



***Real Zeal:***

# **The Thin Line Between Zealous Advocacy and Unethical Conduct**

December 11, 2019

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## Real Zeal

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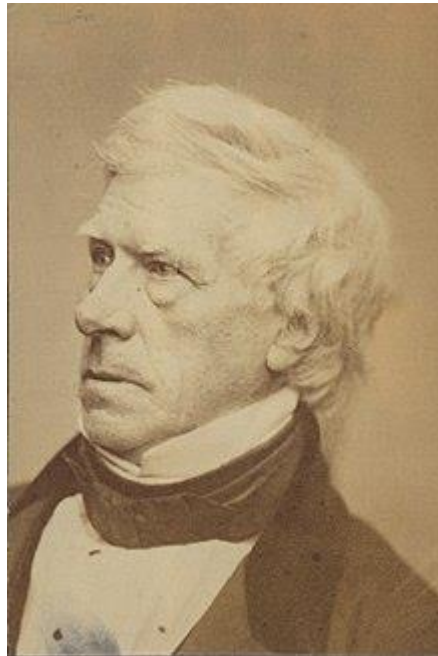
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# Origins of Zealous Advocacy

- Lord Henry Brougham, *Lord High Chancellor of Great Britain*
  - In 1820, represented Princess of Wales Caroline of Brunswick against charges of adultery by the House of Lords



*“An advocate by the sacred duty which he owes his client, knows, in the discharge of that office, but one person in the world, that client and none other. To save that client by all expedient means—to protect that client at all hazards and costs to all others, and among others to himself—is the highest and most unquestioned of his duties; and he must not regard the alarm—the suffering—the torment—the destruction—which he may bring upon any other. Nay, separating even the duties of a patriot from those of an advocate and casting them, if need be, to the wind, he must go on reckless of the consequences, if his fate should unhappily be to involve his country in confusion for his client’s protection.”*

# Origins of Zealous Advocacy

- David Hoffman
  - Baltimore lawyer, professor at University of Maryland
  - Wrote first study of American law in 1817 and America's first code of legal ethics



# Origins of Zealous Advocacy

- David Hoffman – *50 Resolutions in Regard to Professional Deportment* (1836)
  - Resolution 1: “I will never permit zeal to carry me beyond the limits of sobriety and decorum, but bear in mind, with Sir Edward Coke, that ‘if a river swell beyond its banks, it loseth its own channel’”.
  - Resolution 33: “I am resolved to make my own, and not the conscience of others, my sole guide. What is morally wrong cannot be professionally right, however it may be sanctioned by time or custom.”

# Origins of Zealous Advocacy

## *The ABA Model Rules of Professional Conduct*

### **ABA Canons of Professional Ethics (1908)**

Canon 15: “[A] lawyer owes entire devotion to the interest of the client, *warm zeal* in the maintenance and defense of his rights and the exertion of his utmost learning and ability.”

### **ABA Model Code of Professional Responsibility (1969)**

Canon 7: “A lawyer should represent a client *zealously*, within the bounds of the law.”



# Origins of Zealous Advocacy

## *The ABA Model Rules of Professional Conduct*

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

*ABA Model Rule 1.3: Diligence*

# Origins of Zealous Advocacy

## *The ABA Model Rules of Professional Conduct*

“A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. *A lawyer must also act with commitment and dedication to the interests of the client and with **zeal in advocacy** upon the client's behalf.* A lawyer is not bound, however, to press for every advantage that might be realized for a client. For example, a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued. See Rule 1.2. The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.”

*Rule 1.3 Diligence - Comment*

“As a representative of clients, a lawyer performs various functions. As advisory, a lawyer provides a client with an informed understanding of the client’s legal rights and obligations and explains their practical implications. *As advocate, a lawyer **zealously** asserts the client’s position under the rules of the adversary system.*”

“A lawyer’s responsibilities as a representative of clients, an officer of the legal system, and a public citizen are usually harmonious. *Thus, when an opposing party is well represented, a lawyer can be a **zealous advocate** on behalf of a client and at the same time assume that justice is being done.*”

“In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. *These principles include the lawyer's obligation **zealously** to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.*

*ABA Model Rules of Professional Conduct,  
Preamble: A Lawyer’s Responsibilities*

