PROFESSIONALISM: A TIME FOR ACTION

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I. SCOPE

This article will primarily focus on legal professionalism in the context of civil litigation. Of course, many of the topics discussed apply to the profession generally and will thus have a broader scope.

II. INTRODUCTION

A. What is Professionalism?

"Professionalism" is an amorphous term that is difficult to define. A profession is often described in the words of Dean Roscoe Pound:

> The term refers to a group . . . pursuing a learned art as a common calling in the spirit of public service--no less a public service because it may incidentally be a means of livelihood. Pursuit of the learned art in the spirit of a public service is the primary purpose.

R. Pound, The Lawyer from Antiquity to Modern Times 5 (1953). Professor Wolfram, in his excellent treatise on legal ethics, lists nine characteristics that are generally common to professions: (1) the professions are learned in the sense that one must undergo an extended period of education, training, or apprenticeship before being permitted to engage in the profession; (2) not everyone can hold themself out as a professional of a particular kind; (3) a person who is a professional enjoys, by that fact alone, an important advantage in social prestige; (4) professionals make more money than the average worker and often surprisingly more money than persons who do very similar work but are not certified professionals; (5) professionals typically enjoy a significant amount of autonomy as a group, which is often referred to as professional independence; (6) organized groups of members of the profession attempt to exercise relatively rigid control over other group members; (7) professionals deal with needs that are vital to persons who use their services, yet the need is common to many people; (8) professionals assume intensely personal relationships with and responsibilities toward users of their services; and (9) professionals often refer to an element of public service in a claim that they undertake functions that serve the nonuser public in a way relevant to the profession's special competence. C. Wolfram, Modern Legal Ethics § 1.5 (prac. ed. 1986).

If this is a profession, then what is professionalism? Professionalism means more than merely being civil to other lawyers. It means caring about the quality of one's work. Professionalism also means striving to bring about improvements in our profession through participation in organized bar activities and participating in the affairs of one's community through pro bono work and other public service. Thirty-three of the fifty-five members of the Constitutional Convention in 1787 were lawyers; this is an excellent example of professionalism.

B. Nature of the Problem

The following quote is a good paraphrase of some of the problems with the profession today:

> Lawyers are now to a greater extent than formerly business men, a part of the great organized system of industrial and financial enterprise. They are less than formerly the students of a particular kind of learning, the practitioners of a particular art. And they do not seem to be so much of a distinct professional class.

L. Brandeis, The Opportunity in the Law, in Legal Profession: Responsibility and Regulation 16 (1985). Although these words sound as if they were written today, they were actually written by Louis D. Brandeis in 1905. Perhaps the golden age of professionalism was a few years before any of us can remember. Still, within our lifetimes, there have been marked decreases in lawyer professionalism. Further, many changes of today's legal environment have put these problems in a new perspective.

In the past several years there has been a renewed call to increase professionalism in the legal community. Then-Chief Justice Warren E. Burger, in his address at the 1984 American Bar Association meeting in Las Vegas, called for a "rekindling" of lawyer professionalism. Burger, The State of Justice, A.B.A. J., Apr. 1984, at 62. He chastised the profession for recent departures from professional standards and traditions of the law that previously restrained lawyers from practices common and acceptable in other occupations. Id. at 63. Chief Justice Burger also noted that, despite the recent presence of lawyer advertising, the professional standards against advertising are still widely observed by those who regard the practice of law as a profession. Id. Burger further contended that advertising and other abuses, such as an "excess of adversary zeal," have resulted in a sharp

decline in public confidence. Id. at 65. See generally Jost, What Image Do We Deserve?, A.B.A. J., Nov. 1, 1988, at 47.

The public's view of lawyers is at critically low levels. In a study conducted for the ABA Commission on Professionalism, only six percent of corporate users of legal services rated "all or most" lawyers as deserving to be called professionals. G. Shubert, Survey of the Professionalism of the Bar (1985). Only seven percent saw professionalism increasing among lawyers, while sixty-eight percent said it had decreased over time. Id. In a recent Texas survey, only thirty-nine percent of Texans gave a high rating to lawyers on honesty and ethical standards, while the same survey showed high ratings of seventy-eight percent for doctors, seventy-four percent for police officers, and forty-one percent for politicians. Texas Poll, Fall 1987 (conducted by Public Policy Resource Laboratory, Texas A&M University, for Harte-Hanks Communications Co.). See Appendix A. Judge Thomas M. Reavley made the following comments about these results:

> The profession's defenders respond by arguing that the ethical duty of the lawyer is to serve the cause of the client rather than to judge or to ensure the morality of that cause, and that the polls actually testify to the faithfulness of lawyers in performing their ethical duty rather than to their low personal morality.
>
> Without a doubt, it is what we do on behalf of our clients that ruins our standing in the polls. The perception is based, not only upon our representation of unsavory clients, but also upon the familiar displays of deception and sophistry to win whatever the client wants. It seems to me that our low public rating has some justification because, in our proud obsession with the duty to the client, we have become much too casual about the larger moral obligations to society. Neither professional duty to the client nor our role in the adversary system can justify fraudulent conduct.

Reavley, A Perspective on the Moral Responsibility of Lawyers, 19 Tex. Tech L. Rev. 1393, 1393 (1988)(footnote omitted).

These are the basic problems with which we are faced. The rest of the paper will be devoted to discussing these problems facing us in reviving a new professionalism among today's lawyers.

III. CHANGES IN THE PROFESSION

A. Law as a Business

The past several years have brought about many changes in the legal profession. See Linowitz, Pride of the Profession, Trial, July 1988, at 68. Skyrocketing salaries for beginning associates, the growth in firm size and increase in firm mergers, and a continuing specialization are but a few. Firms are now pressed to bill more hours as higher rates and market legal services more efficiently so that the rising costs of overhead can be met. A March 1986 survey showed that lawyers on the average work over forty-six hours a week and that more than seventy percent of lawyers work in excess of forty hours a week. Reidinger, It's 46.5 Hours a Week in Law, A.B.A. J., Sept. 1, 1986, at 44.

With these changes come a decrease in the amount of time lawyers have to devote to other activities. Older partners have less time to train young associates because of this increased competition. New lawyers are likewise pushed to learn to practice on their own while producing as many billable hours as possible. All lawyers have less time to devote to public service, whether it be pro bono work or other activities.

Rapid increases in first-year associates' salaries are causing alarm. A recent survey showed that fifty-seven percent of lawyers believe that very high starting salaries are bad for the profession. Lawpoll: Starting Salaries Rise, A.B.A. J., Aug. 1, 1988, at 38. Judge John F. Grady of the United States District Court for the Northern District of Illinois made an enlightening comment on the problem:

> For [the associate] to come to any conclusion other than the fact that the dollar is what the practice is all about would require some sort of superhuman mental gyration on his part, because all of the stimuli to which he's exposed indicate the exact reverse. The buck is what it's about. Get it, get it now. . . . [W]hat are you worth a year later when you know something, or five years later when you know a little more? Where does it stop?

J. Grady, Commentary, in The Lawyer's Professional Independence: An Ideal Revisited 30 (1985); see also Quality of Life Trade-Offs, A.B.A. J., Apr. 1989, at 38.

Advertising is also being used by many smaller firms to stay competitive with the larger firms. A 1987 ABA Journal poll showed that about one-third of lawyers had done some form of advertising in the paid media. In 1986 alone lawyers spent nearly $47 million on television advertising, almost $10 million more than in 1985. Much--if not nearly all--of this advertising was done in a less than tasteful manner.

While these economic pressures cannot justify unprofessional behavior, it may explain why some lawyers seem less selfless than before. Moreover, the problem seems only to be getting worse.

B. Media Representation

Although disreputable and unprofessional lawyers represent only a minority of the legal profession, they usually receive the majority of media attention. For example, the conduct of American lawyers in Bhopal created considerable public furor a few years ago. See U.S. Lawyers Seek Share of Money in Settlement of Bhopal Litigation, Wall Street J., Feb. 16, 1989, at B2, col. 3.

Litigation is the most visible aspect of the profession and, therefore, the most widely reported. The media often focuses on those few litigators who seek to achieve the goals of their clients without regard to the lawyers' obligations to their profession and the judicial system generally. What the media seldom reports is what lawyers do good. The negative perceptions, even though representing only a minority of the profession, go a long way toward damaging the profession as a whole.

IV. STUDIES OF THE PROBLEM

A. American Bar Association

The ABA Board of Governors authorized the establishment of the Commission on Professionalism in December 1984. The commission was to examine and report on matters affecting the performance of legal services. In July 1986 the commission issued a detailed report entitled ". . . In the Spirit of Public Service:" A Blueprint for the Rekindling of Lawyer Professionalism, 112 F.R.D. 243 (1986)[hereinafter 1986 ABA Report]; see also ABA Commission Releases Report on Professionalism, 2 Law. Man. on Prof. Conduct (ABA/BNA) 282-83 (Aug. 6, 1986). The Commission on Professionalism was succeeded by the Special Coordinating Committee on Professionalism, which carries out the commission's recommendations.

See generally Raven, Professionalism: Meeting the Challenge with New Resolve, A.B.A. J., Jan. 1989, at 8.

B. State Bar Associations

With the increased awareness on the need for a revival of lawyer professionalism, many states have also appointed special committees to study the problem. At least twenty-six states and thirty-six local bar associations have instituted professionalism activities. Three states have conducted studies and published reports modeled after the 1986 ABA Report. See Nicholson, Promoting Professionalism, A.B.A. J., Oct. 1, 1988, at 146. (The Conference of Chief Justices Committee on Lawyer Competence and Professionalism has prepared an extensive bibliography on Professionalism in the Law that is attached as Appendix B.)

In 1988 the State Bar of Texas recreated a special committee on the Professionalism of Lawyers. The purpose of the committee is to identify the specific areas of the practice of law in the state that contribute to the degeneration of professionalism. The committee is also to recommend specific solutions and programs that address the problems.

V. PROPOSALS

A. Practicing Bar

Lawyers themselves must take the first step toward bringing about a new professionalism. See State Bar of Texas, Ethical Considerations on Code of Professional Responsibility EC 9-6 (1972)[hereinafter State Bar of Texas Ethical Considerations]. Ethics in the practice of law is more than following the minimal conduct required by the Code of Professional Responsibility. Lawyers should resolve to abide by higher standards of conduct than the minimum required by the Code. See State Bar of Texas Ethical Considerations EC 6-5. Striving to fulfill the expectations of the Code's Ethical Considerations will aid in rekindling professionalism and encourage other lawyers to do the same.

In relations with other lawyers and the courts, practitioners need to realize they can act in a professional manner and still be effective advocates. A front-page article recently highlighted some of the egregious litigation tactics now being used. Waging 'Rambo' Litigation: Bickel & Brewer's Tactics Stir Resentment, Tex. Lawyer, May 16, 1988, at 1, col. 1. In this article one lawyer was quoted

as saying: "We don't believe we should earn our living from being nice to other lawyers. Client loyalty shouldn't be sacrificed for professional courtesy." Id. at 14, col. 2.

Rambo-type self-destructive attitudes are at the heart of the problem. Such an attitude only evokes retaliation from other lawyers, making the problem even worse. Rambo-type tactics have the effect of making litigation an end in and of itself, thereby driving litigation costs even higher for clients. In a recent poll of lawyers and judges, more than sixty percent of all groups thought that discovery abuse was a major cause of delay and high costs. Civil Courts Called Unfair, Costly, Slow, Wall Street J., Apr. 7, 1989, at A5A, col. 1. Further, these tactics reflect poorly on our profession. See Albright, Rambo Litigation Tactics: A Proposed Cure, Advocate, Dec. 1988, at 3; Sayler, Rambo Litigation: Why Hardball Tactics Don't Work, A.B.A. J., Mar. 1, 1988, at 79; see also State Bar of Texas Ethical Considerations EC 1-5, 7-10, 7-37, 7-38. See generally Hicks, Restoring Civility to the Practice of Law, 52 Tex. Bar J. 586 (1989); Solovy & Byman, Hardball Discovery, Litigation, Fall 1988, at 8.

What we are developing today are "motion lawyers." If you are one day late in answering interrogatories you receive a motion for sanctions requesting that your pleadings be struck and the other side be awarded attorney's fees. We need to return to a system where courtesy and cooperation are routinely practiced. Although there is a place for sanctions, the punishment should fit the crime. In England there was a time when the death penalty would be given for stealing a chicken. We need to make sure only appropriate sanctions are applied.

Another problem area beginning to surface in Texas and elsewhere is outside business activities by lawyers. See 1986 ABA Report, 112 F.R.D. at 280-81. Fundamental issues in this area include whether practicing lawyers should become active in the operation of businesses and whether lawyers should become investors in the business activities of clients. The ABA has called for a study to determine what, if any, controls or prohibitions should be imposed. Id. at 281.

In the area of client relations, one of the most common complaints about lawyers concerns fees, and yet many lawyers still do not use written fee agreements. The ABA has recommended that all fee agreements be in writing where feasible. 1986 ABA Report, 112 F.R.D. at 283; see State Bar of Texas Ethical Considerations EC 2-19. Most

other state committees that have considered the issue have reached the same conclusion. See generally Model Rules of Professional Conduct Rule 1.5(b) (1983).

Some states, however, have gone even further. For example, a 1986 California law requires written fee agreements in all cases in which the fees are more than $1000. "Clients' Rights" Plans Aims to Enlighten Consumer, Bar Leader, Jan.-Feb. 1988, at 10. New Jersey has a rule that calls for a lawyer to provide written fee agreements to those clients who the lawyer does not regularly represent. Id. The use of written fee agreements is a big step toward curbing this area of client complaint.

Law firms also play a role in restoring professionalism. The first three to five years of young lawyers' practice is a critical time. Senior attorneys should strive to provide more guidance to these young lawyers as they begin their practice. See ABA Convention Focuses on Concerns of Profession, 4 Law. Man. on Prof. Conduct (ABA/BNA) 284, 287 (Aug. 31, 1988); see also State Bar of Texas Ethical Considerations EC 6-2. Too often, however, the demand to increase billable time prevents the senior attorneys from giving the necessary guidance to young lawyers. These young lawyers are thus forced to practice without the guidance critical to their professional development.

