

# **James O. Dukes Professionalism Program**

**2009 Law School Orientation  
On Professionalism**

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**Students' Materials**

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THE MISSISSIPPI BAR

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THE MISSISSIPPI BAR

**A LAWYER'S CREED**

**To my clients**, I offer faithfulness, competence, diligence, and good judgment. I will strive to represent you as I would want to be represented and to be worthy of your trust.

**To the opposing parties and their counsel**, I offer fairness, integrity, and civility. I will seek to fairly resolve differences and, if we fail to reconcile disagreements, I will 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. I will strive to 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 will extend to you the same courtesy, respect, candor and dignity that I expect to be extended to me. I will strive to make our association a professional friendship.

**To the profession**, I will strive to keep our business a profession and our profession a calling in the spirit of public service.

**To the public** and our systems of justice, I offer service. I will strive to improve the law and our legal system, to make the law and our legal system available to all, and to seek the common good through effective and ethical representation of my clients.

## **ASPIRATIONAL IDEALS**

### **As a lawyer,** I will aspire:

- (a) To put fidelity to clients and, through clients, to the common good, before my personal interests.
- (b) To model for others, and particularly for my clients, the respect due to those we call upon to resolve our disputes and the regard due to all participants in our dispute resolution processes.
- (c) To pursue the goals of equality and fairness in my personal and professional activities.
- (d) To preserve and improve the law, the legal system, and other dispute resolution processes as instruments for the common good.
- (e) To make the law, the legal system, and other dispute resolution processes available to all.
- (f) To practice with a personal commitment to the rules governing our profession and to encourage others to do the same.
- (g) To preserve the dignity and the integrity of our profession by my conduct. The dignity and the integrity of our profession is an inheritance that must be maintained by each successive generation of lawyers.
- (h) To achieve excellence in my work.
- (i) To practice law not only as a business, but as a calling in the spirit of public service.

### **As to clients,** I will aspire:

- (a) To expeditious and economical achievement of client objectives.
- (b) To fully informed client decision-making. As a professional, I will:
  - (1) Counsel clients about various forms of dispute resolution;
  - (2) Counsel clients about the value of cooperation as a means towards 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. As a professional, I will:
  - (1) Consider and discuss with clients alternative fee arrangements as may be appropriate in the circumstances;
  - (2) Reach fee agreements with clients as early in the relationship as possible; and
  - (3) Determine the amount of fees by consideration of many factors and not just time spent by the attorney.
- (d) To comply with the obligations of confidentiality and the avoidance of conflicting loyalties in a manner designed to achieve the fidelity to clients.
- (e) To achieve and maintain a high level of competence in my fields of practice.

**As to opposing parties and their counsel**, I will aspire:

- (a) To cooperate with opposing counsel in a manner consistent with the competent representation of my client. As a professional, I will:
  - (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. As a professional, I will:
  - (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, other tribunals, and to those who assist them**, I will aspire:

- (a) To represent my clients in a manner consistent with the proper functioning of a fair, efficient, and humane system of justice. As a professional, I will:
  - (1) Avoid non-essential litigation and non-essential pleading in litigation;
  - (2) Explore with clients and opposing parties the possibilities of settlement of litigated matters;
  - (3) Seek non-coerced agreement between the parties on procedural and discovery matters;

- (4) Avoid all delays not dictated by a competent presentation of a client's claims;
  - (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 systems of justice.
- (b) To model for others the respect due to our courts. As a professional, I will:
- (1) Act with complete honesty;
  - (2) Know court rules and procedures;
  - (3) Give appropriate deference to court rulings;
  - (4) Avoid undue familiarity and any appearance or claim of any undue influence with members of the judiciary;
  - (5) Avoid unfounded, unsubstantiated, or unjustified public criticism of members of the judiciary;
  - (6) Show respect with my attire and demeanor;
  - (7) Assist the judiciary in determining the applicable law; and
  - (8) Seek to understand the judiciary's obligations of informed and impartial decision-making.

