

Legal Profession

Spring 2007
Professor Longan

Handout Materials

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The Legal Profession
Spring, 2007
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Syllabus

Course Description

The course will be taught in two sections. I will teach both of them. Coverage and testing for the two sections will be the same. Details of the reading assignments and class procedures are described below. Additional assignments may be announced in class and posted on the course web site from time to time. I will announce in class and on the web site which parts of the reading assignments to focus on for the next few classes.

Required materials

You are required to purchase the following books for the course. All should be available in the Law School bookstore:

Stephen Gillers,	REGULATION OF LAWYERS
Michael Kelley,	LIVES OF LAWYERS
Deborah Rhode,	IN THE INTEREST OF JUSTICE: REFORMING THE LEGAL PROFESSION
ABA Center For Professional Responsibility	MODEL RULES OF PROFESSIONAL CONDUCT

(Note: If this book does not arrive in time, you can find the text of the Model Rules of Professional Conduct at http://www.abanet.org/cpr/mrpc/mrpc_toc.html).

Policies and Procedures

Class Procedure

I will take roll each day. Failure to attend at least 80% of the class hours will result in a grade of 65, absent extraordinary circumstances. If you believe that your attendance has been or will be affected by such circumstances, let me know as soon as possible. There is no need to discuss with me the reason for your absence unless you will fall short of the 80% standard. It is up to you to keep track of your absences.

Please come to class on time. We are going to be in large groups, and it is extremely distracting when students arrive late. If you arrive late, enter the room with as little disruption as possible. You are officially absent for any day on which you are late

(so do not sign the roll sheet). Signing the roll sheet on a day when you are late will be treated as a violation of the Honor Code.

Feel free to bring coffee or other drinks to class. You may not eat during class. Turn off all cell phones unless you have alerted me to a particular situation that requires you to keep the phone turned on.

In recent years, there has been a trend of students using their computers in class to surf the web, check e-mail, play games, send instant messages, and otherwise to “multi-task.” Doing so is extremely distracting to me and you classmates. You may use your computer during class time only for taking notes.

Class Scheduling:

We meet on Mondays, Thursdays, and Fridays. Please mark your calendars for the following class cancellations:

January 19, 2007	I am attending the State Bar of Georgia Formal Advisory Opinion Board Meeting in Savannah.
February 2, 2007	I am attending the meeting of the Georgia Chief Justice’s Commission on Professionalism in Atlanta.
February 26, 2007	I am speaking to the Macon Rotary Club.

Recording

No taping (audio or video) of any class is permitted except with my permission for the purpose of complying with the Americans with Disabilities Act.

Announcements

I will post announcements to the course web page during the semester. Please check for announcements at least once before each class meeting.

Assignments, examination and grading

Writing assignments:

There are two short writing assignments. These short papers are required but will be graded on a pass/fail basis. Failure to turn in either of the papers, or failure to make a good faith effort to fulfill the assignments, will lower your grade. The first of these assignments will be to write a 3-5 page paper on why you have chosen the law and what you hope to accomplish in your career as a lawyer. I

will give you the deadline and the procedures for obtaining a blind grading number in class.

Oral history assignment:

The other short writing assignment requires you to meet with a lawyer or judge who has volunteered to meet with you. You will meet with your subject in groups of approximately three, and the purpose of the meeting is for you to do a brief “oral history” of your subject. You will ask the lawyer or judge to reflect upon his or her career and on life in the profession. You will receive more details about this assignment in class.

Biography assignment:

In addition to the reading assignments for class, you are required to read one of the biographies listed below. You will be required to participate in a discussion group about it. Failure to participate meaningfully in this project may lower your grade. You will be welcome to attend the discussions of the other books on the list as well. I am available to discuss these books if you need help choosing.

Jack Bass, TAMING THE STORM: THE LIFE AND TIMES OF JUDGE FRANK M. JOHNSON, JR.

Arthur L. Liman and Peter Israel, LAWYER: A LIFE OF COUNSEL AND CONTROVERSY

Johnnie Cochran, A LAWYER’S LIFE

Morris Dees, A LAWYER’S JOURNEY: THE MORRIS DEES STORY

John Edwards, FOUR TRIALS

Ken Gormley, ARCHIBALD COX: CONSCIENCE OF A NATION

Michael E. Tigar, FIGHTING INJUSTICE

Linda Greenhouse: BECOMING JUSTICE BLACKMUN

Exam:

At the end of the term, there will be a three-hour, in-class exam that will determine your grade (assuming that you have completed the ungraded assignments satisfactorily). This is a required, three-credit, graded course, and you will be evaluated on the Law School’s usual scale. The exams from the last three years will be posted on the course web site, although this year’s format is significantly different from the format in prior years.

