

**Wisdom, Wit and Ethics: The Instruction Book To Dealing With Difficult Clients While Complying
With The Rules Of Ethics.**

William J. Price Esq.

Elk and Elk Co. Ltd.

330-618-1480/ wprice@elkandelk.com

- I. The Thorn in Every Attorneys Side: The Difficult Client: Introduction.
 - a. Primary Purpose of CLE – Civility issues with the Difficult Client.
 - i. What is civility in the bigger scheme of professionalism?
 - ii. Civility between the lawyer and the client- what it means and what it does
not.
 - iii. Rules to Live by when dealing with the client.
 - b. Secondary Purpose: Utilize Ethics Rules with Civility Rules.
- II. The Difficult Client is the Greatest Enemy to the Practice.
 - a. Difficult Client: what do they look like?
 - i. Typical Characteristics.
 - ii. When do they become problem- timing?
 - iii. Civility – how does this impact the relationship?
 - b. Bar’s Primary Issues with Civility:
 - i. Litigation: lawyers’ interaction with other lawyers.
 - ii. Court System: use outcomes to show the poor side of the profession.
 - iii. Lawyers Behavior Outside the Court Room.
 - c. How the public sees us today:
 - i. Our representatives
 1. M. Cohen.

2. Michael Avanti
 3. F. Bailey
 4. Judge Mason
 5. Judge Gallagher
- ii. Greedy, Dishonest, and Unprincipled.
- d. Civility Issues Between Lawyers.
 - i. Zealous representation
 - ii. Nasty Letters people we receive
 - iii. High retainers and little work
 - iv. Quality Work v. POS
 - v. Resentment
 - e. Clients Typically Adopt These Ideas:
 - i. Lawyers are greedy, dishonest and unprincipled and the public agrees.
 - ii. People think the business of law is more important than the practice.
 - f. We as Lawyers Do Not Help Ourselves.
 - i. Unchecked and Undetermined Substantive and Procedural Law Causes Lawyers to Arrive at Pro-Client Legal Decisions.
 - ii. Lawyers Have a Lot of Discretion with Interpretation of the Rules.

III. What is Civility:

- a. Ethics: Rules and Guideposts for Lawyers on How They Operate.
- b. Civility – Behavior/ Attitude/ Essentially How We Treat People and Other Lawyers.
- c. Civility- How We Conduct Our Selves During A Disagreement or Anger.

- d. Civility – Involves A Course of Action to Get A Result.
 - i. Ethic Rules- How We Conduct Our Selves When We Practice Law.
 - ii. How Do We Serve the Client and Uphold the Standards of The System?
- e. Civility Is How You Act When These Situations Occur
 - i. Profanity Laden Responses.
 - ii. Expectations.
 - iii. Childish Tantrums.
 - iv. Lashing Out.
 - v. People Treated A Certain Way.
 - vi. Hostile Confrontation.
 - vii. Lack of Cooperation.
 - viii. Arguing with Your Lawyer for Any Reason.
- f. O.R.P.C Pre-amble Requires Civility.
 - i. As an officer of the court, a lawyer not only represents clients but has a special responsibility for the quality of justice. O.R.P.C. Paragraph 1.
 - ii. 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. O.R.P.C. Pre-Ambles, Paragraph 4.

iii. A lawyer should seek improvement of the law, ensure access to the legal system, advance the administration of justice, and exemplify the quality of service rendered by the legal profession...In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority.

O.R.P.C. Pre-Ambles, Paragraph 6.

g. Civility Is A Core of The Professionalism:

i. Example: Sworn into The Court.

1. When You Take the Oath:

2. Bar Admission:

a. Investigate and Determine Good Moral Character.

b. General Fitness to Practice Law.

i. Actions in The Past Dictate and Tell the Bar How They Will Potentially Assist or Handle a Client in The Future.

ii. Capacity to Act in A Manner That Exemplifies Respect for The Profession.

iii. Eligibility Justifies the Trust of Clients Professional Duties.

c. Why Do They Require This?

i. Basic Eligibility to Allow You to Handle Your Client's Trust.

- ii. Justification to Allow You to Practice.
- ii. Why Civility Comes Difficult When You Represent the Client v. Your Obligation to The Court.

