



LAWYER TO LAWYER MENTORING PROGRAM
WORKSHEET I
INTRODUCTION TO A LAWYER'S CREED AND A LAWYER'S ASPIRATIONAL IDEALS

Worksheet I is intended to facilitate a meaningful discussion about *A Lawyer's Creed* and *A Lawyer's Aspirational Ideals*, with suggestions of practical application of the concepts contained therein.

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- Reflect together on what it means to be an attorney and how the *Lawyer's Creed* shapes that meaning.
- Identify different roles an attorney plays. Discuss how the *Lawyer's Creed* and *Lawyer's Aspirational Ideals* support an attorney's actions in each of those roles.
- Give to the new lawyer examples of how you, as an experienced attorney, incorporate concepts of the *Lawyer's Creed* and *Lawyer's Aspirational Ideals* into your everyday law practice.
- Discuss the attached articles. Carol Rogers Hilliard, *Incorporating the Nine Aspirational Ideals Into Daily Practice with the Help of the CBA*, CLEVELAND BAR JOURNAL, Dec. 2003; Harper J. Dimmerman and Michael E. Adler, *What We Never Learned in Law School*, GP/SOLO MAGAZINE, Oct./Nov. 2005.

RESOURCES

A LAWYER'S CREED

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.

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.

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.

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.

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

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 toward 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

(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.

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;

(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 non-essential litigation and non-essential pleading in litigation;
- (2) Explore the possibilities of settlement of all litigated matters;
- (3) Seek non-coerced 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
- (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;
- (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.

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 legal system;
 - (3) Commenting publicly upon our laws; and
 - (4) Using other appropriate methods of effecting positive change in our laws and legal system.

By Carol Rogers Hilliard

Incorporating the Nine Aspirational Ideals Into Daily Practice with the Help of the CBA

An attorney's license to practice law is a privilege, not a right. Along with that privilege comes great responsibility to the profession. It is an attorney's professional duty to belong to the Cleveland Bar Association (CBA). Belonging to CBA assists each attorney in reaching the aspirational ideals propounded in the Code of Professional Responsibility.

There are numerous ways in which CBA assists its attorney members in making those nine aspirational ideals relevant to his or her daily practice. A review of the ideals demonstrates that relevance.

1. A Lawyer Should Assist in Maintaining the Integrity and Competence of the Legal Profession.

An easy way for an attorney to incorporate this aspirational ideal is for him or her to join CBA, the alumni association of one's law college, and to participate in professional activities. These activities include serving on committees, volunteering to speak to groups, schools, CLE seminars, accepting referrals and others.

Another way to maintain competence is to seek help or refer friends who may need it to the Assistance to Lawyers Program. Practicing law can be an overwhelming chore at times, and people who are overwhelmed may reach out to various crutches to help them. Unfortunately, these crutches, whether alcohol, drugs, sugar, over-exercising or even over-work, can become addictive in some cases. Rather than lose an attorney to the downward spiral of addiction, the Assistance to Lawyers Program may provide the support needed to keep that attorney in the profession as a competent practitioner.

2. A Lawyer Should Assist the Legal Profession in Fulfilling Its Duty to Make Legal Counsel Available.

This aspirational ideal may be easily met by accepting pro bono cases through the CASE Program at the Legal Aid Society, volunteering to work with the homeless on legal issues and disseminating general legal information to the public through the CBA's Public Law School.

The Committee on the Homeless, the Educational Initiative, Law-Related Education, Law School Liaison and Justice for All Committees offer numerous means to ensure that legal counsel is available.

Often, attorneys report that providing legal counsel through these programs is very satisfying and often more fulfilling than representing paying clients. When volunteering for these programs, the attorney will also make contacts which can lead to future clients.

3. A Lawyer Should Assist in Preventing the Unauthorized Practice of Law.

Every attorney needs to monitor the information given by his or her secretary, receptionist and legal assistant; to know who is drafting deeds and other documents for the public; and to report any discoveries of legal work performed by unlicensed lay people, including those attorneys whose licenses have been suspended but who are still practicing. The Unauthorized Practice of Law Committee can assist in the procedures necessary to investigate these claims.

4. A Lawyer Should Preserve the Confidences and Secrets of a Client.

The attorney can meet this aspirational ideal by knowing what may and may not be revealed, from who the clients are, to what a client has revealed. Even if a potential client never retains the attorney, that attorney is still bound not to reveal anything revealed by the client. However, the attorney needs to remind the client that cer-

tain facts, such as assets and liabilities, may need to be completely and fully disclosed in certain legal matters.