**As to my colleagues in the practice of law,** I will aspire:

- (a) To recognize and to develop our interdependence;
- (b) To assist my colleagues to become better people in the practice of law and to accept their assistance offered to me.
- (c) To defend my colleagues against unjust criticism; and
- (d) To offer my colleagues appropriate assistance with your personal and professional needs.

**As to our profession,** I will aspire:

- (a) To improve the practice of law. As a professional, I will:
  - (1) Support high-quality continuing legal education;
  - (2) Participate in organized activities of the bar and other legal organizations;
  - (3) Assist when requested in the education of future lawyers; and
  - (4) Promote understanding of professionalism and ethical standards among members of the profession.

(b) To protect the public from incompetent or other wrongful lawyering. As a professional, I will:

- (1) Support high standards in bar admissions; and
- (2) Assist in the enforcement of the legal and ethical standards imposed upon all lawyers.

(c) To support diversity in the profession, especially the practice of law by members of historically underrepresented groups.

(d) To promote the understanding of and an appreciation for our profession by the public. I will:

- (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.

(e) To devote my time and skills to activities that promote the common good.

**As to the public and our systems of justice,** I will aspire:

(a) To counsel clients about the moral and social consequences of their conduct.

(b) To consider the effect of my conduct on the image of our systems of justice including the social effect of advertising methods.

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

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

(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 legal system;
- (3) Commenting publicly upon our laws; and
- (4) Using other appropriate methods of effecting positive change in our laws and legal system.



AMERICAN BOARD OF TRIAL ADVOCATES

## *Code of Professionalism*

*As a member of the American Board of Trial Advocates, I shall*



*Always remember that the practice of law is first and foremost a profession.*



*Encourage respect for the law, the courts, and the right of trial by jury.*



*Always remember that my word is my bond and honor my responsibilities to serve as an officer of the court and protector of individual rights.*



*Contribute time and resources to public service, public education, charitable and pro bono activities in my community.*



*Work with the other members of the bar, including judges, opposing counsel, and those whose practices are different from mine, to make our system of justice more accessible and responsive.*



*Resolve matters and disputes expeditiously, without unnecessary expense, and through negotiation whenever possible.*



*Keep my clients well-informed and involved in making decisions affecting them.*



*Achieve and maintain proficiency in my practice and continue to expand my knowledge of the law.*



*Be respectful in my conduct toward my adversaries.*



*Honor the spirit and intent, as well as the requirements of applicable rules or codes of professional conduct, and shall encourage others to do so.*



## AMERICAN BOARD OF TRIAL ADVOCATES

### Principles of Civility, Integrity and Professionalism

#### Preamble

These Principles supplement the precepts set forth in ABOTA's Code of Professionalism and are a guide to the proper conduct of litigation. Civility, integrity, and professionalism, are the hallmarks of our learned calling, dedicated to the administration of justice for all. Counsel adhering to these principles will further the truth seeking process, so that disputes will be resolved in a just, dignified, courteous and efficient manner.

These Principles are not intended to inhibit vigorous advocacy or detract from an attorney's duty to represent a client's cause with faithful dedication to the best of counsel's ability. Rather, they are intended to discourage conduct which demeans, hampers and obstructs our system of justice.

These Principles apply to both attorneys and judges. They have mutual obligations to one another to enhance and preserve the dignity and integrity of our system of justice. As lawyers must practice these Principles when appearing in court, it is not presumptuous of them to expect judges to observe them in kind. The Principles as to the conduct of judges set forth herein are derived from judiciary codes and standards.

These Principles are not intended to be a basis for imposing sanctions, penalties or liability, nor can they supersede or detract from the professional, ethical or disciplinary codes of conduct adopted by regulatory bodies.

