



# **IT'S NOT THE FRUIT, IT'S THE ROOT**

## **Curing the Seven Deadly Sins of Unethical Behavior**

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Sean Carter is the founder of *Lawpsided Seminars*, a company devoted to solid legal continuing education with a healthy dose of laughter.

Mr. Carter graduated from Harvard Law School in 1992. His ten years of legal practice focused on corporate securities and mergers and acquisitions. During this time, he represented such clients as GNC, Experian, The Boston Beer Company, Homeside Lending, Safelite Auto Glass, J. Crew and many others, before eventually serving as in-house counsel to a publicly-traded finance company.

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Mr. Carter is the author of the first-ever comedic legal treatise -- *If It Does Not Fit, Must You Acquit?: Your Humorous Guide to the Law*. His syndicated legal humor column has appeared in general circulation newspapers in more than 30 states and his weekly humor column for lawyers appeared in the *ABA e-Report* from 2003 to 2006.

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# Deadly Sin #1: Lust

Rule 1.8(m) prohibits a lawyer from entering into a sexual relationship with the client. However, lust encompasses more than just physical lust. In a broader sense, lust is the improper desire for anything to which one is not entitled. Therefore, it's possible to lust not only after a person's body, but also their possessions, status, etc. This type of desire may cause a lawyer to breach his/her ethical obligations with regards to the following rules:

## **RULE 1.8: CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES**

- (a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client unless:
  - (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed to the client in writing in a manner that can be reasonably understood by the client;
  - (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction;
  - (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.
  
- (c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

*[6] A lawyer may accept a gift from a client, if the transaction meets general standards of fairness. For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. If a client offers the lawyer a more substantial gift, paragraph (c) does not prohibit the lawyer from accepting it, although such a gift may be voidable by the client under the doctrine of undue influence, which treats client gifts as presumptively fraudulent. In any event, due to concerns about overreaching and imposition on clients, a lawyer may not suggest that a substantial gift be made to the lawyer or for the lawyer's benefit, except where the lawyer is related to the client as set forth in paragraph (c).*

- (d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.
- (m) A lawyer shall not have sexual relations with a client when the client is in a vulnerable condition or is otherwise subject to the control or undue influence of the lawyer, when such relations could have a harmful or prejudicial effect upon the interests of the client, or when sexual relations might adversely effect the lawyer's representation of the client.

**RULE 8.4: MISCONDUCT**

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) commit a criminal act involving moral turpitude;
- (d) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (e) engage in conduct that is prejudicial to the administration of justice;

## Deadly Sin #2

# Gluttony

When we think of gluttony, we usually think solely of consuming too much food, which creates a limited ethical problem with regards to a lawyer's obligation under Rule 1.16 to decline or terminate representation if the lawyer's physical condition materially impairs his/her ability to represent the client. However, gluttony encompasses more than just consuming food to excess. It encompasses *any* excess of consumption. Furthermore, it is not just limited to consumption. It can be gluttonous to consume too soon (prematurely), too extravagantly or too ravenously. In that regard, lawyers must be careful to avoid violating the following ethical rules.

### **RULE 1.16: DECLINING OR TERMINATING REPRESENTATION**

- (a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
  - (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

### **RULE 1.15: SAFEKEEPING PROPERTY**

- (c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

### **RULE 1.3: DILIGENCE**

A lawyer shall act with reasonable diligence and promptness in representing a client.

*[2] A lawyer must control the lawyer's work load so that each matter can be handled competently.*

### **RULE 3.1: MERITORIOUS CLAIMS AND CONTENTIONS**

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

**RULE 3.4: FAIRNESS TO OPPOSING PARTY AND COUNSEL**

A lawyer shall not:

- (a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;
- (b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
- (c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;
- (d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;
- (e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused;

## Deadly Sin #3

### Greed

Greed inhibits a lawyer's ability to abide by the ethics rules in a number of ways. Greed causes lawyers to inflate bills to clients, misappropriate client funds, and even commit criminal acts of bribery, theft, fraud and the like. Furthermore, greed may cause an attorney to violate his/her fiduciary duty to a client in other ways.

#### **RULE 1.5: FEES AND EXPENSES**

- (a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:
- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
  - (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
  - (3) the fee customarily charged in the locality for similar legal services;
  - (4) the amount involved and the results obtained;
  - (5) the time limitations imposed by the client or by the circumstances;
  - (6) the nature and length of the professional relationship with the client;
  - (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
  - (8) whether the fee is fixed or contingent.

**RULE 1.15: SAFEKEEPING PROPERTY**

- (a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of six years after termination of the representation.

*[3] Lawyers often receive funds from which the lawyer's fee will be paid. The lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a trust account and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.*

**RULE 5.5: UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW**

- (a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

## Deadly Sin #4

### Sloth

A common cause of ethical violations is a lawyer's failure to fully carry out the duties owed to the client. In some cases, this failure is due to willful neglect. In other cases, it is a matter of over-commitment. And, in yet other cases, it is a matter of incompetence – not having the necessary experience to know that a particular course of action is warranted under the circumstances. In any case, each of these shortcomings can be classified as “sloth,” either in execution of the duty or in preparation for performance of the duty.

#### **RULE 1.3: DILIGENCE**

A lawyer shall act with reasonable diligence and promptness in representing a client.

*[3] Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. A lawyer's duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer's client.*

#### **RULE 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.

*[1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.*

*[6] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.*

**RULE 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 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 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.

*[4] A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, paragraph (a)(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client when a response may be expected. Client telephone calls should be promptly returned or acknowledged.*

## Deadly Sin #5 Wrath

In some cases, lawyers become so emotionally involved in a dispute that they lose their ability to provide objective representation. In other cases, lawyers cross the line from being zealous advocates to outright zealots, engaging in various forms of unethical behavior.

### **RULE 1.7: CONFLICT OF INTEREST: CURRENT CLIENTS**

- (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
  - (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by *a personal interest of the lawyer*.

### **RULE 3.4: FAIRNESS TO OPPOSING PARTY AND COUNSEL**

A lawyer shall not:

- (a) unlawfully obstruct another party's access to evidence; unlawfully alter, destroy, or conceal a document or other material having potential evidentiary value; or counsel or assist another person to do any such act;
- (c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on a good faith assertion that no valid obligation exists;
- (d) in pretrial procedure, intentionally or habitually make a frivolous motion or discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;
- (e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence or by a good-faith belief that such evidence may exist, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant, or the guilt or innocence of an accused;

**RULE 3.5: IMPARTIALITY AND DECORUM OF THE TRIBUNAL**

A lawyer shall not:

- (d) engage in conduct intended to disrupt a tribunal.