The Ethics and Professionalism Committee may be invaluable in reviewing certain issues posed by an attorney in a confidential and anonymous manner. By rendering advisory opinions and by referring the inquiring attorney to previous opinions, the Committee provides excellent guidance for the attorney.

5. A Lawyer Should Exercise Independent Professional Judgment on Behalf of a Client.

The attorney must be aware that some clients attempt to control the attorney by insisting that the attorney ignore or circumvent certain rules and regulations. It is the duty of the attorney to stay true to the law. Networking with other attorneys through CBA activities reinforces this duty.

It is helpful to discuss common concerns in Section meetings and by e-mail, newsletters and list-serves with attorneys in the same practice area. Social interactions, whether at the biennial Joint Bar Golf and Tennis Outing, at a formal reception or at an informal lunch meeting, can assist the attorney in meeting this aspirational ideal.

6. A Lawyer Should Represent a Client Competently.

This aspirational ideal involves using care and doing one's homework. No attorney should practice in areas outside of his or her experience. The attorney can use a mentor or contact one of the members of a specific Section as a guide, co-counsel or referral.

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ethics perspectives

7. A Lawyer Should Represent a Client Zealously Within the Bounds of the Law.

The attorney may represent the client zealously within the bounds of the law and still remain within the bounds of common courtesy and professional demeanor. The attorney should carefully discuss various courses of action with the client, including alternate dispute resolutions, before filing a claim; and the claims filed should be lawful, not frivolous. If the attorney is not trained as a mediator or arbitrator or certified in collaborative law, there are programs and seminars available through CBA. The attorney may also have his or her client contact the Lawyer Referral and Information Service to locate an attorney in another area of practice.

8. A Lawyer Should Assist in Improving the Legal System.

There are several ways to incorporate this

ideal into the attorney's life—one is to vote. Another is for the attorney to be informed as to the candidates and issues. Another way is to help others to register to vote. The attorney should write, call, e-mail or fax elected officials and encourage others to do so when he or she hears people complaining about the system or certain procedures. The attorney can volunteer to be a member of state committees reviewing court rules, for example.

The Joint Bar Admissions Committee interviews all candidates for the Bar and provides a valuable service in screening out candidates who are unable to meet the criteria required for proper character and fitness to practice law. The Judicial Selection Committee also provides opportunities for attorneys to assist in improving the legal system.

9. A Lawyer Should Avoid Even the Appearance of Professional Impropriety.

The attorney needs to think before accepting a case or having a consultation. Screening questions should be asked first to avoid any potential conflict of interest. Certain types of

cases, such as representing a group of individuals, have built-in problems and must be carefully reviewed before an attorney accepts employment.

It is the attorney's duty to take every opportunity to promote public confidence in the legal professional. It is often difficult in an adversarial system to maintain the collegial rapport necessary to rise above the controversy and to maintain a professional manner and attitude. The assistance of the other attorneys in CBA can be the necessary tool to construct an ethical and professional practice.

Participation in even one of the many programs offered by the Cleveland Bar Association will assist an attorney to incorporate these aspirational ideals into his or her daily work. ■



Carol Hilliard is a partner of Jones Day in Cleveland and a member of the firm's litigation practice group. She can be reached at (216) 586-7246.

from the president

and a seven-member legislative body, provided for tighter budgetary controls, and better-defined administrative and policy-making functions. This alternative form was narrowly defeated with 49 percent of county voters voting in favor.

In 1970, the County Commissioners declined to put the alternative form on the ballot again, but the citizens groups supporting the measure used a petition procedure to place it on the ballot. The proposal's second attempt failed with only 46.2 percent voting in favor.

In 1978, Ohio adopted a constitutional amendment permitting a county charter to be enacted by initiative and 1979 Summit County voters used the initiative approach to place a charter on the ballot that received 62.5 percent of the vote, making Summit the first—and only—home-rule county in Ohio, 46 years after the home rule amendment was first adopted.

In 1980, Cuyahoga County attempted to be the second home rule county. The Citizen's League and the League of Women Voters organized an initiative petition drive to put a home rule charter on the ballot. The proposed charter would have:

- Created a county executive and a nine-member County Assembly that would be elected from districts;

- Retained the eight independently elected county officials;
- Established initiative and referendum procedures;
- Required public meetings and records and a decennial redistricting; and
- Provided a process to create a charter review commission.

The proposed charter was defeated, receiving 43.8 percent support countywide, 40.1 percent in Cleveland and 45.5 percent in the suburbs. It lost in 31 of 33 Cleveland wards, 27 of 37 suburban cities, 14 of 18 suburban villages and all four townships.

