

## **PROFESSIONAL and ETHICAL TIPS FOR LAWYERS**

**Iowa Academy of Trial Lawyers  
February 25, 2021**

Matthew McDermott  
Iowa Supreme Court  
matthew.mcdermott@iowacourts.gov

### Selections from Chapter 33, Standards for Professional Conduct

- Rule 33.1 Preamble.
  - 33.1(1) A lawyer's conduct should be characterized at all times by personal courtesy and professional integrity in the fullest sense of those terms. In fulfilling our duty to represent a client vigorously as lawyers, we will be mindful of our obligations to the administration of justice, which is a truth-seeking process designed to resolve human and societal problems in a rational, peaceful and efficient manner.
  - 33.1(2) A judge's conduct should be characterized at all times by courtesy and patience toward all participants. As judges we owe to all participants in a legal proceeding respect, diligence, punctuality and protection against unjust and improper criticism or attack.
  - 33.1(3) Conduct that may be characterized as uncivil, abrasive, abusive, hostile or obstructive impedes the fundamental goal of resolving disputes rationally, peacefully and efficiently. Such conduct tends to delay and often to deny justice.
  - 33.1(4) The following standards are designed to encourage us, judges and lawyers, to meet our obligations to each other, to litigants and to the system of justice, and thereby achieve the twin goals of civility and professionalism, both of which are hallmarks of a learned profession dedicated to public service.
  - 33.1(5) We expect judges and lawyers will make a mutual and firm commitment to these standards. Voluntary adherence is expected as part of a commitment by all participants to improve the administration of justice throughout the state.

- 33.1(6) Lawyers are alerted to the fact that, while the standards refer generally to matters which are in court, the same standards also apply to professional conduct in all phases of the practice of law.
- 33.1(7) These standards shall not be used as a basis for litigation or for sanctions or penalties. Nothing in these standards supersedes or detracts from existing disciplinary codes or alters existing standards of conduct against which lawyer negligence may be determined.
- Rule 33.2 Lawyers' duties to other counsel.
  - 33.2(1) We will practice our profession with a continuing awareness that our role is to advance the legitimate interests of our clients. In our dealings with others we will not reflect the ill feelings of our clients. We will treat all other counsel, parties and witnesses in a civil and courteous manner, not only in court, but also in all other written and oral communications.
  - 33.2(2) We will not, even when called upon by a client to do so, abuse or indulge in offensive conduct directed to other counsel, parties or witnesses. We will abstain from disparaging remarks or acrimony toward other counsel, parties or witnesses. We will treat adverse witnesses and parties with fair consideration.
  - 33.2(3) We will not encourage or knowingly authorize any person under our control to engage in conduct that would be improper if we were to engage in such conduct.
  - 33.2(4) We will not, absent good cause, attribute bad motives or improper conduct to other counsel or bring the profession into disrepute by unfounded accusations of impropriety.
  - 33.2(5) We will not seek court sanctions without first conducting a reasonable investigation and unless fully justified by the circumstances and necessary to protect our client's lawful interests.
  - 33.2(6) We will cooperate in the transfer of files, wills, and other documents to another attorney when requested to do so, orally or in writing, by a person authorized to make that request. We will provide reasonable assistance in organizing and explaining items transferred, recognizing that such cooperation assists the client in receiving competent legal representation.
  - 33.2(7) We will adhere to all express promises and to agreements with other counsel, whether oral or in writing, and will adhere in

good faith to all agreements implied by the circumstances or local customs.

- 33.2(8) We will promptly acknowledge the receipt of contacts from other attorneys, whether those contacts are by telephone or in writing, and we will make an appropriate response to the subject matter of the contact as soon as reasonably possible.
- 33.2(9) When we reach an oral understanding on a proposed agreement or a stipulation and decide to commit it to writing, the drafter will endeavor in good faith to state the oral understanding accurately and completely. The drafter will provide the opportunity for review of the writing to other counsel. As drafts are exchanged between or among counsel, changes from prior drafts will be identified in the draft or otherwise explicitly brought to the attention of other counsel. We will not include in a draft matters to which there has been no agreement without explicitly advising other counsel in writing of the addition.
- 33.2(10) We will endeavor to confer early with other counsel to assess settlement possibilities. We will not falsely hold out the possibility of settlement as a means to adjourn discovery or to delay trial.
- 33.2(11) In civil actions, we will stipulate to relevant matters if they are undisputed and if no good faith advocacy basis exists for not stipulating.
- 33.2(12) We will not use any form of discovery or discovery scheduling as a means of harassment.
- 33.2(13) We will make good faith efforts to resolve by agreement our objections to matters contained in pleadings and discovery requests and objections.
- 33.2(14) We will not time the filing or service of motions or pleadings in any way that unfairly limits another party's opportunity to respond.
- 33.2(15) We will not request an extension of time solely for the purpose of unjustified delay or to obtain a tactical advantage.
- 33.2(16) We will consult other counsel regarding scheduling matters in a good faith effort to avoid scheduling conflicts.

