The Supreme Court *of* Ohio

Commission on Professionalism

PROFESSIONAL IDEALS
for Ohio Lawyers & Judges

On the Cover:

The *Words of Justice* grace the North Reflecting Pool at the Thomas J. Moyer Ohio Judicial Center. Carved from granite, the words – *Compassion*, *Equity*, *Honesty*, *Honor*, *Integrity*, *Justice*, *Peace*, *Reason*, *Truth*, and *Wisdom* – represent the foundational ideals of the judicial branch and are a reminder of the fundamental principles of justice.

The Supreme Court *of* Ohio

PROFESSIONAL IDEALS
FOR OHIO LAWYERS & JUDGES

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Chief Justice

SHARON L. KENNEDY
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PATRICK F. FISCHER
R. PATRICK DeWINE
MICHAEL P. DONNELLY
MELODY J. STEWART
Justices

JEFFREY C. HAGLER
Administrative Director

STEPHANIE E. HESS
Deputy Administrative Director

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INTRODUCTION

The following pages contain *A Lawyer's Creed*, *A Lawyer's Aspirational Ideals* and *A Judicial Creed*, which were adopted by the Supreme Court of Ohio upon recommendation by the Supreme Court Commission on Professionalism. These statements encapsulate the ideals of professionalism for lawyers and judges.

Included in the professionalism ideals for lawyers and judges are integrity, the achievement and maintenance of competence, a commitment to a life of service, and the quest for justice for all. Professionalism requires lawyers and judges to remain mindful that their primary obligations are to the institutions of law and the betterment of society, rather than to the interests of their clients or themselves.

Also included in these materials is the Supreme Court *Statement Regarding the Provision of pro bono Legal Services by Ohio Lawyers*, which speaks to a lawyer's obligations to ensure equal access to justice and to serve the public good.

Finally, these contents feature *Professionalism DOs & DON'Ts*, which provide guidelines for professional behavior in various contexts of legal practice. Attorneys and judges who adhere to and promote the best practices depicted in the *Professionalism DOs & DON'Ts* will elevate the level of professionalism in the practice of law.

from the
STATEMENT ON PROFESSIONALISM

. . .As professionals we need to strive to meet lofty goals and ideals in order to achieve the highest standards of a learned profession. To this end, the Court issues A Lawyer's Creed *and* A Lawyer's Aspirational Ideals*, which have been adopted and recommended for the Court's issuance by the Supreme Court Commission on Professionalism. In so doing, it is not the Court's intention to regulate or to provide additional bases for discipline, but rather to facilitate the promotion of professionalism among Ohio's lawyers, judges and legal educators. It is the Court's hope that these individuals, their professional associations, law firms and educational institutions will utilize the creed and the aspirational ideals as guidelines for this purpose.*

Issued by the Supreme Court of Ohio
February 3, 1997

A LAWYER'S CREED

TO MY CLIENTS, I offer loyalty, confidentiality, competence, diligence and my best judgment. I shall represent you as I should want to be represented and be worthy of your trust. I shall counsel you with respect to alternative methods to resolve disputes. I shall endeavor to achieve your lawful objectives as expeditiously and economically as possible.

TO THE OPPOSING PARTIES and THEIR COUNSEL, I offer fairness, integrity and civility. I shall not knowingly make misleading or untrue statements of fact or law. I shall endeavor to consult with and cooperate with you in scheduling meetings, depositions and hearings. I shall avoid excessive and abusive discovery. I shall attempt to resolve differences and, if we fail, I shall strive to make our dispute a dignified one.

TO THE COURTS and OTHER TRIBUNALS, and TO THOSE WHO ASSIST THEM, I offer respect, candor and courtesy. Where consistent with my client's interests, I shall communicate with opposing counsel in an effort to avoid or resolve litigation. I shall attempt to agree with other counsel on a voluntary exchange of information and on a plan for discovery. I shall do honor to the search for justice.

TO MY COLLEAGUES in the practice of law, I offer concern for your reputation and well-being. I shall extend to you the same courtesy, respect, candor and dignity that I expect to be extended to me.

TO THE PROFESSION, I offer assistance in keeping it a calling in the spirit of public service, and in promoting its understanding and an appreciation for it by the public. I recognize that my actions and demeanor reflect upon our system of justice and our profession, and I shall conduct myself accordingly.

TO THE PUBLIC and our SYSTEM OF JUSTICE, I offer service. I shall devote some of my time and skills to community, governmental and other activities that promote the common good. I shall strive to improve the law and our legal system and to make the law and our legal system available to all.

A LAWYER'S ASPIRATIONAL IDEALS

AS TO CLIENTS, I shall aspire:

a) To expeditious and economical achievement of all client objectives.

b) To fully informed client decision-making. I should:

   1) Counsel clients about all forms of dispute resolution

   2) Counsel clients about the value of cooperation as a means toward the productive resolution of disputes

   3) Maintain the sympathetic detachment that permits objective and independent advice to clients

   4) Communicate promptly and clearly with clients, and

   5) Reach clear agreements with clients concerning the nature of the representation.

c) To fair and equitable fee agreements. I should:

   1) Discuss alternative methods of charging fees with all clients

   2) Offer fee arrangements that reflect the true value of the services rendered

   3) Reach agreements respecting fees with clients as early in the relationship as possible

   4) Determine the amount of fees by consideration of many factors and not just time spent, and

   5) Provide written agreements as to all fee arrangements.

d) To comply with the obligations of confidentiality and the avoidance of conflicting loyalties in a manner designed to achieve fidelity to clients.

e) To achieve and maintain a high level of competence in my field or fields of practice.

