UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

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U.S. DISTRICT COURT
SAN JUAN, PR

IN THE MATTER OF:

CODE OF PRETRIAL CONDUCT;
CODE OF TRIAL CONDUCT.

Misc. No. 07-182 (JAF)

STANDING ORDER

On September 14, 2006, the Chief Judge of this Court entered a Standing Order adopting The American College of Trial Lawyers' Code of Pretrial and Trial Conduct. See http://www.prd.uscourts.gov/USDCPR/a_so_fustelist.htm.

Effective today, all Judicial Officers also adopt these Codes for Pretrial and Trial Conduct. This Standing Order by all Judicial Officers in this District shall be notified to the Bar and posted on the Court's website.

IT IS SO ORDERED.

San Juan, Puerto Rico, this 24th day of August, 2007.

JOSE ANTONIO FUSTE
Chief U. S. District Judge

CARMEN CONSUELO CEREZO
U. S. District Judge

DANIEL R. DOMINGUEZ
U. S. District Judge

JAY A. GARCIA-GREGORY
U. S. District Judge

AIDA M. DELGADO-COLON
U. S. District Judge

GUSTAVO A. GELPI
U. S. District Judge

FRANCISCO A. BESOSA
U. S. District Judge

JUAN M. PEREZ-GIMENEZ
Senior U. S. District Judge

JAIME PIERAS, JR.
Senior U.S. District Judge

RAYMOND L. ACOSTA
Senior U.S. District Judge

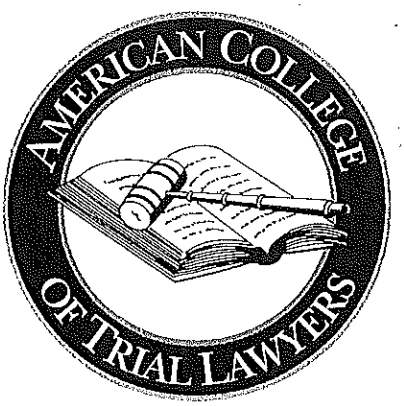
SALVADOR E. CASELLAS
Senior U.S. District Judge

JUSTO ARENAS
U.S. Magistrate Judge

CAMILLE VELEZ-RIVE
U.S. Magistrate Judge

BRUCE J. McGIVERIN
U.S. Magistrate Judge

MARCOS E. LOPEZ
U.S. Magistrate Judge



Code of Pretrial Conduct
and
Code of Trial Conduct

Printing of the
American College of Trial Lawyers U.S. Code of Pretrial Conduct and Code of Trial Conduct
has been generously supported by a grant from the
Foundation of the American College of Trial Lawyers.

Please accept this copy of the Codes of Trial and Pretrial Conduct published by the American College of Trial Lawyers. The development of these Codes by the Fellows of the College and their distribution to persons and institutions engaged in all aspects of the administration of justice represents an important part of the execution of the College's mandate to improve and elevate standards of trial practice, the administration of justice and the ethics of the profession.

The American College of Trial Lawyers, founded in 1950, is composed of the best of the trial bar from the United States and Canada. Fellowship in the College is extended by invitation only, after careful investigation, to those experienced trial lawyers who have mastered the art of advocacy and whose professional careers have been marked by the highest standards of ethical conduct, professionalism, civility and collegiality. Lawyers must have a minimum of 15 years' experience before they can be considered for Fellowship. Membership in the College cannot exceed 1% of the total lawyer population of any state or province. Fellows are carefully selected from among those who represent plaintiffs and those who represent defendants in civil cases; those who prosecute and those who defend persons accused of crime. The College is thus able to speak with a balanced voice on important issues affecting the administration of justice.

The College is confident that utilization of these Codes in the course of legal proceedings in the courts and as teaching aids at the Bar and in the nation's law schools will represent a positive contribution to improving and elevating standards of trial practice, the administration of justice and the ethics of the profession.

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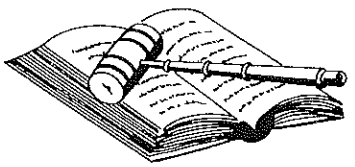
hold every man a debtor to his profession; from the which, as men of course do seek to receive countenance and profit, so ought they of duty to endeavor themselves, by way of amends, to be help and ornament thereto."

Sir Francis Bacon

American College of Trial Lawyers



Code of Pretrial Conduct

Approved by the Board of Regents
October 2002

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Introduction

The American College of Trial Lawyers recently adopted this Code of Pretrial Conduct as a companion to the Code of Trial Conduct first adopted in 1956.

Like the Code of Trial Conduct, this new Pretrial Code is part of a continuing effort to promote professionalism and courtesy among trial lawyers during all stages of litigation. It supplements existing rules of professional conduct, local court rules, and rules of procedure, and provides guidance to trial lawyers on proper conduct in pretrial proceedings. And, like the Code of Trial Conduct, this Code expresses only minimum standards.

As Chief Justice, a former trial lawyer, and an Honorary Fellow of the College, it is a pleasure to commend the Code to the trial bar, law schools, and judiciary of our nation.

William H. Rehnquist,
Chief Justice of the United States

May 2003

Preamble

The American College of Trial Lawyers seeks to promote professionalism and courtesy among trial lawyers. In light of recent widespread abuse of pretrial procedures, the College presents this Code of Pretrial Conduct, as a companion piece to its Code of Trial Conduct.

This Code is primarily applicable to civil cases and is not intended to supplant any local rules, procedural rules, or rules of professional conduct. Instead, it should merely supplement those rules, providing guidance to trial lawyers on proper professional conduct in handling discovery, motion practice, and other pretrial matters.

While trial lawyers owe undivided allegiance to their clients, they also owe important duties to the judicial system, to their colleagues, and to the public. Only by fulfilling these duties can trial lawyers help to ensure the proper administration of justice.

In pretrial proceedings, a trial lawyer owes opposing counsel duties of courtesy, candor, and cooperation in scheduling, serving papers, communicating in writing and in speech, conducting discovery, designating expert witnesses, and seeking to resolve cases without litigation.

Trial lawyers owe similar duties of courtesy, candor, and cooperation to judges during the pretrial stage. These duties include preserving judges' time by seeking to resolve disputes without court involvement, promptly communicating with judges about significant developments, and following all judicial directives. Further, trial lawyers should scrupulously protect the judiciary's dignity and independence by avoiding inappropriate informality and ex parte communications.

Finally, during pretrial proceedings, trial lawyers should exhibit courtesy, candor, and cooperation in dealing with the public and participating in the legal system. These duties extend to all aspects of a trial lawyer's pretrial interaction with nonclients, including opposing parties, nonparty witnesses, expert witnesses, and consultants.

In fulfilling these duties, of course, trial lawyers must act in a manner consistent with their clients' legal interests. But trial lawyers can protect those interests while still applying the highest standards of professionalism. And by doing so, they can generate respect from the public that they serve.

In furtherance of the concepts expressed above, the American College of Trial Lawyers suggests the following minimum standards for lawyers' pretrial conduct.