This demand to keep billable hours high likewise reduces the motivation and availability of attorneys to do pro bono or bar work. Older attorneys should volunteer and set examples for the younger attorneys. Further, firms should count a certain amount of pro bono work toward billable hours quotas. Under the present system at many firms, attorneys who participate in pro bono work are effectively penalized by the firm since associates who instead work on firm cases have more billable hours. By counting a certain amount of pro bono time toward billable time--thirty-six or forty-eight hours a year, for example--the firm would put the attorney doing pro bono work on an equal footing with his peers who forgo the pro bono work. Three or four hours a month should not have a dramatic impact on firm billing and may well encourage many more lawyers to engage in pro bono work. The 1986 ABA Report suggested that a commitment of thirty to fifty hours a year should be possible for all attorneys. 1986 ABA Report, 112 F.R.D. at 297. At the 1988 annual meeting in Toronto the ABA's House of Delegates adopted, without opposition, a resolution that provides lawyers should devote at least fifty hours a year to pro bono and other public service activities. The resolution further provides that law firms should support lawyers' pro bono work by counting that time toward their billable

hours requirements. Pro Bono Policy Passed, A.B.A. J., Oct. 1, 1988, at 140; see State Bar of Texas Ethical Considerations EC 2-25.

B. Bar Associations

Organized bar associations likewise have the potential to greatly impact lawyer professionalism. In the area of education, bar associations should weave the theme of professionalism into all continuing legal education courses. While many courses currently have a small portion devoted to ethics, this portion could be expanded in time and scope to include professionalism. For example, the Texas Bar Foundation recently sponsored a symposium on Professionalism and the Law. See Professionalism and the Law, 51 Tex. Bar J. 1154 (1988); Professionalism and the Law: Increasing the Degree of Civility, Tex. Bar Found., Jan. 1989, at 2. The Virginia State Bar requires all attorneys licensed after June 30, 1988, to complete a two-day course on professionalism within twelve months of being admitted to the bar; failure to complete the course will result in suspension.

Further education is possible through the use of bar journals. Many states have devoted an entire issue of their bar journal to the topic of professionalism and then continued the theme by publishing articles on the topic on a regular basis.

Bar associations should also institutionalize the study of professionalism as a permanent part of their activities. The problems facing the profession are not simple and will not be remedied overnight. Only through continued efforts will improvements be made.

Further, bar associations can work to increase public awareness of the legal process and lawyers' obligations as officers of the court. Too often either the media presents a skewed perspective of a case or the public does not understand the true nature of the proceedings. One example of this is in the criminal law area. Often the media reports that a defendant's conviction was reversed "on a technicality." Many people do not understand the role of a criminal defense lawyer in this situation and, as a result, the public blames the lawyer. See, e.g., Dix, Texas "Confession" Law and Oral Self-Incriminating Statements, 41 Baylor L. Rev. 1, 4 (1989). It is not uncommon for high profile cases to result in a barrage of death threats against the lawyer. Through public education, more people could be made to understand the nature of the proceedings

that are reported in the media and thus have less animosity toward lawyers. See Ethics on TV, A.B.A. J., Jan. 1989, at 32; Ramey, Is Rodney Dangerfield a Lawyer?, 47 Tex. Bar J. 1328 (1984); see also State Bar of Texas Ethical Considerations EC 9-1. The Florida Bar, for example, recently began a public relations campaign to emphasize the volunteerism that lawyers perform in their everyday practices. Harkness, Survey Finds Public Views Lawyers More Favorably, Fla. Bar J., Jan. 1989, at 9.

Disciplinary authorities should increase their enforcement efforts. The lawyers that shame the profession should be prosecuted vigorously. This includes the area of advertising. False, fraudulent, or misleading advertising is not constitutionally protected. Disciplinary authorities should conduct a routine review of printed and video advertising for violations. Further, bar associations should encourage lawyers who do choose to advertise to do so in a more dignified manner. For example, the ABA's Commission on Advertising has drafted voluntary aspirational goals to help lawyers make decisions concerning advertising. Lawyer Ads--The Next Step, A.B.A. J., Aug. 1, 1988, at 17, 18; see also Lawyers Debate Proposals to Increase Professionalism, 4 Law. Man. on Prof. Conduct (ABA/BNA) 209, 211 (July 6, 1988). Advertising should not demean the image of integrity for the legal profession. See Reynoldson, The Case Against Lawyer Advertising, A.B.A. J., Jan. 1989, at 60.

State disciplinary authorities are, in most instances, insufficiently funded and staffed. They are unable to do much more than deal with charges of theft, neglect, or the commission of a felony. Adequate funding should be made available to the disciplinary agencies, thereby enabling them to do a thorough and competent job in pursuing the full range of offenses that occur.

Many bar associations have adopted codes of professional courtesy. The state bar associations of Kentucky, Massachusetts, Mississippi, Montana, and Virginia, for example, have done so. (Their creeds are attached as Appendixes C-G, respectively.) Several local bar associations have done this as well. (The creeds of the Cleveland, Dallas, Houston, Hillsborough County [Tampa, Florida], Kansas City Metropolitan, Lafayette County [Oxford, Mississippi], Multnomah [Portland, Oregon], and Pulaski County [Little Rock, Arkansas] Bar Associations are attached as Appendixes H-O, respectively.) The ABA's Young Lawyers Division and Tort and Insurance Practice Section have also proposed creeds, both of which have been approved by the ABA's House of Delegates. (Their creeds are attached as Appendixes P-Q, respectively.) See Creeds of Professionalism, [Manual] Law. Man. on Prof. Conduct (ABA/BNA) 01:401 (Aug.

31, 1988); see also ABA Recommends Creeds for Bar Associations, A.B.A. J., Jan. 1989, at 58; George, A Plea for Civility, Trial, May 1988, at 65; Lawyers Debate Proposals to Increase Professionalism, 4 Law. Man. on Prof. Conduct (ABA/BNA) 209, 210-11 (July 6, 1988); Professional Courtesy, A.B.A. J., Oct. 1, 1988, at 140. See generally Gering, Law Firms Adopt Credos, A.B.A. J., Jan. 1989, at 56. These bar associations usually ask its members for voluntary compliance with the code and then use peer pressure as an enforcement mechanism. See Attack on Rambo: Bar Courtesy Codes Spread, Bar Leader, Nov.-Dec. 1988, at 11; Nagy, The Power of Professionalism, 50 Tex. Bar J. 1084 (1987). However, at least one judge has used an order to express his discontent for a lawyer's failure to follow an aspirational creed. See Appendix R.

The Dallas Bar Association recently adopted its Lawyer's Creed and Guidelines of Professional Courtesy. See Appendix I. These guidelines were adopted by the United States District Court for the Northern District of Texas as standards of litigation conduct for attorneys appearing in civil actions before the court. Dondi Properties Corp. v. Commerce Sav. & Loan Ass'n, 121 F.R.D. 284 (N.D. Tex. 1988)(en banc). The court adopted the standards in response to sharp practices between lawyers and abusive litigation tactics. Id. at 286; see Dallas Court Adopts Civil Litigation Standards, Bar Leader, Nov.-Dec. 1988, at 13. The Houston Bar Association has also adopted a mandate on professionalism. See Appendix J. The HBA mandate has been adopted unanimously by both the First and Fourteenth Courts of Appeals.

C. Judges

Judges should take a more active role in the conduct of litigation. Judges, and particularly trial judges, are in a unique position to produce a positive change in the ethics, professional courtesy, and demeanor demonstrated by lawyers. Judges should impose sanctions for abuses of the litigation process. See Thomas v. Capital Sec. Servs., Inc., 836 F.2d 866 (5th Cir. 1988)(en banc); Beck, Sanctions Under New Rule 13: A More Effective Tool to Prevent Overzealous Advocacy, 51 Tex. Bar J. 1120 (1988); see also Texas Supreme Court, Code of Judicial Conduct, Canon 3, pt. A(2) (1982). If the client is not at fault, the judge should impose sanctions on the lawyer directly. Further, judges should make a conscious effort to report egregious conduct of lawyers to disciplinary authorities. Cf. State Bar of Texas Ethical Considerations EC 1-4.

D. Law Schools

Most lawyers were first exposed to the legal profession in law schools. This places our law schools in a unique position of influence. Many law schools, however, had been so focused on their traditional task of teaching students to "think like a lawyer" that they often forgot to teach the ethical aspects of legal practice. See generally Karp, Some Thoughts on Professionalism, Brief, Spring 1989, at 31; MacCrate, What Shapes the Profession: Money, Morals, Social Obligation?, A.B.A. J., Mar. 1, 1988, at 10; Turow, Law School v. Reality, N.Y. Times Mag., Sept. 18, 1988, at 52, 71. Luckily, this is changing. Since 1974 all accredited schools have had to offer instruction in ethics. ABA, Approval of Law Schools--Standards and Rules of Procedure, Standard 302(a) (iv); see Rotunda, The Litigator's Responsibility, Trial, Mar. 1989, at 98; Turow, supra, at 72.

However, the law schools should put a greater stress on professionalism in their ethics courses and put less emphasis on teaching only the minimal ethical standards. The Multistate Professional Responsibility Examination also has the effect of emphasizing only the minimal ethical standards. See Morgan, The Fall and Rise of Professionalism, 19 U. Rich. L. Rev. 451, 458 (1985). Further, the schools should work the topic of professionalism into all courses, including substantive law courses and clinical courses such as trial advocacy. In doing so, the schools would be more likely to present the ethical issues to the student in the context in which they are likely to arise. See Kaye, Enhancing Competence and Professional Ethics, Trial, June 1988, at 41, 44. A recent survey showed that law school faculty members who teach ethics are in favor of increasing the number of credit hours for the course and having practitioners as faculty or guest lecturers. Professors of Legal Ethics are Surveyed, Offer Advice, 2 Law. Man. on Prof. Conduct (ABA/BNA) 222 (June 25, 1986).

Some law schools are now working to instill the spirit of public service in their students as well. In May 1989 the University of Pennsylvania Law School decided to require all students to perform seventy hours of unpaid professional service as a requirement for graduation. Penn Law School Move on Pro Bono Work Courts Public Service in Young Lawyers, Wall Street J., May 22, 1989, at B2, col. 3. The students are required to perform thirty-five hours of free public service work during both their second and third years without receiving any course credit. The only other program like this is at Tulane University Law School, where students are required to donate twenty hours of public service work before they can graduate. Id.

In South Carolina, the Young Lawyers Division of the State Bar has published a pamphlet on professionalism directed at law students. South Carolina Bar Young Lawyers Division, Introduction to Professionalism (1988). This pamphlet gives an excellent overview of professionalism and should serve as a guide for other states. By presenting the information to the students early on, they are much more likely to have an increased awareness of professionalism as they continue through school and into practice.

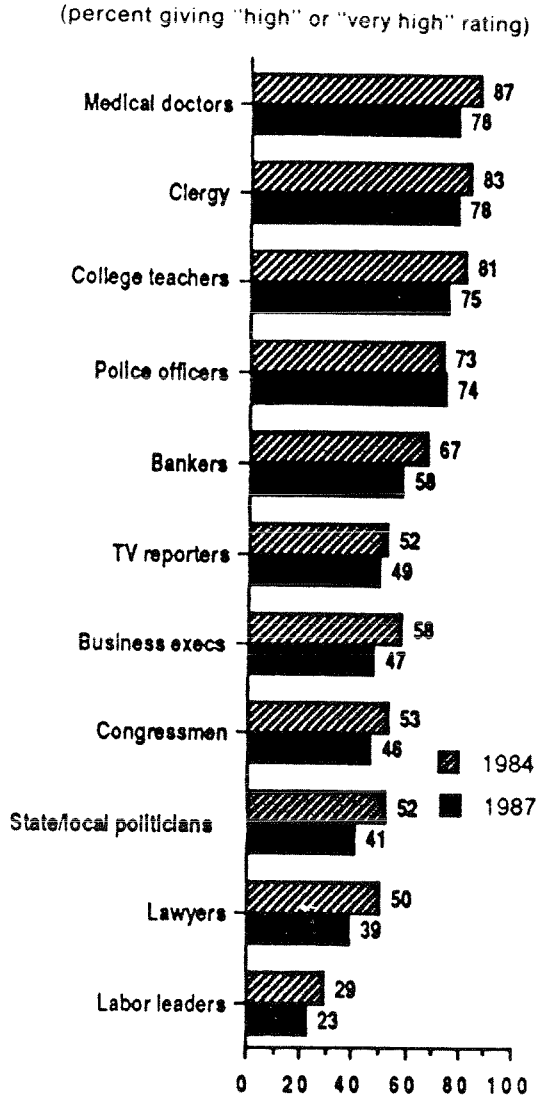
VI. CONCLUSION

All segments of the bar must work together to bring about a new professionalism. Practitioners must strive to abide by higher standards of conduct than the minimum required and avoid overzealous advocacy. With the aid of the law firms, lawyers should also work toward increasing the amount of public service work being performed. Bar associations need to increase the emphasis on professionalism in CLE courses and publications. They should also initiate programs to educate the public about how the profession functions within the legal process. The judiciary must work to take a more active role in the management of litigation. Law schools need to stress the importance of professionalism in all teachings.

Our profession is experiencing rapid changes in many areas, including economic pressure from the business aspects of the practice of law. Business decisions need not undermine professionalism; they can be made in a professional, ethical manner. While our profession must be conducted in a businesslike manner, business concerns should not predominate over professional considerations. Only with this attitude we will be able to bring about a new professionalism.

Ethics of many professions rated lower than in 1984

Q. How would you rate the honesty and ethical standards of people in these different fields — very high, high, low, very low?



