

CANONS OF LEGAL ETHICS

EDITOR'S NOTE—The following is reprinted as a service to the barristers of the province and especially for the benefit of the students, who are about to enter the world of practice.

Approved by the Canadian Bar Association, and adopted by the Barristers' Society of New Brunswick, as a correct, though not exhaustive, statement of some of the ethical principles which should be observed by the members of the legal profession.

It is not possible to frame a set of rules which will particularize all the duties of the lawyer in all the varied relations of his professional life and no attempt has been made to do so.

The following Canons of Ethics should therefore be construed as a general guide and not as a denial of the existence of other duties equally imperative though not specifically mentioned.

The lawyer is more than a mere citizen. He is a minister of justice, an officer of the Courts, his client's advocate, and a member of an ancient, honourable and learned profession.

In these several capacities it is his duty to promote the interests of the State, serve the cause of justice, maintain the authority and dignity of the Courts, be faithful to his clients, candid and courteous in his intercourse with his fellows and true to himself.

1. TO THE STATE

(1) He owes a duty to the state, to maintain its integrity and its laws and not to aid, counsel, or assist any man to act in any way contrary to those laws.

(2) When engaged as a public prosecutor his primary duty is not to convict but to see that justice is done; to that end he should withhold no facts tending to prove either the guilt or innocence of the accused.

(3) He should take upon himself without hesitation and if need be without fee or reward, the cause of any man assigned to him by the Court and exert his best efforts on behalf of the person for whom he has been so assigned counsel.

(4) It is a crime against the State and therefore highly non-professional in a lawyer, to stir up strife or litigation by seeking out defects in titles, claims for personal injury or other causes of action for the purpose of securing or endeavoring to secure a retainer to prosecute a claim therefor, or to pay or reward directly or indirectly any person, for the purpose of procuring him to be retained in his professional capacity.

2. TO THE COURT

(1) His conduct should at all times be characterized by candour and fairness. He should maintain towards the Judges of the Courts a courteous and respectful attitude and insist on similar conduct on the part of his client, at the same time maintaining a self-respecting independence in the discharge of his professional duties to his client.

(2) Judges, not being free to defend themselves, are entitled to receive the support of the Bar against unjust criticism and complaint. Whenever there is proper ground for serious complaint of a judicial officer, it is a right and duty of the lawyer to submit the grievance to the proper authorities.

(3) He should not offer evidence which he knows the Court should not admit. He should not, either in argument to the Court or in address to the jury, assert his personal belief in his client's innocence, or in the justice of his cause, or as to any of the facts involved in the matter under investigation.

(4) He should never seek to privately influence, directly or indirectly, the judges of the Court in his favour, or in that of his client, nor should he attempt to curry favour with juries by fawning, flattery or pretended solicitude for their personal comfort.

3. TO THE CLIENT

(1) He should obtain full knowledge of his client's cause before advising thereon and give a candid opinion of the merits and probable results of pending or contemplated litigation. He should beware of bold and confident assurances to clients especially where the employment may depend on such assurances. He should bear in mind that seldom are all the law and facts on the side of his client and that "*audi alteram partem*" is a safe rule to follow.

(2) He should at the time of retainer disclose to the client all the circumstances of his relations to the parties and his interest in or connection with the controversy, if any, which might influence the client in selection of counsel. He should avoid representing conflicting interests.

(3) Whenever the controversy will admit of fair adjustment the client should be advised to avoid or to end the litigation.

(4) He should treat adverse witnesses, litigants, and counsel with fairness, refraining from all offensive personalities. He must avoid imparting to professional duties the client's personal feelings and prejudices. At the same time he should discharge his duty to his client with firmness and without fear of judicial disfavour or public unpopularity.

(5) He should endeavour by all fair and honourable means to obtain for his client the benefit of any and every remedy and defence which is authorized by law. He must, however, steadfastly bear in mind that the great trust of the lawyer is to be performed within and not without the bounds of law. The office of the lawyer does not permit, much less does it demand of him, for any client, violation of law or any manner of fraud or chicanery.

(6) It is his right to undertake the defence of a person accused of crime, regardless of his own personal opinion as to the guilt of the accused. Having undertaken such defence, he is bound by all fair and honourable means to present every defence that the law of the land permits to the end that no person may be deprived of life or liberty but by due process of law.