### Principles of Civility, Integrity and Professionalism

As a member of the American Board of Trial Advocates, I will adhere to the following Principles:

- Advance the legitimate interests of my clients, but not reflect any ill-will they may have for their adversaries, even if called upon to do so, by offensive conduct, disparaging personal remarks or acrimony, but treat all other counsel, parties and witnesses in a courteous manner.
- Never encourage or knowingly authorize a person under my direction or supervision to engage in conduct proscribed by these principles.
- Never, without good cause, attribute to other counsel bad motives or improprieties.
- Never seek court sanctions unless fully justified by the circumstances and necessary to protect a client's legitimate interests and then only after a good faith effort informally to resolve the issue with counsel.
- Adhere to all express promises and agreements, whether oral or written and, in good faith, to all commitments implied by the circumstances or local custom.

- When called upon to do so, commit oral understandings to writing accurately and completely, provide other counsel a copy for review and never include matters upon which there has been no agreement, without explicitly advising other counsel.
- Timely confer with other counsel to explore settlement possibilities and never falsely hold out the potential of settlement for the purpose of foreclosing discovery or delay of trial.
- Stipulate to undisputed relevant matters when it is obvious they can be proven and, where there is no good faith basis for not doing so.
- Never initiate communication with a judge without the knowledge or presence of opposing counsel concerning a matter at issue before the court.
- Never use any form of discovery scheduling as a means of harassment.
- Make good faith efforts to resolve disputes concerning pleadings and discovery.
- Never file or serve motions or pleadings at a time calculated to unfairly limit opposing counsel's opportunity to respond.
- Never request an extension of time solely for the purpose of unjustified delay or to obtain a tactical advantage.
- Consult other counsel on scheduling matters in a good faith effort to avoid conflicts.
- When calendar conflicts occur, accommodate counsel by rescheduling dates for hearings, depositions, meetings and other events.
- When hearings, depositions, meetings or other events are to be canceled or postponed, notify as early as possible other counsel, the court or other persons, as appropriate, so as to avoid unnecessary inconvenience, wasted time and expense, and to enable the court to use previously reserved time for other matters.
- Agree to reasonable requests for extension of time and waiver of procedural formalities when doing so will not adversely affect my client's legitimate rights.
- Never cause the entry of a default or dismissal without first notifying opposing counsel, unless material prejudice has been suffered by my client.
- Never take depositions for the purpose of harassment or to burden an opponent with increased litigation expenses.
- During a deposition, never engage in conduct which would not be appropriate in the presence of a judge.
- During a deposition, never obstruct the interrogator or object to questions unless reasonably necessary to preserve an objection or privilege for resolution by the court.
- During depositions, ask only those questions reasonably necessary for the prosecution or defense of an action.
- Draft document production requests and interrogatories limited to those reasonably necessary for the prosecution or defense of an action, and never design them to place an undue burden or expense on a party.
- Make reasonable responses to document requests and interrogatories and not interpret them in an artificially restrictive manner so as to avoid disclosure of relevant and non-privileged documents.
- Never produce documents in a manner designed to obscure their source, create confusion, or hide the existence of particular documents.
- Base discovery objections on a good faith belief in their merit, and not for the purpose of withholding or delaying the disclosure of relevant and non-privileged information.
- When called upon, draft orders reflecting a court's ruling accurately and completely, submit them to other counsel and attempt to reconcile any differences before presenting them to the court.
- During argument, never attribute to other counsel a position or claim that he has not taken, or seek to create such an unjustified inference.
- Unless specifically permitted or invited, never send to the court copies of correspondence between counsel.

## **Conduct in Court**

- Always uphold the dignity of the court and never be disrespectful.
- Never publicly criticize a judge for his rulings or a jury for its verdict. Criticism should be reserved for appellate court briefs.
- Be punctual and prepared for all court appearance and, if unavoidably delayed, notify the court and counsel as soon as possible.
- Never engage in conduct that brings disorder or disruption in the courtroom.
- Advise clients and witnesses of the proper courtroom conduct expected and required.
- Never misrepresent or misquote facts or authorities.
- Verify the availability of clients and witnesses, if possible, before dates for hearings or trials are scheduled, or immediately thereafter, and promptly notify the court and counsel if their attendance cannot be assured.
- Be respectful and courteous to court marshals or bailiffs, clerks, reporters, secretaries and law clerks.