Contact information:

My office is Room 315, and my telephone number is 301-2639. You are welcome to come by my office at any time. Tuesdays, Thursdays, and Fridays are best. You may also reach me by e-mail, at longan_p@mercer.edu.

Reading Assignments

Note: Discussion of each of the following reading assignments should take us approximately one class period. We may from time to time also have several guest speakers, and reading assignments for those class meetings will be given in class.

Part One: What does professionalism mean for lawyers? Why does it matter? What does the profession say it expects of its members?

- Assignment #1: Read the syllabus, the *Introduction to Teaching Professionalism in the Required Curriculum*, and the Georgia Lawyer's Creed and Aspirational Statement on Professionalism (handout)
- Assignment #2: Read the preamble to the Model Rules of Professional Conduct and Rules 1.1 and 1.3
- Assignment #3: Read Rules 1.5, 1.7 and 1.8 of the Model Rules of Professional Conduct
- Assignment #4: Read Rules 1.2 and 3.3 of the Model Rules of Professional Conduct
- Assignment #5: Read Rule 4.4 and Seventh Circuit Civility Guidelines (handout)
- Assignment #6: Read Rules 1.2 and 6.2 of the Model Rules of Professional Conduct
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Part Two: What pressures on professionalism are there in the organization of legal practice?

- Assignment #7: Read Chapters 2 and 3 of *Lives of Lawyers*
- Assignment #8: Read Chapter 4 of *Lives of Lawyers*
- Assignment #9: Read Chapter 5 of *Lives of Lawyers*
- Assignment #10: Read Chapter 6 of *Lives of Lawyers*
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Part Three: Professionalism, Money, and Access to Legal Services

- Assignment #11 Read Gillers 119-135 and Model Rule of Professional Conduct 1.5
- Assignment #12 Read Gillers 136-149
- Assignment #13 Read Gillers 168-178 and Model Rule of Professional Conduct 6.1
- Assignment #14: Read Gillers 593-605 and Model Rule of Professional Conduct 5.5
- Assignment #15: Read Gillers 725-745 and Model Rule of Professional Conduct 5.4
- Assignment #16: Read Gillers 745-759 and Model Rules of Professional Conduct 5.4 and 5.7
- Assignment #17: Read Gillers 799-810 and Model Rules of Professional Conduct 7.1, 7.2, and 7.3
- Assignment #18: Read Gillers 810-830
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Part Four: Professionalism and the Regulation of Competence and Character

- Assignment #19: Read Gillers 535-553
- Assignment #20: Read Gillers 553-561
- Assignment #21: Read Gillers 607-626
- Assignment #22: Read Gillers 626-641
- Assignment #23: Read Gillers 641-652
- Assignment #24: Read Gillers 671-685
- Assignment #25: Read Gillers 685-706
- Assignment #26: Read Gillers 707-723
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Part Five: Professionalism and the Adversary System

- Assignment #27: Read Gillers 315-335

Assignment #28: Read Gillers 335-360

Assignment #29: Read Gillers 360-383

Assignment #30: Read Gillers 383-400

Part Six: Critiques of the Legal Profession

Assignment #31: Read Rhode, Chapter One

Assignment #32: Read Rhode, Chapter Two

Assignment #33: Read Rhode, Chapter Three

Assignment #34: Read Rhode, Chapter Four

Assignment #35: Read Rhode, Chapter Six

Assignment #36: Read Rhode, Chapter Seven

[Note: The following is the draft introduction to an article I have written about the Legal Profession course. It is included in these materials to give you some background and some context for the course.]

