

Professionalism

**for New Ohio
Lawyer Training
Seminar**

Getaway C.L.E. Ltd.

Professionalism

“ By

“ Benjamin S. Zacks, Esq.

“ Zacks Law Group LLC

“ Behavior of New
Lawyers

“ A Lawyer’s
Creed

“ Lawyer’s
Aspirational
Ideals

“ Views on
Professionalism

“ Workshop

Presentation Topics



Are you worthy of the learned profession?

In your gut.

Letter to Isham Reavis on November 5, 1855

My Dear Sir: □

*I have just reached home, and found your letter of the 23rd. ult. I am from home too much of my time, for a young man to read law with me advantageously. If you are resolutely determined to make a lawyer of yourself, the thing is more than half done already. It is but a small matter whether you read with any body or not. I did not read with any one. **Get the books, and read and study them till, you understand them in their principal features; and that is the main thing. It is of no consequence to be in a large town while you are reading.** I read at New-Salem, which never had three hundred people living in it. The books, and your capacity for understanding them, are just the same in all places. Mr. Dummer is a very clever man and an excellent lawyer (much better than I, in law-learning); and I have no doubt he will cheerfully tell you what books to read, and also loan you the books.*

Always bear in mind that your own resolution to succeed, is more important than any other one thing.

*Very truly
Your friend* □ *A. Lincoln*

"Let **reverence for the laws be** breathed by every American mother, to the lisping babe, that prattles on her lap – let it be taught in schools, in seminaries, and in college; – let it be written in Primmers, spelling books, and in Almanacs; - let it be preached from the pulpit, proclaimed in legislative halls, and enforced in courts of justice. And, in short, let it become **the political religion of the nation**; and let the old and the young, the rich and the poor, the grave and the gay of all sexes and tongues and colors and conditions, **sacrifice unceasingly upon its altars.**"

Abraham Lincoln in his January 1838 speech to the "Young Men's Lyceum in Springfield."

Ohio Supreme Court February 1997

“ As professionals we need to strive to meet **lofty goals and ideals in order to achieve the highest standards of a learned profession** ***, it is not the Court’s intention to regulate or to provide additional bases for discipline, but rather to facilitate the promotion of professionalism among Ohio’s lawyers, judges and legal educators. It is the Court’s hope that these individuals, their professional associations, law firms and educational institutions will utilize the creed and the aspirational ideals as guidelines for this purpose.

A Lawyers Creed- Life Blood

“ TO MY CLIENTS,

“ I offer loyalty, confidentiality, competence, diligence and my best judgment.

“ I shall represent you as I should want to be represented and be worthy of your trust.

“ I shall counsel you with respect to alternative methods to resolve disputes.

“ I shall endeavor to achieve your lawful objectives as expeditiously and economically as possible.

“

Adversaries

- “ TO THE OPPOSING PARTIES AND THEIR COUNSEL,
- “ I offer fairness, integrity and civility.
- “ I shall not knowingly make misleading or untrue statements of fact or law.
- “ I shall endeavor to consult with and cooperate with you in scheduling meetings, depositions and hearings.
- “ I shall avoid excessive and abusive discovery.
- “ I shall attempt to resolve differences and, if we fail, I shall strive to make our dispute a dignified one.

Legal Stage

“ TO THE COURTS AND OTHER TRIBUNALS, and to those who assist them, I offer **respect, candor and courtesy**.

“ Where **consistent with my client's interests**, I shall communicate with opposing counsel in an effort to avoid or resolve litigation.

“ I shall **attempt to agree** with other counsel on a voluntary exchange of information and on a plan for discovery.

“ I shall **do honor** to the search for justice.

With those whom I work &
play.

“ TO MY COLLEAGUES in
the practice of law, I offer
concern for your
reputation and well-
being. I shall extend to
you the same courtesy,
respect, candor and
dignity that I expect to
be extended to me.

“ TO THE PROFESSION, I offer assistance in keeping it a calling in the spirit of public service, and in promoting its understanding and an appreciation for it by the public.

“ I recognize that my actions and demeanor reflect upon our system of justice and our profession, and I shall conduct myself accordingly.

Ideals to Society.

“ TO THE PUBLIC AND OUR SYSTEM OF JUSTICE, I offer service. I shall devote some of my time

and skills to community, governmental and other activities that promote the common good.

