

# STANDARDS OF PROFESSIONALISM

## STATEMENT OF PRINCIPLES

- 1. Principle:** A lawyer should revere the law, the judicial system and the legal profession and should, at all times in the lawyer's professional and private lives, uphold the dignity and esteem of each, and exercise the right to improve it.
- 2. Principle:** A lawyer should further the legal profession's devotion to public service and to the public good.
- 3. Principle:** A lawyer should strictly adhere to the spirit as well as the letter of the Rules of Professional Conduct, to the extent that the law permits, and should, at all times, be guided by a fundamental sense of honor, integrity and fair play.
- 4. Principle:** A lawyer should not knowingly misstate or improperly distort any fact or opinion.
- 5. Principle:** A lawyer should conduct himself or herself to assure the just, prompt and economically efficient determination and resolution of every controversy consistent with thoroughness and professional preparation.
- 6. Principle:** A lawyer should avoid all rude, disruptive and abusive behavior and should, at all times, act with dignity, decency and courtesy consistent with any appropriate response to such conduct by others and a vigorous and aggressive assertion to appropriately protect the legitimate interests of a client.
- 7. Principle:** A lawyer should respect the time and commitments of others.
- 8. Principle:** A lawyer should be diligent and punctual in communicating with others and in fulfilling commitments.
- 9. Principle:** A lawyer should exercise independent judgment without compromise of a client and should not be governed by a client's ill will or deceit.
- 10. Principle:** A lawyer's word should be the lawyer's bond.

These standards of professionalism are guides and goals for lawyers in the conduct of their professional life at the Bar. They are to always be construed and consistent with the duty to reasonably and effectively represent the client.

Violation of a guideline, principle or standard should not give rise to a cause of action nor should it create any presumption that a legal duty has been breached. The civility guidelines are designed to provide guidance to lawyers and define a structure for helping lawyers deal in a responsible fashion and are not designed to be a basis for civil liability nor a basis for any disciplinary action since disciplinary action is governed by Rule 407 of the Rules of Professional Conduct.

## SOUTH CAROLINA BAR STANDARDS OF PROFESSIONALISM

The South Carolina Bar adopts the following Standards of Professionalism for all of its members to the extent that these Standards are not in conflict with the constitutional rights of clients, existing law or court rules.

### **Reverence for the Law, the Legal System and the Legal Profession**

**1. Principle:** A lawyer should revere the law, the judicial system and the legal profession and should, at all times in the lawyer's professional and private lives, uphold the dignity and esteem of each, and exercise the right to improve it.

### **Standards:**

- 1.1** A lawyer should, at all times, defend the inherent nobility and worth of the law, the rule of law and the judicial system.
- 1.2** A lawyer should, at all times, defend the role of the legal profession in the judicial system and in our system of laws.
- 1.3** A lawyer should support proposals to improve the administration of justice.

**1.4** A lawyer should support proposals to advance the science of jurisprudence.

**1.5** A lawyer should encourage and support qualified candidates to seek judicial office and encourage and support qualified and competent judges personally and publicly.

**1.6** A lawyer should decline to encourage or support for appointment or election to judicial positions persons who, by skill, knowledge, experience, integrity or temperament are not qualified to fill those positions.

**1.7** When considering whether to advertise and what methods of advertising to employ, a lawyer should be guided by the benefit to society of promoting and protecting public confidence in the judicial system and public esteem of the legal profession.

**1.8** A lawyer should not solicit, in person or otherwise, professional employment from a prospective client with whom the lawyer has no family or prior professional relationship when the prospective client is, in connection with the subject matter of the potential representation, physically suffering or emotionally or mentally distressed or distraught if that condition of the client would not enable the client to exercise independent judgment in the employment of a lawyer.

**1.9** A lawyer should not solicit by advertising or by employment of non-practicing lawyers to solicit legal business that the lawyer is not competent or willing to pursue for the purpose of thereafter brokering such business for an unreasonable portion of the fee.

**1.10** A lawyer should not solicit business by advertising or otherwise, legal business which the lawyer cannot or does not intend to fulfill for the purpose of charging a fee and performing little or no legal contribution.

**1.11** A lawyer should strive to maintain and enhance his or her competence and to keep abreast of all developments in the law that are relevant to his or her substantive areas of practice.

**1.12** A lawyer should, at all times, be appropriately prepared for court appearances, meetings and conferences, not only for the benefit of the lawyer's client but also for the benefit of the court if a court appearance, and other persons involved, if a meeting or conference.

