

The Liskow logo is positioned in the top left corner. It features the word "Liskow" in a white, sans-serif font. A small, stylized icon resembling a checkmark or a folded piece of paper is placed above the letter "i".

Liskow

# Ethics for the Oil and Gas Lawyer and Landman in Closing the Deal

Anthony Marino

The AAPL logo is located in the bottom right corner. It consists of a white geometric icon made of triangles to the left of the letters "AAPL" in a bold, sans-serif font. Below "AAPL" is the tagline "Powering The Profession" in a smaller, italicized font. A faint "LISKOW" watermark is visible behind the AAPL logo.

**AAPL**  
*Powering The Profession*

# Gulf Coast Land Institute

April 26-27, 2023 | New Orleans, LA



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<http://www.youtube.com/watch?v=ml2Ae2SIXac>



# Regulation of Professionals

NOTABLE QUOTES FROM “THERE WILL BE BLOOD”

## Scene 1 - Going to the People

- Daniel Plainview was an oil man. He asked the people of Isabella county to drill their lots. All the rest will be speculators to men trying to get between you (the “landowner”) and the oilman to get some money that ought by rights come to you.



## Scene 2 – Insider Information (The Squealing Brother)

- Plainview: [*Paul Sunday has offered to sell Plainview information*]  
Well, why'd you come to me?
- Plainview: I'll tell you what I'll do, son. I'll give you a hundred dollars now, and if it proves to be a promising lease, then I'll give you a thousand-dollar bonus.
- Paul Sunday: Six hundred dollars.
- Plainview: Just tell me one thing to help me decide- what else have you got up there, what do you grow?



## Scene 3 – Honest Bargaining??

- Plainview: Those areas have been drilled
- Eli Sunday: What?
- Plainview: Those areas have been drilled.
- Eli Sunday: ...no they haven't...
- Plainview: Its called drainage. I own everything around it ... so I get everything underneath it.

- Plainview: Drainage! Drainage, Eli Drained dry, you boy! If you have a milkshake, and I have a milkshake and I have a straw and my straw reaches across the room and starts to drink your milkshake. I drink your milkshake! I drink it up!

## Scene 4 – Walking Out

- Prescott: [*Plainview has just stormed out of a town meeting*]
- Mr. Plainview? No! Mr. Plainview, where are you going?
- Plainview: I don't need the lease, thank you.
- Prescott: We need you, we need you to ...
- Plainview: Too much confusion! Thank you for your time.
- Prescott: No, no, no! There's no confusion! If you just...
- Plainview: [*stops in his tracks, stares down Prescott*] I wouldn't take the lease if you gave it to me as a gift.





## Scene 5 – Landman and Boss

- Plainview: What's this? Why don't I own this? Why don't I own this?
- Al Rose: That's the Bandy tract. He was the holdout, when we were doing the buying? He had hoped to speak with you... Can't you just build the pipeline around this tract?
- Plainview: Can I build around fifty miles of Tehachapi mountains? Don't be thick in front of me, Al.
- Al Rose: I can go to him again...
- Plainview: No, I'll go and talk to the man. I'll talk to him, show you how its done.



## Scene 6 – Now I want [NEED] your land

- William Bandy: I'm Bandy.
- Plainview: Uh, yes. Yes. Uh, William Bandy. I'd like to lease your land
- William Bandy: I had asked for you to come and talk to me before. When you were leasing land.
- Plainview: That's right, yes. My boy's been very sick.
- William Bandy: This was before you boy got sick. Now I know that you would like to build a pipeline through my property. Is that right, what I've heard?



- Plainview: That's absolutely right. Its an eight-inch pipe. I can be buried with your consent. I guarantee you absolutely no disruption...
- William Bandy: God, God has told me what you must do
- Plainview: And what is that?
- William Bandy: You should be washed in the Blood of Jesus Christ.
- Plainview: Oh, but I am. I have been washed, Mr. Bandy, I have been.

- William Bandy: It's your only way to salvation, and your only way for what you want. You can take it at the Church of the Third Revelation.
- Plainview: I'll pay you three thousand dollars.
- William Bandy: I'd like you to be part of our church.
- Plainview: I'll pay you five thousand dollars.
- William Bandy: Be baptized be forgiven for the sin that you've done.