Standards For Pretrial Conduct

1. Scheduling

(a) Scheduling a Pretrial Event

(1) Before noticing or scheduling a deposition, hearing, or other pretrial event, a lawyer should consult and work with opposing counsel to accommodate the needs and reasonable requests of all witnesses and participating lawyers. In scheduling a pretrial event, lawyers should strive to agree upon a mutually convenient time and place, seeking to minimize travel expense and to allow adequate time for preparation.

(2) Depositions, hearings, and other pretrial events should be scheduled early enough during the pretrial phase to avoid the difficult scheduling problems that often result from last-minute requests.

(b) Rescheduling a Pretrial Event

(1) If a lawyer needs to reschedule a deposition or other pretrial event, the lawyer should give prompt notice to all other counsel, explaining the conflict or other compelling reason for rescheduling.

(2) A lawyer who receives a reasonable request for rescheduling should strive to accommodate the request.

(3) If the conflict or other reason for rescheduling is later resolved or eliminated, then the lawyer who rescheduled the event should give notice as soon as practicable to all other counsel. The lawyers should then decide which of the two possible schedules is more convenient.

(c) Seeking and Granting Extensions of Time

(1) Courts expect lawyers to grant other lawyers' requests for reasonable extensions of time to respond to discovery, pretrial motions, and other pretrial matters. Opposing such requests wastes resources and needlessly inconveniences courts, which are likely to grant such requests, even if opposed. Lawyers should explain these principles to their clients and should insist on adhering to them, unless the clients' legitimate interests will be adversely affected.

(2) A lawyer should request an extension only when additional time is actually needed, and never merely for purposes of delay. In requesting an extension of time, a lawyer should explain to opposing counsel the reasons for the request.

(3) A lawyer who receives a reasonable request for extension — especially an initial request — should grant the request unless it is clearly inconsistent with the legitimate interests of the lawyer's client.

2. Service of Process, Pleadings, and Proposed Orders

(a) The timing, manner, and place of serving process should not be calculated to disadvantage or embarrass the party being served.

(b) Unless applicable procedural rules require otherwise, papers should not be filed in a court before being delivered to opposing counsel. For example, if papers are hand-delivered or faxed to the court, then they should be hand-delivered or faxed to opposing counsel on the same day and at about the same time.

(c) Papers should not be served in a manner deliberately designed to shorten an opponent's time for response or to take other unfair advantage of an opponent. This may include service:

(1) when the opponent is known to be absent from the office;
(2) late on a Friday afternoon;
(3) the day before a secular or religious holiday;
(4) shortly before a hearing; or
(5) when the timing of service does not afford the opponent adequate time to respond to the paper or to prepare for the relevant pretrial event.

(d) Even if service by mail to opposing counsel does not technically violate the rules, such service sometimes prejudices the opposing party. If such prejudice is likely, then service should be made by hand or by facsimile, followed, if the applicable rules so require, by service by mail.

(e) Except when expressly ordered by a court, a proposed order on any substantive matter should not be delivered to the court without assurance that tendering counsel has complied with paragraph 6(e) of this Code.

3. Written Submissions to a Court

(a) Written briefs and memoranda should not refer to or rely on facts that are not properly a part of the record. A lawyer may, however, present historical, economic, or sociological data if the applicable rules of evidence support the data's admissibility.

(b) 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 the controlling substantive law.

(c) When legal opinions are highlighted and presented to the court, identical highlighting should be included on copies of the opinions furnished to opposing counsel.

4. Communication with Adversaries

(a) In their practice, lawyers should remember that their role is to zealously advance the legitimate interests of their clients, while maintaining appropriate standards of civility and decorum. In dealing with others, counsel should not reflect any ill feelings that clients may have toward their

adversaries. Lawyers should treat all other lawyers, all parties, and all witnesses courteously, not only in court, but also in other written and oral communication. Lawyers should refrain from acting upon or manifesting bias or prejudice toward any person based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status.

(b) Lawyers should avoid hostile, demeaning, or humiliating words in written and oral communication with adversaries.

(c) Letters intended only to make a record should be used sparingly and only when thought to be necessary under all the circumstances. Letters should not be written to ascribe to an adversary a position that he or she has not taken or to create a "record" of events that have not occurred.

(d) Unless specifically permitted or invited by the court, letters between counsel should not be sent to judges.

(e) Lawyers should strictly adhere to all express promises to and agreements with opposing counsel, whether oral or in writing, and should adhere in good faith to all agreements implied by the circumstances or by local custom.

(f) When practicable, lawyers should agree to reasonable requests for the waiver of procedural formalities.

5. Discovery Practice

(a) Discovery in General

In discovery, as in all other professional matters, a lawyer's conduct should be honest, fair, and courteous. In general, a lawyer should adhere to the following guidelines in conducting all forms of discovery:

(1) A lawyer should strictly follow all applicable rules in drafting and responding to written discovery and in conducting depositions.

(2) A lawyer should conduct discovery to elicit relevant facts and evidence, and not for an improper purpose, such as to harass, intimidate, or unduly burden another party or a witness.

(3) A lawyer should respond to written discovery in a reasonable manner and should not interpret requests in a strained or unduly restrictive way in an effort to avoid responding to them or to conceal relevant, nonprivileged information.

(4) Objections to interrogatories, document requests, and requests for admissions should be made in good faith and should be adequately explained and limited.

(5) When a discovery dispute arises, opposing lawyers should attempt to resolve the dispute by working cooperatively together. Lawyers should refrain from filing motions to compel or for sanctions unless they have genuinely tried, but failed, to resolve the dispute through all reasonable avenues of compromise and resolution.

(6) Lawyers should claim a privilege only under appropriate circumstances. They should not assert a privilege solely to withhold or suppress nonprivileged information or to limit or delay their response.

(7) Requests for additional time to respond to discovery should be made as far in advance of the due date as reasonably possible and should not be used for tactical or strategic reasons.

(8) Unless there are compelling reasons to deny a request for additional time to respond to discovery, an opposing lawyer should grant the request without necessitating court intervention. Compelling reasons to deny such a request exist only if the client's legitimate interests would be materially prejudiced by the proposed delay.

(b) Interrogatories

(1) Lawyers should avoid "boilerplate" interrogatories. Instead, they should carefully tailor interrogatories to elicit information that is relevant to the issues in the pending case or that is otherwise necessary to discover or understand those issues.

(2) Lawyers should not assert objections solely to avoid answering an appropriate interrogatory. If only part of an interrogatory is objectionable, then the responding lawyer should object only to that part and should answer the remainder of the interrogatory.

(c) Document Requests

(1) Lawyers should carefully tailor document requests to obtain documents that are relevant to the issues in the pending case or that are otherwise necessary to discover or understand those issues.

(2) Lawyers should not assert objections solely to avoid producing relevant documents. If only part of a request is objectionable, then the responding lawyer should object only to that part and should timely produce all documents responsive to the remainder of the request.

