

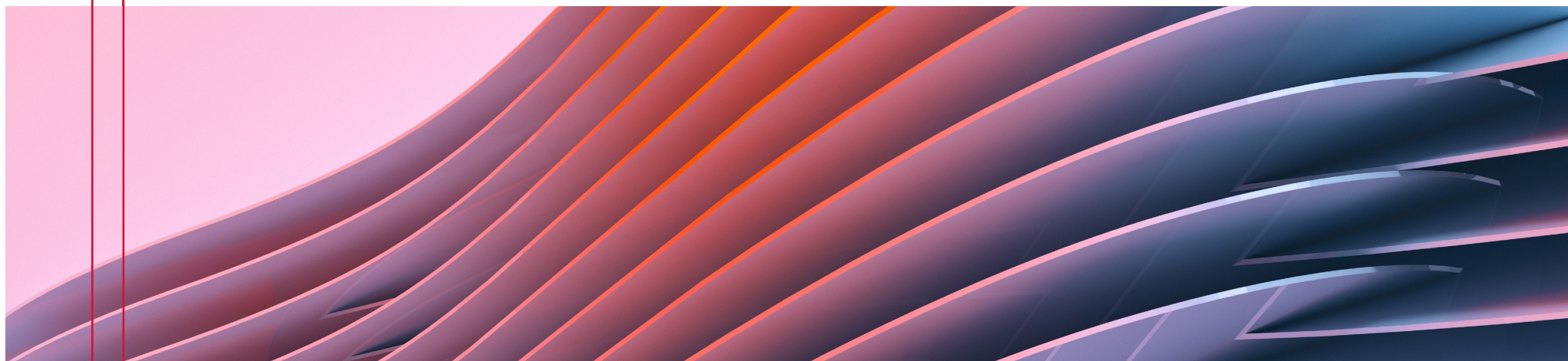


Kilpatrick Confidential

MARCH 12, 2025

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PROFESSIONALISM PANEL: VIEWS FROM THE BENCH AND BAR



A Lawyer's Creed



To my clients, I offer faithfulness, competence, diligence, and good judgment. I will strive to represent you as I would want to be represented and to be worthy of your trust.

To the opposing parties and their counsel, I offer fairness, integrity, and civility. I will seek reconciliation and, if we fail, I will 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. I will strive to do honor to the search for justice.

To my colleagues in the practice of law, I offer concern for your welfare. I will strive to make our association a professional friendship.

To the profession, I offer assistance. I will strive to keep our business a profession and our profession a calling in the spirit of public service.

To the public and our systems of justice, I offer service. I will strive to improve the law and our legal system, to make the law and our legal system available to all, and to seek the common good through the representation of my clients.

Entered by Order of Supreme Court of Georgia, October 9, 1992, nunc pro tune July 3, 1990; Part IX of the Rules and Regulations of the State Bar of Georgia, as amended September 10, 2003 and April 26, 2013





