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# Code of Legal Ethics Adopted by the Kentucky State Bar Association

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## CODE OF LEGAL ETHICS ADOPTED BY THE KENTUCKY STATE BAR ASSOCIATION.

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1. The respect enjoined by law for courts and judicial officers is exacted for the sake of the office, and not for the individual who administers it. Bad opinions of the incumbent, however well founded, can not excuse the withholding of the respect due the office, while administering its functions.

2. The proprieties of the judicial station, in a great measure disable the judge from defending himself against strictures upon his official conduct. For this reason, and because such criticism tend to impair public confidence in the administration of justice, attorneys should, as a rule, refrain from published criticisms of judicial conduct, especially in reference to causes in which they have been of counsel, otherwise than in courts of review, or when the conduct of a judge is necessarily involved in determining his removal from or continuance in office.

3. Marked attention and unusual hospitality to a judge, when the relations of the parties are such that they would not otherwise be extended, subject both judges and attorneys to misconstructions, and should be sedulously avoided. A self-respecting independence in the discharge of the attorney's duties, which at the same time does not withhold the courtesy and respects due the judge's station, is the only just foundation for cordial personal and official relations between bench and bar. All attempts by means beyond these to gain special personal consideration and favor of a judge are disreputable.

4. Courts and judicial officers, in the rightful exercise of their functions, should always receive the support and countenance of attorneys against unjust criticisms and popular clamor; and it is an attorney's duty to give them his moral support in all proper ways, and particularly by setting a good example in his own person of obedience to law.

5. The utmost candor and fairness should characterize the dealings of attorneys with the courts and with each other. Knowingly citing as authority an overruled case, or treating a repealed statute as in existence—knowingly misquoting the language of a decision or text-book—knowingly misstating the contents of a paper, the testimony of a witness, or the language or argument of opposite counsel—offering evidence which it is known the court must reject as illegal, to get it before the jury, under the guise of arguing its admissibility—and all kindred practices are deceits and evasions unworthy of attorneys.

Purposely concealing or withholding in the opening argument positions intended finally to be relied upon, in order that opposite counsel may not discuss them, is unprofessional.

In the argument of demurrers, admission of evidence and other questions of law, counsel should carefully refrain from "side-bar"

remarks and sparring discourse, to influence the jury or bystanders. Personal colloquies between counsel tend to delay, and promote unseemly wrangling, and ought to be discouraged.

6. Attorneys owe it to the courts and the public, whose business the courts transact, as well as to their own clients, to be punctual in attendance on their causes.

7. One side must always lose the cause; and it is not wise or respectful to the court, for attorneys to display temper because of an adverse ruling.

8. An attorney should strive, at all times, to uphold the honor, maintain the dignity, and promote the usefulness of the profession; for it is so interwoven with the administration of justice that whatever redounds to the good of one advances the other; and the attorney thus discharges, not merely an obligation to his brother, but a high duty to the State and his fellow man.

9. An attorney should not speak slightly or disparagingly of his profession, or pander in any way to unjust popular prejudices against it; and he should scrupulously refrain at all times, and in all relations of life, from availing himself of any prejudice or popular misconception against lawyers, in order to carry a point against a brother attorney.

10. Nothing has been more potential in creating and pandering to the popular prejudice against lawyers as a class than the false claim, often set up by the unscrupulous in defense of questionable transactions, that it is an attorney's duty to do everything to succeed in his client's cause.

An attorney owes entire devotion to the interests of his client, warm zeal in the maintenance and defense of his cause, and the exertion of the utmost skill and ability, to the end that nothing may be taken or withheld from him, save by the rules of law, legally applied. No sacrifice or peril, even to the loss of life itself, can absolve from the fearless discharge of this duty. Nevertheless, it is steadfastly to be borne in mind that the great trust is to be performed within and not without, the bounds of law, which creates it. The attorney's office does not destroy man's accountability to his Creator, or lessen the duty of obedience to law, and the obligation to his neighbor; and it does not permit, much less demand, violation of law, or any manner of fraud or chicanery for the client's sake.

11. Attorneys should fearlessly expose before the proper tribunals corrupt or dishonest conduct in the profession; and there should never be any hesitancy in accepting employment against an attorney who has wronged his client.