# The Promised Land

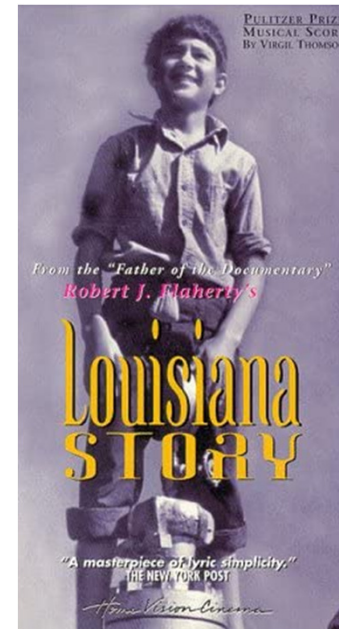
<https://www.youtube.com/watch?v=5GDuVbXKQ9U>

Corporate sales partners Steve Butler (Matt Damon) and Sue Thomason (Frances McDormand) arrive in a small town to secure drilling rights for a natural-gas company. They believe that the economic decline has done their work for them and that the townspeople will happily accept whatever offer they make. However, they don't consider the objections of a respected schoolteacher (Hal Holbrook) and the leader (John Krasinski) of a grassroots campaign against the company's objective.



# Louisiana Story

A young Cajun boy named Alexander Napoleon Ulysses Latour spends his time on a Louisiana bayou. There he plays, fishes, and hunts, worrying only about the alligators which infest its waters. The boy's innocent routine changes forever when his father signs a lease agreement with an oil company which brings a derrick into their corner of the bayou. The rig workers are friendly and don't mind the boy is poking his nose in here and there. In fact, they seem to enjoy a bit of company. Things get exciting for everyone, but his idyllic life with his pet raccoon is disrupted when the tranquility of the bayou is broken by an oil well drilling near his home living in the marshlands of Petit Anse Bayou in Louisiana.



PaPa Lator - lessor and oil company land man



# Landman closes the deal

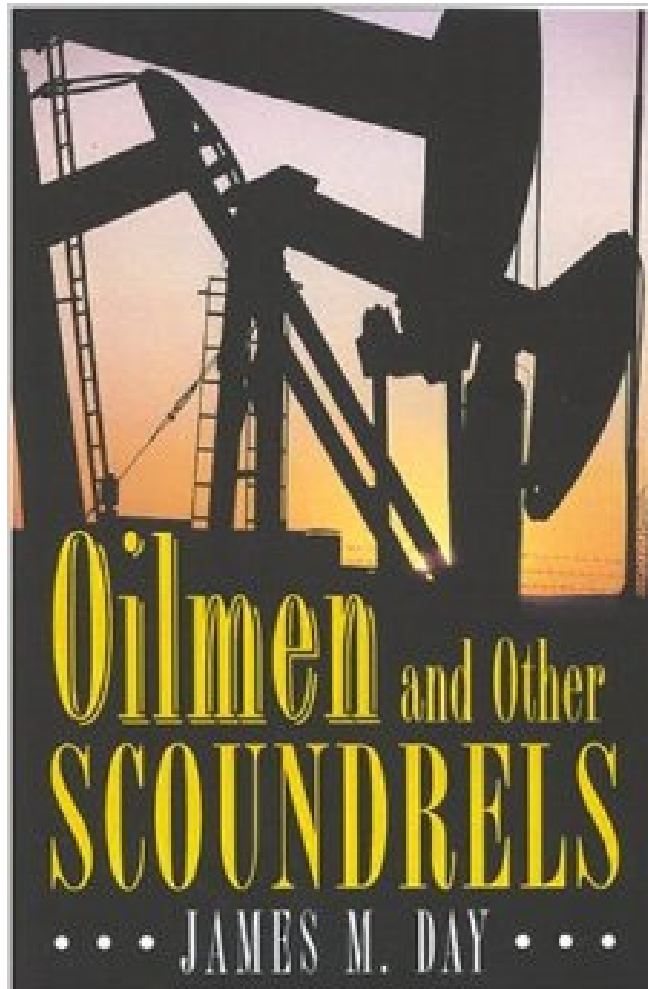




# Regulation of Professionals

- (1) The Model Rules for Professional Conduct for the Lawyers; and
- (2) The AAPL Code of Ethics and Standards of Practice





# Introduction

- The term “profession” has been used to “describe occupations that require new entrants to take an oath professing their dedication to the ideals and practices associated with a learned calling.”[\[1\]](#)

- Professional - Someone called to do essential public service that can only be done by a person with specialized knowledge.

- [\[1\]](#) Deborah L. Rhode, Professional Responsibility: Ethics by the Pervasive Method. 39 (1994).

