



SECTION 2: RULES OF PROFESSIONAL CONDUCT AND STANDARDS OF PROFESSIONALISM AND CIVILITY

Rules of Professional Conduct

This resource is intended to facilitate a discussion between the mentor and new lawyer about the Utah Rules of Professional Conduct and expose the new lawyer to potential resources for dealing with complicated ethical issues, including conflicts of interest.

Required Section 2:

- **Review and discuss the Rules of Professional Conduct. Review and discuss at least two of the following:**
 - **1.7-.8. Conflict of interest: Current Clients**
 - **3.3. Candor Toward the Tribunal**
 - **4.2. Communication with Persons Represented by Counsel**
 - **4.3. Dealing with Unrepresented Persons**

General Mentoring Tips:

- Suggest resources that the new lawyer can consult for making important ethical decisions, including the following:
 - Ethics Hotline: <https://www.utahbar.org/ethics-hotline/> or ethicshotline@utahbar.org
 - Identify procedure for obtaining in-house ethics advice (if you are in an in-house mentoring relationship)
 - Provide suggestions for finding outside ethics counsel and discuss when such action is recommended.
 - Identify other helpful ethics materials, where materials can be found, and the importance of supplementing general ethics resources with independent research on Utah disciplinary case law.
 - OPC Advisory Opinions available online at the following address: <https://www.utahbar.org/bar-committee-ethics-advisory-opinions/>
- Discuss the role of the Office of Professional Conduct.



Standards of Professionalism and Civility

Required Section 2:

- **Review and discuss the Utah Standards of Professionalism and Civility.**
- **Discuss the Preamble and all twenty standards.**
- **Discuss any “unwritten” customary rules of civility or etiquette among lawyers and judges in the community.**

General Mentoring Tips:

- Discuss the Utah Standards of Professionalism and Civility, the importance of these Standards, and ways the Standards promote the administration of justice in Utah.
- Reflect together on what it means to be an attorney and how the Utah Standards on Professionalism and Civility contributes to that meaning.
- Identify the different roles an attorney plays. Discuss the ways in which the Utah Standards on Professionalism and Civility are relevant to those different roles.
- Provide examples on how the mentor, as an experienced attorney, incorporates the Standards of Professionalism and Civility into everyday practice.

Discuss the following issues related to Courtroom Personnel:

- How is a judge customarily addressed in court, formal functions and events, social settings and in the grocery store?
- Does the custom of addressing a judge change depending upon how often you appear before the judge or the capacity in which you know the judge?
- Appropriate demeanor with court personnel—clerks, bailiffs, judge’s assistants. Explain the role of court staff and the importance of building relationships with court staff.
- Appropriate attire for lawyers in the local courts.
- Appropriate attire for clients for different types of case being litigated.
- The local court rules and how they impact attorney conduct. Discuss how different judges have different views and interpretations of the local rules and different courtroom practices. Review the Bench Books and share information with the new lawyer about the preferences of the different judges before whom the new lawyer is likely to appear.

Discuss the following issues related to Opposing Counsel:

- What is the appropriate demeanor toward opposing counsel?
- How does an attorney address opposing counsel? Does that change depending on how familiar you are with opposing counsel?

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- How should one react if opposing counsel has been underhanded or dishonest during your case?
- What types of recourse are available when opposing counsel acts in an uncivil or unprofessional manner?
- Tips for keeping calm during conversations with an opposing counsel who is acting unprofessionally, such as yelling, personal attacks, patronizing due to an attorney's lack of experience, threats, etc?

Discuss the following issues related to your Client:

- What is the appropriate demeanor with a client both in and out of court?
- The importance of sensitivity toward a client.
- The importance of timely communication with clients including any firm policy regarding the timeframe in which attorneys must return client communications. This subject may also include a discussion of a lawyer's obligation to act competently, work diligently, and communicate effectively with every client, as established in the Rules of Professional Conduct, 1.1, 1.3. and 1.4.



