

GUIDELINES
FOR
PROFESSIONAL COURTESY AND CONDUCT



MEMPHIS BAR ASSOCIATION

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FOR
PROFESSIONAL COURTESY AND CONDUCT

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ACKNOWLEDGEMENTS

In 1988, the Board of Directors of the Memphis Bar Association, acting on the theme of “Professionalism” adopted by President Jerome Turner during his tenure in office, appointed a Committee on Professionalism composed of six highly respected lawyers and judges:

Walter P. Armstrong, Jr., Esquire, former President of the Tennessee Bar Association;

Leo Bearman, Jr., Esquire, former President of the Memphis & Shelby County Bar Association and recipient of the Sam A. Myar, Jr. Memorial Award;

The Honorable Bernice B. Donald, first black female ever appointed to the United States Bankruptcy Court;

David J. Harris, Esquire, former President of the award-winning Young Lawyers Division of the Memphis & Shelby County Bar Association;

The Honorable Charles O. McPherson, a judge of the Circuit Court of Tennessee since 1973; and

John J. Thomason, Esquire, a member of the American College of Trial Lawyers and also recipient of the Sam A. Myar, Jr. Memorial Award.

Their assigned task—to compose a statement of the conduct expected of a true professional by one’s fellow lawyers.

These men and Judge Donald brought to this task established reputations for understanding and exemplifying the concept of professionalism; years of experience in dealing with other lawyers and judges on a plane above normal; and a willingness to help engender a concrete recognition that our responsibilities as lawyers do not stop with zealous representation of our clients.

These Guidelines for Professional Courtesy and Conduct are the product of their valued collective judgment and wisdom, and the Memphis Bar Association expresses its deep gratitude for their diligent efforts, many hours of work and their evident understanding and expression of the fact that the practice of law is truly a profession.

INTRODUCTION

The words that you are about to read and the concepts conveyed by these words are an expression by the lawyers of Memphis and Shelby County, Tennessee, of the level of professional conduct to which they aspire in their everyday practice of a demanding and challenging calling, a career that far transcends the business of making a living.

In these days, however, when the consumer has come to set the pace, when financial demands are ever present, when competition for clients appears pervasive and the legal profession sees itself being dragged along in the grip of change, it does the members of this magnificent profession well to momentarily pause to remember that the success of a lawyer cannot be measured alone by the number of verdicts won, nor by the amount of fees earned, but must take into account the means by which the verdicts are won and the fees are earned.

These guidelines do not attempt to set forth new standards of minimally acceptable conduct, nor to suggest that transgression should subject a lawyer to sanctions beyond the mental or emotional rejection of such transgressions by peers. What these guidelines do attempt is to remind us as lawyers, both young and old, experienced and inexperienced, trial and commercial, that the true value of our profession can be seen in a lawyer's recognition that he or she truly owes broad duties to this legal system itself, duties which render us committed to the continued improvement and success of this nation's effort to afford justice in our civilization—based not on a man's dictates but on laws that apply not just to some, but to all.

Judge Jerome Turner
December 1988

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PREAMBLE

A lawyer's duty to each client is to represent that client zealously within the bounds of the law. In striving to fulfill that duty, a lawyer must ever be conscious of the broader duty owed to the legal system which is designed to resolve human and societal problems in a rational and logical manner.

A lawyer owes to the judiciary a duty of candor, honesty, diligence and utmost respect.

A lawyer owes to opposing counsel a duty of courtesy, fairness, and cooperation.

A lawyer should strive to achieve higher standards of conduct than those called for by the Code of Professional Responsibility.

A lawyer owes to the administration of justice a duty of personal dignity and professional integrity.

In furtherance of these fundamental concepts, the following Guidelines for Professional Courtesy and Conduct are hereby adopted. These Guidelines are not intended nor should they be construed as establishing any minimum standards of professional care or competence. The sole purpose of adopting these Guidelines is to promote and foster the ideals of professional courtesy, conduct and cooperation set out above.

I. COURTESY, CIVILITY AND PROFESSIONALISM

1. A lawyer should treat the opponent, the opposing party, the court and the members of the court staff with courtesy and civility, conducting business in a professional manner at all times.

2. A lawyer has no right, even when called upon by a client to do so, to abuse or to indulge in offensive conduct towards the opposite party. A lawyer should always treat adverse witnesses and parties with fairness and due consideration.

3. While in adversary proceedings, clients are litigants, and while ill feelings may exist between them, such ill feeling(s) should not influence a lawyer's conduct, attitude, or demeanor towards opposing lawyers.

4. A lawyer should do all that is necessary to ensure that clients, the public, and other lawyers respect the judicial system. To this end, a lawyer should:

- (a) Never knowingly misstate fact or law, regardless of any pressure to do so.
- (b) Not engage in tactics that complicate or delay matters unnecessarily.
- (c) Avoid creating unrealistic expectations of a client or the public.
- (d) Avoid denigrating the legal profession, the court system or adversary counsel.

5. A lawyer should encourage methods and practices which simplify and make less expensive the rendering of legal services.

6. A lawyer should never institute or pursue a legal procedure solely for the lawyer's own profit where there is no reasonable expectation that it will advance or contribute to the best interest of the client.