1. Client Asks or Pays You to Do These Acts in Court.

- a. Unwarranted Delay Which Helps the Client – Will Supplement in Discovery Answers to Refusing Dates with Depositions.
- b. Frustrate the Other Side- Refusing to Return Calls.
- c. Insult the Opposing Counsel Client.
- d. Threatening Behavior- Money.

2. What the Rules State:

- a. O.R.P.C.
- b. Justice Berger Said This: “Everyone in The Judicial Process Owes Duty of Courtesy to All Other Participants.” Essentially- All Lawyers Should Conduct Themselves in A Compatible Roles.

IV. Hypocrisies in The Law:

- a. Problem One: Lawyers Obligations to The Client V. Lawyers Obligations to The Procedures and The Institutions of The Law.
 - i. U.S. Creates Laws, Procedures, For Legitimate Reasons
 - ii. Not to Use to Harass.
 - iii. Are the Professional Rules to Lenient?
 - 1. When is a Lawyer Reprimand for These Issues?

2. The Rules Are Discretionary Controls- Who Are at The Controls.

3. Lawyers Are Left to Their Own Judgment and The Only Person

Who Is Watching Is the Client and Them. Who Is Too Benefit?

b. Problem Two: Look at The Attorney Client Relationship – Expectations v. Reality

i. Fiduciary Relationship. – Essence of Relationship.

ii. Allegiance to The Client.

iii. Expectations of Demands of Loyalty.

iv. Serve the Client’s Interests.

v. Failure to Follow A Method the Client Expects.

1. Greater Liability or Gravity of The Situation, Then Problems.

vi. There Are Other Underpinnings.

c. Problem Three: Clients Expect too Much:

i. Attorneys: Easy to Bow to Clients When We Have Problems

1. Profits and Losses: Golden Goose.

2. Lack of Business

3. Time to Handle the Client Matters- Not Enough Money.

4. Meeting the Client Expectations So We Do Not Get an Ethical

Issues.

d. Problem Four: How Does the Client’s Cannot Adequately Evaluate the Quality of

Service So They Must Trust the Result.

i. Often, They Need the Result.

ii. Client V. The Public Good

iii. Lawyers Have Problems Self-Regulating.

- e. Problem Four: Representing the Client V. Representative of The Court.
 - i. This Is Where Clients Go Array and We Have Problems.
 - 1. Overzealous,
 - 2. Withholding Evidence.
 - 3. Delays
 - 4. Attacking Your Opponent.
 - ii. If the Lawyer Knows They Cannot Win, They Do Not Want to Be Accused of Not Doing as Much as Possible to Achieve the Result.
- V. Civility in Conjunction with Ethical Rules.
 - a. Ethical Codes: They Serve to Modify and Restrict the Legal Duties of Lawyers Acting as Agents of The Client.
 - i. Agency Law: Expect Agents to Act Lawfully and Refuse to Follow Illegal or Unethical Instruction of Their Principles in Carrying Out Duties.
 - ii. Curb Zeal:
 - b. Civility How Different Than Ethical Rules.
 - i. Has Nothing to Do with An Agreement
 - ii. Has Nothing to Do with Criticism
 - iii. Does Not Mean You Have to Like the Client.
 - iv. Does Not Equate to Politeness or Manners.
- VI. Lawyers Conduct and What It Should Conform Too:
 - a. Ethical Rules.
 - b. Important to Understand Proscribed Behavior That Can Run Afoul of The Ethical Rules.

- i. Push All the Buttons.
- c. Question Is Can You Be Held Responsible for Offensive Speech with The Client.
 - i. Yes- Lie or Misrepresent the Facts to The Client.
 - ii. Treatment of Client- If the Courts Are Curbing Our Behavior with Our Colleagues,
 - iii. Falsity to Judge or Activity Which May Prejudice You to The Administration of Justice.
 - iv. What Happens with Clients- Reckless Truth- Will They Turn Us In?
- d. Civility Issues Has Become an Issue.
 - i. Could You Be Held Responsible for His Issues.