Common Ethics Issues & Conflicts of Interest

Required Section 2:

- **Discuss ethical issues that arise with some regularity in the practice setting. Discuss ways to resolve the issues, referring to experience, as well as the Rules of Professional Conduct. Review and discuss the importance of and methods used to screen for potential conflicts. Discuss the differences between issue conflicts and client conflicts.**

General Mentoring Tips:

- Review the Conflict of Interest Rules. See Rules of Prof. Cond. Rules 1.7 – 1.8.
- If the new lawyer is a government employee (or has been in the past), discuss Rule 1.11.
- If the new lawyer served as a law clerk to a judge or other adjudicative officer, see Rule 1.12.
- Discuss the importance of adequately screening for conflicts of interest.
 - **INSIDE MENTORING:** Discuss the firm's procedure for screening for conflicts.
 - **OUTSIDE MENTORING:** Describe the mentor's office procedure for screening for conflicts.
- Discuss different types of conflicts of interest that can arise, particularly in the new lawyer's practice area(s) or office setting.
- Give examples of conflicts which can be waived with informed consent. Discuss the procedure for and documents utilized to document your clients' consent to conflicts.

Conflicts and Prospective and Declined Clients:

- Explain the importance of including prospective clients and declined clients in a conflicts database.
 - Are these clients treated like former clients in terms of conflicts?
 - What does it mean if another client comes along with an interest adverse to the prospective client that never hired the lawyer?
- Discuss the obligations you have to a potential client (even when you do not take his or her case) regarding conflicts of interest.



Changing Firms

- Discuss how conflicts are handled when a lawyer changes firms. Should a lawyer be concerned about the same issues when hiring non-lawyer personnel who come from another firm?

Spouses, Relatives and Close Relations

- Discuss the propriety of working on a case where opposing counsel is a spouse, close relative, or any person with whom the lawyer shares a close personal relationship. Does client consent cure the potential problem?

Sharing Office Space

- Many new lawyers, in an attempt to save overhead expenses, consider sharing office space with other lawyers. If your new lawyer is sharing office space, discuss the practical issues that must be resolved when sharing office space with lawyers not in the same firm.
- Review and discuss the attached article regarding office sharing.



The Most Common OPC Complaints and 10 Tips For Avoiding A Complaint

This resource is intended to facilitate a discussion between the Mentor and New Lawyer about the most common reasons a complaint about a lawyer is made to the Utah State Bar Office of Professional Conduct. This resource also offers 10 tips for avoid an OPC complaint.

General Mentoring Tips:

- Discuss the Utah State Bar Office of Professional Conduct and the OPC's role in policing bad lawyers.
- Discuss the Consumer Assistance Program and CAP's role is helping clients resolve an issue before it rises to the level of a formal complaint.

Top 10 OPC Complaints:

1. Safekeeping of Property
2. Communication
3. Diligence
4. Fees
5. Bar Admission and Disciplinary Matters
6. Competence
7. Declining or terminating representation
8. Responsibilities regarding non-lawyer assistants
9. Misconduct – Deceit, fraud, misrepresentation
10. Misconduct – Criminal act

Top 10 Ways to Avoid an OPC Complaint:

1. Respond to letters from OPC. Usually this is a matter of not having a current address on record with the Utah State Bar. Keep your address and email up to date by going to the Bar website and changing your email and address: <http://www.utahbar.org/members/request-membership-address-change/>
2. Respond to calls and letters from the Consumer Assistance Program. CAP tries to resolve client problems before they rise to the level of a formal complaint or lawsuit.
3. Use a good calendaring system and have a back up or paper calendaring system. Many complaints result from lawyers not showing up to court, a deposition or other scheduled meeting.



4. Use different sized and colored checks for operating account and client trust accounts. Complaints about insufficient funds in client trusts accounts are because a lawyer mistakenly wrote a check on the client trust account.
5. Keep track of all time spent on a case even if you charge a flat fee or are working on a contingency basis. If a client complains about excessive or unfair fees, you will have a record of how much time you spent on the case and how you spent the time.
6. Give file back to the client. The file belongs to the client and he or she is entitled to the file at the end of the case. You can make a copy, but you have to give it to them. See Rule 1.16.d and *In re Brussow*, 2012 UT 53. Comment to Rule 1.16.d explains what is considered part of file.
7. Use the OPC Ethics Hotline. If in doubt about an issue, email the Ethics Hotline at ethicshotline@utahbar.org or see the website <https://www.utahbar.org/ethics-hotline/>.
8. Take care of your mental health. Many lawyers break the rules because they are under tremendous stress and having difficulty coping. Exercise regularly and have a non-legal hobby. Blomquist Hale and Lawyers Helping Lawyers offer **free** and confidential counseling to active members of the Bar who are struggling with stress, mental health issues and/or substance abuse. Information about these counseling services can be found on the Utah Bar website at: <https://www.blomquisthale.com/>.
9. Only take cases you are competent to handle. Competence 1.1
10. Be selective about clients. When developing a practice it can be difficult to turn away a client. However, if a prospective client informs you that you are one in a line of lawyers he or she has hired and fired, or that he or she has made complaints against or sued previous lawyers, this is a sign you should say no to the representation. Likewise, be wary of clients who have unrealistic expectations about how their case will be resolved or what you can achieve for them.
11. Promptly return calls from clients and keep clients apprised of case status. Clients often do not realize that a legal case takes months to resolve. If a client does not hear from you while a case is pending, he or she may become frustrated and make a complaint to CAP or OPC.