“ I shall strive to improve the law and our legal system and to make the law and our legal system available to all.

a lawyer's
aspirational ideals
for their own clients

“

AS TO CLIENTS, I shall aspire:

“

a) **To expeditious and economical achievement of all client objectives.**

“

b) **To fully informed client decision-making. I should:**

“

1) Counsel clients about all forms of dispute resolution

“

2) Counsel clients about the value of cooperation as a means towards the productive resolution of disputes

“

3) maintain the sympathetic detachment that permits objective and independent advice to clients

“

4) Communicate promptly and clearly with clients, and

“

5) Reach clear agreements with clients concerning the nature of the representation.

“

c) **To fair and equitable fee agreements. I should:**

“

1) Discuss alternative methods of charging fees with all clients

“

2) Offer fee arrangements that reflect the true value of the services rendered

“

3) Reach agreements respecting fees with clients as early in the relationship as possible

“

4) Determine the amount of fees by consideration of many factors and not just time spent, and

A Lawyer's Aspirational Ideals

“ 5) Provide written agreements as to all fee arrangements.

“ d) To comply with the obligations of confidentiality and the avoidance of conflicting loyalties in a manner designed to achieve fidelity to clients.

“ e) To achieve and maintain a high level of competence in my field or fields of practice.

Lawyers to other parties & lawyers

“ AS TO OPPOSING PARTIES AND THEIR COUNSEL, I shall aspire:

“ a) **To cooperate with opposing counsel in a manner consistent with the competent representation of my client. I should:**

“ 1) notify opposing counsel in a timely fashion of any canceled appearance

“ 2) grant reasonable requests for extensions or scheduling changes, and

“ 3) Consult with opposing counsel in the scheduling of appearances, meetings and depositions.

“ b) **To treat opposing counsel in a manner consistent with his or her professional obligations and consistent with the dignity of the search for justice. I should:**

“ 1) not serve motions or pleadings in such a manner or at such a time as to preclude opportunity for a competent response

“ 2) be courteous and civil in all communications

Officer of the Court

- “ 3) Respond promptly to all requests by opposing counsel
- “ 4) avoid rudeness and other acts of disrespect in all meetings, including depositions and negotiations
- “ 5) Prepare documents that accurately reflect the agreement of all parties, and
- “ 6) Clearly identify all changes made in documents submitted by opposing counsel for review.
- “ AS TO THE COURTS AND OTHER TRIBUNALS, AND TO THOSE WHO ASSIST Them, I shall aspire:
- “ a) **To represent my clients in a manner consistent with the proper functioning of a fair, efficient and humane system of justice. I should:**
- “ 1) avoid nonessential litigation and nonessential pleading in litigation
- “ 2) explore the possibilities of settlement of all litigated matters
- “ 3) Seek noncoerced agreement between the parties on procedural and discovery matters
- “ 4) avoid all delays not dictated by competent representation of a client
- “ 5) Prevent misuses of court time by verifying the availability of key participants for scheduled appearances before the court and by being punctual, and

Collegiality

- “ 6) advise clients about the obligations of civility, courtesy, fairness, cooperation and other proper behavior expected of those who use our system of justice.
- “ b) To model for others the respect due to our courts. I should:
- “ 1) act with complete honesty
- “ 2) Know court rules and procedures
- “ 3) give appropriate deference to court rulings
- “ 4) avoid undue familiarity with members of the judiciary
- “ 5) avoid unfounded, unsubstantiated, or unjustified public criticism of members of the judiciary
- “ 6) Show respect by attire and demeanor
- “ 7) assist the judiciary in determining the applicable law, and
- “ 8) give recognition to the judiciary’s obligations of informed and impartial decision-making.
- “ AS TO MY COLLEAGUES IN THE PRACTICE OF LAW, I shall aspire:
- “ a) **To recognize and develop a professional interdependence for the benefit of our clients and the legal system**



Country, Democracy, Rights of
Society & Individuals

Historical

To the BAR

“ b) To defend you against unjust criticism, and

“ c) To offer you assistance with your personal and professional needs.

“ AS TO OUR PROFESSION, I shall aspire:

“ a) **To improve the practice of law. I should:**

“ 1) assist in continuing legal education efforts

“ 2) assist in organized bar activities

“ 3) assist law schools in the education of our future lawyers, and

“ 4) assist the judiciary in achieving objectives of *A Lawyer's Creed* and these aspirational ideals.

“ b) **To promote the understanding of and an appreciation for our profession by the public. I should:**

“ 1) use appropriate opportunities, publicly and privately, to comment upon the roles of lawyers in society and government, as well as in our system of justice, and

“ 2) Conduct myself always with an awareness that my actions and demeanor reflect upon our profession.

“ c) **To devote some of my time and skills to community, governmental and other activities that promote the common good.**

To Public & System

“ AS TO THE PUBLIC AND OUR SYSTEM OF JUSTICE, I shall aspire:

“ a) To consider the effect of my conduct on the image of our system of justice, including the effect of advertising methods.