(3) In responding to document requests, lawyers should make reasonable accommodations for review and copying by opposing counsel. Documents being produced should be organized in a manner consistent with the applicable rules of procedure. A group of documents should never be arranged in a manner calculated to hide or obscure the existence of particular documents or discoverable information.

(4) If any responsive documents are withheld, then at the time of production, the producing lawyer should give notice of that fact and should explain the reason for withholding them. The producing lawyer should timely provide, in accordance with applicable rule, a log of all documents withheld, including, for each document: (a) its date; (b) the author's name; (c) a general description; (d) the addressee, if any; (e) its current location; (f) the basis

for withholding it; and (g) any other information that may be required by applicable rules of procedure.

(d) Requests for Admissions

(1) Lawyers should use requests for admissions only to ascertain the truth of matters within the scope of the pending case. Such requests should be carefully drafted to inquire only about matters of fact or opinion or the application of law to fact, including the genuineness of any documents properly described in the requests.

(2) Lawyers should not assert objections solely to avoid admitting or denying an appropriate request. If only part of a request is objectionable, then the responding lawyer should object only to that part and should admit or deny the remainder of the request or set forth in detail the reasons why the answering party cannot truthfully admit or deny the request.

(e) Depositions

(1) Lawyers should limit depositions to those that are necessary to develop the claims or defenses in the pending case or to perpetuate relevant testimony.

(2) In appearing for depositions, lawyers should arrive punctually at the time and place stated in the notice or subpoena or agreed upon by counsel. If a lawyer is unavoidably delayed, other participating lawyers should be promptly notified, should be told the reason for the delay, and should be advised when to expect the delayed lawyer's arrival.

(3) If a scheduled deposition must unavoidably be cancelled, the other participating lawyers should be notified as soon as possible and should be told the reason for the cancellation. The canceling lawyer should promptly seek to reschedule the deposition in a way that will minimize any inconvenience and expense caused by the cancellation.

(4) During a deposition, lawyers should conduct themselves with decorum and should never verbally abuse or harass the witness or unnecessarily prolong the deposition.

(5) During a deposition, lawyers should strictly limit objections to those allowed by the applicable rules. In general, lawyers should object only to preserve the record, to assert a valid privilege, or to protect the witness from unfair, ambiguous, or abusive questioning. Objections should not be used to obstruct questioning, to improperly communicate with the witness, or to disrupt the search for facts or evidence germane to the case.

(f) Exceptions to the General Guidelines Regarding Discovery

(1) A lawyer who has attempted to comply with these guidelines is justified in setting a hearing or deposition without agreement from opposing counsel if opposing counsel fails or refuses to promptly accept or reject a time offered for the 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 these guidelines, 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 these guidelines appears to be impracticable, a lawyer should nonetheless make a good-faith attempt to comply with their terms to the extent practicable.

(5) If a case involves an extraordinary remedy and the time associated with a scheduling agreement could harm a client's case, then a lawyer is justified in setting a hearing or deposition without agreement from opposing counsel, giving notice as prescribed in paragraph 8(b) of this Code.

6. Motion Practice

(a) Before setting a motion for hearing, a lawyer should make a reasonable effort to resolve the issue without involving the court.

(b) A lawyer who has no valid objection to an opponent's proposed motion should promptly make this position known to opposing counsel. Depending on the nature of the motion, such candor will enable opposing counsel either to file an unopposed motion or to avoid filing a motion altogether.

(c) If, after opposing a motion, a lawyer recognizes that the movant's position is correct based on the facts or the law, then the lawyer should promptly advise opposing counsel and the court of this change in position. Such candor will prevent the court and opposing counsel from participating in an unnecessary hearing and from addressing issues unnecessarily.

(d) After a hearing, the lawyer charged with preparing the proposed order should draft it promptly, striving to fairly and accurately articulate the court's ruling. The lawyer should submit the proposed order in compliance with the court's instructions. If no specific schedule is imposed by the court, the lawyer should strive either to tender a copy to opposing counsel, in accordance with paragraph 6(e), below, no later than the following day, excluding Saturdays, Sundays, and legal holidays, or to inform opposing counsel when he or she may expect such a tender.

(e) Before submitting a proposed order to a court, a lawyer should provide a copy to opposing counsel, who should promptly voice any objections. If the lawyers cannot resolve all objections, then the drafting lawyer should promptly submit the proposed order to the court, stating any unresolved objections.

7. Communication with Nonparty Witnesses

(a) In dealing with a nonparty who is a witness or potential witness, a lawyer must: (1) be truthful about the material facts and the applicable law; (2) disclose his or her interest or role in the

pending matter; (3) correct any misunderstanding expressed by the nonparty; (4) treat the nonparty courteously; and (5) avoid unnecessarily embarrassing, inconveniencing, or burdening the nonparty.

(b) If a lawyer knows that a nonparty witness is represented by counsel in the pending matter, then the lawyer should not contact the witness without permission from that counsel.

(c) If a lawyer knows that a nonparty witness is an employee or agent of an organization represented by counsel in the pending matter, then the lawyer should scrupulously follow the rules of the applicable jurisdiction governing such contacts. Absent such rules, the lawyer should not contact the witness without permission from that counsel if: (1) the witness has the power to compromise or settle; (2) the witness regularly consults with the organization's lawyers; (3) the witness's acts may be imputed to the organization for liability purposes; or (4) the witness's statements would bind the organization.

(d) Lawyers should show courtesy and civility to all nonparty witnesses.

(e) A lawyer should not obstruct another party's access to a nonparty witness or induce a nonparty witness to evade or ignore process.

(f) A lawyer should not issue a subpoena to a nonparty witness except to compel, for a proper purpose, the witness's appearance at a deposition, hearing, or trial or to obtain necessary documents in the witness's possession.

(g) If a lawyer issues a deposition subpoena for a nonparty witness, then the lawyer should simultaneously send all counsel in the pending matter a notice of the deposition and a copy of the subpoena.

(h) If a lawyer obtains documents through a deposition subpoena, the lawyer should, as soon as reasonably practicable, make copies of the documents available to all counsel at their expense, even if the deposition itself is cancelled or adjourned after the documents are produced.

8. Communication with the Court

(a) A lawyer should make no attempt to obtain an advantage in a pending case through ex parte communication with the presiding judge. A lawyer must avoid such communication on any substantive matter and on any matter that could reasonably be perceived as a substantive matter. Ex parte communication of this type is detrimental to the administration of justice and reflects adversely on the entire legal profession. Therefore, when a lawyer informally communicates with a court, the highest degree of professionalism is demanded.

(b) Even if the applicable law permits an ex parte communication with the court under certain circumstances, a lawyer — before approaching the court — should promptly and diligently attempt to notify opposing counsel, if known, and if not, the opposing party directly unless there is a bona fide emergency that threatens to materially prejudice the client's rights if regular notice is given. When giving such notice, the lawyer should advise the opponent of the basis for seeking immediate relief and should make reasonable efforts to accommodate the opponent's schedule so that the party affected may be represented.

(c) For communications with the court that are related to a pending case, a lawyer should provide opposing counsel with copies of all written communications and should notify opposing counsel of all oral communications.

