

Garden State CLE Presents:

A Popcorn CLE:

**Professionalism in N.J. Attorney
Client Relations**



Lesson Plan

1. Fundamentals of Professionalism required of New Jersey Attorneys:

- 1. Respect for all people involved in the judicial process, including witnesses, victims, court staff, adversaries, employees, judicial officers and staff;**
- 2. Honest interactions and utterances;**
- 3. Integrity and keeping promises;**
- 4. Open, professional communications and collegiality;**
- 5. Tolerating differing points of view and advocacy; and**
- 6. Commitment to fair administration of justice and the judicial process.**

2. What the Supreme Court Expects, as expressed through the disciplinary case law”

No one questions the right of an attorney to represent his client with all the vigor at his command. A lawyer should fight hard, but he must always fight fair. Vilification, intimidation, abuse and threats have no place in the legal arsenal. Common courtesy and civility are expected from a member of the bar whether he appears before the State's highest court or presents a matter to some administrative body. Whenever and wherever he appears in his capacity as an attorney, he must measure up to the standards of conduct set forth in the Disciplinary Rules. Chief Justice Burger of the United States Supreme Court [has] said:

“[E]thics, manners and civility in the courtroom are essential ingredients and the lubricants of the inherently contentious adversary system of justice.”

In re Mezzacca, 67 N.J. 387, 389-390 (1975)

The whole concept of the rule of law is bottomed on respect for the law and the courts and judges who administer it. Attorneys who practice law and appear in the courts are officers of the court. An attorney who exhibits the lack of civility, good manners and common courtesy here displayed tarnishes the entire image of what the bar stands for.

In re McAlevy, 69 N.J. 349, 351-352 (1976)

[As applied to courtroom decorum, in New Jersey, there is] a requirement that lawyers display a courteous and respectful attitude not only towards the court but towards opposing counsel, parties in the case, witnesses, court officers, clerks-in short, towards everyone and anyone who has anything to do with the legal process. Bullying and insults are no part of a lawyer's arsenal.

The prohibition of our Disciplinary Rules against “undignified or discourteous conduct degrading to a tribunal”, is not for the sake of the presiding judge but for the sake of the office he or she holds. Respect for and confidence in the judicial office are essential to the maintenance of any orderly system of justice. This is not to suggest that a lawyer should be other than vigorous, even persistent, in the presentation of a case; nor is it to overlook the reciprocal responsibility of courtesy and respect that the judge owes to the lawyer. Unless these respective obligations are scrupulously honored, a trial court will be inhibited in performing two essential tasks: sifting through conflicting versions of the facts to discover where the truth lies, and applying the correct legal principles to the facts as found. Under the best of circumstances these tasks are difficult; without an orderly environment they can be rendered impossible.

Unless order [be] maintained in the courtroom and disruption prevented, reason cannot prevail and constitutional rights to liberty, freedom and equality under law cannot be protected. The dignity, decorum and courtesy [that] have traditionally characterized the courts of civilized nations are not empty formalities. They are essential to an atmosphere in which justice can be done.

In re Vincenti, 92 N.J. 591, 603-604 (1983)

3. As required by the N.J. Rules of Professional Conduct.

RPC 3.2. Expediting Litigation

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client and shall treat with courtesy and consideration all persons involved in the legal process.

RPC 8.4. Misconduct

It is professional misconduct for a lawyer to:

- **(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;**
- **(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;**
- **(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;**
- **(d) engage in conduct that is prejudicial to the administration of justice;**

The evidence amply demonstrates that respondent engaged in a course of harassment and intimidation directed against persons engaged in adversarial positions in the course of an actively-litigated case in the Superior Court. Respondent challenged opposing counsel to a fight on several occasions; he also challenged a witness, the defendants' investigator, to a fight. He used loud, abusive, and profane language against his adversary and opposing witness. On at least one occasion, his language included racial innuendo. This conduct was pervasive and recurrent, continuing from the time of the trial call until after the filing of a motion for a new trial. It indisputably was, or had the clear capacity to be, disruptive, distracting, and unsettling to persons having significant responsibilities and important roles in the handling of the litigation.

This conduct violates [RPC 3.2](#) and [8.4\(d\)](#). Respondent's conduct is intolerable because it has an effect that tends to undermine the proper administration of justice. Conduct calculated to intimidate and distract those who, though in an adversarial position, have independent responsibilities and important roles in the effective administration of justice cannot be countenanced. The adversary system depends on the effectiveness of adversary counsel. Our rules of procedure are designed in large measure to bring to litigation adversaries who have an equal opportunity and comparable ability in the representation of opposing parties in order to assure a just result. Thus, the undue and extraneous oppression and harassment of participants involved in litigation can impair their effectiveness, not only as advocates for their clients, but also as officers of the court. An attorney who consciously and intentionally engages in such conduct perverts advocacy. Such conduct redounds only to the detriment of the proper administration of justice, which depends vitally on the reasonable balance between adversaries and on opposing counsels' respect, trust, and knowledge of the adversary system. There cannot be genuine respect of the adversary system without respect for the adversary, and disrespect for the adversary system bespeaks disrespect for the court and the proper administration of justice.

These considerations have importuned us to stress repeatedly that attorneys are required to act with common courtesy and civility at all times in their dealings with those concerned with the legal process.