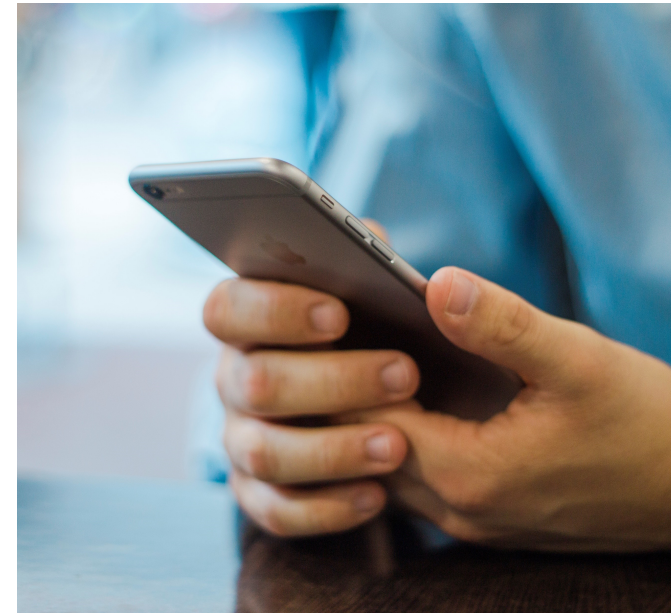
Angry Email
From Corporate
Officer

01

Problem 1: Angry Email From Corporate Officer

As in-house counsel or counsel for a corporation, you send an email to one of the corporate officers wherein you disagree with his or her strategy as set forth in a planning memorandum. **The corporate officer does not like the fact that you disagreed and responds with an angry email to you with some inappropriate language.**

- **What do you do?**
- **How do you respond?**
- **What, if anything, could you have done differently?**





Difficult
Opposing
Counsel

02

Problem 2: Difficult Opposing Counsel

Opposing counsel is the worst. At least in your view, he/she engages in the following conduct:

- **Baiting**
- **Incomplete/Untruthful Statements**
- **Sarcasm**
- **Statements about personal appearance**
- **Shifting positions – whack-a-mole approach; You constantly feel like you're playing whack-a-mole**
- **Works to make everybody in the room mad whether plaintiffs counsel or co-defendants counsel**
- **Occasionally thinks all is forgiven by giving you a smile or a compliment.**

This conduct very seldom occurs on the record. Usually, it is in counsel meetings, phone calls, meet and confers, settlement conferences and other off the record communications.

How do you handle this?





The Delegating Senior Lawyer

03

Problem 3: The Delegating Senior Lawyer

On his way out the door to the Masters, a senior lawyer in your department tells a younger lawyer to research a matter, not to spend more than two hours on it, and to have a memo on his or her desk the next morning. **The young lawyer is not familiar with the particular area of law and really does not know where to begin. The young lawyer comes to you for advice.**

- **How would you advise the young lawyer. Should he or she tell the partner the research cannot do it under those criteria?**
- **Do you advise the young lawyer to accept the assignment and spend as much time as necessary to get it done?**





Angry Client
With No Claim

04

Problem 4: Angry Client With No Claim

Your corporate client is sued by an individual who is alleging negligence of the company caused him minor damages. **The corporate president comes to you to ask you to file counterclaim against the individual that you feel is frivolous.** The corporate client angry about being sued and is willing to pursue the counterclaim at all costs because as he says "it will make that S.O.B. suffer."

- **What do you do?**





Granting
Extensions

05

Problem 5: Granting Extensions

Your corporate client is negotiating a deal and **the opposing counsel, who is a friend of yours, calls and asks for an extension of the deadline for closing the deal because she is overloaded with work** and simply cannot get prepared in time.

- **Do you agree to it?**
- **Do you inform your client?**
- **What if your client instructs you not to agree to the extension?**
- **Does the reason for the request matter?**
- **What if her father died and she must leave town?**
- **What if she isn't a friend but is the "jerk" who refused to give you a continuance in a recent case? Does that change your answer?**
- **What if you do not know her and don't expect ever to deal with her again?**





Eavesdropping

06

Problem 6: Eavesdropping

You are on a lunch break during intense negotiations of a deal. While sitting in the restaurant while eating lunch, **you realize the group sitting in the next booth is discussing the deal you are negotiating.**

- **Do you have an obligation to interrupt them and tell them who you are?**
- **Do you have an obligation to tell the attorney for the other side that you heard individuals from his client discussing the deal and the negotiations?**