(d) Any proposed order containing findings of fact or conclusions of law should be provided to opposing counsel for comment and objection before being submitted to the court. Local rules often govern whether other types of proposed orders must be provided to opposing counsel before submission to the court. In general, however, routine orders that merely reflect a particular ruling need not be provided to opposing counsel in advance. Similarly, if the contents of an order would be entitled to no deference on review, then the proposed order generally need not be furnished to opposing counsel in advance. Once an order has been submitted, there should be no ex parte communication with the court regarding the entry or the contents of the order.

(e) A lawyer should always show courtesy to and respect for a presiding judge. While a lawyer may be cordial in communicating with a presiding judge in court or in chambers, the lawyer should never exhibit inappropriate informality.

(f) A lawyer should avoid taking any action that is or appears to be calculated to gain any special personal consideration or favor from a presiding judge in a pending case.

9. Settlement and Alternative Dispute Resolution

(a) Lawyers should educate their clients early in the legal process about various methods of resolving disputes without trial, including mediation, arbitration, and neutral case evaluation.

(b) Lawyers should advise clients of the benefits of settlement, including savings to the client, greater control over the process and the result, and a more expeditious resolution of the dispute. The lawyer and the client should work together in formulating a settlement strategy designed to accomplish the client's realistic goals and expectations.

(c) At the earliest practicable time, a lawyer should provide the client with a realistic assessment of the potential outcome of the case so that the client may effectively assess various approaches to resolving the dispute. As new information is obtained during the pretrial phase, the lawyer should revise the assessment as necessary.

(d) When enough is known about the case to make settlement negotiations meaningful, a lawyer should explore settlement with the client and opposing counsel.

(e) Throughout the representation of a client in a case, the lawyer should pursue the possibility of settlement and should use all reasonable measures to engage opposing counsel in the settlement process.

(f) A lawyer should enter into settlement negotiations in good faith, should make proposals that are designed to achieve a resolution, and should recommend reasonable compromises consistent with the client's best interests.

(g) When requested by opposing counsel and authorized by the client, a lawyer should informally provide documents and other information that will promote and expedite settlement efforts.

(h) A lawyer should never make settlement proposals that are designed to antagonize or further polarize the parties.

(i) A lawyer should never engage in settlement negotiations for the purpose of delaying discovery or gaining an unfair advantage.

(j) In participating in settlement negotiations and alternative methods of resolving disputes, lawyers should practice the same courtesy, candor, and cooperation expected of them during other pretrial proceedings.

10. Pretrial Conferences

(a) A lawyer should carefully read and comply with an order setting pretrial deadlines or scheduling a pretrial conference. The lawyer should complete any required statement in full, seeking to reach agreement with opposing counsel when possible and thus to limit the issues to be addressed before and during trial.

(b) In advance of a final pretrial conference, it is desirable for discovery to be completed, for discovery responses to be supplemented, for discovery exhibits to be furnished, for evidentiary depositions to be concluded, and for settlement negotiations to be exhausted.

(c) A lawyer should determine in advance of a pretrial conference the trial judge's custom and practices in conducting such conferences.

(d) A lawyer should satisfy all directives of the court set forth in the order setting a pretrial conference and should consult and comply with all local rules and with any specific requirements of the trial judge.

(e) Before the initial pretrial conference, a lawyer should ascertain the client's willingness to participate in alternative dispute resolution.

(f) Unless unavoidable circumstances prevent it, a lawyer representing a party at a pretrial conference should be thoroughly familiar with each aspect of the case, including the pleadings, the evidence, and all potential procedural and evidentiary issues.

(g) Unless unavoidable circumstances prevent it, the pretrial conference should be attended by a lawyer who will actually try the case, and, in any event, by a lawyer who is familiar with the case.

(h) A lawyer should alert the court as soon as practicable to scheduling conflicts and travel considerations of clients, experts, and other essential witnesses.

(i) If stipulations are possible for uncontested matters, a lawyer should propose specific stipulations and work with opposing counsel to obtain an agreement in advance of the pretrial conference.

(j) At or before a final pretrial conference, a lawyer should alert the court to the need for any pretrial rulings or hearings on matters such as motions in limine and Daubert-type motions on expert-witness qualifications or expert testimony.

(k) At the final pretrial conference, a lawyer should be prepared to advise the court of the status of settlement negotiations and the likelihood of settlement before trial.

(l) During the final pretrial conference, a lawyer should confirm the trial judge's practices in the voir dire of potential jurors, the exercise of peremptory strikes, and the selection of replacement jurors.

11. Communication with Consultants and Expert Witnesses

(a) In retaining consultants for expert opinions, a lawyer should be familiar with the qualifications necessary for an expert witness to give opinion evidence at trial, as set forth in the Daubert decision in federal court and in state-court opinions establishing similar guidelines.

(b) In retaining an expert witness, a lawyer should respect the integrity of the expert's professional practices and procedures, and should refrain from asking or encouraging the expert to violate the integrity of those practices and procedures for purposes of the particular matter for which the expert has been retained.

(c) In general, an expert must be qualified based on the expert's specialized knowledge or expertise going beyond the general knowledge of lay persons. In retaining an expert witness, a lawyer should provide the expert with information that is believed to be relevant and material to the subject matter of the expert's proposed written report.

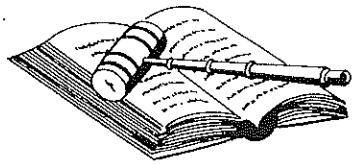
(d) In retaining an expert witness, a lawyer should respect the expert's integrity, knowledge, conclusions, and opinions. A retained expert should be fairly compensated for all work on behalf of the client. But a lawyer must not make compensation, or the amount of compensation, contingent in any way upon the substance of the expert's opinions or written report or upon the outcome of the matter for which the expert has been retained.

(e) A lawyer should not purposefully delay designating an expert witness or delivering an expert's report in an effort to postpone a trial setting or to preclude the taking of the expert's deposition at a reasonable time before trial.

12. Scope of the Code of Pretrial Conduct

This Code of Pretrial Conduct is intended to provide guidance for a lawyer's professional conduct except to the extent that any applicable law, code, rules of procedure, or rules of professional conduct in a particular jurisdiction require or permit otherwise. It is merely a guide for trial lawyers and should not give rise to any claim, create a presumption that a legal duty has been breached, or form the basis for disciplinary proceedings or sanctions not called for under the controlling law.

American College of Trial Lawyers



Code of Trial Conduct

1994 Revision

Introduction

The American College of Trial Lawyers first approved a Code of Trial Conduct in 1956. It has since been adopted by many federal and state courts in our country, and by other professional organizations. Following a two-year study by its Legal Ethics Committee, which took into consideration intervening developments, the Board of Regents of the College enacted the revised version of the Code that follows this introduction.

I hope that the Code will receive careful and conscientious consideration by every lawyer who engages in trial work. It sets forth the duties owed by trial lawyers to their clients, to opposing counsel, to the courts, and to the administration of justice. As pointed out, the Code expresses only minimum standards.