Teaching Professionalism in the Required Curriculum

By

Patrick E. Longan¹

I. Introduction

In Work and Integrity, William Sullivan posits that all professional schools must train their students in “three apprenticeships.”² The first apprenticeship is intellectual. It develops the knowledge base and the habits of the mind that the profession deems to be most important for the practitioner to possess. The second equips the student with the set

¹ William Augustus Bootle Chair in Ethics and Professionalism in the Practice of Law, Director of the Mercer Center for Legal Ethics and Professionalism, Walter F. George School of Law, Mercer University. A.B. Washington University, M.A. University of Sussex, J.D. University of Chicago. For his work on the Legal Profession course, the author received the 2005 National Award for Innovation and Excellence in Teaching Professionalism from the American Bar Association Standing Committee on Professionalism, the National Conference of Chief Justices, and the Burge Endowment for Legal Ethics. Portions of this article are adapted from the application for that award. This paper in earlier forms has been presented to the National Institute for Teaching Ethics and Professionalism, the Mercer Commons Colloquium on Professionalism Across the Professions, the New York Judicial Institute on Professionalism in the Law, the National Consortium of Professionalism Initiatives, the National Conference of Bar Presidents, and the Professionalism Committee of the American Bar Association Section on Legal Education and Admission to the Bar. The author thanks the participants in these programs for many helpful comments. A special word of thanks must also go to Professor Jack Sammons, who had the original idea for the course described in this article and whose insight and support have made its creation and execution possible, and to the members of Mercer’s classes of 2006, 2007, and 2008, who have experienced the ups and downs of our curricular experiment in professionalism.

² William M. Sullivan, WORK AND INTEGRITY: THE CRISIS AND PROMISE OF PROFESSIONALISM IN AMERICA 2d Ed.207-216 (2005).

of skills that will be necessary for translating the intellectual training into effective action in practice. The third inculcates the student with the values and ideals of the profession. To be able to master the complex tasks we expect of professionals, and to use that mastery in ways that are consistent with the profession's purpose, professional schools must integrate all three apprenticeships into their programs.

The first two apprenticeships are quite familiar to legal educators. Lawyers at one time obtained their intellectual training by "reading law" under the supervision of a practicing lawyer. That endeavor, however, long ago moved to the university setting. Doctrinal courses give students a fundamental grounding in various fields of law. Such courses (especially in the first year) also help the students to develop the habits of mind that practitioners need. By reading cases and discussing them with the professor, the students learn how to engage in common law reasoning and otherwise to "think like a lawyer."

The second apprenticeship has also moved into the law school setting, although that occurred much more recently. Lawyering skills at one time were learned on the job, but eventually the profession began to urge the law schools to do a better job of preparing students to do the things they would need to do in practice. The clinical legal education movement of the 1970's was one reaction to this entreaty. After the MacCrate Report of the early 1990's, law schools made even greater efforts to include skills training of various sorts into their curricula. The President of the American Association of Law Schools recently included increased skills training as one of the top ten major changes in legal education in the last 25 years.³ More clinics, more and better legal writing courses,

³ N. William Hines, *Ten Major Changes in Legal Education Over the Past 25 Years*, November 2005 AALS News at 2.

more simulation courses, and a wider variety of externship opportunities all are intended to equip students with skills that they can put into practice from their first day on the job.

That leaves the third apprenticeship. Traditionally, education about the values and ideals of the legal profession came, like intellectual and skills training once did, from actual apprenticeship. Older lawyers would, by example and by one-on-one instruction, help younger lawyers learn what it meant to be a professional. The profession's willingness or ability to provide this third apprenticeship, however, has waned. The economic pressures of law practice, especially the billable hour, have made mentoring activities too expensive to happen naturally as often as they once did. Unsurprisingly, the profession has looked to the law schools to provide what it cannot or will not. To some extent, training in the values of the profession has been around since the post-Watergate era, when law schools were required to provide instruction on the rules of conduct. Many schools, including Mercer, have expanded this training to include, more broadly, courses on the "Law of Lawyering." Such courses include not only the rules of conduct but also other ways, such as civil and criminal liability, in which lawyers' professional responsibilities are enforced.

Yet this has not been enough. The American Bar Association has twice in the recent past explicitly called for professionalism education in law schools.⁴

Professionalism is a concept that is broader than either the rules of conduct or the "Law of Lawyering." Professionalism is a set of character traits that society has a right to expect from those to whom the powers of a professional are entrusted. Professionalism

⁴ "...IN THE SPIRIT OF PUBLIC SERVICE:" A BLUEPRINT FOR THE REKINDLING OF LAWYER PROFESSIONALISM, American Bar Association Commission on Professionalism 16-19 (1986); TEACHING AND LEARNING PROFESSIONALISM, Report of the Professionalism Committee of the American Bar Association Section of Legal Education and Admissions to the Bar 13-25 (1996).

describes what we want a lawyer to be, rather than just what we want a lawyer to do or how we will punish a lawyer who strays. Rules of discipline and of liability are ways in which we communicate to professionals what we want them to be, and they are ways in which society enforces its expectations. Professionalism education necessarily includes study of this guidance and these means of enforcement, but some topics have been missing from legal education. Teaching professionalism requires, in addition to rules of discipline and liability, explicit discussion of what the broader concept of professionalism means, why it matters so much, how it is challenged in contemporary practice, and what a lack of professionalism does to the profession, the people and institutions it serves, and to its individual members.