Source: Texas Poll, March-April 1984; Texas Poll, November 1987

Ethics Ratings

Q. How would you rate the honesty and ethical standard of people in these different fields — very high, high, low, very low?

	Very high	High	Low	Very Low
Clergyman	19	60	10	2
Medical Doctors	14	65	12	2
Bankers	5	53	26	4
TV Reporters, Commentators	4	45	32	7
Lawyers	5	35	37	12
Business executives	4	43	34	4
Congressmen	4	42	34	8
College teachers	11	64	11	1
State, local political officeholders	3	38	39	7
Newspaper reporters	4	42	37	7
Labor union leaders	2	21	40	20
Policemen	9	65	14	4

RATE LAWYERS

RT1E	FREQUENCY	PERCENT	CUMULATIVE FREQUENCY	CUMULATIVE PERCENT
Very high	46	4.6	46	4.6
High	350	34.9	396	39.5
Low	367	36.6	763	76.1
Very low	124	12.4	887	88.5
DK/Refused/NA	115	11.5	1002	100.0

Source: Texas Poll, March-April 1984; Texas Poll, November 1987

A BIBLIOGRAPHY ON PROFESSIONALISM IN THE LAW

Conference of Chief Justices
Committee on Lawyer Competence and Professionalism

Honorable Edward F. Hennessey, Chair

Erick B. Low
Staff Assistant
National Center for State Courts

January 3, 1988

NOTE

The materials in the first part of this bibliography are arranged by author and title. Since some users of the bibliography will have more interest in the activities of state bars and other local organizations than in expressions of individual opinion, materials from the first part of the bibliography have been rearranged by state in the second part. Materials with a general focus have not been relisted in the second part of the bibliography.

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KENTUCKY BAR ASSOCIATION

CODE OF PROFESSIONAL COURTESY

1. A lawyer should avoid taking action adverse to the interests of a litigant known to be represented without notice to adversary counsel sufficient to permit response.

2. A lawyer should promptly respond to attempts by other lawyers to contact him or her, whether by telephone or by correspondence.

3. A lawyer should respect his or her opponent's schedule by seeking agreement on deposition dates and court appearances (other than routine motions) rather than merely serving notice.

4. A lawyer should avoid making ill-considered accusations of unethical conduct toward an opponent.

5. A lawyer should not engage in intentionally discourteous behavior.

6. A lawyer should never intentionally embarrass another attorney and should avoid personal criticism of other counsel.

7. A lawyer should not seek sanctions against or disqualification of another attorney unless necessary for the protection of a client and fully justified by the circumstances, and never for the mere purpose of obtaining a tactical advantage.

8. A lawyer should strive to maintain a courteous tone in correspondence, pleadings, and other written communications.

9. A lawyer should never intentionally mislead or deceive an adversary and should honor promises or commitments made.

10. A lawyer should recognize that the conflicts within a legal matter are professional and not personal and endeavor to maintain a friendly and professional relationship with other attorneys in the matter - "leave the argument in the Courtroom."

MASSACHUSETTS BAR ASSOCIATION

PREAMBLE

As long as we are a people for whom the individual rights to "life, liberty, and the pursuit of happiness" are "inalienable" -- that long will professional advocacy be prized and precious in our society. To advocate the cause of a client is actually to teach the law in a uniquely practical, effective, and individual manner. It requires an uncompromising integrity, a passionate desire for the truth, a practical respect for the law and the legal system, a broad and genuine understanding of the times in which we live, and, most of all, a love of life and humankind. In the United States, advocacy is a very special kind of teaching -- indeed, a very special kind of caring for others.

As attorneys, we are this nation's professional advocates, and guardians of individual human liberty and freedom under the law.

The principles set forth in this document express our commitment to our profession, to each other, and to the people whom we serve. These principles are offered as guidelines of ideal conduct to which the profession and its members should aspire, but are not intended to create standards to which any person shall be bound. The principles are not intended to, do not, and should not be relied upon to establish standards for purposes of any disciplinary proceeding or any civil or criminal case, nor shall they be admissible in any proceeding as evidence of standards to which Massachusetts lawyers or judges must or do adhere, or otherwise be cited or relied on as a restatement of prevailing standards of professional conduct.

LAWYER/COURT RELATIONS

I COURTESY

1. A lawyer should conduct himself or herself before the court in a manner which demonstrates sensitivity to the necessity of preserving decorum and the integrity of the judicial process.

2. A judge should conduct himself or herself in a manner which demonstrates respect for the lawyer's function as an advocate, and which encourages professionalism.

3. Lawyers and judges should refrain from denigrating the dignity embodied in their separate offices and should carry out their responsibilities with a recognition of their respective concerns.

4. Lawyers and judges should deal with one another respectfully because the attitude of the public toward the judicial process is influenced by the relationship among lawyers and judges.

II COMPETING DEMANDS

1. Lawyers and judges should be cognizant of the various demands made upon each of them and should make reasonable accommodations in consideration of these demands.

2. A lawyer should not accept professional commitments which he or she knows or should know he or she will be unable to honor.

3. A judge, in scheduling matters before the court, should consider the conflicting appearances or commitments of lawyers.

4. Lawyers and judges should keep each other informed with respect to potential changes which might cause a disruption of an established schedule.

5. Lawyers and judges, in estimating the time required to conduct a proceeding, should render a good faith estimate.

III COURT'S RESPECT FOR ADVOCACY

1. A judge should not identify a lawyer with his or her client or the client's cause, and should be sensitive to the demands that the client may make upon the lawyer.

2. A judge should regard a lawyer as an advocate and should be aware at all times that the obligations of that role may account for the lawyer's conduct.

3. A judge should pay heed to the circumstance of multiple representation and, if necessary, should be prepared to call upon a lawyer to provide assurance that his or her representation of multiple clients is consistent with the interests of each client and the ends of justice.

IV COURT AS ADJUDICATOR

1. A lawyer should conduct himself or herself in a manner which recognizes that the judge is obligated to resolve conflicting claims and must rely, in large measure, upon the lawyer for the representation of evidence to be used in resolving disputes; accordingly, a lawyer should strive to ensure that the judge is not burdened with a misapprehension of fact or law.

2. While a lawyer is obligated to advocate his or her client's cause in the most compelling manner possible, a lawyer should refrain from engaging in advocacy which is excessive to effective representation of the cause.

3. A lawyer should not use the discovery process to accomplish ends other than the reasonable discovery of information necessary to a just resolution of the dispute.

4. Consistent with his or her responsibility as an advocate, a lawyer should be guided by the principle that representations on behalf of a client or a cause ought to be characterized by good faith and honesty.

5. A lawyer should be guided by the proposition that the interests of justice are best served by the prompt disposition of disputes.

V ROLE OF COURT AND LAWYER IN ADDRESSING IMPROPRIETIES

1. A judge should take appropriate action against a lawyer for unprofessional conduct of which the judge may become aware. Where the judge is persuaded that the lawyer has committed a violation of disciplinary rules, the judge should report the matter to the Board of Bar Overseers. Where the unprofessional conduct does not rise to that level, the judge should impose such sanctions against the lawyer as are necessary to preserve the integrity of the court. A lawyer's failure to observe these principles shall not of itself constitute unprofessional conduct.

2. A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct in such a manner as to raise a substantial question as to the judge's fitness for office should inform the appropriate authority.

3. A judge, in imposing sanctions, contempt determinations or in initiating disciplinary action against a lawyer, should ensure that such imposition is accomplished in a manner calculated not to prejudice the rights of the parties in the litigation.

VI CONFLICTS OF INTEREST

1. A judge, upon determining that he or she knows personally a party or parties in a matter pending before him or her, should immediately inform all counsel, should permit counsel to be heard on the question of the propriety of the judge's presiding in the matter, and should conduct himself or herself in a manner calculated to preserve both the reality and the appearance of fairness and impartiality.

2. Judges and lawyers should conduct themselves in a manner which promotes both the reality and appearance of impartiality in all proceedings wherein the principals, in other contexts, may have or may have had a professional or social relationship.

3. A lawyer should be sensitive to the potential for divergent interests which inheres in any instance of multiple representation and should be guided by the principle that each client is entitled to the undivided loyalty of his or her lawyer.

4. Judges and lawyers should recognize that the integrity of the judicial process may be as severely compromised by the appearance of a conflict of interest as it may by an actual conflict and should conduct themselves so as to avoid even the appearance of a conflict of interest.

VII JUDICIAL INTERVENTION

1. A judge should recognize the significance of the relationship between a lawyer and a client and should not invade that relationship except in those instances where the failure to intervene would cause substantial injustice.

2. A judge should direct all comments or observations concerning litigation strategies, courses of action, settlement and the like to counsel for the parties and should refrain from addressing the clients with respect to those considerations unless the judge finds that justice requires such direct communication with the clients.

VIII LAWYERS AS OFFICERS OF THE COURT

1. Lawyers should decline to endorse a document or present a contention which contains a known misrepresentation of law or fact, which offers a frivolous or patently meritless suggestion or which is designed principally to delay the proceedings.

2. A lawyer should regard all orders properly issued by or on behalf of a court in the ordinary course of the court's business as possessing injunctive effect and should comply with such orders to the same extent as if they were issued formally as injunctions.

3. A lawyer having knowledge that another lawyer has committed a violation of the disciplinary rules which raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, should inform the appropriate professional authority.

IX LAWYER/LAWYER RELATIONS

In his or her representation of a client, a lawyer should conduct himself or herself in a manner which, without compromising the interests of his or her client, will facilitate the resolution of disputed matters. Accordingly, a lawyer should:

(a) maintain open communication with opposing counsel;
(b) communicate respectfully with other attorneys;
(c) respect the schedule of opposing counsel and be truthful about his or her own schedule;
(d) present issues efficiently without unnecessarily burdening opposing counsel by discovery or otherwise;
(e) discuss each issue with opposing counsel in a good faith attempt to resolve it without protracted negotiation or unnecessary litigation;
(f) disclose those aspects of his or her client's case which will promote dispute resolution;
(g) be guided by the principle that representations on behalf of his or her client ought to be characterized by good faith and honesty;
(h) avoid creating unnecessary animosity;
(i) where possible, utilize the least contentious method for dispute resolution and use the courts only as a last resort;
(j) avoid making groundless allegations, or causing groundless allegations to be made, against another attorney;
(k) avoid setting forth, or causing to be set forth, allegations against another attorney for the sole purpose of gaining an improper advantage in any proceeding.

X LAWYER/PUBLIC RELATIONS

A. GENERAL

1. Lawyers should be mindful that the Disciplinary Rules (S.J.C. Rules 3:07 and 3:08) mandate only minimum acceptable standards of conduct and that lawyers should endeavor to conform to the highest principles of professional conduct.

2. Lawyers should participate on a regular basis in programs designed to educate the public about the law and the legal system.

3. Lawyers should be sensitive to the legal profession's tradition of restraint in the area of self-promotion and should engage only in tasteful and honest promotion of legal services.

B. PRO BONO ACTIVITIES

1. Lawyers should engage on a regular basis in charitable and community service activities.

2. Lawyers should provide pro bono legal services on a regular basis to those not otherwise able to procure legal assistance.

C. FEES

1. Lawyers should explore methods that tend to simplify or reduce the cost of rendering legal services without diminishing the quality of representation.

2. Lawyers should reduce to writing all fee arrangements with their clients, and should provide clients with a copy of such writing.

3. Lawyers should advise their clients at the commencement of the representation that any disputes with respect to legal fees shall be submitted to the Fee Arbitration Board of the Massachusetts Bar Association or a similar body.

D. COMMUNICATION WITH CLIENTS

1. A lawyer should keep a client regularly informed about the status of a matter and should respond to all reasonable requests for information.

2. A lawyer should explain a matter to a client to the full extent necessary to permit the client to make informed decisions.

E. CLIENTS' TRUST ACCOUNTS

1. Lawyers should file an annual statement with the Board of Bar Overseers certifying that they maintain an identifiable Clients' Trust Account.

2. Lawyers should comply with reasonable requests from the Board of Bar Overseers to have an independent audit of their Clients' Trust Accounts conducted.

3. Lawyers should participate in the Interest on Lawyers Trust Accounts (IOLTA) program approved by the Supreme

Judicial Court for the benefit of the public and the improvement of the administration of justice.

F. PUBLIC PROTECTION

1. Lawyers should maintain professional liability insurance in amounts commensurate with the nature of their practice.

2. Lawyers who undertake fiduciary obligations in connection with their practice of law should obtain sufficient bonding to guarantee the satisfaction of those obligations.

XI A LAWYER'S RELATION TO THE LAW ITSELF AND TO THE EFFECTIVE PROVISION OF LEGAL ASSISTANCE

1. A lawyer should maintain proficiency in the specific areas of the lawyer's practice, and also in other areas which promote fuller understanding of those specific areas. Proficiency includes not only the correct application of rules of law but also the understanding of the conceptual bases of such rules; a realistic grasp of facts and of means of investigation, discovery and proof of facts; and a system of efficiently addressing client needs and relating the legal system as a whole to those needs, within the scope of lawyer-client engagements. The steps to attain and maintain proficiency may be undertaken:

(a) in response to specific client needs,
(b) as a matter of anticipating the needs of a client or with a group or class of clients,
(c) as a matter of general skill development, not necessarily related to a specific client or group or class of clients,
(d) in connection with improving the law itself through advocacy, teaching and writing, and/or
(e) through organizational procedures for quality control and professional development.

2. Lawyers should be receptive and responsive to colleagues' inquiries and requests for assistance.

3. Lawyers should strive for excellence in their own legal services organizations (firms, legal departments, and space sharing affiliations). Lawyers should continually review client service procedures of their organizations to ensure that such procedures are effective and consistent with the law.

4. Lawyers also should participate actively in continuing legal education activities as students, supporters, organizers and teachers in their own informal ways and in bar sponsored programs to help other lawyers and law practice-related persons achieve proficiency.

5. Lawyers should participate at least annually in continuing legal education courses related to their areas of practice.

