
STATEMENT

ON

LAWYER

PROFESSIONALISM

MASSACHUSETTS

BAR ASSOCIATION

This Statement on Lawyer Professionalism was prepared by the
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PREAMBLE

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

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

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

I. LAWYER/COURT RELATIONS

A. COURTESY

1. A lawyer should conduct himself or herself before the court in a manner which demonstrates sensitivity to the necessity of preserving decorum and the integrity of the judicial process.
2. A judge should conduct himself or herself in a manner which demonstrates respect for the lawyer's function as an advocate, and which encourages professionalism.
3. Lawyers and judges should refrain from denigrating the dignity embodied in their separate offices and should carry out their responsibilities with a recognition of their respective concerns.
4. Lawyers and judges should deal with one another respectfully because the attitude of the public toward the judicial process is influenced by the relationship among lawyers and judges.

B. COMPETING DEMANDS

1. Lawyers and judges should be cognizant of the various demands made upon each of them and should make reasonable accommodations in consideration of these demands.
2. A lawyer should not accept professional commitments which he or she knows or should know he or she will be unable to honor.
3. A judge, in scheduling matters before the court, should consider the conflicting appearances or commitments of lawyers.
4. Lawyers and judges should keep each other informed with respect to potential changes which might cause a disruption of an established schedule.
5. Lawyers and judges, in estimating the time required to conduct a proceeding, should render a good faith estimate.

C. COURT'S RESPECT FOR ADVOCACY

1. A judge should not identify a lawyer with his or her client or the client's cause, and should be sensitive to the demands that the client may make upon the lawyer.
2. A judge should regard a lawyer as an advocate and should be aware at all times that the obligations of that role may account for the lawyer's conduct.
3. A judge should pay heed to the circumstance of multiple representation and, if necessary, should be prepared to call upon a lawyer to provide assurance that his or her representation of multiple clients is consistent with the interest of each client and the ends of justice.

D. COURT AS ADJUDICATOR

1. A lawyer should conduct himself or herself in a manner which recognizes that the judge is obligated to resolve conflicting claims and must rely, in large measure, upon the lawyer for the representation of evidence to be used in resolving disputes; accordingly, a lawyer should strive to ensure that the judge is not burdened with a misapprehension of fact or law.
2. While a lawyer is obligated to advocate his or her client's cause in the most compelling manner possible, a lawyer should refrain from engaging in advocacy which is excessive to effective representation of the cause.
3. A lawyer should not use the discovery process to accomplish ends other than the reasonable discovery of information necessary to a just resolution of the dispute.
4. Consistent with his or her responsibility as an advocate, a lawyer should be guided by the principle that representations on behalf of a client or a cause ought to be characterized by good faith and honesty.
5. A lawyer should be guided by the proposition that the interests of justice are best served by the prompt disposition of disputes.

E. ROLE OF COURT AND LAWYER IN ADDRESSING IMPROPRIETIES

1. A judge should take appropriate action against a lawyer for unprofessional conduct of which the judge may become aware. Where the judge is persuaded that the lawyer has committed a violation of disciplinary rules, the judge should report the matter to the Board of Bar Overseers. Where the unprofessional conduct does not rise to that level, the judge should impose such sanctions against the lawyer as are necessary to preserve the integrity of the court. A lawyer's failure to observe these principles shall not of itself constitute unprofessional conduct.
2. A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct in such a manner as to raise a substantial question as to the judge's fitness of office should inform the appropriate authority.
3. A judge, in imposing sanctions, or in making contempt determinations, or in initiating disciplinary action against a lawyer, should ensure that such action is accomplished in a manner calculated not to prejudice their rights of the parties in the litigation.

F. CONFLICTS OF INTEREST

1. A judge, upon determining that he or she knows personally a party or parties in a matter pending before him or her, should immediately inform all counsel, should permit counsel to be heard on the question of the propriety of the judge's presiding in the matter, and should conduct himself or herself in a manner calculated to preserve both the reality and the appearance of fairness and impartiality.
2. Judges and lawyers should conduct themselves in a manner which promotes both the reality and appearance of impartiality in all proceedings wherein the principals, in other contexts, may have or may have had a professional or social relationship.
3. A lawyer should be sensitive to the potential for divergent interest which inheres in any instance of multiple representation and should be guided by the principle that each client is entitled to the undivided loyalty of his or her lawyer.
4. Judges and lawyer should recognize that the integrity of the judicial process may be as severely compromised by the appearance of a conflict of interest as it may by an actual conflict and should conduct themselves so as to avoid even the appearance of a conflict of interest.

G. JUDICIAL INTERVENTION

1. A judge should recognize the significance of the relationship between a lawyer and a client and should not invade that relationship except in those instances where the failure to intervene would cause substantial injustice.
2. A judge should direct all comments or observations concerning litigation strategies, courses of action, settlement and the like to counsel for the parties and should refrain from addressing the clients with respect to those considerations unless the judge finds that justice requires such direct communication with the clients.

H. LAWYERS AS OFFICERS OF THE COURT

1. Lawyers should decline to endorse a document or present a contention which contains a known misrepresentation of law or fact, which offers a frivolous or patently meritless suggestion or which is designed principally to delay the proceedings.
2. A lawyer should regard all orders properly issued by or on behalf of a court in the ordinary course of the court's business as possessing injunctive effect and should comply with such orders to the same extent as if they were issued formally as injunctions.
3. A lawyer having knowledge that another lawyer has committed a violation of the disciplinary rules which raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, should inform the appropriate professional authority.

