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Regulation and Aspiration in the ABA Model Rules of Professional Conduct,” 54 Wayne L. Rev. 3 (2008).

But the persistent and pervasive influence of aspirational thinking does not end there. Many states have now adopted “professionalism codes” that exhort lawyers to behave in civil, courteous, and non-obstreperous ways. In some jurisdictions, those codes are being enforced—and with severe sanctions. An article from February of this year notes that 43 states and the District of Columbia have adopted some form of professionalism code and describes recent decisions from Florida where lawyers received substantial penalties for engaging in unprofessional behavior.

In one of those cases, the lawyer received a two-year suspension from practice—to be followed by an eighteen-month probationary period—even though his actions largely consisted of tirades before judges rather than the sort of rule violation that has historically supported a punishment of this severity, such as the commission of a crime, the misuse of funds held in a client trust account, or inappropriate sexual contact with a client. *See* Gregory P. Hanthorn, “[When Breaches of Professionalism Become Sanctionable](#).”

It is too soon to tell, but the trend may be toward putting teeth in these codes—and then putting those teeth to work.

There is some irony in this, because the effect of layering enforceable professionalism codes on top of legal ethics codes will be to reverse completely the work of the Kutak Commission, to reintroduce aspirational thinking—on steroids—into the disciplinary environment, and to make lawyers less certain than ever when they are, and are not, doing something for which they can be sanctioned.

These developments come at a particularly important time because recent charges of large-scale lawyer misconduct might lull attorneys into believing that if they aren’t committing *New York Times*-headline-worthy acts of fraud, deceit, and misappropriation then they are behaving ethically and they won’t be punished for any smaller missteps. It would be a grave mistake, though, to think that way. History suggests that—all efforts to the contrary notwithstanding—the irresistible creep of lawyer regulation lies in the direction of the vague, subjective, and aspirational.

Alas, it turns out that there are more rules in heaven and earth than are dreamt of in our philosophies.

And we’re all on double secret probation.

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## MLRC 2014: UPCOMING EVENTS

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November 12, 2014 | New York, NY

### DCS Annual Lunch & Meeting

November 13, 2014 | New York, NY

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