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Articles for Discussion: Attached

Managing Professional Conflicts, Jill Wells Nunnally, Minnesota Lawyers Mutual Insurance Company, March 31, 2006.

Conflict Checking Systems: A Primer, Todd C. Scott, Minnesota Lawyers Mutual Insurance Company, May 10, 2006.

Practice Pointer: Ethical Considerations for Office Sharing, Kate A. Toomey, UTAH BAR JOURNAL, Vol. 18, No. 6, Nov/Dec. 2005.

Civility in the Practice of Law: A Young Lawyer's Perspective, Christopher M. Von Maack, UTAH BAR JOURNAL, Vol. 19, No. 7.

Aspirational Morality: The Ideals of Professionalism, Jeffrey M. Vincent, UTAH BAR JOURNAL, Vol. 15, No 1. 12-13.

Aspirational Morality: The Ideals of Professionalism – Part II, Jeffrey M. Vincent, UTAH BAR JOURNAL, Vol. 15, No. 3. 24-27.

A Professionalism Quiz: How Does Your Conduct Measure Up?, Wayne Klein, UTAH BAR JOURNAL, Vol. 19, No. 7. 24-26.

Learning Professionalism and Civility – Thoughts for New Members of the Bar, Judge Derek P. Pullan, UTAH BAR JOURNAL, Vol. 18, No. 4. 32-36.

“Feature: From the Claim Files.”

20 Professionalism Tips for Millennial Attorneys, Michelle Siverthorn, Illinois Supreme Court Commission on Professionalism, January 27, 2015. www.2civility.org/20-professionalism-tips-millennial-attorneys/#comment-234597.



RELEVANT RULES OF PROFESSIONAL CONDUCT

Rule 1.7. Conflict of Interest

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(a)(1) The representation of one client will be directly adverse to another client; or

(a)(2) There is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(b)(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(b)(2) the representation is not prohibited by law;

(b)(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(b)(4) each affected client gives informed consent, confirmed in writing.

Rule 1.8. Conflict of Interest: Current Clients: Specific Rules.

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(a)(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(a)(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(a)(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

(c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purpose of this paragraph, related persons include a spouse, child, grandchild,

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parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or an account based in substantial part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(e)(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(e)(2) a lawyer representing an indigent client may pay court costs and expenses of litigation, and minor expenses reasonably connected to the litigation, on behalf of the client.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(f)(1) the client gives informed consent;

(f)(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(f)(3) information relating to representation of a client is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not:

(h)(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement; or

(h)(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(i)(1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and

(i)(2) contract with a client for a reasonable contingent fee in a civil case.

(j) A lawyer shall not engage in sexual relations with a client that exploit the lawyer-client relationship. For the purposes of this Rule:



(j)(1) "sexual relations" means sexual intercourse or the touching of an intimate part of another person for the purpose of sexual arousal, gratification, or abuse; and

(j)(2) except for a spousal relationship or a sexual relationship that existed at the commencement of the lawyer-client relationship, sexual relations between the lawyer and the client shall be presumed to be exploitive. This presumption is rebuttable.

(k) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them.

Rule 3.3. Candor Toward the Tribunal.

(a) A lawyer shall not knowingly or recklessly:

(a)(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; or

(a)(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction directly adverse to the position of the client and not disclosed by opposing counsel.

(b) A lawyer shall not offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(c) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(d) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(e) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Rule 4.2. Communication with Persons Represented by Counsel.

(a) **General Rule.** In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by a legal professional in the matter, unless the lawyer has the consent of the legal professional. Notwithstanding the foregoing, an attorney may, without such prior consent, communicate with another's client if authorized to do so by any law, rule, or court order, in which event the communication shall be strictly restricted to that allowed by the law, rule, or court order, or as authorized by paragraphs (b), (c), (d) or (e) of this Rule.

