

KCMBA PRINCIPLES OF CIVILITY

In order to promote a high level of professionalism and courtesy and to improve professional relationships within and throughout the Kansas City metropolitan legal community, the Kansas City Metropolitan Bar Association hereby adopts the following Principles of Civility.

I. CIVILITY AND PROFESSIONALISM AMONG ALL LAWYERS IS ESSENTIAL TO THE OPERATION OF OUR LEGAL SYSTEM.

II. COMMUNICATE PROFESSIONALLY AND RESPECTFULLY IN ALL FORMS, INCLUDING ELECTRONIC MEDIA. UNLESS SPECIFICALLY PERMITTED OR INVITED BY THE COURT, COMMUNICATIONS BETWEEN LAWYERS SHOULD NOT BE SENT TO THE COURT.

Committee Comment: Reasonable communication is encouraged and can alleviate the need for necessary motion practice and/or hearings. Adequate communication may further serve to narrow issues to be litigated and reduce the amount of time and resources required to resolve a matter. Lawyers should refrain from disrespectful communications or disparaging personal remarks toward opposing counsel, the litigants and witnesses. Lawyers should refrain from creating an unnecessary sense of urgency for response; however, inquiries and communications should be made promptly as a matter of professional courtesy. When communicating through electronic media, lawyers and their staff need to consistently consider the nature and tone of all communications.

III. NEVER KNOWINGLY DECEIVE ANOTHER WHILE ENGAGED IN THE PRACTICE OF LAW.

Committee Comment: Candor is vital to open channels of communication and saves time and expense. In adversarial relationships with lawyers, other individuals and parties, the system requires all sides to vigorously advocate their best interests. This Principle does not suggest any obligation (separate from that imposed by existing ethical canons, laws or discovery rules) for disclosure. This Principle is not intended to restrict aggressive expression of opinions helpful to a client. It is, instead, directed against affirmative misrepresentations by lawyers or their staff to others while representing the interests of a client. Settlement negotiations should be conducted with candor, although it is recognized that there can be tactical “jockeying for position.” Examples

of knowing deception might include the following: (a) representations as to physical unavailability of a lawyer or witness on specific dates (“I can’t make that date because I have a deposition, trial or out-of-town meeting”); (b) the existence of evidence or case law that establishes or rebuts a claim of defense (“I have a case directly on point, which completely eliminates your claim as a matter of law” or “I have a ‘smoking gun’ document or witness which will definitely show ...”).

IV. HONOR PROMISES AND COMMITMENTS MADE WHILE ENGAGED IN THE PRACTICE OF LAW.

Committee Comment: This Principle seeks to avoid a cavalier attitude toward breaking commitments to appointments, depositions or other discovery without good cause. A lawyer’s word is a bond on which witnesses, parties, court personnel and other lawyers rightfully rely. Absent an unforeseen and significant change in circumstances, a lawyer should make every effort to honor promises or commitments to others.

V. RESPECT THE TIME AND SCHEDULE OF OTHERS AND WORK COOPERATIVELY IN SCHEDULING ALL MATTERS.

Committee Comment: Lawyers should consider the time commitments of opposing counsel, parties, the court, witnesses and all others involved in the judicial process. Events requiring opposing counsel, including depositions, hearings, meetings and conferences, should be scheduled by the agreement of all interested persons whenever possible. Cooperative scheduling should result in fewer conflicts and avoid unnecessary expenditure of time and expense in rescheduling matters. Additionally, lawyers should make every effort to timely appear for all professional obligations. This Principle does not remove the necessity of serving formal notice, as required by applicable rules and statutes.

VI. SEEK SANCTIONS ONLY WHEN SUPPORTED BY THE FACTS AND LAW AND SUCH ACTION IS NECESSARY FOR THE PROTECTION OF THE CLIENT.

Committee Comment: Lawyers are cautioned against seeking sanctions for mere tactical advantage and/or to embarrass opposing counsel or parties.

VII. AVOID UNFOUNDED AND UNREASONABLE ATTACKS ON OTHER LAWYERS AND THE JUDICIARY, AND EDUCATE OTHERS SO THAT SUCH ATTACKS ARE MINIMIZED OR ELIMINATED.

Committee Comment: The committee thought the old version swept too broadly and that consideration should be given to limiting it to the context of practicing law. Others thought it might be necessary to embarrass or criticize another lawyer in the prosecution of a case if the other lawyer did something that was egregiously wrong or inept. The committee preferred the concept of prohibiting unfounded attacks rather than mere embarrassment or criticism, which might be appropriate in certain situations such as a closing argument.