Both as Chief Justice, and as an Honorary Fellow of the College, I take pleasure in commending the Code to the trial bar and judiciary of our nation.

William H. Rehnquist,
Chief Justice of the United States

July 1994

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Preamble

Lawyers who engage in trial work have a specific responsibility to strive for prompt, efficient, ethical, fair and just disposition of litigation. The American College of Trial Lawyers, because of its particular concern for the improvement of litigation proceedings and trial conduct of counsel, presents this Code of Trial Conduct for trial lawyers, not to supplant, but to supplement and stress certain portions of the rules of professional conduct in each jurisdiction. Generally speaking, the purposes and objectives of this Code are embodied in the following considerations:

To a client, a lawyer owes undivided allegiance, the utmost application of his or her learning, skill and industry, and the employment of all appropriate legal means within the law to protect and enforce legitimate interests. In the discharge of this duty, a lawyer should not be deterred by any real or fancied fear of judicial disfavor, or public unpopularity, nor should a lawyer be influenced directly or indirectly by any considerations of self-interest.

To opposing counsel, a lawyer owes the duty of courtesy, candor in the pursuit of the truth, cooperation in all respects not inconsistent with the client's interests and scrupulous observance of all mutual understandings.

To the office of judge, a lawyer owes respect, diligence, candor and punctuality, the maintenance of the dignity and independence of the judiciary, and protection against unjust and improper criticism and attack, and the judge, to render effective such conduct, has reciprocal responsibilities to uphold and protect the dignity and independence of the lawyer who is also an officer of the court.

To the administration of justice, a lawyer owes the maintenance of professional dignity and independence. A lawyer should abide by these tenets and conform to the highest principles of professional rectitude irrespective of the desires of the client or others.

This Code expresses only minimum standards and should be construed liberally in favor of its fundamental purpose, consonant with the fiduciary status of the trial lawyer, and so that it shall govern all situations whether or not specifically mentioned herein.

1. Employment in Civil Cases

It is the right of a lawyer to accept employment in any civil case unless such employment is likely to result in violation of the rules of professional conduct or other law. The lawyer should decline to prosecute a cause or assert a defense obviously devoid of merit, or which is intended merely to inflict harassment or injury, or to procure an unmerited settlement, or in which the lawyer or the lawyer's firm or associates have conflicting interests. Otherwise it is the lawyer's right and duty to take all proper action and steps to preserve and protect the legal merits of the client's position and claims and he or she should not decline employment in any case because of the unpopularity of the client's cause or position.

2. Continuance of Employment in and Conduct of Civil Cases

After acceptance of employment a lawyer, unless discharged, should diligently pursue the matter to an expeditious conclusion. Subject to the rules of the tribunal, a lawyer may withdraw at any time with the consent of the client but if the client's consent cannot be obtained then the lawyer should obtain the approval of the tribunal to withdraw. A lawyer should withdraw from any litigation for reasons which would require refusing employment under paragraph 1 of this Code, or when differing or conflicting interests with the client arise or if continued representation of the client will involve participation in client conduct which the lawyer reasonably believes is criminal or fraudulent, and the lawyer may withdraw if continuing representation of the client will involve participation in client conduct which has as its objective a goal which the lawyer considers repugnant or imprudent. The lawyer shall take reasonable and practicable steps to protect the client's interests from the consequences of withdrawal, such as giving reasonable notice to the client, allowing time for employment of other counsel, conveying to the client papers and property to which the client is entitled and refunding any advance fee which has not been earned. When the lawyer withdraws he or she should render a prompt accounting of all the client's funds and other property in the lawyer's possession.

3. Court Appointments and Employment in Criminal Cases

A lawyer should not seek to avoid appointment by a tribunal to represent a person except for good cause. Nor should a lawyer decline to undertake the defense of a person accused of a crime merely because of either the lawyer's personal or the community's opinion as to the guilt of the accused or the unpopularity of the accused's position, because every person accused of a crime has a right to a fair trial, including persons whose conduct, reputation or alleged violations may be the subject of public unpopularity or clamor. This places a duty of service on the legal profession and, even though a lawyer is not bound to accept particular employment, requests for services in criminal cases should not lightly be declined or refused merely on the basis of the lawyer's opinion concerning the guilt of the accused, or his or her repugnance to the crime charged or to the accused.

4. Pro Bono Publico

A lawyer should render public interest legal service personally and by supporting organizations that provide services to persons of limited means.

5. Continuance of Employment in and Conduct of Criminal Cases

(a) Having accepted employment in a criminal case, a lawyer's duty, regardless of his or her personal opinion as to the guilt of the accused, is to invoke the basic rule that the crime must be proved beyond a reasonable doubt by competent evidence. The lawyer should raise all valid defenses and, in case of conviction, should present all proper grounds for probation, or in mitigation of punishment. A confidential disclosure of guilt alone does not require a withdrawal from the case, but the lawyer should never offer testimony which the lawyer knows to be false.

(b) The crime charged should not be attributed to another identifiable person unless evidence introduced or inferences warranted therefrom raise at least a reasonable suspicion of such person's probable guilt.

(c) The prosecutor's primary duty is not to convict, but to see that justice is done. A public prosecutor or other government lawyer should not institute or cause to be instituted criminal charges when he or she knows or it is obvious that the charges are not supported by probable cause, and shall make timely disclosure to counsel for the defendant, or to the defendant if the defendant has no counsel, of the existence of evidence, known to the prosecutor or other government lawyers or agencies, that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment.

6. Confidentiality of Information

(a) It is the duty of a lawyer to preserve his or her client's confidences and secrets and this duty outlasts the lawyer's employment. The obligation to represent the client with undivided fidelity and not to divulge the client's confidences or secrets forbids also the subsequent acceptance of employment from others in matters adversely affecting any interests of the former client and concerning which he or she has acquired confidential information, unless the consent of all concerned is obtained.

(b) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (c).

(c) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

(1) to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm; or

(2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge

or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client.

7. Differing Interests-Conflicts

(a) "Differing interests" include every interest that will adversely affect the judgment or the loyalty of the lawyer to a client, whether it be a conflicting, inconsistent, diverse or other interest.

(b) A lawyer should not represent clients with differing interests, nor should a lawyer represent a client in a matter as to which the client's interests are materially adverse to the interests of a former client whom the lawyer represented in the same or a substantially related matter, unless the clients involved consent after consultation.

(c) A lawyer should not accept or continue multiple employment if the exercise of the lawyer's independent professional judgment in behalf of a client will be or is likely to be adversely affected by representation of another client, except that a lawyer may represent multiple clients with respect to the same matter if:

(1) it is obvious that the lawyer can adequately represent the interests of each client;

(2) the lawyer reasonably believes that the matter can be resolved on terms compatible with the clients' best interests, that each client will be able to make adequately informed decisions in the matter and that there is little risk of material prejudice to the interests of any of the clients if the contemplated resolution is unsuccessful;

(3) the lawyer consults with each client concerning the implications of the common representation, including the advantages and risks involved, and the effect on the attorney-client privilege, and obtains each client's consent to the common representation; and

(4) the lawyer reasonably believes that the common representation can be undertaken impartially and without improper effect on other responsibilities the lawyer has to any of the clients.

