

# TENETS OF PROFESSIONAL COURTESY

Adopted At 14th Annual Bench Bar 1987

In order to promote a high level of professional courtesy and improve the professional relationship among members of the Kansas City Metropolitan Bar Association, the association adopts the following Tenets of Professional Courtesy.

## I. A LAWYER SHOULD NEVER KNOWINGLY DECEIVE ANOTHER LAWYER.

**Committee comment:** Candor between lawyers is vital to open channels of communication, which in turn saves time and expense. It is recognized that, in dealing in an adversarial relationship with another lawyer, the system requires all sides to vigorously advocate their best interests. This Tenet in no way suggests that there is any obligation (separate from that imposed by existing ethical canons, laws or discovery rules) to disclose anything that may harm the interests of your client. Neither does this Tenet in any way restrict the aggressive expression of opinions helpful to your client. It is, instead, directed against affirmative misrepresentations by lawyers. Examples might include: (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 which establishes or rebuts a claim of defense (I have a case directly on point which completely eliminates your claim as a matter of law; I have a "smoking gun" document or witness which will definitely show...). Settlement negotiations should be conducted with candor although it is recognized that there can be tactical "jockeying for position."

## II. A LAWYER SHOULD HONOR PROMISES OR COMMITMENTS MADE TO ANOTHER LAWYER.

**Committee comment:** It should be recognized that a lawyer's word is a bond on which witnesses, parties, court personnel, and other lawyers might rightfully rely. There are times when unforeseen circumstances arise which necessarily require lawyers to change previous commitments. This test is one of "reasonableness", involving an examination of whether the later conflict was, in fact, unforeseen at the time of the promise and of the harm which will be caused if the original commitment was "enforced." This Tenet seeks to avoid a cavalier attitude toward committing to appointments, depositions, or other discovery, which are broken without good reason.

## III. A LAWYER SHOULD MAKE ALL REASONABLE EFFORTS TO SCHEDULE MATTERS WITH OPPOSING COUNSEL BY AGREEMENT.

**Committee comment:** Lawyers should recognize the scheduling interests of opposing counsel, the parties the court and witnesses. Therefore, all matters, including, but not limited to, depositions, hearings, meetings, conferences and other events requiring opposing counsel, are to be scheduled by agreement whenever possible. This should result in few continuances and avoid the time and expense of rescheduling these matters. This Tenet does not remove the necessity of serving formal notice as required by any particular statute or rule. Misunderstandings can be avoided if formal notice is sent after agreement is reached.

## IV. A LAWYER SHOULD MAINTAIN A CORDIAL AND RESPECTFUL RELATIONSHIP WITH OPPOSING COUNSEL.

**Committee comment:** This Tenet recognizes that lawyers are engaged in a profession of representing adverse interests which often are in conflict. The conflict is between the clients and not the lawyers. This Tenet also recognizes that effective and open communication between lawyers aids the resolution of the conflict. If conflict arises between the lawyers, they become part of the problem as opposed to part of the solution. Maintaining a cordial and respectful relationship includes what a lawyer says and what a lawyer writes. A lawyer should strive to maintain a courteous tone in correspondence, pleadings and other written communication. Lawyers, whether in negotiations, depositions, or in the courtroom, should always treat each other with respect and the cordiality to be expected by members of the legal profession.

## V. A LAWYER SHOULD SEEK SANCTIONS AGAINST OPPOSING COUNSEL ONLY WHERE REQUIRED FOR THE PROTECTION OF THE CLIENT AND NOT FOR MERE TACTICAL ADVANTAGE.

**Committee comment:** Seeking sanctions against opposing counsel may impugn the integrity of that individual. Such action should be sought only after efforts for agreement have failed, after careful consideration and only in those cases where the interest of the client cannot otherwise be protected. Alternatives such as protective orders, motions in limine and limits on discovery should be explored before stronger measures are sought. Where sanctions are required, the party requesting such action should do so in a professional manner, stating the supporting facts upon which the request is based while avoiding personal attacks against opposing counsel or parties.