- 33.2(17) We will endeavor to accommodate previously scheduled dates for hearings, depositions, meetings, conferences, vacations, seminars or other functions that produce good faith calendar conflicts on the part of other counsel. If we have been given an accommodation because of a calendar conflict, we will notify those who have accommodated us as soon as the conflict has been removed.
- 33.2(18) We will notify other counsel and, if appropriate, the court or other persons, at the earliest possible time when hearings, depositions, meetings or conferences are to be canceled or postponed. Early notice avoids unnecessary travel and expense of counsel and may enable the court to use the previously reserved time for other matters.
- 33.2(19) We will agree to reasonable requests for extensions of time and for waiver of procedural formalities, provided our clients' legitimate rights will not be materially or adversely affected.
- 33.2(20) We will not cause any default or dismissal to be entered without first notifying opposing counsel, when we know the opposing counsel's identity.
- 33.2(21) We will take depositions only when actually needed to ascertain facts or information or to perpetuate testimony. We will not take depositions for the purposes of harassment or to increase litigation expenses.
- 33.2(22) We will not engage in any conduct during a deposition that would not be appropriate in the presence of a judge.
- 33.2(23) We will not obstruct questioning during a deposition or object to deposition questions unless necessary under the applicable rules to preserve an objection or privilege for resolution by the court.
- 33.2(24) During depositions we will ask only those questions we reasonably believe are necessary for the prosecution or defense of an action.
- 33.2(25) We will carefully craft document production requests so they are limited to those documents we reasonably believe are necessary for the prosecution or defense of an action. We will not design production requests to place an undue burden or expense on a party.

- 33.2(26) We will respond to document requests reasonably and not strain to interpret the request in an artificially restrictive manner to avoid disclosure of relevant and nonprivileged documents. We will not produce documents in a manner designed to hide or obscure the existence of particular documents.
- 33.2(27) We will carefully craft interrogatories so they are limited to those matters we reasonably believe are necessary for the prosecution or defense of an action, and we will not design them to place an undue burden or expense on a party.
- 33.2(28) We will respond to interrogatories reasonably and will not strain to interpret them in an artificially restrictive manner to avoid disclosure of relevant and nonprivileged information.
- 33.2(29) We will base our discovery objections on a good faith belief in their merit and will not object solely for the purpose of withholding or delaying the disclosure of relevant information.
- 33.2(30) When a draft order is to be prepared by counsel to reflect a court ruling, we will draft an order that accurately and completely reflects the court's ruling. We will promptly prepare and submit a proposed order to other counsel and attempt to reconcile any differences before the draft order is presented to the court.
- 33.2(31) We will not ascribe a position to another counsel that counsel has not taken or otherwise seek to create an unjustified inference based on counsel's statements or conduct.
- 33.2(32) Unless specifically permitted or invited by the court, we will not send copies of correspondence between counsel to the court.
- Rule 33.3 Lawyers' duties to the court.
  - 33.3(1) We will speak and write civilly and respectfully in all communications with the court.
  - 33.3(2) We will be punctual and prepared for all court appearances so that all hearings, conferences and trials may commence on time; if delayed, we will notify the court and counsel, if possible.
  - 33.3(3) We will be considerate of the time constraints and pressures on the court and court staff inherent in their efforts to administer justice.

- 33.3(4) We will not engage in any conduct that brings disorder or disruption to the courtroom. We will advise our clients and witnesses appearing in court of the proper conduct expected and required there and, to the best of our ability, prevent our clients and witnesses from creating disorder or disruption.
- 33.3(5) We will not knowingly misrepresent, mischaracterize, misquote or miscite facts or authorities in any oral or written communication to the court.
- 33.3(6) We will not write letters to the court in connection with a pending action, unless invited or permitted by the court.
- 33.3(7) Before a date for hearing or trial is set or, if that is not feasible, immediately after such date has been set, we will attempt to verify the availability of necessary participants and witnesses so we can promptly notify the court of any likely problems.
- 33.3(8) We will act and speak civilly to court attendants, clerks, court reporters, secretaries and law clerks with an awareness that they too are an integral part of the judicial system.

### Selected Rules of Professional Conduct – Chapter 32

#### PREAMBLE:

#### A LAWYER'S RESPONSIBILITIES

[1] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice.

[2] As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer **zealously** asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

\* \* \*

[4] In all professional functions a lawyer should be competent, prompt, and diligent. A lawyer should maintain communication with a client concerning

the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Iowa Rules of Professional Conduct or other law.

[5] A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers, and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

\* \* \*

[8] A lawyer's responsibilities as a representative of clients, an officer of the legal system, and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a **zealous** advocate on behalf of a client and at the same time assume that justice is being done. So also, a lawyer can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

[9] In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system, and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. The Iowa Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the rules. These principles include the lawyer's obligation **zealously** to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous, and civil attitude toward all persons involved in the legal system.

### **Rule 32:1.1 COMPETENCE**

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

Comment

\* \* \*

### *Maintaining Competence*

[8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education, and comply with all continuing legal education requirements to which the lawyer is subject.

#### **Rule 32:1.4 COMMUNICATION**

(a) A lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in rule 32:1.0(e), is required by these rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Iowa Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

#### **Rule 32:1.6 CONFIDENTIALITY OF INFORMATION**

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b) or required by paragraph (c).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

- (1) to prevent reasonably certain death or substantial bodily harm;
- (2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests

or property of another and in furtherance of which the client has used or is using the lawyer's services;

(3) to prevent, mitigate, or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

(4) to secure legal advice about the lawyer's compliance with these rules;

(5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

(6) to comply with other law or a court order; or

(7) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

(c) A lawyer shall reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent imminent death or substantial bodily harm.

(d) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

### **Iowa Lawyers Assistance Program**

Hugh Grady, Director  
Toll Free (800)-243-1533  
(515) 277-3817  
Cell (515)-360-1668  
help@iowalap.org  
*Confidential assistance*