12. An attorney appearing or continuing as private counsel in the prosecution for a crime of which he believes the accused innocent, forswears himself. The commonwealth's attorney is criminal if he presses for a conviction, when upon the evidence he believes the prisoner innocent. If the evidence is not plain enough to justify a *nolle prosequi*, a public prosecutor should submit the case, with such comments as are pertinent, accompanied by a candid statement of his own doubts.

13. An attorney is not bound to reject the defense of a person

accused of a criminal offense, because he believes him guilty. It is his duty, by all fair and lawful means, to present such defenses as the law of the land permits—to the end that no one may be deprived of life or liberty, but by due process of law.

14. An attorney must decline in a civil cause to conduct a prosecution when satisfied that the purpose is merely to harass or injure the opposite party, or to work oppression and wrong.

15. It is a bad practice for an attorney to communicate or argue privately with the judge as to the merits of his cause.

16. Newspaper advertisements, circulars and business cards, tendering professional services to the general public, while not improper, are to be dealt in sparingly; but special solicitation of particular individuals to become clients is highly objectionable. Indirect advertisement for business, by furnishing or inspiring editorial or press notices, regarding causes in which the attorney takes part, the manner in which they were conducted, the importance of his positions, the magnitude of the interests involved, and all other like self-laudation, is of evil tendency and wholly unprofessional.

17. Newspaper publications and interviews by an attorney as to the merits of pending or anticipated litigation call forth discussions and reply from the opposite party, tend to prevent a fair trial in the courts, and otherwise prejudice the due administration of justice. It requires a strong case to justify such publications; and, when proper, it is unprofessional to make them anonymously. It is better that all newspaper reports of court proceedings be taken, as far as may be, from the records and papers on file in the court.

18. When an attorney is a witness for his client, except as to formal matters, such as the attestation or custody of an instrument, and the like, he should leave the trial of the cause to other counsel. Except when essential to the ends of justice, an attorney should scrupulously avoid testifying in court in behalf of his client, as to any matter.

19. Assertions, sometimes made by counsel in argument, or a personal belief of the client's innocence, or the justice of his cause, are to be discouraged.

20. It is indecent to hunt up defects in titles, and the like and inform thereof, in order to be employed to bring suit; or to seek out a person supposed to have a cause of action, and endeavor to get a fee to litigate about it. Except where ties of blood relationship or trust, make it an attorney's duty, it is unprofessional to volunteer advice to bring a law suit. Stirring up strife and litigation is forbidden by law, and disreputable in morals.

21. Communications and confidence between client and attorney are the property and secrets of the client; and can not be divulged, except at his instance; even the death of the client does not absolve the attorney from his obligation of secrecy.

22. The duty not to divulge the secrets of clients extends further than mere silence by the attorney, and forbids accepting retainers or employment afterward from others involving the client's interest, in the matters about which the confidence was reposed. When the secrets or confidence of a former client may be availed of or be material, in a

subsequent suit, as the basis of any judgment which may injuriously affect his rights. the attorney can not appear in such cause without the consent of his former client.

23. An attorney can never attack an instrument or paper drawn by him for any infirmity apparent on its face; nor for any other cause where confidence has been reposed as to the facts concerning it. Where the attorney acted as a mere scrivener, and was not consulted as to the facts, and, unknown to him the transaction amounted to a violation of the laws, he may assail it on that ground, in suits between third persons, or between parties to the instrument and strangers.

24. An attorney openly, and in his true character as such, may render professional services regarding proposed legislation, and in advocacy of claims before the departments of the government, upon the same principles of ethics which justify his appearance before the courts; but it is improper for any attorney so engaged to conceal his attorneyship, or to do any act, or to use means other than those addressed to the reason and understanding, to influence action.

25. An attorney can never represent conflicting interests in the same suit or transaction, except by express consent of all so concerned, with full knowledge of the facts. Even then, such a position is embarrassing, and ought to be avoided. An attorney represents conflicting interests, within the meaning of this rule; when it is his duty in behalf of one of his clients, to contend for that, which duty to other clients in the transaction requires him to oppose.