XII THE SCOPE OF RESPONSIBILITY FOR PROFESSIONALISM

1. Professionalism, as defined in these principles and in accordance with other relevant standards, is the responsibility of the individual lawyer, of his or her partners, associates and lawyer-affiliates outside the organization and of non-lawyer staff personnel subject to the lawyer's supervision and/or guidance. Professionalism is also the responsibility of judges and other adjudicative officers in courts and administrative agencies, of their law clerks, docket clerks and other aides and of other public-assisting personnel of the court or agency.

2. A lawyer's participation in community activities and in personal business and property transactions (apart from law practice) should also be guided by these principles.

XIII THE RELATION OF THESE PRINCIPLES TO OTHER ETHICAL STANDARDS

1. The principles presented here are a statement of ideals of professionalism. Lawyers should endeavor to observe these principles even though the failure to do so will not result in professional discipline or liability.

2. These principles have been adopted after review and comment by lawyers, law students and members of the public. In conducting its review, the Commission considered the pressures on lawyers in a wide variety of circumstances, including:

(a) the lawyers' need to remain sensitive to these principles in the face of insensitivity by some opposing counsel, some clients, and some judges;
(b) the legitimate aspirations of lawyers for economic comfort for themselves, their staffs and their families in the face of rising costs and uncertain income prospects;
(c) the evolution of new means of delivery of legal service (including new means of legal research, of fact investigation and presentation, of client interaction and of compensation) clouding the future utility of old means;
(d) attacks on the legal profession; and
(e) exceptional situations where different ethical standards may dictate opposing courses of action and the lawyer must elect one over the other.

3. Adoption and implementation of the attitude of professionalism inherent in these principles provides the basis for each lawyer, and the profession as a whole, to

take the initiative to advance the public interests served by the profession and to place the profession's needs in the context of public interest.

4. Particulars of these principles will always be fair subjects for debate and for revision from time to time as experience and a new consensus may require.

5. Over time, minimum standards enforceable by disciplinary action may grow to encompass more and more of the present aspirational principles, but never all of them and certainly not those which necessarily involve good faith debate as to application in particular circumstance and the benefit of a doubt that professionals deserve. However, the purpose of these principles is not to increase the frequency of lawyer discipline but to decrease the need for it while achieving professionalism in a positive way -- primarily, by encouraging individuals to voluntarily subscribe to these principles. While such adherence may earn the approbation of colleagues and of the public, above all it will engender self-respect in the lawyer who meets the commitments expressed in these principles.

Commitment of the Practicing Bar: A Lawyer's Code of Professionalism

Lawyers are entrusted with the responsibility of carrying out the American system of justice. To meet that responsibility and to insure that the system functions fairly and efficiently, lawyers must not only abide by the Code of Professional Responsibility and the *Rules of Professional Conduct* but must also adhere to the following professional standards which apply to dealings with clients, other parties and their counsel, the courts and the public at large.

A. With respect to my client:
   1. I will be loyal to my client, but I will not permit my loyalty to affect my ability to provide my client with realistic and independent advice.
   2. I will try to achieve a desirable result as expeditiously and inexpensively as possible. Where feasible, I will reduce my fee arrangement to writing in order to avoid any misunderstanding.
   3. I will counsel my client with respect to mediation, arbitration and other alternative methods of resolving disputes in appropriate matters.
   4. I will advise my client against pursuing litigation (or any other course of action) that is without merit and against insisting on tactics which are intended to delay resolution of the matter or to harass or drain the financial resources of the opposing party.
   5. I will advise my client that civility, courtesy and a willingness to initiate settlement discussions are not to be equated with weakness.

B. With respect to other parties and their counsel:
   1. I will endeavor to be courteous and civil.
   2. I will not make factual or legal assertions that, to the best of my knowledge, are not truthful or accurate.
   3. In litigation proceedings I will agree to reasonable extensions of time so long as the extensions will not have an adverse effect on the rights of my client.
   4. I will endeavor to consult with opposing counsel before scheduling depositions or rescheduling hearings, and I will cooperate with opposing counsel when scheduling changes are requested.
   5. I will refrain from utilizing litigation, or any of its components, or any other course of conduct, to harass the opposing party.
   6. I will refrain from engaging in excessive and abusive discovery, and I will comply with all reasonable discovery requests.
   7. I will refrain from utilizing delaying tactics.
   8. In depositions, in other proceedings, and in negotiations, I will conduct myself with dignity, avoid making groundless objections and refrain from engaging in acts of rudeness or disrespect.
   9. I will not serve motions or pleadings on the other party or his counsel, at such a time or in such a manner as will unfairly limit the other party's opportunity to respond.
   10. I will clearly identify, for other counsel or parties, all changes that I have made in documents submitted to me for review.

C. With respect to the Courts and other tribunals:
   1. I will be a vigorous and zealous advocate while paying heed to concepts of common courtesy and recognizing that excessive zeal can be detrimental to my client's interest and to the proper functioning of our system of justice.
   2. I will communicate with opposing counsel in an effort to avoid litigation or to resolve litigation that has actually commenced.
   3. I will voluntarily withdraw claims or defenses when it becomes apparent that they do not have merit or are superfluous.
   4. I will refrain from filing frivolous motions.
   5. I will make every effort to agree with other counsel as early as possible on a voluntary exchange of information and on a plan for discovery.
   6. I will attempt to resolve, by agreement, my objections to matters contained in my opponent's pleadings and discovery requests.
   7. When hearings or depositions have to be cancelled, I will notify opposing counsel and, if appropriate, the Court or other tribunal, as early as possible.
   8. Before dates for hearing or trial are set—or, if that is not feasible, immediately after those dates have been set—I will attempt to verify the availability of key participants and witnesses so that I can promptly notify the Court (or other tribunal) and opposing counsel of any likely problem.
   9. I will stipulate to matters where no genuine objection exists.
   10. I will be punctual in attending court hearings and depositions.
   11. I will at all times be candid with the Court.

D. With respect to the public and to our system of justice.
   1. I will remember that self-interest and commitment to my client are counterbalanced by a devotion to the public good.
   2. I will endeavor to keep myself current in the areas in which I practice and, when necessary, will associate with, or refer my client to, counsel knowledgeable in another field of practice.
   3. I will as a member of a firm or as a sole practitioner help newly admitted attorneys to face the practical and ethical issues which inevitably arise in practice and will make myself available to younger or less experienced attorneys on a confidential basis when they feel the need of assistance.
   4. I will remember that, as a member of a self-regulating profession, it is incumbent on me to report violations by fellow lawyers of any disciplinary rule.
   5. I will be mindful of the need to protect the image of the legal profession in the eyes of the public and will be so guided when considering methods of advertising, entering into fee agreements, and in determining allocation of my time so that I may also serve the public without regard to remuneration.

GUIDELINES FOR RELATIONS BETWEEN AND AMONG LAWYERS

When lawyers get along with each other the clients are better served and the public interest is better served. Lawyers do not need to be "tough" to be effective. When inter-lawyer relationships are characterized by honesty, candor, fairness and courtesy, rather than disagreeable contentiousness, the practice of law can be pleasurable and personally rewarding. In recent years we have seen a deterioration in the quality of personal relationships between lawyers. In the interest of reversing this trend and in promoting amicable inter-lawyer relationships, the following guidelines are presented:

1. **Never lie to or mislead another lawyer.**

2. **Practice law so that you need few favors from opposing counsel, but also practice law so that when you need a favor, opposing counsel will not refuse you.**

3. **Promptly return all telephone calls of other lawyers.**

4. **Avoid making disparaging personal remarks about other lawyers.**

5. **Always be willing to give advice to other lawyers upon request.**

6. **Avoid brash and militant stances.** Militancy raises adrenalin levels and reduces the likelihood of compromise or accommodation. Avoid unnecessary abrasiveness in both oral and written communications.

7. **Cooperate with opposing counsel in all respects not clearly inconsistent with the clients' interests,** specifically including scheduling and discovery matters.

8. **Scrupulously observe all mutual understandings and strictly adhere to all express promises and agreements with other lawyers.** Adhere in good faith to all agreements implied by circumstances or custom.

9. **Never force an opposing lawyer to do something the hard way,** when it is evident that it can and will be accomplished by strict adherence to the prescribed rules.

10. **Don't make a practice of practicing by default,** or of taking advantage of opposing counsel on technicalities. All too often the comment, "I have to protect my clients's rights," or "my client has instructed me to do this," is used to justify actions which provoke but gain no advantage, and make the practice of law unpleasant. Consider the following:

> "The lawyer, and not the client, has the sole discretion to determine the accommodations to be granted opposing counsel in all matters not directly affecting the merits of the cause or prejudicing the client's rights, such as extensions of time, continuances, adjournments and admission of facts. In such matters no client has a right to demand that his counsel be illiberal or that he do anything therein repugnant to his own sense of honor and propriety." From: Code of Trial Conduct, American College of Trial Lawyers.

[Approved by the Board of Trustees of the State Bar of Montana on June 26, 1986.]

GUIDELINES FOR
RELATIONS BETWEEN LAWYERS AND CLIENTS

1. **AGREEMENT:** Begin every client relationship with a written agreement that states clearly the basis on which fees will be charged. Fees should be reasonable and provide an incentive for prompt resolution of disputes.

2. **COMMUNICATION:** Communicate with clients. Inform them of developments as they occur. Correspond with them regularly and answer telephone calls promptly. If there are long periods of delay, explain the reason to your client.

3. **COMPETENCE:** Your client has a **right** to competent representation and you have an ethical duty to demonstrate competence. Keep abreast of developments in the law. Do not undertake representation in matters beyond your experience or ability.

4. **CONCILIATION:** Make every effort to resolve all disputes in an amicable and conciliatory manner. Remember that at the heart of the concept of law is the idea that people should live in harmony with one another.

5. **CONFIDENTIALITY:** Keep your client's confidences and secrets.

6. **CONFLICTS:** Do not represent clients with conflicting interests and disclose in writing any adverse interest.

7. **DECISION-MAKING:** Remember, your client has a right to make the ultimate decision affecting his or her case and a right to veto any advice proferred. Correspondingly, it is your obligation to inform your client of serious problems or risks that may develop.

8. **DILIGENCE:** Do not procrastinate. Be diligent in doing the legal work your client is paying you to do.

9. **OUTREACH:** Reach out to those who need but cannot afford legal services and try to accept at least one "no fee" public service case per year.

10. **RESPECT FOR RIGHTS:** Fight zealously for the rights of clients, but temper that zeal with a respect for the rights of all others involved in the case as well. Avoid personal attacks on opposing counsel.

[Approved by the Board of Trustees of the State Bar of Montana on June 26, 1986.]

Principles of Professional Courtesy

Preamble

Civility and manners, no less than a deep-rooted, broad respect for the law, are the hallmark of an enlightened and effective system of justice. Courtesy, then, emanating from all quarters, extending in all directions, becomes an indispensable ingredient in the orderly administration of the courts. Thoughtful, courteous conduct, manners and attitudes, constantly practiced by the bench and bar in a symbiotic relationship will improve both the reality, and the public perception, of the legal system.

Even though these truths, like others, may be self-evident, they are all too frequently ignored or observed in the breach. While it may be axiomatic that lawyers owe a duty of courtesy, respect and candor to the courts, opposing counsel, witnesses, clients, members of court support groups and the public, reports from a wide range of sources suggest an increasing display of arrogance, rudeness, insensitivity and discourtesy within the system. These traits, reprehensible in themselves, also actually impede the administration of justice and increase the expense of litigation.

Thus, with the firm conviction arrived at by experience and consultation with members of the judiciary and the bar, the Board of Governors of the Litigation Section offers these Principles of Professional Courtesy with the hope their precepts will be a continuing reminder to the bar that the successful, indeed the enjoyable, practice of law requires something more than professional competence and that new and seasoned lawyers alike will practice patience, courtesy and civility at all levels and stages of their calling.

ARTICLE I
Courtesy Toward the Court

(a) A lawyer should speak or write courteously and respectfully in all communications with the court.

(b) A lawyer who has a personal or social relationship with a judge should never intimate that such will have any bearing or influence on matters then pending, or likely to be brought before the court.

(c) A lawyer appearing in court should present a neat and tasteful appearance to the end that neither disrespect nor discourtesy will be an implied affront to the dignity of the court.

(d) A lawyer should, on all occasions, and for all appearances, practice punctuality both for the benefit of the court, counsel and client. Where delay, no matter how slight, is inevitable, prompt communication with the court should be made by the most expedient means.

(e) A lawyer who must endure delay not of his own making should do so with patience and dignity, being ever mindful of the court's docket and unanticipated problems. The lawyer should not publicly berate or criticize the court or other counsel.

(f) A lawyer should never suggest that a client contact the court and, conversely should, if the likelihood of such contact is suspected, forcefully discourage it.

(g) A lawyer should be acquainted with and observe all local rules of court using especial diligence when in a different jurisdiction.

(h) A lawyer should at all times, but especially upon a bench ruling against him, avoid visual or verbal displays of temper or impudence toward the court.

(i) A lawyer should not continue to argue or persist in being heard in open court after the court has made its ruling on the point in contention.

(j) A lawyer should not advance objections merely for appearance, keeping in mind that unwarranted objections obscure the issues for both court and jury.

(k) A lawyer should promptly notify the court and all parties affected, including witnesses, of any delays, cancellations or continuances of proceedings.

(l) A lawyer should always comply with schedules or deadlines set by the court for presentation of authorities, briefs, pretrial motions and pleadings. If a delay is anticipated or becomes probable, prompt notice should be communicated to the court and counsel.

(m) A lawyer should stand when addressing the court.

(n) A lawyer should not, except in cases of extreme emergency, send a notice of, or schedule an appearance, without first obtaining clearance and concurrence of the court and opposing counsel as to time and date.

(o) A lawyer should, when circumstances known to the lawyer, but not the court, might create a conflicting or embarrassing situation for the court, give timely advice thereof to the court and other counsel.