## **Judges' Conduct**

A lawyer is entitled to expect judges to observe the following Principles:

- Be courteous and respectful to lawyers, parties, witnesses, and court personnel.
- Control courtroom decorum and proceedings, so as to ensure that all litigation is conducted in a civil and efficient manner.
- Abstain from hostile, demeaning or humiliating language in written opinions or oral communications with lawyers, parties or witnesses.
- Be punctual in convening all hearings and conferences and, if unavoidably delayed, notify counsel, if possible.
- Be considerate of time schedules of lawyers, parties and witnesses in setting dates for hearings, meetings and conferences.
- Avoid, when possible, scheduling matters for a time which conflicts with counsel's required appearance before another judge.
- Make all reasonable efforts to decide promptly matters under submission.
- Give issues in controversy deliberate, impartial and studied analysis before rendering a decision.
- Be considerate of the time constraints and pressures imposed on lawyers by the demands of litigation practice, while endeavoring to resolve disputes efficiently.
- Be mindful that a lawyer has a right and duty properly to present a case fully, make a complete record, and argue the facts and law vigorously.
- Never impugn the integrity or professionalism of a lawyer based solely on the clients or causes he represents.
- Require court personnel to be respectful and courteous towards lawyers, parties and witnesses.
- Abstain from adopting procedures that needlessly increase litigation time and expense.
- Promptly bring to counsel's attention uncivil conduct on the part of clients, witnesses or counsel.

**PROBLEM #1 - Communications with Other Counsel**

A Mississippi teenager, John Smith, is killed in an accident while driving his Biggie 4 x 4 truck. You represent his parents and file a multi-million dollar suit against Biggie Truck Manufacturer, Inc. During the normal course of pretrial discovery, Biggie schedules a deposition to question Bart Smith (John's father) for 9:00 a.m. Monday. Biggie's lawyers are in New York and will have to fly in Sunday afternoon for their appointment with you and Bart on Monday. On Sunday morning you receive a call saying your daughter has been in a serious auto accident in Texas. You start driving to the hospital in Texas and while you are on the way, you try in vain to reach Biggie's New York lawyers by cell phone or e-mail. You assume, rightfully, that the lawyers are already on the airplane and are outside of coverage for their communications devices. By the time you do get a return e-mail and phone call from Biggie's lawyers, they are already in town and you are almost to the hospital where your daughter will require surgery. You apologize to the Biggie attorneys and tell them you are willing to reschedule but Biggie insists that their lawyers file a motion asking the court to punish Mr. Smith or his attorney for not showing up at a scheduled deposition. Possible sanctions include dismissing the Smiths' case, awarding Biggie its attorneys' fees for traveling to the deposition and several others. Technically, Biggie is entitled to file such a motion and ask for sanctions. What would you do if the Biggie lawyers called and told you they were about to ask the court for sanctions? How would you respond once the motion was filed? What would you do if you were one of the Biggie lawyers?

**PROBLEM # 2 - Lawyer Trust Account**

Lawyer's trust account has a \$25,000 balance on the week before lawyer's \$15,000 income tax payment is due. Lawyer is in a cash flow pinch because a couple of clients are late paying their invoices just when the air conditioning unit went out and had to be replaced. The late-paying clients have promised to pay in full by the end of the month and if they do, then Lawyer will have the money to pay the taxes, but it will be two weeks too late. Rather than take a short-term loan from the bank, lawyer decides to write an IOU to the trust account and take the \$15,000 from there. Is this a problem?