*[4] The advocate's function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge but should avoid reciprocation; the judge's default is no justification for similar dereliction by an advocate. An advocate can present the cause, protect the record for subsequent review, and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics.*

*[5] The duty to refrain from disruptive conduct applies to any proceeding of a tribunal, including a deposition.*

**RULE 4.4: RESPECT FOR RIGHTS OF THIRD PERSONS**

- (a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

**RULE 8.4: MISCONDUCT**

It is professional misconduct for a lawyer to:

- (b) commit an criminal act that reflects adversely on the lawyer's honesty or trustworthiness;
- (e) engage in conduct that is prejudicial to the administration of justice;

*[3] A lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice.*

# Deadly Sin #6

## Envy

The competitive nature of the practice of law makes attorneys particularly susceptible to feelings of envy, whether this envy is directed towards judges, colleagues, opposing counsel or even clients. In each case, envy can cause an attorney to violate his/her ethical obligations with respect to each of these persons as set forth in the following rules:

### **RULE 1.6 CONFIDENTIALITY OF INFORMATION**

- (a) A lawyer shall not reveal information relating to 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).

### **RULE 1.8: CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES**

- (a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client unless:
  - (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed to the client in writing in a manner that can be reasonably understood by the client;
  - (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction;
  - (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

## Deadly Sin #7

### Pride

Excessive pride can cause a lawyer to fall short of his/her ethical obligations in a number of ways. For one, a bragging lawyer may violate client confidences in his/her zeal for recognition. Also, pride may cause a lawyer to attempt to demonstrate his/her “greatness” by engaging in other forms of unethical conduct.

#### **RULE 1.6 CONFIDENTIALITY OF INFORMATION**

- (a) A lawyer shall not reveal information relating to 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).

*[5] Paragraph (a) prohibits a lawyer from revealing information relating to the representation of a client. This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person. A lawyer's use of a hypothetical to discuss issues relating to the representation is permissible so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved.*

#### **RULE 3.6: TRIAL PUBLICITY**

- (a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.
- (c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

**RULE 8.1: BAR ADMISSION AND DISCIPLINARY MATTERS**

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

- (a) knowingly make a false statement of material fact; or
- (b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6.



# **NICE LAWYERS FINISH FIRST**

**Acquiring the Seven Virtues of Good Lawyering**

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# SOUTH CAROLINA BAR STANDARDS OF PROFESSIONALISM STATEMENT OF PRINCIPLES

**1. Principle:** A lawyer should revere the law, the judicial system and the legal profession and should, at all times in the lawyer's professional and private lives, uphold the dignity and esteem of each, and exercise the right to improve it.

**2. Principle:** A lawyer should further the legal profession's devotion to public service and to the public good.

**3. Principle:** A lawyer should strictly adhere to the spirit as well as the letter of the Rules of Professional Conduct, to the extent that the law permits and should, at all times, be guided by a fundamental sense of honor, integrity and fair play.

**4. Principle:** A lawyer should not knowingly misstate or improperly distort any fact or opinion.

**5. Principle:** A lawyer should conduct himself or herself to assure the just, prompt and economically efficient determination and resolution of every controversy consistent with thoroughness and professional preparation.

**6. Principle:** A lawyer should avoid all rude, disruptive, and abusive behavior and should, at all times, act with dignity, decency and courtesy consistent with any appropriate response to such conduct by others and a vigorous and aggressive assertion to appropriately protect the legitimate interests of a client.

**7. Principle:** A lawyer should respect the time and commitments of others.

**8. Principle:** A lawyer should be diligent and punctual in communicating with others and in fulfilling commitments.

**9. Principle:** A lawyer should exercise independent judgment without compromise of a client and should not be governed by a client's ill will or deceit.

**10. Principle:** A lawyer's word should be the lawyer's bond.

These standards of professionalism are guides and goals for lawyers in the conduct of their professional life at the Bar. They are to always be construed and consistent with the duty to reasonably and effectively represent the client.

Violation of a guideline, principle or standard should not give rise to a cause of action nor should it create any presumption that a legal duty has been breached. The civility guidelines are designed to provide guidance to lawyers and define a structure for helping lawyers deal in a responsible fashion and are not designed to be a basis for civil liability nor a basis for any disciplinary action since disciplinary action is governed by Rule 407 concerning Rules of Professional Conduct.

# SOUTH CAROLINA BAR STANDARDS OF PROFESSIONALISM

The South Carolina Bar adopts the following Standards of Professionalism for all of its members to the extent that these Standards are not in conflict with the constitutional rights of clients, existing law or court rules.

## **Reference for the Law, the Legal System and the Legal Profession**

**1. Principle:** A lawyer should revere the law, the judicial system and the legal profession and should, at all times in the lawyer's professional and private lives, uphold the dignity and esteem of each, and exercise the right to improve it.

### **Standards:**

**1.1** A lawyer should, at all times, defend the inherent nobility and worth of the law, the rule of law and the judicial system.

**1.2** A lawyer should, at all times, defend the role of the legal profession in the judicial system and in our system of laws.

**1.3** A lawyer should support proposals to improve the administration of justice.

**1.4** A lawyer should support proposals to advance the science of jurisprudence.

**1.5** A lawyer should encourage and support qualified candidates to seek judicial office and encourage and support qualified and competent judges personally and publicly.

**1.6** A lawyer should decline to encourage or support for appointment or election to judicial positions persons who, by skill, knowledge, experience, integrity or temperament are not qualified to fill those positions.

**1.7** When considering whether to advertise and what methods of advertising to employ, a lawyer should be guided by the benefit to society of promoting and protecting public confidence in the judicial system and public esteem of the legal profession.

**1.8** A lawyer should not solicit, in person or otherwise, professional employment from a prospective client with whom the lawyer has no family or prior professional relationship when the prospective client is, in connection with the subject matter of the potential representation, physically suffering or emotionally or mentally distressed or distraught if that condition of the client would not enable the client to exercise independent judgment in the employment of a lawyer.

**1.9** A lawyer should not solicit by advertising or by employment of non-practicing lawyers to solicit legal business that the lawyer is not competent or willing to pursue for the purpose of thereafter brokering such business for an unreasonable portion of the fee.

**1.10** A lawyer should not solicit business by advertising or otherwise, legal business which the lawyer cannot or does not intend to fulfill for the purpose of charging a fee and performing little or no legal contribution.

**1.11** A lawyer should strive to maintain and enhance his or her competence and to keep abreast of all developments in the law that are relevant to his or her substantive areas of practice.

**1.12** A lawyer should, at all times, be appropriately prepared for court appearances, meetings, and conferences, not only for the benefit of the lawyer's client but also for the benefit of the court if a court appearance, and other persons involved, if a meeting or conference.

**1.13** Upon being employed by a new client, a lawyer should discuss fee arrangements at the outset of the representation and, if practical, promptly confirm those arrangements in writing.

**1.14** In any representation in which the fee arrangement is other than a contingent percentage-of-recovery fee or a fixed, flatsum fee or in which the representation is anticipated to be of more than brief duration, a lawyer should bill clients on a regular and frequent interim basis.