(d) If a lawyer is required to decline employment or to withdraw from employment under this rule, no partner or associate of the lawyer or the lawyer's firm should accept or continue such employment.

(e) When a lawyer has left one firm and joined another, the lawyer and the lawyer's new firm are disqualified from representing a client in a matter adverse to a client of the former firm if the lawyer acquired confidential information material to the matter while with the former firm.

(f) When a lawyer has terminated an association with a firm, the lawyer's former firm is not prohibited from thereafter representing a client with interests materially adverse to those of a client represented by the departed lawyer and not currently represented by the firm, unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has confidential information material to the matter.

(g) The affected client may waive any conflict arising under subparagraphs (e) and (f) (1) and (2) next above.

(h) Generally judges, arbitrators, or other adjudicative officers should not seek employment with parties or attorneys with matters pending before them, and a former judge, arbitrator, or other adjudicative officer should not represent any person in connection with a matter in which the judge or arbitrator formerly participated personally and substantially as a judge or arbitrator.

8. Professional Colleagues and Conflicts of Opinion

(a) A client's proffer of assistance of additional counsel should not be regarded as evidence of want of confidence, but the matter should be left to the determination of the client. Either the original counsel or additional counsel may decline association as colleagues if it is objectionable to either, but if the lawyer first retained is relieved, another may come into the case.

(b) When lawyers jointly associated in a cause cannot agree as to any matter vital to the interests of a client, the conflict of opinion should be frankly stated to the client for final determination. The client's decision should be accepted unless the nature of the difference makes it impracticable or inappropriate for the lawyer whose judgement has been overruled to cooperate effectively; in this event it is the lawyer's duty to ask to be relieved.

(c) Efforts, direct or indirect, in any way to interfere with the professional employment of another lawyer are improper. However, a lawyer should not decline to pursue a claim against another lawyer on a client's behalf merely because the prospective defendant is a member of the same profession.

9. Fees

No division of fees for legal services is proper except with other lawyers. Division of legal fees among lawyers not in the same firm is proper only if:

(a) The division complies with, and is permitted by, the applicable law or rules governing the lawyer's conduct; and

(b) The client is informed in writing and does not object to the participation of all the lawyers involved; and

(c) The total fee charged is reasonable and, unless the additional lawyer adds value to the representation, not more than the client would have been charged if such division of legal fees had not occurred.

10. Relations with Clients

(a) A lawyer should not purchase or otherwise acquire a proprietary interest in the cause of action or subject matter of the litigation the lawyer is conducting for a client, except that the lawyer may acquire a lien granted by law to secure the lawyer's fee or expenses and contract with a client for a reasonable contingent fee in those civil cases in which a contingent fee is permitted.

(b) While representing a client in connection with contemplated or pending litigation, a lawyer should not advance or guarantee financial assistance to the client, except that the lawyer may advance or guarantee the expenses of litigation, including court costs, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence the repayment of which may be contingent on the outcome of the matter.

(c) A lawyer representing an indigent client may pay the court costs and litigation expenses on behalf of such client.

(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 account based in substantial part on information relating to the representation.

(e) (1) A lawyer who represents two or more clients should not make or participate in the making of an aggregate settlement of the claims of or against his clients, unless each client has consented to the settlement after being advised of the existence and nature of all the claims involved in the proposed settlement, of the total amount of the settlement and of the participation of each client in the settlement.

(2) A lawyer who represents two or more criminal defendants should not participate in an aggregated plea agreement as to guilty pleas unless each defendant is informed about the existence and nature of all the pleas being offered and the participation of each defendant in each plea agreement and each defendant consents to such an aggregated plea agreement.

11. Upholding the Honor of the Profession

(a) It is the duty of every lawyer to protect the Bar against the admission to the profession of persons who are unfit because of morals, character, education or traits of character. A lawyer should affirmatively assist courts and other appropriate bodies in promulgating, enforcing and improving the requirements for admission to the Bar.

(b) Lawyers should strive at all times to uphold the honor and dignity of the profession and to improve the administration of justice, including the method of selection and retention of judges.

(c) Every lawyer has the duty to protest by all proper means the appointment or election to the bench of persons whom the lawyer believes are not fully qualified by character, temperament, ability and experience. If the lawyer is unable to reach a considered and informed

judgment about the person's qualifications for appointment or election to the bench, the lawyer must then refrain from writing, speaking or taking any other action in favor of or in opposition to that individual's appointment or election to the bench.

(d) A lawyer cannot knowingly condone perjury or subornation of perjury before any tribunal. A lawyer should report such perjury or subornation of perjury to the tribunal in which such conduct occurred.

(e) Subject only to applicable law governing disclosure of confidential information between lawyer and client, a lawyer having information that another lawyer has violated the applicable disciplinary rules must report such wrongful conduct to the appropriate professional disciplinary authority.

12. Lawyer as a Witness

(a) A lawyer should not act as advocate at a trial in which the lawyer is likely to be a necessary witness except where:

(1) the testimony relates to an uncontested issue;
(2) the testimony relates to the nature and value of legal services rendered in the case; or
(3) disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so because subject to a conflict of interest prohibited by Rule 1.7 or Rule 1.9 of the ABA Model Rules of Professional Responsibility.

(c) A lawyer should never conduct or engage in experiments involving any use of the lawyer's own person or body except to illustrate in argument what has been previously admitted in evidence.

13. Relations with Opposing Counsel

(a) 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. Consequently, the lawyer need not accede to a client's demand that the lawyer act in a discourteous or uncooperative manner toward opposing counsel.

(b) A lawyer should adhere strictly to all express promises to, and agreements with, opposing counsel, whether oral or in writing, and should adhere in good faith to all agreements implied by the circumstances or by local custom. When a lawyer knows the identity of a lawyer representing an opposing party, the lawyer should not take advantage of the opposing lawyer by causing any default or dismissal to be entered without first inquiring about the opposing lawyer's intention to proceed.

(c) A lawyer should not participate in offering or making an agreement in which a restriction on a lawyer's right to practice is part of the settlement of a controversy between private parties.

(d) A lawyer should avoid disparaging personal remarks or acrimony toward opposing counsel, and should remain wholly uninfluenced by any ill feeling between the respective clients. The lawyer should abstain from any allusion to personal peculiarities and idiosyncrasies of opposing counsel,

(e) A charge of impropriety by one lawyer against another in the course of litigation should never be made except when relevant to the issues of the case; provided, however, that if the impropriety amounts to a violation of applicable disciplinary rules, the lawyer should report such wrongful conduct to the appropriate professional disciplinary authority. *See* paragraph 11(e) hereof.