(7) He should not, except as by law expressly sanctioned, acquire by purchase or otherwise any interest in the subject matter of the litigation being conducted by him. He should act for his client only and having once acted for him he should not act against him in the same matter or in any other matter related thereto, and he should scrupulously guard and not divulge his client's secrets or confidences.

(8) He should report promptly to his client the receipt of any monies or other trust property and avoid the co-mingling with his own, or use of trust money or property.

(9) He is entitled to reasonable compensation for his services but he should avoid charges which either over-estimate or under-value the service rendered. When possible he should adhere to established tariffs. The client's ability to pay cannot justify a charge in excess of the value of the service, though his poverty may require a less charge or even none at all.

(10) He should avoid controversies with clients regarding compensation so far as is compatible with self respect and with the right to receive reasonable recompense for services. He should always bear in mind that the profession is a branch of the administration of justice and not a mere money getting trade.

(11) He should not appear as witness for his own client except as to merely formal matters, such as the attestation or custody of an instrument, or the like, or when it is essential to the ends of justice. If he is a necessary witness with respect to other matters, the conducting of the case should be entrusted to other counsel.

4. TO HIS FELLOW LAWYER

(1) His conduct towards his fellow lawyer should be characterized by courtesy and good faith. Whatever may be the ill feeling existing between clients it should not be allowed to influence counsel in their conduct and demeanour towards each other or towards suitors in the case. All personalities between counsel cause delay and promote unseemly wrangling.

(2) He should endeavour as far as possible to suit the convenience of the opposing counsel when the interests of his client or the cause of justice will not be injured by so doing.

(3) He should give no undertaking he cannot fulfil and he should fulfil every undertaking he gives. He should never in any way communicate upon the subject in controversy, or attempt to negotiate or compromise the matter directly with any party represented by a lawyer, except through such lawyer.

(4) He should avoid all sharp practice and he should take no paltry advantage when his opponent has made a slip or overlooked some technical matter. No client has a right to demand that his counsel shall be illiberal or that he shall do anything repugnant to his own sense of honour and propriety.

5. TO HIMSELF

(1) It is his duty to maintain the honour and integrity of his profession and to expose without fear or favour before the proper tribunals unprofessional or dishonest conduct by any other member of the profession, and to accept without hesitation a retainer against any member of the profession who is alleged to have wronged his client.

(2) It is the duty of every lawyer to guard the Bar against the admission to the profession of any candidate whose moral character or education unfits him for admission thereto.

(3) The publication or circulation of ordinary simple business cards is not per se improper but solicitation of business by circulars or advertisements or by personal communications or interviews not warranted by personal relations, is unprofessional. It is equally unprofessional to seek retainers through agents of any kind. Indirect advertisement for business by furnishing or inspiring newspaper comment concerning causes in which the lawyer has been or is connected, or concerning the manner of their conduct, the magnitude of the interests involved, the importance of the lawyer's position, and like self-laudations defy the traditions and lower the tone of the lawyer's high calling, should not be tolerated. The best advertisement for a lawyer is the establishment of a well merited reputation for personal capacity and fidelity to trust.

(4) No lawyer is obliged to act either as adviser or advocate for every person who may wish to become his client; he has a right to decline employment.

(5) No client is entitled to receive, nor should any lawyer render, any service or advice involving disloyalty to the State, or disrespect for the judicial office, or the corruption of any persons exercising a public or private trust, or deception or betrayal of the public.

(6) Every lawyer should bear in mind that the oath of office taken on his admission to the Bar is not a mere form but is a solemn undertaking and on his part should be strictly observed.

(7) He should also bear in mind that he can only maintain the high traditions of his profession by being in fact as well as in name a gentleman.

"THE JUDGE" (1975 A.D.)

I have duelled with Legal Furies,
I've converted stubborn juries,
Heard the plaudits of The Mighty,
(Took the handsome fees they paid.)
Now, my judgments they are quoted
Public speeches, gravely noted,
These were only passing triumphs,
Transient memories, that fade.

But the frolic, and the laughter,
(Tho' the headache followed after)
And that early morning lecture
(Which I gladly would evade)
Mouthy battles; loud and violent
Classmates voices (some now silent)
These are memories enduring,
These; and Friendships that I made.

Herman Lordly