# State Rules of Professional Conduct

## *“Zeal in Advocacy” States*

Alabama

Alaska

Arkansas

Colorado

Connecticut

Delaware

Florida

Georgia

Hawaii

Idaho

Illinois

Iowa

Kansas

Kentucky

Maryland

Michigan

Minnesota

Mississippi

Missouri

Nebraska

New Hampshire

New Mexico

North Carolina

North Dakota

Oklahoma

Pennsylvania

Rhode Island

South Carolina

Tennessee

Texas

Utah

Vermont

Virginia

West Virginia

Wisconsin

Wyoming

# State Rules of Professional Conduct

## *The Last Ones Standing*

- Massachusetts Rule of Professional Conduct 1.3: Diligence
  - “A lawyer shall act with reasonable diligence and promptness in representing a client. The lawyer *should* represent a client zealously within the bounds of the law.”
- District of Columbia Rule of Professional Conduct 1.3: Diligence and Zeal
  - “A lawyer *shall* represent a client zealously and diligently within the bounds of the law.”

# State Rules of Professional Conduct

## *Zealous Advocacy in Tennessee*

“[The Court is] wary of creating a standard that would inhibit attorneys from aggressively and zealously pursuing their clients’ interests. The law is not static and requires lawyers to push its boundaries, including seeking change therein. When an attorney is near, or even slips slightly over, the line where zealous representation goes too far, we will indulge a presumption in favor of the attorney advocating for his or her client in order to provide breathing room for such representation. However, that does not mean that the practice of law is unbounded.”

Flowers v. Board of Professional Responsibility,  
314 S.W.3d 882, 897 (2010).

# State Rules of Professional Conduct

## *Zealous Advocacy in Tennessee*

### Nashville Bar Association – Lawyer’s Creed of Professionalism

- “I will advise my client that civility and courtesy are expected and are consistent with zealous advocacy”
- “In all matters of legal representation, I will conduct myself with dignity, avoid making groundless objections and refrain from engaging in acts of rudeness or disrespect, including making disparaging personal remarks toward adverse parties, counsel and witnesses and making demeaning comments regarding race, religion, national origin or gender.”
- “I will be a vigorous and zealous advocate on behalf of my client, while recognizing, as an officer of the Court, that excessive zeal may be detrimental to my client’s interests as well as the proper functioning of our system of justice.”

# State Rules of Professional Conduct

## *Zealous Advocacy in Tennessee*

### Memphis Bar Association – Guidelines for Professional Courtesy and Conduct

- “A lawyer’s duty to each client is to represent that client zealously within the bounds of the law. In striving to fulfill that duty, a lawyer must ever be conscious of the broader duty owed to the legal system which is designed to resolve human and societal problems in a rational and logical manner.”
- “A lawyer should treat the opponent, the opposing party, the court and the members of the court staff with courtesy and civility, conducting business in a professional manner at all times.”
- “A lawyer has no right, even when called upon by a client to do so, to abuse or to indulge in offensive conduct towards the opposite party. A lawyer should always treat adverse witnesses and parties with fairness and due consideration.”



# State Rules of Professional Conduct

## *California's Hidden Zeal*

- a) A lawyer shall not intentionally, repeatedly, recklessly or with gross negligence fail to act with reasonable diligence in representing a client.
- b) For purposes of this rule, “reasonable diligence” shall mean that a lawyer acts with commitment and dedication to the interests of the client and does not neglect or disregard, or unduly delay a legal matter entrusted to the lawyer.

*California Rule of Professional Conduct 1.3 (Diligence)*

# State Rules of Professional Conduct

## *California's Hidden Zeal*

The State Bar of California Attorney Guidelines of Civility and Professionalism (2009)

“As officers of the court with responsibilities to the administration of justice, attorneys have an obligation to be professional with clients, other parties and counsel, the courts and the public. This obligation includes civility, professional integrity, personal dignity, candor, diligence, respect, courtesy, and cooperation, all of which are essential to the fair administration of justice and conflict resolution.”

# *But Zealous Advocacy is Alive and Well in the Golden State ...*

- “Attorneys are encouraged to comply with both the spirit and letter of these guidelines, recognizing that complying with these guidelines does not in any way denigrate the attorney’s duty of zealous representation.”
  - California Attorney Guidelines of Civility and Professionalism (2009).
- “The duty of a lawyer both to his client and to the legal system, is to represent his client zealously within the bounds of the law.”
  - People v. McKenzie, 34 Cal.3d 616, 634 (1983).