(b) **Rules Relating to Unbundling of Legal Services.** A lawyer may consider a person whose representation by a legal professional in a matter does not encompass all aspects of



the matter to be unrepresented for purposes of this Rule and Rule 4.3, unless that person's legal professional has provided written notice to the lawyer of those aspects of the matter or the time limitation for which the person is represented. Only as to such aspects and time is the person considered to be represented by a legal professional.

(c) Rules Relating to Government Lawyers Engaged in Civil or Criminal Law

Enforcement. A government lawyer engaged in a criminal or civil law enforcement matter, or a person acting under the lawyer's direction in the matter, may communicate with a person known to be represented by a lawyer if:

- (1) the communication is in the course of, and limited to, an investigation of a different matter unrelated to the representation or any ongoing, unlawful conduct; or
- (2) the communication is made to protect against an imminent risk of death or serious bodily harm or substantial property damage that the government lawyer reasonably believes may occur and the communication is limited to those matters necessary to protect against the imminent risk; or
- (3) the communication is made at the time of the arrest of the represented person and after that person is advised of the right to remain silent and the right to counsel and voluntarily and knowingly waives these rights; or
- (4) the communication is initiated by the represented person, directly or through an intermediary, if prior to the communication the represented person has given a written or recorded voluntary and informed waiver of counsel, including the right to have substitute counsel, for that communication.

(d) Organizations as Represented Persons.

(1) When the represented person is an organization, an individual is represented by counsel for the organization if the individual is not separately represented with respect to the subject matter of the communication, and

(A) with respect to a communication by a government lawyer in a civil or criminal law enforcement matter, is known by the government lawyer to be a current member of the control group of the represented organization; or

(B) with respect to a communication by a lawyer in any other matter, is known by the lawyer to be

- (i) a current member of the control group of the represented organization; or
- (ii) a representative of the organization whose acts or omissions in the matter may be imputed to the organization under applicable law; or
- (iii) a representative of the organization whose statements under applicable rules of evidence would have the effect of binding the organization with respect to proof of the matter.

(2) The term "control group" means the following persons: (A) the chief executive officer, chief operating officer, chief financial officer, and the chief legal officer of the organization; and (B) to the extent not encompassed by Subsection (A), the chair of the organization's governing body, president, treasurer, secretary and a vice-president or



vice-chair who is in charge of a principal business unit, division or function (such as sales, administration or finance) or performs a major policy-making function for the organization; and (C) any other current employee or official who is known to be participating as a principal decision maker in the determination of the organization's legal position in the matter.

(3) This Rule does not apply to communications with government parties, employees or officials unless litigation about the subject of the representation is pending or imminent. Communications with elected officials on policy matters are permissible when litigation is pending or imminent after disclosure of the representation to the official.

(e) Limitations on Communications. When communicating with a represented person pursuant to this Rule, no lawyer may

(1) inquire about privileged communications between the person and their legal professional or about information regarding litigation strategy or legal arguments of their legal professional or seek to induce the person to forgo representation or disregard the advice of the person's legal professional; or

(2) engage in negotiations of a plea agreement, settlement, statutory or non-statutory immunity agreement or other disposition of actual or potential criminal charges or civil enforcement claims or sentences or penalties with respect to the matter in which the person is represented by a legal professional unless such negotiations are permitted by law, rule or court order.

Rule 4.3. Dealing with Unrepresented Person.

(a) In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

(b) A lawyer may consider a person, whose representation by counsel in a matter does not encompass all aspects of the matter, to be unrepresented for purposes of this Rule and Rule 4.2, unless that person's counsel has provided written notice to the lawyer of those aspects of the matter or the time limitation for which the person is represented. Only as to such aspects and time is the person considered to be represented by counsel.



Feature: From the Claim Files

Minnesota Lawyers Mutual Insurance Company (MLM) presents the following fact scenarios from our claim files for the purpose of educating attorneys about the real-life circumstances that can lead to a malpractice claim, and to provide recommendations on how the claim could have been avoided.

Claim One: Drafting a Contract

Attorney represents mother and adult daughter, both of whom were seriously injured in a motor vehicle accident. Attorney settles the claim for the \$250,000 policy limit of the tortfeasor. No other coverage is available. When attorney attempts to distribute the settlement proceeds, mother and daughter disagree as to who should get how much. Attorney ends up being sued by both mother and daughter, alleging conflict of interest.

How the Claim Could Have Been Avoided

Attorney should have recognized early on the potential for a conflict and should not have represented both mother and daughter.