In 1995, following the SAFE scandal of 1994, the county commissioners began looking at charter reform again and created a committee known as Citizens for Charter Reform. This group originally had the backing of the commissioners. However, when they issued their report early in 1996, two of the commissioners withdrew their support.

In 2003, we have a climate for real change, a high level of public interest in government reforms that are viable and that will provide a structure for real leadership out of our present quagmire and political malaise. The future of our city, county and region is at stake.

Conclusion

The Bar Association will rise to its mission --

commitment to public education on laws and legislative change and to provide an environment for the success of our practices and professional excellence. The Cleveland Bar Association will vigorously lead the effort to educate the public and thus stimulate the prospects for positive action on needed governmental reform and change. I look forward to my continued opportunity to serve you and our mission by directing substantial amounts of my time and energy to this initiative in the coming months. Please join with me and get involved. It is our mission and part of our duty to the profession and community. ■

MEMBERS OF CBA ARE NOW ELIGIBLE TO JOIN



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GPSolo Magazine - October/November 2005

What We Never Learned in Law School

By Harper J. Dimmerman and Michael E. Adler

Getting a solo or small firm practice off the ground presents a host of obvious obstacles and traps for the unwary businessperson: excessive spending, albeit with the best intentions; overly well appointed digs; liberal policies for case acceptance and contingent-fee commitments (because 98 percent of the cases settle anyway).

But what of the obstacles that are less well known? In this article, we offer ten suggestions that we hope will give some insight into the daily facets of practice we were never told about in law school, particularly concerning ethics, civility, and professionalism. Our experience in the legal field, and within the Philadelphia Bar Association, reflects our two different practice settings: one at a large firm, one as a solo. This article has given us an opportunity to share our experiences and to compare our legal careers so far. We also sought stories from colleagues. We were surprised that despite some obvious differences, we had many common observations.

Get involved in bar associations and pro bono activities. Bar association and pro bono involvement tend to improve relationships between lawyers and judges. The authors became acquainted during local bar association functions. When lawyers connect in both social and professional activities, we tend to get along when we are adversaries—it's human nature that we treat people we know better than we do strangers. Moreover, active involvement in the bar association has helped us sharpen our practice skills, increase our expertise, keep up with changes in the law, and have fun doing it.

Be prompt and responsive. Keep your clients advised, and return phone calls and e-mails promptly. We both try to maintain a rule that the sun does not set before a call is left unreturned (obviously, this is much easier during the summer than the winter). We both carry Blackberries and use them, even if just to say that a full response will arrive once the present meeting or hearing is done. If you can't personally return the message, have someone else do it. Lack of client communications is often cited as the most aggravating complaint by clients; keeping clients in the loop keeps them invested in their case.

Zealous representation does not mean scorched-earth tactics. We didn't learn in

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law school that there is an extremely fine line between zealous advocacy and deceptive or manipulative techniques. Silence from the experienced lawyer in the face of a greener attorney's misinterpretation is a dilemma we never anticipated. During law school's Socratic debates, all of us were forever together, presenting a unified front. Not so in the real world. Do not rely upon your confidence in the human family of attorneys collaborating to achieve a common good. With the goal of pleasing that well-funded client, a more seasoned practitioner might seize upon every opportunity to succeed, at times treading some very delicate ethical lines in order to do this.

But don't react to such unfortunate experiences by repeating the questionable behavior yourself. Neither of us refuses opposing counsel a favor when we have the ability to grant it; it costs nothing and builds trust and credibility with other lawyers.

Be professional in your communications with the court. Each court has its own procedures, but you will find that some rules of professional conduct are universal.

When addressing or writing to the court, identify who you are and whom you represent. Although this case might be the most important matter in your mind, we have learned it is likely only one of many matters being addressed by the court during that hour.

When in court before a judge, do not address opposing counsel, but speak directly to the judge. After all, it is the judge who must decide the issues, not your adversary. Address the court as "Your Honor" or "Judge." Remind yourself to speak slowly and don't be afraid to pause and think before answering questions.

Misrepresentations to the court are always unacceptable, even over such seemingly trivial matters as calendar conflicts or joint stipulation for extension of time to respond to a filing. We are constantly amazed how opposing counsel misrepresent agreements to the court.

Facts that are not properly introduced in the case or part of the record should not be used in written briefs or memoranda of points and authorities.

Always carry an extra copy of the motion or brief, in case the court cannot locate the copy that you filed.

Court staff should be treated as an extension of the court. Anyone who thinks that the judge will never hear how rudely his or her staff was treated has plainly never worked or clerked for a judge.

Show up on time for all court appearances. Character, integrity, and reputation are our most valuable assets; they are not worth trading for any client.