## VI. A LAWYER SHOULD NOT MAKE UNFOUNDED ACCUSATIONS OF UNETHICAL CONDUCT ABOUT OPPOSING COUNSEL.

**Committee comment:** A lawyer should keep in mind that the legal system works best when it has the respect and confidence of the court, lawyers, and members of the public. Unfounded accusations of unethical conduct tend to diminish the respect of the entire profession. If a lawyer genuinely feels that opposing counsel has been guilty of unethical conduct and believes it can be clearly established, the matter should be referred to the local grievance committee. If the lawyer does not believe that the matter is clear enough to be referred to the grievance committee, it should not be publicized.

## VII. A LAWYER SHOULD NEVER INTENTIONALLY EMBARRASS ANOTHER LAWYER AND SHOULD AVOID PERSONAL CRITICISM OF ANOTHER LAWYER.

**Committee comment:** A lawyer should at all times remember that opposing counsel is a fellow professional deserving of respect and courtesy. Criticisms and intentional efforts to embarrass another lawyer in the presence of the Court, the lawyer's client or other counsel, often results only in hard feelings on the part of that lawyer, handicapping future dealings. Further, such conduct tends to diminish the public respect for the profession and lawyers. Personal comments, sarcasm, aspersions, ridicule and other personal attacks should be left out of all writings. Spontaneous oral expletive or vituperative comment need not survive in written communication. One's time in life, let alone in professional practice, is too short and possibly too fleeting to seek momentary advantage by willful acts of discourtesy to today's adversary. Even if successfully planned and artfully achieved, the rewards thus gained likely will not be lasting and certainly would not be sweet.

## VIII. A LAWYER SHOULD ALWAYS BE PUNCTUAL.

**Committee comment:** A lawyer should arrive sufficiently in advance at trials, hearings, meetings, depositions, conferences or other scheduled events so that preliminary matters can be resolved. The failure of a lawyer to arrive on time inconveniences judges, other lawyers, jurors and other participants and disrupts schedules. Time is a precious commodity in the practice of law. A lawyer should respect the commitments of others by arriving on time and should timely notify all other participants when, for a reason beyond control, the lawyer will be unavoidably late. Moreover, when a lawyer is aware that a witness will be late for a scheduled event, the other participants should be timely notified.

## IX. A LAWYER SHOULD SEEK INFORMAL AGREEMENT ON PROCEDURAL AND PRELIMINARY MATTERS.

**Committee comment:** When an adversary is entitled to something, such as information or documents in discovery, normally it should be provided without resort to formal procedural mechanisms such as motions, briefs, hearings, or orders. Facts which are not in dispute should be stipulated in writing to avoid the time, expense and effort required to establish those facts by formal proof. This is particularly true with respect to foundational evidence. If there is no dispute that a document is genuine or authentic, or that foundation otherwise can be established for its admission, then normally one should not require an adversary to obtain the testimony of a custodial or other foundation witness. However, lawyers should remain sensitive to the need to follow up any informal agreement with appropriate formal procedures in order to preserve the record.

## HISTORICAL NOTE

Over the past few years, the complaints about a lack of professional courtesy among the members of the Bar have been increasing with disconcerting frequency. Such comments as "the practice of law just doesn't seem to be fun anymore" or "I can't understand why I can't get along with so-and-so" are heard with all too much regularity. In order to address this problem, The Kansas City Metropolitan Bar Association devoted a substantial portion of the 1987 Bench Bar Conference to problems of professional courtesy. After two days of discussion by the members of that conference, The Kansas City Metropolitan Bar Association formed a committee to put the results of the Bench Bar Committee into a written code of professional courtesy. The committee was chaired by Reggie C. Giffin. The members were The Honorable Richard Ralston, The Honorable Forest Hanna, Penni Johnson, Dirk Vandever, Prof. Pat Kelly, and Fritz Riesmeyer. The committee discussed the issues in detail and drafted the foregoing Tenets in a sincere effort to maintain the high level of professional courtesy and fellowship that has been a source of pride to all Kansas City lawyers in the past.