**1.15** When a fee dispute arises, a lawyer should first attempt to resolve the matter with the client and then should refer the client to the appropriate fee arbitration panel which should endeavor to arbitrate or mediate such disputes.

**1.16** A lawyer should treat the practice of law as a privilege conferred upon the lawyer by the public and should, at all times, be responsible to the public for his or her actions. The character test of the Character and Fitness Committee should not reject those with unpopular view and alternate lifestyles who are otherwise fit and competent.

**1.17** A lawyer should, at all times in his or her professional life, act in a manner that will enhance or maintain the public's esteem for the law, the judicial system and the legal profession.

**1.18** A lawyer should promote a strong commitment to the ideals and independence of the legal profession.

**1.19** A lawyer should, at all times, avoid the appearance of impropriety provided that the espousal of unpopular causes, the aggressive representation of an unpopular client and unconventional lifestyles shall not be the measure of propriety.

**1.20** A lawyer should counsel and encourage other lawyers to abide by these standards of professionalism.

**1.21** A lawyer and the Bar should educate the schools of law, students, lawyers entering the profession and encourage lawyers as to these principles, their practicality and their fairness.

### **Devotion to Public Service and the Public Good**

**2. Principle:** A lawyer should further the legal profession's devotion to public service and to the public good.

#### **Standards:**

**2.1** A lawyer should contribute the skill, knowledge and influence gained as a lawyer to the furtherance of civic responsibility and the public good.

**2.2** A lawyer should provide or assist and defend efforts to provide all persons with just causes, regardless of their means or the popularity of their cause, to full and fair access to the law and to the judicial system.

**2.3** A lawyer should defend the importance to society of serving the fundamental rights of individuals notwithstanding any contrary popular opinion of the day.

**Adherence to a Fundamental Sense of Honor, Integrity and Fair Play**

**3. Principle:** A lawyer should strictly adhere to the spirit as well as the letter of the Rules of Professional Conduct, to the extent that the law permits and should, at all times, be guided by a fundamental sense of honor, integrity and fair play.

**Standards:**

**3.1** A lawyer should never attempt to inappropriately humiliate or intimidate any person or party for the purpose of obtaining unfair advantage consistent with the adversarial system and protection of the client's legitimate interest.

**3.2** A lawyer should not oppose matters on mere form or style when such dispute creates an undue burden on the judicial system or the parties involved.

**3.3** A lawyer should not impose arbitrary or unreasonable deadlines for action by others and should freely grant requests for reasonable time extensions.

**3.4** In drafting a proposed agreement, a lawyer should not insert unnecessary terms and provisions which are unfair or for the purposes of inappropriate deception.

**3.5** In drafting a proposed letter of intent, the memorialization of an oral agreement or a written contract reflecting an agreement reached in concept, a lawyer should draft a document that fairly reflects the agreement of the parties.

**3.6** A lawyer should not unreasonably oppose an adversary's application for an order or an adversary's request to insert a term or provision in a document.

**3.7** A lawyer should stipulate all facts and principles of law that are not in dispute when it is fair to do so.

**3.8** A lawyer should promptly respond to requests for stipulations of fact or law.

**3.9** A lawyer should voluntarily withdraw claims or defenses when it becomes apparent that they are without merit or are superfluous or merely cumulative.

**3.10** A lawyer should promptly comply with requests to prepare proposed orders unless there are compelling or unusual personal and professional reasons for delay.

**3.11** A lawyer should never permit nonlawyer support personnel to communicate with a judge or judicial officer on any matters pending before the judge or officer or with other court personnel except on scheduling and other ministerial matters when it is inappropriate to do so.

**3.12** A lawyer should notify opposing counsel of all communications with the court or other tribunal, except those involving only scheduling matters not related to the choice of judges, and should simultaneously provide opposing counsel with copies of any written communication with the court by the same or substantially the same means by which they were provided to the court.

**3.13** A lawyer should not make scheduling decisions with the motive of limiting opposing counsel's opportunity to prepare or respond.

**3.14** When scheduling hearings and other adjudicative proceedings, a lawyer should request an amount of time that is truly calculated to permit full and fair presentation of the matter to be adjudicated and to permit equal response by the lawyer's adversary.

**3.15** A lawyer should immediately notify all counsel of any hearing time that the lawyer has reserved with the court or tribunal.

**3.16** A lawyer should bring to the attention of the court or other tribunal all controlling legal authority, whether or not favorable to the client's position and whether or not disclosed by opposing counsel when it is known to the lawyer.

**3.17** A lawyer should appear at a hearing before a court or other tribunal appropriately prepared to submit the matter at issue to the court or tribunal for adjudication when the matter is not subject to reasonable grounds for postponement or dismissal and when the case is called for trial with reasonable notice and under appropriate circumstances by the court.

**3.18** A lawyer should not use the post-hearing submission of proposed orders as a guise to argue or reargue the merits of the matter to be determined consistent with the right to further the formation of the grounds for appeal.

**3.19** A lawyer should not request rescheduling, cancellations, extension, and postponements without legitimate reasons and never solely for the purpose of delay or obtaining unfair advantage.

**3.20** When there has been pretrial disclosure of trial witnesses, a lawyer should make a reasonable, good-faith effort to identify those witnesses whom the lawyer believes are reasonably likely to be called to testify.

**3.21** When there has been pretrial disclosure of trial exhibits, a lawyer should make a reasonable good-faith effort to identify those exhibits that the lawyer believes will be proffered into evidence.

**3.22** During trials and evidentiary hearings, a lawyer should disclose the identities requested in discovery and estimated duration of witnesses anticipated to be called that day and the following day, including depositions to be read, and should cooperate in sharing with opposing counsel visual aid equipment and demonstrative exhibits, charts, graphs, and diagrams which have been jointly prepared or which have been previously placed into evidence consistent with the preparation and protection of the trial strategy.

**3.23** A lawyer should not mark or alter exhibits, charts, graphs and diagrams without opposing counsel's permission or leave of court except when prepared by counsel for that purpose.

**3.24** A lawyer should abstain from conduct calculated to detract or divert the fact-finder's attention from the relevant facts or otherwise cause it to reach a decision on an impermissible basis.

**3.25** A lawyer should not enter into an agreement to withhold information from a client to serve the lawyer's own interest or convenience inconsistent with the promotion of a just and fair resolution in the client's best interest.

### **Honesty and Candor**

**4. Principle:** A lawyer should not knowingly misstate or improperly distort any fact or opinion.

#### **Standards:**

**4.1** A lawyer should not knowingly misstate, distort or improperly exaggerate any fact or opinion in a deceitful or deceptive manner for an improper purpose.

**4.2** A lawyer should not improperly permit the lawyer's silence or inaction to mislead anyone deceitful and deceptively for a wrongful purpose.

**4.3** In drafting documents, a lawyer should point out to opposing counsel all changes that the lawyer makes or causes to be made from one draft to another.