14. Relations with Witnesses

(a) A lawyer should thoroughly investigate and marshal the facts. Subject to the provisions of paragraph 15 hereof and to constitutional requirements in criminal matters, a lawyer may properly interview any person, because a witness does not "belong" to any party. A lawyer should avoid any suggestion calculated to induce any witness to suppress evidence or deviate from the truth. However, a lawyer may tell any witness that he or she does not have any duty to submit to an interview or to answer questions propounded by opposing counsel unless required to do so by judicial or legal process.

(b) A lawyer should not suppress any evidence that the lawyer or the client has a legal obligation to reveal or produce. A lawyer should not advise or cause a person to secrete himself or herself or to leave the jurisdiction of a tribunal for the purpose of becoming unavailable as a witness. However, except when legally required, it is not a lawyer's duty to disclose any evidence or the identity of any witness.

(c) A lawyer should not pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of the witnesses' testimony or the outcome of the case. A lawyer, however, may advance, guarantee or acquiesce in the payment of:

(1) expenses reasonably incurred by a witness in attending or testifying;
(2) reasonable compensation to a witness for the witness's loss of time in attending or testifying;
(3) a reasonable fee for the professional services of an expert witness.

(d) A lawyer may advertise for witnesses to a particular event or transaction but not for witnesses to testify to a particular version thereof.

(e) A lawyer should never be unfair or abusive or inconsiderate to adverse witnesses or opposing litigants, or ask any question intended not legitimately to impeach but only to insult or degrade the witness. A lawyer should never yield in these matters to contrary suggestions or demands of the client or allow any malevolence or prejudices of the client to influence the lawyer's action.

15. Communicating with One of Adverse Interest

During the course of representation of a client, a lawyer should not:

(a) Communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in that matter, unless the lawyer has the prior consent of the lawyer representing such other party or is authorized by law to do so. Opposing parties themselves may communicate directly with each other without the consent of their lawyers, and a lawyer may encourage the client to do so, although the lawyer may not use the client as a surrogate to engage in misconduct.

(b) In case of an organization represented by a lawyer in the matter, the lawyer should not communicate concerning the matter with persons presently having a managerial responsibility on behalf of the organization, or with any person whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability, or whose statement may constitute an admission on the part of the organization. Unless otherwise provided by law, this rule does not prohibit communications with former employees of the organization, but during such communications the lawyer should be careful not to cause the former employee to violate the privilege attaching to attorney-client communications.

(c) In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that he or she is disinterested, but should identify the lawyer's client. 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.

16. Relations with the Judiciary

(a) A lawyer should be courteous and may be cordial to a judge but should never show marked attention or unusual hospitality to a judge, uncalled for by their personal relations. A lawyer should avoid anything calculated to gain or having the appearance of gaining special personal consideration or favor from a judge.

(b) Subject to the foregoing and to the provisions of paragraph 23 hereof, a lawyer should defend or cause to be defended judges who are subjected to unwarranted and slanderous attacks, for public confidence in our judicial system is undermined by such statements concerning the character or conduct of judges. It is the obligation of lawyers, who are also officers of the court, to correct misstatements and false impressions, especially where the judge is restrained from defending himself or herself.

17. Courtroom Decorum

(a) A lawyer should conduct himself or herself so as to preserve the right to a fair trial, which is one of the most basic of all constitutional guarantees. This right underlies and conditions all other legal rights, constitutional or otherwise. In administering justice, trial lawyers should assist the

courts in the performance of two difficult tasks: discovering where the truth lies between conflicting versions of the facts, and applying to the facts as found, the relevant legal principles. These tasks are demanding and cannot be performed in a disorderly environment. Unless order is maintained in the courtroom and disruption prevented, reason cannot prevail and constitutional rights to liberty, freedom and equality under law cannot be protected the dignity, decorum and courtesy which have traditionally characterized the courts of civilized nations are not empty formalities. They are essential to an atmosphere in which justice can be done.

(b) During the trial, a lawyer should always display a courteous, dignified and respectful attitude toward the judge presiding, not for the sake of the judge's person, but for the maintenance of respect for and confidence in the judicial office. The judge, to render effective such conduct, has reciprocal responsibilities of courtesy to and respect for the lawyer who is also an officer of the court. A lawyer should vigorously present all proper arguments against rulings or court demeanor the lawyer deems erroneous or prejudicial, and see to it that a complete and accurate case record is made. In this regard, the lawyer should not be deterred by any fear of judicial displeasure or punishment.

(c) In advocacy before a court or other tribunal, a lawyer has the professional obligation to represent every client courageously, vigorously, diligently and with all the skill and knowledge the lawyer possesses. It is both the right and duty of the lawyer to present the client's cause fully and properly, to insist on an opportunity to do so and to see to it that a complete accurate case record is made without being deterred by any fear of judicial displeasure or punishment. But it is steadfastly to be borne in mind that the great trust of the lawyer is to be performed within and not without the bounds of the law. The office of the attorney does not permit, much less does it demand of a lawyer for any client, violation of law or any manner of fraud or chicanery. The lawyer must obey his or her conscience and not that of the client.

(d) In performing these duties, a lawyer should conduct himself or herself according to law and the standards of professional conduct as defined in codes, rules and canons of the legal profession and in such a way as to avoid disorder or disruption in the courtroom. A lawyer should advise the client appearing in the courtroom of the kind of behavior expected and required of the client there, and prevent the client, so far as lies within the lawyer's power, from creating disorder or disruption in the courtroom.

18. Trial Conduct

(a) In appearing in a professional capacity before a tribunal, a lawyer should not:

(1) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

(2) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(3) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

(4) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

(5) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or

(6) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(i) the person is a relative or an employee or other agent of a client; and

(ii) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

(7) fail to comply with known local customs of courtesy or practice of the bar or a particular tribunal without giving to opposing counsel timely notice of the lawyer's intent not to comply;

(8) engage in undignified or discourteous conduct which is degrading to a tribunal.

(b) A lawyer shall not in an adversary proceeding communicate ex parte with a judge or other official before whom the proceeding is pending except as permitted by law.

(c) A question should not be interrupted by an objection unless the question is then patently objectionable or there is reasonable ground to believe that matter is being included which cannot properly be disclosed to the jury.

(d) A lawyer should not engage in acrimonious conversations or exchanges involving personalities with opposing counsel. Objections, requests and observations should be addressed to the court. A lawyer should not engage in undignified or discourteous conduct which is degrading to a court procedure.

(e) Where a court has already made a ruling in regard to the inadmissibility of certain evidence, a lawyer should not seek to circumvent the effect of that ruling and get the evidence before the jury by repeated questions relating to the evidence in question, although a lawyer is at liberty to make a record for later proceedings of the basis for urging the admissibility of the evidence in question.

(f) Examination of jurors and of witnesses should be conducted from the counsel table or from some other suitable distance except when handling documentary or physical evidence, or when a hearing impairment or other disability requires that the lawyer take a different position.

(g) A lawyer should not attempt to get before the jury evidence which is improper. In all cases in which a lawyer has any doubt about the propriety of any disclosures to the jury, a request should be made for leave to approach the bench and obtain a ruling out of the jury's hearing, either by propounding the question and obtaining a ruling or by making an offer of proof.

