

OVERVIEW TO 2019-2020 CURRICULUM

This year's curriculum takes off from last year's hypothetical/mock trial which forms the basis of this year's fully scripted pre-trial, trial and post-trial episodes. The scripted trial is designed to focus on trial strategies, trial skills, evidence issues, common objections, trial preparation, pre-trial conference and the attorney/client relationship. However, there is a large measure of ethical/professional issues grafted into the script which hopefully will make this year's overall curriculum thought provoking, educational and entertaining.

First we start with "The Sliding Scale of Professionalism and The Ten "C's." We will consider legal professionalism in terms of relative reputation, both individually and collectively. What is each of our reputations? How do we see ourselves? How do others see us? How professional is our practice area? How can we improve?

The Ten "C's" are designed as a brief way of discussing some of the components of professionalism that happen to begin with the letter "C." Our introductory general professionalism discussion, focuses on highly regarded professionalism and its components since this is a core component of the American Inns of Court. It will serve as a springboard to see how the characters of the scripted trial measure up.

Before the first pupil meeting, each group should assign two members to discuss each "C" so that it shouldn't take more than two meetings to get through the professionalism-specific part of the curriculum.

We then turn to "Competence, Professionalism and the Trial of James Jones....You Can't Win Them All" which includes five scripted scenes. Each scene will have different group members assigned to play each character and to address the questions posed after each scene. If everyone prepares their assignments well in advance, everyone should have a chance to make a quality contribution to the success of the program which in turn should make for an optimal overall educational experience. Good luck!

Justice James H. Coleman, Jr.
New Jersey Workers' Compensation
American Inn of Court
2019-2020

SLIDING SCALE OF
PROFESSIONALISM
AND
THE TEN "C'S"

INTRODUCTION TO THE SLIDING SCALE OF PROFESSIONALISM
AND
THE TEN 10 “C’S”

This year we start our 25th year as an Inn of Court. It's as good a time as ever to pause for some introspection and reflection on not only our profession, but our “*professionalism*” especially as it pertains to our daily practice of Workers' Compensation Law. The focus of this portion of the 2019-2020 curriculum is to consider and quantify the quality of our professional conduct, professional interactions and professional relationships. It is this synergy that forms our individual and collective professional reputations. This is an opportunity to assess and discuss the extent to which we are meeting reasonable expectations of professionalism, which after all is a cornerstone upon which the American Inns of Court is built.

A common denominator to almost every lawyer and judge who decides to become a member of any Inn of Court, is the desire to be the best judge or lawyer as possible. The strength of such desire is part of the blueprint for what ultimately forms the fundamental core values of the American Inns of Court. It is also a good time to pause and briefly reflect on the history of the American Inns of Court Foundation and our Inn in particular to reemphasize and reaffirm our purpose for being here in the first place.

The American Inns of Court Foundation (AICF) was officially formed in 1985, a mere ten years before our Inn was founded (originally named the New Jersey Workers' Compensation American Inn of Court before it became formally chartered as the Justice James J. Coleman, Jr. New Jersey Workers' Compensation American Inn of Court, thereby making it the longest named Inn of Court in the United States.) The AICF idea took approximately 7 years to progress from a mere thought, to informal Inn formation, to finally becoming a nationally chartered organization.

When we began our Inn, each Inn member had a status: pupil, barrister or master (depending upon the individual's credentials) and we each received official recognition of successful completion of the two year program. Our Inn has largely abandoned these specific monikers and accolades. Rather, we have remained highly focused on the academic and collegial pursuits of excellence mandated by our charter, which forms the basis of how we approach the manner in which our workers' compensation specialty Inn functions. Every Inn is different in that regard.

Actually, admission to any Inn, ours included, is not a right. It is a privilege. Not every applicant has been admitted. We are not merely a vehicle for MCLE credits. Once the New Jersey Workers' Compensation Law Attorney Certification became available, our Inn's curricula have been consistently conferred certification credits sought from the New Jersey Supreme Court both with respect to workers' compensation law attorney certification and thereafter for mandatory continuing legal education credits generally. We have been consistently recognized as operating at a high level of legal excellence.

As part of our present undertaking, we are focusing on the notion of “legal professionalism especially as it pertains to reputation.” We will discuss its characteristics and considerations within the concepts of the “The Ten C's” (which hereinafter follow.) This is by no means

intended to be a definitive or one dimensional primer on the topic. Rather the purpose of this introduction is to encourage a dialogue and introspection (judges and lawyers alike) to assess where we are and how we can improve both individually and collectively as both judges and attorneys and as a practice area.

It has often been said that “highest regarded professionalism” (also known as “true,” “real” or “authentic” professionalism) in the law defies a simple definition. But we all know when we see it. Attorneys or judges who are the “highest regarded professionals” (hereinafter HRPs), are the influencers who drive their practice areas to the most elevated levels of professionalism. They are the benchmarks by which all such professionals are measured. While *highest* regarded professionalism is the apex, *highly* regarded professionalism is the laudable goal. The status of a highly regarded professional is so coveted that it will be included as part of the “HRP” acronym.

REAFFIRMING OUR PURPOSE

When United States Supreme Court Justice Warren E. Burger first conceived of the American Inns of Court, the thought was to address what he felt were very serious deficiencies in American jurisprudence in terms of adequate professionalism, legal ethics, legal excellence and competency. He especially felt the conduct of trial lawyers in particular could be measurably elevated if the United States adopted some of the concepts which represented the cornerstone of the trial practice in England, primarily generated by England’s four Inns of Court: Gray’s Inn, Lincoln’s Inn, Inner Temple and Middle Temple. Unlike the American version, England’s four Inns are mandatory and therefore an indispensable part of the pre-licensing legal training of any barrister (English trial lawyer). They have been in existence for centuries and are therefore deeply culturally ingrained. The United States version of the American Inns of Court initially focused solely on trial attorneys and Judges, but slowly it has expanded into non-trial specific practice areas, which were similarly in need of a professionalism injection.

