This developmental process of socialization, medical scholarship emphasizes, occurs in communities of practice. \(^{83}\) A community of practice is a persistent, sustaining social network of individuals who share and develop an overlapping knowledge base, set of foundational values, and experiences focused on a common practice. \(^{84}\) Medicine, in common with other occupations, does not consist of just one community of practice, but rather consists of many communities of practice, \(^{85}\) called a “landscape of communities.” \(^{86}\) The law school serves as a new entrant’s first community of practice, which will be highly influential in the formation and development of a law student and future lawyer. The Standard 303 changes ask the faculty and staff to become

\(^{76}\) Cite to Interpretation 303-5.

\(^{77}\) For an in-depth analysis of ten curriculum principles that can guide development of an effective curriculum, see HAMILTON & BILONIS, supra note 46. The book is available open access. Chapter one of the book also has an analysis of the empirical studies on the capacities and skills that employers and clients want which helps faculty, staff, and students see the bridge between the core values of the profession and the core values considered foundational to successful legal practice.

\(^{78}\) Lynn V. Monrouxe, *Theoretical Insights into the Nature and Nurture of Professional Identities*, in *TEACHING MEDICAL PROFESSIONALISM*, supra note 14, at 37, 38 (“Our identities are continually rewritten throughout our lives as we draw on the environment, from people and from objects for their content.”).


\(^{80}\) See Cruess et al., supra note 14, at 1448.


\(^{82}\) HAMILTON & BILONIS, supra note 67.

\(^{83}\) Richard Cruess et al, *Medicine as a Community of Practice: Implications for Medical Education*, 93 ACAD. MED. 185, 185-86 (No. 2., 2018). Cite to Hamilton UST Law Journal article discussion of communities of practice in this same issue.

\(^{84}\) Sasha Barab et al., *Developing an Empirical Account of a Community of Practice: Characterizing the Essential Tensions*, 11 J. LEARNING SCI. 489, 495 (No. 4, 2002).

\(^{85}\) Id.

\(^{86}\) Sylvia Cruess et al, *Supporting the development of a professional identity: General principles*, 41 MED. TEACHER 641, 643 (No. 6, 2019).
much more intentional and coordinated in fostering each student’s professional identity development.

### Appendix

**Table 4**

The Discretion Given to Practicing Lawyers in Important Model Rules

<table>
<thead>
<tr>
<th>Codified rule setting a floor of conduct</th>
<th>Lawyer’s discretionary calls</th>
</tr>
</thead>
<tbody>
<tr>
<td>The decision to take a client. There is no specific rule limiting the lawyer’s choice of client except 8.4(g) prohibiting discrimination.</td>
<td>Wide discretion</td>
</tr>
</tbody>
</table>

Rule 1.1 [competence]

Discretion concerning what level of competence is the lawyer’s goal above the floor of minimum competence? E.g., always the “A” game?

Rule 1.2 [autonomy of the client to set objectives and the lawyer to determine means]

Discretion concerning means after consultation with client.

Rule 1.3 [diligence]

Discretion concerning the level of diligence above the floor that is the lawyer’s goal.

Rule 1.4 [communication]

Discretion on the level of good client communication above the floor that is the lawyer’s goal.

Rule 1.5 [fairness in billing]

Discretion on what is fair above the floor of an unreasonable bill.

Rule 1.6 [confidentiality]

Discretion on the situations

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87 Need citation to Hamilton’s other article in this symposium that has this table.
where a lawyer is given permission to reveal.

Rules 1.7 – 1.12 [loyalty] The conflicts rules create a floor of conduct regarding loyalty but still leave discretion concerning how aggressively to interpret the conflicts rules in a way that benefits the lawyer.

Rule 1.13 [special duties with respect to representing organizations] Discretion in situations where a lawyer is given permission to reveal client confidences.

Rule 1.14 [client autonomy when diminished capacity] Discretion given to lawyer to make judgments to empower and protect client.

Rule 1.16 [lawyer agency] Discretion with respect to situations where a lawyer is permitted to withdraw.

Rule 2.1 [independent professional judgment and candid advice] Discretion on how a lawyer counsels a client beyond the technical legal advice necessary to be competent.

Rule 3.1 [duty to justice system] Discretion regarding calls on what is “not frivolous” and what is “good faith.”

Rule 3.2 [duty to justice system] Discretion on what is a reasonable effort to expedite litigation consistent with the interests of the client.

Rule 3.3 [duty to the justice system and candor] Discretion in offering evidence the lawyer reasonably believes is false.
Many of the Model Rules use reasonableness which is defined as “the conduct of a reasonably prudent and competent lawyer.”\(^8^8\) So in the disciplinary context, the question is whether the conduct in question is unreasonable. In the disciplinary context, a lawyer’s peers in the state where the lawyer is licensed (including judges) will decide whether the lawyer’s conduct is unreasonable. In other words, the community of practice in the jurisdiction where the lawyer is licensed decides what conduct is unreasonable.

\(^8^8\) Does the conduct reach the level of mandatory reporting? Will the client agree if confidential information is involved? Note the disciplinary authorities rarely impose discipline for failure to report.

\(^8^9\) MODEL RULES OF PRO. CONDUCT R. 1.0(h).