Law schools have responded to the call for professionalism education in a variety of ways. These responses have included, among other activities, orientations on professionalism, distinguished guest speakers, practitioner involvement in classes, mandatory mentoring, public service requirements, integration of skills courses and values training, and other programs.⁵ This article is about one particular response to the call for professionalism education in law school. In the spring semester of 2004, the Walter F. George School of Law of Mercer University began to require all of its first-year students to take a three-credit, graded course on the Legal Profession in addition to the third-year “Law of Lawyering” course. In the past three years, we have experimented with a variety of techniques, and covered a variety of subject matter, in an attempt to

⁵ See TEACHING AND LEARNING PROFESSIONALISM, *supra* note 5 at 39-59 (describing programs as they existed in 1996). For a more up-to-date listing, consult the web site of the Nelson Mullins Riley & Scarborough Center on Professionalism at the University of South Carolina Law School, <http://professionalism.law.sc.edu/materials/etrlawschools.html>. Even more recent information has been collected by Professor Clark Cunningham of the Georgia State University School of Law in connection with the National Award for Innovation and Excellence in Teaching Professionalism. Professor Cunningham has collected and made available all of the applications for the award. They can be viewed at <http://law.gsu.edu/ccunningham/Professionalism/Award-Home.htm>.

fulfill the need for students to be introduced to their professional responsibilities at an early stage in their legal educations. Some of these experiments have succeeded. Some frankly have failed. This article will describe both.

William Sullivan's metaphor of the "three apprenticeships" is a powerful device for thinking about professional education. As the third apprenticeship for law students follows the first two into the law school setting, law teachers need to learn from each other about effective ways to provide it. Mercer's experience with the Legal Profession course is only one of many innovations, but it is one that may be instructive for other schools that are considering how to ensure that law students receive the exposure they need to what "professionalism" means for lawyers.

II. Lawyer's Creed and Aspirational Statement on Professionalism

The Lawyer's Creed and Aspirational Statement on Professionalism were developed by the Commission to encourage, guide and assist individual lawyers, law firms, and bar associations. These documents have been widely distributed among the lawyers and judges of Georgia through CLE programs and Commission events. A number of local bar associations have used these documents as the basis for bar pledges and creeds. Several law firms have incorporated these documents into their firm mission statements. The Commission's hope is that members of the profession will recognize the special obligations that attach to their calling and will also recognize their responsibility to serve others and not be limited to the pursuit of self-interest. The Creed and Aspirational Statement cannot be imposed by edict because moral integrity and unselfish dedication to the welfare of others cannot be legislated. Nevertheless, a public statement of principles of ethical and professional responsibility can provide guidance for newcomers and a reminder for experienced members of the bar about the basic ethical and professional tenets of their profession. The Lawyer's Creed and Aspirational Statement on Professionalism were adopted by the Commission in 1990 and by Supreme Court order made a part of the Rules and Regulations for the Organization and Government of the State Bar of Georgia.

The Lawyer's Creed and Aspirational Statement on Professionalism have been adopted by the Chief Justice's Commission on Professionalism and incorporated into the Rules and Regulations for the Organization and Government of the State Bar of Georgia. The purpose of the Lawyer's Creed and Aspirational Statement on Professionalism is to serve as encouragement, guidance and assistance to individual lawyers, law firms, and bar associations as they recognize the special obligations that attach to their calling and their responsibility to serve others.

The Creed and Aspirational Statement cannot be imposed by edict because moral integrity and unselfish dedication to the welfare of others cannot be legislated. Nevertheless, a public statement of principles of professionalism can provide guidance for newcomers and a reminder for experienced members of the bar about the basic tenets of our profession.

A LAWYER'S CREED

To my clients, I offer faithfulness, competence, diligence, and good judgment. I will strive to represent you as I would want to be represented and to be worthy of your trust.