While the United States did not adopt the English system in its entirety, it did adopt the English core principals of legal excellence, civility, ethics and professionalism which principles are contained within every charter issued to every Inn created in the United States. Our Justice Coleman charter is #254. Our charter specifically states the 7 purposes of our existence as follows:

1. To establish a society of judges, lawyers, legal educators, law students, and others to promote excellence in legal advocacy in accordance with the professional creed of the American Inns of Court;
2. To foster greater understanding of and an appreciation for the adversary system of dispute resolution in American law, with particular emphasis on ethics, civility, professionalism and legal skills;
3. To provide significant educational experiences that will improve and enhance the abilities of lawyers as counselors and advocates and of judges as adjudicators and judicial administrators;

4. To promote interaction of collegiality among all legal professionals in order to minimize misapprehensions, misconceptions and failures of communication that obstruct the effective practice of law;
5. To facilitate the development of law students, recent law graduates, and less experienced lawyers as skilled participants in the American Court system;
6. To preserve and transmit ethical values from one generation of legal professionals to the next;
7. To build upon the genius and strengths of the common law in the English Inns of Court and to renew and inspire joy and zest in legal advocacy as a service worthy of constant effort and learning.

This is not empty flowery legal prose, but rather mandates for performance.

The mentoring aspiration of the American Inns of Court is for the individual Inns to be vehicles and a process to elevate the manner in which law is practiced at its highest level. The undertaking is not a static one. Rather it's a recognized continuum of excellence achieved by its specific mentoring/collegiality platform.

Our Inn also remains one of the largest Inns in the United States. We are still only 1 of 7 workers' compensation specialty Inns. Since 1985, there have been approximately 250,000 members of the Inns of Court in the United States. Presently there are approximately 30,000 active members nationwide, as contrasted to approximately 420,000 members of the American Bar Association. We have a great untapped market and a long way to go in terms of getting people on board. We remain somewhat of an exclusive organization, at least relatively speaking.

Unlike the American Bar Association, the sole purpose of the American Inn of Court is to improve our practice by way of a mentoring approach to allow us to achieve the goals of the national organization and our charter. In that sense our Inn is an apolitical entity with no institutional bias other than improving our overall practice whether we are a Petitioner's attorney, Respondent's attorney or Judge.

ETHICAL MINIMUM MANDATES vs. PROFESSIONALISM

The license to practice law technically authorizes an attorney to "legally" practice any area of the law including workers' compensation. Regardless of anyone's inherent intellect, most would agree that a first year licensed lawyer would lack the experience, skillset or reputation to be viewed as a highly regarded professional. The potential in the future would exist, but that person does not yet have a current earned status. Similarly, a Supreme Court Certification as a Workers' Compensation Law Attorney and our general rules of professional conduct simply provide threshold standards of conduct for the actual performance of our profession. The Law Attorney certification is primarily an enhanced competency issue. When a disciplinary rule is violated (not unlike a criminal statute), there is a punitive outcome associated with the violation.

The mere fact that a person is not convicted of a crime of moral turpitude does not automatically mean that that such an individual is an individual of high character. Similarly, the Rules of Professional Conduct/Disciplinary Rules (RPCs) simply represent the minimum standard of professional conduct for attorneys and judges, but in and of themselves, they do not assure anyone a reputation status of the aspirational type the American Inns of Court seeks to achieve for its membership, i.e. a high level of professionalism.

Even with certain mandated thresholds of conduct, there are certain RPC's which are under-enforced. Under-enforcement is in part due to the basic "culture" of certain practice areas. For example, while anecdotal, the payment of non-quantum merit referral fees to non-certified lawyers in the areas of personal injury and workers' compensation may be commonplace but nevertheless violative of our Rules of Professional Conduct. While not necessarily morally obvious it is still an RPC violation. is an area where the strict letter of the law is likely under enforced thereby giving rise to a sustained course of conduct that is not necessarily morally obvious, but is nevertheless violative of the unequivocal RPC/Disciplinary Rules. An attorney who refers to a non-certified contingency fee lawyer (workers' compensation/personal injury) regardless of how competent that lawyer is, is not automatically entitled to a one-third referral fee. There are no exceptions. Yet this does occur.

Similarly, in our particular practice, when ex parte discussions about pending claims occur which do not necessarily have any type of scienter or malevolence attached to them, they still have the potential to be disciplinary rule violations. However, the manner in which our practice area operates given its high volume with a finite number of practitioners and judges, such potential for extra-curricular improper communication exists even though there may be no intent to gain unfair or illegal advantage. The prohibition is not absolute.

HIGHLY AND HIGHEST REPUTATIONS FOR PROFESSIONALISM

The current President of the American Inns of Court, the Honorable William C. Koch, Jr. (Tennessee Supreme Court Justice) describes a "profound difference" between professional ethics and professionalism. He describes that any RPC is a mandate for that which "is required" versus professional conduct as that which is "expected when the profession is practiced at the highest level." It should be remembered that our rules of professional conduct have basically morphed into disciplinary rules which essentially codifies mandated minimum conduct. The adherence to the disciplinary rules merely means that your continued license to practice law remains intact and nothing more. Without "anything more," you are highly unlikely to have a reputation as an HRP. Your reputation is the product of your experiences, interaction and relationships with those in your profession.

So the question is asked: You are a lawyer or judge with years of experience. What is your professionalism reputation amongst other members of your profession? What type of reputation do you have? How skilled? How trustworthy? How compassionate? How fair? How consistent? How good? How professional? How highly are you regarded?

The type of professionalism that the American Inns of Court seeks to foster and achieve is not just an issue of semantics. It is intended to be a higher level of professionalism, with the *highest*

level of professionalism as an ultimate aim. It is the level we as workers' compensation Inn members should be always striving to achieve. It involves developing one's "reputation" as a workers' compensation lawyer or judge to its optimal level. Such a positive reputation for competence and conduct can only be forged and earned over time with consistency of high level performance in all aspects of professionalism and significant engagement in professional relationships with all types.

It takes a long series of consistent competent civil conduct to forge one's positive reputation as a "highest regarded professional" or even a "highly regarded professional." But one moment of inappropriate conduct or worse, unethical conduct, can instantaneously forever brand an otherwise competent professional attorney/judge as "unprofessional" or worse, be the cause of the loss of his or her license to practice. This is especially true in the legal profession in part because it specifically embraces practicing and protecting the "Rule of Law" as its "business." We are all licensed business people. We have an earned privilege to earn a living by the practice of law. But to be a respected high level professional in this profession requires much more than baseline conduct. There are *degrees* of a professionalism reputation. There are *degrees* to the qualities that comprise such individual professionalism. The highest regarded professional normally has the highest levels of individual professionalism characteristics. Individual professionalism in numbers is synergetic to the professionalism reputation of the entire profession. Positive reinforcement for the highest level of conduct individually is itself a stimulus both individually and collectively. Part of any blueprint for optimal professionalism includes cultural intolerance of unprofessional conduct even though such conduct may not be unethical. In that regard, each compensation judge has the power and obligation to set an example. The Canons of Judicial Conduct (in part copied in the appendix) require as much. A Judge can create and maintain an appropriate professional decorum in his or her own court room and chambers where unprofessional conduct is given zero tolerance. This should be the baseline new normal for our Inn.