7. A lawyer should preserve and respect the law by observing all duties to the community and to the Profession. To this end, a lawyer should:

- (a) Contribute time and expertise to those unable to otherwise afford representation of their interests.

(b) Participate in public service and public education activities through personal involvement and financial contributions, and encourage fellow lawyers to do the same.

(c) Work to develop among lawyers a strong commitment to the ideals of integrity, honesty, competence, fairness, independence, courage, and dedication to the public interest.

8. A lawyer should recognize the importance of communication with both clients and adversaries. A lawyer should return all telephone calls and respond to all correspondence promptly.

9. A lawyer should never deceive the court or another lawyer.

10. A lawyer should honor promises or commitments made to another lawyer.

11. A lawyer should make every reasonable effort to cooperate with opposing counsel.

12. A lawyer should maintain a cordial and respectful relationship with opposing counsel.

13. A lawyer should seek sanctions against opposing counsel only where required for the protection of the client or of the legal system and not for mere tactical advantage.

14. A lawyer should not make unfounded accusations of unethical conduct about opposing counsel.

15. A lawyer should never intentionally embarrass another lawyer and should avoid personal criticism of another lawyer.

16. A lawyer should always be punctual.

II. PROFESSIONAL CONDUCT IN LITIGATION

1. A lawyer should respect the schedule and commitments of opposing counsel, clients and the courts, thereby promoting the efficient administration of justice and public confidence in our profession. To this end, a lawyer should:

- (a) Consult opposing counsel, when practical, before scheduling hearings and depositions.
- (b) Avoid unnecessary continuances of trials, hearings or depositions.
- (c) Immediately notify opposing counsel and the court of scheduling conflicts.

2. A lawyer should consult opposing counsel in an effort to resolve matters by agreement before filing motions or requesting hearings.

3. A lawyer should refrain from engaging in unnecessary, excessive or abusive discovery. Requests for production of documents should not be excessive or designed solely to place a burden on the opposing party.

4. A lawyer should comply fully with reasonable discovery requests and should not countenance obstructive or evasive tactics. To this end, a lawyer should:

- (a) Exchange information voluntarily, when practical, without formal discovery requests.
- (b) Upon request produce all responsive documents, and produce them as they are kept in the ordinary course of business or organize and label them to correspond with the categories in the request.

5. A lawyer should stipulate to matters where they are undisputed or where no genuine basis for objection exists.

6. A lawyer should always contact opposing counsel in an effort to resolve litigation. Since most cases are ultimately settled, initiating such discussions at the outset is recognition of reality, not a sign of weakness.

7. A lawyer should make reasonable efforts to conduct all discovery by agreement.

8. A lawyer should not use any form of discovery, or the scheduling of discovery, as a means of harassing opposing counsel or an opposing party.

9. A lawyer should, when practical, consult with opposing counsel before scheduling hearings and depositions in a good faith attempt to avoid scheduling conflicts.

10. A lawyer should avoid unnecessary delays. To this end, a lawyer should:

(a) Give notice of cancellation of depositions and hearings to the court and opposing counsel at the earliest possible time.

(b) Submit any proposed order promptly to opposing counsel and attempt to reconcile any differences before presenting it to the court.

(c) Respond promptly to any proposed order submitted by opposing counsel.

11. A lawyer drafting a proposed order should reflect in it clearly and accurately the ruling of the court and nothing more.

12. A lawyer should serve copies of all briefs upon opposing counsel at the time that they are filed with the court.

13. A lawyer should not take a default judgment without first giving reasonable notice to opposing counsel or to the opposing party if not represented by counsel of his intention to do so, and should agree to set aside such a default judgment when reasonable cause exists and his client upon his recommendation consents.

14. A lawyer should grant reasonable extensions of time to opposing counsel where such extensions will not have a material adverse effect on the rights of the client.

15. A lawyer should not attempt to obtain an advantage by informal communication with the court.

III. PROFESSIONAL CONDUCT IN
BUSINESS AND COMMERCIAL PRACTICE

1. A lawyer should determine the sophistication, goals and demands of the client before representing the client in a transaction.

2. A lawyer should ascertain and respect the scope of the negotiating authority granted by the client.

3. A lawyer should be guided by the client's goal in completing a transaction. To this end, a lawyer should:

(a) Utilize terms which are clear, concise and practical in drafting documents.

(b) Not make an issue of matters of form when revising documents. Pride of authorship, when matters of substance are not involved, only contributes to delay and cost in a transaction.

4. A lawyer should not seek tactical advantage by delaying negotiations until the last minute. To promote efficiency and fairness a lawyer should, whenever possible, treat the negotiation of a transaction and the closing thereof as mutually exclusive activities.

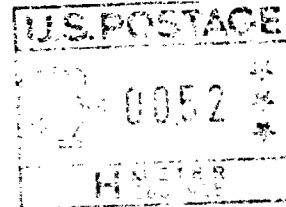
5. A lawyer should not use the threat of legal proceedings or of the possible effect thereof as a means of obtaining an unjustified advantage for a client.

6. When a lawyer requires as part of a transaction an opinion letter from another lawyer, it should deal only with the matters requested, any reservations being clearly stated.



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