# State Rules of Professional Conduct

## *“The Arizona Solution”*

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

*Arizona Rule of Professional Conduct 1.3 (Diligence)*

# State Rules of Professional Conduct

## *“The Arizona Solution”*

### Ethical Rule 4.4: Respect for Rights of Others

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

# State Rules of Professional Conduct

## *“The Arizona Solution”*

### Additional Weapons Against Offensive Behavior

- “The duties and obligations of members [of the Arizona bar] shall be ... [t]o avoid engaging in *unprofessional conduct* and to advance no fact prejudicial to the honor or reputation of a party or a witness unless required by the duties to a client or the tribunal.”

*Arizona Supreme Court Rule 41(g)*

- “Grounds for discipline of members and non-members [of the Arizona bar] include the following:

(a) Violation of a rule of professional conduct. This includes violations of professional conduct rules in effect in any jurisdiction; ...

(i) *Unprofessional conduct* as defined in Rule 31(a)(2)(E).”

*Arizona Supreme Court Rule 54*

# State Rules of Professional Conduct

## *“Reasonable” Representation in Ohio*

“Neither Model Rule 1.3 nor any of the Model Rules on advocacy states a duty of ‘zealous representation.’ The reference to acting ‘with zeal in advocacy’ is deleted from Comment [1] because ‘zeal’ is often invoked as an excuse for unprofessional behavior. Despite the title of Canon 7 of the Ohio Code of Professional Responsibility and the content of EC 7-1, no disciplinary rule requires ‘zealous’ advocacy.”

*Ohio Rules of Professional Conduct,  
Comments to Rule 1.3*

# State Rules of Professional Conduct

## *“Reasonable” Representation in Ohio*

“Lawyers play a vital role in the preservation of society. A lawyer’s conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer’s business and personal affairs. A lawyer should use the law’s procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers, and public officials. Adjudicatory officials, not being wholly free to defend themselves, are entitled to receive the support of the bar against unjustified criticism. Although a lawyer, as a citizen, has a right to criticize such officials, the lawyer should do so with restraint and avoid intemperate statements that tend to lessen public confidence in the legal system. While it is a lawyer’s duty, when necessary, to challenge the rectitude of official action, it is also a lawyer’s duty to uphold legal process.”

– *Ohio Rules of Professional Conduct, Preamble: A Lawyer’s Responsibilities*



# State Rules of Professional Conduct

## *“Reasonable” Representation in Ohio*

“The law demands that all counsel foster respect and dignity for those who administer and enforce the law. Conduct that is degrading and disrespectful to judges and fellow attorneys is neither zealous advocacy nor a legitimate trial tactic. ... Attorneys must advocate within the rules of law and act with civility and professionalism. Counsel must recognize that in every trial, the integrity of the process is as much at stake as are the interests of the accused.”

Columbus Bar Assn. v. Vogel, 117 Ohio St. 3d 108, 112 (2008).

# The Z-word's Bad Rap

- “[I]n recent years, public opinion has evidenced dissatisfaction with th[e] traditional role of lawyer as zealous advocate. In particular, scholars and practitioners have challenged the role as being improperly regulated, morally bankrupt, inefficient, damaging to the legal profession’s image and prejudicial to the administration of justice.”
  - Paul Lowell Haines, *Restraining the Overly Zealous Advocate: Time for Judicial Intervention* (Indiana Law Journal, 1990)
- “[T]he legal profession is the last bastion of unfettered, unapologetic nastiness, proudly flying the flag of zealous client representation.”
  - Noah Feldman, *Lawyers Can Be Zealous Without Being Nasty* (Bloomberg, 2016)

# The Z-word's Bad Rap

## *What Zealous Advocacy Isn't*

- Zealous advocacy is NOT ***unethical behavior***
  - “By definition, then, an attorney who violates court orders and breaks ethical rules is not zealously advocating his client’s cause.”
    - State v. Clark, 124 P.3d 235, 242 (Utah 2005).
  - “[All attorneys must remain aware of the principle that zealous advocacy does not displace their obligations as officers of the court.”
    - Azar v. Garza, 138 S. Ct. 1790, 1793 (2018).
  - “[T]he idea that there is a conflict between zealous advocacy and ethical and professional behavior is completely false. There is no conflict between zealous advocacy and professional conduct.”
    - In re Moncier, 550 F. Supp. 2d 768, 807 (E.D. Tenn. 2008), *aff’d sub nom.*, In re Moncier, 329 F. App’x 636 (6th Cir. 2009).