Claim Two: Conflicts in Business Law Practice

Attorney is retained to set up a small business owned by three individuals. Attorney advises the three that his role will be limited to acting as the attorney for the corporation. He does not, however, memorialize that conversation in either a letter or in the retainer agreement. As time goes by, the business comes on hard times, and two of the partners believe the problems with the company are a result of poor performance of the third partner. They come to attorney to be advised as to the procedures for forcing out the third partner, which they eventually do. Attorney has, over the years, represented the third party in a number of personal matters unrelated to the business. When third partner learns that attorney advised his partners regarding the force out, he sues attorney, alleging, among other things, conflict of interest.

How the Claim Could Have Been Avoided

Clearly define and memorialize in either a letter or in the retainer agreement the exact scope of the representation. Work only within the scope of the representation. Attorney should have advised third party he could not represent him on personal matters.

Claim Three: Conflicts in Commercial Law/Probate Matter

Client was represented by attorney for all matters relating to their family business for over 25 years. Retirement time was approaching. Clients wanted to pass the business on to the children, who had for years been involved with the business. Client and children all came in to meet with attorney. They advised attorney they wanted to sell the business to the children on a contract, having the proceeds from the contract fund their retirement. They

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did not want the contract recorded, as the children needed to borrow operating funds, using the property and inventory as collateral. While attorney advised against this, clients' wishes were carried out. Children borrowed, didn't pay back, and eventually lost the business and the real property. Mom and Dad lost their retirement income. Everybody sued the lawyer.

How the Claim Could Have Been Avoided

Determine and clearly define who you are representing. Do not represent both sides in a transaction.

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Rule 14-301. Standards of Professionalism and Civility

Preamble

A lawyer's conduct should be characterized at all times by personal courtesy and professional integrity in the fullest sense of those terms. In fulfilling a duty to represent a client vigorously as lawyers, we must be mindful of our obligations to the administration of justice, which is a truth-seeking process designed to resolve human and societal problems in a rational, peaceful, and efficient manner. We must remain committed to the rule of law as the foundation for a just and peaceful society.

Conduct that may be characterized as uncivil, abrasive, abusive, hostile, or obstructive impedes the fundamental goal of resolving disputes rationally, peacefully, and efficiently. Such conduct tends to delay and often to deny justice.

Lawyers should exhibit courtesy, candor and cooperation in dealing with the public and participating in the legal system. The following standards are designed to encourage lawyers to meet their obligations to each other, to litigants and to the system of justice, and thereby achieve the twin goals of civility and professionalism, both of which are hallmarks of a learned profession dedicated to public service.

Lawyers should educate themselves on the potential impact of using digital communications and social media, including the possibility that communications intended to be private may be republished or misused. Lawyers should understand that digital communications in some circumstances may have a widespread and lasting impact on their clients, themselves, other lawyers, and the judicial system.

We expect judges and lawyers will make mutual and firm commitments to these standards. Adherence is expected as part of a commitment by all participants to improve the administration of justice throughout this State. We further expect lawyers to educate their clients regarding these standards and judges to reinforce this whenever clients are present in the courtroom by making it clear that such tactics may hurt the client's case.

Although for ease of usage the term "court" is used throughout, these standards should be followed by all judges and lawyers in all interactions with each other and in any proceedings in this State. Copies may be made available to clients to reinforce our obligation to maintain and foster these standards. Nothing in these standards supersedes or detracts from existing disciplinary codes or standards of conduct.

Cross-References: R. Prof. Cond. Preamble [1], [13]; R. Civ. P. 1; R. Civ. P. 65B(b)(5); R. Crim. P. 1(b); R. Juv. P. 1(b); R. Third District Court 10-1-306; Fed. R. Civ. P. 1; DUCivR 83-1.1(g).

1. Lawyers shall advance the legitimate interests of their clients, without reflecting any ill-will that clients may have for their adversaries, even if called upon to do so by another. Instead, lawyers shall treat all other counsel, parties, judges, witnesses, and other participants in all proceedings in a courteous and dignified manner.

Comment: Lawyers should maintain the dignity and decorum of judicial and administrative proceedings, as well as the esteem of the legal profession. Respect for the



court includes lawyers' dress and conduct. When appearing in court, lawyers should dress professionally, use appropriate language, and maintain a professional demeanor. In addition, lawyers should advise clients and witnesses about proper courtroom decorum, including proper dress and language, and should, to the best of their ability, prevent clients and witnesses from creating distractions or disruption in the courtroom.