Reaching the lofty goal of a highest or highly regarded professional is an easier reach when the professional in question starts out life as a "decent human being" (DHB). It might even be a prerequisite to becoming a highest or highly regarded professional. Many of the attributes of a highly regarded professional are those which we recognize in people we describe as "good persons," "mensches" or "DHBs." The growth and direction of those DHB attributes to a highly regarded professional skill set can be more easily and quickly realized because the essential motivation of the individual's personality and psychological makeup is already consistent with the characteristics of optimal professionalism. The concept of decency and morality is a foundation cornerstone for the laws which apply to anyone anywhere. The laws of a particular geographic area normally prohibit specific conduct often based on fundamental concepts of baseline moral conduct. They become secondary vehicles to make certain that general citizen conduct is consistent with fundamental values of the law making group in question. Higher level legal professionalism involves elevating those core optimal personal conduct characteristics collectively to their highest level. This brings us to "The Sliding Scale of Professionalism and The Ten C's."

THE TEN "C's"

The Ten C's are not mutually exclusive considerations, there is considerable overlap. Also they are not exhaustive considerations. They are simply an alliterative list to continue the discussion on the sliding scale of professionalism and its component characteristics.

The analysis of each "C" is intended to start a dialogue on its qualities and relative importance to professionalism. The commentary is not exhaustive on the topic. Feel free to agree or disagree. The idea here is to reflect on these component considerations of professionalism.

Each pupil group should assign at least 2 members to discuss each "C." Feel free to agree, disagree or add anything additional you feel is relevant. Discuss a real life example of this quality in your workers' compensation experience. You can choose to reference an experience involving the absence or opposite of the "C," such as an "uncaring" Judge/Lawyer that left an impression on you. Discuss the relative importance of each C to the concept of becoming a highly regarded professional. Confidentially rate yourself on each "C." See how you measure up. The idea here is to provoke thought and discussion on our respective feelings on what professionalism means to us and where we are.

0-2 Minimal 3-4 Moderate 5-6 Moderately High 7-8 High 9-10 Highest

These ratings can then be totaled at the exercise's conclusion. Most of us should score above 50. This is not scientific. It is meant to be a fun exercise to "quantify" each "C." Each "C" is not weighted equally in real life. After we finish this year's program, come back to the grid and see if you change any these presumptive ratings about yourself.

Remember this approach is neither scientific nor exhaustive. It's just a format to start a meaningful discussion of relative professionalism within the context of our workers' compensation practice.

THE TEN "C's"
In alphabetical order

	Personal ratings before completing this year's program	Personal ratings after completing this year's program
CANDOR		
CARING/COMPASSION		
CHARACTER		
CIVILITY		
COMMITMENT		
COMPETENCE		
CONFIDENCE		
CONSISTENCY		
CONVICTION		
COURAGE		

0-2 Minimal 3-4 Moderate 5-6 Moderately High 7-8 High 9-10 Highest

CANDOR – Candor most often finds itself spoken in legal circles as part of the question “candor to the tribunal” RPC 3.3. However, the candor which is integral to HRP (highest/highly regarded professional) status is an individual’s honesty of word and conduct which is communicated to anyone at any time in any circumstance in one’s professional practice. In this sense “communication and conduct” could be two more “C’s.” One’s word should always be honest, reliable and true. An oath is unnecessary. Here, candor isn’t reserved for testimony under oath, nor is it reserved for words spoken to a Judge whether on or off the record. The special fiduciary relationship between attorneys and their clients is predicated upon candor both in word and deed. Candor is not a relative term. A lawyer’s or judge’s “word” is a priceless commodity in the practice of law. The foundation of any meaningful quality relationship in the practice of law is based in part upon a reputation for candor. High candor is compatible with high advocacy. Candor is not a trait of weakness. It is a strength that almost always facilitates favorable action. An attorney’s candor to an adversary is not inconsistent with the expectation of zealous representation of a client’s interests. Additionally, attorneys are officers of the court. They should always operate with a certain level of integrity, morality and honesty that is not necessarily required from other types of professionals, especially those professions not requiring a license. One’s word is everything especially when it is consistently based on candor. Such

candor inspires trust and reliance which in turn facilitates optimal relationships and facilitates optimal resolution of conflicts. RPC 4.1 prohibits a lawyer from making a "false statement of material fact or law to a third person."

CARING/COMPASSION – Caring alone will not achieve HRP status. But a true professional, a professional who is "caring" has a greater chance of elevating his or her status to a highest regarded professional level than one who is uncaring. This is especially true when caring is coupled with compassion. Caring is a major component of any highly regarded professional. Caring elevates the importance of what you are doing. In a personal relationship it is exercising humanness in a meaningful way. We are all in the personal injury practice whether we are Petitioner attorneys, Respondent attorneys or Judges of workers' compensation. We are always dealing with people who have deficits because of physical or mental disabilities. Yes the process is designed to significantly compensate those who are bona fidedly injured and disabled. But to fully appreciate the scope of the same, it is important to be caring. If you are not caring, you will not see the full picture in any case you are handling (Respondent or Petitioner) or judging. You will not see the depth of that picture. You may not be inclined to even consider the depth of the picture if you don't start out caring enough. Once you are caring, compassion is the connector for a deeper concern for the other person's issue especially if the other person has a deep issue. There are many people who merely come to work for a paycheck. Those people have jobs, not careers. People who only come to work for a paycheck can never reach HRP status because they do not have the quality of sufficient passion, commitment or caring to elevate their professional status. They are operating solely on a one dimensional platform. It is amazing how frequently colleagues positively assess new judges, especially those without significant workers' compensation experience. More often than not we hear that the Judge "gets it," is a "people person," is "intelligent" and best of all, he or she "really cares" and/or has "compassion." These are all professional compliments. Conduct is driven by caring and caring implies a moral character trait to "do the right thing." Our truest professionals "really care." When highly competent attorneys exhibit conduct that proves they really care about their clients, (buoyed with a great deal of compassion) a recipe then exists to optimize his or her professional reputation. Their relationships will inspire such growth. Such intense care is not necessarily normally directed to a client per se. Care can be directed to any responsibility the attorney or judge undertakes. It invariably will impact result. It's what makes professional conduct expected. There may be no personal characteristic more indispensable or stronger than caring/compassion when it comes to professionalism. Lawyers and judges who care about how they practice, care about how they are received, care about doing the right thing and have compassion for the human issues presented are probably those most deserving to have HRP status. They are also people who should care enough to be intolerant of those who are uncaring and/or unprofessional.