AS TO OPPOSING PARTIES and THEIR COUNSEL,
I shall aspire:

a) To cooperate with opposing counsel in a manner consistent with the competent representation of my client. I should:

   1) Notify opposing counsel in a timely fashion of any canceled appearance

2) Grant reasonable requests for extensions or scheduling changes, and

3) Consult with opposing counsel in the scheduling of appearances, meetings and depositions.

b) To treat opposing counsel in a manner consistent with his or her professional obligations and consistent with the dignity of the search for justice. I should:

1) Not serve motions or pleadings in such a manner or at such a time as to preclude opportunity for a competent response

2) Be courteous and civil in all communications

3) Respond promptly to all requests by opposing counsel

4) Avoid rudeness and other acts of disrespect in all meetings, including depositions and negotiations

5) Prepare documents that accurately reflect the agreement of all parties, and

6) Clearly identify all changes made in documents submitted by opposing counsel for review.

AS TO THE COURTS and OTHER TRIBUNALS, and TO THOSE WHO ASSIST THEM, I shall aspire:

a) To represent my clients in a manner consistent with the proper functioning of a fair, efficient and humane system of justice. I should:

1) Avoid nonessential litigation and nonessential pleading in litigation

2) Explore the possibilities of settlement of all litigated matters

3) Seek noncoerced agreement between the parties on procedural and discovery matters

4) Avoid all delays not dictated by competent representation of a client

5) Prevent misuses of court time by verifying the availability of key participants for scheduled appearances before the court and by being punctual, and

6) Advise clients about the obligations of civility, courtesy, fairness, cooperation and other proper behavior expected of those who use our system of justice.

b) To model for others the respect due to our courts.
I should:

1) Act with complete honesty

2) Know court rules and procedures

3) Give appropriate deference to court rulings

4) Avoid undue familiarity with members of the judiciary

5) Avoid unfounded, unsubstantiated, or unjustified public criticism of members of the judiciary

6) Show respect by attire and demeanor

7) Assist the judiciary in determining the applicable law, and

8) Give recognition to the judiciary's obligations of informed and impartial decision-making.

AS TO MY COLLEAGUES IN THE PRACTICE OF LAW, I shall aspire:

a) To recognize and develop a professional interdependence for the benefit of our clients and the legal system

b) To defend you against unjust criticism, and

c) To offer you assistance with your personal and professional needs.

AS TO OUR PROFESSION, I shall aspire:

a) To improve the practice of law. I should:

1) Assist in continuing legal education efforts

2) Assist in organized bar activities

3) Assist law schools in the education of our future lawyers, and

4) Assist the judiciary in achieving objectives of *A Lawyer's Creed* and these aspirational ideals.

b) To promote the understanding of and an appreciation for our profession by the public.
I should:

1) Use appropriate opportunities, publicly and privately, to comment upon the roles of lawyers in society and government, as well as in our system of justice, and

2) Conduct myself always with an awareness that my actions and demeanor reflect upon our profession.

c) To devote some of my time and skills to community, governmental and other activities that promote the common good.

AS TO THE PUBLIC and OUR SYSTEM OF JUSTICE,
I shall aspire:

a) To consider the effect of my conduct on the image of our system of justice, including the effect of advertising methods.

b) To help provide the pro bono representation that is necessary to make our system of justice available to all.

c) To support organizations that provide pro bono representation to indigent clients.

d) To promote equality for all persons.

e) To improve our laws and legal system, by for example:

1) Serving as a public official

2) Assisting in the education of the public concerning our laws and the legal system

3) Commenting publicly upon our laws

4) Using other appropriate methods of effecting positive change in our laws and the legal system.

STATEMENT REGARDING THE PROVISION OF PRO BONO LEGAL SERVICES BY OHIO LAWYERS

Each day, Ohioans require legal assistance to secure basic needs such as housing, education, employment, health care, and personal and family safety. Many persons of limited means are unable to afford such assistance, and legal aid programs must concentrate limited resources on those matters where the needs are most critical. The result is that many Ohioans who are facing significant legal problems do not have access to affordable legal services. These persons are forced to confront landlord-tenant issues, have questions involving employment rights, or seek protection against domestic violence without the assistance of a legal advocate.

In 1997, this Court issued a *Statement on Professionalism* that recognizes each lawyer's obligation to engage in activities that promote the common good, including the provision of and support for pro bono representation to indigent clients. In 2007, in the *Preamble to the Ohio Rules of Professional Conduct*, the Court reemphasized the importance of this obligation by stating:

> A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for those who because of economic or social barriers cannot afford or secure legal counsel.

Lawyers, law firms, bar associations, and legal services organizations, such as the Ohio Legal Assistance Foundation, have done and continue to do much to address unmet civil legal needs through the organization of, support for, and participation in pro bono legal services programs. Although these programs have increased both in number and scope in recent years, there remains an urgent need for more pro bono services.