The need for dignity and professionalism extends beyond the courtroom. Lawyers are expected to refrain from inappropriate language, maliciousness, or insulting behavior in depositions, meetings with opposing counsel and clients, telephone calls, email, and other exchanges. They should use their best efforts to instruct their clients and witnesses to do the same.

Cross-References: R. Prof. Cond. 1.4; R. Prof. Cond. 1.16(a)(1); R. Prof. Cond. 2.1; R. Prof. Cond. 3.1; R. Prof. Cond. 3.2; R. Prof. Cond. 3.3(a)(1); R. Prof. Cond. 3.4; R. Prof. Cond. 3.5(d); R. Prof. Cond. 3.8; R. Prof. Cond. 3.9; R. Prof. Cond. 4.1(a); R. Prof. Cond. 4.4(a); R. Prof. Cond. 8.4(d); R. Civ. P. 10(h); R. Civ. P. 12(f); R. App. P. 24(k); R. Crim. P. 33(a); Fed. R. Civ. P. 12(f).

2. Lawyers shall advise their clients that civility, courtesy, and fair dealing are expected. They are tools for effective advocacy and not signs of weakness. Clients have no right to demand that lawyers abuse anyone or engage in any offensive or improper conduct.

Cross-References: R. Prof. Cond. Preamble [5]; R. Prof. Cond. 1.2(a); R. Prof. Cond. 1.2(d); R. Prof. Cond. 1.4(a)(5).

3. Lawyers shall not, without an adequate factual basis, attribute to other counsel or the court improper motives, purpose, or conduct. Lawyers should avoid hostile, demeaning, or humiliating words in written and oral communications with adversaries. Neither written submissions nor oral presentations should disparage the integrity, intelligence, morals, ethics, or personal behavior of an adversary unless such matters are directly relevant under controlling substantive law.

Comment: Hostile, demeaning, and humiliating communications include all expressions of discrimination on the basis of race, religion, gender, sexual orientation, age, handicap, veteran status, or national origin, or casting aspersions on physical traits or appearance. Lawyers should refrain from acting upon or manifesting bigotry, discrimination, or prejudice toward any participant in the legal process, even if a client requests it.

Lawyers should refrain from expressing scorn, superiority, or disrespect. Legal process should not be issued merely to annoy, humiliate, intimidate, or harass. Special care should be taken to protect witnesses, especially those who are disabled or under the age of 18, from harassment or undue contention.

Cross-References: R. Prof. Cond. Preamble [5]; R. Prof. Cond. 3.1; R. Prof. Cond. 3.5; R. Prof. Cond. 8.4; R. Civ. P. 10(h); R. Civ. P. 12(f); R. App. P. 24(k); R. Crim. P. 33(a); Fed. R. Civ. P. 12(f).

4. Lawyers shall never knowingly attribute to other counsel a position or claim that counsel has not taken or seek to create such an unjustified inference or otherwise seek to create a "record" that has not occurred.

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Cross-References: R. Prof. Cond. 3.1; R. Prof. Cond. 3.3(a)(1); R. Prof. Cond. 3.5(a); R. Prof. Cond. 8.4(c); R. Prof. Cond. 8.4(d).

5. Lawyers shall not lightly seek sanctions and will never seek sanctions against or disqualification of another lawyer for any improper purpose.

Cross-References: R. Prof. Cond. 3.1; R. Prof. Cond. 3.2; R. Prof. Cond. 8.4(c); R. Prof. Cond. 8.4(d); R. Civ. P. 11(c); R. Civ. P. 16(d); R. Civ. P. 37(a); Fed. R. Civ. P. 11(c)(2).

6. Lawyers shall adhere to their express promises and agreements, oral or written, and to all commitments reasonably implied by the circumstances or by local custom.

Cross-References: R. Prof. Cond. 1.1; R. Prof. Cond. 1.3; R. Prof. Cond. 1.4(a), (b); R. Prof. Cond. 1.6(a); R. Prof. Cond. 1.9; R. Prof. Cond. 1.13(a), (b); R. Prof. Cond. 1.14; R. Prof. Cond. 1.15; R. Prof. Cond. 1.16(d); R. Prof. Cond. 1.18(b), (c); R. Prof. Cond. 2.1; R. Prof. Cond. 3.2; R. Prof. Cond. 3.3; R. Prof. Cond. 3.4(c); R. Prof. Cond. 3.8; R. Prof. Cond. 5.1; R. Prof. Cond. 5.3; R. Prof. Cond. 8.3(a), (b); R. Prof. Cond. 8.4(c); R. Prof. Cond. 8.4(d).