CHARACTER – Here we are not discussing "a character," but rather "character" as a moral and decency status. People who have "character" often have a combination of "C's." Character here is implied as being a professional of "good character." "Good character" as perceived in the practice of law is more than merely being an attorney "in good standing," or merely having paid his or her professional dues or having sufficient MCLE credits. As so many of the professionalism traits, character is a developed, earned and perceived quality but is also person-specific in nature. It comes in degrees. Professionals of character by definition have a high

moral component to their practice and behaviors which influences all of their important decisions. It is a series of behaviors and traits, the combination of which allow others to view them as attorneys and judges of "character." This in turn results in a reputation of a "high level" professional. Like many of these traits, character denotes a consistently high level of performance. Individuals of highest level character are almost always highly respected by their peers because it is integral to professionalism. It is a status which is not only entirely consistent with that of being an HRP, but also indispensable to that status. Good character has more to do with the moral decency side of the equation than mere high competency. It is a filter for the manner in which you use your competence. Individuals of high character also have high integrity and therefore can be far more effective and more positively perceived by their peers than those more lacking in this ethical trait. Character is by definition already operating at a higher level, but once achieved, there are still degrees attached to the amount of its existence, not unlike most of the "C's."

CIVILITY- Being polite is not being timid or weak. Civility in the practice of law is ignoring personal animus and fully respecting the issues to be addressed and the process of resolving the same. It is having the commitment to achieve a proper resolution by focusing on the issues in an intelligent fashion. Civility is about proper conduct over personal feelings. We are expected to be civil practitioners because we are officers of the court and we therefore are expected to respect the Law. Professionals who are not civil are rarely highly regarded professionals. It may even be an impossibility. No one needs to be or should be tolerant of unprofessional conduct. It is a poor strategy to simply respond to an obviously inferior uncivil adversary with your own incivility. That's a bad time to "fight fire with fire." Abusive behavior is legally and ethically actionable. Civility by definition respects the process of our rule of law. We are not robots. We are not without emotions or passion. We are expected to be human and humane. Civility underscores confidence in the system in which we operate. Civility demonstrates the confidence in our position that does not have to be advanced by attacking another person based on some irrelevant personal or otherwise ill-conceived issue. Civility is the practice of law in the manner in which it is intended to be practical at all times. Hence it is one of the four cornerstones of the American Inns of Court charter and an indispensable component of being a HRP. Even in the heat of battle, incivility is never an advisable strategy for success.

COMMITMENT – Commitment is an elevated status of determination driven by the higher moral considerations of dedication coupled with personal/moral responsibility. Commitment in this sense is broader in scope than the individual's isolated or transient commitment to a particular case, client or cause. This type of commitment is inherent to the essence of the lawyer or judge in question who faithfully adheres to the principles and cornerstones of the practice area in question. Commitment in professionalism implies more than one's best effort. It includes the righteous notion of always being counted on to doing one's best and as importantly, what is "right" in any challenge presented. When one is committed to practicing law the "right way" one is well on his or her way to becoming a highly regarded professional. This personality trait becomes palpable and most obvious when it is consistently exercised. One's professional commitment in the practice of law involves a person's thought process resulting from the complete acceptance and respect for the rule of law and a bona fide deep dedication to righteousness including the "right way" of practicing. Individuals who inherently operate at such high levels of commitment are more likely to be respected than those more technically

skilled individuals lacking in dedication to consistently doing what is necessary and just regardless of the challenge presented. They are viewed as more likely to fight the fight that needs to be fought for advancing the notion of justice in any given circumstance. They do not necessarily seek expediency solely for the sake of expedience. There is a practical ceiling to the exercise of commitment within the context of practical considerations. The commitment component is always the first thought with practicality or expediency being a secondary issue for consideration. Never the opposite.

COMPETENCE – Competence is also an indispensable component of professionalism. Like almost all “C’s” and even professionalism itself, competence can be seen as part of a continuum on a sliding scale of relativity. However, an individual can never be a recognized expert in a particular practice area if the individual is lacking a sufficient quantum of recognized expertise. The amount of an individual’s personal and professional ethics is irrelevant if in the first instance the individual does not have a sufficient quantum of competence. While a recognized professional does not necessarily have to be at the apex of skill level, someone who is considered a worthy representative or adversary must have the skills, acumen and talent to “get the job done” in resolving any legal challenge presented. It is not mere competency, but **perceived** or **acknowledged** competency that counts in terms of reputation. Perceived competency is best built on a consistent performance of high caliber conduct (again, not unlike most C’s). A highly regarded professional is normally a consensus professional. This requires the development of quality professional interactions and relationships. The status is earned based upon conduct over a period of time with other professionals. A high level of perceived competence is an important asset and a core component of one’s professional reputation. HRP’s are not baseline competence level attorneys, but those with a track record of excellent performance with a recognized high level skill set supporting their deserved reputation status. When you are recognized as highly competent, you are expected to be successful in what you do. A track record of success in this regard, facilitates future track records of success, all factors being equal.

CONFIDENCE – This is a personality trait that facilitates trust and respect in the attorney/client relationship and creates reactive behavior in an adversarial relationship. One’s assuredness, when authentic and not feigned, is generally the result of a combination of many of the “C’s” resulting in a conscious or subconscious projection of a successful outcome regarding whatever challenge is presented. Confidence is a component of perceived strength. In an adversarial practice, confidence never is a substitute for persuasive evidence, but confidence is a palpable trait that can facilitate optimal outcomes in almost any interaction in which it occurs. It can optimize the impact of relevant evidence in terms of presentation. True confidence is a natural result when one has done all of the work necessary to be as assured as possible about one’s position in the adversarial process. It is a “type” of attitude that can facilitate success so long as it is a genuine end result of due diligence concerning all issues. Confidence is not to be confused with arrogance which makes the strength reached by honest conviction diminished by projecting an attitude of personal superiority. Arrogance is a form of disrespect and therefore inconsistent with civility. Personal attacks should never be confused with the bona fide passionate strength of conviction. A personal attack is generally fueled by either insecurity regarding the issues presented or simply bad personal intent and/or personal disrespect. Personal attacks have no place in the professional practice of law and should never be tolerated. The truly confident

person who has the security to stay on the issues rather than to resort to personal attacks has the greatest chance of being the best professional whenever professionalism is being judged.