# The Z-word's Bad Rap

## *What Zealous Advocacy Isn't*

Zealous advocacy is NOT *incivility*

- *“Being a zealous advocate does not mean that one abandons all sense of professionalism, courtesy and common decency.”*
  - Shao ex rel. Shao v. HCA Health Servs. of Tenn., Inc., No. M201802040COAR3CV, 2019 WL 4418363, at \*1 (Tenn. Ct. App. Sept. 16, 2019).
- *“The duty of zealous representation does not supersede the responsibility of counsel to work cooperatively to resolve disputes . . . .”*
  - Crown Equip. Corp. v. Raymond Corp., No. 3:93CV7356, 1994 WL 841008, at \*1 (N.D. Ohio Oct. 5, 1994).

# The Z-word's Bad Rap

## *What Zealous Advocacy Isn't*

Zealous advocacy is NOT *incivility*

- *“It always saddens the court when zealous representation and/or a lawyer’s personal identification with a client’s cause results in the legal issues becoming ‘personal.’ Civility is a goal to be attained by judges and attorneys. The attorneys for both sides got a little testy at times. In the long run, people often get more by honey and sugar instead of vinegar and other noxious liquids.”*
  - Little v. City of Chattanooga, No. E2011-027-24-COAR3CV, 2012 WL 4358174, at \*11 (Tenn. Ct. App. Sept. 25, 2012).

# The Z-word's Bad Rap

## *What Zealous Advocacy Isn't*

Zealous advocacy should NOT be detrimental to client interests

- *“While the Court recognizes that Mr. Hayes may believe he is zealously advocating for his client, the Court also believes Mr. Hayes may fail to recognize that excessive zeal may be detrimental to his client’s interests.”*
  - Beaman v. Beaman, No. M201801651COAT10BCV, 2018 WL 5099778, at \*11 (Tenn. Ct. App. Oct. 19, 2018).

# What Zealous Advocacy Is

## *ABA Rules*

“In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer’s responsibilities to clients, to the legal system and to the lawyer’s own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. ***These principles include the lawyer’s obligation zealously to protect and pursue a client’s legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.***”

*ABA Model Rules of Professional Conduct, Preamble and Scope*

# What Zealous Advocacy Is

## *ABA Rules*

Zealous advocacy is:

- 1) Protecting and pursuing a client's legitimate interests within the bounds of the law; and
- 2) Maintaining a professional, courteous and civil attitude toward all persons involved in the legal system



# What Zealous Advocacy Is

*Protecting and pursuing a client's legitimate interests within the bounds of the law*

*Right to petition the government for redress of grievances*

“[T]he Petition Clause protects the right of individuals to appeal to courts and other forums established by the government for resolution of legal disputes. ‘[T]he right of access to courts for redress of wrongs is an aspect of the First Amendment right to petition the government.’ *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 896–897 (1984).”

*Borough of Duryea, Pa. v. Guarnieri*, 564 U.S. 379, 387 (2011).

# What Zealous Advocacy Is

*Protecting and pursuing a client's legitimate interests within the bounds of the law*

## *Right to present a defense*

“Due process requires that there be an opportunity to present every available defense.”

Lindsey v. Normet, 405 U.S. 56, 66 (1972)  
(quoting American Surety Co. v. Baldwin, 287 U.S. 156, 168 (1932)).

# What Zealous Advocacy Is

*Protecting and pursuing a client's legitimate interests within the bounds of the law*

## ABA MRPC 1.3 Diligence

*“A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. A lawyer is not bound, however, to press for every advantage that might be realized for a client. For example, a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued. See Rule 1.2. The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.”*

# What Zealous Advocacy Is

*Protecting and pursuing a client's legitimate interests within the bounds of the law*

“An attorney’s ethical obligation of zealous advocacy on behalf of his or her client does not amount to *carte blanche* to burden the federal courts by pursuing claims that are frivolous on the merits, or by pursuing nonfrivolous claims through the use of multiplicative litigation tactics that are harassing, dilatory, or otherwise ‘unreasonable and vexatious.’ Accordingly, at least when an attorney knows or reasonably should know that a claim pursued is frivolous, or that his or her litigation tactics will needlessly obstruct the litigation of nonfrivolous claims, a trial court does not err by assessing fees attributable to such actions against the attorney.”