**4.4** A lawyer should not knowingly draft a document or through silence permit a document to be drafted in

a manner that permits the lawyer, the lawyer's client or a third party to take advantage of a term or provision or of the absence of a term or provision to the disadvantage of the adversary in such a manner as the lawyer knows or believes that the adversary neither anticipates nor contemplates.

### **Fair and Efficient Administration of Justice**

**5. Principle:** A lawyer should conduct himself or herself to assure that just and economically efficient determination and resolution of every controversy consistent with thoroughness and professional preparation.

#### **Standards:**

**5.1** A lawyer should accede to reasonable requests for waivers of procedural formalities when the client's legitimate interests are not adversely affected.

**5.2** A lawyer should not invoke a rule for the sole purpose of creating undue delay or obtaining unfair advantage.

**5.3** A lawyer should never use discovery for the primary purpose of harassing or burdening an adversary or causing the adversary to incur unnecessary expense.

**5.4** A lawyer should frame reasonable discovery requests tailored to the matter at hand.

**5.5** A lawyer should assure that responses to proper requests for discovery are timely and complete and are consistent with the obvious intent of the request.

**5.6** A lawyer should seek a resolution of disputes on the merits of the case in preference to procedural formalities when the lawyer can fairly do so without detriment to the client's legitimate interest.

### **Courtesy**

**6. Principle:** A lawyer should abstain from all rude, disruptive, disrespectful and abusive behavior and should, at all times, act with dignity, decency and courtesy when such conduct is reciprocal or not necessary to protect the client from such similar behavior by others.

#### **Standards:**

**6.1** A lawyer should refrain from rude, disruptive, disrespectful and abusive behavior consistent with this principle.

**6.2** A lawyer should encourage support personnel to refrain from all rude, disruptive, disrespectful and abusive behavior consistent with this principle.

### **Respect for the Time and Commitments of Others**

**7. Principle:** A lawyer should respect the time and commitments of others.

**Standards:**

**7.1** Before scheduling a hearing on any motion or discovery objection, a lawyer should endeavor to resolve or narrow the issue at hand.

**7.2** In scheduling depositions upon oral examination, a lawyer should allow enough time to permit the conclusion of the deposition, including examination by all parties, without adjournment.

**7.3** Unless circumstances compel more expedited scheduling, a lawyer should endeavor to provide litigants, witnesses and other affected persons or parties with ample advance notice of hearings, depositions, meetings and other proceedings.

**7.4** Whenever practical, a lawyer should schedule hearings, depositions, meetings and other proceedings at times that are convenient to all interested persons.

**7.5** A lawyer should accede to all reasonable requests for scheduling, rescheduling, cancellations, extensions and postponements that do not prejudice the client's opportunity for full and fair consideration and adjudication of the client's claim or defense.

**7.6** Upon receiving an inquiry concerning a proposed time for a hearing, deposition, meeting, or other proceeding, a lawyer should promptly agree to the proposal or offer a reasonable counter-suggestion.

**7.7** A lawyer should call potential scheduling conflicts or problems to the attention of those affected, including the court or tribunal, as soon as they become apparent to the lawyer.

**7.8** A lawyer should avoid last-minute cancellations of hearings, depositions, meetings and other proceedings.

**7.9** A lawyer should promptly notify the court or tribunal of any resolution by the parties that renders a scheduled court appearance unnecessary.

### **Diligence and Punctuality**

**8. Principle:** A lawyer should be diligent and punctual in communicating with others and in fulfilling commitments.

**Standards:**

**8.1** A lawyer should endeavor to achieve the client's reasonable and lawful objectives as economically and expeditiously as possible.

**8.2** A lawyer should counsel the client concerning the benefits and detriments of mediation, arbitration and other alternative methods of resolving disputes.

**8.3** A lawyer should counsel the client to consider and explore settlement in good faith.

**8.4** A lawyer should be punctual in attending all court appearances, depositions, meetings, conferences and other proceedings.

**8.5** A lawyer should respond promptly to inquiries and communications from clients and others when appropriate and consistent with reasonable case management.

### **Independence of Judgment**

**9. Principle:** A lawyer should exercise independent judgment and should not be governed by a client's ill will or deceit.

**Standards:**

**9.1** A lawyer should, at all times, provide the client with objective evaluation and advice without purposefully understating or overstating achievable results or otherwise creating unrealistic expectations.

**9.2** A lawyer should counsel the client to act with fundamental honesty, candor and fairness.

**9.3** A lawyer should not permit the client's ill will toward an adversary, witness or tribunal to become that of the lawyer.

**9.4** A lawyer should counsel the client against the use of tactics designed to hinder or delay the process involved.

**9.5** A lawyer should counsel the client against the use of tactics designed to embarrass, harass, intimidate, burden or oppress an adversary or any other person or party when appropriate to do so.

**9.6** A lawyer should counsel the client that it may be in the client's best interest to refrain from all rude, disruptive, disrespectful and abusive behavior, even when confronted with such behavior.

**9.7** A lawyer should counsel the client or prospective client, even with respect to a meritorious claim or defense, concerning the burdens of pursuing the claim as compared with the benefits to be achieved.

**9.8** A lawyer should counsel the client about the propriety of withdrawing a claim or defense if it becomes apparent that it is without merit or is superfluous.

**9.9** In contractual and business negotiations, a lawyer should counsel the client concerning what is reasonable under the circumstances.

**9.10** A lawyer should counsel with a client about the disadvantages of rancor and the advantages of settlement when those settlements are of potential benefit to the client.

**9.11** A lawyer should not persist in pursuing a case of questionable merit or value when compared with the negative and expensive aspects of litigation.

**9.12** A lawyer should pursue cases of a novel and imaginative import when the case or cause might legitimately advance a cause of public or private benefit previously unrecognized. It is the lawyer's duty to espouse novel, but reasonable causes.

**9.13** A lawyer, when necessary, should acquaint the client with these principles, their practicality and fairness when requested by the client to violate them.

**Fulfilling Promises**

**10. Principle:** A lawyer's word should be the lawyer's bond.

**Standards:**

**10.1** A lawyer should strive to fulfill all promises and other commitments.

# Virtue #1

## Chastity

Definition: “Abstaining from sexual conduct according to one’s state in life; the practice of courtly love and romantic friendship. Cleanliness through cultivated good health and hygiene, and maintained by refraining from intoxicants. *To be honest with oneself, one’s family, one’s friends, and to all of humanity. Embracing of moral wholesomeness and achieving purity of thought through education and betterment.* The ability to refrain from being distracted and influenced by hostility, temptation or corruption.”

### STANDARDS OF PROFESSIONALISM

**1.8** A lawyer should not solicit, in person or otherwise, professional employment from a prospective client with whom the lawyer has no family or prior professional relationship when the prospective client is, in connection with the subject matter of the potential representation, physically suffering or emotionally or mentally distressed or distraught if that condition of the client would not enable the client to exercise independent judgment in the employment of a lawyer.