**1.13** Upon being employed by a new client, a lawyer should discuss fee arrangements at the outset of the

representation and, if practical, promptly confirm those arrangements in writing.

**1.14** In any representation in which the fee arrangement is other than a contingent percentage-of-recovery fee or a fixed, flat sum fee or in which the representation is anticipated to be of more than brief duration, a lawyer should bill clients on a regular and frequent interim basis.

**1.15** When a fee dispute arises, a lawyer should first attempt to resolve the matter with the client and then should refer the client to the appropriate fee arbitration panel which should endeavor to arbitrate or mediate such disputes.

**1.16** A lawyer should treat the practice of law as a privilege conferred upon the lawyer by the public and should, at all times, be responsible to the public for his or her actions. The character test of the Character and Fitness Committee should not reject those with unpopular views and alternate lifestyles who are otherwise fit and competent.

**1.17** A lawyer should, at all times in his or her professional life, act in a manner that will enhance or maintain the public's esteem for the law, the judicial system and the legal profession.

**1.18** A lawyer should promote a strong commitment to the ideals and independence of the legal profession.

**1.19** A lawyer should, at all times, avoid the appearance of impropriety provided that the espousal of unpopular causes, the aggressive representation of an unpopular client and unconventional lifestyles shall not be the measure of propriety.

**1.20** A lawyer should counsel and encourage other lawyers to abide by these standards of professionalism.

**1.21** A lawyer and the Bar should educate the schools of law, students and lawyers entering the profession and encourage lawyers as to these principles, their practicality and their fairness.

#### **Devotion to Public Service and the Public Good**

**2. Principle:** A lawyer should further the legal profession's devotion to public service and to the public good.

#### **Standards:**

**2.1** A lawyer should contribute the skill, knowledge and influence gained as a lawyer to the furtherance of civic

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responsibility and the public good.

**2.2** A lawyer should provide or assist and defend efforts to provide all persons with just causes, regardless of their means or the popularity of their cause, to full and fair access to the law and to the judicial system.

**2.3** A lawyer should defend the importance to society of serving the fundamental rights of individuals notwithstanding any contrary popular opinion of the day.

**Adherence to a Fundamental Sense of Honor, Integrity and Fair Play**

**3. Principle:** A lawyer should strictly adhere to the spirit as well as the letter of the Rules of Professional Conduct, to the extent that the law permits and should, at all times, be guided by a fundamental sense of honor, integrity and fair play.

**Standards:**

**3.1** A lawyer should never attempt to inappropriately humiliate or intimidate any person or party for the purpose of obtaining unfair advantage consistent with the adversarial system and protection of the client's legitimate interest.

**3.2** A lawyer should not oppose matters on mere form or style when such dispute creates an undue burden on the judicial system or the parties involved.

**3.3** A lawyer should not impose arbitrary or unreasonable deadlines for action by others and should freely grant requests for reasonable time extensions.

**3.4** In drafting a proposed agreement, a lawyer should not insert unnecessary terms and provisions which are unfair or for the purposes of inappropriate deception.

**3.5** In drafting a proposed letter of intent, the memorialization of an oral agreement or a written contract reflecting an agreement reached in concept, a lawyer should draft a document that fairly reflects the agreement of the parties.

**3.6** A lawyer should not unreasonably oppose an adversary's application for an order or an adversary's request to insert a term or provision in a document.

**3.7** A lawyer should stipulate all facts and principles of law that are not in dispute when it is fair to do so.

**3.8** A lawyer should promptly respond to requests for stipulations of fact or law.

**3.9** A lawyer should voluntarily withdraw claims or defenses when it becomes apparent that they are without merit or are superfluous or merely cumulative.

**3.10** A lawyer should promptly comply with requests to prepare proposed orders unless there are compelling or unusual personal and professional reasons for delay.

**3.11** A lawyer should never permit nonlawyer support personnel to communicate with a judge or judicial officer on any matters pending before the judge or officer or with other court personnel except on scheduling and other ministerial matters when it is inappropriate to do so.

**3.12** A lawyer should notify opposing counsel of all communications with the court or other tribunal, except those involving only scheduling matters not related to the choice of judges, and should simultaneously provide opposing counsel with copies of any written communication with the court by the same or substantially the same means by which they were provided to the court.

**3.13** A lawyer should not make scheduling decisions with the motive of limiting opposing counsel's opportunity to prepare or respond.

**3.14** When scheduling hearings and other adjudicative proceedings, a lawyer should request an amount of time that is truly calculated to permit full and fair presentation of the matter to be adjudicated and to permit equal response by the lawyer's adversary.