CONSISTENCY – Consistency is the living proof of the personal bona fides of many important components of professionalism. It creates credibility. It promotes character. It is proof of high competence. It is the glue of a record of experience that allows a professional's reputation to develop and flourish potentially to the highest level. A great restaurant that ~~only~~ occasionally serves great food is not going to have as a compelling reputation for being a great restaurant as a similar restaurant that is consistent. The C's must be *consistently* performed and embraced. Anyone's positive reputation is based upon long term consistency. This is unlike the negative reputation which can be created instantaneously and in perpetuity by "one bad act." A person cannot be an "occasional" "true" "professional." Once the status is earned and deserved, it is a status that must be maintained through consistency of word and conduct. A person can't be considered an honest person by being "occasionally" honest or inconsistently honest. High level professionalism unlike merely being a professional requires a much higher level of consistent quality conduct.

CONVICTION: This conviction is not the determination of one's guilt. Rather it has to do with the depth of one's belief regarding a particular issue. It is not merely the correct answer, but rather an emotional conclusion of some measurable depth that is often demonstrated by the actions taken by the professional consistent with his or her conviction. In that sense it is a righteous belief. One must be careful with conviction. Modest issues of relative "big picture" inconsequence normally do not deserve deeply resonating conviction. One should always aim to be "right" but not necessarily "dead right." Correctness can sometimes have its limits. The level of forcefulness in attempting to persuade another individual as to your position can sometimes elevate an innocuous situation into a destructive personal interaction which does far more damage between the two individuals as opposed to the relatively modest issue which was originally being addressed. Win the battle. Lose the war. Conviction propels effort and one's reasonable best efforts are always an important part of overall professionalism. Conviction is a corollary of commitment. These traits normally go hand in hand. They project a relatively certain level of belief. If you believe with commitment and conviction, that which you believe has elevated importance, and will be perceived as such. More often than not it will result in a successful outcome or at least give you a better chance of success.

COURAGE – When the good judgment to exercise one's courage in doing the right thing actually requires it, the opportunity for respect by others of such courageous conduct becomes potentially enormous. A highly regarded professional is someone who can put his or her own personal comfort and concerns aside and take the risk and effort necessary when the failure to take such action will assure an unacceptable outcome often because of the significance of what is at stake. A person cannot be an HRP without the courage to take the unpopular stand when circumstances require it. There is not always consistency between the common perception of what the law seems to be and what the law "should be." Circumstances often get in the way. It means when a judge disagrees with you or your argument, you must have the courage to respectfully press forward when warranted in a respectful but firm manner. Expediency and convenience are not options in such circumstances. HRPs can take the unpopular but righteous position and will always be viewed as fighting the good fight the right way. However, another

word of caution; this is another area where the “dead right” concept can rear its ugly head. Often times these are very close calls with little margin for error. There is a lot of Monday morning quarterbacking potential. In the heat of the moment we must make certain that we also have the courage to temper our passion and sometimes fold our cards when an adverse practical outcome is virtually assured. Courage exercised with discretion and careful thoughtfulness is about picking your spots and understanding the important moral moments that arise in our practice. Effective courage is rarely spontaneous. It should be well thought out and well planned to be as effective as possible. Courage implies that there is something worthwhile at stake to be courageous about and that there is normally a “bigger picture” involved. Courage and conviction go hand in hand. Conviction fuels courage. The opportunities for courage often occur in our practice given the volume of the contested cases and the limited number of people involved in the process of our claims. Our system presents a myriad of opportunities for conflict. Courage is not necessarily a part of every claim. But when an attorney who has the reputation of having the courage to competently try a difficult case to a conclusion because of the strength of his or her conviction as to any bona fide issue in dispute and does so successfully, that attorney has advanced his or her professional reputation to a higher level through courageous action. That in turn will make the resolution of the next case easier. The same is true of the Judge who faces a difficult set of facts in a particular circumstance when perhaps the written law is unclear but the underlying intent of the law is clear. The potential for an Appellate reversal should never be a reason for not exercising courage if the Judge’s conviction is that the well-reasoned decision best advances the purpose of the provision and the overall intent of the law.

QUESTIONS

1. What are the three most important professionalism traits you find significant in any lawyer you admire as an HRP?
2. What are the three most important professionalism traits you find significant in any adversary you admire as an HRP?
3. What are the three most important professionalism traits you find significant in any judge you admire as an HRP?

As you go through the scripted portion of the curriculum, consider each scene’s characters as demonstrating to any particular high or low degree of the Ten “C’s.”

APPENDIX

Miscellaneous Rules of Professional Conduct

Miscellaneous Provisions – NJ Administrative Code of Conduct for Judges of Compensation

MISCELLANEOUS RULES OF PROFESSIONAL CONDUCT [RPCs]

Rules of Professional Conduct hereinafter [RPC].

RPC 1.1. Competence

A lawyer shall not:

- (a) Handle or neglect a matter entrusted to the lawyer in such manner that the lawyer's conduct constitutes gross negligence.
- (b) Exhibit a pattern of negligence or neglect in the lawyer's handling of legal matters generally.

RPC 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer

(a) A lawyer shall abide by a client's decisions concerning the scope and objectives of representation, subject to paragraphs (c) and (d) and as required by RPC 1.4 shall consult with the client about the means to pursue them. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. ... a lawyer may counsel a client regarding New Jersey's medical marijuana laws and assist the client to engage in conduct that the lawyer reasonably believes is authorized by those laws. The lawyer shall also advise the client regarding related federal law and policy.

RPC 1.3. Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

RPC 1.4. Communication

- (a) A lawyer shall fully inform a prospective client of how, when and where the client may communicate with the lawyer.
- (b) A lawyer shall keep a client reasonably informed about the status of the matter and promptly comply with reasonable requests for information.
- (c) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
- (d) When a lawyer knows that a client expects assistance not permitted by the Rules of Professional Conduct or other law, the lawyer shall advise the client of the relevant limitations on the lawyer's conduct.

RPC 1.8. Conflict of Interest: Current Clients; Specific Rules

(3c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving a lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent, or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

3(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) A lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(2) A lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client; and

RPC 1.16. Declining or Terminating Representation

(a) Except as stated in Paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) The representation will result in violation of the rules of professional conduct or other law;

(2) The lawyer is discharged.

(b) Except as stated in Paragraph (c), a lawyer may withdraw from representing a client if:

(1) Withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) The client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) The client has used the lawyer's services to perpetrate a crime or fraud;

(4) The client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

(5) The client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) The representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) Other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practical to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law. No lawyer shall assert a common law retaining lien.