To the opposing parties and their counsel, I offer fairness, integrity, and civility. I will seek reconciliation and, if we fail, I will strive to make our dispute a dignified one.

To the courts, and other tribunals, and to those who assist them, I offer respect, candor, and courtesy. I will strive to do honor to the search for justice.

To my colleagues in the practice of law, I offer concern for your welfare. I will strive to make our association a professional friendship.

To the profession, I offer assistance. I will strive to keep our business a profession and our profession a calling in the spirit of public service.

To the public and our systems of justice, I offer service. I will strive to improve the law and our legal system, to make the law and our legal system available to all, and to seek the common good through the representation of my clients.

Aspirational Statements

The Court believes there are unfortunate trends of commercialization and loss of professional community in the current practice of law. These trends are manifested in an undue emphasis on the financial rewards of practice, a lack of courtesy and civility among members of our profession, a lack of respect for the judiciary and for our systems of justice, and a lack of regard for others and for the common good. As a community of professionals, we should strive to make the internal rewards of service, craft, and character, and not the external reward of financial gain, the primary rewards of the practice of law. In our practices we should remember that the primary justification for who we are and what we do is the common good we can achieve through the faithful representation of people who desire to resolve their disputes in a peaceful manner and to prevent future disputes. We should remember, and we should help our clients remember, that the way in which our clients resolve their disputes defines part of the character of our society and we should act accordingly.

As professionals, we need aspirational ideals to help bind us together in a professional community. Accordingly, the Court issues the following Aspirational Statement setting forth general and specific aspirational ideals of our profession. This statement is a beginning list of the ideals of our profession. It is primarily illustrative. Our purpose is not to regulate, and certainly not to provide a basis for discipline, but rather to assist the Bar's efforts to maintain a professionalism that can stand against the negative trends of commercialization and loss of community. It is the Court's hope that Georgia's lawyers, judges, and legal educators will use the following aspirational ideals to reexamine the justifications of the practice of law in our society and to consider the implications of those justifications for their conduct. The Court feels that enhancement of professionalism can be best brought about by the cooperative efforts of the organized bar, the courts, and the law schools with each group working independently, but also jointly in that effort.

GENERAL ASPIRATIONAL IDEALS

As a lawyer, I will aspire:

- (a) To put fidelity to clients and, through clients, to the common good, before selfish interests.
- (b) To model for others, and particularly for my clients, the respect due to those we call upon to resolve our disputes and the regard due to all participants in our dispute resolution processes.
- (c) To avoid all forms of wrongful discrimination in all of my activities including discrimination on the basis of race, religion, sex, age, handicap, veteran status, or national origin. The social goals of equality and fairness will be personal goals for me.

- (d) To preserve and improve the law, the legal system, and other dispute resolution processes as instruments for the common good.
- (e) To make the law, the legal system, and other dispute resolution processes available to all.
- (f) To practice with a personal commitment to the rules governing our profession and to encourage others to do the same.
- (g) To preserve the dignity and the integrity of our profession by my conduct. The dignity and the integrity of our profession is an inheritance that must be maintained by each successive generation of lawyers.
- (h) To achieve the excellence of our craft, especially those that permit me to be the moral voice of clients to the public in advocacy while being the moral voice of the public to clients in counseling. Good lawyering should be a moral achievement for both the lawyer and the client.
- (i) To practice law not as a business, but as a calling in the spirit of public service.

SPECIFIC ASPIRATIONAL IDEALS

As to clients, I will aspire:

- (a) To expeditious and economical achievement of all client objectives.
- (b) To fully informed client decision-making. As a professional, I should:
 - (1) Counsel clients about all forms of dispute resolution;
 - (2) Counsel clients about the value of cooperation as a means towards the productive resolution of disputes;
 - (3) Maintain the sympathetic detachment that permits objective and independent advice to clients;
 - (4) Communicate promptly and clearly with clients; and,
 - (5) Reach clear agreements with clients concerning the nature of the representation.
- (c) To fair and equitable fee agreements. As a professional, I should:
 - (1) Discuss alternative methods of charging fees with all clients;
 - (2) Offer fee arrangements that reflect the true value of the services rendered;
 - (3) Reach agreements with clients as early in the relationship as possible;
 - (4) Determine the amount of fees by consideration of many factors and not just time spent by the attorney;
 - (5) Provide written agreements as to all fee arrangements; and
 - (6) Resolve all fee disputes through the arbitration methods provided by the State Bar of Georgia.