(p) When sending a surrogate to court or docket sessions, a lawyer should be responsible for assuring that the surrogate is well informed on dates or issues relevant to the matter at hand.

(q) A lawyer should attempt to avoid bullying, intimidating or sarcastic questioning of witnesses except as reasonably proper under circumstances reasonably related to trial tactics.

ARTICLE II
Courtesy Toward Other Counsel

(a) A lawyer should practice with the continuing awareness that the issues are those of the clients and interact with opposing counsel in a civil and courteous manner.

(b) A lawyer should, except in circumstances obviously unnecessary, identify himself promptly when telephoning another attorney.

(c) A lawyer should return telephone calls and respond to written communications in a timely matter.

(d) A lawyer should not, except in cases of special urgency, give notice of, or schedule, appearances without first attempting to determine compatible dates with opposing counsel.

(e) A lawyer should, whenever possible, attempt and cooperate in any reasonable effort to limit discovery by forbearance in number and detail of interrogatories propounded. A lawyer should seek voluntary and informal production of exhibits and documents and cooperate in the release thereof when the client's interest will not be prejudiced thereby. A lawyer should make fair disclosures to discovery without needless qualifications.

(f) A lawyer should make every effort to carry on litigation strictly within the letter and spirit of *in limine* rulings, limitations or constraints on objections, argument and trial procedure as pronounced by the court or stipulated by parties.

(g) A lawyer should memorialize oral understandings and compromises made with other counsel as promptly as possible to preclude subsequent misunderstandings, delay and expense.

(h) A lawyer should, whenever possible, notify opposing counsel of change of plans relating to juries.

(i) A lawyer should address objections and comments to the court during trial rather than directly to other counsel.

(j) A lawyer should refrain from talking to the client or co-counsel during the opening, closing or summation of opposing counsel. Similarly, a lawyer should avoid any conduct which would distract the court or jury during such presentations.

(k) A lawyer should refrain from curt or personally critical remarks concerning opposing counsel or his client whether in the courtroom, by telephone or in written communication.

(l) A lawyer should always attempt to resolve any question or dispute with opposing counsel prior to filing any notice or scheduling any hearing, being aware of the potential for saving time and money for all parties.

(m) A lawyer in oral communication with other counsel should be forever conscious of tone and manners as effective tools of problem resolution.

(n) A lawyer in a courtroom should:

(i) not interrupt opposing counsel;

(ii) always present an exhibit to opposing counsel before presenting it to the witness;

(iii) not stand between the witness and opposing counsel during examination;

(iv) provide opposing counsel with a copy of any opinion or document given to the court;

(v) avoid turning his back to the person being addressed;

(vi) advise the client who may be perceived as rude or offensive to attempt appropriate courtroom demeanor;

(vii) have trial files and papers organized to avoid undue shuffling during trial and respectfully request the indulgence of the court if difficulty is experienced;

(viii) refrain from raising the voice in an intimidating or offensive manner;

(ix) always be polite, but not condescending or ingratiating to the jury; and

(x) make it a practice to shake hands with opposing counsel at the conclusion of a trial.

(o) A lawyer should, within the framework of vigorous representation, advocacy and duty to the client, be firm, yet tolerant and nonabusive of ineptness or the inexperience of opposing counsel.

(p) A lawyer should not, except in case of strict necessity, request last-minute continuances or amendment to pleadings.

ARTICLE III
Courtesy Toward Court Clerk and Staff

(a) A lawyer should act and speak cordially and civilly to the bailiff, clerk, deputy clerks and secretaries, with an awareness that they too are an integral part of the judicial system.

(b) A lawyer should not remove papers or exhibits from the clerk's table but rather request the clerk to provide the same.

(c) A lawyer should, whenever possible, be mindful of the hours and constraints of time when filing papers, recording documents, and initiating probate proceedings, and attempt to schedule them in advance if extended time is anticipated.

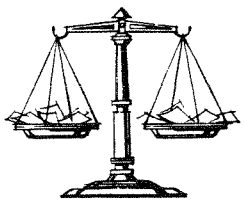
(d) A lawyer should not publicly attempt to alter the appearance of neutrality or otherwise curry favor with court personnel when such conduct might tend to embarrass or intimidate them or opposing counsel.

ARTICLE IV
Courtesy Toward the Press

(a) A lawyer should be responsive and courteous to questions from the press regarding litigation, yet refrain from impugning the integrity of the system or any particular proceedings. A lawyer should not publicly criticize a judge, opposing counsel or clients, nor engage in invective discussions of judicial matters in the public press.

Conclusion

The Board of Governors of the Litigation Section believes that the foregoing principles are, as stated in their Preamble, a guide which will, when voluntarily observed, facilitate the practice of law by promoting an atmosphere free of acerbity and in which the ends of justice may be reached more quickly and with less expense to both the Commonwealth and the client.



A Lawyer's Creed of Professionalism

of the

Preamble

As a lawyer I must strive to make our system of justice work fairly and efficiently. In order to carry out that responsibility, not only will I comply with the letter and spirit of the disciplinary standards applicable to all lawyers, but I will also conduct myself in accordance with the following Creed of Professionalism when dealing with my client, opposing parties, their counsel, the courts and the general public.

A. With respect to my client:

1. I will be loyal and committed to my client's cause, but I will not permit that loyalty and commitment to interfere with my ability to provide my client with objective and independent advice;
2. I will endeavor to achieve my client's lawful objectives in business transactions and in litigation as expeditiously and economically as possible;
3. In appropriate cases, I will counsel my client with respect to mediation, arbitration and other alternative methods of resolving disputes;
4. I will advise my client against pursuing litigation (or any other course of action) that is without merit and against insisting on tactics which are intended to delay resolution of the matter or to harass or drain the financial resources of the opposing party;
5. I will advise my client that civility and courtesy are not to be equated with weakness;
6. While I must abide by my client's decision concerning the objectives of the representation, I nevertheless will counsel my client that a willingness to initiate or engage in settlement discussions is consistent with zealous and effective representation.

B. With respect to opposing parties and their counsel:

1. I will endeavor to be courteous and civil, both in oral and in written communications;
2. I will not knowingly make statements of fact or of law that are untrue;
3. In litigation proceedings I will agree to reasonable requests for extensions of time or for waiver of procedural formalities when the legitimate interests of my client will not be adversely affected;
4. I will endeavor to consult with opposing counsel before scheduling depositions and meetings and before re-scheduling hearings, and I will cooperate with opposing counsel when scheduling changes are requested;
5. I will refrain from utilizing litigation or any other course of conduct to harass the opposing party;
6. I will refrain from engaging in excessive and abusive discovery, and I will comply with all reasonable discovery requests;
7. I will refrain from utilizing delaying tactics;
8. In depositions and other proceedings, and in negotiations, I will conduct myself with dignity, avoid making groundless objections and refrain from engaging in acts of rudeness or disrespect;
9. I will not serve motions and pleadings on the other party, or his counsel, at such a time or in such a manner as will unfairly limit the other party's opportunity to respond;
10. In business transactions I will not quarrel over matters of form or style, but will concentrate on matters of substance and content;
11. I will clearly identify, for other counsel or parties, all changes that I have made in documents submitted to me for review.

C. With respect to the courts and other tribunals:

1. I will be a vigorous and zealous advocate on behalf of my client, while recognizing, as an officer of the court, that excessive zeal may be detrimental to my client's interests as well as to the proper functioning of our system of justice;
2. Where consistent with my client's interests, I will communicate with opposing counsel in an effort to avoid litigation and to resolve litigation that has actually commenced;
3. I will voluntarily withdraw claims or defenses when it becomes apparent that they do not have merit or are superfluous;
4. I will refrain from filing frivolous motions;
5. I will make every effort to agree with other counsel, as early as possible, on a voluntary exchange of information and on a plan for discovery;
6. I will attempt to resolve, by agreement, my objections to matters contained in my opponent's pleadings and discovery requests;
7. When scheduled hearings or depositions have to be canceled, I will notify opposing counsel, and, if appropriate, the court (or other tribunal) as early as possible;
8. Before dates for hearings or trials are set – or, if that is not feasible, immediately after such dates have been set – I will attempt to verify the availability of key participants and witnesses so that I can promptly notify the court (or other tribunal) and opposing counsel of any likely problem in that regard;
9. In civil matters, I will stipulate to facts as to which there is no genuine dispute;
10. I will endeavor to be punctual in attending court hearings, conferences and depositions;
11. I will at all times be candid with the court.

D. With respect to the public and to our system of justice:

1. I will remember that, in addition to commitment to my client's cause, my responsibilities as a lawyer include a devotion to the public good;
2. I will endeavor to keep myself current in the areas in which I practice and, when necessary, will associate with, or refer my client to, counsel knowledgeable in another field of practice;
3. I will be mindful of the fact that, as a member of a self-regulating profession, it is incumbent on me to report violations by fellow lawyers of any disciplinary rule;
4. I will be mindful of the need to protect the image of the legal profession in the eyes of the public and will be so guided when considering methods and contents of advertising;
5. I will be mindful that the law is a learned profession and that among its desirable goals are devotion to public service, improvement of administration of justice, and the contribution of uncompensated time and civic influence on behalf of those persons who cannot afford adequate legal assistance.

LAWYER'S CREED

1. I revere the Law, the System, and the Profession, and I pledge that in my private and professional life, and in my dealings with fellow members of the Bar, I will uphold the dignity and respect of each in my behavior toward others.

2. In all dealings with fellow members of the Bar, I will be guided by a fundamental sense of integrity and fair play; I know that effective advocacy does not mean hitting below the belt.

3. I will not abuse the System or the Profession by pursuing or opposing discovery through arbitrariness or for the purpose of harassment or undue delay.

4. I will not seek accommodation from a fellow member of the Bar for the rescheduling of any Court setting or discovery unless a legitimate need exists. I will not misrepresent conflicts, nor will I ask for accommodation for the purpose of tactical advantage or undue delay.

5. In my dealings with the Court and with fellow counsel, as well as others, my word is my bond.

6. I will readily stipulate to undisputed facts in order to avoid needless costs or inconvenience for any party.

7. I recognize that my conduct is not governed solely by the Code of Professional Responsibility, but also by standards of fundamental decency and courtesy.

8. I will strive to be punctual in communications with others and in honoring scheduled appearances, and I recognize that neglect and tardiness are demeaning to me and to the Profession.

9. If a fellow member of the Bar makes a just request for cooperation, or seeks scheduling accommodation, I will not arbitrarily or unreasonably withhold consent.

10. I recognize that effective advocacy does not require antagonistic or obnoxious behavior, and as a member of the Bar, I pledge to adhere to the higher standard of conduct which we, our clients, and the public may rightfully expect.

DALLAS BAR ASSOCIATION
GUIDELINES OF PROFESSIONAL COURTESY

PREAMBLE

A lawyer's primary duty is to the client. But in striving to fulfill that duty, a lawyer must be ever conscious of the broader duty to the judicial system that serves both attorney and client.

A lawyer owes, to the judiciary, candor, diligence and utmost respect.

A lawyer owes, to opposing counsel, a duty of courtesy and cooperation, the observance of which is necessary for the efficient administration of our system of justice and the respect of the public it serves.

A lawyer unquestionably owes, to the administration of justice, the fundamental duties of personal dignity and professional integrity.

In furtherance of these fundamental concepts, the following Guidelines of Professional Courtesy are hereby adopted.

COURTESY, CIVILITY AND PROFESSIONALISM

1. **General Statement**

   (a) Lawyers should treat each other, the opposing party, the court and the members of the court staff with courtesy and civility and conduct themselves in a professional manner at all times.

   (b) The client has no right to demand that counsel abuse the opposite party or indulge in offensive conduct. A lawyer shall always treat adverse witnesses and suitors with fairness and due consideration.

   (c) In adversary proceedings, clients are litigants and though ill feeling may exist between clients, such ill feeling should not influence a lawyer's conduct, attitude, or demeanor towards opposing lawyers.

2. **Discussion**

   (a) A lawyer should not engage in discourtesies or offensive conduct with opposing counsel, whether at hearings, depositions or at any other time when involved in the representation of clients. In all contacts with the court and court personnel, counsel should treat the court and its staff with courtesy and respect and without regard to whether counsel agrees or disagrees with rulings of the court in any specific case. Further, counsel should not denigrate the court or opposing counsel in private conversations with their own client. We should all remember that the disrespect we bring upon our fellow members of the Bar and the judiciary reflects on us and our profession as well.

   (b) Lawyers should be punctual in fulfilling all professional commitments and in communicating with the court and fellow lawyers.

DEPOSITIONS, HEARINGS, AND DISCOVERY MATTERS

1. **General Statement**

   (a) Lawyers should make reasonable efforts to conduct all discovery by agreement.

   (b) A lawyer should not use any form of discovery, or the scheduling of discovery, as a means of harassing opposing counsel or his client.

   (c) Requests for production should not be excessive or designed solely to place a burden on the opposing party, for such conduct in discovery only increases the cost, duration, and unpleasantness of any case.

2. **Scheduling** Lawyers should, when practical, consult with opposing counsel before scheduling hearings and depositions in a good faith attempt to avoid scheduling conflicts.

3. **Discussion**

   (a) **General Guidelines**

      (1) When scheduling hearings and depositions, lawyers should communicate with the opposing counsel in an attempt to schedule them at a mutually agreeable time. This practice will avoid unnecessary delays, expense to clients, and stress to lawyers and their secretaries in the management of the calendars and practice.

      (2) If a request is made to clear time for a hearing or deposition, the lawyer to whom the request is made should confirm that the time is available or advise of a conflict within a reasonable time (preferably the same business day, but in any event before the end of the following business day).

      (3) Conflicts should be indicated only when they actually exist and the requested time is not available. The courtesy requested by this guideline should not be used for the purpose of obtaining delay or any unfair advantage.

(b) **Exceptions to General Guidelines**

(1) A lawyer who has attempted to comply with this rule is justified in setting a hearing or deposition without agreement from opposing counsel if opposing counsel fails or refuses promptly to accept or reject a time offered for hearing or deposition.

