

AMERICAN BAR ASSOCIATION

**CODE OF PROFESSIONAL  
RESPONSIBILITY AND  
CANONS OF JUDICIAL ETHICS**

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## Preface

On August 14, 1964, at the request of President Lewis F. Powell, Jr., the House of Delegates of the American Bar Association created the Special Committee on Evaluation of Ethical Standards to examine the current Canons of Professional Ethics and to make recommendations for changes. Your Committee has been at work since that time with the extremely competent assistance of its Reporter, Professor John F. Sutton, Jr., of the University of Texas School of Law. Since August of 1967 we have been aided by Mrs. Sarah Ragle Weddington, a member of the Texas Bar, who has served as Assistant to Mr. Sutton. The supporting research work was conducted under the supervision of Mr. Sutton in his capacity as Director of a research project for the American Bar Foundation. We also acknowledge with thanks the effective help of Frederick R. Franklin of the American Bar Association Division of Professional Service Activities, who served as Staff Assistant in the crowded latter months of our work.

After substantial study and a number of meetings, we concluded that the present Canons needed revision in four principal particulars: (1) There are important areas involving the conduct of lawyers that are either only partially covered in or totally omitted from the Canons; (2) Many Canons that are sound in substance are in need of editorial revision; (3) Most of the Canons do not lend themselves to practical sanctions for violations; and (4) Changed and changing conditions in our legal system and urbanized society require new statements of professional principles.

The original 32 Canons of Professional Ethics were adopted by the American Bar Association in 1908. They were based principally on the Code of Ethics adopted by the Alabama State Bar Association in 1887, which in turn had been borrowed largely from the lectures of Judge George Sharswood, published in 1854 under the title of *Professional Ethics*. Since then a limited number of amendments have been adopted on a piecemeal basis.

The thought of studying the Canons of Professional Ethics with a view of possible revision is not a new one. In 1928, 1933 and 1937 special committees of the American Bar Association, appointed for the purpose of investigating the subject, made reports recommending overall revisions, but nothing came of these efforts. In 1954 a distinguished committee of the American Bar Foundation made extensive studies of the Canons and recommended further work in the field, but the subject lay fallow for ten more years until the creation of our Committee.

As far back as 1934 Mr. Justice (later Chief Justice) Harlan Fiske Stone, in his memorable address entitled *The Public Influence of the Bar*, made this observation:

Before the Bar can function at all as a guardian of the public interests committed to its care, there must be appraisal and comprehension of the new conditions, and the changed relationship of the lawyer to his clients, to his professional brethren and to the public. That appraisal must pass beyond the petty details of form and manners which have been so largely the subject of our Codes of Ethics, to more fundamental consideration of the way in which our professional activities affect the welfare of society as a whole. Our canons of ethics for the most part are generalizations designed for an earlier era.

Our studies led us unanimously to the conclusion that the need for change in the statements of professional responsibility of lawyers could not be met by merely amending the present Canons. A new Code of Professional Responsibility could be the only answer.

While the opinions of the Committee on Professional Ethics of the American Bar Association have been published and given fairly wide distribution with resulting value to the bench and bar, they certainly are not conclusive as to the adequacy of the present Canons. Because the opinions are necessarily interpretations of the existing Canons, they tend to support the Canons and are critical of them only in the most unusual case. Since a large number of requests for opinions from the Committee on Professional Ethics deal with the etiquette of law practice, advertising, partnership names, announcements and the like, there has been a tendency for many lawyers to assume that this is the exclusive field of interest of the Committee and that it is not concerned with the more serious questions of professional standards and obligations.

The present Canons are not an effective teaching instrument and they fail to give guidance to young lawyers beyond the language of the Canons themselves. There is no organized interrelationship of the Canons and they often overlap. They are not cast in language designed for disciplinary enforcement and many abound with quaint expressions of the past. The present Canons, nevertheless, contain many provisions that are sound in substance, and all of these have been brought forward in the proposed Code.

In our studies and meetings we have relied heavily upon the monumental *Legal Ethics* (1953) of Henry S. Drinker, who served with great distinction for nine years as Chairman of the Committee on Professional Ethics (known in his day as the Committee on Professional Ethics and Grievances) of the American Bar Association.

We have had constant recourse to the opinions of the Committee on Professional Ethics. These opinions were collected and published in a single volume in 1967; since that time we have been favored with all opinions of the Committee in loose-leaf form.