VII. What Is the Conclusion:

- a. Use the Rules of Ethics and Professionalism to Fight with Clients So You Do Not Open Yourself Up.
- b. A Lawyer Is Not Bound to Press for Every Advantage That Might Realize.
- c. What Is “Reasonable Diligence” Does Not Require Offensive Tactics.
- d. Precludes Treating Personnel Offensively.
- e. What the Court Believes Is Unprofessional Behavior Occurs in The Attorney Client Relationship All the Time.
 - i. Cursing at You.
 - ii. Argue with You Because the Client Does Not Like the Outcome.
 - iii. With-Hold Information
 - iv. Misrepresentation of Facts or Interpret.
 - v. Unprofessional

1. Stress of The Situation
2. Lack of Control of Outcome
3. Raises Sensitive Issues
4. Spending Money and They Cannot See the Work.
5. Issues They Have You Handling Is Affecting Freedom, Self-Worth, Self-Respect.
6. Lawyer on The Other Side Fighting for Outcome Client Fears Most.
7. Clients Have to Be Level-Headed When Attacked, Ridiculed, Advantage

f. Shall and May

- i. What This Means.

VIII. How to Use the Rules When Faced with A Difficult Client?

a. Perspective: Client Misconception:

- i. Hire the Lawyer- Power to Dictate to The Lawyer What Is and What Is Not.
- ii. Employer V. Employee.
- iii. Whipping Boy.

b. Perspective: Client Expectations Dictates the Client Behavior.

i. Client Expectations:

1. Client Hires Lawyers Because They Are Not Personally Knowledgeable About the Law.
 - a. They Have A Problem. They Need It Solved.

- b. They Need Someone Skilled in Legal Argument to Express Their Position or Achieve What They Need.
 2. Client Expects the Attorney to Act as The Client Himself.
 - a. He Expects the Lawyer to Behave as He Believes He Should- Tv, How Someone Treated Him in The Past.
 3. Client Feels Betrayed When the Attorney Is Acting Friendly to The Other Side.
 4. Paying All This Money, Client Expect A Control of The Outcome.
 5. Clients Do Not Understand the Profession.
 6. Clients Want Their Way.
 7. Distorted Image of The Lawyer.
- ii. What Should Their Conduct Be When the Client Becomes Unglued?
 1. Remember This: Rules Are Created Based Upon the Values They Want the Lawyers to Uphold?
 2. Do the Rules Subordinate the Interests of The Client?
 3. The Rules Support the Procedures and The Institutions?
 4. The Rules Are There to Seek the Truth.
- c. The Scope of Representation and Allocation of Authority Between the Client and Lawyer:
 - i. Nothing in The Rules States the Counsel Cannot Refuse to Assist the Client When to Do So Would Be Contrary to The Lawyers Obligation to The Rules and Procedures.
 - ii. The Rules Require Lawyers to Be More Upstanding Than Lay People.

IX. Rules to Live by During the Attorney Client Relationship.

- a. First You Need to Know the Following: Boundaries Are Difficult.
 - i. Limits Are Not Easily Discernable.
 - ii. Duty of The Lawyer: Communicate the Limit.
 1. Strategic Incivility: Incivility on Key Issues, Gain the Upper Hand.
 2. Social and Economic Characteristics Credibility- Sometimes Must Tell the Client.
- b. Second: Strategic Role in Lawyer Engagement.
 - i. Client Stress- Leads to Mental Illness/ Drinking/
 - ii. Increase Costs Which Undermine Trust.
 - iii. Risks Client Endure with A Cause.
 - iv. What Do People See as Effective?
 1. What Do We Want to Accomplish for The Client?
 2. Building Blocks
 3. Good Parts and Bad Parts- Do They Result in A Positive Relationship
- c. How the client I interact.
 - i. I am not a door mat.
 - ii. Treat me as you want to be treated.
 - iii. Ask questions as to why, rather than criticize.
 - iv. Do not use profanity with me.
 - v. Do not lose your temper with me.
- d. Interactions:

- i. Volatile Bully
 - ii. Insults
 - iii. Belittling efforts
 - iv. Fails to apologize for outbursts
 - v. Blames someone if it goes wrong.
 - vi. Unwilling to listen
- e. Communication Guidelines.
- i. Civility Misconceptions
 - 1. Do the clients complain about his lawyer being rude to him?
 - 2. Are the clients paying for this?
 - 3. Are we being paid to win?
 - ii. Civil Behaviors when dealing with a client:
 - 1. Think before you speak
 - 2. Focus on the facts rather than beliefs and opinions
 - 3. Disagree with others respectfully
 - 4. Openness about ideas
 - 5. Respect for other views
 - 6. Manners or common sense in certain situations
 - 7. Not necessarily the rules
 - 8. How to conduct themselves in a legal setting- courts, clients, counsel and outside the office.
 - 9. Image of the legal profession
 - iii. Uncivil Behavior:

1. Interruptions
2. Talking over
3. Insults
4. Overgeneralizations
5. Character Criticisms
6. Use of Aggressive Speech, Sarcasm, Demeaning Language,
7. Refusal to acknowledge points

f. Civility as a behavior:

i. Client: ignored, demeaned, disrespected – combine with bad result.

ii. How to protect self:

1. Timely responsive to client questions, concerns, objective issues affecting him
2. Timely return of phone calls / emails
3. Written status updates
4. Copies of Written Documents
5. Honesty with clients, false expectations about results in court, or when things get hard.
6. Candid with clients, when client is not forthcoming with all facts, or when facts are uncovered that changes outcomes, creates legal issues, anything affect ability to recover.

g. Common Sense Discussions: **“I was not hired to do that.”** An Agreement Between the Lawyer and The Client Regarding the Scope of The Representation May Limit the Matters for Which the Lawyer Is Responsible. See Rule 1.2(C).

h. **“You do not call the shots.”** A Lawyer May Act on Behalf of The Client as Is Impliedly Authorized to Carry Out the Representation. See Rule 1.2 (A)

- i. **“Where in the Law Are You Permitted to Do That?”** A Lawyer Shall Not Counsel A Client to Engage, Or Assist A Client, In Conduct That the Lawyer Knows Is Illegal or Fraudulent. Rule 1.2 (D)

- j. **“Please do not question my integrity, credibility, or character. The way I advocate is my prerogative.”** Division (A) Confers Upon the Client the Ultimate Authority to Determine the Purposes to Be Served by Legal Representation, Within the Limits Imposed by Law and The Lawyer’s Professional Obligations. Rule 1.2 Comment [1]

- k. Lost Is the Congenial Working Relationship.
 - i. **“Treat me like you want to be treated.”**

- l. Hostile Confrontations
 - i. **“I am not a door mat.”**
 - ii. **“Please do not criticize me.”**
 - iii. **“Your Case is Not a Matter of Life or Death.”**
 - iv. **“If you lose your temper with me, I will speak to you about this.”**

- m. Lack of Cooperation
 - i. **“If you do not pay me, I cannot work for you.”**
 - ii. **“When the check clears, the work begins.”**

- n. Collateral Arguments, With Lawyer
 - i. **“I have a family too.”**
 - ii. **“We cannot lend you money.”**

- o. Delay Tactics:
 - i. **“You must comply with deadlines.”**

- p. Public View: Lack of Respect to The Decision of Law
 - i. **“You cannot argue with the judge.”**

- ii. **“Your case cannot be won over night.”**
 - iii. **“Try to see what the evidence states.”**
 - iv. **“Please do not whine, you are an adult.”**
 - v. **“The Law has nothing to do with Perfection”**
- q. Advice/ Expertise/ Competence:
- i. **“Please Listen to What I Advise You Of. “**
 - 1. Rule 1.1 Competence: A Lawyer Shall Provide Competent Representation to A Client. Competent Representation Requires the Legal Knowledge, Skill, Thoroughness, And Preparation Reasonably Necessary for The Representation.
 - a. **“You seek professional advice; you seek a professional. Your friends are not professional.**
 - b. **“I am not perfect. Other People Interpret the Law.”**
 - 2. Comment: [2] A Lawyer Need Not Necessarily Have Special Training or Prior Experience to Handle Legal Problems of a Type with Which the Lawyer Is Unfamiliar. A Newly Admitted Lawyer Can Be as Competent as A Practitioner with Long Experience. Some Important Legal Skills, Such as The Analysis of Precedent, The Evaluation of Evidence and Legal Drafting, Are Required in All Legal Problems. Perhaps the Most Fundamental Legal Skill Consists of Determining What Kind of Legal Problems A Situation May Involve, A Skill That Necessarily Transcends Any Particular Specialized Knowledge. A Lawyer Can Provide Adequate Representation in A Wholly Novel Field Through Necessary Study. Competent Representation can also be provided through the association of a lawyer of established competence in the field in question.
 - a. **“My recommendations are based upon my experience, not a guess.”**
 - b. **“I will not apologize for my success or feel guilty for it.”**

