Ethics and Professionalism

The Art of Graceful Disagreement

Wendy L. Patrick, J.D., Ph.D.
Former Chair, California State Bar Ethics Committee (COPRAC)

ABA Preamble: A Lawyer's Responsibilities

- [5] A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs.

Civility and Ethics



Reputation


It takes many good deeds to build a good reputation, and only one bad one to lose it.
Benjamin Franklin
BrainyQuote

Respect For Others

- Time
- Space
- Personal issues
- Privacy
- Opinions



Zoom Manners Matter



The Bad Day



ABA Rule 1.1 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.

ABA Rule 1.3 Diligence

- A lawyer shall act with reasonable diligence and promptness in representing a client.



ABA Rule 1.3 [1]

- A lawyer is not bound, however, to press for every advantage that might be realized for a client. For example, a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued. See Rule 1.2.

ABA Rule 1.3 [1]

- The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.

ABA Rule 1.2, Scope of Representation and Allocation of Authority

Lawyer shall abide by client's decision re objectives of representation, and per 1.4 shall consult w/ client re means by which they are pursued.

Criminal case: abide by client's decision re plea, whether to waive jury trial, and whether client will testify.

ABA Rule 1.4, Communication

- (a) A lawyer shall:
- (1) promptly inform the client of any decision or circumstance (that requires informed consent)
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

ABA Rule 1.4, Communication

- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information

ABA Rule 1.4, Communication

A lawyer shall:

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

Professional Dealings Within the Court System



ABA Rule 3.4 Fairness to Opposing Party and Counsel

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

Relationship With Adversaries



ABA Model Rule 4.1 Truthfulness in Statements

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person; or

(b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6

ABA Model Rule 4.4
Respect for Rights of 3rd Person

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

Professional Misconduct



ABA Model Rule 8.4 Misconduct

Professional misconduct for a lawyer includes:

- Violate rules of prof conduct
- Commit a criminal act that affects honesty or fitness as a lawyer
- Engage in conduct prejudicial to the administration of justice

ABA Model Rule 8.4 Misconduct

- [1] Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer's behalf.

Motion Practice



ABA Criminal Justice Standards for the Defense Function

- **Standard 4-7.2 Civility with Courts, Prosecutors, and Others**
- (e) In written filings, defense counsel should respectfully evaluate and respond as appropriate to opposing counsel's arguments and representations, and avoid unnecessary personalized disparagement.

“I would really, really like a continuance!”



ABA Criminal Justice Standards for the Defense Function

- **Standard 4-1.9 Diligence, Promptness and Punctuality**
- (c) Defense counsel should not unreasonably oppose requests for continuances from the prosecutor.

Ahanchian v. Xenon Pictures, Inc. (9th Cir. 2010) 624 F.3d 1253

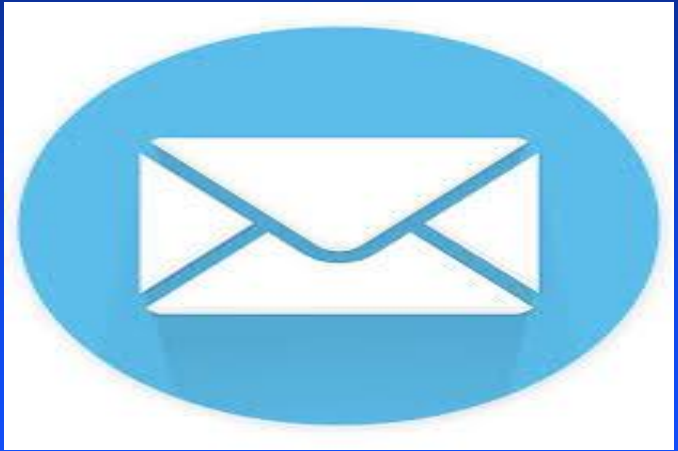
- Holding that District Court abused discretion in not granting plaintiffs' counsel modest extension to file opposition to summary judgment motion.

Ahanchian v. Xenon Pictures, Inc. (9th Cir. 2010) 624 F.3d 1253

- Where, as here, there is no indication of bad faith, prejudice, or undue delay, attorneys should not oppose reasonable requests for extensions of time brought by their adversaries." (*Id*. at 1263, citations to Cal. Attorney Guidelines of Civility & Prof. and appellate rulings omitted.)

The E in Email Stands for Evidence

- Formality
- Less is more
- Watch caps and exclamation points
- Strategize subject line
- Mixed messaging
- Careful with humor
- Inadvertent disclosure



Courtroom Professionalism

ABA Standard 3-5.2 /4-7.1
-Support authority of Court
Professional attitude toward
Court, Opposing Counsel,
Witnesses, Defendants, Jurors



JUDICIAL POWER TO ENFORCE UNCIVILITY



ABA Rule 3.5
Impartiality and Decorum of the Tribunal

- A lawyer shall not (d) engage in conduct intended to disrupt a tribunal.

ABA Rule 3.5 [4]
Impartiality and Decorum of the Tribunal

The advocate's function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants.

Responding to Judicial Misconduct



ABA Rule 3.5 [4]
Impartiality and Decorum of the Tribunal

A lawyer may stand firm against abuse by a judge but should avoid reciprocation; the judge's default is no justification for similar dereliction by an advocate.

ABA Rule 3.5 [4]
Impartiality and Decorum of the Tribunal

An advocate can present the cause, protect the record for subsequent review and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics.

ABA Rule 3.5 [5]
Impartiality and Decorum of the Tribunal

- [5] The duty to refrain from disruptive conduct applies to any proceeding of a tribunal, including a deposition. See Rule 1.0(m).

Bench Bashing



ABA Rule 8.2
Judicial Officials

- (a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

ABA Rule 8.2 Judicial And Legal Officials

- [3] To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized.

The Lawyer´s High Calling



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