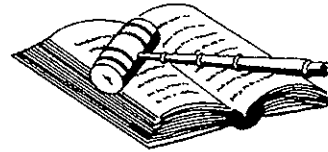


AMERICAN COLLEGE OF TRIAL LAWYERS



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*

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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.

Standards For Trial Conduct

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 statute 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.