This Court strongly encourages each Ohio lawyer to ensure access to justice for all Ohioans by participating in pro bono activities. There are pro bono programs available throughout Ohio that are sponsored by bar associations, legal aid programs, churches and civic associations. Many programs offer a variety of free legal services, while others concentrate on specific legal needs. Lawyers also may choose to participate in programs that focus on the needs of specific individuals such as senior citizens, the disabled, families of military personnel or immigrants.

The website, www.ohiolegalaid.org/pro-bono, contains a complete, searchable listing of pro bono programs and opportunities in Ohio. A lawyer may fulfill this professional commitment by providing legal counsel to charitable organizations that may not be able to afford to pay for legal services or by making a financial contribution to an organization that provides legal services to persons of limited means.

The Court recognizes that many Ohio lawyers honor their professional commitment by regularly providing pro bono legal services or financial support to pro bono programs. Moreover, the Court encourages lawyers to respond to this call by seeking to engage in new or additional pro bono opportunities. To document the efforts and commitment of the legal profession to ensure equal access to justice, the Court, in conjunction with the Ohio Legal Assistance Foundation, will develop a means by which Ohio lawyers may report voluntarily and anonymously their pro bono activities and financial support for legal aid programs. The information regarding pro bono efforts will not only underscore the commitment of the legal profession to serving the public good but also will serve as a constant reminder to the bar of the importance of pro bono service.

This Court strongly encourages each Ohio lawyer to ensure access to justice for all Ohioans …

Issued by the Supreme Court of Ohio
September 20, 2007

Visit www.ohioprobono.org for more information.

from the

STATEMENT ON JUDICIAL PROFESSIONALISM

. . . In recognition of the unique standards of professionalism required of a judge or a lawyer acting in a judicial capacity, the Court issues A Judicial Creed *upon the recommendation of the Supreme Court Commission on Professionalism. It is the Court's goal by adopting this creed to remind every judge and every lawyer acting in a judicial capacity of the high standards expected of each by the public whom they serve.*

Issued by the Supreme Court of Ohio
July 9, 2001

A JUDICIAL CREED

For the purpose of publicly stating my beliefs, convictions and aspirations as a member of the judiciary or as a lawyer acting in a judicial capacity in the state of Ohio:

I RE-AFFIRM my oath of office and acknowledge my obligations under the Canons of Judicial Ethics.

I RECOGNIZE my role as a guardian of our system of jurisprudence dedicated to equal justice under law for all persons.

I BELIEVE that my role requires scholarship, diligence, personal integrity and a dedication to the attainment of justice.

I KNOW that I must not only be fair but also give the appearance of being fair.

I RECOGNIZE that the dignity of my office requires the highest level of judicial demeanor.

I WILL treat all persons, including litigants, lawyers, witnesses, jurors, judicial colleagues and court staff with dignity and courtesy and insist that others do likewise.

I WILL strive to conduct my judicial responsibilities and obligations in a timely manner and will be respectful of others' time and schedules.

I WILL aspire every day to make the court I serve a model of justice and truth.

PROFESSIONALISM DOs & DON'Ts:

PROFESSIONALISM

DOs & DON'Ts:

JUDICIAL PROFESSIONALISM

PROFESSIONALISM DOs & DON'Ts:

JUDICIAL PROFESSIONALISM

As the guardians of our legal system, judges are expected to establish and maintain the highest level of professionalism. The way in which judges manage their dockets, interact with counsel, and preside over their courtrooms sets a standard of professionalism for the attorneys who appear before them. Just as significantly, the words and actions of judges also shape the public's perception of the justice system. Being a judge requires diligence, personal integrity, and a dedication to the attainment of justice. With these principles in mind, the Supreme Court of Ohio Commission on Professionalism prepared this list of "DOs and DON'Ts" to guide judges in carrying out their responsibilities. In creating this list, the commission does not intend to regulate or to provide additional bases for discipline, but rather to help promote professionalism among Ohio's judges. The commission encourages all judges to employ these practices in their daily routines, and in so doing, make lawyers and litigants feel welcome in their courtrooms and assured that disputes will be resolved in an efficient, timely, and just manner.

DO *in* PRETRIAL MATTERS

- Do provide litigants, in advance of an initial pretrial hearing or case management conference, notice of specific procedures that you wish counsel to follow that may differ from those followed in other courtrooms (e.g., regarding voir dire, jury instructions, note taking by or questions from jurors, etc.).
- Do use a case management order with all pertinent deadlines for each case, including specific dates for the completion of fact and expert discovery and the filing of certain motions.
- Do be accessible to parties to resolve discovery disputes, either by telephone conference or court hearing.
- Do remember that counsels' awareness of your accessibility may have the effect of decreasing a need for your actual involvement or the likelihood of counsel filing motions to compel discovery.
- Do conduct final pretrial conferences yourself to the extent possible. If a conflict in your schedule arises, allow parties the opportunity to reschedule before delegating the responsibility to a staff attorney. Remember that the presence of the judge at the final pretrial conference often helps facilitate a settlement.

DO *in* SCHEDULING

- Do freely grant a motion to extend case deadlines if the extension will not adversely affect any date previously set or will not otherwise prejudice a party.
- Do be aware of attorneys' professional and personal schedules (including vacation time) before setting a court date or denying a timely motion for continuance.
- Do perform a proper triage in managing scheduling conflicts between cases.
- Do weigh the consequences, cost, and additional expenditure of time and resources that are likely to result from cancelling one proceeding and moving forward on another.
- Do tell attorneys that if they want to put something on the record, they will be permitted to do so, subject to the court's determination as to the appropriate time, place, and manner.
- Do treat parties, litigants, and others with respect and dignity and create an environment where all persons are treated fairly and believe that they have been fully heard.
- Do instruct the members of your staff to treat all court visitors with the same respect that they themselves would expect.
- Do be patient and temperate, especially under trying circumstances.