26. It is not a desirable professional reputation to live and die with—that of a rough tongue, which makes a man to be sought out and retained to gratify the malevolent feeling of a suitor in hearing the other side well lashed and vilified.

27. An attorney is under no obligation to minister to the malevolence or prejudice of a client in the trial or conduct of a cause. The client can not be made the keeper of the attorney's conscience in professional matters. He can not demand as of right that his attorney shall abuse the opposite party, or indulge in offensive personalities. The attorney, under the solemnity of his oath, must determine for himself whether such a course is essential to ends of justice, and therefore justifiable.

28. Clients, and not their attorneys, are the litigants; and whatever may be the ill feeling existing between clients, it is unprofessional for attorneys to partake of it in their conduct and demeanor to each other, or to suitors in the case.

29. In the conduct of litigation and the trial of causes the attorneys should try the merits of the cause and not try each other. It is not proper to allude to, or comment upon, the personal history, or mental or physical peculiarities or idiosyncracies of opposite counsel. Personalities should always be avoided, and the utmost courtesy always extended to an honorable opponent.

30. As to incidental matters pending the trial, not affecting the merits of the cause, or working substantial prejudice to the rights of the client, such as forcing the opposite attorney to trial when he is under affliction or bereavement; forcing the trial on a particular day to the serious injury of the opposite attorney, when no harm will

result from a trial at a different time; the time allowed for signing a bill of exceptions, crossing interrogatories, and the like, the attorney must be allowed to judge. No client has a right to demand that his attorney shall be illiberal in such matters, or that he should do anything therein repugnant to his own sense of honor and propriety; and if such a course is insisted upon, the attorney should retire from the cause.

31. The miscarriages to which justice is subject, and the uncertainty of predicting results, admonish attorneys to beware of bold and confident assurance to clients, especially where the employment depends upon the assurance, and the case is not plain.

32. Prompt preparation for trial, punctuality in answering letters and keeping engagements are due from an attorney to his clients and do much to strengthen their confidence and friendship.

33. An attorney is in honor bound to disclose to the client at the time of the retainer all circumstances of his relation to the parties, or interests or connection with the controversy, which might justly influence the client in the selection of his attorney. He must decline to appear in any cause where his obligations or relations to the opposite parties will hinder or seriously embarrass the full and fearless discharge of all his duties.

34. An attorney should endeavor to obtain full knowledge of his client's cause before advising him, and is bound to give him a candid opinion of the merits and probable result of his cause. When the controversy will admit of it he ought to seek to adjust it without litigation, if practicable.

35. Money or other trust property coming into the possession of the attorney, should be promptly reported, and never commingled with his private property or used by him, except with the client's knowledge and consent.

36. Attorneys should, as far as possible, avoid becoming either borrowers or creditors of their client; and they ought scrupulously to refrain from bargaining about the subject-matter of the litigation, so long as the relation of attorney and client continues.

37. Natural solicitude of clients often prompts them to offer assistance of additional counsel. This should not be met, as it sometimes is, as evidence of want of confidence; but after advising frankly with the client, it should be left to his determination.

38. Important agreements affecting the rights of clients should, as far as possible, be reduced to writing; but it is dishonorable to avoid performance of an agreement fairly made, because not reduced to writing as required by rules of court or otherwise.

39. An attorney should not, even when the law permits, ignore known customs of practice of the bar of a particular court, where such practice has been long established and generally acquiesced in. If any other course is contemplated, timely notice should be given opposing counsel.

40. An attorney ought not to engage in discussion or arguments about the merits of the case with the opposite party without notice to his attorneys; and should not attempt to compromise with the opposite party without notifying his attorney, if practicable.

41. When attorneys jointly associated in a cause can not agree as to any matter vital to the interest of their client, the course to be pursued should be left to his determination. The client's decision should be cheerfully acquiesced in, unless the nature of the difference makes it impracticable for the attorney to co-operate heartily and effectively, in which event it is his duty to ask to be discharged.

42. Satisfactory relations between attorney and client are best preserved by a frank and explicit understanding at the outset, as to the amount of the attorney's compensation, and, where it is possible, this should always be agreed on in advance.