**1.16** A lawyer should treat the practice of law as a privilege conferred upon the lawyer by the public and should, at all times, be responsible to the public for his or her actions. The character test of the Character and Fitness Committee should not reject those with unpopular view and alternate lifestyles who are otherwise fit and competent.

**1.17** A lawyer should, at all times in his or her professional life, act in a manner that will enhance or maintain the public’s esteem for the law, the judicial system and the legal profession.

**1.18** A lawyer should promote a strong commitment to the ideals and independence of the legal profession.

**1.19** A lawyer should, at all times, avoid the appearance of impropriety provided that the espousal of unpopular causes, the aggressive representation of an unpopular client and unconventional lifestyles shall not be the measure of propriety.

**3. Principle:** A lawyer should strictly adhere to the spirit as well as the letter of the Rules of Professional Conduct, to the extent that the law permits and should, at all times, be guided by a fundamental sense of honor, integrity and fair play.

#### Standards:

**3.4** In drafting a proposed agreement, a lawyer should not insert unnecessary terms and provisions which are unfair or for the purposes of inappropriate deception.

**3.5** In drafting a proposed letter of intent, the memorialization of an oral agreement or a written contract reflecting an agreement reached in concept, a lawyer should draft a document that fairly reflects the agreement of the parties.

**3.16** A lawyer should bring to the attention of the court or other tribunal all controlling legal authority,

whether or not favorable to the client's position and whether or not disclosed by opposing counsel when it is known to the lawyer.

**3.23** A lawyer should not mark or alter exhibits, charts, graphs and diagrams without opposing counsel's permission or leave of court except when prepared by counsel for that purpose.

**4. Principle:** A lawyer should not knowingly misstate or improperly distort any fact or opinion.

**4.1** A lawyer should not knowingly misstate, distort or improperly exaggerate any fact or opinion in a deceitful or deceptive manner for an improper purpose.

**4.2** A lawyer should not improperly permit the lawyer's silence or inaction to mislead anyone deceitful and deceptively for a wrongful purpose.

**4.3** In drafting documents, a lawyer should point out to opposing counsel all changes that the lawyer makes or causes to be made from one draft to another.

**4.4** A lawyer should not knowingly draft a document or through silence permit a document to be drafted in a manner that permits the lawyer, the lawyer's client or a third party to take advantage of a term or provision or of the absence of a term or provision to the disadvantage of the adversary in such a manner as the lawyer knows or believes that the adversary neither anticipates nor contemplates.

**9.2** A lawyer should counsel the client to act with fundamental honesty, candor and fairness.

**10. Principle:** A lawyer's word should be the lawyer's bond.

**10.1** A lawyer should strive to fulfill all promises and other commitments.

# Virtue #2

## Temperance

Definition: “Restraint, temperance, justice. Constant mindfulness of others and one’s surroundings; *practicing self-control, abstention, moderation, zero-sum and deferred gratification. Prudence to judge between actions with regard to appropriate actions at a given time. Proper moderation between self-interest, versus public-interest, and against the rights and needs of others.*”

### STANDARDS OF PROFESSIONALISM

**1.17** A lawyer should, at all times in his or her professional life, act in a manner that will enhance or maintain the public’s esteem for the law, the judicial system and the legal profession.

**1.19** A lawyer should, at all times, avoid the appearance of impropriety provided that the espousal of unpopular causes, the aggressive representation of an unpopular client and unconventional lifestyles shall not be the measure of propriety.

**3.1** A lawyer should never attempt to inappropriately humiliate or intimidate any person or party for the purpose of obtaining unfair advantage consistent with the adversarial system and protection of the client’s legitimate interest.

**6. Principle:** A lawyer should abstain from all rude, disruptive, disrespectful and abusive behavior and should, at all times, act with dignity, decency and courtesy when such conduct is reciprocal or not necessary to protect the client from such similar behavior by others.

**6.1** A lawyer should refrain from rude, disruptive, disrespectful and abusive behavior consistent with this principle.

**6.2** A lawyer should encourage support personnel to refrain from all rude, disruptive, disrespectful and abusive behavior consistent with this principle.

**9.3** A lawyer should not permit the client’s ill will toward an adversary, witness or tribunal to become that of the lawyer.

**9.5** A lawyer should counsel the client against the use of tactics designed to embarrass, harass, intimidate, burden or oppress an adversary or any other person or party when appropriate to do so.

**9.6** A lawyer should counsel the client that it may be in the client’s best interest to refrain from all rude, disruptive, disrespectful and abusive behavior, even when confronted with such behavior.

**9.10** A lawyer should counsel with a client about the disadvantages of rancor and the advantages of settlement when those settlements are of potential benefit to the client.

# Virtue #3

## Charity

Definition: “Generosity, charity, self-sacrifice; the term should not be confused with the more restricted modern use of the word charity to mean benevolent giving.”

### STANDARDS OF PROFESSIONALISM

**1. Principle:** A lawyer should revere the law, the judicial system and the legal profession and should, at all times in the lawyer’s professional and private lives, uphold the dignity and esteem of each, and exercise the right to improve it.

**Standards:**

**1.1** A lawyer should, at all times, defend the inherent nobility and worth of the law, the rule of law and the judicial system.

**1.2** A lawyer should, at all times, defend the role of the legal profession in the judicial system and in our system of laws.

**1.3** A lawyer should support proposals to improve the administration of justice.

**1.4** A lawyer should support proposals to advance the science of jurisprudence.

**1.7** When considering whether to advertise and what methods of advertising to employ, a lawyer should be guided by the benefit to society of promoting and protecting public confidence in the judicial system and public esteem of the legal profession.

**1.21** A lawyer and the Bar should educate the schools of law, students, lawyers entering the profession and encourage lawyers as to these principles, their practicality and their fairness.

**2. Principle:** A lawyer should further the legal profession’s devotion to public service and to the public good.

**2.1** A lawyer should contribute the skill, knowledge and influence gained as a lawyer to the furtherance of civic responsibility and the public good.

**2.2** A lawyer should provide or assist and defend efforts to provide all persons with just causes, regardless of their means or the popularity of their cause, to full and fair access to the law and to the judicial system.

**2.3** A lawyer should defend the importance to society of serving the fundamental rights of individuals notwithstanding any contrary popular opinion of the day.

**9.12** A lawyer should pursue cases of a novel and imaginative import when the case or cause might legitimately advance a cause of public or private benefit previously unrecognized. It is the lawyer’s duty to espouse novel, but reasonable causes.