ii. “If I send you a letter, please read it. “

1. Rule 1.2 [7A] Written confirmation of a limitation of a new or existing representation is preferred and may be any writing that is presented to the client that reflects the limitation, such as a letter or electronic transmission addressed to the client or a court order.
2. Rule 1.2 [7A] A lawyer may create a form or checklist that specifies the scope of the client-lawyer relationship and the fees to be charged. An order of a court appointing a lawyer to represent a client is sufficient to confirm the scope of that representation.
3. Rule 1.5 Comment [2]: A writing that confirms the nature and scope of the client-lawyer relationship and the fees to be charged is the preferred means of communicating this information to the client and can clarify the relationship and reduce the possibility of a misunderstanding.

iii. “If I need your help, please do not ignore me. “

1. A lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client in making a good faith effort to determine the validity, scope, meaning, or application of the law. Rule 1.2 (d)
 - a. **“If you are paid under the table or do anything illegal, you will be reprimanded by the court.”**
 - b. **“Same, do not put down \$5.00 on a title where it says ‘sales price.’ It is fraud.”**

iv. Rule 1.4 Comment Explaining Matters [5]

1. The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so.
 - a. **“Do not underestimate the negative parts of your case.”**
2. Adequacy of communication depends in part on the kind of advice or assistance that is involved. For example, when there is time to explain a proposal made in a negotiation, the lawyer should review

all important provisions with the client before proceeding to an agreement.

a. **“You cannot predict the outcome of your case.”**

b. **“You must face the consequences of your actions.”**

3. In litigation a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that are likely to result in significant expense or to injure or coerce others.

a. **“You are not a mind reader and you cannot predict the future.”**

4. On the other hand, a lawyer ordinarily will not be expected to describe trial or negotiation strategy in detail. The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client’s best interests, and the client’s overall requirements as to the character of representation.

a. **“Never risk what you cannot afford to lose.”**

v. Rule 1.4 Comment [6] Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult.

1. **“I will accept bad behavior. The court will not accept bad behavior.”**

vi. Rule 1.4 Comment [2]: If these rules require that a particular decision about the representation be made by the client, division (a)(1) requires that the lawyer promptly consult with and secure the client’s consent prior to taking action unless prior discussions with the client have resolved what action the client wants the lawyer to take.

1. **Sage Advice Be careful of client expectations.**

r. Disagreements:

i. Rule 1.2 Comment [2] On occasion, however, a lawyer and a client may disagree about the means to be used to accomplish the client’s objectives. Clients normally defer to the special knowledge and skill of their lawyer

with respect to the means to be used to accomplish their objectives, particularly with respect to technical, legal, and tactical matters. Conversely, lawyers usually defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. Because of the varied nature of the matters about which a lawyer and client might disagree and because the actions in question may implicate the interests of a tribunal or other persons, this rule does not prescribe how such disagreements are to be resolved. Other law, however, may be applicable and should be consulted by the lawyer. The lawyer should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental disagreement with the client, the lawyer may withdraw from the representation. See Rule 1.16(b)(4). Conversely, the client may resolve the disagreement by discharging the lawyer. See Rule 1.16(a)(3).

1. **“I will tell you what I can do and what I cannot do under the law.”**
 2. **“Educate me on your business.”**
 3. **Sage advice: the rules do not explain how you resolve the difference.**
 4. **“If I disagree with you, it is not because I don’t believe you.”**
 5. **“If you do not trust me or believe me, you should not keep me as your lawyer.”**
- ii. Rule 1.2 Comment [3]: At the outset of a representation, the client may authorize the lawyer to take specific action on the client’s behalf without further consultation. Absent a material change in circumstances and subject to Rule 1.4, a lawyer may rely on such an advance authorization. The client may, however, revoke such authority at any time.
1. **“No need for profanity”**
 2. **“If you disagree with my conclusion, do not call me names.”**

iii. Rule 1.2 [9] This prohibition, however, does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct.

a. **“Do not loose your temper with me.”**

b. **“I have to be brutally honest with you.”**

iv. Rule 1.2 [9] There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which an illegal act or fraud might be committed with impunity.