**PROBLEM # 3 – Joint Representation in the Criminal Conduct**

Husband and Wife are joint business owners accused of cheating their investors and are facing criminal charges. They come to you ask that you represent both of them. They also tell you that Wife is the one who was embezzling funds, but in order to allow her to stay out of prison and with their small children, Husband wants to plead guilty and take all of the responsibility. Can you represent them both? Can you represent just the Husband if the Wife is paying for your services?

**PROBLEM # 4 – Keeping Confidences Confidential**

You are an associate assisting a partner in confidential settlement negotiations between your international pharmaceutical client and the attorneys for hundreds of patients who have sued the company. Information as to the amount of the potential settlement would affect the company's stock price. One morning during the negotiations, the Wall Street Journal reports, with amazing accuracy, your client's position and strategy. You recognize the reporter's name as someone in your e-mail address book; the last name of the reporter is the same as the last name of your co-counsel. Could it be that you inadvertently sent the information about the potential settlement to the reporter? Now what do you do?

**Alternative to problem number 4.** You are sitting on an airplane and overhear the people in the seats in front of you. They are discussing their proposal to bid on a significant contract. As they talk, you realize that they are from a company in competition with one of your clients for the same contract. You now know most of the features of the competition's bid. When the plane lands, you contact your client and tell what you overheard so that your client can make a more attractive proposal than this one. Your grateful client responds that if it wins the contract, it will give you a trip to Hawaii.

**Alternative to problem number 5.** You are having dinner in a town away from home. Over at the bar, you hear someone talking about one of your business clients. As you listen, you figure out that this must be the divorce lawyer for your client's soon-to-be ex-husband. The information being revealed by the lawyer to her drinking buddies is part exaggeration, part slander and part accuracy based on your knowledge. How should you react? Ignore the conversation? Introduce yourself? Say nothing now, but report the entire conversation to your client?

**PROBLEM # 5 – Joint Representation in Estate Planning**

Lawyer Planner is in the business of estate planning. He sees clients all the time with varying estate sizes and many different psychological problems involving their families. After a recent conference between Lawyer Planner and Mr. and Mrs. Wealthy, in a separate conversation Mr. Wealthy revealed to Lawyer Planner that he had fathered a child a number of years ago out of wedlock; that he has been supporting this child for many years and wants to know what to do about this child in his Will. Mrs. Wealthy has no idea (at least Mr. Wealthy thinks not) about the existence of this illegitimate child.

**PROBLEM # 6 – Appearance of Impropriety**

You have a case pending in front of Judge Wisdom. While your case is active, but before the court has made any final rulings, Judge Wisdom's law clerk calls you and says she is looking for a job once her clerkship is over and wants to know if you will help her get an interview at your law firm. How should you respond to the law clerk's request? Does it make a difference if your case will be decided by Judge Wisdom while this law clerk is still assisting in that capacity?

**Alternative to problem number 6.** You are serving as a law clerk to Judge Wisdom. During your clerkship, one of the lawyers appearing before the judge on a regular basis, asks about your plans after the clerkship and invites you to send a resume if you are interested in working for that lawyer's firm. Should you take the lawyer up on the offer? Should you report the offer to Judge Wisdom?

**PROBLEM # 7 – Procrastination**

When your neighbor's cousin was in a bad accident, you agreed to help. You make some phone calls and get the police report and the name of the truck driver and his employer. You never set up a contract with your neighbor's cousin because it looks fairly simple to resolve. After a few more phone calls, you tell your neighbor's family that the insurer for the trucking company is willing to settle the potential claim by paying medical bills and car repair and rental. The offer sounds reasonable to you and you recommend that the family accept it, but your neighbor's family wants to sue the trucking company because they've read about people in similar situations who got thousands of dollars. Now you're avoiding the family's phone calls because they want to be more aggressive than you believe they should. They don't seem willing to take your advice anyway. The phone slips are piling up from both the insurance company and your neighbor's cousin.