

January 1944

## Code of Ethics and Principles for the Prosecution and Defense of Criminal Cases

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### Recommended Citation

Code of Ethics and Principles for the Prosecution and Defense of Criminal Cases, 21 Dicta 125 (1944).

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Code of Ethics and Principles for the Prosecution and  
Defense of Criminal Cases\*

PREAMBLE

Justice is the firmest pillar of good government. The entire structure of our democracy is built upon it. The true administration of criminal justice is the foundation upon which our civil rights and liberties are maintained. It is in the criminal courts that the rights guaranteed to the individual under our constitutional form of government will either stand or fall under the impact of the present national emergency. Of equal importance to the democratic process, which provides for the right of free men to choose their representatives and to elect their government, is the right of free men to be protected against unjust accusation and oppression. No greater privilege or higher duty ever comes to any lawyer than the opportunity to defend persons accused of crime or to prosecute crime in the name of a free people to the end, not that convictions be had, but that justice be done. It is not sufficient to have well written penal laws, for they cannot be justly and soundly administered in a manner which upholds the Bill of Rights unless certain principles of conduct in the prosecution and defense of criminal cases become imbedded in the system of American criminal justice.

The judge, prosecutor or defense lawyer who believes that he can let his conscience be his sole guide is following a course which leads to a government of men instead of laws. A lawless administration of justice based upon the philosophy that the end justifies the means so long as it satisfies the conscience of the court and its officers is the greatest threat to civil liberties of a free people. "At the foundation of our civil liberty lies the principle which denies to government officials an exceptional position before the law and which subjects them to the same rules of conduct that are commands to the citizens." Judges should always remember that their office is *jus dicere* not *jus dare*; to interpret law, and not to make law or give law.

The true administration of criminal justice cannot be achieved unless the accused is afforded the benefit of the presumption of innocence in a real and not "lip service" manner; it cannot be achieved unless guilt is established beyond a reasonable doubt in the manner provided by law; it cannot be achieved if, as a practical matter, an accused must bear some burden in proving his innocence. Neither is it for prosecutors to decide the guilt of the accused, nor for defense lawyers to decide their innocence. It is not for the conscience of any man to prescribe the line between right and wrong and to determine any other man's guilt or innocence. For that purpose, by tradition and long experience, we have set up an administration of criminal justice based on settled principles of law.

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1. *Advising Clients as to the Effect of Penal Laws*

A client is entitled to receive and a lawyer is entitled to give an opinion and advice as to what constitutes a violation of a penal statute and a lawyer may advise a client as to any question of constitutional law, rule of evidence, or any other matter relating to the administration of criminal justice. Since every person is answerable for every infraction of the law because he is presumed to know the law, it is the duty of an attorney to inform his client fully concerning any and every pertinent question of law. But a lawyer may not advise his client how the law may be violated with impunity. Nor may he make any professional arrangement where the effect thereof is to encourage lawless conduct.

2. *Undertaking Defense of Future Offense*

Any conduct of an attorney which directly or indirectly aids or abets the commission of, or tends to aid, abet or encourage the commission of crime is reprehensible. An attorney may not undertake in advance to defend persons for offenses to be committed, as such an arrangement encourages the commission of crime.

3. *Duty to Defend Regardless of Attorney's Opinion as to Guilt*

Included in A. B. A. Canon 5.

4. *Limitation on Duty to Defend*

Canon 16. (Forbids countenancing perjury or any other fraudulent or deceitful practice.)

5. *Counsel Assigned to Indigent Prisoners; Volunteer Attorneys*

This covers the ground of Canon 5, but adds that the assignment should not be accepted unless the lawyer is fully qualified and has the time and means to do the job properly.

6. *Duty to Protect Client When Withdrawing as Counsel*

Covered by A. B. A. Canon 44.

7. *Responsibility of Each Attorney Regardless of Number*

Where more than one attorney has been assigned to represent an indigent defendant, or where there are a number of attorneys acting for a defendant, each attorney should bear the same responsibility as if acting as sole counsel.

8. *Dealing of Prosecutor with the Accused*

Regardless of the personal opinion of a prosecutor as to the guilt of the defendant or any advantage which might accrue to the defendant, he should not negotiate or bargain with the accused for a plea of guilty or other disposition of a criminal case except through counsel. It is improper for a prosecutor to attempt to obtain such a plea by threat, direct or implied; and no representation or promise should be made by a prosecutor to the defendant except in the presence of counsel.

9. *Disclosure of Inducements Made to Witnesses*

It is the duty of both prosecutor and defense attorney to disclose fully to the court and jury any promise or inducement which may have been made to obtain the testimony of any witness, so that the court and jury may be thoroughly apprised of any bias or motive which may influence or affect the evidence given by the witness.

10. *Where Civil and Criminal Rights Arise Out of Same Facts*

An attorney has the right and at times it becomes his duty to bring to the attention of the public authorities information that he may have concerning the commission of a crime where the information is not received as a confidential communication. However, a lawyer is never justified in using criminal proceedings for the purpose of collecting a civil debt or enforcing a civil right. A prosecutor or attorney should not prefer a criminal charge in order to influence the result or decision in a civil controversy or for the effect it may have on any thing or matter outside the issue of the charge itself.

11. *Disclosing Settlement of Civil Claim Which May Affect Criminal Proceedings*

A civil claim arising out of acts upon which a criminal proceeding is predicated should not be compromised before full and complete disclosure to the prosecuting officer and to the court.