“ b) To help provide the pro bono representation that is necessary to make our system of justice available to all.

“ c) To support organizations that provide pro bono representation to indigent clients.

“ d) To promote equality for all persons.

“ e) To improve our laws and legal system, by for example:

“ 1) Serving as a public official

“ 2) assisting in the education of the public concerning our laws and the legal system

“ 3) Commenting publicly upon our laws

“ 4) using other appropriate methods of effecting positive change in our laws and the legal system.

Workshop:

Rules

All need to participate.

II. COUNSELOR

RULE 2.1: ADVISOR

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations, such as moral, economic, social, and political factors, that may be relevant to the client's situation.

Comment

Scope of Advice

[1] A client is entitled to straightforward advice expressing the lawyer's honest assessment. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront. In presenting advice, a lawyer endeavors to sustain the client's morale and may put advice in as acceptable a form as honesty permits. However, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.

[2] Advice couched in narrow legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.

[3] A client may expressly or impliedly ask the lawyer for purely technical advice. When such a request is made by a client experienced in legal matters, the lawyer may accept it at face value. When such a request is made by a client inexperienced in legal matters, however, the lawyer's responsibility as advisor may include indicating that more may be involved than strictly legal considerations.

[4] Matters that go beyond strictly legal questions may also be in the domain of another profession. Family matters can involve problems within the professional competence of psychiatry, clinical psychology, or social work; business matters can involve problems within the competence of the accounting profession or of financial specialists. Where consultation with a professional in another field is itself something a competent lawyer would recommend, the lawyer should make such a recommendation. At the same time, a lawyer's advice at its best often consists of recommending a course of action in the face of conflicting recommendations of experts.