Recent decisions of the Supreme Court of the United States have necessitated intensive studies of certain Canons. Among the landmark cases in this regard are *NAACP v. Button*, 371 U.S. 415, 83 S. Ct. 328, 9 L.Ed.2d 405 (1963), *Brotherhood of R. R. Trainmen v. Virginia*, 377 U.S. 1, 84 S. Ct. 1113, 12 L.Ed.2d 89 (1964), and *United Mine Workers v. Ill. State Bar Ass'n*, 389 U.S. 217, 88 S. Ct. 353, 19 L.Ed.2d 426 (1967). It is not here necessary to comment in detail on these far-reaching rulings since they are familiar to all lawyers.



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## CODE OF PROFESSIONAL RESPONSIBILITY PREAMBLE AND PRELIMINARY STATEMENT

*Preamble*<sup>1</sup>

The continued existence of a free and democratic society depends upon recognition of the concept that each individual has the right to live in peace and freedom through reason for enlightened self-government.<sup>2</sup> Law and law do the greatest good for the greatest number and protect. Without it, individual rights become subject to unrestricted power, respect for law is devalued, and the preservation of society is imperiled. Lawyers, as stewards of the law, play a vital role in the preservation of society. The fulfillment of this role requires that lawyers be guided by the highest standards of ethical conduct.

The Code of Professional Responsibility, a lawyer's responsibility to society, is to maintain the highest standards of ethical conduct. Each lawyer must necessarily assume various roles that require the performance of many difficult tasks. Not every situation can be governed by the same ethical principles, but within the framework of these principles, a lawyer must with courage and foresight be able and ready to give the law to the ever-changing relationships of society.<sup>3</sup>

The Code of Professional Responsibility points the way to the fulfillment of these responsibilities. It is the judge the transgressor. Each lawyer must act in his own conscience the obligations against which to test himself, to which his actions should refer above all for the respect and confidence of the members of the profession and of the society which he serves. The highest possible degree of ethical conduct is the goal. The possible degree of ethical conduct is the ultimate sanction. So the law will protect the public interest, its principles, its greatness and its strength, which permit of no compromise.

*Preliminary Statement*

In furtherance of the principles stated in the Preamble, the American Bar Association has promulgated this Code of Professional Responsibility, consisting of

1. The footnotes are included merely to enable the reader to relate the provisions of this Code to the ABA Canons of Ethics and the ABA Code of Judicial Conduct, and to the ABA Committee on Professional Ethics, and to be an annotation of the sources, they are not intended to constitute an evaluation of the Canons, the Code of Judicial Ethics, or the ABA Code of Judicial Conduct. Footnotes are included merely to enable the reader to relate the provisions of this Code to the ABA Canons of Ethics and the ABA Code of Judicial Conduct, and to be an annotation of the sources, they are not intended to constitute an evaluation of the Canons, the Code of Judicial Ethics, or the ABA Code of Judicial Conduct.

2. The Code of Professional Responsibility is a special need of a clear understanding of the obligations and of the vital connection in society. *Professional Responsibility: Report of the Joint Conference of the ABA and the IBA, 1160 (1958).*

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### NOTES

1. These separate but interrelated parts, Canon, Ethical Considerations, and Disciplinary Rules. The Code is designed to be adopted by appropriate agencies both as a basis for disciplinary action and as a basis for the profession of a lawyer falls below the required minimum standards in the Disciplinary Rules.

2. Canon 8. A Lawyer should assist in improving the legal system. Disciplinary Rules cannot apply to non-lawyers, however, they do define the type of ethical conduct that the lawyer should observe in his professional employment and in all matters pertaining to professional employment. In all matters pertaining to professional employment, the lawyer should be responsible for the conduct of his professional representation of the client.

3. The Canons are statements of aspirational norms, expected of lawyers in their relationships with the public, with the legal system, and with the legal profession. The Ethical Considerations are derived from which the Ethical Considerations and the Disciplinary Rules are derived. Considerations are aspirational in character. The Disciplinary Rules, are mandatory in character. They constitute a body of principles upon which the lawyer can rely in the performance of his professional duties. The Disciplinary Rules should be uniformly applied to all lawyers. The Code makes no attempt to define professional either disciplinary procedure or penalties for violation of a disciplinary rule, nor does it undertake to define conduct. The severity of judgment against one found guilty of violating a Disciplinary Rule should be dependent upon the circumstances. An enforcement action under the Disciplinary Rules, may find interpretive and in the opinions rendered in the Ethical Considerations.































client property has no need to attempt to limit his... professional activities and one who does not handle the business of the firm... should be permitted to do so. A lawyer who is a stockholder

DR 6-101 Failing to Act Competently. (1) A lawyer shall not: (a) Handle a legal matter which he knows or should know that he is not competent to handle, without associating with him a lawyer who is competent to handle it.