(2) If opposing counsel raises an unreasonable number of calendar conflicts, a lawyer is justified in setting a hearing or deposition without agreement from opposing counsel.

(3) If opposing counsel has consistently failed to comply with this guideline, a lawyer is justified in setting a hearing or deposition without agreement from opposing counsel.

(4) When an action involves so many lawyers that compliance with this guideline appears to be impractical, a lawyer should still make a good faith attempt to comply with this guideline.

(5) In cases involving extraordinary remedies where time associated with scheduling agreements could cause damage or harm to a client's case, then a lawyer is justified in setting a hearing or deposition without agreement from opposing counsel.

4. **Minimum Notice for Depositions and Hearings**

(a) Depositions and hearings should not be set with less than one week notice except by agreement of counsel or when a genuine need or emergency exists.

(b) If opposing counsel makes a reasonable request which does not prejudice the rights of the client, compliance herewith is appropriate without motions, briefs, hearings, orders and other formalities and without attempting to exact unrelated or unreasonable consideration.

5. **Cancelling Depositions, Hearings and Other Discovery Matters**

(a) **General Statement** Notice of cancellation of depositions and hearings should be given to the court and opposing counsel at the earliest possible time.

(b) **Discussion**

(1) Calling at or just prior to the time of a scheduled hearing or deposition to advise the court or opposing counsel of the cancellation lacks courtesy and consideration.

(2) Early notice of cancellation of a deposition or a hearing avoids unnecessary travel and expenditure of time by opposing counsel, witnesses, and parties. Also, early notice of cancellation of hearings to the Court allows the time previously reserved to be used for other matters.

ORDERS AND JUDGMENTS

1. **General Statement** Proposed Orders to be submitted to the court should be prepared promptly, and should be submitted to opposing counsel before or contemporaneously with submission to the Court.

2. **Discussion**

(a) **General Rule**

(1) Unless the Order or Judgment is to be immediately submitted to the Court, the attorney charged with preparing the proposed Order should prepare it promptly, generally no later than the following business day, and should mail it to the court for entry, simultaneously mailing a copy to opposing counsel.

(2) The transmittal letter to the court should advise the court to enter the Order unless the court has heard an objection from opposing counsel within five days from the receipt of the Order or Judgment.

(b) **Exception**

(1) In the event an Order or Judgment must be entered immediately, and hand delivery of the Order or Judgment to the Court is contemplated, the lawyer charged with preparing the Order or Judgment should have a copy of the Order or Judgment hand delivered to opposing counsel the same day it is delivered to the court.

(2) If hand delivery of the proposed Order or Judgment cannot be accomplished, then opposing counsel should be called and the proposed Order or Judgment read to the opposing counsel.

SERVICE OF PAPERS FILED WITH THE COURT

1. **General Statement** Lawyers should not attempt to unfairly gain advantage by delay in service of pleadings or correspondence upon opposing counsel.

2. **Discussion**

(a) When pleadings or correspondence are mailed to the court, copies should be mailed the same day to all other counsel of record, both local and out of town.

(b) When pleadings or correspondence are hand delivered to the court and a response is due or a hearing is scheduled within seven (7) days, or a ruling by the court is expected promptly, such papers should be hand delivered the same day to all counsel of record in Dallas County, and should be sent by overnight delivery to counsel residing in other cities.

AGREEMENTS AND STIPULATIONS OF UNDISPUTED MATTERS

1. **General Statement**

   (a) Lawyers should stipulate to undisputed matters not inconsistent with the client's interests.

   (b) Lawyers should abide by all promises and agreements with opposing counsel, whether oral or in writing.

2. **Discussion**

   (a) Lawyers should be willing to agree to and stipulate to undisputed matters to avoid unnecessary utilization of court time and inconvenience. In doing so, the counsel seeking a stipulation should request a stipulation in writing.

   (b) Opposing counsel should promptly inform the counsel requesting the stipulation whether the stipulation is agreeable or not so that a decision can be made by the party seeking a stipulation as to whether a hearing will be necessary.

   (c) A reasonable time to respond to the request generally would require no more than one week from the time the request for stipulation is received.

   (d) In the preparation of agreements, achievement of a jointly desired common goal is often hindered by the practice of preparing draft agreements which include terms neither desired nor insisted upon by the party. When preparing a draft of an agreement, a lawyer should attempt to state the true anticipated agreement of the parties and avoid inclusion of terms which would hinder the finalization of the agreement.

   (e) It is appropriate to honor requests of opposing counsel made during trial which do not prejudice the rights of the client or sacrifice tactical advantage. To this end, counsel could disclose the identity of the next witness to be called, the next depositions to be read, sharing of a projector or video tape screen, estimates of time and other matters of this nature routinely encountered in trial by trial counsel.

TIME DEADLINES AND EXTENSIONS

1. **General Statement** Reasonable extensions of time should be granted to opposing counsel where such extension will not have a material, adverse effect on the rights of the client.

2. **Discussion**

   (a) Because we all live in a world of deadlines, additional time is often required to complete a given task.

   (b) Traditionally, members of this bar association have readily granted any reasonable request for an extension of time as an accommodation to opposing counsel who, because of a busy trial schedule, personal emergency or heavy work load, needs additional time to prepare a response or comply with a legal requirement.

   (c) This tradition should continue; provided, however, that no lawyer should request an extension of time solely for the purpose of delay or to obtain any unfair advantage.

   (d) Counsel should make every effort to honor previously scheduled vacations of opposing counsel which dates have been established in good faith.

COMMUNICATION WITH THE JUDGE AND COURT PERSONNEL

1. **General Statement**

   (a) Only lawyers should communicate with the judge or appear in court on substantive matters.

   (b) Non-lawyers may communicate with court personnel regarding scheduling matters and other nonsubstantive matters.

2. **Discussion**

   (a) Lawyers should make no attempts to obtain an advantage in a case by an ex parte communication with the court.

   (b) Lawyers should avoid arguments or posturing through unnecessary inclusion of the Court in correspondence. If a matter does not merit the filing of a motion or of an agreed order, it probably does not warrant involving the judge or clerk in correspondence or with copies of correspondence to the opponent. Only correspondence which has been requested by the Court, or is merely filed to record the service of documents, should be sent to the Court.

CONCLUSION

The conduct of the lawyer before the Court and with other lawyers should at all times be characterized by honesty, candor, and fairness.

Professionalism: A Lawyer's Mandate

The conduct of a lawyer should be characterized at all times by honesty, candor, and fairness. In fulfilling his or her primary duty to a client, a lawyer must be ever mindful of the profession's broader duty to the legal system.

I. Relations with Clients

A lawyer owes to a client undivided allegiance, the full application of the lawyer's learning, skill, and industry, and the employment of all appropriate legal means to protect and enforce the client's legitimate rights, claims, and objectives. In the discharge of this duty, a lawyer should not be deterred by any real or imagined fear of judicial disfavor or public unpopularity, nor be influenced directly or indirectly by any considerations or self-interest.

1. Representing my client in a professional manner is my first obligation.

2. I will be loyal and committed to my client's cause, but I will not permit that loyalty and commitment to interfere with my duty to provide objective and independent advice to the client.

3. I will endeavor to achieve my client's lawful objectives in business transactions and in litigation as expeditiously and economically as possible.

4. When appropriate, I will counsel my client with respect to mediation, arbitration, and other alternative methods of resolving disputes.

5. I will advise my client against pursuing litigation (or any other course of action) that is without merit and against insisting on tactics which are intended primarily to delay resolution of a matter or to harass or drain the financial resources of the opposing party.

6. A client has no right to demand that I abuse the opposite party or counsel or indulge in other offensive conduct. I will always treat adverse parties and witnesses with fairness and due consideration.

II. Relations with Other Lawyers

A lawyer owes to opposing counsel courtesy, candor, cooperation in all respects not inconsistent with a client's interest, and scrupulous observance of all mutual agreements and understandings. Ill feelings between clients should not influence a lawyer's conduct, attitude, or demeanor toward opposing lawyers.

1. I will be courteous, civil, and prompt in oral and written communications.

2. In litigation proceedings, I will agree to reasonable requests for extensions of time and for waiver of procedural formalities, provided a legitimate interest of my client will not be adversely affected.

3. I will not serve motions and pleadings at such a time or in such a manner as will unfairly limit the other party's opportunity to respond.

4. I will attempt to resolve by agreement my objections to matters contained in pleadings and discovery requests and responses.

5. When scheduled hearings or depositions are cancelled, I will notify opposing counsel, and, if appropriate, the Court (or other tribunal) as soon as practicable.

6. In business transactions, I will not quarrel over matters of form or style, but will concentrate on matters of substance.

7. I will identify for other counsel or parties all changes I have made in documents submitted to me for review.

III. Conduct in Court

A lawyer owes to the judiciary respect, diligence, candor, punctuality, and protection against unjust and improper criticism and attack. A judge has a reciprocal responsibility to maintain the dignity and independence of the Court and to treat the lawyer with courtesy and respect as an officer of the Court.

1. I will conduct myself in Court in a professional manner and demonstrate my respect for the Court and the law.

2. I will treat opposing counsel, opposing parties, the Court, and members of the Court staff with courtesy and civility.

3. I will advise my client of the behavior expected of him or her.

4. I will be punctual so that preliminary matters may be disposed of in order to start the trial, hearing, or conference on time.

IV. Administration of Justice and Discovery

A lawyer owes to the administration of justice personal dignity, professional integrity, and independence. A lawyer should adhere to the highest principles of professionalism in all dealings with others, regardless of the desires of a client.

1. Ordinarily, I will not give notice of a deposition or hearing until an effort has been made to schedule it by agreement.

2. In oral depositions and other discovery proceedings I will treat opposing counsel, opposing parties, and any others present, with courtesy and civility.

3. I will refrain from excessive and abusive discovery, and I will comply with all reasonable discovery requests.

4. I will submit proposed orders to the Court promptly and will send copies to opposing counsel before or contemporaneously with submission to the Court.

5. If the matter does not merit the filing of a motion or an agreed order, I will not unnecessarily involve the Court or its staff with correspondence or with copies of correspondence to opposing counsel.

Unanimously adopted by the Board of Directors of the Houston Bar Association, on the recommendation of the Special Committee on Professionalism, to encourage all lawyers to observe these traditional standards of professionalism to which the Houston Bar Association wholeheartedly subscribes.

Ewing Werlein, Jr.
President
Houston Bar Association

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HILLSBOROUGH COUNTY BAR ASSOCIATION

STANDARDS OF PROFESSIONAL COURTESY

Preamble

The effective administration of justice requires the interaction of many professions and disciplines, but none is more critical than the role of the lawyer. In fulfilling that role, a lawyer performs many tasks, few of which are easy, most of which are exacting. In the final analysis, a lawyer's duty is always to the client. But in striving to fulfill that duty, a lawyer must be ever conscious of his broader duty to the judicial system that serves both attorney and client. To the judiciary, a lawyer owes candor, diligence and utmost respect. To the administration of justice, a lawyer unquestionably owes the fundamental duties of personal dignity and professional integrity. Coupled with those duties, however, is a lawyer's duty of courtesy and cooperation with fellow professionals, the observance of which is necessary for the efficient administration of our system of justice and the respect of the public it serves.

In furtherance of these fundamental concepts, in recognition that they must be applied in a manner consistent with the interests of one's client and the Code of Professional Conduct, and in keeping with the long tradition of professionalism among and between members of this bar association, the following Standards of Professional Courtesy are hereby adopted.

1. Attorneys Should Treat Each Other, The Opposing Party, The Court And The Members of the Court Staff With Courtesy And Civility And Conduct Themselves In A Professional Manner At All Times

DISCUSSION: Counsel should not engage in discourtesies or offensive personalities with opposing counsel, whether at hearings, depositions or at any other time when involved in the representation of clients. In all contacts with the court and court personnel, counsel should treat the court and its staff with courtesy and respect and without regard to whether counsel agrees or disagrees with rulings of the court in any specific case. Further, counsel should not denigrate the court or opposing counsel in private conversations with their own client. We should all remember that the disrespect we bring upon our fellow members of the Bar and the judiciary reflects on us and our profession as well.

2. Attorneys Should, When Practical, Consult With Opposing Counsel Before Scheduling Hearings And Depositions In A Good Faith Attempt To Avoid Scheduling Conflicts

DISCUSSION: When scheduling hearings and depositions, attorneys should communicate with opposing counsel in an attempt to schedule them at a mutually agreeable time. This practice will avoid unnecessary delays, expense to clients, and stress to attorneys and their secretaries, in the management of their calendars and practice. If a request is made to clear time for a hearing or deposition, the attorney to whom the request is made should confirm that the time is available or advise of a conflict within a reasonable time (preferably the same business day, but in any event before the end of the following business day). Conflicts should be indicated only when they actually exist and the requested time is not available. The courtesy requested by this standard should not be used for the purpose of obtaining delay or any unfair advantage. An attorney who has attempted to comply with this rule is justified in setting a hearing or deposition without agreement from opposing counsel if opposing counsel fails or refuses promptly to accept or reject the time offered for hearing or deposition; if opposing counsel raises an unreasonable number of calendar conflicts; if opposing counsel has consistently failed to comply with this standard; or if the action involves so many attorneys that compliance with this standard is impractical. In such cases, attempts should be made to set depositions and hearings at convenient times and dates for all parties. Depositions and hearings should only be set with less than one week's notice by agreement of counsel or when a genuine emergency exists.

3. Notice Of Cancellation Of Depositions And Hearings Should Be Given To The Court And Opposing Counsel At The Earliest Possible Time

DISCUSSION: Calling at or just prior to the time of a scheduled hearing or deposition to advise the Court or opposing counsel of the cancellation lacks courtesy and consideration. Early notice of cancellation of a deposition or a hearing avoids unnecessary travel and expenditure of time by opposing counsel. Also, early notice of cancellation of hearings to the Court allows the time previously reserved to be used for other matters.