DO *in* CONDUCTING HEARINGS & TRIALS

- Do enforce standards in your courtroom consistent with *Professionalism DOs and DON'Ts: Professionalism in the Courtroom* and encourage attorneys to follow the other publications of the Supreme Court of Ohio Commission on Professionalism.
- Do take the bench promptly and begin hearings at the scheduled time. Alert parties of any delay or conflict with as much advance notice as possible.
- Do consider making reasonable accommodations for self-represented litigants, such as summarizing the nature of the proceedings and the presentation and admission of evidence, using commonly understood words, instead of legal jargon, briefly explaining the reasoning for rulings, and, where appropriate, referring them to available resources that may assist them.
- Do address all participants formally and consistently in court by using an appropriate title, such as Ms., Mr., Mrs., Counsel, Dr., Rev., etc.
- Do be aware of your mood and take necessary breaks to decompress so that you can render the next decision refreshed.
- Do make decisions after the conclusion of a bench trial in such a manner as will make the litigants feel that their arguments were fully considered.
- Do deliver the decision or sentence in a formal, dignified, and neutral tone.

DO *in* RULING ON MOTIONS

- Do prepare for motion hearings by reading all relevant memoranda of law in advance of the hearing.
- Do listen to and consider each party's position, and provide all parties with adequate opportunities to respond, before ruling.
- Do issue timely rulings once motions become ripe, remembering the collateral expense incurred, as well as the frustration attorneys and parties experience, when rulings are not made in a timely manner.
- Do what you believe to be the right thing and trust that, if it turns out that your ruling was wrong, the error will, in all likelihood, be corrected on review.

DO *in* OTHER ACTIVITIES

- Do bring to a lawyer's attention any instance of the lawyer exhibiting a lack of civility or professionalism.
- Do encourage lawyers to engage in pro bono service.
- Do consider providing law students the opportunity to intern or extern in your court, as well as participating in mentoring programs that guide new lawyers in their transition into practice.
- Do accept criticism, justified or unjustified, even though you may not, or should not, respond.
- Do remember that the public or private functions you attend may affect confidence in the judiciary.
- Do consider teaching at bar association and judicial association CLE functions, mock trials, the Law and Leadership Institute, classroom visits, and other educational activities.
- Do bear in mind that dialogue between the bench and bar promotes a strong legal community and a more effective judicial system and so participate actively in the activities and committees of your state and local bar associations, judicial conferences, and judicial associations.

DON'T

- Don't hold attorneys or litigants accountable for events beyond their control.
- Don't chastise, correct, or question attorneys in a demeaning manner, especially in front of their clients or the jury.
- Don't take an overly familiar tone with any lawyer, litigant, or witness while in court and on the record. Recognize how your interactions may be perceived by adverse counsel, by parties, by jurors, or by spectators.
- Don't threaten or disclose how you are leaning on a dispositive motion as a means of forcing a settlement.
- Don't use the contempt power lightly.
- Don't conduct a hearing, sentence a defendant, or render an important decision in a state of anger or depression.
- Don't demean or mock a defendant at a criminal sentencing hearing or in any written opinion.
- Don't permit profanity and expressions of vengeance from attorneys, victims, or witnesses to invade a formal sentencing proceeding.
- Don't hesitate to ask for post-hearing briefs or proposed findings of fact or conclusions of law if you believe that these post-hearing submittals will be helpful or appropriate.
- Don't be worried about whether you will be appealed or what a reviewing court may say.
- Don't disparage any attorney or fellow judge in your private conversations.
- Don't attend an event if your attendance could cause a reasonable person to question your later impartiality in a pending case.

PROFESSIONALISM

DOs & DON'Ts:

WORKING WITH OPPOSING COUNSEL & OTHER LAWYERS

PROFESSIONALISM DOs & DON'Ts:

WORKING WITH OPPOSING COUNSEL & OTHER LAWYERS

Under "A Lawyer's Creed" issued by the Supreme Court of Ohio in February 1997, Ohio lawyers pledge to offer fairness, integrity, and civility to opposing parties and their counsel. The Supreme Court of Ohio Commission on Professionalism prepared this list of "DOs and DON'Ts" to illustrate some of the ways lawyers can fulfill this pledge in their everyday communication with opposing counsel and other lawyers. In creating this list, it is not the commission's intention to regulate or to provide additional bases for discipline, but rather to facilitate the promotion of professionalism among Ohio's lawyers. By following these practices, lawyers will elevate the level of professionalism in their day-to-day interactions with other lawyers.