43. In general, it is better to yield something to a client's dissatisfaction at the amount of the fee, though the sum be reasonable, than to engage in a law suit to justify it, which ought always to be avoided, except as a last resort to prevent imposition or fraud.

44. In fixing fees the following elements should be considered: 1st, The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to properly conduct the cause. 2. Whether the particular case will debar the attorney's appearance for others in cases likely to arise out of the transaction, and in which there is a reasonable expectation that the attorney would otherwise be employed; and herein of the loss of other business while employed in the particular case and the antagonism with other clients growing out of the employment. 3. The customary charges of the bar for similar services. 4. The real amount involved and the benefits resulting from the services. 5. Whether the compensation be contingent or assured. 6. Is the client a regular one, retaining the attorney in all his business?

No one of these considerations is in itself controlling. They are mere guides in ascertaining what the particular service is really worth; and in fixing the amount, it should never be forgotten that the profession is a branch of the administration of justice and not a mere money-getting-trade.

45. Contingent fees may be contracted for; but they lead to many abuses, and certain compensation is to be preferred.

46. Casual and slight services should be rendered without charge by one attorney to another in his personal cause; but when the service goes beyond this an attorney may be charged as other clients. Ordinary advice and service to the family of a deceased attorney should be rendered without charge in most instances; and where the circumstances make it proper to charge, the fees should generally be less than in case of other clients.

47. Witnesses and suitors should be treated with firmness and kindness. When essential to the ends of justice to arraign their conduct or testimony, it should be done without vilification or unnecessary harshness. Fierceness of manner and uncivil behavior can add nothing to the truthful dissection of a false witness' testimony and often rob deserved strictures of proper weight.

48. It is the duty of the court and its officers to provide for the comfort of jurors. Displaying special concern for their comfort, and volunteering to ask favors for them, while they are present—such as frequent motions to adjourn trials, to take recess, solely on the

ground of the jury's fatigue, or hunger, and uncomfortableness of their seats or the court room, and the like, should be avoided. Such intervention of attorneys, when proper, ought to be had privately with the court; thereby there will be no appearance of fawning upon the jury, nor ground for ill feeling of the jury towards the court or opposite counsel, if such requests are denied. For like reasons, one attorney should never ask another, in the presence of the jury, to consent to its discharge or dispersion; and when such a request is made by the court, the attorneys, without indicating their preference, should ask to be heard after the jury withdraws. And, as a general thing, propositions from counsel to dispense with argument should be made and discussed out of the hearing of the jury.

49. An attorney ought never to converse privately with jurors about the case; and must avoid all unnecessary communication, even as to matters foreign to the cause, both before and during the trial. Any other course, no matter how blameless the attorney's motives, gives color to the imputing of evil designs, and often leads to scandal in the administration of justice.

50. An attorney assigned as counsel for an indigent prisoner ought not to ask to be excused for any light cause, and should always be a friend to the defenseless and oppressed.

51. The lawyer should study the law with the constant purpose to do what he can to amend and perfect it.

52. Except upon the ground that a moral principle is involved, an attorney ought never to counsel or approve the infraction or evasion of a valid law. The fact that the end to be gained is a political one will not justify any departure from this rule.

53. While an attorney should speak respectfully of the judiciary and of all lawfully constituted authorities; and in the trial of causes and in all his dealings with the court should demean himself towards it with deference and respect, he has, on the other hand, a right to expect and exact from the court the same demeanor towards himself. It is unfortunate for the cause of justice when the judge forgets his dependence on the bar and forgets to pay it the deference and respect which is its due.

54. The qualities desirable in a judge are courtesy, affability, even temper, patience, conscientiousness, legal learning, sound sense and judgment, the moral courage to meet an issue squarely, and an impartial mind.

55. The bar should never permit political considerations to outweigh judicial fitness in selecting material for the bench, and it should earnestly and actively protest against the appointment or election of those who, in the general estimation of the bar, are unsuitable for the bench.

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**Putting It Clearly.**—"Rastus, what's an alibi?"

"Dat's provin' dat yoh was at a prayer meetin' whar yoh wasn't in order to show dat yoh wasn't at de crap game whar yoh was."—Life.