




**American College of
Trial Lawyers**

**Code of Pretrial and
Trial Conduct**

Teaching Syllabus

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A photograph of a courtroom scene. A lawyer in a dark suit stands with his back to the camera, addressing a jury of ten diverse people seated at a wooden table. The scene is framed by a dark blue border.

Qualities of a Trial Lawyer



Trial lawyers are officers of the court. They are entrusted with a central role in the administration of justice in our society. Lawyers who engage in trial work have a special responsibility to strive for prompt, efficient, ethical, fair and just disposition of litigation.

A lawyer must in all professional conduct be honest, candid and fair.....



A lawyer must possess and apply the legal knowledge, skill, thoroughness and preparation necessary for excellent representation.

A lawyer must diligently, punctually and efficiently discharge the duties required by the representation in a manner consistent with the legitimate interests of the client.

ACTL Code, p. 3.



Obligations only truth to the Court



Judges and lawyers each have obligations to the court they serve. A lawyer must be respectful, diligent, candid and punctual in all dealings with the judiciary. A lawyer has a duty to promote the dignity and independence of the judiciary, and protect it against unjust and improper criticism and attack. A judge has a corresponding obligation to respect the dignity and independence of the lawyer, who is also an officer of the court.

ACTL Code, p. 4.



Problem 5



Problem 5

You are a member of an exclusive golf club with a highly rated golf course. A judge before whom you regularly appear and with whom you have a case currently pending is an avid golfer but lacks the financial means to join a private club and primarily plays public courses. The judge has commented in passing that he would enjoy the opportunity to play your course. Should you invite him?





Query whether the same conclusion would apply if the judge reimbursed the attorney for the guest fees or for the guest fees, food and drink?



Would the same concern exist if you had no active cases pending before the judge?



What if the judge was a long time personal or family friend or former colleague?



Motions and Pretrial Procedure



A lawyer has an obligation to cooperate with opposing counsel as a colleague in the preparation of the case for trial. Zealous representation of the client is not inconsistent with a collegial relationship with opposing counsel in service to the court. Motions and pretrial practice are often sources of friction among lawyers, which contributes to unnecessary cost and lack of collegiality in litigation.....



....The absence of respect, cooperation, and collegiality displayed by one lawyer toward another too often breeds more of the same in a downward spiral. Lawyers have an obligation to avoid such conduct and to promote a respectful, collegial relationship with opposing counsel.

ACTL Code, p. 6.



Problem 7



Problem 7

You represent Bill who is being sued by Joe, a former partner, over the break up of their partnership – Bill and Joe’s Famous Hot Dogs. There is a vast amount of personal hostility between the former partners. Additionally, the opposing lawyer, Alan Sims, is not one of your favorite opponents--he is quick tempered and has a reputation for not always telling the truth. In past litigation with Alan, he has misrepresented to the court “agreements” reached during phone conversations with you.



Problem 7

A pretrial conference has been scheduled by Judge Jolly. Judge Jolly has a practice of rescheduling pretrial conferences only if all parties consent to the continuance. Alan has requested your consent to continue the pretrial conference. Bill has made it clear that he does not want you to voluntarily agree to any procedural requests made on behalf of Joe. Bill also insists on attending all hearings and knows of the current pretrial conference setting. Under which of the following situations should you consent to the continuance?



Problem 7

1) *Alan is requesting the continuance for personal reasons related to an illness in the family. He is a solo practitioner. A continuance will not adversely affect your ability to defend the case.*



Problem 7

2) *Alan is requesting the continuance for personal reasons related to an illness in the family. He is in a large firm and has partners who can cover for him. If he does not attend the conference, it will require time, effort and expense to Joe in order to adequately prepare the partner to handle the conference. A continuance will not adversely affect your ability to defend the case.*



Problem 7

3) Alan is requesting the continuance, but gives no reason other than that he “needs it as a favor”. You strongly suspect that he has gotten behind on his preparation and simply wants more time to prepare. You also know from prior experiences that he will ultimately be prepared, but will have to work some late nights to do so. A continuance will not adversely affect your ability to defend the case.



Problem 7

4) Alan is requesting the continuance but gives no reason other than that he “needs it as a favor”. You strongly suspect that he wishes to attend a sporting event out of town. A continuance will not adversely affect your ability to defend the case.



Problem 7

5) Alan is requesting the continuance and you know that he has not secured affidavits from experts that are necessary to defeat your Motion for Partial Summary Judgment. The Motion for Partial Summary Judgment is set to be argued at the conference. You also believe that, given enough time, Alan will be able to find experts who will provide the necessary affidavits.



Problem 12



Problem 12

During voir dire, in a personal injury case, defense counsel asked a member of the venire (1) whether he had ever suffered a personal injury in an accident and, (2) whether he had ever filed a lawsuit. The venire member responded to both questions in the negative. Based on an examination of court records, the defense already knew that the venire member had filed an action seeking damages for personal injuries allegedly suffered in an accident and had received a substantial jury verdict at trial.



Problem 12


The defense decided to use available peremptory strikes on other members of the venire and did not strike the venire member who filed a personal injury lawsuit.




The jury returned a substantial verdict for plaintiff. In a post trial motion, must defense counsel disclose that they already knew of the venire member's injuries and lawsuit at the time the question was asked during voir dire?





 *Should counsel have revealed to the judge the falsehood as soon as it occurred during voir dire?*

 *Does counsel have a duty to self-report a violation of Model Rule 3.3?*



Problem 13



Problem 13

After a favorable jury verdict in a personal injury case, but before the expiration of the time to appeal from the judgment entered on that verdict, plaintiff's counsel properly conducted interviews with the jurors, who had been discharged by the court. One juror informed plaintiff's counsel that he had suffered injuries similar to those suffered by plaintiff, but was unsuccessful in the lawsuit he filed. He said that he knew from his own experience how painful and severe plaintiff's injuries were.



Problem 13

Defendant's counsel had asked during voir dire whether any member of the venire (1) had suffered a personal injury or (2) had ever filed a lawsuit. The juror's response to each question was negative.



Should plaintiff's counsel report this conversation to the court and defendant's counsel?