7. When committing oral understandings to writing, lawyers shall do so accurately and completely. They shall provide other counsel a copy for review, and never include substantive matters upon which there has been no agreement, without explicitly advising other counsel. As drafts are exchanged, lawyers shall bring to the attention of other counsel changes from prior drafts.

Comment: When providing other counsel with a copy of any negotiated document for review, a lawyer should not make changes to the written document in a manner calculated to cause the opposing party or counsel to overlook or fail to appreciate the changes. Changes should be clearly and accurately identified in the draft or otherwise explicitly brought to the attention of other counsel. Lawyers should be sensitive to, and accommodating of, other lawyers' inability to make full use of technology and should provide hard copy drafts when requested and a redline copy, if available.

Cross-References: R. Prof. Cond. 3.4(a); R. Prof. Cond. 4.1(a); R. Prof. Cond. 8.4(c); R. Prof. Cond. 8.4(d); R. App. P. 11(f).

8. When permitted or required by court rule or otherwise, lawyers shall draft orders that accurately and completely reflect the court's ruling. Lawyers shall promptly prepare and submit proposed orders to other counsel and attempt to reconcile any differences before the proposed orders and any objections are presented to the court.

Cross-References: R. Prof. Cond. 3.2; R. Prof. Cond. 8.4; R. Civ. P. 7(f); R. Third District Court 10-1-306(6).

9. Lawyers shall not hold out the potential of settlement for the purpose of foreclosing discovery, delaying trial, or obtaining other unfair advantage, and lawyers shall timely respond to any offer of settlement or inform opposing counsel that a response has not been authorized by the client.

Cross-References: R. Prof. Cond. 3.2; R. Prof. Cond. 3.4(a); R. Prof. Cond. 4.1(a); R. Prof. Cond. 8.4(c); R. Prof. Cond. 8.4(d).



10. Lawyers shall make good faith efforts to resolve by stipulation undisputed relevant matters, particularly when it is obvious such matters can be proven, unless there is a sound advocacy basis for not doing so.

Cross-References: R. Prof. Cond. 3.1; R. Prof. Cond. 3.2; R. Prof. Cond. 3.4(d); R. Prof. Cond. 8.4(d); R. Third District Court 10-1-306 (1)(A); Fed. R. Civ. P. 16(2)(C).

11. Lawyers shall avoid impermissible ex parte communications.

Cross-References: R. Prof. Cond. 1.2; R. Prof. Cond. 2.2; R. Prof. Cond. 2.9; R. Prof. Cond. 3.5; R. Prof. Cond. 5.1; R. Prof. Cond. 5.3; R. Prof. Cond. 8.4(a); R. Prof. Cond. 8.4(d); R. Civ. P. 77(b); R. Juv. P. 2.9(A); Fed. R. Civ. P. 77(b).

12. Lawyers shall not send the court or its staff correspondence between counsel, unless such correspondence is relevant to an issue currently pending before the court and the proper evidentiary foundations are met or as such correspondence is specifically invited by the court.

Cross-References: R. Prof. Cond. 3.5(a); R. Prof. Cond. 3.5(b); R. Prof. Cond. 5.1; R. Prof. Cond. 5.3; R. Prof. Cond. 8.4(a); R. Prof. Cond. 8.4(d).

13. Lawyers shall not knowingly file or serve motions, pleadings or other papers at a time calculated to unfairly limit other counsel's opportunity to respond or to take other unfair advantage of an opponent, or in a manner intended to take advantage of another lawyer's unavailability.

Cross-References: R. Prof. Cond. 8.4(c); R. Juv. P. 19.

14. Lawyers shall advise their clients that they reserve the right to determine whether to grant accommodations to other 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 admissions of facts. Lawyers shall agree to reasonable requests for extension of time and waiver of procedural formalities when doing so will not adversely affect their clients' legitimate rights. Lawyers shall never request an extension of time solely for the purpose of delay or to obtain a tactical advantage.

Comment: Lawyers should not evade communication with other counsel, should promptly acknowledge receipt of any communication, and should respond as soon as reasonably possible. Lawyers should only use data-transmission technologies as an efficient means of communication and not to obtain an unfair tactical advantage. Lawyers should be willing to grant accommodations where the use of technology is concerned, including honoring reasonable requests to retransmit materials or to provide hard copies.