RPC 3.1. Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, nor assert or controvert an issue therein unless the lawyer knows or reasonably believes that 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, or the establishment of new law. A lawyer for the defendant

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 3.3. Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

(1) Make a false statement of material fact or law to a tribunal;

(2) Fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting an illegal, criminal or fraudulent act by the client;

(3) Fail to disclose to the tribunal legal authority and the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel;

(4) Offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable medial measures; or

(5) Fail to disclose to the tribunal a material fact knowing that the omission is reasonably certain to mislead the tribunal, except that it shall not be a breach of this rule if the disclosure is protected by a recognized privilege or is otherwise prohibited by law.

(b) The duty stated in Paragraph [a] continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by RPC 1.6.

(c) A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all relevant facts known to the lawyer that should be disclosed to permit the tribunal to make an informed decision, whether or not the facts are adverse.

RPC 3.4. Fairness to Opposing Party and Counsel

A lawyer shall not:

(a) Unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value, or counsel or assist another person to do any such act;

(e) In trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or

(f) Request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(1) The person is a relative or an employee or other agent of a client; and

(2) The lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

(g) Present, participate in presenting or threaten to present criminal charges to obtain an improper advantage in a civil matter.

RPC 3.5. Impartiality and Decorum to the Tribunal

A lawyer shall not:

(a) Seek to influence a judge, juror, prospective juror or other official by means prohibited by law;

- (b) Communicate ex parte with such a person except as permitted by law;
- (c) Engage in conduct intended to disrupt the tribunal; or
- (d) Conduct or have discussions with a judge or other adjudicated officer, arbitrator, mediator or other third-party neutral [hereinafter "judge"] about the judge's post retirement employment while the lawyer [or a law firm with or for whom the lawyer is a partner, associate counsel or contractor] is involved in a pending matter in which the judge is participating personally and substantially.

RPC 4.1. Truthfulness in Statements to Others

- (a) In representing a client, a lawyer shall not knowingly:
 - (1) Make a false statement of material fact or law to a third person; or
 - (2) Fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client.
- (b) The duties stated in this rule apply even if compliance requires disclosure of information otherwise protected by RPC 1.6.

RPC 4.4. Respect for the Rights of Third Persons

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) A lawyer who receives a document or electronic information and has reasonable cause to believe that the document or information was inadvertently sent shall not read the document or information or, if he or she has begun to do so, shall stop reading it. The lawyer shall:

- (1) Promptly notify the sender.
- (2) Return the document to the sender and if in electronic form, delete it, and take reasonable measures to assure that the information is inaccessible.

A lawyer who receives a document or electronic information that contains privileged lawyer-client communications involving an adverse or third party and who has reasonable cause to believe that the document or information was wrongfully obtained shall not read the document or information or, if he or she has begun to do so, shall stop reading it. A lawyer shall

- (1) Promptly notify the lawyer whose communications are contained in the document or information.

(2) Return the document to the other lawyer and if in electronic form, delete it, and take reasonable measures to assure that the information is inaccessible. A lawyer who has been notified about a document containing lawyer-client communications has the obligation to preserve the document.

RPC 5.3. Responsibilities Regarding Non Lawyer Assistance

With respect to a non lawyer employed or retained by or associated with a lawyer:

(a) Every lawyer, law firm or organization authorized by the court rules to practice law in this jurisdiction shall adopt and maintain reasonable efforts to ensure that the conduct of non lawyers retained or employed by the lawyer, law firm or organization is compatible with the professional obligations of the lawyer.

(b) A lawyer having direct supervisory authority over the non lawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) A lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) The lawyer orders or ratifies the conduct involved;

(2) The lawyer has direct supervisory authority over the person and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action; or

(3) The lawyer has failed to make reasonable investigations of circumstances that would disclose past instances of conduct by the non lawyer incompatible with the professional obligation of a lawyer which evidence a propensity for such conduct.

RPC 5.4. Professional Independence of the Lawyer

Except as otherwise provided by the rules of court:

(a) A lawyer or law firm shall not share legal fees with a non lawyer ...

RPC 7.1. Communications Concerning a Lawyer's Service

(a) A lawyer shall not make false or misleading communications about the lawyer, lawyer services, or any matter in which the lawyer has or seeks a professional involvement. A communication is false or misleading if it:

(1) Contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

(2) Is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law;

(3) Compares the lawyer's service with other lawyers' services, unless

[i.] The same of the comparing organization is stating,

[ii.] The basis for the comparison can be substantiated and

[iii.] The communication includes the following disclaimer in a readily discernible manner "no aspect of this advertisement has been approved by the Supreme Court of New Jersey"; or

4. Relates to legal fees other than:

[i] A statement of the fee for an initial consultation;

ii. A statement of the fixed or contingency fee charged for a specific legal service, the description of which would not be misunderstood or be deceptive;

RPC 7.2. Advertising

(a) Subject to the requirements of RPC 7.1, a lawyer may advertise services through public media, such as a telephone directory, legal directory, newspaper or other periodical, radio or television, Internet or other electronic media, or through mailed written communication. All advertisements shall be predominantly informational. No drawings, animations, dramatizations, music or lyrics shall be used in connection with televised advertising. No advertisement shall rely in any way on techniques to obtain attention that depend upon absurdity and that demonstrate a clear and intentional lack of relevance to the selection of counsel; included in this category are all advertisements that contain any extreme portrayal of counsel exhibiting characteristics clearly unrelated to legal competence.

(b) A copy or recording of an advertisement or written communication shall be kept for 3 years after its dissemination along with a record of when and where it was used. Lawyers shall capture all material on their web sites, in the form of an electronic or paper backup, including all new content, on at least a monthly basis and retain this information for 3 years.

(c) A lawyer shall not give anything of value to a person for recommending a lawyer's services, except that:

(1) A lawyer may pay the reasonable cost of advertising or written communication permitted by this Rule;

(2) A lawyer may pay the reasonable cost of advertising, written communication or other notification required in connection with the sale of a law practice as permitted by RPC 1.17; and

(3) A lawyer may pay the usual charges of a not-for-profit lawyer referral service or other legal service organization.

RPC 7.3. Personal Contact with Prospective Clients

(a) A lawyer may initiate personal contact with a prospective client for the purpose of obtaining professional employment, subject to the requirements of Paragraph b.