# Virtue #4

## Diligence

Definition: “A zealous and careful nature in one’s actions and work; decisive work ethic, steadfastness in belief, fortitude, and the capability of not giving up. Budgeting one’s time; monitoring one’s own activities to guard against laziness. *Upholding one’s convictions at all times, especially when no one else is watching (integrity).*”

### STANDARDS OF PROFESSIONALISM

The South Carolina Bar adopts the following Standards of Professionalism for all of its members to the extent that these Standards are not in conflict with the constitutional rights of clients, existing law or court rules.

**1.11** A lawyer should strive to maintain and enhance his or her competence and to keep abreast of all developments in the law that are relevant to his or her substantive areas of practice.

**1.12** A lawyer should, at all times, be appropriately prepared for court appearances, meetings, and conferences, not only for the benefit of the lawyer’s client but also for the benefit of the court if a court appearance, and other persons involved, if a meeting or conference.

**8. Principle:** A lawyer should be diligent and punctual in communicating with others and in fulfilling commitments.

**8.1** A lawyer should endeavor to achieve the client’s reasonable and lawful objectives as economically and expeditiously as possible.

**8.4** A lawyer should be punctual in attending all court appearances, depositions, meetings, conferences and other proceedings.

**8.5** A lawyer should respond promptly to inquiries and communications from clients and others when appropriate and consistent with reasonable case management.

**9.9** In contractual and business negotiations, a lawyer should counsel the client concerning what is reasonable under the circumstances.

# Virtue #5

## Patience

Definition: “Forbearance and endurance through moderation. Resolving conflicts and injustice peacefully. Creating a sense of peaceful stability and community, rather than engendering suffering, hostility and antagonism.”

### STANDARDS OF PROFESSIONALISM

**3.2** A lawyer should not oppose matters on mere form or style when such dispute creates an undue burden on the judicial system or the parties involved.

**3.6** A lawyer should not unreasonably oppose an adversary’s application for an order or an adversary’s request to insert a term or provision in a document.

**3.7** A lawyer should stipulate all facts and principles of law that are not in dispute when it is fair to do so.

**3.9** A lawyer should voluntarily withdraw claims or defenses when it becomes apparent that they are without merit or are superfluous or merely cumulative.

**3.10** A lawyer should promptly comply with requests to prepare proposed orders unless there are compelling or unusual personal and professional reasons for delay.

**3.19** A lawyer should not request rescheduling, cancellations, extension, and postponements without legitimate reasons and never solely for the purpose of delay or obtaining unfair advantage.

**3.24** A lawyer should abstain from conduct calculated to detract or divert the fact-finder’s attention from the relevant facts or otherwise cause it to reach a decision on an impermissible basis.

**5.2** A lawyer should not invoke a rule for the sole purpose of creating undue delay or obtaining unfair advantage.

**5.3** A lawyer should never use discovery for the primary purpose of harassing or burdening an adversary or causing the adversary to incur unnecessary expense.

**5.4** A lawyer should frame reasonable discovery requests tailored to the matter at hand.

**5.5** A lawyer should assure that responses to proper requests for discovery are timely and complete and are consistent with the obvious intent of the request.

**5.6** A lawyer should seek a resolution of disputes on the merits of the case in preference to procedural formalities when the lawyer can fairly do so without detriment to the client’s legitimate interest.

**8.1** A lawyer should endeavor to achieve the client’s reasonable and lawful objectives as economically and expeditiously as possible.

**8.2** A lawyer should counsel the client concerning the benefits and detriments of mediation, arbitration and other alternative methods of resolving disputes.

**8.3** A lawyer should counsel the client to consider and explore settlement in good faith.

**9.4** A lawyer should counsel the client against the use of tactics designed to hinder or delay the process involved.

**9.7** A lawyer should counsel the client or prospective client, even with respect to a meritorious claim or defense, concerning the burdens of pursuing the claim as compared with the benefits to be achieved.

**9.8** A lawyer should counsel the client about the propriety of withdrawing a claim or defense if it becomes apparent that it is without merit or is superfluous.

**9.11** A lawyer should not persist in pursuing a case of questionable merit or value when compared with the negative and expensive aspects of litigation.

# **Virtue #6**

## **Kindness**

Definition: “Charity, compassion and friendship for its own sake. Empathy and trust without prejudice or resentment. Unselfish love and voluntary kindness without bias or spite. Having positive outlooks and cheerful demeanor; to inspire kindness in others.”

### **STANDARDS OF PROFESSIONALISM**

**3.14** When scheduling hearings and other adjudicative proceedings, a lawyer should request an amount of time that is truly calculated to permit full and fair presentation of the matter to be adjudicated and to permit equal response by the lawyer’s adversary.

**3.15** A lawyer should immediately notify all counsel of any hearing time that the lawyer has reserved with the court or tribunal.

**5.1** A lawyer should accede to reasonable requests for waivers of procedural formalities when the client’s legitimate interests are not adversely affected.

**7.4** Whenever practical, a lawyer should schedule hearings, depositions, meetings and other proceedings at times that are convenient to all interested persons.

**7.5** A lawyer should accede to all reasonable requests for scheduling, rescheduling, cancellations, extensions and postponements that do not prejudice the client’s opportunity for full and fair consideration and adjudication of the client’s claim or defense.

**7.6** Upon receiving an inquiry concerning a proposed time for a hearing, deposition, meeting, or other proceeding, a lawyer should promptly agree to the proposal or offer a reasonable counter-suggestion.

**7.7** A lawyer should call potential scheduling conflicts or problems to the attention of those affected, including the court or tribunal, as soon as they become apparent to the lawyer.

**7.8** A lawyer should avoid last-minute cancellations of hearings, depositions, meetings and other proceedings.

**7.9** A lawyer should promptly notify the court or tribunal of any resolution by the parties that renders a scheduled court appearance unnecessary.

# Virtue #7

## Humility

Definition: “Modest behavior, selflessness, and the giving of respect. *Humility is not thinking less of yourself, it is thinking of yourself less.* It is a spirit of self-examination; a hermeneutic of suspicion toward yourself and charity toward people you disagree with. *The courage of the heart necessary to undertake tasks which are difficult, tedious or unglamorous,* and to graciously accept the sacrifices involved. Giving credit where credit is due; not unfairly glorifying one’s own self.”

### STANDARDS OF PROFESSIONALISM

The South Carolina Bar adopts the following Standards of Professionalism for all of its members to the extent that these Standards are not in conflict with the constitutional rights of clients, existing law or court rules.

**1.8** A lawyer should not solicit, in person or otherwise, professional employment from a prospective client with whom the lawyer has no family or prior professional relationship when the prospective client is, in connection with the subject matter of the potential representation, physically suffering or emotionally or mentally distressed or distraught if that condition of the client would not enable the client to exercise independent judgment in the employment of a lawyer.

**1.9** A lawyer should not solicit by advertising or by employment of non-practicing lawyers to solicit legal business that the lawyer is not competent or willing to pursue for the purpose of thereafter brokering such business for an unreasonable portion of the fee.