Lawyers should not request inappropriate extensions of time or serve papers at times or places calculated to embarrass or take advantage of an adversary.

Cross-References: R. Prof. Cond. 1.2(a); R. Prof. Cond. 2.1; R. Prof. Cond. 3.2; R. Prof. Cond. 8.4; R. Juv. P. 54.

15. Lawyers shall endeavor to consult with other counsel so that depositions, hearings, and conferences are scheduled at mutually convenient times. Lawyers shall never request a



scheduling change for tactical or unfair purpose. If a scheduling change becomes necessary, lawyers shall notify other counsel and the court immediately. If other counsel requires a scheduling change, lawyers shall cooperate in making any reasonable adjustments.

Comment: When scheduling and attending depositions, hearings, or conferences, lawyers should be respectful and considerate of clients' and adversaries' time, schedules, and commitments to others. This includes arriving punctually for scheduled appointments. Lawyers should arrive sufficiently in advance of trials, hearings, meetings, depositions, and other scheduled events to be prepared to commence on time. Lawyers should also advise clients and witnesses concerning the need to be punctual and prepared. Lawyers who will be late for a scheduled appointment or are aware that another participant will be late, should notify the court, if applicable, and all other participants as soon as possible.

Cross-References: R. Prof. Cond. 3.2; R. Prof. Cond. 3.4; R. Prof. Cond. 5.1; R. Prof. Cond. 8.4(a); R. Juv. P. 20; R. Juv. P. 20A.

16. Lawyers shall not cause the entry of a default without first notifying other counsel whose identity is known, unless their clients' legitimate rights could be adversely affected.

Cross-References: R. Prof. Cond. 8.4; R. Civ. P. 55(a); Fed. R. Civ. P. 55(b)(2).

17. Lawyers shall not use or oppose discovery for the purpose of harassment or to burden an opponent with increased litigation expense. Lawyers shall not object to discovery or inappropriately assert a privilege for the purpose of withholding or delaying the disclosure of relevant and non-protected information.

Cross-References: R. Prof. Cond. 3.1; R. Prof. Cond. 3.2; R. Prof. Cond. 3.4; R. Prof. Cond. 4.1; R. Prof. Cond. 4.4(a); R. Prof. Cond. 8.4; R. Civ. P. 26(b)(1); R. Civ. P. 26(b)(8)(A); R. Civ. P. 37(a)(1)(A), (D); R. Civ. P. 37(c); R. Crim. P. 16(b); R. Crim. P. 16(c); R. Crim. P. 16(d); R. Crim. P. 16(e); R. Juv. P. 20; R. Juv. P. 20A; R. Juv. P. 27(b); Fed. R. Civ. P. 26(b)(1); Fed. R. Civ. P. 26(g)(1)(B)(ii), (iii).

18. During depositions lawyers shall not attempt to obstruct the interrogator or object to questions unless reasonably intended to preserve an objection or protect a privilege for resolution by the court. "Speaking objections" designed to coach a witness are impermissible. During depositions or conferences, lawyers shall engage only in conduct that would be appropriate in the presence of a judge.

Cross-References: R. Prof. Cond. 3.2; R. Prof. Cond. 3.3(a)(1); R. Prof. Cond. 3.4; R. Prof. Cond. 3.5; R. Prof. Cond. 8.4; R. Civ. P. 30(c)(2); R. Juv. P. 20; R. Juv. P. 20A; Fed. R. Civ. P. 30(c)(2); Fed. R. Civ. P. 30(d)(2); Fed. R. Civ. P. 30(d)(3)(A).

19. In responding to document requests and interrogatories, lawyers shall not interpret them in an artificially restrictive manner so as to avoid disclosure of relevant and non-protected documents or information, nor shall they produce documents in a manner designed to obscure their source, create confusion, or hide the existence of particular documents.

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Cross-References: R. Prof. Cond. 3.2; R. Prof. Cond. 3.4; R. Prof. Cond. 8.4; R. Prof. Cond. 3.4; R. Civ. P. 26(b)(1); R. Civ. P. 37; R. Crim. P. 16(a); R. Juv. P. 20; R. Juv. P. 20A; Fed. R. Civ. P. 37(a)(4).

20. Lawyers shall not authorize or encourage their clients or anyone under their direction or supervision to engage in conduct proscribed by these Standards.