DISCIPLINARY RULES (2) Handle a legal matter without preparation adequate in the circumstances.

DR 6-102 Limiting Liability to Client. (1) Neglect a legal matter entrusted to him, from or limit his liability to the client for his personal malpractice.

NOTES

1. "When a client is faced with the need for a lawyer, he can obtain... Changing times produce changes in our law and legal procedure... The nature and complexity of law... under the client a maximum of efficient service... in the profession, and he has the right to expect that the lawyer will have the competence to know where to look for the answers... to advise to the best of his legal talents and to know how to apply them... A Sprague, Accounting and Law 11, Dual Practice in the Law 110 (1980).

CANON 7

A Lawyer Should Represent a Client Zealously Within the Bounds of the Law

ETHICAL CONSIDERATIONS

EC 7-1 The duty of a lawyer, both to his client and to the legal system, is to represent his client zealously... The professional responsibility of a lawyer derives from his membership in a profession which has the duty of... available legal rights and benefits. In our government of laws and not of men, each member of our society is accorded with the law the same respect and protection... through legally permissible means, and to present for adjudication any lawful claim, issue, or defense.

EC 7-2 The bounds of the law in a given case are enunciated and judicial opinions may be uncertain as applied to varying factual situations... The limits and standards of conduct are not absolute... made doubtful by changing or developing constitutional interpretations, inadequately expressed statutes or judicial opinions, and changing public and judicial attitudes... through areas of conflicting authority to areas without precedent.

EC 7-3 There are areas of law which are uncertain, the boundaries of which are not clearly defined... as advocate or adviser. A lawyer may serve simultaneously as both advocate and adviser, but the two roles are not identical... half of his client, an advocate for the most part, deals with past conduct and must take the facts as he finds them. By contrast, a lawyer serving as adviser primarily

EC 7-6 Whether the proposed action of a lawyer is within the bounds of the law may be perplexing... conduct having legal consequences... the client's intent, motive, or desires at the time of the action. Often a lawyer is asked to assist his client in the commission of a crime... the client at a particular time. He may properly assist the client in the development and preservation of evidence... in many cases a lawyer may not be certain as to the state of mind of his client, and in such cases he should exercise reasonable doubt in favor of the client.

EC 7-7 In certain areas of legal representation not affecting the merits of the cause or substantially prejudicial decisions on the part of the client, the lawyer's decision is exclusively that of the client and it is the client's responsibility to make such decisions... a settlement offer or whether he will waive his right to a trial... in a criminal case has the duty to advise his client fully on whether a particular plea to a charge appears to be in his best interests... whether an appeal should be taken.

EC 7-8 A lawyer should exert the best efforts to insure that the outcome of his client's case is not unduly affected by the lawyer's own actions... a lawyer should advise his client of the possible effect of each legal alternative... In assisting his client to reach a proper decision, it is often desirable for a lawyer to point out the possibility of harsh consequences that may result from a particular course of action... always remember that the decision whether to forego an available objective or method because of non-moral, as well as legally permissible, reasons is the client's responsibility.

EC 7-9 In the exercise of his professional judgment the handling of legal matters by a lawyer should always be in a manner consistent with the best interests of his client... EC 7-10 The duty of a lawyer to represent his client with zeal does not inhibit against his concurrent obligations to the legal system and to avoid the infliction of needless harm.

EC 7-11 The responsibilities of a lawyer may vary according to the nature of the proceeding... EC 7-12 Any mental or physical condition of a client which may impair his ability to understand the nature of his own best interests... EC 7-13 A lawyer should not act as a legal representative of a client in a matter which is not a legal matter... EC 7-14 The primary business of a legislative body is to enact laws... EC 7-15 The primary business of a legislative body is to enact laws...