12. *Confidential Communications Between Attorney and Client*

See A. B. A. Canon 37.

13. *Confining the Use of Court Process to Purposes Intended and Fixed by Law*

The process of the court must not be abused or used for purposes other than as provided and intended by law. The secrecy of grand jury proceedings is an exception to the fundamental tenet of the American system of justice that all judicial proceedings should be open and public. Grand jury proceedings are invested with secrecy primarily to prevent premature and unsupported accusation. Hence such proceedings should not be used except for the purpose intended by law of basing indictments on prima facie proof. Where indictments have been returned, the process of the grand jury should not be used for the preparation of trials and it must be borne in mind that the examination of prospective witnesses in secret may easily lead to intimidation of witnesses and oppression.

14. *Simulating Court Process*

Unless permitted by law to compel testimony before himself, a prosecutor should not serve papers having the appearance of subpoenas or other process of the court, nor should a prosecutor use court or grand jury process to compel persons to appear and testify before him personally.

15. *Limitation on Argument and Advocacy by Prosecutors and Attorneys*

This combines the second paragraph of Canon 15, forbidding assertion in argument of the lawyer's personal opinion with the further point that,

Argument should be confined strictly to the crime charged and an assertion or implication that extraneous circumstances exist beyond the crime charged, which should influence the verdict, is never justified.

16. *Personal Conduct of Attorneys in Dealing with Prosecutors*

An attorney engaged to defend a client in a criminal case must use scrupulous care in his relationship with prosecuting officers and avoid any act which may subject him or such officer to a misconstruction of motive. He should not only avoid any impropriety in his relations with prosecuting officers but in the interest of preserving public respect for the courts and the administration of criminal justice he should likewise avoid all semblance of impropriety.

17. *Conferring with Defendants Who Have or Should Have Counsel*

This covers the ground of A. B. A. Canon 9, along with further suggestions in the case of co-defendants .

18. *Former Prosecutors: Limitation on Accepting Cases*

Covered in A. B. A. Canon 36.

19. *Constitutional Privilege Against Self Incrimination*

An attorney, as any other citizen, has the right to assert a claim of privilege against self incrimination or to refuse to waive immunity when called to testify in a criminal proceeding. Otherwise, attorneys as a class would be deprived of a right preserved to others under our constitutional form of government. But an attorney, when called as a witness, is never justified in asserting the privilege against self incrimination for the purpose of avoiding non-incriminating answers.

20. *Duty to Help Maintain Respect for Criminal Justice*

21. *Duty as Officer of Court to Be Truthful and Candid*

These two are covered under A. B. A. Canon 1, "The Lawyer's Duty to the Courts."

22. *Attitude Toward Jury and Jury Panels*

A. B. A. Canon 23.

23. *Ex Parte Communication*

Attorneys and prosecutors should avoid all *ex parte* communications to the court. When an *ex parte* communication or application becomes necessary in the interests of justice by reason of any emergency, the fact that it has been made should be disclosed as promptly and as fully as possible.

24. *Personal Relations Between Advocates, Witnesses and Parties*

A lengthy section with a forty-word title, covering the ground of A. B. A. Canons 16 and 17.

25. *The Paramount Duty*

Similar to the second paragraph of A. B. A. Canon 5.

**They Wanted It of Record**

In abstracting titles to real estate one occasionally runs across some rather curious instruments which have been recorded.

An abstracter in southeast Missouri sent in the affidavit below and stated it was recorded in his county in 1940. He had just extended an abstract on property belonging to the makers of the affidavit, but decided that the affidavit wouldn't affect the title to the real estate, so, of course, it was not shown in the abstract. Since the parties are still living it will be obvious why their names have been omitted.

I, \_\_\_\_\_, swear that I will stand by my wife and uphold all she says and will never speak a wrong word to her. I will allow my wife to buy what she deems necessary and I will give her money without her asking for it. I further swear that I will never go back to Knob Lick, Mo., and if I should ever meet \_\_\_\_\_ I will not acknowledge her presence. I also swear that I stayed a night and took meals with above mentioned Mrs. \_\_\_\_\_, she and I were alone in the house; which fact my wife never found out for over a year. I also had indecent dealings with Mrs. \_\_\_\_\_, before I married my wife and will swear by whatever my wife should say in regard to this affair. I swear that my wife is, and has always been, a true and virtuous wife.

Signed: \_\_\_\_\_

Subscribed and sworn to before me this October 21, 1940.

Signed: \_\_\_\_\_

(SEAL) My Term expires 6-1-43  
Notary Public

I, \_\_\_\_\_ swear that I will never bring up the subject of above paragraph; I will trust my husband and do all I can to help him to bring about peace, if he abides by above.

Signed: \_\_\_\_\_

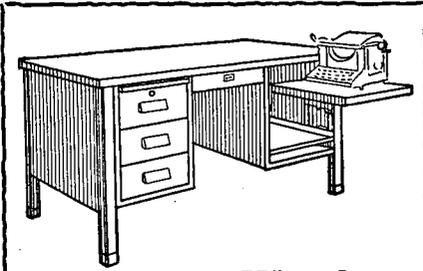
Subscribed and sworn to before me this 21st \_\_\_\_\_ 1940.

(SEAL) My term expires June 1st, 1943.

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Witness \_\_\_\_\_



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