# Introduction (continued)

- Learned Art - An Art/Science that requires both learned knowledge and prudential wisdom.
- Common Calling - A vocation requiring dedication to certain ideals as a way of life as part of a specialized group.
- Public Service - The performance of certain functions necessary to the general welfare or common good.



# Introduction (continued)

- Perception that there has been a lack of professionalism exhibited by lawyers and landmen.



# Introduction (continued)



# Introduction (continued)

What Kind of man are you?

Atticus Finch: Do you know what compromise is?

Scout: Bending the law?

Atticus Finch: [slightly bemused] Uh. No. It's an agreement reached by mutual consent. Now, here's the way it works. You concede the necessity of going to school, we'll keep right on readin' the same every night, just as we always have. Is that a bargain?







# Introduction (continued)

The ABA Report ends up with this definition of professionalism which is built upon an original definition suggested by former Harvard Law School Dean Roscoe Pound:

A professional lawyer is an expert in the law pursuing a learned art in service to clients and in the spirit of public service; and engaging in these pursuits as part of a common calling to promote justice and the public good.



# Introduction (continued)

- The American Association of Professional Landmen has provided the following definition for the professional landman/land professional, which is in the context of performance of specialized functions:
- “Landwork” shall mean the actual performance or supervision of any one or more of the following functions:



# Introduction (continued)

As used in these Bylaws and in any and all other organizational documents of AAPL, the following definitions shall apply:

**Section 1. Landwork.** “Landwork” shall mean the actual performance or supervision of any one or more of the following functions:

- A. Negotiating for the acquisition or divestiture of Mineral rights or rights associated with Other Energy Sources.
- B. Negotiating business agreements that provide for the exploration for and/or development of Minerals or Other Energy Sources.
- C. Ascertaining ownership in Minerals or rights associated with Other Energy Sources, and related real property interests through the research of public and private records.
- D. Reviewing the status of title, curing title defects, providing title due diligence, and otherwise reducing title risk associated with the ownership, acquisition or divestiture of Mineral rights or property associated with Minerals or rights associated with Other Energy Sources, but shall exclude administrative, division order or lease analyst functions.



# Introduction (cont.)



- E. Managing rights and/or obligations derived from ownership of interests in Minerals or rights associated with Other Energy Sources.
- F. Unitizing or pooling of interests in Minerals or rights associated with Other Energy Sources.
- “Mineral(s)” shall be defined without limitation to include oil, gas, related hydrocarbons, coal, lignite, uranium and substances classified as base, industrial, precious or strategic minerals.
- “Other Energy Sources” shall be defined without limitation to include wind energy, geothermal energy and solar energy.
- **Section 2.** “Land Professional” shall mean a person who derives a portion of his or her income as a result of performing Landwork.
- **Section 3.** “Landman” shall mean a Land Professional who engages in Landwork.
- **Section 4.** Gender. The masculine gender shall refer to both men and women.



# Introduction (continued)

- “Land Professional” shall mean a person who derives a (significant) portion of his or her income as a result of performing Landwork.
- “Landman” shall mean a Land Professional who engages in landwork (has been primarily engaged in negotiating for the acquisition or divestiture of mineral rights and/or negotiating business agreements that provide for the exploration for and/or development of minerals).
- Note: Introduction of Distinctions between Minerals or Rights associated with Other Energy Sources.



# Regulation of Professionals

## Lawyers:

(i) Model Rules of Professional Conduct.

(a) House of Delegates of the American Bar Association ("ABA") adopted Model Rules on August 2, 1983.

(b) State-by-State adoption of ABA Model Rules [or modified versions]. Louisiana adopted a modified version on December 18, 1986 effective January 1, 1987. See, Chapter 4 of Title 37 of the Louisiana Revised Statutes.



## Regulation of Professionals (continued)

(ii) Articles of Incorporation of the Louisiana State Bar Association.  
See, Article 16 of the LSBA - Articles of Incorporation.

(iii) Statutory Provisions: La. Rev. Stat. 37:211:

The Louisiana State Bar Association is created and regulated under the rule-making power of the Supreme Court of Louisiana, pursuant to a memorial addressed to the court by the legislature in Act 54 of 1940.



# Regulation of Professionals (continued)

## Land Professionals:

(i) Bylaws of American Association of Professional Landmen ("AAPL"), adopted June 16, 1978, with amendments last being in September 2022. Article V. Section 3.A.4 Applicant must execute such documentation as AAPL may require applicant's willingness to be bound by and abide within the AAPL Code of Ethics and Standards of Practice.

(ii) AAPL Code of Ethics. (Article XVI of Bylaws)

(iii) AAPL Standards of Practice





# Standards of Practice

- The Bylaws of the American Association of Professional Landmen (AAPL) provide that a Code of Ethics has been established “to inspire and maintain a high standard of professional conduct” for the members of the Association. The Code of Ethics is the basis of conduct, business principles, and ideals for the members of the AAPL.

A. Fair and honest dealing with landowners, industry associates and the general public so as to preserve the integrity of the profession (Article XVI, Section 1);



## Standards of Practice (continued)

B. Adherence to a high standard of conduct in fulfilling his fiduciary duties to a principal (Article XVI, Section 2);

C. Avoiding business activity, which may conflict with the interest of his employer or client or result in the unauthorized disclosure or misuse of confidential information (Article XVI, Section 2);

D. Performance of professional services in a competent manner (Article XVI, Section 2);



## Standards of Practice (continued)

E. Adherence to any provisions of the Bylaws, Code of Ethics, or any rule, regulation, or order adopted pursuant thereto (Article V, Section 9);

F. Avoiding the aiding or abetting of any unauthorized use of the title “Certified Professional Landman”, “Registered Land Professional”, “P Land”, or “CPL/ESA” (Article V, Section 9); and

G. Avoiding any act or conduct, which causes disrespect for or lack of confidence in the member to act professionally as a land professional (Article V, Section 9).



# Continuing Education

ARTICLE III OF THE PLANO BYLAWS SET OUT THE PURPOSE –

“TO PROMOTE AND ADVANCE THE ART

AND SCIENCE OF THE PROFESSION OF PETROLEUM

LANDMEN.”



# Continuing Education<sub>(continued)</sub>

WE LEARN IT BY EXAMPLE THAT WE TAKE THE HOLISTIC APPROACH AND MAKE A PART OF THE LIFESTYLE.

IT JUST MAKES COMMON SENSE.



# Continuing Education<sub>(continued)</sub>

- THE FAMOUS FRENCH WRITER AND PHILOSOPHER NOTED:
- “COMMON SENSE IS NOT SO COMMON”



# Continuing Education (continued)

- Our reputation keeps us in business.
- The Land work and legal work associated with the energy field is within a very small community.



“Nice guys finish last”



Being nice, courteous, polite, and respectful does pay.  
I am not suggesting that you don't hold firm in negotiations.



## Continuing Education (continued)

- Perception of a Landman from the negotiation and consummation of the deal.
- There are many times ethical dilemmas which often you do not consciously think about, but it is a gut check. A first reaction!



## Continuing Education (continued)

- Do the right thing!



- Do unto others as you would have them do unto you.



## State Definitions of Professionalism

The most common definition of professionalism relates to the courtesy and respect that lawyers/landmen should have for their clients, adverse parties, opposing counsel, the courts, court personnel, witnesses, jurors and the public.

“Professionalism addresses the subject of what is expected of lawyers (landmen) as opposed to what is required by our ethics rules.”

Note: Both the ABA model rules, and the Louisiana version of The Rules of Professional Conduct phrased in a mix of many mandatory and some discretionary requirements.

See Michael H. Rubin, “What’s Role, If Any, Do Civility and Ethics Have in Negotiations?” 70<sup>th</sup> Mineral Law Institute March 23-24, 2023.



# Continuing Education (continued)



# Continuing Education (continued)

- Famous in France for his Davy Crocket ROLE, French distributors on posters, in TV programmers
- “Fess” Parker in French means “buttocks” or “bottom”
- “Fier” means proud. As in a proud American hero.



# Continuing Education (continued)

- “Be always sure you are right then go ahead.”



# Continuing Education (continued)

- Landmen determine who owns the land and its component part, surface, and minerals; without us, the search for energy would go nowhere. Frequently, companies hire attorneys to do our job, but they really aren't as qualified as we are, if we are trained, experienced and competent.







## Continuing Education (continued)

- “Negotiator and facilitator of oil and gas deals”



## Continuing Education

“The Landman is the heart and soul of the oil and gas industry. The heart by getting the deal started and always keeping the deal going, and the soul for keeping it honest.”



