

BALANCING THE SCALES: THE GROWTH AND DEVELOPMENT OF CIVILITY STANDARDS FOR JUDGES

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In the practice of law, the twenty-first century has been witness to a sea change in how those in the legal profession are expected to conduct themselves. As civility has decreased in society at large over time, incivility on the part of attorneys seemed to become distilled to its purest form as a desirable trait in the practice of law. However, slow but steady progress has been made in replacing this “ideal” with a recognition and embrace of civility in the practice of law. Following the path that has been blazed in the establishment of civility guidelines and standards for attorneys, many states are now bringing similar guidelines of civility to members of the judiciary.

The American Board of Trial Advocates (“ABOTA”) has long been at the forefront of promoting civility in the legal profession. The ABOTA Principles of Civility provided the benchmark for establishing a framework for civility in all aspects of the legal profession. As a result of ABOTA’s efforts and similar efforts in state and local bar associations and courts throughout the country, civility standards for lawyers are now the norm, rather than the exception.

ABOTA’s standards for judges as detailed in the ABOTA Principles of Civility, Integrity, and Professionalism outline the conduct expected of judges. Specifically, judges are to observe the following Principles:

1. Be courteous and respectful to lawyers, parties, witnesses, and court personnel.
2. Control courtroom decorum and proceedings so as to ensure that all litigation is conducted in a civil and efficient manner.
3. Abstain from hostile, demeaning, or humiliating language in written opinions or oral communications with lawyers, parties, or witnesses.
4. Be punctual in convening all hearings and conferences, and, if unavoidably delayed, notify counsel if possible.
5. Be considerate of time schedules of lawyers, parties, and witnesses in setting dates for hearings, meetings and conferences. When possible, avoid scheduling matters for a time that conflicts with counsel’s required appearance before another judge.
6. Make all reasonable efforts to promptly decide matters under submission.
7. Give issues in controversy deliberate, impartial, and studied analysis before rendering a decision.
8. Be considerate of the time constraints and pressures imposed on lawyers by the demands of litigation practice, while endeavoring to resolve disputes efficiently.
9. Be mindful that a lawyer has a right and duty to present a case fully, make a complete record, and argue the facts and law vigorously.

10. Never impugn the integrity or professionalism of a lawyer based solely on the clients or causes he represents.
11. Require court personnel to be respectful and courteous towards lawyers, parties, and witnesses.
12. Abstain from adopting procedures that needlessly increase litigation time or expense.
13. Promptly bring to counsel's attention uncivil conduct on the part of clients, witnesses, or counsel.

Following ABOTA's lead in this area, there are currently 16 states with some form of judicial standards for civility and professionalism. Of those, Delaware,² Hawaii,³ Idaho,⁴ Louisiana,⁵ Maryland,⁶ Minnesota,⁷ New Mexico,⁸ and Oklahoma⁹ are directly based on the ABOTA standards. Another four jurisdictions, District of Columbia,¹⁰ New York,¹¹ Pennsylvania,¹² and West Virginia¹³ have developed standards loosely based on the ABOTA standards. Three additional states have created standards without the guiding framework of the ABOTA standards, New Jersey,¹⁴ Ohio,¹⁵ and Wisconsin¹⁶. Regardless of the specific language or pedigree, all these jurisdictions are united in their commitment to civility in all aspects of the legal profession, including the judiciary.¹⁷

As was the case with the development of civility standards for attorneys, Utah has been part of the early vanguard of states and jurisdictions working to put into place similar standards for judges. The Utah Supreme Court Committee on Professionalism, which was an integral part of the development of civility standards, the establishment of a program of professionalism counseling for members of the Utah Bar and placing civility in the oath for admission, established a Subcommittee on Proposed Standards of Judicial Civility and Professionalism¹⁸ to proposed judicial civility standards.

In developing the proposed standards for the Utah judiciary, members of the Subcommittee examined the judicial standards of civility and professionalism currently existing throughout the country. Using these various models, the Subcommittee created draft standards for judges. These standards were distilled from the ABOTA standards, along with creative and meaningful modifications and additions found in the standards of various other jurisdictions. The Subcommittee's efforts resulted in principles for judges, approved by the Utah Supreme Court, as well as the Judicial Conduct Commission, as part of the Utah Standards of Judicial Professionalism and Civility.¹⁹ Specifically, the Utah Standards state:

1. Judges will refrain from manifesting or acting upon racial, gender, or other improper bias or prejudice toward any participant in the legal process.
2. Judges will not use language in oral or written communications, orders, or opinions that is profane or that gratuitously demeans or humiliates an attorney, litigant, witness, or other judge, recognizing, however, that judges are sometimes expected to stand up to obstinacy or insubordination with sharpness and even severity, and that the difficult

legal or factual determinations they make might produce a demeaning or humiliating effect on a participant in the judicial process.