II. LAWYER/LAWYER RELATIONS

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

III. LAWYER/PUBLIC RELATIONS

A. GENERAL

1. Lawyers should be mindful that the Disciplinary Rules (S.J.C. Rules 3:07 and 3:08) mandate only minimum acceptable standards of conduct and that lawyers should endeavor to conform to the highest principle of professional conduct.
2. Lawyers should participate on a regular basis in programs designed to educate the public about the law and the legal system.
3. Lawyers should be sensitive to the legal profession's tradition of restraint in the area of self-promotion and should engage only in tasteful and honest promotion of legal services.

B. PRO BONO ACTIVITIES

1. Lawyers should engage on a regular basis in charitable and community service activities.
2. Lawyers should provide *pro bono* legal services on a regular basis to those not otherwise able to obtain legal assistance.

C. FEES

1. Lawyers should explore methods that tend to simplify or reduce the cost of rendering legal services without diminishing the quality of representation.
2. Lawyers should reduce to writing all fee arrangements with their clients, and should provide clients with a copy of such writing.
3. Lawyers should advise their clients at the commencement of the representation that any disputes with respect to legal fees shall be submitted to the Fee Arbitration Board of the Massachusetts Bar Association or a similar body.

D. COMMUNICATION WITH CLIENTS

1. A lawyer should keep a client regularly informed about the status of a matter and should respond to all reasonable requests for information.
2. A lawyer should explain a matter to a client to the full extent necessary to permit the client to make informed decisions.

E. CLIENTS' TRUST ACCOUNTS

1. Lawyers should file an annual statement with the Board of Bar Overseers certifying that they maintain an identifiable Clients' Trust Account.
2. Lawyers should comply with reasonable requests from the Board of Bar Overseers to have an independent audit of their Clients' Trust Accounts conducted.
3. Lawyers should participate in the Interest on Lawyers Trust Accounts (IOLTA) program approved by the Supreme Judicial Court for the benefit of the public and the improvement of the administration of justice.

F. PUBLIC PROTECTION

1. Lawyers should maintain professional liability insurance in amounts commensurate with the nature of their practice.
2. Lawyers who undertake fiduciary obligations in connection with their practice of law should obtain sufficient bonding to guarantee the satisfaction of those obligations.

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

- A. A lawyer should maintain proficiency in the specific areas of the lawyer's practice, and also in other areas which promote fuller understanding of those specific areas. Proficiency includes not only the correct application of rules of law but also the understanding of the conceptual bases of such rules; a realistic grasp of facts and of means of investigation, discovery and proof of facts; and a system of efficiently addressing client needs and relating the legal system as a whole to those needs, within the scope of lawyer-client engagements. The steps to attain and maintain proficiency may be undertaken:
- (a) in response to specific client needs,
 - (b) as a matter of anticipating the needs of a client or with a group or class of clients,
 - (c) as a matter of general skill development, not necessarily related to a specific client or group or class of clients,
 - (d) in connection with improving the law itself through advocacy, teaching and writing, and/or
 - (e) through organizational procedures for quality control and professional development.
- B. Lawyers should be receptive and responsive to colleagues' inquiries and requests for assistance.
- C. Lawyers should strive for excellence in their own legal services organizations (firms, legal departments, and space sharing affiliations). Lawyers should continually review client service procedures of their organizations to ensure that such procedures are effective and consistent with the law.

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

V. THE SCOPE OF RESPONSIBILITY FOR PROFESSIONALISM

- A. Professionalism, as defined in these principles and in accordance with other relevant standards, is the responsibility of the individual lawyer, of his or her partners, associates and lawyer-affiliates outside the organization and of non-lawyer staff personnel subject to the lawyer's supervision and/or guidance. Professionalism is also the responsibility of judges and other adjudicative officers in courts and administrative agencies, of their law clerks, docket clerks and other aides and of other public-assisting personnel of the court or agency.
- B. A lawyer's participation in community activities and in personal business and property transactions (apart from law practice) should also be guided by these principles.

VI. THE RELATION OF THESE PRINCIPLES TO OTHER ETHICAL STANDARDS

- A. The principles presented here are a statement of ideals of professionalism. Lawyers should endeavor to observe these principles even though the failure to do so will not result in professional discipline or liability.
- B. These principles have been adopted after review and comment by lawyers, law students and members of the public. In conducting its review, the Commission considered the pressures on lawyers in a wide variety of circumstances, including:
 - (a) the lawyers' need to remain sensitive to these principles in the face of insensitivity by some opposing counsel, some clients, and some judges;
 - (b) the legitimate aspirations of lawyers for economic comfort for themselves, their staffs and their families in the face of rising cost and uncertain income prospects;
 - (c) the evolution of new means of delivery of legal service (including new means of legal research, of fact investigation and presentation, of client interaction and of compensation) clouding the future utility of old means.
 - (d) attacks on the legal profession; and
 - (e) exceptional situations where different ethical standards may dictate opposing courses of action and the lawyer must elect one over the other.
- C. Adoption and implementation of the attitude of professionalism inherent in these principles provides the basis for each lawyer, and the profession as a whole, to take the initiative to advance the public interest served by the profession and to place the profession's needs in the context of public interest.
- D. Particulars of these principles will always be fair subjects for debate and for revision from time to time as experience and a new consensus may require.
- E. Over time, minimum standards enforceable by disciplinary action may grow to encompass more and more of the present aspirational principles, but never all of them and certainly not those which necessarily involve good faith debate as to application in particular circumstance and the benefit of a doubt that professionals deserve. However, the purpose of these principles is not to increase the frequency of lawyer discipline but to decrease the need for it while achieving professionalism in a positive way — primarily, by encouraging individuals to voluntarily subscribe to these principles. While such adherence may earn the approbation of colleagues and of the public, above all it will engender self-respect in the lawyer who meets the commitments expressed in these principles.