4. Proposed Orders To Be Submitted To The Court Should Be Prepared Promptly, And Proposed Orders On Non-Routine Matters Should Be Submitted To Opposing Counsel Before Being Submitted To The Court

DISCUSSION: Following a hearing, the attorney charged with preparing the proposed order should prepare it promptly, generally no later than the following business day, unless it should immediately be submitted to the Court, with a copy to

opposing counsel. Examples of routine orders would include most orders on motions to dismiss, motions on discovery matters and motions for continuances. Where the order to be entered is not routine, a copy should be sent to opposing counsel before the order is submitted to the Court. Examples of non-routine orders would include those granting summary judgments and other orders entered in complex matters or matters which involve factual disputes.

5. Attorneys Should Cooperate With Each Other When Conflicts And Calendar Changes Are Necessary And Requested

DISCUSSION: Counsel should never request a calendar change or misrepresent a conflict in order to obtain an advantage or delay. However, in the practice of law, emergencies affecting our family or our professional commitments will arise which create conflicts and make such requests inevitable. We should be cooperative with each other whenever possible in agreeing to calendar changes, and should make such requests of other counsel only when absolutely necessary.

6. Except Where Any Material Right Of The Client Is Involved, Counsel Should Stipulate To Matters In Order To Avoid Unnecessary Hearings

DISCUSSION: Attorneys should be willing to agree to and stipulate to matters where no genuine objection exists to avoid unnecessary utilization of court time and inconvenience to counsel where the only purpose of the hearing would be to advise the court and opposing counsel that there is no objection to the relief sought. In securing the elimination of unnecessary hearings, the attorney seeking an order should attempt to ascertain prior to the hearing whether any opposition exists. Additionally, the opposing attorney should promptly inform movant's counsel that no objection will be made so that a timely cancellation of the hearing can be made.

7. When Scheduling Hearings, Counsel Should Attempt To Secure Sufficient Time To Allow Full Presentation And To Allow Opposing Counsel Equal Time In Response

DISCUSSION: Too often insufficient time is reserved to allow both sides to address the issues before the court. In addition, this causes the court to use more time than was reserved, thereby causing delay to other litigants and counsel. Similarly, continuations of hearings where insufficient time has been reserved will often cause greater delay than initially reserving the correct amount of time might have caused in the first instance. Continued hearings also cause difficulties for the court and counsel and are particularly frustrating to

litigants. In fulfilling this standard, counsel should also cooperate with one another to the extent that it is practical in attempting to use only that amount of time necessary for resolution of the issues to be adjudicated.

8. Reasonable Extensions Of Time Should Be Granted To Opposing Counsel Where Such Extension Will Not Have A Material, Adverse Affect On The Rights Of The Client

DISCUSSION: Because we all live in a world of deadlines, additional time is often required to complete a given task. Traditionally, members of this bar association have readily granted any reasonable requests for an extension of time as an accommodation to opposing counsel who, because of a busy trial schedule, personal emergency or heavy workload, needs additional time to prepare a response or comply with a legal requirement. This tradition should continue; provided, however, that no lawyer should request an extension of time solely for the purpose of delay or to obtain any unfair advantage.

KANSAS CITY METROPOLITAN BAR ASSOCIATION

ADOPTED AT 14TH ANNUAL BENCH-BAR 1987

TENETS OF PROFESSIONAL COURTESY

In order to promote a high level of professional courtesy and improve the professional relationship among members of the Kansas City Metropolitan Bar Association, the association adopts the following Tenets of Professional Courtesy.

I

A LAWYER SHOULD NEVER KNOWINGLY DECEIVE ANOTHER LAWYER.

Committee comment: Candor between lawyers is vital to open channels of communication, which in turn saves time and expense. It is recognized that, in dealing in an adversarial relationship with another lawyer, the system requires all sides to vigorously advocate their best interests. This Tenet in no way suggests that there is any obligation (separate from that imposed by existing ethical canons, laws or discovery rules) to disclose anything that may harm the interests of your client. Neither does this Tenet in any way restrict the aggressive expression of opinions helpful to your client. It is, instead, directed against affirmative misrepresentations by lawyers. Examples might include: (a) representations as to physical unavailability of a lawyer or witness on specific dates (I can't make that date because I have a deposition, trial or out-of-town meeting); (b) the existence of evidence or case law which establishes or rebuts a claim of defense (I have a case directly on point which completely eliminates your claim as a matter of law; I have a "smoking gun" document or witness which will definitely show . . .). Settlement negotiations should be conducted with candor although it is recognized that there can be tactical "jockeying for position."

II

A LAWYER SHOULD HONOR PROMISES OR COMMITMENTS MADE TO ANOTHER LAWYER

Committee comment: It should be recognized that a lawyer's word is a bond on which witnesses, parties, court personnel, and other lawyers might rightfully rely. There are times when unforeseen circumstances arise which necessarily require lawyers to change previous commitments. This test is one of "reasonableness", involving an examination of whether the later conflict was, in fact, unforeseen at the time of the promise and of the harm which will be caused if the original commitment was "enforced." This Tenet seeks to avoid a cavalier attitude toward committing to appointments, depositions, or other discovery, which are broken without good reason.

III

A LAWYER SHOULD MAKE ALL REASONABLE EFFORTS TO SCHEDULE MATTERS WITH OPPOSING COUNSEL BY AGREEMENT.

Committee comment: Lawyers should recognize the scheduling interests of opposing counsel, the parties, the court and witnesses. Therefore, all matters, including, but not limited to, depositions, hearings, meetings, conferences and other events requiring opposing counsel, are to be scheduled by agreement whenever possible. This should result in few continuances and avoid the time and expense of rescheduling these matters. This Tenet does not remove the necessity of serving formal notice as required by any particular statute or rule. Misunderstandings can be avoided if formal notice is sent after agreement is reached.

IV

A LAWYER SHOULD MAINTAIN A CORDIAL AND RESPECTFUL RELATIONSHIP WITH OPPOSING COUNSEL.

Committee comment: This Tenet recognizes that lawyers are engaged in a profession of representing adverse interests which often are in conflict. The conflict is between the clients and not the lawyers. This Tenet also recognizes that effective and open communication between lawyers aids the resolution of the conflict. If conflict arises between the lawyers, they become part of the problem as opposed to part of the solution. Maintaining a cordial and respectful relationship includes what a lawyer says and what a lawyer writes. A lawyer should strive to maintain a courteous tone in correspondence, pleadings and other written communication. Lawyers, whether in negotiations, depositions, or in the courtroom, should always treat each other with respect and the cordiality to be expected by members of the legal profession.

V

A LAWYER SHOULD SEEK SANCTIONS AGAINST OPPOSING COUNSEL ONLY WHERE REQUIRED FOR THE PROTECTION OF THE CLIENT AND NOT FOR MERE TACTICAL ADVANTAGE.

Committee comment: Seeking sanctions against opposing counsel may impugn the integrity of that individual. Such action should be sought only after efforts for agreement have failed, after careful consideration and only in those cases where the interest of the client cannot otherwise be protected. Alternatives such as protective orders, motions in limine and limits on discovery should be explored before stronger measures are sought. Where sanctions are required, the party requesting such action should do so in a professional manner, stating the supporting facts upon which the request is based while avoiding personal attacks against opposing counsel or parties.

VI

A LAWYER SHOULD NOT MAKE UNFOUNDED ACCUSATIONS OF UNETHICAL CONDUCT ABOUT OPPOSING COUNSEL.

Committee comment: A lawyer should keep in mind that the legal system works best when it has the respect and confidence of the court, lawyers, and members of the public. Unfounded accusations of unethical conduct tend to diminish the respect of the entire profession. If a lawyer genuinely feels that opposing counsel has been guilty of unethical conduct and believes it can be clearly established, the matter should be referred to the local grievance committee. If the lawyer does not believe that the matter is clear enough to be referred to the grievance committee, it should not be publicized.

VII

A LAWYER SHOULD NEVER INTENTIONALLY EMBARRASS ANOTHER LAWYER AND SHOULD AVOID PERSONAL CRITICISM OF ANOTHER LAWYER.

Committee comment: A lawyer should at all times remember that opposing counsel is a fellow professional deserving of respect and courtesy. Criticisms and intentional efforts to embarrass another lawyer in the presence of the Court, the lawyer's client or other counsel, often result only in hard feelings on the part of that lawyer, handicapping future dealings. Further, such conduct tends to diminish the public respect for the profession and lawyers. Personal comments, sarcasm, aspersions, ridicule and other personal attacks should be left out of all writings. Spontaneous oral expletive or vituperative comment need not survive in written communication. One's time in life, let alone in professional practice, is too short and possibly too fleeting to seek momentary advantage by willful acts of discourtesy to today's adversary. Even if successfully planned and artfully achieved, the rewards thus gained likely will not be lasting and certainly would not be sweet.

VIII

A LAWYER SHOULD ALWAYS BE PUNCTUAL.

Committee comment: A lawyer should arrive sufficiently in advance at trials, hearings, meetings, depositions, conferences or other scheduled events so that preliminary matters can be resolved. The failure of a lawyer to arrive on time inconveniences judges, other lawyers, jurors and other participants and disrupts schedules. Time is a precious commodity in the practice of law. A lawyer should respect the commitments of others by arriving on time and should timely notify all other participants when, for a reason beyond control, the lawyer will be unavoidably late. Moreover, when a lawyer is aware that a witness will be late for a scheduled event, the other participants should be timely notified.

IX

A LAWYER SHOULD SEEK INFORMAL AGREEMENT ON PROCEDURAL AND PRELIMINARY MATTERS.

Committee comment: When an adversary is entitled to something, such as information or documents in discovery, normally it should be provided without resort to formal procedural mechanisms such as motions, briefs, hearings, or orders. Facts which are not in dispute should be stipulated in writing to avoid the time, expense and effort required to establish those facts by formal proof. This is particularly true with respect to foundational evidence. If there is no dispute that a document is genuine or authentic, or that foundation otherwise can be established for its admission, then normally one should not require an adversary to obtain the testimony of a custodial or other foundation witness. However, lawyers should remain sensitive to the need to follow up any informal agreement with appropriate formal procedures in order to preserve the record.

HISTORICAL NOTE

Over the past few years, the complaints about a lack of professional courtesy among the members of the Bar have been increasing with disconcerting frequency. Such comments as "the practice of law just doesn't seem to be fun anymore" or "I can't understand why I can't get along with so-and-so" are heard with all too much regularity. In order to address this problem, the Kansas City Metropolitan Bar Association devoted a substantial portion of the 1987 Bench Bar Conference to problems of professional courtesy. After two days of discussion by the members of that conference, the Kansas City Metropolitan Bar Association formed a committee to put the results of the Bench Bar Committee into a written code of professional courtesy. The committee was chaired by Reggie C. Giffin. The members were The Honorable Richard Ralston, The Honorable Forest Hanna, Penni Johnson, Dirk Vandever, Prof. Pat Kelly, and Fritz Riesmeyer. The committee discussed the issues in detail and drafted the foregoing Tenets in a sincere effort to maintain the high level of professional courtesy and fellowship that has been a source of pride to all Kansas City lawyers in the past.

LAFAYETTE COUNTY BAR ASSOCIATION

CODE OF PROFESSIONAL COURTESY

As a member of the Lafayette County Bar Association, I acknowledge this Code to guide my conduct as a lawyer, and to demonstrate my respect for the law:

1. I acknowledge that the law is above me. I will not attempt to violate it or place myself above the law.

2. I will familiarize myself with the Rules of Professional Conduct and try my best to observe them in my daily practice.

3. I will conduct myself as a lady or gentleman and live my personal and professional life by the Golden Rule.

4. I will be honest with myself and others.

5. My word is my bond.

6. Practicing law is an ongoing, intellectual pursuit in which I intend to advance at every opportunity.

7. While my duty is to zealously represent my client, when each adversary proceeding ends, I will shake hands with my fellow lawyer who is my adversary; and if I lose, I will refrain from unnecessary condemnation of the Court, my adversary, or his client, because I realize that to do so reflects adversely both on the profession and me personally.

8. Vigorous advocacy is not inconsistent with professional courtesy. I will stay above the belt. Even though antagonism may be expected by clients, it is not part of my duty to my client. A lawyer is not called (or licensed) to be obnoxious.

9. I recognize that procedural rules are necessary as a last resort to order and decorum; therefore, if my adversary is entitled to something, it should be provided without motions, briefs, hearings, orders, and other formalities. If something is a fact, it should be stipulated in writing without requests for admission, interrogatories, witnesses, and documents.

10. I will be ever mindful that any motion, trial, court appearance, deposition, pleading, or legal technicality costs someone time and money.

11. I recognize that adversaries should communicate to avoid or reduce the cost of litigation and remember their obligation to be courteous to each other.

12. Ordinarily, I will not arbitrarily notice a deposition until an effort has been made to set it by agreement with opposing counsel.

13. I recognize that advocacy does not include harassment.

14. I recognize that advocacy does not include needless delay.

15. I will always be punctual, or sufficiently in advance of the appointed time, so that preliminary matters may be disposed of in order to start the meeting, trial, hearing, or conference on time.

16. When in the courthouse, I will dress appropriately to show my respect for the court and the law. I will stand to address the court.

17. I am thankful for the ability and my opportunity to be a lawyer. I honor the law as it has honored me.

18. I appreciate the respect, trust, and friendship which the public and other lawyers have given me, and I will act at all times to preserve that respect, because without it my clients and I suffer.

Multnomah Bar Association
STATEMENT ON PROFESSIONALISM

Introduction

We, the members of the Multnomah Bar Association, recognize that as lawyers we belong to a profession devoted to serving both the interests of our clients and the public good. In our roles as counselors, advocates, and officers of the court, we aspire to a standard of conduct that warrants the term "professional." We seek to earn a reputation for honor and trustworthiness among our clients, the legal community, and the community at large.