DO

- Do maintain a courteous and cooperative working relationship with opposing counsel and other lawyers.
- Do avoid motions about minor issues that should be worked out informally.
- Do wait 24 hours before deciding to respond to an intemperate, untrue, or exasperating communication from another attorney.
- Do discuss discovery disputes with opposing counsel in person, by phone, or by email before sending a formal letter that stakes out your position.
- Do consult in advance with other attorneys to avoid scheduling conflicts.
- Do cooperate with other attorneys when you have obtained permission of the court to extend deadlines imposed by a court order.
- Do extend professional courtesies regarding procedural formalities and scheduling when your client will not suffer prejudice, DO be fair-minded with respect to requests for stipulations, and DO agree to stipulate to facts that are not in dispute if they will not adversely affect your client.
- Do respond in a timely fashion to communications from opposing counsel and other attorneys.
- Do keep your word.
- Do identify the changes you made from previous drafts when exchanging document drafts.
- Do promptly notify other counsel (and, where appropriate, the court or other persons who are affected) when hearings, depositions, meetings, or conferences must be cancelled or postponed.
- Do conclude a matter with a handshake or an exchange of courteous messages.
- Do require that persons under your supervision conduct themselves with courtesy and civility and that they adhere to these precepts when dealing with other attorneys and their staffs.

DON'T

- Don't respond in kind when confronted with unprofessional behavior by another attorney.
- Don't serve papers at a time or in a manner intended to inconvenience or take advantage of opposing counsel, such as late on a Friday afternoon, on the day preceding a holiday, or when you know counsel is absent or ill.
- Don't be belligerent, insulting, or demeaning in your communications with other attorneys or their staff.
- Don't use discovery as a means of harassment.
- Don't publicly disparage another attorney, either during or after a case concludes.

PROFESSIONALISM

DOs & DON'Ts:

LEGAL WRITING

PROFESSIONALISM DOs & DON'Ts:

LEGAL WRITING

A substantial part of the practice of most lawyers is conducted through the written word. Lawyers communicate with other attorneys, courts, and clients through writing. Writings introduce judges to the facts of a case, state the applicable law, and argue for a desired action or resolution to a legal dispute. The most effective legal writing is well-researched, clearly organized, logically sound, and professional in tone and appearance.

The Supreme Court of Ohio Commission on Professionalism has prepared this list of "DOs and DON'Ts" to guide lawyers in their professional writing. These points relate to many facets of attorney writing. In creating this list, the commission does not intend to regulate or to provide additional bases for discipline, but rather to help promote professionalism among Ohio's lawyers. The list provides general categories of "DOs and DON'Ts" containing specific recommendations on form and content for specific types of writing.

DO

- DO MAINTAIN PROPER FOCUS
  - Do keep your purpose in mind while writing.
  - Do tailor your writing to your primary audience, but be aware that others may read what you have written.
- DO PROVIDE A CONSISTENT, COHERENT ARGUMENT
  - Do research the applicable law thoroughly.
  - Do investigate the facts diligently.
  - Do plan and organize your writing.
  - Do make sure that any legal theory you present is consistent with applicable law.
  - Do use persuasive authority.
  - Do state clearly what you are requesting in motions and briefs.
- DO PRESENT AN HONEST, ACCURATE POSITION
  - Do include all relevant facts.
  - Do cite the record accurately.
  - Do disclose relevant authority, including adverse controlling authority.
  - Do update all cited authorities and exclude any reversed or overruled case.
- DO ADOPT A CLEAR & PERSUASIVE STYLE
  - Do put material facts in context.
  - Do write in a professional and dignified manner.
  - Do put citations at the end of a sentence.
  - Do use pinpoint citations when they would be helpful.

DO

- DO PROVIDE APPROPRIATE SIGNPOSTS
  - Do consider using headings and summaries.
  - Do use transitions between sections that guide the reader from one argument to the next, especially in longer pieces of writing.

- DO USE PRECISE ENGLISH GRAMMAR & CITATION FORM
  - Do proofread for spelling and grammar.
  - Do edit and redraft.
  - Do cite cases and authorities accurately.
  - Do use Ohio citation form (See *Supreme Court of Ohio Writing Manual*[1]).
  - Do adhere to the applicable court's technical requirements and rules for submitting documents, such as, for example, any restrictions on fonts, margins, and document length.

DON'T

- DON'T MAKE YOUR READER'S JOB MORE DIFFICULT
  - Don't use jargon or confusing acronyms.
  - Don't use boilerplate without tailoring to your specific argument or case.
  - Don't use string citations, unless parenthetical explanations follow.
  - Don't use lengthy quotations. Break up quoted language as necessary to simplify points.
  - Don't put important information in footnotes.
  - Don't overuse nominalizations, i.e., noun forms of verbs (e.g., "indication" instead of "indicate").
  - Don't overuse the passive voice.

- DON'T MAKE INAPPROPRIATE COMMENTS
  - Don't make ad hominem attacks.
  - Don't use hyperbole and sarcasm.
  - Don't use overly emotional arguments. Rely on logic and reason.

- DON'T MISCHARACTERIZE YOUR POSITION
  - Don't misrepresent.
  - Don't misquote.
  - Don't rely on non-record facts.
  - Don't plagiarize.
  - Don't lie.

[1] *See* sc.ohio.gov/ROD/manual.pdf.