(d) To comply with the obligations of confidentiality and the avoidance of conflicting loyalties in a manner designed to achieve the fidelity to clients that is the purpose of these obligations.

As to opposing parties and their counsel, I will aspire:

(a) To cooperate with opposing counsel in a manner consistent with the competent representation of all parties. As a professional, I should:

- (1) Notify opposing counsel in a timely fashion of any canceled appearance;
- (2) Grant reasonable requests for extensions or scheduling changes; and,
- (3) Consult with opposing counsel in the scheduling of appearances, meetings, and depositions.

(b) To treat opposing counsel in a manner consistent with his or her professional obligations and consistent with the dignity of the search for justice. As a professional, I should:

- (1) Not serve motions or pleadings in such a manner or at such a time as to preclude opportunity for a competent response;
- (2) Be courteous and civil in all communications;
- (3) Respond promptly to all requests by opposing counsel;
- (4) Avoid rudeness and other acts of disrespect in all meetings including depositions and negotiations;
- (5) Prepare documents that accurately reflect the agreement of all parties; and
- (6) Clearly identify all changes made in documents submitted by opposing counsel for review.

As to the courts, other tribunals, and to those who assist them, I will aspire:

(a) To represent my clients in a manner consistent with the proper functioning of a fair, efficient, and humane system of justice. As a professional, I should:

- (1) Avoid non-essential litigation and non-essential pleading in litigation;
- (2) Explore the possibilities of settlement of all litigated matters;
- (3) Seek non-coerced agreement between the parties on procedural and discovery matters;
- (4) Avoid all delays not dictated by a competent presentation of a client's claims;
- (5) Prevent misuses of court time by verifying the availability of key participants for scheduled appearances before the court and by being punctual; and
- (6) Advise clients about the obligations of civility, courtesy, fairness, cooperation, and other proper behavior expected of those who use our systems of justice.

(b) To model for others the respect due to our courts. As a professional I should:

- (1) Act with complete honesty;
- (2) Know court rules and procedures;
- (3) Give appropriate deference to court rulings;
- (4) Avoid undue familiarity with members of the judiciary;
- (5) Avoid unfounded, unsubstantiated, or unjustified public criticism of members of the judiciary;
- (6) Show respect by attire and demeanor;
- (7) Assist the judiciary in determining the applicable law; and,
- (8) Seek to understand the judiciary's obligations of informed and impartial decision-making.

As to my colleagues in the practice of law, I will aspire:

- (a) To recognize and to develop our interdependence;
- (b) To respect the needs of others, especially the need to develop as a whole person; and,
- (c) To assist my colleagues become better people in the practice of law and to accept their assistance offered to me.

As to our profession, I will aspire:

- (a) To improve the practice of law. As a professional, I should:
 - (1) Assist in continuing legal education efforts;
 - (2) Assist in organized bar activities; and,
 - (3) Assist law schools in the education of our future lawyers.
- (b) To protect the public from incompetent or other wrongful lawyering. As a professional, I should:
 - (1) Assist in bar admissions activities;
 - (2) Report violations of ethical regulations by fellow lawyers; and,
 - (3) Assist in the enforcement of the legal and ethical standards imposed upon all lawyers.

As to the public and our systems of justice, I will aspire:

- (a) To counsel clients about the moral and social consequences of their conduct.
- (b) To consider the effect of my conduct on the image of our systems of justice including the social effect of advertising methods.
- (c) To provide the pro bono representation that is necessary to make our system of justice available to all.
- (d) To support organizations that provide pro bono representation to indigent clients.

(e) To improve our laws and legal system by, for example:

- (1) Serving as a public official;
- (2) Assisting in the education of the public concerning our laws and legal system;
- (3) Commenting publicly upon our laws; and,
- (4) Using other appropriate methods of effecting positive change in our laws and legal system.

PROPOSED STANDARDS FOR PROFESSIONAL CONDUCT

WITHIN THE SEVENTH FEDERAL JUDICIAL CIRCUIT

Preamble

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

A judge's conduct should be characterized at all times by courtesy and patience toward all participants. As judges we owe to all participants in a legal proceeding respect, diligence, punctuality, and protection against unjust and improper criticism or attack.