**1.10** A lawyer should not solicit business by advertising or otherwise, legal business which the lawyer cannot or does not intend to fulfill for the purpose of charging a fee and performing little or no legal contribution.

**1.13** Upon being employed by a new client, a lawyer should discuss fee arrangements at the outset of the representation and, if practical, promptly confirm those arrangements in writing.

**1.15** When a fee dispute arises, a lawyer should first attempt to resolve the matter with the client and then should refer the client to the appropriate fee arbitration panel which should endeavor to arbitrate or mediate such disputes.

**2.2** A lawyer should provide or assist and defend efforts to provide all persons with just causes, regardless of their means or the popularity of their cause, to full and fair access to the law and to the judicial system.

**2.3** A lawyer should defend the importance to society of serving the fundamental rights of individuals notwithstanding any contrary popular opinion of the day.

**9.1** A lawyer should, at all times, provide the client with objective evaluation and advice without purposefully understating or overstating achievable results or otherwise creating unrealistic expectations.

**9.6** A lawyer should counsel the client that it may be in the client's best interest to refrain from all rude, disruptive, disrespectful and abusive behavior, **even when confronted with such behavior.**

**9.11** A lawyer should not persist in pursuing a case of questionable merit or value when compared with the negative and expensive aspects of litigation.



## **ATTORNEY, HEAL THYSELF!**

### **The Detection, Treatment and Prevention of Substance Abuse in the Legal Profession**

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Sean Carter is the founder of *Lawpsided Seminars*, a company devoted to solid legal continuing education with a healthy dose of laughter.

Mr. Carter graduated from Harvard Law School in 1992. His ten years of legal practice focused on corporate securities and mergers and acquisitions. During this time, he represented such clients as GNC, Experian, The Boston Beer Company, Homeside Lending, Safelite Auto Glass, J. Crew and many others, before eventually serving as in-house counsel to a publicly-traded finance company.

In 2002, Mr. Carter left the practice of law to pursue a career as the country's foremost Humorist at Law. Since then, Mr. Carter has crisscrossed the country delivering his Lawpsided Seminars for state and local bar associations, law firms, in-house corporate legal departments and law schools. Each year, he presents more than 100 humorous programs on such topics as legal ethics, stress management, constitutional law, legal marketing and much more.

Mr. Carter is the author of the first-ever comedic legal treatise -- *If It Does Not Fit, Must You Acquit?: Your Humorous Guide to the Law*. His syndicated legal humor column has appeared in general circulation newspapers in more than 30 states and his weekly humor column for lawyers appeared in the *ABA e-Report* from 2003 to 2006.

Finally, Sean lives in Mesa, Arizona with his wife and four sons.

## **DETECTION OF SUBSTANCE ABUSE**

“An ounce of detection is worth a kilo of cure.”

### **What is Substance Abuse?**

Substance abuse is the compulsive use of drugs or alcohol even in the face of negative consequences. The decisive factor is NOT the amount or frequency of consumption but rather the impact the drugs or alcohol have on the person's life.

### **The Scope of the Problem**

- 18 million Americans have a drinking problem
- 14.8 million Americans are “current” illicit drug users
- 4 million Americans are addicted to prescription drugs

The estimated economic cost to American society for substance abuse is over \$300 billion. The cost, in terms of just lost productivity, medical claims and accidents, amounts to half of that total.

One of every 144 American adults is behind bars for a drug or alcohol-related crime. Furthermore, 25-50% of the men who commits acts of domestic violence have a substance abuse problem and substance abuse is one of the two leading factors in child mistreatment cases.

Lawyers are even at greater risk of substance abuse. For instance, it's estimated that 15% to 18% of lawyers have a drinking problem. This is compared with a 7% to 10% rate for the general population. Substance abuse is a causal factor in over 50% of all disciplinary and malpractice complaints.

# SUBSTANCE ABUSE BINGO

1	5	9	13
2	6	10	14
3	7	11	15
4	8	12	16

1. Does your colleague lie about A&D use?
2. Does your colleague have trouble stopping A&D use once he/she starts?
3. Does your colleague show up to work under the influence?
4. Does your colleague avoid social interaction with peers?
5. Does your colleague behave irritably with co-workers?
6. Does your colleague's work product indicate excessive mistakes or neglect?
7. Does your colleague miss important meetings or court dates?
8. Does your colleague call in "sick" more than twice a month?
9. Has your colleague been arrested for DUI?
10. Has your colleague been arrested for public drunkenness?
11. Has your colleague been involved in a fight recently?
12. Is your colleague having "serious" marital difficulties?
13. Has your colleague been accused of malpractice?
14. Has your colleague requested to borrow money?
15. Does your colleague take unnecessary sexual risks?
16. Has your colleague been having excessive car trouble?

# WARNING SIGNS OF SUBSTANCE ABUSE

## **1. Does your colleague lie about A&D use?**

Lying about alcohol and/or drug use is one of the telltale signs of substance abuse, particularly as the problem progresses. To avoid detection, a substance abuser will resort to denying alcohol or drug usage, or at least, minimizing it.

## **2. Does your colleague have trouble stopping A&D use once he/she starts?**

Substance abuse isn't defined in terms of quantity or frequency of use. A person can have, say, a glass of wine with dinner every night and not be an alcoholic. Likewise, a person can consume a large quantity of alcoholic (on occasion) and not be an addict. On the other hand, a person can use substances on infrequently and in small amounts and still have a *substantial* substance abuse problem if they have trouble stopping alcohol or drug use once it starts.

## **3. Does your colleague show up to work under the influence?**

This is a rather obvious sign of a substance abuse problem that has progressed well beyond the casual weekend use. This person has very likely reached the point where they can't make it through an entire day without their substance of choice.

## **4. Does your colleague avoid social interaction with peers?**

Most people realize that getting intoxicated in front of colleagues and superiors in the workplace is not a smart career move. For the person who finds it difficult to abstain from, say, having several beers at the firm Friday Happy Hour, the easiest course of action may be to avoid the affair altogether.

## **5. Does your colleague behave irritably with co-workers?**

For the person who is attempting to limit the use of substances to the weekends, getting through the week without using can be a challenge. As a result, co-workers might encounter an irritable

person during the week, particularly towards the middle of the week (Tuesday, Wednesdays and Thursdays).

**6. Does your colleague's work product indicate excessive mistakes or neglect?**

Excessive mistakes or neglect are a sign that *something* is amiss in the life of your co-worker, particularly if this person was previously a stellar performer. In that case, your co-worker is almost assuredly encountering some problem, whether mental, emotional, financial, relational, physical or perhaps substance abuse.

**7. Does your colleague miss important meetings or court dates?**

This is one of the most obvious signs of a substance abuse problem, particularly if such occurrences are common and not accompanied by extraordinary circumstances which warrant such answers.

**8. Does your colleague call in "sick" more than twice a month?**

As a substance abuse problem progresses so does absenteeism from work, particularly absences centered around Monday and Friday. Most often, this results from your co-worker taking extended weekends. As the illness further progresses, you may notice the sick days creeping into the mid-week.