3. Judges will not disparage the integrity, motives, intelligence, morals, ethics, or personal behavior of an attorney, litigant, witness or other another judge except in circumstances where such matters are in furtherance of a judge's responsibilities or are otherwise relevant under the governing law or rules of procedure. Judges will not impugn the integrity or professionalism of any lawyer on the basis of the client or cause which the lawyer represents.

4. Judges will avoid impermissible ex parte communications

5. Judges will not adopt procedures aimed at delaying the resolution of proceedings before them or at compounding litigations expenses unnecessarily.

6. Judges will endeavor to begin judicial proceedings on time and to provide reasonable notice if necessary to apprise the parties, recognizing that circumstances beyond the judge's control may impact the goal of punctuality.

7. Judges will give issues of controversy thoughtful and impartial analysis and consideration, recognizing the corresponding prerogative and responsibility to promote their just, speedy, and inexpensive resolution.

8. Judges will recognize that a party has a right to a fair and impartial hearing and a right to present its cause within the limits established by law. Judges will allow lawyers or parties, with reasonable time limits, to present proper arguments and to make a complete and accurate record.

9. In all legal proceedings, judges will direct parties, attorneys, and other participants to refrain from uncivil conduct. Judges who observe uncivil conduct or receive a reliable report of uncivil conduct will take corrective action as the judge deems appropriate.

10. Judges will cooperate with other judges to ensure the successful management of the court as a system as well as the judge's individual docket.²⁰

As the world changes and becomes less civil, there is no need for the legal profession to follow suit. Attorneys and educators have been working for many years to bring civility to our profession, with the expansion of civility rules across the country, as well as Canada.²¹ ABOTA continues to champion this cause and welcomes the efforts to develop and implement similar civility rules for the judiciary as a necessary and complimentary step for the continued recognition and respect of the legal profession.

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² <http://courts.state.de.us/forms/download.aspx?id=39418>

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- ³ http://www.courts.state.hi.us/docs/court_rule/rules/pphj.pdf
- ⁴ http://isb/idaho.gov/pdf/general/standards_for_civility.pdf
- ⁵ <http://www.lasc.org/rules/supreme/PartGSection11.asp>
- ⁶ <http://www.msba.org/departments/commpubl/publications/code.asp>
- ⁷ <http://www2.mnbar.org/committees/professionalism/aspirations-final.htm>
- ⁸ <http://www.nmbar.org/Attorneys/creed.html>
- ⁹ <http://www.okbar.org/ethics/standards.htm>
- ¹⁰ http://www.dcbars.org/for_lawyers/ethics/voluntary_standards_for_civility/judges.cfm;
http://www.dcbars.org/for_lawyers/ethics/legal_ethics/voluntary_standards_for_civility/judgeother.cfm
- ¹¹ <http://www.nycourts.gov/jipl/standardsofcivility.pdf>
- ¹² <http://www.pacode.com/secure/data/204/chapter99/subchapDtoc.html>
- ¹³ <http://wvdc.org/sopc.htm#judge>
- ¹⁴ <http://www.njsba.com/resources/njcop/njcop-principle-praf.html>
- ¹⁵ <http://supremecourtofohio.gov/publications/proIdeals.pdf>
- ¹⁶ <http://www.wicourts.gov/sclrulhear/DisplayDocument.html?Content+html&seqNo=1047>
- ¹⁷ Thanks to Kent B. Scott for his research in gathering and examining the current judicial civility rules around the country as part of his service on the Utah Supreme Court's Advisory Committee on Professionalism, subcommittee on Proposed Standards of Judicial Civility and Professionalism.
- ¹⁸ The Subcommittee consisted of Judge John Baxter, Donald J. Winder, Kent B. Scott, and John Sundloff
- ¹⁹ Rule 11-301 Utah Standards of Judicial Professionalism and Civility
- ²⁰ As noted in the Preamble to the Utah Standards, they are voluntary and aspirational.
- ²¹ www.cba.org/cba/activities/pdf/codeofconduct.pdf. Canadian Bar Association Code of Conduct, Appendix: Principals of Civility for Advocates