(h) A lawyer should arise when addressing or being addressed by the judge except when making brief objections or incidental comments. A lawyer should be attired in a proper and dignified manner in the courtroom, and abstain from any apparel or ornament calculated to call attention to himself or herself.

19. Relations with Jurors

(a) Before the trial of a case, a lawyer connected therewith should not communicate with or cause another to communicate with anyone the lawyer knows to be a member of the venire from which the jury will be selected for the trial of the case.

(b) Before the jury is sworn to try the cause, a lawyer may investigate the prospective jurors to ascertain any basis for challenge, provided there is no communication with them, direct or indirect, or with any member of their families. But a lawyer should not conduct or cause, by financial support or otherwise, another to conduct a vexatious or harassing investigation of either a venireman or a juror.

(c) A lawyer should disclose to the judge and opposing counsel any information of which the lawyer is aware that a juror or a prospective juror has or may have any interest, direct or indirect, in the outcome of the case, or is acquainted or connected in any manner with any lawyer in the case or any partner or associate or employee of the lawyer, or with any litigant, or with any person who has appeared or is expected to appear as a witness, unless the judge and opposing counsel have previously been made aware thereof by voir dire examination or otherwise.

(d) During the trial of a case a lawyer connected therewith should not communicate with or cause another to communicate with any member of the jury, and a lawyer who is not connected therewith should not communicate with or cause another to communicate with a juror concerning the case.

(e) The foregoing rules do not prohibit a lawyer from communicating with veniremen or jurors in the course of official proceedings.

(f) Subject to any limitations imposed by law, it is the lawyer's right, after the jury has been discharged, to interview the jurors to determine whether their verdict is subject to any legal challenge. After discharge of the jury from further consideration of a case with which the lawyer was connected , the lawyer should not ask questions or make comments to a member of that jury that are calculated merely to harass or embarrass the juror or to influence the juror's actions in future jury service.

(g) All restrictions imposed herein upon a lawyer should also apply to communications with or investigation of members of a family of a venireman or a juror.

(h) A lawyer should reveal promptly to the court improper conduct by a venireman or a juror or by another toward a venireman or a juror or a member of the juror's family of which the lawyer has knowledge.

(i) A lawyer should scrupulously abstain from all acts, comments and attitudes calculated to curry favor with any juror, such as fawning, flattery, actual or pretended solicitude for the juror's comfort or convenience or the like.

20. Diligence and Punctuality

(a) Every effort consistent with the legitimate interests of the client should be made to expedite litigation and to avoid unnecessary delays, and no dilatory tactics should be employed for the purpose of harassing an adversary or of exerting economic pressure on an adversary or to procure more fees.

(b) A lawyer should be punctual in fulfilling all professional commitments , including all court appearances and, whenever possible, should give prompt notice to the court and to all other counsel in the case of any circumstances requiring his tardiness or absence.

(c) A lawyer should make every reasonable effort to prepare thoroughly prior to any court appearance.

(d) A lawyer should comply with all court rules and see to it that all documents required to be filed are filed promptly. A lawyer should, in civil cases, stipulate in advance with opposing counsel to all non-controverted facts; should give opposing counsel, on reasonable request, an opportunity in advance to inspect all non-impeaching evidence of which the law permits inspection; and, in general, should do everything possible to avoid delays and to expedite the trial.

(e) A lawyer should promptly inform the court of any settlement, whether partial or entire, with any party, or the discontinuance of any issue.

21. Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. A lawyer should never attempt to handle a legal matter without preparation adequate in the circumstances nor neglect a legal matter entrusted to him or her. Similarly, if a lawyer knows or should know that he or she is not competent to handle a legal matter, the lawyer should not attempt to do so without associating with a lawyer who is competent to handle it.

22. Honesty, Candor and Fairness

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

(b) A lawyer should never knowingly misquote the contents of a paper, the testimony of a witness, the language or the argument of opposing counsel, or the language of a decision or a

textbook. A lawyer should not in argument assert as a fact that which has not been proved, or, in those jurisdictions in which a side has the opening and closing arguments, mislead an opponent by concealing or withholding positions in an opening argument upon which the lawyer's side then intends to rely.

(c) In presenting a matter to a tribunal a lawyer should not cite authorities known to have been vacated or overruled or cite a statue that has been repealed without making a full disclosure to the tribunal and counsel, and the lawyer should disclose legal authority in the controlling jurisdiction known to be directly adverse to the position of the client and which is not disclosed by opposing counsel, and, the identities of the clients the lawyer represents and, when required by court rule, of the persons who employed him or her.

(d) A lawyer should be extraordinarily careful to be fair, accurate and comprehensive in all ex parte presentations and in drawing or otherwise procuring affidavits.

(e) A lawyer should never attempt to place before a tribunal, jury, or public evidence which the lawyer knows is clearly inadmissible, nor should the lawyer make any remarks or statements which are intended improperly to influence the outcome of any case.

(f) A lawyer should not propose a stipulation in the jury's presence unless the lawyer knows or has reason to believe the opposing lawyer will accept it.

(g) A lawyer should never file a pleading or any other document known to be false in whole or in part.

(h) A lawyer should not disregard or circumvent or advise a client to disregard or circumvent a standing rule of a tribunal or a ruling of a tribunal made in the course of a proceeding, but a lawyer may take appropriate steps in good faith to test the validity of such rule or ruling.

(i) A lawyer who receives information clearly establishing that the client has, in the course of the representation, perpetrated a fraud upon a tribunal, should promptly call upon the client to rectify the same, and if the client refuses or is unable to do so, the lawyer should reveal the fraud to the affected tribunal. If a lawyer receives information clearly establishing that a person other than the client perpetrated a fraud upon a tribunal, the lawyer should promptly reveal the fraud to the tribunal.

23. Publicity Regarding Pending Litigation

Because a lawyer should try the case in court and not in the newspapers or through other media, a lawyer should not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding.

24. The Trial Lawyer's Duty in Summary

No client, corporate or individual, however powerful, nor any cause, civil or political, however important, is entitled to receive, nor should any lawyer render, any service or advice encouraging or inviting disrespect of the law, whose ministers we are, or of the judicial office, which we are bound to uphold. Much less should a lawyer sanction or invite corruption of any person or persons exercising a public office or private trust, nor should a lawyer condone in any way deception or betrayal of the public. When indulging in any such improper conduct, the lawyer invites stern and just condemnation. Correspondingly, a lawyer advances the honor of the profession and the best interests of the client when he or she encourages an honest and proper respect for the law, its institutions and ministers. Above all, a lawyer will find the highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest person and as a patriotic and loyal citizen.

25. Scope of the Code of Trial Conduct

This Code of Trial Conduct is intended to provide guidance for a lawyer's professional conduct except insofar as the applicable law, code or rules of professional conduct in a particular jurisdiction require or permit otherwise. It is a guide for trial lawyers and should not give rise to a cause of action, create a presumption that a legal duty has been breached, or form the basis for disciplinary proceedings not called for under the applicable disciplinary rules.