a. **“I am not your hit man.”**

v. Rules 1.7 Comment [1]: The principles of loyalty and independent judgment are fundamental to the attorney-client relationship and underlie the conflict of interest provisions of these rules. Neither the lawyer's personal interest, the interests of other clients, nor the desires of third persons should be permitted to dilute the lawyer's loyalty to the client

1. **“I do not keep secrets about your case.”**

2. **“Never Question that I am on your side.”**

3. **“Never think that I will not advocate for you.”**

X. Rules to Guide You as The Advocate:

a. Rule 3.1: A lawyer shall not bring or defend a proceeding, or assert or controvert an issue in a proceeding, 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.

i. **“Arguments are within my discretion. As are the witnesses I call.”**

ii. **“I am the gate keeper.”**

iii. **“Avoid sarcastic remarks.”**

b. Rule 3.1 Comment [1]: 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.

The law, both procedural and substantive, establishes the limits within which an advocate may proceed. However, the law is not always clear and never is static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.

1. **“There are limits.”**

- c. Rule 3.1 Comment [2]: 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.

1. **“You cannot lie to me or withhold facts.”**

- d. Rule 3.1 Comment [2]: Frivolous; the fine line: 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.

- e. Rule 3.3: **What Clients Need to Know When We Are Litigation.**

- i. (a) A lawyer shall not knowingly do any of the following:

1. (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.
2. (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel.
3. (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable measures to remedy the situation, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

- ii. Rule 3.3. Comment [2] **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.**

- iii. Rule 3.3 Comment [4] Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law but **must recognize the existence of pertinent legal authorities. Furthermore, as stated in division (a)(2), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction that has not been disclosed by the opposing party.** The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.
- iv. Rule 3.3 Comment [5]: Division (a)(3) **requires that the lawyer refuse to offer evidence that the lawyer knows to be false, regardless of the client's wishes. This duty is premised on the lawyer's obligation as an officer of the court to prevent the trier of fact from being misled by false evidence.** A lawyer does not violate this rule if the lawyer offers the evidence for the purpose of establishing its falsity.
- v. Rule 3.3 Comment [6]: If a lawyer knows that the client intends to testify falsely or wants the lawyer to introduce false evidence, **the lawyer should seek to persuade the client that the evidence should not be offered.** If the persuasion is ineffective and the lawyer continues to represent the client, the lawyer must refuse to offer the false evidence. If only a portion of a witness's testimony will be false, the lawyer may call the witness to testify but may not elicit or otherwise permit the witness to present the testimony that the lawyer knows is false.
- vi. Rule 3.3 Comment [12] **Lawyers have a special obligation to protect a tribunal against criminal or fraudulent conduct that undermines the integrity of the adjudicative process,** such as bribing, intimidating or otherwise unlawfully communicating with a witness, juror, court official, or other participant in the proceeding, unlawfully destroying or concealing documents or other evidence, or failing to disclose information to the tribunal when required by law to do so.
- vii. A lawyer does not violate this rule by acceding to requests of opposing counsel that do not prejudice the rights of the client, being punctual in fulfilling all professional commitments, avoiding offensive tactics, and

treating with courtesy and consideration all persons involved in the legal process. Rule 1.2 (a)

- f. A lawyer may limit the scope of a new or existing representation if the limitation is reasonable under the circumstances and communicated to the client, preferably in writing. Rule 1.2 (c)
- g. Rule 1.2 Comment [4A] Division (a) **makes it clear that regardless of the nature of the representation the lawyer does not breach a duty owed to the client by maintaining a professional and civil attitude toward all persons involved in the legal process.**
- h. Rule 1.2 Comment [4A] **Specifically, punctuality, the avoidance of offensive tactics, and the treating of all persons with courtesy are viewed as essential components of professionalism and civility, and their breach may not be required by the client as part of the representation.**
- i. Discovery Abuses:
 - i. Verbal hostility
 - ii. Aggressive Tactics
 - iii. Unreasonable denials
 - iv. Lack of Cooperation
 - v. Elongated Depositions
 - vi. Excessive documents requests
 - vii. Refusing to return phone calls
 - viii. Scheduling deposition without consulting the other side
 - ix. All of these contribute

XI. Rules to guide you as the counselor.

- a. Rule 1.2 Comment [5] A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social, or moral views or activities.

- b. Rule 1.4 Comment [7] In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication.