

Utah Municipal Attorneys Association Spring Conference 2016

Ethics/Civility CLE Presentation

Thursday, May 12, 3:30 p.m.

Judge Brian E. Brower

Rule 14-301: Utah's Standards of Professionalism and Civility

- Preamble:
 - courtesy, candor, cooperation (the 3 C's);
 - must be mindful of obligations to administration of justice (**a truth-seeking process** to resolve societal problems in a rational, peaceful, and efficient manner);
 - must educate the client regarding the standards which govern behavior in the legal process.

Rule 14-301: Utah's Standards of Professionalism and Civility

1. “. . . lawyers shall treat all other counsel, parties, judges, witnesses, and other participants in all proceedings in a courteous and dignified manner.”
2. “Lawyers shall advise their clients that civility, courtesy, and fair dealing are expected. **They are tools for effective advocacy and not signs of weakness.**”
10. “Lawyers shall make good faith efforts to resolve by stipulation undisputed relevant matters, particularly when it is obvious such matters can be proven, unless there is a sound advocacy basis for not doing so.”

Rule 14-301: Utah's Standards of Professionalism and Civility

14. “Lawyers shall advise their clients that they reserve the right to determine whether to grant accommodations to other counsel in all matters not directly affecting the merits of the cause or prejudicing the client’s rights, such as extensions of time, continuances, adjournments, and admissions of facts. Lawyers shall agree to reasonable requests for extension of time and waiver of procedural formalities when doing so will not adversely affect their clients’ legitimate rights.

Rule 14-301: Utah's Standards of Professionalism and Civility

15. “. . . If a scheduling change becomes necessary, **lawyers shall notify *the other counsel and the court immediately***. If other counsel requires a scheduling change, lawyers shall cooperate in making any reasonable adjustments.”
17. “Lawyers shall not use or oppose discovery for the purpose of harassment or to burden an opponent with increased litigation expense. Lawyers shall not object to discovery or inappropriately assert a privilege for the purpose of withholding or delaying the disclosure of relevant and non-protected information.”

Rule 3.4 of the Utah Rules of Professional Conduct

Rule 3.4: Fairness to Opposing Party and Counsel

A lawyer shall not: . . .

(d) . . . make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party.

Rule 4.3 of the Utah Rules of Professional Conduct

Rule 4.3: Dealing With Unrepresented Person

(a) In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. **The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel . . .**

Rule 3.8 of the Utah Rules of Professional Conduct

Rule 3.8: Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall:

- (a) Refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;
- (b) Make reasonable efforts to ensure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to retain counsel; . . .
- (d) Make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigate the offense . . .

Edmund Burke said,

“Manners are more important than laws. Upon them, in a great measure the laws depend. The law touches us but here and there, and now and then. Manners are what vex or sooth, corrupt or purify, exalt or debase, barbarize or refine us, by a constant, steady, uniform, insensible operation, like that of the air we breath in.”

Former Chief Justice William Rehnquist remarked that,

“incivility remains one of the greatest threats to the ideals of American justice and to the public’s trust in the law.”

Justice Clarence Thomas said,

“I believe that the decline in civility among lawyers is due to a broader, more intellectual change in our vision of the law’s role in our society.”

“Civility then is the natural functioning of a legal profession in which we are all servants of that higher, nobler master, the Constitution and the law. The lawyer on the other side, or the judge is not the enemy, but a fellow traveler on the journey toward discovering the correct legal answer.”

Standard #1

“ . . . [L]awyers shall treat all other counsel, parties, judges, witnesses, and other participants in all proceedings in a courteous and dignified manner.”

Standard #3

“Lawyers shall not, without an adequate factual basis, attribute to other counsel or the court improper motives, purpose, or conduct . . .”

“Never attribute to a breach of ethics that which can be explained by sheer stupidity.”

-Judge Richard F. Gordon

Standard #3

(continued)

“ . . . Lawyers should avoid hostile, demeaning, or humiliating words in written and oral communications with adversaries. Neither written submissions nor oral presentations should disparage the integrity, intelligence, morals, ethics, or personal behavior of an adversary unless such matters are directly relevant under controlling substantive law.”

Standard #6

“Lawyers shall adhere to their express promises and agreements, oral or written, and to all commitments reasonably implied by the circumstances or by local custom.”

Remember . . . neither brains nor brawn are the most important things in life

“Brains are like muscles—you can hire them by the hour. The only thing that’s not for sale is character.”

-Eugene Scalia (father of the late Justice Antonin Scalia)

Final Comment

When we endeavor merely to *win*, we have lost sight of our justice system's purpose and of our role within it. We must never forget that our process for conflict resolution is designed to be an orderly method for discovering the truth. It's about finding the facts, applying the law, and meting out justice in as fair and civil a manner as possible. We owe that to ourselves, our country, and every individual.