In re Vincenti, 114 N.J. 275, 281-282 (1989)

Preparing a Client Defense

NJSA 2C:28-5

2C:28-5. Tampering with witnesses and informants; retaliation against them; bribery of witnesses or informants

a. Tampering. A person commits an offense if, believing that an official proceeding or investigation is pending or about to be instituted or has been instituted, he knowingly engages in conduct which a reasonable person would believe would cause a witness or informant to:

(1) Testify or inform falsely;

(2) Withhold any testimony, information, document or thing;

(3) Elude legal process summoning him to testify or supply evidence;

(4) Absent himself from any proceeding or investigation to which he has been legally summoned; or

(5) Otherwise obstruct, delay, prevent or impede an official proceeding or investigation.

The Correct way to prepare a client's defense

Anatomy of a Murder - 1959



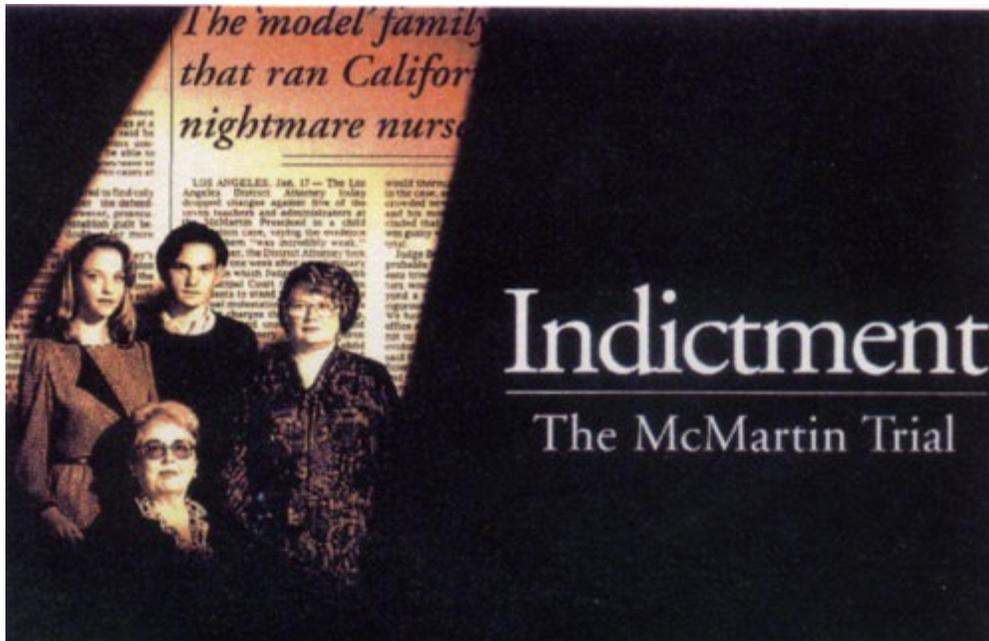
The wrong way to prepare a client's defense

Intolerable Cruelty - 2003



Challenging Your Client's Side of the Story

Indictment - 1995



Preparing your client to testify

The Verdict – 1982



Ethically Setting Client Expectations

Scarface – 1983



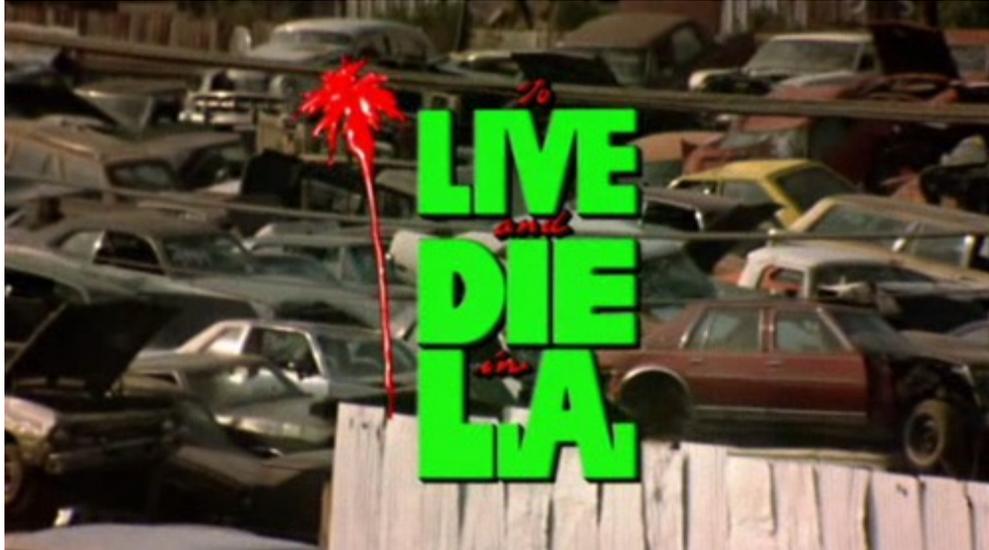
Conflicts of interest

To Live and Die in L.A. – 1985



Civility in Private Dealings

To Live and Die in L.A. – 1985



Legal fees

The Lincoln Lawyer – 2011



When your client has scammed You

Primal Fear – 1996



When the lack of Professionalism results in The American Nightmare

Indictment - 1995

