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PROFESSIONAL CONDUCT

A Holiday Gift: An Ethical Culture for Your Firm and Clients

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Special to the Legal

The holidays are a time for celebration, reflection and resolution. As lawyers who represent lawyers and other professionals, we've been focusing our reflections on the scandals surrounding some of our most revered institutions: This year, churches, law schools and universities fell into disrepute along with corrupt politicians and multi-national corporations. The juxtaposition of scandal and the occupation of Dilworth Plaza seemed more than coincidental and as we passed the tent city each day, we wondered: Have our institutions failed us and are they really beyond repair?

It's clear that lawyers can't fix everything that's wrong with the world, though many of us became lawyers because we wanted to help people and make a positive contribution to society. We can help our public and private institutions by continuing to support robust ethical cultures in our firms and by assisting our clients' businesses and organizations in their efforts to do the same. It's not rocket science, but common sense, and it takes determination and



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perseverance. Here are some basic steps you can take to help foster an ethical culture where you work and for your clients.

First, in this context, the term "culture" means a set of norms, conduct and beliefs that the members of a group share and that guide their daily actions. It's implicitly or explicitly "how we do things here." Ethical means with a sense of right vs. wrong, a sense of doing good and not injuring others. In our profession, the Rules of Professional Conduct set a baseline and a bellwether for

ethical conduct in our various representations and related dealings with others.

The rules specify what ethical professional conduct is in our relationships with clients, courts, our adversaries and the public at large. It's our own "Emily Post Book of Etiquette" and, while subject to interpretation, it clearly lays out the do's and don'ts of the practice. In the context of this discussion, it is important to note that the rules define our character as professionals: that we act with integrity, accept responsibility and respect ourselves and others.

For those of your clients who don't have "Emily Post" or the RPC to guide them, step one to building an ethical culture is to create a code of conduct. The creation of a code of conduct is an important tool for the company to describe its character by telling the world, both inside and outside the organization, who it is, what it believes and how it will act. The code should become the standard of reference for all company employees — at every level. The code must therefore include guidance for the entire gamut of company activities, and like the rules, lay out principles for relationships between all actors, internal and external. At a minimum, the code should address areas of

regulatory compliance, negotiations, procurement, appropriate interpersonal conduct, the use of company property and the fair treatment of employees.

A code of conduct should also describe ethical relationships with clients and vendors and provide guidance on topics such as conflicts of interest, privacy and confidentiality. The code of conduct can also express the company's commitment to good environmental practices and the health and safety of its employees and clients. The code is the starting point for the promulgation of policies and procedures and these must include clear, consistent and graduated consequences for violations.

Naturally, the creation of a code by itself is not enough: a code of conduct that collects dust is ineffective. The code needs to be embraced by company leadership as culture is created from the "tone at the top." The leadership must talk the talk and walk the walk. Further, no matter how big or small the organization, ethics leadership must be centralized at the top level and not left for each unit or department to manage and direct. Management must make clear that following the code is a prerequisite to succeeding and thriving within the organization; compliance with the code and its policies should be a part of evaluating employee performance.

The code of conduct must be communicated to all members of the organization, and training and testing should be provided on an ongoing basis. Many companies develop online tools to assist with these tasks

and third-party vendors have packages that can assist with this. The code should be a practical guide that can be referenced and consulted on a daily basis, just as our rules are. Management should make a point of incorporating the code into the daily life of the organization so that it becomes a part of the dialogue and actively informs decision-making.

Putting controls in place to detect violations of the code and other policies and procedures is the next step in the process of creating an ethical culture. The best detection method is a mechanism that permits anonymous reporting. Of course, retaliation against any employee who reports wrongdoing is illegal in many industries and should be prohibited regardless of its legality.

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Leadership, training and communication all work together to create an environment that demonstrates that this is an organization that cares about ethics. This environment works to combat internal fraud as well as other wrongdoing. Employees who embezzle are functioning in what is popularly known as a fraud triangle: a combination of rationalization, opportunity and need. It's easy to rationalize stealing from a company in which profit is exalted at the cost of ethical behavior, or where the leadership's conduct is perceived

as corrupt. Conversely, an ethical environment fosters trust and commitment, as the perception is that everyone has a high standard to uphold and is working to do so.

While it's been a year of scandal and disgrace at some of our most revered institutions, the perception that corruption is endemic is surely skewed by the media's constant preoccupation with the sensational and the horrific. In the coming year, we plan to bring you columns that focus not just on ethical lapses in our profession but also on the ways in which our profession holds true to its high standards of integrity and good character. Until then, have a happy and safe holiday season. •