VIII. WHEN CIRCULATING DOCUMENTS, EXPLICITLY HIGHLIGHT ALL CHANGES PROPOSED.

Committee Comment: At the 2012 Civility Summit, one of the issues, which received the most attention, was raised by transactional and other lawyers relating to the exchange of documents and the failure of counsel to exchange “untracked” documents. Most considered it uncivil to send documents without suggested changes clearly shown or to send drafts in a non-modifiable format, (e.g., pdf) therefore making changes very difficult. The phrase “explicitly highlight” is used rather than a specific technique, such as redlining, because technology and word processing programs will continue to evolve.

NOTES:

The original Tenets of Professional Courtesy were adopted by the Kansas City Metropolitan Bar Association in the spring of 1987 after significant discussion, review and concern over the declining professionalism and professional courtesy among the bar. Animosity between members of the bar and inability of many lawyers to get along and work out matters resulted in the Bar Association’s 1987 Tenets of Professional Courtesy. Although well-reasoned and well-intentioned, there was significant concern that these Tenets were increasingly unknown or ignored over the years since their adoption. Despite the fact that the Tenets were distributed by some area judges and courts, they were otherwise difficult to locate.

In 2012, then KCMBA President Nancy Kenner appointed a Blue Ribbon Committee to examine the 1987 Tenets of Professional Courtesy, draft revisions to the Tenets and address civility in our legal community. The Committee is chaired by

Fritz Riesmeyer of Seigfreid, Bingham, PC and consists of the following judges and attorneys: Jennifer Gille Bacon, Polsinelli Shughart PC; Jeanne K. Peters-Baker, Prosecuting Attorney, 16th Judicial Circuit of Missouri; Judge Thomas E. Foster, 10th Judicial District Court of Kansas, Johnson County; Professor Barbara Glesner Fines, UMKC School of Law; W. Brian Gaddy, Gaddy Weis LLC; Christopher C. Javillonar, Bryan Cave LLP; Jill M. Katz, Jill M. Katz, LLC; Timothy P. McCarthy, Gilliland & Hayes, P.A.; Jessica E. Merrigan, Lathrop & Gage LLP; Jerome Murphy, The Murphy Law Firm; Phyllis A. Norman-Komoroski, Langdon & Emison; Judge Marco A. Roldan, 16th Judicial Circuit Court of Missouri, Jackson County; Vickie Schatz, Wm. Dirk Vandever, The Popham Law Firm, PC; and Judge Brian C. Wimes, U.S. District Court, Western District of Missouri.

On October 8, 2012, KCMBA convened a Civility Summit, attended by more than 200 attorneys and judges. The Civility Summit was the idea of KCMBA past President Jerry Wolf and is recognized as being one of the first of its kind. The Summit included an expert panel of lawyers and judges who candidly addressed professionalism and civility in our community. The panel consisted of moderator Larry Ward, Polsinelli Shughart PC, and panelists Lynne J. Bratcher, Bratcher Gockel & Kingston, LC; Judge J. Charles Droege, 10th Judicial District Court of Kansas, Johnson County; Willie J. Epps, Jr., Shook, Hardy & Bacon L.L.P.; Judge Fernando J. Gaitan, United States District Court, Western District of Missouri; and Sue A. Sperry, Assurant Employee Benefits.

Small group discussions, led by Honorable Duane Benton, U.S. Court of Appeals for the 8th Circuit, focused on the current state of professionalism, civility and professional courtesy in our legal community. Summit attendees provided considerable input that resulted in significant data that was digested and provided to the Blue Ribbon Committee to assist in drafting new tenets.

The Blue Ribbon Committee recommended changing the name from Tenets of Professional Responsibility to Principles of Civility, as it more applicably describes the content and intent of the document. Additionally, the Blue Ribbon Committee significantly rewrote the Tenets of Professional Courtesy, keeping many of the timeless issues and modernizing the approach with feedback primarily from the Civility Summit small group discussions. In January 2013, the Blue Ribbon Committee published the draft Principles of Civility for comment from the bar and judiciary. Comments received will be [were] considered and incorporated by the Blue Ribbon Committee as appropriate.

The Principles of Civility are intended to be a tool to educate our profession about the importance of civility through the legal process and set aspirational standards to assist in the practice of law. The Blue Ribbon Committee recognizes that implementation and/or enforcement will be a challenge. To that end, KCMBA asks the courts within its territory. It is not the goal that lawyers who fail to follow these principles be sanctioned. It is, however, a goal that lawyers practicing in KCMBA’s service territory adopt and aspire to meet them.