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

The following standards are designed to encourage us, judges and lawyers, to meet our obligations to each other, to litigants and to the system of justice, and thereby achieve the twin goals of civility and professionalism, both of which are hallmarks of a learned profession dedicated to public service.

We expect judges and lawyers will make a mutual and firm commitment to these standards. Voluntary adherence is expected as part of a commitment by all participants to improve the administration of justice throughout this Circuit.

These standards shall not be used as a basis for litigation or for sanctions or penalties. Nothing in these standards supersedes or detracts from existing disciplinary codes or alters existing standards of conduct against which lawyer negligence may be determined.

These standards should be reviewed and followed by all judges and lawyers participating in any proceeding in this Circuit. Copies may be made available to clients to reinforce our obligation to maintain and foster these standards.

Lawyers' Duties to Other Counsel

1. We will practice our profession with a continuing awareness that our role is to advance the legitimate interests of our clients. In our dealings with others we will not reflect the ill

feelings of our clients. We will treat all other counsel, parties, and witnesses in a civil and courteous manner, not only in court, but also in all other written and oral communications.

2. We will not, even when called upon by a client to do so, abuse or indulge in offensive conduct directed to other counsel, parties, or witnesses. We will abstain from disparaging personal remarks or acrimony toward other counsel, parties, or witnesses. We will treat adverse witnesses and parties with fair consideration.

3. We will not encourage or knowingly authorize any person under our control to engage in conduct that would be improper if we were to engage in such conduct.

4. We will not, absent good cause, attribute bad motives or improper conduct to other counsel or bring the profession into disrepute by unfounded accusations of impropriety.

5. We will not seek court sanctions without first conducting a reasonable investigation and unless fully justified by the circumstances and necessary to protect our client's lawful interests.

6. We will adhere to all express promises and to agreements with other counsel, whether oral or in writing, and will adhere in good faith to all agreements implied by the circumstances or local customs.

7. When we reach an oral understanding on a proposed agreement or a stipulation and decide to commit it to writing, the drafter will endeavor in good faith to state the oral understanding accurately and completely. Thereafter will provide the opportunity for review of the writing to other counsel. As drafts are exchanged between or among counsel, changes from prior drafts will be identified in the draft or otherwise explicitly brought to the attention of other counsel. We will not include in a draft matters to which there has been no agreement without explicitly advising other counsel in writing of the addition.

8. We will endeavor to confer early with other counsel to assess settlement possibilities. We will not falsely hold out the possibility of settlement as a means to adjourn discovery or to delay trial.

9. In civil actions we will stipulate to relevant matters if they are undisputed and if no good faith advocacy basis exists for not stipulating.

10. We will not use any form of discovery or discovery scheduling as a means of harassment.

11. We will make good faith efforts to resolve by agreement our objections to matters contained in pleadings and discovery requests and objections.

12. We will not time the filing or service of motions or pleadings in any way that unfairly limits another party's opportunity to respond.

13. We will not request an extension of time solely for the purpose of unjustified delay or to obtain a tactical advantage.

14. We will consult other counsel regarding scheduling matters in a good faith effort to avoid scheduling conflicts.

15. We will endeavor to accommodate previously scheduled dates for hearings, depositions, meetings, conferences, vacations, seminars, or other functions that produce good faith calendar conflicts on the part of other counsel. If we have been given an accommodation because of a calendar conflict, we will notify those who have accommodated us as soon as the conflict has been removed.

16. We will notify other counsel and, if appropriate, the court or other persons, at the earliest possible time when hearings, depositions, meetings, or conferences are to be canceled or postponed. Early notice avoids unnecessary travel and expense of counsel and may enable the court to use the previously reserved time for other matters.

17. We will agree to reasonable requests for extensions of time and for waiver of procedural formalities, provided our clients' legitimate rights will not be materially or adversely affected.

18. We will not cause any default or dismissal to be entered without first notifying opposing counsel, when we know his or her identity.

19. We will take depositions only when actually needed to ascertain facts or information or to perpetuate testimony. We will not take depositions for the purposes of harassment or to increase litigation expenses.

20. We will not engage in any conduct during a deposition that would not be appropriate in the presence of a judge.

21. We will not obstruct questioning during a deposition or object to deposition questions unless necessary under the applicable rules to preserve an objection or privilege for resolution by the court.

22. During depositions we will ask only those questions we reasonably believe are necessary for the prosecution or defense of an action.