PROFESSIONALISM

DOs & DON'Ts:

CONDUCT OF PROSECUTORS & DEFENSE ATTORNEYS

PROFESSIONALISM DOs & DON'Ts:

CONDUCT OF PROSECUTORS & DEFENSE ATTORNEYS

The integrity of our criminal justice system depends, in large part, upon the professionalism of the lawyers who prosecute criminal matters on behalf of the state and the defense attorneys who defend the accused. In a criminal matter, the rights of the victim, the protection of the public, and the liberty of the defendant are at stake. Considering the importance of these interests, perhaps nowhere in the practice of law is it more important for attorneys to act with professionalism and to serve our system of justice honorably. The Supreme Court of Ohio Commission on Professionalism, with the assistance of members of the Ohio Prosecuting Attorneys Association and the Ohio Association of Criminal Defense Lawyers, prepared this list of "DOs and DON'Ts" to guide attorneys who practice criminal law. In creating this list, the commission does not intend to regulate or provide additional bases for discipline, but rather to help promote professionalism among Ohio's lawyers.

DO *for* PROSECUTORS

- Do remember your job is not to "win," but to help administer justice.
- Do go forward with a case only if you have a good-faith belief in the guilt of the defendant.
- Do remember that the power of the state is not personal to an individual prosecutor and that you should always use prosecutorial power judiciously, with personal humility.
- Do remain in control of your case and remember that you – not the police, not the investigator, and not the victim – are the person in charge, that your client is the government, and that your ultimate goal is the furtherance of justice.
- Do periodically and regularly review your case from the point of view of the defense. This practice will help you provide exculpatory evidence in a timely fashion.
- Do be realistic about the strengths and weaknesses of your case as it evolves and circumstances change. Be willing to adjust your position as justice requires.
- Do take any doubts about the sufficiency of the evidence supporting the government's case to your supervisor, and document the fact that you took that step.
- Do provide discovery in a timely manner. Have discovery materials ready within a reasonable period of time after request, and promptly inform defense counsel of delays.
- Do respond to communications from the victim and his or her family. Be attentive to their concerns and be mindful that they may not be familiar with court procedures or proceedings.

DON'T *for* PROSECUTORS

- Don't forget that your role is the obtainment of justice, which does not always mean a conviction.
- Don't pursue a charge if the evidence is not there.
- Don't be rude to defense counsel, who is simply advocating for his or her client.
- Don't be vindictive or punitive to defendants who are exercising their rights. The mere filing of a motion to suppress, a request for search warrant affidavits, a discovery demand, or the exercise of a defendant's right to trial does not justify adding additional and unnecessary charges or recommending a harsher sentence.

DO *for* DEFENSE ATTORNEYS

- Do advocate for your client, listen to your client, and treat your client with respect.
- Do advocate creatively, but reasonably. Remember that your credibility will affect this client and all of your clients, present and future.
- Do determine the type of fee agreement that is best for your client, i.e., hourly or flat fee. Do enter into a written fee agreement with your client as early as feasible.
- Do explain to your client, as early as feasible, your dual role as an adviser and as defender.
- Do respond to communications from the defendant's family, as long as the information sought is not protected by the attorney-client privilege. Be attentive to their concerns and be mindful that they may not be familiar with court procedures or proceedings.
- Do meet with your client regularly throughout the representation.
- Do contact the prosecutor with questions or concerns about discovery before filing a motion to compel or a motion for a continuance.
- Do promptly file a notice of appearance when taking over a case as retained counsel from appointed counsel, so that appointed counsel can file a motion to withdraw, and ask appointed counsel to provide you with all pleadings and all discovery materials and other case information he or she obtained.
- Do prepare accordingly when appearing in a court in which you haven't appeared before. Check the court's website, or with the court staff, and, if necessary, the judge, in order to familiarize yourself with local rules and the general practices of that court.

DON'T *for* DEFENSE ATTORNEYS

- Don't suggest to your client that you can get a certain result or make promises to your client that you may not be able to keep.
- Don't represent that you have not received discovery materials from the prosecutor when such materials have been made available to you, or represent that you have not received a particular document when you have not asked the prosecutor for it.
- Don't file motions that are frivolous, or file certain motions only because you believe that such motions are usually filed, or file last-minute motions with respect to matters about which you have long been aware.
- Don't demean your client in conversations with the prosecutor and/or the judge.
- Don't enter a plea agreement on your client's behalf without first investigating all areas of potential defense.
- Don't ask for more time than is needed when requesting a continuance.
- Don't request last-minute continuances as a trial tactic, especially in cases where witnesses have to travel.

DO *for* PROSECUTORS & DEFENSE ATTORNEYS

- Do review and consistently follow the Supreme Court of Ohio's *Professionalism Dos* and *Don'ts* concerning *Professionalism in the Courtroom and Working with Opposing Counsel and Other Attorneys*.
- Do be respectful of the time and resources of opposing counsel. Where discrepancies in resources exist, be reasonable.
- Do prepare clients, witnesses, family, and friends for the courtroom by explaining the rules and procedures of court to them.
- Do use third parties when possible to interview witnesses. If you must personally interview a witness, especially a witness who is likely to be called to testify for the opposing side, have a third person present during the interview to avoid the possibility of your having to testify at trial as to what the interviewee actually said.
- Do know and follow the rules of evidence and rules of procedure.
- Do treat opposing counsel with the utmost professionalism, even if you disagree.