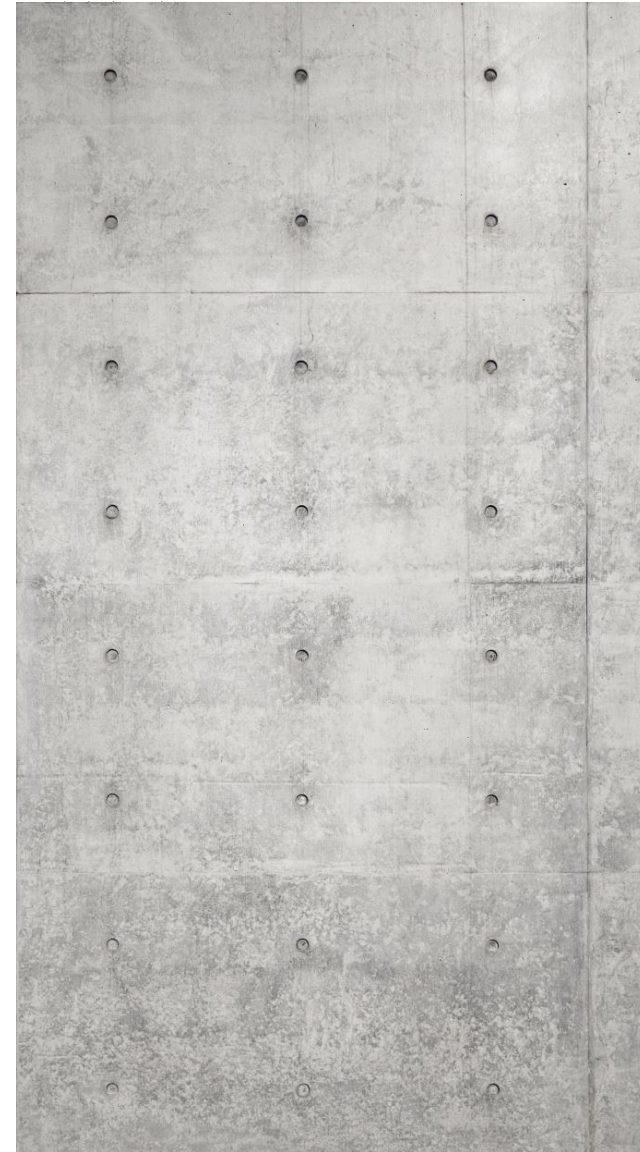
Confidential
Information

07

Problem 7: Confidential Information

One day you receive an email from a lawyer on the other side of an acquisition you are handling for your corporate client that includes communications between the other entity and his counsel related to the acquisition. Without reading the substance of the email you realize two things:

- **(a) the email lays out the other side's negotiation strategy; and**
- **(b) it was emailed to you by mistake.**
- **What do you do with this email? If it is ten pages long, would you read the entire email before deciding? Would you inform your client that this happened? Would your answer be different if attorney/client privileged materials were inadvertently provided to you in response to a document request in a lawsuit?**





Too Much Work

08

Problem 8: Too Much Work

You are one of several corporate lawyers for your client. You have been wanting to do more of the client's corporate work. The President of the company finally calls and asks you to handle a very complicated and high profile matter. **She wants you to handle all the work personally and not delegate it to anyone else. Unfortunately, you are so busy that it is going to be extraordinarily difficult for you to take on this new work.**

- **What do you tell the company?**





Stonewalling

09

Problem 9: Stonewalling

Assume you are a younger lawyer and you and a senior lawyer in your department are in a conference room negotiating a corporate merger on behalf of your corporate client with another entity and its lawyers. During the conference, your partner asserts that a crucial document requested by the other side cannot be located. **You know that the document is in the senior lawyer's briefcase, and you whisper in her ear that the document is present and available. The partner remains silent.**

- **What should you do?**





Pro Bono

10

Problem 10(A): Pro Bono

A young lawyer in your firm comes to you and tells you that she has been asked to take on a pro bono representation. You and another senior partner are determining what response you should make to this young lawyer. **All of the lawyers in your firm are very busy at this time and the requested pro bono undertaking will clearly add additional strain on your legal personnel.**

- **What questions do you ask the associate?**



Problem 10(B): Pro Bono – Additional Facts

- A. The representation will not be unpopular, it will simply be **time consuming**.
- B. The pro bono activity relates to something which is very unpopular in the community and may well **cause some of your existing clients to be unhappy, perhaps even to leave your firm if you take on the representation**.

How does this change your answer?





Thank you!



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