23. We will carefully craft document production requests so they are limited to those documents we reasonably believe are necessary for the prosecution or defense of an action. We will not design production requests to place an undue burden or expense on a party.

24. We will respond to document requests reasonably and not strain to interpret the request in an artificially restrictive manner to avoid disclosure of relevant and non-privileged documents. We will not produce documents in a manner designed to hide or obscure the existence of particular documents.

25. We will carefully craft interrogatories so they are limited to those matters we reasonably believe are necessary for the prosecution or defense of an action, and we will not design them to place an undue burden or expense on a party.

26. We will respond to interrogatories reasonably and will not strain to interpret them in an artificially restrictive manner to avoid disclosure of relevant and non-privileged information.

27. We will base our discovery objections on a good faith belief in their merit and will not object solely for the purpose of withholding or delaying the disclosure of relevant information.

28. When a draft order is to be prepared by counsel to reflect a court ruling, we will draft an order that accurately and completely reflects the court's ruling. We will promptly prepare and submit a proposed order to other counsel and attempt to reconcile any differences before the draft order is presented to the court.

29. We will not ascribe a position to another counsel that counsel has not taken or otherwise seek to create an unjustified inference based on counsel's statements or conduct.

30. Unless specifically permitted or invited by the court, we will not send copies of correspondence between counsel to the court.

Lawyers' Duties to the Court

1. We will speak and write civilly and respectfully in all communications with the court.

2. We will be punctual and prepared for all court appearances so that all hearings, conferences, and trials may commence on time; if delayed, we will notify the court and counsel, if possible.

3. We will be considerate of the time constraints and pressures on the court and court staff inherent in their efforts to administer justice.

4. We will not engage in any conduct that brings disorder or disruption to the courtroom. We will advise our clients and witnesses appearing in court of the proper conduct expected and required there and, to the best of our ability, prevent our clients and witnesses from creating disorder or disruption.

5. We will not knowingly misrepresent, mischaracterize, misquote, or miscite facts or authorities in any oral or written communication to the court.
6. We will not write letters to the court in connection with a pending action, unless invited or permitted by the court.
7. Before dates for hearings or trials are set, or if that is not feasible, immediately after such date has been set, we will attempt to verify the availability of necessary participants and witnesses so we can promptly notify the court of any likely problems.
8. We will act and speak civilly to court marshals, clerks, court reporters, secretaries, and law clerks with an awareness that they, too, are an integral part of the judicial system.

Courts' Duties to Lawyers

1. We will be courteous, respectful, and civil to lawyers, parties, and witnesses. We will maintain control of the proceedings, recognizing that judges have both the obligation and the authority to insure that all litigation proceedings are conducted in a civil manner.
2. We will not employ hostile, demeaning, or humiliating words in opinions or in written or oral communications with lawyers, parties, or witnesses.
3. We will be punctual in convening all hearings, meetings, and conferences; if delayed, we will notify counsel, if possible.
4. In scheduling all hearings, meetings and conferences we will be considerate of time schedules of lawyers, parties, and witnesses.
5. We will make all reasonable efforts to decide promptly all matters presented to us for decision.
6. We will give the issues in controversy deliberate, impartial, and studied analysis and consideration.
7. While endeavoring to resolve disputes efficiently, we will be considerate of the time constraints and pressures imposed on lawyers by the exigencies of litigation practice.
8. We recognize that a lawyer has a right and a duty to present a cause fully and properly, and that a litigant has a right to a fair and impartial hearing. Within the practical limits of time, we will allow lawyers to present proper arguments and to make a complete and accurate record.
9. We will not impugn the integrity or professionalism of any lawyer on the basis of the clients whom or the causes which a lawyer represents.

10. We will do our best to insure that court personnel act civilly toward lawyers, parties, and witnesses.

11. We will not adopt procedures that needlessly increase litigation expense.

12. We will bring to lawyers' attention uncivil conduct which we observe.

Judges' Duties to Each Other

1. We will be courteous, respectful, and civil in opinions, ever mindful that a position articulated by another judge is the result of that judge's earnest effort to interpret the law and the facts correctly.

2. In all written and oral communications, we will abstain from disparaging personal remarks or criticisms, or sarcastic or demeaning comments about another judge.

3. We will endeavor to work with other judges in an effort to foster a spirit of cooperation in our mutual goal of enhancing the administration of justice.