(b) A lawyer shall not contact or send a written or electronic or other form of communication to a prospective client for the purpose of obtaining professional employment if:

(1) The lawyer knows or should know that the physical, emotional or mental state of the person is such that the person could not exercise reasonable judgment in employing a lawyer; or

(2) The person has made known to the lawyer a desire not to be solicited by the lawyer; or

(3) The communication involves coercion, duress or harassment; or

(4) The communication involves unsolicited direct contact with a prospective client within 30 days after a specific mass-disaster event when such contact concerns potential compensation arising from the event; or

(5) The communication involves unsolicited direct contact with a prospective client concerning a specific event not covered by Section 4 of this Rule when such contact has pecuniary gain as a significant motive except that a lawyer may send a letter by regular mail to a prospective client in such circumstances provided that the letter:

[i] Bears the word "advertisement" prominently displayed in capital letters at the top of the first page of the text and on the outside envelope unless the lawyer has a family, close personal, or a professional relationship; with the recipient. The envelope shall contain nothing other than the lawyer's name, firm, return address and "ADVERTISEMENTS" prominently displayed and

[ii] Shall contain the party's name in the salutation and begin by advertising the recipient that if a lawyer has already been retained, the letter is to be disregarded; and

[iii] Contains the following notice at the bottom of the last page of text "Before making your choice of attorney, you should give this matter careful thought. The selection of an attorney is an important decision" and

[iv] Contain an additional notice, also at the bottom of the last page of text, that the recipient may, if the letter is inaccurate or misleading, report same to the Committee on Attorney Advertising, Hughes Justice Complex, PO Box 970, Trenton, New Jersey 08625-0970. The name and address of the attorney responsible for the content of the letter shall be included in the notice.

(d) A lawyer shall not compensate or give anything of value to a person or organization to recommend or secure the lawyer's employment by a client, or as a reward for having made a recommendation resulting in the lawyer's employment by a client except that the lawyer may pay for public communications permitted by RPC 7.1 and the usual and responsible fees or dues charged by a lawyer referral service operated, sponsored, or approved by a bar association.

RPC 7.4. Communication of Fields of Practice and Certification

(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer may not, however, state or imply that the lawyer has been recognized or certified as a specialist in a particular field of law except as provided in Paragraphs b, c and d of this Rule ...

(d) A lawyer may communicate that the lawyer has been certified as a specialist or certified in a field of practice only when the communication is not false or misleading, states the name of the certifying organization and states that the certification has been granted by the Supreme Court of New Jersey or by an organization that has been approved by the American Bar Association. If the certification has been granted by an organization that has not been improved, or has been denied approval, by the Supreme Court of New Jersey or the American Bar Association, the absence or denial of such approval shall be clearly identified in each such communication by the lawyer.

RPC 7.5. Firm Names and Letterheads

(e) A law firm name may include additional identifying language such as "& Associates" only when such language is accurate and descriptive of the firm. Any firm name including additional identifying language such as "legal services" or other similar phrases shall inform all prospective clients in the retainer agreement or other writing that the law firm is not affiliated or associated with a public, quasi-public or charitable organization ...

RPC 8.2. Judicial and Legal Officials

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications of a judge, adjudicatory officer or other public legal officer, or of a candidate for election or appointment to judicial or legal office.

RPC 8.3. Reporting Professional Conduct

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This Rule does not require disclosure of information otherwise protected by RPC 1.6 ...

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;

(f) Knowingly assist a judge or judicial officer in conduct that is a violation of the Code of Judicial Conduct or other law;

(g) Engage in a professional capacity, in conduct involving discrimination [except employment discrimination unless resulting in a final agency or judicial determination] because of race, color, religion, age, sex, sexual orientation, national origin, language, marital status, socioeconomic status, or handicap, where the conduct is intended or likely to cause harm. See also conduct for judicial employees.

CANONS 1 – 8

Canon 2 – Protection of Confidential Information

(a) A court employee may not disclose to any unauthorized person for any purpose any confidential information acquired in the course of employment, or knowingly acquired through unauthorized disclosure by another ...

(b) Every court employee shall report confidential information to an appropriate authority within the judicial system when the employee reasonably believes that that information is or may be evidence of a violation of law or of this Code ...

Canon 3. Avoiding Actual or Apparent Impropriety

A court employee shall reserve high standards of conduct so that the integrity and independence of the courts may be preserved and shall avoid impropriety or the appearance of impropriety.

Canon 4. Avoiding Actual or Apparent Conflicts of Interest

A court employee shall regulate outside activities to minimize the risk of conflict with court-related duties. Generally a conflict of interest exists when the court employee's objective ability or independence of judgment in the performance of his or her job is impaired or reasonably may appear to be impaired. Outside employment or other activities, whether related to judicial administration or not, must not involve the court employee in conflict of interest nor appear to do so, nor encroach on or conflict with judiciary-related duties.

MISCELLANEOUS PROVISIONS –
NJ ADMINISTRATIVE CODE OF CONDUCT FOR JUDGES OF COMPENSATION

N.J.A.C. 12:235-10.1 Causes for discipline or removal

(a) A judge may be disciplined for:

1. Violation of the Code of Conduct for Judges of Compensation;
2. Willful misconduct including misconduct which, although not directly pertaining to judicial duties, brings the office into disrepute or is prejudicial to the administration of justice;
3. Failure, neglect or inability to perform judicial duties; or
4. Failure to notify the Director when the judge has reason to believe that a medical report, medical bill for services, or medical finding has been altered, falsified, or withheld by a licensed physician, dentist, chiropractor, osteopath, optometrist, physical therapist, medical technician, attorney, or a representative of an insurance carrier or self-insured.

12:235-10.5 Establishment of Commission on Judicial Performance

N.J.A.C. 12:235-10.11 Judicial independence and discipline process

The methods used by the judge, but not the result arrived at by the judge in any case, may be the cause for discipline of the judge. In order to foster and encourage independence, claims of error shall be left to appellate review and not subject to discipline.

CODE OF CONDUCT FOR JUDGES OF COMPENSATION *

The Code of Conduct for Judges of Compensation is intended to establish basic ethical conduct standards for judges of compensation. The Code is intended to govern the conduct of these judges of compensation and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct. This Code is based upon the revised New Jersey Code of Judicial Conduct, adopted by the New Jersey Supreme Court to be effective September 1, 2016.

* See also Rules Governing the Courts of the State of New Jersey Code of Judicial Conduct: Appendix to Part 1 (Canons 1-7) which form basis for New Jersey Administrative Code. The Canons are rules of reason. They should be applied consistent with constitutional requirements, statutes, administrative rules, and decisional law and in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions. The Code is designed to provide guidance to judges of compensation and to provide a structure for regulating conduct.