**3.15** A lawyer should immediately notify all counsel of any hearing time that the lawyer has reserved with the court or tribunal.

**3.16** A lawyer should bring to the attention of the court or other tribunal all controlling legal authority, whether or not favorable to the client's position and whether or not disclosed by opposing counsel when it is known to the lawyer.

**3.17** A lawyer should appear at a hearing before a court or other tribunal appropriately prepared to submit the matter at issue to the court or tribunal for adjudication when the matter is not subject to reasonable grounds for postponement or dismissal and when the case is called for trial with reasonable notice and under appropriate circumstances by the court.

**3.18** A lawyer should not use the post-hearing submission of proposed orders as a guise to argue or reargue

the merits of the matter to be determined consistent with the right to further the formation of the grounds for appeal.

**3.19** A lawyer should not request rescheduling, cancellations, extensions and postponements without legitimate reasons and never solely for the purpose of delay or obtaining unfair advantage.

**3.20** When there has been pretrial disclosure of trial witnesses, a lawyer should make a reasonable, good-faith effort to identify those witnesses whom the lawyer believes are reasonably likely to be called to testify.

**3.21** When there has been pretrial disclosure of trial exhibits, a lawyer should make a reasonable good-faith effort to identify those exhibits that the lawyer believes will be proffered into evidence.

**3.22** During trials and evidentiary hearings, a lawyer should disclose the identities requested in discovery and estimated duration of witnesses anticipated to be called that day and the following day, including depositions to be read, and should cooperate in sharing with opposing counsel visual aid equipment and demonstrative exhibits, charts, graphs and diagrams which have been jointly prepared or which have been previously placed into evidence consistent with the preparation and protection of the trial strategy.

**3.23** A lawyer should not mark or alter exhibits, charts, graphs and diagrams without opposing counsel's permission or leave of court except when prepared by counsel for that purpose.

**3.24** A lawyer should abstain from conduct calculated to detract or divert the fact-finder's attention from the relevant facts or otherwise cause it to reach a decision on an impermissible basis.

**3.25** A lawyer should not enter into an agreement to withhold information from a client to serve the lawyer's own interest or convenience inconsistent with the promotion of a just and fair resolution in the client's best interest.

### **Honesty and Candor**

**4. Principle:** A lawyer should not knowingly misstate or improperly distort any fact or opinion.

#### **Standards:**

**4.1** A lawyer should not knowingly misstate, distort or improperly exaggerate any fact or opinion in a deceitful or deceptive manner for an improper purpose.

**4.2** A lawyer should not improperly permit the lawyer's silence or inaction to mislead anyone deceitfully and deceptively for a wrongful purpose.

**4.3** In drafting documents, a lawyer should point out to opposing counsel all changes that the lawyer makes or causes to be made from one draft to another.

**4.4** A lawyer should not knowingly draft a document or through silence permit a document to be drafted in a manner that permits the lawyer, the lawyer's client or a third party to take advantage of a term or provision or of the absence of a term or provision to the disadvantage of the adversary in such a manner as the lawyer knows or believes that the adversary neither anticipates nor contemplates.

### **Fair and Efficient Administration of Justice**

**5. Principle:** A lawyer should conduct himself or herself to assure the just and economically efficient determination and resolution of every controversy consistent with thoroughness and professional preparation.

#### **Standards:**

**5.1** A lawyer should accede to reasonable requests for waivers of procedural formalities when the client's legitimate interests are not adversely affected.

**5.2** A lawyer should not invoke a rule for the sole purpose of creating undue delay or obtaining unfair advantage.

**5.3** A lawyer should never use discovery for the primary purpose of harassing or burdening an adversary or causing the adversary to incur unnecessary expense.

**5.4** A lawyer should frame reasonable discovery requests tailored to the matter at hand.

**5.5** A lawyer should assure that responses to proper requests for discovery are timely and complete and are consistent with the obvious intent of the request.

**5.6** A lawyer should seek a resolution of disputes on the merits of the case in preference to procedural formalities when the lawyer can fairly do so without detriment to the client's legitimate interest.

### **Courtesy**

**6. Principle:** A lawyer should abstain from all rude, disruptive, disrespectful and abusive behavior and should, at all times, act with dignity, decency and courtesy when such conduct is reciprocal or not necessary to protect the client from such similar behavior by others.

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**Standards:**

**6.1** A lawyer should refrain from rude, disruptive, disrespectful and abusive behavior consistent with this principle.