DON'T *for* PROSECUTORS & DEFENSE ATTORNEYS

- Don't make statements to the court or the media concerning the strength of your case prior to evaluating discovery materials.
- Don't disparage or personally attack opposing counsel. Don't claim a prosecutor is "persecuting" your client. Don't treat a defense attorney as if he or she committed the alleged crime. Don't consider opposing counsel an enemy when opposing counsel is simply doing his or her respective job.
- Don't improperly suggest a judge or opposing counsel has a political agenda or bias. Think carefully about how such statements may affect a client, a victim, or the public's perception of the quality of justice.
- Don't refer to your own personal, political, or religious beliefs during a criminal proceeding.
- Don't misrepresent your status by telling a witness that you "work with the court so you have to talk to me," allow your investigator to make such a representation, or discourage a witness from talking to opposing counsel.
- Don't have ex parte communications with the judge about substantive issues or the merits of a case.
- Don't use inappropriate body language to try to persuade a jury. Examples include: fist pumping after a favorable ruling from the judge, rolling eyes during a defendant's or witness's testimony, uttering audible sighs, putting your head down on a table, nodding your head in agreement, or shaking your head in disagreement during court proceedings.
- Don't feign ignorance of rules of courts, rulings made by the judge, or of evidence that was disclosed to you. For example, during a trial or hearing, don't refer to evidence that has been excluded in limine or make comments about, or allude in questions to, evidence already held to be inadmissible.
- Don't hide evidence or fail to disclose witnesses. Don't wait until the morning of trial to disclose witnesses or evidence.
- Don't make unfair or derogatory references to opposing counsel during opening and closing statements. Trials are about facts and the arguments that fit them. Avoid any arguments or characterizations of opposing counsel's case that are not based on the evidence.

PROSECUTORS & DEFENSE ATTORNEYS *are officers of the court and responsible for the administration of justice. Keeping this in mind, they must proceed at all times with the diligence, integrity, and courtesy such an important endeavor requires.*

PROFESSIONALISM DOs & DON'Ts:

DEPOSITIONS

PROFESSIONALISM DOs & DON'Ts:

DEPOSITIONS

If there is one area of the practice of law that consistently gives rise to an inordinate number of complaints about lack of professionalism, it is the area of depositions. Depositions, of course, are an extremely important and valuable component of our adversary system, but, if abused and mishandled, they can engender unnecessary and costly strife that impedes and undercuts the entire process. To help correct this situation, the Commission on Professionalism is publishing the following guidelines, a set of deposition "DOs and DON'Ts." The commission believes that if lawyers follow these guidelines — which are consistent with, and to some extent provide specific amplification of, the Supreme Court's Statements on Professionalism — lawyers will be able to use depositions to advance the legitimate interests of their clients, while, at the same time, treating all participants in the process, including deponents and opposing counsel, with courtesy, civility, and respect. It is not the commission's intention to regulate or to suggest additional bases for discipline, but rather to facilitate the promotion of professionalism among Ohio's lawyers. In short, by adhering to these guidelines, lawyers will be acting as professionals and in the manner that the courts expect.

Therefore, as a lawyer who is scheduling, conducting or attending a deposition:

DO

- Do review the local rules of the jurisdiction where you are practicing before you begin.
- Do cooperate on scheduling. Rather than unilaterally sending out a notice of deposition, call opposing counsel first and cooperate on the selection of the date, time, and place. Then send out a notice reflecting the agreed upon date.
- If, after a deposition has been scheduled, a postponement is requested by the other side, do cooperate in the rescheduling unless the requested postponement would be one of those rare instances that would adversely affect your client's rights.
- Do arrive on time.
- Do be prepared, including having multiple copies of all pertinent documents available in the deposition room, so that the deposition can proceed efficiently and expeditiously.
- Do turn off all electronic devices for receiving calls and messages while the deposition is in progress.
- Do attempt to agree, either before or during the deposition, to a reasonable time limit for the deposition.
- Do treat other counsel and the deponent with courtesy and civility.
- Do go "off record" and confer with opposing counsel, privately and outside the deposition room, if you are having problems with respect to objections, the tone of the questions being asked or the form of the questions.
- Do recess the deposition and call the court for guidance if your off-the-record conversations with opposing counsel are not successful in resolving the "problem."

DO

- If a witness is shown a document, do make sure that you have ample copies to distribute simultaneously to all counsel who are present.
- If a deponent asks to see a document upon which questions are being asked, do provide a copy to the deponent.
- Do inform your client in advance of the deposition (if the client plans to attend) that you will be conducting yourself at the deposition in accordance with these "dos and don'ts."

DON'T

- Don't attempt to "beat your opponent to the punch" by scheduling a deposition for a date earlier than the date requested by your opponent for deposition(s) that he or she wants to take.
- Don't coach the deponent during the deposition when he or she is being questioned by the other side.
- Don't make speaking objections to questions or make statements that are intended to coach the deponent. Simply say "object" or "objection."
- Don't make rude and degrading comments to, or ad hominen attacks on, deponent or opposing counsel, either when asking questions or objecting to questions.
- Don't instruct a witness to refuse to answer a question unless the testimony sought is deemed by you to be privileged, work product, or self-incriminating, or if you believe the examination is being conducted in a manner as to unreasonably annoy or embarrass the deponent.
- Don't take depositions for the purpose of harassing a witness or in order to burden an opponent with increased litigation expenses.
- Don't overtly or covertly provide answers to questions asked of the witness.
- Don't demand conferences or breaks while a question is pending, unless the purpose is to determine whether a privilege should be asserted.
- Don't engage in conduct that would be inappropriate in the presence of a judge.

