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Professionalism

Revisited:

The Client's Viewpoint

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A number of Pittsburgh-based lawyers and judges have written or spoken about the virtues and utility of professionalism in day-to-day practice. These overtures are difficult to reject. Trial lawyers, litigators, business counselors, and other advocates should strive to be cooperative, amicable and non-confrontational in their dealings with opposing counsel. In addition to raising the tone and the quality of practice, professionalism has its pragmatic rewards. Goals are achieved more cost-efficiently; there is more residual good will after litigation or a deal is concluded. Professionalism—like good crops, the flag and motherhood—is indeed hard to criticize.

Some procedural rules for litigation actually encourage professionalism. For ex-

ample, Rule 29, Fed. R. Civ.P. (and its state counterpart Pa. R.C.P.4002) permits parties in most circumstances to stipulate, without court approval, to modifications of discovery procedures. As a result, attorneys may enter into numerous types of flexible arrangements which can informalize discovery practice, modify deadlines and help keep fees and expenses down. In most jurisdictions, moreover, by either rule or practice, attorneys can also by agreement extend time periods for responses to formal pleadings.

What happens, though, when our best attitudes and creative uses of the rules fail us?

Consider Upstart Industries, Inc. ("Upstart"). Upstart, your client, asked you to bring an action for money damages and injunctive relief against one of its competitors, WidgetTech, Inc. Negotiations to settle this dispute in the 18 months before you filed the complaint were disastrous. WidgetTech was uncooperative, dilatory and even hostile. After filing the complaint, and three days before a responsive pleading is due, you receive a telephone call from one of WidgetTech's local attorneys. He asks for an additional 45

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