## a) Annual Requirements

### Lawyers:

#### Conversion of CLE Credit Hours

- 12.5 credit hours per year including (i) 1 credit hour of ethics for each 1-year reporting period; and (ii) not less than 1 credit hour of professionalism for each 1-year reporting period. MCLE rules allow 4 hours annually of credit delivered through computer-based means. Ethics and professionalism credits may be obtained in this matter. Additional online credits will not be carried over.
- Ethics and professionalism require a full 60 minutes
- See, Supreme Court Rules, Rule XXX, Part H, CLE Rule 3(C) as amended, effective November 27, 2018.



# Definitions

## Lawyer: DIFFERENCES BETWEEN PROFESSIONALISM AND ETHICS:

Professionalism concerns the knowledge and skill of the law faithfully employed in the service of client and public good and entails what is more broadly expected of attorneys. It includes courses on the duties of attorneys to the judicial system, courts, public, clients, and other attorneys; attorney competency; and pro-bono obligations.

Legal ethics set forth the standards of conduct required of an Attorney; professionalism includes what is more broadly expected. Section 1. Rule 3(c) of the “Rules of Continuing Legal Education” as amended by the Louisiana Supreme Court on May 23, 1997.

Generally, ethics rules tell us what we cannot do and professionalism deals with what we should do.



# Definitions (continued)

## Legal Ethics:

Concerns the standard of professional conduct and responsibility required of a lawyer. It includes courses on professional responsibility and malpractice.

It does not include such topics as attorneys' fees, client development, law office economics, and practice systems, except to the extent that professional responsibility is discussed in connection with these topics.



# Definitions (continued)

## **Landman:**

Code of Ethics - established to inspire and maintain high standard of professional conduct - the standard of professional conduct and the guiding principles and ideals are mandates.

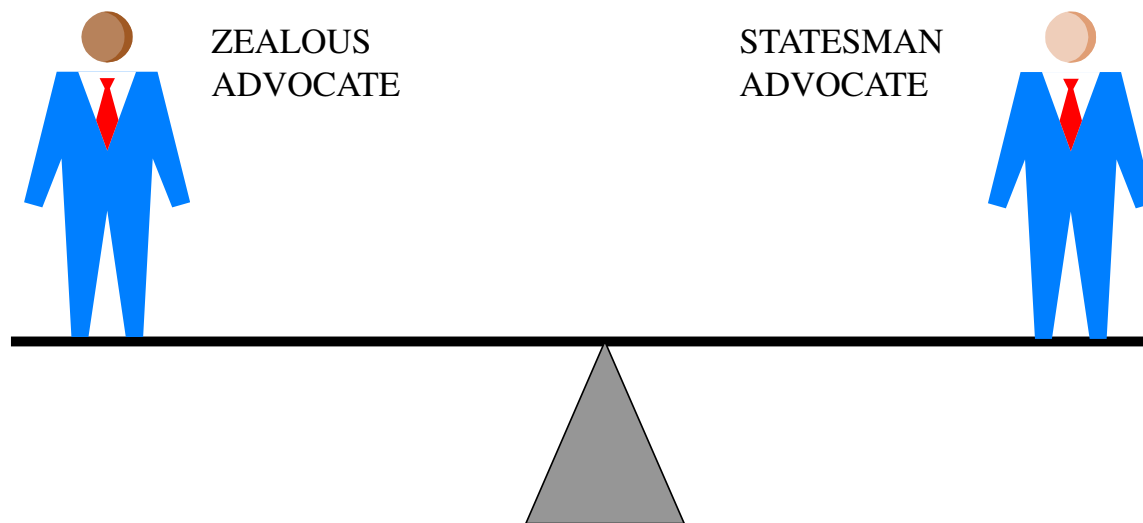
The standards impose obligations beyond those of ordinary trading - grave social responsibility and a duty to which the land professional should dedicate himself .



# Distinctions

Legal ethics sets forth the standards of conduct required of a lawyer; professionalism includes what is more broadly expected.







- The zealous advocate - is one who is primarily interested in winning the case for the client (or sometimes for himself) at any costs.
- In such zeal, the advocate ignores or colors the truth - fair play, cooperation, civility, courtesy, and dignity do not enter the picture - that is why the Model Rule 1.3 adopted by Louisiana deleted the reference to “zeal”. Instead the “Lawyer shall act with reasonable diligence and promptness in representing a client.”
- There is also the other model - the “statesman advocate.”



1. Fairness to opposing parties and counsel (Model Rule 3.4).
2. Confidentiality (Model Rule 1.6).

- Walk out
- Bankruptcy-Win/Win
- When it just has to get there overnight
- Redlining the document
- Coin Toss



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**THANK YOU**  
FOR YOUR TIME AND CONSIDERATION

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