**9. Has your colleague been arrested for DUI?**

This is a very serious warning sign, particularly if it is not immediately accompanied by a reduction or complete elimination of substance consumption.

**10. Has your colleague been arrested for public drunkenness?**

This is another serious warning sign, as it evidences a blatant disregard for public intoxication. In short, they are using substances and don't care who knows about it.

**11. Has your colleague been involved in a fight recently?**

The colleague who has been involved in a physical altercation is certainly undergoing some type of disruption – emotional, mental or perhaps substance abuse.

**12. Is your colleague having “serious” marital difficulties?**

Substance abuse problems cause unusual strain in even the best of marriages. The problems that your co-worker might be able to hide from you can't be hidden from his or her spouse.

**13. Has your colleague been accused of malpractice?**

Substance abuse is a causal factor in more than half of all malpractice cases. More often than not, substance abuse causes otherwise good attorneys to miss deadlines, make excessive mistakes, miss court dates, etc.

**14. Has your colleague requested to borrow money?**

A person in the midst of a substance abuse problem is often caught between two contradictory financial forces. On the one hand, they are experiencing decreased productivity (and likely, decreased income). Yet, on the other hand, they are experience increased expenses – legal, medical and otherwise. Your co-worker's financial difficulties might become manifest if they enlist your financial assistance (or the assistance of others).

**15. Does your colleague take unnecessary sexual risks?**

**16. Has your colleague been having excessive car trouble?**

Motorists who drive under the influence invariably have minor automotive mishaps – bent fenders, minor dents, broken of sideview mirrors, etc. The co-worker whose car looks like it has been in a demolition derby is likely in need of medical intervention, or a driver's lesson.

## TREATMENT OF SUBSTANCE ABUSE

### Resources for Lawyers

Program	Phone Number	Website
Alcoholics Anonymous	(212) 870-3400	www.aa.org
ABA Standing Committee on Substance Abuse	(202) 662-1784	www.abanet.org/subabuse/home.html
AL-ANON	(888) 425-2666	www.Al-Anon-Alateen.org
Drug Help	(800) DRUG-HELP	www.drughelp.org
National Clearinghouse for Alcohol and Drug Information	(800) 729-6686	www.health.org
Narcotics Anonymous	(818) 773-9999	<a href="http://www.na.org">www.na.org</a>
South Carolina Lawyers Helping Lawyers	(866) 545-9590	www.scbar.org/MemberResources/LawyersHelpingLawyers.aspx

## PREVENTION OF SUBSTANCE ABUSE

As lawyers, perhaps the best thing we can do to prevent falling prey to substance abuse is to learn to handle one of its biggest contributors – stress. As much of the stress in the practice of law is self-imposed, lawyers would do well to remember the following:

### A. GET A CLUE

In order to effectively deal with stress, we must first understand its source. In other words, we must get a clue as to what is causing us stress. When we do, we can then take one of the following approaches:

1. Don't Do That Anymore. There's an old joke about a woman who goes to the doctor and says, "Doctor, my arm hurts when I do this (moving her arm to demonstrate)." In the punch line to this joke, the doctor replies, "Well, then, don't do that anymore!" Sometimes the answer to increased stress can be just that simple, don't do that anymore! Through delegation and task-shifting, lawyers can alleviate many of the "pains" of practice.

2. Look on the Bright Side. When the pressures mount (and they will), it's always good to keep in mind that it could always be worse. As lawyers, most of us have jobs that others would envy. It's good to keep this in mind from time to time.

3. Learn to Deal with Difficult People. As lawyers, we are often thrust into situations where we must deal with difficult people. By the nature of the representation, we simply have no choice. We don't choose the judges who hear our cases or opposing counsel. In large organizations, we don't even choose our colleagues. Therefore, we must develop a way to deal effectively with difficult people by using the tools of praise and modeling.

- a. Praise. It's been said that four billion people go to bed hungry every night for food but five billion people go to bed hungry every night for a sincere word of

encouragement and praise. By meeting the most widely unmet need in others (the need for praise), we can create instant harmony, even when dealing with normally inharmonious people.

b. Modeling. It's been said that imitation is the greatest form of flattery. There is some truth to this statement. Most people are automatically inclined to like (and be reasonable to) people who are like them. They can't help themselves. By learning to model the behavior of others, lawyers can greatly reduce the strife of dealing with opposing counsel and others who might naturally seem to be adversaries.

## **B. GET A GRIP**

Much of the stress facing lawyers is fueled by an exaggerated sense of self-importance.

1. The Firm Will Be Open on the Day of Your Funeral. Unless you are a solo practitioner, it's likely that your firm will go on without you. In fact, many lawyers work in law firms where the name partners are long since dead. If the firm can survive with its founders, it almost certainly can survive with you. By coming to grips with the fact, a lawyer is freed from thinking that the weight of the firm rests on her shoulders.

2. It's Not Life or Death. Many lawyers treat their client matters as matters of life or death. As a result, they find themselves experiencing the physiological as well as emotional stress of a life or death struggle. Yet, much of the stress can be alleviated when the lawyer realizes that, in most cases, they are dealing with a simple dispute over money; and it's not even *their* money.

3. Tame Your Inner Lawyer. Law school teaches young people how to "think like a lawyer." And while such a mindset is essential in representing clients, it's important for lawyers to learn when to turn it off. While playing devil's advocate or arguing in the alternative may be

just what the client needs, these tactics only cause undue conflict and strife in interpersonal relationships.

### **C. GET A LIFE**

When we began to understand that there is more to life than the job, the inevitable stresses of the job have less effect on us.

1. Stop Keeping Up With the Obamas. One of the greatest self-imposed stressors is always trying to keep up with others. It's hard enough to achieve a sense of pride and satisfaction in our own lives. However, to heap the added hurdle of being just as successful as our law school roommate, the person we entered the firm with, our brother-in-law, or whomever makes for an impossible task.

2. Live Your *Whole* Life. It's been said that we are not human doings or human havings but rather we are human beings. Yet, the sad truth is that many lawyers define themselves exclusively in terms of what they do (e.g., practice corporate securities law) or by what they have (e.g., a summer home in Hamptons, etc.). The problem is that these things often add more stress to life than less because they provide no lasting fulfillment. After all, who wants to die and have their kids put on their tombstone: "Here Lies Mommy, She Had a Lexus"?

3. Do It Now. Most people have a list of "someday whens" – things they will do someday when. Someday when they have more time, they will take the family on that grand vacation. Someday when they have more money, they will start contributing to the causes that mean something to them. And the list goes on and on. And all of these "someday whens" loom over a person like a weight. The quickest way to throw off that yoke is to make someday when TODAY. As it has been said, "You can't make footprints in the sands of time while sitting on your butt and who wants to make buttprints in the sands of time?"