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CANON 8  
A Lawyer Should Assist in  
Improving the Legal System

EC 8-1 Change in human affairs and imperfections  
EC 8-2 A lawyer should be responsive to the needs of society,  
EC 8-3 The fair administration of justice requires the  
EC 8-4 Whenever a lawyer seeks legislative or admin-  
EC 8-5 Fraudulent, deceptive, or otherwise illegal con-















12. Appointees of the Judiciary and Their Compensation.

Trustees, receivers, masters, referees, guardians and other persons appointed by a judge to act in the judicial and impartial manner should have the strictest probity solely to their character and fitness. The power of making such appointments should not be exercised by permit his appointments to be controlled by others than himself. He should also avoid nepotism and undue favoritism. He should not hesitate to fix or approve just amounts for the services or charges of such appointees or to complain of. He cannot rid himself of this responsibility by the consent of counsel.

13. Kinship or Influence.

A judge should not act in a controversy where a near kinship or influence is likely to prejudice his conduct or influence him or unjustly entitle him to the favor of any party or of the public.

14. Independence.

A judge should not be swayed by partisan demands, public clamor or considerations of personal popularity or notoriety, nor by apprehensions of unjust criticism.

15. Interference in Conduct of Trial.

A judge may properly intervene in a trial of a case of fact, or to clear up some obscurity, but he should bear in mind that his undue interference, impetuous exercise of authority in the examining of witnesses, or a sudden attack on the testimony of witnesses, or the circumstances of a trial, may tend to prevent the proper trial in respect thereto, or the ascertainment of the truth.

Conversation between the judge and counsel in court should be confined to the subject matter of the case to avoid controversies which might reflect on the impartiality of the judge. In addressing counsel, litigants, or witnesses, he should avoid interruptions of counsel in their arguments except to clarify his mind as to their position of law or of a preliminary question.

16. Ex parte Applications.

A judge should discourage ex parte hearings of applications for injunctions and receiverships where the applicant is not represented by counsel, and should not act in such matters without the presence of counsel, unless necessary for quick action is clearly shown, if this is demonstrated, then he should endeavor to conduct prompt cross-examination and investigation as to the facts and the principles of law on which the application is based. He should remember that an injunction is a limitation upon the freedom of action of defendants and should not be granted unless the burden is increased in the absence of necessity and this burden is increased in the absence of a clear and convincing case.

17. Ex parte Communications.

A judge should not permit private interviews, arguments or communications designed to influence the exercise of his judicial functions. He should not receive or entertain any such communications, unless they are not representative of the public interest, and unless the conditions under which such communications are made do not permit the contents of such communications to be concealed from opposing counsel. Ordinarily all communications of opposing

18. Conflicts of Interest.

Delay in the administration of justice is a common cause of loss to the public. A judge should avoid any such delay. A judge should not be influenced by any such considerations as to the detriment of parties, who will endeavor to hold counsel to their own means, and to the detriment of the public interest, to the neglect of the duties of his office.

19. Judicial Opinions.

In a reversed case, a judge should indicate the reasons for his reversal. He should not indicate that he has not disregarded or overlooked serious suggestions of counsel. He thus shows his full understanding of the case and his independence of mind. His opinions may contribute useful precedent to the growth of the law.

It is desirable that Courts of Appeals in reversing cases and granting new trials should so indicate their reasons in their opinions that the reasons for their reversal may be stated to avoid the repetition of errors in the future.

But the volume of reported decisions is so great that it is so rapidly increasing that in writing opinions which are substantially departing from the principles stated above, a court is of high importance that judges constituting a court should exercise care and judgment in their opinions to promote solidity of conclusions and the consequent influence of judicial decision. A judge should not yield to the temptation of a more highly individual reputation than that of the court, or to the temptation of a more individual reputation than that of the court.

20. Influence of Decisions Upon the Development of the Law.

A judge should be mindful that his duty is the application of general law to particular instances, that he should not be influenced by the desire to create a new system of law, or to do what he may personally consider substantial justice in a particular case and distinguish. Such action may become a precedent binding on accepted principles and may have detrimental consequences. He should administer the law with confidence and without regard to the opinion of others. He should remember that he is under the sanction of law.

21. Ideologies and Prejudices.

A judge should be free from any such prejudices or preconceptions which might influence his judgment. He should not be influenced by the desire to create a new system of law, or to do what he may personally consider substantial justice in a particular case and distinguish. Such action may become a precedent binding on accepted principles and may have detrimental consequences. He should administer the law with confidence and without regard to the opinion of others. He should remember that he is under the sanction of law.