*Jones v. Continental Corp.*, 789 F.2d 1225, 1230 (6th Cir.1986).

# What Zealous Advocacy Is

*Protecting and pursuing a client's legitimate interests within the bounds of the law*

## ABA MRPC 3.1 Meritorious Claims

“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.”

# What Zealous Advocacy Is

*Protecting and pursuing a client's legitimate interests within the bounds of the law*

## ABA MRPC 3.1 Meritorious Claims, Comment

*“The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. . . . What is required of lawyers, however, is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions. Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is frivolous, however, if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law.”*

# What Zealous Advocacy Is

*Protecting and pursuing a client's legitimate interests within the bounds of the law*

*“Zealous advocacy is the cornerstone of good lawyering and the bedrock of a just legal system. However, zeal cannot give way to unprofessionalism, noncompliance with court rules, or, most importantly, to violations of the ethical duties of candor to the courts and to opposing counsel.”*

Thomas v. City of North Las Vegas, 127 P.3d 1057, 1067 (Nev. S. Ct. 2006).

# What Zealous Advocacy Is

*Protecting and pursuing a client's legitimate interests within the bounds of the law*

## ABA MRPC 3.3 Candor to the Tribunal

“This Rule sets forth the special duties of lawyers as officers of the court to *avoid conduct that undermines the integrity of the adjudicative process*. A lawyer acting as an advocate in an adjudicative proceeding has an *obligation to present the client's case with persuasive force*. Performance of that duty while maintaining confidences of the client, however, is *qualified by the advocate's duty of candor to the tribunal*. Consequently, although a lawyer in an adversary proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause, the lawyer *must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false.*”



# What Zealous Advocacy Is

*Maintaining a professional, courteous and civil attitude toward all persons involved in the legal system*

*“I must address the methods by which both parties chose to brief this matter and submit it to the Court. Personal attacks on the other party’s behavior or legal skills are unnecessary and unprofessional. Zealous advocacy is not rude advocacy.”*

Isler v. New Mexico Activities Assn, No. CV 10-00009 MV/WPL, 2011 WL 13289706, at \*2 (D.N.M. Aug. 18, 2011).

# What Zealous Advocacy Is

*Maintaining a professional, courteous and civil attitude toward all persons involved in the legal system*

*“Finally, the court is concerned with an apparent lack of professionalism and civility exhibited by one or more attorneys in this case. I strongly suggest that all counsel step back and take a deep breath. While zealous advocacy is a virtue, neither your clients nor the legal profession are well served by pettiness and vitriol. A word to the wise should be sufficient.”*

O’Dwyer v. United States, No. CIV.A. 06-10811, 2007 WL 2571912, at \*5 (E.D. La. Sept. 4, 2007).

# What Zealous Advocacy Is

*Maintaining a professional, courteous and civil attitude toward all persons involved in the legal system*

*“[Deteriorating civility] interrupts the administration of justice. It makes the practice of law less rewarding. It robs a lawyer of the sense of dignity and self-worth that should come from a learned profession. Not least of all, it . . . brings with it all the problems . . . that accompany low public regard for lawyers and lack of confidence in the justice system.”*

Former ABA President Lee Cooper

# What Zealous Advocacy Is

*Maintaining a professional, courteous and civil attitude toward all persons involved in the legal system*

## **ABA MPRC Rules Relevant to Civility**

- Rule 1.3: Diligence
- Rule 3.1: Meritorious Claims and Contentions
- Rule 3.4: Fairness to Opposing Party
- Rule 3.5: Impartiality and Decorum of the Tribunal
- Rule 4.1: Truthfulness in Statements to Others
- Rule 4.4: Respect for Rights of Third Persons
- Rule 8.4: Misconduct

# What Zealous Advocacy Is

*Maintaining a professional, courteous and civil attitude toward all persons involved in the legal system*