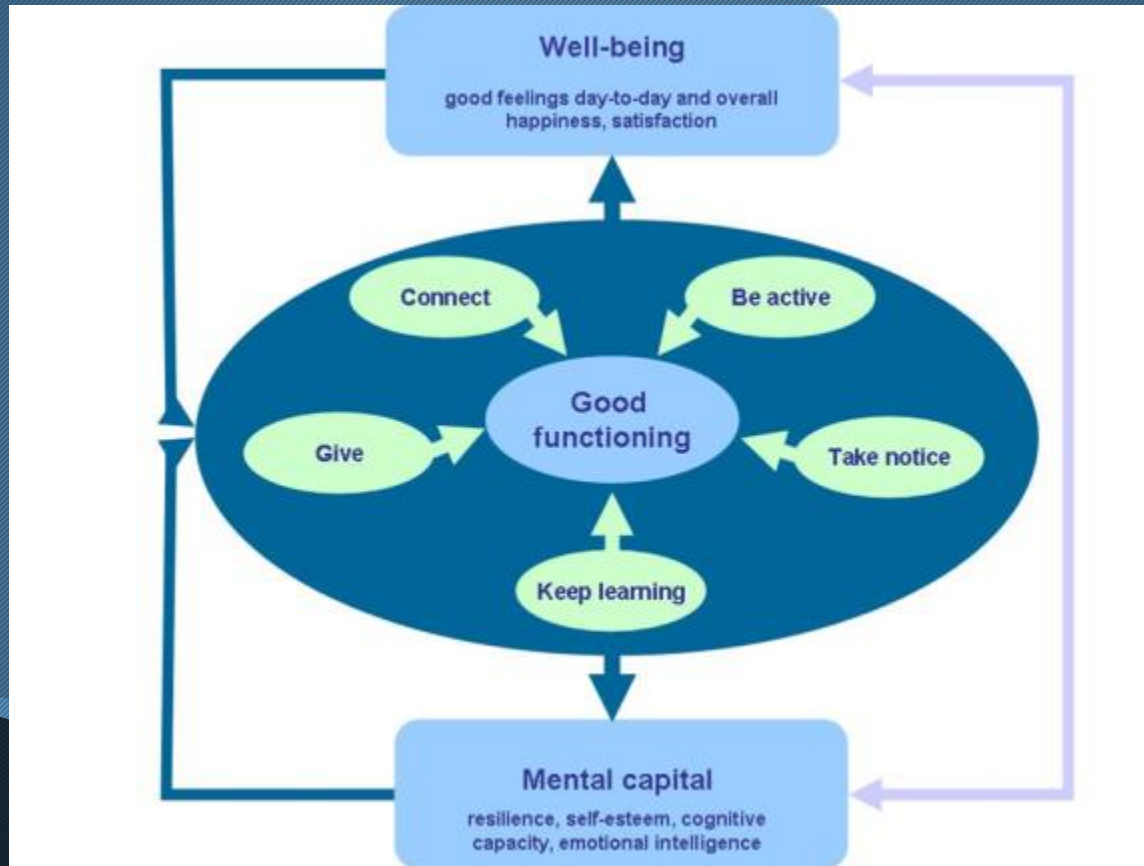
Offering Advice

[5] In general, a lawyer is not expected to give advice until asked by the client. However, when a lawyer knows that a client proposes a course of action that is likely to result in substantial adverse legal consequences to the client, the lawyer's duty to the client under Rule 1.4 may require that the lawyer offer advice if the client's course of action is related to the representation. Similarly, when a matter is likely to involve litigation, it may be necessary under Rule 1.4 to inform the client of forms of dispute resolution that might constitute reasonable alternatives to litigation.

Offering Advice

[5] (cont.) A lawyer ordinarily has no duty to initiate investigation of a client's affairs or to give advice that the client has indicated is unwanted, but a lawyer may initiate advice to a client when doing so appears to be in the client's interest.

Facts:



Why Your Problem-Solving Skills May Sharpen with Age

By Stephanie Bucklin, Live Science Contributor |
November 22, 2016 11:27am ET

Researchers reviewed more than 100 studies on problem solving and aging that were conducted from 1960 to 2016, looking at both data on people's behavior and evidence from brain scans.

The scientists found **that, generally, older adults' ability to focus and avoid distraction was not as strong as that of young adults' — but that this in turn may help older adults to perform better on some creativity and problem-solving tasks.**

Another study, published in 2006 in the journal *Psychology and Aging*, similarly found that adults ages 60 to 75 had a better memory for "distractors" than young adults ages 18 to 30 did. In this study, participants looked at drawings with "distractor" words superimposed over them. Again, although the participants were instructed to ignore the words, the researchers tested them on whether they remembered the words. Results showed that the older participants outperformed their younger counterparts.

Together, these studies suggest that although young adults may be better at disregarding distracting information, they later have poorer recall of this information.

Why Your Problem-Solving Skills May
Sharpen with Age

By Stephanie Bucklin, Live Science Contributor |
November 22, 2016 11:27am ET

FEES 5

“ Setting the Fee

“ Documenting the Fee Agreement

“ Securing the Fee

“ Communicating the Fee

“ Earning the Fee

Scenario One:

“ During contract negotiations, one party includes a clause (often in a form contract) that is often used but is invalid. The other party objects to the clause being included, but the drafting party responds that "if the clause is not valid, why worry about it?"

“ Why not leave the clause in?" The other party, lacking bargaining power, acquiesces but does not comply with the clause.

Lawyers Life

ABA Model-

Contract Lawyers

- “ Rule 1.1: The comment now indicates that a lawyer should ordinarily obtain informed consent before using contract lawyers, and the lawyer should reasonably believe that hiring the freelancer will contribute to the competent and ethical representation of the client. In determining whether hiring the freelancer is reasonable, one should consider the education and experience of the freelance lawyer, the type of work they will be performing, and the ethical rules in the jurisdiction, among other things.
- “ Rule 5.3: The comment now states that it is permissible to hire non lawyers outside of your firm, as long as you make reasonable efforts to ensure that the engagement is in line with your ethical obligations.
- “ Rule 5.5: The comment clarifies that you may not engage in outsourcing when it would facilitate the unauthorized practice of law.

LAWYERS Life

Scenario Two:

“ During contract negotiations, one party includes a clause that is often used but is invalid. The other party does not know about the invalidity but objects to the clause as unfair, unnecessary or undesirable.

“ The drafting party does not disclose their validity and prevails in keeping the clause in.

“ The other party then complies with the clause, never learning of its invalidity.

Scenario Three:

“ During contract negotiations, one party includes a clause that is often used but is invalid.

“ The other party does not object to the clause and later complies with the clause without learning of its invalidity.

Scenario Four:

“ During contract negotiations, one party includes a clause that is often used but has been the subject of criticism in commentary and has been invalidated in other jurisdictions.

“ The other party does not object to the clause and later complies with it without learning of the arguments against its validity.

Scenario Five:

“ During contract negotiations, one party includes a clause that is often used in similar contracts.

“ After contract formation, a court in that jurisdiction rules that these clauses are invalid (for instance, that the term is unconscionable or against public policy).

“ The drafting party learns of the decision, but the other party does not and subsequently complies with the clause.

Lawyer's Life

Thank you for
attending!

Professionalism

New Ohio Lawyer
Training Seminar-

Getaway C.L.E. Ltd. & Benjamin
S. Zacks, Esq.