22. Review.

A judge should not receive or entertain any such communications, unless they are not representative of the public interest, and unless the conditions under which such communications are made do not permit the contents of such communications to be concealed from opposing counsel. Ordinarily all communications of opposing

23. Espialation.

A judge has exceptional opportunity to observe the operation of statutes, especially those relating to public health, safety and morals, and he may well contribute to the public interest by advising those having knowledge of the operation of such statutes, or of the results of their operation.

24. Inconsistent Obligations.

A judge should not accept inconsistent duties; nor should he accept any such duties which will conflict with his judicial duties. He should not accept any such duties which will conflict with his judicial duties.

25. Business Promotions and Substitutions for Charities.

A judge should not be utilizing the power or prestige of his office to promote the success of private business ventures, or to charitable enterprises. He should, however, not use the power of his office or the influence of his name to promote the business interests of others, or to promote the success of private business ventures, or to charitable enterprises.

26. Personal Investments and Relations.

A judge should abstain from making personal investments in enterprises which are apt to be involved in litigation in the court, and after his accession to the bench, longer than a period sufficient to enable him to dispose of them without serious loss. It is desirable that a judge should not be involved in any such enterprises, or in any such enterprises which are apt to be involved in litigation in the court, and after his accession to the bench, longer than a period sufficient to enable him to dispose of them without serious loss.

27. Receivances and Trusts.

A judge should not accept any such duties which will conflict with his judicial duties. He should not accept any such duties which will conflict with his judicial duties.

28. Partisan Politics.

While entitled to entertain his personal views of political questions, and while not required to surrender his political opinions, a judge should not be influenced by the desire to create a new system of law, or to do what he may personally consider substantial justice in a particular case and distinguish. Such action may become a precedent binding on accepted principles and may have detrimental consequences. He should administer the law with confidence and without regard to the opinion of others. He should remember that he is under the sanction of law.

29. Candidate for Office.

A candidate for judicial position should not make or receive any such promises or pledges which will conflict with his judicial duties. He should not accept any such duties which will conflict with his judicial duties.

30. Candidate for Office.

A candidate for judicial position should not make or receive any such promises or pledges which will conflict with his judicial duties. He should not accept any such duties which will conflict with his judicial duties.

31. Private Law Practice.

A judge should not practice law by one holding judicial office in any state, or in any territory, or in any foreign country, or in any other jurisdiction, if it should be permitted. In order courts in some states, it is permitted because the compensation for a competent judge is so small that one who practices law in a position of great dignity is not likely to be able to support himself and his family on his judicial salary.

32. Gifts and Favors.

A judge should not accept any presents or favors from litigants, or from lawyers practicing before him or from others, or from persons who are likely to be subjected to his judgment.

33. Social Relations.

It is not necessary to the proper performance of judicial duty that a judge should live in retirement or seclusion from the world. He should not be influenced by the desire to create a new system of law, or to do what he may personally consider substantial justice in a particular case and distinguish. Such action may become a precedent binding on accepted principles and may have detrimental consequences. He should administer the law with confidence and without regard to the opinion of others. He should remember that he is under the sanction of law.

34. A Summary of Judicial Obligations.

In every particular the conduct should be above reproach. He should be conscientious, sound, fearless of public clamor, regardless of public praise, and indifferent to private political or partisan influences, and with his appointments as a public trust, he should not allow other affairs or his private interests to interfere with his judicial duties.

35. Amended August 31, 1933 and September 20, 1930.

\* Amended August 31, 1933 and September 20, 1930.







OATH OF ADMISSION

The general principles which should ever control the lawyer in the practice of his profession are clearly set forth in the following Oath of Admission to the Bar, formulated upon that in use in the State of Washington, and which conforms in its main outlines to the "duties" of Lawyers as defined by statutory enactments in that and many other States of the Union—duties which they are sworn on admission to obey and for the willful violation of which disbarment is provided:

*I DO SOLEMNLY SWEAR:*

*I will support the Constitution of the United States and the Constitution of the State of .....*

*I will maintain the respect due to Courts of Justice and judicial officers;*

*I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;*

*I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the Judge or jury by any artifice or false statement of fact or law;*

*I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with his business except from him or with his knowledge and approval;*

*I will abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;*

*I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any man's cause for hate or malice. SO HELP ME GOD.*

The American Bar Association commends this form of oath for adoption by the proper authorities in all the States and Territories.