PROFESSIONALISM

DOs & DON'Ts:

PROFESSIONALISM IN THE COURTROOM

PROFESSIONALISM DOs & DON'Ts:

PROFESSIONALISM IN THE COURTROOM

To be truly professional when appearing in court, a lawyer must act in a proper manner. Such conduct goes beyond complying with the specific rules of procedure and of evidence promulgated by the Supreme Court of Ohio and with local rules issued by trial courts and individual judges. Proper conduct in the courtroom also includes adhering to common principles of civility and respect when dealing with the judge, court staff, and opposing counsel. The Supreme Court of Ohio Commission on Professionalism has prepared this list of "DOs and DON'Ts," to illustrate a number of principles so that lawyers appearing in Ohio courts will fully understand what is expected of them. In creating this list, the commission does not intend to regulate or to provide additional bases for discipline, but rather to help promote professionalism among Ohio's lawyers.

By following the principles of civility and respect, lawyers will enhance their professionalism, as well as the dignity of courtroom proceedings.

DO

- Do be prepared for your participation in any court conference or proceeding.
- Do wear appropriate courtroom attire when appearing in court. If you are a male attorney, always wear a tie.
- Do advise your clients on how to dress appropriately for any scheduled court appearance.
- Do be on time for all court conferences and proceedings. (The best practice is to arrive at least five minutes in advance of the scheduled time.)
- If you are going to be late, do call the courtroom so those who are waiting are properly informed.
- Do turn your cell phone and all other electronic devices off or to silent mode before entering a courtroom.
- Do be courteous when addressing the judge and opposing counsel, both in the courtroom and in chambers.
- Do begin any argument on the record before the judge or jury, by saying, "May it please the court."
- Do stand whenever you address the judge in the courtroom.
- Do show all exhibits to opposing counsel before showing the exhibit to a witness.
- Do ask the judge's permission before approaching a witness during trial or before publishing an exhibit to the jury during an examination.
- Do speak clearly and enunciate when addressing the judge or a witness.
- Do agree to stipulate to facts that are not in dispute if they will not adversely affect your client.
- Do respect the private nature of a sidebar conference; avoid making statements or arguments at a level that may be overheard by the jury.
- Do inform the judge in advance of any delays in the scheduling of witnesses.

DO

- Do treat court personnel with the same respect you would show the judge.
- Do be accurate when setting forth pertinent facts and pertinent rules of law.
- Do answer questions from the judge directly and forthrightly.
- Do bring to the judge's attention any possible ethics issues as soon as you become aware of them.
- Do verify immediately the availability of necessary participants and witnesses after a date for a hearing or trial has been set, so you can promptly notify the judge of any problems.
- During final argument, do be circumspect when summarizing testimony that contains profane words.

DON'T

- Don't make ad hominen attacks on opposing counsel or be sarcastic in either your oral arguments or written briefs.
- Don't shout when making an objection in a court proceeding.
- Don't make any speaking objections in a jury case except for an explanatory single word or two (e.g., "hearsay," "leading," "no foundation"). DO request a side bar conference if you must expound on your objections.
- Don't interrupt opposing counsel or the judge, no matter how strongly you disagree with what is being said.
- Don't argue with the judge or react negatively after the judge has ruled on an objection or other matter.
- Don't tell the judge that he or she has committed a reversible error.
- Don't tell the judge that another judge has ruled a different way without providing a copy of the other judge's written opinion.
- Don't display anger in the courtroom.
- Don't make facial objections during testimony or during arguments by opposing counsel.
- Don't bring a beverage to the trial table unless it is in a non-descript glass or cup and only if you determined that the judge does not object to a beverage on the trial table.
- Don't lean or sit on the trial table, jury box, or any other furniture in the courtroom.
- Don't move freely around the courtroom once a proceeding is underway without obtaining permission from the judge.
- Don't celebrate or denounce a verdict as it is delivered, and also advise clients and interested spectators not to do so. DO behave civilly with opposing counsel when leaving the courtroom.

THE SUPREME COURT OF OHIO COMMISSION ON PROFESSIONALISM

The Supreme Court of Ohio created the Commission on Professionalism in September 1992. As stated in Gov.Bar R. XV, the commission's purpose is to promote professionalism among attorneys admitted to the practice of law in Ohio. The commission aspires to advance the highest standards of integrity and honor among members of the profession.

The 15-member commission includes five judges and two lay members appointed by the Supreme Court, six attorneys appointed by the Ohio Metropolitan Bar Association Consortium and Ohio State Bar Association, and two law school administrators or faculty. The duties of the commission include:

- Monitoring and coordinating professionalism efforts and activities in Ohio courts, bar associations and law schools, and in jurisdictions outside Ohio
- Promoting and sponsoring state and local activities that emphasize and enhance professionalism
- Developing educational materials and other information for use by judicial organizations, bar associations, law schools and other entities
- Assisting in the development of law school orientation programs and curricula, new lawyer training and continuing education programs
- Making recommendations to the Supreme Court, judicial organizations, bar associations, law schools and other entities on methods for enhancing professionalism
- Overseeing and administering a mentoring program for attorneys newly admitted to the practice of law in Ohio.

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- Kathy Northern, 1995-1996
- Richard Ison, 1992-1994

For more information
about attorney professionalism
or the Commission on Professionalism,
contact Martha S. Asseff
at 614.387.9317
or Martha.Asseff@sc.ohio.gov.

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65 South Front Street, Columbus, Ohio 43215-3431