**6.2** A lawyer should encourage support personnel to refrain from all rude, disruptive, disrespectful and abusive behavior consistent with this principle.

**Respect for the Time and Commitments of Others**

**7. Principle:** A lawyer should respect the time and commitments of others.

**Standards:**

**7.1** Before scheduling a hearing on any motion or discovery objection, a lawyer should endeavor to resolve or narrow the issue at hand.

**7.2** In scheduling depositions upon oral examination, a lawyer should allow enough time to permit the conclusion of the deposition, including examination by all parties, without adjournment.

**7.3** Unless circumstances compel more expedited scheduling, a lawyer should endeavor to provide litigants, witnesses and other affected persons or parties with ample advance notice of hearings, depositions, meetings and other proceedings.

**7.4** Whenever practical, a lawyer should schedule hearings, depositions, meetings and other proceedings at times that are convenient to all interested persons.

**7.5** A lawyer should accede to all reasonable requests for scheduling, rescheduling, cancellations, extensions and postponements that do not prejudice the client's opportunity for full and fair consideration and adjudication of the client's claim or defense.

**7.6** Upon receiving an inquiry concerning a proposed time for a hearing, deposition, meeting or other proceeding, a lawyer should promptly agree to the proposal or offer a reasonable counter-suggestion.

**7.7** A lawyer should call potential scheduling conflicts or problems to the attention of those affected, including the court or tribunal, as soon as they become apparent to the lawyer.

**7.8** A lawyer should avoid last-minute cancellations of hearings, depositions, meetings and other proceedings.

**7.9** A lawyer should promptly notify the court or tribunal

of any resolution by the parties that renders a scheduled court appearance unnecessary.

**Diligence and Punctuality**

**8. Principle:** A lawyer should be diligent and punctual in communicating with others and in fulfilling commitments.

**Standards:**

**8.1** A lawyer should endeavor to achieve the client's reasonable and lawful objectives as economically and expeditiously as possible.

**8.2** A lawyer should counsel the client concerning the benefits and detriments of mediation, arbitration and other alternative methods of resolving disputes.

**8.3** A lawyer should counsel the client to consider and explore settlement in good faith.

**8.4** A lawyer should be punctual in attending all court appearances, depositions, meetings, conferences and other proceedings.

**8.5** A lawyer should respond promptly to inquiries and communications from clients and others when appropriate and consistent with reasonable case management.

**Independence of Judgment**

**9. Principle:** A lawyer should exercise independent judgment and should not be governed by a client's ill will or deceit.

**Standards:**

**9.1** A lawyer should, at all times, provide the client with objective evaluation and advice without purposefully understating or overstating achievable results or otherwise creating unrealistic expectations.

**9.2** A lawyer should counsel the client to act with fundamental honesty, candor and fairness.

**9.3** A lawyer should not permit the client's ill will toward an adversary, witness or tribunal to become that of the lawyer.

**9.4** A lawyer should counsel the client against the use of tactics designed to hinder or delay the process involved.

**9.5** A lawyer should counsel the client against the use of tactics designed to embarrass, harass, intimidate, burden or oppress an adversary or any other person or party when appropriate to do so.

**9.6** A lawyer should counsel the client that it may be in the client's best interest to refrain from all rude, disruptive, disrespectful and abusive behavior, even when confronted with such behavior.

**9.7** A lawyer should counsel the client or prospective client, even with respect to a meritorious claim or defense, concerning the burdens of pursuing the claim as compared with the benefits to be achieved.

**9.8** A lawyer should counsel the client about the propriety of withdrawing a claim or defense if it becomes apparent that it is without merit or is superfluous.

**9.9** In contractual and business negotiations, a lawyer should counsel the client concerning what is reasonable under the circumstances.

**9.10** A lawyer should counsel with a client about the disadvantages of rancor and the advantages of settlement when those settlements are of potential benefit to the client.

**9.11** A lawyer should not persist in pursuing a case of questionable merit or value when compared with the negative and expensive aspects of litigation.

**9.12** A lawyer should pursue cases of a novel and imaginative import when the case or cause might legitimately advance a cause of public or private benefit previously unrecognized. It is the lawyer's duty to espouse novel, but reasonable causes.

**9.13** A lawyer, when necessary, should acquaint the client with these principles, their practicality and fairness when requested by the client to violate them.

**Fulfilling Promises**

**10. Principle:** A lawyer's word should be the lawyer's bond.

**Standards:**

**10.1** A lawyer should strive to fulfill all promises and other commitments.