Professionalism

Professionalism includes integrity and willing compliance with the highest ethical standards. Professionalism goes beyond observance of the legal profession's ethical rules and serves the best interests of clients and the public in general; it fosters respect and trust among lawyers and between lawyers and the public, promotes the efficient resolution of disputes, and makes the practice of law more enjoyable and satisfying.

General Guidelines

In furtherance of our commitment to conduct ourselves in a manner worthy of professionals, we adopt as guidelines for our practice the following principles:

1. We will represent our clients zealously within the bounds of the law and the ethical standards approved by the Oregon Supreme Court, vigorously protecting the interests of our clients in a responsible manner. We will treat other parties, members of the public, attorneys, and judges with dignity, courtesy, and respect. We will avoid discrimination based on race, religion, gender, or sexual orientation.

2. Basic to the foregoing is our commitment not to knowingly misstate facts or law, even in the most adversarial aspects of practice; to ensure that other lawyers and judges can trust in and rely upon our word;

to learn and follow practices and civilities in working with other members of the bar and the judiciary that encourage respect and trust while accommodating the legitimate interests and needs of the parties involved; to avoid harsh criticisms of and personal attacks upon opponents and judges; and to refrain from asserting untenable positions or engaging in tactics to delay proceedings or gain unfair advantage. We believe lawyers should solve problems, not create or exacerbate them.

Litigation

1. Whenever litigation is contemplated in order to preserve the rights of a party against the running of a statute of limitations, we will endeavor before filing the action to seek an agreement to toll the statute of limitations long enough to investigate whether a lawsuit is warranted.

2. We will not assert ancillary claims for relief that have no independent merit and are likely to result in unnecessary cost and expense.

3. After receiving a complaint, and if possible before an answer is due, we will try to initiate informal discussions with opposing counsel in order to determine the precise nature of the claim, the prospect of settlement, and the possible use of alternative dispute resolution in resolving the claim.

We will try to reach agreement for scheduling of future motions, discovery, pretrial conferences, and other matters in an effort to reduce the cost of litigation to the parties. We will avoid unnecessary motions and discovery.

4. With respect to discovery, we will not seek information from our adversaries for the purpose of harassment, nor will we refuse to produce information that we know the court will ultimately require to be produced. We will try to schedule depositions informally by mutual agreement for the convenience of parties, their counsel, and witnesses before resorting to formal notice procedures.

5. We will file motions likely to eliminate or refine the essential issues of the dispute, but only if it is likely the motions will have a beneficial impact on the case as a whole and not merely correct unimportant defects in the pleadings. In making motions we will consider costs and benefits to the parties, the court, and the system of justice, giving due consideration to any trade-offs to our clients and the progress of the case as a whole. Motions will be considered carefully in light of the likelihood of success and the practical benefit to the client.

6. Recognizing that initiating settlement discussions is not a sign of weakness, we will endeavor to confer early with opposing counsel to assess settlement possibilities.

7. We will encourage innovative methods that simplify and make less expensive the rendering of legal services.

We specifically adopt and incorporate in this statement the cost containment guidelines promulgated by joint action of the Oregon Trial Lawyers Association and the Oregon Association of Defense Counsel.

Business Practice

1. We will endeavor to represent the best interests of our clients while at the same time seeking to resolve matters in a manner that minimizes legal expenses for all involved. We will be sensitive to the varying demands, expectations, and needs of diverse clients and will attempt to provide appropriate representation.

2. In making representations concerning the facts of a matter we will be accurate and indicate clearly the extent to which we have authority to bind the client. We will likewise be circumspect in the manner in which we describe our adversaries and characterize their tactics to our clients, giving due regard to the client's right to our candid views of opposing counsel, but only to the extent those views are relevant to the client's interests and not for the purpose of unfairly disparaging other counsel. In handling disputed issues we will try to find solutions in which all parties achieve a favorable result.

3. We will never intentionally let "pride of authorship" or other self-interested motives interfere with the client's legitimate objectives. In exchanging, reviewing, and revising documents in transactions we will clearly mark all revisions and will attempt to avoid quarrels over matters of form or style and concentrate our energies and resources on matters of content and substance.

Lawyering in the Public Interest

1. When the interests of our clients are not involved, we will endeavor to put aside self-interest and support legislation that is in the public interest; we will urge legislative bodies to consider the consequences of proposed legislation on the courts and legal system.

2. Within our profession we will endeavor to preserve and develop a strong sense of commitment to the ideals of integrity, honesty, competence, fairness, independence, courage, and devotion to the public interest.

3. We will avoid advertising that is not fair, factual, and informative.

4. We will endeavor to increase the participation of lawyers in pro bono activities and to help lawyers recognize their obligation to make legal services available to all members of society.

5. We resolve to employ all the organizational resources necessary to assure that the legal profession is effectively regulated.

6. We will support activities that educate the public about legal processes and the legal system.

Conclusion

We are committed to the foregoing statement of professionalism. We will discuss it within our profession, and we will endeavor to conduct the practice of law in a manner consistent with these precepts.

November 1988

PULASKI COUNTY BAR ASSOCIATION

CODE OF PROFESSIONAL COURTESY

As a member of the Pulaski County Bar Association, I hold these truths to be evidence of my conduct as a lawyer and my respect for the law:

1. I adhere to the rule of law to govern my entire conduct and I acknowledge that the law is above me. I will not attempt to violate it or place myself above the law.

2. Representing my client in a professional manner is my first obligation.

3. I will familiarize myself with Rules of Professional Conduct and try my best to observe it in my daily practice.

4. I will conduct myself as a lady or gentleman and live my personal and professional life by the Golden Rule to do unto others as I would want them to do to me.

5. I will be honest with myself.

6. Practicing law is an ongoing, intellectual pursuit in which I intend to advance at every opportunity.

7. My word is my bond.

8. When each adversary proceeding ends, I will shake hands with my fellow lawyer who is my adversary; and if I lose, I will refrain from unnecessary condemnation of the Court, my adversary, or his client.

9. I recognize that procedural rules are necessary as a last resort to order and decorum, therefore, if my adversary is entitled to something, it should be provided without motions, briefs, hearings, orders, and other formalities. If something is a fact, it should be stipulated in writing without requests for admission, interrogatories, witnesses and documents. Vigorous advocacy is not inconsistent with professional courtesy. I will stay above the belt. Even though antagonism may be expected by clients, it is not part of my duty to my client. A lawyer is not called (or licensed) to be obnoxious.

10. Ordinarily I will not notice a deposition until an effort has been made to set it by agreement.

11. I recognize that adversaries should communicate to avoid litigation and remember their obligation to be courteous to each other.

12. I will strive to take and return lawyer's telephone calls as soon as possible.

13. I recognize that advocacy does not include harassment.

14. I recognize that advocacy does not include needless delay.

15. I will be ever mindful that any motion, trial, court appearance, deposition, pleading, or legal technicality costs someone time and money.

16. I believe that only attorneys, and not secretaries, paralegals, or other non-lawyers, should communicate with a Judge or appear before the Judge on substantive matters.

17. I will stand to address the Court.

18. I have the responsibility to advise my client appearing in the courtroom of the kind of behavior expected of him (i.e., no chewing gum, no sunglasses, proper attire, etc.).

19. When in the courthouse, I will dress appropriately to show my respect for the Court and the law.

20. I will always be punctual, or sufficiently in advance of the appointed time, so that preliminary matters may be disposed of in order to start the meeting, trial, hearing, or conference on time.

21. I recognize that a lawyer should not become too closely associated with his client's activities, or emotionally involved with his client.

22. I am thankful for the ability and my opportunity to be a lawyer.

23. I appreciate the respect, trust and friendship which other lawyers have given me, and I will act at all times to preserve the mutual feeling of camaraderie among lawyers which exists in this Bar, because without it my clients and I suffer.

Adopted May 9, 1986

LAWYERS' PLEDGE OF PROFESSIONALISM

I will remember that the practice of law is first and foremost a profession, and I will subordinate business concerns to professionalism concerns.

I will encourage respect for the law and our legal system through my words and actions.

I will remember my responsibilities to serve as an officer of the court and protector of individual rights.

I will contribute time and resources to public service, public education, charitable, and *pro bono* activities in my community.

I will work with the other participants in the legal system, including judges, opposing counsel and those whose practices are different from mine, to make our legal system more accessible and responsive.

I will resolve matters expeditiously and without unnecessary expense.

I will resolve disputes through negotiation whenever possible.

I will keep my clients well-informed and involved in making the decisions that affect them.

I will continue to expand my knowledge of the law.

I will achieve and maintain proficiency in my practice.

I will be courteous to those with whom I come into contact during the course of my work.

I will honor the spirit and intent, as well as the requirements, of the applicable rules or code of professional conduct for my jurisdiction, and will encourage others to do the same.

AMERICAN BAR ASSOCIATION TORT AND INSURANCE PRACTICE SECTION

A LAWYER'S CREED OF PROFESSIONALISM

Preamble

As a lawyer I must strive to make our system of justice work fairly and efficiently. In order to carry out that responsibility, not only will I comply with the letter and spirit of the disciplinary standards applicable to all lawyers, but I will also conduct myself in accordance with the following Creed of Professionalism when dealing with my client, opposing parties, their counsel, the courts and the general public.

A. With respect to my client:

1. I will be loyal and committed to my client's cause, but I will not permit that loyalty and commitment to interfere with my ability to provide my client with objective and independent advice;

2. I will endeavor to achieve my client's lawful objectives in business transactions and in litigation as expeditiously and economically as possible;

3. In appropriate cases, I will counsel my client with respect to mediation, arbitration and other alternative methods of resolving disputes;

4. I will advise my client against pursuing litigation (or any other course of action) that is without merit and against insisting on tactics which are intended to delay resolution of the matter or to harass or drain the financial resources of the opposing party;

5. I will advise my client that civility and courtesy are not to be equated with weakness;

6. While I must abide by my client's decision concerning the objectives of the representation, I nevertheless will counsel my client that a willingness to initiate or engage in settlement discussions is consistent with zealous and effective representation.

B. With respect to opposing parties and their counsel:

1. I will endeavor to be courteous and civil, both in oral and in written communications;

2. I will not knowingly make statements of fact or of law that are untrue;

3. In litigation proceedings I will agree to reasonable requests for extensions of time or for waiver of procedural formalities when the legitimate interests of my client will not be adversely affected;

4. I will endeavor to consult with opposing counsel before scheduling depositions and meetings and before re-scheduling hearings, and I will cooperate with opposing counsel when scheduling changes are requested;

5. I will refrain from utilizing litigation or any other course of conduct to harass the opposing party;

6. I will refrain from engaging in excessive and abusive discovery, and I will comply with all reasonable discovery requests;

7. I will refrain from utilizing delaying tactics;

8. In depositions and other proceedings, and in negotiations, I will conduct myself with dignity, avoid making groundless objections and refrain from engaging in acts of rudeness or disrespect;

9. I will not serve motions and pleadings on the other party, or his counsel, at such a time or in such a manner as will unfairly limit the other party's opportunity to respond;

10. In business transactions I will not quarrel over matters of form or style, but will concentrate on matters of substance and content;

11. I will clearly identify, for other counsel or parties, all changes that I have made in documents submitted to me for review.

C. With respect to the courts and other tribunals:

1. I will be a vigorous and zealous advocate on behalf of my client, while recognizing, as an officer of the court, that excessive zeal may be detrimental to my client's interests as well as to the proper functioning of our system of justice;

2. Where consistent with my client's interests, I will communicate with opposing counsel in an effort to avoid litigation and to resolve litigation that has actually commenced;

3. I will voluntarily withdraw claims or defenses when it becomes apparent that they do not have merit or are superfluous;

4. I will refrain from filing frivolous motions;

5. I will make every effort to agree with other counsel, as early as possible, on a voluntary exchange of information and on a plan for discovery;

6. I will attempt to resolve, by agreement, my objections to matters contained in my opponent's pleadings and discovery requests;

7. When scheduled hearings or depositions have to be canceled, I will notify opposing counsel, and, if appropriate, the court (or other tribunal) as early as possible;

8. Before dates for hearings or trials are set--or, if that is not feasible, immediately after such dates have been set--I will attempt to verify the availability of key participants and witnesses so that I can promptly notify the court (or other tribunal) and opposing counsel of any likely problem in that regard;

9. In civil matters, I will stipulate to facts as to which there is no genuine dispute;

10. I will endeavor to be punctual in attending court hearings, conferences and depositions;

11. I will at all times be candid with the court.

D. With respect to the public and to our system of justice:

1. I will remember that, in addition to commitment to my client's cause, my responsibilities as a lawyer include a devotion to the public good;

2. I will endeavor to keep myself current in the areas in which I practice and, when necessary, will associate with, or refer my client to, counsel knowledgeable in another field of practice;

3. I will be mindful of the fact that, as a member of a self-regulating profession, it is encumbent on me to report violations by fellow lawyers of any disciplinary rule;

4. I will be mindful of the need to protect the image of the legal profession in the eyes of the public and will be so guided when considering methods and content of advertising;

5. I will be mindful that the law is a learned profession and that among its desirable goals are devotion to public service, improvement of administration of justice, and the contribution of uncompensated time and civic influence on behalf of those persons who cannot afford adequate legal assistance.

IN THE UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF OKLAHOMA

EARVIN J. KRUEGER and EMMA MELINDA KRUEGER,

Plaintiffs,

v.

PELICAN PRODUCTION CORPORATION,

Defendant.

No. CIV-87-2385-A

O R D E R

Defendant's Motion to Dismiss or in the Alternative to Continue Trial is denied. If the recitals in the briefs from both sides are accepted at face value, neither side has conducted discovery according to the letter and spirit of the Oklahoma County Bar Association Lawyer's Creed. This is an aspirational creed not subject to enforcement by this Court, but violative conduct does call for judicial disapprobation at least. If there is a hell to which disputatious, uncivil, vituperative lawyers go, let it be one in which the damned are eternally locked in discovery disputes with other lawyers of equally repugnant attributes.

It is so ordered this 24th day of February, 1989.

Wayne Alley

WAYNE E. ALLEY
United States District Judge