High volume does not equal high quality—or even high profits. Our law school experience did not prepare us for issues that can threaten the profitability of practice. Lawyers who approach specialties in volume are generally seeking economies of scale. The combination of special knowledge and volume might translate into profitability. Remember, however, that high-volume work requires significant administrative and legal support, especially in practice areas such as bankruptcy law. Because of such infrastructure costs, high revenues might not go hand in hand with high operating incomes.

Additionally, despite the degree of knowledge and focus that can accompany specialization, high-volume practice might actually dilute the quality of representation. Paralegals may be taking on work not necessarily in their area of ability or expertise, and more efficient yet less tailored representation may become necessary to generate a net profit. These survival tactics might potentially lead highly personable and even hands-on lawyers astray from the origin of their original success.

Choose your clients carefully. The practice of law is much easier if you can avoid difficult clients. Beware of a client who moves from firm to firm. Watch out for clients who make legal fees and costs a major issue. Such concerns may seem paranoid at first blush. Yet, they have been borne out by our experience and have become part of our analysis in accepting new clientele. Consider, for example, the overly savvy client who comes bearing handsome retainers and uttering convincing representations. Although we'd like to believe that such clients come because of our own brand or quality of representation, our guard is up.

A wise lawyer also once taught us that when evaluating a case, don't become so focused on liability that you forget about damages. The most compelling case of fault without any damages is worth . . . nothing. Similarly, when evaluating a case, if you are so focused on the damages, but there is no liability, that case is worth . . . nothing.

Always be professional in marketing. The Rules of Professional Conduct govern the outer limits of the advertising and claims that lawyers may make to entice clients. If you are in a small firm or you are a solo, consider limiting the type of clients and business that you take. This will allow you to focus your efforts more effectively. One of the best ways to develop business is to establish a referral network to exchange business with other attorneys. The local bar association is the best way to learn about the practices of other attorneys. Write articles and participate in seminars to get your name out there. Don't oversell yourself.

In small practice, owing to the intensity of the competition in the marketplace, some practitioners employ dubious techniques to acquire more clients and more money. For example, in the area of simple divorce, attorneys in a more expensive filing county might lowball potential clients with figures from less expensive filing counties. Remember: Potential clients using the Internet or even being referred to a particular attorney will ordinarily shop quotes.

Be professional during discovery. Much has been written about the effectiveness or costs of discovery in litigation. We merely note below some of our observations about the unprofessionalism we have experienced. Lawyers routinely delay producing documents to prevent opposing counsel from inspecting them prior to scheduled depositions or for other tactical reasons. Document demands and interrogatories are routinely propounded to harass or impose undue burden or expense on the other party. Responses with boilerplate objections to the discovery requests are presented.

In scheduling depositions, rather than unilaterally scheduling dates for depositions, lawyers should cooperate to accommodate the schedules of opposing counsel and the deponent. Objections during depositions should be limited to those that are well founded and necessary for the client's interest (such as preserving privilege). When making objections during a deposition, the attorney must refrain from coaching the deponent or suggesting answers or making self-serving speeches. It is amazing how often we see this happening, particularly by older lawyers trying to intimidate younger lawyers.

Be prepared. Thorough preparation can level the playing field—or even tilt it in your favor. Attention to detail is probably the most important trait of a good lawyer. Nothing is more glaring in written work product or letters than a typo. Proofread, proofread, proofread. Know your case better than the other side does. Anticipate the questions from the judge or opposing counsel.

Appreciate the practice of law. When we were awarded a license to practice law, we were granted a tremendous opportunity to make a difference for ourselves and our clients. Appreciate challenges, for they make us stronger and better as lawyers, with new ways to argue or represent our clients. Appreciate losses, for they make us wiser, and vow never to make the same mistake(s) again. Appreciate (and savor) victories. Keep a "good job" file and make copies of all the winning court decisions or even the congratulations or thank-you letters you have received. Even on a very bad day (and we all have them), opening the "good job" file will remind us why we went to

law school, and why, even though law school did not prepare us for all we have witnessed in terms of ethics, civility, and professionalism, we are lucky to be young attorneys, looking forward to the rest of our careers.

Harper J. Dimmerman operates a solo practice in Philadelphia. He can be reached at harper@harperlawgroup.com. Michael E. Adler is an associate at Blank Rome LLP in Philadelphia. He can be reached at adler@blankrome.com.

Contact information:

ABA General Practice, Solo and Small Firm Division
321 North Clark Street
Chicago, IL, 60610
phone: 312.988.5648
fax: 312.988.5711
genpractice@abanet.org

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