- Twice since 1988, ABA has urged adoption of civility codes
- As of 2017, 27 state bar associations have adopted civility codes; 14 state supreme courts
  - Tennessee Bar Association has not adopted a civility code
    - Memphis Bar Association – Guidelines for Professional Courtesy and Conduct
    - Nashville Bar Association – Lawyer’s Creed of Professionalism

# What Zealous Advocacy Is

*Maintaining a professional, courteous and civil attitude toward all persons involved in the legal system*

## In 2016, ABA Proposed the Guidelines for Litigation Conduct

- “[Guidelines] are aspirational and are not to be used as a basis for litigation, liability, discipline, sanctions, or penalties of any type. The Guidelines are not designed to promote punishment, but rather to elevate the tenor of practice – to set a voluntary higher standard.”
- Modeled on the Standards for Professional Conduct adopted by the United States Court of Appeals for the Seventh Circuit

# What Zealous Advocacy Is

*Maintaining a professional, courteous and civil attitude toward all persons involved in the legal system*

## ABA Guidelines for Litigation Conduct

- Introduction
- Preamble
- Lawyers' Duties to Other Counsel
- Lawyers' Duties to the Court
- Courts' Duties to Lawyers
- Judges' Duties to Each Other
- Civility Pledge: Employers of Attorneys
- Civility Pledge: Clients
- Civility Pledge: Judges

# What Zealous Advocacy Is

*Maintaining a professional, courteous and civil attitude toward all persons involved in the legal system*

## ABA Guidelines for Litigation Conduct

- Preamble

“A lawyer’s conduct should be characterized at all times by personal courtesy and professional integrity in the fullest sense of those terms. In fulfilling our duty to represent a client vigorously as lawyers, we will be mindful of our obligations to the administration of justice, which is a truth-seeking process designed to resolve human and societal problems in a rational, peaceful, and efficient manner.”



# What Zealous Advocacy Is

*Maintaining a professional, courteous and civil attitude toward all persons involved in the legal system*

## ABA Guidelines for Litigation Conduct

- Lawyers' Duties to Other Counsel

“We will practice our profession with a continuing awareness that our role is to zealously advance the legitimate interests of our clients. In our dealings with others we will not reflect the ill feelings of our clients. We will treat all other counsel, parties, and witnesses in a civil and courteous manner, not only in court, but also in all other written and oral communications. We will refrain from acting upon or manifesting bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status toward any participant in the legal process.”

# REAL ZEAL

# “Texas Style Deposition”



# Zealous Advocacy In House



# California Zeal



# A Local Celebrity



THE COURT: It's a very simple question then, understanding how those conflicts can arise. Do you want Mr. Moncier to continue representing you in this case or do you want me to see if I can find somebody who has no connection with any other codefendant or potential codefendant in this case?

MR. MONCIER: Once again, Your Honor-

THE COURT: Mr. Moncier-

MR. MONCIER: He makes-

THE COURT: Mr. Moncier, you be quiet.

MR. MONCIER: May I approach the bench?

THE COURT: You may stand there and do what I told you to do until Mr. Vassar answers this question.

MR. MONCIER: For the record, Your Honor, I object without him having-

THE COURT: Mr. Moncier, one more word and you're going to jail.

MR. MONCIER: May I speak to my-

THE COURT: Officers, take him into custody. We'll be in recess.

“Zealous advocacy is the buzz word which is squeezing decency and civility out of the law profession. Zealous advocacy is the doctrine which excuses, without apology, outrageous and unconscionable conduct so long as it is done ostensibly for a client, and of course, for a price. Zealous advocacy is the modern day plague which infects and weakens the truth-finding process and which makes a mockery of the lawyers’ claim to officer-of-the-court status.”

- Honorable Judge Richard Curry, Illinois Circuit Court, Cook County



# Don't stop being zealous!

*“We welcome zealous advocacy within the bounds of the facts and law of a case.”*

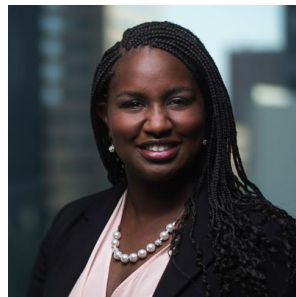
*Moss v. Moss, No. M2010-01064-COA-R3CV, 2011 WL 1459170, at \*2 (Tenn. Ct. App. Apr. 15, 2011).*

# Questions/Comments?



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