The text of the Canons is authoritative. The Commentary, by explanation and example, provides guidance with respect to the purpose and meaning of the Canons. The Commentary is not intended as a statement of additional rules. When the text uses "shall" or "shall not," it is intended to impose binding obligations the violation of which can result in disciplinary action. When "should" or "should not" is used, the text is a statement of what is or is not appropriate conduct, but not as a binding rule under which a judge may be disciplined. When "may" is used, it denotes permissible discretion or, depending on the context, it refers to action that is not covered by specific proscriptions.

CANON 1: AN INDEPENDENT AND IMPARTIAL JUDICIARY IS INDISPENSABLE TO JUSTICE. A JUDGE THEREFORE SHALL UPHOLD AND SHOULD PROMOTE THE INDEPENDENCE, INTEGRITY AND IMPARTIALITY OF THE JUDICIARY.

Rule 1.1 Independence, Integrity and Impartiality of the Judiciary

A Judge shall participate in establishing, maintaining and enforcing, and shall personally observe, high standards of conduct so that the integrity, impartiality and independence of the judiciary is preserved. This Code shall be construed and applied to further these objectives.

Rule 1.2 Compliance with the Law

A Judge shall respect and comply with the law.

COMMENT:

Violations of this Code, or violations of law or N.J.A.C. 12:235 that reflect adversely on a judge's honesty, impartiality, temperament or fitness constitute a failure to respect and comply with the law.

CANON 2 A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY

Rule 2.1 Promoting Confidence in the Judiciary

A Judge shall act at all times in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

COMMENT:

- [1] Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety and must expect to be the subject of constant public scrutiny. This principal applies to both the professional and personal conduct of the judge. A judge must

therefore accept restrictions on personal conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

- [2] Actual impropriety is conduct that reflects adversely on the honesty, impartiality, temperament or fitness to serve as a judge.
- [3] With regard to the personal conduct of a judge, an appearance of impropriety is created when an individual who observes the judge's personal conduct has a reasonable basis to doubt the judge's integrity and impartiality.

Rule 2.2 External Influences on Judicial Conduct

Judges shall decide cases according to the law and facts. Judges shall not permit family, social, political, financial or other relationships or interests to influence their judicial conduct or judgment.

CANON 3 A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY

Rule 3.4 Decorum

A Judge shall maintain order and decorum in judicial proceedings.

Rule 3.5 Demeanor

A Judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall not permit lawyers, court officials, and others subject to the judge's direction and control to display impatience or discourtesy or to detract from the dignity of the court.

Rule 3.6 Bias and Prejudice

- (A) A judge shall be impartial and shall not discriminate because of race, creed, color, sex, gender identity or expression, religion/religious practices or observances, national origin/nationality, ancestry, language, ethnicity, disability or perceived disability, atypical hereditary cellular or blood trait, genetic information, status as a veteran or disabled veteran of, or liability for service in, the Armed Forces of the United States, age, affectional or sexual orientation, marital status, civil union status, domestic partnership status, socioeconomic status or political affiliation.
- (B) A judge shall requires lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice on the bases specified in Rule 3.6(A), against parties, witnesses, counsel or others. This section does not preclude legitimate advocacy when the listed bases are issues in or relevant to the proceeding.

- (C) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice or harassment on the basis specified in Rule 3.6(A), and shall not permit court staff, court officials or others subject to the judge's direction and control to do so. This section does not preclude reference to the listed bases when they are issues in or relevant to the proceeding.

Rule 3.8 Ex Parte Communications

Except as authorized by law or N.J.A.C. 12:235, a judge shall not initiate or consider ex parte or other communications concerning a pending or impending proceeding.

COMMENT:

- [1] This rule does not prohibit a judge from appointing an independent expert in accordance with the rules of court.
- [2] The proscription against communications concerning a proceeding generally includes communications with or from lawyers and other persons who are participants in the proceeding. It does not preclude a judge from consulting with other judges on pending matters, provided that the judge avoids ex parte discussions of a case with judges who have previously been disqualified from hearing the matter and with judges who have appellate jurisdiction over the matter, or from consulting with court personnel whose function is to aid the judge in carrying out adjudicative responsibilities.
- [3] In general, settlement discussions, discussions regarding scheduling and a judge's handling of emergent issues are not considered to constitute ex parte communication in violation of this rule.

Rule 3:14 Responding to Judicial and Lawyer Misconduct

- (A) A judge who receives reliable information indicating a substantial likelihood that another judge has committed a violation of this Code shall take appropriate action. A judge having knowledge that another Judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority.
- (B) A judge who receives reliable information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority.

- (C) Acts of a judge in the discharge of disciplinary responsibilities under this rule shall be absolutely privileged.

Rule 3:16 Disqualification

- (A) A judge shall hear and decide all assigned matters unless disqualification is required by this rule or other law.
- (B) Judges shall disqualify themselves in proceedings in which their impartiality or the appearance of their impartiality might reasonably be questioned, including but not limited to the following:
 - (1) Personal bias, prejudice or knowledge. Judges shall disqualify themselves if they have a personal bias or prejudice toward a party or a party's lawyer or have personal knowledge of disputed evidentiary facts involved in the proceeding.
 - (3) Personal Relationships. Judges shall disqualify themselves if:
 - (d) The judge has a social relationship with a party or a lawyer for a party of a nature that would give rise to a partiality or the appearance of partiality.
- (C) A disqualification required by this rule is not subject to the parties' waiver. The judge shall, however, disclose to the parties any circumstance not deemed by the judge to require disqualification but which might be regarded by the parties as affecting the judge's impartiality.
- (D) A judge shall address disqualification or issues of recusal and disqualification promptly upon recognition of grounds which would give rise to partiality or the appearance of partiality.
- (E) A judge shall not be automatically disqualified upon learning that a complaint has been filed against the judge with the Director/Chief Judge of Compensation, litigation naming the judge as a party, or any other complaint about the judge by a party. If, however, the judge concludes that there is a reasonable basis to question the court's impartiality, the judge may recuse himself or herself. A judge shall promptly disclose to the parties to the pending litigation that a complaint has been filed or made.

COMMENT:

- [1] Judges must be available to decide the matters that come before the court. Although there are times when disqualification is necessary to protect the rights of litigants and preserve public confidence in the independence, integrity and impartiality of the judiciary, unwarranted disqualification may bring public

disfavor to the court and to the judge personally. The dignity of the court, the judge's respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge not use disqualification to avoid cases that present difficult, controversial or unpopular issues.

- [2] In determining whether disqualification is necessary, the applicable standard is as follows: Would a reasonable, fully informed person have doubts about the judge's impartiality. DeNike v. Cupo, 196 N.J. 502